



Transportation Trades Department, AFL-CIO

August 15, 2023

Mr. Karl Alexy
Associate Administrator for Railroad Safety & Chief Safety Officer
Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

**RE: Confidential Close Call Reporting System Petition for Waiver of Compliance
Docket No. FRA-2023-0042**

Dear Mr. Alexy,

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Federal Railroad Administration's (FRA) notice regarding the Association of American Railroads' (AAR) petition for a waiver of compliance from certain provisions of the federal railroad safety regulations contained at 49 CFR part 240 (Qualification and Certification of Locomotive Engineers) and 49 CFR part 242 (Qualification and Certification of Conductors). TTD consists of 37 affiliated unions, including those representing the totality of rail labor, and we therefore have a vested interest in this petition. For the reasons outlined below, we ask the FRA to grant this waiver while continuing to push the Class I railroads to join the Confidential Close Call Reporting System (C3RS). Additionally, we endorse the comments of our affiliates, the Brotherhood of Locomotive Engineers and Trainmen (BLET) and the International Association of Sheet Metal, Air, Rail and Transportation Workers, Transportation Division (SMART-TD).

The Confidential Close Call Reporting System (C3RS) is an important tool that allows rail workers to report safety incidents, or "close calls," to the FRA that do not meet the mandated reporting threshold.¹ C3RS is designed to shield reporting employees from disciplinary action related to a close call event, where an Implementing Memorandum of Understanding (IMOU) is in place, in order to ensure accurate reporting and provide a more complete representation of the rail operating environment. The system can provide invaluable information about safety concerns and hazards previously unreported to the FRA due to gaps in reporting requirements, and has the potential to vastly improve the safety of our rail system. Increased data collection will allow the FRA and the Class I railroads to address known and emerging safety concerns and strengthen safeguards for rail workers and the communities surrounding rail lines.

¹ <https://railroads.dot.gov/safety-data/forms-guides-publications/guides/monetary-threshold-notice>

We firmly believe that participation in this program will create a safer freight rail system and identify potential safety issues before they lead to dangerous catastrophes. TTD and our affiliates support the implementation of C3RS when it is used as a tool to encourage employees to report unsafe conditions encountered on the job. To that end, [TTD earlier this year](#) sent a letter to Administrator Bose urging the FRA to require Class Is to participate in C3RS as none currently do. United States Department of Transportation [Secretary Pete Buttigieg also urged](#) the railroads to join C3RS following the East Palestine, Ohio derailment. Just last week, FRA in its comprehensive system audit of Norfolk Southern (NS) recommended that NS join the C3RS program.²

As the AAR referenced in its correspondence on March 2nd to the Department of Transportation, the nation's six Class I carriers have stated their intent to enter into an IMOU to promote employees' participation in the close-call self-reporting program by shielding them from internal discipline. This would be an important step toward ensuring employee participation in the program. Comprehensive data collected through C3RS will enable the collaboration between rail carriers, labor, and regulators necessary to identify and address known and previously unknown safety concerns. In 2017, the Volpe Center found that utilizing C3RS resulted in a:

- 41% reduction in Human Factor derailments;
- 50% reduction in derailments caused by Run Through Switches;
- 53% reduction in Human Factor incident costs;
- 18% reduction in transportation injuries; and a
- 39% reduction in disciplinary hearings, resulting in \$890,000 in cost savings.³

These types of programs work in other transportation modes as well. Since the implementation of a similar program in the aviation industry, the Aviation Safety Reporting System (ASRS), the fatality rate decreased 83% in less than a 10-year span.

While TTD and our affiliates support this requested waiver to facilitate the AAR's and the Class I railroads' participation in C3RS, the current hypocrisy inherent in the premise of AAR's request should be noted. The AAR is requesting relief from mandatory FRA sanctions for violations of Part 240 or Part 242, which would allow workers to report close calls and receive disciplinary protection from the FRA for rule violations under these two parts. However, the AAR is currently balking at signing an IMOU ***that contains the exact same discipline protections for workers from the railroads' disciplinary policies***. These disciplinary protections are precisely what makes the C3RS program work because they encourage workers to report close-call incidents in the first place.

During the FRA Rail Safety Advisory Committee (RSAC) meetings on C3RS, AAR has consistently advocated for changes to the C3RS program's IMOU that would strip these worker protections and change the definition of a real-time event. AAR's stated rationale is that without these changes, employees will take advantage of the program to avoid disciplinary action. The C3RS program is not intended to shield workers who chronically make mistakes; nor does it

² <https://railroads.dot.gov/elibrary/norfolk-southern-safety-assessment> (see page 9)

³ <https://rosap.ntl.bts.gov/view/dot/38825>

encourage those who would use the program to willfully violate any safety rule. Such concerns are unfounded and frankly insulting to workers who want to use C3RS to improve the safety of the freight rail system and protect themselves, their fellow workers, and the communities that they operate in.

It has now been 20 years since the FRA first conducted research and held workshops with stakeholders, including the Class I railroads, that demonstrated the efficacy and safety benefit of railroad participation in a C3RS-type program. Yet the Class I railroads are still not enrolled in the C3RS program, and there is no firm timeline for them to join despite their commitment to do so earlier this year. It took the East Palestine, Ohio, derailment in February of this year to prompt the Class Is to voluntarily say they would join the program. The wide-reaching breadth of safety failures in the freight rail industry contributes to more than 1,000 freight rail derailments a year – nearly three a day. The C3RS program is one of the most important tools the rail industry should leverage to combat this persistent problem. If the Class I railroads’ commitment to improving safety of the industry is real and not just a buzzword, then joining the C3RS program is one of the simplest common sense steps they can take given its demonstrated effectiveness. Every day that the Class I’s are not utilizing C3RS is a missed opportunity to improve safety and potentially prevent the next East Palestine.

We therefore encourage the FRA to grant the AAR’s petition to facilitate their participation in C3RS but urge the FRA to keep pushing AAR and the Class I railroads to swiftly join the C3RS program using the terms of the existing IMOU. We appreciate the opportunity to comment on this docket and look forward to working with the FRA in the future.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg Regan', with a stylized flourish at the end.

Greg Regan
President