### TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

<table>
<thead>
<tr>
<th>Technical Area</th>
<th>Site ID: Name</th>
<th>Type of Activity</th>
<th>County</th>
<th>Potential Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Safety</strong></td>
<td></td>
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</tr>
<tr>
<td>Safety</td>
<td>C-072: Mayfield-Marcy</td>
<td>Rail Line Segment</td>
<td>Cuyahoga</td>
<td><strong>Hazardous Materials Transport:</strong> Increase in potential for hazardous materials release because of an accident. (A key and a major key route).</td>
</tr>
<tr>
<td>Safety</td>
<td>C-073: Quaker - Mayfield</td>
<td>Rail Line Segment</td>
<td>Cuyahoga</td>
<td><strong>Hazardous Materials Transport:</strong> Increase in potential for hazardous materials release because of an accident (A key and a major key route).</td>
</tr>
<tr>
<td>Safety</td>
<td>C-074: Short - Berea</td>
<td>Rail Line Segment</td>
<td>Cuyahoga</td>
<td><strong>Hazardous Materials Transport:</strong> Increase in potential for hazardous materials release because of an accident (A key and a major key route).</td>
</tr>
<tr>
<td>Safety</td>
<td>C-075: Willard - Fostoria</td>
<td>Rail Line Segment</td>
<td>Huron, Seneca</td>
<td><strong>Hazardous Materials Transport:</strong> Increase in potential for hazardous materials release because of an accident (A major key route).</td>
</tr>
<tr>
<td>Safety</td>
<td>C-228: Fostoria - Toledo</td>
<td>Rail Line Segment</td>
<td>Seneca, Wood</td>
<td><strong>Freight Rail Operations:</strong> Increase in accident frequency.</td>
</tr>
<tr>
<td>Safety</td>
<td>C-229: Columbus - Marion</td>
<td>Rail Line Segment</td>
<td>Marion, Delaware, Franklin</td>
<td><strong>Hazardous Materials Transport:</strong> Increase in potential for hazardous materials release because of an accident. (A key and a major key route).</td>
</tr>
<tr>
<td>Safety</td>
<td>C-230: NJ Cabin, KY - Columbus, OH</td>
<td>Rail Line Segment</td>
<td>Marion, Franklin, Pickaway, Pike, Ross</td>
<td><strong>Hazardous Materials Transport:</strong> Increase in potential for hazardous materials release because of an accident (A key route).</td>
</tr>
<tr>
<td>Technical Area</td>
<td>Site ID: Name</td>
<td>Type of Activity</td>
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</tr>
<tr>
<td>Safety</td>
<td>N-070: Buffalo FW, NY - Ashtabula, OH</td>
<td>Rail Line Segment</td>
<td>Ashtabula</td>
<td><strong>Hazardous Materials Transport:</strong> Increase in potential for hazardous materials release because of an accident (A key and a major key route).</td>
</tr>
<tr>
<td></td>
<td>N-071: Bucyrus - Bellevue</td>
<td>Rail Line Segment</td>
<td>Crawford, Sandusky, Seneca, Huron</td>
<td><strong>Highway/Rail At-grade Crossing Safety:</strong> Increase in potential for vehicle-train accident. <strong>Crawford County</strong> Andrews</td>
</tr>
<tr>
<td></td>
<td>N-072: Vermilion - Bellevue</td>
<td>Rail Line Segment</td>
<td>Huron, Erie, Sandusky</td>
<td><strong>Hazardous Materials Transport:</strong> Increase in potential for hazardous materials release because of an accident (A key route).</td>
</tr>
<tr>
<td></td>
<td>N-073: Fairgrounds (Columbus) - Bucyrus</td>
<td>Rail Line Segment</td>
<td>Crawford, Delaware, Franklin, Marion</td>
<td><strong>Highway/Rail At-grade Crossing Safety:</strong> Increase in potential for vehicle-train accident. <strong>Crawford County</strong> Marion County Hopley Galion-Marseilles Scott Twp. Road-190</td>
</tr>
<tr>
<td></td>
<td>N-074: Cleveland-CP-190</td>
<td>Rail Line Segment</td>
<td>Cuyahoga</td>
<td><strong>Hazardous Materials Transport:</strong> Increase in potential for hazardous materials release because of an accident (A major key route).</td>
</tr>
<tr>
<td></td>
<td>N-075: Ashtabula - Cleveland</td>
<td>Rail Line Segment</td>
<td>Cuyahoga, Lake, Ashtabula</td>
<td><strong>Hazardous Materials Transport:</strong> Increase in potential for hazardous materials release because of an accident (A key and a major key route).</td>
</tr>
<tr>
<td></td>
<td>N-077: Oak Harbor - Miami</td>
<td>Rail Line Segment</td>
<td>Lucas, Ottawa, Wood</td>
<td><strong>Freight Rail Operations:</strong> Increase in accident frequency.</td>
</tr>
<tr>
<td>Technical Area</td>
<td>Site ID: Name</td>
<td>Type of Activity</td>
<td>County</td>
<td>Potential Impact</td>
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</tr>
<tr>
<td>Safety</td>
<td>N-079: Oak Harbor - Bellevue</td>
<td>Rail Line Segment</td>
<td>Ottawa, Sandusky</td>
<td><strong>Highway/Rail At-grade Crossing Safety:</strong> Increase in potential for vehicle-train accident. <strong>Sandusky County:</strong> Kilbourne Street CR 292 Fangboner Road <strong>Hazardous Materials Transport:</strong> Increase in potential for hazardous materials release because of an accident (A key route).</td>
</tr>
<tr>
<td></td>
<td>N-080: Cleveland - Vermilion</td>
<td>Rail Line Segment</td>
<td>Cuyahoga, Erie, Lorain</td>
<td><strong>Hazardous Materials Transport:</strong> Increase in potential for hazardous materials release because of an accident (A key and a major key route).</td>
</tr>
<tr>
<td></td>
<td>N-081: White - Cleveland</td>
<td>Rail Line Segment</td>
<td>Cuyahoga</td>
<td><strong>Hazardous Materials Transport:</strong> Increase in potential for hazardous materials release because of an accident (A major key route).</td>
</tr>
<tr>
<td></td>
<td>N-082: Youngstown - Ashtabula</td>
<td>Rail Line Segment</td>
<td>Ashtabula, Mahoning, Trumbull</td>
<td><strong>Hazardous Materials Transport:</strong> Increase in potential for hazardous materials release because of an accident (A key route).</td>
</tr>
<tr>
<td></td>
<td>N-085: Bellevue - Sandusky Dock</td>
<td>Rail Line Segment</td>
<td>Erie, Huron</td>
<td><strong>Highway/Rail At-grade Crossing Safety:</strong> Increase in potential for vehicle-train accident. <strong>Erie County:</strong> Bradshar Skadden/CR 42</td>
</tr>
<tr>
<td>Technical Area</td>
<td>Site ID: Name</td>
<td>Type of Activity</td>
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</tr>
<tr>
<td>Safety</td>
<td>N-086: Miami - Airline</td>
<td>Rail Line Segment</td>
<td>Lucas</td>
<td><strong>Freight Rail Operations:</strong> Increase in accident frequency.</td>
</tr>
<tr>
<td></td>
<td>N-095: Rochester, PA - Youngstown, OH</td>
<td>Rail Line Segment</td>
<td>Mahoning</td>
<td><strong>Hazardous Materials Transport:</strong> Increase in potential for hazardous materials release because of an accident (A key route).</td>
</tr>
<tr>
<td></td>
<td>N-293C: CP-190-Berea</td>
<td>Rail Line Segment</td>
<td>Cuyahoga</td>
<td><strong>Freight Rail Operations:</strong> Increase in accident frequency.</td>
</tr>
</tbody>
</table>
|                | CY04: Stanley Rail Yard       | Rail Yard        | Wood         | **Hazardous Materials Transport:** Increase in potential for hazardous materials release because of handling.  
|                |                                |                 |              | **Wood County**                                                                 |
|                |                                |                 |              | **City of Toledo**                                                               |
|                | NY06: Conneaut Rail Yard      | Rail Yard        | Ashtabula    | **Hazardous Materials Transport:** Increase in potential for hazardous materials release because of handling. 
|                |                                |                 |              | **Ashtabula County**                                                             |
|                |                                |                 |              | **City of Conneaut**                                                             |
|                | NY07: Homestead Rail Yard     | Rail Yard        | Lucas        | **Hazardous Materials Transport:** Increase in potential for hazardous materials release because of handling. 
|                |                                |                 |              | **Lucas County**                                                                |
|                |                                |                 |              | **City of Toledo**                                                              |
|                | NY08: Airline Rail Yard       | Rail Yard        | Lucas        | **Hazardous Materials Transport:** Increase in potential for hazardous materials release because of handling. 
|                |                                |                 |              | **Lucas County**                                                                |
|                |                                |                 |              | **City of Toledo**                                                              |
### TABLE 4-7
**SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE** (Continued)

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<th>Technical Area</th>
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<tbody>
<tr>
<td><strong>Safety</strong></td>
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</tr>
</tbody>
</table>
|                | NM11: Sandusky Intermodal    | Intermodal Facility | Erie         | **Hazardous Materials Transport**: Increase in potential for hazardous materials release because of handling.  
|                |                              |                  |              | **Erie County**: City of Sandusky                                                  |
|                | NM12: Discovery Park Intermodal | Intermodal Facility | Franklin     | **Hazardous Materials Transport**: Increase in potential for hazardous materials release because of handling.  
|                |                              |                  |              | **Franklin County**: City of Columbus                                             |
|                | SC-06: Greenwich Connection  | Rail Line Segment | Huron        | CSX shall comply with its Negotiated Agreement executed with the Village of Greenwich, Ohio and the Board of Huron County, Ohio Commissioners regarding relocation of the connection construction project in Greenwich.  
|                |                              |                  |              | **Hazardous Materials Transport**                                                  |
|                | NC-11: Bucyrus Connection    | Rail Line Segment | Crawford     | **Hazardous Materials Transport**                                                  |
| **Transportation** |                            |                  |              |                                                                                   |
|                | C-063: Cincinnati–Hamilton   | Rail Line Segment | Butler, Hamilton, Sandusky | **Highway/Rail At-grade Crossing Delay**: Increase in vehicle delay at crossing.  
|                |                              |                  |              | **Butler County**: Hamilton County  
|                |                              |                  |              | **Vine Street**: Township Avenue                                                   |
|                | NC-12: Columbus Connection   | Construction     | Franklin     | **Safety and Traffic**: Vertical alignment of new highway/rail at-grade crossing. |
## TABLE 4-7
**SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)**

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<tr>
<th>Technical Area</th>
<th>Site ID: Name</th>
<th>Type of Activity</th>
<th>County</th>
<th>Potential Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Noise</td>
<td>C-061: Berea – Greenwich</td>
<td>Rail Line Segment</td>
<td>Cuyahoga, Lorain, Huron</td>
<td>Exceeds 70 dBA $L_{dn}$ at noise-sensitive receptors and an increase of at least 5 dBA.</td>
</tr>
<tr>
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<td></td>
<td>Communities:</td>
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<tr>
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<td></td>
<td></td>
<td>Berea Grafton Rochester</td>
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<tr>
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<td></td>
<td>Olmsted Falls LaGrange New London</td>
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<td></td>
<td></td>
<td>Eaton Estates CDF Wellington</td>
</tr>
<tr>
<td></td>
<td>C-065: Deshler – Toledo</td>
<td>Rail Line Segment</td>
<td>Henry, Wood</td>
<td>Exceeds 70 dBA $L_{dn}$ at noise-sensitive receptors and an increase of at least 5 dBA.</td>
</tr>
<tr>
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<td>Communities:</td>
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<tr>
<td></td>
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<td></td>
<td>Perrysburg Weston Deshler</td>
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<td>Haskins Milton Center</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>Tontogany Custer</td>
</tr>
<tr>
<td></td>
<td>C-072: Mayfield – Marcy</td>
<td>Rail Line Segment</td>
<td>Cuyahoga</td>
<td>Exceeds 70 dBA $L_{dn}$ at noise-sensitive receptors and an increase of at least 5 dBA.</td>
</tr>
<tr>
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<td>Communities:</td>
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<td></td>
<td></td>
<td>Cleveland Cuyahoga Heights</td>
</tr>
<tr>
<td></td>
<td>C-073: Quaker – Mayfield</td>
<td>Rail Line Segment</td>
<td>Cuyahoga</td>
<td>Exceeds 70 dBA $L_{dn}$ at noise-sensitive receptors and an increase of at least 5 dBA.</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Community: Cleveland</td>
</tr>
</tbody>
</table>
### TABLE 4-7

**SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)**

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<thead>
<tr>
<th>Technical Area</th>
<th>Site ID: Name</th>
<th>Type of Activity</th>
<th>County</th>
<th>Potential Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Noise</td>
<td>C-074: Short - Berea</td>
<td>Rail Line Segment</td>
<td>Cuyahoga</td>
<td>Exceeds 70 dBA $L_{eq}$ at noise-sensitive receptors and an increase of at least 5 dBA.</td>
</tr>
<tr>
<td></td>
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<td></td>
<td></td>
<td><strong>Communities:</strong> Middleburg Heights</td>
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<tr>
<td></td>
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<td></td>
<td></td>
<td>Berea</td>
</tr>
<tr>
<td></td>
<td>N-074: Cloggsville-CP 190</td>
<td>Rail Line Segment</td>
<td>Cuyahoga</td>
<td>Exceeds 70 dBA $L_{eq}$ at noise-sensitive receptors and an increase of at least 5 dBA.</td>
</tr>
<tr>
<td></td>
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<td><strong>Communities:</strong> Cleveland</td>
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<tr>
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<td></td>
<td>Brooklyn</td>
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<td>Linndale</td>
</tr>
<tr>
<td></td>
<td>N-079: Oak Harbor - Bellevue</td>
<td>Rail Line Segment</td>
<td>Huron, Ottawa,</td>
<td>Exceeds 70 dBA $L_{eq}$ at noise-sensitive receptors and an increase of at least 5 dBA.</td>
</tr>
<tr>
<td></td>
<td></td>
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<td>Sandusky</td>
<td><strong>Communities:</strong> Kingsway</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td>Bookstown</td>
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<td></td>
<td>Fremont</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Clyde</td>
</tr>
<tr>
<td></td>
<td>N-085: Bellevue - Sandusky Dock</td>
<td>Rail Line Segment</td>
<td>Huron, Erie, Sandusky</td>
<td>Exceeds 70 dBA $L_{eq}$ at noise-sensitive receptors and an increase of at least 5 dBA.</td>
</tr>
<tr>
<td></td>
<td></td>
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<td></td>
<td><strong>Communities:</strong> Weyers</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Parkertown</td>
</tr>
</tbody>
</table>
### TABLE 4-7
#### SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

<table>
<thead>
<tr>
<th>Technical Area</th>
<th>Site ID: Name</th>
<th>Type of Activity</th>
<th>County</th>
<th>Potential Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Noise</td>
<td>CC-06: Greenwich Connection</td>
<td>Rail Line Segment</td>
<td>Huron</td>
<td>CSX shall comply with its Negotiated Agreement executed with the Village of Greenwich, Ohio and the Board of Huron County, Ohio Commissioners regarding relocation of the connection construction project in Greenwich. Wheel squeal noise.</td>
</tr>
<tr>
<td>Cultural Resources</td>
<td>CR-03: Collinwood Yard, Cleveland</td>
<td>Construction</td>
<td>Cuyahoga</td>
<td>Acquisition and probable destruction of four to nine extant historic district contributors.</td>
</tr>
<tr>
<td>Natural Resources</td>
<td>NC-11: Bucyrus Connection</td>
<td>Construction</td>
<td>Crawford</td>
<td>NS shall retain its interest in and take no steps to alter the historic integrity of sites identified at Bucyrus, Ohio until completion of the Section 106 process of the National Historic Preservation Act.</td>
</tr>
<tr>
<td>Natural Resources</td>
<td>CR-03: Collinwood Yard, Cleveland</td>
<td>Construction</td>
<td>Cuyahoga</td>
<td>Expand existing rail yard to accommodate intermodal facility.</td>
</tr>
<tr>
<td>Natural Resources</td>
<td>NC-14: Vermilion Connection</td>
<td>Construction</td>
<td>Erie</td>
<td>Potential impacts on endangered Indiana bat.</td>
</tr>
<tr>
<td>Natural Resources</td>
<td>NC12: Columbus Connection</td>
<td>Construction</td>
<td>Franklin</td>
<td>Expanding existing rail yard to accommodate intermodal facility.</td>
</tr>
<tr>
<td>Natural Resources</td>
<td>NC13: Oak Harbor Connection</td>
<td>Construction</td>
<td>Ottawa</td>
<td>Expanding existing rail yard to accommodate intermodal facility.</td>
</tr>
<tr>
<td>Natural Resources</td>
<td>NC14: Vermilion Connection</td>
<td>Construction</td>
<td>Erie</td>
<td>Expanding existing rail yard to accommodate intermodal facility.</td>
</tr>
</tbody>
</table>
### TABLE 4-7
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</tr>
</thead>
<tbody>
<tr>
<td>Natural Resources</td>
<td>NA03: Toledo -</td>
<td>Abandonment</td>
<td>Lucas</td>
<td>Expanding existing rail yard to accommodate intermodal facility.</td>
</tr>
<tr>
<td></td>
<td>Maumee Abandonment</td>
<td></td>
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</tr>
<tr>
<td>Environmental Justice</td>
<td>C-074: Short -</td>
<td>Rail Line Segment</td>
<td>Cuyahoga</td>
<td>Minority and low-income population:</td>
</tr>
<tr>
<td></td>
<td>Berea</td>
<td></td>
<td></td>
<td>Hazardous Materials Transport</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Cuyahoga County</td>
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<td></td>
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<td></td>
<td>City of Berea</td>
</tr>
<tr>
<td></td>
<td>C-072: Mayfield -</td>
<td>Rail Line Segment</td>
<td>Cuyahoga</td>
<td>Minority and low-income population:</td>
</tr>
<tr>
<td></td>
<td>Marcy</td>
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<td></td>
<td>Hazardous Materials Transport</td>
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<td>Cuyahoga County</td>
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<td>City of Cleveland</td>
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<td>Cuyahoga</td>
<td>Minority and low-income population:</td>
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<tr>
<td></td>
<td>Marcy</td>
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<td>Hazardous Materials Transport</td>
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<td>Cuyahoga County</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>City of Cleveland Heights</td>
</tr>
<tr>
<td></td>
<td>C-073: Quaker -</td>
<td>Rail Line Segment</td>
<td>Cuyahoga</td>
<td>Minority and low-income population:</td>
</tr>
<tr>
<td></td>
<td>Mayfield</td>
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<td>Hazardous Materials Transport</td>
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<td>City of Cleveland</td>
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<td>Rail Line Segment</td>
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<td>Hazardous Materials Transport</td>
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<td>Cuyahoga County</td>
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<tr>
<td></td>
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<td></td>
<td></td>
<td>City of East Cleveland</td>
</tr>
</tbody>
</table>
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</tr>
</thead>
<tbody>
<tr>
<td>Environmental Justice</td>
<td>N-075: Ashtabula – Cleveland</td>
<td>Rail Line</td>
<td>Cuyahoga</td>
<td>Minority and low-income population: Hazardous Materials Transport</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Segment</td>
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<td>Cuyahoga County</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>City of Cleveland</td>
</tr>
<tr>
<td></td>
<td>N-075: Ashtabula – Cleveland</td>
<td>Rail Line</td>
<td>Cuyahoga</td>
<td>Minority and low-income population: Hazardous Materials Transport</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Segment</td>
<td></td>
<td>Cuyahoga County</td>
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<td></td>
<td>City of Cleveland Heights</td>
</tr>
<tr>
<td></td>
<td>N-075: Ashtabula – Cleveland</td>
<td>Rail Line</td>
<td>Cuyahoga</td>
<td>Minority and low-income population: Hazardous Materials Transport</td>
</tr>
<tr>
<td></td>
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<td>Segment</td>
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<td>Cuyahoga County</td>
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<td></td>
<td>City of East Cleveland</td>
</tr>
<tr>
<td></td>
<td>N-075: Ashtabula – Cleveland</td>
<td>Rail Line</td>
<td>Cuyahoga</td>
<td>Minority and low-income population: Hazardous Materials Transport</td>
</tr>
<tr>
<td></td>
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<td>Segment</td>
<td></td>
<td>Cuyahoga County</td>
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<td></td>
<td></td>
<td>City of Euclid</td>
</tr>
<tr>
<td></td>
<td>N-075: Ashtabula – Cleveland</td>
<td>Rail Line</td>
<td>Lake</td>
<td>Minority and low-income population: Hazardous Materials Transport</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Segment</td>
<td></td>
<td>Lake County</td>
</tr>
<tr>
<td></td>
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<td></td>
<td></td>
<td>City of Mentor</td>
</tr>
<tr>
<td></td>
<td>N-075: Ashtabula – Cleveland</td>
<td>Rail Line</td>
<td>Lake</td>
<td>Minority and low-income population: Hazardous Materials Transport</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Segment</td>
<td></td>
<td>Lake County</td>
</tr>
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<td></td>
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<td></td>
<td></td>
<td>City of Painesville</td>
</tr>
</tbody>
</table>
### TABLE 4-7

**SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)**

<table>
<thead>
<tr>
<th>Technical Area</th>
<th>Site ID: Name</th>
<th>Type of Activity</th>
<th>County</th>
<th>Potential Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental</td>
<td>C-061: Berea - Greenwich</td>
<td>Rail Line</td>
<td>Huron</td>
<td>Minority and low-income population:</td>
</tr>
<tr>
<td>Justice</td>
<td></td>
<td>Segment</td>
<td></td>
<td>Hazardous Materials Transport</td>
</tr>
<tr>
<td></td>
<td>C-066: Deshler, OH - Willow Creek, IN</td>
<td>Rail Line</td>
<td>Defiance</td>
<td>Minority and low-income population:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Segment</td>
<td></td>
<td>Hazardous Materials Transport</td>
</tr>
<tr>
<td></td>
<td>C-075: Willard - Fostoria</td>
<td>Rail Line</td>
<td>Seneca</td>
<td>Minority and low-income population:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Segment</td>
<td></td>
<td>Hazardous Materials Transport</td>
</tr>
</tbody>
</table>

*Proposed Conrail Acquisition May 1998*
### TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

<table>
<thead>
<tr>
<th>Technical Area</th>
<th>Site ID: Name</th>
<th>Type of Activity</th>
<th>County</th>
<th>Potential Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>OHIO (Continued)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community</td>
<td>Ashtabula</td>
<td>Rail Line Segment</td>
<td>Ashtabula</td>
<td>With the concurrence of the City of Ashtabula, Ohio, NS shall provide, install, and maintain a real-time train location monitoring system to improve local emergency response vehicle dispatching.</td>
</tr>
<tr>
<td></td>
<td>Bellevue</td>
<td>Rail Line Segment</td>
<td>Sandusky</td>
<td>NS shall comply with the terms and conditions of its Negotiated Agreement executed with the City of Bellevue, Ohio.</td>
</tr>
<tr>
<td></td>
<td>Brook Park</td>
<td>Rail Line Segment</td>
<td>Cuyahoga</td>
<td>CSX shall comply with the terms and conditions of its Negotiated Agreement dated February 17, 1998 with the City of Brook Park, Ohio.</td>
</tr>
<tr>
<td></td>
<td>Brook Park and Olmsted Falls</td>
<td>Rail Line Segment</td>
<td>Cuyahoga</td>
<td>CSX and NS shall comply with the terms and conditions of their Negotiated Agreement dated February 24, 1998 with the Cities of Brook Park and Olmsted Falls, Ohio.</td>
</tr>
<tr>
<td></td>
<td>Cleveland</td>
<td>Rail Line Segment</td>
<td>Cuyahoga</td>
<td><em>Highway/Rail At-grade Crossing Safety:</em> Increase in potential for vehicle-train accident. The Applicants shall construct and maintain, where not already present, fencing and landscaping at various locations within the City of Cleveland. Cuyahoga County. City of Cleveland.</td>
</tr>
</tbody>
</table>
## TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

<table>
<thead>
<tr>
<th>Technical Area</th>
<th>Site ID: Name</th>
<th>Type of Activity</th>
<th>County</th>
<th>Potential Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community</td>
<td>Greater Cleveland Area</td>
<td>Rail Line Segment</td>
<td>Cuyahoga</td>
<td><strong>Highway/Rail At-grade Crossing Safety:</strong> Increase in potential for vehicle-train accident. The Applicants shall install and maintain supplemental train defect detection devices at various locations within the Greater Cleveland Area.</td>
</tr>
<tr>
<td>Fostoria</td>
<td>Rail Line Segment</td>
<td>Seneca</td>
<td></td>
<td>Minority and low-income population: Hazardous Materials Transport Traffic delay and safety at highway/rail at-grade crossings. Seneca County City of Fostoria</td>
</tr>
<tr>
<td>New London</td>
<td>Rail Line Segment</td>
<td>Huron</td>
<td></td>
<td><strong>Highway/Rail At-grade Crossing Safety:</strong> Increase in potential for vehicle-train accident. Synchronization of warning devices at highway/rail at-grade crossing of State Route 162 in New London, with devices of Wheeling and Lake Erie Railroad at the same location. Huron County City of New London</td>
</tr>
<tr>
<td>Oak Harbor</td>
<td>Rail Line Segment</td>
<td>Ottawa</td>
<td></td>
<td><strong>Highway/Rail At-grade Crossing Safety:</strong> Increase in potential for vehicle-train accident.</td>
</tr>
<tr>
<td>Oxford Township</td>
<td>Rail Line Segment</td>
<td>Butler</td>
<td></td>
<td><strong>Highway/Rail At-grade Crossing Safety:</strong> Increase in potential for vehicle-train accident. Upgrading warning devices from passive to flashing lights at highway/rail at-grade crossing of Thomas Road in Oxford Township. Butler County Town of Oxford Township</td>
</tr>
</tbody>
</table>
### TABLE 4-7
### SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

<table>
<thead>
<tr>
<th>Technical Area</th>
<th>Site ID: Name</th>
<th>Type of Activity</th>
<th>County</th>
<th>Potential Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community</td>
<td>Defiance</td>
<td>Rail Line Segment</td>
<td>Defiance</td>
<td>Minority and low-income population: Hazardous Materials Transport</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td><em>Highway/Rail At-grade Crossing Safety:</em> Increase in potential for vehicle-train accident. Installation and maintenance of advance warning devices at highway/rail at-grade crossing at U.S. Route 24 in Defiance.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td><em>Defiance County</em></td>
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<tr>
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<td></td>
<td></td>
<td><em>City of Defiance</em></td>
</tr>
<tr>
<td></td>
<td>East Cleveland</td>
<td>Rail Line Segment</td>
<td>Cuyahoga</td>
<td>CSX shall comply with the terms and conditions of its Negotiated Agreement executed with the City of East Cleveland, Ohio. NS shall comply with the terms and conditions of its Negotiated Agreement executed with the City of East Cleveland, Ohio.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td><em>Cuyahoga County</em></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td><em>City of East Cleveland</em></td>
</tr>
<tr>
<td></td>
<td>Peru</td>
<td>Rail Line Segment</td>
<td>Huron</td>
<td>Train horn noise.</td>
</tr>
<tr>
<td></td>
<td>Toledo</td>
<td>Rail Line Segment</td>
<td>Lucas</td>
<td>NS shall comply with the terms of its Negotiated Agreement with the Toledo-Lucas County Port Authority and the Toledo Metropolitan Area Council of Governments.</td>
</tr>
<tr>
<td></td>
<td>Vermilion</td>
<td>Rail Line Segment</td>
<td>Erie</td>
<td><em>Highway/Rail At-grade Crossing Safety:</em> Increase in potential for vehicle-train accident.</td>
</tr>
</tbody>
</table>
### TABLE 4-7
**SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)**

<table>
<thead>
<tr>
<th>Technical Area</th>
<th>Site ID: Name</th>
<th>Type of Activity</th>
<th>County</th>
<th>Potential Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PENNSYLVANIA</strong></td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>N-070: Buffalo FW, NY – Ashtabula, OH</td>
<td>Rail Line Segment</td>
<td>Erie</td>
<td><em>Highway/Rail At-grade Crossing Safety</em>: Increase in potential for vehicle-train accident.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>Erie County</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Peach Street</td>
<td>Raspberry Street</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Cherry Street</td>
<td>Lucas Road</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><em>Hazardous Materials Transport</em>: Increase in potential for hazardous materials release because of an accident (A key and a major key route).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>N-090: Rutherford – Harrisburg</td>
<td>Rail Line Segment</td>
<td>Dauphin</td>
<td><em>Freight Rail Operations</em>: Increase in accident frequency.</td>
</tr>
</tbody>
</table>
## Table 4-7
### Summary of Adverse Environmental Impacts by State (Continued)

<table>
<thead>
<tr>
<th>Technical Area</th>
<th>Site ID: Name</th>
<th>Type of Activity</th>
<th>County</th>
<th>Potential Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Safety</strong></td>
<td>N-091: Harrisburg, PA – Riverton Jct, VA</td>
<td>Rail Line Segment</td>
<td>Cumberland, Franklin Dauphin, York</td>
<td>Highway/Rail At-grade Crossing Safety: Increase in potential for vehicle-train accident.</td>
</tr>
</tbody>
</table>
### TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

<table>
<thead>
<tr>
<th>Technical Area</th>
<th>Site ID: Name</th>
<th>Type of Activity</th>
<th>County</th>
<th>Potential Impact</th>
</tr>
</thead>
</table>
| Safety         | SY01: Greenwich Rail Yard | Rail Yard | Philadelphia     | **Hazardous Materials Transport:** Increase in potential for hazardous materials release because of handling.  
Philadelphia County  
City of Philadelphia |
|                | NY09: Harrisburg Rail Yard | Rail Yard | Dauphin          | **Hazardous Materials Transport:** Increase in potential for hazardous materials release because of handling.  
Philadelphia County  
City of Harrisburg |
|                | CM05: Greenwich Intermodal Facility | Intermodal Facility | Philadelphia  | **Hazardous Materials Transport:** Increase in potential for hazardous materials release because of handling.  
Philadelphia County  
City of Philadelphia |
|                | NM13: New AmeriPort/South Philadelphia Intermodal | Intermodal Facility | Philadelphia  | **Hazardous Materials Transport:** Increase in potential for hazardous materials release because of handling.  
Philadelphia County  
City of Philadelphia |
|                | NM14: Allentown Intermodal | Intermodal Facility | Lehigh          | **Hazardous Materials Transport:** Increase in potential for hazardous materials release because of handling.  
Lehigh County  
City of Allentown |
|                | NM15: Rutherford Intermodal | Intermodal Facility | Dauphin        | **Hazardous Materials Transport:** Increase in potential for hazardous materials release because of handling.  
Dauphin County  
City of Harrisburg |
### TABLE 4-7
**SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)**

<table>
<thead>
<tr>
<th>Technical Area</th>
<th>Site ID: Name</th>
<th>Type of Activity</th>
<th>County</th>
<th>Potential Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Safety</strong></td>
<td>**NM16: Morrisville</td>
<td>Intermodal</td>
<td>Bucks County</td>
<td><strong>Hazardous Materials Transport</strong>: Increase in potential for hazardous materials release because of handling.</td>
</tr>
<tr>
<td></td>
<td>Morrisville Intermodal</td>
<td>Facility</td>
<td>City of Morrisville</td>
<td></td>
</tr>
<tr>
<td></td>
<td>**NM17: Pitcairn</td>
<td>Intermodal</td>
<td>Allegheny County</td>
<td><strong>Hazardous Materials Transport</strong>: Increase in potential for hazardous materials release because of handling.</td>
</tr>
<tr>
<td></td>
<td>Intermodal Facility</td>
<td>Facility</td>
<td>City of Pittsburgh</td>
<td></td>
</tr>
<tr>
<td><strong>Noise</strong></td>
<td><strong>C-085: Sinns - Brownsville</strong></td>
<td>Rail Line Segment</td>
<td>Allegheny, Fayette, Westmoreland</td>
<td><strong>Exceeds 70 dBA L_{eq} at noise-sensitive receptors and an increase of at least 5dBA.</strong></td>
</tr>
<tr>
<td><strong>Environmental Justice</strong></td>
<td><strong>N-070: Buffalo FW, NY - Ashtabula, OH</strong></td>
<td>Rail Line Segment</td>
<td>Erie</td>
<td><strong>Minority and low-income population:</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>Hazardous Materials Transport</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Traffic delay and safety on 19th Street. NS shall comply with the terms and conditions of its Negotiated Agreement with the City of Erie, Pennsylvania.</td>
</tr>
</tbody>
</table>

**Communities:**
- McKeesport
- Glassport
- Lincoln
- Elizabeth
- Bunola
- Elkhorn
- East Monongahela
- Manown
- Gallatin
- Sunny Side
- Milesville
- Webster
- Belle Vernon
- Fayette
- Newell

**Final Environmental Impact Statement**
### TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

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<thead>
<tr>
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<th>Site ID: Name</th>
<th>Type of Activity</th>
<th>County</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Community</td>
<td>Erie</td>
<td>Rail Line Segment</td>
<td>Erie</td>
<td>Traffic delay and safety on 19th Street. NS shall comply with the terms and conditions of its Negotiated Agreement with the City of Erie, Pennsylvania. Erie County City of Erie</td>
</tr>
<tr>
<td></td>
<td>Commonwealth of Pennsylvania</td>
<td>Rail Line Segment</td>
<td>Philadelphia</td>
<td>CSX shall comply with the terms and conditions of its Negotiated Agreement with the Commonwealth of Pennsylvania and the City of Philadelphia. NS shall comply with the terms and conditions of its Negotiated Agreement with the Commonwealth of Pennsylvania and the City of Philadelphia. Philadelphia County Commonwealth of Pennsylvania City of Philadelphia</td>
</tr>
<tr>
<td></td>
<td>C-344: Ashley Jct. - Yemassee</td>
<td>Rail Line Segment</td>
<td>Colleton, Charleston, Beaufort</td>
<td><strong>Hazardous Materials Transport:</strong> Increase in potential for hazardous materials release because of an accident (A key route).</td>
</tr>
<tr>
<td>Safety</td>
<td>N-361: Asheville, NC - Leadvale, TN</td>
<td>Rail Line Segment</td>
<td>Cocke</td>
<td><strong>Hazardous Materials Transport:</strong> Increase in potential for hazardous materials release because of an accident (A key route).</td>
</tr>
</tbody>
</table>
### TABLE 4-7
SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE (Continued)

<table>
<thead>
<tr>
<th>Technical Area</th>
<th>Site ID: Name</th>
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<th>County</th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>TENNESSEE (Continued)</strong></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Safety</td>
<td>N-399: Bulls Gap - Frisco</td>
<td>Rail Line Segment</td>
<td>Hawkins</td>
<td><strong>Hazardous Materials Transport</strong>: Increase in potential for hazardous materials release because of an accident (A key route).</td>
</tr>
<tr>
<td></td>
<td>CY05: Leewood Rail Yard</td>
<td>Rail Yard</td>
<td>Shelby</td>
<td><strong>Hazardous Materials Transport</strong>: Increase in potential for hazardous materials release because of handling.</td>
</tr>
<tr>
<td></td>
<td>NM18: Forrest Intermodal Facility</td>
<td>Intermodal Facility</td>
<td>Shelby</td>
<td><strong>Hazardous Materials Transport</strong>: Increase in potential for hazardous materials release because of handling.</td>
</tr>
<tr>
<td><strong>VIRGINIA</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>C-103: S. Richmond, VA - Weldon, NC</td>
<td>Rail Line Segment</td>
<td>Greensville, Sussex, Dinwiddie, Chesterfield, Colonial Heights City, Petersburg City, Prince George, Richmond City</td>
<td><strong>Passenger Rail Safety</strong>: Increase in risk of passenger train accidents.</td>
</tr>
</tbody>
</table>

*Proposed Corail Acquisition May 1998*  
*Final Environmental Impact Statement*  
*4-220*
<table>
<thead>
<tr>
<th>Technical Area</th>
<th>Site ID: Name</th>
<th>Type of Activity</th>
<th>County</th>
<th>Potential Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>VIRGINIA (Continued)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| Safety | N-091: Harrisburg, PA - Riverton Jct., VA | Rail Line Segment | Clarke, Warren | *Highway/Rail At-grade Crossing Safety:* Increase in potential for vehicle-train accident.  *Clarke County*  *Warren County*  
SR 7  Rockland Road |
| | N-432: Poe ML - Petersburg | Rail Line Segment | Petersburg City | *Hazardous Materials Transport:* Increase in potential for hazardous materials release because of an accident (A key route). |
| Noise | N-100: Riverton Jct. - Roanoke | Rail Line Segment | Augusta, Botetourt, Buena Vista City, Clarke, Page Roanoke City, Roanoke, Rockbridge, Rockingham, Warren, Waynesboro | Exceeds 70 dBA $L_{eq}$ at noise-sensitive receptors and an increase of at least 5 dBA.  
**Communities:**  
Front Royal  Shenandoah  Lyndhurst  Glasgow  
Bentonville  Elkton  Cold Spring  Buchanan  
Kimball  Lynnwood  Vesuvius  Lithia  
Luray  Grottoes  Midvale  Troutville  
Stanley  Crimora  Cornwall  Cloverdale  
Ingham  Waynesboro  Buena Vista  Hollins |
| **WEST VIRGINIA** | | | | |
| Noise | N-111: Deep Water - Fola Mine | Rail Line Segment | Fayette, Nicholas | Exceeds 70 dBA $L_{eq}$ at noise-sensitive receptors and an increase of at least 5 dBA.  
**Communities:**  
Jefferson  Gauley Bridge  Falls View |
### TABLE 4-7
**SUMMARY OF ADVERSE ENVIRONMENTAL IMPACTS BY STATE** (Continued)

<table>
<thead>
<tr>
<th>Technical Area</th>
<th>Site ID: Name</th>
<th>Type of Activity</th>
<th>County</th>
<th>Potential Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Safety</td>
<td>C-003:</td>
<td>Rail Line Segment</td>
<td>District of Columbia</td>
<td><strong>Passenger Rail Safety</strong>: Increase in risk of passenger train accidents.</td>
</tr>
<tr>
<td></td>
<td>Washington, DC – Point of Rocks, MD</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>C-031:</td>
<td>Rail Line Segment</td>
<td>District of Columbia</td>
<td><strong>Hazardous Materials Transport</strong>: Increase in potential for hazardous materials release because of an accident (A key route).</td>
</tr>
<tr>
<td></td>
<td>Alexandria Jct., MD – Washington, DC</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Even though the noise levels do not warrant mitigation at this time, SEA included the impacts to be considered cumulatively with other potential adverse impacts.

Note: Rail line segments N-060 (Corning-to-Geneva, NY) and N-110 (Elmore-to-Deep Water, WV) do not have noise-sensitive receptors within the noise contour boundary; therefore there are no potential impacts.
GUIDE TO THE FINAL ENVIRONMENTAL IMPACT STATEMENT

This Final Environmental Impact Statement (Final EIS) evaluates the potential environmental impacts that could result from the proposed Acquisition of Conrail Inc. and Consolidated Rail Corporation (Conrail) by CSX Corporation and CSX Transportation, Inc. (CSX) and Norfolk Southern Corporation and Norfolk Southern Railway Company (NS). The Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) has prepared this document in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321); the Council on Environmental Quality (CEQ) regulations implementing NEPA; the Board's environmental rules (49 CFR Part 1105); and other applicable environmental statutes and regulations.

SEA issued the Draft EIS on December 19, 1997. Subsequently, SEA issued an Errata (January 12, 1998) and a Supplemental Errata (January 21, 1998) to clarify statements and analyses in the Draft EIS. The 45-day public comment period closed February 2, 1998. This Final EIS provides responses to comments, questions, and issues that the public, agencies, and other document reviewers raised. It describes SEA’s additional environmental analysis and includes SEA’s final environmental mitigation recommendations to the Board.

To assist the reader in the review of this document, each volume contains a Guide to that volume and a Table of Contents for each chapter in that volume. In addition, each individual volume also contains a Guide to the Final EIS, a Glossary of Terms, a List of Acronyms and Abbreviations, and the Table of Contents of the Final EIS. Specifically, the Final EIS document includes the following volumes:
Executive Summary Volume
The Executive Summary provides an overview of the proposed Conrail Acquisition, including the potential environmental impacts and the mitigation measures that SEA recommends to address those impacts. In addition, the Executive Summary Volume contains the Letter to Interested Parties that SEA attached to copies of this Final EIS, the Information Sources that SEA used for preparing both the Draft EIS and the Final EIS documents, and the Index of keywords and phrases that appear in this Final EIS.

Volume 1: Chapters 1, 2, and 3
- Chapter 1, “Introduction and Background,” describes the purpose and need for the project, the proposed action, and the alternatives to the proposed action. It also sets forth the jurisdiction of the Board and outlines SEA’s environmental review process. In addition, this chapter presents an overview of SEA’s agency coordination and the public comment process.

- Chapter 2, “Scope of the Environmental Analysis,” identifies the proposed Conrail Acquisition-related activities that SEA analyzed. This chapter includes a table presenting the thresholds SEA used to identify activities for environmental analysis and explains project activities that differ from those set forth in the Draft EIS.

- Chapter 3, “Agency Coordination and Public Outreach,” describes SEA’s public outreach activities to notify interested parties and environmental justice populations of the potential environmental impacts of the proposed Conrail Acquisition and of the availability of the Draft EIS and the Final EIS. Additionally, the chapter explains SEA’s distribution of the Draft EIS and the Final EIS, explains the methods that SEA used to facilitate the public comment process, and describes the agency coordination that SEA performed as part of the environmental review process. Chapter 3 also reviews the historic properties outreach activities that SEA conducted in Ohio.

Volume 2: Chapter 4
- Chapter 4, “Summary of Environmental Review,” outlines the additional environmental analysis that SEA conducted for each environmental issue area since preparation of the Draft EIS. Specifically, it explains the methods of analysis, presents the public comments and additional evaluations, identifies the results of the analysis, and reviews SEA’s assessment of environmental impacts. In addition, this chapter describes SEA’s refinement of the mitigation measures recommended in the Draft EIS, SEA’s final recommended mitigation measures, anticipated environmental benefits, and the adverse environmental impacts of the proposed Conrail Acquisition.

Volume 3: Chapter 5
- Chapter 5, “Summary of Comments and Responses,” contains summaries of the comments that SEA received on the Draft EIS and SEA’s responses to the comments. The chapter provides the following: (a) an overview of the comments, including those
Guide to the Final Environmental Impact Statement

from Federal agencies, the Applicants, and national and regional groups as well as groups and individuals within specific states; (b) general comments on the Draft EIS, including the Application review process, the environmental review process, and the system-wide technical analysis; and (c) comments on state and community issues, organized by state and environmental issue category.

Volume 4: Chapter 6
- Chapter 6, "Safety Integration Planning," sets forth the purpose and topics of the Safety Integration Plans and presents summaries of comments that reviewing agencies and the public submitted about the Safety Integration Plans. The chapter also includes SEA's analysis and response to those comments and provides SEA's conclusion and recommended conditions regarding the Safety Integration Plans.

Volume 5: Chapter 7
- Chapter 7, "Recommended Environmental Conditions," describes the final environmental mitigation conditions that SEA recommends to address significant adverse environmental impacts that could result from the proposed Conrail Acquisition.

Volume 6: Appendices
- These four volumes (6A through 6D) include appendices containing the comments on the Draft EIS and the analysis by the technical disciplines as well as appendices containing public outreach and agency consultation information and documents.

Volume 6A contains the following appendix:
A. Comments Received on the Draft Environmental Impact Statement.

Volume 6B contains the following appendices:
B. Draft Environmental Impact Statement Correction Letter, Errata, Supplemental Errata and Additional Environmental Information, and Board Notices to Parties of Record.
C. Settlement Agreements and Negotiated Agreements.
D. Agency Consultation.
E. Safety: Highway/Rail At-Grade Crossing Safety Analysis.
G. Transportation: Highway/Rail At-grade Crossing Traffic Delay Analysis.
I. Air Quality Analysis.

Volume 6C contains the following appendices:
J. Noise Analysis.
K. Cultural Resources Analysis.
L. Natural Resources Analysis.
M. Environmental Justice Analysis.
N. Community Evaluations.

Volume 6D contains the following appendices:
O. EPA Rules on Locomotive Emissions.
Q. Example Public Outreach Materials.
R. All Relevant Board Decisions.
T. Final Environmental Impact Statement Rail Line Segments.
U. List of Preparers.

Addendum Volume
The Addendum contains information SEA did not include in the other portions of the Final EIS because of production timing constraints. The Addendum contains SEA's evaluation and additional analyses SEA conducted for train traffic rerouting proposed as mitigation for the Greater Cleveland Area. The Addendum also contains additional analysis of the proposed connection in Alexandria, Indiana (one of the Seven Separate Connections) as well as comments received during an additional comment period and summaries of, and responses to, those comments.
abandonment: The discontinuance of service on a rail line segment and the salvaging and/or the removal of railroad-related facilities for reuse, sale, and/or disposal.

Acquisition: The proposal by CSX, NS, and Conrail to acquire control of Conrail's assets and its basic railroad operations.

active warning devices: Traffic control devices that give positive notice to highway users of the approach or presence of a train. These devices may include a flashing red light signal (a device which, when activated, displays red lights flashing alternately), a bell (a device which, when activated, provides an audible warning, usually used with a flashing red light signal), automatic gates (a mechanism added to flashing red light signals to provide an arm that can lower across the lanes of the roadway), and a cantilever (a structure equipped with flashing red light signals and extending over one or more lanes of traffic).

Advanced Civil Speed Enforcement System (ACSES): A supplement to the Automatic Cab Signal (ACS) and Automatic Train Control (ATC) systems currently in place within the Northeast Corridor (NEC), ACSES uses a series of transponders to communicate location and other factors to passing trains whose on-board computers utilize the information to achieve system function. These functions include: (1) civil speed enforcement; (2) temporary speed enforcement, including protection of roadway workers; and (3) enforcement of positive stop at interlocking home signals and Control Points (CPs).
adverse environmental impact: A negative effect, resulting from the implementation of a proposed action, that serves to degrade or diminish an aspect of human or natural resources.

Advisory Council on Historic Preservation (ACHP): An independent Federal agency charged with advising the President and Congress on historic preservation matters and administering the provisions of Section 106 of the National Historic Preservation Act.

air-brake test: A test made prior to train departure, required by Federal Railroad Administration regulations and by railroad rules to ensure that a train's air-brake system is functioning as intended and that certain devices are within prescribed tolerances and physical parameters.

Allied Rail Unions (ARU): A group of unions representing railroad employees, including the Brotherhood of Locomotive Engineers, the Brotherhood of Railroad Signalmen, and the Brotherhood of Maintenance-of-Way Employees.

Applicants: CSX Corporation and CSX Transportation, Inc. (CSX), Norfolk Southern Railway Company and Norfolk Southern Corporation (NS), and Conrail Inc. and Consolidated Rail Corporation (Conrail).

Application: A formal filing with the Surface Transportation Board related to railroad mergers, acquisitions, constructions, or abandonments. Applications may be either Primary Applications or Inconsistent and Responsive (IR) Applications. See Primary Application and Inconsistent and Responsive (IR) Application.
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<td><strong>Area of Potential Effect(s) (AoPE):</strong></td>
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<td><strong>attainment area:</strong></td>
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<td><strong>Best Management Practice (BMP):</strong></td>
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Glossary of Terms

block group: A small population area that the U.S. Census Bureau uses to measure and record demographic characteristics. The population of a block group typically ranges from 600 to 3,000 people and is designed to reflect homogeneous living conditions, economic status, and population characteristics. Block group boundaries follow visible and identifiable features, such as roads, canals, railroads, and above-ground high-tension power lines.

block swapping: The process of moving groups of cars with a common destination (called “blocks”) from one train to another.

Board: The Surface Transportation Board, the licensing agency for the proposed Conrail Acquisition.

bulletins: Documents addressed to train crews and other operating employees specifying temporary or local operating rules and restrictions.

cab signaling: System that provides signal indications in the locomotive cab instead of, or in addition to, wayside signal displays.

carload: A unit of measure used to describe commodities transported on a railroad typically in a boxcar, tank car, flat car, hopper car, or gondola.

centralized traffic control system: A signal system that allows for the movement of trains in either direction on designated tracks at the maximum authorized speed, in accordance with the wayside or cab signals or both.

census tract: Small, relatively permanent statistical subdivisions of a county containing between 2,500 and 8,000 persons. The U.S. Bureau of Census designs census tracts to reflect homogeneous living conditions, economic status, and population characteristics.
Glossary of Terms

Clean Air Act (Clean Air Act Amendments):
The Clean Air Act of 1970 and the subsequent amendments, including the Clean Air Act Amendments of 1990 (42 U.S.C. 7401-7671g); the primary Federal law that protects the nation’s air resources. This act establishes a comprehensive set of standards, planning processes, and requirements to address air pollution problems and reduce emissions from major sources of pollutants.

Clean Water Act:
The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.) is the primary Federal law that protects the nation’s waters, including lakes, rivers, aquifers, and coastal areas. This act provides a comprehensive framework of standards, technical tools, and financial assistance to address the many causes of pollution and poor water quality, including municipal and industrial wastewater discharges, polluted runoff from urban and rural areas, and habitat destruction. Specifically, the Clean Water Act provides for the following:

- Requires major industries to meet performance standards to ensure pollution control.
- Charges states and tribes with setting specific water quality standards appropriate for their waters and developing pollution control programs to meet them.
- Provides funding to states and communities to help them meet their clean water infrastructure needs.
- Protects valuable wetlands and other aquatic habitats through a permitting process that conducts land development activities and other activities in an environmentally sound manner.

coastal zone:
According to the Coastal Zone Management Act of 1972, lands and waters adjacent to the coast that exert an influence on the uses of the sea and its ecology, or whose uses and ecology the sea affects.
Coastal Zone Management Act (CZMA):
The Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451-1464; P.L. 92-583), is also known as “Federal Consistency With Approved State Coastal Management Programs” (15 CFR 930). This Federal act preserves, protects, develops, and, where possible, restores or enhances the resources of the nation's coastal zone for the present and for future generations. The provisions of 15 CFR 930.30 ensure that all Federally conducted or supported activities, including development projects directly affecting the coastal zone, are consistent with approved state coastal management programs as much as possible.

collective bargaining agreement:
An agreement between a union and an employer that defines the scope of work, rates of pay, rules, and working conditions for the union's members.

common corridor:
For the purposes of this Final EIS, a railroad line segment that accommodates both public mass transportation service and passenger and freight train operations by using separate tracks adjacent to each other in the same right-of-way or area.

compensation wetlands (compensatory wetlands):
Wetlands that an agency or entity creates, enhances, or preserves to mitigate for unavoidable impacts on existing wetlands that occur as a result of implementation of the agency's or entities' proposed action. These compensation (or compensatory) wetlands replace, “in kind”, wetlands that an agency or entity partially or totally fills or drains during its construction or earth-moving activities.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA):
The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601-9675; P.L. 96-510); the Federal act that provides EPA with the authority to clean up inactive hazardous waste sites and distribute the cleanup costs among the parties who generated and/or handled the hazardous substances at these sites.
Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS):

Federal database containing information on potential hazardous waste sites that states, municipalities, private companies, and private persons have reported to the EPA, pursuant to Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act. This database contains sites that are either proposed for inclusion on, or are currently on, the National Priorities List (NPL) and sites that are in the screening and assessment phase for possible inclusion on the NPL.

condition:

A provision that the Board imposes as part of any decision approving the proposed Conrail Acquisition and that requires action by one or more of the Applicants.

conductor:

The operating employee on a train responsible for safe and efficient train movement in accordance with all railroad operating rules and special instructions.

Conrail Shared Assets Operations:

See Shared Assets Areas.

consist:

The number and type of locomotives and cars included in a train, considering special factors such as the tonnage and the placement of hazardous materials cars and “high-wides” (oversize dimension cars).

constant warning time:

A motion-sensing system with the capability of measuring train speed and providing a relatively uniform warning time by warning signal devices to highway traffic at highway/rail at-grade crossings.

Control Date:

The date on which the merger can become effective, following formal approval of the Board.
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**Council on Environmental Quality (CEQ):** Federal agency responsible for developing regulations and guidance for agencies implementing the National Environmental Policy Act.

**craft employee:** Term applied to a railroad employee qualified in a specific railroad operating or maintenance activity (for example, locomotive engineer, train dispatcher, signal maintainer, or car inspector).

**crew caller:** Term applied to a railroad employee who is responsible for notifying train crews when and where to report for duty.

**crew calling:** Process of notifying train crew members when and where their next tour-of-duty will start. Labor agreements commonly specify that railroads call train crews a minimum of 2 hours before crew members are required to begin their tour-of-duty.

**critical habitat:** The specific sites within the geographical area occupied by a threatened or endangered species that include the physical or biological features essential to the conservation of the species. These areas may require special management considerations or protection. These areas include specific sites outside the geographical areas occupied by the species at the time of the listing that are essential for the conservation of the species.

**criteria of significance:** The criteria SEA developed specifically for the proposed Conrail Acquisition to determine whether a potential adverse environmental effect is significant and may warrant mitigation.

**cross-tie:** Transverse wooden, concrete, or steel beam supporting the rails of a railroad track.
**Glossary of Terms**

**cultural resource:** Any prehistoric or historic district, site, building, structure, or object that warrants consideration for inclusion in the National Register of Historic Places. A cultural resource that is listed in or is eligible for listing in the National Register of Historic Places is considered a historic property (or a significant cultural resource). For the purposes of this Final EIS, the term applies to any resource more than 50 years old for which SEA gathered information to evaluate its significance. In addition, this Final EIS addresses potential environmental impacts of the proposed rail line construction and abandonment activities on Native American reservations and sacred sites.

**cumulative effects:** Effects resulting from the incremental impacts of the proposed Conrail Acquisition when added to other past, present, and reasonably foreseeable future actions, regardless of which agency (Federal or non-Federal) or person undertakes such actions, as described in 40 CFR 1508.7. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

**Day 1:** In the event that the Board approves the proposed Conrail Acquisition, the date (as the Applicants determine through mutual agreement) when operating responsibility for the acquired railroad is transferred to the Applicants' organizations.

**decibel (dB):** A unit of noise measured on a logarithmic scale that compresses the range of sound pressures audible to the human ear over a range from 0 to 140, where 0 decibels represents sound pressure corresponding to the threshold of human hearing, and 140 decibels corresponds to a sound pressure at which pain occurs. Noise analysts measure sound pressure levels that people hear in decibels, much like other analysts measure linear distances in yards or meters. A-weighted decibel (dBA) refers to a weighting that accounts for the various frequency components in a way that corresponds to human hearing.
**Glossary of Terms**

- **degredation:** To change a habitat, either terrestrial or aquatic, so that it no longer meets the survival needs of a particular species of plant or wildlife. Such change could include reducing the feeding area, modifying the vegetation type, and limiting the available shelter.

- **detector car:** One of two types of rail equipment designed to detect imperfections in railroad track structure. Rail detector cars detect internal imperfections within the rail, using ultrasonic techniques. See also *track geometry inspection car*.

- **dimensional traffic:** A freight shipment requiring special authorization for movement because of height, width, length, or gross weight.

- **dispatcher (train):** The railroad operating employee responsible for issuing on-track movement and/or occupancy authority through the use of remotely controlled switches, signals, visual displays, voice control written mandatory directives, and/or all of the above.

- **dispatcher desk:** The workstation from which a train dispatcher controls a specific portion of a railroad’s network.

- **dispatching:** The process of real-time planning, supervising, and controlling of train movements.

- **disproportionality (test for):** A comparison test to assess whether potentially high and adverse impacts of an action are predominantly borne or more severe or greater in magnitude in an Environmental Justice (EJ) population than a non-EJ population within the current analysis scale (that is, at the system, state, county, segment, or block group level).

- **double-stack freight service:** The transport of two intermodal containers stacked on top of each other on one platform of an intermodal rail flat car.
### Glossary of Terms

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<tr>
<td><strong>double tracking:</strong></td>
<td>Construction of a second railroad track immediately adjacent to an existing track, to perform railroad activities similar to those occurring on the existing track.</td>
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<td><strong>emergent species:</strong></td>
<td>Any type of aquatic plant whose vegetative growth is mostly above the water.</td>
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<td><strong>emissions:</strong></td>
<td>Air pollutants that enter the atmosphere.</td>
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<td><strong>endangered species:</strong></td>
<td>A species that is in danger of extinction throughout all or a significant portion of its range. Federal and state laws protect these species.</td>
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<td><strong>Endangered Species Act (ESA):</strong></td>
<td>The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; P.L. 93-205), as amended in 1978, is the primary Federal law protecting endangered and threatened wildlife and plant species. The purpose of the law is to provide for the conservation of habitat for such species.</td>
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<td><strong>engineer (railroad):</strong></td>
<td>Employee responsible for operating a railroad locomotive in accordance with train-handling practices, signal indications, operating rules, speed limits, and the technical requirements of the particular locomotive.</td>
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<td><strong>Environmental Impact Statement (EIS):</strong></td>
<td>A document that the National Environmental Policy Act requires Federal agencies to prepare for major projects or legislative proposals having the potential to significantly affect the environment. A tool for decision-making, it describes the positive and negative environmental effects of the undertaking, and alternative actions and measures to reduce or eliminate potentially significant environmental impacts.</td>
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Environmental Justice (EJ):

For purposes of this document, SEA defines environmental justice as the mission discussed in Executive Order (EO) 12898 “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 11, 1994). This EO directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their programs, policies, and activities on minority and low-income populations in the United States. EO 12898 also calls for public notification for environmental justice populations, as well as meaningful public participation of environmental justice populations. In this document, SEA used the guidance provided in the Department of Transportation Order on Environmental Justice, the Council of Environmental Quality, Environmental Justice Guidance under the National Environmental Policy Act, and the Interim Final Guidance for Incorporating Environmental Justice Concerns in EPA’s NEPA analysis to analyze potential disproportionately high and adverse impacts on environmental justice populations for rail segments, intermodal facilities, rail yards, and new construction.

Environmental Justice (EJ) population:

A population within an Area of Potential Effect whose minority and low-income composition meets at least one of the following criteria: (1) The percentage of minority and low-income population in the Area of Potential Effect is greater than 50 percent of the total population in the Area of Potential Effect; or (2) The percentage of minority and low-income population in the Area of Potential Effect is at least ten percentage points greater than the percentage of minority or low-income population in the county of which the Area of Potential Effect is a part.

Environmental Resource Category:

Any of the environmental issues that serve as the major topics of impact analysis for this EIS. Examples include land use, natural resources, noise, hazardous materials, cultural resources, water quality, or air quality.
**Environmental Resource Score (ERS):**
The impact score determined for an environmental resource category within a (block group) Area of Potential Effect. A typical ERS ranges from 0 to 6, reflecting the relative impact on the Area of Potential Effect compared with impacts on other Areas of Potential Effect. For the Environmental Justice analysis, SEA calculated an ERS for noise, hazardous materials transport, and traffic safety and delay.

**equipment:**
For a railroad, a term used to refer to the mobile assets of the railroad, such as locomotives, freight cars, and on-track maintenance machines. Also used more narrowly as a collective term for freight cars operated by the railroad.

**equipment restrictions:**
Operating instructions that restrict certain types of locomotives or freight cars from operating over selected line segments.

**Errata:**
A list of corrections to the Draft EIS, prepared to facilitate public review of the Draft EIS and to clarify some of the information contained therein.

**Executive Order (EO) 12898:**
Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority and Low-Income Populations," issued in February of 1994; directs Federal agencies to identify and address as appropriate "disproportionately high and adverse human health or environmental effects," including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations in the United States.

**extra board crew caller position:**
Railroad employee who does not have a regularly assigned position but who works on an on-call basis.
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<td><strong>floodplain:</strong></td>
<td>The lowlands adjoining inland and coastal waters and relatively flat areas and flood-prone areas of offshore islands, including, at a minimum, those areas that have a 1 percent or greater chance of flood in any given year (also known as a 100-year or a Zone A floodplain).</td>
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<td><strong>Four City Consortium:</strong></td>
<td>An alliance of the cities of East Chicago, Hammond, Gary, and Whiting, Indiana.</td>
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<td><strong>freight car inspections:</strong></td>
<td>Pre-departure tests required for railroad freight cars pursuant to Federal Railroad Administration regulations.</td>
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<td><strong>fugitive dust:</strong></td>
<td>According to EPA regulations, those particulate matter emissions that could not “reasonably pass” through a stack, chimney, vent, or other functionally equivalent opening. Examples of fugitive dust include wind-borne particulate matter from earth-moving and material handling during construction activities.</td>
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<td><strong>Geographic Information System (GIS):</strong></td>
<td>A computer system for storing, retrieving, manipulating, analyzing, and displaying geographic data. GIS combines mapping and databases.</td>
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<td><strong>grade crossing:</strong></td>
<td>See <em>highway/rail at-grade crossing</em>.</td>
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<td><strong>grade separation:</strong></td>
<td>See <em>separated grade crossing</em>.</td>
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<td><strong>gross ton-mile:</strong></td>
<td>A measure of railroad production that represents the weight of cars and freight movement in terms of total tons per mile transported system-wide or over a specific rail line segment. Specifically, 1 ton of railroad car and loading carried 1 mile.</td>
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<tr>
<td>haulage right(s)</td>
<td>The limited right (or combination of limited rights) of one railroad to have their freight traffic moved by another railroad over the designated lines of the other railroad.</td>
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<td>hazardous materials:</td>
<td>Substances or materials that the Secretary of Transportation has determined are capable of posing an unreasonable risk to human health, safety, and property when transported in commerce, as designated under 49 CFR Parts 172 and 173.</td>
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<tr>
<td>hazardous wastes:</td>
<td>Waste materials that, by their nature, are inherently dangerous to handle or dispose of (for example, old explosives, radioactive materials, some chemicals, some biological wastes). Usually, industrial operations produce these waste materials.</td>
</tr>
<tr>
<td>high-and-wide load:</td>
<td>Load on a freight car that exceeds the normal height and/or width limits for general operation over a railroad. Such loads may move only with special operating precautions to prevent damage to wayside structures and trains on adjacent tracks.</td>
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<td>high-profile crossings:</td>
<td>A condition at a highway/rail at-grade crossing where the elevation of the tracks is above the elevation of the approaching roadway. This condition, generally the result of the periodic raising of the tracks for maintenance of the track bed, can affect sight distance for highway users and can become a hazard for trucks and trailers with low ground-clearance. This is also referred to as “hump crossings”.</td>
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<tr>
<td>highway/rail at-grade crossing:</td>
<td>The general area of an intersection of a public or private road and a railroad where the intersecting rail and highway traffic are at the same level.</td>
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historic property: Any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places (NRHP). The term “eligible for inclusion in the NRHP” pertains to both properties that the Secretary of the Interior has formally determined to be eligible and to all other properties that meet NRHP listing criteria.

horn noise (train): Noise that occurs when locomotives sound warning horns in the vicinity of highway/rail at-grade crossings.

hours-of-service regulations: Federal Hours of Service Law, which Federal Railroad Administration enforces, governing maximum shift lengths and minimum rest periods for railroad operating employees. These employees include train crew, train dispatchers, and signal maintainers, as well as mechanical employees such as hodlers who move equipment for the purpose of test and inspection.

Implementing Agreement: An agreement between a railroad company and an employee union regarding working conditions on a combined system, and specifying the corresponding seniority districts, work locations, and other terms and conditions of employment.

Inconsistent and Responsive (IR) application: Proposal to the Surface Transportation Board that Parties of Record submitted prior to October 21, 1997, requesting modifications of, or alternatives to, the proposed Conrail Acquisition.

Indian tribe: According to Indian Self-Determination and Education Assistance Act (25 U.S.C. 450-458; P.L. 93-638), any Indian tribe, band, nation, or other organized group or community recognized as eligible for the special programs and services that the United States provides to Indians because of their status as Indians.
interchange point: Point at which two or more railroads join to exchange freight traffic.

interlocking: An arrangement of switch, lock, and signal devices that is located where rail tracks cross, join, or separate. The devices are interconnected in such a way that their movements must succeed each other in a predetermined order, thereby preventing opposing or conflicting movements.

intermodal facility: A site consisting of tracks, lifting equipment, paved and/or unpaved areas, and a control point for the transfer (receiving, loading, unloading, and dispatching) of trailers and containers between rail and highway, or between rail and marine modes of transportation.

jurisdictional wetland: Wetlands that the U.S. Army Corps of Engineers regulates under Section 404 of the Clean Water Act (33 U.S.C. 1344).

key route: For the purposes of this Final EIS, a rail line segment that carries an annual volume of 10,000 or more carloads of hazardous material.

key train: Any train with five or more tank carloads of chemicals classified as a Poison Inhalation Hazard (PIH), or with a total of 20 rail cars with any combination of PIHs, flammable gases, explosives, or environmentally sensitive chemicals.

$L_{da}$: The day-night average noise sound level, which is the receptor's cumulative noise exposure from all noise events over a full 24 hours. This is adjusted to account for the perception that noise at night is more bothersome than the same noise during the day.

$L_{eq(h)}$: The hourly energy-averaged noise level.
labor relations culture: Philosophy by which an employer and/or parties to a collective bargaining agreement conduct labor-management relations.

land use consistency: Determination of whether the proposed Conrail Acquisition represents a change that is consistent with local land use plans in effect, based on consultation with local and/or regional planning agencies and/or a review of the official planning documents that such agencies have prepared.

Level of Service (LOS): A measure of the operational efficiency of a roadway vehicle traffic stream using procedures that consider factors such as vehicle delay, freedom to maneuver, traffic interruptions, comfort and convenience, and safety. Traffic analysts express LOS as letter grades, ranging from Level of Service A (free flowing) to Level of Service F (severely congested); they measure LOS by the average delay for all vehicles. Specifically, Level of Service A describes operations with very low delay (less than 5.0 seconds per vehicle); Level of Service B describes operations with delay in the range of 5.1 to 15.0 seconds per vehicle; Level of Service C describes operations with delay in the range of 15.1 to 25.0 seconds per vehicle; Level of Service D describes operations with delay in the range of 25.1 to 40.0 seconds per vehicle; Level of Service E describes operations with delay in the range of 40.1 to 60.0 seconds per vehicle; and Level of Service F describes operations with delay in excess of 60.0 seconds per vehicle.

low-income population: A population composed of persons whose median household income is below the Department of Health and Human Services poverty guidelines.

maintenance area: An area classified by EPA as meeting National Ambient Air Quality Standards (NAAQS) and which previously (within the last 10 years before reclassification) did not meet NAAQS.
maintenance-of-way: The activity of maintaining the track and structures of a railroad.

major key route: For the purposes of this Final EIS, a rail line segment where the annual volume of hazardous material it carries is projected to double and also exceed 20,000 carloads as a result of the proposed Conrail Acquisition.

Mechanical Department: Department of the railroad primarily responsible for the maintenance and inspection of locomotives, freight cars, and other moving equipment.

Memorandum of Agreement (MOA): With regard to cultural resources for the Final EIS, a legally binding document executed under 36 CFR 800.5(e)(4) that either specifies the process a Federal agency will undertake in order to avoid, reduce, or mitigate adverse effects on historic properties by the implementation of a proposed action, or documents the acceptance of such effects in the public interest. The parties who sign a MOA generally include the lead agency, the State Historic Preservation Office, the Advisory Council on Historic Preservation, and sometimes other interested parties.

Memorandum of Understanding (MOU): An agreement that two or more parties execute that sets forth the specific duties and responsibilities of each party. For the purposes of this Final EIS, MOU is an agreement that the Applicants may negotiate with communities.

minority population: A population composed of persons who are Black (non-Hispanic), Hispanic, Asian American, American Indian, or Alaskan Native.

mitigation: An action taken to prevent, reduce, or eliminate adverse environmental effects.
motive power: Locomotives operated by the railroad.

multi-level rail car: A two- or three-level freight car, designed for transporting automotive vehicles.

Multiple Resource Score (MRS): For the Environmental Justice analysis, a measure of aggregate impacts used to identify the geographic areas of greatest concern. This score sums the environmental resource scores for hazardous materials transport, noise, and traffic safety and delay and forms the basis for the tests for disproportionality.

National Ambient Air Quality Standards (NAAQS): Air pollutant concentration limits established by the EPA for the protection of human health, structures, and the natural environment.

National Environmental Policy Act (NEPA): The National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4347; P.L. 91-190) is the basic national charter for the protection of the environment. It establishes policy, sets goals, and provides means for carrying out the policy. Its purpose is to provide for the establishment of a Council on Environmental Quality and to instruct Federal agencies on what they must do to comply with the procedures and achieve the goals of NEPA.

National Historic Preservation Act (NHPA): The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470-470t et seq.; P.L. 89-665), is the basic legislation of the Nation’s historic preservation program that established the Advisory Council on Historic Preservation and the Section 106 review process. Section 106 of the NHPA requires every Federal agency to “take into account” the effects of its undertakings on historic properties.
National Priorities List (NPL):
A subset of CERCLIS; EPA's list of the most serious uncontrolled or abandoned hazardous waste sites identified for possible long-term remedial action under the Superfund Program.

National Register of Historic Places (NRHP):
Administered by the National Park Service, the Nation's master inventory of known historic properties, including buildings, structures, sites, objects, and districts that possess historic, architectural, engineering, archaeological, or cultural significance at the Federal, state, and local levels.

Native American:
According to the Native American Graves Protection and Repatriation Act of 1990, as amended (25 U.S.C. 3001 et seq.; P.L. 101-601), of, or relating to, a tribe, people, or culture that is indigenous to the United States.

Native American lands:
According to the regulations of the Advisory Council on Historic Preservation in 36 CFR 800.2, as modified by the scope of this EIS, all lands under the jurisdiction or control of an Indian tribe, including all lands within the exterior boundaries of any American Indian reservation.

Negotiated Agreement:
An agreement between CSX, NS, or both, and one or more communities or other governmental units that addresses potential environmental impacts or other issues.

No-Action Alternative:
The proposed acquisition of Conrail by CSX and NS does not take place under this alternative; also the present setting for the pre-Acquisition conditions.
noise: A disturbance or annoyance of an intruding or unwanted sound. Noise impacts essentially depend on the amount and nature of the intruding sound, the amount of background sound already present before the intruding or unwanted sound occurred, and the nature of working or living activity of the people occupying the area where the sound occurs.

noise contour: Lines plotted on maps or drawings connecting points of equal sound levels.

noise-sensitive receptor: Location where noise can interrupt ongoing activities and can result in community annoyance, especially in residential areas. The Board's environmental regulations include schools, libraries, hospitals, residences, retirement communities, and nursing homes as examples of noise-sensitive receptors.

nonattainment area: An area that EPA has classified as not complying with the National Ambient Air Quality Standards promulgated under the Clean Air Act.

Northeast Corridor (NEC): Railroad right-of-way between Boston, Massachusetts and Washington, D.C. on which Amtrak and others operate; Amtrak is responsible for operation and maintenance on all of the route, except the route segment between New Haven, Connecticut and New Rochelle, New York.
**Northeast Operating Rules:** Rules that govern railroad operations, adapted by members of the Northeast Operating Rules Advisory Committee (NORAC). These operating rules apply to all railroads when working on any NORAC member's territory. The NORAC members are Bay Colony Railroad, Conrail Inc. and Consolidated Rail Corporation (Conrail), Delaware & Hudson Railway company, Guildford Transportation Industries, National Railroad Passenger Corporation (Amtrak), New Jersey Transit (NJT), New York Susquehanna & Western Railway Corporation, Providence & Worcester Railroad Company, and Southeastern Pennsylvania Transportation Authority (SEPTA).

**notices:** Documents addressed to engineers and other operating employees detailing temporary or local operating rules and restrictions.

**on-track (maintenance) equipment:** Track and other maintenance equipment provided with flanged wheels and able to move along railroad track.

**operating employee:** Railroad employee engaged in the operation of trains, including a member of the train crew; a train dispatcher; and a track, a signal, and an equipment maintenance employee.

**Operating Plans:** Documents that CSX and NS provided as part of the Application, detailing their planned railroad operations following the proposed Conrail Acquisition.

**operating practices:** Safety and operating rules, practices, and procedures contained in operating rulebook, timetable, special instructions, or any other company-issued instructions and the management decisions implementing those rules and instructions that govern the movement of trains and work on or around active tracks.
operating rules: Written rules of a railroad governing the operation of trains and the conduct of employees responsible for train operations when working on or around active tracks.

Operation Lifesaver: A non-profit public information and safety education program dedicated to eliminating collisions, deaths, and injuries at highway/rail at-grade crossings and on railroad rights-of-way. It is composed of a broad-based coalition of Federal, state, and local government agencies, private safety groups, and transportation industry representatives.

particulate matter (PM): Airborne dust or aerosols.

Party of Record (POR): Party that notified the Board of their active participation in the proceeding about the proposed Conrail Acquisition. When submitting a filing to the Board, the POR must also notify the entire POR service list.

passive warning devices: Traffic control devices that do not give positive notice to highway users of the approach or presence of a train. These devices may include signs and pavement markings, located at, or in advance of, railroad crossings to indicate the presence of a crossing and the presence of a train. These signs are either regulatory or non-regulatory and may include parallel track signs, crossbucks, stop signs, yield signs, and constantly flashing lights.

positive train separation: Mechanism included in positive train control, an experimental, automated safety system, using Global Positioning System (GPS) technology, onboard computers and wayside information inputs to control train movement. In the event of failure on the primary safety system, positive train control reduces the risk of single-point failure (that is, human error).
posted speed: Maximum speed permitted at a specific location on the railroad network irrespective of train type.

Prevention of Significant Deterioration (PSD) Class I Areas: National parks and wilderness areas designated under the Clean Air Act as areas for which users are to maintain air quality at pristine levels, with very small increases in air pollution levels allowed.

Primary Application: The formal filing of documents with the Surface Transportation Board by applicants for railroad mergers, acquisitions, constructions, or abandonments. The Primary Application contains Operating Plans and information describing related construction projects. It also includes an Environmental Report, describing the physical and operational changes associated with the proposed action and the potential environmental effects of that action.

prime farmland: According to Natural Resources Conservation Service, land having the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops.

proposed Conrail Acquisition: The proposed acquisition of Conrail's physical assets and operating systems by CSX and NS, for which the Applicants are seeking approval from the Board.

public uses: According to 49 U.S.C. 10905 and STB Regulations “Surface Transportation Manual,” Section 1105.7(3)iv, those identified alternative public purposes for the use of rail properties proposed for abandonment or discontinuance, including highways, other forms of mass transportation, conservation, energy production or transmission, or recreation.

queue: A line of vehicles waiting at a highway/rail at-grade crossing for an obstruction to clear.
rail line segment: For the purposes of this Final EIS, portions of rail lines that extend between two terminals or junction points.

rail route: Line of railroad track between two points on a rail system.

rail spur: A railroad track that typically connects to the main line at only one end and provides rail service to one or more railroad freight customers. A rail spur could also parallel the main line.

rail yard: A location or facility with multiple tracks where rail operators switch and store rail cars.

receptor: See noise-sensitive receptor.

regional and system gang: A group of railroad maintenance-of-way employees that work a particular region or an entire railroad system.

remediation (remedial actions): Actions taken to mitigate the adverse effects, or potential adverse effects, to the environmental or to the public health and welfare resulting from the release or spill of hazardous substances.

Request for Conditions: A document filed with the Board by a party to this proceeding on or before October 21, 1997, that requests the Board to impose one or more specified requirements on the Applicants as a condition to the Board’s approval of the proposed Conrail Acquisition.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td><strong>Resource Conservation and Recovery Information System (RCRIS):</strong></td>
<td>Federal database containing information on facilities that generate, transport, store, treat, and/or dispose of hazardous waste.</td>
</tr>
<tr>
<td><strong>Responsive Environmental Report (RER):</strong></td>
<td>A report, submitted by an Inconsistent and Responsive applicant, that contains detailed environmental information regarding the activities proposed in its IR Application and complies with the requirements for environmental reports in the Board’s rules at 49 CFR 1105.7(e).</td>
</tr>
<tr>
<td><strong>restricted speed:</strong></td>
<td>A speed that will permit a train to stop within one-half the range of vision of the railroad employee controlling the movement of the train; the train must stop before passing improperly aligned switches, a defect in the track structure, deliberately placed objects, or striking other railroad equipment. According to Federal Railroad Administration regulations, this speed is not to exceed 20 miles per hour.</td>
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<tr>
<td><strong>retarder:</strong></td>
<td>In railroad yards, a braking device, usually power-operated, built into a railroad track to reduce the speed of cars by means of brake-shoes which, when set in braking position, press against the sides of the lower portions of the wheels.</td>
</tr>
<tr>
<td><strong>right-of-way:</strong></td>
<td>The strip of land for which an entity (for example, a railroad) has a property right to build, operate, and maintain a linear structure (for example, a rail line).</td>
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<tr>
<td><strong>roadmaster:</strong></td>
<td>Railroad supervisor responsible for track inspection and maintenance over a specified portion of the railroad network.</td>
</tr>
<tr>
<td><strong>Safety Assurance and Compliance Program (SACP):</strong></td>
<td>Federal Railroad Administration program to audit railroad safety practices and to ensure compliance with Federal regulations.</td>
</tr>
</tbody>
</table>
safety culture: The manner in which management and employees in an organization view and approach the issue of safety, including both formalized rules and informal practices in the organization.

Safety Implementation Plan Guidelines (SIPG): A series of acquisition-related guidelines that the Federal Railroad Administration developed for CSX and NS, detailing a list of safety concerns that CSX and NS must address in their Safety Integration Plans.

Safety Integration Plans: Plans that the Applicants prepared and submitted to the Board to explain how they propose to provide for the safe integration of their separate corporate cultures and operating systems, if the Board approves the proposed Conrail Acquisition.

Section 106 review process: The review process set forth in Section 106 of the NHPA (16 U.S.C. 470) that requires every Federal agency to "take into account" the effects of its undertakings on historic properties and affords the ACHP the opportunity to comment on those undertakings and their effects.

seniority district: A geographic area within which a group of employees in a specific labor union (for example, engineers, dispatchers) are authorized and expected to work.

seniority rights: The priority one employee has over another employee in bidding for available positions, choice of work assignments, and similar matters, based on length of employment in a specified category. Agreements between railroad companies and labor unions specify such rights.

sensitive receptor: See noise-sensitive receptor.
**separated grade crossing:** The site where a local street or highway crosses railroad tracks at a different level or elevation, either as an overpass or as an underpass.

**service:** The official notification and delivery of Board decisions and notices (including EAs and EISs) by the Secretary of the Board to persons involved in a particular proceeding.

**Settlement Agreement:** An agreement negotiated between CSX or NS or both and one or more parties, including other railroads, that addresses concerns or requests of the party (or parties). Generally, such an agreement addresses competitive customer service or labor issues.

**Seven Separate Connections:** Seven new rail line connection construction projects in Illinois, Indiana, and Ohio. These projects total approximately 4 miles of new track. CSX and NS requested that the Board give early consideration and approval to the physical construction of these particular connections.

**Shared Assets Areas:** Areas comprising Conrail facilities in southeastern Michigan, northern New Jersey, and southern New Jersey/Philadelphia that CSX and NS would share and Conrail Shared Assets Operations would operate for the benefit of both CSX and NS, if the Board approves the proposed Conrail Acquisition.

**shifted load:** An improperly secured freight car load that has moved and may protrude beyond the allowed dimensional limits.

**shipment:** A unit of freight given to the railroad for movement to its destination by an individual customer.
siding: A track parallel to a main track that is connected to the main track at each end. A siding is used for the passing and/or storage of trains.

signal maintainer: Railroad employee who maintains signal and communications systems.

socioeconomic: For this Final EIS, job loss directly attributable to changes in the physical environment as a result of construction and abandonment activities and other activities related to the proposed Conrail Acquisition project.

Sound Exposure Level (SEL): For a transient noise event such as a passing train, equivalent to the maximum A-weighted sound level that would occur if all of the noise energy associated with the event were restricted to a time period of 1 second. The SEL accounts for both the magnitude and the duration of the noise event; noise analysts use SEL to calculate the day-night average noise level.

Spill Prevention, Control, and Countermeasures Plan (SPCCP): A site-specific document written to detail measures to prevent discharges of oil into waters of the United States (as defined in the Clean Water Act). Facilities with aboveground storage capacities in a single container greater than 660 gallons, or the aggregate aboveground storage capacity greater than 1,320 gallons, or total underground storage capacity greater than 42,000 gallons are required to prepare SPCCPs.

superior train: For purposes of this Final EIS, a passenger train operating on the same track network with freight trains. Superior trains must have track clear of all trains not less than 15 minutes prior to their arrival. See temporal train separation.
Supplemental Environmental Report: A report that analyzes the environmental impacts of operating changes related to a Settlement Agreement between an Applicant and another railroad that exceed the Board's thresholds when added to changes proposed in the Applicants' Operating Plans.

switch: The portion of the track structure used to direct cars and locomotives from one track to another.

switching: The activity of moving cars from one track to another in a yard or where tracks go into a railroad customer's facility.

temporal train separation: The time separation of passenger trains that share rail lines with freight trains, in order to reduce the possibility of train collisions. See superior train.

territory: The portion of a railroad's track network under the management of a particular supervisor.

threatened species: A species that is likely to become endangered within the foreseeable future throughout all or part of its range. Federal and state laws protect these species.

threshold for environmental analysis: A level of proposed change in railroad activities that determines the need for SEA's environmental review. For the proposed Conrail Acquisition, SEA used the Board's environmental rules at 49 CFR Part 1105 to determine the activities that it would examine for air and noise impacts ("Board thresholds"). For other issue areas, SEA developed appropriate thresholds to guide its environmental review ("SEA thresholds"). The term "Board thresholds", as used in this EIS, may refer to either Board or SEA thresholds.
**Glossary of Terms**

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<tr>
<th>Term</th>
<th>Definition</th>
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<tr>
<td><strong>timetable:</strong></td>
<td>A document that identifies key railroad line features over a defined portion of the network. The features usually include distances, speed limits, track layout, type of signaling, location and length of passing sidings, and the local applicability of specific operating rules. Operating rules are often published with the timetable.</td>
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<tr>
<td><strong>track geometry:</strong></td>
<td>Dimensional description of railroad track and individual rails compared to optimal design criteria.</td>
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<tr>
<td><strong>track geometry inspection car:</strong></td>
<td>Rail vehicle equipped with instruments to make continuous, in-motion measurements of variations in the track gauge, alignment, and cross level.</td>
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<tr>
<td><strong>trackage right(s):</strong></td>
<td>The right (or combination of rights) of one railroad to operate over the designated trackage of another railroad including, in some cases, the right to operate trains over the designated trackage; the right to interchange with all carriers at all junctions, the right to build connections or additional tracks to access other shipper or carriers. See also <em>haulage right(s).</em></td>
</tr>
<tr>
<td><strong>trackage rights agreement:</strong></td>
<td>An agreement between two parties that defines the trackage rights granted to one party over the tracks of a second party.</td>
</tr>
<tr>
<td><strong>traffic volume (highway):</strong></td>
<td>The number of highway vehicles that pass over a given point during a given period of time, often expressed on an annual, daily, hourly, and sub-hourly basis. For the purposes of this Final EIS, SEA expressed highway traffic volumes on a daily basis.</td>
</tr>
<tr>
<td><strong>traffic volume (rail):</strong></td>
<td>The total volume of rail traffic that passes over a given rail line segment, typically expressed in either trains per day or annual million gross tons per year.</td>
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</table>
**Glossary of Terms**

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>train (freight):</td>
<td>A conveyance transported by one or more locomotives typically with 40 to 150 freight cars, measuring approximately 5,000 to 8,000 feet in length. For the purposes of this Final EIS, does not apply to locals, work trains, switch-engine movements, or engine-only movements.</td>
</tr>
<tr>
<td>train (passenger):</td>
<td>Equipment composed of one or more rail cars designed to carry passengers, propelled by a locomotive or self-propelled, moving from one place to another.</td>
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<td>train crew:</td>
<td>Employees assigned to operate a train, usually an engineer, a conductor, and one or more trainmen.</td>
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<tr>
<td>train defect detector:</td>
<td>An electronic device located alongside a rail track that monitors passing trains to determine the presence of certain potentially dangerous conditions, such as an overheated wheel bearing (&quot;hot box&quot;) or a shifted load that protrudes from the rail car.</td>
</tr>
<tr>
<td>trainman:</td>
<td>Member of a train crew responsible for assisting the engineer and conductor in operating the train, especially with switching cars.</td>
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<tr>
<td>trainmaster:</td>
<td>Railroad operations supervisor responsible for managing train and yard operations and operating employees on a defined portion of the railroad network.</td>
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<tr>
<td>transient noise event:</td>
<td>An intermittent occurrence of noise, such as the passing of a train that generates such noise.</td>
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<tr>
<td>Transportation Department:</td>
<td>Department of the railroad responsible for day-to-day train operations and dispatching.</td>
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</tbody>
</table>
Glossary of Terms

Triple Crown Service (TCS): An expedited intermodal service offered by both Conrail and NS. TCS trains do not require the use of flat cars, but rather use specially designed dual-mode highway trailers that are coupled together with two-axle rail wheel sets that support the ends of the trailers for the rail portion of the rail-highway movement. The equipment used is similar to “RoadRailer” equipment.

turnout: The portion of railroad track structure where a single track divides into two tracks.

Verified Statement: A party’s sworn statement that provides information to the Board.

vibration velocity: The rate of change of displacement of a vibration. Noise analysts often express measurements of vibration in terms of velocity because velocity correlates well with human response to vibration.

waybill: Document or computer record containing details of a rail shipment: origin, destination, route, commodity, freight rate, car or cars used, and similar information.

wayside: Adjacent to the railroad track, as in “wayside signals” or “wayside defect detectors.”

wayside noise: Train noise adjacent to the right-of-way that comes from sources other than the horn, such as engine noise, exhaust noise, and noise from steel train wheels rolling on steel rails.
wetlands: According to 40 CFR Part 230.41, those "areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions," generally including swamps, marshes, bogs, and similar areas.

yardmaster: Railroad operations supervisor responsible for railroad operations and employees in a railyard.
**LIST OF ACRONYMS AND ABBREVIATIONS**

<table>
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<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>AAR</td>
<td>Association of American Railroads</td>
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<tr>
<td>ABS</td>
<td>Automatic Block System</td>
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<tr>
<td>ACHP</td>
<td>Advisory Council on Historic Preservation</td>
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<tr>
<td>ACS</td>
<td>Automatic Cab Signals</td>
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<tr>
<td>ACSES</td>
<td>Advanced Civil Speed Enforcement System</td>
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<tr>
<td>ADT</td>
<td>Average Daily Traffic</td>
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<tr>
<td>Amtrak</td>
<td>The National Railroad Passenger Corporation</td>
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<tr>
<td>ANSI</td>
<td>American National Standards Institute</td>
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<tr>
<td>AoPE</td>
<td>Area of Potential Effect(s)</td>
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<tr>
<td>APL</td>
<td>American Presidents Line</td>
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<tr>
<td>APTA</td>
<td>American Public Transit Association</td>
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<td>ARU</td>
<td>Allied Rail Unions</td>
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<tr>
<td>ASTM</td>
<td>American Society for Testing and Materials</td>
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<tr>
<td>ATC</td>
<td>Automatic Train Control</td>
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<tr>
<td>B&amp;O</td>
<td>Baltimore &amp; Ohio Railroad Company</td>
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<tr>
<td>B&amp;OCT</td>
<td>Baltimore &amp; Ohio Chicago Terminal Railroad Company</td>
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<tr>
<td>BIA</td>
<td>Bureau of Indian Affairs</td>
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<tr>
<td>BMP</td>
<td>Best Management Practice</td>
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<tr>
<td>Board</td>
<td>Surface Transportation Board</td>
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<tr>
<td>BOCT</td>
<td>Baltimore &amp; Ohio Chicago Terminal Railroad Company</td>
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<tr>
<td>BRL</td>
<td>The Cities of Bay Village, Rocky River, and Lakewood, Ohio</td>
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<tr>
<td>CAA</td>
<td>Clean Air Act of 1970</td>
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<tr>
<td>CAAA</td>
<td>Clean Air Act Amendments of 1990</td>
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<tr>
<td>CEQ</td>
<td>Council on Environmental Quality</td>
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<tr>
<td>CERCLA</td>
<td>Comprehensive Environmental Response, Compensation, and Liability Act of 1980</td>
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<tr>
<td>CERCLIS</td>
<td>Comprehensive Environmental Response, Compensation, and Liability Information System</td>
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<tr>
<td>CFR</td>
<td>Code of Federal Regulations</td>
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<tr>
<td>CO</td>
<td>carbon monoxide</td>
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<td>Conrail</td>
<td>Conrail, Inc. and Consolidated Rail Corporation</td>
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<td>CP</td>
<td>Control Point</td>
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<td>CPR</td>
<td>Canadian Pacific Railway</td>
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<tr>
<td>CRC</td>
<td>Comments and Requests for Conditions</td>
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<td>CSX</td>
<td>CSX Corporation and CSX Transportation, Inc.</td>
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<tr>
<td>Acronym</td>
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<tr>
<td>CTC</td>
<td>Centralized Traffic Control</td>
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<td>CZM</td>
<td>Coastal Zone Management</td>
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<tr>
<td>CZMA</td>
<td>Coastal Zone Management Act of 1972</td>
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<td>dB</td>
<td>decibel</td>
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<tr>
<td>dBA</td>
<td>A-weighted decibels</td>
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<tr>
<td>DES</td>
<td>Division of Endangered Species</td>
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<tr>
<td>DOI</td>
<td>U.S. Department of the Interior</td>
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<tr>
<td>DOT</td>
<td>U.S. Department of Transportation</td>
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<td>EA</td>
<td>Environmental Assessment</td>
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<td>EDR</td>
<td>Environmental Data Resources, Inc.</td>
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<td>EIS</td>
<td>Environmental Impact Statement</td>
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<td>EJ</td>
<td>Environmental Justice</td>
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<td>EO</td>
<td>Executive Order</td>
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<td>EPA</td>
<td>U.S. Environmental Protection Agency</td>
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<td>ERS</td>
<td>Environmental Resource Score</td>
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<tr>
<td>ESA</td>
<td>Endangered Species Act of 1973</td>
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<td>FAA</td>
<td>Federal Aviation Administration</td>
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<td>FEMA</td>
<td>Federal Emergency Management Agency</td>
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<td>FHWA</td>
<td>Federal Highway Administration</td>
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<td>FRA</td>
<td>Federal Railroad Administration</td>
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<td>FRA ID</td>
<td>Federal Railroad Administration Identification Number</td>
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<td>FTA</td>
<td>Federal Transit Administration</td>
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Finance Docket No. 33388

"PROPOSED CONRAIL ACQUISITION"
CSX Corporation and CSX Transportation, Inc.
Norfolk Southern Corporation and
Norfolk Southern Railway Company
Control and Operating Leases/Agreements
Conrail, Inc. and Consolidated Rail Corporation

VOLUME 6A
Appendix A: Comments Received on the Draft EIS

prepared by:

Surface Transportation Board
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GUIDE TO VOLUME 6A

Volume 6A of the Proposed Conrail Acquisition Final EIS contains the following items:

- List of Appendices.
- Appendix A, "Comments Received on the Draft Environmental Impact Statement."
- Guide to the Final EIS.
- Glossary of Terms.
- List of Acronyms and Abbreviations.
- Contents of the Final EIS.
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Appendix B: Draft Environmental Impact Statement Correction Letter, Errata, Supplemental Errata and Additional Environmental Information, and Board Notices to Parties of Record

Appendix C: Settlement Agreements and Negotiated Agreements

Appendix D: Agency Consultation

Appendix E: Safety: Highway/Rail At-grade Crossing Safety Analysis

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APPENDIX A
COMMENTS RECEIVED ON THE
DRAFT ENVIRONMENTAL IMPACT STATEMENT

On December 19, 1997, the Section of Environmental Analysis (SEA) of the Surface Transportation Board (the Board) issued a Draft Environmental Impact Statement (Draft EIS) that evaluated the environmental impacts that could result from the proposed Conrail Acquisition. SEA prepared the Draft EIS in accordance with the requirements of the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321); the Board’s environmental rules (49 CFR Part 1105); and other applicable environmental statutes and rules.

This Final Environmental Impact Statement (Final EIS) addresses the comments on the Draft EIS, as well as other environmental comments that SEA received during its ongoing environmental review, and it reflects SEA’s further environmental analysis, including site visits and consultations. In addition, the Final EIS contains SEA’s final environmental recommendations to the Board. The Board will consider SEA’s recommendations and the environmental record before making a decision in this proceeding.

This appendix contains the 257 written comments on the Draft EIS that SEA received during the formal comment period that ended on February 2, 1998. SEA also fully considered comments received after February 2 during its environmental review process. Although they are not reproduced here, these comments are part of the Board’s administrative record and the Board will consider them in making its decision.

Table A-1 lists the comments on the Draft EIS in order of comment date and organizes them as follows:

- Federal agencies.
- Applicants.¹
- National and regional groups.²

¹ “The Applicants” refers to CSX Corporation and CSX Transportation, Inc. (CSX); Norfolk Southern Corporation and Norfolk Southern Railway Company (NS); and Conrail, Inc., and Consolidated Rail Corporation (Conrail).

² This group also includes comments submitted anonymously or without addresses.
States, regional, and local agencies, elected officials, organizations, and individuals, grouped by state.

The reproduced comment letters follow the order presented in Table A-1. For ease of reference, each page of each document contains the document identifier number, as listed in Table A-1.

SEA also provided an additional full 45-day comment period (ending April 15, 1998) specifically for refined hazardous materials transport, noise, and environmental justice analyses. SEA refined these analyses to be able to include information that was unavailable during its preparation of the Draft EIS and then opened this second comment period to allow the public to review all of its analysis. Table A-2 lists the letters SEA received during this comment period. The addendum to this Final EIS presents copies of these letters, along with SEA's responses.

Table A-3 is a list of comment letters that SEA received between publication of the final scope and service of the Draft EIS. Table A-4 is a list of comment letters that SEA received after Final EIS analysis and writing.
### TABLE A-1

**COMMENTS RECEIVED ON THE DRAFT EIS**

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TABLE A-1
COMMENTS RECEIVED ON THE DRAFT EIS

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<td>Florida State Clearinghouse; Clearinghouse Acknowledgment</td>
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<td>Lois M. Cooper, Danville, IL; Environmental Concern</td>
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<td>The Four City Consortium, IN, C. M. Loftus, et al.; Request for Additional Information</td>
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<td>Myrtle Jayne Wheeler Minix, Painsville, KY; Request for Clarification of Newspaper Notice</td>
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<td>Department of Public Works &amp; Transportation, MD, E. A. Daniel; Comment on Draft EIS</td>
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*Proposed Conrail Acquisition May 1998 Final Environmental Impact Statement A-7*
### TABLE A-1

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### TABLE A-1
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Dear Ms. Kaiser:

Thank you for your letter of November 26, 1997, updating the Bureau of Indian Affairs (BIA) about the status of the CSX Corporation (CSX) and Norfolk Southern Corporation (NS) joint application to acquire Conrail Inc.

We appreciate the notification of intent to prepare an Environmental Impact Statement (EIS) for the proposed CSX-NS acquisition of Conrail Inc. and commend the Surface Transportation Board for notifying the two (2) federally-recognized Indian tribes (Seminole Nation of Florida & Poarch Band of Creek Indians) of its intent to evaluate the potential environmental impacts of this proposed action including any and/or all impacts on the Indian reservation trust lands and related trust resources of these tribes.

This type of open communication between non-BIA federal agencies and Indian tribes is an outstanding example of how other federal government agencies are recognizing Indian tribal governments and consulting with Indian tribes in assessing the impact of federal and non-federal actions on tribal trust lands and related trust resources.

We look forward to receiving copies of the various environmental documents related to this proposed action and will coordinate with the two tribes in preparing comments and input for your consideration in preparing the Environmental Impact Statement for the CSX-NS acquisition of Conrail Inc.

Sincerely,

[Signature]

12/31/97 10:12:57 am
This is in response to your October 1, 1995 letter seeking comments on the Draft Environmental Impact Statement (DEIS) for the proposed acquisition of Conrail's assets by Norfolk Southern Railroad and CSX Railroad.

We have reviewed the DEIS and noted that the map of Little Ferry, Bergen County, New Jersey in Figure 3-NF-6, Volume 3B of the DEIS depicts wetland areas regulated by New Jersey Department of Environmental Protection. Work in these areas and/or nearby areas may also be regulated by the U.S. Army Corps of Engineers. Our jurisdiction would include the discharge of dredged or fill material into any wetlands, freshwater or tidal, on the site or into the waterway downstream of the spring high tide line. If such work is proposed within waters of the United States at Little Ferry, a Department of the Army permit from the New York District will be necessary. In order for us to accurately determine the extent of our jurisdiction on the site, a wetland delineation would need to be submitted for our review and approval. Once we receive a wetland delineation for the site, we will then be able to schedule a site inspection.

If the proposed work would not involve work within our jurisdiction, no permit will not be required and no further contact with this office will be necessary.

For issuance to waters of the United States at the Gardena Junction at the City of Buffalo, Erie County, New York we have visited the site and obtained the US Army Corps of Engineers Buffalo District at 1776 Niagara Street, Buffalo, New York 14207-3189. ATH: RCBO-6.

If you have any questions regarding this letter, please contact Mr. James Cannon, of my staff, at (313) 264-0043.

Sincerely,

[Signature]

Chief, Western Permits Section
The Department comments that the Board for entering the preparation of an EIS for this complicated and important matter DOT's comments address the impacts of the pending transaction on the following major subject areas covered in the DEIS: (1) rail safety, (2) rail passenger transportation, and (3) severely affected communities. We also wish to inform the SEA of our view that a purely technical application of environmental thresholds can result in real-world impacts being overlooked.

As discussed more fully below, the Department believes that (1) the safety integration plans ("SIPs") submitted by the Applicants appropriately address the safety issues raised by their operating plans for purposes of the EIS, (2) the DEIS recommendations concerning a 15 minute separation of passenger trains from other trains and implementation of industry guidelines for carriage of hazardous materials should not be adopted, (3) the consequences of the transaction for rail passenger transportation require oversight, (4) prospective impacts on communities are best resolved by STB action that will facilitate prompt resolution of mitigation problems by direct agreements between the Applicants and affected communities, and (5) the DEIS analysis misses some of the "individual" impacts of the transaction in such a way that it fails to identify certain broader consequences and indeed whole communities. DOT recommends that the final EIS should focus more broadly in order to measure the transaction's true impacts more accurately, and for this reason we urge the Board to return overnight.

II. Rail Safety Impacts

A. Safety Integration Plans

Following the Department's expression of concern about the effect that the proposed transaction might have on rail safety (DOT-3, A10-A October 21, 1997), the STB directed each of the Applicants to prepare a SIP. Decision No. 52, (served November 3, 1997). Those plans were intended to explain in detail the steps to be taken by the Applicants to ensure that the division and integration of Conrail into the NS and CSX systems, and the formation and operation of the Shared Asset Areas ("SAA's") occurred in a safe manner. DOT again extends its appreciation for the STB's prompt action.

As we express our similar in this proceeding (DOT-4, filed December 3, 1997),
1997, the Applicants worked closely with the Federal Railroad Administration ("FRA") to produce the SIPs filed on December 1, 1997. Specifically, immediately following the issuance of Decision No. 52, FRA and the Applicants began a close dialogue reporting the contents of the SIPs. At that time FRA also developed merger-related safety integration plan guidelines ("SIPG"), which were crafted specifically for the Applicants, in address of all the safety concerns identified by FRA in the original application filed by Applicants and through in consideration of earlier rail mergers.

Concurrently with the preparation of the SIPG, FRA and the Applicants established a ten-member SIP review team made up of various FRA subject experts and Conrail/CSX/NS representatives. The team's initial purpose was to prepare SIPs that were as comprehensive as possible given the short time allotted for submission to the STB. Subsequently, the SIP review team continued to refine the SIPs and prepare for their implementation by the Applicants under the supervision of FRA, in the event that the STB approved the proposed transaction. DOT wishes to emphasize that each of the Applicants cooperated fully with FRA and continue to do so, and we highly commend their efforts.

The primary criteria used by FRA in reviewing the SIPs were (i) that each safety item identified in the SIPG be thoroughly considered, (2) that provisions for the reasonable integration of the disparate procedures, as well as cultures prevalent in the operations of the Applicants be developed for each safety item, and (3) that the integration process reflect a logical sequence of events including the identification of workforce and resource allocations, as the delegation of authority necessary to carry out the stated action items.

The following are FRA's major findings with respect to the SIPs:

1. The SIPs demonstrate that each Applicant has systematically considered, and established procedures for integrating, all potentially significant sources of increased safety risk. The sources include the following:

a) Differences in employee cultures. These differences have required (i) the establishment of adequate lines of communication between management, labor, and field personnel; (ii) provision of orientation and training; and (iii) the provision of adequate training to employees.

b) Differences in rail management and operating procedures. These differences have necessitated maintaining a high degree of the "best practices" and unique strengths of each carrier.

c) Loss of traditional knowledge. This process has required integration of railway field, staff, and senior management, with knowledge of operating and safety practices;

d) The very large increase in the size of two major railroads, including track volumes, and potential additional workloads for management and labor of both NS and CSX.

2. The CSX, NS, and the Shared Assets Area SIPs adequately address all of the safety items listed in FRA's SIPG in a reasonable manner. Each identifies the significant safety issues and provides a detailed approach to integration through the implementation of a logical sequence of events involving retained workforce and resource allocations that employ sound industry/engineering safety practices.

FRA has held extensive discussions with the Applicants in order to match specific timing and resource allocations, in terms of both manpower and equipment, to each safety action item identified in the SIPs. A common understanding of the issues and the Applicants' undertakings will be critical to ensure a safe implementation of the SIPs under FRA direction, assuming the acquisition is approved. FRA is satisfied with the commitments made to date and will continue to work with the Applicants to address implementation issues as they arise.

Accordingly, the Department is satisfied that the SIPs address and satisfactorily mitigate every safety concern raised in the environmental review portion of this proceeding. The Applicants' commitments to cooperate with FRA, in ensuring the accountability embodied in agreed-upon resource allocations, and the SIPs themselves have put FRA in a position to ensure that the SIPs are implemented by the Applicants in a timely manner, consistent with existing railroad safety laws. No other mitigation on this subject is necessary or appropriate.

Although DOT believes no further changes should be made to the SIPs, we request the SEA and/or the Board to consult with FRA to the extent they may consider comments of others that are inconsistent with our findings.

B. Passenger/Freight Train 15 Minute Separation

The Department takes issue with the DEIS recommendation that passenger and freight trains running on the same track be "shared" by not less than 15 minutes temporal separation between them. DEIS, Executive Summary, at ES-17. The suggestion is not only impractical, but would unduly burden passenger and freight railroaders.

Historically, railroads have not segregated passenger and freight trains for safety reasons. Rather, passenger trains received a "precedence" over freight trains, which meant that slower-moving freight trains were kept out of the way of faster-moving passenger trains because of the priority placed on passenger service. This practice endures, and both types of trains continue to operate safely in a "coexisting" status.

The DEIS recommendation is predicated on "maximizing the potential conflicts" between passenger and freight trains, thereby reducing the risk of collisions. Indeed, there are three types of collisions at risk here: (1) head-on, (2) rear-end, and (3) "raking," that is, when a shifted head on one track strikes a train on an adjacent track. As discussed below, the proposed 15 minute temporal separation is not a good way of reducing the risk of head-on or rear-end collisions, and is irrelevant to the prevention of raking collisions. The risk of collisions overall is best addressed uniformly under FRA's planar rulemaking authority over railway safety.

FRA and the railroad industry are now seeking to minimize the risk of head-on and rear-end collisions through operating rules and practices, track structure, and signal systems (including Advanced Train Control and Positive Train Separation), communication systems, and braking systems. Positive Train Separation holds the promise of virtually eliminating head-on and rear-end collisions. Indeed, FRA's Railroad Safety Advisory Committee is now working with FRA to develop standards for these systems, and the Applicants are all jointly developing such systems for their respective operations under a grant from FRA. A 15 minute temporal separation would further the installation of Positive Train Separation, which would be a step backward.

Neither would a 15 minute separation reduce the risk of "raking." On single line track, one of two trains would have to be placed in a siding to permit the other to pass. On multiple line track, both trains would continue and pass each other. A temporal buffer would not change these operational realities.

This proposal also poses substantial operating problems. In many single track situations, there is insufficient trackage to accommodate freight trains "clearing up" for passenger trains by 15 minutes in each and every case. For example, passenger sidings may not be long enough, or they may be spaced at convenient intervals. This could result in freight trains being held at terminal points for extended periods.

Not only would this be very disruptive of freight operations, it could create a cumulative train congestion area. With expanded crew zones, some crew districts now extend over 300 miles. The federal hours of service laws, of course, still apply in these instances. Application of the 15 minute separation recommendation, however, could cause any number of instances in which freight trains could not pass through such districts within the statutory limit of 12 hours. The necessary result would be re-starting of the crews (together with the logistical and dispatching problems this creates) and inordinate delays for rail traffic.

In sum, the proposed 15 minute temporal separation is both inappropriate and unreasonable, and it should be withdrawn.

C. Hazardous Materials Requirement

The DEIS contains two recommendations to address increased or removed shipments of hazardous materials brought about by the merger. The Applicants would be required to (i) implement guidelines of the Association of American Railroads ("AAR") concerning the carriage of hazardous materials (i.e., trailer (OT 50-9) and develop emergency response plans on major or new routes on which hazardous
materials are transported, and (2) prepare emergency response plans and establish training programs for local communities in which new hazardous materials facilities are constructed. DEIS, Vol. 38, Table 5-2.

The Department has consistently promoted emergency response planning and community awareness programs respecting shipment of hazardous materials. We therefore agree that the applicants should be involved in such planning with the input of local communities. We cannot, however, endorse the imposition of AAR circulars OT-55-88, as those are federal regulatory standards. DOT regulations establish minimum requirements for packaging, handling, and transporting hazardous materials. 49 C.F.R. Parts 172-180. These rules provide mandatory, uniform safety standards applicable to all movements of dangerous commodities, including those that move by more than one route. Circulate OT-55-88, by contrast, is more narrowly focused on a large volume of shippers of a selected group of chemicals, and is written and intended as a "good practices" guide rather than a binding regulatory standard. It calls, for instance, for restrictions on the meetings and passage of trains carrying hazardous materials "when practicable," and requires "maximum reasonable efforts" to reduce coupling speeds of loaded, placarded tank cars to no more than "4 MPH." An arbitrary as the industry efforts represented in this document are, to accord them the status of a mandatory federal standard would be a mistake because it could confuse the regulated community in general, and the Applicants in particular, about their duty to comply with the Code of Federal Regulations.

DOT is also concerned, for example, that the adoption of the circular's "key train" concept (a train with more than a minimum number of cars or intermodal containers loaded with certain classes of hazardous materials) could lead to lower standards of care for other trains carrying hazardous material is. The Department's hazardous materials regulations impose higher standards for packaging, handling, and documentation of more dangerous commodities and less stringent standards for less dangerous items. In order, to assure the same level of safety for the transportation of all regulated commodities. The "key train" concept, made mandatory, would tend to frustrate this interest.

We do not question that the industry may adopt higher standards for itself, so long as they are an addition to and not in excess of-existing federal standards. DOT would, however, consider it unfair for the STB to attempt to create alternative funding standards in this area. DOT urges the SEA merely to commend these "good practices" to the Applicants for appropriate use consistent with federal hazardous materials regulations. Finally, it is important to understand that in the SFRR the Applicants have already developed plans to comply with all federal hazardous materials regulations. DEIS, Vol. 2 at 168-77 (CSX) and at 147-46 (NS).

III. Rail Passenger Transportation Impacts

The purchase and division of Conrail has the potential to affect rail passengers significantly, both commuter and intercity, particularly to the northeastern United States. Rail passenger transportation is an important national resource. Federal, state, and local governments have invested billions of dollars on capital equipment, operating subsidies, improvements, and new construction, and similar purposes for Amtrack and several commuter rail operators. This funding reflects a deep commitment to fundamental values such as reducing pollution and highway congestion, improving energy efficiency, and improving the quality of life, particularly in major metropolitan areas. See, e.g., 49 U.S.C. §§ 5301 et seq. Much of this investment has been concentrated in the region affected by this transaction.

In this region, too, more passenger and freight railroa operate on each others lines to some extent. DEIS, Vol. 1, chap. 4 at 6-22. They must therefore coordinate extensively. As a result, passenger services require that train operators be able to understand the train schedules of other operators and to plan service accordingly. The DEIS concludes that the capacity of passenger service is a major factor in the building and operation of railroads, and that this capacity will become more significant in the future.

In this proposal, the Applicants propose to construct new rail lines or substantially increase service on existing rail lines utilizing CSX and Norfolk Southern (NS) lines. In some cases, the Applicants would operate trains over new lines or lines that are currently used by CSX or NS. In other cases, the Applicants would operate trains over existing lines. The Applicants propose to operate trains on lines that are currently used by CSX or NS, and to construct new lines or substantially increase service on existing rail lines. The DEIS concludes that the capacity of passenger service is a major factor in the building and operation of railroads, and that this capacity will become more significant in the future.

In this regard, the Applicants propose to construct new rail lines or substantially increase service on existing rail lines utilizing CSX and Norfolk Southern (NS) lines. In some cases, the Applicants would operate trains over new lines or lines that are currently used by CSX or NS. In other cases, the Applicants would operate trains over existing lines. The DEIS concludes that the capacity of passenger service is a major factor in the building and operation of railroads, and that this capacity will become more significant in the future.
The second difficulty with the DEIS's treatment of this issue is that it is too narrowly confined to the period covered by existing agreements between Conrail and passenger rail agencies. Regardless of whether such agreements terminate in as little as six months, their duration of the current operational and financial relationships between freight and passenger railroads, and in the view of the DEIS, again means that the purchase and division of Conrail has no effects cognizable by the SEA.

The Department considers this too restrictive a scope to measure the application's true potential effects. Quantitatively, these agreements will only govern the parties (and their successors) for a relatively short period. Most of the agreements will expire within either the usual three-year period projected by rail merger applicants under STB's rules, or the five-year period set by oversight of the effects of the most recent rail merger. 7

DOT finds this approach unacceptable for two reasons. First, it effectively defines away impacts—an impact occurs only if one or more passenger trains must be canceled, but this cannot occur because operating agreements forbid it. This approach overlooks what could be the more significant impacts of an eventual increase in freight traffic—a decline in reliability of passenger service, a development that has potentially profound environmental consequences. Track capacity is a fluid concept. It is certainly possible to demonstrate that additional freight trains may be operated without interfering with commuter and inter-city passenger schedules. However, additional trains clearly create a greater potential for conflict with passenger trains. Freight trains do not always operate on fixed schedules. Train numbers vary with the demand for service, and freight trains are subject to mechanical and other problems that interfere with the operation of passenger trains.

In addition to outright cancellations, erratic delays in passenger trains, particularly commuter operations, can have a serious impact on riders and can reduce ridership and thwart the goal of publicly supported passenger operations. The DEIS offers assurance that there is adequate capacity in all of the commuter rail corridors for the proposed additional freight operations. However, it would also discuss the potential effect on passenger train reliability. DOT notes that Amtrak and most of the commuter rail agencies may be close to agreement with the Applicants. We support this process, but urge the SEA to consider carefully the impact on passenger operation reliability of the proposed passenger service, particularly in the absence of agreements between the parties.

The fact that the Applicants have entered into negotiations with such operators and have reached settlement agreements with several bodies well for future relations, and DOT opponents do not oppose. But this does not change the prospect at least for the other operators, that their negotiations and relationships with CSX or NS may produce different results in the near future than would have been the case had Conrail continued in existence. The extent to which this proves so is a matter of the impact of this transaction on these operations. Finally, of course, the continuing national interest in ensuring passenger rail transportation extends beyond the terms of the current operating agreements.

In the most recent rail merger case, the STB encouraged Reno and Wichita to negotiate agreements with the UP to resolve environmental issues identified in those communities, rather than mandating specific mitigation measures at the outset. UP/UP 278-81. This basic approach is generally preferable to a binding regulatory condition because it is more flexible and allows the parties to negotiate agreements that best suit their situations. Such agreements could include mitigation that encompasses most of specific interests in a party that are so bound that those that directly concern the STB, or that otherwise address concerns beyond traditional criteria for imposing merger conditions. For example, under existing precedent the Board would not seek policy conditions, but will consider cases where the adverse consequences of such delays are likely to be substantial. We therefore urge the SEA to the final EIS to recommend that the Board take direct steps to facilitate a more timely mitigation of outstanding issues.

Village, and Cleared Falls) and Indiana (East Chicago, Hammond, Gary, and Whiting). 8 The Department supports the general SEA approach in these cases of urging the parties to negotiate settlement agreements. However, we are concerned that this approach, without more precise guidance, may lead to interminable delays in a situation where the adverse consequences of such delays are likely to be substantial. We therefore urge the SEA if the final EIS to recommend that the Board take direct steps to facilitate a more timely mitigation of outstanding issues.

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9. The ICC refused to impose on-time conditions for the benefit of Amtrak in the reorganized railroad immediately preceding UP/UP, but that case presented very different facts from one. 8

10. The DOT finds this approach unacceptable for two reasons. First, it effectively

11. The DOT does not advocate that existing contract terms should remain forever unchanged; that passenger rail agencies should obtain whatever they please from NS and CSX, or any other particular outcome. On the basis of issues broadly expressed by Amtrak and these commuter agencies, however, we strongly recommend that the STB retain agreements for a five-year period to monitor relevant developments regarding on-time performance and capacity, and to remain in a position to address passenger service issues that may arise.

IV. Community Impacts

The SEA also addresses the various potential consequences this transaction may have on affected communities, including noise, vibration, pollution, and vehicular traffic delays. As here relevant, the DEIS recommends that the communities most affected by protected rail traffic increases and reroutings should pursue negotiations with the Applicants in order to reach mutually satisfactory solutions. DOT, Vol. 38, at CRH-140-150; Vol. 3A, at IN-45.

The specific communities are in Ohio (Cleveland, Lakewood, Rocky River, Bay Severn). The Department supports the general SEA approach in these cases of urging the parties to negotiate settlement agreements. However, we are concerned that this approach, without more precise guidance, may lead to interminable delays in a situation where the adverse consequences of such delays are likely to be substantial. We therefore urge the SEA if the final EIS to recommend that the Board take direct steps to facilitate a more timely mitigation of outstanding issues.

In the most recent rail merger case, the STB encouraged Reno and Wichita to negotiate agreements with the UP to resolve environmental issues identified in those communities, rather than mandating specific mitigation measures at the outset. UP/UP 278-81. This basic approach is generally preferable to a binding regulatory condition because it is more flexible and allows the parties to negotiate agreements that best suit their situations. Such agreements could include mitigation that encompasses most of specific interests in a party that are so bound that those that directly concern the STB, or that otherwise address concerns beyond traditional criteria for imposing merger conditions. For example, under existing precedent the Board would not seek policy conditions, but will consider cases where the adverse consequences of such delays are likely to be substantial. We therefore urge the SEA if the final EIS to recommend that the Board take direct steps to facilitate a more timely mitigation of outstanding issues.

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The Department is concerned that, without incentives to spur negotiations, following this approach again may lead to inordinate delays in reaching agreements mitigating the more complex and extensive problems posed by the Conrail acquisition. Since, unlike the Reno and Wichita situations, the affected area already should have been examined comprehensively by the time the Board votes on the pending transaction, there is no basis to allow much time to pass while the matter is considered. Moreover, DOT submits that the facts of the instant transaction do not afford the luxury of extended negotiations.

As noted, the DEIS has again proposed that the affected communities and the railroads negotiate an agreement. If this can be accomplished in a timely manner, it is certainly the preferred approach. The Department strongly endorses a fair and equitable treatment of those areas that require mitigation, and believes that the affected parties themselves are in the best position, at least as an initial matter, to decide upon mutually acceptable mitigation measures.

It is emphasized, however, that the situation in Cleveland and neighboring communities in northeastern Ohio, to take the most pressing example, is much more complicated than the situation faced in Reno or Wichita. Agreement must be reached between at least two railroads and several different communities. Some of the mitigation proposals revolve around the railroad's problems at the expense of others; non-proposals solve one railroad's problem at the expense of the other. Noise impacts on residences, blockage of grade crossings, safety hazards at grade crossings, the avoidance of disproportionately severe effects on poor and minority residents, improved service to local industries, efficient movement of through trains, and cost, among other factors, must all be weighed and balanced fairly and sensitively. We understand, for instance, that the Mayor of Cleveland has identified potential impacts of the acquisition on the City, and has proposed mitigation measures. These mitigation measures, however, could have consequences for other communities. Reaching an agreement that meets the requirements of all the interested parties in northeastern Ohio thus promises to be much more difficult than the problems faced after the UP/SP merger.

The financial problems likely to face the Applicants at the time of a delay in their plans to stimulate and remove traffic would seem to give them sufficient encouragement to reach timely agreements and to give the cities a certain leverage. However, without incentives to prompt the communities to avoid delay on their part, there is less prospect for reasonably prompt resolution. Moreover, since reaching an overall solution in an affected region like northeastern Ohio or northwestern Indiana requires cooperation from a number of stakeholders, it is by no means clear that comprehensive negotiated settlements can be reached in a timely fashion without assistance.

The Department proposes that the SEA facilitate this critical negotiation process by providing at the final EIS a clear exposition of what needs to be mitigated and the measures the Board might consider as an agreement at an accelerated basis. These measures must be carefully crafted to balance the environmental burdens placed on communities against the anticipated economic benefits to stoppers as well, under the circumstances facing the communities and the Applicants, all parties have an incentive to negotiate on an accelerated basis. This would also help to forestall at the outset any unrealistic expectations held by the participants as to the scope and cost of the mitigation measures that might be imposed in the absence of settlement, and thus make good faith negotiations more likely to follow.

The DEIS also proposes that the Applicants upgrade warning devices at 118 highway-rail crossings throughout the Corridor territory where train traffic will increase as a result of the pending transaction. DEIS, Executive Summary at ES-18. In reaching this recommendation, the SEA has examined the protected volume of rail and vehicular traffic at individual crossings and other proposed mitigation measures. These mitigation measures, however, could have consequences for other communities. Reaching an agreement that meets the requirements of all the interested parties in northeastern Ohio thus promises to be much more difficult than the problems faced after the UP/SP merger.

Moreover, if the agreed-upon mitigation program includes any substantial construction (e.g. rail or highway overpasses, significant sound barriers, etc.) additional environmental assessment may be required. Even if they are not planned and construction could take one or two years.

For example, a stringent limit on new train routings or operations would be likely to jar communities accustomed and less attempted in hard bargaining. On the other hand, permission for NS and CSX to implement their operating plans without meaningful restrictions would leave the Applicants content with the status quo.

The Department submits that the final EIS should include specific recommendations for those measures and/or mitigation conditions that the

It cannot be assumed that, upon mitigation of the environmental problems, the communities will be satisfied, and less interested in hard bargaining. Outreach and consultation with affected communities must be continued, and all possible effort should be made to prevent any additional, unforeseen environmental problems from occurring.
crossings within two hundred yards. These three crossings will have nearly one hundred trains a day after the acquisition. CSX/NS-20, Vol. 3A, p. 435.

By considering the effects of this increase on each crossing separately, none may appear particularly desirable. But trains on the line that cross the town may block several crossings at the same time. Therefore, even if no one crossing meets the 5,000 ADT threshold, the Board should aggregate the traffic of several streets in close proximity to each other, and in such circumstances mitigation should be considered.

It must be emphasized that in the case of these two communities, CSX and the local authorities agree, to have reached an agreement, and DOT has no desire to disturb such arrangements. We offer these situations only as support for the necessity for the final EIS, and the Board, to apply regulatory criteria not rigidly, but with an eye to the practical reality that will exist following any approval.

Lakewood, Ohio, is another example. Considered individually, only one of its vehicular crossings has sufficiently high ADT to meet the traffic threshold, yet traffic following the integration of General will classify not the town in half by blocking virtually all of its 27 crossings. BLK-2 at 78, CSX/NS-23, Vol. 68 at 18-91. A more reasonable standard in such circumstances, in the Department’s view, would be to adopt a corridor approach to consider impacts at all grade crossings and propose solutions that address the broader problems of emergency access, trespassers on railroad property, and noise. These could include requiring closing of some crossings and grade separation at others, based on the delays at all crossings that otherwise would be blocked without access to a grade separation.

Fostoria, Ohio, is another community as to which no mitigation measures are proposed in the DEIS, but which nonetheless have very real transaction-related problems. The State of Ohio has described the impacts on Fostoria from significant transaction-generated increases in train traffic. OAC-4 at 33-24, and Exhibit 10. This community already experiences high levels of freight rail operations (more than 80 per day), which take place on a "U-shaped" configuration. Id. The three different rail lines pass through Fostoria at grade. When trains are stopped, waiting for trains on other lines before proceeding, they sometimes block all rail access to two sections of the town. Id., Exhibit 11. The addition of more trains pose a realistic risk of blocking off in particular those portions of Fostoria located in the middle of the "U" from access by emergency vehicles in the not uncommon event that freight trains have to stop at particular locations. Id., Exhibit 11, Verifed Statement of Charles Dodge. Given that three busy rail lines cross at grade in the town, such stoppages are likely to occur more frequently in the future, with attendant risks for delayed emergency response times.

The inability to satisfy the ADT threshold and the lack of a national standard for emergency response times, however, are no bases to ignore the problem. To disregard the effects of closing all grade crossings leading to a neighborhood for a significant but understood length of time beyond that occurring under current circumstances is to accept a fundamental risk simply because there may be some difficulty in measuring it. The community and the railroad should be directed to "opt-out" over potential mitigation measures that address this and other issues, such as noise.

Berea, Ohio, is the Department’s final example of a community on which there are likely to be substantial environmental impacts, but which has not been identified in the DEIS. A four lane highway in Berea (Front Street) crosses both of what the Applicants propose to make their main lines, and does so within very close proximity. This circumstance is not mentioned in the DEIS. Vehicles in Berea today face an average of 65.8 trains daily on these lines. CSX/NS-20, Col. 3A at 44-47, Vol. 39 at 46-24. The Applicants project an increase to about 75.7 trains per day. Id. Even this relatively small addition could exacerbate emergency response difficulties and the usual crossing risks. Moreover, if NS’s proposal to relocate trains from the Cleveland-to-Vermilion route is adopted, total rail traffic on these lines in Berea would reach 100 trains per day. DEIS, Appendix 8 at 2.

The Department poses these examples not to impugn the validity of the DEIS overall, but in order to emphasize that the SEA and the Board must be flexible in their assessment of the impacts of this transaction. In cases where rail lines cross roads in close proximity to each other, or multiple rail lines cross the same road, the impacts should be aggregated to obtain a realistic view of the transaction consequences. These communities already saturated with railroad traffic may face serious impacts from the addition of more trains per day, depending upon schedules and operating plans of the new carriers serving the route. Impacts from trains that block vehicular crossings while waiting permission to proceed should be considered in communities where there will be a significant increase in trains that will cross at grade. Impacts on emergency vehicle access should receive special concern as a general matter because of the obvious risks involved.

DOT urges that the final EIS consider appropriate mitigation measures for

19/ Feb. Dist. No. 33598 (Sub-No. 3), Decision No. 28231 (served October 10, 1997).

V. Conclusion

The Department appreciates the Board’s recognition that the consumption of this transaction could have a major impact on safety. The preparation of the SIPs ordered by the STB and their ongoing detailed cooperation with FRA reflect a genuine commitment by the Applicants to maintain safety. FRA will continue to work with the Applicants to assure the proper implementation of the SIPs, consistent with its regulatory authority over rail safety matters, should the Board approve the proposed transaction. However, other safety recommendations contained in the DEIS, specifically those concerning hazardous materials crossing and temporal separation between passenger and freight trains, would not improve safety and should not be adopted.

The introduction of NS and CSX to the high-volume area and commuter passenger operations of the northeastern United States may portend significant changes, notwithstanding the fact that operating agreements will order relationships for the very near future. For this reason, and because dubious assumptions prevent the DEIS from conveying a truly accurate picture of the consequences of the pending transaction for Amtrak and commuter rail operators, DOT strongly recommends that a five year oversight period be established, during which the Board would remain receptive to demonstrations of transaction-related problems from previously unidentified communities.

20/ February 2, 1998

February 2, 1998

Respectfully submitted,

NANCY B. McGADEN

General Counsel

A-26
SAFETY IMPLEMENTATION PLAN GUIDELINES

Introduction

The Federal Railroad Administration (FRA) has determined from the mergers of the Union Pacific Railroad Company and the Southern Pacific Transportation Company and the Burlington Northern Railroad Company and the Atchison, Topeka and Santa Fe Railway Company that integrating operations of two Class I railroads into one railroad entity presents significant challenges to rail safety. Investigations of recent collisions, derailments, and other service incidents reveal a connection between inadequately planned operational integration of independent railroad entities and complications of rail safety. Railroads merging with or acquiring other railroads must properly plan through and complete, format, written safety implementation plans to ensure safe operations.

For these reasons, FRA submits the following guidelines that CEI Transportation, incorporated (CEIT), and Norfolk Southern Corporation (NSC) should address in their respective safety integration plans (SIP). The SIPs should focus on the formulation, development, issuance, and implementation of measures that address safety operational elements, as detailed below, necessary to ensure compliance with the Federal railroad safety laws and otherwise provide safe railroad operations. As one example of how a SIP should extend beyond the reach of present Federal railroad safety regulations, an acquiring company should ensure that personnel in safety-critical positions are not as hesitant with taking actions to safety that cannot adequately perform their safety-critical functions. Principally, CEIT's and NSC's SIPs must show how their practices differ from Conrail's. Specifically, in the end state to be realized once their respective acquisitions are consummated practices that will minimize or eliminate problems and stresses and promote a culture emphasizing rail safety, and demonstrate step-by-step how they will affect the transition from current circumstances to their desired end state while maximizing safety. FRA understands the need for the acquiring railroads to define the steps or procedures proponent to propose Consolidated Rail Corporation's (CRC) operational plans with their own during the integration process (i.e., until the acquisition is complete). FRA concludes that a SIP addressing the subset areas below will strengthen CEIT's and NSC's integrations operations toward and ensure safe rail transportation.

Safety Implementation Plan

1. Content of Plan: Provide the following information for each subject matter listed in section 2:

a. Increased list of targets addressed (i.e., how Conrail differs from the acquiring railroad and two practices identified from either (ii) descriptions of how the railroad will operate once the acquisition is completed, (iii) step-by-step description of how elements of acquired properties, including Conrail's

b. Integrating personnel to ensure safe freight operations and compliance with the law at both 'downloading' and 'loading' depots

c. Ensuring a sufficient fleet service and inventory to carry out field operations

d. Signal and Train Control

e. Track and Structures

2. Operating Practices

b. Allocation of resources (e.g., work effort expressed as person-days per year, capital, facilities, and technology directed to this matter)

c. Schedule for implementing plans addressing that subject

2. Subject Matters To Be Addressed in Plan

a. Corporate Safety Culture

1. Management strategies, directions, practices, and philosophies, within each operating division, that is directed to

2. How organizational prioritize will be balanced between (i) enhancing productivity (i.e., employment reduction and stimulation of resource deployment) to achieve economic efficiency and (ii) minimizing safety risks with an comprehensive of safety (i.e., increased communication between labor and management, excess hearts, and loss of instructional knowledge)

b. Training

1. Train and engine service personnel

2. Assistant worker and bridge worker personnel

3. Motive Power and Equipment personnel

4. Dispatching and operating personnel

5. Signal and Train Control personnel

vi. Hazardous materials personnel

c. Operating Practices

1. Understanding rules, practices, and intersection

2. Testing and qualifying train crews

3. Reliability to proven

4. Standardizing operational testing

5. Assistant railroad

6. Reporting procedures for accidents/incidents

7. Procedures available to employees pursuing investigation and hearing under Federal Railroad Administration regulations

6. Alcoholic and Drug

1. Integration of Conrail program with acquiring railroad's programs

2. Implementation of Peer Accident Testing and Random Drug and Alcohol Testing programs on acquired territory

3. Leasing engine qualification and certification

4. Qualifying and certifying engines on acquired territory

7. Hazardous materials regulations

1. Implementing necessary materials to shipping

2. Training employees on hazardous materials

3. Reviewing and monitoring hazardous materials

8. Vehicular safety

1. Training and instructing employees to ensure familiarly with rules

2. Governing need/terminal operations

a. Motive Power and Equipment

1. Qualifying equipment to inspectors and users of rail equipment

2. Implementing mechanical department maintenance and equipment service plans

3. Implementing measures to ensure safe freight operations and compliance with the law at both 'downloading' and 'loading' depots

4. Ensuring a sufficient fleet service and inventory to carry out field operations

5. Signal and Train Control

6. Integrated procedures on program and programs

7. Establishing safety management with integration of an organization in property acquired, specifically: Assurance Core Fisal, Automatic Train Control systems and wayside and cab signal aspects and indications

8. Track and Structures

1. Management and rehabilitation of track and bridges

2. Inspection program for track and bridges

3. Inspectors and users of track and bridges

4. Sufficient employee (including supervisors) arrangements for track and bridge safety

9. Hazardous Materials

1. Program addressing field operations and internal safety audits

2. Need for comprehensive inspection program addressing

3. Field inspections

4. Hazardous materials transportation and shipping

5. Employees staff training and inspections

6. Employees staff training and inspections

7. Computer software systems to ensure immediate availability of hazardous materials shipping paper information

8. Customer service centers

9. Sufficient employee staff levels

10. Timely generation and dissemination of adverse information on materials and exposure to customers and Federal officials

b. Dispatching Operations

1. Measuring or estimating service concern performed and reduce minimum dispatching workloads, including criteria used for determining minimum safe workloads

2. Implementing acquired dispatch system with acquiring railroad's systems

3. Applying acquired dispatch system with acquiring railroad's systems

November 7, 1997

Washington, D.C.

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INTRODUCTION

Each day, we are reminded of the importance of our efforts to improve highway-rail grade crossing safety and trespass prevention. Highway-rail crossings and trespassing on rail properties are the number one and two leading causes of death in the entire railroad industry, far surpassing employee or passenger fatalities.

In 1993, grade-crossing deaths rose by 8.1% over 1992 and trespassing deaths remained high. Specifically, nearly 4,900 collisions occurred between highway users and on-track railroad equipment. More than 600 individuals were killed and over 1,800 were seriously injured in these collisions. These crashes occurred nearly equally at crossings equipped with automatic warning devices (flashing lights and sometimes gates) and at those not equipped. Also in 1993, more than 500 people died while trespassing on railroad rights-of-way.

On the United States approximately 160,000 miles of rail rights-of-way, there are over 280,000 highway-rail intersections. Approximately 60,000 (21%) of these are equipped with automatic warning devices.

The very existence of crossings is a major challenge to growing traffic and higher speeds for both passenger and freight rail operations. Our efforts to develop a "seamless" national intermodal transportation network must resolve these challenges.

This Action Plan details six major goals and 55 actions, addressing some aspect of crossing safety or trespass prevention. To be successful, the proposed actions will require strong partnerships between local, State and Federal highway and rail officials, law enforcement, the rail and transit industries, Operation Lifesaver and the United States Congress. With this plan as our blueprint, we will work together to increase public awareness to help prevent these needless tragedies.
MAJOR INITIATIVES

- Enhance Enforcement of Traffic Laws at Crossings.
- Enhance Rail Corridor Crossing Reviews and Improvements.
- Expand Public Education and Operation Lifesaver Activities.
- Increase Safety at Private Crossings.
- Improve Data and Research Efforts.
- Prevent Rail Trespass Tragedies.

ENHANCE ENFORCEMENT OF TRAFFIC LAWS AT CROSSINGS

By improving the understanding and observation of existing traffic laws, collisions at highway-rail crossings will be reduced. Law enforcement initiatives and innovations reduce traffic law violations and therefore reduce collisions.

Objective: To establish an expanded and proactive outreach program to our Nation's traffic law enforcement community ranging from patrol officers to judges.

Objective: To reduce the number of traffic law and warning device violations at highway-rail crossings by increasing enforcement and judicial support.

To meet these objectives we will:
- Encourage State officials to use Section 402 funds (Highway Safety Program) to support education programs for the law enforcement and judicial communities.
- Update and republish the 1983 compilation of state laws and regulations regarding highway-rail crossings.

EXPAND PUBLIC EDUCATION AND OPERATION LIFESAVER ACTIVITIES

Over $2.8 billion in Federal-aid funds have been invested by States for safety improvements at highway-rail crossings since 1973. Over half of these funds were for automated warning devices. However, half of all collisions occur at crossings equipped with these devices. To realize full benefit from the public investment in these devices, motorists must be educated in their responsibilities at all types of crossings.

Operation Lifesaver (OL) is an active, continuous public information and education program to help prevent and reduce crashes, injuries and fatalities and improve driver performance at our Nation’s 250,000 public and private highway-rail crossings.

Objective: To increase public awareness of:
1) Hazards at crossings and;
2) Motorist responsibilities at crossings.

To meet this objective we will:
1. Work with OL to plan, coordinate, initiate and sustain a nationwide mass-media and youth education campaign.
2. Develop new and updated driver training materials related to crossing safety. Distribute materials to state officials.
3. Promote outreach to our Nation’s truck and bus industry stressing the hazards of highway-rail crossings.
4. Discuss crossing safety with truck and bus operators during pre-trip compliance reviews by State and Federal inspectors.
5. Increase Federal funding to OL, Inc. on the condition that the increase be matched from non-public sources.
INCREASE SAFETY AT PRIVATE CROSSINGS

Private crossings are categorized as either farm, residential, recreational or industrial. Nearly two-thirds are farm crossings. However, most accidents occur at industrial crossings.

In the U.S., there are 110,000 private highway-rail crossings. More than 400 accidents and 60 deaths occur at these crossings each year. In most years, the number of deaths which occur at private crossings exceed the number of on-duty deaths among railroad employees in all rail operations.

Objective: To develop and provide national, minimum safety standards for private crossings.

To meet these objectives we will:

1. Develop operational definations and monitor accident rates for each private crossing category.
2. Conduct an informal safety inquiry to consider the definition of responsibilities, minimum safety requirements and warning device standards for each category.
3. Promote research to determine the feasibility of using railroad-dispatcher controlled stop lights to warn highway barriors at private crossings.

PREVENT RAIL TRESPASS TRAGEDIES

Trespassing, with over a thousand deaths and injuries each year, presents the rail industry with a serious dilemma. Trespassers are not a single, cohesive group. Their one common attribute is the disregard of their own safety. Because of the diversity, it is not likely that trespassers will respond to a single nationwide initiative. Regional programs have more promise. The Department of Transportation must target the problem. Our goal is to prevent trespassing, not to make the railroad right-of-way safe for trespassers.

Objective: To raise public and police awareness of the dangers of trespassing on railroad right-of-way.

Objective: To develop and make available sufficiently detailed information to prepare and focus trespass prevention campaigns.

To meet these objectives we will:

1. Conduct a demographic survey of past casualties to determine the types of individuals and activities involved.
2. Refine future railroad "Larry and Beans" reporting requirements to provide more detailed and useful information regarding trespass casualties.
3. Conduct a second Workshop on Trespass Prevention in cooperation with Operation Lifesaver, railroad police, and the industry.
4. Plan and promote regional anti-trespass campaigns in cooperation with Operation Lifesaver, railroad police and the industry.
5. Develop model code for possible adoption by State legislatures dealing with trespassers and vandalism in cooperation with the rail industry.

IMPROVE DATA AND RESEARCH EFFORTS

Access to valid data is a key to good decision making. Additionally, for progress to occur, research and innovation are necessary. However, for highway-rail crossing issues, institutional concerns regarding costs research and potential implementation, public safety and current construction often impede progress.

With the Department's involvement and leadership these obstacles can be overcome.

Objective: To enhance the effectiveness of our resources through research and data analysis.

Objective: To promote research and champion plausible innovation.

Objective: To ensure that timely and accurate information needed by decision makers is available.

To meet these objectives we will:

1. Host RMaweh RowdMUat/Workshops in corridor mobility and safety.
2. Create a task force to develop and promote resource-based prevention.
3. Conduct a second Workshop on Railroad Crossing Infrastructure Improvements.
4. Expand and promote automated detection of trespassers and vandalism.
5. Develop and promote model code for possible adoption by States.
6. Promote the development of an automated reporting system.
7. Expand data collection efforts to include more data on railroad crossings involving high rail vehicles.
8. Assess the effectiveness of current and proposed initiatives.
9. Promote more systematic updating of the U.S. DOT/AAR National Highway-

Memorandum

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COUDI'S GUIDE TO INDIAN OCEAN

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PROCEDURES

1. Corridor Selection
2. Organizational Diagnostics Team
3. Pre-site Visit Data Gathering and Review
4. On-site Crossing Assessment
5. Update Inventory as Necessary
6. Post-site Visit Review and Recommendations for Interest (if applicable) and Permanent Improvements

RESOURCES

1. Accident History
   - Number of severity
   - Involving train
     - Non-involved train; train a contributing factor
     - Non-involved train; train not a contributing factor
2. Crossing Inventory Data
3. Accident Prediction/Hazard Index Data
4. Maps
   - State/local
   - Railroad
5. Photographs
   - Aerial
6. State/local jurisdiction short- and long-range plans for crossing/highway improvements
7. Railroad short- and long-range plans for crossing improvements or abandonment/lease sale
8. Traffic studies/projections (highway and railroad)
9. Multidisciplinary diagnostic team reviews
10. Funding source information

DATA COLLECTION AND ANALYSIS

Crossing Location/Description

- U.S.DOT/AAA number
- Highway/street name or number
- Railroad(s) name and milepost(s)
- Urban/rural
- Development
  - Open space
  - Residential
  - Commercial
  - Institutional
- Crossing angle

Crossing Types

- Number of daily train movements (current and projected)
  - Day, night
  - Thru, switching
  - Freight, passenger, light rail, high-speed rail

Traffic generators in area (current and projected)
- Commercial, schools, shopping malls, industries, sports facilities, cultural facilities, etc.

Railroad
- Number of daily train movements (current and projected)
- Number of track(s) and type
- Speed
- Maximum timetable
- Typical range
- Seasonal variations

Crossing Surface
- Material
- Condition
- Length and width

Crossing Closure/Consolidation Candidates
- Distance/additional travel time to alternate crossing
- Alternate crossing at grade or grade separated
- Alternate crossing capacity, existing devices, etc.
- Impact on property owners in vicinity of crossing
- Means of access to alternate crossing
- Utility relocations
- Environmental impact (wetlands, waterways, train corridors, etc.)
- Emergency access needs

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To obtain publications:


Dear Ms. Kaiser,

In accordance with the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is providing comments to you on the Draft Environmental Impact Statement (EIS) for the "Surface Railroad Acquisition." Our comments are meant to build upon our previous scoping comments and technical assurance offered to you in 1995.

As outlined in this letter and technical enclosure, EPA has many specific concerns with the proposal acquisition, however, it is the impacts from the proposal can be successfully avoided, offered or mitigated. Therefore, EPA has rated the potential of impacts from the acquisition as described in the draft EIS "EC" (environmental concern). EPA was asked for the documentation of the draft EIS EC (environmental concern) because while EPA recognizes the difficulty in trying to analyze and document an undertaking which affects 24 states and the District of Columbia, we also think the draft EIS could have described more fully the potential impacts to and from air quality, noise, increased hazardous material transport, and the direct and cumulative impacts to water quality from increased railroad operations and activity in rail yards and intermodal facilities. Our major issues are summarized below and our detailed technical comments are attached. The combined rating for the draft EIS is EC-2. A copy of our rating system is also enclosed.

EPA is concerned about the potential impacts to air quality that the proposal acquisition may impose. In our August 1997 scoping letter we indicated that the Surface Transportation Board (STB) needed to address the applicability of the General Conformity regulations of the CAA (40CFR13150-160). We further recommended that this information be included in the draft EIS. The draft EIS does not address our recommendation. If the STB has the ability to condition its approval of the proposed acquisition and division which limit the operation of the railroads, then the STB should have a continuing program responsibility for the approval and the resulting emissions. It appears that some assessment and/or maintenance may there will be a net increase in emissions above the baseline levels, thus, a conformity determination may be necessary. EPA expects the STB to address our comments regarding General Conformity and recommends that this discussion be included in the final EIS. Please see our enclosed technical comments for our detailed concerns.

EPA also is concerned with the lack of justification for a number of critical assumptions used in the noise analysis. The noise mitigation results are directly related to the validity of these assumptions. The final EIS should offer a more substantive description of the STB's assumptions and their results or errors thereof. Finally, although many minority and low-income communities were identified by the STB, it appears that the STB has not made little effort to mitigate potential impacts. EPA believes that additional coordination may be appropriate in the communities identified and that mitigation should be discussed in the final EIS. Because the STB does not have extensive regional or field staff, the STB staff may want to contact the Environmental Justice Coordinators located in other federal regional or field offices to see if they can provide information on these potentially affected communities. Additionally, the Council on Environmental Quality issued its "Environmental Justice Guidelines Under the National Environmental Policy Act" in December 1995. This guidance should be referred to during the preparation of the final EIS.

Thank you for the opportunity to review this document. If you have any questions regarding our review, the staff contact is Patrick Han. She can be reached at 202-564-7332.

Sincerely,

Richard E. Sandall
Director, Office of Federal Activities

Enclosures
Air Quality

Lake and Porter Counties in Indiana have been granted a nitrogen dioxide (NO₂) waiver, however, Vanderburgh, Marion, St. Joseph and Elkhart Counties all have maintenance plans and a NO₂ budget. The NO₂ emissions in these counties from the project (of about 100 tons per year) should be compared with the projected NO₂ emissions in the maintenance plan to determine if the projected growth is less than assumed. If the NO₂ emissions are found to be greater than the growth allowed by the maintenance plan, then mitigation measures could be implemented as the project can be found to conform.

Six Michigan counties were evaluated for potential impacts from the proposed Conrail Acquisition: Calhoun, Jackson, Kalamazoo, Monroe, Wayne, and Washtenaw. Monroe, Wayne, and Washtenaw are part of the Detroit-Anti Arbor, Michigan, metropolitan area which is an entire maintenance area, and Wayne County is part of a non-maintainable non-maintenance area for carbon monoxide (CO). The Detroit-Anti Arbor, Michigan, area was reclassified to maintenance in 1995, but the area subsequently violated the standards in the same year. This violation prompted U.S. EPA to remove a NO₂ waiver which was granted as part of the reclassification request. Please address this change in status in the final EIS.

EPA is also concerned that passenger or commuter trains which currently utilize freight track rights affected by this acquisition may not be able to continue to provide valuable transportation services to the public. Specifically, because much of the area affected by this acquisition is in the Northeast corridor and is an in-assignment or maintenance area for ground-level ozone, EPA is concerned that these trains may be unable to offer their services or must reduce service, their passengers may resort to additional single occupancy vehicle trips, potentially impeding an area's ability to attain the National Ambient Air Quality Standard for ozone. EPA thinks this potential resultant impact is air quality need to be addressed in the final EIS.

The draft EIS assumes that relocation of intermodal facilities and increased truck activities at these facilities will have little impact on local traffic problems. However, the current conditions or Level of Service of these local roadways were not classified or the effects of any additional truck traffic evaluated. In the review of transportation projects, the effect of truck traffic, and the percentage of truck traffic, on local roadways contribute to operational and safety problems. The draft EIS also does not discuss the interaction of the proposed rail modifications with proposed transportation projects in the potentially affected areas. There are a number of major highway projects that are being undertaken near rail lines involved with this project. For example, the I-90 East Extension of (PA) will cross the relocated Southern Norfolk tracks in Erie. SR 122 in Dauphin County, PA, could be affected by changes in operation of the adjacent rail lines. Coordination with the State Department of Transportation should be undertaken for all activities within each train.

A number of other assumptions in the analysis which should be justified in the final EIS are:

- Why construction noise impacts were not analyzed or discussed in the mitigation sections
- The validity of the (implicit) assumption that post-acquisition traffic has the same daytime ratio as the pre-acquisition traffic.
- Why background noise was not included in the analysis and how its omission effects the mitigation outcome
- Why the option of remote home installations at crossings was not explored as an mitigation option
- Why the need for mitigation for engine noise at switching or other engine "accelerating" areas
- The feasibility of slower train speeds through some critical areas as a mitigation.

Finally, as a matter of clarification, with the draft EIS statement that "noise effects to areas where the Ldn is less than 65 dBA are generally not considered adverse..." in the first paragraph of Section 3.4.6, EPA now states that "in the PSCON group specifically concluded..." that it is prudent to provide for analytically estimating noise levels below 65 dBA to NEPA documents using the Screening Procedure indicated below. If done properly, this added level of analysis could provide useful information to both the public and decision-maker." (See Section 3.4.6.)

Water Quality

Most of the rail segments show an increase in the number of train operations. Also, there is an increase in activity at rail yards and intermodal facilities. However, there is no discussion of the potential water quality impacts of this increased activity. Some little information is given on the environment surrounding the rail segments it is impossible to determine if there are any water resources that could be sensitive to additional pollution. There is no discussion of storm water management treatment for any of the facilities or operational changes. Please address these impacts in the final EIS.

Sanitary Materials

The impact of the proposal on hazardous materials transport is not documented fully in the draft EIS. It is unclear why the draft EIS only recommends mitigations for hazardous materials transport for rail segments which, post-acquisition, exceed 10,000 car loads of hazardous materials per year. The transportation of hazardous materials is increasing significantly on some rail routes (e.g., N-477 by 132%) but still is a level lower than 10,000 car loads. The risk justification used in the draft EIS does not rely or support a significant increase of risk of release at the 10,000 car load level nor does the draft EIS provide enough discussion to explain why these risks may need to be addressed in a community.

We are also concerned about the adequacy of the proposed mitigation for hazardous materials transport to effectively address an anticipated increase in releases of hazardous materials transport for rail segments which, post-acquisition, exceed 10,000 car loads of hazardous materials per year. The proposed mitigation which would be required for an increase in hazardous materials transport appears limited to complying with Association of American Railroads "Key Route" guidelines. The guidelines appear only to address non-permanent movers or demonstrates to decrease the probability of train accidents or rail failures as the cause of accidental releases. "Hazardous materials and what happens should an accident occur." The Key Route or Major Key "...who do not appear to take into account the population or proximity of surrounding communities..." In these routes. We also note that the analysis of accidents involving hazardous materials continues in Chapter 4 of the draft EIS shows that vehicle-train accident/denial accidents account for "...was 3% of the causes of these incidents. We agree that an appropriate mitigation plan would include provisions to address all causes of the incidents involving releases of hazardous materials. Although the SEIS Section of Environmental Assessment (SEA) for even that SEA and NISO included a Normal Failure Mode and Effects Analysis (FMEA) for "allowing risk of spills both for storage and transport of hazardous materials..." page 4-21 of the draft EIS.

EPA could find no specific requirements that this be addressed with specific mitigation measures, or that if considered, the results would be implemented.

Noise

In general EPA finds the noise analysis containing and the methodological assumptions used well documented. Specifically, we are concerned with the lack of justification for the migration criterion for wayside noise. "SEA considered noise impacts of wheel/rail and locomotive engine noise (wayside noise) to warrant potential mitigation if any sensitive receptors are exposed to noise levels above 65 db(L) or have a 6 dB(L) increase." Work done with airport-related noise [see Federal Agency Review of Selected Airport Noise Analysis Issues (Federal Interagency Committee on Noise), August 1992] indicates that thresholds for changes in noise levels should be at 10 dB(L). SEA analysis conclusions can be hindered by reducing passenger train priority over freight trains. We are concerned about the possibility that these conflicts may not be worked out and that increased freight rail operations may impact on passenger rail service. We recommend that the final EIS address this concerns in more detail.

Site-specific Analyses

EPA is concerned with both the scope of the actions analyzed as well as the level of detail for these actions considered to "meet or exceed the Board's Environmental Thresholds." In general, while it apparent that many of the activities resulting from the acquisition were not analyzed. We are unable to evaluate the direct and cumulative impacts of the changes to railroad operations or facilities as a result of this acquisition. For the segments or facilities evaluated in each of the states, regardless of the potential impact associated with the activity, the Board concludes a lack of significant impact with respect to all those assumptions.

In addition to these overarching concerns, EPA Region 5 concern with specific actions in their review of the draft EIS. EPA believes additional analysis of potential impacts to watersheds, wetlands, and threatened or endangered species for construction/development activity is needed for the following actions in:

<table>
<thead>
<tr>
<th>State</th>
<th>Action</th>
<th>County</th>
<th>Segments</th>
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</thead>
<tbody>
<tr>
<td>Illinois</td>
<td>Elwood Connection</td>
<td>Marion County</td>
<td>All segments</td>
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<td>Illinois</td>
<td>Peru-Durand Connecting</td>
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<td>Illinois</td>
<td>Lincoln Avenue Chicago</td>
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<tr>
<td>Illinois</td>
<td>596 South Intermodal Facility</td>
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<td>All segments</td>
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<tr>
<td>Indiana</td>
<td>Butler Connecting</td>
<td>Elkhart County</td>
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<tr>
<td>Indiana</td>
<td>South Bend to Dillon Junction Abandonment</td>
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<td>All segments</td>
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<tr>
<td>Ohio</td>
<td>Oak Harbor, Onslow County</td>
<td>-</td>
<td>All segments</td>
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<tr>
<td>Ohio</td>
<td>Willard Funding, Homan/Seine Counties</td>
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<td>All segments</td>
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<tr>
<td>Ohio</td>
<td>Vandalia Conjunction, Erice County</td>
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<td>All segments</td>
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<td>Ohio</td>
<td>Toledos to Maumee Abandonment, Lucas County</td>
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<td>All segments</td>
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<tr>
<td>Ohio</td>
<td>Columbia Connecting, Findlay Ohio</td>
<td>-</td>
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<td>Ohio</td>
<td>Toledos to Bridge Abandonment, Lucas County</td>
<td>-</td>
<td>All segments</td>
</tr>
<tr>
<td>Ohio</td>
<td>Columbus Intermodal Facility, Cleveland/Cuyahoga Counties</td>
<td>-</td>
<td>All segments</td>
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</table>
Best Management Practices:

It is in the public interest that the details of construction are completed in a manner that minimizes the impact of construction activities on the environment. To this end, two Best Management Practices (BMPs) have been identified and are hereafter referenced. These BMPs are:

1. Construction/Abandonment Practices
2. Identification of Potential Mitigation Measures

Construction/Abandonment Practices

Best Management Practices (BMPs) identified in Volume 1, page 3-4, are well suited, but inappropriate. They were updated in Volume 4, Chapter 7.5, however, they are still referred to as "General Mitigation for Proposed Construction and Abandonments" and again in Volume 5A, Appendix 1, where they are again referred to as "mitigation." It is our position that these are construction and abandonment management practices and not mitigation. To facilitate the review of such an extensive document, they should be compiled into one "Best Management Practices" section and referred back to when applicable. An updated and refined version is provided by one of EPA's regions which we recommend be used to supplement the BMP list in the draft EIS.

Recommended Best Management Practices

a. We recommend the use of recycled materials and environmentally-sound products during construction. Abandonment activities should be coordinated with construction activities to take maximum advantage of reuse and recycling.

b. Impacts or losses to wetlands should be avoided whenever possible. If wetland impacts are unavoidable, it must be demonstrated that there are no practicable alternatives available that would result in further impacts to the wetlands. Unavoidable wetland losses must be compensated for at a minimum of 1.5 times the compensatory wetlands per acre of naturally occurring wetlands impacted by the project and water.

c. Compensatory wetlands should be designed to include a plan to install a specific mix of green infrastructure and trees to a level that will provide the project as a whole with the benefits of wetland functions and values. The project should include the use of green infrastructure and wetland functions in the final design.

d. As the course of the project, it is desired that impacts to water quality occur in a timely, and a well-documented fashion. The next step will be to monitor the area and conduct a thorough review of the environmental impacts and mitigation measures.

e. If trees will be used to be cleared to accommodate the proposed project activities, compensation should be calculated for the removed trees. Trees should be replanted with native species, if practicable, at a minimum ratio of 1:1 and replacement should occur as close as possible to the impacted areas. Replacement of removed trees would provide a more effective and more cost-effective method of replenishing the area.

f. Measuring should be taken to protect vegetation from impacts that may be incurred by the use of heavy equipment. All activities should be limited to the footprint of the project. The contractor should be required to install fences around the project area to prevent vegetation from being disturbed.

g. To control erosion and spills, a no-parking area should be established for the construction equipment and any environmentally sensitive areas. All disturbed areas should be re-seeded or replanted at least twice the affected area to the affected area.

h. In those areas where threatened and endangered species are documented to exist but are not visible to the project area, the responsible parties will take action and consult the U.S. Fish and Wildlife Service and the appropriate state Department of Natural Resources immediately if construction or abandonment activities damage such habitat and/or species.

Required to control noise and forces emitted by construction equipment by installing control devices and employing prescribed control methods:

i. The project plan should consider every way possible the pollution prevention impacts of materials that are spread on the rail line. When painting or re-painting a railroad structure, the responsible parties will take action and consult the U.S. Fish and Wildlife Service and the appropriate state Department of Natural Resources immediately if construction or abandonment activities damage such habitat and/or species.

j. In areas where threatened and endangered species are documented to exist but are not visible to the project area, the responsible parties will take action and consult the U.S. Fish and Wildlife Service and the appropriate state Department of Natural Resources immediately if construction or abandonment activities damage such habitat and/or species.

Environmental Impact Statement

Category 1: Adequacy

The EPA believes the draft EIS is adequate for the environmental impact of the proposed project. The EPA has concluded that the draft EIS is an adequate statement of the environmental impact of the proposed project. The draft EIS is an adequate statement of the environmental impact of the proposed project.

Category 2: Compensatory Mitigation

The draft EIS does not contain adequate information for the EPA to fully assess the environmental impacts that should be avoided in order to protect the environment. The responsible parties should provide such information and provide such information as necessary to the responsible parties. The responsible parties should provide such information and provide such information as necessary to the responsible parties.

Category 3: Additional Information

The draft EIS does not contain adequate information for the EPA to fully assess the environmental impacts that should be avoided in order to protect the environment. The responsible parties should provide such information and provide such information as necessary to the responsible parties.

Category 4: Conclusion

The draft EIS does not contain adequate information for the EPA to fully assess the environmental impacts that should be avoided in order to protect the environment. The responsible parties should provide such information and provide such information as necessary to the responsible parties.
Dear Sir/Madam:

The U.S. Department of the Interior has reviewed the Draft Environmental Impact Statement, Finance Docket No. 33388, 'Proposed Conrail Acquisition,' CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company. We have the following comments:

The Draft EIS showed one rail segment that occurs in Mississippi with a proposed increased environmental risk and exceedance of ESA's criteria for significance. Rail segment Exit 156 E D 255 runs between Mobile, Alabama and New Orleans, Louisiana, and would have an increase in hazardous material transport. This segment passes through Jackson, Harrison, and Hancock Counties, Mississippi. It also crosses the Pascagoula, Biloxi, Wolf, and Pearl Rivers. These large river basins, and other lands along the rail route, have significant fish and wildlife resources including the following federally listed species:

- brown pelican (Pelecanus occidentalis)
- piping plover (Charadrius melodus)
- bald eagle (Haliaeetus leucocephalus)
- Gulf sturgeon (Acipenser oxyrinchus desotoi)
- infested lesser plover (Charadrius pusillus)
- Mississippi sandhill crane (GRUS canadensis poulus)
- ringed seabeck turtle (Ceratemyx olivacea)

The increase in transport of hazardous material would have a significant impact to trust resources if a spill were to occur. The standard Hazardous Materials Emergency Response Plan may not be adequate to address immediate and long term fish and wildlife resource impacts.

Specific Comments

SHE-2.1

We believe preventing a spill is much preferable to cleaning one up. Therefore, we recommend the following:

1. Lower speeds should be adopted across bridges within the listed basins.
2. Inspections of cars carrying hazardous materials along this route should be increased.
3. Inspection of rail lines along this corridor should be increased.
4. Emergency management plans should include guidelines for immediate consultation with service personnel regarding potential adverse impacts to the listed species.

SUMMARY

The proposed project could have significant adverse impacts on present and future natural resources in this area if a spill were to occur. The Surface Transportation Board should adopt the above measures to prevent such an event from occurring.

Thank you for the opportunity to provide these comments.

Sincerely,

[Signature]

Willie H. Taylor
Director, Office of Environmental Policy and Compliance

Operations and Readiness Division
Regulatory Branch

Ms. Elaine F. Kaiser
Environmental Project Director
Section of Environmental Analysis
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Dear Ms. Kaiser:

This is in reply to your letter, dated December 19, 1997, regarding Draft Environmental Impact Statement (DEIS) for the Proposed Acquisition of Conrail by Norfolk Southern Railroad and CSX Railroad.

We have reviewed the DEIS on potential environmental impacts within the regulatory boundaries of the Pittsburgh District. There does not appear to be impacts related to Section 404 of the Clean Water Act (33 CFR 320-330, 33 CFR 320, updated Rev. 22, 1991, 33 CFR 1344 in the Rivers and Harbors Act of 1899 (33 CFR 401, 402, 403, 404).

If further information is required, please contact me at (412) 395-7355.

Sincerely,

[Signature]

Albert T. Angelo
Chief, Regulatory Branch

Enclosure
Subject: Proposed Conrail Acquisition by CSX Corporation.

Dear Mr. Kaiser,

This is in response to your request for comments on the proposed Draft Environmental Impact Statement for the Conrail acquisition by the CSX Corporation.

Our review has not identified any additional issues than those previously set to you by our letter dated August 4, 1997. I have enclosed a copy for your file.

I would like to take this opportunity to briefly reiterate our comments regarding the Lehigh Valley Bridge across Newark Bay in New Jersey. Federal Regulations governing the operation of drawbridges specifically require that this bridge over Newark Bay listed under § 117.735 be operated so as to not delay openings of the draw for more than periods of five minutes. It has been a practice to back up trains across this bridge during the hours under which trains are "made up" for periods of several hours. The Coast Guard has assessed civil penalties for such delays and will continue to enforce the regulations with regard to these delays.

We strongly recommend, once the acquisition is finalized, that steps be taken to prevent these delays by considering all alternatives to expand or reconfigure the train yard to avoid this problem. In this regard, we would be happy to meet with the new management team to discuss this matter.

If you have any questions please do not hesitate to contact me at (212) 666-7165.

Sincerely,

Gary Brubaker
Bridge Administrator
First Coast Guard District
By Direction of the District Commander

2/17/98 3:48:52pm-1

If you have any questions please do not hesitate to contact me at (212) 666-7165.

Sincerely,

Gary Brubaker
Bridge Administrator
First Coast Guard District
By Direction of the District Commander

Please provide a copy of the railroad's Environmental Impact Statement if available as I have not received one. Once the EIS is published we will provide more in-depth analysis. In the meantime, we are ready to comply with any violations under the new lease. Please contact the Bridge Administration Branch at (212) 666-7165.

Sincerely,

Gary Brubaker
Bridge Administrator
First Coast Guard District
By Direction of the District Commander

2/17/98 3:48:52pm-2

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1.0 INTRODUCTION AND SUMMARY

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY (collectively "NS" or "NORFOLK SOUTHERN") hereby submit their comments on the December 12, 1997 Draft Environmental Impact Statement ("DEIS"), prepared by the Surface Transportation Board's ("STB" or the "Board") Section of Environmental Analysis ("SEA") in Docket No. 33388. SEA has served the DEIS in over 2,000 personal and has provided a 45-day period for the submission of comments from all interested persons.

The six-volume DEIS documents the results of an exhaustive environmental analysis by SEA of the potential environmental impacts of the proposed Central Transaction ("Transaction"), involving the operation of rail services across 44,000 miles of the eastern United States. The DEIS addresses in comprehensive fashion every environmental issue which the Board is required to analyze independently in satisfaction of its obligations under the National Environmental Policy Act ("NEPA"), 42 U.S.C. 4321, and the Board's own implementing regulations, 49 CFR 1105. The Board determined that the extent of the Transaction that would prepare an Environmental Impact Statement ("EIS") to evaluate potential impacts of the Transaction to ensure that the full range of environmental issues would be taken into consideration in the Board's evaluation the application filed jointly by NS, CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") and Conrail, Inc. and Consolidated Rail Corporation (collectively, "Conrail") the Board found SEA, and the third-party environmental consultant retained by SEA, with preparing an EIS for the Board's consideration in cooperation with the Board's analysis of the various transportation and competitive issues presented by the Transaction.

The overall conclusion of the DEIS is that the proposed Transaction will produce substantial system-wide environmental benefits in several respects, and will not create any system-wide significant adverse environmental impacts. For example, as noted in the DEIS, on a system-wide basis the Transaction:

- Would reduce emissions for some pollutants (DEIS at ES-25);
- Would result in net annual reduction in fuel consumption of approximately 80 million gallons of diesel fuel (DEIS at ES-25);
- "[I]s expected to benefit the national and regional highway systems by reducing traffic on major state, regional and U.S. highways" (DEIS at ES-21), and
- "[I]s expected to result in a slight safety improvement for rail transportation of hazardous materials" (DEIS at ES-19).

NORFOLK SOUTHERN CORPORATION as the DEIS
February 1, 1998

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Consider what recommendations for mitigation are factually warranted, within the lawful purview of NEPA for public review. The FRA should not, in light of these concerns, disregard the relevance of the provisions of NEPA and the Board's obligations under SEA in addressing potential environmental impacts. NEPA requires a balanced approach involving decisions based on comprehensive analysis of the proposed action. The Board should consider the full range of alternatives before making a final decision. The DEIS provides a reasonable basis for further analysis and should be subject to public comment. The Board's decision should be informed by the substantive considerations raised in the DEIS.

Proposed Action: Train-Train Per Day Limitations on Traffic Increases in Erie, PA

The DEIS proposes that traffic increases over NS main line through Erie, PA be limited to two trains per day until completion of NS's proposed track relocation project (which project will move all NS operations through Erie to new trackage on the grade-separated Coraopolis right-of-way). In view of the substantial benefits (including environmental benefits) associated with the Transaction, this type of limited service limitation is not warranted. The DEIS identifies certain line segments over which both freight and passenger crossings are scheduled to take place, and recommends mitigation measures to address potential adverse impacts. The Board's review should include a comprehensive analysis of all potential impacts.

Proposed Mitigation for Highway/Rail At-Grade Crossings

The DEIS identifies certain line segments over which both freight and passenger crossings are scheduled to take place, and recommends mitigation measures to address potential adverse impacts. The Board's review should include a comprehensive analysis of all potential impacts.
2.0 APPLICABLE LEGAL PRINCIPLES

2.1 Scope of Environmental Impact Analysis and Standards Governing Proposed Mitigation Conditions

As the Board knows, this is the first formal consideration proceeding in which it has undertaken to prepare an Environmental Impact Statement ("EIS") pursuant to the requirements of NEPA. In all previous cases, the EA and the ICC only prepared Environmental Assessments ("EAs"), because it was believed that the conditions would have no significant environmental impacts if the parties agreed with various mitigation conditions prescribed in the agency's formal decision. As a part of the decision to prepare an EIS in this case, the Board's SEA staff and the Appellants have been required to engage in a more extensive and comprehensive analysis of the potential environmental impacts of the Transaction than in any previous case.

The DEIS represents SEA's preliminary conclusion based on its comprehensive and exhaustive environmental review of the proposed Transaction. In six volumes containing a detailed and wide-ranging analysis of the potential environmental effects of the Transaction. The DEIS also contains a summary of the proposed conditions recommended to be imposed on the Transaction. These proposed conditions are for the purpose of mitigating virtually every adverse environmental effect of the Transaction as identified in the DEIS.

The DEIS issued by the Board in this case must conform to the requirements of NEPA and the Board's governing statute, the ICC Transportation Act of 1995, 49 U.S.C. §§ 10501 et seq. ("ICTA"). As discussed below, NEPA emphatically subjects a number of the mitigation conditions proposed in the DEIS, some of which are unprecedented and address far more than the impacts asserted, are not consistent with the Board's basic function and responsibilities under NEPA and the ICTA in several critical respects.

2.2 NEPA Only Requires the Board to Consider Environmental Effects. Impact of EIS on a Balancing of All Relevant Factors. Which the DEIS Does Not Do.

The proposed conditions appear to be based on the assumption that NEPA and/or the ICTA require all adverse environmental effects to be mitigated before the Transaction can be approved. That assumption is incorrect.

In this sense, the purpose of an EIS is fundamentally different from an EA, the form of environmental analysis that has been employed by the Board and the ICC in prior rulemaking proceedings. The purpose of an EA is simply to assess whether the proposed federal action would have significant environmental effects warranting the preparation of an EIS. For this reason, any significant adverse environmental impacts identified in an EA must be fully considered as a condition to the proposed federal action. Any adverse impacts to be mitigated would have to be permitted by a federal agency, and the conditions would need to be put into place to ensure the EA is performed before the proposed action. E.g., 40 Fed. Reg. 18077, 18078 (1980). Agencies can only make mitigation decisions to conclude that mitigation does not require preparation of an EIS. Commenters: Catawba Mountains Waterkeepers/Chowan Crush South States v. Progress, 645 F.2d 473 (D.C. Cir. 1981) (stating that permitting Services' use of mitigation measures cannot be an EA under NEPA).

In this case, the DEIS does not require preparation of an EIS. Certain Measures Waterkeeper/Chowan Crush South States v. Progress, 645 F.2d 473 (D.C. Cir. 1981) (stating that permitting Services' use of mitigation measures cannot be an EA under NEPA).

Although the DEIS at several places makes reference to those established limitations on the Board's authority to impose environmental conditions (e.g., DEIS at 7-01), it fails to apply these standards in a consistent manner. The DEIS identifies various adverse environmental effects that are claimed to be mitigated to the extent that they are not significantly adverse impediments to the proposed action. However, mitigation measures are only recommended to be imposed on areas where the Board finds that no significant adverse effects exist or are to be incurred.

The fundamental command of NEPA is that federal agencies must consider - or take a 'hard look' at - potential environmental impacts associated with the execution of federal regulatory functions. Robinson v. Mathews, Valley Columbia Colleges, 403 U.S. 332, 349 (1990). The obligations that it imposes on federal agencies are procedural in nature. Vermont Yankee Nuclear Power Corp. v. Nuclear Regulatory Comm'n, 435 U.S. 519, 557 (1978). However, neither NEPA nor the ICTA is intended to impose on the Board any substantive duties or obligations that would only be applicable in the event that the Board's decision may have significant adverse environmental impacts. To the contrary, the Board has acknowledged that its obligation under NEPA is to consider environmental impacts in preparing the DEIS. See, e.g., Bethel Steel Co. v. Nuclear Regulatory Comm'n, 435 U.S. 519, 568 (1978). NEPA does not set forth significant substantive duties or obligations that would only be applicable in the event that the Board's decision may have significant adverse environmental impacts. See, e.g., Bethel Steel Co. v. Nuclear Regulatory Comm'n, 435 U.S. 519, 568 (1978).
fashion broad new safety and operating rules to which other major railroads are not subject and
that fall within the regulatory responsibility of other federal and/or state agencies. 3

Such “de facto” ratemaking — resulting in the select imposition of new standards upon
only a portion of the railroad industry — is neither legally as, nor a prudent exercise in
compromising federal transportation policy. SEA recognizes, however, that the DEIS is its
proposal not to impose new rate-shifting mechanisms falling within the FRA’s regulatory
jurisdiction over track-to-track signals (DEIS at p. 5-6), but it stepped from this standard in several
respects, including, in proposals to require Applicants to (1) comply with a proposed
industry-wide FRA regulations governing rail inspections, (2) alter the existing regulatory scheme
governing location and funding of grade crossing improvements, (3) maintain 15 and 30-mile
segments between passenger and freight trains on certain line segments, without regard to
FRA’s passenger train safety rule, prevailing industry standards and operating practices on
similar rail lines, and (4) comply with various newly fastened operating requirements and
procedures governing transportation of hazardous materials, again without regard to the
established FRA rule or the regulating role of hazardous materials, prevailing industry
guidelines and operating practices in the handling of such traffic.

2.4 The DEIS's Recommended Mitigations to Improve Grade Crossing Protection

Devices Upgrade Conflict with the Traditional Role of State DOTs

SEA has recommended in the DEIS that NS and CSX at-grade crossings be upgraded based on
SEA’s analysis of the predicted impact of the proposed Transition upon safety conditions at those locations. NS will address the specific results of SEA’s safety analysis at Section 4.3 below. A more fundamental issue, however, is raised by SEA’s proposed upgrade
upon NS and CSX a requirement that they upgrade the 118 at-grade crossings in accordance with
SEA’s judgment, without state involvement, as to the need for additional protection devices,
the priority of use, the design of such devices for individual locations and the funding of the cost
of installing and maintaining such devices.

1 The ICC recognized the wisdom and propriety of leaving to state and industry expertise
decision concerning industry practices that have traditionally been addressed through
comprehensive state/industrial relationships. See e.g. X Skelton Freight System, Inc. v. Illinois, Plaintiff For Declaration Order - Reopening Shipments, 955 F.2d No. 6083 (1991). SEA’s proposed upgrade
upon NS and CSX mean that they upgrade the 118 at-grade crossings in accordance with
SEA’s judgment, without state involvement, as to the need for additional protection devices,
the priority of use, the design of such devices for individual locations and the funding of the cost
of installing and maintaining such devices.

2.5 Localized Service Limitations Should Not Be Imposed as Environmental

Mitigations in This Case

The significant economic and environmental benefits that can be expected to result from
this Transition can only be fully realized if the Applicants are permitted to implement the
operating plans upon which such benefits are predicated. Among other things, the operating
plans were designed to maximize the efficiency of each Applicant’s expanded system, to improve
service levels, to satisfy the service needs of all existing shippers, to make rail transportation
more attractive as compared to other modes of transportation to current and potential shippers,
and to ensure that each Applicant can fully and effectively compete with the other. If artificial
limitations are imposed upon NS train operations in any particular locality, the above-mentioned
goals of the operating plan will be impaired. Among the preliminary mitigation possibilities
recommended by the DEIS (in Part. Vol. 3B at PA-50), and which may be suggested for other
locations by other parties, are restrictions upon the number of trains which may be operated
over a particular section of track or other roving or operating restrictions. Such restrictions are
not appropriate in this case: They would: (1) create operational bottlenecks or cliffs which
inhibit service and select the network with congestion and delay, (2) preclude realization of
transportation benefits of the Transition, (3) reduce the environmental benefits of the
Transition, and (4) impose long-term rigidity on railroad operating decisions which would
otherwise be entirely discretionary.

2.5.1 Operating Restrictions Would Create Bottlenecks and Cliffs

The parties and, indeed, many commentators in this proceeding have recognized the
economic challenge of allocating the spaces of a single, integrated rail network between two
operators, NS and CSX. The division is fundamental to the competitive benefits of the
Transition but it is a mammoth and at the same time a delicate operation. The parties worked
diligently to allocate routes so as to provide both competitive balance and operational integrity.
Getting the physical plant right assures that the transition from single railroad to dual railroad
service will occur safely and smoothly, with the fewest possible disruptions for shippers.

Among the most difficult allocations were those in urban areas, and urban geography
constrained a large share of the office for both NS and CSX. Making the transition from lines on a
map to a determination of actual rail capacity presented an array of complex operational
challenges. The roadbed, track structure, signaling, connections, and access to yards and sidings all go into the equation governing what traffic a line can actually handle.

The resulting plan for achieving division, transition, and balanced competitive capability is
not fine in under artificial adjustments. It has been reported, for example, that problems experienced in the West by UPSSZ could result from the closure of a single track in Houston. A railroad is like a hydraulic line; a leak in one place can drastically affect the whole system.

3 NS urges SEA to undertake a thorough examination of any mitigation options it might
consider that have the potential to interfere with Applicants’ Operating Plans. All
potential adverse effects related to such mitigation proposals should be carefully analyzed
before selection for recommendation by SEA. SEA should secure from other carriers that a
specific measure that could have other ripple effects on the railroad system is potentially
available to address a significant local impact, ISEA should in a minimum, provide the Board
with several alternatives to that measure so the Board can properly weigh all of the
environmental, commercial and other benefits that would be disturbed and other adverse
impacts that would flow from any undertaking by the Board with an Applicant’s Operating Plan.

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2.5.3 Operating Restrictions Would Reduce Environmental Benefits.

The traffic which causes train increases in Erie, in and around Cleveland, and elsewhere on the network is either being rerouted from other routes or diverted from tracks or other modes of transportation. The environmental benefits of the Transaction are not independent of these traffic changes. On the contrary, traffic changes resulting in train increases in a real sense are the consequence and measure of the environmental improvements of the Transaction.

The substantial highway safety, energy efficiency, and pollution reduction improvements of the Transaction accrue for the predominance of the non-environmental benefits identified by the DEIS (see Section 3.3 below). These benefits come from diverting truck traffic, and to a lesser extent from handling rail traffic more efficiently, with fewer trains and interchanges.

Over half the train increases in the northern Ohio region are accounted for by the capture of business now moving by highway. Because northern Ohio is an interstate highway as well as a rail hub, with interstate Highways 80, 90, and 77 cross-cutting the region, it will be among the major beneficiaries of the diversion of truck traffic. Trains and other railroads will carry much of the additional traffic from moving by rail, with adverse emissions, safety, fuel efficiency and highway congestion and maintenance consequences. Such savings and reductions could also result in reducing of rail traffic and resulting increases in adverse environmental impacts for different locations. The DEIS does not attempt to weigh these adverse consequences against the benefits of restrictions. The required balancing would be difficult, and emphasizes the importance of using statutory train limits to try to reform the predicted but changeable down stream impacts of the Transaction.

2.5.4 Operating Restrictions Would Unduly Limit Operating Discretion.

Under normal circumstances, decisions about numbers of trains and routing of trains rest with railroad management. For example, in recent years, through voluntary coordination agreements with Conrail, NS has operated substantial volumes of north-south interchange from Process Yard (Washington) to Hanover, Maryland to take advantage of the more efficient interchange route via Harmanburg. Without this route, no matter who would be able to offer Northern/Southeast doublestack service. Similarly, NS has agreed with Conrail to continue interchange of auto traffic moving into and from the East at Cleveland, rather than leaving it dispersed among several other points.

2.5.5 Operating Restrictions Would Impede Transportation Benefits.

The EIS process involves balancing Transaction benefits (including environmental benefits) against environmental costs. Consequently, proposed mitigation must be evaluated in light of the point it strikes in the Transaction benefits. Train limits and operating restrictions threaten the fundamental transportation benefits of the Transaction.

For example, a major commercial objective of NS in this Transaction is to use the Southern Tier route for its only access to New England and for an important second minute to the Port of New York/New Jersey through New York State (Application, Vol. 1, pp. 5/5-50; Vol. 28, pp. 359, Vol. 38, pp. 14-15, 30). The Southern Tier route, the lowest route option, needs every possible flexibility to compete with CSX’s Water Level Route and to provide service comparable to that on NS’ Pennsylvania Route, the routes which today have most of the East-West traffic.

Long-haul traffic which NS is projecting for the Southern Tier will move over Buffalo and Erie. The two-train-per-week limit to Erie would prevent NS from handling traffic that is projected for Day 4 in a competitive manner. Particularly since Erie will ultimately receive major environmental benefits from the Transaction through the construction of a bypass, an excess positive restriction on N’s ability to use the Southern Tier effectively and to compete with CSX in the critical startup period is wholly unwarranted.

In northern Ohio, traffic from the former PRR lines to be operated by NS crosses to the former NYC line for movement to and from Chicago (Application, Vol. 1, pp. 525). Train limits or operating restrictions here at the Western end have the potential for major disruption to the fluidity of the system. The routes have been put together with attention to signals, curvature, grade, capacity and service. Even so, NS is not simply standing on its plan. For example, in order to avoid increased travel time in Lakewood, NS has volunteered, subject to funding, to work with local governments to build a connection to move some of the traffic through a more industrial corridor. However, any imposition of minimal solutions would come at a cost to the Transaction which already carries more than appears on the surface. Ultimately, a wrench in the works at Cleveland would cripple the ability of one or both parties to provide efficient, competitive service along the critical East-West routes to Chicago. It would be highly unfortunate if the Applicants, who are making the greater investment in new capacity the East has seen in decades, would find themselves harried by arbitrary limits on train operations.

Commercial initiatives, inadmissible in the context of coordination, should not be restrained when they happen to surface in a control case. These operating and marketing agreements go on continuously in the national industry and do not require federal approval. In the context of a control proceeding, the Board should be very cautious about imposing restrictions that would disable an applicant’s ability to achieve efficient and commercially attractive operations.

In northern Ohio, traffic has vacated among the involved routes as the economies of the industry, the demands of customers and the operating opportunities of the time have required. For example, the Cleveland Short Line corridor from Cullarwood through East Cleveland handled well over 40 trains per day from the time of its completion in 1912 through the late 1950s, then still over 40 trains per day through the early 1960s. Thus, for about 50 years this corridor had train volumes greater than or equal to the volume that CSX now expects to operate over it. Now some interstate services would broaden the discretion which has permitted these adjustments.

The Transaction that is proposed facilitates moving and traffic changes, but as the history of train movements through Cleveland shows, such changes would go on in any event. Authorities of control does not cause trains to move on different routes in the same sense that construction of an interstate causes trains to be diverted from a rail road. Because the construction of a bypass is not a mandatory requirement, the Board should be especially reluctant to impose operating restrictions on the Applicants.

As explained above in Section 2.1, the Board is not required in this Transaction, as it was in the USPP merger, to mitigate every (or indeed, any) environmental impact it identifies. Under USPP, the Board was found with no option other than to proceed, upon completion of its EA with a full EIS unless the implementing blend was then “superseded” by a more or less complete EIS. Here, SEA has no viable option other than to recommend that the Board impose a restriction on the increase in train traffic at Reno and

Indeed, a recent search by NS of the Federal Register found no other merger, in any industry, regulated or unregulated, in 1997 for which an EIS was required. This is probably due to the fact that mergers per se are financial transactions which do not have autonomous environmental consequences. The Federal Energy Regulatory Commission, for example, has "independently excluded" merger approvals from the actions requiring either an EA or an EIS except where issues arise, such as unique resources are affected. 18 C.F.R. § 385.4 (1996) (confirming operational exclusion rule). No other sector of the American economy undergoes this kind of merger scrutiny, a fact which argues for extreme restraint in imposing burdensome conditions with unacceptable consequences.
Within pending selection and completion of mitigation to eliminate the adverse environmental impacts of the merger. Here, the Board faces no similar NEPA restrictions on other legal impediments to the fulfillment of its task of balancing any localized environmental impacts with the system-wide environmental and other public benefits to be derived from the Conrail Transaction. Thus, the rationale applied by the Board for imposing traffic restrictions in UP/SP is neither relevant nor appropriate in this proceeding.

In view of the fact that the DEIS recognizes a number of system-wide environmental benefits associated with the proposed Transaction and does not identify any system-wide significant adverse environmental impacts, and the fact that restricting traffic on one line segment can have adverse effects on operating capacity, efficiency and the net benefits of the Transaction, localized environmental impacts should not be allowed to change the overall operating plans developed by the railroads.

3.6 Expansion to other Inoperable Agreements as Conditions to FEIS Approval

SEA has indicated in the DEIS that it intends to impose as a condition of approval of the Transaction any negotiated settlement agreements or other mutually-acceptable binding agreements pertaining to the Transaction that NS and CSX enter into with non-Applicants. SEA apparently intends to take all such agreements completed prior to the publication of the FEIS and recommend to the Board that it impose the terms of the agreements as environmental conditions to any decision approving the Transaction. DEIS at 7-4. SEA and the Board should, however, give serious consideration to whether this proposed action to impose conditions is in fact within the Board's authority or whether it is in a prudent and necessary way.

While it is true that the Board and the ICC have in several instances involving railroad mergers and other consolidations conditioned agency approval upon the parties' compliance with various environmental mitigation measures, there is no basis in NEPA for requiring in all instances that negotiated agreements pertaining to mitigation be made formal conditions of Board approval. As explained in Section 2.1 above, NEPA mandates a process, not a result. Moreover, the present application by CSX, NS and Conrail is the first instance in which the Board has prepared an EIS to evaluate fully the range of potential environmental impacts associated with a proposed consolidation. Because of the fundamental differences between the processes as stated in the preparation of an EIS versus the completion of an EA, as explained in Section 2.1 above, it is not necessary in this instance that the Board resolve each and every potential environmental impact that can be identified. Yet this is precisely what SEA seems it would do

by requiring that all solutions to potential environmental impacts that the Applicants or state be imposed as formal conditions. Not only is this standard for imposing conditions unnecessarily stringent in the context of an EA, which requires that the Board balance the identified adverse environmental impacts with the identified system-wide environmental, commercial, and other public benefits of the proposed Transaction, it fails to lend clear limits on the Board's authority to impose conditions.

Because of the spontaneous nature of some of the perceived environmental impacts that may become the subject of negotiations between NS and affected entities, it can be expected that some of the negotiated solutions to the impacts will fall outside the limited authority of the Board to impose as mitigation measures. Moreover, any insistence by SEA that the terms of a negotiated agreement be accepted into a Board-imposed condition would have an adverse impact on the ability of NS to consider and agree to innovative, creative solutions to community concerns. The Applicants would likely be less willing to negotiate such agreements with the prospect hanging over their heads of the Board turning a voluntary, uniquely negotiated solution in a specific instance into a formal condition that could later be argued to have prudential effect because of the Board's imposition of the agreement as a condition of approval.

NS is actively seeking bilateral agreements with third parties where feasible and appropriate to address environmental concerns. The recognition in the FEIS of voluntary stipulated agreements between an Applicant and a third party is an appropriate alternative mechanism for addressing identified environmental issues related to the proposed Transaction. Such voluntary third-party agreements should be recognized as stipulations, not conditions of Board approval. The Board's ability to carry out its responsibilities is not impaired if such voluntary agreements become formal conditions of approval — the Board will have continuing oversight following any decision to approve the Application. This oversight function will fully enable the Board to determine whether the Applicants are satisfying the terms of their voluntary agreements and to take appropriate steps in the event that intervention is required.

Moreover, SEA and the Board should not presume that the lack of a voluntary agreement between an Applicant and a third party at the time of issuance of the FEIS will result in a vote of confidence of approval. As stated in the context of SEA's draft decision to approve the Applicants' proposal, the Board's voting confidence encompasses the imposition of a formal condition. As the DEIS itself recognizes, the consultative process is a superior means for developing and implementing creative, mutually beneficial solutions to local environmental impacts than the formal conditioning process. The consultative process allows the parties to share responsibilities and costs in a manner that the Board could not impose unilaterally. However, the consultative process cannot be expected to produce across-the-board agreements over the course of a more

few months. Creative solutions with public use are required many levels of review and approval before the public entity can commit itself to a binding agreement. Given these realities, SEA and the Board should allow the consensual process to continue beyond issuance of the FEIS, the writing conference or the implementation of the Transaction, in order to allow the process a full opportunity to produce optimal results. Applicants propose that they report the outcome of the consultations to the Board as an outline of or otherwise appropriate.

3.6 BENEFITS OF THE CONRAIL TRANSACTION

The proposed Conrail Transaction will provide substantial environmental, safety and economic benefits. NEPA requires that the Board, in choosing a course of action, properly weigh positive effects against adverse effects, and balance environmental benefits against the relevant legal or policy considerations bearing on the merits of the proposed Transaction. The following sections summarize the environmental, safety and economic benefits of the proposed Transaction. These benefits should be properly recognized within the FEIS, and taken into account by the Board in reaching a decision and determining, if any, mitigations are required.

3.1 Environmental Benefits

The Transaction’s benefits start from the basic fact that railroads are the least polluting, most energy efficient, and safest freight transportation mode on land in the United States. Railroads’ environmental advantages are especially pronounced when railroads are compared with trucks:

- Railroads are more fuel efficient than trucks — using the same amount of fuel, trains can move the same amount of freight three times faster than trucks.
- Railroads pollute less than trains — because of their superior fuel efficiency, trains emit 3 to 6 times less air pollution than trucks traveling the same thing the same distance.
- Transportation of hazardous materials (hazardous waste) is safer by rail than by highway — Railroads have far fewer than one-tenth the hazmat incidents of trucks combined on an equal ton-mile basis.
- Railroads provide fewer accident-related than trucks — significantly more truck collisions than train accidents occur on a per ton-mile basis.

The Transaction’s environmental benefits derive mainly from diverting freight from trucks to railroads. These truck-to-raildiversions occur over the entire Transaction, for NS’ portion alone, there will be a reduction of an estimated 89,000 truck trips annually. This will result in system-wide energy savings, fewer air emissions, reduced wear and tear on highways, and less highway congestion, as well as safety and socioeconomic benefits.

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expanding NS rail system. NS" environmental policy requires every employee to understand and comply with environmental requirements in their job. Government agencies are informed of any spills or hazardous materials incidents regardless of the potential to cause environmental harm. Wastes are minimized through recycling, reduced consumption, and use of environmentally preferred materials and outsourcing technologies. Cooperation is given to all environmental/environmental agencies. All laws and regulations related to protecting the environment and transporting environmentally sensitive materials are complied with in full. NS is committed to implement the best environmental practices of Conrail and NS after the Transaction.

Long-standing conservation practices at NS include collecting and recycling corrosion, paper, metal, aluminum, and rail cars, and used oil is recycled and reused. Leaking oil and cleaning solvents are reagent and reused. Terms of thousands of years old railroad cars have been redone, NS works hard to be a sound environmental citizen, and will utilize proven environmental protection practices and programs to improve environmental management throughout its expanded system.

3.2 Safety Benefits

In addition to environmental benefits, the Transaction will bring about significant safety benefits which the Board should take into account as part of the NEPA's balancing process. The most significant of these will result from the integration of Norfolk Southern's safety culture with that of Conrail. As such, the Board has concluded that the Class I railroad's safety record is significantly superior to that of Conrail. The Board has noted, however, that the integration of safety into the new entity will take time and resources. The Board has also noted that the new entity's safety record will be directly affected by its relationship with the PIRA.

3.2.1 Fewer Accidents

The greatest safety benefits from the Transaction will come from diverting freight from Conrail to NS. To that end, NS will substantially reduce the number of rail accidents involving its tracks or railcars. With an estimated reduction of 500,000 track miles annually on the NS network, there will be approximately 500 fewer track casualties involved in one or more lineages. The Board has also noted that the new entity's safety record will be directly affected by its relationship with the PIRA.

3.2.2 Radial Switching

The expansion of single-line service (e.g., service on one mainline) that will result from the Transaction will also improve NS's safety. Single-line service decreases the amount of railcar switching, which is the greatest potential for collisions, derailments, and employee injuries. The post-Transaction NS system will provide single-line service to an additional 200,000 freight units annually. Integration of some existing NS and Conrail terminals should reduce switching and improve safety as well.

3.3 Norfolk Southern's Safety Program

One of the most important factors contributing to the environmental and safety benefits of the Transaction is NS's proven performance and commitment to safety. Within the railroad industry, NS is a recognized leader, having recently earned the prestigious E.H. Harriman Memorial Gold Award for employee safety for the eighth straight year. NS strongly believes that safety is good business, as few number of injuries is a prime commitment in the industry. In 1994, NS employee injuries were one-fifth of what they were just eight years before. Since 1988, Norfolk Southern's train accidents rate has dropped 31 percent, and it is currently less than half that of the railroad industry as a whole. Applying many existing NS or Conrail terminals will eliminate, or at least reduce, any potential negative safety impacts at new train terminals. (Application, Vol. 6A, at 75.)

Safety Integration Planning. NS has been planning since the spring of 1997 how to integrate each of its Conrail stations under the new NS organization. In December 1997, NS submitted a comprehensive Safety Integration Plan to the Board, which documents all anticipated safety elements of the Transaction. NS has been in contact with and is currently working with the PIRA regarding the SIP and related planning for safe integration of operations.

Residual Employee Issues. NS is committed to maintaining safety standards of Conrail's OSHA, as is Norfolk Southern's, and is considering the potential for employee injuries. The Board has noted that the new entity's safety record will be directly affected by its relationship with the PIRA.

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several high-ranking Conrail employees knowledgeable about the carrier's operations and safety practices. For example, NS has already appointed Conrail's Director of Safety, William L. Barringer, as Director of Safety for NS, to capitalize on Conrail's own safety expertise and to help smooth the railroad's respective safety efforts. NS also plans to keep the same regional dispatching system in place to maintain the potential for disruption or disintermediation, thereby ensuring that dispatchers are familiar with their territories.

3.3 Environmental Benefits

The Transaction, and the resultant increased productivity and efficiency of rail operations in the eastern United States, will stimulate economic growth and deliver nearly $1 billion in public benefits to the nation as well as significant unquantified benefits. CONRAIL-18, Volume I at 16. The Board should give proper weight to these benefits, as well as environmental and safety benefits, as part of the NEPA balancing process.

3.3.1 Economic Benefits to the Public

CSX and NS have demonstrated in submissions to the Board that the Transaction will generate nearly $1 billion in quantifiable public benefits. These benefits will result from the following:

- The proposed construction project would increase transportation operation efficiency and improve service capabilities (shorter, more direct transportation routes), resulting in reduced transportation costs to shippers and consumers.
- These enhanced efficiencies would also yield the reductions of traffic from highways to rail. Over one million truck-to-rail divestments are predicted by NS and CSX, and NS alone anticipates approximately 500,000 diverted truckloads (Environmental Report at 2:2).
- In addition, truck-to-rail divestments would reduce fuel consumption by an estimated 2.6 million gallons of diesel fuel annually. DEIS at 6-47.
- Truck-to-rail divestments would also stress the role of the national highway system, and significantly reduce highway maintenance costs, curbed by federal, state and local agencies. The net savings from the Transaction to highway maintenance costs is approximately $65 million per year (Environmental Report at 2:6).

3.3.3 Industrial Development

Over the past seven years, NS' industrial development efforts have led the industry in creating economic growth, new jobs in the Southeast and Midwest regions of the country. Just as NS' efforts have yielded gains in the areas currently served, so will the application of NS' proven industrial development strategy create substantial benefits for communities now served by Conrail. In 1997, 62 new industries located along NS' tracks, and 43 industries expanded existing facilities. Investments by these industries as created $2.4 billion, and 7,300 new jobs were created in the communities NS serves. Eight of the last 12 automobile plants built in the U.S. were built along NS lines.

In addition to the normal capital expenditures the railroads would spend to operate Conrail, NS and CSX plan to spend a combined $1.3 billion for major capital improvements and equipment purchases. (This $1.3 billion is the largest expenditure for new capacity on a railroad in at least four decades.) NS alone anticipates spending $729 million in the first three years for projects such as rail improvements, track improvements, and new warehouses (375 million), improvements to existing Conrail routes (170 million), and new warehouse facilities (30 million).

Other important public economic benefits will include reduced highway congestion and new opportunities for industrial development.

3.3.2 Benefits to Shippers From Increased Competitiveness and Access

The Transaction will bring about a dramatic increase in competition between railroads, and will energize rail as a competitor with trucks for freight movements. The shift of traffic from the highways to NS will save shippers $92 million in annual logistics costs.

Conrail is presently the only Class I rail carrier operating throughout the Northeast section of the country. Shippers who are located in the Northeast thus lack the competitive and service benefits that come from having two strong rail networks serve them. The Transaction will increase competitive Class I rail service for the first time since before the creation of Conrail for a substantial portion of the Northeast. The establishment of Shared Areas Agreements for North Jersey, South Jersey/Philadelphia and Denver and the maintenance of rail competition for shippers served by the former Monongahela Railway will bring shippers in these areas the benefits of local-to-local competition between CSX and NS.

The expansion of CSX and NS' rail networks will also substantially improve rail service by creating new single-line service. Through the operation and use of Conrail's lines, CSX and NS will operate a number of new single-line routes, particularly between the Northeast and the Midwest and the Northeast and the Southeast. Shippers will benefit from the advantages of single-line service as compared to joint-line service in terms of reliability, predictability and cost-effectiveness. There will be fewer curvatures, and more traffic will be able to bypass terminals, reducing delays and inefficiencies.

A6 PRINCIPAL CONCERNS ON ENVIRONMENTAL ISSUES

The following passage Norwalk Southern's comments on the scope, approach, methodology, technical analyses, conclusions, and recommended mitigation measures within the DEIS. These principal concerns affect the DEIS' technical analyses, environmental effects of the proposed Transaction, and correctly concludes that the Transaction will have a net positive benefit on the environment and the economy. The DEIS analyses and conclusions regarding local impacts are equally comprehensive. However, there are several areas where NS has identified inappropriate analytical methods, technical inaccuracies, or other substantive errors in the DEIS which have led to erroneous conclusions and inappropriate recommendations for mitigation. Comments offered below support the DEIS. "the analyses and conclusions are inaccurate and inappropriate, and identify areas where the analyses-... conclusions are inaccurate and mitigation inappropriate. In several areas where it appreciates improvements could be made to the DEIS, NS has offered a discussion of improvements or corrections and the results of their applications, including the necessary technical justifications for SEA's consideration.

4.1 Safety: Freight Rail Operations

For the freight rail operations safety analysis, the DEIS undertook both a system-wide and localized (rail line segment specific) safety analysis. The analyses estimated the probability of occurrence of freight train accidents that would result from the proposed Transaction.

4.1.1 Safety: Freight Rail Operations, System-Wide Analysis

The DEIS examined the system-wide (all eight operations accident risk for both pre- and post-Transaction configurations on all 1,022 rail line segments and 375 rail yards associated with the Transaction. To assess potential system-wide safety effects, the DEIS calculated the system-wide probability of an accident occurring based on the projected train activity data provided by NS and CSX in their Operating Plans. The DEIS concludes that the combined changes in freight traffic on rail line segments are... for activity as rail yards would result in a small overall decrease in the Homeland of f, or accidents and derailments. DEIS at 6-10. Based on this analysis, the DEIS' findings are that the Transaction would not result in significantly adverse system-wide safety effects for freight rail operations and therefore, no system-wide mitigation measures are proposed.

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NS believes the DEIS presents a well-founded, comprehensive analysis of the potential system-wide safety impacts from freight rail operations on the expanded NS and CSX systems. NS completely concurs with the DEIS conclusion of no significant adverse system-wide safety effects from freight rail operations. Additionally, the DEIS will result in a system-wide positive impact on safety when the reduction in track crashes resulting from track-to-rail diversions is considered. The DEIS notes that the estimated reduction in track crashes due to the Transaction could result in 1,400 fewer annual highway accidents. In addition, it should be noted that the latest statistics project a reduction of 31 total track crashes each involving one or more fatalities. DEIS at B-14. Significant environmental benefits such as this must be acknowledged and properly weighed against any adverse environmental effects when considering mitigation, as discussed in Section 2.2 above.

4.1.2 Safety: Freight Rail Operations, Segment-Specific Analysis

The DEIS performed segment-specific analyses of accidents in rail lines segments when estimated increases in freight train traffic would exceed the Board’s environmental threshold for such accidents. The DEIS notes the average annual accident rate for freight operations on each specific segment and adjusts these estimates based on the track condition and whether or not the segment has a freight train signal control system (which reduces the potential for accidents). The DEIS then applies inappropriate significance criteria to the line segment predicted accident frequencies to recommended determined mitigations.

NS does not believe the Transaction will have adverse impacts on freight rail operations or oppose any mitigations for freight rail operations for numerous reasons. First, the Transaction is expected to result in substantial system-wide safety benefits primarily as a result of track-to-rail diversions. Additionally, NS currently has numerous programs, the details of which can be found in the DEIS (Part I, Section 3.9.2) and the SPP (DEIS, Volume 2), to effectively manage freight rail operations safety as evidenced by its consistently low accident rate. These safety benefits of the Transaction should be taken into consideration when evaluating whether to mitigate segment-specific safety concerns. Finally, the significance criteria of a predicted accident frequency greater than one every 100 years actually addresses existing conditions rather than Transaction-related changes in safety operation as well as being based on erroneous data.

The DEIS identifies four NS line segments with SAFER has calculated will exceed the significance criteria defined in the DEIS. The significance criteria as described in the DEIS at B-13 is to evaluate the significance for safety of "NS freight rail operations are as follows."

<table>
<thead>
<tr>
<th>Segment Location of the DEIS</th>
<th>Significance Criteria Exceeds NS Freight Rail Operations</th>
</tr>
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<tbody>
<tr>
<td>2/2/9/8 4:17:23pm-37</td>
<td>4.2</td>
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The DEIS identifies four NS line segments in which SAFER has calculated will exceed the significance criteria defined in the DEIS. There is absolutely no analytical basis for the mitigation the DEIS proposes for the four NS line segments that are purportedly above the DEIS significance criteria for freight rail operations safety. Recommended mitigation in the DEIS includes annual training of mechanical and track inspectors and compliance with a proposed FRA rule requiring certain frequencies of rail inspections. NS opposes the imposition of any mitigation that would constrain its ability to adapt equally to more effective alternative inspection and training programs.

The DEIS proposes for line segments identified as having a significant impact for freight rail operations safety that NS comply with a proposed FRA rule which could require certain frequencies of rail inspections based on ten miles of track on a line. The current proposal would require such inspections at least once every 40 million gross tons or, alternatively, whichever is more frequent. NS already conducts such inspections on a regular basis and stipulates it would continue to do so. NS believes, however, that it would be inappropriate for the DEIS to recommend such a requirement as it would encourage upon the jurisdiction of FRA regarding freight rail operations, and have the effect of permanently adopting a proposed rule which is currently subject to the proper FRA rulemaking process.

Additional mitigations the DEIS recommends for the four NS line segments above the significance criteria includes annual training of mechanical and track inspectors for these locations. NS justification is provided for these mitigations. The existing NS safety "...is proven effective..." the NS annual safety record is second to none. NS also supports an extensive training and are fully qualified to provide inspections per NS standards. NS has systems in place to continuously measure and review the performance of its inspectors to provide additional training when needed or other conditions changes warrant such training. The DEIS fails to provide a reasonable basis for imposing this specific annual training requirement. For these reasons, NS believes it is unnecessary to impose any proposed rule or implemented rule for these inspectors in the DEIS.

4.2 Safety: Passenger Rail Operations

The DEIS incorrectly reports that the Transaction will not result in any system-wide degradation in the safety of passenger rail operations that are conducted on the expanded NS and CSX systems. Following the proposed Transaction, NS and CSX are both experienced in safely handling passenger operations on their systems and are working cooperatively with Amtrak and other passenger rail agencies to enhance safety. NS and CSX have achieved outstanding safety records in this area.

Nonetheless, on the basis of a statistical analysis of passenger and freight operations on the 137 rail line segments on which both freight and passenger operations are conducted. The DEIS (Chapter 7 at 2.2.2) concludes that a total of NS and CSX systems may warrant special safety mitigation measures. The DEIS therefore proposes that the DEIS establishes passenger trains as “superior” and maintains 30-minute windows around passenger trains, and possibly one additional route over which there are both freight and passenger operations. Historical mitigation is proposed for five CSX line segments. The NS segments are:

- Kalamazoo, MI to Porter, IN (N-497)
- Campbell Hall, NY to Port Jervis, NY (N-463)
- Jackson, MI to Kalamazoo, MI (N-120)
- West Durand, MI to Jackson, MI (N-121)
- Porter, IN to Chicago, IL (not the Canadian Pacific (CP) is granted or given trackage or track rights over any segment on this route). This route consists of the following four segments: Porter, IN to Control Pt. 501, IN (N-301); Control Pt.

The DEIS is internally consistent in its description of the proposed mitigation. Chapter 3, which identifies potential mitigation measures, does not even mention a separation rule among the options for consideration. See DEIS Sections 3.2.3 and 3.3.3. Further, Chapters 5 and 7, 11, 13, and 14 contemplate the establishment of proposed separation window around passenger trains as follows:

- The DEIS is internally consistent in its description of the proposed mitigation. Chapter 3, which identifies potential mitigation measures, does not even mention a separation rule among the options for consideration. See DEIS Sections 3.2.3 and 3.3.3. Further, Chapters 5 and 7, 11, 13, and 14 contemplate the establishment of proposed separation window around passenger trains as follows:

- V. S. compared the Accident-related changes in accident rate for a rail segment to the normal fluctuations in the state-wide accident rate. Second, SEA determined that the rail segment is expected to experience an accident rate more frequently than once every 100 years per route mile. If a rail line segment is predicted to have an increase in accident rate greater than the normal variance in state-wide accident rates and is to have an accident more frequently than once every 100 years per route mile, SEA considered mitigation for safety impacts.

The criteria of more than one accident predicted every 100 years is not an appropriate threshold to determine significance of safety impacts. "Use Transaction-related changes in freight rail operations. Any condition imposed by the "should be directly related to the Transaction's impacts and may not be designed to remedy pre-existing conditions. The criteria of a predicted post Transaction accident rate of one per year in 100 years would actually address existing conditions rather than the Transaction-related change in traffic on the case segment. This is verified by the calculations provided in Attachment B-1 of Appendix B of the DEIS. For example, the NS line segment Miami to Atlanta (N-DEI) exceeds the DEIS so-called significance criterion with a predicted post Transaction accident rate of one accident every 71 years. However, this is not a Transaction-related impact, because the pre Transaction predicted accident rate for the same segment is one every 88 years which is already greater than the DEIS significance threshold. This significance criterion encompasses pre-existing conditions and neither restricts its focus to changes related to the Transaction nor results in recommendations narrowly tailored to mitigate the potential changes in such impacts.

Additionally, this significant criterion appears to have been based on unsafe data. The DEIS at B-13 states that a criterion of one accident every 100 years was based on the national frequency of railroad accidents calculated from the 1990 FRA Accident/Incident Bulletin. The DEIS uses the value 1.070 total freight and passenger accidents per 126,682 miles of main line railroad tracks operated in the U.S. to calculate that a freight train accident can be expected to occur once every 111 years per route mile. However, there is no reference to 1.070 total freight and passenger accidents in the 1996 FRA Accident/Incident Bulletin. In fact, on page 14 of the Accident/Incident Bulletin, No. 165 for the Calendar Year 1996, a total of 2,286 freight and accidents were reported. These statistics suggest that a freight rail accident can be expected to occur once every 49 years, and once every 117 years. There are no NS line segments with pre- or post Transaction predicted accident rates exceeding the 1.070 significance threshold.

The DEIS identifies four NS line segments that the DEIS has calculated will exceed the significance criteria described in the DEIS. The significance criteria as described in the DEIS at B-13 is to evaluate the significance for safety of "NS freight rail operations are as follows."

- The DEIS is internally consistent in its description of the proposed mitigation. Chapter 3, which identifies potential mitigation measures, does not even mention a separation rule among the options for consideration. See DEIS Sections 3.2.3 and 3.3.3. Further, Chapters 5 and 7, 11, 13, and 14 contemplate the establishment of proposed separation window around passenger trains as follows:

- By contrast, the discussion of mitigation at the individual line segment levels found in the DEIS is neither resorative its locus to changes related to the Transaction nor results in recommendations narrowly tailored to mitigate the potential changes in such impacts. The DEIS is internally consistent in its description of the proposed mitigation. Chapter 3, which identifies potential mitigation measures, does not even mention a separation rule among the options for consideration. See DEIS Sections 3.2.3 and 3.3.3. Further, Chapters 5 and 7, 11, 13, and 14 contemplate the establishment of proposed separation window around passenger trains as follows:
Amtrak operates on segments N-497, N-120, N-121 and the Porter to Chicago route. On segment N-063, New Jersey Transit operates commuter train service for Metro North. Segment N-497 is owned by Amtrak and Conrail currently operates a local train about twice a week on this segment. CSX has heritage rights only over the Porter, in Control PLC 501, IN-13, IN-603.) segment, a portion of the Porter to Chicago route. The CP traffic on this segment is now being handled by CSX under a heritage rights and control over this segment. While NS assumes that CP traffic will stay on the line post Transaction and be handled by NS, the net result is that there will be no increase in CP traffic without a shift to which railroad will carry that traffic. No formal agreement has been reached by NS with CP regarding possible CP heritage rights over segments N-497, N-120 and N-121, as it was more fully discussed in Section 4.2.2.1.

Norfolk Southern does not believe there are any adverse safety impacts to passenger rail operations as a result of this Transaction for the following reasons:

First, no passenger safety mitigation is warranted because, by any standard, operations on these line segments—which are already subject to FRA safety oversight—are demonstrably safe and will remain equally safe as following the Transaction. The statistical analysis conducted by SEA to ascertain whether mitigation is warranted relied on data and assumptions that overstate the Transaction-related impacts of modestly increased freight traffic. For example, in conducting its statistical review of passenger/truck train collisions, the DEIS utilized a collision rate that was below the median of a type of collision to increase perceived freight impacts and would not be addressed by the proposed mitigation, i.e., collisions resulting from freight trains and passenger trains operating on different tracks or from passenger trains hitting parked freight cars. The actual rate of passenger trains being hit by freight trains operating on the same track, or vice versa, is almost zero. A fact that undercuts the mitigation proposal addresses an unlikely safety risk.

Second, even assuming that some mitigation might be warranted on certain line segments, modern signaling systems and other safety controls offer the highest level of safety without the cumbersome procedures and efficiencies sacrificed in the proposed mitigation. 4

*Presently CSX has heritage rights on this Central line from Porter to Pine, Indiana, east of Gary. All CSX trains on their way to Michigan use this line, excluding the CP heritage traffic.

The Conference substitute removes Sections 801 of existing law, which in part, define the jurisdiction of the Department of Transportation and the Interim or Commerce Commission over safety related and service related issues. First, this provision removes a possible legislative inconsistency which results from the fact that Section 801 of existing law, as presently worded, authorizes the ICC to "prosecute such regulations as it deems necessary to provide safe and adequate service, equipment, and facilities for intercity rail passenger service." The Federal Railroad Safety Act of 1970, enacted only two years prior to the rail passenger Service Act, defined the Secretary of Transportation's jurisdiction to include "all matters of railroad safety." It is the aim of the Conference committee to make clear that the Secretary's jurisdiction has now been explicitly defined. The ICC, in prosecuting its own regulations with respect to the safety of rail passenger service, should take account of safety standards promulgated by the Secretary of Transportation.


Congress's message was straightforward - the FRA has the sole authority to regulate safety. Nothing more, the ICC Transaction Act changes that fact. To the contrary, the statute carved out the Board's limited authority with respect to commuter operations. See 49 U.S.C. §10906(c)(2) (providing that the Board does not have jurisdiction over commuter services and agencies other than with respect to access to facilities). In view of the Board's absence of authority to regulate with respect to passenger carrier service matters, and FRA's exclusive jurisdiction and ongoing activity in the area of passenger carrier service, the Board should refer its sister agency before adopting any passenger safety conditions, particularly a condition as to reaching as that proposed in DEIS Mitigation Measure 2A and (B). The FRA in fact has several pending renumbering proceedings and other projects underway in connection with passenger service. These include Passenger Equipment Safety Standards (FRA Docket No. PECSS-1), 62 Fed. Reg. 49736 (Sept. 23, 1997) and Passenger Train Emergency Response Improvement (FRA Docket No. PETE-1), 62 Fed. Reg. 49737 (Sept. 23, 1997) in the Passenger Equipment Program. The FRA has reached agreement with the Department of Transportation to "reflect mutual responsibilities in regulatory jurisdiction in areas such as passenger transportation." 5

5 See H.R. Rep. 104-442, 104th Cong. 1st Sess. 165 (statement of Board jurisdiction to "reflect mutual responsibilities in regulatory jurisdiction in areas such as passenger transportation").

6 In fact, there were extraordinary circumstances and a separation proposal in connection with the DEIS, which was an unusual situation involving a section of a similar type that could conflict with NS station at 640 feet, from the preference for Amtrak operations.

The proposed separation measure could well stand alone, or conflict with, FRA pending future proposals or plans to address passenger safety issues. Suffice it to say that any potential for conflict arising from the activities of more than one safety regulator should be scrupulously avoided.

The Board should also take note of the fact that neither the FRA nor any participant in the passenger rail community favors NS has proposed a temporary separation rule as a means of enhancing passenger train safety. Neither Amtrak, New Jersey Transit or Metro North (nor any other commuter agency) have requested the proposed mitigation—or any safety mitigation on any line segments—in their filings with the Board. NS works closely with these agencies on other regulatory issues, and there is no safe in-service relationship all of these agencies have the same interests in passenger safety, but none of these agencies have any express agreement with any of these parties.

Notably, neither Amtrak nor any commuter agency has claimed that the Transaction would have any demonstrable impact on the safety of their operations or any NS lines. Nor have any procedures. Train superiority and temporal separation practices of the type proposed in the DEIS, which are not even listed among the potential safety mitigation measures identified in Chapter 3 of the DEIS, have been outlined for decades, and their re-introduction on NS now could well detract from safety.

Third, the proposed 1500 minute separations would disrupt freight service on all freight lines, particularly the Porter to Chicago route. This would impose a substantial burden on commerce and attract more freight to trucks, reversing the significant environmental and other public benefits of the Transaction. The DEIS goes no further to consider possible adverse impacts and the overall balance of effects that would result from the proposed mitigation.

Fourth, to the extent that any mitigation might be appropriate, such mitigation should be in the form of a requirement that NS consult with the FRA and the passenger rail agencies concerning safety enhancements that might be considered for these line segments. A consultation requirement would fully comport with the Board's obligation under NEPA to identify matters that other federal and state agencies might more appropriately address.

4.2.1 The Board Should Not Adopt Mitigation Measures That Interfere with the FRA's Exclusive Authority to Regulate the Safety of Passenger Operations.

The Board should tread cautiously before imposing any special safety condition applicable to train operations, particularly passenger train operations. While NS does not question the Board's right to address legislative Transaction-related safety concerns through the NEPA process, the propriety of any proposed condition in the passenger safety area must be measured against the FRA's "primary authority over the safety of the railroad industry." 6 Section 202 of the Federal Railroad Safety Act of 1970, 49 U.S.C. § 20101, grants the FRA the power to regulate "every area of railroad safety." The FRA has exercised that authority extensively and as discussed further below is currently reviewing a variety of passenger safety issues.

The proposal separate measures could well stand alone, or conflict with, FRA pending future proposals or plans to address passenger safety issues. Suffice it to say that any potential for conflict arising from the activities of more than one safety regulator should be scrupulously avoided.

The Board should also take note of the fact that neither the FRA nor any participant in the passenger rail community favors NS has proposed a temporary separation rule as a means of enhancing passenger train safety. Neither Amtrak, New Jersey Transit or Metro North (nor any other commuter agency) have requested the proposed mitigation—or any safety mitigation on any line segments—in their filings with the Board. NS works closely with these agencies on other regulatory issues, and there is no safe in-service relationship all of these agencies have the same interests in passenger safety, but none of these agencies have any express agreement with any of these parties.

Notably, neither Amtrak nor any commuter agency has claimed that the Transaction would have any demonstrable impact on the safety of their operations or any NS lines. Nor have any
passenger groups claimed that the Transaction will impair in any way the safe operations of passenger trains on any NS lines, including the five trains identified by SEA for mitigation. The proposed mitigation thus not only addresses a problem that does not exist and will not follow the Transaction's exist, but it lacks any safety consistency.

As a matter of sound public policy and respect for its sister agency, the Board should not intrude into a passenger safety area reserved for another agency that is already active in these matters. Nothing in NEPA requires that it do so. Rather, in addressing passenger safety mitigation, the Board would properly fulfill its role by providing potential safety issues for FRA, leaving it to the agency to address those issues as it best sees fit. See Robinson v. Metropolitan Valley Citizens, Council, supra, 940 U.S. at 352-353 (1989) (NEPA "proposes no substantive requirement that mitigation measures actually be taken:") agency proposing NEPA documents fulfills its duty by identifying and evaluating environmental consequences that can be addressed only by another agency.

4.2.2 The DEIS Fails to Justify the Conclusion That Any Mitigation Is Warranted on the Identified NS Line Segments.

In determining the significance of impacts on passenger train safety, SEA first identified an annual rate at which passenger/freight train collisions occur. SEA then identified the line segments shared by passenger and freight trains on which there would be an increase of at least one freight train casualty as a result of the Transaction. Using the accident rate data SEA then determined for each of 7 identified line segments: (a) whether the proposed "innocence-related change in the projected accident rate on each line segment was greater than an annual increase of 25% and (b) whether the accident frequency was less than one accident in 150 years.

NS has several comments to offer on the SEA methodology and the significance factors used by SEA, as follows:

Appendix B of the DEIS explains that one element of the calculation of accident potential on the line segments varied in connection with the DEIS was a factor that assumed a passenger/freight train collision rate of 0.25 annually for Amtrak trains and 0.25 annually for commuter trains. See DEIS Appendix B at B-16. These accident rates were determined based on a review of freight/passenger train collisions over a four-year period, 1993 through 1996, inclusive. The collisions on which the accident rates were based are discussed below.

The list of collisions on which the DEIS relies is informative in several respects. First, it shows that there have been just five passenger/freight collisions in recent years (and in fact fewer than identified by SEA as discussed below). Second, an analysis of the collisions identified by SEA also shows that the proposed mitigation addresses a "problem" of passenger/freight train separation distances that does not in fact exist.

Passenger/freight train collisions are very rare. Six passenger/freight collisions were used to calculate the accident rates used in the DEIS analysis. (Collisions involving passenger trains are identified on the list with the number "1" in either the Amtrak collision column or the commuter collision column.) There have been just five such collisions during that four-year period, all but two of which occurred on the lines of Western railroads.

The six Amtrak and freight trains identified at one commuter/freight train collision during the four-year period studied, thus explaining the 1.25 and 0.25 annual accident rates. However, the one collision involving a commuter train was improperly included because it was not a commuter/freight train collision. Rather, that one accident was an Amtrak/MARC collision in Silver Spring in February 1999. Since this was a collision between two passenger trains, with no freight train involved, it should not have been counted as determining the rate of freight/passenger collisions. Accordingly, the actual annual rate of commuter/freight collisions during the four-year study period was not 0.25 as applied in the DEIS.

Further, a closer analysis of the Amtrak accidents shows that the proposed separation rules are designed to address a situation that experience shows is highly unlikely. At least four of the five Amtrak collisions on the list occurred in circumstances that would not be addressed by the proposed mitigation measures, i.e., circumstances other than passenger and freight trains sharing the same track and running under power too closely to one another. The September 1999 collision occurred when an Amtrak train hit parked freight cars in a siding that was not long enough to accommodate the freight and passenger cars. The May 16, 1994 accident involving a CSX and Amtrak train occurred when the Amtrak train was struck by a train that had been ballasted from its mooring on a CSX track on an adjacent siding and proceeded over the track on which the Amtrak train was moving. Similarly, the February 1997 accident involving an Amtrak and a UP train occurred when the Amtrak train struck a load of steel that was projecting from a UP train located on an adjacent siding. A fourth collision on the list, which occurred on BN's lines in March 1999, was caused when the brakes on several parked BN cars failed, causing those cars to hit an Amtrak train. The freight cars were not connected to a locomotive at the time of the accident.

This review shows that at least four of the five collisions from which the 1.25 annual accident rate involving Amtrak trains was calculated occurred in circumstances that the proposed train separation mitigation rule would not have addressed, i.e., circumstances that are less than the level of freight train traffic on the same track as the passenger train traffic. These accidents did not involve freight and passenger trains moving under power and operating on the same track, and thus a separation rule designed to address freight and passenger trains sharing the same track would not have prevented the accidents.26

In fact, the proposed mitigation also would not address the causes of any of the major collisions involving passenger trains colliding with other trains over the last several years. A summary of these collisions is set forth in an FRA rail safety notice on Passenger Train Safety Standards, 62 Fed. Reg. at 49730 (Sept. 23, 1997). Not one of the major collisions involved a passenger train colliding with a freight train operating on the same track. The one collision involving a freight and passenger train that ended up on the same track was the 1987 collision in Clare, MD between a Conrail and an Amtrak train. The other five collisions involved Amtrak trains colliding with a freight train on a siding, on a spur, or on a crossover. In every one of these five collisions, the freight train was hit by a passenger train. A separation rule of the sort proposed here would not have prevented a collision resulting from such actions by an engineer, who may have been impacted by drug use.27

The rate of passenger/freight collisions involving freight trains hitting passenger trains, from behind or vice versa - the same track is then rear or even, on line segments where the level of passenger and freight train activity (and post Transaction) is much higher than that on NS, is insufficient to be a factor in the DEIS for mitigation. The projected level of increased freight train activity on the NS line segments identified for mitigation ranges from 4.1 trains and 9.2 trains on rail line segments N-497, N-463, N-120 and N-121 and 16.2 on rail line segment N-M-42, which is part of the Porter to Chicago route. This route is double and triple track. Each of the line segments at issue can easily and safely accommodate these train increases. The facts thus show that the passenger train safety mitigation designed to address an increase in the level of freight train operations is simply not warranted.

In addition, SEA has applied an overly conservative threshold of 25% annual fluctuation in passenger train accident rates and a second tier criterion of an accident probability value that would exceed one accident every 150 years. These factors appear to have been arbitrarily chosen, and their use would overstate any potential impact.

NS believes that the DEIS methodology for passenger rail line safety is too conservative and does not reflect NS' actual accident history. NS has not had any accidents involving passenger/freight train collisions in over 30 years — which is as far back as records and memory permit. By applying the national average passenger train accident rates instead of individual railroad accident statistics, the DEIS significantly overestimates the potential for any adverse post Transaction safety impacts. This is demonstrated by considering the FRA train accident database, a much larger database with greater statistical confidence. Central has an accident rate that is close to the national average while the accident rate of NS is considerably lower. NS' average accident rate over the past three years is approximately 4 times less than the national average. Applying such a factor to the passenger train safety analysis would more accurately predict accident probabilities on NS. Such a correction would show that rail line segments N-120, N-121, N-497, and N-663 will have a predicted post Transaction interval between passenger collisions of over 150 years.

NS has reviewed the NS rail line segments where DEIS recommended "superior" trains. Dispatching for the segments Campbell Fd, NY to Port Jarvis, NY (N-463) will be the responsibility of New Jersey Transit, and thus imposing mitigations under the EIS would be inappropriate. The segment Kalamazoo, MI to Porter, IN (N-497) is owned and dispatched by Amtrak and is neither the responsibility of NS nor a suitable candidate for the imposition of mitigation under the FCR.

NS also believes that the Porter, IN to Chicago, IL mitigation isunnecessary. The route consists of four segments: N-308, N-309, N-462 and N-467. Two of these segments (N-308 and N-309) are not even found in the DEIS analysis in Attachment B-2 (Appendix B, Volume 5 A), and thus they either a precipitate decrease in traffic or a negligible increase of 0.1 trains. For the segments N-462 and N-467, the DEIS itself indicates accident intervals of 3,970 years and 684 years, respectively. These rates are substantially less frequent than the 150-year interval...
4.2.3 The Proposed Mitigation Relies on Absurd Notions of Train Operation That Overlook the Existence of Modern Signaling

Even assuming that some passenger safety regulations were warranted, the proposed assignment of “superior” status to one type of train over another, and the proposed temporal separation of trains (e.g., the 15/30-mintute separation rule proposed in the DEIS) would re-introduce into railroading outdated and outdated operating procedures. The proposed mitigation is nothing more than a smoke screen, a distraction from safety, and would cause huge disruptions to NS operations (especially on the Porter line in Chicago), impairing NS’ ability to achieve significant Transaction-related safety and efficiency benefits.

While train superiority and temporal separation rules played a role in ordering train operations in the era prior to the introduction of modern train signals and communications, these procedures were rendered obsolete beginning in the early 20th century, with the advent of modern signaling. Today, neither FRA rules nor rail operational norms tolerate the concept of train superiority or temporal separation. Even when such rules were in effect—decades ago and prior to the advent of modern signals—rail methods provided for a train to clear five minutes ahead of a passenger train schedule. On non-signalized main tracks, trains followed with a ten-minute interval. Trains were never required to remain clear of the track after passage of a train, merely to follow according to signal rules or the “dark territory” (no signal) separation protected. A Movement “bulldoze” around each passenger train was unheard of, even in the 1940s. Further, in the era when separation rules were in effect, such “superiority” rules were not designed as a safety measure at all, but as a means of enhancing the opportunity for trains to maintain on-time schedules.

Each of the five NS line segments identified for mitigation is fully signaled with modern signals. Each line has Automatic Block Signals that provide the engineer with information about other trains or bermail rail within the block covered by the signals. Each line is also equipped with Train Control System signals (“TCS”). This is a remote dispatcher-controlled unattended train control system that provides the train engineer with additional authority for movement including routes and speed at control points, in addition to the “trains or broken rail at block” information provided by Automatic Block Signals.

These signals and train control systems will allow NS trains and passenger trains to operate over the same track with safe headways of approximately five to six minutes between the trains. Such signals and systems provide for train regulations that allow all trains, both freight and passenger, to safely share the same tracks. These systems are designed to prevent train collisions, while enhancing train capacity and service efficiency. The systems are recognized as safe by the FRA and are in use throughout the rail industry. The analysis of the comments discussed above underscores the fact that signals are in fact working to prevent trains from being struck from the rear.

Modern signals and controlled train control provide a uniform and proven method of achieving the safe separation of trains that the DEIS seeks. By contrast, the temporal separation that is envisioned in the DEIS would not ensure safety beyond the levels achieved through these modern signal and train control systems, but could well detract from the safety of rail operations. The proposed mitigation measures would effectively undermine the utility and consistency of these safety systems on the five line segments, in favor of an unconventional, non-technological approach for these segments of the type that pre-dates modern railroad operations. The introduction of this type of approach on the five line segments would undermine the safety that is achieved through the use of the uniform rules now in effect, introducing a “wild card” into NS train operations. From a safety perspective, the introduction of such non-uniform rules enhances the possibility of confusion and human error—directly resulting in the potential for a rail related accident.

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4.2.4 The Proposed Mitigation Is Inconsistent with the DEIS Description of Appropriate Passenger Train Safety Mitigation for Both in Sections 3.2.3 and 3.3.3 of the DEIS.

As noted above, the proposed mitigation is also not consistent with the DEIS description of appropriate passenger train safety mitigation. Beginning in DEIS 3-7, Section 3.2.3 lists a series of “assumed passenger/freight train safety mitigation measures” that the DEIS deemed appropriate or necessary in connection with its analysis of Transaction-related safety impacts, but does not include passenger train superiority or temporal separations on the routes.

The measures that are described in the DEIS in Section 3.2.3 (and incorporated for passenger trains by Section 3.3.3) offer a more appropriate series of potential approaches to the enhancement of operating safety on lines over which both freight and passenger operations are conducted. As described in Appendix NS.1, NS already adheres to each of the proposed safety mitigation measures that are identified in Chapter 3 of the DEIS and will do so with the line segments NS will operate. These measures provide a uniform, consistent and comprehensive measure of safety for the identified line segments, consistent with modern procedures and technologies. The Transaction will not undermine, change in any way, the utility of any of these safety measures, and that no mitigation is required.

4.2.5 The P-penning Mitigation Would Effectively Confuse NS Lines, Lead to Move Train Traffic and Eliminate Important Transaction-Related Benefits.

Were the proposed mitigation rule adopted, it would cause huge disruptions to NS’ east-west operations, effectively confounding NS’ ability to use the Porter line in Chicago. IL route and achieve significant Transaction-related safety and transportation benefits. In these concerns, the absence of any demonstrable safety benefits offered by the proposal, and the absence of any evidence that the increased level of freight operations poses a risk to passenger safety, strongly argues against adoption of the proposed mitigation. Nothing in NEPA requires a different result.

A 15/30-minute separation rule on the NS system would, at least on some of the line segments identified for such mitigation, make it impossible for freight trains and passenger trains to share the same tracks during periods of significant passenger use of the tracks. The problem would be particularly acute on the Porter in Chicago route, over which significant Amtrak operations are conducted.
4.3 Selection: Railroad/Highway At-Grade Crossings

The 1 DDS reviews of grade crossing safety have some useful information for consideration, by state Department of Transportation (DOTs) but it is otherwise seriously flawed. More importantly, the DDS is in direct conflict with federal statute and daily engrained practices accepting the state DOT's primary responsibility for highway-related crossing warning systems. In doing so, the DDS would duplicate federal authority and well-established methods and processes for mitigating any potential grade crossing safety impacts. Rather than requiring mitigation based on flawed and misapplied data and results available to determine if a crossing needs an upgrade

The requirements of the DDS will promote states' discretion to select the best method for ranking crossings as their state for further analysis. The DDS then permanently leaves direct from what is intended and intended to serve only as a preliminary ranking method to a mitigation requirement, ignoring the critically important analysis by state DOTs of state, local and on-specific considerations. Such state analysis is critical to determine whether any upgrade to a warning device is in order and, if so, the best type and design of the upgrade. The DDS has specified installation of some devices which have not been sanctioned by the Manual of Uniform Traffic Control Devices and which are being used only on an experimental or tested basis in carefully selected locations. These DDS recommendations were apparently made without any site evaluation to assess the upgrade would be a safe alternative or as an extension to the specified crossings. The DDS also recommends upgrades to numerous grade crossings where the specificity upgrades have already been made, and at others where the specified upgrades have already been funded and scheduled. This reorders the need for these issues to be addressed by the state DOTs' exchanges in consultation with the railroads.

The DDS requires the use of the D.O.T. Accident and Severity Prediction Formulas to identify crossings which it believes should be upgraded. NS believes that SEA has missed the formula for an unintended purpose. The primary role of the formula is not to help state DOTs rank crossings and to identify crossings that potentially need safety improvements. In short, the formula simply identifies crossings for further evaluation. The formula is not intended to be used, as the DDS has done, as the sole basis for determining the need to upgrade the warning device at a crossing. Application of the formula is part of the process used by state DOTs, which take into account: "other site factors (including completion of field investigations)" that may influence accident rates. Only after the full process is completed can an informed judgment be made on whether the warning device is a crossing should be upgraded. The DDS does not indicate that field investigations were completed, that FRA data were verified, or that the appropriateness of proposed upgrade measures was evaluated. Because these steps were not conducted as part of the analysis, the conclusions and recommendations for mitigation are largely unsubstantiated.

After careful review and analysis, NS believes that 34 of the 44 crossings recommended by SEA for permanence upgrade should not be dropped from consideration for such upgrades based on one or more of the following reasons:

- They do not meet the DDS Category A or Category B significance criteria using 1991-1995 accident histories.
- They do not meet the DDS Category A or Category B significance criteria using 1992-1996 accident histories.
- The upgrade device has not already been installed or is already scheduled and funded for construction.

4.3.1 Display of a Tall-Free Number

The DDS recommends that NS install emergency information signs that prominently display a toll-free telephone number and a unique crossing number at all grade crossings with active warning devices. In addition, SEA recommends that NS provide 24-hour, seven-day-a-week staffing to respond to calls to the toll-free telephone number. NS has already, independently of the proposed Transaction, equipped all of its public crossings and certain private crossings with such signs. All crossings, public or private, with active warning devices are equipped with signs asking the public to report signal malfunctions to a toll-free number. These signs are located on the signal mast, and, where applicable, on the grade. Passive crossings (including marked private crossings) have a sign, measured from each roadway pole, urging motorists to report a stalled vehicle blocking a crossing or other emergency to the same toll-free telephone number. All calls are received at personnel at NS Police Communications Center, which is staffed 24-hours a day, seven days a week.

NS concurs that this is a prudent action. Upon approval of the proposed Transaction, NS will install signs that display a toll-free number and a unique crossing number on all Current public or grade crossings allocated to NS within two years following the closing date. Further, NS and CSX will coordinate with the Council Shared Assets Operator to ensure that a similar program is implemented within the Shared Assets Areas, within the same time frame.

4.3.2 Discretion of Analysis Method

For individual grade crossings, SEA has proposed mitigation for upgraded warning devices at high-speed crossings based solely on the outcome of an analytical method used to model potential risk of safety impacts. The analytical method part of a procedure developed by the U.S. Department of Transportation and published in a document titled "Highway Crossing Resource Allocation Procedure - User's Guide, Third Edition, August 1987." The part of the procedure used by SEA is called the DOT Accident and Severity Prediction Formula. The formula produces the number of accidents and casualties at a crossing based on data on the characteristics of the reported collision history for the crossing which is obtained from FRA's crossing inventory and collision files. The data is prepared on an annual basis after all the information from the previous year has been incorporated into the files.

The DDS has used the D.O.T. Accident and Severity Prediction Formula for a non-targeted purpose. The Highway Crossing Resource Allocation Procedure clearly states that the primary role of the formula is to rank crossings by number of predicted accidents in order to identify crossings that potentially need safety improvements appropriate to state-wide needs. The procedure is not intended to single out crossings on a national basis without considering the many other factors, including criteria appropriate to the individual state, which may influence accident rates.

Further, the federal regulations do not rule a particular hazard ranking formula, but instead leave it to each state to select a formula best suited to its needs. Thus, decisions at grade crossing upgrades are made by each state applying its own criteria, which may differ from criteria used in other states. This is consistent with the federal scheme for state highway authorities to utilize their expertise to improve crossing safety within their borders.

The Federal Grade Crossing Program is based on the premise that a state’s traffic engineers, who have been making similar judgment on implementation of grade crossings throughout the state for many years, have much higher degree of expertise in traffic control than the federal road. In this manner, it can be ensured that the crossings which the state deems most hazardous are upgraded before crossings which are deemed less hazardous, and that the state's determination of relative hazard is based on a hazard ranking formula chosen by the state.

The formula used in the DDS is part of a DOT procedure referenced in the "Rail-Highway Crossing Resource Allocation Procedure User's Guide, Third Edition" which states:

"Results of the DOT Procedure, findings of the diagnostic team, inclusion of any state warnings, and the judgment of state and local officials should all be considered before final improvement decisions are made" (emphasis added).

There is no indication in the DDS that a diagnostic team evaluated the crossing sites and the proposed mitigation or that the appropriate state agencies were involved in the decision-making process.

A diagnostic team, consisting of experts with knowledge of local and state-wide needs, would conduct a field investigation to review the accuracy of the input data. The FRA acknowledges that its crossing inventory database contains errors due to keypunch and submission errors. Thus, the DDS should not use the Drainage Procedure. The grantee also needs to examine other critical factors that are not taken into consideration with the DOT Accident Prediction and Severity Formulas, and which can only be examined by a field investigation. Examples of these factors include: sight distance, roadway geometry, highway congestion, local topography, frequency of high-occupancy vehicle, and frequency of mass transit service. Diagnosis team can determine record non-effective improvement document for particular crossings where data from FRA files is found to be incorrect. The revised results obtained by the diagnostic team can then form a useful basis upon which state and local officials can finalize crossing improvement programs.

4.3.3 Four-Quadrate Gates and Median Barriers

The DDS has proposed mitigation including the installation of four-quadrant gates and median barriers for certain NS crossings in Indiana, Pennsylvania, and Virginia and Ohio. SEA's mitigation proposal appears to be based solely on the outcome of the DOT Accident and Severity Prediction Formula, without involvement of state and local officials or diagnostic review by such officials. The DDS should consider the implementation of four-quadrant gates and median barriers not currently approved by the FRA in the Manual of Uniform Traffic Control Devices (MUTCD). The MUTCD places the responsibility for the design, placement, operation and maintenance of traffic control devices with the governmental body or official having jurisdiction. In virtually all states, traffic control devices are required by statute to substantially conform to the MUTCD. Experimental devices such as...
four-quadrant gates and median barriers require a request for permission of engagement from the governmental agency or private toll facility responsible for the operation of the road or street on which the equipment is to take place.

Furthermore, in those instances in which four-quadrant gates and median barriers have been installed as an experimental basis, preliminary studies have been conducted first. Each such preliminary study involved an evaluation of the geometric features, road width, and other local conditions on a case-by-case basis. The study was identified if a need existed, and if so, what device was best suited to fulfill the need at any particular location. For instance, four-quadrant gates were used where roadway facilities over 20 feet wide and median barriers were only deemed appropriate where there was no road or driveway connections within 70-106 feet of the crossing.

### 4.2.4 Funding of Grade Crossing Upgrades

The DEIS is silent on funding for grade crossing upgrades and leaves unclear the mechanisms for ensuring the requisite construction and maintenance funding by state stakeholders. The proposed mitigation may thus be inconsistent with the mandate and the spirit of the national grade crossing safety program and with 49 U.S.C. 23046(a).

The assignment of the responsibility for grade crossing safety to governmental agencies has carefully evolved over many years. In the early 1960s, the Interstate Commerce Commission concluded:

_Highway users are the principal recipients of the benefits following from multipathway grade separations and from special provisions at rail-highway grade crossings. For this reason the cost of installing and maintaining such separations and protective devices is a public responsibility and should be balanced with public funds. The same is true of highway traffic devices._

These general approaches were adopted by the U.S. Congress in 1973 when it enacted 23 U.S.C. § 1304(a). The congressional mandate was implemented by FHWA’s requirements in 23 C.F.R. § 624.9 and in 23 C.F.R. § 646.210(a)(1), which reads as follows:

1. Projects for grade crossing improvements are deemed to be of no ascertainable net benefit to the railroads and there shall be no required railroad share of the costs.

### Table 7-4

<table>
<thead>
<tr>
<th>Project No.</th>
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<th>Status</th>
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<tbody>
<tr>
<td>IN 474214D</td>
<td>Project 050.0241 Add Gates</td>
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</tr>
<tr>
<td>OH-42321E</td>
<td>Project 050.0524 Add Gates</td>
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<tr>
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<td>Project 050.0243 Add Gates</td>
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</tbody>
</table>

### Notes

- **NS locations currently scheduled and funded:**
  - IN 474214D: Project 050.0241 Add Gates
  - OH-42321E: Project 050.0243 Add Gates
  - VA 468545S: Project 050.0243 Add Gates

When SRA performed its highway-at-grade crossing analysis, the most recent five years of accident history available was the 1991 through 1995 period. Accident history data for the period 1992 through 1996 subsequently became available. Applying the DOT Accidents Prediction and Severity Formula to the most recent data, several crossings in Table 7-4 do not exceed the DEIS Category A or DEIS Category B significance criteria (Table 4.4, 3.3.11 and 4.3.3). Based on analysis using this most recent accident history, the requirement to provide upgraded warning devices at the following crossings in mitigation, unless impacts should be delayed:

- IN 474599M
- IN 474214S
- IN 484218S
- IN 484229S

It is possible that utilizing the most recent accident history data for this analysis will result in additional crossings exceeding the significance criteria. In that event, additional crossings would be added to those brought to the attention of the state DOT

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The DEIS has failed to acknowledge the process which state authorities might follow to evaluate a hierarchy of options on a cost-effective basis. The first option is to close the crossing if it is deemed redundant and unsafe. A closed crossing eliminates the possibility of collisions; however, closing a crossing is not always possible because of high traffic volumes or a lack of alternative routes. The second option is the installation of additional passive devices such as stop or yield signs. The third option is the addition of flashing lights or flashing lights and gates. The fourth option, and by far the most costly, is to grade separate the crossing.

### 4.3.5 Suggested Revisions and Corrections to Table 7-4

The following inconsistencies illustrate the weakness of the DEIS’ use of the FRA formula to require specific mitigations:

NS reviewed the proposed mitigations in DEIS Table 7-4 at 7-26 to 7-53 and has identified thirteen crossings apparently inadvertently included in requiring mitigations. Three of these have been revisited and are reported in Attachment B-7 of the DEIS do not have accident prediction values that meet the DEIS’ proposed significance criteria of an increase of one accident every 20 years for a Category A crossing or an increase of one accident every 10 years for a Category B crossing (see Tables 4.3.1, 4.3.2, and 4.3.3). These crossings are as follows:

- IN 484214S
- IN 484229S
- IN 484221E

There are also several NS crossings included in DEIS Table 7-4 that already have upgrades completed. The installed devices merely exceed the mitigation recommended by the DEIS. Also, the appropriate public agency with jurisdictional authority has scheduled improvements at several other locations that have been included in Table 7-4. These crossings are already funded and are due to be constructed within the next six months under the respective agency’s grade crossing program. These crossings should be removed from Table 7-4.

- NS locations where upgrades are already installed:
  - IN 474214D: Project 050.0241 Add Gates
  - OH-42321E: Project 050.0243 Add Gates
  - VA 468545S: Project 050.0243 Add Gates
In sum, a review of the 44 NS highway/rail grade crossings where the DEIS proposed permanent warning device upgrades shows that 34 of them should not be included in Table 7-4 because of one or more of the following reasons:

- They do not exceed DEIS Category A or Category B significance criteria using the 1991 through 1995 accident histories.
- They do not exceed DEIS Category A or Category B significance criteria using the 1996 accident history.
- The upgraded device has already been installed.
- The upgraded device is already scheduled for construction.

4.3.6 Responsibilities and Jurisdiction for Upgrading Grade Crossing Safety Devices

The DEIS specifically states in Section 7.2.3.8 at 7-15 and Table 7-4 at 7-26 to 7-31, "CSX and NS shall upgrade warning devices at 118 highway/rail grade crossings in the States of Illinois, Indiana, Kentucky, Maryland, Michigan, New York, Ohio, Pennsylvania, and Virginia, as listed and specified in Table 7.4." This statement implies that NS has the authority to determine need and selection of traffic control devices. The Manual of Uniform Traffic Control Devices (MUTCD) Section A-5 and Section 6A-1 places this responsibility on the public agency with jurisdictional authority. While NS should report crossings that have the potential for increased accident probabilities due to a change in operational or physical characteristics, and NS may recommend a particular warning device, it is ultimately the responsibility of the public agency to confirm the need and select the type of device. Under most circumstances, the public agency will fund the project and maintain the devices. The railroad's role is normally to coordinate the design and construction of the projects. Therefore, the table statements in Volume 4, Chapter 7.3, Section 7.2.3.8 at 7-15 should be revised to say:

"CSX has identified grade crossings in the States of Illinois, Indiana, Kentucky, Maryland, Michigan, New York, Ohio, Pennsylvania, and Virginia as listed in Table 7-4 that have been ranked using the DOT Accident and Severity Prediction Formula. CSX and NS should notify the appropriate State agency with jurisdictional authority of the potential of increased accident probabilities for these crossings due to changes in operational characteristics so that these crossings can be evaluated to determine if closing of the crossing or upgrade of the warning device is needed."

4.4 Safety: Rail Transport of Hazards Mater. Mode

The DEIS concludes that "[i]n general, the proposed Transaction should result in a slight safety improvement for rail transportation of hazardous materials and no significant adverse effects related to hazardous materials transport." DEIS at ES-19. NS concurs and expects the improvements to be greater than described in the DEIS as the best of NS and Conrail's practices are implemented system-wide. The DEIS recommends mitigation for 29 NS and 4 Shared Assets Areas rail line segments based on expected increases in hazardous materials traffic.

NS concurs with the large majority of these recommendations as prudent, but has concluded that certain aspects of the analysis and certain recommendations are unreasonable or impractical and should be amended. Recommendations that could promote implementation of the Operating Plan, such as requiring implementation of DOT-55B guidelines to increase hazardous materials traffic on a rail line segment, are neither justified nor reasonable. The Board is obligated, as discussed in Section 2, to balance adverse environmental effects against offsetting positive environmental effects and, importantly, non-environmental public benefits to the Transaction. The recommendation that would establish a permanent new "rule" requiring drills or mock-up simulations on some rail segments should have a more rigorous process to allow those lines to be reviewed and possibly re-opened for rail line segments after the first three years. The recommended adoption of a Failure Mode and Effects Analysis (FMEA) is aimed at pre-existing conditions and not controlled by the DEIS conclusion that yard activity is expected to decrease as a result of the Transaction. Each of these topics is discussed in more detail below.

Safety, including safe transport of hazardous materials, is Northern's highest priority. Thisulfing commitment, which goes beyond compliance with existing regulations and accepted industry practices, has molded the NS industry-leading safety performance. NS is dedicated to being a responsible member of the communities it serves and is also motivated by the need that safety is good business. Simple pre-accidents are both damaging and expensive, and NS is devoted to preventing these. NS participates in many voluntary programs such as the guidelines of AAR Circular No. OT-55B, "Recommended Railroad Operating Practices for Transportation of Hazardous Materials." Responsible Care®, and the North American Non-Acids, Railers (OAR) Program. The insertion of such programs is to voluntarily reduce risks, improve railroad performance, and thus to allow the need for even more government regulation. These programs have been effective at reducing risks through innovative approaches. It is important that these efforts be encouraged and that Applicants retain...
the flexibility to continue to seek improvements. Recommendations in the DEIS should be considered in this context.

NS is committed to improvements it expects to be effective and concise with a number of the recommendations presented in the DEIS. Many of these recommendations relate to practices which have already been voluntarily implemented by NS, and therefore are not required as a negotiated condition. In some cases, there are established, cooperative mechanisms in place for developing new rules or standards. These mechanisms involve the participation of NS and other railroads and effective use of their tremendous reservoir of experience and talent. NS only objects to DEIS recommendations that may create barriers without commensurate safety benefits and recommended requirements where existing industry practices already address the issue.

4.4.1 Key Route Requirements

The DEIS applies the definition of a "key route" from OT-55B as a significant criterion when hazardous materials traffic has increased from below to above 10,000 hazardous materials car train per year. A new route segment becomes a key route. NS notes that this is an appropriate threshold and has itself adopted a stricter threshold of 9,000 car loads. NS supports the use of the DEIS recommendation that NS must meet "key route" requirements on new key routes and that these existing standards and practices mitigate potential risks. However, as these industry standards are revered and improved, NS should retain the flexibility to adopt updated practices.

In addition to the OT-55B standards, NS is committed to fulfill regardless of the Transaction, the DEIS recommends four additional requirements for "new key routes." The first is that, if NS has more stringent requirements than the provisions of the AAR "Key Routes" and "Key Trains" methodologies, NS shall comply with its own requirements. NS does have more stringent requirements and will comply with them. However, NS objects to its proactive responsibility being established as a condition by the STB. The actions required would not apply to other railroads and thus would create an inappropriate double-standard. Further, it could unsettle previous NS practices aimed at further improving safety performance. The recommendation to require Applicants, as a condition, to comply with their own more stringent "key route requirements" is neither necessary nor appropriate. NS recommends it not be included in the FEIS other than to acknowledge that NS has no less stringent requirements than which it will voluntarily apply.

The second additional DEIS recommendation is that NS implement the OT-55B requirements geared to increasing hazardous materials traffic on these lines. NS does not believe that such a condition is warranted because it is already a matter of practice to the industry. The second additional DEIS recommendation is that NS implement the OT-55B requirements geared to increasing hazardous materials traffic on these lines. NS does not believe that such a condition is warranted because it is already a matter of practice to the industry.

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The third additional DEIS recommendation is that NS implement the OT-55B requirements geared to increasing hazardous materials traffic on these lines. NS does not believe that such a condition is warranted because it is already a matter of practice to the industry.

The fourth additional DEIS recommendation is that NS provide a 24-hour toll-free telephone number to all emergency response organizations for each community located along "new key route" and "existing key route" line segments. NS believes that is a prudent recommendation and will provide such a phone number to all community organizations, that will provide to each county, for distribution to LEPCs, a toll-free number for the NS Police Communications Center in Roanoke which can immediately access all NS dispatch centers. Local emergency response personnel would quickly obtain information regarding the transport of hazardous materials on a given train and appropriate emergency response procedures in the event of a train accident or train-related hazardous materials release.

Section 127 of SARA Title III exempts transporters from all provisions of the statute, including the requirement to coordinate with the LEPCs, except for the emergency notification requirement for spills set forth in Section 304.

The DEIS recommends certain requirements for rail line segments on which hazardous materials rail car traffic would double and exceed an annual volume of 20,000 cars per year as a result of the Transaction. NS concurs with the DEIS that this represents a significant change in hazardous materials traffic and that additional efforts are reasonable to increase the preparedness of local emergency response organizations. NS concurs with the recommendation to provide emergency response planning information in affected counties as described above in Section 4.4.1 for new key routes.

The DEIS also recommends that for line segments which exceed this higher threshold, NS shall implement a real-time or desktop simulation emergency response drill with voluntary participation of local emergency response teams at least once every two years. NS concurs that it is reasonable to conduct such drills within two years of Day One for rail line segments which exceed the threshold in order to coordinate and educate these local emergency response organizations. However, the recommendation in the DEIS would appear to be a permanent condition without any "sunset" provision. It would also create a double-standard because the requirement would not apply to existing rail line segments on which hazardous materials traffic currently have as much or even more hazardous materials traffic. It would thus have the effect of penalizing without the benefit of the cooperative and established rulemaking or standards setting process. The fact is, NS conducts drills already should and continue to be allowed to prioritize and schedule such drills as it does now in cooperation with state and local emergency response organizations. This recommendation should be modified for NS to conduct one such drill for each line segment exceeding the threshold within two years of Day One. This will appropriately "bring up to speed" local emergency response teams on these line segments, after which time these may be subject to the same NS management practices as other segments with a similar hazardous materials traffic levels.
The DEIS determines where grade separations would be necessary due to the high frequency of traffic incidents. NS believes that these improvements will reduce traffic delays and improve safety. The DEIS recommends that NS establish a forms, Failure Mode and Effects Analysis (FMEA) Program, to identify and mitigate the potential impacts of grade crossing delays. The FMEA Program will be used to evaluate the potential impact of various maintenance and operating procedures on traffic flow and to determine if any changes are necessary to minimize the impact of grade crossing delays.

The DEIS recommends that NS establish a forms, FMEA Program, to identify and mitigate the potential impacts of grade crossing delays. The FMEA Program will be used to evaluate the potential impact of various maintenance and operating procedures on traffic flow and to determine if any changes are necessary to minimize the impact of grade crossing delays.

As an example, the DEIS evaluated the potential impact of grade crossing delays on a system-wide basis, it is impossible to predict actual delays that would occur as a result of Traffic-related changes in traffic flow. However, the DEIS recommends that NS establish a forms, FMEA Program, to identify and mitigate the potential impacts of grade crossing delays. The FMEA Program will be used to evaluate the potential impact of various maintenance and operating procedures on traffic flow and to determine if any changes are necessary to minimize the impact of grade crossing delays.

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crossings. The HCM defines level of service criteria for signalized intersections in terms of the average stepped delay per vehicle for a 15-minute analysis period. Delay at signalized intersections can be measured in the field using procedures contained in the HCM. These HCM procedures are complex empirical equations that are dependent upon a number of variables such as the quality of progression, the cycle length, the "green ratio", and the volume to capacity ratio. These equations are only approximate and have little or no relevance to highway/rail at-grade crossings. These procedures are inappropriate to estimate delay impacts of grade crossings.

Traffic signals and highway/rail at-grade crossings differ because traffic signals continuously operate in uniform cycles (red-green phase changes) throughout the majority of the day as opposed to intermittent crossing events at highway/rail at-grade crossings. Also drivers do not have the same expectations from different types of warning devices. For instance, the HCM recognizes different thresholds between signalized road intersections and road crossings: only proceed or stop signs. Drivers would reasonably expect longer stop signals at highway/rail at-grade crossings than for signalized intersections. Therefore, LOS as defined in the HCM for signalized road intersections cannot be directly applied to highway/rail at-grade crossings.

The equation used in the DEIS to decide LOS at highway/rail at-grade crossings is found in DEIS. Appendix C-13 as Average Delay for All Vehicles. The equation over-simplifies a very complex traffic operation by making several general assumptions. For instance, the equation assumes that the period of critical delay at a crossing occurs during the peak hour of vehicular delay (i.e. during rush hour), the arrival rate of traffic is spread evenly throughout the day, and vehicles arrive uniformly throughout the time blockage period. The equation also assumes that all trains are the same length and travel at the same speed through the crossing.

The flawed equation used by the DEIS to estimate at-grade crossing delays has resulted in overestimates of projected increases in average delay per vehicle at crossings. At two crossings (746000 and 4740001 in Alexandria, IN) for which the DEIS recommends that NS construct crossings by the community, the DEIS's equations estimate a critical time of 33 minutes. NS has used a more appropriate equation to calculate the delay incurred. The DEIS reports the delay increases to be 2.16 minutes and 1.64 minutes, respectively. NS alternative equation shows a much lower delay increase of 0.72 minutes for each crossing. While NS acknowledges this would not exceed the NS second criterion proposed in the DEIS, this demonstrates the DEIS calculations overestimated these potential delays by over 100 percent. NS recommends use of the correct equation:

\[
\text{LOS} = \frac{\text{signalized intersection delay}}{\text{vehicle travel time}}
\]

4.8 Transportation: Navigation

The DEIS evaluated a total of 13 movable bridges on NS and Csx line - m1uys systemwide where Truck Traffic Management, Inc. projects are proposed to move or exceed the Board's thresholds for evaluation. SEA determined that the U.S. Coast Guard has jurisdiction over these movable bridges and that, in accordance with U.S. Coast Guard regulations, recognition was in place. Therefore, the DEIS concludes that there are no system-wide or site-specific adverse impacts on navigation, including services to coastal and interior ports. Norfolk Southern concurs with this conclusion. Conrail, CSX, and Norfolk Southern together serve a combined total of 17 ports on the Atlantic and Gulf coasts, and 27 ports on the Great Lakes and inland waterways. Service to these ports will be maintained and enhanced by the Central Transaction.

The overriding impact of the Transaction on energy consumption is the decrease in annual diesel fuel consumption resulting from truck-to-rail diversion - a net annual decrease for NS and CSX combined of approximately 135.6 million gallons, according to the DEIS. Both the methodology employed in the DEIS for evaluating fuel savings and the application of that methodology are reasonable and appropriate. Fuel consumption is the most dependable indicator of the net positive impact expected from the Transaction on energy resources.

The DEIS further projects a total Transaction-related net annual reduction in fuel consumption of 80.1 million gallons. This is clearly a significant environmental benefit and should be measured as such in the DEIS. Nevertheless, that figure greatly understates the actual benefits, for which NS believes is more accurately reflected by the truck-to-rail diversion impacts discussed above. The DEIS arrives at the 80.1 million gallon reduction after a confusing and misleading discussion which concludes by: ex-conclusively subtracting 33.5 million gallons - from the 135.6 million gallon net decrease in annual rail diversion, DEIS 6-47. The DEIS incorrectly calculates that an annual increase of 33.5 million gallons is the "change in fuel consumption from factors other than...". The DEIS here uses this calculation on the rail traffic data and Csx projects that increased in rail traffic greater than those associated with truck-to-rail diversions have no effect on or decrease on other rail or transport.

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SEA relied on these overestimates of delays when proposing that delays be mitigated in Lafayette, Indiana; Erie, Pennsylvania; and Alexandria, Indiana.

System-wide, the assumptions made within the correct equation may be acceptable and the results may provide some useful screening of potential delay impacts. However, before recommending a final mitigation, a site-specific analysis should be done. Such an analysis would provide more accurate data and would take into consideration actual site-specific characteristics and truck/rail traffic patterns.

Generic modeled calculations may be reviewed to be too conservative if a site-specific analysis determines, for example, that during the non-congested period of "volumetric traffic, no trucks block the crossing. Conversely, actual conditions may show that during the peak time interval, very few vehicles use the roadway. At the site-specific level, various combinations of train length, train speed, vehicle arrival frequencies, and lane configurations should be considered based on actual conditions to decide the critical delay period.

Therefore, SEA should only use the results of this equation to "rank" the crossings in terms of delay severity, similar to the way the Traffic Analysis Prediction Form is used to rank crossings for further evaluation of the need for warning device upgrades. After the crossings are ranked, state authorities should be notified that a change in the operational characteristics has taken place that may influence delay. The state authorities can then make their own determinations regarding the need and method for mitigation. The state authorities are in a better position to consider all the other factors that influence a grade separation project, such as evaluating whether alternate routes exist or determining the impact of purchasing additional right-of-way on adjacent land uses. NS recommends that the FEIS direct Applicants to consult with state DOT's about any potential grade crossing delay impacts rather than directing NS to participate in implementation of specific mitigation measures.

4.7 Transportation: Roadway/Track Safety

The DEIS considered the impact on local transportation systems of changes in truck activity at intermodal facilities, construction projects and abandonments. NS concedes that the methods, analysis and results are reasonable and appropriate. In the following discussion, NS is providing updated information for SEA to use in the final analysis for the FEIS.

The DEIS reports a new at-grade crossing would be constructed in Vermilion, Ohio. The DEIS recommends that NS fully fund the cost of raising Corn Road in order to create a level crossing. The DEIS concludes that there will be a large annual reduction in diesel fuel consumption and no adverse environmental impacts on transportation of energy resources or recyclable commodities in a result of the Transaction. DEIS 4-44. NS concurs with this observation but, as with other benefits of the Transaction, these substantial environmental benefits are undervalued in the DEIS. The net "reduction in fuel consumption is a worthy significant positive impact compared to other significant criteria in the DEIS. The fact that it is a positive impact does not diminish its value. Rather, the value of this benefit should be given appropriate emphasis in the Board's decision.

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The fact is that essentially all Transaction-related increases in rail traffic on NS and CSX lines occur beyond those associated with track-to-rail diversions would, but for the Transaction, be shipped on other railways or by other transport modes. The resulting decreases on other railways or other modes of transport have not proven feasible to model. However, it is obvious they will result in a net change in fuel consumption since railways are the most fuel efficient land-based method of transporting freight in the United States. Therefore, a conservative estimate would be to assume that Transaction-related net fuel changes associated with NS and CSX rail traffic decreases other than track-to-rail diversions would be zero.

NS recommends that the EIS adopt this reasoning and a methodology that Transaction-related net impact on fuel consumption is a net annual decrease of approximately 133,000 million gallons—a much larger benefit than the 150 million gallons stated in the DEIS.

The DEIS also analyzed proposed changes in operations at rail yards and intermediate facilities that could allow energy resources. Additionally, the DEIS considered the proposed Transaction's effect on the transportation of energy resources and recyclable commodities, and also considered the consumption of energy resulting from vehicular traffic delays at highway-rail grade crossings. The DEIS concluded that there would be no significant adverse environmental impacts on energy consumption, transportation of energy resources, or recyclable commodities as a result of the proposed Transaction.

NS concurs that no significant adverse impacts are expected on transportation of energy resources or recyclable commodities from the Transaction, but urges SEA to recognize the proposed greater decrease in fuel consumption as a notably significant positive impact.

Air Quality

The analysis of air quality impacts in the DEIS is thorough and comprehensive. NS agrees that some of the details where the DEIS methods depart from SEA's analysis is a regional concern. Local control of particulate emissions in activity were compared to the stationary source thresholds as a screening method, then compared to one percent of the existing county emissions. If the increase from the Transaction was less than one percent of the existing county emissions, the change was considered insignificant. If the increase, however, exceeded one percent of the existing county emissions, the emissions were then analyzed in terms of regional or multi-county emissions changes. In some cases the emissions in a particular county exceed the one percent threshold. However, in no cases did it find that a particular community would be significantly affected by the Transaction.

NS concurs with this conclusion, wording however that establishment of local significance criteria, a practice commonly employed by SEA for prior transactions, is inconsistent with OTA's criteria. NS recommends further consideration of the implications of the recent OTA conclusions that suggest that local air emissions and significance criteria is no longer relevant when it is a system and regional issue.

Conclusions

The DEIS concludes there will not be a significant adverse impact on air quality resulting from the proposed Transaction either locally or system-wide. In fact, the DEIS finds there will be significant decreases in emissions, including reduction of over 4,500 tons of nitrogen oxides, over 4,000 tons of carbon monoxide and over 1,000 tons of volatile organic compounds as a "significant" air increase of $1 million per year of sulfur dioxide DEIS at 5%. For example, these reductions are expected to eliminate 100 major stationary sources (sources with nitrogen oxide emissions of 25 tons per year for seven acme nonattainment areas), or to removing 500,000 passenger cars from the road. The overall reduction in sulfur dioxide emissions represent the major impact of the Transaction on air quality and are a significant benefit.

As mentioned above in the discussion methodology, the DEIS presents a conservative analysis which does not account for all of the expected reductions in air emissions. A more representative analysis of system-wide air emissions impacts would be based on the track-to-rail diversions which is a key indicator of the air and fuel impacts of the Transaction.

Based on the same reasoning discussed above in Section 4.9 on fuel consumption, such an analysis would result in estimated reductions in emissions over 60% higher than the DEIS has projected.

New locomotive emissions standards were promulgated by EPA on December 17, 1997 and are discussed in the DEIS. The new standards will provide further substantial reductions in the future. According to a U.S. EPA fact sheet on the new standards, the new emission standards will reduce nitrogen oxide emissions from locomotives by nearly two-thirds and hydrocarbons and particulates by half. This would result in an additional 30,000 tons per year reduction of nitrogen oxides emissions expected in 2005, and would be the equivalent of removing nearly 20 million passenger cars from the road.

Mitigation

The DEIS recommends that the railroads should use "best management practices" to minimize fugitive dust emissions that result from construction projects and associated activities. NS already employs standard best management practices during construction activities to minimize fugitive dust, and is committed to using such practices to minimize dust during Transaction-related construction and associated activities.

Noise

The DEIS provides a comprehensive, albeit highly conservative, analysis of potential noise impacts, and concludes that only a few rail segments are likely to have significant adverse noise impacts. NS concurs with the noise impacts significance criteria applied in the DEIS and the noise considerations recognized for these noise by the DEIS. The general approach for modeling noise is appropriate for use as a screening tool. However, the DEIS applies a CSX noise model based on CSX noise measurements of CSX and Central trains and ignores equivalent data to noise measurements of NS trains. This information on measured NS train noise levels was supplied to SEA and to SEA's consultants. The data demonstrate that NS trains, which are typically shorter and operate at slower average speeds, are quieter than the DEIS suggests. SEA's exclusion of the CSX model and measurements significantly overestimates noise levels on NS lines, as has been demonstrated by current field measurements. Further, all of the noise measurement models were intentionally developed to be conservative, the models should only be used as a screening tool to identify areas of potential concern for more-specific analysis. The DEIS also over-generally and unnecessarily defines a "preferred" recommended emissions approach. Appropriate training on, if warranted, should be only determined following

Noise Impact on the Environment

The DEIS evaluated both system and county-wide emission increases and decreases from each rail line segment, rail yard, and intermediate facility, as well as emission changes due to track-to-rail diversions, rail-to-rail diversions, and emissions from utilizing vehicle grade crossings. SEA's independent analysis deviated from Applicant's method in selection of certain emission factors. NS review indicates the factors and methods used in the DEIS are sound. This is consistent with the October 24, 1997 letter from SEA to EPA which discusses SEA's methodology and EPA's view that the methodology used is sound and conservative.

The DEIS analysis does, however, suffer from the same bias discussed above in Section 4.9. That is, for the track-to-rail diversions, the air quality analysis includes all the expected NS and CSX rail traffic increases but does not include offsetting traffic decreases for other railways and transportation modes that currently carry, that freight. This omission is not through oversight, but because it has not proven feasible to model the reductions in detail. However, it is expected that the offsetting air emissions benefits from decreased traffic on other railroads or modes can be expected to be approximately the same magnitude as the air emissions increases from the shift of traffic to NS and CSX. As with energy impacts, analysis of the track-to-rail diversions must accurately reflect the net impact on air quality that can be expected from the Transaction.
The DEIS presents a noise analysis of local adverse impacts where railroad operations are expected to increase on rail line segments, area-related facilities and rail yards. The DEIS only considers potential adverse local noise impacts. Essentially absent in any discussion of the noise impacts is the question of what will be done to reduce the noise levels once they are measured. NS recommends the DEIS at least examine these reductions that would be possible in order to assess what the actual impacts will be.

The DEIS appropriately concludes that safety considerations necessitate the sounding of locomotive horns ('conspicuous and take on us') over certain areas. This is consistent with FRA regulations which specify horn locations. All laws which require horns to be sounded at grade crossings to provide for public safety. Therefore, for areas near grade crossings, the DEIS does not consider noise mitigation to be feasible. NS concurs with the conclusion that safety considerations necessitate the sounding of horns and the presence of public safety considerations and the existing FRA regulations.

NS concurs that the significant criteria of 70 dBA and an increase of 5 dBA, applied in the DEIS for usability and facility noise is reasonable and appropriate.

4.11.1 The DEIS Falls to Apply NS Trade Noise Data to NS Traffic:

The DEIS analysis of noise levels and contours related to NS rail operations purposes to be based on noise levels which were based on measurements of NS trains. In fact, the DEIS impact analysis is consistent with use of a CSX noise model based on measurements of CSX and Conrail trains. As demonstrated by field measurements, this results in a significant overestimation of noise impacts on NS lines.

NS recognizes the validity of the general approach applied within the DEIS - applying noise models to project potential increases in noise levels as a screening tool to determine where there might be a significant noise impact. NS also agrees that it is appropriate to be conservative in applying such a tool to guard against potential impacted areas. Thus in the reasons NS applied a conservative model in the Applicants' Environmental Report (ER) - to avoid underestimating potential noise impacts. As discussed in Appendix NS-3 of these comments, NS

appropriate as a screening tool for US trains since it contains - accurately actual noise impacts from passing trains.

The ThorMon Acoustics noise model was based on noise measurements made as an open-top field area as North Carolina observers to NS track over a four-day period. There were no noise levels reported to shield (above or adjacent) noise. There were, however, no noticeable sources of background noise or non-railroad noise. The model included a factor for background noise inputs, but for all recording early morning hours, the background noise levels would be very low (50 dBA during daytime and 60 dBA during nighttime hours). Although standard shielding equations predict shielding of up to 10 dBA from structures between the train source and the receptor, the ThorMon Acoustics model calculated the maximum shielding attenuation in the model to 5 dBA, and only if structures parallel to the track occupied at least 65 percent of the total distance along the track. This very conservative shielding assumption ensures the model provides a conservative, i.e., lower, estimate of noise levels. In addition, the quiet flat rail noise measurements made in North Carolina accentuate the effects of train noise when compared to urban or even train areas where the model is applied to determine impacts on receptors. The ThorMon Acoustics model was intentionally made so conservative.

4.11.3 Validation of the NS Model as a Conservative Screening Method

Some models are better than others, but a model is only as good as the noise source and the area classified as a screening tool. The results are presented in noise levels in Appendix NS-3 and summarized below.

In December 1997 and January 1998, noise measurements were performed by Wake Laboratories on North Carolina rail segments in Cleveland, Belhaven, and Clayton, Ohio and Fort Wayne and Lafayette, Indiana. The measurements were made in a manner as to (1) measure the existing North Carolina noise model was conservative of C level and (2) perform on-site specific modeling at air. Some of the measurements include horn and bell noise, which

used a model developed by ThorMon Acoustics based on actual field measurements of NS trains. These measurements determined that the wayside SEL (the standard Exposure Level) 100 dBA from the track where the train passed was 94.6 dBA for the representative NS train.

The train noise model used in the DEIS is apparently the CSX model from the ER. This CSX model is based on CSX field measurements of CSX and Conrail trains. As documented in the ER, Volume 6A, Appendix B, field measurements found CSX trains to be louder than other NS or Conrail trains.

Although the DEIS states that SELs of 98 to 108 dBA wayside noise and 108 to 118 dBA crossing noise were used to determine contours to NS trains (DEIS, Appendix F, pages F-3), in fact the contours presented in the DEIS are consistent with SELs of 100 dBA (wayside noise) and 105 dBA (grade crossing noise). Although this difference appears small, the CSX model represents approximately 50 percent higher noise energy, from a sound source than the ThorMon Acoustics model due to the inappropriate nature of SEL. The wayside noise level of 100 dBA in the DEIS was apparently derived by applying a model based on CSX measurements of CSX and Conrail trains to NS trains, which operate at slower speed and shorter train lengths than CSX trains. The noise in grade crossings (105 dBA) in the DEIS was apparently determined by adding the noise (100 dBA) to the horn noise (only 10.5 dBA).

Application of the incorrect SEL for NS trains in the DEIS results in significantly increased L50 durations from the rail line over the already conservative model results based on noise measurements of NS trains. The measurements of NS trains and the ThorMon Acoustics model were presented in detail in the noise methodology in Appendix B of Applicants' ER. The CSX model was presented in the same Appendix. The data for NS trains was apparently reviewed applied by the DEIS not incorporated into a unified model for use in the DEIS. The DEIS does not indicate any attempt to validate the assumptions that the CSX model is a better predictor of NS wayside noise than the NS measurements and models.

4.11.2 The NS Model is Conservative.

NS and its consultant, ThorMon Acoustics recognized the need for a conservative model to avoid any possibility of underestimating potential noise impacts. The model was based on real-world measurements of NS trains, but conservative assumptions were made concerning shielding and background noise, effects which reduce the actual impacts of a noise source. Subsequent field measurements have confirmed that the ThorMon Acoustics model is conservative and

NS has acknowledged should not be considered for purposes of determining significance of impact or mitigation. Results are shown below and in Table 4.1.1.

<table>
<thead>
<tr>
<th>Location</th>
<th>Distance (ft)</th>
<th>Grain Counting</th>
<th>High Value (SEL)</th>
<th>ThorMon Acoustics</th>
<th>Percentage-Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belhaven</td>
<td>0</td>
<td>Yes</td>
<td>100.2</td>
<td>102.3</td>
<td>69%</td>
</tr>
<tr>
<td>Cleveland</td>
<td>0.5</td>
<td>Yes</td>
<td>88.9</td>
<td>92.2</td>
<td>15%</td>
</tr>
<tr>
<td>Clayton</td>
<td>1.5</td>
<td>Yes</td>
<td>84.6</td>
<td>88.3</td>
<td>21%</td>
</tr>
<tr>
<td>Clayton</td>
<td>2.5</td>
<td>No</td>
<td>83.4</td>
<td>87.9</td>
<td>15%</td>
</tr>
<tr>
<td>Cleveland</td>
<td>3.5</td>
<td>Yes</td>
<td>87.4</td>
<td>91.3</td>
<td>9%</td>
</tr>
</tbody>
</table>

The measured SEL include horn + bell noise for Belhaven, Clayton and Cleveland. The measured SEL include horn + bell noise for Cleveland, Ohio. The measured SEL include horn + bell noise for Clayton, Ohio. The measured SEL include horn + bell noise for Belhaven, Ohio.

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Acoustics train noise model. In each case, the noise levels measured were lower than the NS model predicted. The Thomson Acoustics model overestimated noise levels at the three locations between 2-2.4 dB (0.6% too high to 6.1 dB (207% too high); the DEIS values would overestimate the actual values by approximately 4.6 dB (129% too high) to 7.7 dB (189% too high).

- Beavercreek, Ohio: In Beavercreek, Ohio, Wyle Laboratories performed noise measurements at three locations on an existing NS rail line segment. The Beavercreek noise measurements were taken over a three-hour period. Three train passes by noise measurements were made and subsequently compared to the Thomson Acoustics noise model predictions. For each site and train pass by, the measured noise levels were lower, i.e., quieter, than those predicted by the Thomson Acoustics model.

- Clyde, Ohio: Wyle Laboratories performed SEL noise measurements at three locations in Clyde, Ohio along NS Oak Harbor to Belleville line segment. Two train passes by noise measurements were made. The measured noise values were lower than those predicted by the Thomson Acoustics model predicted for each site and train pass by.

- Fort Wayne, Indiana: Wyle Laboratories performed SEL noise measurements at two locations in Fort Wayne, Indiana along an existing Norfolk Southern line segment. Three train passes by noise measurements were made. The measured noise values were lower than those predicted by the Thomson Acoustics model predicted for each site and train pass by.

- Lafayette, Indiana: Wyle Laboratories performed SEL noise measurements at two locations in Lafayette, Indiana along an existing NS line segment. One train pass by noise measurement was made at each location. The measured noise values were lower than those predicted by the Thomson Acoustics model predicted for each site and train pass by.

The comparison between Wyle Laboratories noise measurements and the predictions of the Thomson Acoustics noise model show that, in all cases, the Thomson Acoustics noise model overestimated the measured noise levels associated with trains operating on railroad tracks. The conclusion is that the noise levels measured in these locations are lower than those predicted by the Thomson Acoustics noise model, and modified levels should be used only as a screening tool to determine where additional site-specific measurements are indicated.

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4.11.4 Acoustic Shielding and Background Noise

The Thomson Acoustics and DEIS (CSS) models were not simultaneously designed with conservative assumptions concerning acoustic shielding and background (non-railroad) noise. The model output only contributes a fraction of the shielding examined by a Federal Highway Administration (FHWA) noise model. The measures suggested by Wyle Laboratories suggest that the full range of shielding from the FHWA model would provide a more accurate prediction of actual noise levels. Also, urban areas and areas with other noise sources have higher background noise levels that reduce the impact of train noise. Therefore, potential noise impacts are overestimated throughout the DEIS. Details are discussed in Appendix NS-3.

4.11.5 Exclusive Use of CSS Train Noise Levels for Shared Assets Areas

For the Shared Assets Areas, the DEIS apparently based noise projections solely on CSS model calculations for CSS's average train length and speed (102 dB for way-side noise and 112.4 dB for grade crossings [see DEIS Appendix F, Attachment F-1]). This only ignores the NS model for NS trains, it also ignores that the typical NS train operates at lower speeds and shorter length. NS recommends, the DEIS apply a weighted average SEL between CSS and NS trains for Shared Assets Area line segments since the Shared Assets Areas will have both NS and CSS trains.

4.11.6 Arbitrary Exclusion of Noise as a Potential Environmental Justice Impact

The DEIS applies a dual-standard for consideration of noise impacts in the discussion of Environmental Justice on these levels:

1. An advisarically restrictive noise contour is established and used to define the affected area within which the DEIS will address potential population characteristics for inclusion within the Environmental Justice category.

2. The DEIS eliminates three line segments with DEIS-designated environmental justice communities in potentially varying noise mitigation; however, the three segments fail to meet the DEIS established noise criteria for significance.

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4.12 Cultural Resources

The DEIS, in accordance with Section 106 of the National Historic Preservation Act of 1966, as amended, evaluated each proposed change in the construction and operation of the project by the UNCCADD. This process provides a structured way to identify, evaluate, and avoid adverse effects on cultural resources. In addition to DEIS's own analysis of potential impacts to cultural resources,
each proposed abandonment and construction action was coordinated with the State Historic Preservation Officer (SHPO) for additional review. The DEIS was amended by the January 12, 1998 Errata and the January 21, 1998 Supplemental Errata) concluded there are no adverse impacts to cultural resources along NS rail line segments from the Transaction.

NS concerned with the cultural resources evaluation approach and conclusions as presented in the DEIS (as amended by the two Erratas). During the implementation of the proposed abandonment and construction activities, NS will coordinate to the extent possible with the appropriate SHPOs to ensure that cultural resources are not adversely impacted by the Transaction-related activities.

During recent engineering studies on Corvair's Buffalo-Binghamton rail line (which will be operated by NS post-Transaction), a Corvair Bridge (No. 361.66) over the Genesee River near Portville, New York, was found to be near the end of its useful life. The bridge is an 819-foot long steel viaduct carrying a single railroad track, and is currently rated for 286 lb. long term traffic at 10 mph due to its condition. The viaduct was on six steel towers that were constructed in 1875. The design and size of the current structure preclude repair or renovation without replacing the entire bridge. NS is conducting further studies and working with federal state and local authorities, including consultation with the State Historic Preservation Officer, to evaluate alternatives to replace the existing bridge. The anticipated bridge replacement is in response to an existing condition, and is not related to the Transaction. NS will replace the bridge in full compliance with all applicable federal, state and local laws and regulations.

4.13 Hazardous Materials and Waste Sites

The DEIS evaluated the potential for the Transaction to affect existing hazardous waste sites within 500 feet of the Transaction-related rail line segment or abandonment activities. Investigation and cleanup of hazardous waste site during construction or abandonment activities is coordinated by several federal and state agencies and regulations. The DEIS therefore concluded that no further evaluation was necessary, and that additional mitigation measures were not warranted. NS concerns with this conclusion. NS continues to coordinate with federal and state agencies as appropriate to ensure all hazardous waste sites where NS has responsibilities are addressed in compliance with applicable laws and regulations, and in a manner protective of human health and safety and the environment. It will continue to do so. NS does point out, as a general rule, some sites only involve the requirement of the appropriate state agency(ies) while others may require the involvement of U.S. EPA alone or, at times, just State and EPA involvement depending on the constraint or amount of contamination described. Applicants

resources (data collection, field review, and evaluation of impacts). The methodologies are applied appropriately and the findings in the DEIS are well-founded except for the uncertain methodology for the distances used to identify biological resources described in Section 7.4 and the survey recommendations at Vermilion discussed above.

NS concerns that the proposed Transaction will not result in significant impacts to natural resources.

4.15 Land Use/Environmental

The DEIS addresses land use and socioeconomic issues directly related to changes in the physical environment from the proposed Transaction-related rail line segment constructions and abandonments. The DEIS concludes there are no significant adverse effects or land use or socioeconomic results from the proposed Transaction. NS supports this conclusion. The DEIS conducted a thorough review of all "need-related" late segment constructions and abandonments for:

- consistency with local land use plans;
- effects on Prime Farmlands;
- consistency with State Coastal Zone Management Plans;
- need for relocation/development of any business or residence;
- consistency with local land use plans and other requirements if within Native American lands; and
- effects on jobs as a direct result of or related to changes in the physical environment.

Proposed abandonments were also evaluated for suitability for alternative public uses and/or real uses, and identification of alternative transportation modes for goods and services affected by the abandonment.

A few comments below offer clarification to the DEIS methodology and state-specific conclusions related to the Tolono, Illinois rail line segment construction and the Seneca Indian Nation/Northern Illinois Reservation in New York.

Tolono, Illinois: The proposed Tolono Connection involve the construction and operation of a new rail line extending from Benton Central (IC) and NS lines. The City of Tolono, Illinois identified a potential concern that the proposed NS construction should be given the feasibility they currently have to involve the most appropriate authority(ies) in clean water matters consistent with legal requirements.

4.14 Natural Resources

The DEIS addresses natural resources (resources and biota) for site-specific Transaction-related activities at rail line segment constructions and abandonments. SEA evaluated the use for the construction of the proposed NS connection at Vermilion, Ohio for its potential to impact natural resources. The DEIS at OHI-105 discusses the need to preserve and/or maintain the wetland area located south of the proposed Vermilion connection. SEA must maintain habitat for the endangered Indiana bat. However, a subsequent Errata to the DEIS (dated January 9, 1998, page 13) indicated the bat is not historically documented in Erie County. The DEIS indicated that Vermilion construction use was not identified any potential habitat for other threatened or endangered species. No other potentially significant natural resource impacts were identified, although the bald eagle was identified in the DEIS as a threatened species known to occur in Erie County.

Although the wooded area south of the Vermilion connection site will not be directly affected by the construction, the DEIS recommends that it conduct with the U.S. Fish and Wildlife Service (USFWS) and the Ohio Department of Natural Resources to determine the potential effects to any federally listed threatened or endangered species. Prior to initiating construction at the site, the DEIS at OHI-105 directs NS to conduct a survey to determine the potential presence of the Indiana bat and the bald eagle.

NS does not concur with the DEIS proposed mitigation. NS believes that since the wooded area will not be directly affected by the construction, a survey for the bat is not necessary. According to NS' preliminary correspondence with the USFWS, dated January 12, 1998, a survey for the Indiana bat may not be needed as the wooded area won't be affected by the construction. Also, based on the same preliminary correspondence, the USFWS indicates a survey for the bald eagle would not be necessary since the Ohio Department of Natural Resources maintains good records of the nesting locus of the nesting locus on existing NS land. Therefore, the proposed mitigation should be revised. (S foresee NS should contribute with the U.S. Fish and Wildlife Service and Ohio Department of Natural Resources prior to construction.

NS concurs with the DEIS' three-step process for evaluating water resources (map review and analysis, field reviews, and evaluation of impact) and for evaluating biological activity would denude Daggy Street and adjacent residential properties. This concern, expressed in comments by the City on the scope of the DEIS, was based on information within the Environmental Report which was incomplete. In a public meeting held to address the City's concerns, NS clarified that the construction of a Tolono Connection would occur entirely within the existing IC and NS rights-of-way and no additional land would be acquired for this construction.

The DEIS concludes:

- "Because the proposed construction would not require the acquisition of land outside the existing right-of-way, this activity would be consistent with the local land use plan."
- "...the land use within the existing right-of-way is railroad. Therefore, there would be no effect on prime farmlands in the area."
- "Based on the findings described above, SEA has determined that there would be no significant impacts to land use associated with the proposed action at Tolono so long as construction remains within existing railroad right-of-way. Because there are no significant impacts, SEA does not recommend mitigation."

However, in the next paragraph, the DEIS goes on to construct material and recommend mitigation. Specifically, the DEIS provides a preliminary recommendation which states "The Board states, in a condition for approval of the Transaction, that Norfolk Southern does not disturb Daggy Street or marginal properties of this location." DEIS at IL-46 through 49.

NS does not believe this recommendation is necessary nor is keeping with the conclusions of the DEIS. In effect, the recommendation seeks to mitigate a potential effect that is not proposed to happen and which SEA has determined is not an issue of concern. NS proposed construction activity at Tolono would not occur entirely within the existing IC and NS right-of-way and no additional land would be acquired for this construction. Further, NS has met with local officials to clear the misunderstand. Therefore, there is no impact to Daggy Street, and there is no need for a mitigation requirement.

Seneca Indian Nation, Canaan Reservation. New York. The DEIS departs from its usual methodology for land use and socioeconomic analyses by addressing Native American issues on the NS Ashland - Buffalo (N-070) rail line segments. The DEIS concludes that the N-070 rail line segments is projected to increase the transportation of hazardous materials from 7,000 carloads to 26,000 carloads per year. The DEIS recommends the following mitigation:
4.16 Attempting to Apply This Kind of Transaction the Executive Order on Environmental Justice and the Guidance and Methodologies Developed Thereunder by Other Agencies Presents Difficulties and Risks of Unfairness, Consequences, Which Councils Consultation.

The Executive Order on environmental justice defines its substantive standard as follows:

"Each federal agency shall conduct its programs, policies and activities that sub, socially affect human health or the environment, in a manner that ensures that such programs, policies and activities do not have the effect of excluding persons, including populations, that suffer from or have suffered persons (including populations) from determining under, such programs, policies and activities, because of their race, color, or national origin."

To achieve its objectives, the Executive Order urges Federal Agencies to conduct elaborate population demographic analysis for, "identifying and addressing, as appropriate, disproportionate, high risk, adverse human health or environmental effects" on minority and low-income populations. While the Executive Order mandates that independent agencies such as the Surface Transportation Board comply with the terms of the Order, the DEIS recognizes (at 3.4.6. note 4) that the Board is not bound to conduct environmental justice analyses, or to require mitigation on the basis of such analyses.

NS believes that the Board has always met the substantive standard of the Executive Order and can continue to do so through existing processes. However, the guidance and methodologies developed to date by other agencies, applying the Executive Order to very different types of proposed actions, were not designed for, and are not well suited to, a rail transaction of this kind. Attempting to apply such guidance and methodologies in this context, moreover, risks making unfair or unreasonable consequences contrary to those intended.

First, the proposed action at issue - the Board’s decision whether to approve this Transaction - does not present the potential for discrimination that the Executive Order was designed to protect against. This is not a situation in which certain communities might be excluded from participating in the environmental review process or otherwise receive less environmental protection. Notice of the proceedings and relevant information have been widely distributed everywhere where there could be potential environmental impacts from the proposed Transaction. SEA has undertaken a comprehensive analysis of potential environmental impacts system-wide and, at each point in the 44,000-mile system controlled by the Applicants. Minority and low-income communities have not been overlooked. Potential impacts in those communities have not been dismissed or created less seriously than potential impacts in other communities, because the DEIS evaluations of potential impacts and the criteria for analysis and for recommended mitigation have been applied evenly and uniformly system-wide. Population demographics have not been a factor in determining potential impacts or mitigation measures. Rather, the driving factors have been increases in rail traffic projected across the entire 44,000-mile system based on operational capacity and market demand. Where neutral criteria are being applied across the system, as in this case, additional demographic analysis is not necessary to ensure nondiscrimination.

Application of the Executive Order to this proceeding is not necessary to protect against discrimination by NS or CSX. The DEIS does not suggest that NS and CSX, in deciding how to route their trains, had any intent to discriminate minority or low-income populations. Nor could such a claim plausibly be made. The numerous complex factors which were taken into account in deciding how to route trains are detailed in the Operating Plans. The demographics of communities along the rail lines is not among them.

Moreover, orders or conditions based on incomplete or technically flawed environmental justice analyses could inadvertently create preferential treatment on the basis of minority status or income level. Nothing in the Executive Order requires or suggests preferential or unique treatment for minority and low-income populations.

The DEIS does not state why the Seneca Indian Nation requires additional outreach. However, NS supports community outreach efforts with the Seneca Indian Nation (and all communities) to ensure information on the Transaction is available to the affected public and the community is informed that it may participate in the EIS process.

4.16 Environmental Justice

NS strongly supports the objectives of inclusiveness and non-discrimination. However, the DEIS analysis of potential environmental justice effects of the Transaction is flawed and reflects a misapplication of usual environmental justice concepts. The analysis does not support additional mitigation or consider that populations served as in it would exceed the legal authority of the Board. Specifically, NS believes:

- There are substantial difficulties in attempting to apply the Executive Order on environmental justice and the guidance and methodologies developed thereunder by other agencies, to a transaction of this kind, which warrants caution.
- The Transaction will not have disproportionate effects on minority and low-income populations.
- Potential impacts would not be borne predominantly by minority or low-income populations.
- Effects on minority and low-income populations would not be more serious or greater in magnitude than on other populations.
- The Transaction will not have high and adverse effects on the "Environmental Justice communities" identified in the DEIS, disproportionately or otherwise.

methodologies developed to date by other agencies, applying the Executive Order to very different types of proposed actions, were not designed for, and are not well suited to, a rail transaction of this kind. Attempting to apply such guidance and methodologies in this context, moreover, risks making unfair or unreasonable consequences contrary to those intended.
migratory for—now-as a minority or low-income community compared to a non-minority or non-low-income community similarly situated with respect to the impacts. The recommendation in the DEIS for NS to enter into binding agreements for additional emissions with certain communities but not with minority or non-low-income communities similarly situated with respect to impacts is an example of preferential treatment not warranted under the Executive Order and its violations of its directive and spirit.

In an attempt to work within the framework of an Executive Order aimed at different kinds of transactions, the NSU's draft agreement with new tenants, recessional methodologies, and internal migration strategies. The Board has never issued guidance to developers with respect to the application of environmental justice concepts to the types of issues typically reviewed by the Board. Virtually all of the academic literature and guidance from other federal agencies with respect to environmental justice discusses analysis of localized facility zoning and construction decisions (e.g., where to locate an industrial facility, or whether to expand an airport). NS can find no precedent for environmental justice analysis of a financial transaction like the Transaction here. The principal environmental effect of which it is to cause incremental system-wide shifts in train and truck traffic throughout the eastern United States. The railroad rights-of-way at issue in the proposes were established beginning in the mid-
nineteenth century and were largely deterred by the easy, enclosed century. Nearly laid was developed with the full knowledge that freight trains moved along the tracks, in most cases with much greater frequency than they do today (e.g., in Cleveland, see Section 2.5.5) it would follow the consummation of the proposed Transaction. Neither the Executive Order nor any other guidance is provided to implement the Order. Directly addresses the type of action proposed here. NS believes that the DEIS environmental justice section is technically flawed, due in large part to the conceptual incompatibility of a facility zoning model with the very different nature of the Transaction. Given that the Board is not required to conduct such an analysis, and that such analysis is not necessary to ensure inclusiveness and non-discrimination, a better approach is to review incremental traffic shifts and ensure non-discrimination, or to use additional demographic analysis to new construction, as was proposed in the draft soliciting notice for the EIS.

However, if the Board believes that environmental justice considerations in the future should become a distinct part of its processes, NS urges the Board to follow the lead of DOT and other agencies. The Board (like DOT and other agencies) should issue proposed rules or guidance on environmental justice analysis and seek input from community organizations, state and local environmental agencies, and other stakeholders before issuing final rules. The EIS

Potential impacts are not borne disproportionately by minority or low-income communities. Table 4.16.1 compares the minority and low-income concentrations of populations that would experience increases in train traffic post Transaction with the minority and low-income concentrations of populations residing adjacent to all of the rail lines to be constructed by the Applicants. Table 4.16.1 clearly shows that the demographic makeup of communities in which increases in train traffic are virtually identical to that of the system as a whole. It shows, additionally, that about 75 percent of the population adjacent to the rail lines involved in this Transaction that will experience train traffic are non-minority and about 35 percent of the population so impacted is non-low-income. Potential impacts would therefore not be "proportionate" borne by minority or low-income communities on a system-wide basis.

Table 4.16.1: Comparison of Communities Where Traffic Increases Will Increase and Decrease Across the Expanded NS, CSX and Shared Assets Areas Systems

<table>
<thead>
<tr>
<th>Minority Concentrations</th>
<th>Low-Income Concentrations</th>
</tr>
</thead>
<tbody>
<tr>
<td>NS CSX Shared Assets</td>
<td>NS CSX Shared Assets</td>
</tr>
<tr>
<td>Traffic would increase</td>
<td>Traffic would decrease</td>
</tr>
<tr>
<td>Traffic would increase</td>
<td>Traffic would decrease</td>
</tr>
<tr>
<td>Minority population (%)</td>
<td>Minority population (%)</td>
</tr>
<tr>
<td>Low-income population (%)</td>
<td>Low-income population (%)</td>
</tr>
</tbody>
</table>

On a system-wide basis, potential effects on minority and low-income populations would not "appreciably extend," be "most severe" or "greater in magnitude" than among other adversely affected communities. Table 4.16.1 shows that communities that would see increased train traffic as shown by the Board's analysis of eight groups per day are virtually identical to low-income communities and, if anything, slightly larger in minority concentration.

27 Demographic data were gathered for populations adjacent to each rail line in the expanded NS, CSX and Shared Assets areas using procedures similar to those described in the DEIS (Appendix B). Because NS analysis is system-wide, and by contrast, the DEIS excludes demographic data for only a small number of segments, there are some important differences in methodology. First, data were collected for this analysis at the postal zip code level instead of the census block group level used in the DEIS. Second, NS analysis does not contain the portion of each zip code potentially affected by the Transaction. The DEIS provides no methodologies for deriving an area of potential effect where the Transaction would result in a beneficial or in negligible impact. This analysis is based solely on expected increases in traffic, as a surrogate for environmental impacts, and does not consider the magnifying effects of actions recommended by the DEIS.

The process is not the appropriate place for the Board to establish for the first time a policy and approach in environmental justice.

4.16.2 The Proposed Action Will Not Have Disproportionate Effects on Minority and Low-Income Populations.

The President's Executive Order on Environmental Justice directs Federal Agencies to identify and address "disproportionately high and adverse human health or environmental effects" on minority and low-income population segments. The DEIS Operating Plans have been devised to route freight traffic so as to provide the quickest, safest and most cost-effective rail transportation possible, to the benefit of persons of every racial and income group. Some lines will experience increased traffic and some will experience decreased traffic. Analysis of the minority and income status of populations adjacent to the rail lines, shown in Tables 4.16.1 and 4.16.2, discussed below, clearly shows that the increases and decreases in traffic over the 44,000 miles of new residential rail lines are typically regions where minority and low-income populations are not disproportionately impacted.

The US Department of Transportation's Order on Environmental Justice (as well as the statutes in the field of environmental justice enactment) defines two tests to determine whether impacts are disproportionate: "Disproportionately high and adverse effects on minority and low-income populations means an adverse effect that:

- is disproportionately borne by a minority population and/or a low-income population, or
- will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population."

Neither test is met in this Transaction.

20 Executive Order 12898, Sec. 1-101.

Table 4.16.2: Comparison of Rail Segments Where Traffic Increase Will Be Higher (High Minority and Low-Income Concentration Segments Versus Other Rail Segments)

<table>
<thead>
<tr>
<th>Minority Concentration</th>
<th>Low-Income Concentration</th>
</tr>
</thead>
<tbody>
<tr>
<td>NS CSX Shared Assets</td>
<td>NS CSX Shared Assets</td>
</tr>
<tr>
<td>Traffic would increase</td>
<td>Traffic would decrease</td>
</tr>
<tr>
<td>Traffic would increase</td>
<td>Traffic would decrease</td>
</tr>
<tr>
<td>Change in traffic</td>
<td>25%</td>
</tr>
<tr>
<td>increase (%)</td>
<td>25%</td>
</tr>
<tr>
<td>Minority population (%)</td>
<td>Low-income population (%)</td>
</tr>
</tbody>
</table>

*Minority concentration* means that the system as a whole. Table 4.16.2 below focuses on those segments where train traffic would increase. The table compares increases on segments with adjacent populations in the highest 20 percent as terms of minority and low-income concentration, with increases on other segments. Table 4.16.2 clearly shows that, among the greatest or nearest segments to segments where train traffic would increase, those communities with the highest minority and low-income concentrations would see bigger increases than the rest of the communities adjacent to such segments.

22 To construct the "highest 20%" and "other segments" groups, segments were ranked by minority or low-income concentrations of adjacent populations from highest to lowest. Segments were then divided into five groups (quintiles). The sum of the populations in any quintile equals 20% of the total population adjacent to the entire system. The exercise was done separately for analysis of minority and low-income effects. The "highest 20%" is the quintile with the highest minority or low-income concentrations. The "other segments" group includes the other four quintiles.

23 As the literature suggests, difference of means tests were used to determine whether communities such as those found in Table 4.16.1 or Table 4.16.2 are "statistically significant," i.e., whether differences in the demographics can be considered real rather than noise in the data. These tests—conducted on all the comparisons made in Tables 4.16.1 and 4.16.2—confirm that differences in the average demographics of communities that will see various effects are not statistically significant.
No where in the DEIS is there an assessment of whether impacts would be disproportionate, predominantly borne by minority or low income populations, or whether potential impacts on minority or low income communities would be more severe or greater in magnitude, even among other affected populations. The only explanation of the DEIS methodology for determining whether effects on minority or low-income communities are disproportionate is as follows:

"SEA used a qualitative analysis approach which included review of several different factual circumstances, including cumulative effects of exposure to health and environmental impacts from many sources, to determine the significance levels on a local case-by-case basis. A determination of a significant environmental justice impact specifically included SEA’s consultation with affected communities." 49

Such analysis can provide useful information, but it is not determinative of the question of whether impacts are disproportionately borne by, or are more severe among, minority and low-income populations than among other populations on a system-wide basis. Members of communities consulted in such an analysis would have limited knowledge of how other communities are being affected by the proposed action. Consultation might help to identify hypothetical cumulative effects (e.g., situations where individuals are more susceptible to effects because of site-specific circumstances) but the DEIS puts forward no reason why such consultation is needed only in minority or low-income communities, or why a community’s demographics could affect the potential for cumulative effects.

4.16.3 The Proposed Action Will Not Have High and Adverse Effects on the "Environmental Justice Communities" Identified in the DEIS.

The DEIS identifies seven rail segments along the in-progress NS system that "may warrant environmental justice mitigation" (see Table 4-16.3). The list is composed of rail segments that (1) exceed DEIS significance criteria for one or more environmental effects and (2) also exceed a DEIS threshold for minority or low-income concentration in the surrounding population. The potential adverse effects identified on these segments include grade crossing safety (2 segments), freight rail safety (2 segments), and increased hazardous materials transport (5 segments). 50

The DEIS states that proposed mitigation measures are of the type that the Transportation Board typically considers and imposes to "ensure freight safety" and to "ensure safety at specific grade crossings." 51 With respect to hazardous materials transport, the DEIS proposes system-wide measures to "prevent and promptly and effectively respond to hazardous materials releases." 52 The DEIS also proposes measures on these specific segments that "reduce potentially significant associated impacts resulting from the increased frequency of hazardous materials." 53 Yet, the adverse effects of these mitigating measures are not taken into account by the DEIS' environmental justice analysis.

Even in its consideration of potential impacts, the DEIS fails to demonstrate any meaningful connection to minority or low-income populations. The U.S. Environmental Protection Agency’s Guidance on Incorporating Environmental Justice into EIA's NEPA Compliance Analyses states that the effects of proposed actions will often vary depending on the distance of the affected community from the action and the type of effect created by the action. Effects on the community should be discussed in terms of reasonable increments from the one "comparative in original." In fact, the DEIS states minority and low-income populations based on an area that would hypothetically be affected by an excavation 65 (B a noise contour 54. But the DEIS identifies no significant adverse noise impact as any of the seven environmental justice communities.

Two of the segments identified in the DEIS, N-045 (Toledo, Ohio) and N-119 (Hannibal, Pennsylvania), are singled out for environmental justice analysis solely because of potential freight rail safety effects. The DEIS analysis of freight rail safety focuses on freight trains crossing demilines, doorways, and collisions with train service vehicles. Freight rail safety effects are considered significant in the DEIS if, absent mitigation, they were projected to produce at least one accident in 100 years. Freight rail accidents are usually confined to the tracks themselves, does not create a "high and adverse effect" on surrounding populations. In addition, members states to improve freight rail safety are determined by regulatory requirements, industry practice, available technology, and the national operating plan. Freight rail safety measures must be implemented/ system-wide, not on a community-by-community basis.

Two of the segments identified in the DEIS (N-045 (Toledo, Ohio) and N-119 (Hannibal, Pennsylvania), are singled out for environmental justice analysis in part because of potential at-grade crossing safety effects. The potential effects are related to accidents involving highway vehicles, not rail. The DEIS provides no evidence linking the highway traffic to these crossings or the relevant populations, i.e., there is no evidence that a potential at-grade crossing safety issue has a significant adverse effect on an environmental justice community located elsewhere along the line segment.

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<table>
<thead>
<tr>
<th>TABLE 4-16.3</th>
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<th>TABLE 4-16.3</th>
<th>TABLE 4-16.3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Segment</td>
<td>At-Grade Grade</td>
<td>Freight Rail Safety</td>
<td>Hazardous Materials Transport</td>
</tr>
<tr>
<td>N-045</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>N-040</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>N-090</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>N-025</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>N-045</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<td>N-119</td>
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<tr>
<td>N-119</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>N-045</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

Potential cumulative impact concerns

These rail segments, like all areas that could potentially experience effects, were appropriate to SEAs assessment. NS is prioritizing outreach activities in minority and low-income communities near these segments as the DEIS directs. However, a closer look reveals that these communities will not experience significant impacts from the Transaction, much less impacts that are "disproportionately high and adverse.""

The initial step in the environmental justice methodology described in the DEIS is identification of health and environmental effects of the proposed Transaction. The DEIS proposes system-wide and site-specific mitigation measures that SEA generally believes will "ensure that no significant effects occur." Given these measures, NS sees no grounds for further environmental justice analysis. There can be no disproportionately high and adverse effect on minority or low-income populations if there is no significant adverse effect at all. If mitigation is in place to ameliorate the potential adverse condition.

The failure to consider the benefits of proposed measures to promote at-grade crossing safety, freight rail safety, and hazardous materials transport is a major flaw in the DEIS environmental justice analysis. In this respect, the DEIS deviates from federal guidance and..."
The DEIS identifies an inadequacy in which a decision on the proposed Transaction will redound to the detriment of the surrounding communities which are not located adjacent to the railroad. The DEIS indicates that the DEIS for these seven communities result from interdependent changes in traffic patterns across a 40,000-mile system that crosses county, state, and even national borders, changes that are central to the safety of the proposed Transaction. Therefore, NS argues that standard for defining a community as minority or low-income must be dropped from the DEIS. 4.16.5 The Environmental Justice Mitigation Measures Proposed in the DEIS Are Unaffected and Unpersuasive.

Notwithstanding the acknowledgment that other proposed mitigation measures address all of the relevant environmental impacts in the seven environmental justice communities, the DEIS does not mention to reach to the communities to identify and agree on any further measures to address the specific environmental impacts. "As may disproportionately impact these communities." The DEIS states further that, above all else, was prior to issuance of the DEIS, "NS had recommended that the Board, as a condition of the approval of the Application, direct NS to implement appropriate mitigation measures."

It is clear that the proposed Transaction will not have a disproportionately adverse impact on minority or low-income communities in that the proposed Transaction will not have a high and adverse impact on the seven environmental justice communities that are not located adjacent to the railroad. The Board is limited by its own regulations to condition approval of a proposed action on environmental mitigation only when that mitigation is directly related to the environmental impact of the proposed action. Improving mitigation based on the environmental justice study as reflected in the DEIS, would, contrary to these regulations, be based on evidence of additional human health or environmental impact on these communities, but rather solely on the

sum of its parts, e.g., that synergies between multiple magnitudes effects create a significant effect. Neither the DEIS, nor the summary comments that preceded it, discuss a link between magnitudes of adverse effects and other effects. The DEIS provides no evidence that such a link exists. The DEIS contains no discussion of how the hypothetical cumulative effects are borne disproportionately in minority and low-income populations. A finding of cumulative effects must be based on sound science that is clearly explained.

NS supports the Board's efforts so much to these communities and all the communities affected by the Trans Con. NS urges the Board to mitigate all impacts on these communities. When the Board does not follow the procedures as outlined in its regulations, then the Board is not bound to the procedures, but must still consider the impact on the surrounding communities, even if the Board is not bound to the procedures.

4.16.4 "Environmental Justice" Communities in the DEIS Are Not Practically Low-Income or Minority. According to the DEIS, in none of the seven communities is a majority of the potentially affected population classified as low-income and in none of the seven communities, along NS line segment N-041, does the share of minority persons in the potentially affected population top 50 percent. Six of the seven communities were identified as "environmental justice" communities within the DEIS because they exceeded by ten percentage points the minority or low-income concentration in the surrounding counties. NS could not find any applicable procedures for the use of this state card. Practically, the DEIS meant to identify those communities that might be disproportionately affected by changes to or operations within the communities. For example, a state card might be issued to the communities that might be disproportionately affected by operations of the railroad. The Board would then be required to address the impacts of the railroad on the communities that might be disproportionately affected by the railroad.

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and, accordingly, that paragraph has been deleted from the final order. NS argues that the Board is not bound by the DOT Order, but argues the Board to come to the same conclusion as DOT and public commenators on this matter.

NS is not opposed to additional consultations with individual communities. Our own outreach efforts to date are described in Sections 3 and 6 of these comments. Additional consultation may be useful, for example, in determining whether a particular grade crossing or road' railway or hazardous materials transportation mitigations strategy recommended by the DEIS can be altered to address local concerns. Consultation may open the EIS process to input from a wider spectrum of interests. NS supports efforts to achieve these objectives. But NS is opposed to binding regulations of the type proposed in the DEIS, and to practices that might cause prefrerential treatment on the basis of minority status or income.

4.17 Cumulative Impacts

The DEIS evaluated system-wide cumulative effects of the Corrall Transaction, considering the scale and dimensions of the overall Transaction, including the effects on energy, air quality and transportation. Based on this evaluation, the DEIS concludes that the Transaction will result in a net positive cumulative effect. Norfolk Southern continues with this conclusion - as stated in Section 3 herein. NS strongly argues that the Transaction will have a net positive benefit for the environment and the economy.

The DEIS also discusses evaluating cumulative impacts on identified environmental justice communities, but not, however, on other communities with similar potential impacts. The DEIS provides no supporting justification, analytical, approach or evidence supporting potential adverse cumulative effects at the local level. The DEIS includes no methodology for weighting and then combining the various potential adverse effects on rail traffic (grade crossing safety, traffic delays, noise, etc.) and, of course, there are no quantifications of the benefits of the Transaction on a local level. Further, there is no attempt to consider the mitigations of effects on surrounding populations. NS believes this approach is flawed as discussed in detail in Section 4.18 above.

4.18 Relationship Between Short-Term Costs of the Environment and Enhancement of Long-Term Productivity

The DEIS considers the extent to which the Transaction would result in long-term productivity gains at the expense of short-term cost in terms of environmental and economic impacts. The question of short-term activities for new rail line constructions. The short-term impacts identified by the DEIS are typically very limited in geographic scope, and rarely mitigated by the railroad's existing Best Management Practices employed in construction sites. The DEIS concludes that the short-term impacts would be offset by long-term gains in productivity, including increased productivity and efficiency of rail operations in the context. U.S. Long-term positive effects include system-wide reductions in energy consumption, highway traffic congestion, highway safety and so emissions. Norfolk Southern concurs with this conclusion: the Corrall Transaction will have a net positive benefit for the environment and the economy.

4.19 Irreversible and Irretrievable Commitment of Resources

The DEIS evaluates the irreversible and irretrievable consequences of resources, including natural, physical, human and fiscal resources. The evaluation addresses resources committed to basic operational changes and construction of new and/or modified intermodal facilities, rail yards and line segments. Operational changes on existing rail lines irretrievable resources, but do not increase the use of irreversible and irretrievable resources. New construction activities typically involve use of land and construction materials, labor, and nature a months of local fields. In use on an existing rail line or in an existing facility, the land can later be converted to another use. The use of construction materials, labor, and fiscal costs represents a minor irretrievable use of resources, use of these materials will not have an adverse effect upon continued availability of these resources. Therefore, the DEIS concludes that the benefits of the proposed Transaction outweigh the disadvantages of the described resources. The long-term positive effects include system-wide reductions in energy consumption, highway traffic congestion, and so pollution. Norfolk Southern concurs with this conclusion: the Corrall Transaction will have a net positive benefit for the environment and the economy.
During engineering studies on Conrad’s Buffalo-Bingham rail line, a train bridge (No. 56-1) 66 feet wide over the Genesee River near Portageville, New York, was found to be near the end of its useful life. The bridge is an 816 feet long steel viaduct carrying a single railroad track, and is currently rated for 26,850 trainloads per day. The bridge is rated at 26,390 trainloads per day, and is currently under construction in 1878. The design and age of the bridge result in its wear and tear, and the bridge needs to be replaced due to its age and condition. The bridge replacement project is under construction in 1878 and is expected to be completed in 2019.

4.22.2 Other Miscellaneous Issues

4.22.2.1 Traffic Corridors for CP Trains on the Michigan Line Segments

The presence of the DEIS of the W. Detroit to Saginaw Public Act 110, 1991, and the Kalamazoo-Michigan (No. 120) line segments to consider important information provided by NS in SEA in October 30, 1991 correspondence. In that correspondence, NS clarified that the Canadian Pacific (CP) traffic that was included in the Operating Plan for these segments were not correct. At the October 30 letter specified, a final agreement with CP has not been reached. For the agreement to become final, CP would have to commit capital on the NS line and on the Amtrak line from Kalamazoo, Michigan to Porter, Indiana, including specialized locomotive equipment for the Amtrak line. CP traffic could be based on the NS or Amtrak times until a final agreement has been reached. Further, by agreement with CSX, CP is required to submit a maximum number of trains on the CSX route from Detroit, MI to Grand Rapids, MI to Porter, IN. The specified minimum number of trains is 50 per day and therefore the number of trains would vary on the NS line if a final agreement should be reached and CP should choose to use its load rights on NS. With this understanding, the letter states that the CP traffic would not be added to the line segments. The CP traffic should be deferred, as a result, the traffic agreements would meet the STB requirements and, therefore, no longer need to be submitted for environmental impacts. Additionally, the CP trains should not have been added to the Amtrak line from Kalamazoo to Porter. The correct train data is included in Section 7.11 of these comments and should be used for these line segments for the DEIS.

5.8 NORTHEASTERN RESPONSE TO DEIS DISCUSSION REGARDING COMMUNITIES WITH UNIQUE CHARACTERISTICS

NS concurs with CSX’s comments on the DEIS regarding the South Development Board, Cross-Harbor Car Flow Service, New Jersey Department of Transportation at New Jersey Transit Corporation and the Southeastern Pennsylvania Transportation Authority. NS also agrees with the DEIS of the W. Detroit to Saginaw Public Act 110, 1991, and the Kalamazoo-Michigan (No. 120) line segments for the information provided by NS in SEA in October 30, 1991 correspondence. In that correspondence, NS clarified that the Canadian Pacific (CP) traffic that was included in the Operating Plan for these segments were not correct. At the October 30 letter specified, a final agreement with CP has not been reached. For the agreement to become final, CP would have to commit capital on the NS line and on the Amtrak line from Kalamazoo, Michigan to Porter, Indiana, including specialized locomotive equipment for the Amtrak line. CP traffic could be based on the NS or Amtrak times until a final agreement has been reached. Further, by agreement with CSX, CP is required to submit a maximum number of trains on the CSX route from Detroit, MI to Grand Rapids, MI to Porter, IN. The specified minimum number of trains is 50 per day and therefore the number of trains would vary on the NS line if a final agreement should be reached and CP should choose to use its load rights on NS. With this understanding, the letter states that the CP traffic would not be added to the line segments. The CP traffic should be deferred, as a result, the traffic agreements would meet the STB requirements and, therefore, no longer need to be submitted for environmental impacts. Additionally, the CP trains should not have been added to the Amtrak line from Kalamazoo to Porter. The correct train data is included in Section 7.11 of these comments and should be used for these line segments for the DEIS.
The City of Lafayette is not significantly adversely impacted by the Transaction, as defined by the DEIS threshold of significance. The existence of multiple at-grade crossings is a pre-existing condition, with a plan to address the existing condition (the Lafayette Railroad Relocation Project) in place for the past several years, and now under the final phase of construction. The additional temporary mitigation measures required for the Transaction do not meet the DEIS requirements for significance, and therefore do not warrant special mitigation.

Regardless of these inconsistencies, NS recognizes the importance of ensuring the public’s access to information on the Transaction, and in working with affected communities to address specific issues and public concern wherever possible. Accordingly, NS has initiated a coordination and outreach program with the City of Lafayette and the Indiana DOT.

5.2 Muncie, Indiana

The DEIS notes that residents of Muncie have expressed concerns regarding traffic delays, including potential delays of emergency vehicles, that may result from increased train traffic on NS rail lines between Alexandria and Muncie. The DEIS directs NS to negotiate with the City of Muncie, Indiana DOT, and other appropriate parties to develop a binding agreement for the implementation and funding of measures to address traffic and safety concerns at seven highspeed at-grade crossings in Muncie on the Alexandria to Muncie line.

There are several inconsistencies with this approach. In addition to NS’ previously stated objective to mandatory negotiations concerning grade crossings and Board imposition of stipulated agreements in conditions of approval (see Sections 2.4 and 2.6), the requirement for mitigation at Muncie is not based on an assessment of potentially significant environmental impacts within the DEIS. The crossings at Muncie do not exceed the DEIS impact thresholds for significance for delays or safety, and therefore do not require mitigation. The sole reason for identifying Muncie as a community with unique circumstances appears to be the existence of public comments unsupported by technical analyses of impact.

Nevertheless, NS recognizes the importance of ensuring the public’s access to information on the Transaction, and in working with affected communities to address specific issues and public concern wherever possible. Accordingly, NS has initiated a coordination and outreach program with the City of Muncie and the Indiana DOT. NS has also prepared to work with the Indiana DOT and other relevant governmental agencies to seek support and public funding for upgrading seven existing grade crossings.

The Four Cities Consortium is an association of East Chicago, Gary, Hammond, and Whiting, Indiana, formed to assess regional effects of the proposed Transaction. In its concern for local issues of safety and traffic delays at crossings, the DEIS identified potential significant safety impacts at four CSX at-grade crossings, but none for at-grade crossings on NS rail line segments. Traffic delay impacts were evaluated for 15 crossings (both CSX and NS), and the DEIS determined that levels of service remained unchanged and therefore no mitigation was warranted. However, recognizing the Four Cities Consortium’s expressed concerns regarding potential delays for emergency vehicles, the DEIS recommends that NS and CSX negotiate with the Four Cities Consortium and the Indiana DOT to address potential traffic delays and safety concerns at non-at-grade crossings. Potential noise impacts were also addressed by the DEIS, but no significant noise impacts requiring mitigation were identified. The DEIS does not identify any socioeconomic or specific impacts affecting low income or minority populations within the Four Cities Consortium area. Nonetheless, additional public outreach efforts are being conducted by SEA.

There are several inconsistencies with this approach to mitigation. In addition to NS’ previously stated objective to mandatory negotiations concerning grade crossings and Board imposition of stipulated agreements in conditions of approval (see Sections 2.4 and 2.6), the requirement for negotiated mitigation at the Four Cities is not based on any determination of potentially significant environmental impacts within the DEIS. The crossings within the Four Cities do not exceed the DEIS impact thresholds for significance, and therefore do not require mitigation. The sole reason for identifying the Four Cities as a community with unique circumstances appears to be the existence of public comments unsupported by the DEIS technical analyses.

The Four Cities Consortium proposed alternative plans, named principally at reducing CSX train traffic. Implementation of the Consortium’s Alternative 2 would remove NS grade crossings at Wayne I and their role in crossing traffic to the north of the DEIS. However, as the Preliminary Recommended Mitigation section (DEIS at IN-49) for Lafayette, the importance of the Lafayette Railroad Relocation Project would reportedly mitigate air quality impacts. This is an inauspicious application in the DEIS of the basis for mitigation.

- The DEIS calculates a 65 dBA LEq, noise contours for pre- and post-Transaction conditions at the NS line segment Peru - Lafayette Junction and Lafayette - Tilton. These line segments exceed this DEIS threshold for evaluation, but not the 70 dBA LEq and 5 dBA increase threshold as a significant impact. "SEA considered rail line segments eligible for noise mitigation for noise sensitive receptors exposed to at least 70 dBA LEq and an increase of at least 5 dBA dBA LEq due to increased rail activity." DEIS at 3-35. Since noise levels at these rail line segments do not qualify as significant impacts, no mitigation is necessary for noise.

- The DEIS directs NS to upgrade safety warning devices at several crossings. However, as stated in Sections 2.4 and 4.3 of these comments, NS believes this requirement conflicts with state DOT authority to determine crossing upgrade priorities, and fails to consider site-specific variables.

- Traffic delay impacts identified at the ten NS at-grade crossings in Lafayette no longer meet the DEIS threshold for a significant impact resulting from the Transaction, as calculated within the January 21, 1998 Supplemental Errata. Nonetheless, the Supplemental Errata concludes that mitigation is required for the NS crossings due to the unique conditions in this community with close proximity of these crossings to each other within an urban setting and the resultant effect on traffic delays along these roadways." Supplemental Errata, Table 1, n.3 of 4. Thus, the DEIS applies a more restrictive and arbitrary threshold for significance of traffic delays to Lafayette than to other communities. There is no supporting rationale for this more restrictive threshold, nor any supporting studies projecting the resultant effect on traffic delays along these roadways." In addition, the Lafayette Railroad Relocation Project will eliminate all highspeed at grade crossings, thus eliminating the projected vehicle delays.

- The DEIS notes that residents of Muncie have expressed concerns regarding traffic delays, including potential delays of emergency vehicles, that may result from increased train traffic on NS rail lines between Alexandria and Muncie. The DEIS directs NS to negotiate with the City of Muncie, Indiana DOT, and other appropriate parties to develop a binding agreement for the implementation and funding of measures to address traffic and safety concerns at seven highspeed at-grade crossings in Muncie on the Alexandria to Muncie line.
TheHuban-Van Loon trackage rights would border on important NS main lines that represent NS's only route between Chicago and Cincinnati; Atlanta, Jacksonville, New Orleans, the Virginian, and the Carolinas. This additional burden would be placed on the NS line at the same time that NS would be losing the use of a second main line route in this corridor (the former Conrail Fort Wayne-Hobart line, which NS only recently acquired and which will be assigned to CSX as part of the Transaction). Following the Transaction, NS would be left without a viable alternative existing for time-sensitive and other high-priority traffic between Chicago and the Southeast. The unanticipated addition of CSX trains to NS's line between Hobart-Van Loon would aggrivate congestion problems on the line and would threaten NS's ability to maintain schedules for time-sensitive and other high-priority traffic. Currently, there are 16 Antrum passenger trains per day using the line east of - - Junction.

With respect to the two new connections that would have to be constructed under the Four-Cities Consortium Plan, the Pines Junction connection would be economically problematic for NS. Due to the topographic arrangement east of Pines Junction, this "connection" would actually involve the crossing (via a second intermediate crossover) of a line that will be allocated to NS - the extremely busy Central Chicago - Toledo main. A crossing at this bottleneck would cause severe disruption, at substantial costs, to NS's planned operations.

The DEIS draws CSX and NS to negotiate a mutually acceptable binding agreement on train routing through Cleveland and mitigation measures for those routes that could be economically significant environmental impacts. As stated previously, NS does not believe that such agreements should be mandated in a mitigation measure, and Cleveland has no exception. Nonetheless, the Applicants are willing to consult with City representatives and others in an attempt to address local concerns regarding the Transaction.

In December 1997, the City proposed that the Applicants "fly" ownership of selected lines running through the City. Both Applicants conducted an exhaustive operational, engineering, and environmental analyses of the proposal and reported back to Cleveland in mid-January 1998 that the fly proposal would not be feasible.

The alternative routings now proposed by the City (reestablished publicly by the City of Cleveland on January 24, 1998) would result in NS trackage moving over the portion of the Short Line between Berea and Howard/University Circle toward connections with its own Buffalo and Pittsburgh lines. It would further result in trackage movement between Berea and Cleveland/Notre Dame for the prospective line segment. It would further result in trackage movement between Berea and Cleveland/Notre Dame for the prospective line segment.
White drives the train

Cleveland's effort to reconfigure major rail deal could damage others' interests — and its own

To his role as airport master planner and transportation director, Richard B. Kreger added another job last week: chief negotiator for a major rail deal that could result in a new high-speed rail line between Cleveland and Pittsburgh.

The deal is the subject of a legal dispute between CSX Transportation Inc. and the Department of Transportation, which is pushing for the line.

The line, if built, would run from Cleveland to Pittsburgh, and would be a major component of the regional high-speed rail system that Cleveland is building.

Kreger, who is also the director of the Greater Cleveland Regional Transit Authority, said the deal is important because it is a key part of the region's transportation plan.

The deal would allow CSX to build a new line that would run parallel to the existing CSX line between Cleveland and Pittsburgh, and would provide additional capacity for the region's rail system.

The deal is also important because it would allow the Greater Cleveland Regional Transit Authority to use its existing rail rights-of-way for a new line that would run parallel to the existing CSX line between Cleveland and Pittsburgh.

The Greater Cleveland Regional Transit Authority is already working on a new line that would run parallel to the existing CSX line between Cleveland and Pittsburgh.

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the DEIS approach and conclusions regarding safety at grade crossings (see Section 4.3).\(^2\) In addition, as was noted above in Section 2.3, it is not appropriate for the Board to displace the well-established role of state DOTs in determining the selection, priority and funding of grade crossing upgrades in communities within their jurisdiction. NS recommends that this important safety role be properly left to the state transportation agencies and the well-identified safe practices and procedures already in place to facilitate comprehensive corrective grade crossing safety measures.

Moreover, the DEIS recommendation of a limit of two additional trains per day on the existing NS main line through the 19th Street corridor in Erie is without sound basis—localized service limitations should not be imposed as environmental mitigation in this case (see Section 2.4). Having determined that certain of the NS grade crossings along 19th Street would meet the threshold criteria for mitigation consideration, the DEIS did not take into account several crucial facts.

First, the limit of a two-train per day increase in rail traffic pending completion of the proposed NS rerouting appears to have been taken from SEA's preliminary mitigation recommendations at Reno and Wichita in DEIS\(^2\). In this instance, SEA recommended that UP/SP be limited to running an additional two trains per day through Reno, Nevada and Wichita, Kansas pending completion of a post-SEA mitigation study. The two-train limit was selected due to a desire to avoid SEA's threshold for air impact analysis in a non-statutory area. 64 CFR 1105.10(a)(3)(i). This was necessitated by the fact that the environmental analysis of the UP/SP merger was being pursued by SEA through means of an EA, rather than an EIS, and therefore all significant impacts required mitigation. As described in Section 2.1 above, by choosing to prepare an EIS for the Transaction, the Board has eliminated the need to eliminate or mitigate all potentially significant environmental impacts—a fundamental distinction from the UP/SP scenario. Also, the DEIS acknowledges that unlike the issue presented for further consideration in UP/SP, the Transaction would have any significant air impact at Erie and that no mitigation is needed. DEIS at PA-43. Thus the reason for applying the train increase limit recommended in DEIS at Reno and Wichita is simply not transferable to the circumstances of the Board's consideration of potential environmental impacts at Erie.

The DEIS recommends that the construction of the 19th Street rerouting proposal will completely negate any need for grade separation along the 19th Street corridor.

Second, the increase in NS traffic along the 19th Street corridor will be only temporary, until completion of the physical improvements to reroute traffic to the Central right-of-way. Once completed, rail safety in Erie will benefit more than just the reroute of the post-Transaction increase in train traffic along 19th Street. Because NS plans to remove all freight traffic to the new route, existing as well as increased traffic will be taken out of downtown Erie. Excessive grade crossings along 19th Street will be able to be closed. This is a substantial benefit to Erie that NS believes is adequate to offset any traffic until the rerouting construction work is completed.

Third, the DEIS fails to recognize that, as of Day One, there will be freight traffic waiting to be carried by NS along its Cleveland to Buffalo main line. This represents capacity of freight traffic that will, up until Day One, have been carried over the Central System. In order to be competitive, and in order to preserve future service to shippers, NS must be able on Day One to assume its share of the Central traffic. The only feasible way for NS to do so is to move trains over its existing main line route through Erie pending completion of the rerouting. This is a critical aspect of the commercial benefits and viability of the Transaction.

An arbitrary and artificial limit of two additional trains per day in Erie, because of the much broader ripple effects, would have catastrophic consequences to the ability of NS and CSX to create a smooth transition for eastern United States rail service on Day One and thereafter. NS urges SEA to eliminate from further consideration any recommendations by the Board of “temporary” limits to the proposed increase in NS main traffic at Erie on Day One.

### 6.6 Norfolk Southern Community Outreach Program

The DEIS identifies several areas and communities where consultation and coordination with a local community or agency is recommended in order to resolve various potential environmental impacts or potential public concerns. The DEIS further recognizes that NS agreements leading to agreements with affected communities to resolve potential environmental impacts. NS opposes the imposition of segmented agreements as conditions to Board approval (see Section 2.2). Any negotiated agreements between NS and affected communities or agencies should be viewed as stipulations, not conditions, within the context of the Transaction. NS supports public outreach and coordination with neighboring communities. This section presents NS response to the DEIS-directed community outreach for specific communities, other outreach efforts, and the need for consultation with some Department of Transportation (state DOTs).

NS regularly meets with and hears the concerns of local citizens and government officials, in an effort to make an approach to doing business to community-specific needs whenever practicable. Examples of NS current outreach efforts include:

- Operation Lifesaver, a program designed to reduce grade crossing accidents and save lives by educating local communities and children.
- Working with state and local transportation agencies to improve grade crossing safety, including closing unnecessary grade crossings.
- Conducting Grade Crossing Collision Investigation courses for state and local agencies to ensure proper investigatory techniques, identify causes of collisions and improve safety.
- Meeting with interested community to discuss railroad operations.

### 6.7 DEIS-Based Community Outreach

The DEIS recognizes that the recommended mitigation measures within the DEIS encompass the potential significant impacts. Nonetheless, the DEIS directs NS to involve potential environmental impacts in several communities identified by the DEIS in “Environmental Justice Communities,” as well as to other communities, through negotiation of funding agreements between the locally affected community, NS, and the appropriate state DOT agencies. At page 7-18, the DEIS says:

"SEA's Recommended Mitigation No. 1-18, and 28-41 would address potential environmental impacts for those communities, which may experience disproportionately high adverse effects as a result of the proposed Conrail Acquisition. Nevertheless, CSX and NS shall meet with these communities to identify and agree upon any further appropriate measures to address the specific environmental impacts that may disproportionately and adversely impact these communities, or to develop other mitigation measures that might offset these disproportionate impacts. If the parties were to seek mutually acceptable mitigation measures on the implementation of appropriate mitigation measures to address environmental impacts resulting from the proposed Conrail Acquisition prior to issuing the Final EIS, SEA may recommend that the Board, as a condition of the approval of the Application, direct CSX and NS to implement appropriate mitigation measures."
SEA is also planning an expanded public outreach program in those (and other) communities to ensure adequate public access to information about the Corridor Transaction and the EIS process.

NS believes the requirement to negotiate funding agreements with these communities, and subsequent inclusion of such agreements as conditions of the Transaction, as described within the DEIS, to be flawed and inappropriate for the following reasons:

1. The potential environmental impacts to be evolved through negotiations are not identified within the DEIS. The Out Hafl - Bellevue, Ohio NS line segment is the only exception where a potential for a noise impact has been identified.

2. The DEIS also fails to identify the specific portion of the community (e.g., the actual people, neighborhood, or group) significantly affected by the Transaction. In most cases, the affected "community" described within the DEIS is based on the DEIS' general statement that the rail line is not representative of actual social or political boundaries or local communities. This makes it difficult to properly focus outreach and, if appropriate, mitigation.

3. The DEIS does not provide any rationale for treating these communities differently than any other communities throughout the system (see Section 4.16, Environmental Justice). These communities labeled as "environmental justice" within the DEIS do not suffer any disproportionate or high adverse impacts as a result of the Transaction.

4. NS strongly opposes the imposition of a requirement to negotiate agreements as a condition of approval of the Transaction (see Section 2.3, CEQ and DOT guidance on considering environmental justice issues during the EIS process). Negotiate outreach, but do not negotiate with the community.

Although NS does not believe negotiated settlements should be mandated as a mitigation measure, it does recognize the importance of ensuring the public's access to information on the Transaction. Accordingly, NS has initiated a community outreach program within the communities identified above. The purpose of NS' community outreach is to identify community concerns relating to the Transaction, and provide information to the community.

The DEIS does not identify any specific environmental impacts which require mitigation through negotiations with the local community.

Status of Community Outreach - NS has initiated community outreach efforts with Fort Wayne, Indiana. Discussions with local officials and other outreach efforts are ongoing.

6.1.2 Alexandria, Indiana

Background - Alexandria is the hub of the NS Alexandria - Muncie line segment (N-040). Alexandria (Madison County) includes one at grade crossing identified by the DEIS as requiring mitigation for safety (CB 100 E). The DEIS recommends upgrading the crossing safety warning devices from passive to flashing lights. The DEIS also identifies two crossings in Madison County which are projected to exceed the significance thresholds for traffic delay. The increased delays at these crossings are due to slower moving trains through the new Alexandria connection.

The DEIS recommends that NS coordinate with the City of Alexandria, the Indiana DOT, and other appropriate agencies to agree on mitigation measures to address the potential traffic delay impact.

Status of Community Outreach - NS has been engaged in discussions with City officials since early 1997 concerning plans for addressing traffic delays. NS has scheduled additional community outreach efforts in February 1998.

6.1.3 Tilton, Illinois

Background - The DEIS has identified NS Lathrop Ferry, Indiana - Tilton, Illinois line (N-045) as having potential environmental justice impacts in Tilton, requiring outreach and a negotiated settlement. However, the DEIS fails to provide any rationale for this. In addition to the previous issues noted in Sections 2.6 and 4.16, and above, NS' concerns with this requirement at this community include:

- The segment is identified as a "major key route" for hazardous materials transportation. However, mitigation of increased hazardous materials transportation does not warrant providing special treatment to any single community (see Section 4.4 for additional NS comments on transportation of hazardous materials).

- The DEIS also identifies noise as a potential cumulative environmental impact, presumably due solely to the demographics of the population affected, as the projected noise in the rail segments do not meet the DEIS criteria for a significant impact (see Sections 4.13 for additional NS comments on evaluation of noise, and Section 4.16 for additional NS comments on environmental justice). Further, the DEIS states that SEA is conducting additional studies to determine if the environmental justice population is impacted by noise. However, noise impacts are not determined by the minority status or income level of a community. Also, beyond the simple fact that these issues all spring from an increase in true traffic, there is no methodology specified in the DEIS for weighing and combining the various potential adverse effects of rail traffic (grade crossing safety, traffic delay, noise, etc.) into a determination of cumulative impact. Similarly, there is no methodology specified in the DEIS for defining and evaluating the benefit of the Transaction on a local basis.

The DEIS does not identify any specific environmental impacts which require mitigation through negotiations with the local community.

Status of Community Outreach - NS has initiated community outreach efforts with Fort Wayne, Indiana. Discussions with local officials and other outreach efforts are ongoing.

The DEIS recommends that NS continue coordination with the City of Alexandria, the Indiana DOT, and other appropriate agencies to agree on mitigation measures to address the potential traffic delay impact.
impact. Similarly, there is no methodology specified in the DEIS for defining and evaluating the benefits of the Transaction on a local basis.

The DEIS does not identify any specific environmental impacts which require mitigation through negotiation with the local community.

**Status of Community Outreach -** NS has issued contacts with local officials in an effort to provide information on the proposed Transaction. NS will conduct additional outreach and hold informational meetings if they are requested.

6.1.4 Danville, Illinois

**Background -** The DEIS has identified the NS Lafayette, Illinois - Titan, Illinois line segment (N-043) as having potential environmental justice impacts in Danville, Illinois, requiring outreach and a negotiated settlement. However, the DEIS fails to provide any outreach for this segment in the DEIS. In addition to the previous issues noted in Sections 2.6 and 4.16, and above, NS concerns with this requirement at this community include:

- At grade crossing safety potential impacts are identified at Campbell Crossing, City of Danville, Illinois as “potential to minority and low-income communities.” The DEIS reviewed demographics and traffic grade crossing potential impacts along this rail line segment, and found that grade crossing delays and traffic accidents potential impacts would not be disproportionately severe for minority or low-income populations along this segment. The DEIS specifically concludes for this rail segment that no environmental justice impacts exist for grade crossing. The DEIS further recommends that NS mitigate the potential traffic safety impact to this segment by upgrading the existing warning devices (see Section 4.3 for NS comments on traffic safety). At grade crossing safety issues are addressed and resolved in the Illinois Department of Transportation, not derived from negotiation with the local community (see Section 4.3 for additional NS comments on traffic safety). Therefore, there is no need to negotiate with the community outside the normal cooperative process addressing grade crossing safety.

The DEIS does not identify any specific environmental impacts which require mitigation through negotiation with the local community.

**Status of Community Outreach -** NS has issued contacts with local officials in an effort to provide information on the proposed Transaction. NS will conduct additional outreach and hold informational meetings if they are requested.

6.1.5 Youngstown and Ashland, Ohio

**Background -** The DEIS has identified NS Youngstown - Ashland line segment (N-056) as having potential environmental justice impacts in both Youngstown and Ashland, requiring outreach and a negotiated settlement. However, the DEIS fails to provide any outreach for this segment in the DEIS. In addition to the previous issues noted in Sections 2.6 and 4.16, and above, NS concerns with this requirement at this community include:

- At grade crossing potential safety impacts are identified at the intersections of Broadview Road and Warren Street Road, several miles north of Youngstown and away from environmental justice populations. At grade crossing safety issues are addressed and resolved at the discretion of the Ohio Department of Transportation, not derived from negotiation with the local community (see Section 4.3 for additional NS comments on traffic safety). Therefore, there is no need to negotiate with the community outside the normal cooperative process addressing grade crossing safety. Moreover, due to the distance of several miles between the grade crossings in issue and the environmental justice populations in Youngstown designated by the DEIS, there is no evidence of high and disproportionate impacts on environmental justice populations.

The segment is identified as a “key route” for hazardous materials transportation. However, mitigation of increased hazardous materials transportation does not warrant providing special treatment to any single community (see Section 4.4 for additional NS comments on transportation of hazardous materials).

The DEIS also identifies noise as a potential cumulative environmental impact, presumably due solely to the demographics of the population affected, as the projected noise levels on the rail segment do not meet the DEIS criteria for a significant impact (see Section 4.11 for additional NS comments on evaluation of noise, and Section 4.16 for additional NS comments on environmental justice). Further, the DEIS states that SEA is conducting additional studies to determine if the environmental justice population is impacted by noise. However, noise impacts are not determined by the minority status or income level of a community. Also, beyond the simple fact that these issues all spring from an increase in train traffic, there is no methodology specified in the DEIS for weighting and combining the various potential adverse effects of rail traffic (grade crossing safety, traffic delays, noise, etc.) into a determination of cumulative impact. Similarly, there is no methodology specified in the DEIS for defining and evaluating the benefits of the Transaction on a local basis.

The DEIS does not identify any specific environmental impacts which require mitigation through negotiation with the local community.

**Status of Community Outreach -** NS has scheduled community outreach efforts to begin in February 1998.

6.1.7 Toledo, Ohio

**Background -** The DEIS has identified the NS Munson - Airline line segment (N-086) as having potential environmental justice impacts in Toledo, Ohio, requiring outreach and a negotiated settlement. The rationale for this is not clear. The only potential environmental impact identified in the DEIS is freight safety, calculated by the DEIS for this segment as an 88-year interval between train accidents per mile. (The DEIS thresholds for freight safety is a 100-year interval). However, freight safety is not an issue directly affecting the community, nor is it an issue which is racially mitigated through negotiation with the local community. See Section 4.1 for additional NS comments on freight rail safety and Section 4.16 for additional comments on environmental justice issues.

**Status of Community Outreach -** NS has scheduled community outreach efforts to begin in February 1998.

6.1.8 Harrisburg, Pennsylvania

**Background -** The DEIS has identified the NS Harrisburg - Ransford line segment (N-090) as having potential environmental justice impacts in Harrisburg, Pennsylvania, requiring outreach and a negotiated settlement. The rationale for this is not clear. The only potential environmental impact identified in the DEIS is freight safety, calculated by the DEIS for this segment as an 88-year interval between train accidents per mile. (The DEIS thresholds for freight safety is a 100-year interval). However, freight safety is not an issue directly affecting the community, nor is it an issue which is racially mitigated through negotiation with the local community. See Section 4.1 for additional NS comments on freight rail safety and Section 4.16 for additional comments on environmental justice issues.

**Status of Community Outreach -** NS has scheduled a series of meetings with the Mayor of Harrisburg and other local officials. In those meetings, NS will ensure that information on the Transaction is available to the public.

The DEIS does not identify any specific environmental impacts which require mitigation through negotiation with the local community.

**Status of Community Outreach -** NS has issued contacts with local officials in an effort to provide information on the proposed Transaction. NS will conduct additional outreach and hold informational meetings if they are requested.
6.1.3 Oak Harbor - Bellevue, Ohio

Background: The DEIS identifies the NS line segment Oak Harbor - Bellevue, Ohio (N-070) as having potential significant adverse noise impacts requiring mitigation. The DEIS directs NS to meet with communities along the rail line segment to negotiate an agreement to implement measures to reduce the worst noise levels for sensitive receptors experiencing noise levels above 60 dBA Leq with an increase of 5 dBA or more. The DEIS does not, however, provide specific measures on which receptors are potentially significantly impacted by increased noise levels related to the Transaction.

Nature of Community Outreach: NS will conduct additional community outreach efforts along the Oak Harbor - Bellevue line segment to ensure information on the Transaction is available to the public. NS will also conduct further technical reviews, including noise level measurements, on the potential for significant noise impacts along this line segment, to identify specific receptors where there may be a significant adverse effect from increased noise, and to assess the feasibility and effectiveness of mitigation alternatives.

6.2 Additional Community Outreach

The DEIS describes a program of expanded public outreach by SEA to specific communities, including several low income and minority communities, to ensure full opportunity to participate in the review of the proposed Transaction. These communities are:

- Seneca Indian Nation, Cattaraugus Reservation, New York
- Bellevue - Sandusky, Ohio
- Kankakee, Illinois
- Chicago, Illinois
- Dearborn County, Indiana
- Detroit, Michigan
- Ontario & Seneca Counties, New York
- Chicago Junction, Ohio.

The DEIS states that additional outreach will include community imliuence by SEA. Given the DEIS conclusion that there are no significant adverse noise impacts along the entire line segment, there is no basis for conducting further investigation of noise impacts on environmental justice populations. Noise impacts are not determined by the minority status or income level of a community.

6.2.2 Bellevue - Sandusky Decks, Ohio

The Bellevue - Sandusky Decks NS line segment (N-065) is identified in the DEIS as having potential environmental justice effects from increased noise, presumably due to the demographics of the population along the line segment. The DEIS noise impact evaluation does not identify this segment as having significant noise impacts. Nonetheless, the DEIS has identified a need to conduct further reviews to determine if environmental justice populations are impacted by noise. These further reviews will include community outreach by SEA. Given the DEIS conclusion that there are no significant adverse noise impacts along the entire line segment, there is no basis for conducting further investigation of noise impacts on environmental justice populations. Noise impacts are not determined by the minority status or income level of a community.

6.2.3 Kankakee, Illinois

TheDEIS notes that Kankakee (line segment NC-040) is identified in the DEIS as having potential environmental justice effects from increased noise. Noise is based on access to mass transit, infrastructure, and unimproved housing. The correct information, supplied by SEA on October 2, 1987, correspondences from NS, that traffic on this new connection would be zero trains per day after the Transaction. The reason for the connection is anticipated of a growing need for transportation services, traffic which cannot be predicted and does not meet the Board's criteria for being retained in the Transaction. The DEIS provides the correct information at Chapter 3, page 8.22, although the information and discussion on page 8.24 was based on outdated and incorrect information. As described in Section 4.22.1, herein, this error was compounded by SEA's January 12, 1988 Errata which proposed to eliminate the incorrect information and to insert the necessary information needed. Applying the correct information, there is no significant noise impact on environmental justice communities (or other populations) in Kankakee. The DEIS should reflect the correct information for analysis of this segment.

The DEIS provides a program of expanded public outreach by SEA to specific communities, including several low income and minority communities, to ensure full opportunity to participate in the review of the proposed Transaction. These communities are:

- Seneca Indian Nation, Cattaraugus Reservation, New York
- Bellevue - Sandusky, Ohio
- Kankakee, Illinois
- Chicago, Illinois
- Dearborn County, Indiana
- Detroit, Michigan
- Ontario & Seneca Counties, New York
- Chicago Junction, Ohio.

The DEIS notes that the Kankakee (line segment NC-040) is identified in the DEIS as having potential environmental justice effects from increased noise, presumably due to the demographics of the population within Kankakee County. The DEIS noise impact evaluation does not identify this line segment as having significant noise impacts. Nonetheless, the DEIS has identified a need to conduct further reviews to determine if environmental justice populations are impacted by noise. These further reviews will include community outreach by SEA. Given the DEIS conclusion that there are no significant adverse noise impacts along the entire line segment, there is no basis for conducting further investigation of noise impacts on environmental justice populations. Noise impacts are not determined by the minority status or income level of a community.

6.3 Delaware County, Indiana

The Arrows - Monroe NS line segment (N-044) is identified in the DEIS as having potential environmental justice effects from increased noise, presumably due to the demographics of the population within Delaware County. The DEIS noise impact evaluation does not identify this proposed line segment as having significant noise impacts. Nonetheless, the DEIS has identified a need to conduct further reviews to determine if environmental justice populations are impacted by noise. These further reviews will include community outreach by SEA. Given the DEIS conclusion that there are no significant adverse noise impacts along the entire line segment, there is no basis for conducting further investigation of noise impacts on environmental justice populations. Noise impacts are not determined by the minority status or income level of a community.

6.3.5 Detroit, Michigan

The Detroit - N. Yard Shared Assets Area line segment (S-021) is identified in the DEIS as having potential environmental justice effects from increased noise, presumably due to the demographics of the population within Detroit. The DEIS noise impact evaluation does not identify this line segment as having significant noise impacts. Nonetheless, the DEIS has identified a need to conduct further reviews to determine if environmental justice populations are impacted by noise. These further reviews will include community outreach by SEA. Given the DEIS conclusion that there are no significant adverse noise impacts along the entire line segment, there is no basis for conducting further investigation of noise impacts on environmental justice populations. Noise impacts are not determined by the minority status or income level of a community.
6.2.6 Ontario and Seneca Countiy, New York

The Corning - Oswego NS line segment (N-060) is identified in the DEIS as having potential environmental justice effects from increased noise, presumably due to safety in the demographics of the population within Ontario and Seneca Counties. The DEIS noise impact evaluation does not identify this line segment as having significant noise impacts. Nonetheless, the DEIS has identified a need to conduct further studies to determine if environmental justice populations are impacted by noise. These further studies will include community outreach by SEA. Given the DEIS conclusion that there are no significant adverse noise impacts along the entire line segment, there is no basis for conducting further investigation of noise impacts on environmental justice populations. Noise impacts are not determined by the minority status or income level of a community.

6.2.7 Chagwipolis Junction (Cleveland, Ohio)

The Cleveland - Southline Junction NS line segment (N-074) is identified in the DEIS as having potential environmental justice effects from increased noise, presumably due to safety in the demographics of the population adjacent to the line in Cleveland. The DEIS noise impact evaluation does not identify this line segment as having significant noise impacts. Nonetheless, the DEIS has identified a need to conduct further studies to determine if environmental justice populations (2 sensitive receptors) are impacted by noise. These further studies will include community outreach by SEA. Given the DEIS conclusion that there are no significant adverse noise impacts along the entire line segment, there is no basis for conducting further investigation of noise impacts on environmental justice populations. Noise impacts are not determined by the minority status or income level of a community.

6.3 Consultation with State Departments of Transportation

The DEIS directs NS to consult with state DOTs (and appropriate local agencies) to address potential safety and traffic delay issues related to the Transaction, and to negotiate "traditional" separated crossing agreements or identify other mutually acceptable approaches to mitigate potential impacts. The DEIS is corrected by the January 12, 1998 Errata and the January 21, 1998 Supplemental Errata, identifies for NS 94 at grade crossings as requiring mitigation for safety and 18 NS at grade crossings requiring mitigation for traffic drivers. Further, the DEIS specifies mitigation measures and types of crossing upgrades for each crossing.

7.0 ADDITIONAL COMMENTS ON ENVIRONMENTAL ISSUES

Norfolk Southern's principal substantive comments on the DEIS analysis of environmental and safety topic areas are contained in Section 4.0 of this document. Additional comments provided in this section are for the purpose of clarification or improving accuracy, and many come from previous or factual errors and inconsistencies and discrepancies. The comments and clarifications offered by NS in this section are not expected to substantively affect the conclusions or recommendations of the DEIS.

7.1 Safety: Freight Rail Operations

Comment No. 1

NS has noted several inconsistencies in accident rates (accidents per million train miles) used in several locations in the DEIS as follows.

<table>
<thead>
<tr>
<th>Crossings With</th>
<th>Potential Safety Issue</th>
<th>Potential Delay Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>State DOT*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>IL</td>
<td>1</td>
<td>13</td>
</tr>
<tr>
<td>MD</td>
<td>3</td>
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<tr>
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<td>1</td>
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<td>13</td>
<td>13</td>
</tr>
<tr>
<td>PA</td>
<td>9</td>
<td>5</td>
</tr>
<tr>
<td>VA</td>
<td>2</td>
<td>5</td>
</tr>
</tbody>
</table>

*State Department of Transportation or similar agencies.

NS will also discuss with the state DOTs all crossings affected by significant increases in traffic volume or train speed and those subject to physical change resulting from Transaction-related construction. The state DOTs will then be able to evaluate fully and prioritize all crossings affected by the Transaction, based on each state's unique criteria.

Comment No. 2

NS concurs with the DEIS recommendation for consultations with state DOTs and other appropriate agencies to address potential safety and traffic delay issues. NS recognizes the importance of ensuring that issues affecting highway traffic safety and delay are dealt with under the direction of state DOTs and other appropriate agencies. Accordingly, NS has initiated a program of consultation with state DOTs and other appropriate agencies, following NS' standard practice of coordinating highway rail crossing issues with state DOTs and other appropriate agencies. The purpose of NS's consultation with the state DOTs and other appropriate agencies is to ensure that the Transaction-related changes in traffic safety and delay at highspeed grade crossings are understood by the state DOTs, and become part of the state DOTs planning process for crossing upgrades and/or closures according to state priorities.

NS is conducting a consultation with the state DOTs listed below, in accordance with the potential impacts identified by the DEIS. This consultation includes describing the Transaction, describing the projected effects on highspeed at grade crossings as determined within the DEIS (plus Errata) and by NS's calculations, and requesting the state DOT move the crossing in question into the state crossing safety planning process as appropriate. NS will then work with the state DOT to identify and implement those mitigation measures considered necessary by the state crossing safety planning process.
Comment No. 3
NS suggests revisions to the definition of two factors in a formula presented in Section
B.4.4, page B-22 (Volume 3A, Appendix B). The formula is presented under the
heading "Segment-Specific Safety Effects Analysis."

\[ \text{s} = R / E + \Delta T \times N \times M \times \text{IP} \times \text{HL} \]

The definition for "s" should be revised to read, "a is the annualized initial projected
number of accidents per year," and the definition for "E" should be revised to read "E is
the exposure index factor based on the product of the number of average daily
roadway vehicles and average miles per day."

Comment No. 4
On page B-23 (Volume 3A, Appendix B, Section B.4.3), the second sentence of the
second paragraph states, "FRA recommends that actual accident experience be limited to
the 1991 through 1995 period, as ..." NS suggests that this sentence be revised, replacing
the portion of the sentence "1991 through 1995 with "data for the most recent 5 years of
history." NS notes that the period 1991 through 1995 was not the most recent interval
available at the time the FEIS analysis was conducted. However, more recent data (1992
trough 1996) has since been released.

7.3 Safety & Rail Transport of Hazardous Materials

Comment No. 1
NS has noted that the definition of a "Key Transit" as presented in the following sections
of the DEIS is incorrect (Executive Summary, Glossary, Volume 1, Glossary, Volume 1,
Chapter 4, Page 1-15, Volume 3A, Glossary, Volume 3A, Glossary). The definition described
in those DEIS sections is as follows: "The Association of American Railroads (AAR)
defines a "Key Transit" as any train hauling five or more cars in a train containing
hazardous materials or a combination of 20 or more cars containing hazardous
materials."

This definition is incorrect because PSI Zone A or B materials are not specified, and
because the definition implies that any train that contains 20 or more hazardous material
loads regardless of hazardous classification are defined as "Key Transits." The correct
definition should be: "Force roa i a any train with five or more tank car loads of
chemicals classified as Poison Inhalation Hazard (PSI) Zones A or B, or any train with
a combination of 20 or more car loads or intermodal tank loads of PSI (Hazard A or B),
Explosives 11.1 flammable Gases Division 1.2 and Environmentally
Sensitive Chemicals (ESCs) as defined in Appendix A to the Circular." (Italic added)

Comment No. 2
NS notes that one of the requirements for key routes as stated on page ES-19 under the
Hazardous Materials Transportation section is incorrect. The DEIS states "These AAR
[Key Route] guidelines include visual rail defect inspections at least twice per month." The
correct definition, which includes neither visual inspections nor twice weekly inspections,
is referenced in DEIS Volume 3A, Appendix B-10 (page 2 of AAR Circular No. C-55B:
"Main Track on "Key Routes" must be inspected by rail defect detection and track
promyector inspections once or any equivalent level of inspection no less than two times
each year; and sadness must be similarly inspected no less than one time per year." As a
further note, FRA regulations specify weekly track inspections.

Comment No. 3
NS notes the following typographical error on page 9-1, Table 9-8 of the DEIS. The
total number of rail cars should be 2,430 not 2,430.

Comment No. 4
NS notes the following misspelling on DEIS Page 5-32, Table 5-2. Summary of Impacts
Warming Mitigation by State, for rail segment 9-308 Berea County should be spelled
Berea County.

Comment No. 5
NS suggests modifying Table 9-1 in Volume 3A, Appendix B, Page B-34 and B-35. Per
Conrail, the table includes "Key Routes" columns for 5,000-10,000 and 10,000-20,000 cars.
These reflect tabulations of faster routes in Criteria 's "key routes." Neither OT-BS nor
the criteria in the DEIS would consider routes with less than 10,000 cars of hazardous to be
"key routes." NS recommends the tables be modified to eliminate these columns to
avoid confusion.

Comment No. 6
NS suggests the following correction to the table of Figure 4-6 on page 4-52 of the DEIS. Figure 4-6
does not indicate the specific pollutants for which each of the shaded areas is designated
nomenclature. It is logical therefore to infer that the shaded areas are non-atmospheric for
SO₂, CO, NOₓ, and particulate matter. This is not correct. As a minimum the title could be
modified to say "Areas of Non-Atmosphere for SO₂, CO, Landfill gases and Particulate Matter."
Also, it would be appropriate to add a reference to Attachment E in Appendix E where the pollutants for which a county is nomenclature are specified.

Comment No. 2
NS suggests a correction to the use of energy consumption, the DEIS estimated changes in
fuel consumption from incineration to bioenergy) in grade crossings. (DEIS is 4-49.) This
analysis considered the effect of crossings with average daily traffic (ADT) greater than
5,000 vehicles on 5.3% segments that met the Board's thresholds for environmental analysis.
(See Energy Consumption Changes from Highway-Rail Air-Grade Crossing Delay, DEIS,
Appendix D, Page D-73.) Those were the same at crossings analyzed for air quality impacts.
This analysis arbitrarily excludes at-grade crossings with ADT greater than 5,000
projected to experience decreases in train traffic. This analysis thereby overestimates fuel
consumption and fails to assess the benefits (e.g., decrease in fuel consumption) associated
with the Transaction.

7.5 Air Quality

Comment No. 1
NS notes that there appears to be some inconsistency in the impacts reported in DEIS
Appendix E, Attachments E2 and E4. For example, if the difference in the two sets of data is a result of Attachment E2 presenting emissions increases while Attachment E4 presents decreases, these could be stated clearly in Appendix E. Otherwise, if the differences are in error, it should be corrected in the FEIS.
Comment No. 7
NS notes corrections to two emission factors used in Table E-4 on page E-10 of the DEIS. The emission factor for NO, as listed at 89.7 lb/KgH, should be 87.0 lb/KgH. The emission factor for VOC is listed at 49.2 lb/KgH, but should be 46.0 lb/KgH.

7.6 Notes

Comment No. 1
In Appendix F, Attachment F-1, the DEIS indicates receptors along the Riverport Act. to Route 30 line segment will experience a 5.0 dBA increase in noise level from the pre-Transaction to pre-Transaction conditions. In the Applicators Environmental Report (ER), noise receptors were expected to experience a 4.7 dBA increase along this line segment. Even applying the DEIS model, which we recommend be adjusted to accurately reflect NS noise norms, it appears projected traffic changes would result in a 4.9 dBA increase. The equations used for this calculation follow:

\[ \text{4.9} = 10 \times \log \left( \frac{\text{# of Pre-Transaction trucks x Post-Transaction}}{\text{# of Post-Transaction trucks}} \right) \]

where:
\[ \text{# of Pre-Transaction trucks = 159 and # of Post-Transaction trucks = 121} \]

Comment No. 2
With reference to DEIS Appendix F, Attachment F-2, the following table identifies discrepancies between the DEIS and information on operations submitted to SEA by NS in the ER and thereafter. The table below lists discrepancies in number of trucks, change in dB levels (dBA) and distance to the 65 dBA line contours at the intermodal facilities. NS requests that SEA verify the accuracy presented in the DEIS for Luther, also the EIS should use the information for a proposed intermodal facility in Sandusky, OH and delete information for a proposed intermodal facility in Bellevue, OH since NS is no longer planning to construct a facility there.

NS Southern Counties to the DEIS

7-3

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2/2/98 4:17:23pm-153

For example, at the Baltimore facility, the pre-Transaction number of trucks is 108, the post-Transaction number of trucks is 280. Using the equation above, the change in dBA was calculated to be 2.7 dBA. However, the DEIS lists 3.0 dBA.

The distance to the 65 dBA contour was calculated using the equation from the ER (page B-39). The equation is shown below:

\[ L_{eq} = 20.2 - 15 \log(D) + 10 \log(N) + 10 \log(R_{eq}) ]

where:
\[ R_{eq} = \text{number of hours of operation during the daytime (7am to 10pm) }]
\[ N = \text{number of hours of operation during the night (10pm to 7am) }]
\[ N_{avg} = \text{average number of daily operations }]
\[ D = \text{distance in feet to 65 dBA contour} \]

For example, at the Baltimore facility the number of daytime hours is 9, the number of nighttime hours is 1 and the average number of operations is 200. Using the above mentioned equation, the distance to the 65 dBA contour is 63 feet. The DEIS lists 145 feet.

7.7 Natural Resources

Comment No. 1
The methodology for natural resources (DEIS at 3-41 and 3-7) states, “The biological resources assessments included identifying and analyzing potential impacts to Federally listed threatened and endangered species, protected wildlife habitats and migration corridors, wildlife refuges and sanctuaries, national, state and local parks or forests, and protected unique or critical habitats.” This methodology does not provide a specific distance from the construction or abandonment that was used for identifying biological resources, such as a parks or refuges, for inclusion in the analysis of potential impacts. However, varying distances to specific biological resources are provided in the following instances:

NS Southern Counties to the DEIS

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- The DEIS at IN-62 states, “SEA determined that there are no Federal or state parks, forests, preserves, refuges, or sanctuaries located within or adjacent to the proposed construction site at Tolleson.”
- The DEIS at IN-62 also states, “… there are no Federal or state parks, forests, preserves, refuges and sanctuaries that exist within one miles of the Tolleson site…”
- The discussion of the South Bend to Dillon Junction abandonment (DEIS at IN-66) states, "Kingfisher State Fish and Wildlife Area is located approximately one mile southwest of Dillon Junction, and the NR/PR C-101 Erosion Area is located less than one mile north of the proposed abandonment area. There are no sanctuaries, refuges, national, state, or local forest/parks within 500 feet of the existing rail line for the proposed NS abandonment from South Bend to Dillon Junction.”

The EIS should clarify the natural resources methodology regarding distances to wildlife refuges and sanctuaries: national, state and/or local parks or forests. Also, if none are within the specified distance, this should be clearly stated under the Existing Conditions section.

Comment No. 2
Under the column, Preliminary Recommended Mitigation for the Alexandra, IN Construction (DEIS at Volume 5A, Page 5-24, Table 5-2 and Volume 5B, Page 5-24, Table 5-2), the following text appears "NS shall use only EPA-approved herbicides during right-of-way maintenance.” The apparent error in the this statement is referenced under Environmental Justice in the "At the Factories area column, rather than the technical area for Natural Resources.

Comment No. 3
Under the Preliminary Recommended Mitigation heading for Tolono, Illinois Construction (DEIS at B-42), there is an incorrect reference to CEX in the following sentence, “…SEA would require CEX to conform to its standard specifications during construction.” The EIS should contain the correct reference to NS not CEX.
7.8 Land Use/Economics

Comment No. 1
The reference to Native American Issues (DEIS at NY-31) appears to be associated with the Garvinville Junction construction because the text follows directly under the discussion of prime farmland in this construction. Separating the discussion of Native American Issues with a bulleted heading similar to those used for constructions or abandonments could reduce the possibility for confusion.

7.9 Abandonments

Comment No. 1
The summary of potential effects and preliminary recommended mitigation actions (DEIS at IN-59) states, "Tables 5-IN-10 and 5-IN-11 presented at the end of this state discussion here."

Comment No. 2
There is no Table 5-IN-11 at the end of the Indiana State discussion. The reference actually appears to refer to Tables 5-IN-11 and 5-IN-12. If this is the case, the sentence in question should be revised to say, "Tables 5-IN-11 and 5-IN-12, presented at the end of this state discussion, show..."

Comment No. 3
In both Table 5-IN-4a (Volume 3A, Chapter 5) and Table 2a (Volume 6) of the DEIS, the east end point for the South Bend to Dillon Junction Abandonment is in South Bend. The east abandonment end point on the figure should be moved to a point on the rail line approximately 200 feet northeast of U.S. Highway 20/31, southwest of South Bend. The correct end point is approximately 2 miles closer to Dillon Junction.

Comment No. 4
The Hazardous Waste Sites section (DEIS at Volume 6 Page 30) states, "...the EDR database report identified 13 sites including one NPL/CERCLIS site, four Indiana SPILLS sites, six LUST sites, and two BCRIS-TSD sites located within 500 feet of the proposed abandonment corridor". As discussed in Comment No. 2 above, the South Bend to Dillon Junction abandonment end point is located approximately 2 miles closer to Dillon Junction. Therefore, the hazardous spills sites located in South Bend are not within 500 feet of the proposed abandonment corridor. Therefore, this statement should be revised to

Table: Summary of Site Abandonments

<table>
<thead>
<tr>
<th>Source Name</th>
<th>SEA #</th>
<th>Type of Data</th>
<th>DEIS#</th>
<th>Correct</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indiana Hts to S. Chicago</td>
<td>M-10</td>
<td>Train Traffic Data</td>
<td>22</td>
<td>40</td>
<td>Revised Table 4 submitted on 11/11/97</td>
</tr>
<tr>
<td>Wash. Divert to Jct.</td>
<td>N-121</td>
<td>Percent change in MTW</td>
<td>92</td>
<td>0.4</td>
<td>See explanation below</td>
</tr>
<tr>
<td>change or minus</td>
<td>92</td>
<td>0.4</td>
<td>See explanation below</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jct. to Raritan</td>
<td>N-210</td>
<td>Percent change in MTW</td>
<td>12</td>
<td>3.4</td>
<td>See explanation below</td>
</tr>
<tr>
<td>change or minus</td>
<td>14</td>
<td>3.0</td>
<td>See explanation below</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Raritan to Monmouth</td>
<td>N-563</td>
<td>Percent change in MTW</td>
<td>162</td>
<td>49</td>
<td>See explanation below</td>
</tr>
<tr>
<td>change or minus</td>
<td>162</td>
<td>4.0</td>
<td>See explanation below</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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Comment No. 5
The DEIS at Volume 6, page 67 states, "NS would also dispose of all materials that would be housed in accordance with state and local waste management regulations." NS believes the DEIS intended to say and therefore should be modified to, "NS would also dispose of all materials that cannot be reused in accordance with state and local solid waste management regulations."

7.10 Construction

Comment No. 1
The DEIS at II-87 states, "The construction of the new connection at Kankakee, would convert approximately 2.3 acres to rail line right-of-way. "The correct acreage is 1.6 acres as provided in a letter from NS to SEA dated October 16, 1997. The correct acreage should be used in the FEIS.

Comment No. 2
The DEIS at IN-69 states, "The proposed construction would require that NS acquire and convert approximately 3.9 acres of currently undeveloped land to rail line right-of-way." The correct acreage is 0.6 acres as provided in a letter from NS to SEA dated October 16, 1997. The correct acreage should be used in the FEIS.

Comment No. 3
The DEIS at IN-29 states, "The connection would be approximately 1,750 feet long." The correct length is 1,760 feet as provided in a letter from NS to SEA dated October 23, 1997. The correct length should be used in the FEIS.

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7.12 Data Differences Between the DEIS and Information Provided SEA by NS

7.12.1 Train Traffic Data

Comment No. 1
Some of the traffic data included in the DEIS differs from what was provided by NS to SEA in the ER, the Operating Plan or in supplemental submittals. The following table presents discrepancies noted by NS of plus or minus 10 or greater, or discrepancies of plus or minus 8 percentage points or greater. Explanations which follow the table address apparent errors which should be corrected in the FEIS. The reason for other discrepancies is unclear, and the discrepancies are noted out here for SEA's consideration and appropriate use.

<table>
<thead>
<tr>
<th>Source Name</th>
<th>SEA #</th>
<th>Type of Data</th>
<th>DEIS#</th>
<th>Correct</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indiana Hts to S. Chicago</td>
<td>M-10</td>
<td>Percent change in MTW</td>
<td>22</td>
<td>40</td>
<td>Revised Table 4 submitted on 11/11/97</td>
</tr>
<tr>
<td>W. Divert to Jct.</td>
<td>N-121</td>
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<td>162</td>
<td>4.0</td>
<td>See explanation below</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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The differences in tonnage on the Indiana Harbor to South Chicago segment are likely a result of the exclusion of 14,6 million tons per year of CSX post-Transaction traffic from the DEIS. The tonnage should have been included in the DEIS and should be reflected in the proposed change in tonnage.

As discussed in Section 4.22 in these comments, the proposed change in traffic on the W. Division to Jct. and Jct. to Kankakee line segments was modified by NS based on new information on the status of the potential for leasing of CP traffic across these line segments (addressed in a correspondence to SEA on 10/30/97). The FEIS should be updated to reflect these modifications.

In the Operating Plan, the post-Transaction train numbers for the Darnall, Alabama to Mobileton, Mississippi line segment were listed as 12 passenger trains per day, 18 freight trains per day and 18.2 total trains per day. The total trains per day column was incorrect, it should have read 20 trains per day. Thus, 18.2 freight trains per day post-Transaction in correct.

The reason for the other data discrepancies is unclear. This information is supplied for SEA's consideration.

7.12.2 Other Data

The DEIS in GA-21 in Table 5-GA-16 incorrectly states NS is currently constructing a new intermodal facility in Fulton County, Georgia which is related to the proposed Transaction. This is not the case. NS is currently in the process of seeking permits for a new intermodal facility in Fulton County, Georgia which is related to the proposed Transaction.

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new multimodal facility in Austell, Georgia which is located in Cobb County. However, this action is completely unrelated to the Transaction and therefore, all references to it should be removed from the DEIS.

APPENDIX NS-1
DESCRIPTION OF NS COMPLIANCE WITH POTENTIAL PASSENGER TRAIN SAFETY MITIGATION MEASURES DESCRIBED IN CHAPTER 3 OF THE DEIS

Chapter 3 of the DEIS, Sections 3.2.3 and 3.3.3, describe a variety of potential mitigation measures for passenger rail safety as follows:

- Enhanced rail safety programs, such as closer spacing of rail car defect detectors along rail lines.
- Increased frequency of track inspections, tank car inspections, and highway/rail grade crossing signal inspections.
- Toll-free numbers for use by emergency response forces in communities to contact railroad authorities.
- Training programs for community and emergency response personnel to enhance their abilities to respond to rail-related emergencies.
- Head-hardened rail-on-track curves in mountainous terrain to reduce the risk of track breakage and serious derailments.
- Centralized traffic control systems for safer rail operations.
- Replacement of old rails to reduce the risk of derailment.
- New track installations to increase the capacity of the rail line segment, which reduces the potential for train collisions.
- Improved rail signal system to make more efficient and safer use of track.

In this appendix, NS will describe its existing compliance programs with each of the nine measures described above. These measures will be employed by NS on each of the line segments operated by NS.

1. Rail Safety Programs/Defect Detectors - NS will maintain rail safety programs appropriate to the classification of the track on each of the four NS (new Conrail) involved line segments. With respect to defect detectors, Conrail's standard spacing for hot bearing detectors is 20 miles. Conrail presently has an approved

APPENDIX NS-1
DESCRIPTION OF NS COMPLIANCE WITH POTENTIAL PASSENGER TRAIN SAFETY MITIGATION MEASURES DESCRIBED IN CHAPTER 3 OF THE DEIS

...capital AFE to install 41 detectors to achieve nominal 20-mile spacing on lines where spacing presently exceeds this standard. Upon completion of this AFE, 20-mile nominal spacing will be achieved on these four line segments.

2a. Inspection of Track - NS already has in place an inspection program which features twice weekly inspections (twice as frequent as the FRA requirements). In addition to these regular inspections, NS will perform more frequent inspections when: (a) ambient temperature conditions and/or temperature changes along the involved line segments cause stresses in the track structure which produce the potential for track problems such as cracks and rail separations, and (b) weather conditions produce potential risks associated with the possibility of derailments caused by uncontrolled water flows or other weather phenomena as addressed in FRA Safety Advisory 97.

In addition, current NS standards require all main line rail to be inspected at least once per year. Frequency of testing can be up to four times per year. NS testing frequency is based on density, traffic type, defect history, rail type, and age. The NS track testing policy is more stringent in most cases than STB's proposed "at least once every 40 million gross ton-miles of rail traffic, or to inspect annually, whichever is more frequent."

2b. Inspections of Tank Cars - Tank cars are inspected before acceptance at originating points, when received in interchange, and at any point where a train is required to be inspected (i.e., in yards where the car is put into a train). The cars may continue in transit only when the inspection indicates that the cars are in safe condition for transportation as required by 49 CFR 174.4 and NS Standard Materials Transportable Rail Rule 1.3 and F.F. The inspection is made from the ground and verifies that the car has no visible leaks and all valves and openings are properly secured. Additional inspections in passenger corridors by railroads is not practical or necessary to ensure safety.

2c. Inspections of Hump/Reflsh/As-Gangs Crossing Warning Devices - NS conducts monthly, quarterly, and bi-annual tests and inspections of grade crossing warning devices in accordance with FRA and company standards and instructions. Such tests and inspections will continue to be done on the four lines.

3. Toll-Free Telephone Number - The NS Police Communications Center has two toll-free numbers which are used for general emergencies and the other is displayed on grade crossing warning devices. The general number is published in the phone books at all locations which NS operates. It has also been broadcast on the law enforcement network. Additionally, it is distributed at all Grade Crossing Collision Classes conducted by the NS police department (approximately 30 classes per year).

4. Emergency Response Training - The NS Police Department conducts approximately 30 Grade Crossing Collision Courses each year. As part of this instruction, unique problems associated with passenger train collisions are...
discussed. Passenger train, locomotive, and car schematics are included in the
Operation Response software NS contains to local communities. For more
information on the Operation Response program refer to the SFAS at DEER 3-15.
Schematics for Amtrak, BNSF, MARC and NTT will be included in version 2.3 of
the ORRS software which will be available by January 1998.

5. Road-bounded Rail - Note: if the segments are located in mountainous
Apparatus of road-bounded rail on these segments will be initiated in cases where
this type of rail is justified by overall traffic levels and track curvature.

6. Directional Traffic Control - Each of the four lane segments remained is already
equipped with centralized traffic control (CTC) signaling. When signal indications
are complied with, these systems enhance safety by providing provisions for
approaching and following train movements on the same track, and allow for
passenger protection of roadway workers. In addition, these systems enable more efficient
and fluid train operations.

In addition, Amtrak, Illinois DOT and CR (State NS) have a FRA grant for $9
million to install and test a positive train separation system called Incremental Traffic
Control System (ITS) on the Kalamazoo to Portage line. The grant will equip 40
intersections, and 10 wayдерs areas along 15 miles of track. Improvement of the
15:30 minute rule would satisfy the value of this system.

On the Campbell Hall to Port Jervis line New Jersey Transit (NJT) is installing a
similar system. The objective of the NJT project is to implement technology to
make the railroad safer. It consists of two systems for enforcing civil speed
restrictions, signal indications, and positive stops at "Stop" and "Stop and Proceed" signals.
The complementary systems, using wayweye transponders at intersections and
automatic signals controlled to signal requests, is called ITS or Positive Train
Suppression. It will be integrated into the remaining existing wayweye signal systems and
operate as cooperatives with and enhance the capabilities of the existing and
future Continuous Cab Signal Systems and Automatic Traffic Control.

7. Rail Replacement - NS will replace rail on the involved segments based on
worn and detected distress in accordance with applicable FRA requirements.

8. Enhancement of Track Capacity - NS believes that existing track capacity of the
five involved lines is insufficient to accommodate existing and foreseeable future traffic levels. Should future traffic levels develop where additional track capacity is needed to achieve an efficient and
sufficiently accommodates train operations, NS is prepared to initiate necessary train tracks projects. These appear to be sufficient space in the rights-of-way on the Kalamazoo - Jackson - West Detroit and Campbell Hall - Port Jervis segments to add track if necessary.

In addition, the lines at issue are projected to experience only modest freight train

APPENDIX NS-2
HIGHWAY/RAIL AT-GRADE CROSSING DELAYS

In Volume 5A, Appendix C, Section C-4.3, pages C-11-C-12 of the DEIR, SEA has
calculated the crossing delays per stopped vehicle by using the following equations which the
DEIR describes to "form" the Institute of Transportation Engineers, "Transportation and Traffic

\[ D = \frac{4}{9} \left( \frac{v}{C} \right) \]

This equation does not appear in the "Transportation and Traffic Engineering Handbook,"
as such form to represent a relationship of delay per stopped vehicle. Also, the equation is not
automatically correct (i.e. \( \frac{v}{C} \) is not equal to one). The equation SEA used to calculate
are those given vehicle, which remains the equation in the "Transportation and Traffic
Engineering Handbook," for calculating the duration of the queue. The same equation used in the
publication that contains the average number of vehicle delay is presented on the same page as
the above equation in the ITR "Transportation and Traffic Engineering Handbook." The
equation is expressed as follows:

\[ D = \frac{4}{9} (1 - \frac{v}{C}) \]

where,

\( D \) = average minutes of vehicle delay
\( v \) = duration of blockage, minutes
\( a \) = flow rate (vehicles per minute) or齿tphasms during blockage
\( q \) = average arrival rate of traffic (achio to be per minute) upstream of

The value of \( a \), is zero when the roadway is completely blocked as in the case of an
at-grade railroad crossing. Therefore, the equation reduces to:

\[ D = \frac{4}{9} \]

When an additional 0.50 minute is added for the waiting line of vehicles to
obtain the number of minutes of vehicle delay, the equation resembles the average delay
time equation presented in the respondents' EE, Volume 6A, Appendix D, page 260. This
equation was developed by the Stanford Research Institute "Handbook for Planning to
Allocate Urban Rail Transit," prepared for the Federal Railroad Administration and Federal Highway Administration, August 1974, RP-31. Volume 1, Appendix C has been used previously in the Environmental Assessments prepared by SEA for the UP/PS merger. (STB, SEA, 1996, EE, Volume Docket No. 32703, Union
Pacific Corporation, et. al. Council and Western Southern Pacific Rail Corporation et. al.

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Therefore, the final form of the equation to calculate average delay per vehicle using the DEIS notation should be expressed as:

$$D_v = v_0 \times 0.3$$

This equation will more accurately reflect the crossing delay per stopped vehicle definition as described in the DEIS Volume 1, Chapter 4, Section 4.4.2, page 3-17, that says SEA assumed that vehicles arrive at a crossing at a uniform rate and that the average delay for any particular roadway is half the time the crossing is occupied ($D_v/2$), plus the time required for vehicles to disperse ($D_v/2$) after the train has passed.

In Volume 5A, Appendix C, Section 4.3.4, the last paragraph on page C-16 describes Table C-3 in the variation of average delay per stopped vehicle with changes in train length and train speed for various roadway ADT volumes and number of roadway travel lanes. However, Table C-3 is titled "Blocked Crossing Times (in minutes)" which SEA defines differently than average delay per stopped vehicles. Furthermore, the ITE "Traffic Engineering Handbook" does not directly associate blocked crossing time and delay per stopped vehicle as functions of the number of lanes and ADT during a blocked crossing event. If it is SEA's intent to generate a table of average delay per stopped vehicle as defined in the ITE handbook, the table should contain the values generated by using the equation:

$$D_v = \frac{v_0}{2} \times 0.3$$

and the proposed table would be as follows:

<table>
<thead>
<tr>
<th>Table C-6</th>
<th>Average Delay per Stopped Vehicle (minutes)</th>
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<tbody>
<tr>
<td>Train Speed</td>
<td>Train Length (in feet)</td>
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<tr>
<td>10</td>
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<tr>
<td>20</td>
<td>1.95</td>
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<td>30</td>
<td>1.47</td>
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<td>40</td>
<td>1.28</td>
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<tr>
<td>50</td>
<td>1.10</td>
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</tbody>
</table>

In Volume 5A, Appendix C, page C-14, the third paragraph says, "For crossing delay per vehicle, SEA defines that a significant impact would occur if vehicle delay at high-speed grade crossings increased by 30 seconds. This figure represents a driver tolerance threshold above which the driver perceives added delay for an instantaneous blocked crossing event."

APPENDIX NS-3

ADDITIONAL NOISE MEASUREMENTS

Noise measurements were performed on Norfolk Southern rail segments by Wyle Laboratories in Cleveland, Buhlo and Clyde, Ohio and Fort Wayne and Lafayette, Indiana. The measurements were performed in December, 1995 and January, 1996. The measurements were performed in order to: (1) determine if the existing Norfolk Southern noise model was conservative or underestimated noise impacts, and (2) perform site-specific modeling in areas where the STB identified a noise concern.

The noise model used in the Environmental Report (ER) was developed by Thornton Acoustics. The noise model was based on noise measurements made in a flat open field area in North Carolina over a four-day period. Widespread noise measurements were made at four locations perpendicular to the track at distances of 50, 100, 150 and 200 feet from track centerline. The train speed was measured by a radar gun and number of locomotives and rail cars were counted for each train pass-by. Thirty-six noise measurements were taken and analyzed. Based on these noise measurements, SEL's were determined for noise traveling at 30 mph, 55 mph and 60 mph.

The measurements were made without any horn soundings. Based on these noise measurements, SEL's were determined for noise traveling at 30 mph, 55 mph and 60 mph. The train speed was measured by a radar gun and number of locomotives and rail cars were counted for each train pass-by. Thirty-six noise measurements were taken and analyzed. Based on these noise measurements, SEL's were determined for noise traveling at 30 mph, 55 mph and 60 mph. The train speed was measured by a radar gun and number of locomotives and rail cars were counted for each train pass-by. Thirty-six noise measurements were taken and analyzed. Based on these noise measurements, SEL's were determined for noise traveling at 30 mph, 55 mph and 60 mph. The train speed was measured by a radar gun and number of locomotives and rail cars were counted for each train pass-by. Thirty-six noise measurements were taken and analyzed. Based on these noise measurements, SEL's were determined for noise traveling at 30 mph, 55 mph and 60 mph.
In Bellevue, Wyk Laboratories performed noise measurements at three sites on an existing Norfolk Southern rail segment. The Bellevue noise measurements were taken over a three-hour period. These train-pass-by noise measurements were made. A comparison was made between the measured noise value and the calculated noise levels using the Thornton Acoustics noise model. It is evident from the train-pass-by noise measurements that there noise affects the noise SEL levels. Thornton Acoustics measured a noise SEL for a standard train at grade crossings to be 100.6 dB SEL at 100 feet from the track centerline. The highest measured SEL value at 100 feet from the track centerline was 100.6 dB SEL. The lowest measured SEL value was 90 dB SEL. The measured SEL value at 100 feet from the track centerline was 90 dB SEL. The noise measured SEL model predicts a 102.9 dB SEL. At the third location, 100 feet from the track, the highest measured SEL was 98.5 dB SEL while the modeled SEL value was 95.3 dB SEL. Thornton Acoustics noise model over-predicts the measured noise values for each site and train pass-by.

Noise measurements were performed at Clyde, Ohio, along Norfolk Southern's Oak Harbor to Bellevue line segment. Wyk Laboratories performed SEL noise measurements at three locations. Two train-pass-by noise measurements were made. A comparison was made between the measured noise value and the calculated noise levels using Thornton Acoustics' noise model. It is evident from the train-pass-by noise measurements that there noise affects the noise SEL levels. Thornton Acoustics measured a noise SEL for a standard train at 108.6 dB SEL at 100 feet from the track centerline. The highest measured SEL value at 100 feet from the track centerline was 108.6 dB SEL. The lowest measured SEL value was 97.4 dB SEL. Thornton Acoustics measured an average SEL of 96.8 dB SEL at 100 feet from the track centerline. The highest measured SEL value was 100.6 dB SEL. The highest measured SEL value was 100.6 dB SEL. The lowest measured SEL value was 90 dB SEL. The noise measured SEL model predicts a 102.9 dB SEL. At the third location, 100 feet from the track, the highest measured SEL was 95.4 dB SEL. Thornton Acoustics' noise model over-predicts the noise values for each site and train pass-by.

Noise measurements were performed in Fort Wayne along an existing Norfolk Southern line segment. Wyk Laboratories performed SEL noise measurements for one location. Two train-pass-by noise measurements were made. A comparison was made between the measured noise value and the calculated noise levels using Thornton Acoustics noise model. All crossings within the measurement area are separated. The highest measured SEL value was 94.6 dB SEL at 100 feet from the track centerline. The lowest measured SEL value was 93.4 dB SEL. The noise measured SEL model predicts a 95.6 dB SEL. The highest measured SEL value at 100 feet from the track centerline was 99.0 dB SEL. The lowest measured SEL value was 75.5 dB SEL. At location 1,500 feet from the track, the highest measured SEL was 93.4 dB SEL. The highest measured SEL value at 100 feet from the track centerline was 93.4 dB SEL. The lowest measured SEL value was 95.6 dB SEL. Thornton Acoustics’ noise model over-predicts the noise values for each site and train pass-by.

Noise measurements were performed in Lafayette along an existing Norfolk Southern line segment. Wyk Laboratories performed SEL noise measurements for two locations. One train pass-by noise measurement was made. A comparison was made between the measured noise value and the calculated noise levels using Thornton Acoustics noise model. All crossings within the measurement area are at grade. However, more noise was heard during the train pass-by. It was noted that rail noise was heard during the train pass-by. Thornton Acoustics measured a noise SEL for a standard train at grade crossings to be 101.5 dB SEL at 100 feet from the track centerline. The highest measured SEL value at 100 feet from the track centerline was 101.5 dB SEL. The lowest measured SEL value was 98.5 dB SEL. The noise measured SEL model predicts a 102.9 dB SEL. Thornton Acoustics’ noise model over-predicts the noise values for each site and train pass-by.

The comparison between Wyk Laboratories noise measurements and Thornton Acoustics' noise model predictions shows that in all cases, the Thornton Acoustics' noise model overestimates the SELs by 4 to 6 dB compared to the measured SELs. The data consistently shows that the differences between Wyk Laboratories noise measurements and Thornton Acoustics' noise model are greatest where the building structure is most densely populated. Also, in areas with high background noise, the change in the total noise level is not necessarily equal to the change in the rail traffic only due to the logarithmic nature of the dB. For example, at Cleveland site #1, the background noise level is 51.5 dB. The measured L_n from the rail traffic is 63.2 dB. The total measured L_n was 65.4 dB. Assuming a 181 percent increase in rail traffic along the line as a result of the acquisition, the total L_n will increase by 4.5 dB. The pre-acquisition rail L_n was then to be 67.7 dB and the total L_n will increase by 3.2 dB due to the acquisition, not the 4.5 dB increase predicted by the noise model.

The Thornton Acoustics' noise model used in the ER is conservative compared to all noise measurements made by Wyk Laboratories. The model used to predict noise contours and levels in the DEIS further overestimates noise impacts and should be amended to adopt the Thornton Acoustics' predicted SELs for NS trains. The model would also be improved by application of additional acoustic shielding where justified by the presence of structures. Finally, it is apparent that noise models should be used only as a screening tool and that further local analysis needs to be performed in areas where the SBA is considering mitigation.

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<tr>
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</table>
1. The Board Should Not Adopt Mitigation Measures That Interfere With the FRA’s Exclusive Authority To Regulate the Safety of Passenger Operations

2. The DEIS Fails to Justify the Conclusion That Any Mitigation Is Warranted on the Identified Line Segments

3. The Proposed Mitigation Relies on Archaic Notions of Train Operation That Overlook the Existence of Modern Signaling


5. Any Additional Safety Measures Should Be Carefully Considered in Coordination with the FRA and the Passenger Agencies


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7. Safety: Freight Rail Operations

8. Safety: Highway-Rail At-Grade Crossings

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B. The Established Regulatory Scheme Provides a Comprehensive Approach to Grade Crossing Safety

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19. Environmental Justice

A. The Board’s Traditional Environmental Review Process Adequately Protects Against Discrimination

1. This Railroad-Related Proceeding Does Not Present an Opportunity for Discrimination

2. This Railroad Cost of Proceeding Does Not Present an Opportunity for Discrimination

B. If the Board Chooses to Apply a Demographic Analysis, It Must Employ a Methodology that is Consistent With the Executive Order

1. The Scope of Review is Too Broad

2. The DEIS Fails to Determine Whether the Proposed Action Will Have a Disproportionate Effect on Minority or Low-Income Populations

C. Specific Recommendations for Coordination With Communities with Significant Minority or Low-Income Populations

1. Butt Yard to Elmhurst, IL
2. 59th Street Chicago (intermodal) Yard
3. Willcoxia to Penn Station
4. Alexandria Junction to Washington, DC
5. Quakertown to Mayfield, Mayfield to Marcy, OH
6. Marion to Ridgeway, OH

21, 24, 25, 27: Communication with Unique Circumstances

21. Cleveland

A. CSX Constellation Efforts to Date

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Pursuant to the mandate of NEPA, the Board has exposed the DEIS to public comment. The public comments will allow the attention of the board and its staff other possible methods of addressing the environmental impacts of the Transaction. The public comments period will, indeed, the period throughout the preparation and exposure of the DEIS, should permit the Applicants and other interested parties to suggest the appropriate weighing of the benefits that flow from the Transaction as proposed—both on environmental issues and on the basic public interest factors considered by the Board under its statutory authority—against any adverse environmental impacts. It also should permit the Board to weigh and consider the extent to which any of the mitigation alternatives proposed in the DEIS affect, on balance, not too deeply into or even eliminate the benefits—environmental and non-environmental—of the Transaction. Such balancing will require the Board's consideration of whether other, more targeted mitigation approaches might be taken, or perhaps a realization reached that in some areas no mitigation is appropriate given the prevailing considerations, such as the broader impacts on the region or significant impacts that the mitigation would have on the transportation system.

Comments will be received by numerous persons with concerns about various local impacts. Some local communities, understandably concerned only with their local interests, might request that the Board impose solutions that would adversely impact CSX and NS's operating plans or prevent their implementation (effectively nullifying the Transaction). An example of this is the greater Cleveland area where the City of Cleveland has offered a plan requiring a reconfiguration of the CSX/NS systems that would disrupt East-West traffic flows, as well as have significant adverse impacts on other local communities. If adopted, such requests would have catastrophic consequences for the CSX and NS rail networks, and indeed the national transportation system, and would thwart the public and private benefits flowing from the Transaction.

It is important to note that the Board concludes that the proposed Transaction will create important, system-wide benefits. These positive impacts are in a number of areas including enhanced safety, improved air quality and reduced energy consumption. For example, the DEIS predicts a decline in the likelihood of train accidents and the release of hazardous materials, a decline in truck accidents and averager due to the projected diversion of approximately one million ton/mile movements to CSX and NS rail systems, a significant decline in smoke resulting from these diversions and a growth in movement of the efficiency of rail operations. Further, no systemwide significant adverse human and ecological impacts are noted in the DEIS.

Because of the fact that the local and particular benefits are of greater locality and are not impacted, the DEIS is properly devotes considerable attention to a discussion of particular local impacts and less attention to a discussion of the overall, system-wide benefits and other effects of the Transaction. This is entirely appropriate—indeed necessary under NEPA—as any discussion of numerous, unique local impacts will inevitably require more lengthy discussion. But it is important that the Board not lose sight of a crucial conclusion of the DEIS, namely, that the environmental benefits of the Transaction outweigh the far more limited local impacts discussed in such considerable detail. The FEIS should clarify this.

While the DEIS does not detail any local non-regulation benefits of the Transaction, since these are analyzed by other elements of the Board's staff and are to be, with
the environmental impacts, the material of the ultimate resolution and decision by the Board itself, the FEIS should nonetheless recognize them. It is also worthwhile to note them at this stage.

The Transaction brings, to a large extent of the Northeastern United States, rail-to-rail competition between Class 1 rail carriers for the first time in a generation. The Transaction enhances Class 1 rail-to-rail competition in a number of major markets in the Northeastern United States. The Transaction also amends the system of two strong Class 1 railroads considerably and brings single-line rail service between many shippers to the Southeastern United States and the Northeastern United States. These effects not only strengthen rail movements as a competitor against truck movements, thus producing more efficient railroads and many of the synergistic environmental benefits already mentioned, but also bring economic benefits to businesses, consumers and communities throughout the entire Eastern United States and indeed throughout the country at large. Strong railroads offer opportunities for growth and jobs in communities, including in lower-income communities where they are most needed.

The FEIS has fulfilled its mission of identifying all of the significant environmental impacts that could flow from the proposed Transaction. However, there are two issues of unfinished business which must be undertaken in preparing an FEIS.

First, the SEA, in taking its work and the work of its consultants on the FEIS stage to the FEIS stage, must permit the Board to fulfill its statutory charge of balancing the economic and other non-environmental benefits and the synergistic environmental benefits, against localized environmental impacts that may attend the Transaction, and in balancing possible remediation of those local impacts against the achievement of the great benefits of the Transaction. The FEIS, perhaps understandably, does not do this nor does it suggest here or when that balancing process is going to be conducted. As we develop below, it is this balancing process which distinguishes the EIS process from the Environmental Assessment ("EA") process, which has previously been employed in rail combinations by the Board and its predecessors. Just as the Board is not to single-mindedly devote itself to its transportation mission in ignorance of the environmental consequences—which the process employed by the SEA simply guarantees it will not—the Board is not to devote itself single-mindedly to avoiding localized environmental impacts at the price of sacrificing its basic statutory mandate. Then, where the effect of a recommended remediation might be to reduce materially the overall public benefits of the Transaction, the FEIS should provide the Board with a broader menu of remediation alternatives. It should, as far as the SEA’s expertise permits, provide some suggestions as to the relative weight of the local environmental concerns and the synergistic environmental benefits, and the weight of the transportation policy benefits which the Transaction involves.

Second, while identifying localized environmental impacts and their optimum “remedies” mitigation, that is, mitigation not balanced against other factors, the FEIS is a number of cases overlooks the basic concerns under which the Board operates, in the environmental as well as other areas. Respectfully, CSX suggests that the FEIS has not recommended environmental mitigation in situations where the Board’s established policies and precedents (even where an EA has been prepared) do not require—nor permit—the imposition of conditions. Moreover, in some areas, the mitigation proposed by the FEIS would unacceptably extend the Board’s reach into areas reserved exclusively or primarily to other federal and state agencies.

Accordingly, CSX believes that in a number of areas the recommended mitigation measures which are set forth in the FEIS should be withdrawn, should be modified, or should be supplemented with alternative recommendations, in each case for ultimate resolution by the Board. Among the areas discussed in detail below where CSX believes the proposed mitigation measures set forth in the FEIS go beyond an appropriate use of the Board’s conditioning authority are the following:

- the proposed 30-minute separation window around passenger trains in relation to freight trains;
- the proposed up-grading of certain grade crossings or construction of grade separations at CSX’s expense;
- the proposed conduct of emergency response drills every two years on certain line segments that may experience more hazardous materials traffic;
- the proposed Failure Mode and Effects Analysis for hazardous materials incidents at yards;
- the proposed environmental justice mitigation;
- the proposed mitigation for “unsee” crossings with pre-set stop conditions (Newark and the Four Cities).

As to each of these measures, and others, it appears to CSX that one or more of the following conditions is present:

1) the recommended mitigation will unacceptably reduce the public benefits that the proposed Transaction was designed to create;
2) the recommended mitigation is unnecessary or alternative remedies are available;
3) the recommended mitigation ranges to cure environmental impacts that are unrelated to the Transaction;
4) the recommended mitigation is overbroad and reaches beyond any potential harm caused by the Transaction;
5) the recommended mitigation is not a feasible strategy for curing the identified environmental impact; and
6) the recommended mitigation would infringe on the jurisdiction of other bodies.

The FEIS is, by definition, a preliminary document. The current process provides interested parties with the opportunity to make the SEA in shaping the FEIS. CSX submits that, by addressing its concerns in the manner discussed in the subsequent sections of these comments, the SEA can provide the Board with a tool of environmental analysis that is best suited for enabling the Board to weigh the environmental costs of the proposed Transaction against the Transaction’s environmental and other public benefits and to decide if, how, and to what extent, it will exercise its conditioning authority.
1. General Comments

A. The Purpose of an EIS Is Not To Resolve Every Identified Environmental Impact: An EIS Is Simply A Tool To Bring Environmental Considerations to the Decision Maker's Attention

The DEIS represents an innovative undertaking by the SEA to identify and analyze every potential significant environmental impact that could result from Board approval of the proposed Transaction. The enormous effort and millions of dollars committed to the preparation of the DEIS are unparalleled in the history of the Board or Interstate Commerce Commission ("ICC") and reflect the earnestness with which the SEA approaches its environmental review process. While CSX respectfully disagrees with certain limited portions of the analysis, CSX, on the whole, agrees with and applauds the analytical process. However, upon completion of this analytical process, the FEIS should address the unfinished task - that the authors of NEPA intended - to provide a finished document permitting the balancing process to be effected by the Board, without resolving every environmental impact identified by SEA's analytical process.

Although well-intentioned, DEIS's attempt to devise a Board-controlled mediation for every identified environmental impact not only runs beyond what is legally required by NEPA but also (1) does not facilitate the balancing test that the Board will ultimately apply and (2) runs the very real danger of straining into the regulatory jurisdiction of other federal and state agencies and unnecessarily precipitating conflicts with those agencies.


Once a federal agency identifies and evaluates the adverse environmental effects of a proposed transaction, NEPA's goals are satisfied. See Supergum v. United States Army Corps of Engineers, 120 F.3d 664, 666 (9th Cir. 1997) ("NEPA's federal agency has heard all the objections to a plan and considered all the sensible options before it, the agency has fulfilled its duty.") The agency is then free to conclude that the benefits of the proposed action outweigh the environmental costs and that the proposed action should go forward. Robinson, 490 U.S. at 350-51.

As part of the process of weighing the benefits and costs of a proposed action, a federal agency must include in its EIS a discussion of possible measures that can be taken to mitigate the identified adverse environmental impacts. See R. Hannon, 490 U.S. at 351-52. However, because NEPA mandates a process and not a result, the Supreme Court has made clear that NEPA does not require an agency to mitigate all (or indeed any) of the identified adverse environmental impacts. See id. at 352 n.16. If an agency determines that, given the benefits of the proposed action, the identified impact must not be mitigated, the agency may approve the action without mitigation, even if the imposition of mitigation would fully remedy the identified harm.

The weighing of the costs and benefits that go into this decision is left to the discretion of the agency.

The DEIS's attempt to remedy every identified potentially significant impact goes beyond what is required in an EIS process and is more consistent with the abbreviated Environmental Assessment ("EA") process followed by the Board and the ICC in prior rail consolidation proceedings. However, the purpose of preparing an EA is to determine whether or not the action contemplated will have a significant adverse environmental effect requiring the preparation of an EIS. If an EA shows that the proposed action will have a significant adverse environmental effect, the agency may then consider and mitigate all significant impacts or prepare a full EIS. See id., 35 F.3d at 591 (citing Cabinet Mountains Wilderness v. Proposition 603, 43 F.3d 678, 682 (D.C. Cir. 1991)); Los Angeles River Basin Area v. North Carolina, 940 F.2d 64, 62 (4th Cir. 1991).

In stark contrast to the shorter EA process, where here, the STB prepares an EIS, it has no corresponding obligation to mitigate every (or any) environmental impact, because the preparation and consideration of a legally sufficient EA satisfies NEPA's procedural mandate. As the Supreme Court has explained, "[i]t is the action environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding other values outweigh the environmental costs." Robinson, 490 U.S. at 350.

While noting the differences between the two processes, the DEIS also recommends some form of "mitigation for every significant local environmental impact. This approach should now be complemented with a further balancing of the environmental impacts of the proposed Transaction against the Transcanada's public benefits. By performing the balancing process, the Board will determine what weight the local environmental impacts will carry in its ultimate decision as to whether or not to approve the pending application. The Board may decide that (1) the public benefits of the proposed Transaction outweigh the local environmental impacts that the Transaction should be approved without any environmental condition, or (2) the public benefits of the proposed Transaction outweigh the local environmental impacts but that certain mitigation of environmental impacts, which will not reduce the public benefits, should be imposed.

While the DEIS presently recommends a mitigation measure that would require Applicants to modify their respective Operating Plans, either permanently or pending implementation of the mitigation measures, or would otherwise significantly reduce the overall public benefits of the Transaction, CSX argues that the FEIS provides the Board with one or more alternative mitigation measures which would not significantly reduce the overall public benefits of the Transaction. The Board will then be able to balance the local environmental impact and the costs of mitigating it in various ways against both the local and overall public benefits of the Transaction in deciding if, and how, it will exercise its conditioning authority.

The DEIS's preference for "<or> or" mitigation - through remedial70acted and administered by the Board alone - for every identified environmental impact also runs the risk of
incorporating, or (2) unlikely to be adopted or enforced by the responsible agency.

A. All relevant, reasonable mitigation measures that could improve the project are to be identified, even if they are outside the jurisdiction of the lead agency or the cooperating agency, and thus would not be committed as part of the EIS of these agencies. Section 1502.06(o), 1502.26(c). This will serve to alert agencies or officials who are responsible for other environmental impacts and will encourage them to do so. Because the EIS is the most comprehensive environmental document, it is an ideal vehicle in which to lay out not only the full range of environmental impacts but also the full spectrum of appropriate mitigations.

46 Fed. Reg. 18026, 18031-32 (Mar. 23, 1981) ("CEQ Notice"). So long as the lead agency presents its mitigation recommendations for consideration by the agency possessing the appropriate substantive jurisdiction, the lead agency may approve the proposed action and need not wait for the agency with jurisdiction to decide whether to implement the recommended mitigation.

B. The DEIS Contains More Mitigation Recommendations Than Are Beyond the Scope of the Board's Policies as to the Site of the Conditioning Power.

It is important to understand that CEQ is not suggesting that the Board dedicate its environmental review responsibilities to another agency. This would simply be inappropriate. See id., 33-36, 39-55. When CEQ is suggesting is that the Board can and should utilize its environmental review responsibilities to identify all significant environmental impacts and, where appropriate, leaving the imposition of mitigations to those agencies with the requisite authority to do so.

In other contexts, the ICC defers to other federal and state agencies that have jurisdiction to regulate a matter, including transportation. See, e.g., 40 U.S.C., § 1973. Yellow Freight Systems, Inc. of Indiana - Permission for Disclosures - Holding Meetings (issued Jan. 20, 1995) (deferral to jurisdiction of National Institute of Standards and Technology and state over truck weighing practices).

Even if the DEIS concludes that the DEIS's attempts to mitigate every identified environmental impact is proper, the DEIS nonetheless recommends numerous mitigation measures that, if not the Board's power, in its traditional approach to exercising these powers. The core of the Board's power to require mitigation is contained in well-established Authorities. The Board will not exercise its conditioning power where (1) local or state jurisdiction is exercised in the transaction, and the alleged environmental harm is, e.g., the alleged environmental harm is in a pre-existing condition; (2) the mitigation is not necessary to remediate the alleged harm; (3) alternative remedies are available; (4) the mitigation would put the affected community in a better position than before the transaction; or (5) the mitigation, although potentially remedying a specific environmental harm, would reduce the overall public benefits of the transaction. See United Pacific Corp., United Pacific R.R. Co., & Northern Pacific R.R. Co. v. Central and Southern Pacific Transportation Co., St. Louis, S. & Southern R.R. Co., 89 F.3d 1356 (9th Cir. 1995). The United States District Court for the Western District of Washington.

While the DEIS acknowledges these established authorities on the Board's imposition of environmental conditions, it fails to apply these standards in a number of critical respects. For example, the DEIS proposes that Applicants are required to (1) comply with various laws, regulations and prior agreements that would be independently binding on them (measures that, by definition, are not necessary and which alternative remedies exist), (2) install, with or without otherwise required state and federal funding, costly upgrades at high-maintenance-stake crossings that would more than precisely the chain's transmission-related adverse impacts on accident rates and highway traffic movements, and (3) commit enormous funds to the installation of new rail facilities, thus the number of trains moving over various less congested and implement new operating procedures and other measures that would disproportionately and drastically undermine the public benefits of the Transaction, and actually reduce the level of transportation services to the public. In all of these respects, the proposed mitigation measures should be reviewed and/or eliminated, or alternative approaches held, before the Board, in the interest of the FEIS.

In addition, the NEPA process and the Board's conditioning power is not properly used to re-write industry-wide regulations and operating practices related to railway safety and operations. Just as the "Board recognized that its conditioning power may not be used to effectuate broad restructuring of the rail industry and the competitive balance among carriers, see, e.g., RENZ at 35-36, so also it should be an inappropriate exercise of the Board's responsibility to consider environmental impacts of the Transaction as a prelude to impose conditions that favor broad new safety and operating rules to which other major railroads are not subject and that fall within the regulatory responsibility of other federal and state agencies. The DEIS itself recognizes this limitation in its proposed to impose noise-impact assessment measures falling within the FRA's regulatory jurisdiction over the ordering of train cars, see Vol. I at 3-16, but...
a has not conformed to this standard in several other respects, including its proposals to require Applicants to (1) comply with a proposed industry-wide FRA regulation governing rail inspections, (2) construct a grade-crossing protection device at certain locations notwithstanding the existing regulatory regime governing inspections and funding of grade crossing improvements, (3) maintain 15-minute separations between passenger and freight trains on certain key segments without regard to the prevailing industry standards and operating practices on similar rail lines, and (4) comply with new or newly fashioned operating requirements and procedures governing the transportation of hazardous materials, again without regard to prevailing industry standards and operating practices in the running of that traffic.

C. The Board Should Not Impose the Terms of Voluntary Agreements as Formal Conditions of Approval of the Transaction

The DEIS has suggested that the SEA intends to require that the Board impose as a condition of its approval of the proposed Transaction any negotiated settlement agreements or other mutually acceptable binding agreements pertaining to the Transaction that CSS and NS enter into with non-Applicants. Some parties have even suggested that such agreements, or at least the terms of such agreements, be submitted to the Board for approval. The SEA should be aware, however, that the imposition of voluntary agreements as formal conditions is a prudent and necessary step.

First and foremost, the existence of a bilateral agreement between an applicant and an affiliated third party is an alternative mechanism for rendering an identified area that otherwise met the need for the imposition of a formal condition. As the Board notes in LEP, the Board expects Applicants to honor all representations and agreements. LEP at 12 n 14. Furthermore, the Board will have continuing oversight following any decisions to approve the Application. This oversight function will fully enable the Board to determine whether the Applicants are satisfying the terms of their voluntary agreements and to take appropriate steps in the event that intervention is required. Accordingly, no reason exists to impose the terms of voluntary agreements as formal conditions to approval of the Transaction.

While it is true that the Board has in several instances involving railroad mergers and other consolidations conditioned its approval of the transaction in questions upon the parties’ compliance with various environmental mitigation measures, there is no basis in NEPA for requiring in all instances that negotiated agreements pertaining to mitigation of environmental impacts be made formal conditions of Board approval. As bilaterally-negotiated agreements, those agreements contain no provisions that go beyond the Board’s standards for imposing conditions. Again, NEPA mandates a triggering, not a result. Moreover, where, as here, the Board has proposed an EIS rather than an EA, it is not necessary that the Board force such each and every potential environmental impact that can be identified. A “precise” statement leaving the issue to private resolution is often better than an regulatory agreement, taken as a whole, with respect to the matter and established procedures and practices, may be the more desirable result. Not only is the DEIS’s proposal for imposing conditions unnecessary in the context of an EIS (which requires that the Board balance the identified significant adverse environmental impacts with the identified synergetic environmental and commercial benefits of the proposed Transaction), it fails to head clear limits in the practice applied by the Board as to the imposition of conditions.

Because of the uncertain and nature of some of the perceived environmental impacts that may become the subject of future written between CSS and effective action, it can be expected that some of the mitigated solutions to the impacts will fall outside the practices of the Board in imposing mitigation measures. Moreover, any assurance that the terms of a negotiated agreement can be converted into a Board-imposed condition would have an obvious dampening affect on the ability of CSS to consider and agree to innovative, creative solutions to community concerns. The Applicants would likely be less willing to negotiate such agreements with the prospect hanging over their heads of the Board turning a voluntary, mutually-negotiated solution in a specific instance into a formal condition that could later be argued to have procedural effect because of the Board’s imposition of the agreement as a condition of approval. The need to so limit the conditioned authority have long been recognized by the Board and the ICC which often favorably commented on settlement agreements but declined to impose them as conditions.

D. The Liability of Applicants and Third Parties to Engage in Voluntary Agreements by the SEA of the Board’s Decision Does Not Necessarily Require the Imposition of Formal Conditions

Just as the Board should not impose the terms of voluntary agreements as formal conditions, the SEA and the Board should not presume that the lack of a voluntary agreement at the time of the issuance of the FEIS and/or at the time of the voting conference means the imposition of a formal condition. As the DEIS itself recognizes, the consultation process is a far superior means for developing and implementing creative, mutually-beneficial solutions to local environmental impacts that is the formal conditioning process. The consultation process allows the parties to share responsibilities and costs in a manner that the Board could not impose unilaterally. However, the consultation process cannot be expected to produce across-the-board agreements over the course of a mere few months. Creative solutions with public entities require many levels of review and approval before the public entity can commit itself to a binding agreement. Given these realities, the SEA and the Board should allow the consultation process to continue beyond the issuance of the FEIS, the voting conference or the implementation of the Transaction. Applicants propose that they report the status of the consultations to the Board as consultations are concluded or as otherwise appropriate. What the SEA and the Board should not do is insist that the consultation process and impose rigid conditions before the consultation process has had a full opportunity to produce optimal results.

E. The SEA Should Not Recommend the Imposition of Any Environmental Conditions that Require Applicants to Modify or Refuse Implementation of Their Repeal Operating Plan Pending Implementation of Mitigation

Well-established Board and ICC precedents make it clear that the Board will only impose a condition where the condition “will produce public benefit (through reduction or elimination of the possible harm) outweighing any reduction to the public benefit produced by the merger.” BNSF at 56, and LEP at 144. The approach of NEPA and the readings of the courts as to the function of an EIS confers the applicability of the balancing approach. The proposed Transaction is designed to produce a more efficient and competitive rail network. Key to the realization of these benefits is implementation on Day One (the day that the CSS and NS Operating Plans become effective) of these Operating Plans.
recommending the complete and immediate prevention of any adverse environmental impacts. As
the SEA had not yet recommended specific mitigation measures for Rano and Wickham, the SEA
recommended, and the Board adopted, the only available option for avoiding the adverse
impacts in the absence of an EIS. Prohibit the applicants from increasing traffic in Rano and Wickham until
the completion of mitigation studies and the implementation of that mitigation.

Here, the SEA has chosen a different means of complying with NEPA, namely the
preparation of an EIS, and does not have to recommend the elimination of every significant
environmental impact, either immediately, or, indeed, at all, as it was required to do in USFP.

The SEA, therefore, should use USFP as a model for developing its recommended
environmental conditions. Instead, the SEA should recognize, when making its final mitigation
recommendations, that the Board will only impose mitigation where the benefits of the mitigation
outweigh any reductions to the public benefits to be realized by approval of the Transaction, and
should provide the Board with the necessary tools to make this determination.

The Board, under an EIS, can weigh the benefits obtained from a constructive
redressing of freight rail transportation issues to a transaction within its jurisdiction against
the necessary environmental impacts in determining whether mitigation should be ordered or the
extent of mitigation. Likewise, it can and should weigh the benefits of the immediate nationwide
efficacies inherent in commencing negotiation of the Applicants’ Operating Plans at once, rather
than delaying the implementation of one or both of the plans in a specific area (which is apt to
have impacts on transportation in other parts of the system) against permitting the environmental
impacts to go unmodified for a period of time until plans for the remediation are finalized and/or
the remediation put into effect.

Furthermore, it is essential that the SEA and the Board not allow a third-party to impose
approval of the Transaction by demanding that Applicants modify their Operating Plans either
permanently or pending mitigation. Although Congress abolished the Interstate Commerce
Commission in 1995, the Commerce Clause of the United States Constitution is still alive and
well. The Commerce Clause grants Congress the power to regulate interstate commerce and
where it has acted (and in some cases where it has not) prohibits the states from interfering with
interstate commerce. Using its power under the Commerce Clause, Congress has given the
Surface Transportation Board, not any individual state or locality, the exclusive and plenary
power to regulate railroad operations subject to Board jurisdiction, as well as railroad
consolidations. See 49 U.S.C. §10501 (providing that the Board has “exclusive” jurisdiction over
rail operations); Kansa Counties, W.A. – Position For Precedent Order – Burlington Northern
R.R. Co. – Stampede Pass Line F.D. No. 33095 (served Sept. 23, 1996) (Board’s exclusive
jurisdiction with respect to operations over rail lines of remote states) Thus, so long as the
Board finds that the proposed Transaction is consistent with the public interest, the Board should
approve the Transaction, even if a state or locality protests loudly that it deters the local
environmental impact unacceptable. Simply put, the national interest in interstate commerce must
take priority over a local environmental impact, if the only feasible remedies of that local
impact would impede the public of competitive or efficient transportation.

The DEIS concludes that there are numerous positive, systemwide environmental impacts
that would flow from approval of the Transaction. CSX recognizes that, because positive impacts

do not require extended discussion of potential mitigation approaches and measures, the amount of
space devoted to a discussion of positive impacts in the DEIS is small in comparison to the
discussions addressing certain localized adverse impacts that SEA has already determined
warrant mitigation. The positive impacts are, however, substantial and should be addressed in the
DEIS in a manner consistent with their significance. These positive impacts of the Transaction are
manifest in every major area of environmental analysis: safety, transportation, air quality, and
energy.

Safety: The DEIS observes that projected decreases in rail accidents “would result in a
small overall decrease in likelihood of freight rail accidents and derailments.” Chapter 4 at 4-10.

The DEIS also correctly notes that the Transaction will reduce the opportunity for release of
hazardous materials, resulting in “a slight safety improvement for rail transportation of hazardous
materials and no significant systemwide adverse impacts related to hazardous materials transport.”
Executive Summary at ES-19. This predicted decrease in the likelihood of accidents and
derailments tells only part of the safety benefits that will accrue from the Transaction.

The October 21, 1997 comments submitted by the Department of Transportation and
Federal Railroad Administration in this proceeding correctly observed that, “CSX and NS have
had the two best safety records among large U.S. railroads for the last six years.” (DCT-3 at
17). In terms of the accident rate/mile measures used by DCT to assess rail safety performance,
CSX has achieved the best record among all of the Class I railroads, with an accident rate that is
one-half of that of CSX’s. While CSX’s safety record has been commendable, the better record
achieved by both CSX and NS offer a strong indicator that the Transaction will result in a net
improvement of rail safety in the Eastern United States. The safety records of both CSX and NS

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also used in contrast to those of UP and SF. According to the DOT data described above, both of these Western railroads have had consistently higher accident rates than CSX or NS.

The level of safety planning, as reflected in the detailed Safety Integration Plans ("SIP") submitted by CSX and NS, further underscores the positive aspects of the Transaction. CSX has been engaged in detailed planning for the sale and integration of Conrail since the spring of 1997, and this planning will have commenced well over one year by the time a decision is due to be made in this proceeding. That level of planning effort, and CSX's consultation with FRA concerning the integration of the railroads, is unprecedented in rail merger proceedings and underscores the importance that has been assigned to the achievement of a safe integration of the portions of the Conrail system allocated to the use of CSX. One important consequence of that planning effort is that the best safety practices of CSX and Conrail will be identified and implemented on the expanded CSX system.

The Transaction will also significantly enhance highway safety. The truck diversion studies presented to the Board by CSX and NS indicate that a total of approximately 1.2 million ton-miles units (trucks or containers) will be diverted from highway transport to the rail system. This diversion will result in a substantial net safety benefit. As noted in the DEIS, the assumed reduction in truck-miles "could result in 1,600 fewer annual highway accidents," including 31 crashes involving one or more fatalities. The projected savings in human lives deserves substantial weight in the environmental analysis of this Transaction.

Transportation: The transportation benefits associated with the Transaction — enhanced rail capacity, more efficient routes, new single-line rail opportunities and an improved infrastructure — are uncontested in this proceeding. The DEIS does not address these benefits in

any length, but correctly concludes that the proposed Transaction "would positively contribute to an overall improvement in both rail and highway transportation systems." Vol. 4 at p. 4-73.

Among the positive impacts identified in the DEIS are a more efficient use of rail system resources, a shift of freight from publicly funded highways to privately funded rail lines, and enhanced competitiveness of the rail system with highway carriage. As the DEIS correctly states, the "shift in truck miles traveled would result in beneficial effects on air quality, energy consumption, and the use and associated safety concerns of the interstate highway system." Vol. 1 at 6-44.

The CSX Operating Plan describes: at some length the new multimodal transportation opportunity that will be made possible by the Corridor acquisition, resulting from new single-line services linking, e.g., the northeast and the southwest. These and other single-line routes will allow an expanded CSX system to compete for the transportation of cargo that has long been dominated by mass corridors, resulting in significant diversions to closer, safer and more fuel efficient rail transport. In addition, CSX is investing in substantial infrastructure improvements to its rail system, including improvements to intermodal terminals and to rail lines that will carry substantial amounts of freight projected to be diverted from highway carriage. The DEIS thus correctly concludes that the Transaction will benefit the highway system, result in reduced traffic and provide many millions with more efficient routes.

The DEIS also correctly concludes that the Transaction "will have no significant effect on commuter rail." Vol. 1 at 6-74. SEA properly determined that no transportation-related mitigation is required to address increased freight traffic on certain lines also used by New Jersey

Transit, SouthEastern Pennsylvania Transportation Authority, the Maryland Rail Commuter System, Virginia Railway Express, or Amtrak. 1 As the DEIS states, "there is insufficient capacity on all of these rail line segments (used by Amtrak) to accommodate the (projected) increases in freight traffic," and "[e]ach of the rail-line segments with commuter service can accommodate the proposed acquisition-related increase in freight traffic." Chapter 4 at 6-50 and Executive Summary at ES-20.

Air Quality: The DEIS properly recognizes that the Transaction will result in "an overall improvement in air quality." Chapter 4 at 6-70. SEA found that virtually all major emission compounds (including nitrogen oxides, brethable particulate matter, volatile organic compounds and carbon emissions) will decrease as a consequence of the Transaction. These decreases are in large measure associated with the environmentally-friendly diversion of freight from highway to rail.

The DEIS also properly found another air quality benefit: "a reduction in the potential for accidental releases of ozone-depleting materials . . . . " Vol. 1 at 6-62. This reduction is the result of a proposed Transaction-related decrease in total co2-emissions in freight handling at yards.

EMERG: As to each of the other major areas of environmental concern, the Transaction will result in a net benefit to energy resources. This benefit will be realized in part because of reduced fuel consumption associated with truck diversion and more efficient rail routings. The annual reduction in fuel consumption resulting from truck to rail diversion would amount to 133.8 million gallons. See Vol. 1 at 6-47. As a result, SEA concluded that the Transaction

would positively contribute to an overall net reduction in energy consumption." Vol. 1 at 6-73.

(3) The DEIS, however, erroneously reduces the predicted fuel savings by 53.5 million gallons, an amount of fuel attributed to increased rail operations. What the DEIS overlooks is that this increased fuel use by CSX and NS will be largely offset by decreased fuel use by other railroads and transportation modes.) SEA also correctly recognizes that the Transaction provides opportunities for more competitive routings and transportation alternatives for energy resources and for reusable commodities.

As noted above, it is easy to lose the forest for the trees in an environmental review process that focuses on areas where mitigation may be appropriate and concurrently addresses general, environmental benefits relatively briefly. In this case, the over-arching fact that should not be obscured in the DEIS is that the Transaction presents an opportunity to achieve an important, and very significant, net plus for the environment in the areas of rail, transportation, air quality and energy. These benefits enhance the public interest. The DEIS should comprehensively consider that conclusion and the non-environmental benefits of the Transaction are the benchmarks against which local impacts and their appropriate remuneration, if any, are to be measured.

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1 SEA did propose safety-related mitigation with respect to commuter and Amtrak operations on certain lines. This proposal is addressed in Section II.B of these comments.
Amtrak operates on each of these segments. In addition, CSX-operated MARC trains provide commuter services on the Washington/Patuxent yards line ("Poolesville yard") and Amtrak-operated VRE trains provide commuter services on the Fredericksburg (Potomac Yard) segment ("Fredericksburg line"). All but the Poolesville yard form part of the north-south CSX corridor described in the CSX Operating Plan as the Atlantic Coast Service Route, a planned major traffic lane for transporting intermodal and general merchandise traffic between New England, the Middle Atlantic states, the Southeast, and Florida.

CSX will show here as follows:

First, no passenger safety mitigation is warranted because, by any standard, operations on these three segments—which are already subject to PPA safety requirements—are exceptionally safe and will remain equally so after following the Transaction. The material analysis conducted by SEI to assess the relative mitigation is warranted relies on data and assumptions that overstate the Transaction-related impacts of modestly increased freight traffic. For example, in conducting its statistical review of passenger freight train collisions, the DEIS utilized a passenger train-freight train collision rate that was derived from collisions of a type that are unrelated to increased freight operations and that would not be addressed by the proposed mitigation, i.e., collisions resulting from freight trains and passenger trains operating on different tracks or from passenger trains hitting parked freight cars. The actual rate of passenger trains being hit head-on or from behind by freight trains operating on the same track, or vice-versa, is closer to zero, a fact that underscores that the mitigation proposal addresses an unlikely safety risk.

With the PPA’s Exclusive Authority to Regulate the Safety of Passenger Operations

The Board should treat cautiously before imposing any special safety conditions applicable to train operations, particularly passenger train operations. While CSX does not question the Board’s right to identify legitimate, Transaction-related safety concerns through the NEPA process, the propriety of any proposed conditions in the passenger area must be measured against the PPA’s “primary authority over the safety of the railroad industry.” Section 202 of the Federal Railroad Safety Act of 1970, 49 U.S.C. 20101, grants the PPA the power to regulate “every area of railroad safety.” The PPA has exercised that authority extensively, and its expertise and findings are generally viewed with favor by the industry as a whole.

Congress has made clear that the PPA’s role in regulating passenger train safety is exclusive. In explaining the 1973 deletion of language from section 901 of the Rail Passenger Service Act of 1970 that allowed the ICC to prescribe regulations “necessary to provide safe service,” the Conference Report on the Amtrak Improvement Act of 1973 stated as follows:

The Conference substitutes revenue seats. 901 of existing law to clarify the jurisdiction of the Department of Transportation and the Interstate Commerce Commission over safety-related and service-related issues. First, the provision removes a possible legislative inconsistency which results from the fact that section 901 of existing law, as presently worded, authorizes the ICC to “prescribe such regulations as it considers necessary to provide safe and adequate service, equipment, and facilities for intercity rail passenger service.” The Federal Railroad Safety Act of 1970, passed only two weeks prior to the rail passenger Service Act, defined the Secretary of Transportation’s jurisdiction over railroad safety to include “all areas of railroad safety.” It is the intent of the committee of

Second, even assuming that some mitigation might be warranted on certain less segments, modern signaling systems and other safety controls offer the highest levels of safety without the cumbersome procedures and efficiency sacrifices inherent in the proposed mitigation procedures.

Traffic priority and temporal separation practices of the type proposed in the DEIS, which are not even listed among the potential safety mitigation measures identified in Chapter 1 of the DEIS, have been outdated for decades, and their re-introduction on CSX now would cost detract from safety.

Third, the proposed 15/90 minutes separations would effectively entail or significantly delay freight service on two of the CSX less segments (Point of Rocks and Fredericksburg) during key travel periods, imposing a substantial burden on commuters or forcing a reduction in the number of currently scheduled passenger trains on these lines. The proposed separations would not only result in CSX’s inability to accommodate additional passenger service on these lines, but could well impair CSX’s ability to divert non-rail service to highways in its rail system, thereby undermining important Transaction-related efficiency and safety benefits.

Fourth, to the extent that any mitigation might be appropriate, such mitigation should be in the form of a requirement that CSX consult with the PPA and the passenger agencies concerning safety enhancements that might be considered for these three segments. A consultation requirement would fully comport with the Board’s obligations under NEPA to identify measures that other agencies might more appropriately address.

A. No Mitigation is Warranted on These Three Segments.

1. The Board Should Not Adopt Mitigation Measures That Interfere

conference to make clear that the Board’s jurisdiction over railroad safety is exclusive. The ICC, in turn, it has by statute, is not involved in the Transaction-related operations of CSX or by the proposed regulations prescribed by the Secretary of Transportation.


Congress’s message was unambiguous—the PPA has the sole authority to regulate rail safety. Moreover, nothing in the ICC Transportation Act changes that fact. To the contrary, that statute carved out the Board’s limited authority with respect to intercity operations. See 49 U.S.C. 20501(b)(7) (providing that the Board does not have prior action over commuter agencies other than with respect to access to facilities). In view of the Board’s lack of authority to regulate with respect to passenger carrier service safety, and PPA’s exclusive jurisdiction and ongoing activity in the area of passenger safety, the Board abdicated to any other agency before adopting any passenger safety conditions, particularly a condition as far-reaching as that proposed in DEIS mitigation measure 2(b).

See H.R. Rep. 104-423, 104th Cong., 1st Sess. at 147 (Board jurisdiction modified to reflect narrower of regulatory jurisdiction in areas such as passenger transportation.”)

In fact, the DEIS to impose the type of separation system proposed in the DEIS, such a condition could conflict with CSX’s statutory right under section 402(a) of the Rail Passenger Service Act of 1970, 49 U.S.C. 24318, to petition for relief from the preferences rule for Amtrak operations. The proposed freight passenger train separation conditions in the PPA’s two separate notices, which include a proposed exception that is encompassed by that provision in the PPA/Amtrak contract. Section 402(a) provides that separate in any emergency, “Amtrak has preference for freight transportation in using a rail line, junction, or crossing unless the Secretary of Transportation orders otherwise under this subsection.” Notice to the Board for the Amtrak passenger service agreement between Amtrak and freight service. The purpose of the agreement require any separation agreement between Amtrak and freight service. The purpose of the agreement requires that separation agreement between Amtrak and freight service. The purpose of the agreement requires that separation agreement between Amtrak and freight service.
The FRA in fact has several pending rulemaking proceedings and other projects underway in connection with passenger safety. These include Passenger Equipment Safety Standards (FRA Docket No. PCSS-1), 62 Fed. Reg. 49728 (Sept. 23, 1997) and Passenger Train Emergency Evacuation Procedures (FRA Docket No. PTEP-1), 62 Fed. Reg. 8310 (Feb. 24, 1997). It is noteworthy that the FRA has acknowledged the breadth of its interest in this area in its September 23, 1997

rulemaking notices in the Passenger Equipment proceeding.

rail passenger safety does involve the safety of the railroad system as a whole, including the track structure, signal and train control systems, operating procedures, and maintenance and platform-to-train interface design — in addition to passenger equipment safety. To that end, FRA has active rulemaking and research projects in a variety of contexts that address non-equipment aspects of passenger railroad safety, including signal and train control systems.


The proposed separation measure could well attract upon, or conflict with, pending or future FRA proposals or plans to address passenger safety issues. Suffice it to say that any potential for conflict arising from the activation of more than one safety regulator should be

The Board should also take note of the fact that neither the FRA nor any participant in the rail safety community knows to CEX has proposed a temporal separation rule as a means of enhancing passenger train safety. Neither Amtrak, VRE nor MARC (nor any other commuter agency) has requested the proposed mitigation — or any safety mitigation on any line segments — to their filings with the Board. CEX works closely with these agencies on safety issues, and so

identified the line segments shared by passenger and freight trains on which there would be an increase of at least one freight travel as a result of the Transaction. Using the accident rate data, the DEIS then determined for each of the identified line segments (a) whether the Transaction-related change in the accident rate on each line segment would be greater than a presumed annual fluctuation of 21% and (b) whether the mean accident frequency was less than one accident in 150 years. CEX has several commenters to offer on the DEIS methodology and the significance factors used in the DEIS as follows.

Appendix B of the DEIS explains that one element of the calculation of accident potential on the line segments that were assessed in connection with the DEIS was a factor that assumed a passenger/freight train collision rate of 1.25 annually for Amtrak trains and 0.25 annually for commuter trains. See Vol. 5A, App. B at 8-16. CEX understands that these accident rates were determined based on a review of freight/passenger collisions over a four year period, 1991 through 1995, inclusive.

Several points emerge from a review of the collisions that were considered in the preparation of the DEIS. First, there were very few passenger/freight collisions in recent years. Second, an analysis of the collisions considered in the DEIS analysis shows that the proposed mitigation addresses a "problem" of passenger/freight train separation distances that does not justify the type of radical mitigation proposed, much less any mitigation.

The DEIS also presented some facts about the line segments shared by passenger and freight trains, and the implications of the Transaction for each line segment. The DEIS assumed that there were five Amtrak/freight train collisions and one commuter/freight train collision during the four-year period studied, that explains the 1.25 and 0.25 annual accident rates. However, the one collision involving a commuter train was not properly considered because it was not a commuter/freight train collision. Rather, that one accident was an Amtrak/MARC collision in Silver Spring, Maryland in February 1996. Because this was a collision between two passenger trains, with no freight train involved, it should not have been counted in determining the rate of freight/passenger collisions. Accordingly, the actual annual rate of commuter/freight collisions during the four-year study period was none, not 0.25.

Further, a closer analysis of the considered Amtrak accidents shows that the proposed separation rules are designed to address a situation that apparently did not exist at all. As few as four of the five considered Amtrak collisions occurred in circumstances that would not be addressed by the proposed mitigation measures, i.e., circumstances where both passenger and freight trains were moving on the same track and traveling under power too close to one another. The September 1995 collision that was considered in calculating accident rates occurred when an Amtrak train hit a parked freight car on a siding that was not long enough to accommodate the freight and passenger cars. The May 16, 1994 accident involving a CEX and Amtrak train occurred when the Amtrak train was struck by a trailer that had become entangled in its storing on a flat car that was part of a CEX train on an adjacent track and protruded over the track on which the Amtrak train was traveling. Similarly, the February 1995 incident - involving as

point in CEX's safety-related dealings with any of these agencies have the notions of passenger train superiority or mandated temporal separations of trains as a means of ensuring safety been raised by any of those parties.

While Amtrak and VRE have filed comments with the Board requesting that certain conditions be imposed in connection with the Central acquisition (and MARC, through the State of Maryland, has supported the Transaction without requesting any conditions) none of these agencies have claimed that the Transaction will have any detrimental impact on the safety of their operations on any CEX line. No new or other commuter groups claimed that the Transaction will impair in any way the safe operations of passenger trains on any CEX line, including the five lines identified by SEA for mitigation.

As a matter of sound policy and deference to its parent agency, the Board should not impose into a passenger safety was removed for another agency that is already active on these matters. Nothing in NEPA requires that it do so. Rather, in addressing passenger safety mitigation, the Board appropriately affirms its NEPA rule by identifying potential safety issues for the FRA, leaving it to the agency to address those issues as it sees fit. See 49 CFR 315-33 (NEPA "promotes no substantive requirement that mitigation measures actually be taken," agency preparing NEPA document fulfills its duty by identifying and evaluating environmental consequences that can be addressed only by another agency).

In determining the significance of impacts on passenger train safety, the DEIS first identifies an annual rate at which passenger/freight train accidents occur. The DEIS then

The CEX was operating on an adjacent track, and because it was on a different track would not have been subject to a separation rule. CEX has taken several steps to prevent the recurrence of the type of accident, including improved enforcement of intramural tracks.
A train and a UP train occurred when the Amtrak train struck a lead of sand that was being projected from a UP train located on an adjacent siding. A fourth collision that was considered occurred on BN's lines in March 1995, and was caused when the brakes on several freight cars failed, causing these cars to hit an Amtrak train. The freight cars were not connected to a locomotive at the time of the accident.

This review shows that at least four of the five collisions from which the 1.25 annual accident rate involving Amtrak trains was calculated occurred in circumstances that the proposed train separation mitigation rule would not have addressed, i.e., circumstances that are unrelated to the level of freight train traffic on the same track as the passenger train traffic. These accidents did not involve freight and passenger trains moving under power and operating on the same track, and the separations related to address freight and passenger trains sharing the same track would not have prevented the accident. The appropriate annual accident rate that should have been used was less than 0.25 for Amtrak accidents.

Had the appropriate (higher) accident rate been used for the type of accident of interest (i.e., "lead-on" and "hit from behind" accidents related to increased levels of freight operations) been used in the calculation of post-Transaction impacts, the predicted annual increases in accident rates shown on Attachment B-2 of Appendix H to the DEIS would have been markedly different.

The DOT/FRA drug testing rules were not in effect at the time. Neither were the rules regarding engineer certification, which impact penalties for those of prohibited substances.

The expected post-Transaction passenger accident rate increase would have been much lower, underscoring that no mitigation is warranted on any of the identified line segments.

In fact, the proposed mitigation rules would not address the causes of any of the five major collisions involving passenger trains colliding with other trains over the last several years. A summary of these collisions is set forth in a FRA rulemaking notice on Passenger Train Separation Safety Standards, 62 Fed. Reg. at 49730 (Sept. 23, 1997). None of the major collisions involved a passenger train colliding with a freight train operating on the same track. The one collision involving a freight and passenger train that ended up on the same track was the 1977 collision in Clear, MT between a Commuter and an Amtrak train. However, that collision resulted when the Conrail engines chose to ignore signals and occupy a track without permission. A separation rule of the sort proposed here would not have prevented a collision resulting from such actions by an engineer, who may have been disabled by drug use.

The rate of passenger/freight collisions involving freight trains hitting passenger trains from behind or vice-versa on the same track is quite rare. This fact shows that passenger train safety mitigation designed to address an increase in the level of freight train operations is simply not warranted.

In addition, the 23% accident variability rate and 150 year accident occurrence factor used in the DEIS to assess significance appear to have been arbitrarily chosen, and the use of these factors would overstate Transaction impacts. The criteria used in the DEIS to assess the significance of safety impacts on passenger train operations was based on an assessment of

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(1) post-Transaction accident variability and (2) a prediction of post-Transaction accident frequency. The DEIS identified for mitigation these line segments that, post-Transaction, would have a passenger/freight train accident variability rate of 25% or more and an occurrence rate such as accident every 150 years or less.

A 23% variability criteria was chosen as a conservative proxy for the 50% annual accident variability rate that the DEIS reports for passenger train accidents over the last several years. See Volume 1A, App. B at B-17-B-18. However, the DEIS used in an accident variability rate as a "significance" factor -- if accidents varied 30% from some level before the Transaction, they can be expected to vary 30% annually post-Transaction.

Instead of using the annual accident variability rate (or a "conservative" variation of it) as a measure of significance, the DEIS should have analyzed anticipated percentage increases in passenger train accidents that are Transaction-related in determining an appropriate measure of significance. CSX has undertaken such an analysis based on the post-Transaction accident percentage increases shown on Attachment B-2 of Appendix H. This analysis is reflected in the histograms of percentage changes in passenger accident rates set forth in Exhibit 1 and on the distribution chart of post-Transaction accident percentage increases set forth in Exhibit 2. Both of these exhibits are based on the data in Attachment B-2, which is shown above overestimate the anticipated post-Transaction accident rate. A review of the distribution percentage changes based on post-Transaction increases in passenger accidents reveals that accident percentage increases of 35% or greater lie outside the expected range of the rate increases. The DEIS would appropriately have used a "conservative" factor of a "greater than 32%" increase in the post-Transaction accident rate as a measure of significance. This is because 32% is the end point of the observed range of observations that are not "cushions," i.e., that are part of the ensemble distribution of observations as shown on both exhibits. Had the more appropriate factor been used, four of the five CSX line segments would have dropped out of the mitigation pool: Points of Rocks (29%), Weisbrod - Rocky Mount (30%), South Richmond - Weisbrod (27%) and Savageon - Joppa (33%).

As to the 150 year accident frequency factor, as discussed in greater detail below in connection with freight train safety (mitigation Measures 7), the annual accident rate for each rail route mile is one accident every 49 years. Thus, a 70 year frequency factor would be quite conservative.

That standard is met with respect to all of the CSX line segments identified for mitigation, except South Richmond-Weisbrod. However, the accident variability rate for that line segment is only 23%, which is lower than the significance threshold that CSX submits SEA should have used.


Even assuming that passenger safety mitigation were warranted, the proposed assignment of "superior" status to one type of train over another, and the proposed temporal separation of trains (i.e., the 17/50 minute separation rule proposed in the DEIS) would re-introduce into railroad operating procedures whose days have long since come -- and are now long since gone. The proposed mitigation is contingent on concepts and would detract from safety.

While train superiority and temporal separation rules played a role in ordering train operations in the era prior to the introduction of modern train signals and communications, those procedures
were rendered obsolete beginning in the early part of this century, upon the advent of modern signals. Today, statute FRA rules are rail operational rulesbooks utilize the concepts of time superiority; or temporal separation. Even when such rules were in effect—decades ago and prior to the advent of modern signals—rail rulesbooks provided a train to clear 5 minutes ahead of a passenger train schedule. On non-signalized main tracks, trains followed within a ten-minute interval. Trains were never required to remain clear of the track after passage of a train, merely to follow according to signal rules or the "dark territory" (no signals) separation prescribed. A 30-minute "halo" around each passenger train was unheard of, even in the 1940's. Further in the era when separation rules were in effect, traffic superior or time separation rules were not designed as a safety measure at all, but as a means of enhancing the opportunity for trains to maintain on-time schedules.

Each of the five CSX line segments identified for mitigation is fully signaled with the modern signals used in large portions of the CSX system. Each line is equipped with Traffic Control System signals ("TCS"). TCS is a remote, computer-controlled centralized traffic control system that provides the train engineer with substantial information about authority for movement including speed at control points, in addition to the "train or broken rail in block" information provided by semaphores.

These signals and traffic control systems allow CSX trains and passenger trains to operate over the same track with safe headways of approximately four to five minutes between the trains. Such signals and systems provide tolerances that allow all trains, both freight and passenger, to safely share the same tracks. These systems are designed to prevent train collisions, while enhancing track capacity and service efficiency. The systems are recognized as safe by the FRA and are in use throughout the rail industry. The analysis of the collisions documented above underscores the fact that signals are in that working to prevent trains from being hit in the rear.

In addition, the Point Francis and Fredericksburg line segments are double tracked and the latter segment is, in sections, triple tracked. Also, none of these line segments will experience a significant increase in the level of freight train operations; these increments will range between 4.6 and 7.1 per cent. Thus, added frequency can be accommodated with no compression in safety. There are in fact several other line segments identified or significant B-2 to Appendix B of the DEIS on which both freight and passenger service trains are today much higher — with no safety problem.

Modern signals and centralized traffic control provide a uniform and proven method of achieving the safe separation of trains (and the DEIS makes). By contrast, the temporal separation that is envisioned in the DEIS would not enhance safety beyond the levels achieved through these modern signal and traffic control systems, but could well detract from the safety of rail operations. The proposed mitigation measures would effectively undermine the utility and consistency of their safety systems on five line segments. In favor of an uncontrolled, non-technological approach for those segments of the type that presently employ these operations. The introduction of this type of unusual operating rule on five line segments would undermine the safety that is achieved through the use of the uniform rules now in effect, introducing a "wild card" into CSX train operations. From a safety perspective, the introduction of such non-uniform rules enhances the possibility of confusion and human error — thereby resulting in the real potential for a net reduction in safety.

Moreover, as noted above, the proposed mitigation is also not consistent with the DEIS description of appropriate train safety mitigation. as set forth in Chapter 3 of the DEIS. Section 3.2.3 lists a review of potential passenger/freight train safety mitigation measures that the DEIS deemed appropriate to consider in connection with its analysis of acquisition-related safety impacts, but does not include passenger train superiority or temporal separations on the list.

The measures that are identified in section 3.2.3 (and incorporated for passenger trains by section 3.3.3) offer a more appropriate series of potential approaches to the enhancements of operating safety on lines over which both freight and passenger operations are conducted. As described in Reference 3 to those Comments, CSX already adheres to each of the pertinent safety mitigation rules, but that are identified in Chapter 3 of the DEIS with respect to the five idle segments at issue. These measures provide a formidable, uniform and consistent measure of safety for those five line segments, consistent with modern procedures and technologies. The "Central acquisition will not underwrite, or change in any way, the utility of any of these safety measures, and thus no mitigation is required.


Were the proposed mitigation rule adopted, it would cause immense disruptions to CSX’s north-south operations, effectively disabling CSX’s use of the Fredericksburg line segment for freight movements and eliminating significant transaction-related safety and transportation benefits resulting from improved intermodal service. In these circumstances, the absence of any demonstrable safety benefits offered by the proposal, and the absence of any evidence that the modestly increased levels of freight operations pose a risk to passenger safety, strongly argues against adoption of the proposed mitigation.

A 15/30 minute separation rule on the CSX system would make it impossiible for freight trains and passenger trains to share the same tracks during periods of significant passenger use of the tracks on the Fredericksburg and Point of Rocks line segments, over which both commuter and Amtrak operations are conducted. Both freight and passenger service would suffer as a consequence.

Simulations undertaken by CSX have shown that the 30 minute separation between would have the effect of terminating or severely curtailing and delaying freight service on the Fredericksburg line (and thus CSX’s Atlantic Coast Service Route) for several blocks of daytime hours, particularly in the morning, late afternoon and early evening, or conversely, sharply reducing passenger service during those key hours. Assuming the current level of passenger service was maintained, CSX would have to radically alter its train operations and would be unable to meet its goals of providing enhanced service to time-sensitive intermodal freight moving on the Atlantic Coast Service Route. Alternatively, CSX might not be to continue to accommodate the high level of passenger use of this line segment, which now accommodates 21 Amtrak trains and 12 VRE trains daily. While the level of impacts would not be as dramatic on the Point of Rocks line (which now accommodates 8 Amtrak and 17 MARC trains), it would be considerable and interfere significantly with freight operations on that line segment as well.

The massive interference with CSX’s major north-south line would not only impair efficient rail operations, but would also destroy CSX’s efforts to divert time-sensitive intermodal
Further, the availability of passenger transportation could also suffer. The proposed
separation windows were adopted, CSX would be unable to entertain any proposals from
consumer agencies to expand their services on those lines segments, and would need to carefully
re-evaluate its options with respect to continued passenger operations on certain segments. The
proposed mitigation would effectively destroy the operational basis on which CSX is able to
accommodate extensive Amtrak and commuter services on its lines, and hinder CSX’s ability to
work cooperatively with these passenger service providers with respect to future passenger
service enhancements.

D. Any Additional Safety Measures Should Be Carefully
Considered in Coordination with the FRA and the
Passenger Agencies

For all of the reasons stated above, CSX does not believe that any special mitigation
measures are called for in connection with the five line segments identified for mitigation in the
DEIS. However, if any mitigation were to be imposed, the Board could appropriately consider a
provision for consultation with CSX by the FRA and other relevant parties over possible further
passenger train safety enhancements that may be appropriate for these line segments. Such a
mitigation approach would be consistent with the settled proposition that where other
governmental agencies have jurisdiction over matters that might warrant mitigation, the Board,
lacking such jurisdiction, satisfies its NEPA obligations by identifying the issues that those
governmental agencies might address. See Reference, 495 U.S. at 312-313, 110 S. Ct. 2193,
32 (the EIS can appropriately identify matters outside the lead agency’s jurisdiction as so to allow
appropriate officials of other agencies).
PDH (Standard Zone A or B), flammable gas, Class 1 or 2 explosives (Class A), and environmentally sensitive chemicals, over a period of one year."

A table showing the 18 current or allocated CSX line segments and Shared Assets segments that CSX has determined (based on traffic projections) might become key routes post-Transaction is attached to this submission as Exhibit 4. Seven of the line segments would become new key routes based on traffic projections. These are shown in Part B of Exhibit 4. An additional 11 line segments, nine of which are today key routes, are projected to experience a doubling in hazardous material traffic and carry hazardous material volumes in excess of 20,000 tons annually. These routes, shown on Part A of the Exhibit, are addressed in connection with proposed mitigation measures 4(A) and 4(B).

Mitigation Measure 3(A). This measure would require that CSX comply with the GT-55-B guidelines before increasing the number of cars carrying hazardous materials on the line segments that are projected to experience increased hazardous material traffic. This measure would apparently apply even if these line segments do not actually meet the key route thresholds.

CSX does not believe that any condition is warranted because it adheres to a number of long-standing practices to the industry-standard key routes safety procedures set forth in the AAR Circular. Thus, to the extent that any line segments meet the key route volume thresholds, CSX would apply the key route safety measures. Further, as Exhibit 4 shows, several of the line

An analysis of the CSX hazardous materials traffic plus data identifies six additional segments on which traffic projections indicate that the key route thresholds might be met. These are segments C-794, C-797, C-798, C-999, S-232 and S-301, all currently on the Central system. These segments are 200 miles away from the other line segments because CSX already adheres to the Circular GT-55-B measures on these segments and CSX will continue that practice.

Mitigation Measure 3(B). Under this new mitigation measure, CSX would be obligated to comply with the AAR "Key Train" requirements before increasing the number of rail cars carrying hazardous materials on any train. These requirements are set forth in AAR Circular No. GT-55-B, which defines a "key train" as one "with five or more tank cars loaded of poisons inhalation hazard (Standard Zone A or B) or 20 cars loaded or immaterial portable tank loads of a combination of P81 (Shared Zone A or B), flammable gas, Class 1 or 2 explosives (Class A), and environmentally sensitive chemicals."

CSX agrees to adhere to this mitigation proposal, subject to the same event discussed above concerning possible future revisions or supplements to the standards currently described in Circular No. GT-55-B. CSX assures that the intent of SEA is to require, as of Day One, that whenever CSX operates a train that, by virtue of the number of hazardous materials cars on the train and nature of those materials, meets the definition of a Key Train as set forth in the AAR Circular, CSX must comply with the Key Train requirements as to that train.
practices that no other railroad in similar circumstances would be obligated to maintain. This type of condition might serve, counter-productively, to stifle safety improvements.

As noted above, CSX agrees to adhere to the current industry safety standards for key routes for the identified line segments and key routes as set forth in Circular 05-75-B, or in any future modifications of, or reiterations of, these requirements. Adherence to these requirements offers a fail-safe measure of safety. To the extent that CSX might do more, that choice should not be favored by a condition obligating it to continue any additional practices where, for example, such additional practices are determined not to be meaningfully enhance safety. For these reasons, CSX admits that this proposed mitigation measure should not be adopted.

Mitigation Measure 5(A). This proposed measure would apply to certain key routes which are defined in the DEIS to be those line segments on which hazardous materials traffic is projected to double and to exceed 20,000 carloads annually. Part A of Exhibit 4, which is based on the revised CSX data, indicates that there will be no such key routes on the CSX system and one in the North Jersey Shoreline Area. The additional mitigation proposed in 4(A) for these key routes is the preparation of HMERP's (as proposed for key routes in 3(A)) for local emergency response organizations along these segments. CSX agrees to this proposed mitigation measure.

CSX appreciates that SEA intends to impose a somewhat greater level of mitigation for routes that carry a higher volume of hazardous materials than are transported on these lines currently. However, CSX does not believe that it is constructive, and that it could be confusing, to assign new terminology to each route by calling some "major key routes," as the DEIS does. This terminology is not used or known in the rail or chemical industries or to hazardous materials regulations and, in CSX’s view, there is no need to introduce such terminology — the proposed mitigation can be imposed merely with reference to the hazardous materials volume on specific line segments without calling them "major key routes."

Mitigation Measure 5(B). The proposed measure would obligate CSX to conduct real time or desktop emergency response drills at least once every two years with local emergency response officials on the line segments subject to the measure 4(A) proposed mitigation. CSX notes that this recommendation does not have a "must" provision and would not apply to other rail line segments, which currently carry as much or more hazardous materials traffic. As such, its implementation would create a double-standard.

CSX agrees that it would be useful to conduct one real-time or desktop emergency response simulation drill with local emergency response personnel within one year after Day One with respect to these routes projects as experience a doubling of hazardous materials traffic and carry in excess of 20,000 hazardous materials carloads. Such a drill would be useful in familiarizing the local personnel with the HMERP's. Following the conduct of this drill, CSX proposes that it adheres to the requirements of Circular 05-75-B, as it may be amended in the future, with respect to these key routes. Such adherence is designed to ensure the continued safety of such routes. To the extent that local communities desire to conduct additional safety drills or to coordinate planning efforts with CSX, CSX is prepared to cooperate in such efforts, as it does today. However, the need for an emergency drill every two years has not been demonstrated for these line segments any more than it has been demonstrated for line segments that today (unrelated to the Transaction) carry even larger volumes of hazardous materials.
programs which are effective for seat safety as low-level safety are not the proposed mitigation redundant and therefore unnecessary.

Among the ongoing industry programs designed to determine and eliminate the causes for hazardous materials spills in the U.S. and Truck Car Safety Research and Test Program of the Railway Research Institute and AAR. This Project, which has been active since 1978, is responsible for numerous studies and programs that have led to rail track transportation, including programs that have identified the vulnerabilities of rail cars and have led to improvements in rail car load protection, couplers, thermal protection standards and rail car bottom outlet protection. The Project has several ongoing studies to further identify, test rail car vulnerabilities and develop improvements.

Another industry risk mitigation measure in which CSX participates in the AAR document prevention program that is designed to review accidents, assess their causes and consider prevention techniques. This program involves regular meetings/training involving CSX and other rail officials at which a variety of accident prevention issues are addressed.

In addition, as described in greater detail in pages 174-175 of the CSX SIP, CSX is a participant in CCA's Responsible Care program. One of the conditions of participation in this program is that CSX undertakes risk assessments with respect to the transportation of hazardous materials. CSX does so in a variety of ways. These include the following:

1. CSX uses a Transport Management Program to assess the gross tonnage of freight moving over particular line segments, the characteristics of the traffic (including the extent to which hazardous materials and passengers are carried on the line segments) and the information obtained from track inspections. This data is input into the model to allow CSX to assess where and how to devote capital to track upgrades, thereby reducing the level of risk on particular line segments.

2. CSX also uses a risk assessment on chemical traffic that it transports to determine, based on flammability, toxicity, environmental impacts, and other relevant factors, whether a particular chemical poses a high, medium or low risk. Emergency training programs involving local emergency response personnel are geared to the segments based on the results of this analysis.

3. CSX reviews where non-accidental releases ("NAR") occur on its system and works to identify trends in terms of types, year, number, and other factors. This program allows for risk management planning to address causes of such accidents. This program has been successful. In 1997, CSX experienced the lowest number of NAR's of any recent year on its system.

4. CSX implements a Trains Accident Prevention program known as the TAPS program. This program consists of a series of conferences -- a headquarters conference and separate conferences for each service route, lump yard and smaller facility. The purpose of these conferences is to analyze train accidents that occur on lines or at yards and small facilities (including accidents that result in the release of hazardous materials) determine the causes of these accidents and develop action plans to avoid repetition of such accidents.

In addition to these formal risk assessment and analysis programs, CSX's SIP, at pages 174 through 175, also discusses a variety of hazardous materials safety programs that are implemented by CSX. These include inspection and training programs and emergency notification.

Beyond the level achieved by other programs and the regulations of other agencies or address any transaction-related impacts. The Board should accordingly act to do so.
7. Safety, Female Rail Operations

The DEIS includes the most detailed analysis of freight rail safety ever undertaken in the environmental review of a new transaction. For the first time, the SEA undertakes a material determination of the accident risk on a segment-by-segment basis. Although the DEIS concludes that there will be a “small overall decrease in the likelihood of freight rail accidents and fatalities” as a consequence of the Transaction, (Vol. 1 at 4-32), the DEIS concludes on the basis of the material analysis that there will be a significantly increased risk of accidents on a limited number of lease segments.

In proposed mitigation Measure 7(A), the SEA has proposed that CSX employ on these identified lease segments with the FRA’s proposed rule, and any final rule that may eventually be adopted by the FRA, in District No. RST-40-1, which complies with “on-vehicle-based” inspections. Under the proposed rule, such inspections would have to be conducted at least once every 40 million gross ton miles of traffic on the line, or annually, whichever is more frequent. Proposed mitigation Measure 7(B) would require annual training of CSX mechanical and track inspectors that dispatch trains, or those track, respectively, on these three identified lease segments.

These mitigation measures would apply over the following three lease segments:

Berea to Greenwich, Ohio (C-041);
Greenwich to Willard, Ohio (C-042); and
Willard to Fortosta, Ohio (C-045).

The first of these segments is part of Conrail’s system today, the latter two are part of CSX’s current system. CSX does not agree that there would be any increased risk of accidents on these three lease segments warranting special safety mitigation for two reasons:

First, the Transaction will not have a detrimental impact on the safety practices of CSX.

CSX has achieved one of the highest at levels of safety in the rail industry through its safety and operating practices. These practices will not change as a consequence of the Transaction. CSX has carefully planned for the Transaction so that there will be no compromise on safety – track maintenance and inspection must continue, signal and communication systems and trackwork are not to be reduced or compromised in any way. In fact, CSX’s safety practices will be amended to one portion of the Conrail system to be allocated for CSX’s use. Because CSX’s safety record is better than Conrail’s (as required by DOT in its October 21, 1997 comments, DOT-3 at 17), the accident risk on the Conrail lease segment to be allocated to CSX should decrease.

Second, CSX’s Operating 19 has been designed with full consideration of the existing expansion of the rail infrastructure and to 1,100,000 expenditures. The opportunity to acquire Conrail opened CSX to undertake an example-1,000,000 capital program to make improvements to its tracks, signaling systems and equipment, etc., which promotes safety as well as service to customers. Chief among these improvements is the double-tracking and additional signaling (on bi-directional TCS signals) of CSX’s B&O line from Clarksburg, Ohio and improvements to the Conrail line from Greenwich through Cleves, and Green. Applied, Vol. 1A at 260. All three CSX segments identified in the DEIS as having a significantly increased risk of accidents are on the line. This approximately $200 million project, already underway and due to be completed by Day One, will result in these segments being among the most up-to-date on the entire CSX system. They will form part of the high-speed net that will carry CSX into the 21st century for the transportation of time-sensitive incremental freight. It appears that the DEIS’s statistical methodology did not factor in the upgrading of these three segments.

In addition, the significance criteria used by SEA for light rail safety overstated the actual safety risk on these lease segments. The DEIS included as part of its criteria a determination of whether the lease segments at issue could experience an accident more frequently than every 100 years. The 100 year threshold was based on the proposition that in 1996 there were 1.078 freight and passenger train accidents on 126,482 miles of main line track, yielding an accident rate of one accident every 1.7 years on each rail mile. The DEIS then applied a more conservative figure of one accident every 100 years at such rail mile to assess significance.

However, FRA statistics indicate that there were actually 2,954 train accidents in 1996, not 1,078. See 1996 FRA Accident/Incident Bulletin. This means that on each mile of the rail system, an accident may occur every 49 years, not once every 117 years as reported in the DEIS. According to the DEIS, each of the three CSX lease segments has a far lower post-Transaction accident rate than 49 years – Berea to Greenwich (94 years), Greenwich to Willard (93 years) and Willard to Fortosta (95 years). See Attachments B-1 to Volume 1A. Accordingly, no mitigation is warranted on those segments for the additional reason.

Knowing that the case for mitigation on the identified segments appears as open to question, CSX’s current annual track inspection and training programs with respect to these lease segments, and associated personnel, already exceed the requirements that are proposed to mitigate. While CSX does not believe that any mitigation is warranted, and oppose imposition of a condition that would constrain its ability to adopt equally effective alternative inspection and training programs, it would not change its current practices if these mitigation measures were imposed.

8. Safety, Highways/Rail At-Grade crossings

In Table 7-4, the DEIS identifies 106 highway/rail at-grade crossings where improvements might be required. These recommendations are the result of an in-depth analysis by the SEA as to existing traffic at these crossings and the projected increase in traffic following the Transaction. As the basis for its analysis, the DEIS relies on DOT’s Accident and Safety Prediction Formulas to identify areas of potential mitigation. This formula is used to rank and identify potentially dangerous crossings. Although the result of this examination was the list of one-hundred mentioned above, this list should not constitute the final recommendation to the Board. The formula is inappropriate for the DEIS because it identifies potential environmental safety concerns and highlights them for responsible state agencies. Further analysis, however, reveals that many of the crossings in Table 7-4 already have the suggested mitigations in place or that the recommended improvements have been funded and scheduled for installation. In other cases, more recent information reveals that mitigation is not necessary.

As discussed below, the FTA should recognize the importance state role in evaluating grade crossing safety. Although the Federal Highway Administration ("FHWA"), and to a lesser extent the Federal Railroad Administration ("FRA"), provide oversight and guidance in this area, the state agencies with jurisdiction over highways are in the best position to determine the proper level of warning devices required at the highway/rail crossings. If the Board were to direct CSX to consult with state authorities, the Board would fully and properly fulfill its NEPA role.

Specifically, it would be appropriate for the FTA to recommend (1) an appropriate methodology to identify crossings that may mandate a Transaction-related impact thereby warranting some form of crossing improvement, and (2) a requirement that Appellants bring these crossings to the
officials for this information. Indeed, the DOT User's Guide, which contains the DOT Formulas used in the DEIS, acknowledges that "the judgment of state and local officials should all be considered before final improvement decisions are made."

The Final Highway Crossing Resource Allocation Procedures - User's Guide, Third Edition, August 1987. The reason for state involvement is that the DOT formulas do not incorporate crucial factors into its ranking such as safety, sight-distance, roadway geometry, highway congestion, local topography, frequency of high-occupancy vehicles, and frequency of hazardous material transport vehicles. This information is obtained from on-site site-diagnostic teams. Moreover, data that are applied to the DOT formulas are obtained from FRA's crossing grade inventory and collision file, which are subject to keep-pans and submission errors.

Not only did the DEIS fail to consider site-specific circumstances, but the DEIS has proposed the installation of certain devices, such as four-quadrant gates and median barriers, that are not approved for use in the FRA's Manual of Uniform Traffic Control Devices ("MUTCD"). The MUTCD places responsibility for design, placement, operation, and maintenance of warning devices with the governmental body or official having jurisdiction. See MUTCD at §8-1. In most states, warning devices at high-speedway crossings are required by statute to conform substantially to the MUTCD. Experimental devices such as four-quadrant gates and median barriers usually require specific permission from the state agency or toll facility responsible for the operation of the road where the experiment would take place.

Moreover, four-quadrant gates are best suited for roadway facilities more than 45 feet wide and median barriers are appropriate where there are no road or driveway connections within 70 to 100 feet of the crossing. Thus, even if such improvements were appropriate, without

site reviews it cannot be determined whether conditions exist that would allow installation of these measures.

The above point underscores that the appropriate recommendation for the DEIS would be for Applicants to contact with appropriate state officials under the established regulatory scheme. This would allow for consideration of all relevant facts and the installation of appropriate warning devices at all crossings.

B. The Established Regulatory Scheme Provides a Comprehensive Approach to Grade Crossing Safety

The DEIS's proposed mitigation measures, requiring the upgrading of certain crossings and the construction of grade separations at other crossings, intersect the Board into an established and well-functioning federal-state regulatory regime. Although the DEIS properly identifies areas of concern, the final decision on improvements should be left to the state agencies with the most knowledge and expertise in this area. Without such a give and take with FHWA, FRA, and the states, the Board would, in effect, be invading on the funding and safety jurisdiction of its state DOT agencies (FHWA and FRA), while also assuming a role reserved to the states of prioritizing and determining the appropriate warning device that should be installed at each crossing.

This is not a role that the Board should play. Nothing in NEPA suggests or requires that the Board, through its environmental-considering process, venture into areas where Congress has established a very sophisticated funding mechanism and assigned specific safety and funding roles to other federal agencies within DOT. It is perfectly acceptable for the Board to rely on these state and federal agencies to make crossing decisions.

1. The Established Federal Role

The FHWA, with assistance from the FRA, works with the respective state representatives to regulate safety and fund improvements at highway crossings. These responsibilities began in 1970 with the passage of the Highway Safety Act ("HSA") and the Federal Railroad Safety Act ("FRSA"). Section 205 (a) of the HSA called for "...a full and complete investigation and study of the problem of providing increased highway safety at public and private ground-level rail highway crossings."

The FRSA directed the Secretary of Transportation to undertake "...a comprehensive study of the problems of eliminating and protecting railroad grade crossings and to provide recommendations for appropriate action."

In response to Congress's direction, the Department of Transportation ("DOT") prepared a two-part study. Part I, which DOT submitted to Congress in 1971, addressed the crossing safety problem. In 1972, DOT submitted Part II of the study, which provided various recommendations, including a federal planning program to improve grade crossing safety.

One year later, Congress passed the Highway Safety Act of 1973. Pub. L. 93-87, 87 Stat. 213 (1973). As amended, the HSA governs the distribution of funds to states for the elimination of hazards at rail-highway grade crossings. To be eligible for funding, the Act requires the states to survey and analyze crossings and establish a schedule for improving those found to present the highest hazard levels.

The primary federal role in grade crossing improvements is one of funding. FHWA funds are apportioned to the states in the following manner: fifty (50) percent of the money is apportioned according to the ratio of the number of public crossings in each state to the total

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number of public crossings in the entire country. 23 U.S.C. § 139(b). The remainder is


Federal funds may be used for improvements to any highway or crossing, whether on or

off the federal-aid highway system. 23 U.S.C. § 130.

When it was enacted, the federal funding statute, as Section 130(b), presented the

Secretary of Transportation with the option of requiring the railroads to pay a small share (up to

20 percent) of the costs of improvements that represented a "net benefit to the railroad." When

the Secretary promulgated implementing regulations for Section 130, however, those regulations

explicitly recognized that the railroads derived no "net benefit" from grade crossing

There are two principal opinions of the committee favoring rail-highway grade separations and from special permission or rail-highway grade crossings. For this reason, the cost of installing and maintaining such separation systems and

protective devices in public responsibility and should be financed with

public funds the states as highway traffic devices.

Interstate Commerce Commission Report No. 3340, Prevention of Rail-Highway Grade

Crash Accidents Involving Railroad Trains and Motor Vehicles, 322 I.C.C. 1, 87 (Jan. 22,

1984).

Despite these well-established funding responsibilities, the DEIS can be read to suggest

that I-X and NS should bear full responsibility for the costs of proposed mitigation at the

crossings, as outlined in Table 7-4. Similarly, a crossing has been identified in a NEPA review of

a railroad crossing, however, does not mean that the established regulatory and

funding system should be ignored. Requiring CSX and NS to bear the full costs of these

improvements would be inconsistent with federal regulations and the spirit of the national grade

crossing safety program.

2. The Role of the States

According to DOT, "Elimination of highway-grade crossings requires primarily with

the States." Department of Transportation "Rail-highway Grade Crossing Handbook" at 19

(FHWA/TYS-86-315) (Dec. Ed.) (1986). While the FHWA and FRA provide island-wide, state

and funding guidelines. In most instances, it is the states that are most familiar with the needs and

dangers posed by a particular crossing. It is the states, therefore, that perform the on-site

inspections and it is the states that are charged with promoting the health and welfare of its

citizens. The federal government's role is one of funding and approval of state determinations.

In the majority of the states, the overall authority for highway-crossing safety and

consideration lies with the state agency that oversees and regulates transportation. In a limited

number of states, the responsibility for crossing safety and consideration is vested in regulatory

bodies with a broader scope, such as the Public Utility Commissioners or the Public Service

Commission. A few states apportion the responsibility among the state transportation agencies

and other state agencies.

Regardless of the administrative structure, to qualify for federal funding, each State must

conduct and systematically maintain a survey of all highways to identify those railroad crossings

that may require improvement, relocation, or protection devices, and establish and implement a

schedule of projects for this purpose." 23 U.S.C. § 139(b). Pursuant to FHWA regulations, each

state receiving federal aid is also required to develop a "highway improvement program" that

establishes priorities to address highway hazards and provides guidance as to the evaluation and

implementation of remedial measures. 23 C.F.R. § 924. In developing these priorities, the states

are directed to consider and rank the dangers posed by grade crossings. 23 C.F.R. § 924.900(b).

Having developed this program, each state must evaluate its effectiveness and costs, § 924.11,

and file yearly reports with the FHWA. 23 C.F.R. § 924.11.

Using the DOT's Accident and Severity Prediction Formula, the FHWA calculates the

accident risk at each crossing for all states based upon the characteristics of the grade crossing

and statistical information on historic accident experience. The states, however, supplemented

this information with more recent data (e.g., average daily vehicle traffic) and conduct on-site

visits before deciding whether to upgrade highway crossings. Under this approach, the

individual needs of the local community can be considered along with any unique safety concerns

for a particular crossing.

The DEIS recommends grade crossing mitigation in four states involving EXXON

Indiana, Kentucky, Michigan and Ohio. As is discussed below, each of these states has developed

an in-depth process for analyzing the type of warning devices that should be installed at

highway-grade crossings. The states are in a unique position to assess the current needs and

circumstances associated with a particular crossing. A state brings this information to the table

when seeking FHWA approval of its plan for warning device protection.

Indians begins with the federal accident data for each rail-highway crossing in the state. The

federal data is also used to evaluate the conflict ratio of various improvement alternatives at a

crossing, such as installing flashers or gates. The federal data, however, cannot incorporate every

possible factor that influences the number of accidents at a crossing, and the data available is not

always completely accurate. To compensate for this, Indiana added to its analysis by performing a

diagnostic site review, using actual accident history, and reviewing other pertinent factors. This

analysis forms the basis for selecting and prioritizing safety improvement projects. Continuing

analyses are used in determining the final priority list. Thus, the crossings with the highest

accident risk are not necessarily included in the final upgrade program.

Ohio and Kentucky use a methodology similar to Indiana's approach. These states use

FHWA/PA data to determine a preliminary crossing safety ranking, and then perform a

diagnostic survey of each site that considers vehicle traffic and recent accident history. In Ohio,

the survey team consists of the local highway authority, the Ohio Railroad Development

Corporation, the railroads, the FHWA and the Public Utilities Commission of Ohio. The state "spends" the

FHWA/PA/444-fact results before completing their final priority list if changes in rail crossings (e.g., improved safety measures) recently have been performed. The states also consider field

observations for their final listing.

Recently, Michigan proposed a four-tiered methodology for prioritizing crossing

upgrades: (1) Low Yearly Car-Truck Crash Frequency; (2) FHWA/PA Top 100 Crossings in

Michigan based on the FHWA/PA Accident Prediction Equation. (3) Calculated Benefits

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Reduction Potential Through Conventional Treatment (e.g. adding flashing-light signals to a crossing with positive warning, adding gates to a crossing with flashing-light signals, and adding gates to a crossing with flashing-light signals which are suspended on horizontal arms), and
(4) An identification of crossing needs based on field observations. After considering these factors, the state will decide on appropriate rail crossing upgrades.

3. The DEIS Should Recommend Conventional with Improvements State Agency

By directing mitigation at certain highway-rail crossings, the SEA has stepped into the shoes of the state and the FHWA as the final administrator of the type of warning device required at each affected highway-rail crossing. Although the SEA has undertaken the responsibility of determining the appropriate level of warning device, it has not done so in a manner consistent with the established regulatory process. Most importantly, the SEA has not obtained the type of information upon which states rely in making grade crossing decisions. As a result, the DEIS recommendations are over-inclusive. For example, many of the improvements identified in the DEIS already are in place or are scheduled to be put in place in the near future. In other instances, more recent information indicates that mitigation is not warranted.

CSX’s consultations with the states of Ohio demonstrates how the system should function.

CSX has been working with the Public Utilities Commission of Ohio (“PUCO”) and the Ohio Rail Development Corporation (“ORDC”) to perform several rail corridor studies in northeast Ohio. In these studies, the parties placed particular emphasis on improving the condition of vehicular traffic at crossings, thereby reducing the number of crossings with a lower level of signal protection. Following joint field studies by CSX, PUCO, and ORDC, recommendations for signal upgrades and improvements were developed and suggestions were made for closure of certain crossings.

One of the results of these outreach and consultation efforts was an agreement between CSX and PUCO/ORDC to: (a) the proper level of crossing safety improvements needed for CSX’s track improvements on the line segment from Greenwich, Ohio in Huron County to the Ohio/Illinois border at a point in Delaware County (“the B&OD Corridor”). The DEIS examines crossings on the B&OD Corridor and arrives at the state conclusions as PUCO and ORDC for three crossings – 142 369, 142 178, and 141 179. PUCO and ORDC, however, recommended improvements at a number of additional crossings in the B&OD Corridor that are not addressed in the DEIS. Thus, if the DEIS’s final recommendation is for the Applicant to consult with appropriate state agencies, it is likely that the state mitigation will equal or exceed that currently in the DEIS.

Another area where the DEIS recommends mitigation involves crossings on the Toledo to Doublett lane segment (segment C-215). Although the DEIS identifies fifteen crossings on this segment as requiring mitigation, CSX does not believe that mitigation is appropriate because any impact from increased traffic are independent of the Transaction. The CEX Operating Plan, which provides the basis for the traffic figures in the DEIS, provides 1995 base figures and pre-Transaction prepared figures. The 1995 base for the CEX Toledo to Doublett lane segment is 0.6 trains per day, and the projected post-Transaction traffic is 1.4 trains per day, for an increase of 1.5 trains per day on average. This increase led to the conclusion in the DEIS that the Transaction would result in certain impacts (including increased traffic) on the 34-mile line.

For these reasons, the mitigation recommended in the DEIS already has been installed or is funded and scheduled for installation.

C. The DEIS Overstates the Problem

Not only should the SEA allow the established regulatory process to address the potential safety issues identified in the DEIS, but a review of the DEIS reveals that only a few of the CSX crossings at issue actually may require additional mitigation.

First, as noted above, the fifteen crossings on the Toledo to Doublett lane segment are not experiencing any traffic increases because of the Transaction. Thus, these fifteen crossings should not be subject to any mitigation.

In addition to the non-Transaction related crossings, the DEIS’ consultants, ICF Kaiser, reviewed the DEIS methodology to determine whether the fifty-two (52) CSX rail crossings identified in the DEIS, including the fifteen on the Toledo to Doublett segment, were appropriately categorized. The results of ICF Kaiser’s review are presented at Exhibit 4. This Exhibit lists four components: (1) a report from ICF Kaiser summarizing its findings, (2) an appendix with a description of the current status at each crossing, (3) a summary table that highlights crossings where the DEIS incorrectly applies its own criteria and where mitigation would not be triggered if the most recent accident data (1995-96) were applied to the DEIS methodology, and (4) a table that contains ICF Kaiser’s analysis as to all the CEX crossings. An explanation of the results of ICF Kaiser’s review follows.

The DEIS separates highway-rail crossings into two categories. Category A consists of highway-rail crossings with an accident frequency rate of 0.15 or higher accident frequency rate. The DEIS considers a projected accident frequency of

- For twenty-two of the crossings, the DEIS apparently bases an inaccurate city, street or DOT crossing number. This information has been corrected in the Appendix prepared by ICF Kaiser. Crossings where information has been corrected are noted with an asterisk.

- These crossings are 155 7997, 155 7997, 155 812B, 155 814F, 155 819H, 155 820C, 155 821G, and 155 865H.

- These crossings are 155 795Y, 155 794F, 155 804T, 155 818B, and 155 839B.
For the remaining twenty (20) crossings, ICF Kaiser supplied the DEIS formula using more current and current history data than was available in the RHA. The FRA recommends that the accident data used in the DOT formula be limited to the most recent five years. The DEIS relies on data from 1991-95 in its analysis. Since the completion of the DEIS, however, data from 1996 has been more available. ICF Kaiser applied the more current data from 1996-99 to the DEIS methodology. As found that nineteen (19) of these crossings no longer triggered the DEIS category A or B risk criteria. These crossings are:

- 518 391G
- 342 820D
- 155 617W
- 232 122V
- 155 790T
- 155 840N
- 155 750V
- 155 798S
- 345 340C
- 345 362R

For the four (4) crossings not eliminated by the 1996-99 data, one is on the Toledo to Dunkirk line segment and should not be subject to any Transaction-related impacts (155 821C). The four (4) remaining crossings, CEX agrees that further consultation with the Illinois Public Utilities Commission and any nearby residents may be appropriate to determine whether an upgrade is warranted. These crossings are:

- 345 364C
- 345 362R

See DOT FRA Railroad-Highway Grade Crossing Handbook (FHWA-TS-84-215) (2d Ed.) (Sept. 1986) at 73 (stating that "five-year accident history information other than for five years may be misleading because of changes that occur in crossing characteristics over time")

As noted on Table 1, all eight (8) crossings that the DEIS incorrectly identified as triggering a threshold also would not require mitigation using the 1992-96 data.
grade separations. Section 1300c provides that the Secretary may require a railroad to pay for that share of a grade separation which represents the "net benefit to the railroad," but in no case greater than 10 percent. The Secretary has exercised his statutory authority under this provision through regulations at 23 C.F.R. §664.310(b) and capped the railroad share at 5 percent.

(1) Projects for grade crossing improvements are deemed to be of an unattainable net benefit to the railroad and there shall be no required railroad share of the costs. * * *
(2) On projects for the elimination of existing grade crossings in which active warning devices are in place or ordered to be installed by a State regulatory agency, the railroad share of the project costs shall be 5 percent.
(3) On projects for the elimination of existing grade crossings in which active warning devices are not in place and have not been ordered installed by a State regulatory agency, or on projects which do not eliminate an existing crossing, there shall be no required railroad share of the project costs.

There is no apparent reason why the consistent conclusion of the Board's predecessor, Congress and the Secretary of Transportation as to the appropriate share of railroad funding for a grade separation should be left to be not only an arbitrator (or an aside by the Board) simply because attention has been drawn to a grade crossing through the NHTSA's review of a control transaction.

In summary, the railroad is not a coparticipant in the decision to grade separate, nor is it an appropriator of the funds which make grade separation a reality. The railroad is only an interested party and, as such, should be treated as such by the Board. Such a treatment is consistent with the Board's practice of grade separation in previous decisions and results in no undue burden on the railroad.

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state program and procedures for identifying and funding grade separations. The person responsible for these programs will evaluate Randolph Street in light of the train traffic levels predicted in the CSX Operating Plan, and will balance the needs in the City of Carver against the needs in other cities and towns in Illinois which may be as great or greater but which do not happen to be affected by the Transaction. Because the Board has chosen to undertake an EIS, it does not want to overlook every potentially significant impact prior to approval of the Transaction.

11. Highways/Rail At-Grade Crossing Data: Consideration Recommended

The DEIS identifies seven at-grade crossings on the CSX system which meet the significance criteria for traffic delay mitigation, but which do not meet the criteria for construction of a grade separation. The DEIS recommends that CSX consult with appropriate agencies to address potential traffic delay at these crossings. In the event that these conclusions do not result in binding agreements, the DEIS suggests that the FESI may recommend that CSX participate in the implementation of specified traffic delay mitigation. The seven crossings are as follows:

- Dixie Hwy., Blue Island, IL
- Broadway-150th St., Blue Island, IL
- 5th St., Evergreen Park, IL
- E. 9th St., Harpethville, KY
- W. Nord Ave., Madisonville, KY
- Van St., Cincinnati, OH
- Township Ave., Cincinnati, OH

A. The DEIS Performed Its Function As a Screening Tool

The DEIS identified these crossings for potential mitigation based on application of the Highway Capacity Manual Level of Service criteria for signalized intersections to the railroad grade-crossing conflict. This is the first time SHA has utilized this approach in assessing vehicle delay at grade crossings. CSX might have obtained somewhat different results. See the report of ICF Kaiser at Exhibit 6. However, any method which includes only a limited number of factors can only be used as an initial screening tool for more detailed analysis.** The DEIS then does not recommend using a different model in the FESI.

** The DEIS formula is based on the following six factors: length of train, train speed, number of trains per day, average daily vehicle traffic, vehicle data (1 and 2) and number of road lanes.

The Blue Island crossings are both on the East Yard to Blue Island line segment in the Chicago area. Based on its increased train traffic on the line, the DEIS predicts a decrease in LOS from B to D. In fact, however, ICF Kaiser has determined that LOS as computed in the DEIS will actually increase from a present level of 3 to C. See Exhibit 6, Table 1. The DEIS assumes a train speed of 20 mph both before and after the Transaction. In fact, however, average train speeds at these crossings are presently closer to 10 mph than 20 mph because of movements in and out of East Yard. Average train speeds after the Transaction are expected to average about 20 mph. This segment will benefit from the capital improvements planned for the Chicago area in connection with the Transaction and the implementation of the CSX Operating Plan which will allow for more fluid movements through Chicago, including in and out of East Yard.

Accordingly, CSX expects that vehicle delays at the Dixie Highway and Broadway-150th St crossings will decrease as a result of the Transaction even though more trains will operate through the crossings. CSX does not believe that any further mitigation is appropriate.

The DEIS also predicts a decrease to a post-Transaction LOS of D at the East 9th Street crossing in Hopkinsville, KY, based on an ADT of 14,000. The most current information from the Kentucky Transportation Cabinet, however, puts the ADT at 9,000. ICF Kaiser has computed the post-Transaction LOS using this lower ADT, resulting in a C LOS which does not warrant mitigation under the criteria of the DEIS. See Exhibit 6, Table 1. CSX therefore does not believe that mitigation is required with respect to this crossing.

The DEIS should not be bound, it should not be required to take into account any specific information to the east of all of the grade crossings to be examined on a 44,000-vehicle rail system. The DEIS has well performed its function as an initial screening tool.
CSX believes that it is appropriate to undertake

The DEIS indicates that there are no

The DEIS provides a comprehensive analysis of potential noise impacts and concludes that

The DEIS currently reports that noise levels on some line segments will increase with

The DEIS appropriately concludes that no mitigation can be imposed for train noise, the
dominant form of railroad noise, because FRA regulations require homes to be rounded in
grade crossings for safety reasons. The DEIS concludes that mitigation for roadway noise is warranted
where the roadway noise level exceeds 70 dBA L90 and where the increase in roadway noise level
as a result of the Transaction is 5 dBA L90 or greater.

CSX will undertake field investigation of noise impacts on the identified line segments to

January 20, 1998 that it did not believe any mitigation was warranted at this crossing.

It should be clear from this discussion that the final determination whether there is in fact a
vehicle delay problem at these crossings and, if so, what mitigation might be appropriate, should
be left to the state and local agencies which ordinarily handle these matters. There is no reason
why the Board should intervene in this process.
Board might require, the construction of a noise barrier for a handful of residents on the eastern side of town who experience long noise levels than the other residents of the town. 8

Second, the issue of rural noise has not, of course, arisen for the first time in this proceeding. The Environmental Protection Agency ("EPA"), in consultation with the Department of Transportation, regulates noise emissions from railroad equipment and facilities pursuant to Section 17 of the Noise Control Act of 1972, 42 U.S.C. § 4916. EPA has chosen to regulate by controlling the noise emissions at the source (locomotives and rail cars) and has rejected the approach of building receptors by noise barriers. 9 Investment in noise and local legislation is expressly preempted. 42 U.S.C. § 4916(e). The areas proposed for mitigation were identified because of Transaction-related changes to train traffic (and thus noise levels) on the line segments. The absolute noise levels expected in these areas are below the Transaction. However, nonresidential areas and to be experienced in many other communities as present and post-Transaction. 10 In setting its noise emission standards, EPA has determined that these noise levels are acceptable. The Board should therefore consider carefully whether it is prudent to impose additional noise mitigation measures as conditions in this proceeding.

As stated above, CSX is in the process of field investigation of the areas identified as potentially warranting mitigation and evaluation of feasible mitigation strategies. Based on this analysis, CSX will determine whether or not it is appropriate to impose additional noise mitigation measures as conditions in this proceeding.

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10 This concern does not apply in Cleveland and East Cleveland where the line through the residential area is entirely grade separated and therefore the noise is not an issue. CSX has already undertaken field investigations on the Mayfield to Maylifld, OH and Quaker to Mayfield, OH line segments and has recently presented a proposed noise mitigation plan to the Cities of Cleveland and East Cleveland.

11 EPA's regulations are described more fully in the comments of NS.

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As noted above, CSX has already proposed a noise mitigation plan to Cleveland and East Cleveland and will continue to consult with those jurisdictions about that proposal.

C. There Are No Transaction-related Impacts on the Definer to Toledo Line Segment

With respect to the Definer to Toledo line segment, CSX does not believe that any mitigation is appropriate in connection with Financer Down No. 33208 because any impacts (noise or other) are not related to the Transaction. The CSX Operating Plan, which provides the basis for the traffic figures in the DEIS, provides 1995 base figures and post-Transaction projected figures. The 1995 base for the CSX Definer to Toledo line segment is 0-6 trains per day, and the projected post-Transaction traffic is 14 trains per day, for an increase of 13.5 trains per day on average. This increase led to the conclusion in the DEIS that the Transaction would result in certain impacts (including noise impacts) on this 50-miles line segment. However, in May, 1997, CSX received through train operations over the Definer to Toledo line segment for reasons unrelated to the Transaction. Present traffic on the line is about 14 trains per day. There will thus be no significant Transaction-related impacts on this line segment and that no mitigation would be appropriate in connection with this proceeding.

14, 16, 17 Cultural and Historic Resources

14 Environment, IL

The DEIS recommends that CSX undertake no construction or modification of a rail line connections in Enonset, Illinois until completion of the Section 106 process of the National Historic Preservation Act (16 U.S.C. 470k, as amended) the "Section 106 process.")

CSX will comply with this condition. On January 25, 1998, CSX provided the latest set of construction drawings to EDA and its contractors as part of Phase II archeological survey of the area in question could be completed by EDA’s contractors.

16 75th Street Interlocking Tower

The DEIS recommends that CSX maintains its interest in and take no steps to alter the historic integrity of the 75th Street Interlocking Tower in Chicago, IL until completion of the Section 106 process. The proposed demolition of the 75th Street Interlocking tower is in no way related to the Transaction. The proposed connection at 75th Street will not affect the tower. CSX accomplished the 75th Street Interlocking in the fall of 1997 to improve operations through the interlocking.

The tower is slated for demolition because it is no longer needed to control the interlocking. Nonetheless, CSX has agreed to work with EDA and the Illinois State Historic Preservation Officer to document the tower before it is demolished.

17 Colwood Yards Located in Cleveland, OH.

The DEIS recommends that CSX complete cultural and historic resource documentation for the Lake Shore and Michigan Southern (New York Central) Shops District at the Colwood rail yard in Cleveland, Ohio no later than 180 days following the effective date of a final written agreement by the Board. Based on CSX's understanding of the documentation required, CSX will comply with this condition. CSX would like to work with EDA as soon as possible to ensure that there is adequate time to complete it before construction planned for the yard begins. The Colwood Yard will play a major role in CSX's planned intermodal services between the Eastern U.S. and Chicago, and its expansion will facilitate the environmentally-beneficial truck diversions that are projected.

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Environmental Justice

In Farnce Dockci No 11994, SEA is undertaking for the first time a specific analysis of the "environmental justice" effects of a proposed railroad control transaction. The DEIS presents the minority and low-income percentage of the population residing in the area potentially affected (as defined in the DEIS) by increases in traffic on rail line segments, increases in activity at rail yards, increases in truck traffic to intermodal facilities, and construction of new connections. Vol. 5A, App X. The DEIS then recommends that CSK consult with communities having a certain percentage of minority and low-income individuals (often less than 50%) regarding mitigation of certain effects the DEIS says are "high and adverse." If that consultation does not result in binding agreements to implement mitigation measures, the DEIS indicates that the FEIS may recommend that such measures be imposed as conditions.

CSK strongly believes that the procedures used by the Board in all prior control transactions were adequate to ensure nondiscrimination in those proceedings and are adequate to ensure nondiscrimination in this proceeding. Demographic analysis is not required to protect against discrimination because the Board's implementation of the NEPA process applies neutral criteria to identify potential impacts and recommended mitigation throughout the entirety of the rail systems involved in the control proceeding. The DEIS improperly applies an analytical framework developed in the very different context of facility siting decisions to the analysis of operational changes on a fixed rail infrastructure. The proper analysis in this context requires a systems approach. Systemically, this Transaction does not disproportionately affect minority or low-income populations.

The Department does not insist that this Order be the first step in creating a new set of requirements. The objective of this Order is the development of a process that promotes the existing statutory and regulatory requirements in a manner that helps ensure that the interests and values of minority populations and low-income populations are considered and addressed during transportation decision making.

62 Fed. Reg. 18377, 18379 (April 15, 1997). To date, the Board has not published an environmental justice strategy or other guidance document on implementation of the Executive Order. If the Board believes that it should adopt new procedures to comply with the Executive Order, the Board should initiate a rulemaking. CSX respectfully submits that it is not appropriate to launch a major new requirement in the environmental review process of this proceeding without prior public notice and comment.

It is not necessary for the Board to undertake special demographic analysis of the particular action presented here -- the approval of a railroad control application. The Board correctly decided that such an analysis was not required in its review of the Burlington Northern/Santa Fe and Union Pacific/Southern Pacific railroad control proceedings, both of which post-dated Executive Order 12898.

The Railroad Control Proceeding Does Not Present An Opportunity for Discrimination By the Board.

The federal action in question here -- the Board's decision whether to approve this Transaction -- does not present the potential for discrimination that the Executive Order was designed to protect against. Section 2-2 of the Executive Order sets forth the Order's substantive standard:

Each federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying benefits to, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

As with prior control applications, SEA has undertaken a comprehensive analysis of potential environmental impacts from the Transaction, independent of demographic considerations. This is not a situation in which an impact on minority or low-income individuals might be overlooked, as the environmental analysis includes potential environmental impacts applied to all line segments, yards, and intermodal facilities. Similarly, this is not a situation in which impacts on minority or low-income persons could be minimized or treated as less serious than impacts on others, because criteria for recommending mitigation were applied equally.

Even making the unmentioned assumption that the Board might have some desire to discriminate (which it most assuredly does not), it did not have readily available demographic data to include or exclude impact areas on this basis. Given the lack of data, if the no other reasons, everyone had to be treated equally.

Moreover, this is not a situation in which certain communities might be excluded from participating in the environmental review process. Notice of the proceeding and relevant information were widely distributed -- through distribution of Applicants' Environmental Report, the draft and final scoping notice, information packages from SEA, the DEIS and other means -- to more than 2,000 federal, state and local agencies everywhere. There could be environmental impacts from the Transaction throughout the entire United States and the
Midway. Moreover, the DEIS was translated into Spanish, and CEC understands that SEA is undertaking various outreach efforts in minority and low-income areas.

Thus, a demographic analysis is not necessary to ensure nondiscrimination. Where racial criteria are plainly applied across the board, and no persons are excluded from the process, the Board can complete an environmental review without special consideration of race, national origin and income status.

Furthermore, CEC does not need the Executive Order to require preferential treatment of minority and low-income persons, so demographic information need not be considered for this purpose. Nothing in the Executive Order requires mitigation for minority incomes, owner-occupied, or traffic delay in one community but not in another community similarly situated with respect to the expected level of impact, the only difference being the demographic composition of the communities. That is not to say, however, that where the Board determines that mitigation is warranted in a community based on national criteria, consultation about the most effective implementation of the mitigation is inappropriate. As discussed above, the Board can consider assessment tools to identify problem areas, but the resolution of problems will often be more effective if specific local conditions are taken into account.

2. This Federal Council Procedure Does Not Provide an Opportunity for Discrimination By CEC or NS

Similarly, application of the Order to this relevant council proceeding is not necessary to prevent against any potential discrimination by CEC or NS. CEC and NS state that Council's rail network as it is, they propose to build a few short connections between existing lines, but are not building new routes. There were thus no significant decisions to be made regarding areas where or sites

promises along the rail lines. As explained in NS' comments on the DEIS, that is what a statistical analysis conducted in response to the DEIS is for demonstrating.

Thus, because of the fundamental nature of a major railroad control application and the standard environmental review required under NEPA, there is no equal-impact risk of discrimination against minority and low-income populations. The Board should consider, out of existing procedures for central transactionally fully satisfy Executive Order 12086. To the extent that the Board believes that the Order requires something more than the existing procedures to control transactions, the Board should continue its discussion not to apply Executive Order 12086 in this proceeding. The appropriate procedures would be to initiate a notice and comment rulemaking for application to future Board proceedings. Such a procedure would allow for a full and open exploration of the criteria to be used in any environmental analysis to be undertaken in future cases.

new facilities, the classic situation in which spatial environmental justice analysis have been undertaken.

Moreover, neither CEC nor NS had any reason either to favor or disfavor minority or low-income populations in deciding how to route their lines after the Transaction. The factors which were taken into account in selecting lines were transportation-related, and are discussed in the Operating Plan. 77

As the verbatim statements of John W. Orman and M. Michael Marius (Appellant Vols. 1A and NS) attest, the Operating Plan for the expanded CEC and NS systems and for the Shared Areas Areas were designed to route freight traffic so as to provide the quickest, safest and most cost-effective rail transportation possible out of the Mississippi River, to the benefit of persons of every racial and income group. Lines, locations, yards and intermodal facilities will experience increased traffic under the Operating Plan, and more will experience decreased traffic. Because minority and income status of populations in the vicinity of rail lines were not factors in the decision how to route the lines, it is to be expected that the increase and decrease in traffic over the 40,000 miles of rail lines or miles in the Transaction will be borne by minority and majority groups and portions of various income levels in reasonable proportion to their...
knowledge that freight trains moved over the tracks. 

In the draft scoping notice for the EIS, SEA had proposed to apply environmental justice analysis only to the proposed new construction projects and abandonment, which was consistent with the usual application of the concept. In the final scoping notice, SEA expanded the scope of the environmental justice analysis to include traffic and activity changes on existing infrastructure.

SEA had right the first time.

The level of freight traffic on any given rail line varies through the year, sometimes greatly, with shifts in the origin and destination of shipments, the overall level of economic activity, plant closures and openings, competition from other modes, development of substitute products for those shipped by existing rail customers, competition from trucks, and other factors. Moreover, a railroad's decision to change the level of traffic on a line is not ordinarily subject to review by any federal agency. Accordingly, it would not be reasonable for any individual or community along a rail line to expect that the level of traffic which "remained in 1985" or any other year would never change.

What persons living along a rail line can expect, however, is that railroads will operate through their communities in compliance with company policies, railroad industry standards, and federal regulations designed to protect their health and welfare. Railroads are, of course, subject to comprehensive legal requirements imposed by the Federal Railroad Administration, Environmental Protection Agency, and other agencies. CSX, NS and Conrail also have adopted a set of industry standards and have implemented their own company-specific programs, particularly in the area of safety, which go beyond federal regulations. The company policies, industry standards and regulations are designed to promote safety and protect the environment, whether on trains or on hundred trains per day or no train at all. And it should go without saying that the company policies, industry standards and regulations are designed to provide the same high level of protection to all persons living in proximity to rail lines, regardless of their race, national origin or annual income.

Reference to the comparative effects suffered by non-minority and non-low-income populations

As explained above, CSX believes that analysis of disproportionate impacts requires a statistical analysis of all of the persons affected by the 3 successive. The DEIS did not present any such statistical analysis. It did not present any analysis which compares the impacts on non-minority and non-low-income persons to those on minority and low-income persons. The DEIS states the following as its sole explanation of the methodology for determining whether adverse effects disproportionately affect minority or low-income communities:

SEA used qualitative analysis approach which included review of several different historical circumstances, including comparative effects of exposure to health and environmental impacts from many sources, to determine the significance levels on a local case-by-case basis. A determination of a significant environmental justice impact specifically included SEA's consideration with affected communities.

Vol. 5A at K-10 to K-11. With all of this respect, this analysis is relevant only to the question whether certain effects are "high and adverse," not whether they disproportionately affect certain populations. The answer to the question whether an impact is disproportionate cannot come from consideration with minority and low-income populations, who presumably have little knowledge of low other communities are better affected by the Transaction. The answer must come from statistical analysis to determine whether similar impacts occur in other communities which are not predominantly minority or low-income.

In order to determine whether the Transaction would have disproportionate effects on minority or low-income populations, one would need to assess the systemwide effects of the

The DOT Order defines the disproportionate requirement as follows:

(1) In disproportionately borne by a minority population and/or a low-income population.

(2) Will be suffered by the minority population and/or non-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and non-low-income population.


Significantly, however, it improperly maintained the second part of the definition to cover the

The DEIS may have sought to avoid analysis of the disproportionate requirement because a rigorous application of that requirement to a rail transaction involving 44,000 miles of rail line would have been much more difficult to show that an adverse effect was "proportional" and hence "appropriate" (Executive Order Section 1-101), particularly because the Board is not even required to comply with the Executive Order. What is not permissible for the DEIS simply to ignore the critical element of the analysis.

The DEIS compares the demographic composition of the population living in proximity to some of the rail lines segments, to that of the surrounding counties as a whole, but this is not an appropriate comparison group for purposes of analysis of disproportionate with respect to a fixed infrastructure such as a rail line system extending throughout the entire United States. The

It is notable that the DEIS's summary of systemwide impacts did not even include environmental justice. Vol. 1 at 4-6. Environmental justice is improperly identified as only a "site-specific environmental issue."
The DEIS analyzed the community around each individual rail segment as a separate population. While there may be some appropriate uses for a segment-by-segment analysis, a rail segment is not the equivalent of an individual facility, the typical subject of an environmental justice analysis. Segments and points are places where the level of train traffic changes, either because there is an origin or destination point, a rail yard or an aerosol facility, or a junction point between rail lines. Rail segments vary greatly in length, from a minimum of one mile to a maximum of about 250 miles. The rail facility at issue in this Transaction is the entirety of the CSX, NS, and Corrals systems. One study has analyzed the impacts on a systemwide basis. NS has undertaken a systemwide analysis of all CSX, NS, and Corral low segments using demographic information sorted by zip code which demonstrates that the Transaction will not have a disproportionate impact on minority or low income persons. The NS analysis is presented in its comments.

NS's analysis determined that the population in proximity to the rail lines involved in the Transaction is approximately 2% minority and 15% low-income. Of course, the composition of the individual communities along the rail lines varies from one end of the percentage scale to the other; CSX and NS do not control land use patterns, and cannot move their infrastructure. Therefore, any comparison of rail impacts can only be among the communities residing in proximity to the rail lines, not to persons residing elsewhere. Executive Order 12898 cannot

There are only very slight changes that, the composition of the United States as a whole, which is approximately 24% minority and 17% low-income.

The USPHS environmental justice analysis is not necessary to ensure that these communities are not excluded from the benefits of mitigation.

C. Specific Recommendations for Consultations with Communities with Significant Minority or Low-Income Populations

The DEIS directs CEQ to "consult with tribal officials, appropriate local agencies, and community representatives" in the cities and towns listed on Table 7-9 in order to address the potential environmental impacts identified in Table 7-9, to the extent that those impacts are disproportionate. As explained above, this Transaction does not have a disproportionate impact on minority or low-income populations. There is no basis for drawing CEQ to embark upon special environmental justice consultations.

To the extent that the application of natural criteria has identified impacts potentially warranting mitigation, and the crafting of the mitigation is properly informed by local considerations, CEQ has undertaken and will continue to undertake consultations with appropriate officials regardless of the demographic composition of the community. With respect to the first point, because the Executive Order does not require a lesser threshold for requiring mitigation in communities which are predominantly minority or low income, there is no basis for directing CEQ to consult with any communities in addition to those which have been identified for potential mitigation through application of SEA's natural criteria. With respect to the second point, there are some impacts which by their nature must be addressed through uniform, systemwide (if not mandatory) standards and are thus not the appropriate subjects of consultations with cities and towns designed to fine-tune mitigation in light of local conditions. Freight rail safety issues, including transportation of hazardous materials, fall into this category. Freight rail safety issues are comprehensively addressed by federal agencies, primarily the Federal Railroad Administration. State regulation is preempted by the federal regulatory scheme and by the Commerce Clause of the United States Constitution. Accordingly, it would not be consistent with sound transportation policy for CEQ to undertake consultation with cities and towns regarding the design of special mitigation of any potential freight rail safety impacts identified in the DEIS. CEQ will address freight rail safety conditions proposed in the DEIS - 4th point to specific local groups that meet the DEIS's criteria for "significant impact." For instance, CEQ currently meets with communities along its rail lines to discuss a wide variety of issues of interest to the community. CEQ will continue its community relations efforts. What CEQ objects to is a discussion of the purpose of designing a special mitigation strategy for freight rail safety and hazardous materials transportation that would apply only in certain communities because of their demographic composition.

 prohibent rail transportation, or require mitigation which would be so extensive as to make rail transportation uneconomic, simply because some communities along rail lines have a higher percentage of minority and low-income persons than the rail population as a whole or the nation as a whole.

The NS analysis shows that the impact of the Transaction is not disproportionate because it is not 'predominantly borne by a minority population and/or a low-income population.' 42 Fed. Reg. At 13631. About 72% of the impact is borne by the minority population and about 85% of the impact is borne by the low-income population. In addition, the impact on minority and low-income persons is consistent with their prior use in the rail population as a whole.

Moreover, the adverse effect suffered by the minority, non-minority, and low-income population will not be "approximately more severe or greater in magnitude than the adverse effect that will be suffered by the minority population and/or non-low-income population," the second criterion in DOT's definition of disproportionality. See id. The nature of the impacts are the same throughout the system, primarily safety concerns, noise and traffic delay. Using neutral criteria, the DEIS identifies the communities that are expected to experience significant impacts as a result of the Transaction. Some of these communities are predominantly minority or low-income, and others are not. These are the segments to which mitigation is targeted. The
The potential impacts which may be appropriate for consultation are thus grade crossing safety, traffic delay, and noise. The identification of the appropriate entity to consult with regarding appropriate mitigation measures depends on the nature of the issue.

The DEIS strongly encourages CEI to enter into "initially-acceptable binding agreement[s] on the implementation of appropriate mitigation measures." Vol 4 at 7-18. It must be noted, however, that whereas it might be appropriate to consult with a particular official about mitigation, it might not be appropriate to enter into an agreement with that particular official. For example, a local official might desire a grade separation, but the state would normally want the decision whether to undertake a grade separation in a more official capacity. Any agreement regarding the separation would have to be between CEI and the state officials, not the local official.

CEI does not believe that agreements are appropriate with "community representatives" who are not representatives of duly-constituted state or local government agencies. CEI has conducted "outreach" to educate and solicit the views of community groups about the Transfin. One community group can state their views known to their governmental representatives. If the view of a particular group does not persuade their governmental representation, however, there is no basis for an agreement between the group and CEI. In its draft order on environmental justice, DOT had proposed "an agreement with the potentially affected population" as one option for addressing disproportionately high and adverse effects." 46 Fed. Reg. 13399, 13390 (June 29, 1991). Nonsensical communities opposed the provision as unworkable and subject to abuse. DOT agreed, and deleted the provision from its final order on environmental justice. 62 Fed. Reg. 18771, 18778 (April 15, 1997). CEI agrees as well, and does not plan to enter into any such agreements.

Having stated these general points, we will now address the DEIS's specific directions.

1. Best Yard in Blue Island, IL

The DEIS directs CEI to consult with Blue Island with respect to traffic delay. Two crossovers are identified which may warrant mitigation for vehicle delay impacts — Dixie Highway and Broadway-135th St. These crossovers were included in Mitigation Measure 11. As explained above in connection with Mitigation Measure 11, CEI expects that capital improvements planned in connection with the Transaction and the implementation of CEI's Operating Plan will greatly improve traffic flow through Blue Island. Accordingly, it does not appear that any additional mitigation is required. CEI will consult with the City of Blue Island about these operational improvements.

2. 59th Street Chicago Intermodal Yard

The DEIS directs CEI to consult with Chicago with respect to noise from truck traffic to the 59th Street rail terminal facility even though the noise level does not meet the DEIS's criteria for mitigation. CEI's proposed intermodal facility at 59th Street is addressed below in connection with Mitigation Measure 24. As explained below, CEI has already consulted with the Chicago City Council in connection with CEI's operating applications for the facility and has reached agreement on mitigation measures for the facility or conditions to the approval of the operating application.

3. Wilson Creek to First Junction

SEA has directed CEI to consult with Gary, Indiana with respect to a number of impact categories. Gary is a member of the Four Cities Consortium. As explained below in connection with Mitigation Measure 27, CEI is presently consulting with Gary about these issues as part of its consultation with the Four Cities.

4. Alexandria Junction to Washington, DC

SEA has directed CEI to consult with Bredenbourg, MD and Washington, DC with respect to hazardous materials transport because this route is expected to become a key route after the Transaction. As explained above, CEI does not believe that consultation is appropriate with local communities regarding the design of special mitigation measures related to transportation of hazardous materials through their community. However, CEI will coordinate with Washington, DC and Prince George's County, MD regarding the Hazardous Materials Emergency Response Plans recommended in Mitigation Measure 3.

5. Osage to Meriden, Meriden to Marion, OH

CEI is in the process of consulting with Cleveland and East Cleveland with respect to a number of impact categories, as explained below in connection with recommended Mitigation Measure 21.

6. Marion to Republic, Ohio

In the area to the DEIS, SEA has directed CEI to consult with respect to mitigation of noise impacts in Marion, Ohio. For the reasons set forth below, CEI respectfully suggests there is no basis for any noise mitigation in Marion.

First, SEA's stated concern in Marion, Ohio is noise impacts, but this segment does not meet the SEA's criteria for noise mitigation. Nor can it be considered as a cumulative impact in Marion, because no other impacts have been identified that warrant mitigation. The objective of the Executive Order is sustainable, not preferential treatment.

Second, it is not clear that any noise mitigation in Marion would even benefit minority or low-income persons. As stated in Appendix E (Vol 5A at K-43), the population living in the Marion-Ridgley line segment is 22.2% white, 43% Hispanic, and 24% low-income. This segment was identified as raising environmental justice concerns because the income percentage is more than 10% higher than the income percentage of Marion and Hardin Counties in a whole. As explained above, this is not a permissible application of the disproportionately higher requirement of the Executive Order.

Disproportionality can only be determined on a systematic basis. Presumably the DEIS was looking to identify those communities that might have less political influence than their wealthier, minority neighborhoods in the county. Relative power within the county might be an appropriate concern if the Board were deciding whether to approve the construction of a new rail line through Marion and was looking at two different routes, but the approach makes no sense in the context of the action already before the Board.

The problem with the DEIS's approach is that it looks more accurate when one focuses on the precise area of the noise impacts. A maximum of about 50 residences within Marion on the Marion-Ridgley segment would likely experience a perceived increase in noise from increased traffic on the line. If a noise barrier were built along the 1.2 mile in the vicinity of one affected residence, for example, it would benefit only the occupants of those homes. It would not benefit anyone else in Marion. The relevant population for purposes of an environmental justice analysis is that the residence of those 50 or fewer persons. CEI cannot readily determine the race, national
origin or income level of this small population. Thus, it is far from clear that any noise mitigation in Marcon would benefit the persons the Executive Order was meant to protect.

The DEIS directs CEX and NS jointly and/or separately to "continue to consult with the City of Cleveland, the City of East Cleveland, the Ohio Department of Transportation, elected representatives for Cleveland and other appropriate parties to address concerns about train traffic increases on the CEX's current Mayfield and Mayfield to Brady rail line segments and NS's Cleveland (East Cleveland to Avonlake) rail line segments." It further directs CEX and NS to "negotiate a memorandum of understanding concerning a noise mitigation measures for those routes that could eliminate potential environmental impacts."

The major rail route of Conrail being allocated to CEX and NS in the Transaction form an "X", one leg of which is the Conrail line from Boston and New York City (via Albany) to St Louis and the other in the line from New York (via Philadelphia) to Chicago. The cross-point of the Conrail "X" is in the Cleveland area. One of the core concepts of the Transaction's allocation of the Conrail routes is that CEX will take the first-named leg of the "X", and NS will take the other leg. The "X" will no longer be operated as part of a single system, but the two legs of the "X" will be operated on a competitive basis by the two carriers.

Collectively, on the two legs of the "X", approximately 50-60 trains per day will be operated through Cleveland under the two carrier operating plans. It should be noted that the Transaction will not materially change the number of trains traversing Cleveland on Day One (although traffic may obviously increase in Cleveland as elsewhere on the CEX and NS systems as the benefits of the Transaction induce the diversion of freight from truck to rail). However,

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in Cleveland for decades. More significantly, Conrail has designed its system so that both of its major routes cross in Cleveland, making Cleveland the center of its system. As a result, Cleveland is the most direct and efficient route for traffic between Chicago and eastern points and, as detailed in Applicants' Exhibit, running traffic away from Cleveland is neither economically nor operationally feasible and would substantially diminish the quality and competitiveness of East-West rail transportation.  

Robert J. Vorel, President of Conrail, has said in detail:

"The Short Line was designed for high volume freight traffic. It is entirely grade separated through Cleveland and East Cleveland, using some placing on elevated tracks and in others through cuts below grade. The Short Line became an integral part of the expansion to four main tracks, and upon its completion in 1911, it became the bypass for freight traffic. By 1915, the line consisted of 19.64 miles of main track, 19.17 miles of second (trunk) track and 22.23 miles of sidings, making it well suited for handling heavy volumes of freight traffic.

Line-yeard policies as well as through freight trains were scheduled across the Short Line for many years, averaging 30-40 freight trains per day. As the Lake Shore Line carried a heavy volume of regular passenger service as well as freight trains, the Short Line provided an efficient route for handling freight trains. The opening of the Cleveland Union Terminal in 1930 and its associated passenger routes reduced some of the traffic on the Lake Shore Line by rerouting a substantial amount of passenger train traffic to the Short Line. Nonetheless, even with the decrease in passenger traffic on the Lake Shore Line, the Short Line continued to carry between 25-30 freight trains per day throughout the 1940s and 1950s.

In connection with the construction of the Cleveland Union Terminal, the New York Central (NYC) announced a new alignment for passenger trains from the Short Line to Cleveland and along the Short Line between Cleveland and University Circle (near Mayfield on SR 7). At University Circle, the passenger route diverged from the Short Line to reach the terminal. This line was now used by the RTA. This part of the Short Line became part of the Cleveland RTA's system, providing service to the northeastern suburbs of Cleveland. The RTA has a number of rail/road projects currently underway in Cleveland.
elimination of the bottleneck results in improved transit time for CSX and NS East-West traffic. In addition, the ability of CSX and NS to fully control the movements of its trains (and particularly time-sensitive intermodal trains which consist of trains) unimpeded by the movements of the other carrier promotes more efficient and reliable East-West service.

Applicants' proposed alteration and routing enable CSX and NS to achieve their objective of each having a high-quality, two-track route through Cleveland with the expansion of the Lake Shore Line at reduced cost and displace the Oswego Terminal complex. As stated above, the RTA continues to operate along or near the Short Line in Cleveland and East Cleveland. The Applicants continue to route traffic on the Short Line to relieve congestion on the Lake

Line between Berea and the Harvard connection (near Marysville) and then onto its acquired Pittsburgh line or between Berea and Mayfield and onto its own Buffalo line. CSX traffic would move between Berea and Clevelan via the Lake Shore Line to its newly acquired route New Jersey.

This alternative would result in CSX and NS having to cross each other's lines at grade at Berea, creating either a major bottleneck at the crossing point or the need for an expensive and costly separation. It would also make it extremely difficult for NS to reach several facilities that it will serve, without substantial additional investment. In fact, the proposal would require several major construction projects, beyond those now contemplated, including:

- Construction of a flyover at Berea to enable the unimpeded crossing of CSX and NS trains at Berea and their connecting tracks. An average-speed overpass with about a 15% grade and clearance for future improvements would be approximately 10,000-11,000 feet long and take at least 2 years to construct.
- Construction would accommodate the demands of existing residential and commercial structures, and would dramatically alter the existing character of the impacted area. In addition, the construction could potentially affect Berea's existing transportation infrastructure, including sewer lines, water lines, utility and communication lines. Finally, the potential noise impacts of such an advanced alternative would require additional assessment and potentially significant mitigation efforts.

- Construction of a flyover at Berea via the Lake Shore Line at grade for NS to operate. This proposal was not made due to the building of another flyover at the adjacent cross lines and could adversely affect the environmentally sensitive wetlands located in Mill Creek.

- Construction of additional track capacity for CSX to access Roger Memorial Yard (where it maintains an operating base) and Ford Motor Company, and Ford Motor Company, and

- The Applicants propose the construction of an additional track capacity for CSX to access Roger Memorial Yard (where it maintains an operating base) and Ford Motor Company, and

- Establishment of a project to facilitate NS's efficient access to Wickless Island, where use for use in local steel production is translated from lake cargo vessels.

The costs of this proposal are estimated as follows:

- Construction of the monorail superstructure of the Flyover alone could cost in excess of $100 million, without even considering the costs and impacts of relocating utilities, or the costs of relevant environmental mitigations. But the true costs associated with this proposal go beyond the capital needed to construct the additional projects. They also include the high public and private costs of entirely postponing or drastically implementing the Transcon, the need for very serious environmental impacts in Berea, and serious on-going operational and customer service issues when construction is completed. Such decisions fly in the face of the railroad transportation policy goals of promoting speed, economic, competitive, and efficient service.

Any suggestion that CSX and NS should change the Lake Shore Line is equally impractical. There is not sufficient right-of-way to accommodate new separate tracks. Sharing the same tracks would not give the shippers the benefits of two efficient, reliable East-West routes offered by two strong competitors. Like the "drop" alternative, it would create a Cleveland bottleneck for the two competing routes, resulting in decreased efficiency and the unavailability of East-West movement. Similar problems of crossing grade level, as in the "drop" alternative, would be created.

Cleveland's consultant Parsons Brinckerhoff has estimated the cost of Cleveland's alternative at $145 to $171 million, a significant sum of which is in the Flyover structure in Berea. CSX has not yet developed an economic impact of the cost of the structure.

Cleveland is not what Berea and Wickless were to the CPSP culmination - points where operations could be framed without systematic damage. Cleveland is the corner point on the CSX route system and is central to the new high-level operation of both CSX and NS.
Another proposal has been made to have a "central terminal operator" in Cleveland. This presumably would operate in a manner similar to those of the other cities. But it would not solve the problem, if there is to be coordination of the movement of CSX and NS through Cleveland, the coordination has to extend statewide, since the trains that will move through Cleveland will be in large part those making long-haul runs over most of the eastern systems. East and West, of the two carriers upon the implementation of the Central route allocation. Thus, what is in issue is not the management of local traffic moving through Cleveland, but the efficient operation of intercity and even transcontinental traffic. While it is true that Cleveland could economically and efficiently program trains through Cleveland without the need for separations, the situation here is different. Unlike Cleveland, a terminal operator would not have control over the scheduling and operation of all trains traveling from one to the other. It may be expected that for competitive reasons CSX and NS would tend to schedule trains in such a way as to make the competitive movement in Cleveland at the same time of day. The terminal operator, therefore, would not be in a position to coordinate and facilitate the efficient movement of intercity rail traffic converging on Cleveland from all directions.

These proposals, nationwide, the allocation of Central routes through Cleveland would have the most serious consequences. They would either entirely prevent the implementation of the CSX and NS operating plans (effectively nullifying the Transaction), postpone their implementation while the necessary construction work was completed, or compromise them by greatly reducing capacity while construction proceeds at the critical throat of the system.

Fourth, the implementation of the Operating Plan will allow Cuyahoga County (which includes Cleveland) to realize a net savings of over $15 million in truck miles in truck diversions, which means a reduction of 6,150 truck accidents annually (1.06 of which would involve injuries) and net savings of about $320,000 in annual highway maintenance costs. These benefits will be lost if the CSX and NS Operating Plans are not fully implemented.

Moreover, the impacts that will be experienced on the Short Line will be no different in nature or magnitude than those impacts currently being experienced on the Lake Shore Line. Cleveland has described the impacts from CSX rail traffic on residents living in proximity to the Short Line, without acknowledging that there are about the same number of residents in Cleveland along the Lake Shore Line. Both the Lake Shore Line and the Short Line pass through a mix of industrial, commercial and residential areas. Under the CSX Operating Plan approximately 40 CSX trains will pass through Cleveland each day. Whether they traverse Cleveland on the Lake Shore Line or on the Short Line they will unavoidably create some noise. The significant noise impacts are largely centered on the first row of structures along the tracks. The number of Cleveland residents living along the Short Line is roughly comparable to the number of residents living along the Lake Shore Line.

The residents along the Lake Shore Line have been living, their lives without serious adverse effects with high levels of Central traffic on the Lake Shore Line that CSX is proposing to route over the Short Line. There are numerous locations throughout the eastern United States, including its major metropolitan areas, where rail traffic exceeds 40 trains per day. Comprehensive federal regulation, along with industry standards and company policies, ensure that rail freight transport will perform its important functions in the economy without unacceptably affecting the communities through which it passes, in terms of noise, safety or issues of public inconveniences such as traffic delays. Compared to other communities which do not have the benefit of a grade-separated rail corridor (including that portion of the Lake Shore Line in Cleveland near Kirkland Park where there are grade crossings), train traffic over the Short Line will have relatively less adverse effect because homes are not surrounded at grade crossings, there will be no risk of accidents at grade crossings, and vehicles will not be delayed at grade crossings.

CSX analyzed the noise impacts from its proposed operations over the Short Line in Cleveland. East Cleveland. CSX identified about 350 residences on the Lake Shore and Mayfield Street to have linework segments which meet the DEQ's criteria for significant impact (70 dBA Ldn and an increase of 3 dBA Ldn). These residences are all in the first row of structures adjacent to the rail line. CSX proposed mitigations for 233 of these residences. The proposed mitigations are low noise barriers to shield the residential area. High noise walls to block noise were determined not to be feasible. Although low noise walls are more effective than the wirewall noise, it is not considered for a much shorter time period. Because CSX recognized that the low noise barriers would not shield all rail noise, CSX proposed in addition to provide an additional benefit -- noise stopping -- to provide a visual barrier and generally improve the appearance of the rail corridor.

The amount that transport of hazardous materials has been raised as a concern, existing regulations and programs already ensure that the risk of a release of hazardous materials is
24 Chicago, Illinois

The DEIS describes CSX's proposed construction of a new intermodal facility at 59th Street in Chicago, Illinois. The DEIS shows CSX to assess and reach mutually acceptable binding agreement with respect to traffic and noise mitigation measures for this facility.

As the DEIS reports, CSX filed a notice application with the City of Chicago which was supported by detailed reports documenting both potential benefits and adverse effects from the 59th Street facility (including increased traffic and noise). The application was thoroughly considered by the City Council and its staff. CSX engaged in extensive negotiations with the community surrounding the 59th Street facility, including with the City Council Members in Ward 15 and Ward 16, who supported the application.

On December 10, 1997, just after the DEIS went to print, the City Council approved the remaining application. The approval included conditions designed to address adverse effects of the facility. CSX will submit documentation of the approval to the EIS. CSX believes that the application fully satisfies the recommendations in the DEIS, and that the EIS should report that the matter has been resolved. Accordingly, no condition is warranted.

25 Newark, Delaware

CSX currently operates an average of 26.9 trains per day through Newark, Delaware (the Wayne–Robinson line segment of the CSX Operating Plan). The CSX Operating Plan projects that traffic on this line will increase to an annual average of 28.5 trains per day. As the DEIS acknowledges, this minor increase in traffic does not meet the threshold for environmental analysis.

Vol. 1A at DE-14 to DE-17: CSX agrees with the conclusion of the DEIS that the "minor increase in train traffic would have no... major incremental effect on the community." Vol. 1A at DE-17. The concern raised by Newark is reflected in Exhibit D-23494. It reflects existing conditions.

Despite these conclusions, the DEIS recommends that CSX consult with local agencies, the University of Delaware and the Delaware Department of Transportation regarding potential safety issues. Vol. 4 at 7-21. The DEIS suggests that EIA might recommend mitigation in the DEIS if CSX does not enter into a binding agreement regarding anticipated measures.

CSX voluntarily committed to consultation with the University of Delaware and local agencies regarding potential safety issues in Newark before EIA issued the DEIS. These discussions have been very productive to date and CSX is optimistic that an agreement will be reached regarding a variety of measures that will enhance pedestrian safety in Newark. CSX will inform EIA if it reaches an agreement with one or more parties regarding pedestrian safety in Newark, and EIA will document that agreement in the FEIS for consideration by the Board in evaluating the overall environmental impacts of the Transaction.

However, it would not be appropriate for the Board to consider approval of the Transaction on any such 'dictionary agreement relating to what is clearly a pre-existing issue.'
Transmission-related situation is Newark. Nor would it be appropriate for the Board to impose any mitigation in the event that no agreement is not reached. The Board has repeatedly held that it will not impose conditions to address pre-existing issues. See UPSP at 145, RNGI at 54. This limitation is recognized in the DEIS itself. See DEIS, Vol. 1 at 1-10, 3-3. It is insufficient that the FEIS simply document any voluntary agreement that may be reached with respect to the pre-existing situation under discussion or, in the absence of such an agreement at the time of the FEIS, report that the parties are negotiating.

27. The Four Cities Corridor

CSX, NS and Central currently operate freight rail service on a number of line segments through the cities of East Chicago, Hammond, Gary, and Whiting, Indiana (collectively referred to as the "Four Cities"). The DEIS analyzed the effect of traffic increases on vehicle delay at nine grade crossings in the Four Cities. The DEIS acknowledges that there is an existing problem with vehicle delay in the Four Cities. The DEIS concludes that the slightly increased delays resulting from Transmission-related traffic increases do not meet the DEIS’s criteria for mitigation. See DEIS at 3A-64.6

Despite these conclusions, the DEIS recommends that CSX consult with representatives of the Four Cities, the Indiana Department of Transportation, and other appropriate parties regarding at-grade crossing delay and safety issues. Vol. 4 at 7-21. The DEIS notes that NSA might recommend mitigation in the FEIS if CSX does not enter into a binding agreement regarding mitigation measures.

CSX notes at the outset that the traffic delay calculations in the DEIS for the nine crossings overestimate the post-Transmission traffic delay. The calculations do not take into account the increased average speed on the Four Location to Bear Yard Line segment which will result from the capital improvements and operational improvements planned for the line and the Chicago area as a whole. When the increased speed is taken into account, CSX expects that traffic delays at the nine crossings will actually decrease as a result of the Transmission. See Joint Rebate

6 The DEIS also analyzed the effect of traffic increases on grade crossing safety throughout the Four Cities and concluded that traffic increases on the Willow Creek to Five Points Line segment warrant grade crossing protection upgrades at four grade crossings on this segment. This recommendation is addressed in comments on recommended mitigation Measures 8 above.

28-41 Recommended General Mitigation for Proposed Construction Projects and Abandonments

The DEIS recommends that CSX comply with Upstream specified mitigation measures in all construction and abandonment activities described in the DEIS. CSX will do so.
The DEIS recommends that CSX retain its interest in and take no steps to alter the historic integrity of the line segment proposed for abandonment between Passaic and Darby Boro, NJ, until the Section 106 process is completed. CSX undertakes from a letter from the Illinois Historic Preservation Agency to Elaine Kaiser, dated January 13, 1998, that the Section 106 process is completed with respect to this line segment. CSX will contact the Illinois SHPO if archaeological resources are found during the course of salvage activities, as recommended in the DEIS.

I. Miscellaneous Comments

The DEIS notes that certain comments and requests for conditions ("CRNC") filed on October 21, 1997 "raise environmental issues that SEA is considering" and that these issues will be considered "until the Final EIS is published." Vol. 1 at 2-36. The DEIS also observes that it did not consider the Applicants' December 15, 1997 rebuttal evidence in and argument, which was filed three days after the DEIS was served. The 9 CRNCs that required conditions are listed in Appendix U of Volume 5 of the DEIS. This has also been forth in various summaries, what the DEIS describes as "the potential environmental effects of the conditions are stated." Vol. 1 at 2-36.

In this section of its comments, CSX will briefly respond to two of the descriptions of potential environmental effects found in Appendix U—specifically, the description of the environmental impacts of the conditions requested by certain members of the U.S. House of Representatives from New York and Connecticut and the Stark Development Board.

In addition, CSX will briefly respond to suggestions found in Chapter 5 of the DEIS with request to the New Jersey Department of Transportation and New Jersey Transit Corporation, Southeastern Pennsylvania Transportation Authority, proposed Rockland County, NY commuter service and Amtrak service at Danbury, NY. With the exception of the Rockland County matter (which was not the subject of any filing with the Board of which CSX is aware), CSX has responded fully to each of the parties in its December 15 rebuttal. Specific references to the relevant portion of that rebuttal are set forth below.

1. Stark Development Board

The Stark Development Board ("SDB"), an economic development entity based in Stark County, Ohio, has filed comments with the Board that request that CSX and NS offer special conditions with respect to an intermodal terminal (known as the Neosho Terminal) located in that county on the line of Wheeling & Lake Erie ("W&LE") Railroad. Specifically, SDB requests a series of special conditions that would require CSX and NS to (1) provide competitive pricing, schedules, market access, and reliability to Neosho Terminal, (2) work with W&LE to ensure competitive rates, (3) integrate Neosho into their own CSX and NS systems, and market it as if it were their own terminal, and (4) enter into long-term agreements with the companies for the terminal's construction. Alternatively, SDB states that CSX and NS will be required to purchase the Neosho Terminal at their market value and integrate it into their systems.

While the DEIS does not, and has no reason to, evaluate the merits of SDB's requested conditions, the DEIS does note that the closing of the Neosho Terminal might result in the "loss of environmental benefits like reduced highway congestion and air pollution." DEIS, Appendix U at U-19. CSX briefly responds to this remark in the DEIS to ensure that the EIS does not confuse the general environmental benefits of intermodal rail transportation—of which there are many—with the merits of SDB's requested condition—of which there are none.

Simply put, the failure of the Neosho Terminal to attract business is entirely unrelated to the proposed Transaction. The primary problem facing the Terminal is the Terminal's location—it is not located on or near either CSX's or NS'" mainlines and is distant from major population and commercial centers. In an intermodal market where most freight is time sensitive, and where
competition with the door-to-door services offered by motor carriers is keen, SBD’s decision to locate its Neosho depot far from C&NW or NS maintains plans that terminal at a distinct disadvantage. All freight moving to or from the Terminal must be switched with WABE at the nearest C&NW and NS yard, an operation that adds both time and expense to the interchange of intermodal units.

For these reasons, the Neosho terminal is not a financial success today—a situation having nothing to do with the Transaction. Moreover, the Transaction will not reduce the level of intermodal service available to shippers in the area served by Neosho. C&NW respectfully refers the SEA to pages HC-471 through HC-475 of Volume 1 of Applicants’ Rebuttal and to the Rebuttal Verified Statement of Peter Tanta of Volume 2 of Applicants’ Rebuttal, for a detailed discussion of why the Board should deny SBD’s request for conditions.

In sum, C&NW is a firm believer in the economic and environmental benefits of intermodal rail transportation. As the truck diversion studies presented to the Board by C&NW and NS indicate, approximately one million intermodal units (trailers or containers) will be diverted from highway transport to the rail system as a result of the proposed Transaction, thereby reducing highway congestion, air pollution, and highway accidents. Indeed, NS and C&NW continue to serve Neosho and to market that facility. However, the overall benefits of intermodal rail transportation do not justify a Board-imposed condition that requires Applicants to provide special treatment to, and indeed to finance or purchase, an intermodal facility of uncertain economic viability for whose creation they were not responsible

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2. East Side of Hudson River

Several commentators, including the Tri-State Transportation Campaign (TSTC) and Congressman Nadler, have requested that the Board require C&NW and NS to take over the rerail service across the Hudson River, currently operated by the New York & New Jersey Railroad (NYCRR). The common element among these requests for conditions is the long distance of a rail crossing over the Hudson River south of Albany. This is not a result of the Transaction. While the DEIS does not, and has no reason to, evaluate the feasibility or the merits of a Board-imposed takeover of NYCRR, which is suggested by some commentators, the DEIS does note that a "]one operation could reduce congestion on area highways by cutting 500 miles of traffic from New York to New Jersey." DEIS, Vol. SC at U-12. C&NW briefly responds to this remark in the DEIS to make the point that the Board should not consider C&NW and NS to operate the NYCRR’s existing rail service.

C&NW welcomes all studies and analyses that consider methods for connecting rail lines on opposite sides of the river. The New York City Economic Development Corporation ("NYCEDC") has recently launched a two-year, $7 million study, to commence this Spring, to consider alternatives to cross harbor freight movement. C&NW has stated its willingness to participate as a resource in this study. If the NYCEDC or any other entity successfully develops a new Hudson River rail crossing, C&NW will carefully analyze the merits of the new crossing to take advantage of it.

However, there is a significant difference between recognizing the limits of the current Hudson River crossings and requiring C&NW and NS to operate NYCRR’s rail service—

3. New Jersey Department of Transportation and New Jersey Transit Corporation

The New Jersey Department of Transportation, the New Jersey Transit Corporation, and New Jersey Transit Rail Operations, Inc. (collectively referred to as "NJT") have requested that the Board require Applicants to cooperate with NJT in its efforts to eliminate light rail transit service on Conrail’s Bordentown Secondary between Trenton and Camden. The Bordentown Secondary will become part of the South Jersey/Philadelphia Shared Access Area upon Board approval of the proposed Transaction. The DEIS does not recommend any mitigation with regard to the NJT’s proposed light rail transit service. However, the DEIS "encourages" Applicants to work with New Jersey Transit to ensure that the proposed Acquisition would not adversely affect any planned operations.

The DEIS was issued before Applicants filed their Rebuttal on December 15, 1997. Applicants’ opposition to the NJT’s request concerned regarding to light rail project on Conrail’s Bordentown Secondary was fully addressed in this document and will not be repeated herein. See Applicants’ Rebuttal, Vol. 1 at HC-545 to 56, Rebuttal Verified Statement of P. Paul Carey, Vol. 2 at HC-124, Rebuttal Verified Statement of P. Paul Carey, Vol. 2 at HC-225.

Discussion are continuing with NJT on a variety of issues. C&NW will inform SEA if a consensus agreement with NJT, and SEA can determine that agreement to the DEIS for consideration by the Board is evaluating the overall environmental effects of this Transaction. However, it would not be appropriate for the Board to make any such voluminous agreement relating to the agreement prior Board approval of the Transaction. It would be

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appropriate for the Board to impose its own conditions in the event that an agreement is not reached, for the reasons stated in Applicant’s Statement.

5 New York Rail Passenger Service

The DEIS notes that Rockland County, New York is studying the possibility of restoring commuter service on Conrail’s River Line. The River Line would be connected to CSE if the transaction is approved, and would provide a new route between New York and Scranton and from Scranton east to Boston and west to Chicago. Because Rockland County has informed CSE of its interest, CSE has not amended the DEIS. CSE will be willing to evaluate Rockland County’s proposal if and when Rockland County’s study receives the endorsement of a public agency authorized by the State of New York to operate commuter rail services.

The DEIS states that the City of Danbury, CT desires to have Amtrak’s Lake Shore Limited stop there and reports that the “City and CSE reached a service agreement, but a dispute developed over the need to refurbish the existing station, which is owned by Conrail.” Vol. 3B at NY-15. The DEIS has not accurately reported the facts. There is no agreement between CSE and the City with respect to such service. Amtrak has previously considered a Danville, stop, but has no plans to add a stop at Danbury for its Lake Shore Limited. That train is the only Amtrak train to traverse Danbury—passing through the city at about 7:00 a.m. on its outbound and 4:00 p.m. on its inbound trip, an hour that is not particularly conducive to a successful passenger operation. See Statement, Vol. 1 at HC-279-90. Further, new passenger service at Danbury has nothing to do

with this Transaction. Whether such service is to be provided is a matter properly left for consideration by Amtrak, the City of Danbury or CSE in due course. It is not a matter that the Board should consider here.

Respectfully submitted,

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SOUTHCAROLINA PAVEMENT TRANSPORTATION AUTHORITY

The South Carolina Pavement Transportation Authority ("SEPTA") has requested that the Board consider the development of light rail service on CSE’s existing right-of-way in Richburg, for consideration by the Board in evaluating the overall environmental effects of the Transaction. The DEIS does not discuss any mitigation with regard to SEPTA’s request. The Board should consider whether the request is consistent with the goals of the Board’s mission, as set forth in the Board’s Charter.

M. Michael C. Gifford, Vol. 1 at HC-100-63. Rebuttal Verified Statement of

R. Paul Curry, Vol. 2A at HC-54. Rebuttal Verified Statement of John R. Raitz,

Vol. 2B at HC-225

Discussion is continuing with SEPTA on a variety of issues. CSE will inform SEPTA if it reaches agreement with SEPTA, and SEPTA can document that agreement in the DEIS for consideration by the Board in evaluating the overall environmental effects of the Transaction. However, it would not be appropriate for the Board to take any action voluntarily to agree with the SEPTA proposal because the Board’s mission is to consider all environmental impacts, not just those that are consistent with SEPTA’s goals.

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February 2, 1998
Chapter 3 of the DEIS, sections 3.2.3 and 3.3.3, describe a variety of potential mitigation measures for passenger rail safety as follows:

- Enhanced rail safety programs, such as closer spacing of rail car defect detectors along rail lines.

- Increased frequency of track inspections, track car inspections, and signal inspection.

- Toll-free numbers for use by emergency response forces in communications to contact railroad authorities.

- Training programs for community and emergency response personnel to enhance their ability to respond to rail-related emergency incidents.

- Hand-held rail-on-track curves in mountainous terrain to reduce the risk of track imaging and vehicle derailments.

- Centralized train traffic control systems for safer rail operations.

- Reservations of old rail to reduce the risk of derailment.

- New track installations to increase the capacity of the rail line segment, which reduces the potential for train collisions.

- Inter-modal rail signal systems to make more efficient and safer use of track.

In this section, CSX will describe its existing compliance on the five rail line segments identified for passenger train safety mitigation, with each of the rail line segments described above.

1. Rail Safety Program (Defect Detectors) – On each of the five CSX rail line segments at issue, and on all rail line segments at which passenger operations are conducted on the CSX system, CSX applies special safety measures to enhance passenger safety. These measures are described below.

With respect to rail car defect detectors, these are already in place on each of the identified CSX segments. The industry standard is the placement of detectors approximately 40 miles apart. CSX has exceeded this standard on all of these line segments. The 42 mile Point of Rocks rail line segment has three detectors, with a fifth placed just west of the Point of Rocks terminus of this segment. The approximately 50 mile Fredericktown rail line segment has five detectors, with a fifth located just north of Potomac Yard. The 65 mile Savannah-Hopewell segment has three detectors. The 15 mile Walden-Richmond segment has five detectors, with the 65 mile South Richmond-Walden segment has 6 detectors. These detectors are strategically located at appropriate distances and at points of segment and are near from each of the segments.

2. Toll-Free Telephone System – CSX already has in place a program to report these segments at least twice per week, consistent with FRA requirements.

3. Rail Safety Program (Defect Detectors) – The first potential mitigation measure identified in Chapter 3 is the establishment of toll-free telephone numbers for use by emergency response forces to contact railroad authorities. This measure is already in place.

4. Emergency Response Training – The fourth potential mitigation measure is training programs for local emergency response organizations. Such programs are already available to communities. As described at pages 218-219 of CSX’s Safety Information Plan, CSX has undertaken a variety of emergency safety initiatives in connection with MARC operations. CSX has worked closely with MARC officials to assure that emergency response personnel are trained in advance to respond to rail-related emergency incidents. MARC trains have been equipped with emergency equipment and communications. CSX has prepared an emergency training video which is shown to all such crews.

5. crew train traffic control systems for safer rail operations.

6. Reservations of old rail to reduce the risk of derailment.

7. New track installations to increase the capacity of the rail line segment, which reduces the potential for train collisions.

8. Track signal systems to make more efficient and safer use of track.

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