

**INFORMATION COLLECTION
SUPPORTING JUSTIFICATION
Secretary's Emergency Order Docket No. DOT-OST-2014-0067
OMB No. 2130-0604**

Summary of Submission

- This submission is a revision to the collection of information approved by OMB for 180 days under **Emergency processing** on May 10, 2014, and which expires on November 30, 2014, for the Secretary's Emergency Order Docket No. DOT-OST-2014-0067. FRA is requesting **regular processing** of this revised submission.
- FRA published the required 30-day **Federal Register** Notice seeking public comment on its request for OMB regular processing of the information collection associated with the Secretary's Emergency Order on June 30, 2014. See 79 FR 36860. As noted in the detailed answer to question number 8 below, FRA received one comment in response to this Notice.
- The total number of burden **requested** for this collection of information is **3,773 hours**.
- The total number of burden **previously approved** for this collection of information is **3,778 hours**.
- Total number of **responses requested** for this information collection is **229**.
- **Adjustments** decreased the total number of burden hours for this collection of information by five (5) **hours** and increased the number of **responses** by **10**.
- ****The answer to question number 12 itemizes the hourly burden associated with each requirement of this rule (See pp. 14-17).**
- *Note: The Secretary's Emergency Order is in full force and effect until the end of March 2016. However, FRA is requesting a **three-year approval** for this submission because PHMSA is now working on a new Oil Spill Response Proposed Rule that will codify the requirements of the Secretary's EO and it is highly likely that PHMSA's Final Rule will be published later than the end of March 2016. Once PHMSA does publish this Final Rule, FRA will discontinue the information collection associated with the Secretary's EO.*

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

Background

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.^a

^a 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>.

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^b 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 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,^c 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

^b 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).

^c 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.

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.^d 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.

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

^d 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>

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.^e 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.^f For purposes of addressing an imminent hazard, that threshold 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.

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

This is a revision to the collection of information previously approved under **Emergency processing** in which FRA is now requesting **regular processing** by OMB. The collection of information is 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 uses 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). As part of its monitoring program of compliance with the Secretary Emergency Order, 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

^e This approximation assumes that the tank cars would not be entirely filled to capacity.

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

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 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 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.

Further, FRA will also use the 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 are being sent electronically via e-mail and the like. Copies of these notifications are also being 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 are being conveyed electronically as well. Thus, 100% of responses of responses are currently being 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 revised collection is 3,773 hours,

FRA believes that this collection of information does not – and 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.**

All information collection requirements relating to the Secretary's EO are in compliance with this section.

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

As required by the Paperwork Reduction Act of 1995 and 5 CFR 1320, FRA published a notice in the Federal Register on June 30, 2014, soliciting comment on these information collection requirements from the public, railroads, and other interested parties. See 79 FR 36860. FRA received one comment directly in response to this notice.

On August 29, 2014, FRA received a joint comment from the Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA) (Commenters). The Commenters raised three main points. First, the Commenters assert that the crude oil routing information the EO requires railroads to provide to SERCs is sensitive information from a security perspective and should only be available to persons with a need-to-know the information (e.g., emergency responders and emergency response planners). Second, the Commenters assert that the same information is commercially-sensitive information that should remain confidential and not be publically available. Finally, the Commenters assert that the EO is not serving a useful purpose as the information required by the EO to be provided to the SERCs is already provided to emergency responders through AAR Circular OT-55-N. See AAR, "Circular OT-55-N: Recommended Railroad Operating Practices For Transportation of Hazardous Materials," (Aug. 5, 2013) (OT-55). The Commenters specifically suggest that the EO "be withdrawn because it has resulted in information confidential from security, safety, and business perspectives being made public and because the objective of the emergency order, informing government officials of the transportation of Bakken crude oil through their jurisdictions, was already being met, and would continue to be met, if the EO is withdrawn." AAR and ASLRRA continued:

The EO requires that railroads make crude oil routing information available to [SERCs]. Specifically, the EO requires that a railroad provide to the SERC in each state in which it operates trains transporting 1,000,000 gallons or more of Bakken crude oil information on the number of such trains traveling per week through each county and the routes over which the trains operate.

While AAR and ASLRRA do not believe it was DOT's intention, the EO resulted in the information required to be disclosed by the EO to be made publicly available. Such a result is hardly a necessary consequence of informing government officials of the transportation of Bakken crude oil through their jurisdictions. Railroads were already informing government officials of the hazardous materials transported through their communities pursuant to AAR's circular governing operating practices for the transportation of hazardous

materials, OT-55.⁸

In their comment, AAR and ASLRRRA further remarked:

Unfortunately, in so far as confidentiality is concerned, the result of the EO has proven inconsistent with DOT's intent. Since SERCs in many states have contended they have no choice but to make the routing information public because of the laws governing SERCs, the SERCs have refused to keep crude oil routing information confidential.

The EO is not needed to provide emergency responders with notice that crude oil shipments are being transported through their communities because railroads have been providing that information for many years. OT-55 provides that railroads will give emergency response agencies and planning groups information on the hazardous materials transported through their communities. Class I railroads and short lines have notified communities as provided by OT-55.

For emergency response planning purposes, there is no need to disclose the actual route taken by a crude oil train. Notifying an emergency responder of the hazardous materials transported through the community, including crude oil, is sufficient.

Railroading is a highly competitive business. A railroad's traffic is susceptible to competing railroads and competing modes. As is the case with any company engaged in a competitive business, railroads keep their customers confidential to the extent possible. Forced disclosure of routing information provides a means for competitors to ascertain a railroad's customers and constitutes the disclosure of confidential commercial information.

Although DOT and FRA, in particular, recognize the Commenters concerns relating to the potential confidentiality of the information required to be provided under the EO, DOT notes that the information does not fall into any of the 15 categories of Sensitive Security Information (SSI) defined by either DOT or Transportation Security Administration (TSA) regulations. See 49 CFR parts 15 and 1520. Further, at this time, DOT finds no basis to conclude that the public disclosure of the information is detrimental to transportation safety. DOT has consulted with the Department of Homeland Security and TSA in making this decision. Accordingly, the Secretary of Transportation has not designated the information as SSI.

The Commenters are correct in remarking that DOT's intent in issuing the EO was not to cause the widespread public disclosure of the information, but rather to ensure that emergency responders have an understanding of the volume and frequency with which

⁸ OT-55 provides that AAR members will provide emergency response agencies or emergency response planning groups with "commodity flow information covering at a minimum the top 25 hazardous commodities transported through the community in rank order."

Bakken crude oil is transported through their communities so that they can prepare their response plans and resources accordingly. DOT notes that the Commenters do not document any actual harm that has occurred by the public release of the information required to be provided to the States under the EO. That being said, DOT understands that railroads may have an appropriate claim that the information required to be provided to the SERCs constitutes confidential business information, but the merit of such claims may differ by State depending on each State's open records and sunshine laws. For these reasons, FRA concludes that the information required to be provided to the SERCs under the EO is neither security-sensitive nor commercially-sensitive information that is protected by Federal law.

With regard to the Commenters' assertion that the EO is not serving a useful purpose as the information required by the EO to be provided to the States is already available to emergency responders through OT-55, FRA notes that there are important distinctions between the information required to be provided by railroads under the EO and the nature and content of the information provided pursuant to OT-55. First, the railroad's sharing of information contemplated by OT-55 is only voluntary. Second, the railroad's voluntary sharing of information under OT-55 is only upon written request of emergency response or emergency planning groups. Third, the information voluntarily shared pursuant to OT-55 is "commodity flow information" covering "the top 25 hazardous commodities transported through the community in rank order." Large quantities of Bakken crude oil in single trains may or may not be part of this top-25 commodity ranking in any given community. In contrast, by mandating in the EO that railroads provide the identified information on the transportation of large quantities of Bakken crude oil to States, the EO helps ensure that local emergency responders have access to that information. Further, the information that the EO mandates railroads to provide to States is very specific, limited to one commodity (Bakken crude oil), more detailed than the information voluntarily shared pursuant to OT-55, and specifically designed to ensure that local emergency responders are provided sufficient information to confirm that they have an understanding of the volume, route, and frequency with which Bakken crude oil is transported through their jurisdictions so that they can prepare emergency response plans and resources accordingly. For these reasons, FRA strongly disagrees with the Commenters' assertion that the EO is not serving a useful purpose.

Finally, DOT notes that a pending Pipeline and Hazardous Materials Safety Administration Notice of Proposed Rulemaking (NPRM) proposes to codify into Federal regulations the terms of the EO. See 79 FR 45016 (Aug. 1, 2014). The public comment period on this NPRM is scheduled to close on September 30, 2014. It would be premature to change the terms of the EO now and prohibit the disclosure of the specified information to SERCs before those terms undergo full public scrutiny and comment through the rulemaking process.

Note: Although FRA's 60-day Notice published on June 30, 2014, in the Federal Register requested that any comments in response to it be sent to two specified contact

persons within FRA, an additional three comments to this Notice were posted on/sent to the Regulations.Gov Website under the assigned Docket Number (Docket ID: FRA-2014-00111).

The first additional comment was posted by an anonymous person on July 25, 2014. As posted, the comment stated the following:

This regulation should provide for safer cars, 3 man crews on oil trains empty or loaded, reroute into less populated areas, 25 mph max speed through areas of any population over 500 people or less, funding for fire and rescue for appropriate equipment for all communities along routes affected by Backen [Bakken] Crude Trains, at least a minimum of 5 buffer cars between engines and cars loaded or empty.

Thank you for this opportunity to comment.

The second additional comment was posted by Fran Kramer on July 28, 2014. As posted, the comment mentioned the following:

We ARE VERY VERY CONCERNED ABOUT THE SHIPMENT OF OIL (MAINLY BAKKEN) ON RAIL CARS THROUGH HEAVILY POPULATED AREAS, LIKE PITTSFORD NY. MANY OF THE CARS ARE THE OLDER ONES, AND THE SPEED OF THE TRAINS IS TOO FAST, ESP [ECIALLY] FOR AN OLD OVERPASS ON GOLF AVE, WHICH IS A SHARP NARROW CURVE FOR CARS. WE NEED TO KNOW A LOT MORE ABOUT THESE OPERATIONS, AND THEIR FUTURE.WHO PROFITS FROM THIS,OTHER THAN THE OIL COMPANIES,OIL REFINERIES AND LANDOWNERS INVOLVED.DOES AMERICA GET ANY BENEFITS AT ALL? AT WHAT PRICE ? CAN THE OIL BE SOLD ABROAD,AND IF SO ,HOW DOES THAT BENEFIT AMERICA ? IN ANY CASE, THIS IS TOO MUCH TOO SOON, AND WE DO NOT BELIEVE THE INHERENT HAZARDS JUSTIFY THE MEANS. A HUGE INVESTIGATION MUST TAKE PLACE AND WE HOPE THAT LAWMAKERS AND THE GOVERNMENT IN GENERAL WILL NOT DE SWAYED BY BIG OIL. ALL OF THE TOWNS,VILLAGES,CITIES ALONG THE RAIL ROUTES ARE IN DANGER, AND WE SEEM TO HAVE NO VOICE OR INFLUENCE. CXS DOES NOT HAVE TO CARRY THIS CRUDE OIL,BUT OF COURSE THEY DO,FOR THE PROFITS.LET NEW TRACKS BE BUILT THRU LESS INHABITED AREAS;WITH ALL THE MONEY TO BE MADE,SURELY BIG OIL CAN AFFORD IT. We have lived in our current home with tracks in the back yard for 35 years. Never the volume of rail traffic as we see now.

The third additional comment came from David Nice and was also posted on July 28, 2014. As posted, the comment observed the following:

One option, admittedly an expensive one, is to build a rail-sea oil terminal somewhere in southwestern Washington. That would enable the oil trains using the Columbia Gorge route to avoid going through Seattle. That would reduce the risk of a major accident affecting a very large group of people. Some oil trains could go through Seattle to the refineries north of the city, but many would be off-loaded before going to Seattle. The terminal could be funded jointly by the Burlington Nothern Santa Fe Railroad, the state of Washington, local governments in the area,

and the federal government. Construction of this facility would take quite some time, however, which means it wouldn't be very helpful in the short run. The large volume of crude oil in the Bakkan fields means that longer-term options could be helpful eventually.

A cheaper option (which probably won't reassure the more nervous people in the Seattle metropolitan area) would be to conduct more frequent track inspections in more heavily populated areas. Given the role that track problems play in many derailments, the inspections could help with a major source of derailments. A related option, borrowed from the old Milwaukee Railroad, would be reducing the number of switches traversed by oil trains in densely populated areas. Unfortunately, that would make switching operations more difficult, but if the routes were chosen carefully, the difficulties might not be too burdensome.

FRA appreciates these three comments, and the concerns expressed by each of the commenters. These concerns are being addressed in a proposed rulemaking by the Pipeline and Hazardous Materials Safety Administration (PHMSA) pertaining to routing and speed of trains transporting large quantities of hazardous materials and in other FRA regulations.

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.

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).

The Department of Transportation and the Department of Homeland Security's Transportation Security Administration (TSA) have distinct responsibilities with regard to administration and designation of Sensitive Security Information (SSI). Designation of information as SSI requires a determination that public disclosure of the information would be detrimental to the safety or security of transportation. See 49 CFR parts 15 and 1520. Only information that has been determined to be SSI under the SSI regulations (49 CFR parts 15 and 1520) may be marked as SSI and afforded the protections required under the regulations.

As stated earlier in the answer to question number 8 of this document referencing the

AAR/ASLRRA comment, DOT notes that the information required by the Secretary's Emergency Order to be provided to SERCs does not fall into any of the 15 categories of Sensitive Security Information (SSI) defined by either DOT or Transportation Security Administration (TSA) regulations. See 49 CFR parts 15 and 1520. Further, at this time, DOT finds no basis to conclude that the public disclosure of the information is detrimental to transportation safety. DOT has consulted with the Department of Homeland Security and TSA in making this decision. Accordingly, the Secretary of Transportation has not designated the information as SSI.

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.

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

2. 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.

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

3. 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 a total of approximately 10 instances twice a year (a total then of approximately 20 instances). Thus, approximately 20 notification copies will be provided by railroads under the above requirement. It is estimated that it will take approximately 10 minutes to provide each notification copy. Total annual burden for this requirement is five (5) hours.

	Respondent Universe: 47 Railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	20 notification copies
Annual Burden:	5 hours
<u>Calculation:</u>	20 notification copies x 10 min. = 5 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:	On occasion
Annual number of Responses:	30 informational assistance requests + 30 informational responses
Annual Burden:	60 hours
<u>Calculation:</u>	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:	On occasion
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 3,773 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 recurring 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.

The total number of burden hours for this revised information collection seeking OMB approval under **regular processing** procedures has decreased by five (5) hours from the previous submission approved by OMB under **Emergency processing** procedures. The change in burden is due solely to **adjustments**. For item No. 2 under the Secretary’s EO, FRA revised/increased its estimate of the number of copies of Notifications that SERCs will provide to FRA (from 10 to 20). FRA also revised/decreased its estimate for the average time it would take to complete each notification copy (from 60 minutes to 10 minutes). The table below depicts these two **adjustments**:

TABLE FOR ADJUSTMENTS

Secretary EO Item Number	Responses & Avg. Time (Previous Submission)	Responses & Avg. Time (This Submission)	Burden Hours (Previous Submission)	FRA Burden Hours (This Submission)	Difference (plus/minus)
2. Copies of Notifications to SERCs made available to FRA upon request	10 copies 60 minutes	20 copies 10 minutes	10 hours	5 hours	--5 hours + 10 responses

Adjustments above then decreased the burden by **five (5) hours**, and increased the number of **responses** by **10**.

The present submission exhibits a burden total of 3,773 hours, while the total burden listed for this information collection in the current inventory shows a total of 3,778 hours. Hence, there is an overall decrease in burden of *five (5) hours*.

There is no cost to respondents, and this has not changed from the previously approved submission.

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.