

GUIDE TO VOLUME 4

Volume 4 of the Proposed Conrail Acquisition Final EIS contains the following items:

- Guide to Volume 4.
- Contents of Chapter 6.
- Chapter 6, “Safety Integration Planning.”
- Guide to the Final EIS.
- Glossary of Terms.
- List of Acronyms and Abbreviations.
- Contents of the Final EIS.

CONTENTS

	Page
CHAPTER 6: SAFETY INTEGRATION PLANNING	6-1
6.1 INTRODUCTION AND SUMMARY	6-1
6.2 PROCEDURAL HISTORY	6-3
6.3 SAFETY INTEGRATION PLANNING OVERVIEW	6-4
6.3.1 Purpose and Topics of the Safety Integration Plans	6-4
6.3.2 Operating Practices, Rules, and Procedures	6-5
6.3.3 Dispatching	6-5
6.3.4 Signals, Communications, and Train Control	6-6
6.3.5 Motive Power and Equipment	6-6
6.3.6 Track and Structures	6-7
6.3.7 Hazardous Materials Transport and Handling	6-7
6.3.8 Passenger Service	6-8
6.3.9 Overall Safety Management Process	6-8
6.3.10 Planning and Scheduling	6-8
6.3.11 Staffing and Workload	6-9
6.3.12 Training	6-9
6.3.13 Implementation Monitoring and Feedback	6-9
6.3.14 Corporate Culture's Safety Implications	6-10
6.3.15 Information Technology	6-10
6.4 SUMMARY OF COMMENTS REGARDING SAFETY INTEGRATION PLANS	6-11
6.4.1 U.S. Department of Transportation	6-11
6.4.2 State and Local Government	6-12
6.4.3 Non-Applicant Railroads and Transit Authorities	6-13
6.4.4 Labor Unions	6-13
6.4.5 Shippers and Other Parties	6-14
6.4.6 CSX and NS	6-15
6.5 SEA'S CONCLUSIONS	6-16
6.5.1 Responses to Comments	6-16
6.5.2 Recommended Conditions	6-19
6.6 MEMORANDUM OF UNDERSTANDING (MOU)	6-20

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CHAPTER 6 SAFETY INTEGRATION PLANNING

6.1 INTRODUCTION AND SUMMARY

The Surface Transportation Board (Board) considers railroad safety a paramount concern in the transactions it licenses. In merger and acquisition cases, the Board imposes appropriate environmental conditions to ensure the day-to-day safety of the operations it approves (such as upgraded highway/rail at-grade crossing warning devices where train traffic would increase and special procedures for hazardous materials transport). In the past, however, the Board has not focused on, or been asked to address, an applicant's process for combining and safely integrating the infrastructure, equipment, personnel, and operating practices of two or more entities following a merger or acquisition. For the first time in an environmental review, the Board has considered this process, called safety integration. The Board required specific integration actions by the proposed Conrail Acquisition Applicants.¹

Following the Federal Railroad Administration's (FRA's) expression of concern about the potential effect that the proposed Conrail Acquisition might have on rail safety and the recommendation by FRA and others including railroad labor that CSX and NS develop a safety integration plan, the Board directed the Applicants to prepare and submit Safety Integration Plans explaining their intended process for integrating the operations of CSX, NS, and Conrail. The Applicants developed these Safety Integration Plans within guidelines set by FRA, the agency responsible for railroad safety regulation.² The Board included the Safety Integration Plans in the Draft Environmental Impact Statement (EIS) to allow review and comment by FRA, the public, and other parties. The Board's Section of Environmental Analysis (SEA) also conducted an independent review of the Safety Integration Plans.

¹ The Applicants are CSX Corporation and CSX Transportation (CSX) and Norfolk Southern Railway Company and Norfolk Southern Corporation (NS), and Conrail, Inc. and Consolidated Rail Corporation (Conrail).

² USDOT enclosed a copy of FRA's Safety Integration Plan guidelines as an attachment to comments USDOT submitted dated February 2, 1998. For a reproduction of these guidelines please see Appendix A, "Comments Received on the Draft Environmental Impact Statement," pages 27a—28b.

The U.S. Department of Transportation (USDOT) commented on the Draft EIS to express FRA's position that the Safety Integration Plans address and satisfactorily mitigate every safety concern raised in the environmental review portion of this proceeding and that no other mitigation on this subject would be necessary or appropriate. In addition, USDOT states that the Applicants' commitments made to date satisfy FRA, and that FRA will continue to work with the Applicants to address safety integration issues as they arise, if the Board approves the proposed Conrail Acquisition. To ensure that the Applicants follow the safety integration process that the Board and FRA have defined, SEA recommends that the Board impose an environmental condition requiring the Applicants to comply with the Safety Integration Plans, which may be modified and updated as necessary to respond to evolving conditions.

Safety integration is an ongoing process with activities that will continue if the Board approves the proposed Conrail Acquisition. Moreover, both FRA and the Board recognize that, while safety integration involves both agencies, FRA is equipped and willing to monitor the Applicants' implementation of their Safety Integration Plans. Accordingly, the Board has agreed to enter into a Memorandum of Understanding (MOU) with FRA, with the concurrence of USDOT, to establish an ongoing process whereby FRA will monitor the Applicants' implementation of the Safety Integration Plans and other safety integration issues that may arise and advise the Board of the Applicants' progress in the event the Board approves the proposed Conrail Acquisition. The MOU, described in more detail below and presented in full (unsigned) at the end of this chapter, provides that FRA may request action by the Board, in exercise of the Board's oversight authority over the Applicants, to correct identified deficiencies and address safety problems resulting from the proposed Conrail Acquisition. When requesting Board action, FRA will provide recommendations for correcting the deficiency. FRA will report periodically to the Board regarding safety integration of the proposed Conrail Acquisition. FRA will also report significant integration issues to the Board if and when they are identified. FRA's reporting will continue, not less frequently than biannually, until FRA affirms to the Board in writing that the proposed integration of the CSX, NS, and Conrail systems has been completed safely and satisfactorily.

Given the Board's safety objectives, the comments received from USDOT and other parties, and the ongoing activities planned by the Board and FRA, SEA recommends that the Board impose an environmental condition requiring the Applicants to participate and fully cooperate with the ongoing regulatory activities associated with safety integration as described in the MOU. This condition would ensure continuing participation by the Applicants until FRA affirms that the integration of the Applicants' systems has been completed. SEA is confident that this approach to safety integration will allow Conrail, NS, and CSX to integrate their systems in a manner that is responsive to the requirements of public safety. SEA does not believe that any further environmental mitigation in this area would be warranted.

The remainder of this chapter provides information regarding the following topics:

- Procedural History.
- Explanation of Safety Integration Topics and Issues.
- Summary of Comments regarding the Safety Integration Plans.
- SEA's Responses to Comments.
- SEA's Recommended Conditions.
- Board and FRA MOU Text.

6.2 PROCEDURAL HISTORY

Following expressions of concern about the potential effects of the proposed Conrail Acquisition on rail safety and the recommendation by FRA and others including railroad labor that CSX and NS develop a safety integration plan, the Board served Decision No. 52 on November 3, 1997. Decision 52 directed CSX, NS, and Conrail to prepare and submit Safety Integration Plans that would explain the intended process for integrating the Applicants' infrastructure, equipment, personnel, and operating practices. Safety Integration Plan guidelines were then developed by FRA for the proposed Conrail Acquisition. FRA issued these guidelines to the Applicants on November 7, 1997.

The Applicants followed the FRA guidelines and submitted their Safety Integration Plans to the Board on December 3, 1997.³ SEA packaged the Safety Integration Plans as a part of the Draft EIS to provide an opportunity for review and comment by FRA, the public, state and local governments, labor unions, and the Applicants. SEA also carefully reviewed the Safety Integration Plans after their publication in the Draft EIS. As requested by FRA, the Safety Integration Plans provide information regarding the intended integration of operations, including:

- The differences in safety standards, procedures, and programs among Conrail, CSX, and NS.
- The best existing safety standards, procedures, and programs of Conrail, CSX, and NS.
- The safety standards, procedures, and programs each railroad would ultimately use.

³ The three plans are:

- Safety Integration Plan of CSX Corporation and CSX Transportation, Inc.
- Norfolk Southern's Safety Integration Plan.
- CSX/NS Safety Integration Plan for Conrail Shared Assets Operations (filed jointly by CSX, NS, and Conrail.)

- CSX's and NS's planned integration of their own safety standards, procedures, and programs, on a step-by-step basis, with those of Conrail.
- The actions the Applicants would take to comply with Federal regulations.

Since the December 3, 1997, submittal of the Safety Integration Plans, FRA has continued working with the Applicants to refine the Safety Integration Plans and to prepare for safe integration of CSX, NS, and Conrail systems in the event the Board approves the proposed Conrail Acquisition. FRA has developed additional monitoring processes, for example, a requirement for the Applicants to provide Safety Integration Plan accountability matrices that further define implementation elements such as schedules and resource requirements. SEA has also continued safety integration activities, including a review of the Safety Integration Plans and of comments received regarding the Safety Integration Plans from USDOT, the Applicants, and other parties. In addition, SEA has discussed safety integration issues with the Applicants.

The Board and FRA recognize that safety integration is an ongoing process that involves both agencies. Accordingly, FRA and the Board have agreed to enter into a MOU, with the concurrence of USDOT, whereby FRA will monitor, evaluate, and review the Applicants' progress in implementing their Safety Integration Plans and other integration-related safety matters brought to the attention of FRA. FRA's role includes responsibility for the requirements of public safety and the safe implementation of rail operations by the Applicants following the proposed Conrail Acquisition. FRA will monitor the Applicants' implementation of the Safety Integration Plans and advise the Board of the Applicants' progress.

If deemed necessary, as agreed to in the MOU, FRA may request that the Board exercise its oversight authority over the Applicants and take action to correct identified deficiencies and address safety problems arising out of the approved Conrail Acquisition. In those circumstances where FRA informs the Board of a concern that may require Board action, FRA will provide sufficient information to the Board to identify the safety deficiency, describe the implications of the deficiency, and provide recommendations for correcting the deficiency. FRA will report to the Board on a periodic basis regarding safety integration and any time FRA observes significant safety integration issues developing. FRA's reporting will continue, not less frequently than biannually, until FRA affirms to the Board in writing that the integration of the CSX, NS, and Conrail systems has been completed safely and satisfactorily.

6.3 SAFETY INTEGRATION PLANNING OVERVIEW

6.3.1 Purpose and Topics of the Safety Integration Plans

Implementation of the proposed Conrail Acquisition would require the Applicants to integrate the operating practices of two or more entities into a single program of safety-related measures. As noted, both the Board and FRA recognized that this integration process requires specifically tailored planning. In Decision 52, the Board directed CSX, NS, and Conrail to prepare specific Safety Integration Plans.

The purpose of the Safety Integration Plans is to begin a documented process of effectively integrating safety-related infrastructure, equipment, personnel, and operating practices. The Applicants will continue the process by adding detail to the Safety Integration Plans and modifying them as necessary to reflect evolving conditions in the event the Board approves the proposed Conrail Acquisition. Likewise, an ongoing regulatory oversight program, planned by the Board and FRA, will provide continuing monitoring, evaluation, and review of the Applicants' integration activities until FRA affirms to the Board in writing that the Applicants' integration has been completed safely and satisfactorily.

The FRA safety integration plan guidelines provided the Applicants with overall direction regarding the Safety Integration Plan topics and areas of documentation. SEA's analysis identified additional safety integration topics, such as Safety Management Process and Implementation Monitoring and Feedback, that SEA examined and discussed with the Applicants.

The following sections are brief explanations of safety integration topics. This includes topics required by FRA's safety integration plan guidelines and included in the applicants' Safety Integration Plans. Also listed are additional safety integration topics identified, and discussed with the Applicants, by SEA.

6.3.2 Operating Practices, Rules, and Procedures

An important safety integration activity that merging railroads perform is to combine different operating rules. Railroad operating rules prescribe activities such as on-track occupancy requirements, authorization procedures for track usage, and signal system rules. In addition, the railroad operating rules typically set forth general signal system rules, rules of employee behavior, and rules for reporting accidents and incidents. Timetables, bulletins, and notices augment the general operating rules. To operate safely, a railroad must require strict adherence to its operating rules by all employees. Although one railroad's operating rules may be similar to another's, they generally are different enough to require training for an employee of one railroad to operate equipment or perform work on the trackage of another.

6.3.3 Dispatching

Railroads face special challenges as they combine formerly separate dispatching functions following a merger or acquisition. Changes in dispatching would require safety-related integration activities. "Dispatching" is the railroad term for the real-time planning and control of train movements. Dispatching problems can cause train delays which in turn may lead to hurried decisions that impact safety.

Large railroads typically have either a single operations control center that houses all dispatching activities or a small number of regional control centers. Each control center has a number of dispatcher "desks" or workstations. The dispatcher at each desk directs train operations over a specific portion of the railroad network, aided by suitable control and communications equipment. An operations control center must provide smooth and error-free service to minimize

delays and associated safety risks. All equipment, including computer software, must function reliably. Dispatchers must be properly trained and familiar with the territory they control.

6.3.4 Signals, Communications, and Train Control

Railroads use signals, communications, and train control to manage the safe movement of trains. The items of equipment include:

- Wayside and/or cab signals that indicate the maximum allowable speed.
- Interlocking systems that govern the signals and switches at a junction.
- Block signal systems that maintain a safe separation between trains on the same track.
- Switch and signal displays and controls that help dispatchers manage train movements.
- Voice and data communication systems that link control centers with operating personnel.

The proposed Conrail Acquisition would increase the diversity of signal and communications equipment on CSX's and NS's systems and would, therefore, require effective integration activities.

6.3.5 Motive Power and Equipment

“Motive power and equipment,” often referred to as “equipment,” is railroad terminology for locomotives and freight and passenger cars. Mechanical failure of equipment can cause railroad accidents. Railroads have developed procedures, some of which are required actions under FRA safety regulations, to reduce equipment failure, including:

- Adherence to recognized standards and operating practices in equipment design and manufacture.
- Adherence to safe wear-limits for components such as wheels and brake shoes.
- Regular testing and reconditioning of selected safety-critical components.
- Regular inspection of safety-critical locomotive systems and components every 3 months.
- Visual inspection of freight trains prior to departure and at selected travel intervals.
- Testing of freight train brakes prior to departure.
- Installation of wayside defect detectors at intervals along main routes.

For these precautions to be effective, equipment inspection and maintenance staff must have adequate training, experience, tools, and time to do their jobs properly. Following a merger or acquisition, effective integration of equipment-related operating practices and personnel must be accomplished.

6.3.6 Track and Structures

The term “track and structures” refers to both the track itself (rails, cross ties, and ballast) and structures such as bridges, culverts, and tunnels. Track failures such as broken rails, large track misalignments, and turnout defects can result in accidents. Practices to minimize the risk of accidents resulting from track failure include:

- Regular visual inspections of the track by railroad-qualified staff.
- Automated inspection of rails for internal defects.
- Automated track geometry measurements.
- Periodic inspections of bridges and other structures by railroad-qualified staff.
- Use of automatic devices to detect dangerous situations (for example, a rock fall or a flood).
- Adherence to recognized standards and practices for track installation and maintenance.

FRA regulations require adherence to minimum track quality standards. If the Board approves the proposed Conrail Acquisition, the Applicants must ensure that appropriately trained and experienced staff perform activities at the proper time and with the right tools and equipment.

6.3.7 Hazardous Materials Transport and Handling

Effective hazardous materials safety programs rely on databases for tracking rail cars, communicating with shippers and emergency response teams, and providing well-trained workers. Each railroad's approach to hazardous materials safety is different. A merger or acquisition requires integration of different approaches. Incomplete integration or insufficient planning can cause gaps and deficiencies in safety-critical programs related to hazardous materials.

6.3.8 Passenger Service

Passenger and freight railroad operators, through many years' experience, have developed operating practices for safe operation of freight and passenger trains on shared tracks. Considerations resulting from the proposed Conrail Acquisition include:

- Changes in traffic patterns may increase freight traffic on certain shared lines and create a need for new safety precautions.
- Operating and staffing patterns may change and create a need to train and qualify additional train crews and dispatchers in passenger line operating rules and practices.
- Newly assigned freight railroad staff may not be thoroughly familiar with unique passenger train service safety measures.

During integration planning, the Applicants must recognize these issues and include provisions for taking appropriate safety precautions.

6.3.9 Overall Safety Management Process

When railroads integrate operations and safety management systems, they can inadvertently remove existing controls that help to minimize hazards and potentially create situations that could harm people, property, or the environment. The process of identifying and resolving hazards within railroad operations is very important during any period of change. During times of change, it is also important that employees know what to do if they identify a new hazard or believe that the control measures for a known hazard are no longer effective. Broad-based participation also helps employees feel they “own” the resulting safety management system, creating a sense of ownership that makes successful implementation more likely.

6.3.10 Planning and Scheduling

Following a merger or acquisition, railroads face the task of integrating different safety management systems. This integration involves a number of challenging issues, such as identifying and blending the “best” of two or more distinct systems, changing roles and responsibilities within the organizations, and training staff in new procedures. These issues would all affect the successful implementation of a new unified system. Therefore, planning and scheduling tasks must take these issues into account.

After the initial planning and scheduling phase, a railroad must define how it will implement changes to an existing safety management system, including:

- Details on the critical path and phasing of each activity involved.
- A detailed schedule specifying time allocations for each activity, as well as key milestones.

- An organization chart detailing safety responsibilities of personnel within the organization.
- Identification of any additional resources required.
- A strategy for communicating information regarding changes to all concerned.

6.3.11 Staffing and Workload

Staffing and workload issues present challenges for railroad managers in a merger or acquisition. Railroads must assess their existing staffing levels and evaluate future needs to ensure they have sufficient resources to meet operational requirements in the proposed new operating environment. Traffic patterns, labor agreements, regulatory guidelines, operating rules, and the consolidation and elimination of facilities all influence staffing requirements. Because staffing and workload projections are estimates based on an overall strategy for a proposed merger or acquisition, these projections tend to change as integration planning proceeds.

In addressing staffing levels, railroads need to consider requirements both immediately following a merger and after integration. A railroad merger or acquisition requires proper planning to ensure adequate labor force levels and the availability of properly trained staff given the following:

- Experienced staff and managers may relocate or retire.
- New or transferred staff and managers must receive training.
- Unanticipated staff shortages may arise, placing unreasonable workloads on employees.

6.3.12 Training

Training is critical to a successful merger or acquisition, particularly when operating rules, procedures, operating practices, reporting requirements, and collective bargaining agreements vary among the merging railroads. Effectively delivered, training ensures that all employees develop the knowledge and skills necessary to perform their jobs efficiently and safely. Experience has shown that satisfactory availability of adequately trained employees is important to avoid operational problems that can have safety consequences.

6.3.13 Implementation Monitoring and Feedback

A railroad's safety integration tasks are diverse and range from providing employee training to ensuring that locomotives compatible with the proper signal systems are available. These integration efforts involve many individuals and teams with interdependent tasks. Monitoring and feedback are important in ensuring that the Applicants properly execute their Safety Integration Plans and that the Applicants identify and correct deficiencies in the Plans or their execution. Therefore, safety integration planning in this case addresses mechanisms for the

Applicants to monitor progress and evaluate their status. These mechanisms are intended to ensure that the Applicants' safety integration efforts are sequenced appropriately, completed properly, and are responsive to ongoing changes in conditions.

6.3.14 Corporate Culture's Safety Implications

If the Board approves the proposed Conrail Acquisition, the Applicants must effectively integrate employees from separate organizations with distinct corporate cultures. Five main elements of corporate culture include corporate history, corporate structure, employee behavior, management actions, and management systems. The management systems include hiring, termination, supervision, discipline and reward practices.

A company's profile in each of these five elements defines its culture, which in turn provides a framework for all cultural elements, including safety. Safety culture primarily refers to the way in which a company's management and employees view and approach various safety issues. A railroad's safety culture depends on the degree of commitment from employees on safety issue management, the degree of employee involvement in the decision-making process, the complexity of combining two different cultures, and the railroad's style of management and its effect on employee attitudes toward safety.

6.3.15 Information Technology

Information Technology (IT) consists of hardware, software, and the linkages among those systems. The systems support administrative (human resources, finance, and marketing), operational (train, car, and locomotive scheduling), and maintenance (track, equipment, and signal inspection records) processes within the railroad. IT systems also support signal systems, train dispatchers, and train control centers. IT systems that support signal, dispatching, and train-control functions have a direct influence on safety.

If the Board approves the proposed Conrail Acquisition, the Applicants must accomplish effective integration activities of their IT systems to prevent the following types of difficulties:

- Improper response to a hazardous materials release.
- Improper routing of high and wide loads
- Inaccurate training records that could affect staff assignments.
- Inadequate backup plans during change over, including provisions to maintain orphan systems.
- Unforeseen hardware or software incompatibilities of the merging railroads.
- Communications link failures.

- Inadequate IT manpower to staff integration efforts, such as programming and additional training of system maintenance staff and system users, and reversing outsourcing arrangements.
- Service and operating plan shortcomings that promote circumstances conducive to accidents.

6.4 SUMMARY OF COMMENTS REGARDING SAFETY INTEGRATION PLANS

As noted, SEA included the Applicants' Safety Integration Plans as part of the Draft EIS to allow wide distribution of the Safety Integration Plans and give FRA, the public, and the Applicants the opportunity to review and comment. SEA received comments from USDOT, state and local governments, labor unions, non-Applicant railroads and shippers, the general public, and the Applicants. The comments are reproduced in Appendix A, "Comments Received on the Draft EIS." This section presents a summary of SEA's analysis, acknowledgment, and understanding of the issues, arguments, and statements contained in the comments. Section 6.5.1, "Responses to Comments," explains SEA's responses to the principle issues and arguments raised by the comments.

6.4.1 U.S. Department of Transportation

USDOT addressed the Safety Integration Plans in both its comments on the Draft EIS and its brief on the Merits filed February 23, 1998. In its comments, USDOT explained the following:

1. FRA held a series of meetings with the Applicants to produce Safety Integration Plans that are responsive to USDOT safety concerns. During those meetings, FRA provided the Applicants with Safety Integration Plan guidelines.
2. The Safety Integration Plans adequately address the safety items required by FRA in a reasonable manner. The Applicants identify significant safety issues and provide a detailed approach to integration through the implementation of a logical sequence of events involving detailed workforce and resource allocations that employ sound industry/engineering practices.
3. The Applicants are working in conjunction with FRA to develop specific plans regarding issues such as differences in management styles and operations among CSX, NS, and Conrail; operational changes in all areas that the implementation of the proposed Conrail Acquisition would affect, and appropriate staffing to ensure safety.
4. The Safety Integration Plans demonstrate that the Applicants have systematically considered and established procedures for integrating all potentially significant sources of increased safety risk. These sources include differences in employee cultures. These differences have required (a) establishment of adequate lines of communication among management, labor, and field personnel; (b) prevention of harassment and intimidation; and (c) provision for adequate training for employees.

5. The Safety Integration Plans account for the increase in size and train volumes that would occur on specific rail line segments if the Board approves the proposed Conrail Acquisition. In addition, they safely and satisfactorily address the differences in operating procedures and take advantage of the “best practices” and unique strengths of each carrier.
6. FRA has held discussions with the Applicants to match specific timing and resource allocations to each safety action item identified in the Safety Integration Plans. FRA is satisfied with the commitments made to date and recognizes that safety integration must be an ongoing process. FRA will continue to work with the Applicants to address implementation issues as they arise.
7. The Applicants' commitments to cooperate with FRA, the accountability embodied in agreed-upon resource allocations, and the Safety Integration Plans themselves have put FRA in a position to ensure that the Applicants implement the Safety Integration Plans in a timely manner, consistent with existing railroad safety laws.
8. Although USDOT believes no further mitigation is necessary or appropriate, the agency requests that SEA and/or the Board consult with FRA to the extent they may consider comments of other parties inconsistent with USDOT findings.

6.4.2 State and Local Government

Representatives of a number of communities—including the City of Berea, the City of Cleveland, the City of New Orleans, the City of Dayton, the Four City Consortium, Allegheny County, Ohio's 20th Senate District, and the Capital District Transportation Committee, submitted comments addressing the Safety Integration Plans. The comments raise concerns in such areas as:

- **Workforce.** The proposed Conrail Acquisition would result in decreased availability of qualified signal maintainers and maintenance-of-way personnel to conduct safety-related activities.
- **Train Traffic Increase.** Higher levels of train traffic and commensurate increases in hazardous materials transport would cause increased risks to public safety and environmental resources.
- **Level of Detail and Implementation Requirements.** The Safety Integration Plans are general and without the detail necessary to thoroughly address safety integration topics. The requirements for the Applicants to implement the Safety Integration Plans, including Board oversight, is not detailed.

6.4.3 Non-Applicant Railroads and Transit Authorities

The National Railroad Passenger Corporation (Amtrak) owns most of the Northeast Corridor and some connecting lines over which Conrail operates freight service. Amtrak raised a number of issues regarding signals and train control, but it does not believe that any compromise on safety would occur on the Northeast Corridor. Amtrak commented on the Applicants' plans to cooperate with the development of the Advanced Civil Speed Enforcement System (ACSES), stated its requirement that Applicants operating over the Northeast Corridor operate ACSES-compatible equipment, and acknowledged the Applicants' representations that operations will conform to ACSES requirements. Amtrak noted favorably that the Applicants intend to conduct certain operations under Northeast Operating Rules Advisory Committee (NORAC) rules following the proposed Conrail Acquisition. Amtrak expressed concern, however, that the Applicants may adopt different rules in the future and stated that the Board's approval should be required to do so.

The Southeast Pennsylvania Transportation Authority (SEPTA) commented that the Applicants' Safety Integration Plans did not fully address the issues related to the ramifications of routing freight traffic through SEPTA's heavily utilized Main Line and the alteration of the present freight operations in the region. In addition, SEPTA cited a number of inconsistencies in the Safety Integration Plans regarding ownership of lines and operating rights in this area and concerns with many of the planned dispatching changes.

The Washington Metropolitan Area Transit Authority referenced FRA's recent Safety Assurance and Compliance Program report regarding CSX and expressed concern that freight train traffic increases could impact passenger rail safety.

6.4.4 Labor Unions

Labor unions including the Transportation Communications Union, the Allied Rail Unions, the Brotherhood of Maintenance-of-Way Employees, the Brotherhood of Locomotive Engineers, and the Brotherhood of Railroad Signalmen submitted comments related to the Safety Integration Plans. The unions expressed the following concerns:

- A sufficient number of properly trained personnel may not be available for safety-related activities such as crew calling, freight car inspections and air brake tests requiring employees to work excessive hours.
- The Safety Integration Plans do not adequately address safety issues such as air brake inspections related to the practice of block-swapping.
- The Applicants' intent to use "New York Dock" arbitration to resolve labor disputes, where labor now perceives it rarely prevails, would reduce employee morale and adversely affect safety culture.

- The expected decrease in maintenance-of-way personnel and related reduction in track, bridge, and infrastructure maintenance could increase derailments.
- Plans to establish large seniority districts would decrease the ability of maintenance personnel to address safety-related activities.
- The plans for training and qualifying personnel with regard to new rules and coordinating activities such as dispatching and maintenance-of-way work are not sufficient.
- The plans to train and familiarize locomotive engineers with regard to new territories are not sufficient.
- The Applicants have not given adequate attention to the relationship of the labor relations cultures to the safety culture. The Applicants have not made a realistic assessment of existing labor relations and have not adequately prepared for integration activities, including clashes in culture resulting from geographic issues of customs, languages, and understandings.
- The effectiveness of, and communication with, the signal maintainers' service desk.
- The adequacy of manpower for handling of signal trouble calls and train dispatching.

6.4.5 Shippers and Other Parties

E.I. DuPont De Nemours & Company, Inc. (DuPont), a major shipper of hazardous materials, stated that it has met with the Applicants regarding their Safety Integration Plans and anticipates future meetings. It commented that the Safety Integration Plans contain an excellent overview of the Applicants' plans for a seamless transition but that many specific implementation details are not yet included. DuPont encouraged adoption of the best operating practices already in place at Conrail and consideration of the Chemical Manufacturers Association's Responsible Care[®] Partnership Program.

Individuals also submitted comments on the Safety Integration Plans. Individual commentors included Mr. Robert W. McKnight, who commented favorably on the Applicants' plans regarding highway/rail at-grade crossings; Mr. Saul J. Stone, who expressed a wish that the Columbus, Ohio, signal facility remain open; and Mr. Belknap Freeman, who expressed concerns about crew qualifications and overall electrical operating instructions, as well as signaling and speed control.

Three Northeast Ohio-based community organizations—United WE-CAN!, BOLD, and United Pastors in Mission—expressed concern about the effect of the proposed Conrail Acquisition on the City of Cleveland. They proposed a Regional Rail Summit to allow the most affected communities to debate the issues associated with the proposed Conrail Acquisition and to agree on a unified response. They opposed the proposed Conrail Acquisition because of increased

hazardous materials transport, the potential elimination of safety and maintenance jobs, and an insufficient number of FRA inspectors.

The Northeast Ohio Areawide Coordinating Agency stated that the Board should require more detail in the Applicants' Safety Integration Plans.

The National Industrial Transportation League commented on the importance of information technology systems integration. The National Industrial Transportation League noted its settlement agreement with both CSX and NS, stipulating that CSX and NS will advise the Board prior to "Day One" that management information systems are in place to manage operations on the former Conrail system, the Shared Assets Areas, and at interchanges between the CSX/Conrail and NS/Conrail systems.

6.4.6 CSX and NS

CSX pointed out that its Safety Integration Plan effort is unprecedented in rail merger proceedings. CSX noted that it has been engaged in detailed safety integration planning for the proposed Conrail Acquisition since the spring of 1997. CSX stated that it had one of the industry's highest levels of safety and that the proposed Conrail Acquisition would have no detrimental impact on safety. CSX stated that because its safety record is better than Conrail's, the accident risk on the Conrail line segments allocated to CSX should decrease if CSX continues to meet its current safety standards.

NS stated that it has been planning Acquisition-related integration activities since the spring of 1997. NS noted that safely integrating its operations and activities with those of Conrail would be a key factor in maintaining and improving the safety of railroad operations and that NS continues to consult with FRA regarding the Safety Integration Plans. NS noted that it recently earned the E.H. Harriman Memorial Gold Award for employee safety for the eighth straight year and that NS strongly believes that safety is good business. NS further commented that applying either NS's or CSX's accident rate to the new lines reduces the number of projected future accidents.

NS acknowledged that a skilled workforce is critical and asserted that it is committed to employing sufficient Conrail employees to ensure the retention of essential institutional knowledge. NS presented plans regarding dispatching employees and commented that it "plans to keep the same regional dispatching system in place to minimize the potential for disruption or disorientation, thereby ensuring that dispatchers are familiar with their territories."

NS commented that hazardous materials transport safety is a high priority and noted its participation in a number of voluntary programs such as Responsible Care[®] and the North America Non-Accident Release Program. NS commented that it would provide each county with emergency response plans for distribution to local response organizations and a 24-hour toll-free phone number, which local emergency response organizations along key routes and major key routes could access. NS cited its efforts to address the causes and consequences of hazardous materials spills in yards and during transport. In particular, NS commented on plans

for integrating NS's and Conrail's information technology systems to store and categorize information on hazardous materials releases. NS stated that, as noted in its Safety Integration Plan, "NS intends to adopt the Conrail framework (including the Transportation Incident Severity Index process used by Conrail) for systematic categorization of shipper-caused releases."

NS commented regarding passenger operations and stated that "NS and CSX are both experienced in safely handling passenger operations on their systems and in working cooperatively with Amtrak and other passenger rail agencies to enhance safety. NS and CSX have achieved outstanding safety records in this area." NS further stated, "Notably, neither Amtrak nor any commuter agency has claimed that the Transaction will have any detrimental impact on the safety of their operations on any NS lines. Nor have any passenger groups claimed that the Transaction will impair in any way the safe operations of passenger trains on any NS lines."

6.5 SEA'S CONCLUSIONS

6.5.1 Responses to Comments

SEA has carefully reviewed all the comments addressing safety integration. As a result of those efforts and discussions with the Applicants and FRA, SEA recommends that the Board include two conditions regarding safety integration with any approval of the proposed Conrail Acquisition. These conditions are presented in Section 6.5.2, "Recommended Conditions."

SEA does not believe that any other environmental conditions in this area are warranted. SEA recognizes that some comments received on the Draft EIS raise safety integration issues that have not yet been fully addressed and that certain safety integration concerns still remain regarding the proposed Conrail Acquisition. However, this is largely because of the ongoing nature of safety integration and the fact that the Safety Integration Plans issued with the Draft EIS had not been fully developed. SEA concludes that the ongoing monitoring and enforcement process described in the MOU provides an effective way to address safety integration issues that may arise in the event the Board approves the proposed Conrail Acquisition. These monitoring and enforcement activities will assure the successful combination of the Applicants' infrastructure, equipment, personnel, and operating practices. SEA bases these conclusions on the following:

1. SEA's review of the Applicants' Safety Integration Plans.
2. USDOT's review and finding that the Safety Integration Plans address and safely and satisfactorily mitigate every safety concern raised in the environmental review portion of the proposed Conrail Acquisition and that no other mitigation on the subject is necessary or appropriate. More specifically, USDOT stated that FRA concludes that the Applicants have systematically considered and established procedures for integrating all potentially significant sources of increased safety risk including (a) perceived differences in employee cultures; (b) differences in railroad management and operating procedures;

- (c) loss of institutional knowledge; and (d) the increase in the size of the two major railroad systems, including train volumes, and potential workloads for management and labor. FRA is satisfied with the commitments made to date and will continue to work with the Applicants to address implementation issues as they arise.
3. The Board and FRA MOU agreement (with concurrence by USDOT) that creates a cooperative oversight process to provide ongoing monitoring, evaluation, and review of the Safety Integration Plans. This process will ensure that the Applicants' Safety Integration Plans are modified and updated as necessary to adapt to changing conditions during the Applicants' implementation of Acquisition-related activities.
 4. SEA's inclusion of recommended mitigation measures in Chapter 7, "Recommended Environmental Conditions," that relate to and address issues raised by commentors in the context of safety integration, including mitigation that would address highway/rail at-grade crossing safety, freight/passenger rail traffic safety, and hazardous materials transport safety.
 5. The Applicants' comments acknowledging the challenges of Acquisition-related safety integration, explaining the level of effort they have devoted to safety integration, and stating their existing operating practices to reduce the potential for accidents.
 6. The Applicants' continuing Safety Integration Plan development since their December 3, 1997, submittals to the Board. The Applicants would also have to comply with various existing FRA regulations that apply uniformly to all railroads, in the event the Board approves the proposed Conrail Acquisition. These regulations address areas where commentors raised concerns. For example:
 - Railroads must file their operating rules for review by FRA. Further, they must also provide employees with periodic instruction regarding those rules, according to a plan that they must file with FRA.
 - FRA regulations at 49 CFR Parts 233 through 236 contain detailed requirements for the design, installation, inspection, and maintenance of signals, communications, train-control systems, and grade crossing signal systems. These regulations address safety problems that could arise from inconsistent engineering practices, poor records, or a lack of responsiveness in correcting signal faults.
 - Regarding air brake issues and concerns, FRA regulations contain detailed requirements for predeparture and en route testing and inspections of locomotives, freight cars, and freight trains. These regulations provide FRA with authority to oversee locomotive, freight car, and freight train inspections and tests, including inspector qualifications and brake testing after block-swapping.

- FRA safety oversight provides a further safeguard against a degradation in safety because of inadequate track inspection and maintenance. FRA has authority to regulate track safety derived from the Track Safety Standards at 49 CFR Part 213. These standards specify inspection requirements and minimum acceptable track standards for different speeds of operation. FRA normally includes track condition, as well as maintenance and inspection practices in Safety Assurance and Compliance Program reviews.
 - Finally, FRA's recent final rule on passenger train emergency preparedness includes standards for freight railroads hosting the operation of passenger trains.
7. The settlement agreement that the Applicants negotiated with the National Industrial Transportation League relative to service. The settlement agreement established a process for periodic discussions between the Applicants and shippers to ensure a smooth service transition. One provision of that agreement is that the Applicants will not attempt to integrate operations until management information systems have been integrated and demonstrated to work smoothly.
 8. Corporate safety culture, information technology, dispatching, workload, staffing, and training are prominent topics in the FRA Safety Integration Plan guidelines and have a corresponding tracking system requirement in the FRA Safety Integration Plan accountability matrices. This provides a means to address these issues as FRA continues to work with the Applicants to address implementation issues as they arise.
 9. The Applicants amplified the discussion on signals, communications, and train control issues in their comments on the Draft EIS. For example, NS recognized the legal, contractual, and operating rules' requirements to use locomotives equipped with Automatic Train Control (ATC) where required by timetable. NS committed to providing all necessary training, tests, maintenance, and management support needed to follow through in this area. CSX plans to expand the number of locomotives available to operate on ATC-equipped lines. CSX also indicated its willingness to cooperate with Amtrak and commuter agencies regarding application of the Advanced Civil Speed Enforcement System on the Northeast Corridor.
 10. The Applicants' Safety Integration Plans state that, with regard to track and structures, improved productivity of their system gangs would offset most of the planned track maintenance staff reductions. System gangs would work in southern areas of each railroad during the winter and northern areas during the summer, eliminating the winter layoff and maintaining consistency of system gang skills and efficiency. In addition, system gangs on the proposed expanded NS and CSX railroads would perform heavy maintenance on track in the Shared Assets Areas. The operator of the Shared Assets Areas would employ only basic track maintenance and inspection staff. Along with these planned maintenance procedure changes, CSX and NS would consolidate some workshops that service and rehabilitate track maintenance equipment. In addition, CSX and NS have stated that they would implement an adequate inspection and maintenance

program to ensure that bridges remain in safe condition. Thus, SEA does not believe that a reduction in the amount of maintenance performed or deterioration in track quality would likely occur.

6.5.2 Recommended Conditions

Based on its review of available information and consideration of comments from USDOT, the public, the Applicants, and other parties, SEA recommends that any final Board decision approving the proposed Conrail Acquisition include the following conditions:

Recommended Safety Integration Condition 1

The Applicants shall comply with the Safety Integration Plans, which may be modified and updated as necessary to respond to evolving conditions.

Recommended Safety Integration Condition 2

The Applicants shall participate and fully cooperate with the ongoing regulatory activities associated with the safety integration process, as described in the MOU agreed to by the Board and FRA with the concurrence of USDOT, until FRA affirms to the Board in writing that the integration of the Applicants' systems has been completed safely and satisfactorily.

These recommended safety integration conditions are included, along with all other SEA-recommended mitigation, in Chapter 7, "Recommended Environmental Conditions."

6.6

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE SURFACE TRANSPORTATION BOARD
AND THE FEDERAL RAILROAD ADMINISTRATION**

**CSX AND NS ACQUISITION OF CONRAIL, FINANCE DOCKET NO. 33388
IMPLEMENTATION OF SAFETY INTEGRATION PLANS**

WHEREAS, the United States Department of Transportation (USDOT) filed comments with the Surface Transportation Board (Board) reflecting the concern of the Federal Railroad Administration (FRA), the agency within USDOT responsible for enforcement of railroad safety regulations, about the effect that the proposed acquisition of Conrail by CSX and NS (Conrail Acquisition) might have on rail safety, and FRA's recommendation that the board require CSX and NS to develop plans detailing the procedures each would follow to integrate the part of Conrail it is acquiring into its operations in a manner that will maintain safety at every step of the process in the event that the acquisition is approved by the Board; and

WHEREAS, the Board, in its Decision No. 52 issued on November 3, 1997, directed Applicants CSX and NS, and Conrail to the extent it will be responsible for operation in the Shared Assets Areas, to prepare and submit to the Board detailed Safety Integration Plans (SIPS) explaining the process by which they intended to integrate Conrail into their operations, in the event the Board approved the proposed Conrail Acquisition; and

WHEREAS, working closely with FRA, the carriers developed the SIPS and submitted them to the Board on December 3, 1997. The Board's Section of Environmental Analysis (SEA) included the SIPS in the Draft EIS for the proposed Conrail Acquisition to provide an opportunity for

review and comment by FRA and the public and SEA has carefully reviewed the plans and comments; and

WHEREAS, DOT's comments on the Draft EIS state that FRA is satisfied that the SIPS address and satisfactorily mitigate every safety concern raised in the environmental review portion of the pending Conrail Acquisition proceeding and that no other mitigation on this subject is necessary or appropriate. In addition, DOT's comments state that FRA is satisfied with the Applicants' commitments made to date and that, in the event the Board approves the Conrail Acquisition, FRA will continue to work as appropriate with the Applicants to address integration issues that arise; and

WHEREAS, the FRA and the Board wish to enter into a memorandum of understanding (MOU) to clarify the actions each will take to assure the successful implementation of the SIPS.

NOW, THEREFORE, in the event the Board approves the Conrail Acquisition, in consideration of the premises and the mutual undertakings hereafter set forth, the FRA and the Board do hereby agree as follows:

1. Both FRA and the Board recognize that safety integration is an ongoing process that involves both agencies. Accordingly, FRA will exercise its authority over rail safety matters to monitor, evaluate and review the Applicants' progress in implementing their SIPS.

2. FRA will keep the Board informed of the Applicants' progress. If deemed necessary by FRA, FRA may request the Board to exercise its oversight authority over the Applicants and take action to correct identified deficiencies and address safety problems arising out of the approved transaction. FRA will be responsive to the requirements of public safety and the safe implementation of post-acquisition rail operations by the Applicants.

3. In those circumstances where FRA informs the Board of a concern that may require Board action, FRA will provide sufficient information to the Board to identify the safety deficiency, describe the implications of the deficiency, and provide recommendations for correcting the deficiency.

4. FRA agrees to report significant safety integration issues to the Board if and when they occur. FRA also will report to the Board from time to time, as FRA deems appropriate, but not less than biannually, regarding safety integration of the Conrail Acquisition. FRA's reporting will continue until safety integration implementation has been completed to the satisfaction of FRA, and FRA affirms to the Board in writing that the proposed integration has been completed satisfactorily.

IN WITNESS HEREOF, the parties hereto have executed this MOU on this ____ day of May, 1998.

Henri F. Rush
General Counsel
Surface Transportation Board

S. Mark Lindsey
Chief Counsel
Federal Railroad Administration

The Department of Transportation concurs in this memorandum of understanding.

Nancy E. McFadden
General Counsel
U.S. Department of Transportation