

Frequently Asked Questions on DOT's May 7, 2014, Emergency Order (EO) Regarding Notification to Communities of Bakken Crude Oil Shipments

1. How can railroads identify Bakken crude oil when they are the carrier, not the offeror of the product?

DOT recognizes that distinguishing shipments of Bakken crude oil from other crude oil, without the offeror positively identifying it, is a difficult task. Therefore, for purposes of this EO, crude oil tendered to railroads for transportation from any facility directly located within the Williston Basin (North Dakota, South Dakota, Montana in the United States or Saskatchewan or Manitoba in Canada) is Bakken crude oil for the purposes of this EO. However, to ensure the most accurate compliance with the EO going forward, railroads and offerors should work together to develop a means for identifying Bakken crude oil prior to transport, such as a Standard Transportation Commodity Code number, that identifies the crude oil by its geographic source.

2. As railroad schedules can vary for many reasons, when reporting on Bakken crude oil traffic through communities, what is the required level of specificity for traffic data?

The aim of this reporting requirement is to give first responders an understanding of the volume and frequency with which Bakken crude oil is transported through their communities so that they can prepare their response plans accordingly. With this in mind, when reporting the traffic data required by the EO, railroads should look at their aggregate traffic of Bakken crude oil through the jurisdiction for the prior year, and after considering any reasonably anticipated changes in that traffic, provide a reasonable estimate of the weekly traffic along the affected routes. This estimate can be provided in a range to account for normal variations in traffic. If a railroad's Bakken crude oil traffic changes materially ($\geq 25\%$) from the aggregate estimate provided, railroads must provide updated traffic information to the SERCs as soon as possible.

3. Who will have access to the data submitted to a SERC pursuant to this EO?

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. Historically, railroads and States have routinely entered into confidentiality agreements prior to railroads providing States with information on commodities transported in trains within their jurisdictions, as this information has traditionally been viewed as confidential from business and security perspectives. DOT believes that following precedent and sharing the data required by this EO under confidentiality agreements is appropriate.

4. May railroads share the data with Fusion Centers or other State agencies responsible for emergency response planning instead of SERCs?

DOT understands that States have varying methods and agencies responsible for emergency response planning and preparedness within their jurisdictions. For example, Fusion Centers are established on a State and regional basis, with one of their purposes being to share emergency response information. Railroads currently routinely share data on their shipments with Fusion Centers. Given that railroads and Fusion Centers have already established protocols for sharing information under existing confidentiality agreements, in some situations, there might be advantages to States and railroads in utilizing Fusion Centers instead of SERCs for the sharing of information required by this EO. DOT also notes that there is an existing mechanism for Tribal Nations to interact with the Fusion Centers through the State, Local, Tribal and Territorial Government Coordinating Council. Similarly, DOT recognizes that individual States may have an agency other than the SERC or Fusion Center that is more directly involved in emergency response planning and preparedness than either the SERC or Fusion Center. Accordingly, if a State agrees that it would be advantageous for the information required by this EO to be shared with a Fusion Center or other State agency involved with emergency response planning and/or preparedness, as opposed to the SERC, a railroad may share the required information with that agency instead of the SERC.

5. Must separate outreach be done with Tribal Emergency Response Commissions (TERCs)?

No. DOT will be reaching out to Tribal leaders to let them know that their TERCs can coordinate with the appropriate SERC(s) for access to data supplied under this EO. Railroads must therefore ensure that SERCs (or relevant Fusion Centers, if States so choose) are also supplied with information for traffic through tribal lands.