

# FRA Data Protections

*FTA Joint State Safety Agency Oversight and  
Rail Transit Agency Workshop and Training*

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# FRA Structured Safety Performance Programs

- System Safety Program (“SSP”) Final Rule
  - A structured program with proactive processes and procedures, developed and implemented by passenger railroads
  - Final Rule issued August 12, 2016 (81 FR 53850)
  - Currently stayed through December 4, 2018
- Risk Reduction Program Proposed Rule
  - NPRM issued February 27, 2015 (80 FR 10950)
  - Proposed requirement for similar programs for Class I and certain other freight railroads

# Statutory Data Protection Authority

- FOIA Exemption for Safety Risk Reduction Program or Pilot Program (49 U.S.C. § 20118)
  - General FOIA exemption for “any part of any record ... related to the establishment, implementation, or modification of a railroad safety risk reduction program or pilot program,” except as required by Federal law or allowed by limited discretionary exceptions
- Study Regarding Discovery or Admission of Certain Reports (49 U.S.C. § 20119)
  - Study “to evaluate whether it is in the public interest, including public safety and the legal rights of persons injured in railroad accidents, to withhold ... railroad safety risk reduction program” data

# § 20118 Exemption

- Risk reduction records obtained by FRA are exempt from the public disclosure requirements of FOIA
- Limited Exceptions:
  - Disclosure is necessary to enforce or carry out any Federal law
  - Disclosure is necessary when a record is comprised of facts otherwise available to the public *and* disclosure would be consistent with the confidentiality needed
- FRA therefore believes that railroad risk reduction records would generally be exempted under FOIA

# § 20119 Study Results

- Study and Analysis Prepared by Baker Botts L.L.P. in October 2011
- Considered...
  - existing DOT regulations regarding discovery requests,
  - other Federal statutes and regulations protecting safety-related information,
  - more than 25 public comments, and
  - various legal and policy positions raised
- Conclusion: “[A] rule protecting railroad safety risk information from use in civil litigation involving claims for personal injuries or wrongful death would serve the broader public interest.”

# Hazard and Risk Information and Civil Discovery

- FRA implemented data protection under § 20119
- SSP success depends on robust assessment of the hazards and resulting risks for railroad operations
- Protection from:
  - discovery, admissibility into evidence, or use for other purposes in a proceeding for damages involving personal injury, wrongful death, or property damage
  - State discovery rules and sunshine laws
- Protection applies to information generated solely for SSP development, implementation, or evaluation

# Confidential Close-Call Reporting System (C<sup>3</sup>RS)

- Partnership between NASA, FRA, railroad carriers, and labor organizations
- Employees whose carrier and craft are covered by a written Implementing Memorandum of Understanding can participate in C<sup>3</sup>RS and receive a waiver from discipline for covered actions
- Anyone submitting a report to C<sup>3</sup>RS will receive confidential treatment
- A Peer Review Team (carrier, union, and FRA representatives) receives de-identified reports and may recommend corrective actions based on its independent analysis

# C<sup>3</sup>RS Data Protection

- NASA has administered Aviation Safety Reporting System (ASRS) since 1976 with no violations of confidentiality
- FOIA
  - Exemption 3 would apply (through § 20118) if part of risk reduction records provided to FRA
  - Exemption 4 would apply due to confidentiality interest in business records
- Courts also recognize the importance of confidential reporting



# Questions?

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