

# Confidential Close Call Reporting System

## Pilot Program Implementing Memorandum of Understanding (C<sup>3</sup>RS/IMOU)

DATE: February 15, 2024



U.S. Department  
of Transportation

**Federal Railroad  
Administration**

**SECTION 1 – Parties to Pilot Confidential Close Call Reporting System Implementing Memorandum of Understanding (C<sup>3</sup>RS/IMOU) (Parties)**

- A. International Association of Sheet Metal, Air, Rail Transportation – Transportation Division (SMART-TD): recognized collective bargaining organization representing operating craft employees in train service and yardmasters.
- B. Brotherhood of Locomotive Engineers and Trainmen (BLET): recognized collective bargaining organization representing the operating craft of engineers.
- C. Norfolk Southern Railway (NSR): a railroad carrier.
- D. Federal Railroad Administration (FRA): an administration in the Department of Transportation charged with carrying out all railroad safety laws of the United States under 49 United States Code (U.S.C.) Section 103 and 49 Code of Federal Regulations (CFR) § 1.89.

**SECTION 2 – Intent, Goals, and Boundaries**

The Parties are voluntarily entering into this C<sup>3</sup>RS/IMOU with the intent of improving the safety of railroad operations.

- A. The intent of this C<sup>3</sup>RS Pilot Program is to encourage the confidential reporting of unsafe practices, behaviors, or situations to ensure a safe workplace. A related goal is to create an environment free from repercussions/discipline from those reports. In order to promote the success of this C<sup>3</sup>RS Pilot Program, employees should submit reports in good faith and provide a comprehensive and accurate accounting of events.
- B. The goals for this C<sup>3</sup>RS Pilot Program are as follows:
  - Enhancing safety at NSR,
  - Collecting information on currently unreported unsafe practices, behaviors, or situations, with full confidentiality of the reporting employee and any other person or entity mentioned in the reporting employee's account of the close call event,
  - Identifying corrective actions or remedies by undersigned Parties,
  - Reporting information to be analyzed by the Peer Review Team (PRT),
  - Provision of assistance by FRA in its role of safety oversight, and
  - Informing publication of general railroad safety trends and statistics by government agencies.
- C. The boundaries of the C<sup>3</sup>RS Pilot Program are anywhere NSR employees represented by the collective bargaining organizations identified in Section 1 and whose home terminal is Atlanta, GA, Elkhart, IN, or Roanoke, VA (including outlying points protected by extra boards at these pilot locations) perform activities in support of NSR railroad operations, including deadheading as defined in 49 CFR § 228.5.
- D. Nothing in this IMOU is intended to modify, circumvent, or substitute for NSR's own incident investigation, reporting procedure, safety program, or Alcohol and Drug Testing policy or processes, or supersede any non-FRA Federal or State regulatory requirements (e.g., regulatory requirements promulgated by the Occupational Safety and Health Administration (OSHA)).

This IMOU also does not establish C<sup>3</sup>RS as a whistleblower program and reporting a close call does not establish any legal rights pursuant to 49 U.S.C. 20109. Rather, reporting of Close Call Events is intended to be an additional tool for improving railroad safety under FRA safety oversight. Unsafe conditions must continue to be reported by the fastest means possible.

### **SECTION 3 – Application of Program**

The C<sup>3</sup>RS/IMOU will apply to NSR employees operating within boundaries described in Section 2 who are represented by the collective bargaining organizations signatory to this C<sup>3</sup>RS/IMOU, including employees in training or probationary status. An employee must submit an accepted C<sup>3</sup>RS report, in compliance with all applicable provisions of this C<sup>3</sup>RS/IMOU, in order to be protected from NSR discipline/certification revocation and/or FRA civil enforcement. This C<sup>3</sup>RS/IMOU does not alter or modify any Collective Bargaining Agreement.

### **SECTION 4 – Definitions**

**AAR** means the Association of American Railroads, a trade association of which NSR is a member.

**Adverse Consequences** means negative impacts that are a result of system or human error.

**C<sup>3</sup>RS Internal Pilot Program Staff** means National Aeronautics and Space Administration (NASA) federal employees and NASA agents. For this C<sup>3</sup>RS Pilot Program, NASA agents may include NASA contractors.

**Certification** means qualification and certification of locomotive engineers under 49 CFR Part 240 and the qualification and certification of conductors under 49 CFR Part 242.

**Close Call Report or Reported Close Call** is an event or sequence of events that has a potential for more serious Adverse Consequences to railroad safety and provides an opportunity to improve safety in support of NSR railroad operations. In order for a Reported Close Call to qualify for this C<sup>3</sup>RS/IMOU's discipline, certification revocation, and enforcement protections, it must be reported in accordance with all applicable provisions of this C<sup>3</sup>RS/IMOU, including (but not limited to) Sections 6.1, 6.2, 6.4, 7.3, and 7.4.

**Consensus** is the voluntary agreement of all Parties.

**Corrective Actions** mean actions taken by NSR in response to PRT recommendations concerning reported events and emerging safety trends.

**Digital Enforcement** means an event involving a positive train control (PTC) enforcement for which NSR management receives a notification.

**Discipline** is any NSR action that would result in a materially adverse employment action like documented written or verbal conference/warnings/counseling or termination/dismissal/demotion, etc.

**FRA Reporting Threshold** is the current monetary rail equipment accident/incident

reporting threshold defined in 49 CFR § 225.19(c) and published annually by FRA.

**FRA Safety Inspector** means an FRA Safety Inspector, a State inspector participating in a railroad safety investigation and surveillance activities under 49 CFR Part 212, or any other official duly authorized by FRA.

**Hazardous Material** is a commodity designated as hazardous material by 49 CFR Part 172.

**Locomotive Event Recorder** is a device designed to resist tampering that monitors and records data on employee activities, equipment operation, track occupancy, record of protection, time, distance, or other information, and includes radio communication recordings and footage from outward-facing locomotive image recording devices, but does not include footage from inward-facing locomotive image recording devices or voice recordings from inward- and/or outward-facing locomotive audio recording devices.

**Need to Know** means when government employees and contractors may have access to information only if it is necessary for Pilot Program management and programmatic evaluation and analysis. This “need to know” will be administered by NASA and access to “need to know” information will be granted in the sole discretion of the NASA Program manager.

**Peer Review Team or PRT** is a problem-solving team consisting of representatives for the primary stakeholders to this C<sup>3</sup>RS/IMOU, including FRA, NSR, BLET and SMART-TD. The PRT will consist of an equal number of management and labor organization members who will be appointed and approved by NSR and the relevant labor organization (BLET or SMART-TD), respectively, and also consist of FRA personnel. Each primary stakeholder will have at least one primary PRT representative who attends PRT meetings and one secondary PRT representative who serves as back-up to the primary PRT representative(s). The PRT may add other subject matter experts, on an ad hoc basis, when the supplemental expertise would assist the PRT in developing recommendations. The PRT may also include a NASA representative.

**PRT Support Team** helps the PRT review and, if appropriate, implement corrective actions based upon the PRT’s analysis of Close Call Reports. The corrective action recommendations made by the PRT are non-binding; the PRT Support Team may, in implementing corrective action, accept, reject, or modify these recommendations. The PRT Support Team will consist of an equal number of management and labor organization members who will be appointed and approved by NSR and the relevant labor organization (BLET or SMART-TD), respectively. FRA representatives may participate in the PRT Support Team when requested, including upon FRA’s request.

**Railroad Operations** means the movement of equipment over rails and activities that support such movement.

**Real-Time Observation** means a direct observation by an FRA Safety Inspector or NSR manager or supervisor of a violation of FRA regulations or NSR’s operating procedures or practices. Real-time observation includes observations that occur during operational testing performed by NSR supervisors or management and observations made by NSR supervisors or management who are monitoring railroad operations contemporaneously through the use of cameras (except for inward-facing cameras or other image or audio recording devices installed on locomotives).

## **SECTION 5 – Confidentiality**

All Parties agree to protect the confidentiality of any and all information (including, but not limited to, data, analyses, findings, and recommendations) related to this C<sup>3</sup>RS/IMOU. The obligation to maintain the confidentiality of this information survives the cancellation and/or end of this C<sup>3</sup>RS/IMOU.

NASA shall act as the owner of the information that NSR employees report under this C<sup>3</sup>RS/IMOU and shall protect the confidentiality of this information through its own governance.

After NASA has compiled into a unified document all relevant information about a Reported Close Call event, including the C<sup>3</sup>RS report and all information collected by NASA through follow-up calls, NASA will develop a document from which all individually-identifying information has been removed for further analysis by the PRT. NASA will de-identify this record so that the identity of the reporting employee and any other involved employee, person, or third party can no longer be determined through direct or indirect means.

NASA shall protect the following information from disclosure when provided in a Close Call Report:

1. The employee Close Call Report form and the content of that form;
2. The name of the employee who submits a Close Call Report;
3. The name of any other employee mentioned in the Close Call Report;
4. The name of the railroad involved in the Close Call Report;
5. The name of any non-railroad person or third party entity (such as a passenger or a contractor to the railroad) mentioned in the report; and
6. Information that would make it obvious that only a few (fewer than 3), easily identifiable people could have made the Close Call Report, such as exact location and time of a Close Call, or description of specific, rarely used equipment models.

If NASA is unable to protect the confidentiality of the reporter or any other railroad employee, person, or third party entity mentioned in the report, the report will not be provided to the PRT (or the PRT Support Team). Similarly, if NASA is unable to protect the confidentiality of the railroad or another person or third party entity involved in the report, NASA will not upload the report to the searchable C<sup>3</sup>RS database.

The confidentiality of the information collected during this C<sup>3</sup>RS Pilot Program will be preserved in perpetuity beyond the cancellation and/or end of this C<sup>3</sup>RS Pilot Program.

### **SECTION 5.1 – Access to Confidential Information**

In the interest of providing the best measures for maintaining the confidentiality of the information contained in a Close Call Report, NASA will grant C<sup>3</sup>RS Internal Pilot Program Staff access to confidential information for internal use only on a “need to know” basis for the

purposes of completing their work assignments. The PRT assigned to this C<sup>3</sup>RS Pilot Program will have access to de-identified reports and PRT work products.

## **SECTION 6 – Reporting Procedures**

When an employee of NSR covered by this C<sup>3</sup>RS/IMOU experiences a Close Call event, he or she should report the event and describe it in detail to NASA. NASA has developed a Close Call form that requests information about the date, time, location, contributing factors, actions taken and potential consequences of an event, along with any other information necessary to fully describe the event. NASA has a process for electronic submission or download of report forms at: <https://c3rs.arc.nasa.gov/report.html>.

NSR employees are encouraged to report events that they think qualify as a Close Call event, even if they are unsure whether the event qualifies as a Close Call pursuant to the provisions of this C<sup>3</sup>RS/IMOU.

If an employee experiences multiple Close Call events during a tour of duty, the employee must file a separate Close Call Report for each event.

The employee will complete the report form, either paper or electronic, and submit it to NASA in accordance with the instructions on the form. NSR will make paper forms, or access to electronic forms, available at work locations. NASA will send an ID Strip in receipt to the employee via United States Postal Service.

If NASA determines the initial report contains insufficient information to determine acceptance, the report may receive provisional acceptance. Final eligibility for ID strip issuance will be determined when the NASA rail safety expert obtains more information from the reporting employee. NASA may call the reporting employee for further information, and the reporting employee is encouraged to accept the call and provide the requested information. NASA may reject reports that do not include sufficient information when the reporting employee does not accept a follow-up call from NASA. If the Close Call Report is accepted as valid by NASA, NASA will issue the reporting employee an ID strip via United States Postal Service.

Any record of such ID strip will not be available in the NASA Close Call Reporting system. If an employee facing discipline has lost or misplaced the ID strip, the reporting employee may request a verification letter from NASA. The letter will be provided whenever possible. However, there is no guarantee that NASA can provide a verification letter, since NASA does not store any identifying information about the employee who submitted the report.

Once accepted, NASA will evaluate and de-identify the Close Call Report form. NASA will then provide the de-identified information to the PRT for evaluation.

### **SECTION 6.1 – Criteria for Close Call Report Acceptance**

Reports may be submitted for any event an employee experiences that could potentially result in an adverse consequence to the safety of railroad operations.

Each Close Call Report must contain sufficiently detailed information about an event so NASA can evaluate it. A NASA interviewer may call the employee to obtain more information about the event. If in doubt, NASA will err on the side of accepting the report. The final decision on whether to accept or reject a Close Call Report will be made by NASA. Pursuant to Section 6.2,

not all reports accepted by NASA will receive this C<sup>3</sup>RS/IMOU's protections against discipline, certification revocation, and civil enforcement.

NASA will reject the following types of reports during the initial screening process:

1. Any event that caused or is alleged to have caused injury, illness or medical treatment of any kind to any person (including passengers) involved in the event;
2. Any train accident/incident above the FRA Reporting Threshold;
3. Reports unrelated to the safety of activities performed in support of railroad operations;
4. Willful violations of Federal railroad safety laws or NSR operating and/or safety rules, including alcohol use, substance abuse, or inappropriate use of controlled substances;
5. An event resulting in the identifiable release of a hazardous material;
6. Acts of sabotage or other criminal offenses; and
7. Reports that exclusively involve personal grievances, such as a rejected time slip or perceived unfairness by a supervisor. Employees are reminded that C<sup>3</sup>RS is not a whistleblower protection program.

During the initial screening process, NASA may reject reports that do not include sufficient information when the reporting employee does not accept a follow-up call from NASA.

### **SECTION 6.2 – Conditions Under Which a Reporting Employee Is Not Protected from Railroad Discipline, Railroad Revocation of Certification, or FRA Civil Enforcement**

NSR employees included in this C<sup>3</sup>RS/IMOU receive no protection from railroad discipline, railroad revocation of certification, or FRA civil enforcement when one or more of the following conditions occur:

1. The report is rejected under Section 6.1;
2. Information is discovered after NASA accepts the report indicating the report should have been rejected under Section 6.1;
3. The event is a Real-Time Observation not eligible for reporting as described in Section 7.3;
4. The event is a Digital Enforcement not eligible for reporting as described in Section 7.4;
5. The event requires managerial notification and protection (e.g., the event resulted in damage to equipment or introduced a hazard into railroad operations) pursuant to NSR operating rules and the employee failed to report the event in accordance with NSR operating rules, including required timelines for reporting;

6. The employee's action or lack of action was intended to damage NSR or another entity's operations or equipment or to injure other individuals, or intentionally placed others in danger (for example, sabotage); or
7. The Reported Close Call occurred as a result of the unauthorized use of an electronic device by the employee submitting the Reported Close Call.

The PRT shall determine whether any of these conditions exist in relation to a particular Reported Close Call. The PRT may, as necessary, consult the PRT Support Team in making this determination.

### **SECTION 6.3 – Time Limits to File Report and Receive Protection from NSR Discipline, Railroad Revocation of Certification, or FRA Civil Enforcement**

To receive protection from NSR discipline, revocation of certification, and/or FRA civil enforcement, an employee who experiences a Close Call event must submit a written (either paper or electronic) Close Call Report to NASA within 48 hours of the event. For example, an event that occurs at 3:00 a.m. on a Tuesday must be reported before 3:00 a.m. on Thursday). NASA may adjust this timeline for unforeseen circumstances, such as a system malfunction that prevents an employee from reporting a Close Call within 48 hours. In such a circumstance, the PRT shall similarly determine that the report qualifies for this C<sup>3</sup>RS/IMOU's protection provisions, except as provided for in Section 6.2.

### **SECTION 6.4 – Known Event Reporting**

Events below the FRA Reporting Threshold that do not involve a fatality, injury, illness, or medical treatment, but would require managerial notification and protection under NSR policy or operating rules (for example, a run-through yard switch), shall be considered eligible close call events if they are reported in accordance with all applicable provisions of this C<sup>3</sup>RS/IMOU.

To facilitate analysis of Known Events, an employee will provide notification of the event to NSR management/supervision (foreman) in accordance with NSR operating rules, including required timelines for reporting.

Events that are part of Real-Time Observations, as discussed in Section 7.3, or Digital Enforcements, as discussed in Section 7.4, shall not be considered Known Events.

Please see “Appendix II – Known Event Reporting” at the end of this C<sup>3</sup>RS/IMOU for how discipline protection for Known Events applies during the 12 months of this specific and limited pilot program.

### **SECTION 7 – Purpose for Protection from Railroad Discipline, Revocation of Certification, or FRA Civil Enforcement**

The main purpose of this C<sup>3</sup>RS Pilot Program is for the Parties to learn more about the safety risks they face. An important element of the C<sup>3</sup>RS Pilot Program is the shielding of reporting employees from NSR discipline, revocation of certification or FRA civil enforcement potentially arising from events reported under this system. This C<sup>3</sup>RS/IMOU also shields NSR from FRA civil enforcement potentially arising from events reported under this system.



Confidential Close Call reporting protects the identity of the person disclosing information. The PRT is able to use the information to learn about systemic problems and to educate all Parties. The voluntary reporting of Close Calls without the threat of discipline will foster an environment that enables the Parties involved to understand systemic failures and implement improvements.

### **SECTION 7.1 – Conditions Under Which a Reporting Employee is Protected from Railroad Discipline, Revocation of Certification, or FRA Civil Enforcement**

Except as provided for in Section 6.2 and the Appendix II, for an event reported to and accepted by NASA as a close call, in accordance with the applicable provisions of this C<sup>3</sup>RS/IMOU:

- NSR agrees it will not initiate any discipline (including written warnings or written counseling) against the reporting employee;
- FRA agrees it will not pursue any civil enforcement against the reporting employee; and
- If FRA has granted the requisite waiver of compliance from 49 CFR Parts 240 (Qualification and Certification of Locomotive Engineers) and 242 (Qualification and Certification of Conductors), FRA agrees it will not require NSR to revoke the certification of a reporting employee, and NSR agrees not to initiate any such certification revocation.

The protections of this section apply to the retrospective discovery of close call events, including the retrospective (as opposed to real-time) use or review of locomotive event recorder data.

No portion of any C<sup>3</sup>RS report, including a PRT investigation or interview(s) concerning a reported event, shall be used to initiate or support railroad discipline, railroad certification revocation, or FRA enforcement action against either the reporting employee or any other NSR employee mentioned in the report. Additionally, an employee who files a Close Call Report shall not appear as a witness in an investigation of an employee who did not file a Close Call Report. This policy applies regardless of whether NASA accepts the report and whether the PRT determines the report is eligible for the discipline protections of this C<sup>3</sup>RS/IMOU.

*Note: If FRA grants the waiver petition(s) in question, copies of FRA's decision letter(s) will be attached to this IMOU as Appendix I and incorporated by reference.*

### **SECTION 7.2 – Conditions Under Which NSR Is Protected from FRA Civil Enforcement.**

For a reported Close Call event, FRA will afford the same protection from civil enforcement action to NSR, as that afforded to an NSR employee covered by C<sup>3</sup>RS/IMOU. For example, if an employee Close Call Report does not qualify for protection under one of the exceptions listed in Section 6.2, NSR will also not receive protection from FRA civil enforcement action.

### **SECTION 7.3 – Conditions That Are Required for Real-Time Observations**

When a Real-Time Observation is made by an NSR manager or supervisor, including

observations a manager or supervisor learns in real-time from a dispatcher, the observed employee must be informed of the observation as soon as possible, but not to exceed 2 hours from the time the event occurred. Real-Time Observation does not include:

- The retrospective review of locomotive event recorder data, alert, or any video or audio recordings;
- Real-time alerts from locomotive event recorder data (e.g., alerts received by the NSR Road Foreman Desk); or
- The real-time or retrospective review of footage from inward-facing image or audio recording devices on locomotives.

An event may also be considered a Real-Time Observation upon notification by an observing FRA Safety Inspector to the observed employee(s) or the railroad as soon as possible after observing the violation of FRA regulations or NSR's operating procedures or practices. The FRA Safety Inspector will provide any such notice by documenting the time, date, location and a description of the observation on an FRA Inspector Report (6180.96 Report). The FRA Safety Inspector will provide a copy of the Inspection Report to the appropriate railroad officer preferably on the same day, but no later than 24 hours after the observation.

As provided in Section 6.2, Item 3, an employee reporting a Real-Time Observation will not be entitled to protection from railroad discipline, revocation of certification, or FRA civil enforcement, so long as NSR or FRA provides the notification required in this section.

#### **SECTION 7.4 – Conditions That Are Required for Digital Enforcements**

An event involving a Digital Enforcement may be considered ineligible for reporting under the C<sup>3</sup>RS pilot program when the railroad informs the employee as soon as possible, but not to exceed 24 hours from the time of the enforcement. Examples of events that may be considered ineligible when the event is a Digital Enforcement include passing a stop signal or exceeding track authority limit.

A Digital Enforcement that involves a technology failure (such as a hardware malfunction or a software programming flaw or malfunction) remains eligible for reporting, as determined by the PRT.

Pre-enforcement notifications generated by PTC that are addressed before an enforcement is applied, even if sent to a railroad manager, are not Digital Enforcements and remain eligible to be reported as protected close calls pursuant to all applicable provisions of this C<sup>3</sup>RS/IMOU.

To the extent possible, NSR will use C<sup>3</sup>RS information and other data obtained from pre-enforcement notifications, Digital Enforcements, locomotive event recorders, locomotive desk alerts, and other electronic monitoring systems to improve employee performance through positive interventions such as mentoring, coaching, and training.

#### **SECTION 8 – How an Employee Notifies NSR or FRA of Protection from Railroad Discipline, Revocation of Certification or FRA Civil Enforcement**

When NSR initiates an investigation of an unsafe event or condition and an employee indicates

that the event or condition has been reported under the C<sup>3</sup>RS/IMOU, the time limits for pursuing discipline will be put in abeyance if necessary, pending delivery of an ID Strip from NASA.

When an ID strip is available for review, the employee must present it to the NSR charging manager. If the NSR charging manager can determine the ID strip applies to the event, the discipline portion of the investigation will be closed.

If the employee and NSR manager do not agree that the ID strip is applicable to the event, the employee will present a copy of the ID strip to the PRT, which will then determine whether the event qualifies for this C<sup>3</sup>RS/IMOU's protections against discipline, certification revocation, or civil enforcement.

If the PRT determines the event qualifies for protection under this C<sup>3</sup>RS/IMOU, charges and/or assessed discipline, including any revocation of certification, will be dismissed by NSR and all lost time will be paid. If the PRT determines the event does not qualify for protection (as described in Section 6.2), the PRT will advise the NSR manager and the time limits for initiating disciplinary or revocation proceedings may commence. In such cases, no Party may use or reference the Close Call Report in the subsequent disciplinary or revocation proceedings.

Upon receiving notice of FRA civil enforcement for an event covered by an accepted Close Call Report, the employee will present the ID strip to FRA, PRT, or a member of the FRA C<sup>3</sup>RS Implementation Team for assistance in resolving the notice consistent with this C<sup>3</sup>RS/IMOU.

#### **SECTION 9 – Use of C<sup>3</sup>RS Information**

All Parties to this C<sup>3</sup>RS/IMOU agree to use the information they acquire only for positive purposes to improve railroad safety. This could include new or modified training, assessing risks and allocating resources to address those risks, and learning why Close Calls occur.

#### **SECTION 10 – Stakeholders**

The primary organizations that will be involved in the C<sup>3</sup>RS Pilot Program are:

- FRA's Office of Railroad Safety;
- NASA;
- NSR;
- SMART-TD (including yardmasters);
- BLET;
- PRT; and
- PRT Support Team.

#### **SECTION 11 – Stakeholders' Responsibilities in Support of the C<sup>3</sup>RS/IMOU**

The rights, roles, and responsibilities set forth in this C<sup>3</sup>RS/IMOU apply only to Parties, the Parties' employees, and stakeholders participating in the C<sup>3</sup>RS Pilot Program under this C<sup>3</sup>RS/IMOU.

### **SECTION 11.1 – FRA’s Responsibilities in Support of the C<sup>3</sup>RS/IMOU**

FRA will oversee the scope and quality of NASA’s work. Experience gained from other modes has indicated that the willingness of employees to submit a Close Call Report depends to a large degree on preserving confidentiality of NSR, the reporting employee, and any other railroad employee, person, or third party named in those reports. FRA will not seek, and NASA will not release to FRA, any information that might reveal the identity of such employees, persons, organizations, locations, or events mentioned in Close Call Reports.

Specific FRA responsibilities include the following activities:

- Assign FRA personnel as necessary and available to assist the PRT in analyzing and summarizing emerging trends and recommend corrective action.
- Work with NASA to ensure that NASA fulfills its responsibilities as outlined in this C<sup>3</sup>RS/IMOU.

### **SECTION 11.2 – NASA Responsibility in Support of the C<sup>3</sup>RS/IMOU**

NASA’s responsibility in support of the C<sup>3</sup>RS/IMOU is to manage the C<sup>3</sup>RS and protect the confidentiality of the information. FRA will work with NASA to ensure NASA’s responsibilities outlined in this IMOU are fulfilled. NASA’s responsibility to protect the confidential information as outlined in this C<sup>3</sup>RS/IMOU will be governed by a separate Interagency Agreement (IA) between FRA and NASA providing for the development of a railroad safety reporting system. The performance of this C<sup>3</sup>RS/IMOU is contingent upon the finalization and the execution of the IA between FRA and NASA.

Additionally, NASA is responsible for timely review of Reported Close Calls. If a Reported Close Call provides safety-critical information that warrants immediate attention, NASA will notify NSR of the concern as soon as practicable.

NASA is also responsible for using information provided pursuant to the C<sup>3</sup>RS/IMOU to maintain a searchable database of de-identified reports of Close Calls, and analyzing the reports received to issue timely safety alerts about matters or events that present immediate safety concerns and to publish quarterly newsletters that communicate broader safety trends identified during its review of the collective Close Call Reports. NASA will also provide the PRT the option to request a quarterly teleconference.

### **SECTION 11.3 – NSR Responsibilities in Support of the C<sup>3</sup>RS/IMOU**

NSR shall not have any access to nor seek any NASA information that might reveal the identity of a reporting employee or any other NSR employee, person, or third party mentioned in a Close Call Report. By participating in the C<sup>3</sup>RS Pilot Program, NSR will:

- Ensure that any requisite waiver petition(s) are filed with FRA. NSR may rely on the AAR to fulfill this responsibility;
- Commit to support the use of C<sup>3</sup>RS by employees covered by this C<sup>3</sup>RS/IMOU at all levels of railroad management;

- Consult on the high-level implementation plan with all NSR's senior managers;
- Ensure NSR senior management and its supervisors cannot preempt an NSR PRT representative's decision-making discretion for an event reported;
- Use the information collected from the C<sup>3</sup>RS Pilot Program for the purpose of improving safety. NSR agrees not to use the information reported for the purpose of disciplining, decertifying, or disqualifying employees except for those circumstances covered in Section 6.1 and 6.2;
- Use the PRT recommended corrective actions to evaluate and implement corrective actions in a timely manner as recommended by a consensus of the PRT and PRT Support Team, with the PRT Support Team retaining final decision-making authority regarding the recommended implementation of corrective actions;
- Develop a communications plan for sharing findings with its employees in order to help achieve success in the C<sup>3</sup>RS Pilot Program;
- Fund a collective bargaining unit representative's participation on the PRT at the rate of one basic day at the current governing rate of the crafts represented per day worked, or make whole the labor representative for lost earnings, whichever is greater. When needed, NSR will pay for and reimburse travel expenses outside either the employee's duty area or outside of NSR's service area; and
- Provide travel for PRT members to attend the Annual User Group meeting at NSR's discretion.

#### **SECTION 11.4 – Collective Bargaining Unit(s) Responsibilities in Support of the C<sup>3</sup>RS/IMOU**

By participating in the C<sup>3</sup>RS Pilot Program, the collective bargaining units signatory to this C<sup>3</sup>RS/IMOU shall have the following responsibilities:

- Commit to and promote use of the C<sup>3</sup>RS Pilot Program at all levels of the organization;
- Appoint representatives to participate on the PRT & PRT Support Team; and
- Participate on the PRT & PRT Support Team to analyze emerging trends and recommend corrective actions.

#### **SECTION 11.5 – Peer Review Team's Responsibilities in Support of the C<sup>3</sup>RS/IMOU**

The PRT's primary responsibility will be to accept for review de-identified Close Call Reports from NASA, and to analyze these reports in order to:

- Identify and analyze emerging patterns or trends in Close Call Reports, relate those to corrective actions taken by NSR, and advise and assist with the implementation of corrective actions;
- Create, review, and discuss a summary report comprised of the individual Close Call

Reports, emerging trends, identified root causes, and suggested corrective actions;

- Assess the association between emerging patterns or trends in Close Call Reports and relate those to corrective actions taken by NSR;
- Review and determine whether Close Call Reports are eligible for this C<sup>3</sup>RS/IMOU's protections against discipline, certification revocation, or civil enforcement, including determining whether reported events are ineligible for protection as described in Section 6.2; and
- Ensure adherence to time limits within this C<sup>3</sup>RS Pilot Program /IMOU.

The PRT will function using, but not limited to, the following guidelines:

- PRT representatives will represent their constituencies' perspectives when reviewing or forming a comprehensive view of Close Call events.
- The PRT will develop a handbook for PRT governance and succession planning. The PRT can change the handbook as conditions warrant and in accordance with procedures established in the handbook.
- The PRT will meet two times a month and may adjust the frequency as needed.
- The PRT conducts business only when a quorum is present. A quorum is defined within the PRT handbook.
- The members of the PRT are encouraged to consult with their peers of industry experts for guidance on complex or sensitive matters where more information is desired to make an informed decision. The use of subject matter experts is encouraged.
- The PRT will conduct its own event analysis based on the NASA report.
- Each PRT representative is empowered to offer possible sources of risk, error recovery mechanisms, and corrective actions. Diverse perspectives are expected and encouraged. The PRT's opinions reflect a collaborative decision-making process among all PRT representatives.
- The PRT makes its decisions using consensus when assigning root causes and proposing corrective actions. It does not require that all members believe that a particular decision is the best one. Instead, all representatives' positions are given a proper hearing and are addressed, and a decision is one that all can accept.
- If there is a dispute concerning the application of this C<sup>3</sup>RS/IMOU, the PRT is encouraged to use interest-based problem-solving techniques to resolve the matter internally. The PRT may contact the FRA C<sup>3</sup>RS implementation team for assistance if the matter cannot be resolved internally.
- The PRT will protect the confidentiality of the reporting employee and will not disclose to any person or entity any information that would make it possible to identify the

reporting employee or any other railroad employee, person, or third party mentioned in the Close Call Report.

- The PRT will develop a communication strategy that provides information regarding the C<sup>3</sup>RS Pilot Program to the employees at the locations to which this C<sup>3</sup>RS/IMOU applies, including information regarding which events are eligible to be reported as close calls.

#### **SECTION 11.6 – PRT Support Team Roles and Responsibilities**

The PRT Support Team’s responsibilities include:

- Evaluating and, where appropriate, implementing corrective actions the PRT recommends in a timely manner;
- Providing technical support to the PRT, including during implementation of PRT-recommended corrective actions;
- Reviewing PRT decisions and providing feedback to the PRT, Parties, and other stakeholders;
- Reporting corrective actions NSR implements to the PRT or reporting why no action was taken;
- Distributing information regarding the corrective actions to the employees at the locations to which this C<sup>3</sup>RS/IMOU applies; and
- Reporting on the measured effectiveness of corrective actions to the PRT.

#### **SECTION 12 – Modifications**

Modifications to the C<sup>3</sup>RS/IMOU may be proposed at any time during the period of performance by any Party and shall become effective upon written agreement by all Parties.

#### **SECTION 13 – C<sup>3</sup>RS Pilot Program Duration/Employee Protections**

This C<sup>3</sup>RS/IMOU will be in effect for twelve (12) months following its full execution which will be considered the date the last signature(s) is applied or when FRA grants the requisite waiver petition from 49 CFR Parts 240 (Qualification and Certification of Locomotive Engineers) and 242 (Qualification and Certification of Conductors), whichever is later. The Parties note that on August 22, 2023, FRA granted a petition filed by AAR on behalf of NSR (and five other Class I freight railroads) for the requisite waivers. This C<sup>3</sup>RS/IMOU may be extended by written agreement by all Parties and may be cancelled before it expires as outlined below.

Cancellation of this C<sup>3</sup>RS Pilot Program/IMOU is subject to the following restrictions:

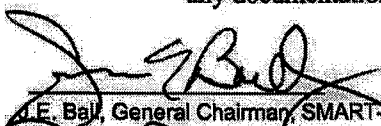

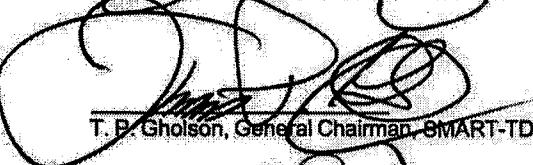
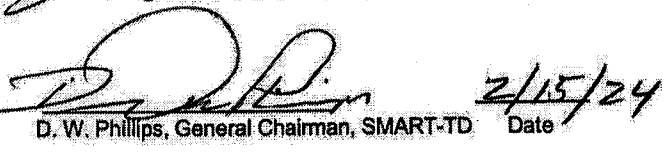

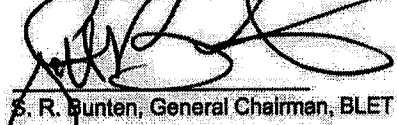
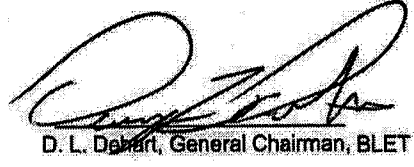

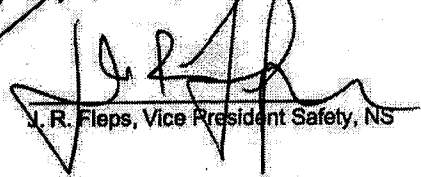
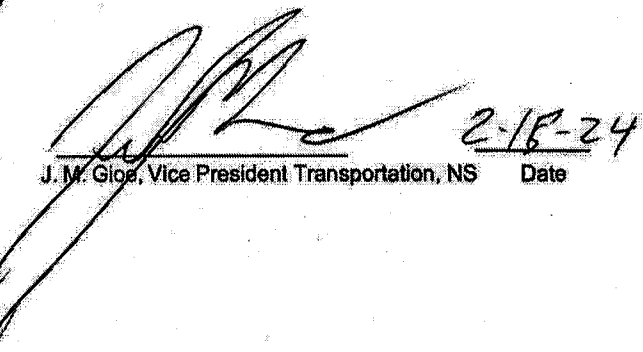

- Parties to this C<sup>3</sup>RS/IMOU may cancel their respective participation with 30 days’ written notice to all Parties;
- The termination or modification of the C<sup>3</sup>RS Pilot Program will not adversely affect any

person or organization that acted in compliance with the terms of the C<sup>3</sup>RS Pilot Program in effect at the time of that action; i.e., if the C<sup>3</sup>RS/IMOU is terminated, all reports and investigations that were in progress will be handled under the provisions of the C<sup>3</sup>RS Pilot Program until they are completed. Employees reporting a Close Call under this C<sup>3</sup>RS Pilot Program will remain protected from NSR discipline, revocation of certification, or FRA civil enforcement for reported events;

- Should any Party serve the appropriate cancellation notice, all Parties commit to meet within the 30-day period to seek resolution to avoid cancellation; and
- The confidentiality provided under this C<sup>3</sup>RS/IMOU survives its cancellation.

**SECTION 14 – Record Keeping**

To ensure compliance, all records and documents relating to this C<sup>3</sup>RS Pilot Program, including any documentation from the PRT, shall be kept in a manner prescribed by NSR.

 J.E. Bai, General Chairman, SMART-TD	_____	 J.A. Borders, General Chairman, SMART-TD	2/15/24 Date
 T.P. Gholson, General Chairman, SMART-TD	2/15/24 Date	 D.W. Phillips, General Chairman, SMART-TD	2/15/24 Date
 D.J. Weir, General Chairman, SMART-TD	2-15-24 Date		
 S.R. Buntin, General Chairman, BLET	2-15-24 Date	 D.L. Dehart, General Chairman, BLET	2-15-24 Date
 J.C. Sturdivant, General Chairman, BLET	2-15-2024 Date		
 J.R. Fleps, Vice President Safety, NS	2-15-24 Date	 J.M. Gios, Vice President Transportation, NS	2-15-24 Date
 R.W. Wong, Vice President Labor, NS	2/15/24 Date		

 Digitally signed by JOHN KARL ALEXY  
Date: 2024.02.15 21:01:43 -05'00'

Karl Alexy, Associate Administrator  
for Railroad Safety/ Chief Safety Officer, FRA..... Date



## APPENDIX I



U.S. Department  
of Transportation

Federal Railroad  
Administration

1200 New Jersey Avenue, SE  
Washington, DC 20590

VIA E-MAIL ONLY

August 22, 2023

Mr. Stephen Gordon  
Associate General Counsel for Safety  
Association of American Railroads  
SGordon@aar.org

**Re: Docket Number FRA-2023-0042**

Dear Mr. Gordon:

On May 30, 2023, the Association of American Railroads (AAR) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained in Title 49 Code of Federal Regulations (CFR) Parts 240 (Qualification and Certification of Locomotive Engineers) and 242 (Qualification and Certification of Conductors). AAR submitted the waiver petition on behalf of the six Class I freight railroads.<sup>1</sup> FRA assigned the petition Docket Number FRA-2023-0042.

This letter grants AAR's petition, subject to the two conditions noted below.

AAR's petition requests a waiver for the Class I freight railroads to participate in the FRA-sponsored Confidential Close Call System (C<sup>3</sup>RS) Program, a voluntary confidential program allowing railroads and their employees to report close calls. AAR's petition noted that the Class I freight railroads agreed to join C<sup>3</sup>RS based on an understanding that there would be an opportunity to address their concerns with C<sup>3</sup>RS through the Railroad Safety Advisory Committee (RSAC) C<sup>3</sup>RS Working Group, Task No. 2022-03. While the C<sup>3</sup>RS Working Group is currently seeking agreement among stakeholders on a C<sup>3</sup>RS Implementing Memorandum of Understanding (IMOU) for the Class I freight railroads, AAR's petition explained it was seeking the necessary waiver at this time so that there would be no delay in implementing C<sup>3</sup>RS once IMOU agreement is reached.

AAR's petition seeks relief on behalf of the Class I freight railroads from mandatory sanctions as required by Parts 240 and 242, in relation to revocation of engineer and conductor certification. The petition further acknowledges that for events to be considered covered events, they must be reported in accordance with a governing IMOU. AAR specifically requests relief from the following for covered events:

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<sup>1</sup> The six Class I freight railroads seeking relief are: BNSF Railway, Canadian National Railway, CPKC, CSX Transportation Inc, Norfolk Southern Corporation, and Union Pacific Railroad Company.

- § 240.117(e)(1)-(4);
- § 240.305(a)(1)-(4) and (6);
- § 240.307, *Revocation of certification*;
- § 242.403(b), (c), (e)(1)-(4), (e)(6)-(11), (f)(1)-(2); and
- § 242.407, *Revocation of certification*.

On June 16, 2023, FRA published a document in the *Federal Register* providing public notice of AAR's petition and inviting interested parties to submit written views, data, or comment for FRA's consideration.<sup>2</sup>

Three railway labor unions submitted comments to the docket supporting AAR's waiver request – the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART-TD), the Brotherhood of Locomotive Engineers and Trainmen (BLET), and Transportation Trades Department, AFL-CIO (TTD). These organizations are longstanding C<sup>3</sup>RS stakeholders and collectively represent several hundred members participating in current C<sup>3</sup>RS programs on other railroads. Overall, they expressed support for implementing C<sup>3</sup>RS on the Class I freight railroads as a valuable tool to promote railroad safety and the safety of their members. Their comments generally clarified, however, that their support of the waiver reflects their belief that the Class I freight railroads should join C<sup>3</sup>RS in accordance with the current structure established in the existing IMOU's.

After review of AAR's petition, the technical staff findings, and the comments from SMART-TD, BLET, and TTD, FRA's Railroad Safety Board (Board) determined that granting AAR's request is in the public interest and consistent with railroad safety. With regard to the labor unions' submitted comments, FRA notes that the continued success of C<sup>3</sup>RS within the rail industry requires the support of all involved stakeholders. FRA believes utilizing the RSAC process to achieve that support is the best method of facilitating the adoption of C<sup>3</sup>RS within the rail industry and commits to continuing work with the C<sup>3</sup>RS Working Group to achieve agreement on an IMOU for Class I freight railroads. FRA also agrees with AAR that granting the waiver now will help avoid delays in implementing C<sup>3</sup>RS once agreement on an IMOU is reached. Accordingly, the Board grants the waiver, subject to the following conditions:

1. This waiver takes effect for each Class I freight railroad only after an IMOU has been adopted and signed by the respective railroad's management, the representatives of the participating labor organizations, and FRA.
2. This waiver is limited to the relief necessary to implement the terms of the IMOU. This waiver incorporates by reference all applicable articles of the IMOU, including (but not limited to) articles governing real-time observations or otherwise establishing specific conditions under which a reporting employee is not protected from FRA enforcement and railroad discipline and/or revocation of certification.

This waiver expires 5 years from the date of this letter, or until either FRA, the railroad, or all participating labor organizations cancel participation in the C<sup>3</sup>RS program, whichever occurs

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<sup>2</sup> 88 FR 39505.

first. FRA reserves the right to extend the waiver if conditions warrant, and if AAR or an individual participating Class I freight railroad provides a written request for an extension at least 6 months before expiration of the waiver. Any request for an extension must (1) demonstrate the petitioner's compliance with the above-identified conditions; (2) comply with the requirements of § 211.7, *Filing requirements*, and § 211.9, *Content of rulemaking and waiver petitions*; and (3) be submitted via e-mail to [FRAWaivers@dot.gov](mailto:FRAWaivers@dot.gov).

FRA reserves the right to modify or rescind this waiver upon receipt of information pertaining to the safety of railroad operations or in the event of noncompliance with any condition of this letter. Further, FRA reserves the right to take enforcement action under 49 U.S.C. § 20111 for noncompliance with any condition of this letter or applicable Federal regulations.

In any future correspondence regarding this waiver, please refer to Docket Number FRA-2023-0042. If you have any questions, please contact Mr. Robert Castiglione, Staff Director, Safety Partnerships Division, at 817-247-3707 or [robert.castiglione@dot.gov](mailto:robert.castiglione@dot.gov).

Sincerely,



Digitally signed by JOHN KARL  
ALEXY  
Date: 2023.08.22 13:26:33 -04'00'

Karl Alexy  
Associate Administrator for Railroad Safety  
Chief Safety Officer

## **APPENDIX II**

For the specific and limited purposes of this pilot program, an employee reporting a Known Event as a close call pursuant to Section 6.4 and all applicable provisions of this C<sup>3</sup>RS/IMOU will receive discipline protection for two (2) reported Known Events involving the same type of non-compliance with an NSR operating rule during the 12-month period of the pilot program. The PRT is responsible for determining how many Known Events involving the same type of non-compliance an employee reports to C<sup>3</sup>RS.

Upon expiration of this 12-month pilot program, the Parties to this C<sup>3</sup>RS/IMOU agree to consider this Appendix and its effects upon the reporting of Known Events as close calls.