



**CONFIDENTIAL CLOSE CALL REPORTING SYSTEM
IMPLEMENTING MEMORANDUM OF UNDERSTANDING (C³RS/IMOU)
METRO-NORTH RAILROAD**

JULY 8, 2014



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Article 1. Parties to C³RS/IMOU (Parties)

- A. **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 United States Code (USC) Section 103 and 49 Code of Federal Regulations (CFR) §1.49.
- B. **Metro-North Railroad (MNR):** a common carrier railroad.
- C. **Association of Commuter Railroad Employees (ACRE):** the duly recognized collective bargaining representative of the crafts of Metro-North Transportation employees working within the boundaries of the Confidential Close Call Reporting Program.
- ACRE Division 77 on behalf of Yardmasters and Assistant Stationmasters
General Chairman-Anthony Bottalico
 - ACRE Division 1 on behalf of Conductors and Train Crew employees
General Chairman-Anthony Bottalico
 - ACRE Division 9 on behalf of Locomotive Engineers
General Chairman-Michael Doyle
 - ACRE Division 113 on behalf of Rail Traffic Controllers
General Chairman-James Fahey

Article 2. Purpose

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

The objectives for close call reporting are:

- The accumulation of confidential data on currently unreported or underreported unsafe events,
- 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

All territory owned and/or controlled by MNR.

Article 3.1 Applicability

The C³RS/IMOU will apply to all Parties employed by MNR as described in Article 1, governed by those signatory to this IMOU, including employees in training or probationary status. Employees must submit an accepted C³RS report, subject to conditions specified in Article 7.1 of this C³RS/IMOU, to have protection from discipline from MNR and/or FRA civil enforcement. Additionally, MNR will be exempt from FRA civil enforcement under the same terms as these individuals for accepted C³RS reports. This C³RS/IMOU does not alter or modify any Collective Bargaining Agreement.

Article 3.2 Other Covered Employees

C³RS reports within the Boundaries of this IMOU may be accepted from employees of other carriers if their employing carrier has an approved C³RS IMOU in effect.

Article 4. Definitions

“Adverse Consequences” The negative impacts that may result from a human error or system failure.

“Close Call” a reported close call that is an opportunity to improve safety practices in a situation or incident that has a potential for more serious *adverse consequences*. The reported close call represents a situation in which an ongoing sequence of events was stopped (except as outlined in Article 6.4) from developing further, preventing the occurrence of potentially serious safety-related consequences. Personal injuries do not fall into the category of a close call, and will continue to be reported and handled in accordance with the current MNR rules and FRA regulations, or any subsequent revisions to MNR rules and/or FRA regulations.

“Consensus” is the voluntary agreement of all representatives.

“Corrective Actions” action taken by MNR in response to the PRT's recommendations concerning emerging trends and reported safety events.

“Discipline” any MNR action that would result in a materially adverse employment action like a suspension, termination, demotion, written warnings, written counseling, etc.

“Event Recorder” a device, designed to resist tampering, that monitors and records data on train movements, direction of motion, occupancy, record of protection, time, distance, video, and voice recordings, etc.

“Electronic Train Monitoring Devices” a technological device or methodology for remotely identifying abnormal events, such as engineer induced emergency application of brakes.

“FRA-certified inspector” any individual authorized by the Secretary of Transportation to enter, inspect and examine lands, buildings, and equipment on railroad property.

“Hazardous material” a commodity designated as a hazardous material by 49 CFR Part 172.

“Immediate Co-Worker” 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, a passenger conductor, and assistant conductors working the same train would be immediate co-workers. A train crew conducting switching operations but separated from each other by distance, cars, etc., so that they are only in radio contact (i.e., not visual

contact) are members of the same train crew. Utility employees are immediate co-workers while attached to a train crew. Yardmasters or employees from other crafts are immediate co-workers when they are directly or indirectly involved in an accepted reported event.

“Need to Know” government employees and contractors may have access to information only if it is necessary for close call program management and programmatic evaluation and analysis. This “need to know” will be administered by the National Aeronautical Space Administration (NASA) and permission granted by the NASA Program manager.

“Real-Time Observation” observations or testing conducted by management or a FRA-certified inspector.

“Train Accident Reporting Threshold” as defined in 49 CFR Part 225 in regard to monetary reporting threshold.

Article 5. Confidentiality

NASA shall act as the owner of the data reported by MNR employee(s) under this C³RS/IMOU and shall protect the confidentiality of this information through its own governance.

After all relevant data about a reported close call event, including the C³RS report and all other information collected by NASA that is relevant to the reported event, have been compiled into a unified document, NASA will develop a de-identified document for further analysis by the Peer Review Team (PRT). NASA will de-identify this record so that the employee(s)’s identity, any third party reference, including anyone mentioned in the original C³RS report, can no longer be determined through direct or indirect means.

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

1. The employee close call report form and the content of that form,
2. The name of the employee who submits a close call report,
3. The name of any other employee mentioned in the close call report,
4. The name of the 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.
6. If NASA is unable to protect the confidentiality of the reporter, the report will not be forwarded to the PRT.

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

Article 5.1 Access to Confidential Data

In the interest of providing the best measures for maintaining the confidentiality of the data, all internal NASA program 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. Internal Program staff includes NASA federal employees and NASA agents. For this Program, NASA agents may include NASA contractors assigned to this Program. If the railroad chooses to use a PRT, the PRT assigned to this Program will have access to de-identified reports and PRT work products.

Article 6. Reporting Procedures

When an employee of MNR covered by this C³RS/IMOU, observes a safety problem or experiences a close call event, he or she should report the problem or event and describe it in detail to NASA. NASA has developed a close call 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 or perceived safety problem. NASA has a process for electronic submission or download of report forms at: <http://c3rs.arc.nasa.gov/report/electronic.html>.

The close call form will be evaluated and de-identified by NASA. The de-identified 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 tour of duty. The employee will complete the report form, either paper or electronic, and submit it in accordance with the instructions on the form. NASA will mail a receipt to the employee.

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

MNR will make forms available at work locations.

Article 6.1 Criteria for Close Call Report Acceptance

Reports will be accepted for any condition or event that is perceived as potentially resulting in adverse consequences. Any concern about one's own safety or someone else's safety at work should be reported.

Each close call report must contain sufficiently detailed information about an event so NASA can evaluate it. An interviewer may call the employee(s) to obtain more information about the event. If in doubt, the interviewer will err on the side of accepting the report. NASA will conduct the first screening and the PRT the second screening.

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

1. Any type of FRA reportable train accident/incident,
2. Any reported event that caused or is alleged to have caused any injury, illness, or medical treatment of any kind to any person involved in the event,
3. Acts of sabotage and other willful acts or criminal offenses including use of alcohol and prohibited controlled substances,
4. An event resulting in an identifiable release of a hazardous material.
5. Use of electronic devices as described in MN-400, Rule D.6 or General safety Instructions section 300.3.

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

1. Reports that do not include sufficient information when the reporting employee(s) does not accept a follow-up call when contacted,
2. Reports unrelated to railroad safety, including a train missing a station stop.
3. Personal grievances, such as a rejected time slip or perception of unfairness by a supervisor.

Article 6.2 Conditions Under Which a Reporting Employee is not Protected from Railroad Discipline and/or Revocation of Certification/Qualification and Other FRA Enforcement

MNR employees included in this C3RS/IMOU receive no protection from discipline, and 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 MNR or another entity's operations or equipment or to injure other individuals, or intentionally placed others in danger (for example, 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. The report is rejected in accordance with Article 6.1,
5. The event resulted in any type of FRA reportable train accident/incident,
6. The event caused or is alleged to have caused any injury, illness, or medical treatment of any kind to any person involved in the event,

7. The event resulted in an identifiable release of a hazardous material, or
8. The event is a real time observation or testing conducted by any MNR employee or an FRA certified inspector.

FRA will also afford the same protection from enforcement action to MNR, as that afforded to an MNR 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 6.2 and the employee is not afforded protection, MNR will also not receive protection from FRA enforcement action.

Article 6.3 Time Limits to File Report and Receive Protection from MNR Discipline and FRA Enforcement

To receive protection from MNR discipline and/or FRA enforcement, each employee with knowledge of the incident must submit a written (either paper or electronic) close call report to NASA within 48 hours.

If NASA determines the initial report contains insufficient information to determine acceptance, the report may receive provisional acceptance. Final eligibility for receipt issuance will be determined when the NASA rail safety expert obtains more information from the employee. NASA may call the reporting employee for further information and the reporting employee is encouraged to provide information. If, based on evidence, the close call report is accepted as valid by NASA, a receipt is issued to the reporting employee via United States Postal Service.

Any record of such receipt will not be available in the NASA close calls reporting system. If an employee facing discipline has lost or misplaced the receipt, the reporting employee may request a verification letter from NASA. This 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.

Article 6.4 Special Criteria for Known Event Reporting

This article does not modify MNR's incident investigation or Alcohol and Drug Testing policy, or supersede any OSHA requirements. This article does not include or cover events that are part of real time observations or operational testing conducted by MNR employees or an FRA certified inspector.

Events below the FRA reporting threshold that do not involve an injury, but would require managerial notification and/or protection, shall be considered eligible close call events. To facilitate analysis of such events, an employee will provide notification of the event to MNR management without undue delay. A C³RS report will be completed and submitted to NASA within the time limits set forth in Article 6.3.

MNR agrees it will not initiate any discipline for an event reported and accepted by NASA as a close call.

NASA will provide a receipt for the close call report as proof of an accepted report. The employee must allow MNR to review and copy the receipt, when requested.

Article 7. Purpose for Protection from MNR Discipline and 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 employee(s) from MNR discipline and/or FRA enforcement potentially arising from events reported under this system. An additional concern is the need to also shield MNR from FRA enforcement potentially arising from events reported under this system.

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

Article 7.1 Conditions under Which a Reporting Employee(s) is Protected from MNR Discipline and FRA Enforcement

Except as provided below and in Article 6.2, an MNR employee who submits a close call report will be protected from carrier discipline and FRA sanction. If an employee is unaware that a close call event has occurred and was properly reported by any other work group member, upon notification, the employee may then complete and submit a close call report in accordance with Article 6.3 and receive the same protections as the work group member who reported the close call. All employees who submit a close call report will be protected from MNR discipline and FRA sanctions provided the reports are submitted in accordance with Article 6 and Article 6.3, and appropriate FRA waivers have been approved.

An employee who has received protection from discipline and/or FRA sanctions by submitting a close call report will not be required to appear as a witness at an investigation of an employee who did not file a close call report.

Employees who file an accepted close call report are protected from discipline by MNR and from 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.

MNR and FRA 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, and must not be used for any purpose other than PRT analysis and development of corrective actions.

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

Article 7.2 Conditions under Which MNR is protected from FRA Enforcement

FRA will also afford the same protection from enforcement action to MNR, as that afforded to an MNR 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 6.2 and the employee is not afforded protection, MNR will also not receive protection from FRA enforcement action.

Article 7.3 Conditions that are required for Real-Time Observations

When an MNR manager makes a real-time observation under article 6.1 the employee(s) must be informed of the observed/witnessed violation as soon as possible, and reasonable attempts will be made to notify the employee within two hours from the time of the observation/witness of event.

An event may also be considered a real-time observation upon notification by an observing FRA-certified inspector to the employee(s) and/or the railroad as soon as possible after observing a rules violation. The FRA-certified inspector will document the time, date, location, and a description of the rules violation observed on a FRA Inspection Report (6180.96 report). The FRA-certified 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 observing the rules violation.

Article 8. How Employee(s) Notify MNR or FRA of Protection from Discipline or FRA Enforcement

When MNR initiates an investigation of an unsafe event or condition and an employee(s) indicates that the event or condition has been reported in accordance with the C³RS/IMOU, the time limits for pursuing discipline will be put in abeyance if necessary, pending a confirmation receipt from NASA.

When a receipt is available for review it will be presented to the railroad manager. If the railroad manager is able to determine that the receipt is applicable to the event, the investigation will be closed.

If the Parties do not agree that the receipt is applicable to the event, the employee(s) 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, the investigation will be closed.

If the PRT rejects the receipt, the railroad manager will be advised and the time limits for initiating disciplinary proceedings may commence. In such cases, neither party may use nor reference the close call report in the subsequent disciplinary proceedings.

Upon receiving notice of FRA civil enforcement for an event covered by an accepted close call report, the employee(s) will present the receipt to the FRA 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. Reserved

Article 11. Stakeholders

The primary organizations that will be involved in the Program are:

- FRA's Office of Railroad Safety,
- NASA,
- MNR,
- ACRE,
- Peer Review Team (PRT),
- Support Team
- ConnDOT

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 Program pursuant to any IMOU that are approved by the FRA. If the Program 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.

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 the confidentiality of MNR, the reporting employee(s), and immediate co-workers named in those reports. FRA will not seek, and NASA will not release to FRA, any information that might reveal the identity of such persons, organizations, locations or events mentioned in close call reports.

Specific FRA responsibilities include the following activities:

- Fund the C³RS Program if Congress appropriates funds for the Program. The duration of the Program is dependent upon continued Congressional funding. As provided in Article 14, any party may terminate their participation in the Program at any time;
- FRA may assign personnel to assist the PRT to analyze and summarize emerging trends, as well as to recommend corrective actions;

Article 12.2 Third Party Responsibility in Support of the C³RS/IMOU

Third party responsibility in support of the IMOU is to manage the close call reporting system and protect the confidentiality of the data. FRA will work with NASA to ensure its responsibilities outlined in Article 5 and 5.1 are fulfilled. NASA's responsibility to protect the confidential information as outlined in this IMOU will be governed by a separate Interagency Agreement (IA) between FRA and NASA providing for the development of a railroad safety reporting system. The performance of this IMOU is contingent upon the finalization and execution of the IA between FRA and NASA.

Article 12.3 MNR Responsibilities in Support of the C³RS/IMOU

MNR shall not have any access to nor seek any NASA data that might reveal the identity of employee(s) or individuals mentioned in a close call report. By participating in the C³RS Program, MNR will:

- Commit to the support and use of the close call reporting system at all levels of the organization,
- Consult on the high-level implementation plan with all MNR's Senior Managers,
- Ensure senior management and supervisors cannot preempt their respective representative's decision-making discretion for an event reported,
- Use the information collected from the close call Program for the purpose of improving safety. MNR agrees not to use the information reported for the purpose of disciplining or disqualification of employee(s) except for those circumstances covered in Article 6.1,
- Use the PRT recommended corrective actions to evaluate and implement corrective actions in a timely manner as recommended by a consensus of the PRT and the PRT Support Team,
- Develop a communications plan for sharing findings with its employee(s) in order to help achieve success in this Program.

Article 12.4 Labor Union(s) Responsibilities in Support of the C³RS/IMOU

By participating in the C³RS Program, labor unions signatory to this IMOU shall have the following responsibilities:

- Commit to and promote use of the close call reporting system at all levels of the organization,
- Appoint representatives to participate on the PRT, and
- 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 is a multi-stakeholder problem solving team that consists of subject matter experts from the crafts, managers, and FRA. A representative from NASA may also participate on the PRT.

The PRT will develop a handbook for PRT governance and succession planning. The PRT can change the handbook as conditions warrant.

The PRT may draw subject matter experts from each craft to assist in problem solving. Continuity of the PRT membership is essential for success.

MNR will determine the resources available for the PRT size and meeting time. Meeting frequency will be adjusted by the PRT as needed. Its primary responsibilities include:

Analyze close call event reports:

- Analyze each close call report after the identifying information has been removed and determine the root causes of the reported incidents,
- Generate and distribute feedback on close calls, emerging trends, and newly identified risks,
- Send proposed corrective action recommendations and/or presentations to management,
- Follow-up on the effectiveness of implemented corrective actions.

Identify and analyze multiple reports:

- Identify and analyze emerging patterns or trends in close calls, relate those to corrective actions taken by MNR, and advise and assist with the implementation of corrective actions,

- 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 MNR,

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

- The PRT conducts business only when a quorum is present. A quorum is defined within the PRT handbook,
- The primary stakeholders on the PRT are encouraged to consult with their peers 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,
- The PRT will conduct its own event analysis driven by the NASA report,
- 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,
- 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 IMOU, the Parties signatory to this C³RS/IMOU are encouraged to use interest based problem solving techniques to resolve the matter internally. PRT's 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(s). The PRT will not disclose any information that would make it possible to identify the reporting employee(s) 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.

Article 12.6 PRT Support Team Roles and Responsibilities

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

Their responsibilities will include:

- Support the PRT during implementation and provide continuing project oversight,
- Evaluate and implement corrective actions recommended by the PRT in a timely manner,
- Review PRT decisions and provide feedback to stakeholders,
- MNR's appointed representative on PRT Support Team will report corrective actions implemented to PRT or report why no action was taken. The MNR representative will also report on the measured effectiveness of corrective actions to PRT.

Article 12.7 Reserved

Article 13. Modifications

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. Program Duration/Employee(s) Protections

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

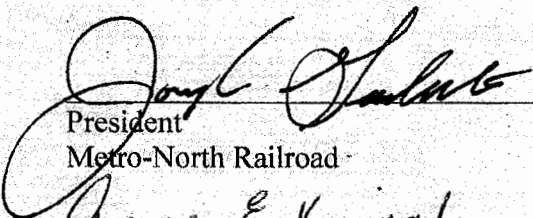
- Parties to this C³RS/IMOU may cancel their respective participation with a 45 day written notice,
- The termination or modification of the Program will not adversely affect anyone who acted in compliance with the terms of the Program in effect at the time of that action; i.e., if the C³RS/IMOU is terminated, all reports and investigations that were in progress will be handled under the provisions of the Program until they are completed. Employee(s) reporting under this Program will remain protected from MNR discipline and/or FRA 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,
- 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 MNR.

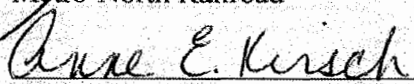
Article 16. C³RS/IMOU Signatures

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


President
Metro-North Railroad

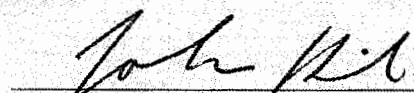
Date

2/15/14


Chief Safety and Security Officer
Metro-North Railroad

Date

7/14/14


Senior Vice-President of Operations
Metro-North Railroad

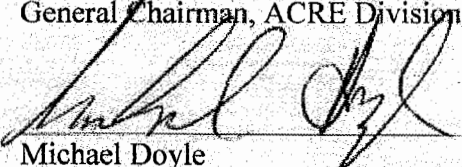
Date

7-14-14


Anthony Botalico
General Chairman, ACRE Divisions 1 and 77

Date

7-10-14


Michael Doyle
General Chairman, ACRE, Division 9

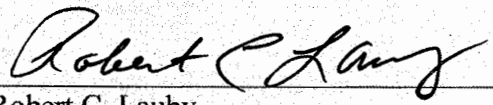
Date

7/8/14


James Fahey
General Chairman, ACRE, Division 113

Date

7-10-14


Robert C. Lauby
FRA Associate Administrator for Railroad Safety/
Chief Safety Officer

Date

9-16-14