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BNSF Railway Company

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***Sensitive Security Information
Railroad Restricted Material***

June 6, 2014

Brigadier General Brad Richy
Idaho Military Division
Bureau of Homeland Security
4040 Guard Street, Bldg. 600
Boise, ID 83705-5004

Re: U.S. Department of Transportation Emergency Order Docket Number DOT-OST-2014-0067 (Issued May 7, 2014)

Dear General Richy:

Pursuant to the above referenced Emergency Order, I am enclosing the information required by the United States Department of Transportation ("D.O.T.") to be provided to your state: a copy of the traffic flow summary for crude oil shipments in your state through each county. It is important to note that this information is subject to several restrictions on its release and exemptions from both state and federal applicable Freedom of Information laws and should only be provided to persons meeting with the appropriate need-to-know as discussed below. BNSF considers this information commercial confidential and business confidential information and Security Sensitive Information pursuant to Federal law, and the documents have been marked accordingly.

The D.O.T.'s guidance states that "This data is intended for those persons with a need-to-know; that is, first responders at the State and local level, as well other appropriate emergency response planners. DOT expects the SERCs to treat this data as confidential, providing it only to those with a need-to-know, and with the understanding that recipients of the data will continue to treat it as confidential. Accordingly, railroads may require reasonable confidentiality agreements prior to providing this information". BNSF trusts that each agency will maintain the confidentiality of this information in accordance with D.O.T.'s stated expectation.

Under federal homeland security regulations, this data is also considered sensitive security information and is **ONLY** to be shared with individuals having a "need to know" as defined by statute. Here, the information is being provided to government personnel with emergency response, planning and/or security-related responsibilities. Please

Warning: This record contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to persons without a "need to know", as defined in 49 CFR parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520.

distribute this information only to those people who have a direct "need to know" as defined by regulation with a copy of this letter. The key purpose of the emergency order is to ensure local responders understand if crude oil is being routed through their counties and potential volumes for the purpose of developing emergency response plans.

BE FURTHER ADVISED, numerous federal and state regulatory restrictions prohibit BNSF or those receiving this information from publicizing data on train volumes and routing. These include, but are not limited to the following:

1. Federal regulation prohibits sensitive security information relating to transportation shipments from being released. The SSI regulations are under three different federal agencies:
 - Department of Transportation: 49 CFR Subtitle A (Part 15)
 - Department of Homeland Security: 49 CFR Chapter XII (Part 1520)
 - Pipeline and Hazardous Materials Safety Administration: 49 CFR Subtitle B Chapter I (Part 172.820)
 - Also see attached STB protective order as further example of treatment and restriction on disclosure of SSI:
[http://www.stb.dot.gov/decisions/readingroom.nsf/UNID/369FD392053798F985257975005464D3/\\$file/42116.pdf](http://www.stb.dot.gov/decisions/readingroom.nsf/UNID/369FD392053798F985257975005464D3/$file/42116.pdf)

2. BNSF considers this information to be proprietary and confidential trade secret and business information and is providing it to your agency with the expectation and understanding that you will not share it with anyone who does not have a "need to know" such information for emergency response, planning and/or security-related responsibilities.
 - 49 CFR Parts 15 and 1520 defines SSI as including information that would "Reveal trade secrets or privileged or confidential information. . . ."
 - Pursuant to Federal Statute, information relating to the route, kind, quantity routing of a shipper's property is competitively sensitive information that shall not be disclosed by a railroad 49 USC § 11904.

BNSF recognizes the important role community emergency planning and responding personnel play in protecting our communities and is committed to providing information needed to support these efforts within the limits defined by law. Although security regulations allow for limited disclosure of this information, we must all be cognizant that there is a real potential for the criminal misuse of this data in a way that could cause harm to your community or other communities along the rail route. BNSF is providing this

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information to you with the understanding that your agency can and will protect such information from public disclosure. Each agency that receives this information is responsible for compliance with these restrictions.

In the event that you are asked to disclose or provide this information via an open records or other request to which your or another agency believes this information is responsive, BNSF requires that you immediately notify me at 817-740-7358 or by email at Patrick.Brady@bnsf.com so that BNSF can determine whether legal or other action to prevent disclosure is appropriate.

Sincerely,

Patrick Brady

Director Hazardous Materials
Special Operations
BNSF Railway

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