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June 11, 2009

Jo Strang
Associate Administrator for Railroad
Safety/Chief Safety Officer
Federal Railroad Administration
[Room W35-326]
1200 New Jersey Ave., S.E.
Washington, DC 20590

Dear Associate Administrator Strang:

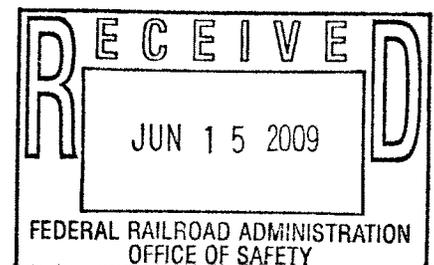
Following the New Jersey Transit Rail Corporation (NJTR) October 14, 2008 request to the Confidential Close Calls Reporting System Steering Committee (C3RS) to be considered as a pilot location for FRA's C3RS Demonstration Pilot project and our subsequent acceptance as a pilot site, NJTR, along with the American Train Dispatchers Association, the Brotherhood of Locomotive Engineers and Trainmen, and the United Transportation Union began the process of building a Peer Review Team and an Implementing Memorandum of Understanding (IMOU). I am pleased to enclose the signed IMOU for a C3RS demonstration pilot project on the entire NJTR system.

The IMOU is a consensus document developed by a team of dedicated employees who value safety above all. We are pleased to join Union Pacific and Canadian Pacific in working in this arena to enhance our Safety Management System. We believe this project will add value to our current processes. We look forward to FRA's review and support of this IMOU and the waiver petition that will be forwarded to Mr. Cothen shortly.

We would also like to acknowledge the invaluable assistance provided to us by members of your team, the Volpe Center, and the C3RS Steering Committee.

Sincerely,

Kevin J. O'Connor
Deputy General Manager
Transportation





**Confidential Close Call Reporting System
Implementing Memorandum of Understanding (C³RS/IMOU)
for New Jersey Transit**



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Article 1. PARTIES TO C³RS/IMOU (Parties)

- A. **American Train Dispatchers Association (ATDA):** the duly recognized collective bargaining representative of the craft of train dispatchers working within the boundaries of the Confidential Close Call Reporting pilot demonstration project.
- B. **Brotherhood of Locomotive Engineers and Trainmen (BLET):** the duly recognized collective bargaining representative of the crafts of NJT locomotive engineers and assistant engineers working within the boundaries of the Confidential Close Call Reporting pilot demonstration project.
- C. **Bureau of Transportation Statistics (BTS):** the Federal Agency responsible for maintaining the security of the confidential database and all materials reviewed by the Peer Review Teams.
- D. **Federal Railroad Administration (FRA):** an administration in the Department of Transportation charged with carrying out all railroad safety laws of the United States per 49 U.S.C. Section 103 and 49 C.F.R. 1.49.
- E. **New Jersey Transit (NJT):** a common carrier railroad.
- F. **United Transportation Union (UTU):** the duly recognized collective bargaining representative of the crafts of NJT conductors, assistant conductors, and yardmasters working within the boundaries of the Confidential Close Call Reporting pilot demonstration project.

Article 2. PURPOSE

The Parties are voluntarily entering into this C³RS/IMOU with the intent to improve the safety of railroad operations. The Parties have determined that based on over 20 years of experience of airlines' and foreign railroads' close call reporting systems, safety may be improved by implementing a system of voluntary, confidential, discipline-free reporting of close call events.

The objectives for reporting are:

- the accumulation of confidential data on currently unreported or underreported unsafe events;
- analysis of reported data by peer review teams (PRT);
- identification of corrective actions by the Parties to remedy identified safety hazards;
- provision of assistance by FRA in its safety oversight role, and;
- publication of general trends and statistics by government agencies.

Article 3. BOUNDARIES

The boundaries of the C³RS pilot demonstration project are defined as all New Jersey Transit owned and/or operated territory, including the Southern Tier and Pascack Valley Line (excluding Conrail and Amtrak territories not covered by C³RS).

Article 3.1. APPLICABILITY

The C³RS/IMOU will apply to all parties employed by NJT as described in Article 1, including employees in training or probationary status. Employees must submit an accepted C³RS report, subject to exceptions specified in Article 7.1 of this C³RS/IMOU to have protection from discipline and/or FRA civil enforcement. Additionally, NJT will be exempt from FRA civil

enforcement under the same terms as an employee for accepted C³RS reports. Only events reported by employees as defined by Article 1 and Article 3 are included. This C³RS/IMOU does not alter or modify any Collective Bargaining Agreement.

Article 4. DEFINITION OF "CLOSE CALL"

A reported close call is an opportunity to improve safety practices in a situation or incident that has a potential for more serious consequences. It represents a situation in which an ongoing sequence of events was stopped from developing further, preventing the occurrence of potentially serious safety-related consequences. Personal injuries and/or train accidents of any kind do not fall in the category of a close call, and will continue to be reported and handled in accordance with the current NJT rules and FRA regulations, or any subsequent revisions, to NJT rules and/or FRA regulations. A close call includes the following examples:

1. Events that occur but have low consequences, (e.g., a run-through yard switch, other than main track switch, that does not result in a train accident, improper blocking or missed repeat of NORAC Rule 241);
2. Events that have the potential for high consequences (e.g., a train in non-signal territory proceeds beyond its authority).

Article 5. CONFIDENTIALITY

BTS shall act as the owner of the data reported to it by NJT employees under this C³RS/IMOU, and protect the confidentiality of this information through its own governance and the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA)¹.

After all relevant data about a reported close call event, including the C³RS report and all other information collected by BTS that is relevant to the reported event, have been compiled into a unified document BTS will develop a depersonalized (redacted) document for further analysis by the Peer Review Team. BTS will redact this document so that the employee's identity or anyone mentioned in the original C³RS report can no longer be determined through direct or indirect means.

BTS shall protect the following information from disclosure when provided in a close call report:

1. The employee's 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 employees mentioned in the close call report;
4. The name of the carrier involved in the close call report; and
5. Information that would make it obvious that only a few (fewer than three), 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.

¹ "By Federal mandate, data collected by BTS are not subject to the Freedom of Information Act (FOIA) or third party litigation. In addition, under CIPSEA, raw data cannot be used for the development of regulations and cannot be released to another federal agency."

The confidentiality of the information collected during this project will be preserved beyond the cancellation and/or end of this project.

C³RS Confidentiality Procedures Manual, and any further amendments or revisions to this document are hereby incorporated into this agreement.

Article 5.1 ACCESS TO CONFIDENTIAL DATA

In the interest of providing the best measures for maintaining the confidentiality of the data, all internal project staff will be granted access to confidential internal use data on a “need to know” basis and for the purposes of completing their work assignments. All internal project staff shall receive confidentiality training and shall have signed confidentiality non-disclosure agreements. Internal project staff includes BTS federal employees and BTS agents. For this project, BTS agents will include BTS contractors assigned to this project, the Peer Review Team (PRT), and Volpe federal employees and contractors assigned to this project

For C³RS program evaluation (see Article 12.2.1) Volpe center staff will be granted access to PRT work products on a “need to know” basis. Internal data handling and “need to know” is further explained in the C³RS Confidentiality Procedures Manual. No additional uses of the data are allowed unless agreed to by all parties to this IMOU.

Article 6. REPORTING PROCEDURES

When an employee of NJT covered by this C³RS/IMOU, observes a safety problem or experiences a close call event, he or she should note the problem or event and describe it in detail using the BTS close call reporting form (See Article 6.2). The information from this form will be evaluated and depersonalized by BTS. The depersonalized information will be evaluated by the PRT. A separate close call report form is required for each safety problem or close call event experienced during a trip or tour of duty.

The reporting of close call events is not intended to circumvent nor meant to be a substitute for any existing NJT safety programs or reporting procedures. Rather, it is intended to be an additional tool for improving safety.

Article 6.1 CRITERIA FOR CLOSE CALL REPORT ACCEPTANCE

Reports can be accepted for any condition or event that is perceived as potentially endangering employees, the public, equipment, or the environment.

Any concern about one's own safety or someone else's safety at work can be reported.

Each close call report must contain sufficiently detailed information about an event so that a third party can evaluate it. An interviewer may call the employee to obtain more information about the event. If in doubt, the interviewer will err on the side of accepting the report.

BTS will conduct the first screening and the PRT the second screening.

The following types of reports will be rejected during the initial screening process:

1. Reports that do not include sufficient information and the reporting employee does not accept a follow up call when contacted;

2. Reports unrelated to railroad safety;
3. Urgent real-time issues (e.g., a runaway train);
4. Personal grievances;
5. Labor organization and/or management grievances; and
6. Any report that resulted in any type train accident, and/or has caused or alleged to have caused any injury, illness, or medical treatment of any kind to any person involved in the event.

BTS will provide the PRT with a summary of confidential reports that have been rejected for review.

Article 6.2 CLOSE CALL REPORT FORM

BTS has developed a close call report form that requests information about the date, time, location, contributing factors, actions taken, potential consequences, along with any other information necessary to fully describe the event or perceived safety problem.

The employee will complete the report form and submit it by mail to the BTS in accordance with the instructions on the form. BTS will mail a receipt to the employee.

NJT will make forms available at on and off duty locations. Electronic copies of the form are available on the BTS/Volpe Center Close Call web site <<http://closecallsrail.org>> (non-interactive; for downloading only). Further information on the reporting process can be found in Appendix B. The reporting form itself can be found in Appendix D.

Article 6.3 TIME LIMITS TO FILE REPORT AND RECEIVE PROTECTION FROM NEW JERSEY TRANSIT DISCIPLINE AND/OR DECERTIFICATION AND OTHER FRA ENFORCEMENT

To receive protection from NJT discipline and/or decertification and other FRA enforcement, an employee must report the event by telephone within 48 hours after the occurrence. Reports filed by telephone within the 48-hour time limit must be followed by a formal written close call report mailed to BTS within three Federal government business days after the phone call. The BTS telephone line is available 24 hours a day, seven days a week.

If the event reported is accepted, a receipt will be issued to the reporting employee.

If BTS determines the initial report contains insufficient information to determine acceptance, the report will receive provisional acceptance. Final eligibility for receipt issuance will be determined when the BTS rail safety expert obtains more information from the employee. BTS may call the reporting employee for further information and the reporting employee is encouraged to provide information. If, based on evidence gathered thus far, the close call report is accepted as valid by BTS, a receipt letter is issued and mailed to the reporting employee and an electronic record of such receipt is saved in the BTS close calls reporting system. In the event that an employee facing discipline or decertification has lost or misplaced the receipt, the reporting employee may request a duplicate receipt from BTS.

Article 6.4 SPECIAL ADDITIONAL CRITERIA FOR RUN-THROUGH YARD SWITCH CLOSE CALL EVENT REPORTING

The following additional criteria are required for an event involving a run-through yard switch to be considered a close call:

1. To facilitate root cause analysis of this type of event, the employee must provide immediate notification of the event to an appropriate NJT officer (e.g., a yardmaster or assistant chief train dispatcher) prior to filing a C3RS report by telephone;
2. The C3RS written report shall be completed and mailed to BTS within the established time limit set forth in Article 6.3 of this (IMOU) document;
3. The event must not result in any type of train accident (e.g., a yard derailment or collision); and
4. The event must not cause, nor be alleged to have caused, an injury, illness, or medical treatment of any kind to any person involved in the event.

BTS will provide a receipt for the written close call report as proof of an accepted report. The employee must allow NJT to review the receipt, when requested.

This article does not modify the company's (NJT) incident investigation procedures and/or Drug and Alcohol Testing policy. Also, this article does not cover events that are real-time observations.

Article 7. CONDITIONS FOR PROTECTION FROM NEW JERSEY TRANSIT DISCIPLINE AND/OR DECERTIFICATION AND OTHER FRA ENFORCEMENT

The main purpose of this close call reporting system is for the participating parties to learn more about the safety risks they face. An important element of the program is the shielding of employees from NJT discipline and/or decertification and other FRA enforcement potentially arising from events reported under this system. An additional concern is the need to also shield NJT from FRA enforcement potentially arising from events reported under this system.

Shielding employees and NJT from a possible enforcement action creates an environment where employees feel more comfortable disclosing information.

Confidential close call reporting protects the identity of the person disclosing information. The PRT is able to use the information to learn about system problems and to educate all parties. The reporting of close calls will foster an environment that enables the parties involved to understand system failures and implement improvement opportunities.

Article 7.1 CONDITIONS UNDER WHICH A REPORTING EMPLOYEE IS PROTECTED FROM NEW JERSEY TRANSIT DISCIPLINE AND/OR DECERTIFICATION AND OTHER FRA ENFORCEMENT

Except as provided below and in Article 7.2, NJT employees included in this C³RS/IMOU who report close calls, or are involved in the reported event, in accordance with Article 6, will be protected from discipline and/or decertification by NJT, provided an appropriate FRA waiver has been granted (see Appendix A).

Note: If FRA grants the waiver petitions in question, copies of the FRA's decision letters will be attached to this C³RS/IMOU and incorporated by reference.

FRA will not require NJT to revoke the certification of the employees if the event meets the following two conditions:

1. The employees action or lack of action was not intended to cause damage to NJT's operations, equipment, or personnel; and
2. The employee reports the close call event within the time limits set forth in Article 6.3, and the report is accepted as provided in Article 6.1.

Protection from NJT discipline requires that the same conditions apply.

An employee who violates a law, regulation, or operating rule under a direct order from a supervisor is protected from discipline and/or decertification.

Employees who file an accepted close call report are protected from discipline and/or decertification by NJT and from other FRA enforcement arising from the retrospective discovery of events involving violations of operating practices involving the event reported. This includes the retrospective (as opposed to real-time) use or review of event recorder data.

All employees covered by this IMOU that are involved in a close call event will be afforded the same protection as long as at least one member filed an accepted close call report.

are prohibited from using any information contained in a close call report to pursue or defend any disciplinary or enforcement actions.

All parties to this C3RS IMOU understand that this data is also protected by CIPSEA and must not be used for any purpose other than PRT analysis. Each of the PRT members must be trained on confidentiality and must sign a confidentiality agreement.

Article 7.2 CONDITIONS UNDER WHICH A REPORTING EMPLOYEE IS NOT PROTECTED FROM NEW JERSEY TRANSIT DISCIPLINE AND/OR DECERTIFICATION AND OTHER FRA ENFORCEMENT

NJT employees included in this C³RS/IMOU receive no protection from discipline and/or decertification and other FRA enforcement action when one or more of the following conditions occur:

1. The employee's action or lack of action was intended to damage NJT or another entity's operations or equipment or to injure other individuals, or intentionally places others in danger (e.g., sabotage);
2. The employee's action or lack of action involved a criminal offense;
3. The employee's behavior involved substance abuse or inappropriate use of controlled substances;
4. If the report is rejected by BTS/PRT.
5. The event resulted in any type train accident and/or has caused or alleged to have caused any injury illness, or medical treatment of any kind to any person involved in the event;

6. The event resulted in an identifiable release of a hazardous material; or
7. The event was observed in real-time by FRA and/or a railroad employee and reported to NJT management, except as provided in Article 6.4 where an employee is reporting a run-through yard switch close call event that has not resulted in any type train accident, and/or has not caused or alleged to have caused, any injury, illness, or medical treatment of any kind to any person involved in the event and must provide immediate notification of the event to NJT, or
8. The event was observed in real time as part of Efficiency Testing.

Efficiency testing generally consists of real-time observations and does not qualify for exemption. Similarly, an employee is not exempt from discipline and/or decertification for a violation that NJT or FRA identifies as real-time (e.g., the Train Dispatcher notices an unauthorized track occupancy). In such situations, NJT or FRA may use event recorder information to support discipline and/or decertification and for enforcement. For example, a NJT manager or supervisor who observes a train operating past a signal that requires a stop may use any relevant data recorded by the locomotive's event recorder⁴ in pursuing disciplinary action against the train crew, regardless of whether another employee has filed a close call report. (See Appendix C for the definition of "event recorders" and "immediate co-workers")

Article 7.3 CONDITIONS UNDER WHICH NEW JERSEY TRANSIT IS NOT PROTECTED FROM FRA ENFORCEMENT

FRA will also afford the same protection from enforcement action to NJT, as that afforded to a NJT employee covered by this IMOU, for any incident for which an accepted close call report is filed. Likewise, if an employee report falls under one of the exceptions listed in Article 7.2 and the employee is not afforded protection, NJT will also not receive protection from FRA enforcement action.

Article 7.4 CONDITIONS THAT ARE REQUIRED FOR REAL-TIME OBSERVATIONS

For an event to be considered as observed in real-time, as per article 7.2, items 7 and 8, the employee must be informed (or attempted to be informed by radio) of the observed violation by a NJT manager or supervisor as soon as possible, but not to exceed one hour from the time of the observation. Another employee witness must either be present or acknowledge that he or she heard the notification.

An event may also be considered as real-time upon notification by the observing FRA Inspector to the employee or the railroad as soon as possible after observing a rules violation. The FRA Inspector should document the time and location of the observation and the FRA Inspection Report (6180.96 report).

Article 8. HOW EMPLOYEES NOTIFY NEW JERSEY TRANSIT OR FRA OF PROTECTION FROM DISCIPLINE OR FRA ENFORCEMENT

Upon receiving written notice of any disciplinary charges from NJT or notice of FRA civil enforcement for an event that may have been properly reported to BTS, the affected employee and/or his or her immediate co-worker(s) will notify their union representative immediately that

they possesses or are waiting for a receipt or a duplicate receipt for a close call report involving the event.

Time limits for disciplinary proceedings will be consistent with existing collective bargaining agreements. If the BTS receipt has not yet been issued for a properly submitted close call report, postponements to verify receipts will be granted upon request.

When the receipt is available for review, the employee's union representative will present the receipt to a local manager who is a member of the PRT. If the local manager is able to determine that the receipt is applicable to the event, the charges will be withdrawn.

If the union representative and local manager do not agree that the receipt is applicable to the event in question, the union representative will present a copy of the receipt to the PRT, who will then accept or reject the receipt as proof of an accepted report of the event in question. If the PRT accepts the receipt, charges and/or assessed discipline will be withdrawn and all lost time will be paid. A charged employee and his or her union representative will be given an opportunity to attend the PRT meeting to discuss the specific event only. If the PRT rejects the receipt, neither party may use or reference the close call report in a disciplinary proceeding.

Upon receiving notice of FRA civil enforcement for an event covered by an accepted close call report, the employee and / or employee's union representative will present the receipt to the FRA PRT member for assistance in resolving the notice consistent with this IMOU.

Article 9. USE OF DATA

All participants in 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 risk and allocating resources to address those risks, and learning why these close calls are taking place.

Article 10. CORRECTIVE ACTIONS

Corrective actions are the actions taken by NJT labor and management in response to the PRT's recommendations concerning emerging trends and reported safety events.

Article 11. STAKEHOLDERS

The primary organizations that will be involved in the pilot demonstration project are:

- FRA's Office of Railroad Development;
- FRA's Office of Safety;
- BTS;
- D.O.T. Volpe Center ;
- NJT;
- ATDA
- BLET;
- UTU; and
- Peer Review Team (PRT)
- PRT Support Team

Article 12. STAKEHOLDERS' RESPONSIBILITIES IN SUPPORT OF THE C³RS/IMOU

The rights, roles, and responsibilities set forth in this C³RS/IMOU apply only to participants in the C³RS Pilot Demonstration Project pursuant to implementing MOUs that have been approved by the FRA. If the Pilot Demonstration Project involves a waiver of any FRA rules, the Parties shall submit a waiver request under 49 CFR § 211.41. In granting the waiver request, the FRA Railroad Safety Board may impose conditions necessary to assure safety.

There are ten primary stakeholder organizations that will be involved in the Pilot Demonstration Project. These include: FRA Office of Railroad Development, which will fund and sponsor the program for the industry; FRA Office of Safety, which will consult on the project's goals and implementation plan; BTS, which will collect and analyze the reporting data; the Volpe Center, which, on behalf of the FRA, will coordinate the Pilot Demonstration Project, conduct the program evaluation, and provide staff support to the project; NJT, which will implement the reporting system in the boundaries specified in Article 3; the ATDA, BLET and UTU, which will represent the employees providing the close call reports, the PRT which will analyze the data provided by BTS and make corrective action recommendations, and the PRT Support Team which will assist in implementing corrective action recommendations.

Article 12.1 FRA'S RESPONSIBILITIES IN SUPPORT OF THE C³RS/IMOU

The FRA will oversee the scope and quality of the work. Experience gained from other modes has indicated that the willingness of persons to submit a close call report depends to a large degree on preserving NJT's and the employee's confidentiality as well as that of persons named in those reports. Accordingly, FRA agrees to stay at arm's length from the close call reports before the identifying information (See Appendix B) has been removed. FRA will not seek, and BTS will not release to FRA, any information that might reveal the identity of such persons or organizations mentioned in close call reports.

Specific FRA responsibilities include the following activities:

1. Fund the C³RS Pilot Demonstration Project if Congress appropriates funds for the project. The duration of the project is dependent upon continued Congressional funding. As provided in Article 14, any party may terminate their participation in the project at any time;
2. Approve the project plan, budget, and detailed implementation;
3. Assign FRA employees to work on the PRT to analyze and summarize emerging trends as well as to recommend corrective actions;
4. Monitor the evaluation of the project;
5. Consult on the project's organization, goals, objectives, elements, and high-level implementation plan, as one of the stakeholders on the Close Call Steering Committee, already in existence; and
6. Develop a model corrective action protocol, which is a communications system with a feedback loop between NJT, BTS and the PRT.

Article 12.2 THIRD PARTIES' RESPONSIBILITIES IN SUPPORT OF THE C³RS/IMOU

BTS and the Volpe Center are independent third parties. The third parties' responsibilities in support of the IMOU are to manage the implementation of the close call reporting system and protect the confidentiality of the data. BTS will act as the owner of the data and protect the confidentiality of this information through its own governance and CIPSEA.

Other tasks include the following:

12.2.1 The Volpe Center:

Project Planning

1. Design the project's overall organizational structure; goals, objectives, elements; project plan; draft of budget; high-level implementation plan; detailed implementation plan; and oversight and management of the Pilot Demonstration Project.
2. Identify and prepare Pilot Demonstration Project sites, including training applicable employees and managers, and integration with other current NJT related efforts.
3. Provide a process for rigorous quality assurance of data input, output, content, and timeliness.
4. Manage the BTS/Volpe Center Close Call web site at www.closecallsrail.org

Manage reporting system

1. Participate in the development of quarterly reports/letters to summarize emerging trends and corrective actions. Post reports on the Close Call web site or any other appropriate websites as determined by the PRT and FRA.
2. Participate in the development of an annual report/letter describing the status of the C³RS Pilot Demonstration Project, any modifications made and lessons learned to date; describe emerging trends and recommended solutions; and put on the Close Call web site or any other appropriate websites as determined by the PRT and FRA.
3. Review data input, output, content, timeliness and make recommendations as part of quality assurance process

Program evaluation

The success of the C³RS Pilot Demonstration Project depends upon its implementation and how it impacts safety at NJT. A program evaluation will be conducted in a way to facilitate the smooth implementation of the project and measure the project's effectiveness in improving safety with a minimal burden to NJT. The Volpe Center will conduct the program evaluation component of this project with support from a third party and BTS. The following tasks related to program evaluation will be performed:

1. Collect baseline measures of safety and reporting culture for each participating railroad.
2. Measure performance by tracking safety numbers against the baseline to see if risk has been reduced.
3. Provide feedback to participants to improve the implementation of close call Pilot Demonstration Project. This includes review of PRT Multiple Cause Incident

Analysis (MCIA) reports or other worksheets and corrective actions recommendations

4. After there are three or more carriers involved in the C³RS Pilot Demonstration Project, prepare written baseline, mid-term and final reports, with NJT's approval prior to publication.

12.2.2 The Bureau of Transportation Statistics

Project planning

1. Design the project's organizational structure at the BTS level including developing goals, objectives, elements; project plan; draft of budget; detailed implementation plan; and oversight and management of BTS- C³RS operations.
2. Provide training to employees/contractors and managers participating in the BTS- C³RS project.
3. Develop a system for railroad employees to report close calls confidentially, including processes and procedures for data collection, and analysis and interpretation of reports.
4. Develop a C³RS report form to be used for reporting close call events to BTS.
5. Evaluate and acquire appropriate hardware and software to implement a confidential data reporting system.
6. Provide a process for rigorous quality assurance of data input, output, content, and timeliness at the BTS operations level.

Manage reporting system

1. Enter close call report in the tracking system if it meets acceptance criteria;
2. Conduct interviews with reporting employees to collect additional details about reported close call incidents;
3. Depersonalize close call report;
4. Analyze multiple reports for emerging trends and new sources of risk. Produce a railroad industry summary level report based on the collected data to NJT's Deputy General Manager Transportation and Deputy General Manager Safety and Training; PRT members; FRA Office of Safety; FRA Office of Railroad Development; and the General Chairpersons ATDA, BLET and UTU;
5. Send reports to those identified above about C³RS reporting patterns, emerging safety trends and corrective actions;
6. Make feedback available to employee on corrective actions;
7. Draft quarterly report to summarize emerging trends and corrective actions. Distribute to all participants in the C³RS Pilot Demonstration Project, including FRA;

8. Write an annual report describing the status of the C³RS Pilot Demonstration Project and any modifications made and lessons learned to date. Describe emerging trends and recommended solutions and distribute to participants in this C³RS Pilot Demonstration Project. This report will not be prepared until three or more carriers are involved in the project;
9. Track the PRT's root cause analysis results and proposed corrective actions;
10. Track the carrier's follow through on the implementation of corrective actions;
11. Track the effectiveness of a carrier's implemented corrective actions and their impact on a pilot demonstration project site's safety as reported to BTS; and
12. Ensure that all reports, letters, and any other documents containing analyses of data from C³RS reports and related information are treated as confidential until BTS reviews and approves them for public use.
13. Review corrective action recommendations received from PRTs and forward to IMOU signatories or their designees.

Program evaluation

The tasks that BTS will perform in support of program evaluation, with direction from the Volpe Center evaluation team, include:

1. Provide outside review and consultation on interim and final statistical analysis findings;
2. Conduct survey data collections for the baseline, mid-term, and final project evaluation reports. Design a Scantron version of the Volpe Center Railroad Safety Culture survey for a C³RS application at pilot demonstration project sites. Prepare survey administration package, receive and process surveys, clean data, perform factor analysis and basic descriptive statistics on survey data. Provide electronic copies of data, basic descriptive statistics, technical report of data cleaning and analysis procedures used in enough detail that they can be replicated for other railroads.

Article 12.3 NEW JERSEY TRANSIT'S RESPONSIBILITIES IN SUPPORT OF THE C³RS/IMOU

NJT shall not have any access to nor seek any BTS data that might reveal the identity of employees or individuals mentioned in a close call report (See Appendix B). By participating in the C³RS Pilot Demonstration Project, NJT will:

1. Commit to the support and use of the close call reporting system at all levels of the organization;
2. Consult on the high-level implementation plan with NJT's Deputy General Manager Transportation and Deputy General Manager Safety and Training;
3. Ensure NJT Support Team assists the PRT to analyze and summarize emerging trends as well as to recommend corrective actions;
4. Ensure senior management and supervisors cannot preempt their respective representative's decision-making discretion for an event reported;

5. Use the information collected from the close call Pilot Demonstration Project for the purpose of improving safety. NJT agrees not to use the information reported for the purpose of disciplining or decertifying employees except for those circumstances covered in Article 7.2;
6. Work with BTS to develop and implement a secure C³RS data access and storage process, in accordance with BTS requirements, to be used by the PRT;
7. Use the reports to take corrective action in a timely manner as recommended by a consensus of the PRT;
8. Develop a communications plan for sharing findings with its employees in order to help achieve success in this pilot demonstration project; and
9. Fund labor 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 shall make whole the labor representative for lost earnings, whichever is greater. When needed, travel expenses will be reimbursed or paid by NJT.
10. Ensure the NJT Support Team assists the Lessons Learned Team and BTS to acquire information and data needed for developing C3RS reporting trends and conducting project evaluation. Detailed specifications on data needed for such analyses will be presented to NJT's representative on the Support Team in the C3RS Data Request Document.

Article 12.4 ATDA, BLET'S and UTU'S RESPONSIBILITIES IN SUPPORT OF THE C³RS/IMOU

By participating in the C3RS Pilot Demonstration Project, the ADTA, BLET and UTU shall have the following responsibilities:

1. Commit to the use of the close call reporting system at all levels of the organization.
2. Consult with Volpe Center on the high-level implementation plan.
3. Appoint ATDA, BLET and UTU representatives to participate on the PRT; and
4. The ATDA, BLET and UTU shall participate on the PRT to analyze and summarize emerging trends as well as recommend corrective actions.

Article 12.5 PEER REVIEW TEAM'S RESPONSIBILITIES IN SUPPORT OF THE C³RS/IMOU

The PRT consists of individuals from the primary stakeholders (NJT, ATDA, BLET, UTU, and FRA) who represent their constituency's perspectives in forming a comprehensive view of close call events. The PRT will be composed of an equal number of representatives from NJT management and the labor organizations, ATDA, BLET and UTU (conductors and yardmasters), and one representative from the FRA. A representative from BTS may also participate on the PRT.

During the start up period of the Pilot Demonstration Project (the first six months) the PRT may utilize the membership of the Steering Committee Working Group for initial guidance and direction. The PRT will develop a handbook for PRT governance and succession planning. The handbook can be changed, by the PRT, as conditions warrant.

Following the start up period, the PRT will draw members from the local level of the primary stakeholders. Continuity of the PRT membership is essential for success.

The PRT will meet on a required basis, after agreeing to a schedule that considers the availability of PRT members. Meeting frequency will be adjusted by the PRT as needed. Their primary responsibilities include:

1. Analyze close call event reports

- Analyze each close call report after the identifying information has been removed (see Appendix B), and determining the root causes of the reported incidents.
- Generate and distribute feedback reports to PRT Support Team, giving feedback on close calls, emerging trends and newly identified risks, which were provided by BTS to the PRT.
- Assess the association between emerging patterns or trends in close calls, relate those to corrective actions to be taken by NJT, advise and assist with the implementation of corrective actions.
- Send proposed corrective action recommendations and/or presentations to BTS.
- Monitor, measure and track the effectiveness of the corrective actions and their impact on the Pilot Demonstration Project site's safety.

2. Analyze collective reports

- Analyze data from multiple reports.
- Identify emerging trends and new types of safety-critical events within and across the Pilot Demonstration Project site.
- 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 calls and relate those to corrective actions taken by NJT.
- Propose company-wide corrective actions to address new sources of risk and emerging trends.
- Review and discuss all reports prior to their distribution.

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

1. The PRT can conduct business only when a quorum is present. A quorum is defined within the PRT handbook.
2. The primary stakeholders on the PRT are encouraged to consult with their constituents and additional FRA or 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.

3. The PRT will conduct its own root cause analysis driven by the BTS report. Access to the root causes will be granted to the BTS.
4. Each 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.
5. The PRT makes its decisions using consensus when assigning root causes and proposing corrective actions. "Consensus" means the voluntary agreement of all representatives. 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.
6. If there is a dispute concerning the application of this IMOU, the parties signatory to this C³RS/IMOU will refer the matter to the General Chairmen of the ATDA, BLET and UTU and the NJT Deputy General Manager Transportation. The General Chairmen and NJT Deputy General Manager Transportation will consider the matter and recommend a resolution to the PRT. If this referral fails to resolve the dispute, the matter will be referred to the Disputes Subcommittee of the C³RS Steering Committee for consideration. The Disputes Subcommittee will be comprised of five members: two (2) representatives of labor, one of whom must be a representative of the organization involved in the dispute; two (2) senior representatives of NJT; and one (1) representative of the FRA Office of Safety. The Disputes Subcommittee will make recommendations on disputes referred to it by consensus, consistent with the purpose of this C³RS/IMOU (as stated in Article 2) and return the decision to the General Chairmen and NJT Deputy General Manager Transportation.
7. The PRT will protect the confidentiality of the reporting employee. The PRT will not disclose any information that would make it possible to identify the reporting employees mentioned in the close call report to any person or entity. All parties also agree to protect the confidentiality of any and all data, analysis, findings and recommendations related to this IMOU. The confidentiality of this information will survive in perpetuity.
8. The PRT will provide access to their analyses of BTS redacted reports and recommendations for corrective actions to federal employees and contractors of the Volpe Center for the performance of program evaluation as described in Article 12.2.1. These federal employees, contractors, and Steering Committee members will be granted access based on their "need to know" (for purpose of conducting program evaluation), after completion of confidentiality training and signing confidentiality non-disclosure agreement as specified in Article 5.1.
9. The PRT will meet in a mutually convenient central location with pay/expenses covered as in number 9 of Section 12.3.

Article 12.6 PRT SUPPORT TEAM ROLES AND RESPONSIBILITIES

The PRT Support Team will consist of individuals from the NJT appointed representatives' as well as representatives from FRA and labor organizations when requested.

Their responsibilities will include:

1. Support the PRT during implementation and provide continuing project oversight.
2. Provide support for the implementation of corrective actions.
3. Review PRT decisions and provide feedback to stakeholders.
4. NJT's appointed representative on PRT Support Team will report corrective actions implemented to the BTS or report why no action was taken. The NJT representative will also report on the measured effectiveness of corrective actions to the BTS.

Article 13. FINAL ACCEPTANCE AND MODIFICATIONS

This C³RS/IMOU is not effective until FRA approves a waiver of certain provisions of Title 49 of the Code of Federal Regulations that are identified in Appendix A. Final implementation of this C³RS/IMOU will be dependent on ADTA, BLET and UTU accepting and signing Appendix A.

Modifications to this C³RS/IMOU may be proposed at any time during the period of performance by any party to the C³RS/IMOU, and shall become effective upon written approval by all parties.

Article 14. PROJECT DURATION/EMPLOYEE PROTECTIONS

This C³RS/IMOU will be in effect until cancelled as outlined below. Cancellation of participation is subject to the following restrictions:

1. The ATDA, BLET or UTU signatory to this C³RS/IMOU may cancel their respective participation with a 30 days written notice to NJT. The notice will be mailed to NJT Deputy General Manager Transportation and the remaining signatories.
2. NJT may cancel participation with 30 days written notice to the ATDA, BLET and UTU signatories to this agreement.
3. FRA and BTS may cancel participation with 30 days written notice to NJT, ATDA, BLET and UTU. The continued participation of the FRA and BTS is contingent on the availability of FRA appropriated funds. In its written notice, FRA will advise NJT as to the status of any FRA waiver in connection with this IMOU at the conclusion of FRA's participation.
4. The termination or modification of the program will not adversely affect anyone who acted in reliance on the terms of the 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 program until they are completed. Employees reporting under this program will remain protected from NJT discipline and/or FRA enforcement for reported events.

5. Should any party serve the appropriate cancellation notice, all parties commit to meet within the 30-day period to seek resolution.
6. The confidentiality provided by this agreement survives its cancellation.

Article 15. RECORD KEEPING

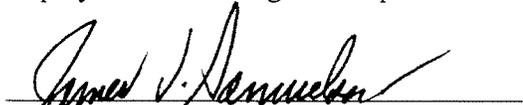
To ensure compliance, all records and documents relating to this program, including any documentation from the PRT shall be kept in a manner prescribed by BTS and CIPSEA regulations.

Article 16. C³RS/IMOU SIGNATURES

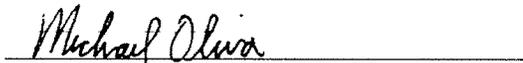
The parties signing below participated in the development of this C³RS/IMOU and support the concepts of close call reporting.


Kevin J. O'Connor
Deputy General Manager Transportation NJT

4/3/09
Date


James V. Samuelson
Deputy General Manager Safety and Training NJT

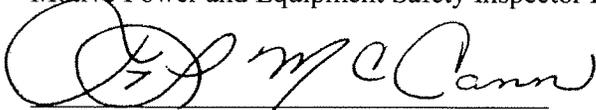
4/3/09
Date


Michael Oliva
Operating Practices Safety Inspector FRA

4/3/2009
Date


Edward J. Flynn
Motive Power and Equipment Safety Inspector FRA

4/3/2009
Date


Leo McCann
President ATDA

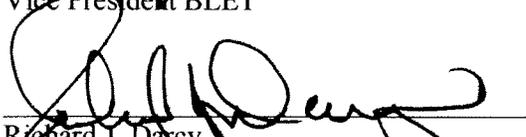
4/21/2009
Date


Jose Lantigua
General Chairman ATDA

4/24/2009
Date


Marcus Ruef
Vice President BLET

4/3/2009
Date


Richard J. Darcy
General Chairman BLET

4/3/2009
Date


James P. Brown
Local Chairman #373 BLET

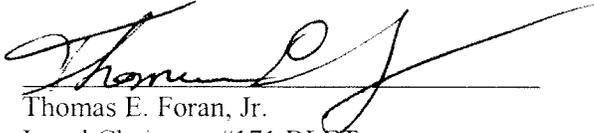
4/3/2009
Date



David C. Decker
Local Chairman #272 BLET

4/3/09

Date



Thomas E. Foran, Jr.
Local Chairman #171 BLET

4/3/09

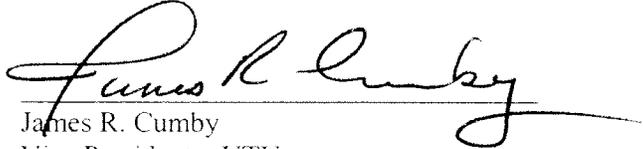
Date



Brian Gilmartin
Local Chairman #53 BLET

4/3/09

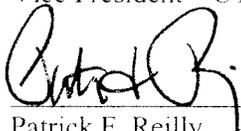
Date



James R. Cumby
Vice President - UTU

4-7-2009

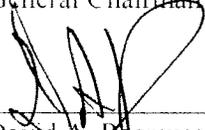
Date



Patrick F. Reilly
General Chairman UTU

4/3/09

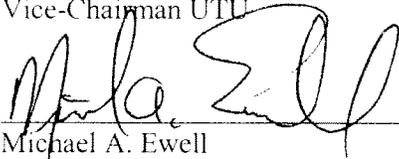
Date



David A. Rasmussen
Vice-Chairman UTU

4-3-09

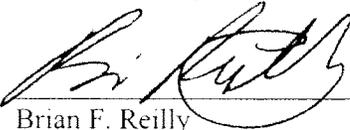
Date



Michael A. Ewell
Alternate Delegate UTU

4.3.2009

Date



Brian F. Reilly
Representative UTU-Y

4/3/09

Date



Mark Woodson
General Chairman UTU-Y

4-7-2009

Date

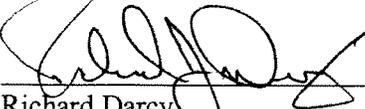
Article 17. C³RS/IMOU SIGNATURES

The parties below support this Implementing Memorandum of Agreement and the principles of a Confidential Close Call Reporting System.



Jose Lantigua
General Chairman ATDA

Date



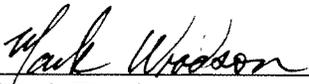
Richard Darcy
General Chairman BLET

Date



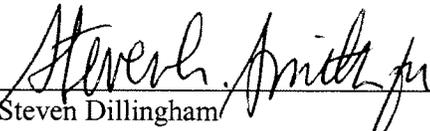
Patrick F. Reilly
General Chairman UTU

Date



Mark Woodson
General Chairman UTU

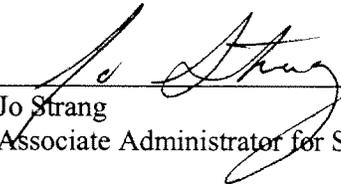
Date



Steven Dillingham
Associate Administrator and Director BTS

6/17/09

Date



Jo Strang
Associate Administrator for Safety FRA

7/1/09

Date

APPENDIX A: WAIVERS NECESSARY AS A CONDITION PRECEDENT TO PARTICIPATION IN THE C3RS PILOT DEMONSTRATION PROJECT

NEW JERSEY TRANSIT, UTU. AND BLET will not participate in the C³RS Pilot Demonstration project, unless FRA has granted waivers of the following sections with respect to the C³RS project as defined in Article 3 and 3.1.

49 CFR 240.117(e) (1) - (4);
49 CFR 240.305;
49 CFR 240.307

SIGNATURES:

Jose Lantigua for the ATDA
General Chairman – ATDA

Richard J. Darcy for the BLET
General Chairman - BLET

Patrick F. Reilly for the UTU
General Chairman – UTU GO-610

Mark Woodson for the UTU-Y
General Chairman - UTU GO-340

APPENDIX B: STEPS IN THE REPORTING PROCESS

Step	Responsible party
1. Identify an unsafe event or condition and initiate a close call report.	Employee(s)
2. Enter close call report in tracking system if it meets acceptance criteria. ¹ a. Confirm eligibility (See Article 6.1 and Article 6.4 criteria for close call report acceptance), b. Date stamp and assign number,	BTS/ Contractor
3. Interviewer calls employee(s) to collect additional details about close call event or unsafe condition. If it meets acceptance criteria, report receives final acceptance.	BTS/ Contractor
4. De-identify close call report.	BTS/ Contractor
5. Analyze individual close call report for preliminary root causes and error recovery mechanisms. Analyze multiple reports for emerging trends and new sources of risk. Produce a confidential report* based on the collected data.	BTS/ Contractor
6. Meet at regular intervals to: a. Analyze each close call report (after the identifying information has been removed) and root causes; b. Analyze summarized data from multiple reports; c. Identify new sources of emerging trends & new types of safety-critical risks; d. Assess the association between emerging patterns or trends in close calls, relate those to corrective actions to be taken by NEW JERSEY TRANSIT, and advise on implementation; e. Review and discuss a confidential summary report* comprised of the individual close call reports generated from the Close Call Reporting System, emerging trends, identified root causes and suggested corrective actions; f. Distribute confidential report* to NEW JERSEY TRANSIT and FRA giving feedback on close calls, emerging trends and newly identified risks, which were provided by BTS to the PRT: and g. Review and discuss all reports prior to their distribution.	PRT
7. Review NEW JERSEY TRANSIT's decisions on corrective actions.	NEW JERSEY TRANSIT
8. Provide BTS with information on decisions made with respect to corrective actions (See Article 10).	NEW JERSEY TRANSIT
9. Track corrective actions taken in response to close call events.	PRT
10. Make feedback available to employee on corrective actions.	BTS/ Contractor
11. Draft confidential quarterly report* to summarize emerging trends and corrective actions and distribute to all participants and FRA.	BTS/ Contractor
12. Write a confidential annual report* describing the status of the project, any modifications made and lessons learned to date: describe emerging trends and recommended solutions and distribute to all participants and FRA.	BTS/ Contractor

Reporting, tracking and corrective action monitoring systems all will be developed and improved over time.

*NEW JERSEY TRANSIT will review all confidential quarterly and annual reports generated prior to the dissemination of the report to insure each report is de-identified.

¹If initial report contains insufficient information to determine acceptance, report will receive provisional acceptance. Final eligibility will be determined when the interviewer obtains more information from the employee.

APPENDIX C: DEFINITIONS

1. **“Event Recorder”** means a device, designed to resist tampering, that monitors and records data on train speed, direction of motion, time, distance, throttle position, brake applications and operations (including train brake, independent brake, and, if so equipped, dynamic brake applications and operations), and, where the locomotive is so equipped, cab signal aspect(s), over the most recent 48 hours of operation of the electrical system of the locomotive on which it is installed. (See 49 C.F.R. § 229.5(g).)
2. **“Immediate Co-Worker”** means a member of the same train crew or work group. The determination, however, is not to be based merely on proximity, but on functionality as well. An engineer and a conductor in the cab of a locomotive would be immediate co-workers. A train crew conducting switching but separated from each other by distance, cars, etc., so that they are only in radio contact (i.e., not visual contact) may be members of the same train crew. Utility employees are immediate co-workers while attached to a train crew. Train dispatchers and yardmasters are immediate co-workers when they are directly or indirectly involved in an accepted reported event.
3. **“Real-Time Observation”** means direct visual observance of a violation of NJT’s operating rules or federal regulations by a NJT supervisor or FRA field inspector. Test and Qualification System (e.g., efficiency testing, train control signal testing) are real-time observations and do not qualify for exemption from discipline and/or FRA decertification and civil enforcement. Similarly, an employee is not exempt for a violation that NJT or FRA identifies contemporaneously (e.g. a block goes red and the dispatcher notices it before the train backs off the circuit.)
4. **“Discipline”** means any NJT action that would result in a materially adverse employment action like a suspension, termination, demotion, decertification, etc.
5. **“Reasonable Suspicion”** has the meaning given to that term in the current NJT Drug and Alcohol Policy, or any future revisions to the policy, as it applies to drug and/or alcohol testing authorized by 49 CFR Part 219.
6. **“Train Crews”** means any locomotive engineers, conductors, trainmen, switchmen, and hostlers or other employee(s) represented by BLET or UTU that are employed by NJT.
7. **“Train Dispatcher”** means any employee whose duties include the supervision and control of train movements.
8. **“Yardmaster”** means any employee whose duties include the supervision of crews and train movements within yards.
9. **“Train Accident”** as defined in 49 CFR 225 without regard to monetary reporting threshold.



**Confidential
Close Call
Reporting System**

C³RS Report Form

OMB NO: 2139-0010
EXPIRATION DATE: 11-30-2009

C³RS Receipt Number: _____ C³RS Date/Time Stamp: _____

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2139-0010. Public reporting of a close call is estimated to take approximately 30 minutes, including the time for reviewing instructions, completing and reviewing the report. Reporting any information to the Confidential Close Calls Reporting System (C³RS) is voluntary. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: C³RS Data Collection Officer, Dorostra Colbia, US DOT/BTS, 1200 New Jersey Avenue SE, Room E36-E14, Washington, D.C. 20590 or e-mail: Dorostra.colbia@dot.gov

Incident Description

Please provide your name and at least one telephone number where a C³RS rail safety analyst can contact you to discuss your report, if needed. Indicate the best time to call and if you authorize BTS to leave a voice mail message on your answering service. Please provide an address to receive notice which will serve as confirmation of your report.

DATE OF OCCURRENCE _____ TIME OF OCCURENCE (24 HR.) _____
 RR SUBDIVISION _____ M.P. _____ YARD _____

NAME _____ JOB TITLE _____

ADDRESS/PO BOX _____

CITY _____ STATE _____ ZIP _____

	PHONE NUMBER	BEST TIME TO CALL	CAN BTS LEAVE A VOICE MAIL MESSAGE?	TIME			
PRIMARY	() -		<input type="checkbox"/> YES	Eastern	Central	Mountain	Pacific
ALTERNATE	() -		<input type="checkbox"/> YES	Eastern	Central	Mountain	Pacific

Immediate Co-Workers

Please provide the name and job title of any immediate co-workers involved in an event eligible for protection from discipline. Please encourage your immediate co-worker(s) to file their own report(s) so they receive a receipt confirming their participation in this event. You may send in your reports together or separately.

NAME _____ JOB TITLE _____ PHONE # () -

NAME _____ JOB TITLE _____ PHONE # () -

NAME _____ JOB TITLE _____ PHONE # () -

To receive protection from discipline, call C³RS at 1.888.568.2377 (1.888.LOV.C3RS) within 48 hours of the event to file a report and mail the completed C³RS Report Form, postmarked within 3 calendar days of the call, not counting weekends and Federal holidays.

Mail your report to: C³RS
 Bureau of Transportation Statistics
 P. O. Box 23295
 Washington, DC 20026-3295



**Confidential
Close Call
Reporting System**

C³RS Report Form

OMB NO: 2139-0010

EXPIRATION DATE: 11-30-2009

Event Description

Please use the space below to continue your description of the event or condition you wish to report. Your responses to the questions below, where relevant, will enable reviewers to conduct a more complete analysis of the event/condition. Add as many details as possible to fully describe the event.

PLEASE PRINT CLEARLY.

- a. What were you and your crew doing immediately prior to the close call incident?
- b. What did you notice that made you think a problem was developing?
- c. What factors (weather, light, terrain, equipment, human error, etc.) may have contributed to the incident?
- d. What, if anything, was unusual or unfamiliar to you or your crew with respect to this job assignment?
- e. If anything or anybody interfered with your ability to perform the assigned task safely, describe how.
- f. What prevented this incident from becoming a more serious accident?
- g. What corrective actions can you recommend to prevent similar incidents from occurring in the future?
- h. What was the train consist? (Locomotives, loads, empties, tons, length, hazardous material shipments)

Engine #'s:

Distributed Power Units:

Loads: Empties: Tons: Length: ft. No. of Hazardous Material Cars:

Please provide a drawing depicting the incident on the back of this page. Use additional paper, if needed.

The information you provide will be used for statistical purposes only. In accordance with the BTS confidentiality statute (49 U.S.C. 111 (k)) and the Confidential Information Protection provisions of Title V, Subtitle A, Public Law 107-347, your responses will be kept confidential and will not be disclosed in identifiable form to anyone other than BTS employees or BTS agents such as telephone interviewers. In accordance with these confidentiality statutes, only statistical and non-identifying data will be made publicly available through reports. By law, every BTS employee and BTS agent has taken an oath of confidentiality and is subject to a jail term of up to 5 years, a fine of up to \$250,000, or both if he or she discloses ANY identifiable information about the respondent. BTS will not release to FRA or any other public or private entity any information that might reveal the identity of individuals or organizations mentioned in close call reports.

