

**INFORMATION COLLECTION  
SUPPORTING JUSTIFICATION  
Secretary's Emergency Order Docket No. DOT-OST-2014-0067  
OMB No. 2130-NEW**

Summary of Submission

- This submission is a new collection of information requesting **Emergency processing** for the Secretary's Emergency Order Docket No. DOT-OST-2014-0067, which was issued on May 7, 2014, and is available through the Department's public docket system at [www.regulations.gov](http://www.regulations.gov). FRA is requesting **Emergency processing** upon publication of the required **Emergency processing Federal Register** Notice on **May 13, 2014**, because this Emergency Order was effective immediately and the notification requirements must be completed within 30 days of the date of this Order.
- The total number of burden **requested** for this collection of information is **3,778 hours**.
- Total number of **responses requested** for this information collection is **219**.
- **\*\*The answer to question number 12 itemizes the hourly burden associated with each requirement of this rule (See pp. 11-14).**

**1. Circumstances that make collection of the information necessary.**

The Secretary of Transportation has the authority to regulate the transportation of petroleum crude oil in commerce. 49 U.S.C. 5103(b). The Secretary of Transportation has designated petroleum crude oil, UN 1267, 3, Packing Group I, II, or III, as a hazardous material subject to the requirements of DOT's Hazardous Materials Regulation (HMR) (49 CFR parts 171 to 180). 49 U.S.C. 5121(d); 49 U.S.C. 5103(a). Commerce is as defined by 49 U.S.C. 5102(1) and 49 CFR 171.8, and "transportation" or "transport" are as defined by 49 U.S.C. 5102(13) and 49 CFR 171.8. A "railroad" is as defined by 49 CFR 171.8. Accordingly, railroads that transport petroleum crude oil in commerce by rail are subject to the authority and jurisdiction of the Secretary, including the authority to impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or an opportunity for hearing, to the extent necessary to abate the imminent hazard. 49 U.S.C. 5121(d).

An imminent hazard, as defined by 49 U.S.C. 5102(5), constitutes the existence of a condition relating to hazardous materials that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk that death, illness, injury or endangerment.

The number and type of petroleum crude oil railroad accidents described below that have occurred during the last year is startling, and the quantity of petroleum crude oil spilled as a result of those accidents is voluminous in comparison to past precedents. Due to the volume of crude oil currently being shipped by railroads, the demonstrated recent propensity for rail accidents involving trains transporting crude oil to occur, and the subsequent releases of large quantities of crude oil into the environment and the imminent hazard those releases present, this Order requires that railroads take the action described above to assist emergency responders in mitigating the effects of accidents involving petroleum crude oil trains. Releases of petroleum crude oil, subsequent fires, and environmental damage resulting from such releases represent an imminent hazard as defined by 49 U.S.C. 5102(5), presenting a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur.

The United States has experienced a rapid growth in the quantity of petroleum crude oil being shipped by rail in recent years. The growth has largely been sparked by developments in North Dakota, where the Bakken formation in the Williston Basin has become a major source of crude oil in the United States. Much of the Bakken petroleum crude oil is shipped via rail to refineries located near the U.S. Gulf Coast or to pipeline connections, most notably to connections located in Oklahoma.<sup>a</sup>

Shipping hazardous materials is inherently dangerous. Transporting petroleum crude oil can be problematic if the crude oil is released into the environment because of its flammability. This risk of ignition is compounded in the context of rail transportation because petroleum crude oil is commonly shipped in unit trains that may consist of over 100 loaded tank cars. With the rising demand for rail carriage of petroleum crude oil<sup>b</sup> throughout the United States, the risk of rail incidents increases commensurate with the increase in the volume of crude oil shipped. There have been several significant derailments in the U.S. and Canada over the last seven months causing deaths and property and environmental damage that involved petroleum crude oil shipments. These accidents have demonstrated the need for emergency action to address unsafe conditions or practices in the shipment of petroleum crude oil by rail.

Most recently, on April 30, 2014, an eastbound CSX Transportation, Inc. (CSX) unit train consisting of 105 tank cars loaded with petroleum crude oil derailed in Lynchburg, Virginia. Seventeen of the train's cars derailed, and one of the tank cars was breached. A petroleum crude oil fire ensued, and emergency responders evacuated approximately 350 individuals from the immediate area. Three of the derailed tank cars containing petroleum crude oil came to rest in the adjacent James River, spilling up to 30,000

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<sup>a</sup> See Association of American Railroads' (AAR) May 2013 paper "Moving Petroleum Crude Oil by Rail", available online at: <https://www.aar.org/keyissues/Documents/Background-Papers/Crude-oil-by-rail.pdf>.

<sup>b</sup> In 2011 there were 65,751 originations of tank car loads of crude oil. In 2012, there were 233,811 originations. AAR, *Moving Crude Petroleum by Rail*, <https://www.aar.org/keyissues/Documents/Background-Papers/Moving%20Crude%20Petroleum%20by%20Rail%202012-12-10.pdf> (December 2012).

gallons of petroleum crude oil into the river. The National Transportation Safety Board (NTSB) and DOT are both investigating this accident.

On December 30, 2013, 13 cars in a westbound BNSF Railway (BNSF) grain train derailed near Casselton, North Dakota,<sup>c</sup> fouling an adjacent main track. At the same time, an eastbound BNSF petroleum crude oil unit train with 106 cars was operating on that adjacent main track. The petroleum crude oil unit train reduced its speed but collided with the derailed car that was fouling the main track, resulting in the derailment of the lead locomotives and the first 21 cars of the petroleum crude oil unit train. Eighteen of the 21 derailed tank cars ruptured, and an estimated 400,000 gallons of petroleum crude oil was released. The ruptured tank cars ignited, causing a significant fire. Approximately 1,400 people were evacuated. Damages from the derailment have been estimated at \$8 million.

On November 8, 2013, a 90-car petroleum crude oil train operated by Alabama & Gulf Coast Railway derailed in a rural area near Aliceville, Alabama. The petroleum crude oil shipment originated in North Dakota, and was bound for Walnut Hill, Florida, to be transported by a regional pipeline to a refinery in Saraland, Alabama. Twenty-six cars derailed, resulting in eleven cars impinged by a crude oil pool fire. An undetermined amount of petroleum crude oil escaped from derailed cars and found its way into wetlands area nearby the derailment site. Clean up costs are estimated at \$3.9 million.

On July 6, 2013, a catastrophic railroad accident involving a U.S. railroad company occurred in Lac-Mégantic, Quebec, Canada, when an unattended freight train transporting petroleum crude oil rolled down a descending grade and subsequently derailed.<sup>d</sup> The subsequent fires, along with other effects of the accident, resulted in the confirmed deaths of 47 individuals. In addition, the derailment caused extensive damage to the town center, a release of hazardous materials that will require substantial clean-up costs, and the evacuation of approximately 2,000 people from the surrounding area.

Due to the volume of crude oil being shipped by railroads, the demonstrated recent propensity for rail accidents involving trains transporting crude oil to occur, and the subsequent releases of large quantities of crude oil into the environment and the imminent hazard those releases present, the Order is requiring that each railroad carrier notify the SERC for each state in which it operates of the expected movement of trains transporting 1,000,000 gallons or more of Bakken crude oil through each county in that state.

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<sup>c</sup> This derailment currently is being investigated by the National Transportation Safety Board (NTSB), and information regarding this incident can be found at the NTSB website. [See http://www.nts.gov/doclib/reports/2014/Casselton\\_ND\\_Preliminary.pdf](http://www.nts.gov/doclib/reports/2014/Casselton_ND_Preliminary.pdf).

<sup>d</sup> This derailment currently is being investigated by the Transportation Safety Board of Canada and information regarding this incident can be found at the TSB website. [See http://www.bst-tsb.gc.ca/eng/enquetes-investigations/rail/2013/R13D0054/R13D0054.asp](http://www.bst-tsb.gc.ca/eng/enquetes-investigations/rail/2013/R13D0054/R13D0054.asp)

As prior accidents demonstrate, prompt and effective emergency response to any hazardous materials release is critical. The HMR require offerors of hazardous materials to provide appropriate emergency response information applicable to the specific hazard or hazards of the material being offered for transportation and the HMR require that this information be maintained and immediately available to any person who, as a representative of a Federal, state or local government agency, responds to an incident. See 49 CFR 172. 200-.205 and 172.600-606. See also 49 CFR 130.11 (pertaining to oil in particular).

Given the unique hazardous characteristics of Bakken crude oil and the risks presented by large quantities of this commodity being transported in single trains, additional communication between railroads and emergency responders is necessary to ensure that the emergency responders are prepared to respond to an incident involving a train carrying a large quantity of petroleum crude oil. Currently, state and local emergency responders may not know if, or how many, such trains transporting large quantities of Bakken crude oil are moving through their jurisdiction until after an incident with a train has been reported. Because state and local emergency responders are typically the first to arrive on any accident scene, before any railroad response personnel or any Federal official, it is essential that these individuals be as well-informed as possible as to the presence of trains carrying large quantities of Bakken crude oil within their jurisdictions. Accordingly, to help state and local emergency responders best be able to protect life, property, and the environment in the event of a derailment, this Order requires that a railroad carrier transporting 1,000,000 gallons or more of Bakken crude oil, to notify in writing the SERC in each state in which it operates these trains of the expected movement of the trains through each county in that state (or a particular state or commonwealth's equivalent jurisdiction; e.g., Louisiana parishes, Alaska boroughs, Virginia independent cities).

DOT has determined that for purposes of this Order that the 1,000,000 gallon threshold is appropriate to trigger the written notification requirement. Considering the typical 30,000-gallon capacity railroad tank car used for the transport of petroleum crude oil, a 1,000,000-gallon threshold for a unit train would require a comprehensive response plan being required for unit trains composed of approximately 35 cars of petroleum crude oil.<sup>e</sup> This is a reasonable threshold when considering that the aforementioned incidents all involved trains consisting of more than 70 railroad tank cars carrying petroleum crude oil, or well above the Order's threshold of 1,000,000 gallons or more of petroleum crude oil being transported in a single train. In setting this threshold quantity of 1,000,000 gallons, DOT has also relied on a Federal Water Pollution Control Act mandate for regulations requiring a comprehensive spill response plan to be prepared by an owner or operator of an onshore facility.<sup>f</sup> For purposes of addressing an imminent hazard, that threshold

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<sup>e</sup> This approximation assumes that the tank cars would not be entirely filled to capacity.

<sup>f</sup> See 40 CFR 112.20. The Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, directs the President, at section 311(j)(1)(C) (33 U.S.C. 1321(j)(1)(C)) and section 311(j)(5) (33 U.S.C. 1321(j)(5)), respectively, to issue regulations "establishing procedures, methods, and equipment and other requirements for

amount of petroleum crude oil also ensures DOT is assisting local emergency responders to be prepared for the type of accidents that have been occurring regularly, and represent the greatest risks to public safety and the environment with regard to the transportation of Bakken crude oil. Further, this threshold amount of Bakken crude oil ensures that DOT is not unnecessarily imposing safety-related burdens on lesser risks that have not, to date, proven to represent the same safety and environmental concerns.

*Note: FRA cannot reasonably comply with normal clearance procedures under 5 CFR 1320 because the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information. FRA also believes public safety is at risk. Therefore, FRA is requesting an approval for 180 days under Emergency Clearance Processing. Upon approval, FRA will go through regular clearance procedures for this proposed collection of information.*

## **2. How, by whom, and for what purpose the information is to be used.**

This is a new collection of information. The proposed collection of information will be used by FRA to ensure that railroad carriers transporting one (1) million gallons or more of Bakken crude oil through the various States fulfill the requirements that are set out in the Secretary's Emergency Order Docket No. DOT-OST-2014-0067. Specifically, FRA will use the information collected to verify that railroads send the required notifications – and updated notifications where there is a material change (i.e., there is an increase or decrease of 25% in the number of implicated trains) – to the appropriate State Emergency Response Commission (SERC). FRA will conduct audits of railroad notifications to ensure that the required information is provided in each notification to the appropriate SERC. In particular, FRA inspectors will review notifications to ensure that they provide the following information: (a) a reasonable estimate of the number of trains implicated by this Order that are expected to travel, per week, through each county within the State; (b) identify and describe the petroleum crude oil being transported in accordance with 49 CFR part 172, subpart C; (c) provide all applicable emergency response information required by 49 CFR part 172, subpart G; and (d) identify the route over which the material will be transported. Each notification also must identify at least one point of contact at the railroad (including name, title, phone number and address) responsible for implementing/handling the notification information and serving as the point of contact for local emergency responders related to the railroad's transportation of Bakken crude oil. The above requirements will enable SERCs, and accordingly, state and local emergency responders, to have a reasonable expectation of the petroleum crude oil train traffic, and prepare accordingly for the possibility of an accident involving a train transporting a large quantity of Bakken crude oil.

This Order requires that railroad carriers, to the extent reasonably practicable, assist SERCs as necessary in responding to any requests for information from local emergency

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equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges.”

response agencies regarding the volume and frequency of train traffic implicated by this Order within that agency's jurisdiction. SERCs will disseminate the information provided by railroad carriers so that local community emergency responders have all the information they need to respond to an accident/incident involving trains transporting Bakken crude oil through their communities.

FRA will also use the proposed collection of information to ensure that railroads develop a process for employees responsible for securing unattended trains or vehicles transporting EO 28 Appendix A materials on a mainline track or a mainline siding outside of a yard or terminal to communicate to the train dispatcher the number of hand brakes applied, the tonnage and length of the train or vehicle, the grade and terrain features of the track, any relevant weather conditions, and the type of equipment being secured. The dispatcher is then required to record the information provided by the employee, and train dispatcher or qualified railroad employee must verify and confirm that the securement meets the railroad's requirements. Under this requirement, the controlling locomotive cab must be locked or the reverser on the controlling locomotive must be removed and secured. FRA inspectors will use the information to be collected to verify that dispatchers keep records of the information communicated to them by the railroad employee. These required records will be extremely helpful to FRA investigators in the event of an accident/incident involving an unattended train. Railroad employees will use the verification and confirmation information to make sure that necessary and employer required measures are used to secure unattended trains. FRA will also use the proposed collection of information to confirm that railroads review and verify and adjust, as necessary, existing procedures and processes related to the number of hand brakes to be set on all unattended trains and equipment and must ensure the means of verifying that the number is appropriate. This information will be used by railroads to carefully evaluate and change, if necessary, the measures they put in place for their employees to adequately secure unattended trains via hand brakes.

Finally, the Secretary/the FRA Administrator as his designee will review petition requests for relief from the Secretary's Emergency Order to determine whether it is safe and in the public interest to grant such relief from the EO's requirements. Petitions for relief/review must be complete and state the material facts at issue which the petitioner believes dispute the existence of an imminent hazard and must include all evidence and exhibits to be considered. The petition must also state the relief sought. Within 30 days from the date the petition for review is filed, the Secretary must approve or deny the relief in writing; or find that the imminent hazard continues to exist, and extend the original Emergency Order.

### **3. Extent of automated information collection.**

FRA strongly endorses and highly encourages the use of the latest information technology, wherever feasible, by the railroad industry to reduce burden. The Secretary's Emergency Order requires written notifications and updated written notification to SERCs. However, these written notifications can be sent electronically via e-mail and the like. Copies of these notifications can also be provided electronically to FRA inspectors or in paper form during agency audits. Railroad carriers, to the extent reasonably practicable, must assist SERCs as necessary in responding to any requests for information from local emergency response agencies regarding the volume and frequency of train traffic implicated by this Order within that agency's jurisdiction. These requests and response will likely be conveyed electronically as well. Thus, 100% of responses of responses will be transmitted electronically.

**4. Efforts to identify duplication.**

The proposed collection of information is new and pertains to railroad carriers transporting 1 million gallons or more of Bakken crude oil through the various States. FRA and PHMSA have overlapping jurisdictions when it comes to rail hazardous materials shipments. This proposed information collection actually augments information that is collected by PHMSA under OMB No. 2137-0034. Therefore, the information collected is unique and not currently available.

This information to our knowledge is not duplicated anywhere.

**5. Efforts to minimize the burden on small businesses.**

There are approximately 47 railroad carriers affected by the Secretary's Emergency Order. Of these 47, seven (7) are Class I and 40 are Class II and Class III railroads. Since the estimated number of notifications – and updated notifications – is small (145 total notifications) and the total burden for this entire proposed collection is 3,778 hours, FRA believes that the proposed collection of information will not have a significant impact on a substantial number of small entities.

**6. Impact of less frequent collection of information.**

If this information were not collected or collected less frequently, rail safety throughout the United States country would face imminent hazard. In particular, without this collection of information, State Emergency Response Commissions (SERCs) would not have necessary and vital information to share with their local communities emergency responders regarding trains transporting 1,000,000 gallons or more of Bakken crude oil through them. Without the required notifications and updated notifications, SERCs and local community emergency responders would not have the necessary information that Bakken crude oil is the commodity involved in shipments through their communities, would not have the necessary information about the routes over which these shipments are traveling, and would not have the necessary information to be fully prepared for an

accident/incident involving a train transporting one (1) million gallons or more of Bakken crude oil. Without such reliable information, emergency response to an accident/incident involving Bakken crude oil might be delayed, inappropriate or inadequate in terms of necessary resources of responding personnel and materials. This could lead to greater numbers of injuries, fatalities, and property damage as well as damage to communities. In the event of a Bakken crude oil shipment accident/incident necessitating evacuation of a community, having the required notification information in advance could make a difference in saving lives and preserving environmentally sound communities.

Without the collection of information necessitated by this Emergency Order, SERCS and local community emergency responders would not have necessary additional information regarding very large Bakken crude oil shipments. This Order requires that railroad carriers, to the extent reasonably practicable, assist SERCs as necessary in responding to any requests for information from local emergency response agencies regarding the volume and frequency of train traffic implicated by this Order within that agency's jurisdiction. Current and complete information regarding these shipments will help to enhance safety and ensure better responses by emergency responders in the event of a shipment accident/incident.

Finally, without the information collected related to relief petitions, the Secretary/his FRA designee would not have the necessary information to make sound and informed decisions whether it is safe and in the public interest to grant exceptions to this Emergency Order and its requirements. Also, railroad carriers that might be burdened excessively would not find the relief they need and this might affect the economics and safety of their rail operations.

In sum, this collection of information is essential and assists FRA in its primary mission of promoting and enhancing rail safety throughout the United States by allowing to FRA to enforce the Secretary's Emergency Order.

**7. Special circumstances.**

The Secretary's Emergency Order Docket No. DOT-OST-2014-0067 was issued on May 7, 2014, and is available through the Department's public docket system at [www.regulations.gov](http://www.regulations.gov). The Emergency Order this Emergency Order was effective immediately and the notification requirements must be completed within 30 days of the date of this Order.

All other information collection requirements relating to E.O. 28 are in compliance with this section.

**8. Compliance with 5 CFR 1320.8.**



In accordance with the Paperwork Reduction Act of 1995 and 5 CFR 1320 (§1320.13), FRA is publishing a notice in the Federal Register on May 13, 2014, (see 79 FR XXXX) requesting **Emergency processing** of the proposed collection of information associated with the Secretary's Emergency Order Docket No. DOT-OST-2014-0067 (which was issued on May 7, 2014, effective immediately; the notification requirements must be completed within 30 days of the date of this Order (June 9, 2014)). Under the circumstances noted in answer to question number 1 of this Supporting Justification, FRA cannot reasonably comply with the normal clearance procedures specified in 5 CFR 1320 (regarding the two Federal Register Notices and normal Clearance time frames) because the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information. Additionally – and perhaps more importantly – FRA believes public safety is at issue regarding Bakken crude oil shipments.

### Background

On August 29, 2013, FRA convened an emergency session of the Railroad Safety Advisory Committee (RSAC). RSAC is a group composed of railroad industry, labor, and governmental representatives who develop recommendations on new regulatory standards and other rail safety programs. During the emergency meeting, RSAC established three collaborative working groups to formulate new rulemaking recommendations regarding hazardous materials transportation by rail, appropriate train crew sizes, and train securement procedures. Each of these working groups has met on a regular basis and has now finished with its work. DOT has initiated rulemaking proceedings as appropriate to codify in Federal regulation certain of the items discussed by the working groups.

On September 6, 2013, PHMSA issued an Advanced Notice of Proposed Rulemaking (ANPRM (HM-251); 78 FR 54849) to solicit comments on petitions for rulemaking and NTSB recommendations related to rail hazmat safety, including regulations for DOT specification tank cars most commonly used to move crude oil by rail. The comment period closed on December 5, 2013, and PHMSA received nearly 150 substantive comments representing over 150,000 stakeholders. PHMSA, in cooperation with FRA, has developed a comprehensive Notice of Proposed Rulemaking (NPRM). The NPRM is titled: PHMSA-2012-0082 (HM-251; RIN 2137-AE91): Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains. The NPRM is under review by the Office of Management and Budget pursuant to Executive Order 12866. (See <http://www.reginfo.gov/public>).

PHMSA and FRA issued a supplementary safety advisory, Safety Advisory 2013-07, on November 20, 2013, to emphasize the importance of proper characterization, classification, and selection of a packing group for Class 3 materials (flammable liquids, including petroleum crude oil), and to reinforce the need to follow the Federal hazardous materials regulations for safety and security planning. On January 2, 2014, PHMSA issued a Safety Alert, which warned of crude oil variability and emphasized that

unprocessed crude oil may affect the integrity of packaging or present additional hazards related to corrosivity, sulfur content, and dissolved gas content. Further, noting that mined natural resources, such as crude oil, may have widely variable chemical compositions and properties, the Safety Alert noted that crude oil being transported from the Bakken region of North Dakota may be more flammable than traditional heavy crude oil.

On January 16, 2014, the Secretary met with members of the rail and the petroleum industries in a Call to Action to address the risks associated with the transportation of crude oil by rail. As a result, on February 21, 2014, the Secretary of Transportation sent a letter to the President and Chief Executive Officer at the AAR requesting that he and his members subscribe to voluntary actions to improve the safe transportation of crude oil by rail. These include: speed restrictions, braking signal propagation systems, routing analyses, additional track and rail integrity inspections, more frequent mechanical inspections, development of an emergency response inventory, funding for emergency responder training, and continued communication with communities about the hazards of crude oil being transported by rail.

On February 25, 2014, DOT issued an Emergency Order requiring all shippers to test product from the Bakken to ensure the proper classification of crude oil in accordance with the HMR before it is transported by rail, while also prohibiting the transportation of crude oil in the lowest-strength packing group. That Emergency Order was issued, in part, out of concerns over proper classification and packaging of petroleum crude oil that are under investigation as part of DOT's Operation Classification, also known as the "Bakken Blitz." On March 6, 2014, DOT issued an amended emergency order replacing the February 25 Emergency Order.<sup>8</sup> The Amended Emergency Order is still in effect.

Notwithstanding the above DOT actions, in light of continued risks associated with petroleum crude oil shipments by rail, the further actions described in this Order are necessary to eliminate unsafe conditions and practices that create an imminent hazard to public health and safety and the environment.

**9. Payments or gifts to respondents.**

There are no monetary payments or gifts made to respondents regarding the proposed information collection requirements resulting from this emergency order.

**10. Assurance of confidentiality.**

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<sup>8</sup> The Amended Emergency Order addressed shipments already in transportation at the time of the emergency order's issuance. <http://www.dot.gov/sites/dot.gov/files/docs/Amended%20Emergency%20Order%20030614.pdf>.

Information collected is provided to State Emergency Response Commissions (SERCs) by railroad carriers regarding trains transporting 1,000,000 gallons or more of Bakken crude oil through the various States. Railroad carriers will also assist SERCs as necessary in responding to any requests for information from local emergency response agencies regarding the volume and frequency of train traffic implicated by this Order within that agency's jurisdiction.

No assurances of confidentiality are made in this Emergency Order or by the Federal Railroad Administration (FRA).

**11. Justification for any questions of a sensitive nature.**

There are no questions of a sensitive or private nature involving the proposed collection of information associated with the Secretary's Emergency Order Docket No. DOT-OST-2014-0067.

**12. Estimate of burden hours for information collected.**

*Note: Since the Secretary's Emergency Order applies to all railroad carriers that transport one (1) million gallons or more of Bakken crude oil in a single train in commerce within the United States, and its officers, directors, employees, subcontractors, and agents, FRA estimates the respondent universe to be approximately 47 railroads.*

**Secretary's Emergency Docket No. DOT-OST-2014-0067**

**(I) Remedial Action**

1. Within 30 days of this Order, to abate this imminent hazard, each affected railroad carrier shall, notify the State Emergency Response Commission (SERC) in each state in which the railroad carrier operates trains transporting 1,000,000 gallons or more of Bakken crude oil. If notification is not made to a SERC within 30 days of the date of this Order, a railroad is prohibited from operating any train transporting 1,000,000 gallons or more of Bakken crude oil in that State until such notification is provided. This notification must provide information regarding the estimated volumes and frequencies of train traffic implicated. Specifically, this notification must: (a) provide a reasonable estimate of the number of trains implicated by this Order that are expected to travel, per week, through each county within the State; (b) identify and describe the petroleum crude oil being transported in accordance with 49 CFR part 172, subpart C; (c) provide all applicable emergency response information required by 49 CFR part 172, subpart G; and, (d) identify the route over which the material will be transported. This notification also must identify at least one point of contact at the railroad (including name, title, phone number and address) responsible for implementing the protocol and serving as the point of contact for local emergency responders related to the railroad's transportation of Bakken crude oil. [Note: The burden for the requirements of b and c above under included under

*PHMSA OMB No. 2137-0034, Hazardous Materials Shipping Papers and Emergency Response Information. Consequently, there is no additional burden associated with these requirements.]*

Written notification containing the required information to States in which trains affected by this Order operate must be made within 30 days of the effective date of this Order. As noted above, respondent universe is 47 railroads. FRA estimates that approximately 120 notifications will be completed and sent to the appropriate SERC(s) under the above requirement. It is estimated that it will take approximately 30 hours to complete each notification and send it to the appropriate SERC. Total annual burden for this requirement is 3,600 hours.

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|                             | Respondent Universe:<br>47 Railroads                 |
| Burden time per response:   | 30 hours   |
| Frequency of Response:      | One-time   |
| Annual number of Responses: | 120 written notifications                            |
| Annual Burden:              | 3,600 hours  |
| <b><u>Calculation:</u></b>  | 120 written notifications x 30 hrs. =<br>3,600 hours |

- To ensure that the information provided to a SERC remains reliable, railroad carriers shall update notifications prior to making any material changes – defined as any increase or decrease of 25 percent or more – in the estimated volumes per week or frequencies of trains per week traveling through local communities.

Based on the above, FRA estimates that there will be approximately 25 material changes to trains carrying one (1) million gallons or more of crude oil and thus approximately 25 updated written notifications will need to be completed and sent to the appropriate SERC(s) under the above requirement. It is estimated that it will take approximately four (4) hours to complete each updated notification and send it to the appropriate SERC. Total annual burden for this requirement is 100 hours.

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|                             | Respondent Universe:<br>47 Railroads                     |
| Burden time per response:   | 4 hours  |
| Frequency of Response:      | One-time   |
| Annual number of Responses: | 25 updated written notifications                         |
| Annual Burden:              | 100 hours  |
| <b><u>Calculation:</u></b>  | 25 updated written notifications x 4<br>hrs. = 100 hours |

- Copies of railroad notifications to SERCs must be made available to the DOT's Federal Railroad Administration (FRA) upon request. This Order does not preclude railroad carriers from taking any additional steps to communicate with state and local emergency responders regarding the transportation of hazardous commodities within a state or local jurisdiction.

FRA estimates that it will request copies of the required notifications in approximately 10 instances. Thus, approximately 10 notification copies will be provided by railroads under the above requirement. It is estimated that it will take approximately 60 minutes to provide each notification copy. Total annual burden for this requirement is 10 hours.

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|                             | Respondent Universe:   |
|                             | 47 Railroads           |
| Burden time per response:   | 60 minutes             |
| Frequency of Response:      | One-time               |
| Annual number of Responses: | 10 notification copies |
| Annual Burden:              | 10 hours               |

**Calculation:** 10 notification copies x 60 min. = 10 hours

- This Order requires that railroad carriers, to the extent reasonably practicable, assist SERCs as necessary in responding to any requests for information from local emergency response agencies regarding the volume and frequency of train traffic implicated by this Order within that agency's jurisdiction.

FRA estimates that approximately 30 requests for informational assistance will be made to railroad carriers from SERCs and approximately 30 informational responses will be provided by railroads each year under the above requirement. It is estimated that it will take approximately 60 minutes to make each request for informational assistance and approximately 60 minutes for railroads to make each informational response. Total annual burden for this requirement is 60 hours.

|                             |   |
|-----------------------------|---|
|                             | Respondent Universe:  |
|                             | 50 SERCs/47 Railroads   |
| Burden time per response:   | 60 minutes + 60 minutes   |
| Frequency of Response:      | One-time  |
| Annual number of Responses: | 30 informational assistance requests + 30 informational responses |
| Annual Burden:              | 60 hours  |

**Calculation:** 30 informational assistance requests x 60 min. + 30 informational responses x 60 min. = 60 hours

5. Review/Relief Petitions. Any petition seeking relief must be filed within 20 calendar days of the date of this order (49 U.S.C. § 5121 (d)(3)), and addressed to U.S. DOT Dockets, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., Room W12-140, Washington, DC 20590. Petitions for review must include the docket number of this Emergency Order (<http://www.regulations.gov>). Furthermore, a petition for review must state the material facts at issue which the petitioner believes dispute the existence of an imminent hazard and must include all evidence and exhibits to be considered. The petition must also state the relief sought. Within 30 days from the date the petition for review is filed, the Secretary must approve or deny the relief in writing; or find that the imminent hazard continues to exist, and extend the original Emergency Order.

FRA estimates that approximately four (4) petitions for relief will be completed each year under the above requirement. It is estimated that it will take approximately two (2) hours for each railroad to complete its petitions for relief with the necessary evidence and exhibits documents. Total annual burden for this requirement is eight (8) hours.

|                             |                      |
|-----------------------------|----------------------|
|                             | Respondent Universe: |
|                             | 47 Railroads         |
| Burden time per response:   | 2 hours              |
| Frequency of Response:      | One-time             |
| Annual number of Responses: | 4 relief petitions   |
| Annual Burden:              | 8 hours              |

**Calculation:** 4 relief petitions x 2 hours = 8 hours

In response to a petition for review, the Secretary may grant the requested relief in whole or in part; or may order other relief as justice may require (including the immediate assignment of the case to the Office of Hearings for a formal hearing on the record).

*The requirements of this provision are exempted from the Paperwork Reduction Act under 5 CFR 1320.4(2) which states: “The requirements of this Part ... shall not apply to collections of information ... during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities ...” Since this provision pertains to an administrative action/investigation, there is no burden associated with these requirements.*

Total annual burden for this entire information collection is 3,778 hours.

**13. Estimate of total annual costs to respondents.**

There might be some negligible cost for paper and ink, but, essentially, there are no

additional costs to respondents besides those delineated in the answer to question number 12.

**14. Estimate of Cost to Federal Government.**

There is a cost to the Federal Government to enforce this Emergency Order. FRA estimates that a FRA inspector will spend approximately one (1) hour inspecting the railroad carrier notifications. Thus, a cost of \$3,384 will be incurred by FRA.

**Calculation:**

47 Railroad carriers x 1 hour (FRA inspector to review notifications) x \$72 = **\$3,384**

*Note: The hourly labor rate of \$72 is derived from 2014 OPM Federal Salary Table (salary of GS-12-5 FRA inspector) burdened by 75% overhead costs).*

**15. Explanation of program changes and adjustments.**

These are new information collection requirements. By definition, this entire submission is a **program change**. As stated above, upon OMB Emergency Clearance approval for 180 days, FRA will initiate necessary steps to obtain regular Clearance of this information collection.

**16. Publication of results of data collection.**

FRA does not have any plans to publish the results of this collection of information.

**17. Approval for not displaying the expiration date for OMB approval.**

Once OMB approval is received, FRA will publish the approval number for these information collection requirements in the Federal Register, and will take necessary steps to obtain a regular OMB Clearance.

**18. Exception to certification statement.**

No exceptions are taken at this time.

### Meeting Department of Transportation (DOT) Strategic Goals

This information collection supports the top DOT strategic goal, namely transportation safety. Specifically, this collection of information seeks to improve safety by imposing requirements that will serve to heighten awareness on the part of railroads, SERCS and local communities regarding train shipments of 1 million gallons or more of Bakken crude oil. If this information were not collected or collected less frequently, rail safety throughout the United States country would be considerably jeopardized. In particular, without this collection of information, State Emergency Response Commission (SERC) would not have necessary and vital information to share with their local communities emergency responders regarding trains transporting 1,000,000 gallons or more of Bakken crude oil through them. Without the required notifications and updated notifications, SERCs and local community emergency responders would not know that Bakken crude oil is the commodity involved in shipments through their communities, would not know the routes over which these shipments are traveling, and would not be prepared for an accident/incident involving a train transporting one (1) million gallons or more of Bakken crude oil. Without such reliable information, emergency response to an accident/incident involving Bakken crude oil might be delayed, inappropriate or inadequate in terms of necessary resources of responding personnel and materials. This could lead to greater numbers of injuries, fatalities, and property damage as well as damage to communities. In the event of a Bakken crude oil shipment accident/incident necessitating evacuation of a community, having the required notification information in advance could make all the difference in saving lives and preserving environmentally sound communities.

Without the collection of information necessitated by this Emergency Order, SERCS and local community emergency responders would not have necessary additional information regarding very large Bakken crude oil shipments. This Order requires that railroad carriers, to the extent reasonably practicable, assist SERCs as necessary in responding to any requests for information from local emergency response agencies regarding the volume and frequency of train traffic implicated by this Order within that agency's jurisdiction. Current and complete information regarding these shipments will help to enhance safety and ensure better responses by emergency responders in the event of a shipment accident/incident.

Finally, without the information collected related to relief petitions, the Secretary/his FRA designee would not be able to make sound and informed decisions whether it is safe and in the public interest to grant exceptions to this Emergency Order and its



requirements. Without the required exhibits and documents for the Secretary or his designee to review, poor decisions might be made that could jeopardize rail safety. Also, railroad carriers that might be burdened excessively would not find the relief they need and this might affect the economics and safety of their rail operations.

In sum, this collection of information is essential and assists DOT/FRA in their primary mission of transportation safety, particularly by promoting and enhancing rail safety throughout the United States by enabling to FRA to enforce the Secretary's Emergency Order.

In this information collection and indeed in all its other information collection activities, FRA seeks to do its utmost to fulfill DOT Strategic Goals and to be an integral part of One DOT.