



**CONFIDENTIAL CLOSE CALL REPORTING SYSTEM
PILOT PROGRAM IMPLEMENTING MEMORANDUM OF
UNDERSTANDING**

JUNE 11, 2024



U.S. Department
of Transportation

**Federal Railroad
Administration**

SECTION 1 – Parties to Pilot Confidential Close Call Reporting System Implementing Memorandum of Understanding (C³RS/IMOU) (Parties)

- A. **American Train Dispatchers Association (ATDA):** recognized collective bargaining organization representing the craft of train dispatchers.
- B. **BNSF Railway (BNSF):** a railroad carrier.
- C. **Federal Railroad Administration (FRA):** an operating administration in the Department of Transportation (DOT) 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 and Goals

The Parties are voluntarily entering into this C³RS/IMOU with the intent of improving the safety of railroad operations.

- A. The intent of this C³RS 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 C³RS Pilot Program, employees should submit reports in good faith and provide a comprehensive and accurate accounting of events.
- B. The goals for this C³RS Pilot Program are as follows:
 - Enhancing safety at BNSF;
 - 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;
 - 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. Nothing in this IMOU is intended to modify, circumvent, or substitute for BNSF'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 C³RS 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 and Boundaries of Program

The C³RS/IMOU will apply to BNSF employees, including employees in training or probationary status, represented by the collective bargaining organization identified in Section 1, and will apply wherever those employees perform activities in support of BNSF railroad

operations. An employee must submit an accepted C³RS Report Form, in compliance with all applicable provisions of this C³RS/IMOU, in order to be protected from BNSF discipline/certification revocation and/or FRA civil enforcement. This C³RS/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 BNSF is a member.

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

C³RS Internal Pilot Program Staff means National Aeronautics and Space Administration (NASA) federal employees and NASA agents. For this C³RS Pilot Program, NASA agents may include NASA contractors.

Certification means qualification and certification of locomotive engineers under 49 CFR Part 240, the qualification and certification of conductors under 49 CFR Part 242, and any future qualification and certification of train dispatchers under a regulation published by FRA.

C³RS Report Form means the written or electronic form an employee uses to report a Close Call to NASA.

Close Call, 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 BNSF railroad operations that has been reported pursuant to this C³RS/IMOU. In order for a Reported Close Call to qualify for this C³RS/IMOU's discipline, certification revocation, and enforcement protections, it must be reported in accordance with all applicable provisions of this C³RS/IMOU, including (but not limited to) Sections 6.1, 6.2, 6.4, and 7.3.

Consensus is the voluntary agreement of all Parties.

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

Discipline is any BNSF 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 under 49 CFR Part 172.

ID Strip means the identification strip NASA issues to a reporting employee via United States Postal Service indicating NASA has accepted the close call.

Need to Know means when government employees and contractors may have access to information only if it is necessary for C³RS 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 C³RS/IMOU, including FRA, BNSF, and ATDA. The PRT will consist of an equal number of management and labor organization members who will be appointed and approved by BNSF and ATDA, 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 a 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 BNSF and ATDA, 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 contemporaneous observation by an FRA Safety Inspector or BNSF manager or supervisor of a violation of FRA regulations or BNSF’s operating procedures or practices. Real-time observation includes observations that occur during operational testing performed by BNSF supervisors or management and observations made by BNSF supervisors or management who are monitoring railroad operations contemporaneously, as further described in Section 7.3 (except for inward-facing cameras or other image or audio recording devices installed on locomotives).

Recording Device is any device (including a locomotive event recorder 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 video, voice, computer screen, and keystroke recordings.

Roadway Worker in Charge or RWIC means a roadway worker who is qualified under 49 CFR § 214.353 to establish on-track safety for roadway work groups, and lone workers qualified under 49 CFR § 214.347 to establish on-track safety for themselves.

Working limits means a segment of track with definite boundaries established in accordance with 49 CFR Part 214—Railroad Workplace Safety (Part 214) upon which trains and engines may move only as authorized by the roadway worker having control over that defined segment of track. Working limits may be established through “exclusive track occupancy,” “inaccessible

track,” “foul time” or “train coordination” as defined in Part 214.

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 C³RS/IMOU. The obligation to maintain the confidentiality of this information survives the cancellation and/or end of this C³RS/IMOU.

NASA shall act as the owner of the information that BNSF employees report under this C³RS/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 C³RS Report Form 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 C³RS 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 passenger or a contractor to the railroad) mentioned in the Close Call Report; and
6. Information that would make it obvious that 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 C³RS database.

The confidentiality of the information collected during this C³RS Pilot Program will be preserved in perpetuity beyond the cancellation and/or end of this C³RS 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 C³RS 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 C³RS Pilot Program will have access to de-identified reports and PRT work products.

SECTION 6 – Reporting Procedures

When an employee of BNSF covered by this C³RS/IMOU experiences a Close Call event, he or she should report the event and describe it in detail to NASA. NASA has developed a C³RS Report 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>.

BNSF 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 C³RS/IMOU.

If an employee experiences multiple Close Call events during a tour of duty, the employee must file a separate C³RS Report Form 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. BNSF will make paper forms, or access to electronic forms, available at work locations.

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 C³RS 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 C³RS/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 BNSF 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 C³RS 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

BNSF employees included in this C³RS/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 requires managerial notification and protection (e.g., the event resulted in damage to equipment or introduced a hazard into railroad operations) pursuant to BNSF operating rules and the employee failed to report the event in accordance with BNSF operating rules, including required timelines for reporting;

5. The employee's action or lack of action was intended to damage BNSF or another entity's operations or equipment or to injure other individuals, or intentionally placed others in danger (for example, sabotage);
6. The Reported Close Call occurred as a result of the unauthorized use of an electronic device by the employee submitting the Reported Close Call; or
7. The PRT determines that the report does not qualify for discipline protection pursuant to "Appendix I – Close Calls Subject to Reporting Limitations" at the end of this C³RS/IMOU.

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 BNSF Discipline, Railroad Revocation of Certification, or FRA Civil Enforcement

To receive protection from BNSF discipline, railroad revocation of certification, and/or FRA civil enforcement, an employee who experiences a Close Call event must submit a written (either paper or electronic) C³RS Report Form to NASA within 24 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 Wednesday). NASA may adjust this timeline for unforeseen circumstances, such as a system malfunction that prevents an employee from reporting a Close Call within 24 hours. In such a circumstance, the PRT shall similarly determine that the report qualifies for this C³RS/IMOU's protection provisions, except as provided for in Section 6.2.

SECTION 6.4 – Special Criteria for 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/or protection under BNSF policy or operating rules, shall be considered eligible Close Call events. Examples of Close Call events that must be reported immediately to a BNSF manager or supervisor include but are not limited to: failure to properly issue or maintain required blocking protection, failure to properly issue or release a mandatory directive, improper roadway worker protection, and incidents resulting in computer aided dispatching system or onboard electronic monitoring device activations (e.g., PTC). To facilitate analysis of such events, an employee will provide notification of the event to a BNSF manager or supervisor in accordance with BNSF operating rules, including required timelines for reporting. A C³RS report will be completed and submitted to NASA within the time limits set forth in Article 6.3.

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

The main purpose of this C³RS Pilot Program is for the Parties to learn more about the safety risks they face. An important element of the C³RS Pilot Program is the shielding of reporting employees from BNSF discipline, revocation of certification or FRA civil enforcement potentially arising from events reported under this system. This C³RS/IMOU also shields BNSF from FRA civil enforcement potentially arising from events reported under the C³RS Pilot

Program.

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, for an event reported to and accepted by NASA as a Close Call, in accordance with the applicable provisions of this C³RS/IMOU:

- BNSF 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 issued a rule governing qualification and certification of train dispatchers, and has granted the requisite waiver of compliance from any such rule, FRA agrees it will not require BNSF to revoke the certification of a reporting employee, and BNSF agrees not to initiate any such certification revocation.

The protections of this section apply to the retrospective discovery of Close Call events that have been reported in accordance with all applicable provisions of this C³RS/IMOU, including the retrospective (as opposed to real-time) use or review of recording device data or alerts; any video, audio, computer screen, or keystroke recordings; or any other recording of data.

No portion of any Close Call Report, including a PRT investigation or interview(s) concerning a Reported Close Call 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 BNSF employee mentioned in the report. Additionally, an employee who files a Close Call Report shall not appear as a witness in a BNSF discipline investigation or a certification revocation hearing involving 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 C³RS/IMOU.

Note: If FRA grants a waiver petition in question, copies of FRA's decision letter will be attached to this IMOU as an appendix and incorporated by reference.

SECTION 7.2 – Conditions Under Which BNSF Is Protected From FRA Civil Enforcement.

For a reported Close Call event, FRA will afford the same protection from civil enforcement action to BNSF, as that afforded to a BNSF employee covered by this C³RS/IMOU. For example, if an employee Close Call Report does not qualify for protection under one of the exceptions listed in Section 6.2, BNSF 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 a BNSF manager or supervisor, the observed employee must be informed of the observation as soon as possible, but not to exceed two (2) hours from the time the event occurred. Real-Time Observation does not include the retrospective review of recording device data or alerts; any video, audio, computer screen, or keystroke recordings; or any other recording of data.

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 BNSF'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 Inspection 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 BNSF or FRA provides the notification required in this section.

SECTION 8 – How an Employee Notifies BNSF or FRA of Protection From Railroad Discipline, Revocation of Certification or FRA Civil Enforcement

When BNSF initiates an investigation of an unsafe event or condition and an employee indicates that the event or condition has been reported under the C³RS/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 BNSF charging manager. If the BNSF charging manager can determine the ID Strip applies to the event, the discipline portion of the investigation will be closed.

If the employee and BNSF 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 C³RS/IMOU's protections against discipline, certification revocation, or civil enforcement.

If the PRT determines the event qualifies for protection under this C³RS/IMOU, charges and/or assessed discipline, including any revocation of certification, will be dismissed by BNSF 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 BNSF 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 proceeding(s).

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 C³RS implementation team for assistance in resolving the notice consistent with this C³RS/IMOU.

SECTION 9 – Use of C³RS Information

All Parties to this C³RS/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 C³RS Pilot Program are:

- FRA's Office of Railroad Safety;
- NASA;
- BNSF;
- ATDA;
- PRT and
- PRT Support Team.

SECTION 11 – Stakeholders' Responsibilities in Support of the C³RS/IMOU

The rights, roles, and responsibilities set forth in this C³RS/IMOU apply only to Parties, the Parties' employees, and stakeholders participating in the C³RS Pilot Program under this C³RS/IMOU.

SECTION 11.1 – FRA's Responsibilities in Support of the C³RS/IMOU

FRA will oversee the scope and quality of NASA's work. Experience gained from other operating administrations within DOT has indicated that the willingness of employees to submit a Close Call Report depends to a large degree on preserving confidentiality of BNSF, 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 and PRT Support Team in analyzing and summarizing emerging trends and recommend corrective action.
- Work with NASA to ensure that NASA fulfills its responsibilities as outlined in this C³RS/IMOU.

SECTION 11.2 – NASA Responsibility in Support of the C³RS/IMOU

NASA's responsibility in support of the C³RS/IMOU is to manage the C³RS 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 C³RS/IMOU is governed by a separate Interagency Agreement (IA) providing for the development of a railroad safety reporting system that has been signed and executed by FRA and NASA. The performance of this C³RS/IMOU is

contingent upon the continued implementation 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 BNSF of the concern as soon as practicable.

NASA is also responsible for using information provided pursuant to the C³RS/IMOU to maintain a searchable database of de-identified 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 – BNSF Responsibilities in Support of the C³RS/IMOU

BNSF shall not have any access to nor seek any NASA information that might reveal the identity of a reporting employee or any other BNSF employee, person, or third party mentioned in a Close Call Report. By participating in the C³RS Pilot Program, BNSF will:

- Ensure that any requisite waiver petition is filed with FRA within 30 days of the effective date of any final rule establishing the qualification and certification of train dispatchers. BNSF may rely on the AAR to fulfill this responsibility;
- Commit to support the use of C³RS by employees covered by this C³RS/IMOU at all levels of railroad management;
- Consult on the high-level implementation plan with all BNSF's senior managers;
- Ensure BNSF senior management and its supervisors cannot preempt a BNSF PRT representative's decision-making discretion for an event reported;
- Use the information collected from the C³RS Pilot Program for the purpose of improving safety. BNSF 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, where appropriate, corrective actions in a timely manner as recommended by a consensus of the PRT and PRT Support Team;
- Develop a communications plan for sharing findings with its employees in order to help achieve success in the C³RS 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, BNSF will pay for and reimburse travel expenses outside either the employee's duty area or outside of BNSF's service area; and

- Provide travel for PRT members to attend the Annual User Group meeting at BNSF's discretion.

SECTION 11.4 – ATDA Responsibilities in Support of the C³RS/IMOU

By participating in the C³RS Pilot Program, ATDA shall have the following responsibilities:

- Commit to and promote use of the C³RS 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 C³RS/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 BNSF, 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 BNSF;
- Review and determine whether Close Call Reports are eligible for this C³RS/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 C³RS 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 Reports.
- 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 C³RS/IMOU, the PRT is encouraged to use interest-based problem-solving techniques to resolve the matter internally. The PRT may contact the FRA C³RS 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 C³RS Pilot Program to the employees to whom this C³RS/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 BNSF implements to the PRT or reporting why no action was taken;
- Distributing information regarding the corrective actions to the employees to whom this

C³RS/IMOU applies; and

- Reporting on the measured effectiveness of corrective actions to the PRT.

SECTION 12 – Modifications

Modifications to the C³RS/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 – C³RS Pilot Program Duration/Employee Protections

This C³RS/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. This C³RS/IMOU may be extended by written agreement by all Parties and may be cancelled before it expires as outlined below.

Cancellation of this C³RS Pilot Program/IMOU is subject to the following restrictions:

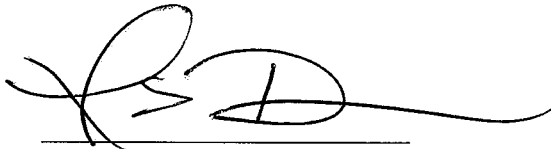
- Parties to this C³RS/IMOU may cancel their respective participation with 45 days' written notice to all Parties;
- The termination or modification of the C³RS Pilot Program will not adversely affect any person or organization that acted in compliance with the terms of the C³RS Pilot Program in effect at the time of that action; i.e., if the C³RS/IMOU is terminated, all reports and investigations that were in progress will be handled under the provisions of the C³RS Pilot Program until they are completed. Employees reporting a Close Call under this C³RS Pilot Program will remain protected from BNSF 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 45-day period to seek resolution to avoid cancellation; and
- The confidentiality provided under this C³RS/IMOU survives its cancellation.

SECTION 14 – Record Keeping

To ensure compliance, all records and documents relating to this C³RS Pilot Program, including any documentation from the PRT, shall be kept in a manner prescribed by BNSF.

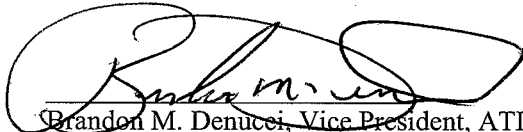
SECTION 15 – C³RS/IMOU Signatures

The Parties below approve this Implementing Memorandum of Understanding and the principles of the Confidential Close Call Reporting System.



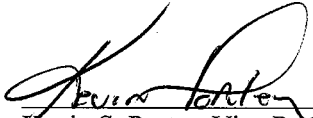
L. Ed Dowell, President, ATDA

6/11/2024
Date



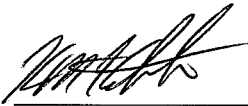
Brandon M. Denucci, Vice President, ATDA

6/11/2024
Date



Kevin S. Porter, Vice President, ATDA

6/11/2024
Date



Kevin Ketcham, General Chairman, ATDA

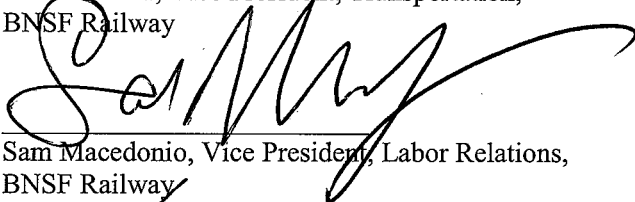
06/11/2024
Date

Matthew
Garland

Digitally signed by
Matthew Garland
Date: 2024.06.07
14:55:40 -05'00'

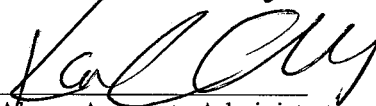
Matt Garland, Vice President, Transportation,
BNSF Railway

Date



Sam Macedonio, Vice President, Labor Relations,
BNSF Railway

6/11/2024
Date



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

6/11/2024
Date

APPENDIX I – Close Calls Subject to Reporting Limitations

For the specific and limited purposes of this pilot program, an employee reporting a Close Call that involves a violation of any of the following will receive discipline protection for two (2) such reported Close Calls during the 12-month period of the pilot program:

1. Improperly authorizing a train or other on-track equipment to enter into an out-of-service or blue flag protected track;
2. Granting permission for a train or other on-track equipment to enter into established RWIC limits without authority or permission from the RWIC;
3. Removal of blocking devices or established protection of RWIC working limits prior to the RWIC releasing the limits which results in a roadway worker occupying limits without proper protection;
4. Failure to properly apply blocking devices or establish proper protection for specified working limits or movements of trains or other on-track equipment which results in a train or other on-track equipment occupying working limits without proper protection;
5. Failure to properly issue or apply mandatory directives when warranted resulting in a roadway worker, train, or other on-track equipment occupying limits without proper protection, or a train or other on-track equipment exceeding the maximum authorized speed by greater than 10 miles per hour; or
6. Failure to establish proper protection for a train to enter Positive Train Control (PTC) or Cab Signal limits with inoperative or malfunctioning PTC or Cab Signal equipment which results in the train occupying PTC or Cab Signal limits without proper protection.

The PRT is responsible for determining whether a Reported Close Call counts as one of the six types of violations identified above.

After six months, the Parties agree to meet and evaluate the application of violations listed in this appendix and, if agreed upon, modify the list.

Upon expiration of this 12-month pilot program, the Parties to this C³RS/IMOU agree to consider this appendix and its effects upon the reporting of Close Calls.

DISCLAIMER: The violations listed above are identified exclusively for purposes of this C³RS/IMOU. Nothing in this C³RS/IMOU should be interpreted in relation to FRA's ongoing rulemaking regarding the certification of dispatchers, Docket No. FRA-2022-0019. *See* 88 Fed. Reg. 35574 (May 31, 2023). Similarly, nothing in this C³RS/IMOU should be construed as: (1) communication among the Parties to this C³RS/IMOU regarding the contents of the dispatcher certification rulemaking; (2) FRA's response to comments on the dispatcher certification Notice of Proposed Rulemaking published on May 31, 2023, or (3) indicative of any determination FRA may make regarding the contents of any promulgated dispatcher certification final rule. *Ibid.*