

August 28, 2024

Ms. Katie Farmer
President and Chief Executive Officer
BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, Texas 76131

Dear Ms. Farmer,

We are writing to you to express our grave concerns with recent changes to BNSF's tariff requirements for shipments of Toxic Inhalation Hazard (TIH) materials. Our respective organizations represent major BNSF customers that both ship and receive TIH materials.

In an August 5, 2024, notice to customers, BNSF announced changes to its General Rules stated in BNSF 90096 that will become effective September 1, 2024. These changes require each TIH customer to:

- Maintain a minimum of \$100 million of general liability insurance coverage;
- Equally share liability for damages up to \$1.8 billion where the proximate cause is not an act or omission of either party or cannot be determined (e.g. 3rd party acts, Acts of God); and
- Accept full responsibility for and indemnify BNSF against such liability above \$1.8 billion.

This 10-fold increase over BNSF's current insurance requirement is excessive. With a limited number of insurance carriers in the market, your customers face significant challenges in obtaining coverage for their full range of products. Moreover, the September 1 deadline fails to provide customers with a reasonable amount of time to work through these challenges.

Presumably BNSF may reject shipments of TIH materials from customers who are not fully in compliance with the requirements starting September 1. If this happens, critical supply chains will be disrupted because some BNSF customers will have no transportation alternatives. TIH materials are the building blocks of chemistry and essential to nearly every aspect of our daily lives, including food production, water purification, energy production, and countless manufacturing processes. Therefore, it is essential to our nation's security, public health, and economic well-being that TIH materials continue to move by rail without interruption.

Liability should rest on the party with operational control over safety. Hazmat shippers are responsible for properly packaging materials and offering a secured railcar for transportation. Railroads, including BNSF, are the parties in the primary position to mitigate risks during transportation, including those associated with third-party actions and natural forces. Shifting liability to shippers could reduce incentives for railroads to mitigate such risks.

A workable liability framework is crucial to the safe and efficient transportation of essential products throughout the economy. TIH customers share BNSF's objective to manage transportation risks and are investing to convert their entire TIH fleet to the new, more robust design standards. However, BNSF's

unilateral rule changes impose unworkable insurance requirements and disproportionately shift greater liability to TIH customers. We urge you to further engage with your customers to achieve a constructive solution.

Thank you for your attention to this urgent matter.

Sincerely,



Chris Jahn
President and CEO
American Chemistry Council



Eric Byer
President and CEO
Alliance for Chemical Distribution



Frank Reiner
President
The Chlorine Institute



Chet Thompson
President and CEO
American Fuel & Petrochemical Manufacturers



Corey Rosenbusch
President and CEO
The Fertilizer Institute

cc: Chairman Robert Primus, STB
Vice Chair Karen Hedlund, STB
Patrick Fuchs, STB
Michelle Schultz, STB