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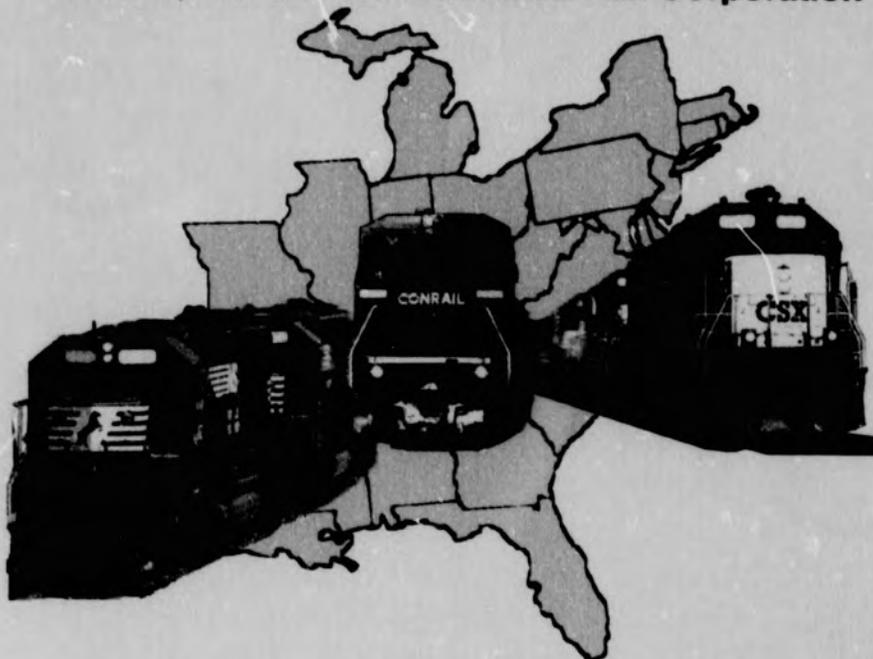
FINAL ENVIRONMENTAL IMPACT STATEMENT

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 3

Chapter 5: Summary of Comments and Responses

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GUIDE TO VOLUME 3

Volume 3 of the Proposed Conrail Acquisition Final EIS contains the following items:

- **Contents of Chapter 5.**
- **Chapter 5, "Summary of Comments and Responses."**
- **Guide to the Final EIS.**
- **Glossary of Terms.**
- **List of Acronyms and Abbreviations.**
- **Contents of the Final EIS.**

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CHAPTER 5

SUMMARY OF COMMENTS AND RESPONSES

Chapter 5 summarizes the comments that the Section of Environmental Analysis (SEA) received on the Draft Environmental Impact Statement (Draft EIS) regarding the proposed Conrail Acquisition and provides SEA's responses to those comment summaries. This chapter also provides an overview of the types of comments that SEA received from various entities and individuals.

SEA issued the Draft EIS for public review and comment on December 19, 1997. The formal 45-day period for reviewing and filing comments on the Draft EIS ended on February 2, 1998. Table 1-1 in Chapter 1, "Introduction and Background," of this Final Environmental Impact Statement (Final EIS) lists the milestone dates in the procedural and review schedule for the EIS.

SEA encouraged all recipients and reviewers to comment on its technical analyses and preliminary recommended mitigation measures in the Draft EIS. Subsequent to the Draft EIS, SEA prepared Errata and Supplemental Errata and issued them to the public for review as well. (See Appendix B, "Draft Environmental Impact Statement Correction Letter, Errata, Supplemental Errata and Additional Environmental Information, and Board Notices to Parties of Record," of this Final EIS for the content of these documents.) In this Final EIS, SEA has considered all comments on the Draft EIS, the Errata, and the Supplemental Errata that it received in a timely manner. Given the large volume of comments that SEA received, SEA summarized comments and grouped similar comments to present the information as succinctly as possible.

The organization of this chapter is as follows:

- Section 5.1 is an overview of the comments that SEA received from Federal agencies, the Applicants, national and regional groups as well as groups and individuals within specific states.
- Section 5.2 contains general comments on the Draft EIS, in summary form, followed by SEA's responses. This section includes comments regarding the Board's application review process, the environmental review process, and the system-wide technical analysis. The organization of the technical analysis discussion is by type of environmental issue category (such as safety at highway/rail at-grade crossings).

- Section 5.3 presents summarized comments on state and community issues and SEA's corresponding responses. The organization is by state (and within many states, also by city or region) and by environmental issue. This section includes comments from the Seneca Nation under the State of New York; the intent is to be consistent with the geographic organization of Section 5.3, not to imply a jurisdictional or political grouping. Section 5.3 contains the same environmental issue categories as Section 5.2, but focuses on each issue as it pertains to a particular location.

SEA's response to each summary of comments in Sections 5.2 and 5.3 addresses only the issues that the commentor(s) raised. That is, each response is specific to each summary and does not address environmental effects to which the commentor(s) did not refer. Other responses in this chapter, however, may address additional potential environmental impacts of the proposed Conrail Acquisition. Also note that SEA has addressed the comments within the scope of the environmental review process and the Board's jurisdiction. For example, many comments referred to pre-existing conditions, which are not part of SEA's environmental review. In addition, SEA sometimes received more than one comment referring to the same area of concern, and these comments were often diametrically opposed to one another. SEA has tried to balance its responses to those varied comments.

In cases where SEA's analysis led to mitigation of an issue that a commentor raised, the response provides a brief description or a reference to the location of the mitigation discussion in this Final EIS. In developing the final recommended mitigation measures, SEA modified a number of its Draft EIS preliminary recommendations to address concerns that commentors expressed. Chapter 7, "Recommended Environmental Conditions," of this Final EIS presents SEA's final recommended mitigation.

The Addendum to this Final EIS presents additional information and analysis of proposed mitigation measures, NS's "Mitigation Proposal for Train Frequencies in Greater Cleveland and Vicinity" (the "Revised Mitigation Proposal"), which would change rail traffic levels, particularly NS's traffic levels, in Cleveland and the surrounding area. NS's rerouting proposal shifts train traffic starting in Rochester, Pennsylvania, through Cleveland, and on to Oak Harbor, Ohio, removing 10.6 trains per day from NS's Nickel Plate Line through Cleveland and rerouting the trains on NS's Pittsburgh Line. NS's mitigation proposal generally reduces traffic in Ashtabula, East Cleveland, the University Circle area of Cleveland, and the West Shore communities of Cleveland. Traffic would generally increase along the Pittsburgh Line, along the Lakeshore Line in Cleveland, and in Berea. Chapter 4, "Summary of Environmental Review," Section 4.19, "Community Evaluations," and Appendix N, "Community Evaluations," of this Final EIS provide detailed information about the Greater Cleveland Area.

5.1 OVERVIEW OF COMMENTS

SEA received about 260 comment documents (ranging from short letters to report-length submittals) that provided comments on the Draft EIS. Of this total, local government agencies and elected officials submitted the greatest number of documents, followed by citizens and citizen groups, state agencies and state elected officials, regional groups, special interest and other groups, Federal agencies, businesses, members of Congress, and a Native American tribe. SEA also received comment documents from the Applicants, other railroads, and unions. Overall, SEA received comments from 18 states and the District of Columbia. Two states, Alabama and Rhode Island, neither acknowledged receipt of the Draft EIS nor submitted comments. Four states, Mississippi, Missouri, South Carolina, and West Virginia, acknowledged receipt of the Draft EIS but did not submit comments.

Appendix A of this Final EIS, "Comments Received on the Draft Environmental Impact Statement," contains a complete list of those who commented on the Draft EIS as well as photocopies (reduced) of the actual comment letters. Appendix A also includes a list of those who submitted comment documents late in the Final EIS writing process. Although SEA did not prepare responses to these comments, SEA has reviewed and considered them during the preparation of this Final EIS.

To prepare responses to the many comment documents, SEA identified and grouped specific comments according to environmental impact category and issue area, based on the categories and issue areas in the Draft EIS. In many instances, documents contained comments on more than one environmental issue and more than one state or geographical area. Using the method of categorizing and grouping comments, SEA identified more than 1,000 individual comments within the approximately 260 comment documents.

The following paragraphs give an overview of comments that public agencies, the Applicants, national and regional groups, and groups and individuals within specific states submitted to SEA. The overview does not discuss all comments, nor does it represent a complete discussion of all issues addressed in this Final EIS.

5.1.1 Federal Agencies

Federal agencies that submitted comments were the U.S. Departments of the Interior (DOI), Transportation (DOT), and Housing and Urban Development (HUD); the U.S. Environmental Protection Agency (EPA); the U.S. Army Corps of Engineers (USACE); and the U.S. Coast Guard (USCG).

DOI expressed several concerns, including the potential environmental impacts of hazardous materials transport on fish and wildlife resources. DOT's comments addressed the potential environmental impacts of the proposed Conrail Acquisition in several areas, including railroad safety, passenger rail transportation, and severely affected communities. HUD commented that the proposed Conrail Acquisition did not raise any special interests or present any special concerns to HUD. EPA commented on the air quality and noise analyses in the Draft EIS and

the potential environmental impacts of the proposed Conrail Acquisition on minority and low-income communities. Comments from USACE focused primarily on the potential environmental impacts of construction activities on wetlands and water resources. The USCG reiterated earlier comments concerning the potential impacts of rail traffic on travel along waterways relative to movable bridges.

5.1.2 Applicants

Norfolk Southern Railway Company and Norfolk Southern Corporation (NS) and CSX Corporation and CSX Transportation, Inc. (CSX) each submitted substantial documents expressing many concerns regarding the Draft EIS. Their documents included detailed comments on each environmental category that SEA studied in the Draft EIS. NS commented on SEA's approach to mitigation, the environmental justice analysis, and the way in which the Board should treat Negotiated Agreements and settlements in the final written decision. NS's comments also discussed Areas of Concern that SEA identified in the Draft EIS.

CSX suggested that SEA more fully recognize the benefits of the proposed Conrail Acquisition. Like NS, CSX commented on SEA's approach to mitigation and the manner in which the Board should treat Negotiated Agreements and settlements in the final written decision. CSX also requested that SEA not recommend any environmental conditions requiring the Applicants to modify or refrain from putting into effect their Operating Plans pending implementation of any mitigation.

5.1.3 National and Regional Groups

SEA received comments from several national and regional groups, including Amtrak and rail labor unions. Several regional agencies operate in more than one state. For purposes of summarizing comments, SEA assigned comment documents from regional planning agencies and regional transit providers to the state with the largest city in the region (for example, Washington, D.C. for the Washington Metropolitan Area Transit Authority, or Philadelphia for the Southeastern Pennsylvania Transportation Authority [SEPTA]). The exception is the Ohio-Kentucky-Indiana Regional Council of Governments, which appears in Appendix A, "Comments Received on the Draft Environmental Impact Statement," of this Final EIS under National/Regional Groups. This grouping also includes comments from individuals who did not provide a mailing address.

Amtrak provided comments on SEA's analysis of passenger rail impacts, passenger rail safety, and the Applicants' Safety Integration Plans. The rail labor unions (Transportation Communications International Union and Allied Rail Unions) also submitted comments on the Applicants' Safety Integration Plans. The American Public Transit Association (APTA) commented that the Draft EIS did not adequately state the potential impacts of the proposed Conrail Acquisition on passenger rail operations.

5.1.4 Alabama

SEA received no comments on the Draft EIS from public agencies, organizations, businesses, or citizens in Alabama.

5.1.5 Connecticut

The Connecticut Department of Transportation and the South Western Regional Planning Agency expressed concerns regarding the potential environmental impacts of truck emissions on air quality and truck traffic on highway congestion.

5.1.6 Delaware

The Delaware State Historic Preservation Office (SHPO) suggested, among other comments, that SEA expand its analysis beyond abandonment and construction-related effects on historic and cultural resources. The Delaware Department of Transportation voiced concerns over the potential impact of the proposed Conrail Acquisition on passenger rail service, the scope of SEA's air quality and noise analysis, and safety at highway/rail at-grade crossings.

5.1.7 Florida

The Hillsborough County Planning Commission requested that SEA conduct additional analysis of a rail line segment in Florida to determine whether there were potential environmental impacts related to hazardous materials transport.

5.1.8 Georgia

The Atlanta Regional Commission expressed concerns regarding the potential environmental impacts of rail traffic on air quality, the ability of local governments to respond to hazardous materials spills and releases, commuter operations, and the impacts associated with a proposed intermodal facility. The Athens-Clarke County Government also raised concerns about the potential impacts of the proposed Conrail Acquisition on proposed commuter operations in the Atlanta-to-Athens corridor.

5.1.9 Illinois

At the local level, several cities and counties expressed concerns about localized impacts in relation to delay and safety at highway/rail at-grade crossings, increased air pollutant emissions in their communities, SEA's safety and noise analysis, and hazardous materials transport. The commentors included the Village of Tilton, the Village of Tolono, the City of Danville, and Champaign County. In addition, local environmental advocacy groups raised concerns about the potential adverse impacts of the proposed Conrail Acquisition on minority and low-income communities.

5.1.10 Indiana

The Indiana Department of Natural Resources voiced concerns and requested additional information related to the potential impacts of abandonments and constructions on cultural and historic resources. At the local level, several cities, including Fort Wayne, Lafayette, and New Haven, expressed their concerns related to delay and safety at highway/rail at-grade crossings, noise, hazardous materials transport, and environmental justice. In addition, the Four City Consortium (East Chicago, Hammond, Gary, and Whiting) provided comments on potential environmental impacts associated with safety, traffic, transportation systems, energy, air quality, noise, land use and socioeconomics, and environmental justice. The Consortium's comments also raised the issue of cumulative effects. In addition, the Consortium requested that SEA conduct further analysis and evaluation of the Consortium's Alternative Routing Plan.

5.1.11 Kentucky

The Kentucky Transportation Cabinet and the Cities of Hopkinsville and Madisonville requested that SEA withdraw its recommendation for grade separations in Kentucky, based in part on existing State priority-setting processes.

5.1.12 Louisiana

The City of New Orleans expressed its concern about the potential for hazardous materials spills, contamination of groundwater, increased truck traffic, higher risk of rail accidents, and environmental justice impacts.

5.1.13 Maryland

The Maryland Office of Planning, Maryland Department of Transportation, Montgomery County Department of Public Works and Transportation, and Baltimore Metropolitan Council voiced their concern about potential environmental impacts of the proposed Conrail Acquisition on passenger rail operations and safety. In addition, the Maryland Department of the Environment raised several issues with regard to emissions and construction-related particulate matter (PM).

5.1.14 Massachusetts

The Berkshire Regional Planning Commission suggested that SEA clarify the potential environmental impacts of hazardous materials transport on a specific rail line segment and discussed the importance of cooperation from the Applicants regarding future passenger rail service.

5.1.15 Michigan

The Southeast Michigan Council of Governments raised concerns in several areas, including emergency response and passenger vehicle delay at highway/rail at-grade crossings. Several cities, including Northville, Wixom, Milford, and Taylor, as well as Monroe County, expressed concern about safety at highway/rail at-grade crossings and hazardous materials transport.

5.1.16 Mississippi

The Mississippi State Clearinghouse acknowledged receipt of the Draft EIS. However, no state or local agencies, organizations, businesses, or citizens in Mississippi submitted comments to SEA.

5.1.17 Missouri

The Missouri Office of Administration Clearinghouse acknowledged receipt of the Draft EIS. However, no state or local agencies, organizations, businesses, or citizens in Missouri submitted comments to SEA.

5.1.18 New Jersey

At the local level, concerns that cities and counties voiced included the potential environmental impacts of the proposed Conrail Acquisition on passenger rail service. In addition, the Township of Woodridge and the Village of Ridgefield Park provided comments on air quality, noise, hazardous materials transport, and delay at highway/rail at-grade crossings.

5.1.19 New York

The New York Department of Transportation, Metro-North Commuter Railroad Company (MNR), and Capital District Transportation Committee commented on the potential impacts of the proposed Conrail Acquisition on passenger rail service. They also commented on the need for competitive rail service into New York City to reduce truck traffic and emissions. The Seneca Nation of Indians offered comments related to hazardous materials at a specific rail yard, hazardous materials transport through the Nation's lands, emergency response to releases or spills, and environmental justice. In addition, the Nation suggested that SEA consider the Nation's definition of cultural resources and environmental justice and analyze these further. Several commentors raised concerns about the potential environmental impacts that the proposed Conrail Acquisition would have on the area east of the Hudson River.

5.1.20 North Carolina

The North Carolina Department of Administration consolidated the comments of several state agencies. The comments included a request for additional information on stormwater runoff management and the potential environmental impacts of increased rail traffic on rail yards and intermodal facilities.

5.1.21 Ohio

SEA received more than 100 comments from public agencies, organizations, businesses, and citizens in Ohio. The issue areas that commentors in Ohio addressed most frequently were safety; noise; and transportation systems, including highway/rail at-grade crossing delays and emergency response.

The comments from the Greater Cleveland Area included concerns over potential environmental or safety impacts from increased noise, vibration, traffic and emergency vehicle delay at highway/rail at-grade crossings, and hazardous materials transport, particularly on minority and low-income populations. Commentors in the northeastern Ohio region raised concerns about the potential impacts associated with increased train traffic along the NS route from Cleveland to Ashtabula. Specifically, the commentors voiced concerns about traffic delay and emergency response time at highway/rail at-grade crossings, emergency response training for hazardous materials transport, and highway/rail at-grade crossing safety. In northwestern Ohio, the concerns that commentors voiced included safety and delay at highway/rail at-grade crossings, highway/rail at-grade crossing closures, maintenance of highway/rail at-grade crossings, pedestrian safety, emergency response, and hazardous materials transport and training.

5.1.22 Pennsylvania

Several commentors in Pennsylvania, including the Port Authority of Allegheny County, the Southeastern Pennsylvania Transportation Authority, and the Tri-County Regional Planning Commission, voiced concerns about passenger rail service. Also, several commentors expressed concern over potential impacts related to delay and safety at highway/rail at-grade crossings, air quality, hazardous materials transport, and hazardous waste sites.

5.1.23 Rhode Island

SEA received no comments on the Draft EIS from public agencies, organizations, businesses, or citizens in Rhode Island.

5.1.24 South Carolina

The Anderson County government wrote to acknowledge receipt of the Draft EIS. However, SEA received no comments on the Draft EIS from other public agencies, organizations, businesses, or citizens in South Carolina.

5.1.25 Tennessee

The Nashville Area Metropolitan Planning Organization expressed concern about the potential environmental impacts of the proposed Conrail Acquisition on air quality and highway/rail at-grade crossing delay.

5.1.26 Virginia

The Virginia Department of Rail and Public Transportation raised concerns about potential crossing delay in specific communities. The Virginia Department of Environmental Quality submitted several comments on the air quality analysis. The Northern Virginia Transportation Commission (which operates the Virginia Railway Express [VRE]) provided extensive comments on the potential environmental impacts of the proposed Conrail Acquisition on passenger rail service in northern Virginia and the Washington, D.C. metropolitan area. At the local level, SEA also received comments on delay, air quality, passenger rail service, and noise.

5.1.27 West Virginia

The West Virginia Development Office and West Virginia Division of Natural Resources informed SEA that they had no comments.

5.1.28 District of Columbia

The Washington Metropolitan Area Transit Authority (WMATA) provided comments on common corridors and other potential environmental impacts on passenger rail service in the Washington, D.C. metropolitan area.

5.2 GENERAL COMMENTS ON THE DRAFT EIS

As the introduction to this chapter explains, Section 5.2 presents general and system-wide types of comments and SEA's responses. The comments in this section apply broadly to the decision-making process, the environmental analysis, and other related matters.

The first part of this section pertains to the Board's application review process—particularly those matters that the Board may wish to consider, but are not strictly part of the environmental review. Examples are commentors' support or opposition for the Acquisition, merits issues, and oversight. The second part of this section presents comment summaries and responses related to the National Environmental Policy Act of 1969 (NEPA) and the environmental review process, including public involvement, alternatives to the proposed Conrail Acquisition, impact assessment methodology, and mitigation measures. The third part presents comment summaries and responses related to technical analyses; the organization is by type of environmental issue (such as safety at highway/rail at-grade crossings).

Many of those who commented on the Draft EIS also contributed comments on the Safety Integration Plans of CSX and NS, which appeared in Volume 2 of the Draft EIS. SEA addresses these comments in Chapter 6, "Safety Integration Planning." of this Final EIS,

5.2.1 The Application Review Process

5.2.1.1 Support for the Proposed Conrail Acquisition

Summary of Comments. SEA received letters supporting the proposed Conrail Acquisition from several areas of the country. A special interest group from Chicago stated that it supported the proposed Conrail Acquisition to the extent that the Acquisition would increase the volume of freight moved by rail, "a substantially more energy efficient and environmentally benign transportation alternative than trucking." However, the group also stated that the Applicants' proposed Operating Plans were unclear concerning whether all communities and shippers would benefit equally.

Response. These particular comments represent opinions supporting the proposed Conrail Acquisition and do not require an environmental response by SEA. In making its final decision on the proposed Conrail Acquisition, the Board will consider the entire environmental record, including the Draft EIS, the Final EIS, and all public comments.

Summary of Comments. The Applicants stated that the Draft EIS did not address how the Board should balance the potential environmental impacts against the benefits of the proposed Conrail Acquisition. In the Applicants' opinion, the Final EIS should recognize the tangible benefits, including the environmental benefits, of the proposed Conrail Acquisition.

NS stated that "traffic changes resulting in train increases in a real sense are the consequences and measure of the undisputed environmental benefits of the Transaction." NS continued, "Since an EIS, rather than an EA, is being prepared in this case, there is no requirement that all identified adverse environmental impacts be mitigated. The D[raft] EIS blurs this important distinction, however, with a variety of mitigation proposals that appear to be designed to deal with virtually every potential localized adverse impact, and without adequate balancing of the potential adverse impacts against the positive benefits of the Transaction, including its environmental benefits."

CSX commented that the public comment period and the Final EIS itself should permit the Applicants and other interested parties to suggest appropriate weighing of benefits against potential environmental impacts. According to CSX, the proposed Conrail Acquisition would have benefits with respect to safety, air quality, and energy consumption. The Final EIS should reflect that "the substantial system-wide beneficial environmental effects...overshadow the far more limited local impacts...."

Response. The EIS fulfills its purpose, which is to analyze both the potential benefits and adverse environmental impacts of the proposed Conrail Acquisition. NS is correct that no requirement exists to mitigate all impacts an EIS identifies; however, the Council on Environmental Quality's (CEQ) NEPA regulations do require that an EIS include in the description of alternatives "appropriate mitigation measures not already included in the proposed action or alternatives" (40 CFR 1502.14(f)). Therefore, for all potentially significant adverse environmental impacts, the Draft EIS identifies mitigation measures

that the Board could impose as recommended environmental conditions of the proposed Conrail Acquisition. As the EIS discusses, SEA analyzed the potential environmental impacts, both positive and adverse, and system-wide and local, of the proposed Conrail Acquisition. Other potential impacts associated with the proposed Conrail Acquisition are merits issues and are analyzed separately from environmental issues.

5.2.1.2 Opposition to the Proposed Conrail Acquisition

Summary of Comments. Many commentors voiced opposition to the proposed Conrail Acquisition. Several individuals from Ohio asserted that any proposal that increased rail traffic in residential areas was "outrageous." One citizen from New York City contended that the proposed Conrail Acquisition could doom that city's economy. Other commentors remarked upon the "obscene profits" that would result from the Acquisition.

Response. These particular comments represent opinions opposing the proposed Conrail Acquisition. In making its final decision on the proposed Conrail Acquisition, the Board will consider the entire environmental record, including the Draft EIS, the Final EIS, and all public comments.

5.2.1.3 Merits

Summary of Comments. Several commentors from Connecticut to Illinois expressed concern that the proposed Conrail Acquisition would result in significantly reduced competition. Most of these commentors contended that this lack of competition would increase costs to their local shippers and have potentially negative impacts on their local economies. Ohio State Senator James E. Carnes noted that increasing shipping costs "could produce substantial losses of market share" for the local plastics industry. He also stated that given the high costs to "pay for feeder lines and abandoned lines ... [the proposed Conrail Acquisition would] create jobs in the Eastern United States at the expense of the Ohio Coal Industry." Another Ohio Senator, Dick Schafrath, remarked that the proposed Conrail Acquisition would result in "community and commercial harm." A nonprofit group in Illinois stated that "absence of meaningful freight rail competition has undermined the competitive position of shippers located in the area, resulting in a significant loss of business," and noted that reducing capacity at the NS Calumet Yard would divert the transportation mode from rail to trucks.

Conversely, CSX and NS both commented that they expect enhanced competition between Class I railroads. To support that expectation, NS observed that "Conrail is presently the only Class I U.S. rail carrier operating throughout the Northeast"

A few commentors referenced the merits of the proposed Conrail Acquisition other than competition and local economic stability. One commentor expressed concern regarding future ownership of a rail line segment in Orange County, New York. Another commented that the proposed Conrail Acquisition would occur at "taxpayers' expense." Yet another commentor was concerned about the proposed closure of a Conrail signal shop in Columbus, Ohio.

Faith-Based Organizing for Northeast Ohio stated its concern that CSX and NS would receive more than \$1.8 billion in yearly profits that would cover the costs for infrastructure improvements, yet would be exempt from real estate tax obligations. The organization objected to having the State of Ohio use "its public transportation dollars to subsidize the NS and CSX rail improvements."

Response. It is SEA's position that the appropriate means of addressing comments on the merits of the proposed Conrail Acquisition—such as those the comment summary cites that relate to economic conclusions, ownership or operating rights, tax issues, specific shop closures, profits, operating agreements, or competition among the railroads—is the Board's review of the Application's economic and competitive merits, not the environmental review process. The Board will consider the economic and competitive issues collectively with SEA's environmental analysis before making its decision.

5.2.1.4 Consultation and Negotiation

Summary of Comments. DOT expressed its position that "prospective impacts on communities are best resolved by STB [the Board] action that will facilitate prompt resolution of mitigation problems by direct agreements between the Applicants and the affected communities."

Response. In the Draft EIS, SEA encouraged the Applicants and potentially affected communities to negotiate agreements directed at mitigating potential environmental impacts on those communities. As of the date of this Final EIS, NS, CSX, or both have entered into numerous Negotiated Agreements with communities and with other governmental units, including passenger service organizations. Chapter 4, "Summary of Environmental Review," Section 4.21.2, "Negotiated Agreements," of this Final EIS contains a more detailed description and a listing of Negotiated Agreements associated with the proposed Conrail Acquisition. Chapter 7, "Recommended Environmental Conditions," of this Final EIS describes SEA's recommended mitigation measures that incorporate Negotiated Agreements.

Summary of Comments. DOT asked "SEA and/or the Board to consult with FRA to the extent they may consider comments of other parties that are inconsistent with our findings."

Response. Chapter 6, "Safety Integration Planning," of this Final EIS addresses this issue.

Summary of Comments. DOT expressed the concern that, although DOT supports SEA's general approach of urging communities affected by the proposed Conrail Acquisition to negotiate with the Applicants directly to reach mutually satisfactory solutions to potential community impacts, without more precise guidance or incentives this approach may lead to interminable and substantial delays in addressing such impacts. Specifically, DOT stated "that the final EIS should include specific recommendations for interim measures and/or mitigation conditions that the STB [the Board] would impose absent an agreement for the identified

communities. To hasten serious bargaining, DOT recommends that the issue of required mitigation be resolved as soon as possible, but in any event, no later than the Board's final decision on the application." In addition, DOT offered its assistance in identifying the highway/rail at-grade crossing problems related to the proposed Conrail Acquisition.

Response. SEA acknowledges DOT's contributions in identifying highway/rail at-grade crossings, specifically in Cleveland and neighboring northern Ohio communities. These areas are complicated because of the presence of two railroads, multiple potential environmental impacts, and interrelated consequences. SEA also agrees with DOT that the affected parties are in the best initial position to decide on mutually acceptable mitigation measures. It is precisely for these reasons that the Draft EIS encouraged the Applicants and the potentially affected communities to consult with one another to develop mutually acceptable resolutions to the issues.

Acknowledging that consultation between the Applicants and the various potentially affected communities could otherwise become protracted or delayed in addressing potential environmental impacts, SEA has reserved its alternative to recommend specific practicable mitigation actions. SEA does not intend to recommend continuing consultation as a final mitigation measure unless both the affected communities and the Applicant(s) formally request such dialog, and if so, the parties would specify a date within an oversight period by which, if the parties do not reach a formal agreement, SEA would recommend default mitigation. Such default mitigation action could be interim or final, depending on the status of agreement negotiations when SEA issues this Final EIS.

The Applicants still have the opportunity to supplant a recommended mitigation action with a Negotiated Agreement between the time SEA issues this Final EIS and the time the Board makes its decision. Beyond that, the Board could approve a Negotiated Agreement as an alternative to a condition based on an Applicant petition during the oversight period.

Summary of Comments. The City of Danville, Illinois expressed its support of SEA's recommendation to require binding arbitration between the City and the Applicants pursuant to a finding of potential adverse impacts.

Response. SEA specifically recommended that CSX meet with the community to reach a mutually acceptable binding agreement on the implementation of appropriate mitigation measures prior to release of this Final EIS. This did not entail binding arbitration. Chapter 7, "Recommended Environmental Conditions," of this Final EIS describes SEA's final recommended mitigation conditions.

Summary of Comments. The City Council of Ashtabula, Ohio commented, "In response to your offer to interested parties to comment, protest, and request protective conditions, we respond with the understanding that all comments, protests, and requests will be given full consideration, and that a follow up response be received from your Board."

Response. This Final EIS contains responses to comments, including requests for environmental conditions, that SEA received during the comment period on the Draft EIS. In its review of the economic and competitive merits of the case, the Board established a separate procedural schedule that included requests for protective conditions from Parties of Record.

5.2.1.5 Oversight and Enforcement Period

Summary of Comments. The Baltimore Metropolitan Council provided, in addition to its own comments, a letter from the Governor of the State of Maryland to the Board. The Governor stated, "It is our expectation and understanding that commitments made by the railroads in their Operating Plans, as approved by [the Board], will be subject to future enforcement via [the Board]."

Response. The Board will determine what conditions to impose on the Applicants as part of its final decision. The Operating Plans submitted by the Applicants, agreements entered into between the Applicants and other parties, and all other information that is part of the record will be considered in making such determinations. SEA recommends that the Board establish conditions of compliance and maintain enforcement jurisdiction during the oversight period. See Chapter 7, "Recommended Environmental Conditions," of this Final EIS for SEA's mitigation recommendations.

Summary of Comments. Several commentors requested that the Board retain oversight of the proposed Conrail Acquisition for up to 5 years in order to assess the actual environmental impacts of the Acquisition, to enforce mitigation, or to provide dispute resolution through the Board's continuing authority in order to reduce environmental impacts and resolve disputes.

Response. In its most recent merger decision (the Union Pacific/Southern Pacific), the Board adopted a 5-year oversight period. However, the Board considers each oversight duration issue on a case-by-case basis. When there are legitimate concerns with respect to applicants' implementation of mitigation measures or a material change in the facts or circumstances upon which the Board relied in developing mitigation measures, the Board, upon the petition of any party that demonstrates such material changes or failure to implement mitigation measures, may review the final mitigation measures, if warranted. To assist the Board in this regard, the Board may impose reporting requirements upon applicants. The purpose of such requirements is to monitor the progress and effectiveness of imposed mitigation measures. Further, the Board has continuing jurisdiction over the actions it licenses (including acquisitions), and can use this jurisdiction to enforce compliance with its mitigation conditions.

5.2.2 The Environmental Review Process

5.2.2.1 Application of NEPA

Summary of Comments. Several commentors expressed concern regarding the way in which the Draft EIS applied NEPA principles and regulations, and questioned the adequacy of SEA's analysis. NS voiced concern that the approach to implementation of the Board's obligations under NEPA indicates a potential misapplication of NEPA principles and may go beyond the Board's authority in deciding railroad control applications. In contrast, Congressman Jerrold Nadler of New York commented that the Draft EIS did not comply with the requirements of the law or with its own stated standards for review, and the Cities of Cleveland and Berea, Ohio commented that the Draft EIS did not adequately address their specific issues and circumstances.

SEA received many comments arguing that the Draft EIS presented insufficient information. EPA rated "the documentation of the [D]raft EIS '2' (insufficient information) because... [the EPA] thinks the [D]raft EIS could have described more fully the potential impacts to and risk from air quality noise, increased hazardous materials transport, and direct and cumulative impacts to water quality issues from increased rail operations and activity in rail yards and intermodal facilities." Several commentors noted that the Draft EIS did not discuss key branch lines or geographic areas (for example, the New York City metropolitan area and southern New England) or evaluate potential environmental impacts in those areas. Congressman Nadler offered the opinion that the Draft EIS was "insufficient to meet any" of the legal requirements that govern SEA and the Board.

The Four City Consortium commented that the Draft EIS "failed to provide the public with sufficient meaningful information on the environmental impacts of the Conrail transaction to make an informed decision on the environmental merits of the Application."

Response. Under NEPA, the Board is required to analyze potential environmental impacts of the proposed action before it—in this case, the proposed Conrail Acquisition. The EIS discusses SEA's analysis and conclusions regarding potential environmental impacts, and, for certain impacts, presents mitigation that the Board may consider as conditions of approval for the proposed Conrail Acquisition. Chapter 4, "Summary of Environmental Review," Section 4.19, "Community Evaluations," and Appendix H, "Transportation: Roadway Systems Analysis," present SEA's site-specific analyses of potential environmental impacts on the areas east of the Hudson. Chapter 4 and Appendix H also provide additional analyses of issues and impacts related to Cleveland and the Four Cities.

SEA maintains that its analysis of impacts resulting from the proposed Conrail Acquisition is consistent with the Board's and CEQ's NEPA requirements and the scope of the EIS. The analysis and documentation that this Final EIS contains will assist the Board in making an informed decision. SEA maintains that mitigation conditions it is recommending to the Board are reasonable and warranted, even though they may not satisfy all the expectations and concerns of the Applicants or other parties.

Summary of Comments. NS expressed its opinion that "SEA has conducted a comprehensive assessment of the environmental aspects of the proposed Transaction that satisfies and exceeds the mandate of NEPA and the Board's implementation regulations."

Response. SEA acknowledges this comment.

5.2.2.2 Public Involvement

Summary of Comments. SEA received requests to extend the public review and comment period for the Draft EIS from the Public Utilities Commission of Ohio and the Ohio Rail Development Commission; the Southeast Michigan Council of Governments; the Village of Lagrange, Ohio; and the Trustees of Huntington Township in Wellington, Ohio.

Response. SEA acknowledged all requests for an extension of the public comment period by letter. The 45-day public review and comment period that SEA provided established the due date for public comments as February 2, 1998. CEQ's regulations implementing NEPA require this public review and comment period. Also, because SEA conducted this environmental review process within the Board's well-defined procedural schedule, sufficient time was necessary to review and respond to the public comments and to conduct appropriate additional analysis for inclusion in this Final EIS. Accordingly, SEA was unable to extend the comment period. SEA has considered all written comments on the Draft EIS that SEA received by February 2, 1998 and has incorporated them in this Final EIS. During development of this Final EIS, SEA has considered any written comments that SEA received after February 2, 1998; these comments are in the public record.

Summary of Comments. The Connecticut South Western Regional Planning Agency expressed concern that the statements in Tables 5-CT-1 and 5-CT-2 of the Draft EIS show no evidence of the comments that the Agency submitted in its July 31, 1997 letter. As such, the Agency resubmitted the letter and attachments with its comments. The Agency also requested that the Final EIS include its January 30, 1998 comment letter with all enclosures.

Response. The statements in Table 5-CT-1 and 5-CT-2 of the Draft EIS were simply to note who had provided data to SEA in addition to the Applicants. SEA assures the South Western Regional Planning Agency that it carefully considered the information the Agency provided and used that information in preparing the Draft EIS. As requested, Appendix A, "Comments Received on the Draft Environmental Impact Statement," of this Final EIS includes the July 31, 1997 letter and attachments along with the January 30, 1998 letter.

Summary of Comments. The Connecticut South Western Regional Planning Agency commented that SEA should revise the Draft EIS to reflect the concerns that the Agency voiced in its January 30, 1998 comment letter. Furthermore, the Agency stated that SEA should revise the Draft EIS to recommend the conditions that the New York/Connecticut Congressional Intervention Petition demanded.

Response. SEA maintains that the adequacy of future service is a matter that the Board will address on the economic and competitive merits of the case; it is not an environmental issue that is appropriate for SEA to evaluate in this Final EIS.

The disparity in rail service east and west of the Hudson River does not, in itself, constitute a potential environmental impact. With respect to the concern that there will be increased truck traffic, Appendix H, "Transportation: Roadway Systems Analysis," of this Final EIS analyzes the potential for such increases. While a minimal number of trucks trips would shift to a route through the New York City metropolitan area, SEA does not expect significant adverse environmental impacts to occur.

Summary of Comments. The North Carolina Department of Administration stated that it had submitted comments during the scoping process but that SEA apparently did not address them or eliminated them from the Draft EIS.

Response. The Department appears to be referring to comments that it provided to the Applicants during the preparation of their Environmental Reports, prior to the Applicants' decision to submit a combined Application. The scoping comment period for the Draft EIS was July 7, 1997 to August 6, 1997. During this period, SEA received letters from the North Carolina Department of Environment, Health and Natural Resources Coastal Zone Management Program (indicating no potential significant impacts), the North Carolina Department of Cultural Resources, and the North Carolina Department of Transportation. SEA also received comments of the Department of Environment, Health and Natural Resources Water Quality Division and the North Carolina Wildlife Resources Commission; however, these were not related to EIS scoping.

SEA has addressed in a general manner the commentors' concerns relative to potential water quality, wildlife, and related natural resource impacts from potential spills or runoff from increased rail traffic based on comments on the Draft EIS from North Carolina and elsewhere. See Chapter 4, "Summary of Environmental Review," and Appendix L, "Natural Resources Analysis," of this Final EIS for more detail.

Summary of Comments. Women Like Us, an organization representing the Anacostia area of Washington, D.C., requested a community meeting in Anacostia to discuss the proposed Conrail Acquisition.

Response. SEA responded to the Women Like Us organization in a letter dated January 29, 1998. Because of the large number of potentially affected communities, SEA's public participation process has been designed to provide opportunities for information exchange through written comments and responses in the Final EIS. SEA will review all comments received and incorporate them into the Final EIS. In making its final decision on the proposed Conrail Acquisition, the Board will consider the entire environmental record, including the Draft EIS, the Final EIS, and all public comments.

Summary of Comments. University Circle Incorporated and Associated Estates Management Company requested a meeting between the Applicants, SEA, and the residents and institutions of University Circle, a cultural, medical, and educational center of Cleveland and northeastern Ohio. The companies indicated that the meeting would enable SEA to make a more informed decision that would benefit the community.

Response. SEA received many requests for meetings. Given the size of the study area, however, SEA is unable to attend all of them. Therefore, SEA has focused on obtaining public input through written comments. SEA has received and has considered comments from various parties in the Cleveland/University Circle area. SEA has also attended meetings and received a variety of other input on issues in the Cleveland area. See Chapter 4, "Summary of Environmental Review," Section 4.19, "Community Evaluations," and Appendix N, "Community Evaluations," of this Final EIS for further discussion of these issues.

Summary of Comments. Faith-Based Organizing for Northeast Ohio proposed that the Regional Rail Summit (including the Cities of Cleveland and Lorain as well as several other stakeholders) meet by the end of February 1998. The purpose of the Summit would "be to have all of the most adversely impacted communities meet together and forge a unified response to the acquisition." Summit participants would arrange meetings with the Applicants after the Summit. The letter requested that results of the Summit appear in the Final EIS.

Response. SEA staff attended a meeting in the area on January 31, 1998, and noted concerns raised. SEA received many comments from numerous parties in the Cleveland area. All comments received and information provided become part of the record on which the Board will base its decision. See Chapter 4, "Summary of Environmental Review," Section 4.19, "Community Evaluations," and Appendix N, "Community Evaluations," of this Final EIS for a more thorough discussion of issues in the Cleveland area.

5.2.2.3 Alternatives to the Proposed Conrail Acquisition

Summary of Comments. Many commentators suggested new alternatives or indicated that the alternatives evaluation in the Draft EIS was incomplete. For example, the Tri-State Transportation Campaign, a consortium of 13 environmental, transportation, and planning groups, stated that "the Board failed to consider many reasonable alternatives and highly significant alternatives to the proposed action." The Mayor of East Cleveland recommended that "SEA examine alternatives, such as re-routing trains..." to avoid potential environmental impacts on local residents.

Congressman Jerrold Nadler of New York State and 23 other members of Congress stated that the "D[raft] EIS must study viable alternatives" regarding truck traffic increases in New York City and southern New England in order to allow full consideration of the environmental impacts. They noted, "The State and City of New York believes that the transfer of the east of the Hudson assets to the CIAO (Conrail Shared Assets Operator) is a viable option the effects

of which should be reviewed in the EIS.... Granting the CIAO access to Fresh Pond to handle that traffic via the cross harbor floats, [which] have substantial unused capacity, ...and is a viable option which would mitigate present and future highway traffic across the Bronx.”

The Four City Consortium commented that SEA “failed to adequately consider the Consortium’s Alternative Routing Plan ...” as the Consortium set forth in an October 1997 letter to SEA. The Consortium was critical of SEA’s failure to consider and analyze alternatives. The City of Cleveland expressed a similar concern and also presented an alternative for further consideration in this Final EIS.

Response. SEA has reviewed the alternatives that various commentors proposed to determine whether they would be feasible and has further evaluated the potential environmental impacts of those feasible alternatives. The Board will evaluate alternatives that Parties of Record proposed through Inconsistent and Responsive (IR) applications relative to economic and competitive issues in the merits analysis process. The Board required IR parties to provide a Verified Statement that the proposal would have no potential significant environmental impacts or to provide a Responsive Environmental Report describing the potential environmental impacts. All 15 IR applications that the Board accepted in its decision No. 54 provided Verified Statements of no significant impacts. The Draft EIS and Chapter 4, “Summary of Environmental Review,” Section 4.20, “Inconsistent and Responsive Applications and Requests for Conditions,” of this Final EIS contain information on the IR applications.

SEA has continued to analyze alternatives in response to comments on the Draft EIS. This Final EIS presents the results of these analyses in Chapter 4, “Summary of Environmental Review”; Appendix H, “Transportation: Roadway Systems Analysis”; and Appendix N, “Community Evaluations.” The Board will consider the comments and results of the analysis of alternatives in making its final decision.

5.2.2.4 Methodology of the Impact Analysis

Summary of Comments. Congressman Jerrold Nadler and 23 other members of Congress from the States of New York and Connecticut jointly stated: “The D[raft] EIS first segments the various parts of the plan and then limits its analysis to local effects of each segment. To accomplish even that unlawful analysis, it then sets threshold criteria for a determination that an adverse environmental effect caused by truck traffic requires analysis. That threshold is an increase of 50 truck trips per day or a 10% increase on any roadway. There is no legal or logical basis for any such threshold.” The members of Congress also stated: “To conform with the minimum requirements of law, the exact amount of new traffic through northern Manhattan, the Bronx, and other regional neighborhoods must be determined and the adverse environmental effects reviewed and stated.... Indeed, the numbers in question are well over even the thresholds for impact analysis stated in Table K-1 of Appendix K. Thus, the lack of an impact analysis violates the law as well as even the standards accepted for this D[raft] EIS by the Board.”

Response. The Board's environmental rules (49 CFR 1105.7) establish certain thresholds for environmental analysis. In addition, for the scoping process for the EIS, SEA established project-specific thresholds for environmental analysis. SEA maintains that the Board's thresholds coupled with the project-specific thresholds are a reasonable approach for SEA to identify the activities that potentially could have adverse environmental impacts. Past actions have demonstrated that the Board's thresholds for environmental analysis for intermodal activity, which are either an average increase in truck traffic of more than 10 percent of the average daily traffic (ADT), or 50 vehicles a day on any affected road segment, are an appropriate screening level. Based on these thresholds, SEA concluded in the Draft EIS that there are four intermodal facilities in the northern New Jersey area where the projected level of intermodal activity would increase truck traffic by more than 50 trucks per day. SEA evaluated the impact of this increase in truck traffic on the local area road network in Chapter 5 of the Draft EIS, "State Settings, Impacts and Proposed Mitigation."

For this Final EIS, SEA expanded its review of the potential impacts of the increased intermodal activity to evaluate the potential impact of the proposed Conrail Acquisition on truck traffic in the New York City/northern New Jersey metropolitan area. Appendix H of this Final EIS, "Transportation: Roadway Systems Analysis," contains this analysis. As Appendix H discusses, SEA has concluded that the proposed Conrail Acquisition would have no significant environmental impacts in the New York City metropolitan area.

Summary of Comments. A citizen stated that the "Abandonments" discussion in Volume 6 of the Draft EIS did not provide information on what type of shipper would have to "resort to 'trucks.'" In addition, the citizen stated that he "still believe[s] rail access to a military facility is still a national asset" yet there is no mention in the Draft EIS "as to the abandonment of any form of military support infrastructure."

Response. According to Volume 6 of the Draft EIS, "Abandonments," the Applicants would abandon three Conrail rail line segments if the Board approves the proposed Conrail Acquisition. The Toledo-to-Maumee, Ohio (Toledo Back Belt), which is 7.5 miles in length, is the only rail line segment with a shipper located on it that would lose rail service. The Draft EIS identified that shipper as A & K Rail Materials in Section 4.1 of Volume 6. A & K Rail Materials currently ships 90 rail carloads over Conrail. SEA did not investigate the types of materials A & K ships; however, SEA has no reason to believe that either A & K or the materials it ships are related to this country's military support or infrastructure.

Summary of Comments. DOT expressed the concern that "a purely technical application of environmental thresholds can result in real-world impacts being overlooked."

Response. DOT's statement is accurate, and in recognition of the shortcomings of a purely technical application of environmental thresholds, SEA has evaluated impacts below thresholds of environmental analysis where circumstances demonstrated that such

evaluation was warranted and appropriate. The Board designed thresholds to identify potentially serious adverse environmental impacts. Only through the exercise of sound judgment and careful analysis can SEA identify those circumstances where a mechanical application of SEA's thresholds would result in a failure to consider adverse impacts. Thus, even in some cases where impacts did not meet or exceed the thresholds, SEA still conducted the appropriate analysis.

In SEA's experience, however, the thresholds that the Board uses have been a reasonable and practical means of limiting analysis to circumstances where there is potential for significant environmental impacts. See Chapter 4, "Summary of Environmental Review," of this Final EIS.

Summary of Comments. Many commentors questioned the methodology and/or assumptions that SEA used to prepare the Draft EIS. The commentors' primary concern was whether SEA had the ability to make an informed decision about the proposed Conrail Acquisition when its analyses to identify potential environmental impacts or mitigation were flawed. For example, the Huron Township Board of Trustees commented that the "assumptions and methodology used in the development of the EIS are certainly questionable, and require further review prior to any proposals being considered."

In another example, the City of Sandusky questioned the assumptions and methodologies used in developing the Draft EIS. Also, NS was of the opinion that SEA's analysis of potential impacts employed "unduly conservative or flawed approaches or assumptions and thereby overestimated the predicted impacts."

In addition, the Four City Consortium questioned the assumptions and methods SEA used to determine highway/rail at-grade crossing delay times. The Consortium stated that "SEA's apparent decision to evaluate individual crossings in the Four Cities in isolation, without any consideration of cumulative increases in crossing delays for contiguous crossings or a related group of crossings, is both arbitrary and a violation of the Board's statutory duty" to consider the cumulative environmental impacts. The Consortium also questioned the conclusions for potential energy-related impacts because of "SEA's incomplete evaluation of grade crossing delays"

The City of Cleveland commented that the Draft EIS "despite its bulk ... does not begin to address the serious harm that Cleveland and its suburban neighbors will experience. The shortcomings in the D[raft] EIS begin with problems in the methodology used to address certain of the impacts, and end with the failure to identify and recommend appropriate mitigation." Seneca County commented that the "general concern of the study was to evaluate the results of the merger against 'preacquisition' numbers instead of using this as an arena to fix some of the existing problems associated with rail commerce in a proactive manner."

DOT acknowledged that the Board needs to establish thresholds for environmental analysis, such as an increase in the number of trains per day or an increase in the ADT. DOT expressed the concern, however, that such thresholds only identify locations that warrant further analysis of

possible environmental impacts. DOT stated that "thresholds only prompt further consideration, and their satisfaction, *vel non* [or not], does not by itself conclusively demonstrate the need (or lack thereof) for mitigation." DOT commented that a more reasonable standard in such circumstances would be to adopt a corridor approach to consider impacts at all grade crossings. DOT proposed that SEA adopt solutions addressing the broader problems of emergency access, trespassers on railroad property, and noise. DOT suggested that SEA and the Board consider several real-world examples, including the Cities of Greenwich, New London, Fostoria, Berea, and Lakewood, Ohio. Further, DOT stated that these examples were not intended to impugn the validity of the Draft EIS overall, but to emphasize that SEA and the Board must be flexible in their assessment of the impacts of this proposed Acquisition. In communities where a significant increase in trains at highway/rail at-grade crossings would occur, DOT recommended considering potential impacts from trains that block vehicular crossings while awaiting permission to proceed. DOT added that similar impacts on emergency vehicle access should also receive special attention.

Response. SEA conducted environmental analyses for those activities that meet or exceed the thresholds for environmental analysis in the Board's environmental rules and in SEA's scope of the EIS. The thresholds in the Board's environmental rules (specified in 49 CFR 1105.7 (e)) have been in place since 1991. The Board has used them to assess air quality and noise in recent railroad mergers and acquisitions because they are a conservative and practical means of focusing analysis on those activities and areas with potential for significant environmental impacts. In circumstances where the Board's regulations do not specifically provide a threshold, SEA generally applied increases of 8 trains a day as the threshold for addressing environmental impacts.

SEA considered agency and public comments to develop the scope of the EIS. The scope included an analysis of the potential environmental impacts on specific resource categories and cumulative effects on a regional or system-wide basis for the resource categories of air quality, energy, and transportation. Also, SEA evaluated cumulative effects on specific resource categories associated with other projects or activities that related to the proposed Conrail Acquisition, where local communities; local, regional, state, or Federal officials; or other interested parties provided information to SEA. In accordance with the scope of the EIS, however, SEA did not consider aggregated multiple resource effects in its cumulative effects analysis on a system-wide, regional, or local basis. Multiple resource effects are best addressed by the analysis and recommended mitigation, if appropriate, of individual resource categories.

SEA maintains that the assumptions and analysis methods that it used provide an adequate determination of the potential environmental impacts of the proposed Conrail Acquisition and development of appropriate mitigation. See Chapter 4, "Summary of Environmental Review," of this Final EIS for further discussion.

5.2.2.5 Requests for Information and Corrections

Summary of Comments. NS and numerous state, regional, and local agencies provided general editorial corrections, clarifications, and additions to the Draft EIS. Many of these commentors expressed concern about details that the Draft EIS presented or omitted in relation to specific technical issue areas. These editorial comments would improve the accuracy of the Draft EIS, and "mainly note minor typographical or factual errors and inconsistencies and discrepancies."

Response. SEA acknowledges the corrections, clarifications, and additions provided by the commentors. SEA has reviewed all of the comments it received and has incorporated pertinent information into this Final EIS as appropriate. In making its final decision on the proposed Conrail Acquisition, the Board will consider the entire environmental record, including the Draft EIS, the Final EIS, and all public comments.

Summary of Comments. A law firm representing the City of Cleveland provided errata to comments that the City had previously submitted; the City's errata consisted of minor editorial and grammatical corrections.

Response. The errata to the City's previous comments did not offer substantive changes to those comments nor to the Draft EIS. However, SEA considered the City's comments in preparation of this Final EIS and has incorporated pertinent information into this Final EIS as appropriate.

Summary of Comments. The Bureau of Indian Affairs requested copies of the Draft EIS.

Response. SEA acknowledges the request and has responded by providing copies.

Summary of Comments. A citizen of Rosemont, Pennsylvania requested a copy of the Final EIS when the Board publishes it.

Response. SEA acknowledges the request and has added the commentor to the Final EIS distribution list.

Summary of Comments. The Tri-State Transportation Campaign, a "consortium of 13 environmental, transportation and planning groups," requested that SEA develop and distribute a Supplemental Draft EIS. The commentors expressed several merit and environmental benefits related to providing an alternative to the Conrail routing system east of the Hudson River in the New York metropolitan area.

Response. SEA has considered these comments as well as a Petition for Intervention, two Responsive Applications, and several Requests for Conditions and analyzed the potential environmental impacts in Appendix H, "Transportation: Roadway Systems Analysis," of this Final EIS. SEA has concluded that any potential environmental impacts from the proposed Conrail Acquisition east of the Hudson River would be insignificant both individually and cumulatively.

SEA conducts the environmental review process and makes recommendations to the Board regarding environmental issues. SEA does not evaluate the potential economic (including competitive) benefits of proposed acquisitions. The Board considers such benefits when ruling on the economic merits of a proposed transaction. Therefore, SEA concludes that no Supplemental Draft EIS is warranted.

Summary of Comments. The Athens-Clarke County, Georgia, Planning Department requested updates on the Board's decision regarding the proposed Conrail Acquisition.

Response. The Board periodically publishes notices of its actions in the Federal Register and maintains an Internet site at www.conrailmerger.com. SEA will provide a copy of the Final EIS to the commentor. The Board expects to have its final written decision on July 23, 1998.

Summary of Comments. The Southern Wayne County Chamber of Commerce of Michigan requested a list of endorsers of CSX and NS, an example endorsement letter, and the "rationale for needing the endorsement."

Response. This issue is not within the scope of the environmental review process.

Summary of Comments. Lorain County, Ohio requested additional data and the opportunity to review and comment on the data beyond the February 2, 1998 comment period closure. Specifically, the County requested more information on the Cleveland-to-Vermilion rail line segment (N-080) rerouting proposal.

Response. SEA acknowledges the request for information and has responded by letter.

5.2.2.6 Mitigation

Summary of Comments. Congressman Jerrold Nadler of New York and 23 other members of Congress representing the States of New York and Connecticut jointly stated the following: "The EIS must review the environmental and economic significance of these similar and complementary proposals and if they do provide mitigation, the EIS must recommend approval of the petition conditioned on the acceptance by the Petitioners of: 1. extending of the CIAO across the New York Harbor by car-float to interchange directly with the Long Island Railroad and the Providence and Worcester east of the Hudson River and directly accessing Oak Point Yard, Harlem River Yard, and the New York Produce Terminal at Hunts Point; 2. allowing any operator to provide RoadRailer service on the entire Northeast Corridor; 3. access by another carrier on the lines accessing the region east of the Hudson."

Response. SEA recognizes the concerns that the 24 members of Congress representing New York and Connecticut raised. The Board considers the economic and competitive issues related to proposals of Parties of Record in the merits portion of the its review process. This Final EIS examines the potential environmental impacts of proposed alternatives to the extent that such alternatives are feasible and reasonable. SEA

discusses the environmental issues that the commentors raised relative to the activities in the New York City/northern New Jersey metropolitan area in Chapter 4, "Summary of Environmental Review," and Appendix H, "Transportation: Roadway Systems Analysis," of this Final EIS.

Summary of Comments. NS commented, "The D[raft] EIS proposes for line segments identified as having significant impact for freight rail operations safety that NS comply with a proposed FRA rule which could require certain frequencies of rail inspection based on ton-miles of traffic on a line. The current proposal would require such inspections at least once every 40 million gross ton-miles, or annually, whichever is more frequent. NS already conducts such inspections on an equal or more frequent basis and stipulates it would continue to do so. NS believes, however, that it would be inappropriate for the F[inal] EIS to recommend such a requirement as it would encroach upon the jurisdiction of FRA regarding freight rail safety operating rules, and have the effect of prematurely adopting a proposed rule which is currently subject to the proper FRA rulemaking process."

Response. In the interest of safe operations, SEA does not consider requiring the Applicants to follow the provisions of the proposed FRA rule prior to its formal adoption by FRA to be inappropriate, nor does SEA consider this requirement to be an encroachment on FRA's jurisdiction. The proposed mitigation measures would implement the draft FRA rule on a specific number of affected rail lines and allow for compliance with any final rule FRA adopts.

Summary of Comments. DOT stated, "We do not question that the industry may adopt higher standards for itself, so long as they are in addition to and not inconsistent with existing federal standards. DOT would, however, consider it unwise for the STB [the Board] to attempt to create alternative binding standards in this area. DOT urges SEA merely to commend these 'good practices' to the Applicants for appropriate use consistent with federal hazardous materials regulations. Finally, it is important to underscore that in the SIPs [Safety Integration Plans], the Applicants have already developed plans to comply with all federal hazardous materials regulations."

Response. SEA fully recognizes FRA's plenary authority with respect to railroad safety matters. However, where specific safety concerns arise as a result of the matter before the Board, it is appropriate for the Board to address such safety concerns. The imposition of the Association of American Railroads (AAR) Circular OT-55-B regarding the designation of key trains is such a safety concern. It would be appropriate to withdraw the adoption of AAR Circular OT-55-B at such time as FRA imposes standards that are equal to or higher than those that AAR Circular OT-55-B imposes. In addition, if a particular key route no longer meets the criteria for applicability of key route status, the requirements would no longer apply to that route.

Summary of Comments. CSX and NS submitted numerous comments regarding mitigation measures that the Draft EIS proposed. CSX agreed to comply with 14 mitigation measures that the Draft EIS recommended for construction and abandonment activities and with three

mitigation measures that it recommended for operations over connections in Crestline and Sidney, Ohio and Willow Creek, Indiana.

The principal issue that CSX and NS raised was the extent of the mitigation that SEA recommended in the Draft EIS. CSX commented that the Draft EIS recommended mitigation in situations where the Board's established policies and precedents do not require or permit the imposition of conditions. CSX indicated that, in some areas, the proposed mitigation infringes on the jurisdiction of other Federal or state agencies. NS cautioned that the Board must evaluate the proposed mitigation in light of the price it exacts in lost benefits of the proposed Conrail Acquisition. For example, train limits and operating restrictions threaten the fundamental transportation benefits.

Both CSX and NS commented that the Final EIS should acknowledge that voluntary stipulated agreements between the Applicants and a third party are appropriate mechanisms for addressing identified environmental issues related to the proposed Conrail Acquisition. However, CSX also stated that such voluntary agreements should not be conditions of the proposed Conrail Acquisition.

Response. SEA agrees that compliance with existing laws and regulations is not mitigation. However, SEA recommends that the Board establish conditions of compliance with several specific laws, rules, regulations, and permitting requirements to establish and maintain enforcement jurisdiction during the oversight period. This enforcement jurisdiction would be held jointly with the primary Federal, state, or local agency responsible for the law, rule, regulation, or permitting function. This joint jurisdiction would offer an additional means of compliance enforcement if a violation should occur during the oversight period.

SEA likewise recommends that the Board require, as a condition of approval, compliance with Negotiated Agreements and retain oversight jurisdiction because SEA based its mitigation recommendations in part on the implementation of those Negotiated Agreements. Because the affected individuals are not parties to, or may not be direct beneficiaries of, agreements between CSX and NS and the community governing bodies, those individuals may otherwise have difficulty in causing enforcement in the event that the agreement is breached or protracted. Because the agreements generally involve future performance, the Board, which is not a party to the agreement, must rely on the parties to mitigate adverse environmental impacts that the Board could otherwise have conditioned. Without being able to enforce the agreement, the Board could not forego alternative mitigation.

Regarding proposed mitigation actions that may rectify or improve pre-existing conditions, SEA recognizes that some mitigation measures for significant adverse environmental impacts would also mitigate some pre-existing conditions. For example, the construction of a grade separation, implemented to remedy a significant and substantial increase in traffic delay and risk of collision, would necessarily eliminate any traffic delay and safety risk that was present before the proposed Conrail Acquisition.

SEA acknowledges that significant public benefits are associated with the proposed Conrail Acquisition. While SEA has recommended mitigation actions to reduce or offset significant adverse environmental effects, SEA has strived to maintain a fair and open-minded approach when dealing with such issues. SEA recognizes that NEPA does not mandate mitigation for every significant adverse impact. SEA has sought to maintain an equitable balance between the cost of mitigation and the anticipated public benefits.

Summary of Comments. Many municipalities and individuals commented that the mitigation that the Draft EIS proposed would be insufficient to reduce or avoid potential environmental impacts. For example, statements such as "SEA's recommended mitigation for the Four Cities, as set forth in the Draft EIS, completely fails to ameliorate these considerable impacts," or "SEA must find that additional mitigation is required," were common themes among a variety of commentors.

Several commentors proposed additional mitigation or mitigation that they thought would more specifically address the potential environmental impact. For example:

- The Cities of Bay Village, Rocky River, and Lakewood, Ohio (BRL) think, "The only mitigation step that will completely eliminate the harms of the NS proposal to BRL is adoption of the mitigation plan outlined by Mr. Maestri [of NS] on November 25, 1997."
- The State of Delaware, Department of Justice, "believes that a long-range plan for the entire rail network should be established."
- The State of Delaware, Department of Justice requested that "CSX and NS immediately commit to adopting and allocating funding programs towards implementing future FRA rules on train horn blowing procedures."
- Jerrold Nadler and 23 other members of Congress stated that, jointly, the Congressional Delegation, the State of New York, the City of New York, and the Tri-State Transportation Campaign demanded action that would "result in substantial mitigation" of adverse effects and "constitute both an alternative and a means of mitigation."
- The Draft EIS only recommends further consultation; the Final EIS should list each of the areas that SEA studied and identify the specific potential environmental impacts that would occur.

Response. Many commentors suggested that the mitigation measures that the Draft EIS identifies were insufficient to reduce or avoid impacts, or that the measures failed to adequately address the specific concerns of the communities; other commentors recommended additional or alternative mitigation actions. See Chapter 4, "Summary of Environmental Review," and Chapter 7, "Recommended Environmental Conditions," of this Final EIS. Commentors also suggested mitigation for pre-existing conditions, where no significant environmental impact would occur as a result of the proposed Conrail Acquisition. In addition, other commentors raised economic concerns or merits issues

associated with the proposed Conrail Acquisition. In accordance with Board policy, CSX and NS would provide relief or mitigation for many of these issues only when circumstances warrant, consistent with mitigation criteria and approaches SEA has established.

Some commentors highlighted specific issues within their communities so that SEA was able to more thoroughly analyze the circumstances, determine whether mitigation was warranted, and recommend reasonable mitigation actions, if warranted. This type of comment fulfills the purpose of a public review and comment process for a Draft EIS.

SEA clarifies that, according to CEQ's NEPA regulations and related NEPA case law, this Final EIS must identify significant adverse environmental impacts associated with the proposed Conrail Acquisition. However, the EIS does not need to prescribe mitigation measures for such impacts. Nevertheless, even though SEA and the Board have no obligation to mitigate significant adverse environmental impacts, SEA and the Board remain guided by national rail transportation policy [as stated in the Interstate Commerce Commission (ICC) Termination Act of 1995] and strive to identify mitigation measures when warranted and when reasonable, effective, and practicable measures are available.

Some commentors suggested that the Board require the Applicants to establish funding programs for implementing future rules or regulations imposed by other agencies. SEA has concluded, however, that such requirements are unwarranted. Any future regulatory requirements are likely to have independent implementation requirements that the Applicants would have to fund, regardless of current programs. To the extent that a new regulatory action would fall within the Board's oversight period for this proposed Conrail Acquisition, any affected party could petition the Board (under a material change of facts or circumstances rationale) for a more stringent rule implementation program for specific sites or rail line segments, as warranted.

Summary of Comments. SEA received a comment from Congressman Dennis J. Kucinich noting several contradictions within the Draft EIS. For example, Congressman Kucinich commented: "The D[raft] EIS is therefore ambiguous when it finds that the Cleveland-Vermilion line does not meet most criteria for mitigation, but later singles out the west side of Cleveland and West Shore communities as an area of particular concern.... These contradictions need to be reconciled—or at the very least—addressed in the Final EIS."

As another example, Congressman Kucinich commented that the Draft EIS stated, "Densely populated, residential areas are simply not appropriate places for a steady stream of horn blasts 37 times per day." Congressman Kucinich alleged that SEA contradicted its acknowledgment of his comments in the responsive application he submitted with its finding that this section of railroad is not eligible for mitigation. He went on to say that SEA's conclusions are ambiguous and that the Final EIS should clarify them.

Response. SEA applied thresholds for environmental analysis that the Board designed to identify potentially significant adverse environmental impacts (see Appendix N, "Community Evaluations," of this Final EIS). SEA also identified circumstances where mechanical application of thresholds would result in a failure to consider impacts that merit consideration even though the change did not meet or exceed one of the Board's thresholds for environmental analysis. Where environmental impacts would be potentially significant, SEA has recommended reasonable mitigation measures for the Board's consideration.

Mitigation of horn noise at highway/rail at-grade crossings is not appropriate at this time because of the overriding concern for safety. FRA is expected to issue rules and specifications regarding the use of train horns at all public highway/rail at-grade crossings during 1998. These rules would preempt local ordinances that ban train horns except where other safety measures provide the same level of safety. Quiet Zones or future whistle bans might occur where FRA found that the alternate safety measures were equal to the existing practice of train horns at highway/rail at-grade crossings. FRA is also studying safety measure technology, such as the placement of four-quadrant gates and automated horn systems, as alternatives to train horns. When FRA promulgates its Quiet Zone rules, a means may become available for communities to use that mechanism to deal with such horn noise problems.

While SEA has conducted additional analysis in certain areas, such as Cleveland, without rigidly adhering to the overall thresholds established, such additional analysis should not be construed as creating conflicts. By acknowledging and being responsive to comments made, SEA does not necessarily concede that it has adopted or agreed to all such statements.

Summary of Comments. The City of Sandusky, Ohio, Department of Engineering Services suggested that "a fund be established based on tonnage of goods moved that will be dedicated to solving the problems created by vehicular and rail conflicting movements."

Response. SEA has addressed highway/rail at-grade crossing delay and safety-related issues as well as emergency response delay attributable to increased freight traffic resulting from the proposed Conrail Acquisition (see Chapter 4, "Summary of Environmental Review," of this Final EIS). Further, SEA has recognized the circumstances under which a party may petition the Board for reconsideration of a matter when there are material changes to the facts on which the Board relied in developing mitigation measures.

SEA maintains that mechanisms currently exist to fund highway/rail at-grade crossing safety improvements; therefore, SEA does not recommend requiring the Applicants to establish the fund.

Summary of Comments. The City of Ashtabula City Council commented that, if adverse impacts should occur as a result of changes related to the proposed Conrail Acquisition, "the creator of that negative impact should compensate the community for their hardship."

Response. The hardship question concerns vehicular traffic delays as a result of increased rail activity, as well as a risk to human life as a result of the inability of emergency response teams to move expeditiously through the City.

SEA is concerned with traffic delays and emergency response delays associated with the proposed Conrail Acquisition and has evaluated those matters in each community, including Ashtabula, with a view toward identifying the seriousness of the problem as well as developing mitigation measures to alleviate such problems should mitigation be warranted. However, the issue of monetary compensation is beyond the authority of an EIS and is an inappropriate response to a need for mitigation. If, in fact, mitigation is appropriate with respect to traffic and emergency response delays, the Board will decide which conditions to impose based on SEA's final environmental recommendation and the public record. If the facts and circumstances upon which SEA based its recommendations change as a result of Acquisition-related activities, or if the mitigation that the Board directs is unsuccessful, then the Board, upon the petition of any party who demonstrates such material change or failure of mitigation, may review the final mitigation measures if warranted.

Summary of Comments. NS expressed the concern that the proposed limit of a two train per day increase on its main line through Erie, Pennsylvania would "have serious adverse ramifications for NS' proposed operating plan, particularly in the crucial Midwest to New York/New Jersey market." NS stated that there appears to be no analytical basis for the limitation and urged SEA to "undertake a thorough examination of any mitigation options it might consider that have the potential to interfere with Applicants' Operating Plans."

Further, NS commented that the Four City Consortium's Proposed Alternative 2, which would "compel NS to grant CSX trackage rights over the NS Fort Wayne-Chicago main line" as well as construct several new connections, is not feasible. NS contended that the alternative would "significantly undermine NS' service from Chicago to the Southeast."

Response. SEA considered the impact of increasing the number of trains through Erie, and has reevaluated the 2 trains per day limit that the Draft EIS recommended as a proposed mitigation measure. See Chapter 4, "Summary of Environmental Review," Appendix C, "Settlement Agreements and Negotiated Agreements," and Appendix N, "Community Evaluations," of this Final EIS for more detailed discussion of the Erie situation.

In Erie, NS anticipates an increase of 12.1 trains per day after the proposed Conrail Acquisition. SEA analyzed the impacts of this increase on several highway/rail at-grade crossings and identified those that potentially warrant mitigation. SEA has also evaluated the NS proposal to relocate its main line from its present locations along 19th

Street and place it adjacent to the grade-separated Conrail main line. SEA anticipates that the relocation will require 18 to 24 months to complete. SEA has encouraged NS and the City of Erie to arrive at a Negotiated Agreement that would allow NS to operate its forecasted traffic levels while committing to relocate the main line out of 19th Street on a schedule satisfactory to the City.

For the Four City Consortium proposal, SEA considered the impact of allowing CSX traffic to operate over NS's main line between Hobart and Van Loon. See Chapter 4, "Summary of Environmental Review"; Appendix C, "Settlement Agreements and Negotiated Agreements"; and the separate discussion in Appendix N, "Community Evaluations," of this Final EIS.

Summary of Comments. The Ohio Attorney General's office, the Ohio Rail Development Commission, and the Public Utilities Commission of Ohio asserted that the "Joint Application, as proposed, is not in the public interest and should be denied unless the Board directs" certain conditions. They stated these conditions as follows: (a) The Board should require the Applicants to identify and fund safety improvements necessary to address potential environmental impacts from an increase in rail operations within the State; and (b) the "Board should order and impose upon the Joint Applicants more stringent requirements regarding rail transportation of hazardous materials."

Response. SEA has identified numerous conditions for the proposed Conrail Acquisition, including conditions on safety and transportation of hazardous materials. Chapter 7, "Recommended Environmental Conditions," of this Final EIS discusses all conditions of the proposed Conrail Acquisition.

5.2.3 System-wide Technical Analysis

5.2.3.1 Safety: Highway/Rail At-grade Crossings

Summary of Comments. CSX volunteered to install emergency information signs displaying a toll-free telephone number and a unique highway/rail at-grade crossing number at all crossings with active warning device signals. In addition, CSX stated that it would provide 24-hour, seven-day-a-week staffing to respond to calls to the toll-free number. CSX noted that it is currently installing the signs on its existing system and would voluntarily expand the program to the Conrail rail lines that it would acquire if the Board approves the proposed Acquisition. CSX stated that the Final EIS may include this information but requested that the Board not include it as a condition of the approval.

Response. SEA acknowledges CSX's comment.

Summary of Comments. NS commented that it has already completed the Draft EIS recommendation that NS equip all of its public crossings and certain private crossings with information signs that display a toll-free telephone number for motorists to report emergencies. NS stated that on approval of the proposed Conrail Acquisition, it would install emergency

information signs displaying a toll-free number and a unique crossing number at all Conrail public highway/rail at-grade crossings that the proposed Conrail Acquisition would allocate to NS within 2 years of the control date. Further, NS and CSX offered to work with the Conrail Shared Assets Operator to ensure implementation of a similar program in the Shared Assets Areas within the same time frame.

Response. SEA acknowledges NS's comment.

Summary of Comments. NS and CSX both commented that the Draft EIS methodology is flawed because it relies on the accident prediction formula as the sole basis for determining the need for and type of highway/rail at-grade crossing warning upgrade. NS noted that DOT designed the accident formula to help state departments of transportation rank crossings and to identify crossings that potentially need safety improvements. NS indicated that each state and local community upgrades highway/rail at-grade crossings based on different criteria and priorities. CSX asserted that SEA's accident prediction analysis did not consider site-specific conditions and variables affecting safety measures before SEA designated recommended mitigation measures. CSX commented that SEA should recommend as a condition that state diagnostic teams conduct on-site reviews of those individual highway/rail at-grade crossings where there are potential safety concerns.

Response. NS is correct that the formula SEA used was designed to help state departments of transportation rank crossings and to identify crossings that potentially need safety improvements. SEA's use of the formula was appropriate because SEA used it to identify crossings that potentially need safety improvements. SEA used the formula because it provided a statistically valid means of assessing accident risk at highway/rail at-grade crossings. The formula provided a consistent means of analyzing safety at highway/rail at-grade crossings on all rail line segments throughout the NS, CSX, and Conrail systems.

SEA conducted site inspections of more than 280 highway/rail at-grade crossings, including all crossings identified in the Draft EIS for safety mitigation. The purpose of the site inspections was both to verify the characteristics reported in the FRA database and to develop appropriate mitigation measures that would address site-specific conditions.

SEA maintains that analyzing accident risk at individual highway/rail at-grade crossings is appropriate. The standard FRA accident risk calculation methodology uses this approach, which demonstrates its validity. However, SEA recognizes state departments of transportation responsibility for highway/rail at-grade crossing safety and acknowledges that a state department of transportation may use a corridor-based analysis. Consequently, SEA's recommended highway/rail at-grade crossing safety mitigation in the Final EIS includes the possibility that the Applicants may implement alternative safety improvements if they execute a Negotiated Agreement with the affected local jurisdiction and the state department of transportation. This may include a state department of transportation-performed corridor safety analysis as an alternative to the

crossing-specific mitigation that SEA recommended, as long as the crossing specified for mitigation is included in the corridor analysis.

Summary of Comments. NS stated that the Draft EIS does not indicate whether a diagnostic team evaluated the highway/rail at-grade crossing sites before proposing mitigation or whether the decision-making process involved appropriate state agencies. NS recommended that field investigations determine the accuracy of FRA input data for highway/rail at-grade crossings and determine revised cost-effective improvement decisions for highway/rail at-grade crossings where data are inaccurate. In addition, NS requested that a diagnostic team examine other critical factors "not taken into consideration with the DOT Accident Prediction Severity Formula," including sight distance, roadway geometrics, highway congestion, local topography, frequency of high-occupancy vehicles, and frequency of hazardous materials transport vehicles.

Response. SEA conducted site visits at each of the highway/rail at-grade crossing locations where mitigation was recommended. Based on the findings of each site visit, SEA evaluated the overall feasibility of the proposed mitigation and considered all relevant factors in developing its final recommendations. SEA agrees with NS that diagnostic teams from the states and the Applicants should evaluate each site in depth before any upgrade is designed and implemented.

Summary of Comments. NS and CSX both objected to SEA's recommended use of four-quadrant gates and median barriers. The Applicants noted that neither FRA nor the *Manual of Uniform Traffic Control Devices* (MUTCD) has approved these devices. NS stated, "In virtually all states, traffic control devices are required by statute to substantially conform to the MUTCD." NS added that in instances where four-quadrant gates exist, their installation followed site-specific studies of geometric figures, road width, and other local conditions.

Response. SEA recognizes that neither FRA nor MUTCD have universally approved four-quadrant gates and median barriers. As a result, SEA's recommended highway/rail at-grade crossing safety mitigation includes the possibility that CSX and NS may implement alternative safety improvements if they execute a Negotiated Agreement with the affected local jurisdiction and the state department of transportation. Such an agreement may include a corridor safety analysis by the state department of transportation, as an alternative to the individual crossing safety mitigation that SEA recommends, as long as the analyzed corridor includes the crossing specified for mitigation. This alternative mitigation strategy is especially appropriate for gate-protected crossings that warrant mitigation. Chapter 7, "Recommended Environmental Conditions," of this Final EIS contains SEA's recommended mitigation conditions.

Summary of Comments. NS expressed concern that the Draft EIS did not explicitly identify which parties would be responsible for funding the highway/rail at-grade crossing upgrades. NS noted that traditionally state departments of transportation and the railroads have worked in a cooperative effort to allocate costs of installing and maintaining warning devices, but that government agencies have the ultimate responsibility for highway/rail at-grade crossing safety.

Response. SEA concurs that states and railroads typically cooperate to improve safety at highway/rail at-grade crossings. However, because the potential safety impacts identified in this analysis would be the direct result of increases in train traffic from the proposed Conrail Acquisition, SEA recommends that CSX and NS bear most of the costs of mitigation for highway/rail at-grade crossing upgrades if the Board approves the proposed Conrail Acquisition. Refer to Chapter 7, "Recommended Environmental Conditions," for SEA's final mitigation recommendations.

Summary of Comments. CSX commented that at many of the 118 highway/rail at-grade crossings that Table 7-4 of the Draft EIS identifies as sites potentially requiring improvements, either the suggested mitigation is already complete or funding and scheduling for installation have taken place. NS had similar comments about 34 of the 44 highway/rail at-grade crossings that SEA recommended for permanent upgrading. CSX and NS both commented that the identified crossings did not meet the EIS Category A or Category B significance criteria using either the 1991 through 1995 accident histories or the 1992 through 1996 accident histories. In addition, CSX noted that SEA used accident rates after the proposed Conrail Acquisition, but should have used accident rates before the proposed Conrail Acquisition, to determine whether some highway/rail at-grade crossings meet the Board's threshold for environmental analysis. CSX also disagreed with the recommended mitigation in the Draft EIS for the Toledo-to-Deshler rail line segment "because any impacts from increased traffic are independent of the Transaction."

Response. SEA considers the May 1997 increase in through train operations along the Toledo-to-Deshler rail line segment C-065 to be related to the proposed Conrail Acquisition. As a result, SEA continues to analyze this rail line segment based on an increase from 0.6 trains per day before the proposed Conrail Acquisition to 14.2 trains per day after the proposed Conrail Acquisition. SEA therefore did not eliminate the 16 warning device upgrades along this rail line segment that it recommended in the Draft EIS. SEA continues to recommend mitigation at these crossings in this Final EIS in Chapter 7, "Recommended Environmental Conditions."

SEA identified the highway/rail at-grade crossings that would warrant mitigation based on the accident risk that would result from the proposed Conrail Acquisition. The use of the existing accident risk is not appropriate because it would not account for the impacts of the proposed Conrail Acquisition. Therefore, SEA did not reanalyze highway/rail at-grade crossings nor modify its list of crossings warranting mitigation in response to this comment.

In this Final EIS, SEA removed from the list of locations warranting mitigation those highway/rail at-grade crossings where the Applicants have already upgraded warning devices. SEA understands that various crossings are under review by the appropriate state agencies. However, since SEA does not have a firm schedule for implementing funded or otherwise active improvements, SEA cannot be certain that the Applicants would implement these improvements in a timely manner. Thus, SEA continues to recommend mitigation at locations it identified as active projects. The Applicants would

have to complete the improvements within 2 years and certify on a quarterly basis to the Board that they would install the improvements during the 2-year period following the decision granting approval of the proposed Conrail Acquisition. See Appendix E, "Safety: Highway/Rail At-grade Crossing Safety Analysis," and Chapter 7, "Recommended Environmental Conditions," of this Final EIS.

SEA recognizes that state agencies and railroads typically cooperate to improve safety at highway/rail at-grade crossings. However, because the safety impacts that the analysis identified are the result of Acquisition-related increases in train traffic, the Applicants would be primarily responsible for the costs of mitigation if the Board approves the proposed Conrail Acquisition. In recognition of the role of states in improving crossing safety, SEA recommended an optional approach that would allow the states and the Applicants to agree on alternative mitigation if they execute a Negotiated Agreement with the affected local jurisdiction. This could include examining a rail corridor, as long as the corridor includes the crossing specified for mitigation.

The established baseline for the analysis is 1995. Therefore, SEA used 1991 to 1995 accident data in the accident risk analysis. All analyses used this baseline. To maintain consistency, SEA has continued to use this established baseline. The crossings that CSX identified remain as sites to be mitigated.

Summary of Comments. After reviewing the proposed mitigation measures in Table 7-4 of the Draft EIS, NS identified 13 highway/rail at-grade crossings that SEA "apparently inadvertently" included as requiring mitigation. NS commented that these crossings do not have accident prediction values that meet the significance criteria. These crossings are as follows: IN 484248X, IN 484209G, IN 484246J, IN 478240E, NY 471825F, PA 471940M, PA 592290T, PA 592320H, OH 473726P, OH 473668W, OH 473673T, and MD 534887F.

Response. SEA's analysis revealed that each of the highway/rail at-grade crossings that NS identified meets the criteria of significance as the Draft EIS describes in Chapter 3, "Analysis Methods and Potential Mitigation Strategies," and Appendix B, "Safety," and therefore each warrants mitigation. SEA identified the highway/rail at-grade crossings that would warrant mitigation based on accident risk that would result from the proposed Conrail Acquisition, as opposed to the present accident risk that NS suggested. The risk is not appropriate for SEA to use because it would not account for the impacts of the proposed Conrail Acquisition. Refer to Chapter 7, "Recommended Environmental Conditions," of this Final EIS for SEA's final mitigation recommendations.

Summary of Comments. NS identified the following highway/rail at-grade crossings in Table 7-4 of the Draft EIS where the currently installed devices meet or exceed the mitigation that the Draft EIS recommended: IL 479848P, IN 478314U, MD 469321F, OH 472012W, OH 481584W, and OH 481490V. In addition, NS listed the following highway/rail at-grade crossings as funded and scheduled for upgrade: IN 478216D, IN 478270W, OH 481546M, VA 468634S, and IN 484282E.

Response. SEA has updated the Draft EIS highway/rail at-grade crossing safety analysis to reflect the upgrades to warning devices. In this Final EIS, SEA removed from the list of locations warranting mitigation those highway/rail at-grade crossings where the Applicants warranting mitigation those highway/rail at-grade crossings where the Applicants have already upgraded warning devices. SEA understands that various crossings are under review by appropriate state agencies. However, since SEA does not have a firm schedule for implementing funded or otherwise active improvements, SEA cannot be certain that the Applicants would implement these improvements in a timely manner. Thus, SEA continues to recommend mitigation at locations it identified as active projects. The Applicants would have to complete the improvements within 2 years and certify the status of the improvements on a quarterly basis to the Board during the 2-year period following a decision granting approval of the proposed Conrail Acquisition. See Appendix E, "Safety: Highway/Rail At-grade Crossing Safety Analysis," and Chapter 7, "Recommended Environmental Conditions," of this Final EIS.

Summary of Comments. NS stated that it had performed an accident analysis using historical data for 1992 through 1996 and identified several highway/rail at-grade crossings where SEA should delete its recommendation to provide upgraded warning devices: IN 474598M, IN 484216D, IN 484229T, OH 481547U, OH 503133H, OH 472284J, PA 535146X, VA 468599F, IN 484269R, PA 592295C, OH 481660M.

Response. The baseline that SEA established for the analysis is 1995; therefore, the safety analysis used accident data from 1991 through 1995. All analyses used this baseline for the Draft EIS and the Final EIS. To maintain consistency, SEA has continued to use this established baseline. Refer to Chapter 7, "Recommended Environmental Conditions," for SEA's final mitigation recommendations.

Summary of Comments. NS and CSX both commented that SEA's recommendation for NS and CSX to upgrade 118 highway/rail at-grade crossings meeting SEA's significance criteria would ignore established practice. Specifically, NS and CSX said it would undermine the role of the state departments of transportation as the parties with primary responsibility for highway/rail at-grade crossing warning devices. NS noted that Federal statutes and regulations assign to the state transportation agencies the task of determining the need for, type of, and priority of warning devices. NS pointed out that the Applicants must have the express approval of the state departments of transportation in order to implement recommended mitigation measures. CSX suggested that "it would be appropriate for the Final EIS to recommend ... a requirement that Applicants bring these crossings to the attention of the state agencies that have jurisdiction over highway/rail crossings."

Response. The Board is authorized by statute to impose conditions to protect public health and safety in its decisions regarding transactions such as the proposed Conrail Acquisition. Such conditions may include improved warning devices at highway/rail at-grade crossings where the Board finds that such improvements are appropriate to mitigate the potential safety impacts of transaction-related increases in train traffic. SEA agrees that the Applicants must have approval from the state departments of

transportation in order to implement recommended mitigation measures. The responsibility for funding the mitigation measures, however, lies with the Applicants.

Summary of Comments. DOT proposed that SEA use a corridor approach for its analysis and mitigation of potential safety impacts involving highway/rail at-grade crossings. DOT noted, "The crossing-by-crossing approach used in the D[raft] EIS isolates each crossing from its overall setting, and so in this case may present a distorted or otherwise unrealistic view of the impacts under study."

Response. SEA determined that analyzing accident risk at individual highway/rail at-grade crossings on a system-wide basis is appropriate. SEA notes that the standard FRA accident risk methodology uses this approach, which SEA considers a demonstration of its validity. The FRA accident risk methodology includes actual accident history at each highway/rail at-grade crossing to explicitly reflect the characteristics of its overall setting. SEA did, however, conduct corridor-based analysis on nine areas in northwestern Ohio, as Appendix G, "Transportation: Highway/Rail At-grade Crossing Traffic Delay Analysis," in this Final EIS discusses. SEA recognizes, however, the state departments' of transportation responsibility for providing highway/rail at-grade crossing safety and acknowledges that a state department of transportation may use a corridor-based analysis. Consequently, SEA's recommended highway/rail at-grade crossing safety mitigation in this Final EIS includes the possibility that the Applicants may implement alternative safety improvements if they execute a Negotiated Agreement with the affected local jurisdiction and the state department of transportation. This may include a corridor safety analysis by the state department of transportation as an alternative to the individual crossing mitigation, as long as the crossing specified for mitigation is in the analyzed corridor.

Summary of Comments. The Seneca County (Ohio) Engineer and a former Director of Engineering with AAR stated that whistle bans would adversely affect safety. With a whistle ban in place, the County Engineer asked, "What will happen if and when the warning devices fail?"

Response. In the Draft EIS, SEA did not recommend any change in the sounding of train horns. SEA recognizes the importance of train horns to safety. The Draft EIS noted that FRA is developing rules that would allow communities and railroads to receive FRA approval for alternatives to train horns. The Draft EIS stated, "Until such regulations are in place, SEA does not believe it would be appropriate to recommend mitigation measures to reduce horn noise because of safety implications."

Summary of Comments. A former Director of Engineering with AAR suggested that recommended mitigation may not be feasible. The commentor reasoned that, in order to allow for braking distance and prevent a train from colliding with a stalled vehicle, active warning devices may need to operate up to two minutes before the train arrives at the crossing. He concluded that this type of warning device would be costly and would increase the delay at crossings.

Response. SEA concurs with the commentor that the time and distance requirements for stopping trains make a notification mechanism impractical as a routine accident avoidance strategy. In the Draft EIS, SEA did not intend to suggest using a notification mechanism to directly stop oncoming trains. In the Draft EIS, SEA described the benefits of improved notification in order to inform railroads of obstructed highway/rail at-grade crossings. SEA recommended this notification to provide a prompt warning device and repair response to reduce the likelihood of accidents.

Summary of Comments. Two parties commented about the tendency of drivers to take risks at highway/rail at-grade crossings to avoid long delays. One resident of Princeton, Indiana noted that trains block crossings for long periods of time, causing people to take chances by driving in front of trains. This commentor stated that eight such deaths have occurred in that community in less than a year. The City of Sandusky, Ohio asked, "Will these drivers anticipate a long delay and therefore take the risk of crossing by going around guards or over the crossing while the lights are flashing?"

Response. SEA's safety analysis included the overall effect of risky driver behavior, but did not calculate the way behavior would vary at different highway/rail at-grade crossings. The analysis used a standard FRA method that applies a set of formulas to estimate the risk of accidents at each highway/rail at-grade crossing. These formulas represent a statistical analysis of actual accident experience at highway/rail at-grade crossings in the United States. FRA formulas reflect the fact that some people ignore flashing lights and drive around crossing gates, thus increasing the probability of accidents. By using actual accident history, SEA's analysis accounts for actual driver behavior by using these formulas.

There may potentially be increased delays at certain highway/rail at-grade crossings as a result of Acquisition-related train traffic increases. SEA understands that FRA does not include the amount of time that drivers must wait for trains to pass at a specific highway/rail at-grade crossing, so it cannot reflect variations among crossings in the probability that drivers would ignore warning devices.

Summary of Comments. A railroad signal expert, formerly a Director of Engineering with AAR, commented that SEA cannot require the Applicants to upgrade warning devices because the Federal government traditionally funds improvements to highway/rail at-grade crossings using highway trust funds.

Response. The Board has statutory authority to impose conditions to protect public health and safety in its decisions regarding transactions such as the proposed Conrail Acquisition. Such conditions may include improved warning devices at highway/rail at-grade crossings, where the Board finds that such improvements are appropriate to mitigate the safety impacts of increases in train traffic as a result of the proposed Conrail Acquisition.

SEA concurs with the commentor that Federal funds for upgrading warning devices at highway/rail at-grade crossings are available through the Federal highway program. The availability of such funds does not preclude the use of other funds, however, including those of the Applicants, for upgrading warning devices.

5.2.3.2 Safety: Hazardous Materials Transport

Summary of Comments. EPA commented that the Draft EIS did not fully discuss potential environmental impacts of hazardous materials transport. EPA questioned the significance criterion of an increase in hazardous materials transport to more than 10,000 carloads per year, stating that the risk calculations in the Draft EIS do not support a significant increase in risk at the 10,000 carload level. Also, EPA stated that "the [D]raft EIS [does not] provide enough discussion to explain what those risks may mean to a community."

Response. SEA estimated potential changes in hazardous materials transport on each rail line segment associated with the proposed Conrail Acquisition, and estimated accident frequencies for those rail line segments that would have increased hazardous materials transport following the proposed Conrail Acquisition. The potential risk of a hazardous materials release during rail transport is primarily dependent on the likelihood of a hazardous materials rail car being involved in an accident. Because rail accidents are relatively infrequent, especially those involving hazardous materials releases, SEA determined that it would be appropriate to use thresholds for environmental analysis and significance criteria based on the number of hazardous materials cars per year on a rail line segment. Therefore, SEA used AAR's 10,000 carloads per year value for key route designation as a criterion of significance for mitigation. AAR key route guidelines are based on industry experience nationwide. SEA concludes that this protective value would minimize potential impacts of hazardous materials transport.

SEA understands that there are more than 50,000 chemicals in use in the United States and does not consider it possible to predict the consequences of any given rail accident involving hazardous materials. SEA has provided additional information in Appendix L, "Natural Resources Analysis," of this Final EIS regarding the classes, characteristics, and potential exposure pathways of chemicals that the Applicants transport. SEA has determined that the additional information, its analysis, and its recommended mitigation adequately address the potential environmental impacts of hazardous materials transport.

Summary of Comments. NS agreed with the conclusion in the Draft EIS that the proposed Conrail Acquisition would result in a slight safety improvement for hazardous materials transport and stated its expectation that the improvements would actually be greater than those the Draft EIS described.

Response. SEA acknowledges the comment.

Summary of Comments. NS objected to the proposed requirement to prepare a hazardous materials emergency response plan for each local emergency response organization along key

routes and major key routes. NS expressed concern that this would apply to each such organization in 63 counties in 10 states. NS stated its willingness to provide plans for each County to distribute to local emergency planning committees within the County. NS also expressed its willingness to provide a toll-free telephone number for the NS Police Communications Center in Roanoke, which can immediately access all NS dispatch centers, to each County for distribution to local emergency planning committees.

Response. SEA has concluded that the requirement to prepare a hazardous materials emergency response plan for each local emergency response organization along major key routes is not excessively burdensome.

Summary of Comments. NS commented that the Draft EIS definition of a key train was not correct. NS quoted the Draft EIS definition as follows: "The Association of American Railroads (AAR) defines a key train as any train handling five or more carloads of poison inhalation hazard (PIH) materials or a combination of 20 or more carloads containing hazardous materials." NS stated that the correct definition of a key train is any train "with five or more tank car loads of chemicals classified as Poison Inhalation Hazard (PIH) Zone A or B; or any train with combination of 20 or more car loads or intermodal tank loads of PIH (Hazard A or B), Division 2.1 Flammable Gas; Division 1.1 or 1.2 Explosives, and Environmentally Sensitive Chemicals (ESCs) as defined in Appendix A to the Circular."

Response. SEA used an abbreviated key train definition in the Draft EIS for editorial purposes only. Where the Draft EIS and the Final EIS describe key train mitigation requirements, however, SEA means the full definition from AAR Circular No. OT-55-B, dated October 19, 1993. That full definition is as follows: "Any train with five tank car loads of poison inhalation hazard (Hazard zone A or B) or 20 car loads of intermodal portable tank loads of a combination of PIH [Poison Inhalation Hazard] (Hazard zone A or B), flammable gas, Class 1.1 or 1.2 explosives (Class A), and environmentally sensitive chemicals shall be called a 'Key Train.'" Appendix A of Circular OT-55-B lists PIH (Hazard zone A or B) and environmentally sensitive chemicals with 49 Standard Transportation Commodity Codes designated number 49. The Draft EIS included a copy of AAR Circular OT-55-B as Attachment B-10 of Appendix B, "Safety."

Summary of Comments. NS suggested modifying Table 9-1 of the Draft EIS, Appendix B, "Safety," Volume 5A, pages B9-4 and B9-5. NS stated, "For Conrail, the table includes 'Key Routes' columns for 5,000-8,000 and 8,000-10,000 cars. These reflect tabulations of feeder routes to Conrail's 'key routes.' Neither OT-55B nor the criteria in the D[raft] EIS would consider routes with less than 10,000 carloads of hazmat to be 'key routes.' NS recommends the tables be modified to eliminate these columns to avoid confusion."

Response. SEA concurs with NS's comment. SEA based the columns showing "Pre-Acquisition Key Route" on information from large-scale key route maps, which SEA did not precisely link to the 1,022 rail line segments that describe the system. SEA did not use this information in the analysis. Therefore, SEA has deleted these two columns in the Final EIS.

Summary of Comments. EPA expressed concern that the mitigation measures proposed for hazardous materials transport do not account for the population or proximity of communities adjacent to key routes and major key routes. EPA also suggested that mitigation should address causes of all incidents, rather than just vehicle-train accidents. EPA noted the proposal for formal Failure Mode and Effects Analysis as mitigation for potential hazardous materials transport impacts, but could not find a requirement for the analysis or the implementation of its results in the Draft EIS.

Response. SEA did examine causes of all accidents, not just vehicle-train accidents, in developing the proposed mitigation measures. SEA proposed mitigation measures for key routes and major key routes that apply the best possible proven physical facility, responder, and carrier coordination technology to provide safety in hazardous materials transport at all locations. SEA has designed the proposed key route and major key route mitigation measures to protect high-density populations adjacent to the rail lines. These mitigation measures provide a higher margin of safety to rural populations than might be the case if SEA proposed different mitigation measures for different populations. SEA also notes that other Federal regulations governing hazardous materials transport—for example, those that DOT has promulgated—do not vary based on the population density along the transport corridor.

SEA recommends modifications to the original proposed mitigation measures to better reflect the scope of the Board's authority and the information SEA gained from the hazard analyses. SEA recommends that the Board require the Applicants to conduct formal hazard analyses for the rail yards and intermodal facilities where an increase in activities exceeds the criteria of significance for mitigation. Refer to Appendix F, "Safety: Hazardous Materials Transport Analysis," and Chapter 7, "Recommended Environmental Conditions," of this Final EIS for additional information.

Summary of Comments. CSX and NS stated that the term "major key route" does not agree with accepted terminology and recommended not using this terminology. CSX and NS concurred with SEA and the Draft EIS about using a threshold for environmental analysis for routes that would double in hazardous materials transport and exceed 20,000 carloads per year to trigger mitigation. However, CSX and NS recommended that the Board not call these segments "major key routes."

Response. SEA has concluded that the major key route terminology does not contradict any existing terminology and serves a useful purpose in the Draft EIS and this Final EIS.

Summary of Comments. CSX and NS commented that the Draft EIS incorrectly stated that the AAR key route guidelines include "measures for visual rail defect inspections at least twice per week." CSX explained that the guidelines require inspection frequency twice per year on main track and once per year on sidings. NS noted that the requirement is not for visual inspections, but for inspection by rail defect detection and track geometry inspection cars or any equivalent level of inspection.

Response. SEA concurs with CSX and NS. SEA has included the correct wording in Chapter 7, "Recommended Environmental Conditions," of this Final EIS.

Summary of Comments. CSX maintains that the proposed conduct of emergency response drills every 2 years on certain rail line segments with increased hazardous materials traffic (Mitigation Measure 4[B]) exceeds the Board's authority. CSX and NS agree that it would be useful to conduct, within 1 or 2 years after Day 1, one real-time or desktop emergency response simulation drill for the major key routes because of the proposed Acquisition-related increase in hazardous materials transport on those routes. However, CSX and NS noted that the Draft EIS did not demonstrate the need for similar drills on rail line segments that currently carry even larger volumes of hazardous materials. CSX stated that, after the one-time drill, it would follow the guidelines of AAR Circular OT-55-B with respect to key routes.

Response. SEA maintains that potential personnel changes that would occur over time justify the requirement that the Applicants perform emergency response drills. The drills would occur within 2 years of Board approval of the proposed Conrail Acquisition. SEA also concludes that requiring emergency response drills addresses, in part, the Board's responsibility to address potential safety impacts of the proposed Conrail Acquisition. See Chapter 7, "Recommended Environmental Conditions," of this Final EIS for SEA's recommended mitigation.

Summary of Comments. CSX maintains that the proposed Failure Mode and Effects Analysis for hazardous materials incidents at rail yards and intermodal facilities (Recommended Mitigation Measure No. 6) exceeds the Board's authority. CSX's reasoning is that the proposal would apply to all rail yards and facilities, including those that either would not change or would decrease in activity following the proposed Conrail Acquisition. CSX and NS also stated that the proposed requirement would be redundant because of numerous existing CSX and other industry programs. These programs include the Railroad Tank Car Safety Research and Test Project of the Railway Progress Institute and AAR; CSX participation in the Chemical Manufacturers Association's Responsible Care Program, which includes risk assessments for hazardous materials transport and train accident prevention; and adherence to DOT's regulations governing hazardous materials transport (49 CFR 171-174).

Response. SEA recommends modifications to the originally proposed mitigation measure to better reflect the scope of the Board's authority and the information SEA obtained from the impact analysis. SEA recommends that the Board require the Applicants to conduct formal Failure Mode and Effects Analysis for the rail yards and intermodal facilities where the increase in activities exceeds SEA's criteria of significance for mitigation. The analysis could include shipper practices and communications between shippers and the Applicants. SEA has included this proposed mitigation in Chapter 7, "Recommended Environmental Conditions," of this Final EIS.

Summary of Comments. CSX maintains that the Board should not require any special mitigation measures for hazardous materials transport, but does not object to a number of the recommendations. Specifically, CSX would agree with the requirement to prepare a hazardous

materials emergency response plan for each local emergency response organization along major key routes, as the Draft EIS described in Recommended Mitigation Measures Nos. 3(A) and 4(A), respectively. CSX would also agree to mandatory adherence to AAR key train guidelines, as the Draft EIS described in Recommended Mitigation Measure No. 3(B). Further, CSX would agree to provide a toll-free telephone number in the hazardous materials emergency response plan to local emergency response organizations, as the Draft EIS described in Recommended Mitigation Measure No. 5.

CSX and NS noted that they do not think that the Board needs to impose adherence to the AAR key route guidelines as a condition of the proposed Conrail Acquisition, because CSX and NS already adhere to those guidelines. If the Board does impose such a condition, however, CSX and NS recommended that the Board structure the condition such that they would have the flexibility to adhere to any new industry standard that updates the requirements (specifically, those of AAR Circular OT-55-B). CSX and NS further recommended that any such condition expire 3 years after Day 1 of the proposed Acquisition, after which CSX and NS would designate key routes based on the actual level of hazardous materials their trains carry.

DOT stated that it cannot endorse the imposition of AAR Circular OT-55-B as though it were a Federal regulatory standard. DOT stated that doing so "could confuse the regulated community in general, and CSX and NS in particular, about their duty to comply with the Code of Federal Regulations [CFR]." DOT further expressed concern that the adoption of the AAR key train guidelines could lead to lower standards of care for other trains carrying hazardous materials. According to DOT, its "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 secure the same low level of risk for the transportation of all regulated commodities. The 'key train' concept, made mandatory, would tend to frustrate this interest."

Response. SEA does not claim that, as a minimum level of mitigation, requiring CSX and NS to follow the provisions of AAR Circular OT-55-B for those rail line segments that would be affected by the proposed Conrail Acquisition would cause confusion, lower standards of care for hazardous materials transport, or frustrate the interests of fellow Federal agencies.

SEA recommends that the Board require CSX and NS to adhere to AAR Circular OT-55-B only on those rail line segments where the number of carloads of hazardous materials would increase beyond SEA's criteria of significance following the proposed Conrail Acquisition (see Chapter 7, "Recommended Environmental Conditions," of this Final EIS). SEA establishes these criteria as a means of (a) uniformly defining the concepts of "key routes" and "major key routes"; and (b) setting a minimum level of mitigation. SEA further recommends that the Board require CSX and NS to adhere to the most current version of Circular OT-55-B or to any successor documents, in order to preserve the regulatory flexibility that CSX and NS request. SEA does not recommend that the Board allow the proposed mitigation to expire after 3 years.

Summary of Comments. CSX and NS objected to Recommended Mitigation Measure No. 3(C), which would require them to comply with any of their own hazardous materials transport requirements that are more stringent than AAR guidelines. CSX and NS both stated their commitment to fulfilling AAR Circular OT-55-B guidelines; however, they asserted that they should have the flexibility to devise additional requirements and modify existing requirements based on experience.

Response. SEA does not consider the proposed requirement that the Applicants comply with any of their own hazardous materials transport requirements that are more stringent than AAR guidelines to represent an undue burden. However, SEA recommends that the Board require the Applicants to adhere to the most current version of AAR Circular OT-55-B, or to any successor documents, in order to preserve the regulatory flexibility that the Applicants, request.

5.2.3.3 Safety: Passenger Rail Operations

Summary of Comments. Several commentors, including the State of New York, Amtrak, United Parcel Service, CSX, and NS, expressed opposition to the "Superior Train" mitigation, also known as temporal train separation mitigation. The Draft EIS indicated that the proposed mitigation would require "trains moving in the same or opposite directions on the same track on any of these line segments...to be clear of the track at least 15 minutes before and 15 minutes after the expected arrival of a passenger train at any point." SEA proposed this mitigation in the Draft EIS to protect passenger trains that would operate on rail line segments with additional freight train traffic. The proposed mitigation would apply to trains on nine rail line segments (four NS and five CSX) that SEA projected could experience a significant increase in accident frequency as a result of the additional freight train traffic. The commentors claimed that the proposed mitigation would substantially reduce the capacity of the affected tracks in order to address an unlikely safety risk, namely, potential collisions between freight trains and passenger trains occupying the same track. Some of the commentors maintained that modern signal systems and automatic train protection technology make "train superiority and temporal separation rules" unnecessary on the affected lines. Others suggested that such rules could actually detract from the safety of passenger rail operations.

MNR, the Mass Transit Administration of the Maryland Department of Transportation, CSX, and NS commented that FRA has the exclusive authority to regulate railroad safety and is currently considering several "proposals relating to passenger train issues." MNR suggested that "train superiority and temporal separation rules" should be the subject of an FRA rule-making procedure. The Maryland Department of Transportation commented that FRA and the National Transportation Safety Board should conduct an analysis to address "such questions as past experience with this approach [with respect to train superiority and temporal separation rules], potential safety benefits, routes where this might be beneficial, and impacts on present and future commuter and freight service operations and capacity expansion." CSX urged the Board to fulfill its "NEPA role by identifying potential safety issues for the FRA, leaving it to that agency to address those issues as it sees fit." NS suggested that if any passenger safety mitigation is

appropriate, "it should be in the form of railroad consultations with the FRA and the affected passenger rail agencies."

As a result of these concerns, the commentors asked the Board not to impose the proposed mitigation.

Response. SEA has reviewed its analysis and determined that four of the nine originally projected rail line segments would not experience increases in freight traffic or potential accident risk. SEA has also determined that modern signal systems and automatic train protection technologies that the Applicants employ may adequately address the increased risk of train collisions. Therefore, SEA withdraws its proposed mitigation of temporal separation of passenger and freight trains. See Chapter 4, "Summary of Environmental Analysis," Section 4.4, "Safety: Passenger Rail Operations," of this Final EIS for detailed discussion of SEA's recommended mitigation for passenger rail safety; also see Chapter 7, "Recommended Environmental Conditions," of this Final EIS.

Summary of Comments. EPA commented that potential conflicts between passenger and freight trains "may not be worked out and that increased freight rail operations may impinge on safe passenger rail service." EPA recommended that the Final EIS address this concern in more detail.

Response. SEA recognizes that passenger trains have priority in general railroad operations. Additional freight traffic on a rail line segment would have the effect of increasing congestion and delay, and straining the capability of the rail line segment. SEA initially proposed temporal separation so that this potential strain on capability would not result in increased collision probability. Based on comments that SEA received about this issue in the Draft EIS, SEA maintains that the collaborative efforts of the rail line segment owners and operators and FRA to apply new technology to an inherently safe railroad signal system would achieve the same objectives. SEA's recommended mitigation provides for the resolution of potential conflicts.

Summary of Comments. The Applicants questioned the statistical analysis that SEA conducted to reach its preliminary conclusion that nine rail line segments in use by both freight and passenger trains would warrant passenger safety mitigation. The Applicants asserted that the analysis "utilized a collision rate" that pertained to a type of collision that is unrelated to increased freight operations. The Applicants indicated that the proposed mitigation (temporal train separation of freight and passenger trains) would not address this type of collision. NS suggested that SEA used an overly conservative methodology for analyzing passenger rail operations safety "by applying the national average passenger accident rates instead of individual railroad accident statistics," and as a result overestimated the potential for adverse impacts on passenger service safety. CSX stated that "the accident rate factors appear to have been arbitrarily chosen, and the use of these factors would overstate transaction impacts."

Response. The best available information was the source of the statistics that SEA used to derive the constants to estimate the increase in passenger train accidents as a result of

increased freight traffic after the proposed Conrail Acquisition. SEA reexamined the data and determined that the calculation was representative of potential events. SEA notes that the commentors challenged specific characterization and calculations but not the potential for substantially greater risk on certain rail line segments. SEA determined that the application of railroad-specific accident rates as NS suggested was not appropriate because of the very small number of accidents occurring annually. SEA noted that when the occurrence of one event sharply changes the outcome of an estimated calculation, valid long-term projections are not possible. SEA notes that its methodology, which CSX characterized as arbitrary, was based on best available data and was properly conservative.

Summary of Comments. CSX raised a concern that the temporal separation of passenger trains by a 15- to 30-minute clearance, as the Draft EIS proposes, would offset the ability of the proposed Conrail Acquisition to obtain the projected highway-to-rail diversion rates. According to CSX, the result would be more highway truck traffic, especially in the I-95 corridor. CSX pointed out that truck-to-rail diversions offer a safety enhancement because the accident rate per ton-mile is approximately 300 percent lower for rail freight than for truck freight. As a result, CSX stated, "The safety benefit associated with this large number of diversions will obviously be sacrificed in whole or large part were the proposed mitigation adopted."

Response. SEA has reviewed its analysis and determined that modern signal systems and automatic train protection technologies that the Applicants employ adequately address the increased risk of train collisions. Therefore, SEA withdraws its proposed mitigation of temporal separation of passenger and freight trains. See Chapter 4, "Summary of Environmental Review," Section 4.4, "Safety: Passenger Rail Operations," of this Final EIS for a detailed discussion. For SEA's recommended mitigation for passenger rail safety, refer to Chapter 7, "Recommended Environmental Conditions," of this Final EIS.

Summary of Comments. NS commented that SEA's proposed temporal train separation mitigation for passenger rail safety would be inappropriate or was "unsubstantiated" for the NS rail line segments. NS maintained that passenger service operators own and/or dispatch rail line segments N-063 and N-497. NS added that the Porter, Indiana-to-Chicago, Illinois rail corridor (rail line segments N-308, N-309, N-042, and N-047) did not meet the 150-year accident interval that SEA used as the significance criterion under the second-tier analysis. NS argued that the separation mitigation "is inconsistent with the D[raft] EIS description of appropriate passenger train safety mitigation."

Response. SEA has seriously considered these comments and concluded that they represent valid concerns. SEA has reviewed its analysis and concurs that rail line segments N-308, N-309, N-042, and N-047 have negligible increases in risk and do not warrant mitigation. It is reasonable to expect the modern signal systems and automatic train protection technologies that the Applicants currently employ to adequately address the increased risk of train collisions. Therefore, SEA withdraws its proposed mitigation of temporal separation of passenger and freight trains.

Summary of Comments. NS and CSX each identified nine proposed mitigation measures that Chapter 3, "Analysis Methods and Potential Mitigation Strategies," of the Draft EIS included in relation to passenger rail safety. In NS and CSX Exhibits 1 and 3, respectively, of their comments, they described how they have already implemented or are in the process of implementing these measures on the rail line segments that the Draft EIS identified for passenger train safety mitigation.

Response. SEA considered the nine potential mitigation measures that Chapter 3, "Analysis Methods and Potential Mitigation Strategies," of the Draft EIS identified. SEA acknowledges that CSX and NS are completing implementation of these Best Management Practices (BMPs) to improve passenger rail safety. See Chapter 7, "Recommended Environmental Conditions," of this Final EIS for SEA's recommended mitigation for passenger rail safety.

5.2.3.4 Safety: Freight Rail Operations

Summary of Comments. WMATA voiced concern that the proposed increased rail traffic resulting from the proposed Acquisition would increase the probability and potential severity of catastrophic rail accidents, which would increase WMATA's risk of exposure and the associated costs of liability insurance and indemnification. To mitigate this risk and the associated costs, WMATA states that the Applicants should reimburse WMATA for the additional incremental costs of liability insurance and indemnification of the common corridor because of the risk.

Response. SEA has determined that before the proposed Conrail Acquisition, the seven rail line segments with portions immediately adjacent to WMATA's Metrorail mass transit service have expected accident frequencies of less than one accident every 150 years per mile of route. With the changes anticipated as a result of the proposed Conrail Acquisition, if approved, the largest expected accident frequency on any of these rail line segments would be less than one per 135 years per mile of route. SEA has determined that each of the seven rail line segments would have an increase in expected accidents if the Board approves the proposed Conrail Acquisition; however, none of these seven rail line segments would have an expected interval between accidents that is near SEA's mitigation criterion of 100 or fewer years between expected accidents per mile of route. SEA concludes that there is adequate risk management and that the proposed Conrail Acquisition would not result in significant adverse passenger rail service impacts.

Summary of Comments. NS commented that the Draft EIS "applies inappropriate significance criteria to the line segment predicted accident frequencies to recommend unwarranted mitigation. NS does not believe the Transaction will have adverse impacts on freight rail operations, and opposes any mitigation for freight rail operations safety for numerous reasons." NS indicated that "the significance criteria of a predicted accident frequency greater than one every 100 years actually addresses pre-existing conditions rather than Transaction-related changes as well as being based on erroneous data." NS stated, "The criterion of more than one accident predicted every 100 years is not an appropriate threshold to determine significance of safety effects from Transaction-related changes in freight rail operations." NS continued that "this significance

criterion appears to have been based on incorrect data.... There are no NS line segments with pre- or post-Transaction predicted accident rates exceeding one every 49 years. For this reason, and the reason described above, no mitigation related to freight rail operation safety is justified or warranted."

Response. SEA acknowledges the concern of NS regarding potential mitigation for freight rail safety, as Chapter 3, "Analysis, Methods and Potential Mitigation Strategies," Section 3.2.2, Volume 1, of the Draft EIS explains. However, SEA has determined the criteria of significance for both the amount of change in the predicted accident rate and the interval between the estimated occurrences of accidents. SEA has adopted the dual criteria to avoid imposing mitigation for pre-existing conditions. SEA has concluded that the impact analysis and the criteria of significance are appropriate, and therefore the recommended mitigation is warranted.

Summary of Comments. NS raised a concern regarding the Draft EIS recommendation that the four NS rail line segments above the significance criteria include annual training of mechanical and track inspectors for these locations. NS indicated that its existing safety record is second to none and that all NS inspectors receive extensive training and are fully qualified to provide inspections to NS standards. NS stated, "The D[raft] EIS fails to provide a reasonable basis for implementing this specific annual training requirement. *For these reasons, NS believes there is no justification for any proposal to require annual training for these inspectors in the F[inal] EIS.*"

Response. The Applicants made a strong commitment to work with FRA through development and implementation of the Safety Integration Plans to address continued freight train safety, if the Board approves the proposed Conrail Acquisition. Therefore, SEA withdraws the proposed additional training of mechanical and track inspectors. SEA also recommends that the Board require CSX and NS to work with FRA for continued safety during and after the implementation process. For further discussion of the Safety Integration Plans, see Chapter 6, "Safety Integration Planning," of this Final EIS.

Summary of Comments. CSX raised a concern over the conclusion in the Draft EIS that, on the basis of the statistical analysis, there would be a significantly increased risk of accidents on a limited number of rail line segments. Specifically, CSX expressed a concern because, on three line segments above the significance criteria, SEA proposed that CSX include annual training of train dispatchers, train mechanics, and track inspectors who dispatch trains, inspect cars, and check track, respectively, for these three locations. The three segments are Berea-to-Greenwich, Ohio; Greenwich-to-Willard, Ohio; and Willard-to-Fostoria, Ohio. The first of these segments is a part of Conrail's system, while the latter two are a part of CSX's current system. CSX stated, "CSX does not agree that there would be any increased risk of accident on these three line segments warranting special safety mitigation for two reasons: First, the proposed Conrail Acquisition will have no detrimental impact on the safety practices of CSX. CSX has achieved one of the highest levels of safety in the rail industry through its safety and operating practices. These practices will not change as a consequence of the Transaction.... Because CSX has a

better safety record than Conrail (as DOT reported in its October 21, 1997 comments, DOT-3 at 17), the accident risk on the Conrail line segments to be allocated to CSX should decrease. Second, CSX's Operating Plan was designed with full consideration of the existing capacities of the rail infrastructure and of planned capital improvements. The opportunity to acquire Conrail spurred CSX to undertake an unprecedented capital program to make improvements to its tracks, signaling systems and equipment, all of which promote safety as well as service to customers. Chief among these improvements is the doubletracking and associated signal upgrading (to bidirectional TCS [traffic control system] signals) of the CSX B&O line from Chicago to Greenwich, Ohio and improvements to the Conrail line from Greenwich through Cleveland." Because the three segments are included in this upgrade, CSX contends that the statistical methodology in the Draft EIS did not factor in the upgrading of these rail line segments. Additionally, CSX maintains that the significance criteria SEA used for freight rail safety overstated the actual safety risk on these rail line segments. CSX added that using FRA statistics, an accident may occur every 49 years, but not once every 117 years as the Draft EIS reports. As a result, CSX concluded that no mitigation is warranted on these segments.

Response. Because of the strong commitment CSX (and NS) made to work with FRA through the development and implementation of the Safety Integration Plan, SEA has withdrawn its recommendation for training of mechanical and track inspectors.

Summary of Comments. EPA indicated that the Draft EIS provided insufficient information. In particular, EPA stated, "The discussion on rail safety was confusing. Although the Federal Railroad Administration reports 2600 accidents nationally for 1996, the [D]raft EIS shows that there will be no accidents for hundreds of years. We believe that both the Board and the public need to understand the potential for increase in rail accidents from the associated increases in rail operations."

Response. For those rail line segments that met SEA's thresholds for environmental analysis, SEA estimated accident probabilities per mile per year on each rail line segment. For ease of understanding, SEA reported the estimates as the expected interval between accidents. SEA concluded that there is no conflict between FRA's report of a total of 2,584 accidents in 1996 and SEA's estimates that the interval between accidents on a given mile of rail line segment is hundreds of years. SEA divided 2,584 accidents between 1,078 mainline accidents and 1,506 yard and industrial track accidents. SEA focused analysis on the mainline accidents because of their greater severity and resultant potential for impact. There were 126,682 miles of mainline railroad in the United States in 1996. The likelihood of an accident in any one location, however, is very low. SEA maintains that the Draft EIS fairly characterizes the potential changes in rail accident frequencies that would likely occur as a result of the proposed Conrail Acquisition.

5.2.3.5 Safety: Other

Summary of Comments. The E. I. DuPont De Nemours & Company commended the Board for its concern about the safety aspects of the proposed Conrail Acquisition, and encouraged CSX and NS to consider adopting, where possible, SEA's BMPs already in place at Conrail (see

Appendix P, "SEA's Best Management Practices for Construction and Abandonment Activities," of this Final EIS). DuPont indicated that it values highly the Board's incorporation of safety planning and execution into the approval process for the proposed Conrail Acquisition.

Response. SEA acknowledges the comments from DuPont.

5.2.3.6 Transportation: Passenger Rail Service

Summary of Comments. Amtrak commented that the limited information that the Draft EIS provided regarding the calculation of rail line capacities suggested flaws in SEA's methodology. Amtrak indicated that the methodology did not seem to take into account the need to take track out of service for maintenance, the extended occupancy of mainline tracks by local trains performing switching, or the slower speeds of freight trains (compared with the maximum permissible speeds that SEA used), which result in longer track occupancy and reduced capacity. Amtrak also expressed concern that the Draft EIS assumed that its Porter, Indiana-to-Kalamazoo, Michigan rail line could handle all projected freight traffic increases. Amtrak disputed the claim in the Draft EIS that the sidings on the rail line would be sufficient to handle future traffic.

Response. SEA considered several factors in determining the capacity of rail line segments that both passenger and freight trains use, including:

- Number of main tracks.
- Train control system.
- Passing siding spacing and capacity.
- Crossover tracks.
- Times and frequency of freight service.
- Times and frequency of passenger service.
- Degree of train speed uniformity.

After reviewing these factors and the various operating plans, operating agreements, train volumes and schedules, and physical characteristics (including yards), SEA examined the capacity of each affected rail line segment. SEA then added the anticipated increases in freight train traffic that would result from the proposed Conrail Acquisition to evaluate the ability of the rail line segments to accommodate these higher volumes. If the analysis showed that the rail line segments could accommodate the higher volumes, SEA's preliminary conclusion was that the proposed Conrail Acquisition would have no adverse impact on passenger train operations.

Amtrak did not identify any rail line segments that would be unable to accommodate Amtrak trains according to its operating agreements with the Applicants because of either the proposed increase in the number of freight trains or yard capacity constraints. SEA concluded that the most important factor in Amtrak's ability to provide on-time performance is its ability to enforce the conditions of its operating agreements.

Amtrak is concerned about the capacity of its Michigan Line between Kalamazoo, Michigan and Porter, Indiana. This rail line segment is part of the Detroit, Michigan to Chicago, Illinois route on which 8 Amtrak trains operate daily. NS originally proposed to operate an unspecified number of haulage trains for the Canadian Pacific Railway (CPR) but has since withdrawn that proposal relative to Michigan.

Based on NS's decision not to pursue CPR haulage, SEA assumed that CPR haulage trains would not operate on the Michigan Line, and that CPR would continue to use its haulage rights on the CSX Detroit-to-Porter Corridor, which is freight-service only between Detroit and Grand Rapids. SEA stated in the Draft EIS that the capacity exists to operate some haulage trains on this Amtrak-owned route. Some capacity exists during the day, and considerable capacity exists at night, when only one or no passenger trains operate on the rail line segment.

Summary of Comments. Amtrak commented that the Draft EIS "seriously underestimates the capacity constraints Amtrak faces on the [Northeast Corridor]," including those hours between 10:00 p.m. and 6:00 a.m. Amtrak noted that passenger and commuter operations have grown "exponentially" since 1976, when Amtrak took over the corridor. Amtrak continued that planned improvements to the corridor would further restrict available capacity for passenger, freight, and commuter operations. Amtrak argued that the "assignment of nighttime freight trains to the two inside tracks while assigning off-hours passenger trains to the outside tracks" would not alleviate constraints on capacity between Newark and Trenton, New Jersey as the Draft EIS suggests. Amtrak added that the Draft EIS conclusions regarding the Northeast Corridor capacity "are ill-founded, and should not be retained in the [F]inal EIS."

Response. SEA analyzed the available capacity on the Northeast Corridor for moving freight, particularly between 10:00 p.m. and 6:00 a.m. SEA noted that substantial capacity exists, and recognized that Amtrak does track and catenary maintenance at night. In the Draft EIS, SEA did not direct Amtrak to use specific tracks at specific hours, such as the two inside tracks between Newark and Trenton, New Jersey. SEA stated that track capacity would be available for the additional freight trains included in the Applicants' Operating Plans. If Amtrak chooses not to use certain tracks for freight movements, it would not be a comment on the corridor's capacity but a statement of operating preference. If freight operations on the two inside tracks would increase maintenance expenses on those tracks, Amtrak can recover this increased expense in trackage rights fees. Amtrak preferred this approach in its Request for Conditions filed with the Board in October.

Summary of Comments. Amtrak commented that the Draft EIS contains three minor factual errors that SEA may want to correct in the Final EIS. They are as follows: (a) on page 4-28 of Volume 1, a misstatement that CPR filed a responsive application for trackage rights over Amtrak's line between Porter, Indiana and Kalamazoo, Michigan; (b) on page 4-39, a misstatement that Amtrak operates through the Virginia Avenue Tunnel in southeast Washington that CSX plans to improve; and (c) on page U-13 of Volume 5C, an incomplete statement of a

request for a performance oversight condition that Amtrak is requesting that the Board apply to Amtrak trains operated by both CSX and NS.

Response. Amtrak correctly noted three factual errors in the Draft EIS. However, none of them affected SEA's analyses involving Amtrak operations, nor does this Final EIS include any of that information.

Summary of Comments. Amtrak and DOT disputed the Draft EIS's conclusion that all of the rail lines that the Applicants share with passenger service could readily accommodate planned increases in freight service. They commented that the Draft EIS does not sufficiently consider the impacts on passenger train reliability that would result from increased freight traffic. DOT expressed the concern that the Draft EIS appeared to make "dubious assumptions" concerning the capacity of affected rail line segments—a factor that undermines the proposed Conrail Acquisition-related assessment of the potential environmental impacts on passenger railroads. The commentors added that the Draft EIS failed to take account of actual and projected freight train schedules in determining whether increases in proposed freight traffic would exceed a rail line's capacity. SEA assumed that the freight trains that would operate on each rail line following the proposed Conrail Acquisition would be spread evenly throughout each day, 365 days a year. This assumption, according to DOT, understated the potential impact of the Proposed Conrail Acquisition on passenger rail service. According to the commentors, SEA's analysis ignored numerous variables that affect train movements, including whether yards and terminal facilities that trains on those rail lines use would have enough capacity to absorb increases in traffic related to the proposed Conrail Acquisition. Amtrak concluded that adding freight traffic to the rail lines over which it operates would exacerbate the problems with on-time performance that Amtrak already experiences.

DOT also disputed a statement in the Draft EIS that it is possible to accommodate increased freight traffic on the rail line segment between Washington, D.C. and Richmond, Virginia. DOT noted that a "number of physical and operating factors" in addition to volume levels affect the capacity of a rail line segment.

DOT added that the train volume statistic does not account for the differences in types of freight trains and their effect on a freight railroad's capacity. DOT noted that intermodal, coal, and grain trains travel at different speeds and different priorities, and can therefore have different effects on railroad capacity. DOT recommended that CSX, Amtrak, and VRE work together to develop Operating Plans and performance standards to avoid disruptions in service. DOT also stated, "Close cooperation among the affected carriers will be necessary to match theoretical capacity to operating realities."

Response. In its analysis of rail line segment capacity, SEA assumed that if a rail line segment had capacity to accommodate the proposed increase in freight trains, the passenger trains using the rail line could operate following contractually agreed-upon schedules. SEA did not assume that dispatchers would evenly distribute operations over affected rail line segments throughout each day, although freight operations occur throughout the 24-hour day.

SEA's analysis of documents and information indicated that CSX has greatly improved the on-time performance of Amtrak trains between Washington, D.C., Richmond, Virginia, and Florida. The improvement indicated that on-time performance is not simply a function of rail line and rail yard capacity, but of operations management as well.

DOT identified the rail line segment between Washington, D.C. and Richmond, Virginia as an example of a rail line segment with both passenger and freight service concentrated in the same peak periods. SEA stated in the Draft EIS (page 4-39) that the Washington-to-Richmond rail line segment is the subject of a study being conducted by FRA, Amtrak, the State of Virginia, VRE, and CSX to identify needed improvements for future rail passenger service in this corridor. The study's objective is to identify the priority for capital spending on the rail line segment. SEA endorsed the study as the preferred course to identify and plan future capacity improvements.

SEA also considered the Rail Passenger Service Act (49 U.S.C. § 24308(c)), which authorizes DOT and FRA to enforce regulations requiring that passenger trains be dispatched before freight trains. The contract provides for priority of passenger trains over freight trains. Thus, while in theory the dispatchers could schedule a freight train in the midst of passenger train operations on a given rail line segment, the passenger trains are entitled to dispatching preference. Both Amtrak, DOT, and FRA have the power to enforce that entitlement.

Summary of Comments. DOT noted that Amtrak and most commuter rail agencies may be close to agreement with the Applicants; however, DOT urged SEA to carefully consider the impact of the proposed Conrail Acquisition on passenger operation reliability in the absence of such agreements. DOT expressed the concern that the treatment of this issue in the Draft EIS is too narrowly confined to the period of time covered by existing agreements between Conrail and passenger rail agencies. DOT considered this approach too restrictive in scope to accurately predict the potential effects of the proposed Conrail Acquisition. DOT stated that it is plausible that, when these existing agreements must be renegotiated in the near future, NS and CSX will bring different goals and incentives to the bargaining table.

Response. Operating access agreements between passenger and freight service providers require considerable time to formalize, particularly when capital spending is necessary in order to implement one or more of the parties' objectives. Mandating specific terms of operating access agreements and "arbitration procedures that will assure prompt resolution of disputes" is beyond the scope of this Final EIS. SEA also noted that most of the Tri-State area passenger rail service operates on rail lines that either a commuter authority or Amtrak owns, which gives them greater control over the agreement terms.

With regard to expiration of Amtrak's operating agreements with NS, CSX, and Conrail, the parties recently renewed existing operating agreements without causing service interruption or inconvenience to Amtrak's customers. SEA presumes that Amtrak negotiated the terms of these agreements to protect its interests. Additionally, SEA

concludes that Amtrak has significant legal and regulatory remedies at its disposal, in accordance with the Rail Passenger Service Act, that would ensure its continued operations.

Summary of Comments. The Rutgers Environmental Law Clinic commented on behalf of the Tri-State Transportation Campaign (Tri-State) that expansion of commuter or intercity rail passenger service has historically led to arguments among service providers about how track can be shared and the extent of new rail investment necessary to accommodate such expansion. Tri-State suggested that, as a condition of approval of the proposed Conrail Acquisition, the Board establish "arbitration procedures that will assure prompt resolution of disputes." Tri-State also claimed that the Draft EIS should have considered the environmental consequences of (a) long delays that have characterized service expansion proposals in recent years, and (b) the possible failure of extending Amtrak operating agreements that will expire soon with Conrail, NS, and CSX.

Response. Operating access agreements between passenger and freight service providers require considerable time to formalize, particularly where capital spending is necessary to implement one or more parties' objectives. Mandating specific terms of operating access agreements and "arbitration procedures that will assure prompt resolution of disputes" is beyond the scope of this Final EIS. SEA also noted that most of the Tri-State-area passenger rail service operates on lines owned by either a commuter authority or Amtrak, which gives them greater control over the agreement terms.

With regard to the expiration of Amtrak's operating agreements with NS, CSX, and Conrail, the parties all recently renewed existing operating agreements without causing service interruption or inconvenience to Amtrak's customers. Amtrak presumably negotiated the terms of these agreements to protect its interests. Additionally, Amtrak has significant legal and regulatory remedies at its disposal, in accordance with the Rail Passenger Service Act, that would ensure its continued operations.

SEA also noted that the State of New Jersey recently agreed with NS and CSX on a wide range of issues related to the proposed Conrail Acquisition, including the joint operation of freight and passenger service on several rail lines in that state.

Summary of Comments. The APTA "strongly" disagreed with the Draft EIS's conclusion that "each of the rail line segments with commuter trains can accommodate the proposed Acquisition-related increase in freight traffic." APTA cited as examples: (a) the VRE Fredericksburg corridor, where CSX projects a 40 percent increase (7 trains per day), and (b) MARC's commuter Brunswick corridor, where there is a proposed increase of 7 to 8 freight trains per day. APTA also contended that the proposed Conrail Acquisition may have stalled discussions between CSX, NS, and potential passenger rail service providers in New Jersey, Philadelphia, and Cleveland and that the Draft EIS did not address these problems. APTA asked that the Board condition approval of the proposed Conrail Acquisition on implementing a "means to resolve disputes [over rail line capacity] between freight and commuter railroads, and to safeguard the public's interest in and investment in passenger rail service."

Response. Train operation after the proposed Conrail Acquisition over VRE's Fredericksburg Line would include CSX freight trains, approximately 18 Amtrak passenger trains per weekday, and 12 VRE commuter trains per weekday. As part of its analysis, SEA recognized that VRE operations on the Fredericksburg Line are affected by several suboptimal features of the CSX freight route from points as far north as Jessup, Maryland on the MARC Camden Line to points as far south as the single-track bridge at Quantico Creek on the VRE Fredericksburg Line. VRE has planned capital investments that would improve some of these suboptimal features in Virginia and facilitate the expansion of VRE service.

In addition, FRA, Amtrak, the Commonwealth of Virginia, VRE, and CSX are conducting a study of the Washington, D.C.-to-Richmond, Virginia corridor. The study will identify the needed improvements for future rail passenger service in this corridor and the priorities for capital spending.

CSX has demonstrated over the last 6 months that it can dispatch VRE trains in a timely manner to and from Washington, D.C. CSX's solution to the previous on-time performance problem was not an increase in rail line and yard capacity, but rather more effective control of operations, including program maintenance planning.

Regarding the capacity of MARC's Brunswick corridor, the State of Maryland's Mass Transit Administration in September 1997 entered into a new operating agreement with CSX for MARC commuter train service on the Camden and Brunswick Lines. The State of Maryland was satisfied with the new agreement and endorsed the proposed Conrail Acquisition. The new operating agreement permits expansion of service on the Brunswick Line to serve Frederick, Maryland with 6 trains per day. Furthermore, CSX will be responsible for land acquisition and construction of the Camden-Penn connection, which in addition to regular weekday service, will permit special trains to operate to Baltimore Orioles and Ravens games at Camden Yard via the Northeast Corridor. To protect existing service, there will be no change in commuter train operations on the Camden Line until the Camden-to-Penn connection is available. This connection will permit some MARC Penn Line (Northeast Corridor) trains to use Camden Station.

APTA did not provide a description of how the proposed Conrail Acquisition has stalled commuter rail service expansion in New Jersey, Philadelphia, and Cleveland. The Draft EIS examined the impact on planned commuter rail service that would use lines with a projected increase in the number of freight trains per day, if those plans were sufficiently advanced and funded. SEA concluded that passenger service proposals that are not yet funded are preliminary; therefore, this Final EIS could not address these proposals.

Summary of Comments. The Atlanta Regional Commission, the regional planning and intergovernmental coordination agency for the 64-city, ten-county region surrounding Atlanta, Georgia, requested that the EIS "examine all opportunities for cooperation on commuter rail and both CSX and Norfolk Southern should be required to work with the state departments of transportation on such opportunities as a part of the acquisition agreement." The Unified

Government of Athens-Clarke County commented that the Governor of the State of Georgia has allocated funds to perform preliminary engineering on the corridor between Athens and Atlanta for passenger service. The Unified Government expressed its hope that "the acquisition of Conrail by CSX and Norfolk Southern will further this effort."

Response. In the Draft EIS, SEA analyzed the impacts the proposed Conrail Acquisition would have on passenger rail service using rail line segments that would experience an increase in freight trains, and on plans for passenger service that SEA received and that have been finalized and funded. SEA did not identify any adverse impacts on existing Amtrak service in Georgia. In addition, SEA did not receive information concerning commuter service plans for the Atlanta area or the Athens-to-Atlanta corridor to include in its analysis. SEA concluded the proposed Conrail Acquisition would not prevent the State of Georgia Department of Transportation or the Unified Government of Athens-Clarke County from negotiating an operating access agreement for commuter rail service that would utilize the properties of either NS or CSX. In this Final EIS, SEA did not address as yet unfunded or preliminary plans.

Summary of Comments. DOT commented that Conrail, the various commuter rail agencies, and Amtrak have managed to operate on each other's lines "in relatively harmonious fashion." DOT is concerned that replacing Conrail with CSX and NS "introduces at least the potential for concern" that this interdependent arrangement might not survive. Consequentially, DOT urged the Board to retain oversight as a condition of approval so it has "the ability to respond to demonstrations of adverse impact."

Response. SEA's analysis of existing and proposed passenger and commuter rail service indicated that the proposed Conrail Acquisition would not affect rail commuters and Amtrak passengers. SEA analyzed rail line segments that would carry both services and determined that their capacity would be sufficient to handle current traffic and CSX's and NS's projected freight increases.

The overwhelming majority of rail commuters that the proposed Conrail Acquisition could affect would continue to travel on rail line segments that either the commuter authorities or Amtrak dispatches. In the case of MARC trains on CSX rail lines in Maryland, SEA noted that such trains had excellent on-time performances, frequently better than Amtrak's performance for MARC's Penn Line on the Northeast Corridor. SEA also noted that Amtrak and VRE trains in the last six months have experienced dramatic improvements in on-time performance on the Washington-to-Richmond corridor. The renewed managerial attention by CSX has contributed to these improvements.

SEA did not analyze the potential impact of the proposed Conrail Acquisition on passenger service on-time performance. The Rail Passenger Service Act authorizes DOT and FRA to ensure that Amtrak trains receive dispatching preference over freight trains. SEA agreed with DOT's assessment that the mutual interdependence among Conrail, Amtrak, and the commuter authorities has produced relatively "harmonious"

relationships. The proposed increased level of CSX and NS operations on Amtrak rail lines in the Northeast Corridor would necessitate a continued high degree of cooperation. SEA concluded that mutual interests would continue to promote the harmony to which DOT referred.

Summary of Comments. CSX opposed SEA's proposed temporal train separation mitigation measure that would require that freight trains be clear of the track 15 minutes before and after the expected arrival of a passenger train because such a condition would effectively disable CSX's use of the Fredericksburg, Virginia and Point of Rocks, Maryland line segments for freight movements "during periods of significant passenger use."

Response. SEA has reviewed its analysis and determined that modern signal systems and automatic train protection technologies that the Applicants employ adequately address the increased risk of train collisions. Therefore, SEA withdraws its proposed mitigation of temporal separation of passenger and freight trains. See Chapter 4, "Summary of Environmental Review," Section 4.4, "Safety: Passenger Rail Operations," of this Final EIS for a detailed discussion. For SEA's recommended mitigation for passenger rail safety, refer to Chapter 7, "Recommended Environmental Conditions," of this Final EIS.

Summary of Comments. APTA stated that the Draft EIS underestimated changes in transportation and congestion that would result from freight rail changes, hindering commuter rail operators from providing service. APTA continued that the Draft EIS "does not adequately address the effect of delays and lost productivity on the overall transportation system due to potential decreased commuter train use and attendant increased private vehicle use and traffic congestion."

Response. The analysis of passenger rail operations that the Draft EIS described did not identify a decrease in commuter train operations as a result of the proposed Conrail Acquisition. Therefore, no increase in private vehicle use would occur as a result of the proposed Conrail Acquisition.

5.2.3.7 Transportation: Highway/Rail At-grade Crossing Delay

Summary of Comments. NS commented that the methodology that SEA used to identify highway/rail at-grade crossings that warrant mitigation is flawed. NS stated that the Draft EIS improperly used a methodology from the *Highway Capacity Manual* (HCM) that the Transportation Research Board developed for assessing delay at signalized roadway intersections. NS indicated that the HCM does not address the operational efficiency of highway/rail at-grade crossings, and procedures do not exist to measure highway/rail at-grade crossing efficiency in terms of level of service (LOS). In addition, NS stated that "the HCM does not contain the table shown at C-14 of the D[raft] EIS, which is purported to draw a correlation between [level of service] and delay at highway/rail at-grade crossings." NS indicated that the table in the Draft EIS resembled a table from the HCM, but described average delay per vehicle, not stopped delay per vehicle as in the HCM. NS indicated that the Draft EIS

improperly modified this table to imply the same relationship between LOS and average delay per vehicle at a grade crossing. NS asserted that there are considerable differences between the characteristics of a signalized intersection and a highway/rail at-grade crossing, and that the procedures for evaluating signalized intersections are "inappropriate to estimate delay impacts of grade crossings."

NS stated that the equation SEA used to calculate delay oversimplified a very complex traffic operation. NS stated that by using this equation, SEA overestimated projected increases in average delay per vehicle at highway/rail at-grade crossings. NS cited examples of two crossings at which SEA overestimated delays by 100 percent. NS recommended that SEA use the correct equation in the Final EIS.

NS stated that the consideration of LOS exceeds the Board's regulatory scope. NS stated that the Draft EIS displaced the authority of state and local agencies responsible for grade separation issues. NS remarked that the determination of need for grade separations in the Draft EIS lacks critical site-specific considerations. NS also stated that the recommendations in the Draft EIS threaten to disrupt well-established policies and practices regarding cost allocation for highway/rail at-grade crossing improvements and grade separations.

NS expressed the viewpoint that few, if any, highway/rail at-grade crossings would experience significant delays as a result of the proposed Conrail Acquisition. NS urged SEA to prepare a site-specific analysis before recommending final mitigation. NS noted, as an example, that few vehicles may use a roadway at the time that trains block the highway/rail at-grade crossing. NS suggested that SEA use the results of the analysis to rank the crossings in terms of delay severity. State authorities could make their own decisions about the need for mitigation. NS suggested that the Board direct the Applicants to consult with the appropriate state and local authorities, rather than to implement specific mitigation measures.

CSX commented that performing an initial screening for highway/rail at-grade crossing delay mitigation is an appropriate function of the Draft EIS, but a more detailed analysis, including site-specific information, must follow the initial screening. CSX stated that the Board should not undertake this site-specific analysis as part of the environmental review process. CSX indicated that CSX should consult with state agencies for appropriate recommendations with respect to vehicle delay concerns at specific highway/rail at-grade crossings. The state agencies should then determine whether to require any mitigation.

Response. In response to NS's comments about SEA's methodology, SEA provides the following explanation:

2. Use of the HCM LOS Criteria

SEA applied the principles in Chapter 9, "Signalized Intersections," of the HCM to evaluate average delay for all vehicles. Although the manual bases LOS criteria on a 15-minute analysis period, SEA applied these criteria to a 24-hour period. Applying the criteria to a 24-hour period is appropriate because SEA used 24-hour data for all

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elements of the analysis. SEA characterized highway/rail at-grade crossings as signalized intersections. The use of daily train volumes and daily highway traffic volume results in a uniform measure of daily operation at highway/rail at-grade crossings, similar to the uniform traffic signal cycle over a 15-minute analysis period. This approach permitted SEA to expand the period of the analysis from the 15 minutes in the manual to 24 hours in the Draft EIS.

Appendix C, "Traffic and Transportation," of the Draft EIS correlates LOS to the average delay per vehicle (page C-14). SEA determined the average delay per vehicle by calculating the total stopped vehicle delay over the entire day and dividing that figure by the ADT. NS indicated that this may be inconsistent with HCM Table 9-1, which relates LOS to stopped delay per vehicle (also described as average stopped delay per vehicle on HCM page 9-4). SEA's method, however, is consistent with the HCM because the manual defines average stopped delay as the total stopped delay that traffic experiences on a roadway approach or group of travel lanes during a designated time period, divided by the total roadway volume entering the intersection on the roadway approach or group of lanes during the same time period (see pages 1-9 and 1-10 of the HCM).

The definition of stopped delay per vehicle in the HCM is the same as SEA's definition of average delay per vehicle. In addition, the definition in the manual does not specify a particular time period; it specifies only the use of the same time period for calculating the total stopped delay and total traffic volume.

SEA notes that the manual uses the expression "stopped vehicle" to emphasize that it includes the delay while a vehicle is stopped but not any delay while a vehicle is slowing down. The Draft EIS correctly interpreted and used the relationship and formulas in the HCM.

The information available to SEA for preparing the Draft EIS included daily train counts, ADT volumes, average train lengths, and train speeds from the FRA database; track charts; and train timetables. SEA assumed that freight trains operate with no fixed schedule. As a result, SEA was unable to assume that trains would arrive during periods of low highway traffic volumes or that no trains would arrive during periods of high traffic volume.

2. Estimation of Delay per Stopped Vehicle

NS correctly identified the equation that SEA used to calculate average delay per stopped vehicle as one-half of the duration of the vehicle queue. This equation accounts for the time that the queue requires to dissipate after the train has passed the highway/rail at-grade crossing. Using this equation permits variation in the dissipating time for highways with different traffic volumes. The higher the traffic volume per travel lane, the greater the time needed for the queue to dissipate.

SEA assumed that the queue begins to dissipate after the train passes the highway/rail at-grade crossing and the warning device is no longer activated. SEA also assumed that vehicles arriving after the queue begins to dissipate do not stop but may slow down. SEA did not consider those vehicles that slow down to be delayed vehicles. This is consistent with the assumption concerning vehicle delay contained in the HCM.

SEA recognizes that there are several different methods for calculating vehicle delay. The method that NS suggested is valid, as is the method that SEA used in the Draft EIS. Another method could assume that the delay calculations should consider vehicles approaching the highway/rail at-grade crossing after the queue begins to dissipate. Such a method would result in shorter crossing delay per stopped vehicle but a larger number of delayed vehicles. These two factors would counterbalance each other, and the results would not change SEA's recommendations. Thus, SEA concludes that the delay calculations in the Draft EIS are reasonable and provide a sound basis for evaluating the effects of the proposed Conrail Acquisition on highway/rail at-grade crossings.

In addition, SEA notes that the Board has the authority to impose conditions to mitigate the potential significant environmental impacts of the proposed Conrail Acquisition. The Board recognizes that state transportation agencies have primary responsibility for implementing highway improvement projects.

The primary data source for this analysis was the FRA database of all highway/rail at-grade crossings in the United States. SEA made site visits to highway/rail at-grade crossings to collect more detailed information.

Summary of Comments. DOT commented that SEA should use a corridor approach to identify and mitigate potential environmental impacts at highway/rail at-grade crossings in a more realistic fashion. DOT stated that trains on rail lines that cross a town may block several highway/rail at-grade crossings at the same time. DOT indicated that even if no single highway/rail at-grade crossing meets the threshold for environmental analysis of 5,000 ADT, the Final EIS should aggregate the traffic of several streets close to each other. DOT expressed the opinion that the Board should make the Applicants responsible for mitigating these problems.

The State of Ohio also commented that the Draft EIS relied too heavily on a statistical analysis of numbers of vehicles, train cars, and speed. The State added that this analysis failed to take into account real-world conditions that block highway/rail at-grade crossings. The State indicated that the 5,000 ADT threshold for environmental analysis was too high and eliminated from the analysis highway/rail at-grade crossings that would experience severe potential environmental impacts. In addition, the State suggested that SEA could effectively evaluate this issue only through on-site field reviews in affected communities to examine the factors that contribute to highway/rail at-grade crossing blockages.

Response. SEA performed its primary analysis of delay at individual highway/rail at-grade crossings. This analysis provided the basis for evaluating the potential effects of

the proposed Conrail Acquisition along highways with their distinct physical characteristics, such as number of lanes, and ADT volumes.

SEA also conducted a highway corridor delay analysis at locations where roadways located within 800 feet of each other cross the rail line. SEA performed these corridor analyses in northwestern Ohio, the Cleveland area, and Lafayette, Indiana. See Appendix G, "Transportation: Highway/Rail At-grade Crossing Traffic Delay Analysis," of this Final EIS for further discussion.

SEA applied a 5,000 ADT minimum threshold for its primary delay analysis. In SEA's experience, for roadways with ADT volumes below 5,000, the additional vehicle delay that would result from Acquisition-related increased train traffic would be minimal. However, SEA did not apply the 5,000 ADT minimum threshold for the corridor analysis.

SEA agrees that field observations are important and has conducted visits to many sites, including those recommended for mitigation in the Draft EIS. From these observations, SEA verified or modified its data describing the physical and operational characteristics of the crossings. Where appropriate, SEA performed revised analyses to reflect observed differences from the characteristics assumed in the Draft EIS.

Summary of Comments. CSX stated that the traffic delay analysis in the Draft EIS would be appropriate as a screening tool, but said that SEA should not use it to analyze potential environmental impacts in detail or to determine mitigation. CSX provided a critique of the Draft EIS analysis methodology and recommended another methodology for more detailed evaluations.

Response. SEA analyzed the change in vehicle delay that would result from the train traffic increase after the proposed Conrail Acquisition. SEA calculated the crossing delay per stopped vehicle, the average delay for all vehicles, and the resulting LOS for highway/rail at-grade crossings on rail line segments that met the Board's thresholds for environmental analysis. The primary data source for this analysis was FRA's database of all highway/rail at-grade crossings in the United States. SEA made site visits at crossings to collect more detailed information. This approach was the appropriate level of analysis for a study of this scope and magnitude. It was effective in determining the potential environmental impacts of the proposed Conrail Acquisition as well as those locations where mitigation would be warranted. SEA's approach was as follows:

1. Use of 30-Second Delay Criterion

SEA applied the 30-second delay criterion of significance to the crossing delay per stopped vehicle, which is the average amount of time a driver would have to wait at a highway/rail at-grade crossing when traffic stops to let a train pass. SEA applied this criterion only to stopped vehicles. Train length, train speed, and roadway traffic volume affect this measure of delay. SEA determined that a potential significant impact would

occur if vehicle delay at highway/rail at-grade crossings increased by 30 seconds. There is no universally accepted standard, but SEA maintains that this represents a driver tolerance level above which the driver perceives added delay for an intermittent blocked crossing event. In the Draft EIS, SEA identified two highway/rail at-grade crossings in Indiana—SR 9 (FRA ID 474600L) and Harrison Street (FRA ID 474601T)—that would meet the 30-second criterion. These crossings would meet the criterion mainly because average train speeds through these crossings would decrease from 40 mph before the proposed Conrail Acquisition to 20 mph after the proposed Acquisition. This is because NS estimates that 6.8 trains per day (out of 11.8) over this rail line segment would utilize a 10 mph connecting track near these crossings.

2. Use of the HCM LOS Criteria

SEA applied the principles in Chapter 9, "Signalized Intersections," of the HCM in its evaluation of average delay for all vehicles. Although the LOS criteria in the manual are based on a 15-minute analysis period, SEA applied these criteria to a 24-hour period. Applying the criteria to a 24-hour period is appropriate because SEA used 24-hour data for all elements of the analysis. SEA characterized highway/rail at-grade crossings as if they were signalized intersections. The use of daily train volumes and daily highway traffic volume results in a uniform measure of daily operation at highway/rail at-grade crossings, similar to the uniform traffic signal cycle over a 15-minute analysis period. This approach permitted SEA to expand the period of the analysis from the 15 minutes in the manual to 24 hours in the Draft EIS.

Appendix C, "Traffic and Transportation," of the Draft EIS correlates LOS to average delay per vehicle (page C-14). SEA determined the average delay per vehicle by calculating the total stopped vehicle delay experienced over the entire day and dividing that figure by the ADT. CSX indicated that this may be inconsistent with Table 9-1 in the HCM, which relates LOS to stopped delay per vehicle (the HCM also describes this as average stopped delay per vehicle on page 9-4). SEA's method, however, is consistent with the HCM because the manual defines average stopped delay as the total stopped delay that traffic experiences on a roadway approach or group of travel lanes during a designated time period, divided by the total roadway volume entering the intersection on the roadway approach or group of lanes during the same time period (see pages 1-9 and 1-10 of the HCM).

The definition of stopped delay per vehicle in the HCM is the same as SEA's definition of average delay per vehicle. In addition, the manual's definition does not specify a particular time period; it specifies only the use of the same time period for calculating the total stopped delay and total traffic volume.

SEA notes that the manual uses the expression "stopped vehicle" to emphasize that it includes the delay while a vehicle is stopped but not any delay while a vehicle is slowing down. The Draft EIS correctly interpreted and applied the relationship and formulas in the HCM.

3. Estimation of Delay per Stopped Vehicle

CSX correctly identified the equation that SEA used to calculate average delay per stopped vehicle as one-half of the duration of the vehicle queue. This equation accounts for the time required for the queue to dissipate after the train has passed the highway/rail at-grade crossing. Using this equation permits variation in the dissipating time for highways with different traffic volumes. The higher the traffic volume per travel lane, the greater the amount of time required for the queue to dissipate.

SEA assumed that the queue begins to dissipate after the train passes the crossing and the warning device is no longer activated. SEA also assumed that vehicles arriving after the queue begins to dissipate do not stop but may slow down. SEA did not consider those vehicles that slow down to be delayed vehicles. This is consistent with the assumption concerning vehicle delay contained in the HCM.

SEA initially tested the equation for average delay per stopped vehicle suggested in the comment. This equation, with the constant 0.3 minutes to represent queue dissipation time, resulted in the same average delay time figures on highways with the same number of lanes but different traffic volumes crossing the same rail line segment. SEA concluded that this result was not realistic.

SEA recognizes that there are several different methods for calculating vehicle delay. The method suggested in the comment is valid, as is the method SEA used in the Draft EIS. Another method could assume that the delay calculations should consider vehicles approaching the highway/rail at-grade crossing after the queue begins to dissipate. Such a method would result in shorter crossing delay per stopped vehicle but a larger number of delayed vehicles. These two factors would counterbalance each other, and the results would not change SEA's recommendations. Thus, SEA concludes that the delay calculations in the Draft EIS are reasonable and provide a sound basis for evaluating the effects of the proposed Conrail Acquisition on highway/rail at-grade crossings.

4. The Importance of Field Observation

SEA agrees that field observations are important. SEA conducted visits to many sites, including those that the Draft EIS recommended for mitigation. From these observations, SEA verified or modified its data describing the physical and operational characteristics of the crossings. Where appropriate, SEA performed revised analyses to reflect observed differences from the characteristics that the Draft EIS assumed.

CSX indicated that field observations may show that during periods of peak roadway traffic, trains may not block the crossing and that there should be field verification of train speeds, train length, and highway vehicle arrival frequency. SEA concluded that such a level of analysis was not appropriate for this study. SEA used reasonable assumptions and data that accurately described train operations, including daily train counts; average train speeds from the FRA database, track charts, and train timetables;

and average train lengths that the Applicants provided. SEA assumed that freight trains do not operate on fixed schedules.

Summary of Comments. CSX commented that SEA should withdraw, modify, or supplement with alternative recommendations some of the mitigation measures that SEA recommended in the Draft EIS. CSX stated that "the proposed upgrading of certain grade crossings or construction of grade separations at CSX's expense" recommended by the Draft EIS goes beyond the Board's conditioning authority.

CSX indicated that 23 United States Code (U.S.C.), Section 130, allowed the Secretary of Transportation to require the Applicants to pay up to 10 percent of the costs of improvements that represented "a net benefit to the railroad." CSX stated that the Secretary determined that highway/rail at-grade crossing improvements are of "no ascertainable net benefit to the railroads and there shall be no required railroad share of the costs."

Response. SEA's proposed mitigation in the Draft EIS reflected careful consideration of the information available in each case. Based on public comments on the Draft EIS, SEA revised its proposed mitigation in some cases where additional information or analysis showed a revision to be appropriate as part of its recommended mitigation in the Final EIS. If the Board approves the proposed Conrail Acquisition, the Board will determine the final environmental mitigation in each case, taking into account all public comments on the Draft EIS and SEA's recommended mitigation in the Final EIS.

The Board has broad statutory authority to impose conditions to protect public health and safety in its decisions regarding transactions such as the proposed Conrail Acquisition. Such conditions may include upgrading highway/rail at-grade crossings or the construction of grade separations where the Board finds that such improvements are appropriate to mitigate the environmental effects of Acquisition-related increases in train traffic.

The Board's authority to impose conditions, at 49 U.S.C. §11324(c), is consistent with rail transportation policy, at 49 U.S.C. §10101(8), which states that "it is the policy of the United States Government to operate such activities without detriment to the public health and safety." Section 101(b) of NEPA (42 U.S.C. 4321) provides that it is the continuing responsibility of the Federal government to use all practicable means to provide safe and healthful surroundings and to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety or other undesirable or unintended consequences. The NEPA implementing regulations, at 40 CFR §1505.3(a), direct Federal agencies to "include appropriate [mitigation] conditions in grants, permits, and other approvals."

5.2.3.8 Transportation: Roadway Systems

Summary of Comments. EPA expressed the concern that the Draft EIS did not adequately address the potential environmental impacts from the relocation of intermodal facilities and

increased truck activity at these facilities. EPA stated that the "current conditions or Level of Service of these local roadways were not identified or the effect of additional truck traffic evaluated." EPA suggested that the Board coordinate with the state departments of transportation on all proposed activities within each state.

Response. SEA's analysis found that the projected increase in truck traffic resulting from the proposed Conrail Acquisition would add less than 10 percent to the existing traffic on the vast majority of roadways that trucks would use in the vicinity of intermodal facilities. At locations where the projected increases would exceed 10 percent, SEA compared the resulting volume to the capacity of the roadways and concluded that the existing roadways could accommodate the additional truck traffic with no potentially significant environmental impacts on the roadways.

Summary of Comments. The Tri-County Regional Planning Commission in Pennsylvania disagreed with the regional analysis methodology that SEA used to treat intermodal terminal access. The Commission suggested that the Draft EIS should have addressed these issues on a local level.

Response. SEA analyzed the potential local impact of truck traffic changes in activity at intermodal terminals, including the proposed facility at Rutherford, which is in the Tri-County area. The Draft EIS Volume 1, Chapter 3, "Analysis Methods and Potential Mitigation Strategies," page 3-20 discussed the methods SEA used to determine transportation impacts from increased truck traffic at intermodal facilities. The Draft EIS, Volume 5A, Appendix C, "Traffic and Transportation," pages C-19 and C-20 described the analysis. SEA considered the level of analysis to be appropriate.

5.2.3.9 Transportation: Other

Summary of Comments. NS commented that SEA should delete CPR traffic on the West Detroit-to-Jackson, Michigan (N-121) and Jackson-to-Kalamazoo, Michigan (N-120) rail line segments. NS explained that "as a result, the two line segments would not meet STB [the Board] thresholds and, therefore, no longer need to be analyzed for environmental impacts."

Regarding train traffic on the Kankakee connection, NS noted, "In summary, the correct information was properly reflected in the initial D[raft] EIS at IL-22. The January 12, 1998 Errata was incorrect. The discussion and references in Volume 3A, page IL-74 are incorrect. *Applying the correct information of 0 trains per day, there is no potential impact in Kankakee. The F[inal] EIS should consistently reflect the correct information in its analysis.*" NS summarized other discrepancies in traffic data in the Draft EIS and suggested corrections SEA should make.

NS also commented that the Draft EIS "incorrectly states NS is currently constructing a new intermodal facility in Fulton County, Georgia which is related to the proposed Transaction." NS added that "NS is currently in the process of seeking permits for a new intermodal 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 F[inal] EIS.”

Response. SEA received a letter from NS dated October 30, 1997 stating that the volumes of trains per day for rail line segment N-121 from West Detroit to Jackson and rail line segment N-120 from Jackson to Kalamazoo include traffic from CPR. NS has withdrawn its proposal to operate this CPR traffic over these rail line segments. CPR traffic currently does and will continue to operate over CSX on a haulage rights basis. Therefore, this traffic should not be included in NS traffic volumes.

The original Environmental Report submitted with the Application in June 1997 stated that 6 trains per day would use the proposed Kankakee connection. NS subsequently revised the estimated changes to rail traffic on the connection in a letter dated October 2, 1997. This included statements that there would be zero (0) trains per day on the new connection, because it is intended for future traffic growth. The Draft EIS discussion on page IL-22 correctly reflects this information. However, the environmental justice discussion on page IL-74 incorrectly references the original projection of 6 trains per day on the new connection. The Supplemental Errata, dated January 12, 1998, incorrectly changed the text on page IL-22 to the 6 trains per day figure. SEA acknowledges the corrections in the data as noted by NS, and the Final EIS reflects these changes—that is, that there would be zero (0) trains per day on the new connection and that the connection is intended for future traffic growth.

SEA analyzed the potential impacts at the existing NS Fulton County Inman Intermodal Yard facility caused by the increase of 143 trucks per day. NS is currently seeking permits for a new intermodal facility in Austell, Cobb County, Georgia. SEA has determined that the action at Austell is unrelated to the proposed Conrail Acquisition.

5.2.3.10 Energy

Summary of Comments. The Maryland Department of the Environment recommended that projects use energy-efficient equipment to minimize secondary environmental impacts.

Response. SEA recognizes the Maryland Department of the Environment’s concern that projects should use energy-efficient equipment to minimize secondary effects. The Board has limited jurisdiction in its licensing and oversight of acquisitions, and cannot impose specific requirements on the Applicants as to the types of equipment that they would use in the implementation of the proposed Conrail Acquisition, if approved. However, SEA expects the Applicants would strive to maximize the energy efficiency of their operations.

5.2.3.11 Air Quality

Summary of Comments. The Tri-County Regional Planning Commission of Pennsylvania stated that the regional method used to identify air quality effects is inappropriate, and that the

analysis should have been done on a local level. The Commission recommended using local analysis to ensure compliance with existing air quality and congestion mitigation goals, the purpose of which is to meet Clean Air Act and Intermodal Surface Transportation Efficiency Act requirements.

Response. SEA has estimated emissions increases on a local (county) basis, as shown in the Draft EIS. Local impacts can be a concern for some pollutants, such as sulfur dioxide (SO₂). However, nitrogen oxides (NO_x) are the only pollutant for which local emissions increases were non-negligible anywhere in Pennsylvania. Recent studies by the Ozone Transport Assessment Group have shown that NO_x effects on ozone nonattainment are primarily a regional concern, rather than a local one. Therefore, SEA does not think that local NO_x emissions changes, particularly the relatively low and widely distributed emissions changes shown in the Draft EIS, would have any measurable effect on local ozone levels.

Summary of Comments. NS commented that there appears to be an inconsistency between impacts reported in Attachments E-2 and E-4 of Appendix E, "Air Quality," of the Draft EIS. NS suggested that if the difference in the two sets of data is a result of Attachment E-2 presenting air pollutant emissions increases while Attachment E-4 presents net air pollutant emission changes, this could have been stated clearly in Appendix E, "Air Quality" of the Draft EIS.

Response. The apparent inconsistencies in the data in Attachments E-2 and E-4 of the Draft EIS that NS noted arise from two factors. First, CSX and NS provided data in E-2, which SEA used for screening purposes, while SEA generated the data in Attachment E-4 as part of its detailed analysis. Second, NS is correct in its suggestion that Attachment E-2 presented only the activities that exceeded the Board's threshold for environmental analysis, while Attachment E-4 presented emissions changes (increases or decreases) for rail segments in all counties for which SEA performed a detailed emissions analysis. See Section 5.3.18, "Greater Cleveland Area—Air Quality," of this chapter for further explanation.

Summary of Comments. NS commented that the emission factor for NO_x used in the rail line segment emissions calculations as presented in Table E-3, page E-9 is incorrect. NS stated the listed emission factor is 565.4 lb/Kgal, and the correct factor should be 564.2 lb/Kgal.

Response. SEA used the same locomotive NO_x emission factor used by the Applicants in their Environmental Report submitted with the Joint Control Application. Prior to completing the analysis, SEA reviewed this factor and thinks that it is valid and is representative of the current locomotive fleet average emission factor. Also, the minor change suggested is insignificant and would not change the results substantially nor alter the conclusions of the analysis.

Summary of Comments. NS commented that the emission factors for NO_x and volatile organic compounds for yard locomotives used in the rail yard emissions calculations as presented in

Table E-4, page E-10 are incorrect. NS stated the listed emission factor for NO_x is 830.7 lb/Kgal and should be 827.5 lb/Kgal; the listed emission factor for volatile organic compounds is 46.2 lb/Kgal and should be 46.0 lb/Kgal.

Response. SEA used the same NO_x and volatile organic compound emission factors for yard locomotives used by the Applicants in their Environmental Report submitted with the Joint Control Application. Prior to completing the analysis, SEA reviewed these factors and concluded that they are valid and representative of the current locomotive fleet average emission factors. Also, the minor changes suggested are insignificant and would not change the results substantially nor alter the conclusions of the analysis.

Summary of Comments. EPA stated that the Draft EIS could have described the air quality impacts more fully, and that the Board needed to address the applicability of the General Conformity Rules (40 CFR 93.150-160).

Response. EPA has stated that it is up to each Federal agency to review its own unique legal authority and determine what emission-generating activities it has the ability to control (see *General Conformity Guidance: Questions and Answers*, Office of Air Quality Planning and Standards July 13, 1994, page 14). The Board has examined the issue of control and has determined that it cannot practicably control railroad emissions as part of a continuing program responsibility.

EPA has defined "control" to mean "the ability to regulate in some way the emissions from the Federal action." This ability to regulate may be demonstrated directly, such as through the implementation of regulations or conditions on the nature of the activity that permits or approvals may establish, or indirectly by the design of the action (see *General Conformity Guidance: Questions and Answers*, EPA Office of Air Quality Planning and Standards, July 13, 1994, page 13). The Board has no legal jurisdiction to control train emissions; and therefore cannot make a General Conformity determination for the proposed Conrail Acquisition.

In support of this statement, SEA provides the following:

Under the Interstate Commerce Commission Termination Act, 49 U.S.C. 11323-25, the Board has the responsibility to review, and approve or disapprove, applications for the acquisition of control of railroads. The Board's approval or disapproval must be based on the evaluation of the following issues: (a) the effect of the proposed transaction on the adequacy of transportation to the public; (b) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction; (c) the total fixed charges that result from the proposed transaction; (d) the interest of rail carrier employees affected by the proposed transaction; and (e) the adverse effect, if any, that the proposed transaction would have on competition among rail carriers in the affected region or in the national rail system.

The Board licenses railroads as common carriers, meaning that railroads are required to accept goods and materials for transport from all customers upon reasonable request and at a reasonable rate. The Board does not regulate how many trains the railroads operate or where they can operate. Railroads are able to operate as many trains as they need in order to serve their customers, even though changes in operations may have the secondary effect of increasing or decreasing emissions in specific locations. Such changes are not subject to Board approval or jurisdiction. Board approval of the Acquisition would allow the transfer of ownership, but the approval would not cause an increase in railroad activities or emissions.

Although the NEPA process requires the Board to evaluate and disclose potential impacts of the Acquisition, it does not expand the Board's jurisdiction or authority relative to the approval or disapproval of the Acquisition. Therefore, although emissions may result from changes in train traffic, the Board does not base its approval on the changes in train traffic or the emissions potentially produced. The Board has examined the issue of control of emissions and has determined that it does not have the authority to practicably control railroad emissions as part of a continuing program responsibility.

Although the Board has broad authority to impose conditions, including environmental conditions developed through the environmental review process, its power is not limitless. Conditions imposed by the Board must be reasonable and must address issues directly related to the action under the Board's consideration. For example, in rail merger cases, agency policy has long been to focus on the potential environmental impacts related to changes in rail traffic patterns on existing lines. The agency's practice consistently has been to mitigate only those impacts that result directly from the merger. It is the Board's policy not to require mitigation of pre-existing conditions.

In developing and evaluating environmental mitigation options, the Board is also guided by the historical authority of ICC and Congressional intent regarding railroad regulation. Over the last 20 years, Congress has continued to reduce the regulatory role of ICC and the Board. The statute allows carriers to compete and to increase the efficiency of their services, with regulatory intervention to be employed only as a last resort to prevent an abuse of market power. See 49 U.S.C. 1010.

On applicability of General Conformity determinations, 40 CFR 51.853 subsection (b) covers situations such as the Board's action on railroad acquisitions and states: "A conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a Federal action would equal or exceed any of the rates in paragraphs (b) (1) or (2) of this section." Paragraphs (b) (1) and (2)

provide emissions thresholds in tons per year for various pollutants and types of nonattainment and maintenance areas.

According to 40 CFR 51.852, the definition of "direct emissions" is "emissions of a criteria pollutant or its precursor that are caused or initiated by the Federal action and occur at the same time and place as the action." Emissions from train traffic are a product of market forces affecting the flow of goods and materials. The railroads decide on a continuous and ongoing basis which routes are most efficient to meet customers' needs. The Board does not regulate these factors; therefore, no direct emissions occur as a result of the Board's action.

Continuing, 40 CFR 51.852 defines "indirect emissions" as "those emissions of a criteria pollutant or its precursors that (1) are caused by the Federal action, but may occur later in time and/or may be farther removed in distance from the action itself but are still reasonably foreseeable; and (2) the Federal Agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal Agency." Also, 40 CFR 51.852 defines emissions for which a Federal agency has a "continuing program responsibility" as "emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless such activities are required by the Federal agency." The Board's approval does not require the railroads to transport more freight or transport freight by any specific route. Because the Board has no continuing program responsibility over railroad activities that take place after the approval of the Acquisition, there are no indirect emissions associated with the Board's action.

In addition, 40 CFR 51.852 defines "caused by" in relation to direct and indirect emissions as "emissions that would not otherwise occur in the absence of the Federal action." In the absence of the Board's approval, the same amount of freight would have to be moved to the same destinations. Such transport may be done by trucks, however, which are less energy-efficient and result in greater emissions of most pollutants than rail transport.

The preamble to the General Conformity Rules in the context of Federal activities in marketing electric power further clarifies this definition. Such activities are exempt from General Conformity because customers can get power from other sources; therefore, the emissions arising from generating the power are not the result of the Federal marketing activity (58 FR 63,226, Nov. 30, 1993). Freight transport is an analogous situation because freight transport will occur whether by the railroads or not.

Also on the topic of General Conformity, 40 CFR 51.852 defines a Federal action subject to General Conformity Rules as any activity that a Federal agency supports in any way, provides financial assistance for, licenses, permits, or approves. On the other hand, 40 CFR 51.853 (c)(2) identifies Federal actions not

subject to these rules. 40 CFR 51.853 (c) (2) (xiv) identifies "transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer" as one of the Federal actions not subject to the General Conformity Rules. Therefore, under these definitions, the proposed Conrail Acquisition is exempt from General Conformity Rules because it is a transfer of ownership and titles.

Summary of Comments. EPA stated that Lake and Porter Counties in Indiana have been granted NO_x waivers, but that Vanderburgh, Marion, St. Joseph, and Elkhart Counties all have maintenance plans and a NO_x budget in place. EPA further stated that SEA should compare NO_x emissions in these counties with emissions projected in the maintenance plan; if they are greater than the growth allowed, then implementation of mitigation measures could bring the project into conformity.

EPA also stated that Monroe, Wayne, and Washtenaw Counties in Michigan are part of the Detroit-Ann Arbor, Michigan metropolitan area, which is an ozone maintenance area, and that Wayne County is part of a nonattainment area for carbon monoxide. A recent ozone violation in the Detroit-Ann Arbor area prompted EPA to remove the area's NO_x waiver. EPA requested that SEA address these issues in the Final EIS.

Response. SEA recognizes that Lake and Porter Counties in Indiana have been granted NO_x waivers, and the Draft EIS correctly accounted for this issue.

With respect to Marion, St. Joseph, and Elkhart Counties, activities related to the proposed Conrail Acquisition do not result in any emissions increases above conformity thresholds; therefore, conformity requirements would not apply in any event. SEA used conformity thresholds to identify which counties would have detailed analysis of net emissions increases. Apart from the potential impacts of the proposed Conrail Acquisition, the Indiana Department of Environmental Management has projected that NO_x emissions in a 13-county area including Vanderburgh County would decrease by 5.7 percent between the years 1990 and 2006. The "Revision to Indiana State Implementation Plan, Maintenance Plan for Ozone Attainment, Vanderburgh County," prepared by the Department, indicated that the last measured ozone National Ambient Air Quality Standards (NAAQS) violations in Vanderburgh County occurred in 1988.

SEA has estimated that the proposed Conrail Acquisition would temporarily increase rail-related NO_x emissions in Vanderburgh County by 2.18 percent of existing NO_x emissions in the County from all sources (see Appendix I, "Air Quality Analysis"). This temporary increase would be more than offset by the year 2007 by NO_x decreases resulting from EPA's new rule to establish emissions standards for locomotives (see Appendix O, "EPA Rules on Locomotive Emissions," of this Final EIS). Given this offset, plus the existing downward trend in Vanderburgh County NO_x emissions, SEA does not expect the temporary 2.18 percent increase in NO_x to affect attainment of the ozone NAAQS in the County.

The Board has determined that General Conformity Rules (40 CFR 93, Subpart B) do not apply to the proposed Conrail Acquisition. EPA has stated that "it is up to each Federal agency to review its own unique legal authority and determine what emission-generating activities it has the ability to control." (See *General Conformity Guidance: Questions and Answers*, EPA Office of Air Quality Planning and Standards, July 13, 1994, page 14.) The Board has examined the issue of control and has determined that it cannot practicably control railroad emissions as part of a continuing program responsibility. See the preceding response for additional discussion of General Conformity Rules.

The projected emissions increases for railroad activities exceeding Board thresholds in Washtenaw County, Michigan do not exceed SEA's emissions screening criteria for any air pollutant (see Appendix I, "Air Quality Analysis," Table I-1 of this Final EIS). SEA therefore did not perform a detailed emissions netting analysis for this county.

As described in the cumulative NO_x emissions analysis in Appendix I, "Air Quality Analysis," of this Final EIS, the NO_x emissions from locomotives in Monroe County in Michigan would decrease to below current (1995) levels by the year 2004, based on the combined effects of the proposed Conrail Acquisition and EPA's new emissions standards for locomotives. In addition, the cumulative NO_x emissions analysis shows that NO_x emissions in Wayne County would never exceed the General Conformity threshold of 100 tons per year. Also, as the Draft EIS shows in Section 5.MI.11, SEA's analysis demonstrated that the proposed Conrail Acquisition alone would cause very minor emissions increases: less than 0.25 percent of the total 1995 NO_x emissions in each of these two counties.

The Draft EIS showed that carbon monoxide (CO) emissions from railroad activities exceeding Board thresholds for analysis in Wayne County, Michigan would increase by only 14.5 tons per year as a result of the proposed Conrail Acquisition. This is a very small increase compared with the existing CO emissions in the County, which were estimated to be more than 644,000 tons per year in 1995 (EPA, 1996). The estimated increase in rail activities in Wayne County thus would be only about 0.002 percent of the 1995 CO emissions.

Summary of Comments. SEA expressed the concern that delayed or reduced passenger train service that currently uses freight train tracks may cause passengers to return to automobiles. This change in transportation modes potentially could impede an area's ability to attain the ozone standard. EPA requested that this issue be addressed in the Final EIS.

Response. Under the Rail Passenger Service Act of 1970 (49 U.S.C. § 24308(c)) and similar statutes, the Applicants have entered into contractual agreements with passenger rail operators that give passenger trains dispatch priority over freight trains in order to maintain passenger train schedules. The proposed Conrail Acquisition would not affect these contractual agreements. Increased freight train traffic resulting from the proposed Conrail Acquisition therefore should not affect passenger rail services, and SEA expects that there will be no diversion of passengers to automobiles. Accordingly, SEA does not

expect that the proposed Conrail Acquisition would affect air quality with respect to passenger train service.

Summary of Comments. Women Like Us, an organization representing the Anacostia area of Washington, D.C., asked what responsibility the Applicants would take for potential air quality impacts on public health.

Response. While railroads are not officially charged with overseeing air quality regulatory programs (this is the responsibility of EPA), railroads nationally will share substantially in the costs of EPA's new emissions standards for locomotive engines. EPA has estimated that the new emissions standards will cost the railroad industry nationally approximately \$89 million per year over the next 40 years (Locomotive Emissions Standards, Regulatory Support Document, EPA, Office of Mobile Sources, December 1997).

As shown in the Draft EIS (Table 4-15), locomotive emissions represent about 4.7 percent of nationwide emissions of NO_x, 1.8 percent of nationwide emissions of volatile organic compounds, and small fractions of emissions of CO and PM. The new emissions standards will eventually reduce locomotive fleet-wide average emissions of NO_x by 60 percent, particulate matter by 45 percent, and volatile organic compounds (or hydrocarbons HC) by 42 percent (EPA: Publication EPA 420-F-97-051, December 1997).

Summary of Comments. NS commented that the Draft EIS, with its focus on local increases in emissions, both understated and undervalued the positive overall impact of the proposed Conrail Acquisition on air quality.

Response. SEA maintains that it has not understated the positive value of the proposed Conrail Acquisition on air quality. While the air quality benefit would be generally positive on a system-wide basis because of emission reductions of most pollutants, the calculated changes in emissions of all pollutants would be a very small percentage of total emissions of air pollutants from all sources in the affected regions. SEA is also aware of EPA's new locomotive emissions standards, and has noted the beneficial effect that these standards would have in combination with the proposed Conrail Acquisition.

Summary of Comments. NS concurred with the statement in the Draft EIS that ozone is a regional concern rather than a local concern. NS suggested that the Final EIS emphasize this point with the following language: "No local mitigation options for NO_x are indicated because NO_x emissions will decrease at the system-wide level over the Northeast Ozone Transport Region (OTR) and will decrease further in the future due to the newly promulgated EPA locomotive standards."

Response. SEA is aware that EPA's new emissions standards for locomotive engines (see Appendix O, "EPA Rules on Locomotive Emissions," of this Final EIS) will result in emissions reductions from railroads that more than offset any local increases resulting

from the proposed Conrail Acquisition. However, recent studies by the Ozone Transport Assessment Group have shown that NO_x effects on ozone nonattainment are primarily a regional concern, rather than a local one. Therefore, SEA does not think that local NO_x emissions changes, particularly the relatively low and widely distributed emissions changes shown in the Draft EIS, would have any measurable affect on local ozone levels (see Appendix I, "Air Quality Analysis," of this Final EIS).

Summary of Comments. NS recommended additional consideration of the implications of the recent Ozone Transport Assessment Group conclusions, and suggested that local air quality analysis and significance criteria are no longer relevant, because ozone is a system-wide and regional issue.

Response. SEA does not agree that the Board's local analysis criteria are no longer relevant, as NS has suggested, based on the Ozone Transport Assessment Group's finding that the impact of NO_x emissions on ozone is primarily a regional or large-scale concern. The Board's criteria are intended to trigger evaluations of other pollutants in addition to ozone. Also, SEA maintains that it is important for the purpose of complying with the disclosure requirements of NEPA to make its best effort to identify the maximum emissions that may occur should the Board decide to approve the proposed Conrail Acquisition.

5.2.3.12 Noise

Summary of Comments. EPA commented that the noise analysis in the Draft EIS "could have described more fully the impacts to and risks from" noise. EPA expressed a concern with the lack of justification for a number of critical assumptions used in the analysis and requested that the Final EIS offer a "more substantive description" of the assumptions or correct them if necessary. Specifically, EPA objected to the lack of justification for the mitigation criteria for wayside noise, resulting in underestimating the need for mitigation. Other analysis issues for which EPA requested justification in the Final EIS are as follows: lack of construction noise impact analysis, the validity of the assumption that post-Acquisition traffic has the same day/night ratio as "pre-Acquisition" traffic, failure to include background noise in the analysis, failure to consider remote horn installations at crossings as a mitigation option, the need for mitigation of engine noise at switching or other engine accelerating areas, and the feasibility of slower train speed through noise-critical areas as a mitigation option.

Response. SEA stresses that the 70 A-weighted decibels (dBA) and 5 dBA day-night equivalent sound level (L_{dn}) noise increase criteria are mitigation criteria, not significance criteria. SEA performed an analysis of different mitigation criteria to evaluate the number of potential mitigation sites resulting from each criterion reviewed. Ultimately, SEA selected mitigation criteria that it considers reasonable and that provide mitigation to the most highly impacted areas.

SEA recognizes that other agencies implement different noise mitigation criteria. Use of other criteria for the proposed Conrail Acquisition could substantially increase the

number of mitigation sites and place an unrealistic and unreasonable burden on the Applicants. SEA maintains that its goal has been to develop reasonable and appropriate criteria and mitigation to address noise impacts. SEA notes that the concept of reasonableness exists in the Federal Highway Administration (FHWA) noise abatement guidance.

Regarding construction noise impacts, SEA anticipates that construction activities would be short-term in duration, and that any resulting impacts would likewise be temporary. The Applicants would minimize construction noise resulting from the proposed Conrail Acquisition in a similar fashion to construction noise abatement on projects regulated by other transportation-related agencies.

SEA considers valid the assumption that traffic would have the same day/night ratio after the proposed Conrail Acquisition. Rail traffic patterns vary with rail customer demands, and therefore it is not possible for SEA to determine a more accurate day/night traffic ratio. The Applicants have indicated that the assumed day/night ratio is appropriate on an annual basis.

SEA recognizes that it did not include background noise in the analysis; however, SEA has concluded that its omission is not likely to have a significant effect on the noise mitigation analysis outcome. Railroad traffic dominates noise levels in the area immediately adjacent to the track in most of the communities where it occurs, especially in areas with high L_{dn} values where SEA is recommending mitigation. Therefore, SEA maintains that it is reasonable and appropriate to use railroad traffic noise to model the L_{dn} in areas affected by the proposed Conrail Acquisition.

Regarding remote horn installations at highway/rail at-grade crossings, Congress directed FRA to issue rules and specifications regarding the use of train horns at all public crossings under the Swift Rail Act of 1994. These rules, including preliminary rules and specifications, are tentatively scheduled for release during 1998. The rules would preempt local ordinances that ban the use of train horns and whistles except where other demonstrable measures provide the same level of safety. Quiet Zones or future "whistle bans" might only occur where FRA found that the alternate safety measures were equal to the existing practice of sounding train horns and whistles at highway/rail at-grade crossings. FRA is studying safety measure technology, such as the placement of four-quadrant gates and automated horn systems, as alternatives to train horns. Details regarding the possibilities of Quiet Zones in specific communities, the use of alternatives to train horns as part of noise impact mitigation, and the overall effect of implementing these rules can only be addressed after the FRA rules are released.

The Board's final decision is likely to occur prior to the release of the final FRA rules. Because of the uncertainty of the content of the FRA rules, SEA did not recommend alternative safety measures to reduce horn noise at highway/rail at-grade crossings. However, the Draft EIS discussed the miscellaneous benefits and costs of these measures in detail.

EPA commented on the need to mitigate engine noise at switching or other engine accelerating areas. SEA evaluated rail yard activities that exceeded the Board's thresholds for analysis but did not exceed the mitigation criteria for noise impacts; therefore, SEA is not recommending mitigation in this case.

EPA also questioned why SEA did not consider slower train speeds in noise-sensitive areas as a mitigation option. SEA did not consider slower train speeds in noise-sensitive areas as an appropriate mitigation option for the following reasons:

- Slower train speeds in residential areas cause longer delays at highway/rail at-grade crossings.
- Public safety would not be enhanced if emergency response vehicles experience longer delays at highway/rail at-grade crossings.
- The system-wide truck-to-rail diversion is a tangible and fundamental benefit of the proposed Conrail Acquisition. Slower train speeds reduce the system-wide benefits of the truck-to-rail diversions by decreasing the advantages of rail transport.
- Federal regulations limit railroad workers to 12-hour shifts. Railroad companies schedule trains and staff resources based on the distance that a train can travel in 12 hours. At these endpoints, new crews assume control of the trains and the old crews take a mandated rest period. Slower train speeds could require relocation of the places where crews change and rest. System-wide changes of this nature are neither practical nor reasonable.

Finally, SEA notes EPA's reference to Section 3.4 of the Federal Agency Review of Selected Airport Noise Analysis Issues, but SEA maintains that airport noise issues should not be treated the same as rail noise issues.

Summary of Comments. CSX and NS commented that the Final EIS should acknowledge that noise levels would be lower in communities along rail line segments and highways where SEA projected that truck and train traffic would decrease as well as along those rail lines that CSX and NS proposed for abandonment.

Response. SEA recognizes that there would be lower noise levels in communities located along rail line segments and highways where truck and train traffic would decrease and along those rail line segments proposed for abandonment.

Summary of Comments. CSX commented that the Draft EIS "appropriately concludes that no mitigation can be imposed for horn noise, the dominant form of railroad noise, because FRA regulations require horns to be sounded at grade crossings for safety reasons." CSX commented that it would undertake a field investigation to better define potential noise impacts on segments where the wayside noise level exceeded the mitigation criteria. CSX and NS expressed concern

that the Draft EIS may have overstated potential noise impacts because of the overly conservative methodology and failure to recommend or conduct site-specific measurements and analysis.

CSX and NS commented that the mitigation criteria for noise are reasonable, but argued that mitigation that the Board imposes is problematic. CSX and NS stated that the Draft EIS contained no analytic or other support for the suggestion that noise barriers are the preferred mitigation methodology. CSX asserted that its field investigation would identify potential mitigation areas and possible mitigation strategies and would determine the need for consultation with local governments. NS recommended that SEA base mitigation alternatives on a site-specific analysis of potential noise impact rather than proposing an arbitrary mitigation measure such as noise barriers.

Response. With respect to the comments from CSX and NS regarding mitigation for horn noise and the pending FRA draft regulations, SEA points out that it conducted site-specific mitigation analyses that included site visits.

SEA notes the Applicants' concerns that the Draft EIS may have overstated noise impacts because of the overly conservative methodology for the noise analysis. However, SEA points out that much of the noise analysis that the Draft EIS contains reiterated the conclusions in the Environmental Report that the Applicants submitted.

SEA also notes the difficulties associated with performing a refined, or even a screening, analysis on an area as large as the one affected by the proposed Conrail Acquisition. SEA contends that a screening analysis, by nature, is intended to be conservative. This provides for an analysis that, system-wide, would not underestimate the noise levels or understate the potential impacts resulting from the proposed Conrail Acquisition. SEA concludes that the limitations that the geographic scope of the proposed Conrail Acquisition imposes require a conservative screening analysis.

SEA agrees that the Draft EIS may not have justified why noise barriers are the primary mitigation method. This Final EIS includes a discussion of why SEA considers noise barriers to be the primary noise mitigation method in Appendix J, "Noise Analysis." Again, SEA encourages CSX and NS to conduct additional field investigations to determine potential alternative mitigation strategies and to contact local governments. SEA maintains that there are several local governments that would also encourage such contact. Regarding the comment by NS that mitigation alternatives should be based on site-specific analyses of noise impacts, not on "arbitrary" mitigation measures such as noise barriers, SEA conducted site-specific mitigation analyses that included visits to each of the candidate sites for mitigation. SEA has revised its noise mitigation to provide more flexibility. See Chapter 7, "Recommended Environmental Conditions," of this Final EIS.

SEA does not agree with the suggestion by CSX and NS that EPA's noise emission standards for new locomotives and railcars constitute de facto approval and acceptance

of Acquisition-related noise. The EPA noise emission standards limit maximum noise levels for locomotives and railcars. However, SEA's environmental rules also take into account increased train activities in terms of L_{dn} . Therefore, SEA maintains that L_{dn} -based noise mitigation criteria are appropriate and complementary with respect to the EPA noise emission standards.

Summary of Comments. NS commented that SEA should not apply "noise models developed for CSX trains to the quieter NS trains." NS explained that this model overstates noise levels on the NS lines, and SEA should use the models only as a screening tool to identify areas that may warrant site-specific analysis.

NS commented that its consultant confirmed that the Thornton Acoustics model "is both conservative and more accurate for NS trains than the model applied by the D[raft] EIS." NS noted that the Final EIS modeling should "apply a weighted average SEL [sound exposure level] between CSX and NS trains for Shared Assets Area line segments" because these areas would run both types of trains.

Response. With respect to the comments that NS submitted regarding the noise model and use of certain Sound Exposure Levels (SELs) in Shared Assets Areas, SEA notes that it used a wayside value of 102 dBA in the Draft EIS and in this Final EIS for trains in the Shared Assets Areas.

SEA used a wayside SEL value of 98.4 dBA in the Draft EIS and 100 dBA in the Final EIS for NS trains. SEA used the 100 dBA value because it better reflected the accuracy and variability of a limited set of noise monitoring values upon which NS based its original analysis. SEA used the 98.4 dBA value in the Draft EIS because much of the data presented in the Draft EIS were based on the Applicants' noise studies, which incorporated the 98.4 dBA value.

5.2.3.13 Cultural and Historic Resources

Summary of Comments. Many State Historic Preservation Officers and interested parties provided comments on the National Historic Preservation Act, Section 106 process.

Response. For more information regarding the Section 106 consultation process, see Chapter 3, "Agency Coordination and Public Outreach"; Chapter 4, "Summary of Environmental Review"; and Appendix K, "Cultural Resources Analysis," of this Final EIS.

Summary of Comments. The Delaware Division of Historical and Cultural Affairs, Historic Preservation Office noted that Appendix G (Volume 5A), "Cultural Resources," of the Draft EIS states that traffic changes for rail segments, rail yards, and intermodal facilities would have "little effect" on historic and cultural resources. The division requested justification for this statement.

The Office requested that recommendations for mitigation be considered for traffic changes, rail yards, and intermodal facilities.

Response. SEA prepared a detailed definition of the Area of Potential Effects as part of its concurrent Section 106 compliance process. The Area of Potential Effects definition recognized all of the criteria of adverse effect, but found that none were applicable to increased railroad traffic. Increased traffic would be limited to moving and handling more rail cars on the existing trackage, at intermodal facilities, or at rail yards. Increased rail traffic does not have the potential to adversely affect cultural resources because such railroad traffic is already part of the historic setting. No ground disturbance or physical alteration of existing facilities would result from increased rail traffic.

Summary of Comments. The Delaware Historic Preservation Office expressed concern regarding SEA's "typical" requirements for mitigation of potential impacts on archaeological properties because these measures do not appear to consider avoidance measures, which is "inconsistent with the Advisory Council's regulations." The commentator indicated that the steps outlined in the Draft EIS for addressing unanticipated discoveries were a "reversal of the steps required by 36 CFR Part 800.4, and sets all such projects up as 800.11 situations (addresses unanticipated discoveries)." Further, the commentator stated that the Draft EIS did not appropriately address 36 CFR 800.4 and 800.5.

Response. Appendix G of the Draft EIS, "Cultural Resources," presented a detailed methodology for identifying and treating archaeological properties in accordance with Section 106 and its implementing guidelines. Salvage operations associated with the abandonment process, such as the removal of rails, ties, ancillary structures, and ballast, usually are performed using equipment operated from the existing rail bed. This process therefore has a very low potential for disturbing archaeological resources that were not already disturbed during the original railroad construction. Because of the extent of this earlier disturbance and the nature of the salvage process, 36 CFR 800.11 procedures provide the most reasonable approach. According to 36 CFR 800.4 and 800.5, neither resource identification nor assessment of effects is reasonable or necessary.

5.2.3.14 Natural Resources

Summary of Comments. USACE, Jacksonville District, Florida, indicated that a permit application under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act would not be necessary based on the information in the Draft EIS.

Response. SEA recognizes that USACE would not require this permit based on the information that the Applicants provided.

Summary of Comments. EPA expressed a concern regarding increased pollutant loading as a result of increased activity at rail yards and intermodal facilities. EPA commented that there was a lack of discussion in the Draft EIS regarding water quality impacts, stormwater management facilities, operational changes, surrounding environment, and water resources.

Further, EPA commented that additional analysis is necessary to identify potential environmental effects on watersheds, wetlands, and threatened or endangered species associated with construction and abandonment activities at 13 construction and abandonment sites (four sites in Illinois, two sites in Indiana, and seven sites in Ohio).

Response. Appendix L, "Natural Resources Analysis," of this Final EIS includes discussions of potential water quality impacts and stormwater management, and descriptions of the methodologies that SEA used to determine the presence of, and potential impacts on, watersheds, wetlands, and Federally listed threatened and endangered species. Thus, SEA points out that Appendix L addresses EPA's concerns.

Summary of Comments. NS requested that the Final EIS clarify the natural resources methodology that it used to determine survey distances to "wildlife refuges and sanctuaries; national, state and/or local parks or forests." NS also requested that the Existing Conditions section of the Final EIS clearly identify those areas where no such conservation or preservation areas occur within the specified distance.

Response. SEA's methodology for identifying biological resources included surveying for wildlife refuges and sanctuaries, national, state and/or local parks or forests within 200 feet of the right-of-way boundary.

Summary of Comments. The DOI Office of Environmental Policy and Compliance provided comments regarding threatened and endangered species in the States of Alabama, Louisiana, and Mississippi. Specific river systems cited include the Pascagoula, Biloxi, Wolf, and Pearl Rivers. The commentor identified several Federally listed species as potentially occurring in these rivers. The commentor requested that emergency management plans for hazardous materials spills include guidelines for immediate consultation with DOI personnel regarding potential adverse environmental effects to listed species. These plans should also address both immediate and long-term effects to fish and wildlife resources.

Response. SEA concurs with DOI. SEA would recommend that the Applicants add a statement to the emergency management plans that directs the Applicants to contact the U.S. Fish and Wildlife Service (USFWS) representative as soon as is appropriate when a spill occurs. See Chapter 7, "Recommended Environmental Conditions," of this Final EIS for further discussion.

5.2.3.15 Land Use and Socioeconomics

Summary of Comments. Numerous public agencies, individuals, and institutions expressed concern that property values and the tax base along railroad lines would decline because of increased rail traffic and noise.

Response. The scope of SEA's land use and socioeconomic analysis was limited to a determination of the consistency between the proposed Conrail Acquisition's rail line construction and abandonment activities and local land use plans. SEA has no evidence

that the proposed Conrail Acquisition would result in reduced property values. Railroad lines, abutting land uses, and property values generally are already established and are the result of many local conditions. Local land use planning processes exist and function, in part, to protect property values. In nearly all cases, SEA determined rail line construction and abandonment activities of the proposed Conrail Acquisition to be consistent with the local land use plans. Comments from communities and individuals provided no supporting quantitative analysis, only rather generalized remarks.

Summary of Comments. Many state and local agencies, individuals, and institutions commented that increased train traffic, crossing delays, potential air quality degradation, or recommended improvements would lead to a loss of business or impede economic development and redevelopment activities. The commentors cited a lack of access to downtown locations, business and industrial areas, and proposed projects as the reason for these potential environmental impacts.

Response. In accordance with the Board's environmental regulations and the scope of the EIS, SEA limited its land use and socioeconomic analysis to considering the consistency of the rail line construction and abandonment activities that would result from the proposed Conrail Acquisition with local land use plans and to evaluating the potential business loss that would be directly related to proposed constructions and abandonments. SEA determined that the proposed Conrail Acquisition rail line construction and abandonment activities were consistent with local land use plans, and no business losses would be attributed to proposed constructions or abandonments.

Overall economic effects related to the proposed Conrail Acquisition are merits issues outside of the scope of the EIS. SEA's review considered the effects of increased train traffic on downtown areas through specific resource-related analysis, including highway/rail at-grade crossing delay and safety analyses. Chapter 7, "Recommended Environmental Conditions," of this Final EIS presents SEA's final mitigation recommendations for these resource-related issues.

Summary of Comments. Several commentors stated their opposition to the use of taxpayers' money for the proposed Conrail Acquisition, including its use for infrastructure expansion or subsidies.

Response. The socioeconomic methodology addressed issues related to changes in the physical environment as a result of the proposed Conrail Acquisition. SEA found the issue of taxpayers' burden to be beyond the scope of the EIS for land use and socioeconomic analysis. The Final EIS identifies mitigation requirements for the Applicants, the implementation of which would be the responsibility of the Applicants, not taxpayers. Additionally, the Applicants, not taxpayers, are responsible for all costs associated with the preparation of this EIS.

Summary of Comments. NS commented that SEA departed from the land use and socioeconomic methodology in its analysis of the NS Ashtabula-to-Buffalo (N-070) rail line

segment through the Cattaraugus Reservation of the Seneca Indian Nation. NS contended that, based on the stated methodology in the Draft EIS, SEA should have applied the land use and socioeconomic analysis only to construction projects and abandonments, but not to a rail line segment for which SEA projected only a potential increase in hazardous materials transport.

NS added: "Since recommended mitigation for increased hazardous materials transportation would eliminate the potential for a significant impact, there is no need to repeat the issue under land use and socioeconomic issues, and it should not be addressed in this section of the F[inal] EIS."

Response. SEA included Native American nations in the land use and socioeconomics section of the EIS. Land use issues related to construction and abandonment activities are most closely related to issues of tribal sovereignty over land use changes. The evaluation determined that no construction or abandonment activities were proposed within the lands of the Seneca Nation, and therefore there was no need to evaluate land use and socioeconomics on those lands. The text reference remains in the land use section of the Final EIS for reasons of organization, clarity, and recognition of the Seneca Nation's jurisdiction.

5.2.3.16 Environmental Justice

Summary of Comments. Many commentors, including members of Congress and regional and local agencies, indicated that minority and low-income neighborhoods and areas are more adversely affected by the impacts of the proposed Conrail Acquisition, including increased rail traffic, air quality, hazardous materials transport, noise, socioeconomic, and emergency response. Some commentors stressed the need for the Board to follow Executive Order 12898 for environmental justice analysis.

Response. SEA recognizes that Executive Order 12898 calls for research and data collection in potentially affected minority and low-income populations. SEA has used the Executive Order in a manner that addresses minority and low-income populations that may experience disproportionately high and adverse environmental impacts. Where minority and low-income populations would potentially experience high and adverse environmental impacts, SEA conducted special public outreach efforts.

SEA has determined whether mitigation measures that this Final EIS recommends for other environmental issue areas would be sufficient to eliminate or mitigate the high and adverse impacts that these populations could experience in the absence of mitigation measures; if they would not be sufficient, SEA has recommended additional mitigation where practicable. Further, SEA has considered the appropriateness of modifying the recommended mitigation measures to meet the needs of minority and low-income populations experiencing disproportionately high and adverse impacts. SEA has also considered whether any additional recommended mitigation was reasonable and feasible to implement.

For further discussion, see Chapter 3, "Agency Coordination and Public Outreach"; Chapter 4, "Summary of Environmental Review"; Chapter 7, "Recommended Environmental Conditions"; and Appendix N, "Community Evaluations," of this Final EIS.

Summary of Comments. NS commented that "there is no evidence that a potential [highway/rail] at-grade crossing safety issue has a significant adverse effect on an environmental justice community located elsewhere along the rail line segment."

Response. SEA concurs with the commentor. SEA identified specific populations (by census block groups) that were located in proximity to where highway/rail at-grade crossing safety impacts would occur along a rail line segment. See Appendix M, "Environmental Justice Analysis," of this Final EIS for further details.

Summary of Comments. Some commentors expressed concern about certain aspects of the Draft EIS environmental justice analytical methodology. The Applicants questioned the inclusion of populations that exceeded by 10 percentage points the minority and low-income concentration in the surrounding counties. The Southeast Michigan Council of Governments stated that the Draft EIS demographic data are not consistent with data supplied by HUD.

Response. Section 4.17, "Environmental Justice," and Appendix M, "Environmental Justice Analysis," of the Draft EIS presented the method for determining the Area of Potential Effect as well as the method for determining the percentage of minority and low-income populations within the Area of Potential Effect. Section 4.17, "Environmental Justice," and Appendix M, "Environmental Justice Analysis," of this Final EIS also include modifications in response to public comments. SEA generally derived the Area of Potential Effect from the maximum area potentially exposed to the Board's noise thresholds of 65 dBA L_{dn} . SEA used this conservative approach to identify populations that would experience the most adverse noise effects and also to encompass areas that could be expected to experience other localized effects associated with the proposed Conrail Acquisition.

CSX suggests that demographic analysis of environmental justice populations is unnecessary, quoting the preamble to the DOT Environmental Justice Order. However, the preamble does not suggest that agencies need not begin analyzing demographic information merely because they have not done so in prior cases. To the contrary, the preamble emphasizes DOT's intent "to insure that a process for the assessment of environmental justice factors becomes common practice" under NEPA. Indeed, the Order provides that "in implementing these requirements [to ensure non-discrimination under NEPA and related statutes] the following information should be obtained where relevant, appropriate, and practical:"

- "Population served and/or affected by race, color or national origin and income levels.

- “Proposed steps to guard against disproportionately high and adverse effects on persons on the basis of race, color or national origin.”
- The implementation of a process to evaluate demographic content within the areas affected by the proposed Conrail Acquisition is clearly consistent with DOT policy and does not create a process at odds with the underlying rationale of either the Executive Order or the DOT environmental justice strategy.

SEA used 1990 Census Population Data and a Geographic Information System to estimate the number of minority and low-income populations within the Area of Potential Effect. Based on the geographic scale of the proposed acquisition, SEA was unable to use multiple local databases. Census data is an accepted, recognized source for demographic statistical analysis.

SEA used the following guidance in addressing environmental justice: DOT’s Order on Environmental Justice (62 Federal Register 18377, April 15, 1997), the CEQ Guidance for Considering Environmental Justice under the National Environmental Policy Act (May 7, 1997), the CEQ Environmental Justice Guidance under the National Environmental Policy Act (1998), and the Interim EPA Guidance on Addressing Environmental Justice (September 30, 1997). The CEQ Guidance and EPA Guidance define populations as minority and low-income where either (a) the minority and low-income population of the affected area exceeds 50 percent, or (b) the minority and low-income population percentage of the affected area is meaningfully greater than the minority and low-income population in the general population or other appropriate unit of geographic analysis. SEA used the 50 percent figure to define environmental justice populations. SEA also used 10 percent as a measure of a meaningfully greater concentration of minority and low-income individuals. SEA chose the 10 percent figure so that pockets where minority and low-income individuals concentrate, but are not sufficient in number to constitute a majority of residents, do not predominantly bear disproportionately high and adverse impacts. SEA used county populations for comparison because EPA Guidance suggests comparison with “the next larger geographic area or political jurisdiction” and because counties offer a practical jurisdictional boundary that does not artificially dilute or inflate the affected environmental justice population. The 10 percent figure and the use of counties for demographic comparison are reasonable, appropriate, and consistent with the Executive Order, DOT Order, CEQ and EPA Guidance, and the purpose of SEA’s environmental justice analysis.

Summary of Comments. NS contended that the “D[raft] EIS approach to noise for environmental justice further overstates the extent of actual noise impacts by applying two arbitrary assumptions solely to environmental justice analysis: (1) assuming an increase of three to 7 trains per day generates as much noise as an increase of 8 trains per day—effectively lowering the analysis threshold for environmental justice communities from an increase of 8 trains per day to three; and (2) assuming that horn noise occurs along the entire line segment, not just at crossings. No justification is provided for this unfounded double standard.” Further,

NS stated that environmental justice communities should be subject to the same threshold and criteria as those in the Draft EIS, which SEA applied to other communities.

Response. The environmental justice analysis did not create a separate or distinct approach for analyzing noise effects. The environmental justice analysis overestimates noise effects only to identify the Area of Potential Effect (the study area). SEA was conservative in its use of noise contours as a basis, including assuming horn noise as a worst-case scenario, in order to be more inclusive of potentially affected populations. The method and analysis for identifying the environmental justice Area of Potential Effect is separate from the analysis of noise impacts, and does not influence that analysis in any way.

In general, SEA based the environmental justice Area of Potential Effect, or study area, on the noise contours, which marked the distance from the tracks where the noise levels would reach 65 dBA L_{dn} . SEA used these noise contours as a basis for the development of the environmental justice Area of Potential Effect because they offered a practical, uniform approach to identifying the communities that would experience adverse noise effects. The methodology also encompassed areas that could experience other localized effects such as traffic congestion, grade crossing delays, pedestrian and safety effects, and construction effects associated with the proposed Conrail Acquisition.

Summary of Comments. NS commented that requiring the Applicants to undertake mitigation or to consult or enter into binding agreements only with environmental justice communities solely on the basis of demographics constituted preferential treatment not warranted under the Executive Order. EPA, the City of Cleveland, Fort Wayne, and the Four City Consortium commented that the Draft EIS makes little effort to mitigate potential effects on minority and low-income populations.

Response. SEA conducted extensive notification of environmental justice populations with potential high and adverse effects to afford them the opportunity to participate in the Draft EIS review and the comment period. SEA also encouraged the Applicants to initiate consultation with the communities within which these populations reside to identify voluntary Applicant efforts to tailor recommended mitigation or develop alternative mitigation appropriate for these minority and low-income populations.

SEA does not consider requiring the Applicants to coordinate with local communities to be giving preferential treatment; rather, SEA considers this an effective tool for determining the special needs of the communities with disproportionately high and adverse impacts and for providing additional mitigation, where necessary and possible, to address those needs.

The CEQ Environmental Justice Guidance under NEPA maintains that agencies should ensure meaningful community representation in the process. The CEQ guidance also provides the following guidance regarding mitigation: "Throughout the process of public participation, agencies should elicit the views of the affected populations on measures

to mitigate a disproportionately high and adverse human health or environmental effect on a low-income population, minority population, or Indian tribe and should carefully consider community views in developing and implementing mitigation strategies.”

SEA did not consider community consultation, by itself, to be mitigation of significant environmental justice effects. At the issuance of the Draft EIS, SEA was working with Cleveland and East Cleveland to develop mitigation strategies for those communities. The community consultation that the Draft EIS described and SEA's continued analyses were measures SEA used to better understand the issues in each community. This process would also assist SEA in determining whether the mitigation proposed by the other technical resource analyses in the EIS was sufficient to eliminate or mitigate the significant environmental justice effects, or, if further mitigation would be necessary, in determining the appropriateness of modifying recommended mitigation measures to meet the needs of a disproportionately affected minority and low-income population, and in determining whether any additional recommended mitigation was reasonable and feasible to implement.

Summary of Comments. NS and CSX stated that the Draft EIS failed to assess whether minority and low-income populations would experience disproportionate impacts. They contend that an analysis of disproportionality must assess the system-wide effects of the proposed action (rather than comparing rail line segments) and must statistically compare effects on minority and low-income populations to effects on non-minority and non-low-income populations. NS contends that their system-wide analysis demonstrates that the proposed Conrail Acquisition would not have a disproportionate impact on minority and low-income populations. By contrast, the City of Cleveland and others argue that SEA should analyze whether effects are disproportionate in specific environmental justice communities that are smaller than rail segments, because failure to do so masks impacts on disadvantaged populations.

Response. SEA does not consider the NS system-wide analysis to be adequate because the analysis does not address the fact that some communities may bear the majority of high and adverse effects or the most severe effects compared with the greater population along the entire rail system. Thus, the NS system-wide analysis does not adequately serve the purposes of the Executive Order or the public interest. SEA also concurs that if it limits its comparison to populations living adjacent to rail line segments, it may miss potential environmental impacts on smaller disadvantaged populations along these rail line segments. For the Final EIS, therefore, SEA analyzed effects at the block group level to account for this possibility.

As Appendix M, “Environmental Justice Analysis,” of this Final EIS discusses, and in response to public comments, SEA analyzed all block groups along threshold segments for multiple resource (noise, hazardous materials transport, traffic safety) effects. SEA applied standard statistical tools (that is, the Chi-Squared test, the Ratio of the Means, and the Pearsons Correlation Coefficient) to the database to compare effects among all populations, both environmental justice and non-environmental justice. Appendix M lists all communities that would bear high and adverse effects as well as those

environmental justice communities with high and very high multiple resource impacts. Based on this information and the public comments, this Final EIS describes which environmental justice populations would experience disproportionately high and adverse impacts in the absence of mitigation measures. Chapter 7, "Recommended Environmental Conditions," of this Final EIS outlines SEA's recommendations regarding mitigation for these populations.

Summary of Comments. EPA commented that the Draft EIS made little effort to mitigate potential environmental impacts on many minority and low-income communities. EPA recommended additional coordination for identified communities, using EPA environmental justice coordinators as resources. EPA suggested using CEQ's "Environmental Justice Guidance Under the National Environmental Policy Act" as a reference.

Response. This Final EIS addresses the question of whether environmental justice populations would experience disproportionate effects. SEA investigated whether the mitigation measures that SEA recommends in this Final EIS for other environmental issue areas would be sufficient to eliminate or mitigate the disproportionately high and adverse impacts on minority and low-income populations. If not, SEA recommended additional mitigation where practicable. SEA also considered the appropriateness of modifying the recommended mitigation measures to meet the needs of a minority and low-income population that would experience disproportionately high and adverse effects. Further, SEA considered whether it would be reasonable and feasible to implement any additional recommended mitigation. SEA's staff notified and coordinated with identified communities. This Final EIS references the CEQ Environmental Justice Guidance under the National Environmental Policy Act.

Summary of Comments. CSX and NS asserted, as follows, that the required site-specific outreach and negotiated settlements are not appropriate:

- The Draft EIS failed to provide any rationale, or the rationale is unclear, for Ft. Wayne, Indiana; Danville, Illinois; Youngstown, Ashtabula, and Toledo, Ohio; and Harrisburg, Pennsylvania.
- No significant noise impacts are present along entire rail line segments in Bellevue-to-Sandusky Docks, Ohio; Delaware County, Ohio; Detroit, Michigan; Ontario and Seneca Counties, New York; Cloggsville Junction and Marion, Ohio.
- The train traffic information used in Kankakee, Illinois was incorrect. Applying the correct information, there is no noise impact.

CSX and NS also objected to any requirement for consultation with local communities regarding mitigation measures for hazardous materials transport, specifically with respect to Bladensburg, Maryland; Washington, D.C.; Fort Wayne, Indiana; Tilton and Danville, Illinois; and Youngstown and Ashtabula, Ohio.

Response. The Draft EIS and this chapter, Section 5.2.3.16, "Environmental Justice," of this Final EIS provide the rationale for having the Applicants consult with local officials and community representatives.

CSX and NS stated that site-specific outreach was not appropriate along certain rail line segments because no significant noise impacts would occur on these segments. SEA did not recommend site-specific outreach and consultations with communities where the only potential impacts would involve noise levels in excess of 65 dBA L_{dn} but below the noise mitigation criterion of 70 dBA L_{dn} . SEA conducted outreach and consultation only for those locations that would experience substantial noise and at least one other significant environmental impact.

The environmental justice analysis in this Final EIS reflects the corrected Kankakee, Illinois train traffic information.

Summary of Comments. CSX and NS contended that because Executive Order 12898 is not binding for independent agencies such as the Board, the Board should not undertake an environmental justice analysis. They also contended that the Executive Order was designed primarily for the localized siting of facilities, that an environmental justice analysis was not employed in any previous Board control transactions and is not necessary for this proposed Acquisition because there was no intent to discriminate, and that if an environmental justice analysis is conducted, it should be limited to new construction projects and abandonments. In addition, they stated that the Board should establish its policy for environmental justice prior to the EIS process. Some commentors stressed the need for the Board to follow Executive Order 12898 for environmental justice analysis.

Response. Although Executive Order 112898 is not binding on independent agencies such as the Board, SEA chose to conduct an environmental justice analysis because the President requested independent agencies to comply with the Order (see Section 6-604 of the Order), particularly during the NEPA process; because a DOT Order and CEQ and EPA Guidance emphasize addressing environmental justice concerns in the NEPA context; and because the Board is responsible for ensuring that this proposed transaction is consistent with the public interest. In the context of the proposed Conrail Acquisition, SEA determined that the public interest warrants addressing whether the proposed Conrail Acquisition could have disproportionately high and adverse impacts on minority and low-income populations and, if so, whether reasonable and feasible mitigation measures could eliminate or mitigate disproportionate impacts. The public interest also warrants addressing whether it is appropriate to modify recommended mitigation measures to meet the needs of a minority and low-income population that would experience disproportionate effects.

The proposed and final scoping notice for this proposed transaction announced SEA's intent to conduct an environmental justice analysis, and the Draft EIS developed a six-step process for conducting the analysis. Thus, there has been ample opportunity for public comment on the environmental justice analysis for this proposed Acquisition.

Further rule making or policy making is unnecessary, impractical within the time frame for completion of this EIS, and would only delay this analysis.

Executive Order 12898 was not, as the commentor asserts, principally designed for and most logically applied to the localized siting of new facilities. The Executive Order states that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." The programs, policies, and activities of Federal agencies consist of more than the localized siting of facilities.

The commentors also assert that, because there was no intent on the part of CSX or NS to discriminate and because the Draft EIS does not present any evidence to the contrary, the application of the Executive Order is not necessary. However, the Executive Order, DOT Order, EPA Guidance, and CEQ Guidance provide direction that environmental justice analysis should assess unjustified disparate impacts in all cases, not just in cases where intentional discrimination exists.

The Applicants state that they took numerous factors into account in deciding how to route trains, and demographics of communities along the rail lines was not among them. SEA concludes that an environmental justice analysis is appropriate for precisely this reason, and because these communities have traditionally been underrepresented in these decision making processes.

Summary of Comments. CSX and NS commented that there was a very low risk of a freight rail incident; the effects are usually confined to the tracks themselves, and rail incidents do not have a major, adverse effect on surrounding populations. CSX and NS also disagreed with the concept of requiring the railroads to design a special mitigation strategy for freight rail safety and hazardous materials transport that could apply only in certain communities based on their demographic consideration.

Response. CSX and NS argued that freight rail safety was not an appropriate subject for environmental justice analysis because the effects of an incident would not create a disproportionately high and adverse impact on surrounding environmental justice populations. The Draft EIS revealed that only two rail line segments that met environmental justice demographic criteria would experience potentially significant freight rail safety impacts in the absence of mitigation. In this Final EIS, SEA recommended mitigation for these freight rail safety impacts that would be comparable to the mitigation it recommended for other areas with potentially significant freight rail safety impacts. However, neither segment would experience other potentially high and adverse impacts. Therefore, neither segment merited consideration for further environmental justice analysis.

Summary of Comments. NS commented that the environmental justice analysis in the Draft EIS did not take into account the effects of system-wide safety measures and other mitigation

measures on a local basis. NS further stated that additional benefits of the proposed Conrail Acquisition should be recognized.

Response. SEA provides a discussion of the benefits of the proposed Conrail Acquisition in Chapter 4, "Summary of Environmental Review," of this Final EIS. This discussion of benefits pertains primarily to air quality, energy, truck-to-rail diversions, and other system-wide analyses. By their system-wide nature, these benefits do not lend themselves to localized analysis.

Impacts on environmental justice communities are localized, and SEA only considers mitigation after determination of the demographics and impacts. SEA analyzed the pre-mitigation environmental effects in the Draft EIS. For the Final EIS, SEA further analyzed pre- and post-mitigation effects and determined whether effects were mitigated adequately.

Summary of Comments. NS commented that SEA's environmental justice analysis should not employ a cumulative effects analysis. The Draft EIS includes no methodology for weighting and combining the various adverse effects, and it would be impossibly complicated to attempt such a cumulative impacts analysis.

Response. The CEQ Environmental Justice Guidance Under NEPA provides the following direction: "Agencies should consider relevant public health data and industry data concerning the potential for multiple or cumulative exposure to human health or environmental hazards in the affected population and historical patterns of exposure to environmental hazards, to the extent such information is reasonably available." The EPA Interim Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses states that, when determining whether environmental impacts are disproportionately high and adverse, agencies are to consider "whether the environmental effects occur or would occur in a minority population or low-income population affected by cumulative or multiple adverse exposures from environmental hazards." Appendix M, "Environmental Justice Analysis," identifies and addresses those environmental justice communities with disproportionately high and adverse multiple resource impacts.

SEA's multiple resource analysis is a reasonable, practical, and appropriate approach to serve the purposes of the Executive Order, the DOT Order, the CEQ and EPA Guidance, and the public interest in the context of this proposed Conrail Acquisition.

Summary of Comments. Faith-Based Organizing for Northeast Ohio requested that "the Surface Transportation Board, U.S. Congressional Representatives and state and local officials draft industry-wide environmental justice standards designed to protect the health, safety and quality of life within the communities impacted by the railroad commerce. These standards should include specific limits on the number of trains allowed to travel through densely populated urban and suburban communities."

Response. In its environmental justice analysis, SEA referred to Executive Order 12898 on Environmental Justice, DOT's Order on Environmental Justice (DOT, April 16, 1997), CEQ's Guidance for Addressing Environmental Justice in NEPA Analysis (1997), and EPA's Interim Guidance on Addressing Environmental Justice (September 30, 1997). Establishing industry-wide standards for environmental justice is beyond the purview of the Board.

5.2.3.17 Cumulative Effects

Summary of Comments. The Seneca Regional Planning Commission (Ohio) commented on the evaluation of potential environmental impacts in the Draft EIS. The Commission expressed its concern "that multiplicity must be realized in evaluating impacts [on] Fostoria."

Response. The Commission's concern about multiplicity appears to pertain to the relationships of interlockings, increased train speeds, traffic flow projections, increased stopped trains, traffic delay, the increase in hazardous materials transport, the location of five rail line segments, and the areas known as the Iron Triangles. In effect, these matters pertain to multiple impacts and the overall result on emergency response, traffic delay, and safety. SEA addressed these potential environmental impacts subject to the Board's thresholds for environmental analysis and EIS scope. See Appendix G, "Transportation: Highway/Rail At-grade Crossing Delay Analysis," of this Final EIS.

Summary of Comments. Congressman Jerrold Nadler of New York, and 23 other members of Congress representing the people of the States of New York and Connecticut, commented that the Draft EIS "unlawfully fails to consider the cumulative effects of the plan in any regard" and that it "violated the law by segmenting the program, by localizing its separate effects and by ignoring cumulative effects."

Response. SEA relied on NEPA and CEQ's handbook, *Considering Cumulative Effects Under the National Environmental Policy Act*, to develop the cumulative effects methodology. According to the handbook, the goal of a cumulative effects analysis is the making of "a better decision, rather than a perfect cumulative effects analysis." With this guidance in mind, and without a precedent for Federal EIS cumulative effects analysis, SEA established an approach for evaluating potential cumulative effects in a thorough yet timely manner, within the geographic area that the proposed Conrail Acquisition encompasses. The methodology evaluated system-wide effects on air quality, energy, and transportation. SEA also evaluated localized potential impacts (that commentors made known to SEA within the scoping process) that may have represented a cumulative effect associated with the proposed Conrail Acquisition.

Regarding Congressman Nadler's concerns about the New York City/northern New Jersey metropolitan area and southern New England, SEA analyzed the potential environmental effects of truck traffic, and the results are presented in Appendix H, "Transportation: Roadway Systems Analysis," of this Final EIS.

Summary of Comments. Congressman Jerrold Nadler of New York and 23 other members of Congress, representing the people of the States of New York and Connecticut, expressed concern regarding the increased truck traffic on the highways of Manhattan and the Bronx because of those trucks driving to and from the North Jersey intermodal facilities. The commentors stated that "the cumulative effect of this traffic added to Rt. 95, the George Washington Bridge and the highways east of the Hudson is far greater than the local effect, yet is unmentioned." Further, the commentors stated that improved cross-harbor rail car float service would "quickly raise traffic handled from nearly nothing to over 14 million tons per year (823,520 17-ton trucks per year, 2,261 trucks per day), with minimal investment in infrastructure." The commentors derived this information from studies conducted by the City of New York.

Response. Several commentors expressed concerns that truck trips east of the Hudson River would increase if the Board approves the proposed Conrail Acquisition. They suggested that the Board impose various operational conditions including competitive access to the New York City/northern New Jersey metropolitan area, southern New England, as well as RoadRailer service (that is, Triple Crown Service) on the Northeast Corridor east of the Hudson River that would divert truck traffic to rail. SEA considered these comments as well as a Petition for Intervention, two Responsive Applications, and several Requests for Conditions. SEA analyzed the potential for increased truck trips and truck route shifts in the metropolitan area in Appendix H, "Transportation: Roadway Systems Analysis," of this Final EIS. SEA concluded that there would be no significant environmental impacts in the metropolitan area and southern New England as a result of the proposed Conrail Acquisition, either individually or cumulatively.

Section 5.3.1—Alabama

5.3 COMMENTS ON STATE AND COMMUNITY ISSUES

5.3.1 Alabama

SEA did not receive any comments from Alabama.

Section 5.3.2—Connecticut

5.3.2 Connecticut

Connecticut—Safety: Other

Summary of Comments. The South Western Regional Planning Agency of Connecticut disagreed with the following statement on page CT-2 of the Draft EIS: “CSX and NS anticipate that, due to predicted truck-to-rail diversions, Connecticut would experience a benefit in the areas of emissions, noise and safety.” The Agency maintains that the diversions would end on the west side of the Hudson River in New Jersey, thus resulting in more, not fewer, potential truck safety impacts in Connecticut.

Response. On further review of the Draft EIS, SEA found that the statement “Connecticut would experience a benefit in the areas of emissions, noise and safety” was inadvertently included on page CT-2 of the Draft EIS. As that page also stated, SEA did not evaluate air quality emissions, noise, safety, or other technical areas “based on the nature of the proposed Conrail Acquisition-related activities in Connecticut.” None of the changes in train traffic in Connecticut that would result from the proposed Conrail Acquisition exceeded the Board’s thresholds for environmental analysis.

Summary of Comments. The Connecticut Department of Transportation expressed the following concern: “NS enthusiastically indicated to CDOT [the Connecticut Department of Transportation], (prior to April of 1997) that RoadRailer-type service would figure prominently in its business and Operating Plans. Should this type of intermodal service flourish in southern regions, but terminate west of the Hudson River in the North Jersey Shared Assets Area, it must follow that a significant number of containers destined for points east of the Hudson River will complete the trip by truck on I-95. Paradoxically, a plan which purports to reduce traffic congestion, as well as enhance air quality and public safety, will have quite the opposite effect in Connecticut.”

Response. SEA conducted an analysis of the potential increase in truck traffic and shifts in truck traffic routes that the proposed Conrail Acquisition could cause in the New York City/northern New Jersey metropolitan area and southern New England. Appendix H, “Transportation: Roadway Systems Analysis,” of this Final EIS contains this analysis. SEA determined that the projected increase in intermodal activity in northern New Jersey intermodal facilities was based on truck-to-rail diversions, not new truck movements to New Jersey. Therefore, SEA concluded that the activity would not result in a measurable increase in truck traffic in the New York metropolitan area or Connecticut. In addition, CSX proposes to divert some current truck traffic from the I-95 corridor by introducing new intermodal service from the southeastern United States to Boston, Massachusetts. This intermodal service would result in a minor decrease in truck traffic in Connecticut.

Section 5.3.2—Connecticut

Connecticut—Transportation: Passenger Rail Service

Summary of Comments. The South Western Regional Planning Agency of Connecticut commented that SEA should add the following words to the Draft EIS under the heading “Railroad Facilities” in Chapter 5, page CT-1 of Volume 3A of the Draft EIS: “Conrail has trackage rights on Amtrak and the Metro North Railroad from New York to New Haven, but has failed to use them except for local freight service.”

Response. SEA considers the language in the Draft EIS satisfactory as originally written. Day-to-day railroad operations are typically market driven and traditionally beyond the Board’s authority.

Connecticut—Transportation: Roadway Systems

Summary of Comments. The Connecticut Department of Transportation stated that approval of the Application in its current form would lead to increased traffic congestion. The Department disputed the statement in the Draft EIS that “no rail line segments, rail yards or intermodal facilities in Connecticut would experience increased traffic or activity....”

Response. SEA determined that no rail line segments in Connecticut would experience any increase in trains as a result of the proposed Conrail Acquisition. Appendix B, “Safety,” of the Draft EIS listed all rail line segments, including those in Connecticut. Appendix B also listed daily rail car switching activity at terminals, none of which occurred in the State of Connecticut. Information that CSX and NS provided indicates that CSX, NS, and Conrail do not have any existing or proposed intermodal facilities located in the State of Connecticut.

Summary of Comments. The Connecticut Department of Transportation stated that the Draft EIS underestimated truck use on I-95. According to the commentor, if intermodal service should “flourish in southern regions, but terminate west of the Hudson River in the North Jersey Shared Assets Area, it must follow that a significant number of containers destined for points east of the Hudson River will complete the trip by truck on I-95.”

The South Western Regional Planning Agency in Connecticut stated that heavy truck traffic on the congested I-95 corridor in Connecticut would increase as a result of intermodal activity in northern New Jersey. Further, the Agency indicated that the Board should address the increase in truck traffic on I-95 in Connecticut resulting from intermodal activity in northern New Jersey. The commentor requested mitigation and suggested using mitigation that the Intervention Petition of Congressman Jerrold Nadler and 23 other members of Congress proposed.

Response. SEA considered these comments as well as a Petition of Intervention, two Responsive Applications, and several Requests for Conditions, and it analyzed the potential for increased truck trips and truck trip route shifts in the New York

Section 5.3.2—Connecticut

City/northern New Jersey metropolitan area in Appendix H, "Transportation: Roadway Systems Analysis," of this Final EIS. SEA concluded that no significant environmental impacts would result from the proposed Conrail Acquisition in the New York City/northern New Jersey metropolitan area or southern New England.

Connecticut—Transportation: Other

Summary of Comments. The South Western Regional Planning Agency of Connecticut pointed out the need for a "rail intermodal directly across the Hudson River at New York City with rail intermodal continuing into southern New England along the Northeast Corridor." The Agency based this claim on the 1994 New England Transportation Initiative study, which forecasted severe congestion on limited-access facilities in Connecticut and Rhode Island by the year 2000. Similarly, the Conservation Law Foundation of Massachusetts noted the need to increase freight rail service between New York and New England "to reduce the dependence on highway trucking," especially on I-95.

The Agency added that train densities following the proposed Conrail Acquisition would be higher south of New York City than north of New York City, and it is logical that freight train operations would not conflict with passenger rail operations in the Northeast Corridor to the north of Newark, New Jersey. The Agency also stated that RoadRailer and container on flatcar service is feasible through Pennsylvania Station in New York City.

Response. The 1994 forecast of increasing truck traffic in Connecticut and Rhode Island is not directly related to the proposed Conrail Acquisition. It is a pre-existing condition and it is the Board's policy not to require mitigation in such circumstances. Nonetheless, SEA considered these comments as well as a Petition for Intervention, two Responsive Applications, and several Requests for Conditions, and analyzed the potential for increased truck traffic and truck trip route shifts in the New York City/northern New Jersey metropolitan area in Appendix H, "Transportation: Roadway Systems Analysis," of this Final EIS. SEA also considered the Applicants' Operating Plans, which indicated that RoadRailer and container on car service would not be introduced on the Northeast Corridor or through Penn Station because of operating and clearance conflicts. SEA concluded that any environmental impacts that could result from the proposed Conrail Acquisition in the metropolitan area and southern New England would be insignificant. SEA's responsibility and the scope of the EIS do not include evaluating merits issues such as the competitive aspects of the proposed Conrail Acquisition.

Section 5.3.2—Connecticut

Connecticut—Air Quality

Summary of Comments. The Connecticut Department of Transportation and South Western Regional Planning Agency of Connecticut commented that areas of the state affected by the proposed Conrail Acquisition are currently in nonattainment based on current levels of motor vehicle traffic in the I-95 corridor. The Department commented that contradictory statements in the Draft EIS warrant a reanalysis of the air quality impacts of the proposed Conrail Acquisition in Connecticut; for example, the statement that air quality in Connecticut would benefit from truck-to-rail diversions contradicted another statement that no rail line segments, rail yards, or intermodal facilities would experience increased traffic or activity. The Department further stated that traffic congestion and air quality in Connecticut would worsen if the Board approves the proposed Conrail Acquisition because truck-to-rail diversions would not extend east of the Hudson River. The Department expressed dissatisfaction that SEA considered only the obvious impacts of the Conrail Acquisition in Connecticut; according to the Department, in nonattainment areas such as the I-95 corridor, the potential primary and secondary environmental effects of the Conrail Acquisition require more detailed analysis.

Response. SEA determined that the truck-to-rail diversions that the Draft EIS projected to occur in Connecticut, and the associated air pollutant emissions reductions, are not related to intermodal traffic bound for New Jersey. Rather, the Applicants expect that shippers will use intermodal facilities in New England, if the Board approves the proposed Conrail Acquisition. Trains serving New England facilities would access the remainder of the CSX rail route network via Selkirk Yard near Albany, New York, and NS trains would use the Gilford Transportation Company lines.

With respect to potential additional truck trips between Connecticut and New Jersey, SEA does not expect the proposed Conrail Acquisition and the associated changes at intermodal facilities in the New York City/northern New Jersey metropolitan area to cause any additional truck trips in Connecticut. Therefore, SEA does not expect an increase in air pollutant emissions as a result of the proposed Conrail Acquisition from highway truck traffic in Connecticut. See Appendix, I, "Air Quality Analysis," of this Final EIS.

See Appendix H, "Transportation: Roadway Systems Analysis," Section H.1, "New York City/Northern New Jersey Metropolitan Area," of this Final EIS for further discussion on rail and truck traffic issues in the metropolitan area.

Summary of Comments. Congressman Jerrold Nadler of New York, representing himself and 23 other members of Congress from New York and Connecticut, commented that New York City is at the center of the nation's largest nonattainment area, and that the Draft EIS deals only with local effects of increases in truck traffic in the areas around the northern New Jersey intermodal terminals. He also suggested that the EIS study viable truck rerouting alternatives that could mitigate the adverse effects of the proposed Conrail Acquisition.

Section 5.3.2—Connecticut

Response. As Appendix H, "Transportation: Roadway Systems Analysis," of this Final EIS describes, SEA does not expect the proposed Conrail Acquisition and associated increased truck lifts at the intermodal facilities in northern New Jersey to result in additional truck trips on roads or bridges. Although a minimal number of trucks could shift their routes across the metropolitan area, these shifts would not result in significant environmental impacts. Therefore, SEA concludes that the proposed Conrail Acquisition would not cause a significant increase in road congestion or a reduction in air quality in the New York metropolitan area.

Connecticut—Noise

Summary of Comments. The South Western Regional Planning Agency of Connecticut commented that truck-to-rail diversions ending on the west side of the Hudson River in New Jersey would cause more heavy truck noise in Connecticut.

Response. SEA evaluated the potential for increased truck traffic at intermodal facilities in northern New Jersey that would result from the proposed Conrail Acquisition. Based on its previous review of the Applicants' Operating Plans, SEA identified no indication of significant change in existing truck traffic volumes in Connecticut. Therefore, SEA concluded that no basis exists to expect that the proposed Conrail Acquisition would cause noise impacts in Connecticut. See Chapter 4, "Summary of Environmental Review."

Section 5.3.3—Delaware

5.3.3 Delaware

Delaware—Safety: Highway/Rail At-grade Crossings

Summary of Comments. The Delaware Department of Transportation concurred with SEA's preliminary recommendation that the Board require CSX to consult with local agencies, the University of Delaware, the Delaware Department of Transportation, and appropriate parties to address potential safety concerns at the three highway/rail at-grade crossings in Newark. The Department stated that several overpasses and underpasses in Newark pose an immediate problem for traffic and pedestrian/bike safety, and recommended that the Board warrant mitigation at these locations. One example of a deficient overpass is Casho Mill Road in Newark.

Response. SEA identified concerns in Newark, Delaware in the Draft EIS and notes that these are existing conditions. SEA also notes that CSX has consulted with the University of Delaware, the City of Newark, and the Delaware Department of Transportation regarding safety concerns in Newark. SEA understands that CSX has reached a Negotiated Agreement with the parties to address the safety concerns, including pedestrian and bicycle safety.

Delaware—Safety: Hazardous Materials Transport

Summary of Comments. The State of Delaware, Department of Justice voiced concern about hazardous materials transport on the Wilsmere-to-Elsmere (C-084) and Bell-to-Edgemoor (N-010) rail line segments. The Department cited the Draft EIS Executive Summary as stating that these segments exceeded "threshold limits in hazardous material," but found no discussion of this issue in the Draft EIS. The Department requested that the Board clarify the analysis and respond to the Department before reaching any final decision. The Department also requested "proper time allotted in order to determine and respond to the SEA if there is a hazardous waste threshold limit exceeded in Delaware."

Response. Two rail line segments, N-010 and C-084, met SEA's threshold for analysis of hazardous materials transport. Although these segments appeared in the master segment table of the Draft EIS, SEA inadvertently omitted them from the discussion of the analysis in Chapter 5. Subsequent to the Draft EIS, the Applicants provided revised (reduced) information for rail line segment C-084 between Philadelphia, Pennsylvania and Wilsmere, Delaware. According to the revised data, the hazardous materials carloads would increase from 11,000 per year to 16,000 per year on rail line segment C-084. See Appendix F, "Safety: Hazardous Materials Transport Analysis," of this Final EIS.

The increase of hazardous materials transport on rail line segment C-084 following the proposed Conrail Acquisition is below SEA's significance criteria. However, this rail

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line segment is already a key route and would remain a key route. Therefore, SEA does not recommend additional mitigation.

Hazardous materials transport on rail line segment N-010 between Bell and Edgemoor, Delaware, would increase from 4,000 to 6,000 carloads per year following the proposed Conrail Acquisition. This increase is below SEA's significance criterion. Therefore, SEA does not recommend mitigation.

Delaware—Safety: Passenger Rail Operations

Summary of Comments. The Delaware Department of Justice stated that SEA did not accurately assess “the potential risks of an accident” involving passenger and commuter trains. The Department commented that it “would like to know how maintenance agreements for safety concerns and operations will be addressed ... for passenger operations through Delaware.”

Response. SEA respectfully disagrees with the Department's comment that it did not accurately assess “the potential risks of an accident” involving passenger and commuter trains. SEA recognizes that the potential risks of an accident involving passenger and commuter trains require thorough analysis. Chapter 3 of the Draft EIS, “Analysis Methods and Potential Mitigation Strategies,” presents SEA's analysis, which considered every rail line segment with passenger service and one or more additional freight trains per day as a result of the proposed Conrail Acquisition. For each rail line segment, SEA first determined an historic accident rate and estimated the annual passenger train accident rate on a train-mile basis. SEA then calculated the change in accident rate based on the anticipated change in the number of freight trains that would operate on the rail line segment.

Nationwide, the passenger train accident rate varies by approximately 30 percent from year to year. To be conservative, SEA determined whether the predicted Acquisition-related change in the projected accident rate was greater than 25 percent. SEA then determined whether each rail line segment would experience a projected accident frequency of greater than one accident every 150 years, which reflected an annual frequency based on actual history of passenger train service providers. Using these criteria, SEA identified each rail line segment that would likely have an accident more frequently than once every 150 years, and whose projected accident risk would increase by 25 percent or more. SEA recommended mitigation for each rail line segment that exceeded these criteria of significance.

SEA notes that FRA regulations regarding track safety include preventive maintenance provisions. These requirements, which the Applicants consider to be minimum standards, mandate inspections on a rigorous schedule, with documentation and remedial action when the inspectors identify problems. SEA reviewed the Applicants' Safety Integration Plans (Draft EIS, Volume 2). The Safety Integration Plans contain

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comprehensive explanations of the actions that the Applicants would take before implementing changes associated with the proposed Conrail Acquisition. These actions would implement preventive maintenance programs that meet or exceed FRA guidelines for maintenance. SEA is, therefore, confident in its evaluation of safety concerns in Delaware. Refer to Chapter 6, "Safety Integration Planning," of this Final EIS for further discussion of the Safety Integration Plans.

Delaware—Safety: Freight Rail Operations

Summary of Comments. The Delaware Department of Transportation raised the following concern: "Because the SEA did not take into account the increased freight activity with preventive maintenance provisions, the Department feels that safety operations in both freight and passenger/commuter rail operations in Delaware was inaccurately evaluated."

The Delaware Department of Transportation also raised the concern that, "the [Draft] EIS states that increased freight and operations require rehabilitation of the Shellpot Bridge. However, was there a proper assessment done to ensure that other bridges and high maintenance areas are not easily prone to accelerated safety concerns (i.e., secondary impacts of safety not evaluated)? This would not only include other Delaware rail bridges (underpasses and overpasses), but other freight and intermodal facilities, traffic intersections, sensitive land uses, and anticipated expansion areas as indicated within the [Draft] EIS."

Response. FRA regulations regarding track safety include preventive maintenance provisions. These requirements, which the Applicants consider minimum standards, mandate inspections on a rigorous schedule, with documentation and remedial action when the inspectors identify problems. SEA and DOT reviewed, and DOT approved, the Applicants' Safety Integration Plans that were included in the Draft EIS, Volume 2. The Safety Integration Plans contain comprehensive explanations of the actions that the Applicants would take before implementing changes associated with the proposed Conrail Acquisition. These actions would implement preventive maintenance programs that meet or exceed the FRA guidelines for maintenance. SEA is therefore confident in its evaluation of safety concerns in Delaware. See Chapter 6 of this Final EIS, "Safety Integration Planning," for further discussion of the Safety Integration Plans.

Following implementation of the proposed Conrail Acquisition, CSX rail line segments in Delaware would have small increases in train activity. NS rail line segments (formerly Conrail rail line segments) would have small increases in activity, except that rail line segment N-010, a 1-mile segment that includes the Shellpot Bridge, would have an increase of nearly 7 trains per day on the average.

Two Amtrak rail line segments, S-001 and S-040, are part of the Northeast Corridor, which is a state-of-the-art mainline railroad. These rail line segments would have an increase of approximately 8 trains per day. Amtrak manages the maintenance and

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operation of the Northeast Corridor, and the Board does not have jurisdiction over Amtrak maintenance and operations. SEA analyzed freight rail safety for seven of the nine rail line segments in Delaware. In the Draft EIS, none of these segments met SEA's significance criteria that would warrant mitigation for freight rail safety. Proposed traffic changes on the other two rail line segments, C-771 and N-242, were below the Board's thresholds for environmental analysis.

Delaware—Transportation: Passenger Rail Service

Summary of Comments. The State of Delaware General Assembly adopted and sent to SEA a copy of a resolution "to reserve for future passenger rail use that portion of the existing Conrail lines in the State of Delaware that are included in the merger transaction of Conrail by Norfolk Southern Railroad and CSX Railroad."

Response. SEA determined that the Applicants do not own rail lines that host passenger rail service in the State of Delaware. Neither the Applicants nor passenger service operators informed SEA about plans to initiate passenger service on Applicant-owned lines. Consequently, SEA did not consider them in its passenger rail service analysis. SEA determined that undefined and unfunded proposed passenger rail services were too speculative, and therefore, SEA did not evaluate them in the Final EIS. However, the State of Delaware can, if it wishes, move forward with its plans for future service.

Summary of Comments. The Delaware Department of Justice commented that the Draft EIS appeared to contain contradictory statements regarding commuter service and freight operations on one another's rail lines. According to the Department, the Draft EIS implied both that the commuter rail operates over freight rail lines and that freight carriers operate over commuter rail lines. It also asked (a) "why the Draft EIS did not consider SEPTA and the Delaware Department of Transportation's plan to expand commuter service "within the Stanton, Delaware region (i.e., Churchmans Crossing)," and (b) whether "the Conrail acquisition [would] impact the Department's future plans for additional frequency and times for commuter rail service along the Amtrak northeast corridor."

Response. SEA's analysis of the effect of the proposed Conrail Acquisition on passenger service included the State of Delaware Department of Transportation's service on Amtrak's Northeast Corridor. SEA's analysis also included the September 1997 extension of SEPTA service from Wilmington to Newark, Delaware, because Stanton is between Wilmington and Newark. Any future plans that the Department may have to add passenger service at Stanton would probably consist of adding a station at Stanton at which existing en route SEPTA trains could stop.

SEA notes that the proposed service at Stanton would require the approval of Amtrak, as owner and operator of the Northeast Corridor. Neither NS nor CSX would need to concur on this matter if the Board approves the proposed Conrail Acquisition, which

Section 5.3.3—Delaware

would have no effect on the Department's future plans for commuter rail service. Freight service operates on lines owned and dispatched by SEPTA in Pennsylvania; however, SEPTA does not own rail lines in Delaware.

Because Amtrak owns and has train dispatching control of the Northeast Corridor, Amtrak is able to control the hours and conditions under which freight trains operate. SEA noted that an important constraint on expanding commuter rail service would be the 73 high-speed Amtrak trains that currently operate on the Northeast Corridor through Delaware, rather than the proposed Conrail Acquisition. SEA determined that no significant environmental effects on current or future planned passenger rail service in Delaware were likely as a result of the proposed Conrail Acquisition.

Delaware—Transportation: Roadway Systems

Summary of Comments. The Delaware Department of Transportation disagreed “with the assessment that there are no intermodal facilities or rail yards that would meet or exceed the Board’s threshold for environmental analysis.” The Department requested that “the EIS report further analyze and list increases in specific activities at certain intermodal facilities and rail yards.”

Response. SEA has reexamined this issue and confirms that no intermodal facilities or rail yards in Delaware meet the Board’s thresholds for environmental analysis. SEA agrees that the train activity would change at various rail yards in Delaware as a result of the proposed Conrail Acquisition; however, changes in yard activities would not affect truck traffic on nearby roadways. The proposed Conrail Acquisition would result in a decrease of 79 rail cars per day at the Wilmers/Wilmington Yard, a decrease of 4 rail cars per day at the Edgemoor Yard, and an increase of 46 rail cars per day at the Harrington Yard. The Applicants neither operate nor plan to operate any intermodal facilities in the State of Delaware.

Delaware—Air Quality

Summary of Comments. The Delaware Department of Transportation commented that SEA evaluated air quality impacts in Delaware incorrectly. The Department stated that an air quality analysis should be conducted, and associated mitigation prescribed, on a local basis rather than a regional basis because freight operations are a stationary or linear source.

Response. Although the proposed Conrail Acquisition would lead to localized increases in emissions in Delaware, SEA does not expect that these emissions would cause air pollutant concentrations to exceed the health-based NAAQS. With respect to rail yards and intermodal facilities, the emission levels from such facilities are relatively minor compared to those at many stationary point sources. Because the emissions are also distributed over a large site, rather than concentrated at a single point, SEA expects any

Section 5.3.3—Delaware

effect on concentrations would be minor. Similarly, emissions from locomotives on rail line segments are distributed over a relatively large linear distance. In response to a number of comments requesting analysis of ambient concentrations resulting from locomotives on rail line segments, SEA performed a screening air quality impact analysis of these emissions. SEA used conservative assumptions in the analysis (see Appendix I, "Air Quality Analysis," of this Final EIS for the analysis). This analysis demonstrated that emissions from locomotives on rail line segments would not cause air pollutant concentrations to exceed the NAAQS in Delaware.

Summary of Comments. The Delaware Department of Transportation commented that it requires proof or concurrence, in the form of a letter from the Delaware Department of Natural Resources and Environmental Control's Air Quality Branch, of the statement in the Draft EIS that increases in air pollution are unlikely to affect compliance with air quality standards.

Response. SEA conducted the air quality analysis in accordance with the methodology described in the Draft EIS. Letters of concurrence from state air pollution agencies for impact analyses performed for the EIS are not required for the proposed Conrail Acquisition under NEPA regulations, the Clean Air Act, or State of Delaware air pollution regulations.

Summary of Comments. The Delaware Department of Transportation commented that truck diversions would not provide an immediate decrease in NO_x emissions of 49.18 tons per year in New Castle County as stated in the EIS.

Response. SEA agrees that all of the anticipated truck-to-rail diversions would not occur immediately. SEA expects that during the 3-year phase-in of the proposed Conrail Acquisition, truck-to-rail diversions would occur at the same rate as increased train traffic.

Summary of Comments. The Delaware Department of Transportation commented that the portion of the air quality analysis based on the existing county NO_x emissions budget is flawed because the data are from 1995. The Department stated that updated information and data are necessary to fully determine the air quality impacts. The Department disagreed with SEA's netting criteria because the use of such criteria dilutes the results.

Response. SEA used 1995 emissions data to evaluate air quality impacts because, at the time it was preparing the Draft EIS, 1995 data were available for all states in the entire project study area. While some states may have had data for more recent years, not all states did. Therefore, SEA used 1995 emissions data for a consistent impact analysis in each state.

Netting criteria focused the analysis on those counties with the greatest potential for emissions increases. Analyzing small increases and decreases elsewhere would not alter the results of the analysis significantly.

Section 5.3.3—Delaware

Delaware—Noise

Summary of Comments. The Delaware Department of Justice commented that, in the Draft EIS, SEA failed to consider or measure noise-sensitive receptors within the City of Newark.

Response. SEA disagrees with the comment that the Draft EIS failed to consider sensitive receptors within the City of Newark, Delaware. Where noise impacts exceeded the Board's thresholds for noise analysis, SEA conducted detailed noise impacts analyses and identified sensitive receptors. The Newark area would not have train traffic increases and associated noise increases that would exceed the Board's thresholds for analysis; therefore, noise impacts would be minimal.

Delaware—Cultural and Historic Resources

Summary of Comments. The Delaware Historic Preservation Office noted that, although the Shellpot Bridge was eligible for the National Register of Historic Places (NRHP), the State Historic Preservation Officer has not received a formal Determination of Eligibility for this property. The commentor also requested that the Applicants formally address that portion of the Northeast Corridor, historically known as the Wilmington Rail Viaduct, which is an identified historic property that includes rail lines, bridges, and other related structures.

Response. SEA has requested more detailed plans from NS regarding the proposed scope of work for the Shellpot Bridge and the Shellpot Connection. SEA will continue Section 106 consultation upon receipt of these plans. SEA will apply NRHP criteria to these properties and will formally request SHPO's concurrence with SEA's findings as part of the ongoing Section 106 process. SEA recommends that the Applicants defer performing any work on the Shellpot Bridge until Section 106 consultation is completed.

SEA has determined that the Amtrak-owned Northeast Corridor and the Wilmington Rail Viaduct are outside the Board's jurisdiction because Amtrak, who owns these lines, is not a party to the proposed Conrail Acquisition.

Summary of Comments. The Delaware Department of Transportation, through the Delaware Justice Department, commented that "according to NEPA guidelines, all additional bridges, building facilities, and rail yards that are expected to be improved or updated (as indicated) may be considered a secondary impact." The Department added the Draft EIS should have included a historic evaluation of an inventory of existing facilities.

The Department agreed that "NS shall undertake no construction or modification of the Shellpot bridge near Wilmington, DE, until completion of the Section 106 process" and identification of appropriate mitigation measures. The Department "cautions the interpretation of what is considered 'appropriate' mitigation." It added that the Delaware State Historic Preservation Officer "has and will require measures that extend beyond the reasonable and feasible thresholds

Section 5.3.3—Delaware

that may seem appropriate under the Section 106 regulations. In sum, the [A]pplicants may not adhere to the DE SHPO [Delaware State Historic Preservation Officer] measures for cultural resource identification, alternative analysis, and appropriate mitigation.”

Response. SEA identified, evaluated, and assessed the potential adverse effects that activities related to the proposed Conrail Acquisition would have on any historic properties where improvements, alterations, or abandonments would occur. In Delaware, only the Shellpot Bridge and its approaches have the potential for cultural resource impacts. SEA and its consultants are currently conducting Section 106 consultation with the Delaware SHPO to provide satisfactory mitigation of any potential adverse effects.

Delaware—Environmental Justice

Summary of Comments. The State of Delaware Department of Justice raised concerns about how SEA evaluated socioeconomic data and conducted public outreach to environmental justice populations in Delaware.

Response. SEA conducted the evaluation using 1990 Census data and a Geographic Information System (a tool used to determine which block groups fell within the Area of Potential Effect for a rail line segment or a site). The method for determining the percentage of minority and low-income populations within the Area of Potential Effect appears in the Draft EIS, Appendix K, “Environmental Justice,” page K-6. SEA determined the percentages of minority and low-income populations in the total population within the Area of Potential Effect. SEA compared these percentages to the following thresholds: The minority and low-income population percentage must be greater than 50 percent of the total population, or the minority and low-income population must be 10 percent greater in the Area of Potential Effect than in the county.

The Area of Potential Effect surrounding the four rail line segments (Edgemoor-to-Bell; Davis, Delaware-to-Perryville, Maryland; Wilsmere, Delaware-to-RG, Pennsylvania; Davis, Delaware-to-Arsenal, Pennsylvania) did not meet the environmental justice criteria for minority and low-income populations. In response to the concerns raised by the State of Delaware Department of Justice, for this Final EIS, SEA performed a more detailed review of environmental justice populations at the block group level. All of the block groups in the Area of Potential Effect along these segments fell within the lower three quintiles of the multiple resource effects score and would experience no disproportionate impacts. See Chapter 4, “Summary of Environmental Review,” and Appendix M, “Environmental Justice Analysis,” of this Final EIS for a more detailed discussion of the analysis.

Section 5.3.3—Delaware

Delaware—Cumulative Effects

Summary of Comments. The Delaware Department of Transportation commented that the Draft EIS did not address “future costs and secondary impacts/changes that are brought upon the State’s transportation system” as a result of the “extended market outreach expected.” The Department also stated that the Draft “EIS overlooks the induced, additive, and synergistic impacts of cumulative impacts.”

Response. SEA determined that economic modeling of the type described by the Department is a matter beyond the scope of the EIS, and one which lends itself to speculation on matters that are not reasonably foreseeable, and thus not encompassed in SEA’s cumulative impacts analysis.

Further, SEA considered agency and public comments in developing the scope of the EIS. The scope included an analysis of the potential environmental impacts on specific resource categories and cumulative effects on a regional or system-wide basis for the resource categories of air quality, energy, and transportation. Also, SEA evaluated cumulative effects on specific resource categories associated with other projects or activities that related to the proposed Conrail Acquisition where local communities, local, regional, state, or Federal officials, or other interested parties provided information to SEA. However, in accordance with the scope of the EIS, SEA did not consider aggregated multiple resource effects in its cumulative effects analysis on a system-wide, regional, or local basis. Multiple resource effects are best addressed by the analysis, and recommended mitigation, if appropriate, of individual resource categories.

Section 5.3.4—Florida

5.3.4 Florida

Florida—Safety: Hazardous Materials Transport

Summary of Comments. The Hillsborough County Planning Commission concurred with the finding in the Draft EIS that the proposed Conrail Acquisition would have no potential environmental impacts in Hillsborough County, with the exception of an increase in hazardous materials transport between Winston and Plant City. The Commission recommended that the Board require CSX to comply with the AAR key route guidelines before any increase in hazardous materials transport occurs.

Response. Although SEA used the most current information available to prepare Attachment ES-B in the Draft EIS, the Applicants provided revised information on specific rail line segments shortly after publication. Rail line segment C-403 between Winston and Plant City was one of the revised rail line segments. As a result, the revised information revealed that rail line segment C-403 would experience no increase in hazardous materials shipments following the proposed Conrail Acquisition. Therefore, SEA did not conduct further analysis or propose mitigation measures in the Final EIS for this segment.

Section 5.3.5—Georgia

5.3.5 Georgia

Georgia—Safety: Hazardous Materials Transport

Summary of Comments. DeKalb County, Georgia expressed concern about the doubling of hazardous materials transport through the County following the proposed Conrail Acquisition. The County also recommended that CSX bring rail line segments into compliance with AAR guidelines for hazardous materials transport. Further, the County requested that CSX develop a hazardous materials emergency response plan with the participation of County and municipal governments.

Response. In the Draft EIS, SEA estimated that hazardous materials transport on rail line segment C-354 between Athens and Atlanta, Georgia would increase by 132 percent following the proposed Conrail Acquisition. However, SEA changed this estimate based on new information that CSX provided. Rail line segment C-354 would actually have a 23 percent increase in hazardous materials transport (from 22,000 to 27,000 carloads per year) and is also already a key route. Therefore, CSX already complies with the applicable AAR standards along this rail line segment, and the proposed increase would not change this compliance requirement. SEA also notes that rail line segment N-022 between Spring and Scherer Coal, Georgia is already a key route. Therefore, NS already complies with AAR standards along this rail line segment, and the proposed increase would not change this compliance requirement. Therefore, SEA does not recommend that the Board require additional mitigation measures along rail line segments C-354 or N-022.

Georgia—Air Quality

Summary of Comments. The Atlanta Regional Commission, the Metropolitan Planning Organization for the Atlanta, Georgia area, commented that any increases in air pollutant emissions in the region would be significant, and it requested that the Final EIS more fully analyze impacts of increased levels of NO_x, volatile organic compounds, PM, and carbon monoxide on the Atlanta Region.

Response. SEA's analysis in the Draft EIS demonstrated that emissions increases of pollutants other than NO_x that are related to the proposed Conrail Acquisition would clearly not meet SEA's significance criteria in the Atlanta metropolitan area. As the Draft EIS shows, SEA analyzed net NO_x emissions in detail for two counties in the area that would have the greatest potential increases of emissions as a result of activities related to the proposed Conrail Acquisition. SEA summed NO_x emissions increases from Acquisition-related activities in the Atlanta area and determined that the total NO_x emissions increase represented only 0.14 percent of the total NO_x emissions in the area. This increase does not meet SEA's significance criteria. In addition, EPA's new emissions standards for locomotive engines (see Appendix O, "EPA Rules on

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Locomotive Emissions,” of this Final EIS) will result in emissions reductions from railroads that far exceed any increases resulting from the proposed Conrail Acquisition.

Georgia—Cumulative Effects

Summary of Comments. The Director of the Atlanta Regional Commission, Atlanta, Georgia noted that “both CSX and Norfolk Southern are proposing new intermodal facilities in the Atlanta Region—CSX in South Fulton County and Norfolk Southern in the City of Austell in Cobb County.” The Director did not find reference to these proposed facilities in the Draft EIS nor to the question of whether the proposed Conrail Acquisition would “affect the impact of these facilities on the Atlanta Region.” Two citizens from Powder Springs, Georgia also expressed concerns about the potential environmental impacts of the proposed intermodal facility in Cobb County.

Response. SEA determined that the proposed development of intermodal facilities at Austell, Georgia (NS) and South Fulton County in Fairburn, Georgia (CSX) is unrelated to the proposed Conrail Acquisition. Even when they are considered along with the proposed Conrail Acquisition, SEA determined that they did not constitute a cumulative effect. SEA reviewed the locational characteristics, legal status, and construction timing of the two intermodal facilities, and their relationship to the proposed Conrail Acquisition. SEA determined that each intermodal facility is approximately 10 to 15 miles from the existing intermodal facilities—Hulsey (CSX) and Inman (NS)—subject to SEA’s review in the proposed Conrail Acquisition, and these facilities affect different roads. SEA analyzed the potential impacts of the existing NS Fulton County Inman Intermodal Yard facility that would result from the increase of 143 trucks per day. Further, planning for each facility began prior to the proposed Conrail Acquisition (1992 for Austell; 1993 for Fairburn), and each proposed facility was subject to NEPA review requirements, as well as local planning, regulatory, and transportation permitting and approval processes. CSX has obtained the necessary approvals for the Fairburn facility, and construction was scheduled to begin in March 1998.

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Chicago Metropolitan Area—Safety: Highway/Rail At-grade Crossings

Summary of Comments. Blue Island Greens of Illinois commented that SEA should provide an explanation of the potential environmental impacts of the proposed Conrail Acquisition on highway/rail at-grade crossings located at 135th-Broadway and at Western Avenue located on Railroad Segment C-010. Blue Island Greens remarked that, in the Draft EIS and Errata, SEA incorrectly reported these two highway/rail at-grade crossings to be in Calumet Park. Also, Blue Island Greens stated that the Board should allow an opportunity for public involvement and comment by its citizens regarding the mitigation measures that SEA recommended for those locations. The commentor added that SEA should complete a grade separation analysis because grade separations at these locations would prevent an increase in fatal accidents, particularly those involving pedestrians.

Response. SEA analyzed the highway/rail at-grade crossings at Broadway-135th Street in Cook County (FRA ID 163416P) and Dixie Highway (also known as Western Avenue, FRA ID 163415H) in Blue Island, Illinois. SEA understands that both of these crossings are equipped with gates. SEA's analysis showed that the proposed Conrail Acquisition would not have a significant effect on highway/rail at-grade crossing safety at Broadway-135th Street and Dixie Highway, and consequently, SEA does not recommend that the Board require mitigation measures for grade crossing safety at these locations.

Although the Draft EIS incorrectly identified the municipality in which these two highway/rail at-grade crossings are located, the accident risk analysis was correct.

Chicago Metropolitan Area—Safety: Hazardous Materials Transport

Summary of Comments. The Blue Island Greens of Illinois expressed a number of concerns related to hazardous materials transport and mitigation at Blue Island Junction and the adjacent area. The Greens suggested that SEA's significance criteria for determining whether to warrant mitigation for hazardous materials transport impacts were inadequate, arbitrary, and unreasonable. The Greens' explanation was that the significance criteria did not take into account the population living near the tracks, suggesting that a risk level acceptable in a rural area is not acceptable in an urban area. The Greens expressed concern that communities along key routes and major key routes, including Blue Island, currently lack active local emergency planning committees, emergency response plans, and training in emergency response. They requested that the Board require CSX and NS to fund the development or update of emergency response plans and training for emergency response personnel. The Greens also requested that the Board require CSX and NS to consult with communities in all areas with increases in hazardous materials transport, whether or not they met the Board's criteria for significance.

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Specifically, the Greens expressed concern that CSX would use Blue Island Junction, where three rail line segments converge, for transfers of hazardous materials, an activity that the Greens said the Draft EIS does not analyze. The Greens also requested that the Board require the Applicants to prepare emergency response plans, plume maps, a worst-case analysis, a notification system, and an escape plan for the 59th Street Intermodal Yard.

The Greens also commented that SEA has not considered cumulative effects that would result from increases in hazardous materials shipments on several lines and transfers to parallel lines. They specifically mentioned loads at Blue Island, Barr Yard, and on rail line segments C-011, C-023, C-417, and C-263.

Response. SEA proposed mitigation measures for key routes and major key routes that apply the best possible proven technology for physical facilities, emergency responder, and carrier coordination to ensure safety in the movement of hazardous materials. See Chapter 7, "Recommended Environmental Conditions," of this Final EIS. SEA has designed the proposed key route and major key route mitigation measures to protect high-density populations adjacent to the rail lines. This, in turn, provides a higher margin of safety to rural populations than if SEA had proposed different mitigation measures for different populations. See Appendix F, "Safety: Hazardous Materials Transport Analysis," of this Final EIS. SEA notes that other Federal regulations governing hazardous materials transport—for example, those that DOT has promulgated—do not vary based on the population density along the transport corridor.

Title I.I, Emergency Planning and Community Right-to-Know, of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III) makes it mandatory for local emergency planning committees to plan for possible releases of hazardous substances. SARA Title III establishes State Emergency Response Commissions and requires that they, in turn, form Local Emergency Planning Committees. A publicly coordinated Local Emergency Planning Committee exists in every county in the United States and has responsibility for hazardous materials response planning for its locality.

SEA has determined that providing first-responder emergency services is a basic local government function that is funded through the general revenue taxation system. No changes associated with or resulting from the proposed Conrail Acquisition change those basic responsibilities. Also, SEA states that existing DOT and FRA regulations adequately protect public safety in the Blue Island area.

CSX originally projected that hazardous materials transport through Blue Island Junction would increase slightly if the Board approves the proposed Conrail Acquisition. After SEA published the Draft EIS, CSX revised its estimate of hazardous materials transport for those rail line segments at Blue Island Junction. CSX reported lower volumes of hazardous materials transport through Blue Island Junction both before and after the proposed Conrail Acquisition. These revised volumes clearly show that current

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operating conditions would remain essentially unchanged following the proposed Conrail Acquisition. The only change of note is the projected increase of hazardous materials that CSX would transport through the 59th Street Intermodal Facility. Because none of the activities exceed SEA's criteria of significance, SEA does not recommend hazardous materials related mitigation for the 59th Street Yard.

Chicago Metropolitan Area—Transportation: Passenger Rail Service

Summary of Comments. The Champaign County Department of Planning and Zoning commented that increased NS freight traffic would potentially delay or affect the reliability of two daily Amtrak trains serving Champaign County on Amtrak's trackage rights over the Illinois Central Railroad between Chicago, Kankakee, and Gilman. The Department noted that these increases on the rail line segment, combined with projected conflicting use of rail crossings and interlockings by other railroads, could cause more Amtrak delays.

Response. In response to this comment, SEA reviewed passenger train service in Champaign County and concluded that the proposed Conrail Acquisition would not adversely affect passenger rail service. The four Amtrak trains operating on the Illinois Central Railroad through the at-grade railroad interlockings at Kankakee, Tolono, and Tuscola would not be delayed by projected additional freight train volume. Because Illinois Central controls the three interlockings, it should not allow freight trains on intersecting lines that would block Illinois Central. Illinois Central affords operating priority to these passenger trains pursuant to operating agreement with Amtrak.

Chicago Metropolitan Area—Transportation: Highway/Rail At-grade Crossing Delay

Summary of Comments. CSX commented that only 3 additional trains per day would use the 95th Street highway/rail at-grade crossing in Evergreen Park as a result of the proposed Conrail Acquisition. CSX stated that it was appropriate for it to undertake consultation on this highway/rail at-grade crossing, but suggested that state agencies might find it prudent to take a "wait and see" approach toward mitigation because of the small increase in train traffic. CSX added that the Board should not intervene, and appropriate mitigation should be the responsibility of state and local agencies.

Response. SEA analyzed the 95th Street highway/rail at-grade crossing (FRA ID 163433F) in Evergreen Park for changes in delay resulting from the Acquisition-related increase in trains. The number of trains on the Blue Island Junction-to-59th Street rail line segment C-011 would increase by 3.4 trains per day, from 19.5 trains before the proposed Conrail Acquisition to 22.9 trains after the proposed Conrail Acquisition.

To correct a previous discrepancy in the number of roadway travel lanes at this location, SEA revised the delay calculations to use six roadway travel lanes. SEA's reanalysis indicated that the LOS at the 95th Street crossing would remain at LOS C, and the

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crossing delay per stopped vehicle would increase from 2.70 minutes per vehicle to 2.78 minutes per vehicle. As a result, SEA concluded that there would be no significant effect on vehicle delay at this highway/rail at-grade crossing.

Summary of Comments. CSX commented that, in Blue Island, neither the Dixie Highway nor the Broadway-135th Street highway/rail at-grade crossings would meet the significance criterion if SEA used the best available information. CSX indicated that capital improvements associated with the proposed Conrail Acquisition and CSX's Operating Plan would greatly improve traffic flow through Blue Island. Although train traffic would increase on the rail line affecting these highway/rail at-grade crossings, CSX pointed out that it expects train speeds to increase on that rail line, resulting in an overall increase in LOS at the highway/rail at-grade crossing. CSX indicated that it would consult with the City of Blue Island regarding these operational improvements. Therefore, CSX recommended that SEA delete these highway/rail at-grade crossings from this Final EIS. CSX added that the Board should not intervene, and appropriate mitigation should be the responsibility of state and local agencies.

Response. SEA recognizes that once implemented, CSX's capital improvements would increase train speeds through Blue Island. Nevertheless, SEA reviewed train operations at this location using a train speed of 20 mph for both before and after the proposed Conrail Acquisition in this Final EIS and in the Draft EIS. The LOS at both crossings would decrease from B to D as a result of the increase in the number of trains. See Appendix G, "Transportation: Highway/Rail At-grade Crossing Traffic Delay Analysis," of this Final EIS.

SEA recommends that the Board require CSX to implement operational improvements in order to mitigate the significant impacts on delay. See Chapter 7, "Recommended Environmental Conditions," of this Final EIS. This increase in train speed is consistent with the Applicant's indication that operating efficiencies and the resulting speed increase would be achieved as a result of the capital improvements associated with the proposed Acquisition.

Chicago Metropolitan Area—Transportation: Roadway Systems

Summary of Comments. The Center for Neighborhood Technology in Chicago, Illinois commented that unsatisfactory rail service would encourage shippers to use trucks instead of trains, overloading trucking firms and highway systems.

Response. In Chapter 4, "System wide and Regional Setting, Impacts, and Proposed Mitigation," Section 4.8, "Traffic and Transportation: Highway System," the Draft EIS states "The proposed Acquisition would result in changes to the freight rail network that would cause reductions in truck traffic on major highways, including the interstate system and on regional, state, and U.S. primary routes." Based on estimates by CSX and NS, and an evaluation of their proposed Operating Plans, SEA projects that the proposed

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Conrail Acquisition would result in an annual net reduction in truck travel of approximately 1.03 million truck trips and approximately 782 million truck miles.

Chicago Metropolitan Area—Transportation: Other

Summary of Comments. The Center for Neighborhood Technology in Chicago, Illinois stated that the NS Operating Plan did not address how the “proposed restructuring of Calumet Yard will affect classification service to Lake Calumet industries.” The Center added that area manufacturers are “fearful that their already unreliable service might deteriorate further.”

Response. In response to the commentor’s concerns, SEA determined that Calumet Yard would retain its role as a yard that supports local industry. Calumet Yard is the principal NS yard in the Chicago area for classification, industrial switching, interchange, and train make-up. A Triple Crown Service facility is also located at Calumet Yard. As a result of the proposed Conrail Acquisition, the following activities would occur: most train classification functions would be transferred to the Elkhart, Indiana (currently Conrail) yard (as the NS Operating Plan states); Triple Crown Service’s activity would increase at Calumet Yard, with possible future expansion; and NS would also transfer some local industrial support functions to the two Conrail yards that they would acquire at 47th Street and Colehour. Consequently, the Applicants expect service to local industries to improve because the Applicants would primarily use Calumet Yard for local switching. The activity that would decline in Calumet Yard is the classification of through-trains that currently originate and terminate at Calumet Yard. The Applicants would transfer this activity to Elkhart.

Chicago Metropolitan Area—Air Quality

Summary of Comments. The Center for Neighborhood Technology in Chicago, Illinois stated that reducing the capacity at Calumet Rail Yard and increasing the number of freight trains would result in significant delays in freight shipments. According to the Center, these delays would cause shippers to divert freight from rail to truck, and the increased truck traffic would increase air pollutant emissions.

Response. The overall volume of truck travel in an area depends on the relative attractiveness of the truck, rail, and intermodal options available to the area’s freight customers, not on the level of freight train activity at a particular rail yard. The projected Acquisition-related decrease in activity at Calumet Yard would occur because the Yard’s rail car classification functions would be transferred to other facilities. There would be no change in Calumet Yard’s industrial switching services, which are the activities that serve local freight customers. There would be no increase in truck traffic and associated air pollutant emissions as a result of Acquisition-related changes in freight train activity at Calumet Yard.

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Chicago Metropolitan Area—Noise

Summary of Comments. CSX commented, “The D[raft] EIS directs CSX to consult with Chicago with respect to noise from truck traffic to the 59th Street intermodal facility even though the noise level does not meet the D[raft] EIS’s criteria for mitigation.” CSX stated that they have already consulted with the City and reached agreement on mitigation measures for the facility.

Response. SEA recognizes that CSX and the City of Chicago have reached an agreement regarding mitigation for impacts at this facility as a result of the proposed Conrail Acquisition. See Volume 5C of the Draft EIS for more information.

Chicago Metropolitan Area—Cultural and Historic Resources

Summary of Comments. The Illinois Historic Preservation Agency confirmed the accuracy of the cultural resource information that the Draft EIS presented for the State of Illinois. Specifically, the Agency indicated its anticipation of future consultation regarding the interlocking tower at 75th Street in Chicago and the cultural resources at Exermont, both of which are currently undergoing Section 106 consultation.

Response. SEA acknowledges this comment.

Summary of Comments. Regarding SEA’s recommendation in the Draft EIS that CSX take no steps to alter the 75th Street Interlocking Tower in Chicago until it completes the National Historic Preservation Act Section 106 process, CSX stated that the proposed demolition of the tower is unrelated to the proposed Conrail Acquisition. Nevertheless, CSX agreed to work with SEA and the Illinois State Historic Preservation Officer to document the tower before it is demolished.

Response. SEA acknowledges this comment.

Chicago Metropolitan Area—Environmental Justice

Summary of Comments. The Center for Neighborhood Technology in Chicago, Illinois commented that the proposed reduction in capacity at Calumet Yard would lead Calumet-area shippers to increase truck transport, thereby undermining the competitive position of industries providing jobs to low- and moderate-income communities.

Response. SEA determined that the proposed changes in activity at the Calumet Yard would result primarily from a reduction in switching and classifications of rail cars. The proposed changes would not reduce service to shippers because these activities would shift to other rail yards. Calumet Yard is a location for NS’s TCS intermodal operations which would continue to operate and may well expand in the future. Therefore, SEA does not expect any adverse impacts on industries or jobs.

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Chicago Metropolitan Area—Cumulative Effects

Summary of Comments. The Center for Neighborhood Technology in Chicago, Illinois commented that the Final EIS should address the potential environmental impacts of NS's planned restructuring and downsizing of Calumet Yard. The Center indicated that the same spirit of competition should extend to local switching services as well as line-haul traffic. "Otherwise, the result of the Proposed Acquisition for some communities may well be a shift of freight movement from rail to truck, with accompanying environmental consequences."

Response. SEA has received no evidence that a shift of freight movement from rail to truck would occur at Calumet Yard as a result of the proposed Conrail Acquisition. NS's proposed changes would result in improved service to local industries through both rail and truck modes at Calumet Yard. According to NS, Calumet Yard is the principal NS yard in the Chicago area for classification (sorting of rail cars in a rail yard), industrial switching, interchange, and train make-up, and it includes a TCS facility. NS anticipates that most train classification functions would be transferred to the Elkhart, Indiana yard (currently operated by Conrail) after the proposed Conrail Acquisition. NS would also transfer some local industrial support functions to two current Conrail yards—97th Street and Colehour—that NS would acquire after the proposed Conrail Acquisition. NS has stated that TCS service would increase at Calumet Yard, which would continue to support local industries. NS is also considering future expansion of the TCS facility. Consequently, NS expects service to local industries to improve, because the Applicants would primarily use Calumet Yard for local switching; only classification and through traffic would decline.

Eastern Central Illinois—Safety: Highway/Rail At-grade Crossings

Summary of Comments. The Village Board of Tolono, Illinois commented that increased rail traffic poses a large risk to pedestrians who cross tracks, especially children walking to school. For example, one commentator noted that children are more likely to take risks when rail traffic blocks the tracks for long periods of time.

Response. SEA concurs that the safety of school children is a paramount concern. SEA's recommended mitigation includes the requirement that the Applicants sponsor and participate in Operation Lifesaver programs in these communities. Each year, the Applicants present these programs in accordance with school officials' requests. Chapter 7 of this Final EIS, "Recommended Environmental Conditions," presents SEA's recommended mitigation measures.

Summary of Comments. A resident of Danville commented that she was concerned about safety if rail traffic increases without improved scheduling and/or construction of an overpass at 4th Street. The resident also suggested that SEA secure documentation of fatalities at highway/rail at-grade crossings in the Danville area.

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Response. SEA understands that the Applicants do not plan to construct an overpass in the Danville, Illinois area. The safety analysis in the Draft EIS for the highway/rail at-grade crossings addressed all-inclusive accident rates, not just the incidence of fatalities. That safety analysis included all highway/rail at-grade rail crossings on affected segments within Vermilion County, Illinois, including Danville. The two affected rail line segments within Vermilion County are NS's N-033 and N-045. Of the 28 highway/rail at-grade crossings that SEA analyzed for safety in the Draft EIS, the proposed Conrail Acquisition would adversely affect only Campbell Crossing (FRA ID 479848P). However, field investigation indicated that the warning device at this crossing has been upgraded to a gate. As a result, this Final EIS contains no recommendations for highway/rail at-grade crossing safety in Vermilion County.

Summary of Comments. The City of Danville identified four locations where the train tracks are inactive and requested removal of the highway/rail at-grade crossings. The locations of these crossings are Jackson, Winter, Liberty, and Bowman Streets. The City also identified two grade separation structures, Fairchild Street and English Street, that are deficient in height.

Response. SEA analyzed only the impacts of the proposed Conrail Acquisition in this Final EIS. SEA understands that the inactive tracks and the height of existing grade separations at Fairchild Street and English Street are pre-existing conditions, and would not be the result of the proposed Conrail Acquisition. It is the Board's policy not to require mitigation of pre-existing conditions.

Summary of Comments. The City of Danville commented that SEA should consider overall potential impacts in determining mitigation for all highway/rail at-grade crossings in a town. In particular, SEA projects that accidents would increase at every crossing. The City noted that a separated grade crossing may be warranted at Third Street, South Street, Bowman Street, and Voorhees Street and requested further analysis and arbitration that is mandatory and binding for Applicants.

Response. SEA's safety analysis in the Draft EIS included all highway/rail at-grade crossings on rail segments in Vermilion County that met SEA's thresholds for environmental analysis. Of the 28 crossings SEA analyzed for safety, SEA determined that only Campbell Crossing (FRA ID 479848P) would be adversely affected by the proposed Conrail Acquisition. Field investigation indicated that the warning device at this crossing has been upgraded to a gate. SEA's analysis in both the Draft EIS and Final EIS showed that the increase in train traffic resulting from the proposed Conrail Acquisition would not warrant safety mitigation at 3rd Street, South Street, Bowman Street, or Voorhees Street. SEA does not recommend mitigation at these locations and does not consider arbitration appropriate. See Appendix E, "Safety: Highway/Rail At-grade Crossing Safety Analysis," of this Final EIS for further detail.

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Summary of Comments. The Champaign County Planning Department identified a highway/rail at-grade crossing in the Village of Tolono that appears to meet SEA's criteria for significance. The CR 1000 E highway/rail at-grade crossing (TR 134 D, FRA ID 479930J) is "a Class A crossing with 3 accidents in the last 5 years and is projected to have an increase in accidents of .0118 ." The County recommended that SEA study the CR 1000 E highway/rail at-grade crossing in detail and evaluate possible mitigation measures.

Response. SEA's analysis of this crossing, which appeared in the Draft EIS, showed that this crossing did not meet SEA's criteria of significance. The projected accident frequency following the proposed Conrail Acquisition would be less than 0.15 (less than one accident every 7 years). At this level, an increase in accident frequency of 0.05 (one accident every 20 years or more frequent) would be needed to warrant mitigation. See the last paragraph of this response. SEA performed a further review of this crossing for this Final EIS and found that the warning device had recently been upgraded. The accidents at this crossing during the 5-year period had occurred prior to the warning device upgrade. The FRA accident risk analysis methodology includes only those accidents occurring after a change in safety warning device. The risk of an accident depends upon the characteristics of a highway/rail at-grade crossing and a change in the warning device changes those characteristics. Therefore, only those accidents that occurred after a change reflect existing rail crossing characteristics and are appropriate to use in a present risk calculation.

FRA information showed that the date the warning device at this highway/rail at-grade crossing changed was October 1995. Based on this change, the current accident rate of 0.0157 would increase to 0.0202 after the proposed Conrail Acquisition, a change of 0.0045. This increase does not meet the criterion of significance.

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Eastern Central Illinois—Safety: Hazardous Materials Transport

Summary of Comments. The Village of Tolono expressed concern that the proposed NS construction of the Tolono connection would increase the probability that the Village would experience accidents and fires involving hazardous materials. The Village stated that the local fire department does not have equipment to handle hazardous materials spills, and that the Draft EIS did not identify the types of hazardous materials that NS would transport, specific safety practices and protocols, or plans for responding to derailments and hazardous materials spills. The Village submitted letters from citizens that also expressed these concerns.

Response. SEA determined that construction of the proposed 1,600-foot-long Tolono connection would permit efficient movement of traffic between NS rail line segment N-033 and the Illinois Central Railroad. As the Draft EIS notes in Volume 3A pages IL-1 through IL-86, 2 trains per day would use the proposed connection, which NS would build within existing railroad right-of-way. Because the Illinois Central rail line segment is not a part of the proposed Conrail Acquisition, SEA evaluated only rail line segment N-033.

SEA estimated in the Draft EIS (Attachment B-3, Appendix B, "Safety," Volume 5-A) that the interval between hazardous materials releases would decrease from 10,530 years to 6,555 years after the proposed Conrail Acquisition. SEA has concluded that this very small risk does not warrant mitigation beyond the existing key route designation. See Chapter 7, "Recommended Environmental Conditions," of this Final EIS.

Summary of Comments. The City of Danville expressed concern about an increase in hazardous materials transport from 10,000 carloads per year to 16,000 on NS's Tilton-to-Lafayette line, and recommended grade separations as mitigation for this and other potential environmental impacts such as traffic delays.

Response. SEA recommends that the Board require NS to implement major key route mitigation measures on the Tilton-to-Lafayette rail line segment following the proposed Conrail Acquisition. This rail line segment is already a key route, which means that NS currently adheres to AAR key route guidelines. Chapter 7, "Recommended Environmental Conditions," of this Final EIS, describes these guidelines. SEA does not consider grade separations as appropriate mitigation for increased hazardous materials transport. Further, SEA did not identify any highway/rail at-grade crossings in Danville, Illinois for which the predicted accident rate would warrant mitigation.

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Eastern Central Illinois—Safety: Freight Rail Operations

Summary of Comments. The Village of Tolono raised the concern that the higher probability of train accidents and derailments, presumably because of increased rail traffic, would expose local residents, especially children, to additional hazard.

Response. Rail line segment N-033 runs through Tolono from Tilton to Decatur, Illinois. The average daily number of freight trains would increase by 16.3 trains per day along this segment following the proposed Conrail Acquisition. SEA determined that this increase does not result in a change in expected accidents that exceeds SEA's criteria of significance. Therefore, SEA does not recommend mitigation. The post-Acquisition interval between expected accidents on rail line segment N-033 is 111 years. SEA would impose mitigation only if that interval were to be 100 years or less between expected accidents on a per-line-mile basis.

SEA notes that the level of railroad activity on rail line segment N-033, both in number of daily freight trains and annual gross tonnage, has always been at levels that warrant high maintenance standards, Class 4 track, and key route status. NS has indicated that it proposes to maintain those measures. FRA and NS also have extensive programs in place, including the Safety Integration Plan for the proposed Conrail Acquisition, to provide for the continuing safety of people living near rail lines. SEA does recommend key route mitigation for N-033. Refer to Chapter 7, "Recommended Environmental Conditions," of this Final EIS.

Eastern Central Illinois—Safety: Other

Summary of Comments. A resident of Danville raised a concern that "the steel in the Rail Bridge that spans the Vermilion River appears to be flaking. The integrity of this structure brings serious questions of safety. Will there be repair work done on this structure before increased rail traffic?"

Response. SEA notes that the concerns that the resident raised refer to conditions existing before the proposed Conrail Acquisition. SEA recognizes that NS has adequate maintenance programs, which include bridge maintenance and repair. Additionally, NS has committed to continue these maintenance practices after the proposed Conrail Acquisition in its Safety Integration Plan.

Summary of Comments. A resident of Danville expressed concern that NS has abandoned bundles of railroad ties on his property, along with remnants of steel beams. He asked whether NS would leave "additional environmental problems" uncorrected.

Response. SEA notes the concerns that the resident raised refer to conditions existing before the proposed Conrail Acquisition. With respect to the concern regarding the

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Applicants' right-of-way maintenance practices, however, SEA clarifies that the Board does not have jurisdiction regarding maintenance of rights-of-way. There are other local or state agencies that have jurisdiction over illegal dumping activities.

Eastern Central Illinois—Transportation: Passenger Rail Service

Summary of Comments. Champaign County, Illinois noted that SEA analyzed the potential environmental impacts that increased freight traffic could have on passenger service trains when both are using the same rail line segments. The County commented that SEA's analysis should also consider potential increases in train movements at rail/rail crossings and interlockers that intersect the rail line segments that passenger trains use and that SEA should determine the potential impacts on these passenger train services.

Response. SEA considered the potential impact of rail/rail crossings in its passenger service analysis. In accordance with the Rail Passenger Service Act, Amtrak service over rail/rail crossings is entitled to dispatching preference, even if another company controls the crossing. SEA concluded that the proposed Conrail Acquisition would not adversely affect passenger service at rail/rail crossings.

Eastern Central Illinois—Transportation: Highway/Rail At-grade Crossing Delay

Summary of Comments. The Director of the Champaign County Department of Planning and Zoning commented that the Illinois Route 130 highway/rail at-grade crossing at Philo had an ADT of 6,400 vehicles in 1991. The Draft EIS stated that the current ADT for this crossing was 3,500 vehicles. Because 18 more trains per day would pass this crossing if the Board approves the proposed Conrail Acquisition, the Director pointed out that the highway/rail at-grade crossing would exceed the Board's threshold for environmental analysis, and SEA should evaluate it in detail.

Response. SEA performed an additional analysis of vehicle delay at the Illinois Route 130 highway/rail at-grade crossing of rail line segment N-033. This analysis reflects the updated ADT volume of 6,400. The analysis results are contained in the Final EIS and show that this crossing would operate at LOS A before the proposed Conrail Acquisition and LOS B after the proposed Conrail Acquisition.

The crossing delay per stopped vehicle would increase from 1.16 minutes per vehicle before the proposed Conrail Acquisition to 1.19 minutes per vehicle after the proposed Conrail Acquisition. This highway/rail at-grade crossing delay would not meet SEA's criteria for a significant increase in vehicle delay.

Summary of Comments. The Board of Trustees of the Village of Tolono stated that the Draft EIS did not address the added delay resulting from the additional trains traveling through their

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community. They expressed a particular concern about the potential for added delay on U.S. Route 45.

Response. SEA identified the impact of the proposed Conrail Acquisition on the Village of Tolono by analyzing the change in delay from train traffic that would result from the proposed Conrail Acquisition. The number of trains on the NS Tilton-to-Decatur rail line segment N-033 would increase by 16.3 trains per day, from 22.7 trains per day before the Acquisition to 39.0 trains per day after the Acquisition, as shown in the Final EIS. None of the highway/rail at-grade crossings in Tolono on the NS rail line met the 5,000-highway-vehicle ADT threshold for traffic delay analysis. In SEA's experience, for roadways with ADT volumes below 5,000, the additional vehicular delay that would result from increased train traffic as a result of the proposed Conrail Acquisition would be minimal.

Benham Street, which provides access to U.S. Route 45, does not cross the NS rail line and would not be affected directly by the increase in the number of trains. However, NS proposes to construct a new rail connection between the north-south Illinois Central Railroad line and the east-west NS (Conrail) line that would cross Benham Avenue. NS expects the new rail connection to carry 2 trains per day. Based on SEA's review of the crossing configuration, freight traffic change, and minor alterations to highway/rail at-grade crossing warning devices for this new connection, SEA determined that the impacts on highway vehicle delay would not exceed SEA's criteria of significance.

Summary of Comments. The Village of Tolono commented that the increase in train traffic would reduce the ability of emergency vehicles (police, fire, and ambulance) to gain access from one side of the community to the other. The Village also noted that there would be a lack of crossings during construction, which would place a severe burden on emergency services.

Response. In the Tolono, Illinois area, SEA determined that the NS Tilton-to-Decatur rail line segment (N-033) met or exceeded the Board's threshold for environmental analysis. The time, 1.6 minutes, that only one train would cause a highway/rail at-grade crossing on this rail line segment to be blocked would not change as a result of the proposed Conrail Acquisition. When delays affect emergency vehicles, the average delay would be half the blocked crossing time, less than a minute. Because the average number of trains on this rail line segment would increase from 22.7 to 39.0 trains per day, the total time that each crossing would be blocked would increase from 36.3 minutes to 62.4 minutes per day as a result of the proposed Conrail Acquisition. The discussion in Appendix G, "Transportation: Highway/Rail At-grade Crossing Traffic Delay Analysis," Section G.2.1, "Emergency Response Vehicle Delay," of this Final EIS addresses SEA's analysis pertaining specifically to emergency response vehicle delay at highway/rail at-grade crossings.

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Emergency services in the area are north of the NS tracks. A fire station, police station, and ambulance service are west of U.S. Route 45, and a second fire station and rescue squad is east of U.S. Route 45. The highway/rail crossing of U.S. Route 45 and the NS tracks is grade-separated. This grade separation effectively provides access across the NS tracks to all parts of the community.

Blocked crossings are also a concern on the connector track that NS would construct in this area as a result of the proposed Conrail Acquisition. The connector would be in the southeast quadrant of the crossing of the north-south Illinois Central Railroad rail line segment and the east-west NS rail line segment. The time that a train would cause a highway/rail at-grade crossing on the connector to be blocked would be 3.4 minutes. Only 2 trains per day would use the connector, so the total time that a crossing would be blocked would be 6.8 minutes per day. Blocked crossings on the connector would delay emergency vehicles bound for the southeast part of the community, but construction of the connector would have little effect on streets and could be staged to allow continuous access.

Because the existing separated grade crossing provides access to the community, and the construction would not disrupt emergency vehicle access, SEA concluded that no mitigation is warranted.

Summary of Comments. The Board of Trustees of the Village of Tolono commented that the proposed Conrail Acquisition may force the closing of Benham, Elizabeth, Bourne, and Daggy streets in their community. The Board of Trustees explained that this would severely restrict vehicular traffic movement.

Response. As part of the proposed Conrail Acquisition, NS proposes to construct a new rail connection between the north-south Illinois Central Railroad line and the east-west NS (Conrail) line in the Village of Tolono. Based on SEA's review of the crossing configuration, freight traffic change, and minor alterations to highway/rail at-grade crossings, SEA concludes that the impacts on highway vehicle delay would not exceed SEA's criteria of significance along the new connection. NS cannot close streets unilaterally. During construction, NS must comply with state and local requirements for traffic maintenance.

Summary of Comments. The Mayor of Danville, Illinois commented that the proposed increase from 23.6 to 41.0 trains per day on NS's Tilton, Illinois-to-Lafayette, Indiana line would nearly double the average vehicular delays at every crossing in the City. The Mayor stated that the installation of grade separations at critical roadways could mitigate these conditions. The Mayor suggested that SEA investigate grade separations at 3rd Street, South Street, Bowman Street, and Voorhees Street.

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A resident of Danville stated that trains have blocked the 3rd Street crossing for excessive periods in the past. According to the resident, additional train traffic may cause additional blockage of this crossing. The resident stated that NS should build an overpass on 4th Street to solve this problem.

Several other residents of Danville stated that the addition of 25 more trains each day through the City, together with the switching activities, would cut Danville in half. The trains would block the streets for a greater share of the day, and people would not want to live in Danville.

Response. To identify the impact of the Acquisition on the City of Danville, SEA analyzed the change in delay that would result from the Acquisition-related increase in train traffic. The current delay problem cited by the commentors is not an impact of the Acquisition; it is an existing condition caused by trains that are already operating through Danville.

However, the number of trains on NS's Lafayette, Indiana-to-Tilton, Illinois rail line segment N-045 would increase by 17.4 trains per day, from 23.6 trains per day before the proposed Conrail Acquisition, to 41 trains per day after the proposed Conrail Acquisition. SEA analyzed the highway/rail at-grade crossings that the Mayor identified. SEA's analysis in both the Draft and Final EIS shows that the LOS at the Voorhees Street crossing (FRA ID 479854T) crossing would drop from LOS A to LOS B, and the crossing delay per stopped vehicle would increase from 1.20 minutes per vehicle to 1.22 minutes per vehicle. LOS at the Bowman Street crossing (FRA ID 479856G) would drop from LOS A to LOS B, and the crossing delay per stopped vehicle would increase from 1.09 minutes per vehicle to 1.11 minutes per vehicle. LOS at the South Street crossing (FRA ID 479863S) would remain at LOS B, and the crossing delay per stopped vehicle would increase from 1.28 minutes per vehicle to 1.31 minutes per vehicle. None of these crossings would meet SEA's criteria of significance. Therefore, mitigation of traffic delay at these locations is not warranted. Other highway/rail at-grade crossings in Danville did not meet the 5,000-highway-vehicle threshold for traffic delay analysis. For example, ADT on 3rd Street was 1,100. In SEA's experience, for roadways with ADT volumes below 5,000, the additional vehicular delay that would result from Acquisition-related increased train traffic would be minimal.

Summary of Comments. The Mayor of the Village of Tilton commented that the 14th Street highway/rail at-grade crossing is currently experiencing significant delays because of passing trains and switching. The Mayor also commented that adding more trains would cause problems at the 14th Street crossing because it is the only east-west street connecting the Central Park area of Tilton with emergency vehicles. The nearest alternative route would add 5 to 10 minutes to the response time. According to the Mayor, 14 additional trains per day would increase the delays. As the solution, the Mayor suggested that the Applicants build a viaduct or overpass at the 14th Street crossing.

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Response. To address the concerns that the Mayor of Tilton raised regarding change in delay from the increase in train traffic as a result of the proposed Conrail Acquisition, SEA analyzed the 14th Street highway/rail at-grade crossing in the Village of Tilton. SEA determined that the current delay problem the Mayor cited would not be a result of the proposed Conrail Acquisition; rather, trains that already operate through the Village of Tilton cause the delay. It is the Board's policy not to require mitigation of pre-existing conditions.

Also, SEA's analysis showed that the ADT on 14th Street would be 2,550, well below the 5,000- highway-vehicle threshold for traffic delay analysis. In SEA's experience, roadways with ADT volumes below 5,000 would experience only minimal additional vehicular delay from increased train traffic resulting from the proposed Conrail Acquisition. Therefore, mitigation of traffic delay at this location is not necessary.

With respect to the potential impacts of delay on emergency response vehicles, SEA determined that NS's Tilton-to-Decatur rail line segment met or exceeded the Board's threshold for environmental analysis. The time, 1.6 minutes, that a train would cause a highway/rail at-grade crossing on this rail line segment to be blocked would not change as a result of the proposed Conrail Acquisition. When delays affect emergency vehicles, the average delay would be half the blocked-crossing time, or less than a minute. The average number of trains on this rail line segment would increase from 22.7 to 39.0, so the total time that a crossing would be blocked would increase from 36.3 minutes to 62.6 minutes.

Emergency services in Tilton cover both sides of the NS tracks. Fire stations, which are also the bases for ambulance operations, are located on both sides of the tracks. The police station is west of the tracks, but the police patrol in beats on both sides of the tracks. Local officials told SEA that some trains move slowly through town or almost stop.

Although the highway/rail crossing of the NS tracks and 5th Street is not grade-separated, the highway/rail crossings of U.S. 150, I-74, and G Street/Glendale Avenue are all grade-separated, so emergency vehicles can cross the tracks when a train is passing through town. Therefore, no mitigation is warranted.

Summary of Comments. The City of Danville commented that the potential increase in trains on the north-south line from Tilton to Lafayette could increase response time for emergency services. The City noted that the "police station and ESDA are immediately adjacent to..." the rail line and can only cross it at a highway/rail at-grade crossing either at South Street or Main Street. A resident stated that blockages of the 3rd Street crossing have exceeded 20 minutes numerous times. The resident added that such blockages could jeopardize her personal safety because the nearest fire hydrant is on the other side of the tracks.

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Response. In the City of Danville, Illinois, SEA determined that the NS Lafayette-to-Tipton rail line segment (N-045) met or exceeded SEA's threshold for environmental analysis for emergency response. The time that a train would cause a highway/rail at-grade crossing on this rail line segment to be blocked would increase from 2.3 minutes to 2.4 minutes as a result of the proposed Conrail Acquisition, an increase of approximately 6 seconds. When delays affect emergency vehicles, the average delay would be half the blocked-crossing time, or 1.2 minutes. The average number of trains on this rail line segment would increase from 23.6 to 41.0, so the total time per day that a crossing would be blocked would increase from 55.3 minutes to 98.2 minutes. The discussion in Appendix G, "Transportation: Highway/Rail At-grade Crossing Traffic Delay Analysis," Section G.2.1, "Emergency Response Vehicle Delay," of this Final EIS addresses SEA's analysis pertaining specifically to emergency response vehicle delay at highway/rail at-grade crossings.

There are several alternate grade-separated highway/rail crossings in the area that provide access to all areas of the community when a train blocks at-grade crossings. Fire and ambulance services as well as hospitals are located on both sides of the NS tracks. The police station is located west of the tracks, but police officers patrol on beats on either side of the tracks. Emergency vehicles can use the grade-separated highway/rail crossings in the community to avoid delays caused by trains.

The number of switching movements in the area would not increase as a result of the proposed Conrail Acquisition, so they would not block crossings for additional time.

SEA notes that the comments raised on the blockages of 3rd Street describe a pre-existing condition. Because emergency services are on both sides of the tracks and separated grade crossings allow access across the tracks, SEA concluded that no mitigation is warranted.

Eastern Central Illinois—Transportation: Roadway Systems

Summary of Comments. The Village of Tolono President, writing on behalf of the Village, commented that the construction of the Tolono Connector would result in the closure or removal of Daggy Street, which would significantly affect local citizens and commercial traffic. The President further noted that the closure or elimination of Daggy Street is "clearly perceived as a negative impact."

Response. As the Draft EIS noted, NS stated that it does not anticipate that the construction of the Tolono Connector would affect adjacent road structures, including Daggy Street. SEA agrees with this assessment. The recommended mitigation in the Draft EIS included a condition that NS not close Daggy Street during the construction of the Tolono Connector. The recommended mitigation in this Final EIS clarifies SEA's intention by including a condition that NS not disturb Daggy Street or nearby residential

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properties during construction. NS shall limit construction to within the railroad's rights-of-way to avoid adverse impacts on streets and properties.

Eastern Central Illinois—Transportation: Other

Summary of Comments. A Danville, Illinois Alderwoman questioned the Draft EIS estimate of the number of trains that the railroad indicated run daily on the NS rail line between Lafayette, Indiana and Tilton, Illinois.

Response. SEA has concluded that the NS estimates of current and future train traffic are reasonable. For rail line segment N-045 between Lafayette Junction, Indiana and Tilton, Illinois, the current 23.6 trains per day would increase by 17.4 trains per day, to 41.0 trains per day. NS provided existing train data based on actual train counts and operating schedules for freight trains. NS submitted train projections as a revision to its June 1997 Operating Plan. SEA evaluated the Operating Plan and subsequent similar revisions for general accuracy, comparing them with other railroad operating data such as track charts and timetables. The Draft EIS Appendix A, "Rail Line Segments and Traffic Density Changes," Attachment A of the Draft EIS lists all rail line segments. Section A.4 of Appendix A describes the analysis methods for developing the train projections.

Eastern Central Illinois—Air Quality

Summary of Comments. The Board of Trustees of the Village of Tolono, Illinois and residents in Danville, Illinois commented that any increase in trains would result in increased air pollutant emissions. A resident asked how much additional pollution (in terms of tons of diesel emissions) would occur in Danville.

Response. SEA agrees that there would be an increase in air pollutant emissions in Tolono and Danville, Illinois. SEA did not attempt to estimate air pollutant emissions on a city-by-city basis for proposed Acquisition-related activities; instead, SEA estimated emissions for counties or independent jurisdictions that are separately classified by the EPA with respect to compliance with NAAQS.

Tolono is located in Champaign County, which is an ozone attainment area with relatively low existing NO_x emissions. SEA has concluded that the projected 2 percent increase in County NO_x emissions would not significantly affect local ozone levels or ozone attainment status. Emissions increases of pollutants other than NO_x in the County would be insignificant.

Danville is located in Vermilion County, a county for which SEA estimated pollutant emissions related to the proposed Conrail Acquisition. SEA's analysis estimated that emissions of NO_x in Vermilion County would increase by approximately 319 tons per

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year as a result of the proposed Conrail Acquisition, while emission increases of other pollutants would be negligible. The estimated NO_x emissions increase represents about 5 percent of the 1995 NO_x emissions in the County.

Recent studies by the Ozone Transport Assessment Group have shown that NO_x effects on ozone nonattainment are primarily a regional concern, rather than a local one. Therefore, SEA concludes that local NO_x emissions changes, particularly the relatively low and widely distributed emissions changes that the Draft EIS identified, would not have any measurable effect on local ozone levels in Champaign and Vermilion Counties.

Summary of Comments. The Mayor of Danville, Illinois stated that the increase in the number of trains from 24 to 41 on the Tilton-to-Lafayette line would cause an increase in air pollution emissions of over 100 tons per year, and that this increase would be disproportionate in Danville because of slow train speeds. The Mayor also stated that the increase in trains would cause a doubling of air pollutant emissions from motor vehicle delays.

Response. SEA understands that many cities must deal with slower-moving trains traveling through their jurisdictions. While air pollutant emissions may be somewhat higher (per mile traveled) with trains moving at slower speeds than with trains moving at higher speeds, SEA has determined that there are no cases where slow-moving trains have been shown to cause air quality problems. Also, unlike stationary emissions sources, which can affect given locations nearly continuously, emissions from moving locomotives are spread out over large areas, thus minimizing their impact on any one location. SEA agrees that increasing the number of trains per day from 24 to 41 in Danville, Illinois would likely cause an increase in Acquisition-related air pollutant emissions. However, this increase would not exceed the health-based NAAQS. The additional impacts analysis conducted for the Final EIS substantiates this conclusion. See Appendix I, "Air Quality Analysis," of this Final EIS.

Summary of Comments. NS commented that the Draft EIS stated that there would be no need for air quality mitigation for the town of Lafayette, Indiana (Draft EIS on page W-49). However, NS continued, in the Preliminary Recommended Mitigation section (Draft EIS on page IN-89) for Lafayette, the Draft EIS noted the completion of the Lafayette Railroad Relocation Project would mitigate air quality impacts. NS expressed a concern that this is an inconsistent and inappropriate use of mitigation in the Draft EIS.

Response. SEA agrees with the NS comment that air quality should not be listed on page IN-89 of the Draft EIS as an issue that would be mitigated by the depressed rail section being installed as part of the ongoing Lafayette Railroad Relocation Project. SEA has determined that potential air quality impacts resulting from the proposed Conrail Acquisition would be insignificant in Lafayette. Therefore, it is not appropriate to suggest that potential air quality impacts would be mitigated by the ongoing Lafayette Railroad Relocation Project.

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Eastern Central Illinois—Noise

Summary of Comments. Community groups expressed concern over the proposed increase in train volume that the Draft EIS identified. The Village of Tolono is concerned that the increased train volume would raise the level of noise for single-family dwellings in the community. According to the Draft EIS, the increase in train volume would result in a L_{dn} increase of 2.3 dBA, extending the 65 dBA contour 500 feet perpendicular to the tracks. The Village of Tolono stated that the increase in L_{dn} would expose more residents to train traffic noise. Further, the Village noted that the increased noise could have a negative effect on some property values in the residential area along Daggy Street, which is immediately adjacent to the NS/Illinois Central crossing.

Response. SEA recognizes the concerns of the Village of Tolono and that the Draft EIS predicted noise levels to increase as a result of the proposed Conrail Acquisition. SEA has recommended mitigation for areas that it predicted to exceed the mitigation criteria for engine and wheel/rail noise of an L_{dn} of 70 dBA and an increase of 5 dBA after the proposed Conrail Acquisition. SEA cannot mitigate horn noise impacts at this time because FRA has not yet promulgated its Quiet Zone rules. SEA determined that the areas in the Tolono region do not meet the mitigation criteria. Therefore, SEA maintains that the potential noise impacts on residential property values resulting from the proposed Conrail Acquisition would be minimal. Local land use planning processes exist in part to protect property values. SEA determined that rail line construction and abandonment activities related to the proposed Conrail Acquisition would be consistent with local land use plans. The commentors provided generalized remarks rather than a supporting quantitative analysis.

Summary of Comments. Champaign County and the Village of Tolono commented that the Draft EIS neglected to take into account horn noise near grade crossings and wheel noise at rail joint locations in villages along the line. The County and the Village specifically identified wheel squeal on the rail spur at Tolono. Tolono commented that trains on rail spurs generate wheel squeals not normally associated with mainline traffic and would generate additional noise through creation of the rail spur.

The Village of Tolono commented that horn noise from the Illinois Central crossing especially affects the Village, which is concerned because the Draft EIS concludes that the potential noise impacts do not warrant mitigation. The Champaign County Board requested a detailed study of the potential noise impacts in Tolono and an investigation of potential mitigation measures. The Champaign County Board suggested that “there may be room at the NS/I[llinois] C[entral] crossing to provide noise barriers of some kind.”

Response. Contrary to the commentors’ statement that the noise analysis neglected to account for horn noise near highway/rail at-grade crossings, SEA’s noise model did account for such noise (see Appendix F, “Noise,” of the Draft EIS). The comment

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suggesting that the noise analysis did not account for circumstances where the rails are jointed is partially correct. The noise model that SEA used in the analysis did not specifically account for areas where the rails are jointed; however, the noise model is a conservative screening model. This model predicts noise levels slightly higher than what might reasonably be expected to occur.

Regarding the issue of wheel noise for the proposed spur in Tolono, the Applicants could design the radius of this proposed spur to minimize wheel squeal typically associated with areas of curved track with tight radii.

Regarding the need for additional noise analyses in Tolono, SEA clarifies that, where the Board noise analysis thresholds were exceeded, SEA performed appropriate analyses. Similarly, where noise mitigation criteria were exceeded, SEA performed mitigation analyses and has proposed appropriate mitigation measures. SEA proposed no mitigation for areas that did not meet the mitigation criteria. This analysis did not include traffic that is not associated with the proposed Conrail Acquisition on the Illinois Central lines in Tolono.

Summary of Comments. Residents of Danville expressed concern that increased train traffic would result in more frequent blasting of air horns. The residents noted that “engineers start blowing the air-horns from the Main Street crossing, across South Street and quit south of the 3rd Street crossing, almost continuously. We must listen to this noise inside and outside our homes twenty-four hours a day and seven days a week.” The City of Danville commented that an increase in the number of trains along the NS line from Tilton to Lafayette, Indiana (from 23.6 to 41 trains per day) would increase noise in the community.

Response. SEA recognizes that increased daily train traffic could result in increased noise near the rail line. Currently, state and local regulations require trains to sound their horns one-quarter mile from highway/rail at-grade crossings, resulting in noise exposure to residences in the surrounding area. The purpose of sounding the horn is to warn motorists and others at the crossing that a train is approaching. FRA is assessing a device that delivers horn noise only to the area at or near the crossing (loudspeaker horn technology) as an alternative to rail horn soundings.

Another alternative FRA is considering is the use of four-quadrant gates or median barriers designed to keep motorists from driving around the crossing gate arm as a train approaches. Loudspeaker horn technology and four-quadrant gates could eliminate train horns at specific highway/rail at-grade crossings. FRA expects to incorporate the results of its evaluation of these alternative signaling technologies into its anticipated Quiet Zone rules. However, FRA has not promulgated the Quiet Zone Rule to date, and therefore SEA cannot incorporate it into this action at this time. Because safety is paramount, SEA does not recommend mitigating train horn noise.

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Summary of Comments. The Champaign County Department of Planning and Zoning commented that SEA estimated that the increase in train gross ton-miles between Tilton and Decatur would increase the number of residences and noise-sensitive land uses experiencing significant noise impacts by 56 percent along this rail line segment. The Department commented that the noise analysis in the Draft EIS “does not break down the location of noise impacted land uses by County or other civil division.”

Response. SEA acknowledges the Acquisition-related increase in the number of residential and other receptors that would experience potential noise impacts on the rail line segment between Tilton and Decatur. The Board’s regulations form the basis for the noise analysis contained in the Draft EIS. As explained in Appendix F of the Draft EIS, “Noise,” the regulations specify the thresholds for conducting noise analyses: when activities would cause an incremental increase of 3 decibels, and when activities would cause an increase to a noise level of 65 dBA L_{dn} .

An increase in train gross ton-miles, as SEA has projected for the subject rail line segment, would expand the potentially affected receptor population adjacent to the rail lines and within the area encompassed by the 65 L_{dn} noise contour. As required by the Board’s noise regulations, SEA’s analysis included an estimate of the number of potentially affected sensitive receptors. The Draft EIS presents Receptor Counts in Attachment F-1 to Appendix F, “Noise,” a table of rail line segments that meet the Board’s thresholds for noise analysis. This table also provides: (a) location information at the county-specific level, (b) specific rail line segment identification, and (c) wayside and crossing distances to the 65 dBA L_{dn} contour both before and after the proposed Acquisition. The potential dBA increase for the Tilton-to-Decatur rail line segment following the proposed Conrail Acquisition, would be 2.4, which is below SEA’s noise mitigation criteria of 70 dBA L_{dn} and an increase of 5 dBA L_{dn} .

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Summary of Comments. NS commented that the Peru-to-Lafayette Junction and Lafayette-to-Tilton rail line segments exceeded the Board's threshold for environmental analysis, but the noise analysis results did not meet noise mitigation criteria. NS stated that no noise mitigation is necessary for these segments based on lack of potential environmental impacts.

Response. SEA performed noise analysis on the N-046 Peru-to-Lafayette Junction and N-045 Lafayette-to-Tilton rail line segments. However, these rail line segments did not meet mitigation criteria and, therefore, SEA proposed no noise mitigation for them.

Eastern Central Illinois—Cultural and Historic Resources

Summary of Comments. CSX commented on the Draft EIS recommendation that CSX take no steps to alter the historic integrity of the rail line segment proposed for abandonment between Paris and Danville, Illinois until completion of the National Historic Preservation Act Section 106 process. CSX stated its understanding, based on a letter from the Illinois State Historic Preservation Officer to Elaine Kaiser, that the process has been completed. CSX also stated that it would contact the State Historic Preservation Office if archaeological resources become evident in the course of salvage activities, as the Draft EIS recommended.

Response. SEA acknowledges this comment.

Eastern Central Illinois—Hazardous Waste Sites

Summary of Comments. A letter from the Village Board President of Tolono summarized his understanding of the Board's regulations. The commentator stated that the Board's regulations require that the Applicants identify the location and types of hazardous substances at hazardous waste sites or hazardous materials spills on the right-of-way of any proposed connection or rail line abandonment site.

Response. SEA notes that the Draft EIS and the Environmental Report that accompanied the Application met these regulatory requirements. The Draft EIS identified known hazardous waste sites within 500 feet of all proposed abandonments and new connections, including the one at Tolono. In addition, in Appendix F of their Environmental Report, the Applicants provided a listing of hazardous materials reportable system-wide incidents (that is, spills) for CSX, NS, and Conrail for 1991 through 1995.

Eastern Central Illinois—Natural Resources

Summary of Comments. The Village of Tolono raised a concern about the potential for increased flooding. It stated that the flooding could occur on adjoining residential areas as a result of placing fill to install the new rail spur in accordance with the proposed Conrail Acquisition. Further, the Village cited potential environmental impacts "of drainage patterns on

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nearby structures which would have to be carefully analyzed and taken into account in the event of any construction.”

Response. SEA has determined that the Tolono site is not within the 100-year floodplain; therefore, the flooding potential is minimal.

SEA has determined that the Applicants have developed BMPs to address stormwater runoff, erosion and sediment control, and impacts on surface waters, thereby minimizing potential environmental impacts during and after construction.

SEA concludes that NS should seek final design approval with the Illinois Department of Natural Resources and USACE to reduce the potential for flooding by the proposed construction. NS should also obtain applicable Federal, state, and local permits.

Eastern Central Illinois—Land Use and Socioeconomics

Summary of Comments. The Village of Tolono commented that the proposed Tolono Connector construction does not comply with the Village’s land use plan and zoning. The Village President stated, “It is impossible to imagine a more inconsistent use of land than heavy industrial rail use in the midst of single family residences.”

The Village also commented that the proposed construction would result in the closure of public streets necessary for commercial, residential, and emergency vehicle traffic. The Village expressed concerns that the proposed construction would damage water and storm sewer lines.

Response. In nearly all cases, SEA determined that the rail line construction and abandonment activities of the proposed Conrail Acquisition were consistent with local land use plans. SEA determined that there would be no significant impacts as a result of construction and abandonment activities associated with the proposed Conrail Acquisition in these communities. The Village of Tolono based its assertion of inconsistency upon an assumption that construction would expand beyond NS’s existing right-of-way into adjacent residences. NS has determined that the proposed construction would occur within existing railroad rights-of-way and would not involve closure of Daggy Street. SEA has determined that there would be no significant land use impacts as a result of new rail line construction activities associated with the proposed Conrail Acquisition at Tolono, as long as construction remains within the existing railroad right-of-way. SEA’s recommended mitigation would require that NS perform all construction work within the existing right-of-way.

Summary of Comments. The Champaign County Department of Planning and Zoning commented that the proposed new rail line construction in Sidney, analyzed in one of the seven Environmental Assessments (EAs) on the Seven Separate Connections, would “involve the

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conversion of approximately six acres of prime farmland and the separation of about 28 acres into an irregularly shaped area which will impede cultivation of some additional small area.”

Response. SEA evaluated the potential environmental impacts of the proposed construction in Sidney, Illinois in an EA that it issued to the public on October 7, 1997. Based on the EA and the public comments that it received, SEA informed the Board of its determination that the proposed construction, together with the associated recommended environmental mitigation, would not have a significant impact on the environment (including prime farmland). After considering the public comments and SEA's recommendations, the Board issued a decision on November 25, 1997, approving the construction of the new rail line connection in Sidney. As a condition of this decision, the Board required NS to use BMPs in constructing the new connection.

Summary of Comments. NS commented that a proposed mitigation measure and condition at Tolono are inappropriate. NS stated that it had met with city officials and confirmed “that the construction of the Tolono Connection would occur entirely within the existing Illinois Central and NS rights-of-way and no additional land would be acquired for this construction.”

NS noted the following statement in the Draft EIS: “Based on the findings ... 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.” Nevertheless, NS pointed out, the Draft EIS contained a preliminary recommendation to “not disturb Daggy Street or residential properties at this location.” The commentor cited Draft EIS, pages IL-68 through 69. NS commented that it “does not believe this recommendation is necessary nor in keeping with the conclusion of the D[raft] EIS [that] ... there is no impact to Daggy Street, and there is no need for a mitigation requirement.”

Response. SEA developed its recommended mitigation, in part, to address concerns expressed by the Village of Tolono. Since SEA's recommended mitigation is consistent with NS's plans for the Tolono construction, SEA concludes that there is no need to remove this mitigation recommendation.

Eastern Central Illinois—General

Summary of Comments. The Village of Tolono, Illinois commented: “The document states that the construction would not result in any significant environmental impact. A review of the proposal together with the surrounding area and the comments from Village residents confirms that this statement is in error. There is a documented increase in noise, air pollution, traffic disruption, safety, and other effects on the adjacent residential area. The document notes that the “no action alternative would not cause further disruption to the citizens of Tolono. Given that alternative, rail spurs in other locations would give the desired connection with lesser impact.

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This no action alternative is a practical and viable one and should be considered as the primary alternative as it relates to the Village of Tolono.”

Response. SEA has reexamined the environmental impacts that the Draft EIS identified in Chapter 5, Section 5-IL. After this reexamination, which included additional site visits to the Village, SEA confirmed that the potential effects of the new connection are below the noise mitigation criteria.

In its noise analysis, SEA predicted a 2.4 dBA increase along rail line segment N-033 (which runs through Tolono) as a result of the projected increase of 16.3 trains per day. NS proposes to operate an average of 2 trains per day over the proposed new connection in Tolono (which connects rail line segment N-033 with an Illinois Central rail line segment). Based on the noise analysis methodology presented in the Draft EIS, SEA determined that the Acquisition-related increase in noise levels in Tolono does not meet the noise mitigation criteria and thus does not warrant mitigation. Additionally, although there would be a potential increase in NO_x emissions in Champaign County, SEA does not expect a significant adverse air quality impact. The percentage increase in NO_x emissions is modest, and the County currently is designated as in attainment for all pollutants.

As the Draft EIS states, SEA reviewed the crossing configuration, freight traffic change, and alterations to the highway/rail at-grade crossing devices for the new connection in Tolono. SEA verified that traffic-related impacts may be limited to short-term vehicular delays and detours during construction. SEA's safety analysis showed a predicted increase in accident frequency in Champaign County from one accident every 294 years to one accident every 57 years. This accident rate falls below SEA's criteria of significance.

In its initial analysis NS considered an alternative that would be approximately 4,600 feet long. NS determined that this alternative would result in more impacts than the proposed connection because it would require right-of-way acquisition and alterations at highway/rail at-grade crossings. Therefore, NS did not carry this alternative forward for detailed consideration. NS also discarded a “no-action alternative” at this location because it would not provide the necessary connection. After conducting its independent evaluation of these options, SEA concurred that neither alternative was reasonable for the Tolono area.

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Other Illinois—Cultural and Historic Resources

Summary of Comments. CSX agreed with the Draft EIS recommendation that CSX not construct or modify a new rail connection in Exermont, Illinois until it completes the National Historic Preservation Act Section 106 process.

Response. SEA acknowledges this comment.

Section 5.3.7—Indiana

5.3.7 Indiana

Indiana—Transportation: Highway/Rail At-grade Crossing Delay

Summary of Comments. NS commented that the Supplemental Errata called for mitigation at the ten NS highway/rail at-grade crossings in Lafayette even though the crossings no longer meet the Draft EIS significance criteria. NS stated that the Draft EIS applied a more restrictive and arbitrary significance criteria of traffic delays to Lafayette than to other communities. NS added that the Lafayette Railroad Relocation Project would eliminate all highway/rail at-grade crossings, thus eliminating the projected vehicle delays.

Response. SEA analyzed the change in vehicle delay in the City of Lafayette that would result from the increase in train traffic after the proposed Conrail Acquisition. The number of trains on the Peru-to-Lafayette rail line segment N-046 would increase by 21.8 trains per day, from 18.4 trains per day before the proposed Conrail Acquisition to 40.2 trains per day after the proposed Acquisition.

None of the ten highway/rail at-grade crossings in Lafayette would meet SEA's criteria of significance for vehicle delay, and SEA does not recommend traffic delay mitigation in this Final EIS. SEA changed its Draft EIS recommendation for this area because a pending version of the Intermodal Surface Transportation Efficiency Act legislation allocates funding for the Lafayette Railroad Relocation Project. Appendix N, "Community Evaluations," of this Final EIS discusses the proposed improvements in Lafayette. Chapter 7, "Recommended Environmental Conditions," of this Final EIS addresses the proposed mitigation for Lafayette in more detail.

Summary of Comments. NS stated the Draft EIS directed NS to negotiate with the City of Muncie for a binding agreement for the implementation and funding of measures to address traffic concerns at seven highway/rail at-grade crossings in Muncie. NS stated that the highway/rail at-grade crossings do not exceed the Draft EIS significance criteria for delay, and therefore do not warrant mitigation. NS suggested that public comment was the sole reason for this condition, which SEA did not support with technical analyses.

Response. SEA analyzed the change in vehicle delay in the City of Muncie that would result from the increase in train traffic after the proposed Conrail Acquisition. The number of trains on the Alexandria-to-Muncie rail line segment N-040 would increase by 9.2 trains per day, from 2.6 trains per day before the proposed Conrail Acquisition to 11.8 trains per day after the proposed Conrail Acquisition.

None of the five highway/rail at-grade crossings in Muncie would meet SEA's criteria of significance for vehicle delay; therefore, SEA does not recommend traffic delay mitigation. Appendix G, "Transportation: Highway/Rail At-grade Crossing Traffic Delay Analysis," of this Final EIS discusses the proposed improvements in Muncie.

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Indiana—Air Quality

Summary of Comments. Indianapolis Power and Light Company stated that the air quality analysis in the Draft EIS was seriously flawed. They stated that by setting the thresholds for analysis of air quality at a level below which impacts are “not worthy of consideration,” SEA committed an error. They further stated that, because the Indianapolis area is a maintenance area for ozone, any increase in air pollutant emissions in the region may be a violation of the Clean Air Act and that increased emissions of diesel fumes from locomotives would cause additional violations of the Act.

Response. SEA considers the use of the Board’s activity thresholds for air quality analysis to be justified, as shown by the data in the Draft EIS, Appendix E, “Air Quality,” Attachment E-3, “County Total Emissions Increases for Threshold Activities, in Decreasing Order of Total NO_x.” These data indicate that numerous counties that have activity levels that barely exceed the thresholds also have very minor increases in emissions of all air pollutants. SEA therefore maintains that it is justified in excluding negligible air pollutant emissions from activities that are below the Board’s thresholds for environmental analysis.

Notwithstanding the above, SEA conducted an emissions analysis as part of this Final EIS for a CSX rail line segment in Marion County, Indiana because of a change in CSX’s Operating Plan (see Appendix I, “Air Quality Analysis,” of this Final EIS). CSX changed its Operating Plan as a result of a Settlement Agreement with the Louisville and Indiana Railroad. The estimated NO_x increase in Marion County, Indiana for this rail line segment is 14.2 tons per year. The projected decrease in NO_x resulting from truck diversions, estimated by the Applicants at 37 tons per year, would more than offset this minor NO_x emissions increase. Also, the new EPA locomotive engine emissions standards will result in reductions of NO_x and other pollutants that would easily offset any increases related to other activities that fall below Board thresholds for environmental analysis. See Appendix O, “EPA Rules on Locomotive Emissions,” of this Final EIS.

Summary of Comments. Indianapolis Power and Light Company stated that because of the uncertainty of train traffic increases in Indianapolis, coupled with increases from trucking coal to its power plants, the Applicants must take responsibility for mitigating increases in air pollutant emissions.

Response. SEA expects that emissions changes in the Indianapolis area as a result of the proposed Conrail Acquisition would be negligible. Although there may be uncertainty about future business growth and resulting railroad activity, these concerns are speculative and are beyond SEA’s responsibility under NEPA regulations, which require SEA to evaluate reasonably foreseeable impacts (40 CFR 1508.8(b)).

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Indiana—Cultural and Historic Resources

Summary of Comments. The Indiana State Historic Preservation Officer commented that his office had conducted a Section 106 review of the EA for “Willow Creek and Alexandria in Madison and Porter counties, Indiana.” The Officer stated, “As long as the project remains within areas disturbed by previous construction, no known historic buildings, structures, districts, objects, or archaeological sites listed in or eligible for inclusion in the National Register of Historic Places will be affected by this project.” In the event that construction, demolition, or earthmoving activities uncover archaeological artifacts or human remains, state law requires that work stop and the district office of the State Historic Preservation Office receive a report of the discovery within two business days.

Response. SEA acknowledges this comment.

Indiana—Hazardous Waste Sites

Summary of Comments. NS commented that there was a conflict in the Draft EIS regarding hazardous waste sites within the proposed abandonment of the South Bend-to-Dillon Junction (Indiana) rail line segment. The Draft EIS text stated that there were no concerns (Volume 6, page 30); however, Table H-1 indicated that one leaking underground storage tank site was present within 500 feet of the proposed abandonment. NS requested that this inconsistency be corrected.

Response. SEA determined that the leaking underground storage tank is within 500 feet of the proposed abandonment. SEA does not recommend that the Board propose mitigation measures. If NS encounters hazardous materials during construction, it would follow appropriate regulations and procedures that the Draft EIS described in Chapter 3, “Analysis Methods and Potential Mitigation Strategies,” and Appendix H, “Hazardous Materials and Waste Sites.” Because existing regulatory requirements of other agencies and standard construction practices of the Applicants adequately address potential disturbance of contaminated areas, SEA recommends that the Board not require additional mitigation.

Four City Area—Safety: Passenger Rail Operations

Summary of Comments. Amtrak, in a letter to FRA included with comments from the Four City Consortium (a regional organization in northwest Indiana consisting of the Cities of East Chicago, Hammond, Gary, and Whiting) described safety hazards it experienced between Hammond and Gary, Indiana, where there have been more than 50 highway vehicle accidents involving passenger and freight trains in the past 20 years. Amtrak requested that FRA examine highway/rail at-grade crossings and protective devices in that area.

Response. SEA encourages the Consortium to forward these concerns to FRA.

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Four City Area—Safety: Highway/Rail At-grade Crossings

Summary of Comments. The Four City Consortium expressed concern that the increase in train traffic would create additional motorist frustration and cause more motorists to ignore active crossing warning devices. The Consortium noted that this problem is of particular concern on the Baltimore & Ohio Chicago Terminal (BOCT) Railroad Company line between Pine Junction and Calumet Park. The Consortium also commented that the proximity of several highway/rail at-grade crossings creates a situation where motorists attempt to speed to an adjacent crossing in an effort to beat the train and cross the tracks. Further, the Consortium remarked that reinstating the former Pennsylvania Railroad line between Hobart and Clark Junction could cause problems because motorists are unaccustomed to stopping at highway/rail at-grade crossings on this line.

Response. SEA's safety analysis included the overall effect of aggressive driver behavior, but it did not calculate the way such behavior would vary at different highway/rail at-grade crossings. The analysis used a standard FRA method that applies a set of formulas to estimate the risk of accidents at each highway/rail at-grade crossing. The basis for the development of the formulas was a statistical analysis of actual accident history at highway/rail at-grade crossings in the U.S. That actual history reflected the fact that some people ignore flashing lights and drive around crossing gates, and thus increase the probability of accidents. SEA used actual accident history; therefore, the formulas take into account actual driver behavior. See Chapter 4, "Summary of Environmental Review," of this Final EIS.

FRA does not include the amount of time that drivers must wait for trains to pass at a specific highway/rail at-grade crossing, so it cannot reflect crossing-to-crossing variations in the probability that drivers would ignore warning devices. See Appendix N, "Community Evaluations," of this Final EIS for further information.

Summary of Comments. The Four City Consortium commented that the Draft EIS does not propose specific mitigation measures for adverse safety effects. Furthermore, the Consortium stated that the thresholds for environmental analysis that SEA used for potential safety impacts, such as selecting rail line segments that would have an increase of 8 or more trains per day and would meet a predicted accident rate per year per mile, "appear to be arbitrary." The Consortium expressed concern regarding the application of thresholds for environmental analysis to the former Pennsylvania Railroad rail line segment from Hobart-to-Clarke Junction that is currently out of service and could not have had any accidents in the last 10 years.

Response. SEA's analysis determined the risk of increased train-vehicle accidents at highway/rail at-grade crossings as a result of increases in train traffic resulting from the proposed Conrail Acquisition. The analysis considered crossings on those rail lines that would meet the Board's thresholds for environmental analysis of an increase of 8 or more trains per day. SEA clarifies that the thresholds for environmental analysis are not

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arbitrary; the Board established these thresholds through the Federal regulatory process and incorporated them, based on SEA's criteria of significance, in the Board's environmental regulations at 49 CFR 1105. In the Draft EIS, SEA recommended mitigation at crossings where the analysis found that mitigation would be warranted. See Appendix N, "Community Evaluations," of this Final EIS for further discussion.

SEA notes that the Tolleston-to-Clarke Junction rail line segment C-024 and a portion of rail line segment C-026 are currently out of service and would have no accidents to include in the grade crossing safety analysis. SEA further notes that rail line segment C-024 would experience an increase from 0 to 5 trains per day, and rail line segment C-026 would experience an increase from 1 to 5 trains per day after the proposed Conrail Acquisition. These increases do not meet SEA's thresholds for environmental analysis. Therefore, SEA did not analyze these rail line segments for grade crossing safety.

Four City Area—Safety: Freight Rail Operations

Summary of Comments. The Four City Consortium expressed the following concern: "Motorists have become used to slow-moving trains, particularly on the BOCT line, which contributes to the around-the-gates problem. In addition, vehicles traveling on east-west Chicago Avenue, which parallels the BOCT line through East Chicago and Hammond, routinely attempt to beat a train to the next open crossing. These problems may be exacerbated by CSX's proposal to raise the maximum train speed on the BOCT line to 40 miles per hour, as motorists who desire to cross this line will not expect increased train speeds."

Response. SEA notes that the Applicants have committed to operational improvements that would allow an increase in freight train speed to 40 miles per hour and to change the highway/rail at-grade warning devices to state-of-the-art constant warning time devices. These changes would decrease the duration of highway/rail at-grade crossing blockages by reducing the time that trains are on the crossing and by reducing gate-down time before trains pass through the crossing.

SEA determined that two rail line segments in the Four Cities could experience significant safety impacts as a result of the proposed Conrail Acquisition. SEA predicted an increase in freight train accidents on rail line segment N-042. SEA also determined that crossing accidents and hazardous materials transport could increase on rail line segment C-027. Therefore, SEA recommends that the Board impose the mitigation measures that Chapter 7, "Recommended Environmental Conditions," of this Final EIS sets forth for these rail line segments.

The Four City Consortium's concern that the existence of several highway/rail at-grade crossings would be affected by higher train speeds is reasonable. However, SEA's experience in other rail mergers and consolidations suggests that, as the number of railroad companies decreases, the need for complex coordination diminishes

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proportionally. Chicago area railroad operations managers have established cooperative communication efforts completely separate from the proposed Conrail Acquisition. SEA understands that these coordination efforts have helped to improve train movements and scheduling of track outages for maintenance. SEA concludes that the combination of fewer entities and the existing communication and cooperation improvements by railroad operations management in the General Chicago Area would allow the Applicants to achieve improvements in train speed. See Appendix N, "Community Evaluations," of this Final EIS.

SEA also points out that informational and educational efforts by the Applicants (for example, through Operation Lifesaver and in close cooperation with local police departments) typically precede significant increases in train speed through highway/rail at-grade crossings. SEA considers these efforts to be BMPs and does not recommend mitigation (see Appendix P, "SEA's Best Management Practices for Construction and Abandonment Activities," of this Final EIS). SEA does recommend, however, that the Board require the Applicants to implement Operation Lifesaver, as Chapter 7, "Recommended Environmental Conditions," of this Final EIS discusses.

Four City Area—Safety: Other

Summary of Comments. The Four City Consortium expressed the following concern: "After reviewing the CSX and NS operating plans as set forth in the Railroad Control Application in this proceeding, the Four Cities Consortium determined that implementation of those plans is likely to make the serious existing rail-related public health and safety problems in their region significantly worse."

Response. SEA conducted additional analysis specific to the Four Cities. See Appendix N, "Community Evaluations," of this Final EIS. The Applicants have committed to improvements that would allow an increase in freight train speed to 40 miles per hour and would change the highway/rail at-grade crossing warning devices to state-of-the-art constant warning time devices. These changes would decrease the amount of time that trains block highway/rail at-grade crossings by shortening train pass-through time and gate down time at crossings. The primary public health issues associated with highway/rail at-grade crossings concern emissions from vehicles idling at crossings and potential delays to emergency response vehicles. SEA maintains that the improvements undertaken by CSX and NS would mitigate the effects associated with the increased number of trains.

SEA determined that two rail line segments in the Four Cities could experience significant environmental impacts as a result of the proposed Conrail Acquisition. On rail line segment N-042, the estimated increase in freight train accidents and crossing accidents would warrant mitigation; likewise, on rail line segment C-027, increased shipments of hazardous materials would also warrant mitigation. SEA recommends that,

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if the Board decides to approve the proposed Acquisition, it require the Applicants to implement the mitigation measures set forth in Chapter 7, "Recommended Environmental Conditions," of this Final EIS for these rail line segments.

Summary of Comments. The Four City Consortium voiced the following concern: "Train stoppages and blocked crossings occur so frequently that pedestrians, particularly children, routinely climb under or through trains to get from one side of the tracks to the other. Again, this problem will be exacerbated by the Applicants' projected increases in train traffic in the region."

Response. SEA clarifies that this is a pre-existing condition. Therefore, SEA encourages the Four City Consortium to work with local law enforcement and the Applicants to increase public education and deter people from this practice. SEA also points out that the Applicants have committed to operational improvements that would allow increased freight train speed and would change the highway/rail at-grade crossing warning devices to state-of-the-art constant warning time devices. These changes would decrease the amount of time that trains block highway/rail at-grade crossings by shortening train pass-through time and gate down time at crossings. See Appendix N, "Community Evaluations," of this Final EIS for additional detail.

Four City Area—Transportation: Highway/Rail At-grade Crossing Delay

Summary of Comments. The Four City Consortium (East Chicago, Hammond, Gary, and Whiting, Indiana) expressed concerns about increased delay at railroad crossings. The Consortium agreed with the comment in the Draft EIS that "even a small increase in (crossing) delays could exacerbate the problems faced by an urban area with several grade crossings." According to the Consortium, one of the most significant adverse environmental impacts on the Four City region would arise from the increased delay at highway/rail at-grade crossings. The Consortium voiced the opinion that these delays would have significant potential environmental impacts related to safety and air pollution as well as an adverse impact on cost in terms of the amount of time that occupants of delayed vehicles would incur.

The Consortium indicated that the Draft EIS calculated delay at only 15 of the 29 affected highway/rail at-grade crossings in the area with an ADT of greater than 5,000 vehicles. The Consortium added that it had evaluated all highway/rail at-grade crossings in the area, regardless of ADT volume, and claimed that its evaluation was more appropriate for evaluating cumulative effects of the proposed Conrail Acquisition.

Further, the Consortium indicated that the train speeds used to calculate highway/rail at-grade crossing delay times are inconsistent both with reality and with the Applicants' own data. Also, SEA assumed in the Draft EIS that the increase in the average train length in northwestern Indiana would be 200 feet. According to CSX's records for operations after the proposed Conrail Acquisition, the length would be 1,298 feet on certain northwestern Indiana lines. The Consortium calculated revised crossing delay times based on the train speed and train length

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information that it claimed is accurate. The Consortium recommended that the Final EIS reflect the corrected crossing delay times and that SEA calculate the delays for all 108 affected highway/rail at-grade crossings in the Four Cities, regardless of ADT volume.

Response. SEA agrees with the Four City Consortium. As the Consortium noted, 15 of the 29 highway/rail at-grade crossings in the Four Cities met the 5,000-highway-vehicle ADT threshold for traffic delay analysis. In SEA's experience, roadways with ADT volumes below 5,000 would experience only minimal additional vehicular delay from increased train traffic resulting from the proposed Conrail Acquisition. Therefore, SEA did not analyze more than the 15 specified highway/rail at-grade crossings.

SEA applied system-wide average values for train lengths that account for the mix of different trains on each rail line segment. SEA applied typical speed values for delay calculations that are less than the maximum speed allowed on rail line segments. This speed assumption produced conservative estimates of traffic delay at highway/rail at-grade crossings.

Chapter 4, "Summary of Environmental Review," Section 4.19.3, "Four City Consortium, Indiana," and Appendix N, "Community Evaluations," of this Final EIS present SEA's additional analysis of the Four Cities.

Summary of Comments. The Four City Consortium (East Chicago, Hammond, Gary, and Whiting, Indiana) requested additional information regarding train speed inputs used to calculate vehicle delay times in the Four Cities. The Consortium also requested information on all highway/rail at-grade crossings that SEA evaluated in the area, including the number of trains per day that SEA assumed; train length, speed, weight and power; ADT; number of roadway travel lanes; number of tracks; and warning devices.

Response. SEA notes that a number of tables in the Draft EIS presented the information the Four City Consortium requested. Five rail line segments are located in the Four Cities in Lake County: C-023, C-024, C-026, C-027, and N-042. Table 5-IN-9, "Highway/Rail At-Grade Crossing Vehicle Delay and Queues," in the Supplemental Errata to the Draft EIS lists 15 highway/rail at-grade crossings that SEA evaluated for traffic delay and presents the following information: trains per day, length of trains, train speeds, ADT, and number of roadway travel lanes. Appendix A, "Rail Line Segments and Traffic Density Changes," of the Draft EIS displays gross tonnage by rail line segment, where the analysis assumed the amount of power on each train would be typical of railroad practices. Table 5-IN-8, "Highway/Rail At-Grade Crossing Accident Frequency," in the Draft EIS lists the present type of warning devices at highway/rail at-grade crossings that SEA analyzed for safety. For the prediction of vehicle delay, SEA used a conservative approach that did not differentiate among different types of warning devices.

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Summary of Comments. NS commented that the Draft EIS directed NS to negotiate with the Four City Consortium and the Indiana Department of Transportation to address traffic delay concerns at nine highway/rail at-grade crossings in the Four Cities. NS stated that the highway/rail at-grade crossings do not exceed the Draft EIS significance criteria for delay, and therefore do not warrant mitigation. NS suggested that public comment was the sole reason for this condition, which SEA did not support with technical analyses.

Response. SEA disagrees with NS's comment in light of the fact that the CSX rail line segment C-023 runs through the Four Cities. SEA analyzed the change in vehicle delay in the Four Cities that would result from the increase in train traffic after the proposed Conrail Acquisition. The number of trains on the Pine Junction-to-Barr Yard CSX rail line segment C-023 would increase by 1.7 trains per day, from 30.0 trains per day before the proposed Conrail Acquisition to 31.7 trains per day after the proposed Acquisition.

None of the nine highway/rail at-grade crossings along this rail line segment in the Four Cities would meet SEA's criteria of significance for vehicle delay. Appendix N, "Community Evaluations," of this Final EIS discusses the proposed improvements in the Four Cities. Chapter 7, "Recommended Environmental Conditions," of this Final EIS addresses the proposed mitigation for the Four Cities in more detail.

Summary of Comments. CSX commented that the traffic delay calculations in the Draft EIS overstated the "post-Acquisition" traffic delay for the nine crossings in the Four Cities. CSX held that the calculations did not take into account the increased average speed on the Pine Junction-to-Barr Yard rail line segment that would result from the capital improvements and the operational improvements that CSX plans for the rail line and for its rail lines in the Chicago area as a whole. CSX stated that the increased speed would actually decrease traffic delays as a result of the proposed Conrail Acquisition.

CSX indicated that SEA directed CSX to consult with Gary, Indiana regarding a number of potential environmental impact categories. CSX added that the Draft EIS indicated that SEA may recommend mitigation in the Final EIS if CSX does not enter into a binding agreement regarding mitigation measures. CSX pointed out that it is currently consulting with Gary about these issues as part of its consultation with the Four City Consortium. CSX stated that it would inform SEA if it reaches an agreement with the Four City Consortium, and SEA can document the final agreement in the Final EIS for consideration by the Board.

CSX commented that the Board should not impose a voluntary agreement relating to a pre-existing condition in the Four Cities as a condition of approval for the proposed Conrail Acquisition. CSX also stated that it would not be appropriate for the Board to impose its own condition in the event that CSX and the Four City Consortium do not reach an agreement. CSX suggested that the Final EIS should simply document any voluntary agreement that CSX and the Four Cities may reach with respect to the pre-existing situation under discussion. If they reach

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no agreement by the time of the Final EIS distribution, the Final EIS should report that the parties are consulting.

Response. SEA analyzed the change in traffic delay that would result from the Acquisition-related increase in train traffic in the Four Cities. The number of trains on the Pine Junction-to-Barr Yard rail line segment C-023 would increase by 1.7 trains per day, from 30.0 trains per day before the proposed Acquisition to 31.7 trains per day after the proposed Acquisition. Because this increased number of trains did not meet the Board's thresholds for environmental analysis, SEA's analysis did not address highway/rail at-grade crossings along this rail line segment.

Chapter 4, "Summary of Environmental Review," Section 4.19.3, "Four City Consortium," of this Final EIS presents additional analysis regarding the Four City Consortium, Indiana. SEA encourages CSX and the Four City Consortium to continue discussions leading to a voluntary agreement between the parties. Appendix C, "Settlement Agreements and Negotiated Agreements," contains a listing of applicable agreements in place at the time of the printing of this Final EIS.

Summary of Comments. The Four City Consortium commented as follows: "The frequent crossing blockages habitually prevent emergency police, fire and ambulance vehicles from responding in a timely manner to calls that require such vehicles to use rail/highway at-grade crossings." The Four City Consortium noted that the emergency response problem is particularly acute at crossings along the BOCT rail line between Pine Junction and Calumet Park. When a train stops in the East Chicago and Hammond central business districts, it blocks several highway/rail at-grade crossings because of the close spacing of cross streets.

Response. The emergency response delays that the comment cited are pre-existing problems, not a result of the proposed Conrail Acquisition. CSX's original operating plan included an Acquisition-related increase of 5.7 trains per day on the BOCT rail line between Pine Junction and Calumet Park, which is part of the CSX Pine Junction-to-Barr Yard rail line segment (C-023). This increase is less than SEA's threshold for environmental analysis of an increase of 8 trains per day. SEA notes that in response to the concerns that the comment raised, CSX revised its Operating Plan to increase the train traffic on this rail line segment by 1.7 trains per day as a result of the proposed Conrail Acquisition.

In the Four Cities, the CSX Willow Creek-to-Pine Junction rail line segment (C-027) met or exceeded SEA's threshold for environmental analysis. All highway/rail at-grade crossings in the Four Cities on this rail line segment are grade-separated; therefore, the increase would cause no impacts on emergency response and mitigation is not warranted. Appendix N, "Community Evaluations," of this Final EIS contains a discussion of the effects of the proposed Conrail Acquisition on the Four Cities, Indiana area.

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Four City Area—Transportation: Roadway Systems

Summary of Comments. The Four City Consortium stated that the “negative impacts associated with the Application are largely attributable to the Applicants’ proposed increases in rail traffic movements over certain line segments heavily laden with rail/highway at-grade crossings....”

Response. SEA notes that it conducted site visits and additional analysis. SEA addresses these and other concerns in its additional analysis on the Four City Consortium in Chapter 4, “Summary of Environmental Review,” Section 4.19.3, “Four City Consortium, Indiana,” and Appendix N, “Community Evaluations,” of this Final EIS.

Four City Area—Transportation: Other

Summary of Comments. The Four City Consortium stated that the proposed Conrail Acquisition would have adverse environmental impacts. As reasons, they cited the planned reinstatement of rail service on a long-unused rail right-of-way that directly traverses the heart of Gary, Indiana and increased rail traffic over certain rail line segments. The attorneys proposed an alternative routing plan and recommended that the Board require the implementation of this plan as a condition of the proposed Conrail Acquisition. One part of the alternative routing plan would reroute some CSX traffic that would move between Willow Creek, Indiana and Calumet Park, Illinois. The rerouted traffic would move from the CSX/BOCT rail line via Pine Junction (Gary), Indiana to a parallel route consisting of Conrail’s Porter Branch (that CSX would acquire) between Willow Creek and would add a connection with the Indiana Harbor Belt’s Gary-Calumet Park line near Virginia Street in Gary as the alternative routing plan proposes.

The second part of the alternative routing plan is an alternative to CSX’s plan to acquire from NS and restore to service the portion of the former Pennsylvania Railroad’s Fort Wayne-to-Chicago line between Hobart, Indiana and Clark Junction (Gary), Indiana. The plan proposes that CSX reroute this traffic to a parallel route via the NS line between Hobart and Van Loon, Indiana, and from there via the Elgin, Joliet, and Eastern Railway Company rail line between Van Loon and a connection with both the Eastern Railway Company and CSX lakefront lines near Pine Junction.

The Consortium stated, “If, after considering the Four Cities’ ARP [alternative routing plan] in more detail, the SEA still believes that negotiation between the Applicants and the Consortium is the most appropriate mitigation action, then the Four Cities would request, at a minimum, that SEA’s Final EIS recommend that moratoriums be placed on (a) any increases in railroad traffic moving over the BOCT line between Pine Junction and Calumet Park above current levels (28 trains per day), and (b) the rehabilitation of, and reinstatement of service on, the former Pennsylvania Railroad line between Hobart and Clarke Junction.”

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Response. SEA's preference in resolving environmental concerns is to encourage the community and the Applicant to work together to develop a mutually agreeable solution. However, SEA realizes that agreements are not always reached; in such cases, SEA may independently develop and recommend mitigation. In the Four City Consortium case, SEA thoroughly evaluated both the Applicant's Operating Plans and the Consortium's proposed revisions on rerouting options. See Chapter 4, "Summary of Environmental Review," and Appendix N, "Community Evaluations," of this Final EIS for this additional analysis.

SEA has concluded that the reactivation of the former Pennsylvania Railroad line from Hobart-to-Clark Junction would not result in significant environmental impacts. SEA also determined that mitigation of the potential environmental impacts of the operation of additional freight trains on the Pine Junction-to-Barr Yard rail line segment could be achieved by the implementation of certain operational and safety improvements. Chapter 7, "Recommended Environmental Conditions," of this Final EIS describes SEA's recommended mitigation measures. CSX has also modified its operation plan to reroute some traffic from the Pine Junction-to-Barr Yard rail line segment, thus reducing the net increase to 1.7 trains per day on this segment. SEA concludes that because it has addressed the potential environmental impacts, a moratorium is inappropriate.

Four City Area—Energy

Summary of Comments. The Four City Consortium questioned the assumptions SEA used to identify energy-related impacts. The Consortium questioned why SEA accepted the Applicants' estimates of a net system-wide reduction in diesel fuel consumption while SEA acknowledged that the Applicants probably overestimated the truck-to-rail diversions that would occur. The Consortium also questioned the conclusion that mitigation would not be necessary for individual crossings because "there would be no significant system-wide changes in energy use due to vehicle crossing delays...." The Consortium commented that SEA's conclusions "ignore the cumulative impacts of grade crossing delays at the many interrelated grade crossings, particularly on the BOCT line between Pine Junction and Calumet Park. The Conrail transaction will clearly result in a substantial increase in fuel and oil consumption by idling vehicles delayed at blocked grade crossings in this region."

The Applicants also commented on the estimated fuel savings that the Draft EIS predicted. CSX and NS contended that the statement in the Draft EIS regarding a "post-Acquisition" fuel savings of 80.1 million gallons is incorrect; they estimated that the actual savings would be 133.6 million gallons. The Applicants maintained that the Final EIS should present this cost savings as a net positive impact.

NS also commented regarding fuel savings at highway/rail at-grade crossings. NS stated that the analysis described in the Draft EIS "arbitrarily excludes at-grade crossings with ADT greater

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than 5,000 projected to experience decreases in train traffic. This analysis thereby overestimates fuel consumption and fails to assess the benefits ... associated with the Transaction.”

Response. SEA based its system-wide analysis of the proposed Conrail Acquisition's potential energy impacts on predicted diversions of freight from truck to rail transport. SEA concluded that a substantial reduction in fuel consumption would result from predicted truck-to-rail diversions, and that other sources of change in fuel consumption would be insignificant in comparison. SEA acknowledged in the Draft EIS that there was probably a level of duplication in the estimates of gross ton-miles diverted from truck to rail transport, because of the competitive nature of the proposed Acquisition. However, SEA concluded that the order of magnitude of the estimates, and thus the reduction in fuel consumption, was reasonable.

SEA estimated fuel consumption changes attributable to delays at highway/rail at-grade crossings that SEA studied for delay. For example, SEA evaluated crossings with a roadway ADT volume of 5,000 or more vehicles per day, which exceeded the Board's thresholds for environmental analysis. SEA determined that, while consumption of fuel increased at highway/rail at-grade crossings, the overall potential environmental impacts would be insignificant when compared in magnitude to the system-wide reduction in fuel consumption attributable to truck-to-rail diversions.

With regard to the Applicants' comments that the fuel savings that the Draft EIS presented were erroneous, SEA notes (as the Applicants commented) that the estimated reduction in fuel consumption as a result of predicted truck-to-rail diversions is 133.6 million gallons of diesel fuel. SEA estimated that, based on the Applicants' projections, 53.5 million gallons of fuel would be consumed by increased rail traffic not related to truck-to-rail diversions. Thus, SEA estimated that the net reduction in fuel consumption from the proposed Conrail Acquisition would be 80.1 million gallons of diesel fuel, which would represent a substantial reduction in fuel consumption and would provide an overall benefit of the proposed Conrail Acquisition.

Finally, regarding NS's comment on fuel savings at highway/rail at-grade crossings, SEA acknowledges that the Draft EIS's analysis of potential energy impacts of delays at highway/rail at-grade crossings considered only those crossings that SEA studied for delay. SEA determined that the very small increase in fuel consumption at those crossings that it studied would be insignificant in comparison to the substantial reduction in fuel consumption attributable to truck-to-rail diversions. Further, SEA maintains that, while the delay analysis did not encompass crossings where there would be a decrease in train traffic, the potential energy impacts of these grade crossings would be similarly insignificant.

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Four City Area—Air Quality

Summary of Comments. The Four City Consortium commented that SEA inexplicably determined that the air quality impacts in Lake County would not be significant, despite the fact that NO_x emissions estimates in the Draft EIS exceeded SEA's significance criteria for the imposition of mitigation measures. The Consortium further stated that SEA not recommending mitigation measures for potential air quality impacts is unacceptable, in light of mitigation measures already undertaken by State, County, and local officials.

Response. SEA has concluded that the projected 2 percent increase in Lake County NO_x emissions would not significantly affect local ozone levels and would not affect ozone attainment status. Recent studies by the Ozone Transport Assessment Group have shown that NO_x effects on ozone nonattainment are primarily a regional concern, not a local one. Therefore, SEA concludes that the small local NO_x emissions changes that the Draft EIS showed would not have any measurable effect on local ozone attainment in Lake County. Accordingly, SEA is not proposing mitigation measures for NO_x emissions increases in Lake County. In addition, SEA expects EPA's new locomotive emissions rule to offset emissions increases from train traffic within a few years. See Appendix I, "Air Quality Analysis," of this Final EIS for further discussion.

Summary of Comments. The Four City Consortium commented that SEA failed to consider significant air quality impacts that would result from increased delays at highway/rail at-grade crossings in the Four Cities.

Response. SEA performed a screening air quality impact analysis of emissions from vehicles delayed at highway/rail at-grade crossings. SEA used conservative assumptions in the analysis, as described in Appendix I, "Air Quality Analysis." The analysis demonstrated that emissions from vehicles delayed at highway/rail at-grade crossings would not cause pollutant concentrations to exceed the NAAQS in the Four Cities.

Summary of Comments. The Four City Consortium stated that the air quality analysis in the Draft EIS was flawed because SEA evaluated only the potential environmental effects of highway/rail at-grade crossings with ADTs over 5,000 vehicles. The Consortium maintained that the air quality analysis should have included the potential effects of all highway/rail at-grade crossings in the Four Cities.

Response. As an example of the relative emissions contribution of highway/rail at-grade crossings with ADTs of fewer than 5,000 vehicles, SEA selected a representative county as an example to analyze. The results of SEA's analysis of all affected highway/rail at-grade crossings in Cuyahoga County, Ohio appear in the Draft EIS, Appendix E, "Air Quality," Section E.7.5, "Grade Crossings," and Attachment E-10, "Emissions for All Affected Roadway Crossings." This analysis demonstrates that emissions from highway/rail at-grade crossings with ADTs of fewer than 5,000 vehicles are minimal.

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Based on this conservative analysis, SEA concludes that contributions of air pollutant emissions from traffic at highway/rail at-grade crossings with ADTs of fewer than 5,000 would not significantly affect the outcome of the air quality analysis.

Summary of Comments. The Four City Consortium has requested that SEA, as a part of its Final EIS, conduct a conformity determination to ascertain the potential environmental impact of the Application on the Four Cities.

Response. SEA notes that the Board has determined that General Conformity does not apply to the proposed Conrail Acquisition. EPA has stated that “it is up to each Federal agency to review its own unique legal authority and determine what emission-generating activities it has the ability to control.” (See *General Conformity Guidance: Questions and Answers*, EPA Office of Air Quality Planning and Standards, July 13, 1994, page 14.) The Board examined the issue of control and determined that it cannot practicably control railroad emissions as part of a continuing program responsibility. See Chapter 4, “Summary of Environmental Review,” of this Final EIS for additional discussion of General Conformity Rules and their applicability.

Four City Area—Land Use and Socioeconomics

Summary of Comments. The Four City Consortium questioned the lack of land use and socioeconomic analysis for the Pennsylvania Railroad Hobart-to-Clarke Junction line. The Consortium noted that the rail line would require substantial rehabilitation to restore it to service. Also, the Consortium contended that reactivation would have potential negative environmental impacts on land use and socioeconomics.

Response. SEA evaluated the land use effects of proposed new rail line construction and rail line abandonments based on the EIS scope. Because neither is the case for this rail line, the asserted effects are beyond the scope of the EIS for land use and socioeconomics. SEA has no evidence that the legal status of the right-of-way has changed. While the reactivation of this rail line segment (which the Four City Consortium’s comment stated has been inactive for approximately 10 years) may cause effects, SEA determined that these effects would be beyond the scope of the EIS. Given the continued physical presence of the rail infrastructure, conditions do not support an assertion that the proposed reactivation would negatively affect land use.

Four City Area—Noise

Summary of Comments. The Four City Consortium expressed concern that three rail line segments met the Board’s noise threshold for environmental analysis, yet SEA proposed no mitigation. The rail line segments that the Consortium identified are the former Pennsylvania Railroad rail line segment between Tolleston and Clark Junction, the former Pennsylvania Railroad rail line segment between Warsaw and Tolleston via Hobart, and the CSX rail line

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segment between Willow Creek and Pine Junction. The Consortium commented that receptors near grade crossings would experience increased horn noise and requested that SEA consider an alternative routing plan (that the Consortium developed) for mitigation of noise impacts.

Further, the Consortium commented that SEA failed to consider noise impacts along the Pennsylvania Railroad Hobart-to-Clarke Junction rail line segment, which is currently inactive. The Consortium expressed concern that Roosevelt Manor, a proposed low-income housing project in Gary, would be located close to the rail line and would suffer noise impacts.

Response. SEA notes that the Board's regulatory thresholds for noise analysis are different from SEA's mitigation criteria. The regulatory thresholds establish when SEA should conduct noise analysis; SEA then uses the mitigation criteria to determine whether specific impacts warrant mitigation. This explains why some rail line segments may meet the Board's thresholds for environmental analysis but, after applying the mitigation criteria, SEA does not propose that the Board impose mitigation conditions.

SEA also recognizes that increased daily train traffic can result in increased noise near the rail line and at highway/rail at-grade crossings. Currently, regulations typically require trains to sound their horns one-quarter mile from highway/rail at-grade crossings, and this results in noise exposure to residences in the surrounding area. The purpose of sounding the horn is to warn motorists and others at the crossing devices of approaching trains.

FRA is developing Quiet Zone Rules to provide a mechanism for reducing noise impacts without sacrificing safety. FRA is also considering the use of four-quadrant gates or median barriers, which are designed to keep motorists from driving around the highway/rail at-grade crossing gate arm as a train approaches. FRA expects to incorporate the results of its evaluation of these alternative technologies into the FRA's proposed Quiet Zone Rules; however, FRA has not yet proposed these rules, and therefore, SEA cannot incorporate them into this action.

The Applicants are reviewing the alternative routing plan that the Four City Consortium developed; however, the Applicants have not made a decision regarding rerouting rail traffic in this region (see Appendix N, "Community Evaluations," of this Final EIS).

The commentator suggested that SEA failed to consider noise impacts along the Pennsylvania Railroad Hobart-Clarke Junction rail line segment, which is currently inactive. This suggestion is not correct because SEA performed a site-specific noise impact analysis for this rail line, which the Applicants designate as rail line segment C-026. See Chapter 4, "Summary of Environmental Review," and Appendix J, "Noise Analysis," for a discussion of the results of this analysis.

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In regard to the Four City Consortium's concern that the proposed Roosevelt Manor low-income housing project in Gary would lie in close proximity to this rail line segment and would experience noise impacts, SEA reviewed the location of the proposed Roosevelt Manor project. The proposed site is a vacant 20-acre parcel adjacent to rail line segment C-026. There are highway/rail at-grade crossings on both the east and west sides of the parcel. SEA determined that the distance to the 65 dBA L_{dn} contour of the post-Acquisition highway/rail at-grade crossing would be 361 feet. A large portion of the parcel lies within this contour line. SEA concluded that mitigation for highway/rail at-grade crossing noise is not warranted; however, the FRA Quiet Zone Rule may provide a mechanism to reduce the area of noise impacts from highway/rail at-grade crossing noise.

Four City Area—Environmental Justice

Summary of Comments. The Four City Consortium commented on the environmental justice analysis regarding:

- NS's planned reactivation of the Hobart-to-Clark Junction rail line segment, which would adversely affect the proposed Roosevelt Manor moderate- to low-income housing project.
- Failure to find significant impacts on environmental justice populations in the City of East Chicago and the Pine Junction-to-Calumet Park rail line segment.

The Four Cities Consortium also commented that its alternative routing plan reduces effects on environmental justice populations.

Response. SEA calculated the percentage of low-income population by using 1990 Census data and a Geographic Information System, which is a tool to determine which block groups fell within the Area of Potential Effect for a rail line segment or a site. SEA divided the low-income population by the total population within the Area of Potential Effect, and SEA used this percentage to determine whether the population within the Area of Potential Effect met the thresholds for environmental justice analysis. The thresholds are: the low-income population percentage must be greater than 50 percent of the total population, or the low-income population must be 10 percent greater in the Area of Potential Effect than in the county as a whole.

The Hobart-to-Clarke Junction rail line segment did not meet the initial environmental justice criteria for further analysis. See page K-19 in the Draft EIS, Appendix K.

The population in the Area of Potential Effect surrounding the Pine Junction-to-Barr Yard rail line segment (C-027), including Calumet Park, did not meet the initial environmental justice criteria for further analysis (see page K-19 in Draft EIS, Appendix

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K, "Environmental Justice"). The Willow Creek-to-Pine Junction rail line segment did meet the initial environmental justice criteria for further analysis. See page K-23 in the Draft EIS, Appendix K.

The Indiana Harbor, Indiana-to-South Chicago, Illinois rail line segment (N-047), which runs through East Chicago, did not meet the initial environmental justice criteria. The CP-501 to Indiana Harbor (N-042) rail line segment, which also runs through East Chicago, did meet the first environmental justice criterion for the presence of minority and low-income communities, but did not meet the second criterion. There were no environmental effects along the segment that met the thresholds for significance.

For the Final EIS, all of the block groups along these segments experienced multiple resource effects scoring in the low range, but there were no disproportionate impacts in any of these block groups.

SEA performed an analysis of alternatives in the Four Cities for this Final EIS, which is presented in Chapter 4, "Summary of Environmental Review." See Appendix M, "Environmental Justice Analysis," and Appendix N, "Community Evaluations," of this Final EIS for a full discussion of the analysis and findings.

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Four City Area—Cumulative Effects

Summary of Comments. The Four City Consortium stated, “The Four Cities strongly urge the Board to evaluate, in a meaningful fashion, the significant cumulative environmental, safety, and socioeconomic impacts on the residents and communities of northwest Indiana region that would be created by the Applicants’ proposed incremental increases in railroad traffic using the BOCT Line between Pine Junction and Calumet Park and reinstatement of service on the portion of the Pennsylvania Railroad line between Hobart and Clarke Junction.”

Response. SEA has performed additional site visits and site-specific analysis to address these Four City Consortium concerns. Chapter 4, “Summary of Environmental Review,” Section 4.19, “Four City Consortium, Indiana,” and Appendix N, “Community Evaluations,” of this Final EIS discuss this analysis.

Summary of Comments. The Four City Consortium commented on NS’s reactivation of rail service on the Pennsylvania Railroad Hobart-to-Clarke Junction rail line segment, which has been inactive for the last 10 years. The Consortium stated that this would interfere with its plans to expand the Gary/Chicago Airport and impede plans for the redevelopment of Gary’s Lake Michigan waterfront. The Consortium continued, “SEA did not examine any cumulative impacts involving either of the two line segments of principal concern to the Four Cities: the BOCT rail line segment between Pine Junction and Calumet Park, and the former Pennsylvania Railroad rail line...” The Consortium added that “post-transaction operating plans will have a very substantial cumulative impact on the Four Cities region, particularly in the area of rail/highway grade crossing safety and delays.”

Response. SEA has no evidence that the reactivation of rail service on the Pennsylvania Railroad Hobart-to-Clarke Junction rail line segment would result in a cumulative effect that would interfere with the future expansion of the Gary/Chicago Airport. The presence of the rail line embankment would not affect the airport’s goal to upgrade from a reliever/general aviation airport to a commercial service airport for passengers. The principal runway is unaffected by the embankment. Airport plans are not sufficiently advanced for SEA to determine whether the presence of an active railroad line on this embankment represents a potential obstacle to airplanes landing on or departing from a future extended runway. The airport’s plan is not sufficiently advanced for Federal Aviation Administration to determine whether, or precisely how, such a condition would affect operations.

Also, SEA has determined that plans to expand the runway in the direction of the Conrail rail line are not sufficiently advanced to consider in its cumulative effects analysis for the proposed Conrail Acquisition. The airport layout plan, which guides present development, is scheduled for augmentation by a master plan update beginning in 1998. The airport has not planned, approved, and funded an extension of the runway bordered by a Conrail rail line. The airport acquired land as early as 1979, under the Airport

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Development Aid Program, to protect the existing runway approach. Problems with contamination and funding have slowed additional acquisitions. Future additional acquisition of commercial land, and relocation of Industrial Highway (Route 20) near the airport would be necessary to expand the runway to the northeast in the direction of the Conrail rail line.

Future development that is not railroad-related, such as Gary's Lake, Michigan waterfront, would likely include traffic analysis, where appropriate. SEA does not anticipate that increased rail traffic associated with the proposed Conrail Acquisition would impact such development.

SEA evaluated other potential projects or activities that, when combined with the proposed Conrail Acquisition, could create a cumulative effect. SEA became aware of these projects or activities through public comments from local agencies. SEA analyzed the potential environmental impacts on specific resource categories, and SEA considered agency and public comments to develop the scope of analysis for the EIS and to assess potential environmental impacts. Often, perceived cumulative effects are actually multiple resource effects, and cognizant agencies can best determine mitigation for potential impacts through resource-specific mitigation techniques. For the proposed Conrail Acquisition, however, individual resource category impacts in some instances did not exceed the respective thresholds that the Board established for analysis in the Draft EIS. In accordance with the scope of the EIS and as Chapter 4, "Summary of Environmental Review," Section 4.18, "Cumulative Effects," explains, SEA did not consider aggregated multiple resource effects in its cumulative effects analysis.

SEA did analyze highway/rail traffic delays resulting from increased freight rail traffic, and it determined that potential delays in the Four Cities would not be large enough to result in deterioration of the LOS. The LOS for roads in that area ranged from A to D. Acquisition-related increased train traffic would not cause LOS D roads to deteriorate.

Four City Area—General

Summary of Comments. The Four City Consortium requested detailed train speed data that SEA used in the Draft EIS for calculations for 15 highway/rail at-grade crossings. The Consortium requested this information in time to review and address it in comments prior to the February 2, 1998 comment period closure.

Response. SEA acknowledges the request for information and has responded by letter.

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Indianapolis Metropolitan Area—Transportation: Roadway Systems

Summary of Comments. According to Indianapolis Power & Light, the Applicants insist that trucks are the real competition for transporting coal to its Stout Plant. The commentor stated that, if the “Board were to accept the Applicants’ contention” that trucks are the preferred transportation mode to and from the Stout Plant, a significant volume of trucks would use area roadways following the proposed Conrail Acquisition, thereby adversely affecting traffic and road conditions.

Response. With respect to Indianapolis Power & Light’s concern regarding access to competition by shippers of coal to its Perry K and Stout Plants, SEA notes that issues relating to competition of the railroads are not within the scope of the environmental impact analysis. Rather, the Board will consider these issues collectively with SEA’s environmental analysis before making its decision.

Based on information from the Applicants and in Indianapolis Power & Light’s comment, and in view of the fact that rail access would remain available, SEA does not consider it to be a foregone conclusion that the proposed Conrail Acquisition would result in truck transport. SEA has determined that analysis of the potential environmental effects of such truck traffic is not within the final scope of the EIS.

Northeastern Indiana—Safety: Highway/Rail At-grade Crossings

Summary of Comments. The City of New Haven, Indiana requested that the Board require the Applicants to install four-quadrant gates to create a “secured crossing” near the residential areas bordering the rail lines in New Haven at the following locations: West Street, Rose Avenue, Landin Road, North Rufus Street, Estella Avenue, Hartzell Road, and Main Street. The City noted that it has experienced two serious accidents involving trains and automobiles in the past 4 years.

Response. SEA’s safety analysis of the intersections that the comment notes showed that only Estella Avenue would potentially be significantly impacted by an increase in train traffic related to the proposed Conrail Acquisition. See Chapter 7, “Recommended Environmental Conditions,” of this Final EIS for SEA’s mitigation recommendations. The State is already studying the upgrade of the flashing light warning device at this location independent of the proposed Conrail Acquisition. The Applicants would fund the installation of standard gate warning devices at this location. If other funds are available, however, the local authority may decide to install four-quadrant gates or other approved enhanced crossing warning systems at this and other locations.

Summary of Comments. The City of Fort Wayne, Indiana recognized that the installation of four-quadrant gates to create “secured” crossings would be necessary before it would be safe to

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delete train horns at the following intersections or locations: Lombard Street, Wabash Avenue, Fletcher Avenue, Winter Street, Brooklyn Avenue, and Nuttman Avenue.

Response. SEA noted that the Draft EIS did not recommend any change in the sounding of train horns. SEA recognizes the importance of train horns to safety. FRA is developing regulations that would allow communities and railroads to receive FRA approval for alternatives to train horns. SEA expects these potential regulations to address four-quadrant sites. The Draft EIS states, "Until such regulations are in place, SEA does not believe it would be appropriate to recommend mitigation measures to reduce train horns because of safety implications."

Northeastern Indiana—Safety: Hazardous Materials Transport

Summary of Comments. The City of Fort Wayne, Indiana requested that the Applicants pay for upgrades to computers and for metering and testing equipment for the City's emergency response team in response to a proposed fivefold increase in cars carrying hazardous materials.

Response. SEA recognizes the concerns of the City of Fort Wayne. SEA has recommended mitigation for rail line segments that were considered "key routes" as Chapter 7, "Recommended Environmental Conditions," of this Final EIS discusses. SEA does not recommend additional mitigation.

Northeastern Indiana—Transportation: Highway/Rail At-grade Crossing Delay

Summary of Comments. CSX commented that the Draft EIS identified a recommended grade separation for the Randolph Street highway/rail at-grade crossing in Garrett. CSX indicated that it has been discussing this grade separation with the City of Garrett and the Indiana Department of Transportation since 1995. CSX stated that it has committed to sharing the cost of this construction, but the Indiana Department of Transportation has not funded the remainder of the cost at this time. CSX asserted that there is no reason for SEA to recommend any further action on this grade separation in the Final EIS. CSX added that "the suggestion of a binding arbitration procedure in the event that agreement is not reached by the time the Final EIS is issued is problematic." CSX suggested that requiring such a condition would be beyond the Board's jurisdiction.

Response. The Board has broad authority to impose certain conditions, such as grade separations, to mitigate the impacts of the proposed Conrail Acquisition. The Board recognizes agreements between the Applicants and local communities involving grade separations, as long as the parties develop a future implementation plan. Lacking an agreement, however, and because the increased train traffic and slow speeds resulting from the proposed Conrail Acquisition would significantly affect traffic delay at this crossing, SEA recommends mitigation as discussed in Chapter 7, "Recommended Environmental Conditions," of this Final EIS.

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Northeastern Indiana—Noise

Summary of Comments. The Cities of Fort Wayne and New Haven, Indiana expressed a concern about railroad-related noise, particularly from train horns at highway/rail at-grade crossings near neighborhoods bordering rail lines. The Cities noted their interest in the FRA mandate, under the Swift Rail Act of 1994, to develop “whistle ban” regulations. The Cities cited the expected publication of the notice of proposed rule making in the first half of 1998 and expressed the hope that these rules would create opportunities to safely reduce train horn sounding at grade crossings. The Cities expressed interest in the development of loudspeaker horn technology at highway/rail at-grade crossings to reduce the potential noise impacts of train horns on nearby residences.

Response. SEA recognizes the commentor’s concern regarding noise at highway/rail at-grade crossings. Under the Swift Rail Act of 1994, Congress directed FRA to issue rules and specifications regarding the use of train horns at all highway/rail at-grade crossings. FRA is tentatively scheduled to release these rules, including preliminary rules and specifications, during 1998. These rules would preempt local ordinances that ban train horns and whistles except where other demonstrable measures provide the same level of safety. Quiet Zones or future whistle bans might only occur where FRA found that the alternate safety measures were equal to the existing practice of sounding train horns at highway/rail at-grade crossings. FRA is studying safety measures, such as the placement of four-quadrant gates and automated horn systems, as alternatives to train horns. FRA expects to incorporate the results of its evaluation of these alternative signaling technologies into its anticipated Quiet Zone Rule. However, FRA has not promulgated the Quiet Zone Rule to date, and therefore SEA cannot incorporate it into this action at this time. Because safety is paramount, SEA does not recommend mitigating train horn noise.

Northeastern Indiana—Hazardous Waste Sites

Summary of Comments. NS commented that there was a conflict on the number of hazardous waste sites within the proposed connection in Butler, Indiana. NS stated that Draft EIS text did not identify the leaking underground storage tank that is approximately 300 feet from the proposed connection listed in Table H-1 of Appendix H, “Hazardous Materials and Waste Sites,” of the Draft EIS. NS requested correction of the inconsistency in the Final EIS.

Response. Table H-1 of the Draft EIS is correct; there is one leaking underground storage tank within 500 feet of the site. The leaking underground storage tank is approximately 300 feet east of the proposed Butler Connection. SEA does not propose site-specific mitigation measures for pre-existing conditions. If NS encounters hazardous materials during construction, it would follow appropriate regulations and procedures that the Draft EIS described in Chapter 3, “Analysis Methods and Potential Mitigation Strategies,” and in Appendix H, “Hazardous Materials and Waste Sites.” Because

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existing regulatory requirements of other agencies and standard construction practices of the Applicants adequately address potential disturbance of contaminated areas, SEA recommends that the Board not require additional mitigation.

Northeastern Indiana—Cumulative Effects

Summary of Comments. The Mayor of the City of Fort Wayne, Indiana, suggested “that the cumulative impacts on this community, particularly in areas of safety, disruption of surface roads, noise, hazardous materials transport, and on low income and minority neighborhoods deserve additional consideration by the STB [the Board], even though the SEA has not found many of these issues to meet their thresholds of mitigation.”

Response. SEA considered agency and public comments in developing the scope of the EIS. The scope included an analysis of the potential environmental impacts on specific resource categories and cumulative effects on a regional or system-wide basis for the resource categories of air quality, energy, and transportation. Also, SEA evaluated cumulative effects on specific resources associated with other projects or activities related to the proposed Conrail Acquisition, where local communities; local, regional, state, or Federal officials; or other interested parties provided information to SEA.

When SEA identified unique or unusual local circumstances where the Board’s established thresholds were not met, SEA evaluated individual or cumulative effects. The Mayor of the City of Fort Wayne did not identify projects or activities that would cause SEA to treat the City differently from any other communities affected by the proposed Conrail Acquisition. SEA determined that the EIS adequately addressed the environmental impacts identified in the comment with respect to Fort Wayne on the basis of individual resource categories. In accordance with the scope of the EIS, SEA did not consider aggregated multiple resource effects in its cumulative effects analysis on a system-wide, regional, or local basis.

Southwestern Indiana—Safety: Hazardous Materials Transport

Summary of Comments. A citizen expressed a concern about the potential environmental impact of radioactive waste transport through Princeton, Indiana.

Response. CSX and NS shipped approximately 3,107 and 6,650 tons, respectively, of radioactive materials system-wide in 1996, which is less than 0.05 percent of the hazardous materials that the Applicants transport. SEA concludes that the regulatory system for transportation of radioactive materials has been successful in minimizing the safety impact from accidents involving such shipments. Few accidents have occurred involving shipments of radioactive materials (averaging less than 50 accidents out of three million annual shipments). Only a small number of those accidents have involved any release of the radioactive contents, and in these instances, radioactive contamination

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has been generally minor with no significant public safety consequences. Therefore, SEA expects no significant potential environmental impacts associated with radioactive materials transport to result from the proposed Conrail Acquisition.

Southwestern Indiana—Transportation: Highway/Rail At-grade Crossing Delay

Summary of Comments. Several residents of Princeton, Indiana stated that NS and CSX tracks cross at the south end of Princeton. According to the residents, the existing train traffic on these tracks blocks access to Princeton from the south for long periods of time. In addition, a Toyota truck factory south of Princeton will be operational by late 1998. This factory will ship its products by rail and could cause additional delay to vehicular traffic.

Response. SEA notes that the current delays that the residents of Princeton discussed are a pre-existing condition and therefore not an impact of the proposed Conrail Acquisition. Also, potential changes in railroad operations relating to the opening of the Toyota truck factory would not be an impact of the proposed Conrail Acquisition.

Nevertheless, SEA analyzed the Broadway Street (FRA ID 342475L) highway/rail at-grade crossing in Princeton for potential impacts from the proposed Conrail Acquisition. Changes in delay resulting from the proposed increase in trains on the Vincennes-to-Evansville rail line segment C-025 are not significant. LOS at the highway/rail at-grade crossing would remain at LOS B, and the crossing delay per stopped vehicle would increase from 1.60 to 1.64 minutes per vehicle.

Because the Broadway Street crossing remains at LOS B, it does not meet SEA's criteria of significance for vehicle delay. Therefore, SEA determined that mitigation of traffic delay at this location is not warranted.

Southwestern Indiana—Cumulative Effects

Summary of Comments. Two citizens in Princeton, Indiana expressed concern that the initiation of Toyota T100 vehicle shipments by rail through Princeton from the Toyota factory south of Princeton would exceed the thresholds for air quality, noise, and vehicular traffic analyses.

Response. SEA evaluated other potential projects or activities that, when combined with the proposed Conrail Acquisition, could create a cumulative effect. SEA became aware of these projects or activities through public comments from local agencies. SEA analyzed the potential environmental impacts on specific resource categories, and SEA considered agency and public comments to develop the scope of analysis for this EIS and to assess potential environmental impacts. Often, perceived cumulative effects are actually multiple resource effects, and cognizant agencies can best determine mitigation for potential impacts through resource-specific mitigation techniques. For the proposed

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Conrail Acquisition, however, individual resource category impacts in some instances did not exceed the respective thresholds that SEA established for analysis in the Draft EIS. In accordance with the scope of the EIS, SEA did not consider aggregated multiple resource effects in its cumulative effects analysis.

SEA analyzed the Broadway Street (FRA ID 342475L) highway/rail at-grade crossing in Princeton, Indiana for changes in delay resulting from the proposed increase in trains on the Vincennes-to-Evansville rail line segment C-025. This highway/rail at-grade crossing does not meet SEA's criteria for a significant increase in vehicle delay.

When SEA identified unique or unusual local circumstances, it evaluated individual or cumulative effects even though the impacts did not meet the Board's thresholds for environmental analysis. The commentors did not identify projects or activities that would cause SEA to treat Princeton, Indiana differently from any other community affected by the proposed Conrail Acquisition. SEA determined that the environmental impacts that the comment identified were adequately addressed with respect to Princeton on the basis of individual resource categories.

The commentor specifically addressed increased rail activity and vehicle traffic delay with regard to the planned opening of Toyota T100 vehicle assembly plant near Princeton. The Applicants have anticipated the associated increased rail activity and have incorporated this factor into their Operating Plans. SEA contacted Indiana Department of Transportation officials and identified no evidence of road changes that could result in additional vehicle traffic delays. Local authorities have not planned, approved, and funded any capital improvements, nor have they made any decisions to close or alter road/highway access related to the plant in order to accommodate the rail shipment activities. Therefore, SEA has determined that it is not necessary to consider plans for the Toyota plant in its cumulative effects analysis for the proposed Conrail Acquisition.

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5.3.8 Kentucky

Kentucky—Other

Summary of Comments. A citizen submitted a letter regarding previous and apparently unrelated actions involving businesses that had rail access in Kentucky.

Response. SEA acknowledges this comment. However, the issues that the citizen identified are not related to the proposed Conrail Acquisition.

Western Kentucky—Safety: Highway/Rail At-grade Crossings

Summary of Comments. The Commonwealth of Kentucky Transportation Cabinet provided information on the seven highway/rail at-grade crossings that SEA identified as warranting safety warning device upgrades. Three of the crossings have recently received upgrades or approval for upgrades. The following upgrades have occurred: upgrade to flashing light signals and bell at the 7th Street crossing in Hopkinsville; proposed upgrade from passive to flashing light signals and bell at the Moss Avenue crossing in Earlington; and programming for upgrade from flashing light signals and bell to flashing light signals and automatic gates at the West Center Street crossing in Madisonville. The Transportation Cabinet added that crossings at Duffey Street in Hopkinsville and West Dixon Street in Sebree will “be considered for upgrade in one of our future Crossing Warning Device Improvement Programs.” The Transportation Cabinet does not concur with SEA’s recommended mitigation measure of separated grade crossings at East 9th Street in Hopkinsville or at West Noel Avenue in Madisonville because “implementation of grade separation projects would have severe impacts on many businesses and residences.” The City of Madisonville commented that the recommended mitigation of the separated grade crossing at West Noel Avenue is not appropriate for the site and that the measure would have potential environmental impacts. The City also noted that the Kentucky Transportation Cabinet, with input from local officials, determines the need for separated grade crossings.

Response. This Final EIS presents SEA’s analysis that includes the information on the three recently completed and/or programmed warning device upgrades at 7th Street in Hopkinsville, Moss Avenue in Earlington, and West Center Street in Madisonville, Kentucky. Based on revised information from the Applicants, the train volume on rail line segment C-021 would increase by 7.3 trains per day instead of 9.3 trains per day following the proposed Conrail Acquisition, which is below SEA’s threshold for environmental analysis for safety.

Western Kentucky—Transportation: Highway/Rail At-grade Crossing Delay

Summary of Comments. The Kentucky Transportation Cabinet noted that the Draft EIS proposed that the Board require CSX to consult with the Cabinet concerning the grade separation

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of West Noel Avenue in Madisonville and East 9th Street in Hopkinsville. The Cabinet stated that it cannot support grade separations at these locations.

CSX commented that the Draft EIS predicted a "post-Acquisition" LOS D at the East 9th Street highway/rail at-grade crossing in Hopkinsville. CSX indicated that their consultant (ICF Kaiser) computed the LOS after the proposed Conrail Acquisition to be C, using updated ADT from the Kentucky Transportation Cabinet. CSX maintained that this potential environmental impact does not warrant mitigation under the significance criterion of the Draft EIS; therefore, the Board should not require further consultation with regard to this highway/rail at-grade crossing. CSX added that the Board should not intervene, and appropriate mitigation should be the responsibility of state and local agencies.

CSX commented that the West Noel Avenue highway/rail at-grade crossing in Madisonville would have an LOS of D following the proposed Conrail Acquisition. CSX stated that the LOS D condition is a result of a 20 mph speed limit through Madisonville. CSX explained that the track would permit speeds of 50 miles per hour in this area, and that the trains need to operate at only 25 miles per hour to achieve LOS C. Therefore, CSX maintained that mitigation for traffic delay is not appropriate under these circumstances. CSX added that the Board should not intervene, and appropriate mitigation should be the responsibility of state and local agencies.

Response. SEA received revised operating data from CSX that indicated a projected increase of 7.3 trains per day on the Evansville, Indiana-to-Amqui, Tennessee rail line segment (C-021). The Draft EIS evaluated the change in traffic delay at the highway/rail at-grade crossings using ADT volumes in the FRA database. The Kentucky Department of Transportation later provided additional ADT data. SEA used the data to reanalyze the LOS at the East 9th Street highway/rail at-grade crossing (FRA ID 345267V), but did not use the additional ADT data for the West Noel Avenue highway/rail at-grade crossing (FRA ID 345331S) because the data appeared to be for a location some distance from the crossing.

The East 9th Street crossing delay analysis that SEA revised for the Final EIS used the ADT volume of 9,040 that the Kentucky Department of Transportation provided. LOS at the East 9th Street crossing would change from LOS B to LOS C, and the crossing delay per stopped vehicle would increase from 2.21 to 2.27 minutes per vehicle. This highway/rail at-grade crossing would not meet SEA's criteria for a significant increase in vehicle delay, and, therefore, SEA does not recommend mitigation.

LOS at the West Noel Avenue crossing would change from LOS C before the proposed Conrail Acquisition to LOS D after the proposed Conrail Acquisition, and the crossing delay per stopped vehicle would increase from 2.39 to 2.46 minutes per vehicle as was the case when SEA used the original FRA data. This highway/rail at-grade crossing would meet SEA's criteria for a significant increase in vehicle delay and would require mitigation.

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The Draft EIS recommended grade separations at West Noel Avenue in Madisonville and at East 9th Street in Hopkinsville as mitigation for the potential increase in vehicle delay resulting from the proposed Conrail Acquisition. The Supplemental Errata changed the recommended mitigation for these crossings from grade separations to a requirement for consultation between CSX and appropriate state and local officials.

Therefore, in the Final EIS, SEA does not recommend mitigation for delay at the East 9th Street highway/rail at-grade crossing. Furthermore, the Final EIS delay analysis for the West Noel Avenue highway/rail at-grade crossing indicates that increasing the typical train speed by 5 mph to 25 mph would mitigate the significant increase in delay at this crossing resulting from the Acquisition-related increase in train traffic. Train speeds are now restricted by ordinance to 20 miles per hour in Hopkinsville. SEA recommends that the Board require CSX to consult with City officials regarding the modification of this speed restriction and to implement necessary safety enhancements to permit this increase in speed.

Western Kentucky—Cultural and Historic Resources

Summary of Comments. State Representative James E. Bruce, Commonwealth of Kentucky, stated his objection to the East 6th Street and Dudley Street highway/rail at-grade crossings as well as the proposed East 9th Street separated grade crossing. He stated that, in his opinion, “this would detract from—rather than enhance—the current surroundings.” Each of these crossings is located in Hopkinsville.

The Mayor of the City of Hopkinsville, Kentucky expressed his opposition to the grade separation proposed for East 9th Street. The Mayor stated that the grade separation would “disrupt our community,” would result in “numerous adverse consequences” to the established commercial and historic area, and “is not appropriate for this site.”

The Transportation Cabinet of the Commonwealth of Kentucky and the Kentucky Secretary of Transportation voiced opposition to the proposed separated grade crossings at West Noel Avenue in Madisonville and East 9th Street in Hopkinsville. The Cabinet stated that it cannot support or endorse the proposed “mitigated separation.” The Cabinet indicated that the proposed mitigation would have a potential environmental impact on cultural resources. The Secretary termed this mitigation unreasonable.

Response. SEA notes that, as previously stated, based on revised train operating data, traffic on rail line segment C-021 would increase by only 7.3 trains per day as a result of the proposed Conrail Acquisition. Therefore, this rail line segment does not meet the Board’s thresholds for environmental analysis, and SEA withdraws any previously proposed mitigation condition.

Section 5.3.9—Louisiana

5.3.9 Louisiana

Louisiana—Safety: Hazardous Materials Transport

Summary of Comments. The Mayor of New Orleans, Louisiana, on behalf of the City, expressed concern about increased hazardous materials transport through Louisiana from Mobile, Alabama to New Orleans. The Mayor's concerns focused on an increased accident risk and potential environmental impacts that an accident would have on drinking water supplies, wetlands, and wildlife. The Mayor also expressed concern about potential exposures to hazardous fumes and questioned whether CSX and NS would prepare or implement the emergency response plans and drills that the Draft EIS recommended. Finally, the Mayor stated that there is no guarantee that sufficient staff would be available to carry out emergency response plans.

Response. Based on additional information that CSX provided after publication of the Draft EIS, SEA now estimates that hazardous materials transport on rail line segment C-387 through New Orleans would increase from the current 45,000 carloads per year to 54,000 carloads per year following the proposed Conrail Acquisition. This is a change from the increase from 44,000 carloads per year to 88,000 carloads per year that the Draft EIS reported. SEA notes that CSX has designated rail line segment C-387 a key route, and this designation would remain following the proposed Conrail Acquisition. SEA is confident that these measures and existing FRA and DOT regulations would effectively address concerns regarding hazardous materials transport, and SEA therefore does not recommend additional mitigation. Appendix L, "Natural Resources Analysis," of this Final EIS provides additional information on potential hazardous materials transport impacts on natural resources.

Louisiana—Transportation: Roadway Systems

Summary of Comments. The Mayor of New Orleans expressed concern over the proposed increase in truck traffic around NS's Oliver intermodal facility. The Mayor stated that the increased traffic would "create abundant problems for the residents living near the station and for those who travel on Almonaster Avenue, Florida Avenue, Elysian Fields Avenue and Louisa Road."

Response. SEA's analysis determined that the potential environmental impact of additional traffic around the Oliver intermodal facility would be small. The additional truck traffic resulting from the increased truck traffic at the facility would cause an increase in traffic on the major roadways used by trucks that would be below SEA's criteria of significance. As the Draft EIS notes, traffic on Florida Avenue would increase by 2.07 percent, and would not result in significant environmental impacts. See Appendix H, "Transportation: Roadway Systems Analysis," of this Final EIS.

Section 5.3.9—Louisiana

Louisiana—Air Quality

Summary of Comments. The Mayor of the City of New Orleans, Louisiana commented that the Draft EIS did not discuss how increased truck traffic around the Oliver intermodal facility would affect air quality conditions in the community.

Response. In response to the Mayor's comment, SEA points out that it does not expect emissions from trucks accessing the Oliver intermodal facility to cause exceedances of the health-based NAAQS. The projected increase of 63 trucks per day (see the Draft EIS, Table 5-LA-1) represents an ADT increase on affected roadways of only 0.08 to 2.07 percent (see the Draft EIS, Table 5-LA-4). Therefore, SEA does not recommend mitigation.

Louisiana—Noise

Summary of Comments. The Mayor of New Orleans commented that the Draft EIS did not discuss how increased truck traffic on Florida Avenue, Almonaster Avenue, and Louisa Road would affect noise conditions.

Response. As Appendix F, "Noise," Attachment F-2 of the Draft EIS shows, truck traffic at the NS intermodal facility at Oliver Yard in New Orleans would increase from 64 trucks per day before the proposed Conrail Acquisition to 127 trucks per day after the proposed Conrail Acquisition. Thus, traffic would increase by 63 trucks per day, exceeding the Board's thresholds for noise analysis. Noise levels generated by truck traffic would increase by 3 dBA. If truck traffic generated by the intermodal yard were the only audible sound in the area, a 3 dBA increase would be perceivable to most people. However, there are no sensitive receptors in the study area affected by existing operations, and there would not be an effect on sensitive receptors if the Board approves the proposed Conrail Acquisition. Therefore, SEA does not anticipate that the increased truck traffic associated with the proposed Conrail Acquisition would cause a noise impact in the study area.

Table 5-LA-4 of the Draft EIS shows existing ADT volumes and projected increases for Louisa Road, Almonaster Avenue, and Florida Avenue. The noise analysis results show that the total daily truck traffic increase would be less than 3 percent of the ADT for all the study area roadways. This would not result in a perceivable increase in noise impacts along these roadways. See Appendix J, "Noise Analysis," of this Final EIS.

Section 5.3.10—Maryland

5.3.10 Maryland

Maryland—Safety: Highway/Rail At-grade Crossings

Summary of Comments. The Montgomery County (Maryland) Department of Public Works and Transportation disagreed with SEA's estimate of the accident frequency at CSX's Randolph Road highway/rail at-grade crossing. The Department recommended that the Board consider requiring CSX to contribute to the costs of a grade separation at this location. The Department obtained accident data from the Maryland Automobile Accident Reporting System that showed three, two, and one accident at the Randolph Road highway/rail at-grade crossing during 1980-1985, 1986-1987, and 1994-1997, respectively. Thus, the accident rate was at least one every 3 years, higher than the 19-year interval that the Draft EIS projected for Category A highway/rail at-grade crossings. Also, the Department noted that if Maryland maintained a list of the "Top 50" high-risk highway/rail at-grade crossings, the Randolph Road crossing would be the top-rated crossing and the top candidate for grade separation.

Response. SEA's analysis determined that the Randolph Road highway/rail at-grade crossing is on rail line segment C-003, which would not have an Acquisition-related increase of 8 or more trains per day, and therefore does not meet SEA's threshold for environmental analysis. However, SEA did analyze this segment for grade crossing safety. For those segments that met the threshold, SEA applied a standard FRA analytical technique that uses actual accident history as well as information on roadway characteristics, warning devices, track characteristics, and train operations. The Department's use of accident history going back to 1980 is not consistent with FRA methodology. Documentation of FRA methodology notes that accident history older than 5 years reflects highway/rail at-grade crossing characteristics that typically no longer exist, and so does not represent the present accident risk. See Chapter 4, "Summary of Environmental Analysis," of this Final EIS.

Because of the unusual circumstances regarding this crossing—a high ADT volume of 41,000 and an increase of 7 trains per day—SEA did review the safety analysis at this crossing. SEA used the actual accident history that the FRA database contains, which shows two accidents between 1991 and 1995. SEA also used varying speeds, including the 45 mph that the Department suggested. The grade crossing safety analysis results show an accident rate of 0.2249, which would change to 0.2355 after the proposed Conrail Acquisition, a change of 0.0106. SEA concludes that no mitigation is warranted.

Maryland—Safety: Passenger Rail Operations

Summary of Comments. Montgomery County, Maryland requested that "SEA conduct an evaluation of the extent to which increased freight traffic may have [sic] on safety aspects of CSX operation in the 11.4 miles where CSX is in 'common corridor' alignment adjacent to Metrorail passenger service." The County indicated that it and WMATA submitted preliminary

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comments on this situation in the summer of 1997. The County added that the Draft EIS does not address these concerns, and “as of the date of the D[raft] EIS, no site visits to the common corridor segments had been made in response to our or WMATA’s comments on this issue.”

Response. SEA notes that these comments all address the issue of freight train accidents in the corridor adjacent to WMATA’s Metrorail that have the potential to impact Metro operations.

SEA has conducted additional analysis to address passenger train and hazardous materials transport in the common corridor with WMATA Metrorail that included the following seven rail line segments (with the corresponding Metrorail line in parentheses): C-034, Jessup-to-Alexandria Junction (WMATA Green Line); C-003, Washington-to-Point of Rocks (WMATA Red Line) (two locations); C-030, Alexandria Junction-to-Benning (WMATA Orange Line); C-101, Fredericksburg- to-Potomac Yard (WMATA Yellow and Blue Lines); S-011, Bowie-to-Landover (WMATA Orange Line); C-035, Landover-to-Anacostia (WMATA Orange Line); and N-315, Alexandria-to-Manassas (WMATA Blue Line).

The number of freight trains would increase on all seven rail line segments. However, the increase on each segment would be fewer than SEA’s threshold for environmental analysis of an 8-train-per-day increase. SEA undertook additional analysis to address freight train safety, passenger train safety, and hazardous materials movement that included all seven rail line segments.

SEA used the expected interval between freight train accidents to assess the change in safety that would be anticipated if the Board approves the proposed Conrail Acquisition. SEA’s analysis indicated that the interval between accidents would decrease on each of the rail line segments cited above (that is, accidents would become statistically more frequent). However, SEA also notes that on rail line segment C-034, the shortest interval between expected freight train accidents is 154 years now and would be 138 years following the proposed Conrail Acquisition. Five of the seven rail line segments would have intervals greater than the current level of 154 years. Thus, SEA determined the general level of safety would not meet SEA’s criteria of significance, and SEA does not recommend mitigation.

Maryland—Safety: Freight Rail Operations

Summary of Comments. The Department of Public Works for Montgomery County, Maryland expressed a concern that helper locomotives, operating in the “push” mode, could potentially contribute to derailments along the eastbound downgrade of the CSX Metropolitan Branch located in Montgomery County and Washington, D.C. In light of the National Transportation Safety Board’s recommendation to discontinue the practice, the Department suggested that SEA

Section 5.3.10—Maryland

evaluate the risk of seven additional trains operating in this corridor if CSX continues this practice.

Response. SEA understands that the National Transportation Safety Board, the Federal agency responsible for safety oversight of all transportation activities, issued Recommendation R-87-058 following two derailments in 1987 in the Silver Spring-Rhode Island “common corridor” shared by CSX and WMATA. A significant causative factor in these derailments was the use of pusher or helper locomotives at locations other than the head end of the train, and R-87-058 included a recommendation that CSX discontinue the use of pusher locomotives.

A joint WMATA/CSX safety task force reviewed possible methods of improving safety. WMATA and CSX agreed to 13 safety-specific recommendations for the operations, which resulted in the National Transportation Safety Board closing the recommendation with the designation “Acceptable Action.” As a result of the WMATA/CSX task force efforts, CSX developed specific instructions for the safe operation of trains with helper or pusher locomotives for inclusion in its Operating Special Instructions.

SEA understands that these instructions include requirements that, whenever possible, CSX detach helper locomotives before reaching the joint corridor, or, in those cases where the helper locomotive must remain with the train, that the helper not apply power in the critical portions of the joint corridor. SEA concluded that CSX, by using this process, has satisfactorily addressed the derailment of individual trains, and any change in the number of trains does not pose a significant potential risk that would require SEA to perform additional analysis or recommend additional mitigation measures.

Summary of Comments. The Department of Public Works for Montgomery County, Maryland expressed a concern over the 6-mile CSX rail line segment (C-003) between the former QN Tower and Georgetown Junction. The Department pointed out that a 1989 Metro study cited this rail line segment as having a high risk factor. At Georgetown Junction on this rail line segment, a multi-fatality collision occurred between MARC and Amtrak while a CSX westbound freight train was stopped. Therefore, the Department maintained that, with three major freight train accidents having occurred in 9 years, SEA should update its evaluation of this rail line segment. The Department recommended that SEA mandate a CSX speed restriction through the common corridor segments limiting freight operations to 40 to 45 mph instead of the current 55 mph.

Response. SEA recognizes the County’s concern regarding the rail line segment between QN Tower in Washington, D.C. and Georgetown Junction in Silver Spring, Maryland (C-003). SEA’s analysis in the Draft EIS identified that potentially significant Acquisition-related passenger rail safety impacts could occur on this rail line segment. In response to the County’s comment, SEA reviewed its analysis. However, SEA determined that additional analysis of this rail line segment was not warranted. SEA concluded that it is reasonable to expect the modern signal systems that the Applicants

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use will adequately address the increased risk of train collisions. In addition, upon commencement of planned service to and from Frederick, Maryland, MARC trains would operate on only one of the two Brunswick rail line tracks, leaving the other track exclusively for freight service, in accordance with the Operating Agreement between CSX and MARC that they executed in September 1997. Therefore, SEA withdraws its proposed mitigation of temporal separation of passenger and freight trains, and recommends that the Board require that the Applicants work with FRA to apply the best current and future management practices and technologies to avoid hazards. SEA does not recommend additional mitigation such as train speed restrictions through this common corridor area.

Maryland—Transportation: Passenger Rail Service

Summary of Comments. The Maryland Office of Planning consolidated comments on the Draft EIS and submitted them on behalf of various governmental bodies, including Harford County, Maryland. Harford County expressed concern that increased freight traffic would “impact the need for future MARC service” in the County.

Response. SEA concluded that the proposed Conrail Acquisition would not affect Harford County’s plans to increase MARC passenger service. Harford County would experience the lowest increase in the number of freight trains as a result of the proposed Conrail Acquisition of any county or city along the Northeast Corridor between New York and Washington. The number of freight trains on rail line segment S-238 through Harford County would increase by 1.3 trains per day, to a total of 15.6 trains per day.

Amtrak’s Northeast Corridor in Harford County has passenger stations at Aberdeen and Edgewood. MARC Penn Line trains serve both stations with 7 trains per day, and Amtrak serves Aberdeen with 11 trains per day. Harford County is on the rail line segment between Perryville and Baltimore, Maryland. SEA noted that a significant constraint on expanding local MARC service would be the 73 high-speed Amtrak trains, most of which operate on the Northeast Corridor at times the proposed MARC commuter trains would likely be added.

Maryland—Transportation: Highway/Rail At-grade Crossing Delay

Summary of Comments. The Montgomery County Department of Public Works and Transportation stated that SEA should use an operating speed of 45 mph instead of 50 mph to calculate delay at the Randolph Road highway/rail at-grade crossing. The Department pointed out that long trains often travel below 35 mph because of an uphill grade. The Department indicated that this would result in longer vehicle delay at this highway/rail at-grade crossing.

The Department commented that CSX’s projected increase in tonnage would result in one of the following: (a) trains longer than the 6,200 feet that the Draft EIS cited; (b) the operation of

Section 5.3.10—Maryland

more, but shorter trains; or (c) substantially slower westbound (upgrade) speeds than the Draft EIS cited. The Department indicated that any of these changes would cause substantial additional delay at the following highway/rail at-grade crossings: Randolph Road, Forest Glen Road, South Summit Avenue, and Chestnut Street.

Response. In its analysis of highway/rail at-grade crossing delay, SEA determined maximum operating speeds and then adjusted these speeds downward to obtain typical operating speeds and to reflect the factors cited by the commentor. The train lengths are averages provided by the Applicants. SEA continued to use the same factors in the Final EIS as it used in the Draft EIS.

In response to the comment, SEA performed a delay analysis for train speeds of 45 mph and 40 mph, while maintaining the same train length and train counts presented in the Draft EIS. At 45 mph, the LOS both before and after the proposed Conrail Acquisition would be B. At 40 mph, the LOS before the proposed Conrail Acquisition would be B, and the LOS after the proposed Conrail Acquisition would be C. See Appendix G, "Transportation: Highway/Rail At-grade Crossing Traffic Delay Analysis," of this Final EIS. SEA concluded, based on this further analysis, that no mitigation for crossing delay is warranted.

Maryland—Transportation: Other

Summary of Comments. The Baltimore Metropolitan Council commented that the Draft EIS did not address the need for improved clearances for the double-stack service that NS proposed for Amtrak's Northeast Corridor to Perryville. The Council added that the Draft EIS did not address the potential impacts of construction on the Perryville community, a concern that the Maryland Office of Planning also voiced.

Response. The issue regards improvements to allow double-stack movements along an existing rail corridor. These improvements would occur within current railroad right-of-way. According to NS's Operating Plan, NS intends to fund the construction necessary for Amtrak to increase vertical clearances along the Northeast Corridor from Perryville to Baltimore. Raising the catenary clearances would accommodate the operation of double-stack equipment. For land use consistency for the proposed construction and abandonment activities, SEA applied its land use methodology in its analysis. The cited improvement is beyond both the scope of the EIS and SEA's jurisdiction over the proposed Conrail Acquisition.

Maryland—Air Quality

Summary of Comments. The Maryland Department of the Environment reminded SEA at out the following state requirements related to air quality and construction activities:

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- The Applicants must take reasonable precautions to prevent particulate matter from becoming airborne during construction activities.
- The Applicants must obtain a State Permit to Construct for any boilers or other equipment capable of producing air pollutant emissions.
- State regulations prohibit cutback asphalt from being used during June, July, and August.

Response. SEA acknowledges these comments from the State of Maryland and expects Applicants to adhere to regulatory requirements.

Summary of Comments. The Maryland Department of the Environment stated that SEA needs to include an air quality analysis for Harford County, a designated severe nonattainment area for ozone.

Response. SEA projects the increase in rail traffic on rail line segments in Harford County, Maryland to be below the Board's threshold for environmental analysis of 3 trains per day. Therefore, SEA expects that the proposed Conrail Acquisition would result in small emissions changes of all pollutants in the County and that there would be no significant adverse effects on compliance with the health-based NAAQS. SEA performed the air quality analysis in accordance with the approved EIS scope published in the Federal Register (62 FR 51500-51506, October 1, 1997).

Maryland—Noise

Summary of Comments. The Maryland Department of the Environment commented that increasing nighttime freight traffic could make living near the rail stations "less attractive from a noise standpoint."

Response. SEA recognizes the concerns of the Maryland Department of the Environment regarding potential noise increases relating to additional nighttime freight traffic. See Chapter 4, "System-wide and Regional Setting, Impacts and Proposed Mitigation" of the Draft EIS, Section 4.7, "Transportation: Passenger Rail Operations." As shown in Table 4-7, "Current and Proposed Operations on Amtrak's Northeast Corridor," of the Draft EIS, the proposed increases in freight train traffic represent a small fraction of the total train traffic on rail line segments in Maryland. SEA recognizes that nighttime events may be considered a nuisance, and SEA weighted them heavily in the calculation of an L_{dn} . Considering that the proposed additional freight train traffic in the Maryland portion of the Northeast Corridor represents a small fraction of the total train traffic on this route, SEA does not expect the additional trains to have a significant effect on the L_{dn} in the surrounding areas. SEA concluded that potential noise impacts did not warrant mitigation.

Section 5.3.10—Maryland

Maryland—Cultural and Historic Resources

Summary of Comments. The Maryland Historic Trust stated that the proposed Conrail Acquisition, which would result in increased train operation on 13 rail line segments, construction of one rail line connection in Hagerstown, and construction of one intermodal facility in Baltimore, would have “no effect on historic properties, including historic structures and archeological sites, eligible for inclusion in the National Register of Historic Places.”

Response. SEA acknowledges this comment.

Maryland—Land Use and Socioeconomics

Summary of Comments. The Maryland Department of the Environment commented, “Lighting for security and parking needs to be shielded from nearby residences.”

Response. In accordance with the Board’s environmental regulations and the scope of the EIS, SEA limited its land use and socioeconomic analysis to considering the consistency of proposed rail line construction and abandonment activities with existing land use plans. In this Final EIS (Chapter 7, Attachment A), SEA recommends that the Applicants practice best construction management techniques for all construction projects. In general, local land development regulations also provide regulatory standards for site improvements, including lighting direction for abutting nonresidential uses.

Maryland—Cumulative Effects

Summary of Comments. The Chairman of the Transportation Steering Committee of the Baltimore Metropolitan Council commented that the analysis of the proposed NS Triple Crown Service in Volume 3A of the Draft EIS did not address the potential environmental impacts that construction would have on the Perryville community.

Response. SEA reviewed the comments regarding the NS Triple Crown Service improvements near Perryville, Maryland. The improvements are raised catenaries to allow the operation of double-stack equipment. The only potentially affected facilities were bridge clearances and overhead electrical wires. SEA determined that all improvements would be within current rights-of-way and that no changes are required for the bridges and electrical wires.

Section 5.3.11—Massachusetts

5.3.11 Massachusetts

Massachusetts—Safety: Hazardous Materials Transport

Summary of Comments. The Berkshire Regional Planning Commission stated that the Executive Summary of the Draft EIS showed the New York-to-Westfield, Massachusetts rail line as meeting the Board's hazardous materials transport threshold for environmental analysis, but Volume 3A did not provide a site-specific analysis. The Commission requested an explanation for this. It also requested assurance that the proposed Conrail Acquisition would not absolve CSX or Conrail from any future liability for hazardous materials releases.

Response. SEA prepared the Executive Summary, Attachment ES-B of the Draft EIS, using the most current information available. Shortly after the publication of the Draft EIS, the Applicants provided revised information on specific rail line segments. Rail line segments C-725 and C-726, from Springfield-to-Westfield, Massachusetts and from Westfield, Massachusetts-to-Selkirk, New York, respectively, were segments with revised information. The revised information showed that after the proposed Conrail Acquisition, rail line segment C-725 would experience a slight reduction in freight traffic and no change in hazardous materials transport, while rail line segment C-726 would experience a 17 percent decrease in hazardous materials shipments and a 1 percent decrease in freight traffic after the proposed Conrail Acquisition. As a result, neither rail line segment meets the Board's thresholds for environmental analysis. Therefore, SEA did not conduct further analysis or propose mitigation measures.

SEA points out that there are numerous state and Federal laws and regulations that establish hazardous materials cleanup responsibility. SEA also notes that the Applicants would not be absolved of any future liability as a result of the proposed Conrail Acquisition.

Massachusetts—Transportation: Passenger Rail Service

Summary of Comments. The Berkshire Regional Planning Commission and the Conservation Law Foundation commented on the need for cooperation among CSX, as the proposed successor to Conrail, and the Massachusetts Bay Transportation Authority, Amtrak, and the Planning Commission to provide faster, increased, and more efficient passenger rail service in Massachusetts.

Response. SEA determined that the proposed Conrail Acquisition would not affect passenger service on Conrail's Boston Line in the States of Massachusetts and New York because the Applicants did not project an increase in freight trains on that rail line. Amtrak has historically provided limited service on this route because of the low average speed. The route has significant curvature and grades because of the nature of the terrain, making it noncompetitive in travel time.

Section 5.3.11—Massachusetts

The Conservation Law Foundation's statement that the Boston Line is FRA Class 5 track, which would permit 90 mph passenger train operations, is incorrect. The Boston Line is FRA Class 4, which permits a maximum passenger train speed of 80 mph. However, the many speed restrictions on the Boston Line, related to curvature and gradients, currently result in a much lower average speed. Nonetheless, Berkshire Regional Planning Commission, the Massachusetts Bay Transportation Authority, and Amtrak are free to discuss their proposals with CSX if the Board approves the proposed Conrail Acquisition.

Massachusetts—Transportation: Other

Summary of Comments. The Conservation Law Foundation's Massachusetts office stated that "CSX should make every effort to create an efficient intermodal transfer in the port of Boston, eliminating the current reliance on trucks to transfer cargo from the port to the railyards." The Foundation noted that Conrail currently transfers freight cargo from the port in South Boston several miles by truck to its rail yard, a step that is "clearly highly inefficient."

Response. SEA determined that the change in intermodal traffic that would occur at Beacon Park Yard as a result of the proposed Conrail Acquisition would not exceed thresholds for environmental analysis. According to the Applicant's plan, Beacon Park Yard would experience a decrease of 157 rail cars handled each day. SEA concluded that container traffic between the Port of Boston and Beacon Park Yard would also be likely to decrease, and, therefore, performed no access studies related to the Port.

Section 5.3.12—Michigan

5.3.12 Michigan

Michigan—Natural Resources

Summary of Comments. The Detroit District of USACE stated that the Applicants shall apply for permits for new construction, connections, and abandonments in the Detroit District's jurisdictional areas. Further, the Detroit District stated that activities in Michigan would require coordination with the Michigan Department of Environmental Quality, because of established joint regulatory responsibilities.

Response. SEA acknowledges that if the Board approves the proposed Conrail Acquisition, certain railroad activities would require further Federal, state, and local agency permits. SEA agrees that the Applicants have the responsibility to secure all required permits.

Southeastern Michigan—Safety: Highway/Rail At-grade Crossings

Summary of Comments. Several communities expressed concern about the potential risk of automobile accidents resulting from increases in rail traffic. Residents of Monroe County and Detroit, Michigan provided comments expressing safety concerns. Many of these communities have experienced accidents at highway/rail at-grade crossings.

Response. SEA's safety analysis addressed the potential for increased accident risk. SEA determined the risk of increased train-vehicle accidents at highway/rail at-grade crossings as a result of increases in train traffic related to the proposed Conrail Acquisition. The occurrence of previous accidents at highway/rail at-grade crossings did not, by itself, indicate the need for mitigation as a condition of the proposed Conrail Acquisition. The Draft EIS identified mitigation only for potential significant increases in accident risk as a result of increases in train traffic following the proposed Conrail Acquisition. The Draft EIS did not attempt to mitigate existing accident risk.

SEA's analysis considered highway/rail at-grade crossings on those rail line segments that would have large enough increases in train traffic (8 or more trains per day) to cause a potentially significant impact on accident risk. SEA's method for calculating accident risk takes into account actual accident history at each highway/rail at-grade crossing, using that history as an indication of how the physical characteristics of the highway/rail at-grade crossing would affect the increase in accident risk. See Chapter 4, "Summary of Environmental Review," of this Final EIS for further discussion.

Summary of Comments. The Village of Milford commented that track maintenance has caused roadways to "peak," making the approaches increasingly dangerous. The Village requested that CSX correct the approaches to the highway/rail at-grade crossings.

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Response. SEA recommended improvements to mitigate only those potential environmental impacts that would result from the proposed Conrail Acquisition. It is the Board's policy not to require mitigation of pre-existing conditions. Therefore, characteristics that existed prior to the proposed Conrail Acquisition, such as a peak at a highway/rail at-grade crossing, where there is a difference in elevation between the roadway and the rail line, would require improvement only if the improvement would mitigate an impact resulting from the proposed Conrail Acquisition. SEA would recommend mitigation if an increase in the number of trains across such a crossing resulting from the proposed Conrail Acquisition would create a potentially significant safety impact. SEA's analysis in the Draft EIS found that no highway/rail at-grade crossings in the Village of Milford, Michigan would exceed SEA's significance criteria or warrant mitigation.

Summary of Comments. The Monroe County Planning Commission expressed concern that increased rail traffic and "faulty crossing warning systems" could cause delays in the event of a nuclear plant emergency evacuation.

Response. SEA understands there are three evacuation routes for the Fermi Nuclear Power Plant in Monroe County. Only one of these routes crosses railroad tracks affected by the proposed Conrail Acquisition. SEA encourages local emergency response and power plant personnel to coordinate with the Applicants to ensure that contact with the Applicants and pertinent rail operations procedures are included in the emergency response plan for the power plant. SEA recommends that the Board require the placement of toll-free telephone numbers that persons can use to report malfunctioning crossing safety devices. In addition, SEA recommends mitigation for adverse delay impacts. See Chapter 7, "Recommended Environmental Conditions," of this Final EIS.

SEA noted that Monroe County was concerned about faulty wiring that apparently was identified at a highway/rail at-grade crossing. While the commentor did not identify which one of several railroad companies that operate within the County is responsible for the wiring at that highway/rail at-grade crossing, SEA understands that regulations that FRA promulgated govern the inspection and operation of crossing warning appliances.

Summary of Comments. The City of Dearborn Office of Emergency Management requested the current 24-hour emergency number for derailment/leak notification and inquired as to whether the number would change in the future. The Monroe County Road Commission requested railroad contact numbers to report problems on highway/rail at-grade crossings.

Response. SEA has recommended that, as a condition of approval, the Board require the Applicants to provide toll-free phone numbers as part of the hazardous materials emergency response plans. The Applicants would provide these plans to the local emergency response agencies, including 24-hour emergency response numbers. SEA is

Section 5.3.12—Michigan

currently not aware of any future changes to the emergency response phone number. The emergency response agencies would receive notification of any phone number changes.

SEA has also recommended that the Board impose a condition requiring the Applicants to post a toll free number at certain highway/rail at-grade crossings. SEA maintains that these numbers would provide a system for the public to report problems at the crossings. See Chapter 7, "Recommend Environmental Conditions," of this Final EIS.

Southeastern Michigan—Safety: Hazardous Materials Transport

Summary of Comments. The City of Northville, Michigan stated its opposition to the proposed Conrail Acquisition because of a projected 75 percent increase in hazardous materials transport through the City. The City noted that it "is not equipped to handle a catastrophic disaster which could result from a hazardous material accident or spill."

Response. SEA has determined that rail line segment C-221, between Wixom and Plymouth, Michigan would experience only an 8 percent increase in hazardous materials transport following the proposed Conrail Acquisition. This increase differs from estimates presented in the Draft EIS because it is based on an analysis of new data that CSX supplied to SEA. The projected 8 percent increase is below SEA's criteria of significance for hazardous materials transport safety. Therefore, SEA does not recommend additional mitigation.

Summary of Comments. Local governments in southeastern Michigan expressed concerns about the proposed increase in hazardous materials transport through Monroe County, Michigan; from Ecorse, Michigan through Carleton, Michigan to Toledo, Ohio; and on the Conrail line through Ypsilanti and Willow Run, Michigan. The local governments focused on the need for emergency response training, equipment, public education, warning systems, and drills. They also asked about CSX's willingness to provide financial and training support to meet emergency response needs. One commentator requested information on the percentage by which hazardous materials transport would increase throughout Michigan. The City of Monroe requested that SEA make every effort to divert unnecessary hazardous materials freight around the Monroe urban area and to take adequate measures to safeguard the public.

Response. SEA has determined that providing first-responder emergency services is a basic local government function, which is funded through the general revenue taxation system. No changes associated with or resulting from the proposed Conrail Acquisition change those basic responsibilities. SEA encourages the local governments to work with the Applicants on emergency response planning efforts.

SEA did not estimate the total percent increase in hazardous materials transport throughout the entire State of Michigan; however, SEA did estimate the percent increase in hazardous materials transport on individual rail line segments. Based on information

Section 5.3.12—Michigan

provided by the Applicants, SEA estimated that the change in hazardous materials transport on rail line segments in Michigan would range from a 100 percent decrease to a 67 percent increase.

SEA determined that only one rail line segment—C-040 between Carleton, Michigan and Toledo, Ohio—would remain a designated key route for hazardous materials transport following the proposed Conrail Acquisition. SEA concluded that changes in hazardous materials transport on the other rail line segments were below SEA's criteria of significance. See Appendix F, "Safety: Hazardous Materials Transport Analysis," of this Final EIS for a list of all rail line segments that SEA analyzed. Because rail line segment C-040 is currently a key route, SEA does not recommend additional mitigation.

Summary of Comments. The Southeast Michigan Council of Governments asked whether the anticipated increase in hazardous materials transport through Monroe County included future disposal of low-level and high-level radioactive waste from nuclear power plants. The Council also asked about quantities of radioactive and biological waste included in hazardous materials transport and about the likelihood of an accident involving radioactive waste.

Response. Although the Applicants do not currently transport any commercial nuclear power plant spent fuel or high-level waste, they could do so in the future. The Applicants do transport other types of radioactive materials, and transport companies make about 3 million highway, rail, air, and sea shipments of radioactive materials each year in the United States. Regulating the safety and security of these shipments is the joint responsibility of DOT and the Nuclear Regulatory Commission (NRC). The Federal regulatory system protects transport workers and the public by setting performance standards for the packages and by setting limits on the radioactive contents and radiation levels for packages and vehicles. Package marking and labeling, vehicle placards, and shipping papers describing the materials provide information on radioactive shipments. DOT has regulatory jurisdiction over radioactive shipments while the material is in transit. DOT also establishes shipping categories, sets the standards for labeling of radioactive shipments, and establishes criteria for containers that shippers use for smaller quantities of radioactive materials.

NRC, which licenses the organizations shipping and receiving the radioactive materials, ensures that its licensees meet DOT shipping requirements. NRC also establishes the requirements for the design and manufacture of packages for larger quantities of radioactive materials. Typical of small-quantity shipments using packages meeting DOT requirements are radioactive materials for medical diagnostic tests and therapy. These shipments constitute the major portion of all shipments of radioactive materials each year. For these shipments, shippers use packaging (classified as "Type A") that is designed to withstand the rigors of normal transportation without damage. For larger quantities of radioactive materials, shippers design the containers to withstand accident conditions without releasing their contents. Shippers use these packages ("Type B") for

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industrial irradiators, medical radiation therapy devices, and some radioactive wastes. The accident evaluation criteria for these containers include impact, puncture, heat, and submersion in water. Spent fuel shipping casks are specialized Type B containers that shippers use to transport used fuel from nuclear reactors. Trucks or rail cars carry these large shipping casks. As with all Type B containers, shippers seal them to prevent leakage and heavily shield them to minimize the radiation levels. NRC also imposes security requirements on shipments of spent fuel and on shipments of larger quantities of highly enriched uranium or plutonium. These security measures include route evaluation, escort personnel and vehicles, communications capabilities, and emergency plans. NRC notifies state governments in advance of spent fuel shipments and those large-quantity shipments of radioactive waste requiring Type B containers.

The regulatory system for transportation of radioactive materials has been successful in minimizing safety impacts. Few accidents have occurred involving shipments of radioactive materials (an average of fewer than 50 accidents out of a total of 3 million annual shipments). Only a small number of those accidents have involved any release of radioactive contents. In those instances, radioactive contamination has been generally minor with no public safety consequences. System-wide in 1996, CSX and NS shipped approximately 3,107 and 6,650 tons, respectively, of radioactive material, which may have included some low-level waste. This is less than 0.05 percent of the total hazardous materials that the Applicants transport. In the Draft EIS, SEA estimated the frequency of a hazardous materials release on the rail line segments in Monroe County (C-040, N-295, and N-476) at less than one in 1,000 years. Because less than 1 percent of hazardous materials would be radioactive materials, the frequency of a radioactive materials release would be less than one in 100,000 years.

Available data on hazardous materials transport do not specify biological waste as a separate category. DOT regulates transport of infectious waste in the same manner as other hazardous materials, however, and SEA concludes that these practices adequately address the safe handling and transport of these materials.

Summary of Comments. The City of Wixom stated a concern that municipalities in Oakland County need to be able to properly react to any emergency involving hazardous materials, particularly because CSX has notified the City to expect an increase in the number of trains.

Response. SEA concludes that rail line segment C-220 between Holly and Wixom, Michigan would experience an 18 percent increase in hazardous materials shipments following the proposed Conrail Acquisition. Additionally, rail line segment C-221 between Wixom and Plymouth, Michigan would experience an 8 percent increase in hazardous materials shipments following the proposed Conrail Acquisition. SEA acknowledges these concerns; however, these increases are below SEA's criteria of significance. Both segments, however, are currently key routes, which means that CSX already takes a number of measures to mitigate hazardous materials transport impacts,

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pursuant to AAR Circular OT-55-B. Therefore, SEA does not recommend that the Board require additional mitigation measures.

Southeastern Michigan—Safety: Passenger Rail Operations

Summary of Comments. The Southeast Michigan Council of Governments stated that SEA's proposed mitigation for two rail line segments (West Detroit-to-Jackson, N-121, and West Detroit-to-Dearborn, S-210) in Michigan would require freight trains to be clear of the tracks that passenger trains use at least 15 minutes before the estimated arrival of a passenger train. The council asked SEA to clarify "whether the recommended 15 minute freight train track clearing is an improvement on the current practice or just reinforcement of it." The Council also requested that SEA further analyze the frequency and severity of accidents that could occur on rail line segments that passenger and freight trains use.

Response. SEA reviewed its analysis and determined that modern signal systems and automatic train protection technologies that the railroads currently employ may adequately address the increased risk of train collisions throughout the post-Acquisition system. Therefore, SEA withdraws its proposed mitigation of temporal separation of passenger and freight trains. Chapter 7, "Recommended Environmental Conditions," of this Final EIS describes SEA's recommended mitigation measures that address passenger rail operations safety. Additionally, NS revised the projected number of freight trains on both rail line segments N-120 and N-121. The number of trains per day after the proposed Conrail Acquisition would be below the Board's thresholds for environmental analysis.

Southeastern Michigan—Safety: Freight Rail Operations

Summary of Comments. The Southeast Michigan Council of Governments indicated a concern over the "accident duration rates" for the three segments presented in Table 5-MI-5 on page MI-6 of the Draft EIS. The Council's concern lay "in the fact that these three segments' accident duration rates did decrease by factors ranging from 1.6 to 5.5. Since SEA could not accurately predict either frequency or severity of actual accidents, we question whether the area may need to be investigated further. Further clarification or analysis by SEA is necessary in the final EIS."

Response. SEA estimated average annual accident rates on rail line segments because there is no way to predict actual accidents. SEA's analysis of accident rates used reliable data and verifiable procedures. This approach provided conservative results that formed a valid basis for assessing changes in accident risk and identifying needs for mitigation.

SEA notes that since SEA published the Draft EIS, traffic routing arrangements among several railroads have changed such that the number of trains on the West Detroit-to-Jackson rail line segment N-121 and the Jackson-to-Kalamazoo rail line segment (N-120) would increase by less than one per day. Therefore, SEA determined that there

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would be no decrease in the time interval between expected accidents. As the Draft EIS showed (see Chapter 5, "State Settings, Impacts and Proposed Mitigation"), accident rates on all three rail line segments did not meet or exceed SEA's threshold for mitigation for freight rail accidents.

Southeastern Michigan—Safety: Other

Summary of Comments. The Southeast Michigan Council of Governments, on behalf of the Village of Milford, and the Village itself commented that CSX disposes of replaced railroad ties along the embankment of the rail line; allows brush and junk trees to grow; does not paint overpasses; requires the use of fully automatic signals at pedestrian crossings (for pedestrians only), which the municipality must install at its own expense; and raises track grades, making crossings ever-increasing "humps." These conditions exist in a fully developed community, not an open rural area. The Village asked, "Will the CSX policy of maintenance within communities be reviewed and a greater commitment made?"

Response. SEA understands that the concerns raised refer to conditions existing before the proposed Conrail Acquisition. SEA acknowledges the concern regarding the Applicant's maintenance policies; however, the Board does not have jurisdiction regarding maintenance of facilities and rights-of-way within municipalities.

Summary of Comments. The Township of Highland expressed concern over the proposed increase in rail traffic (a 20 percent increase in daily tonnage, requiring longer trains and an additional 1.2 trains daily). Representatives of the Township "think it's reasonable to expect assurances that all safety issues associated with this increased rail traffic will be addressed by CSX prior to its implementation. A letter to that effect would be appreciated."

Response. SEA notes that state and Federal law would require the Applicants to maintain safety practices and standards and meet current safety regulations if the Board approves the proposed Conrail Acquisition. DOT and FRA, the Federal agencies charged with oversight of railroad safety, have reviewed the Safety Integration Plans and concluded that the plans adequately address all of the issues that Highland Township raised. Therefore, SEA does not recommend that the Board require further mitigation.

Summary of Comments. The City of Monroe voiced its safety concern that "the southbound Conrail track traverses a residential area in the east-central part of Monroe, and closely abuts a City street, Kentucky Avenue. In this area, some of the rail track lies less than thirty feet (30') from residences. The track prevents vehicle access to homes by eliminating the possibility of driveways and parking, and lies within a few feet of pedestrian sidewalks with no barrier protection."

Response. SEA acknowledges the concern regarding this condition; however, the concerns raised refer to conditions existing before the proposed Conrail Acquisition.

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SEA does not recommend that the Board impose mitigation relating to conditions existing prior to the proposed Conrail Acquisition. Rail line segment N-295, between Airline (Toledo), Ohio and River Rouge, Michigan, would experience increases in freight rail traffic from 11.6 trains per day to 14.5 trains per day, which is below the Board's thresholds for environmental analysis.

Southeastern Michigan—Transportation: Highway/Rail At-grade Crossing Delay

Summary of Comments. The City of Wixom stated that the information in the Draft EIS for highway/rail at-grade crossings in Wixom may not be correct. The source of the discrepancy may be the switching operations at a nearby Bulk Intermodal Distribution Services yard. The City recommended that the Final EIS analyze the crossings and consider site-specific mitigation.

Response. SEA did not analyze the highway/rail at-grade crossing delay on the rail line segments through Wixom because the rail line segments did not meet the Board's thresholds for environmental analysis. Also, the Board does not regulate railroad operations, such as train speed, dispatching, or yard operations. The local government may wish to discuss these operational considerations with CSX.

Summary of Comments. The City of Monroe commented that the existing high level of train movements on the CSX track irritates motorists. The City Council commissioned a feasibility study for a grade separation on Elm Avenue. The City stated that the problem would become more severe with the 50 percent increase in train traffic that SEA projected as a result of the proposed Acquisition and requested that the Board require CSX to grade separate Elm Avenue in Monroe.

Response. SEA has determined that the number of trains passing the Elm Avenue highway/rail at-grade crossing in the City of Monroe would increase from 21.9 trains per day to 33.1 trains per day as a result of the proposed Conrail Acquisition. In the Draft EIS, the analysis showed that the crossing delay per stopped vehicle would increase from 1.55 minutes to 1.59 minutes. This Final EIS shows that the average crossing delay per stopped vehicle would increase from 1.80 minutes to 1.84 minutes. In both the Draft and this Final EIS, the analysis indicated a LOS B for conditions at the Elm Avenue highway/rail at-grade crossing both before and after the proposed Conrail Acquisition. See Appendix G, "Transportation: Highway/Rail At-grade Crossing Traffic Delay Analysis," of this Final EIS. The proposed Conrail Acquisition would not change the LOS, and therefore SEA does not recommend mitigation at the Elm Avenue highway/rail at-grade crossing.

Summary of Comments. The Special Projects Manager for the City of Taylor commented that the traffic counts in the Draft EIS are lower than those available from the Wayne County Department of Public Service. The lower traffic counts would affect the analysis of highway/rail at-grade crossing delays. The Manager requested that SEA use Wayne County's traffic counts

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in the analysis. The Manager also expressed serious concerns about traffic delay and the associated LOS on the area roadways because of increased train traffic following the proposed Conrail Acquisition.

Response. SEA determined that the Applicants have revised the train volumes on the affected rail line segment N-121. This rail line segment no longer meets the Board's threshold for environmental analysis. Therefore, SEA did not analyze this rail line segment in this Final EIS. The Carleton-to-Ecorse rail line segment (S-020) met or exceeded SEA's threshold for environmental analysis. SEA obtained revised traffic counts for the highway/rail at-grade crossings in Taylor, Sibley, Pennsylvania, and Allen Roads met the 5,000-highway-vehicle ADT threshold for traffic delay, and SEA analyzed delay at these crossings with the revised traffic counts. The Final EIS analysis indicates a LOS A for conditions both before and after the proposed Conrail Acquisition at the Sibley highway/rail at-grade crossing. The Final EIS analysis indicates a LOS A before the proposed Conrail Acquisition and a LOS B after the proposed Conrail Acquisition at the Pennsylvania and Allen Roads highway/rail at-grade crossings. See Appendix G, "Transportation: Highway/Rail At-grade Crossing Traffic Delay Analysis," of this Final EIS. Therefore, SEA determined that no adverse effect on roadway vehicle delay would result from the proposed Conrail Acquisition and mitigation of traffic delay in Taylor is not warranted.

Summary of Comments. The Southeast Michigan Council of Governments expressed concern about existing delays at highway/rail at-grade crossings. The Council stated that Michigan communities are concerned that an increase in freight rail traffic would further exacerbate this problem. The City of Plymouth and Plymouth Township voiced concern about extended blockage of their highway/rail at-grade crossings. Trenton, Michigan indicated that Lathrop Street currently experiences vehicular congestion from rail traffic. Trenton was uncertain whether the proposed Conrail Acquisition would exacerbate this condition. Monroe County expressed concern that the increase in traffic on the CSX line between Carlton, Michigan and Toledo, Ohio would cause additional delay at highway/rail at-grade crossings in the County.

Response. To identify the potential impact of the proposed Conrail Acquisition on communities in southeastern Michigan, SEA analyzed changes in highway traffic delay that would result from increases in train traffic as a result of the proposed Conrail Acquisition. The current traffic delay problems the Council cites are not a result of the proposed Conrail Acquisition, as they are caused by trains that are already operating through the area. See Chapter 4, "Summary of Environmental Review," of this Final EIS.

In response to the City of Plymouth and Plymouth Township, SEA notes that the number of trains on the Detroit-to-Plymouth rail line segment (C-214) would decrease by 2.8 trains per day, from 24 trains per day to 21.2 trains per day. Therefore, SEA determined that no adverse effect on roadway vehicle delay would result from the

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proposed Conrail Acquisition and mitigation of traffic delay in Plymouth is not necessary.

In response to the City of Trenton, the number of trains on the Airline, Ohio-to-River Rouge, Michigan rail line segment (N-295) running parallel to Lathrop Street in Trenton would increase by fewer than 3 trains per day. This increase is below the Board's threshold for environmental analysis. In response to Monroe County, the number of trains on the Carleton-to-Ecorse rail line segment (S-020) would increase by 9.2 trains per day, from 2.0 trains per day to 11.2 trains per day. This rail line segment passes along the western side of Trenton and would not add to congestion problems on Lathrop Street. Highway/rail at-grade crossings on the Carleton-to-Ecorse rail line segment did not meet the 5,000-highway-vehicle threshold for traffic delay analysis. Based on SEA criteria for significance, roadways with ADT volumes below 5,000 would experience only minimal additional vehicular delay from increased train traffic resulting from the proposed Conrail Acquisition. See Appendix G, "Transportation: Highway/Rail At-grade Crossing Delay Analysis," of this Final EIS.

Summary of Comments. The Monroe County Planning Department and Commission expressed concern that the significant increase in traffic on the CSX line between Carleton, Michigan and Toledo, Ohio and the minor increase in traffic on the Conrail (NS) line between Detroit and Toledo would mean more blocked highway/rail at-grade crossings on Telegraph Road and other area roadways. They requested that CSX and NS provide the Monroe County Road Commission with a telephone number for reporting problems on highway/rail at-grade crossings and stated that the Board needs to address these problems.

Response. SEA analyzed the change in traffic delay that would result from Acquisition-related increases in train traffic in Monroe County. The number of trains on the CSX Carleton-to-Toledo rail line segment (C-040) would increase by 11.2 trains per day, from 21.9 trains per day before the proposed Conrail Acquisition to 33.1 trains per day after the proposed Conrail Acquisition. The number of trains on the NS (Conrail) Airline (Toledo), Ohio-to-River Rouge, Michigan rail line segment N-295 would increase by 2.9 trains per day, from 11.6 trains per day before the proposed Conrail Acquisition to 14.5 trains per day after the proposed Conrail Acquisition, which did not meet the Board's environmental threshold for analysis.

In addition, SEA analyzed the Stewart Road, Elm Street, Front Street, Dunbar Street, and Lakewood-Lunapier Street highway/rail at-grade crossings. LOS at the Stewart Road crossing (FRA ID 232148X) would remain at LOS B, and the crossing delay per stopped vehicle would increase from 1.35 minutes per vehicle to 1.38 minutes per vehicle. LOS at the Elm Street crossing (FRA ID 232147R) would also remain at LOS B, and the crossing delay per stopped vehicle would increase from 1.80 minutes per vehicle to 1.84 minutes per vehicle. LOS at the Front Street crossing (FRA ID 232146J) would change from LOS B to LOS C, and the crossing delay per stopped vehicle would increase

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from 2.37 minutes per vehicle to 2.43 minutes per vehicle. LOS at the Dunbar Street crossing (FRA ID 232140T) would remain at LOS B, and the crossing delay per stopped vehicle would increase from 1.48 minutes per vehicle to 1.51 minutes per vehicle. LOS at the Lakewood-Lunapier Street crossing (FRA ID 232129T) would remain at LOS B, and the crossing delay per stopped vehicle would increase from 1.49 minutes per vehicle to 1.53 minutes per vehicle. None of these highway/rail at-grade crossings would meet SEA's criteria for a significant increase in vehicle delay.

The Draft EIS recommended that CSX and NS install emergency information signs that display a toll-free telephone number for reporting problems and unique crossing numbers at all highway/rail at-grade crossings with active warning devices. Independent of the proposed Conrail Acquisition, CSX has already begun to install emergency information signs meeting SEA's specifications at highway/rail at-grade crossings throughout the CSX network. CSX expects to complete the installation of the signs by spring 1998. In addition, NS has already, independent of the proposed Conrail Acquisition, equipped all public highway/rail at-grade crossings with emergency information signs. See Appendix G, "Transportation: Highway/Rail At-grade Crossing Traffic Delay Analysis," of this Final EIS for further information.

CSX and NS plan to expand the sign installation program to include the Conrail rail line segments acquired through the proposed Conrail Acquisition before the Applicants increase train traffic on the rail line segments. Further, CSX and NS will coordinate with the Conrail Shared Assets Operator to ensure the implementation of a similar program in the Shared Assets Areas within the same time period. SEA recommends that the Board require the Applicants to install toll-free telephone numbers and temporary notification signs at each of the public highway/rail at-grade crossings on the rail line segments that would have an increase of 8 or more trains per day, as Chapter 7, "Recommended Environmental Conditions," of this Final EIS discusses.

Summary of Comments. The Southeast Michigan Council of Governments commented that increased rail traffic could cause delays in evacuating the area around the Enrico Fermi II Nuclear Power Plant in the event of an emergency.

Response. SEA has determined that the Enrico Fermi II Nuclear Power Plant has north, south, and west emergency evacuation routes. Only the west evacuation route is affected by the CSX Carlton-to-Toledo rail line segment (C-040). The time that a highway/rail at-grade crossing would be blocked because of a train would be 2.3 minutes after the proposed Conrail Acquisition, compared to the current value of 2.2 minutes, an increase of approximately 6 seconds per train. The previous response discussed the potential delay effects in this area. SEA determined that none of these highway/rail at-grade crossings would meet SEA's criteria for a significant increase in vehicle delay and does not recommend mitigation.