BNSF RAILWAY

Katie Farmer
President and
Chief Executive Officer

BNSF Railway Company
P.O. Box 961052
Fort Worth, TX 76161-0052

2650 Lou Menk Drive
Fort Worth, TX 76131-2830
(817) 352-1215
(817) 352-7488 fax
katie.farmer@bnsf.com

September 9, 2024

Mr. Chris Jahn
President and Chief Executive Officer
American Chemistry Council
700 Second Street NE
Washington, DC 20002

Mr. Eric Byer
President and Chief Executive Officer
Alliance for Chemical Distribution
4201 Wilson Blvd., Suite 0515
Arlington, VA 22203

Mr. Frank Reiner
President
The Chlorine Institute
1300 Wilson Blvd., Suite 525
Arlington, VA 22209

Mr. Chet Thompson
President and Chief Executive Officer
American Fuel & Petrochemical Manufacturers
1800 M Street NW, Suite 900 North
Washington, DC 20036

Mr. Corey Rosenbusch
President and Chief Executive Officer
The Fertilizer Institute
4201 Wilson Blvd., Suite 700
Arlington, VA 22203

Dear Sirs:

I write in response to your August 28 letter concerning the recently announced changes to BNSF's common carrier pricing authorities for shipments of Toxic by Inhalation Hazard (TIH) commodities. Those commodities represent the most hazardous commodities moving via rail today, and an incident involving a TIH release could result in financial liability that compromises our ability to continue serving all the customers who rely on BNSF to move their goods across North America. In the absence of a comprehensive statutory liability regime addressing such catastrophic losses, we all have a responsibility to take reasonable measures to mitigate these risks. We believe that the updates we have made to our shipment terms are reasonable, workable, and promote the safe and efficient transportation of TIH commodities.

Against that backdrop, I will address each of your specific concerns in turn.

<u>Insurance</u>

BNSF increased the minimum insurance requirement for TIH shipments from $10 million to $100 million. This was the first time we have increased the insurance requirement for these commodities in nearly 20 years, and updating this requirement was overdue as demonstrated by recent events in our industry. Additionally, it is our understanding that the updated requirement is consistent with insurance levels already in place for TIH shippers. For instance, Chubb Ltd's annual report benchmarking liability limits purchased by industrial sector shows that in 2023, the median limit purchased by companies in the chemical industry was $350 million (the excerpt from that report is attached).

We have heard from a small handful of customers who needed time to understand whether their existing coverage satisfied this requirement. We are working in good faith with those customers, including by providing additional time beyond September 1 for them to complete their analyses. We did not begin rejecting shipments on September 1, and we will remain in close contact with our customers who requested more time.

Joint Liability

BNSF made an additional change to the provision governing situations where neither BNSF nor our customer has caused the liability. Liability sharing between BNSF and our customer in these situations has long been part of our shipment conditions, so that is not new. Our prior language allocated that liability on a 50/50 basis between BNSF and the customer from the first dollar to the last dollar. That remains the case for the first $1.8 billion in liability, but any liability in excess of $1.8 billion is now allocated to the customer.

First, it is important to note that the types of losses to which this provision applies are beyond BNSF's control to prevent. Customers are not required under this revised shipment condition to indemnify BNSF for BNSF's own negligence. Second, BNSF's share of the $1.8 billion represents the upper limit of the protection that is reasonably available in the current market to a common carrier railroad that is required to transport ultrahazardous commodities. An incident involving a TIH release could exhaust available coverage and jeopardize a railroad's ability to operate. BNSF's demonstrated record of safely moving hazardous materials shipments underscores that this risk is very small, but it is not zero; we must take reasonable measures to ensure those risks are prudently managed.

I also want to address your comment that liability should be assumed by the party "with operational control over safety" to avoid reducing incentives for railroads to mitigate those risks. BNSF's safety vision is to operate free of incident or injury, and external incentives are not required to ensure that we continually pursue this core value. Regardless, the continuing framework of joint liability up to $1.8 billion certainly provides sufficient incentives. The operating decisions that your members independently make regarding which of different substitutable products to utilize and from where to procure them can substantially impact the risk profile associated with the supply chain for TIH commodities. A rational allocation of risk for losses outside of a railroad's control would incentivize better risk mitigation choices from everyone involved in the manufacture, distribution, and transportation of these ultrahazardous commodities.

BNSF remains committed to meeting our obligation as a common carrier to transport TIH commodities, and these updates to our shipment conditions do not change that. We have been deeply engaged with our customers on these changes thus far and will continue to be so going forward.

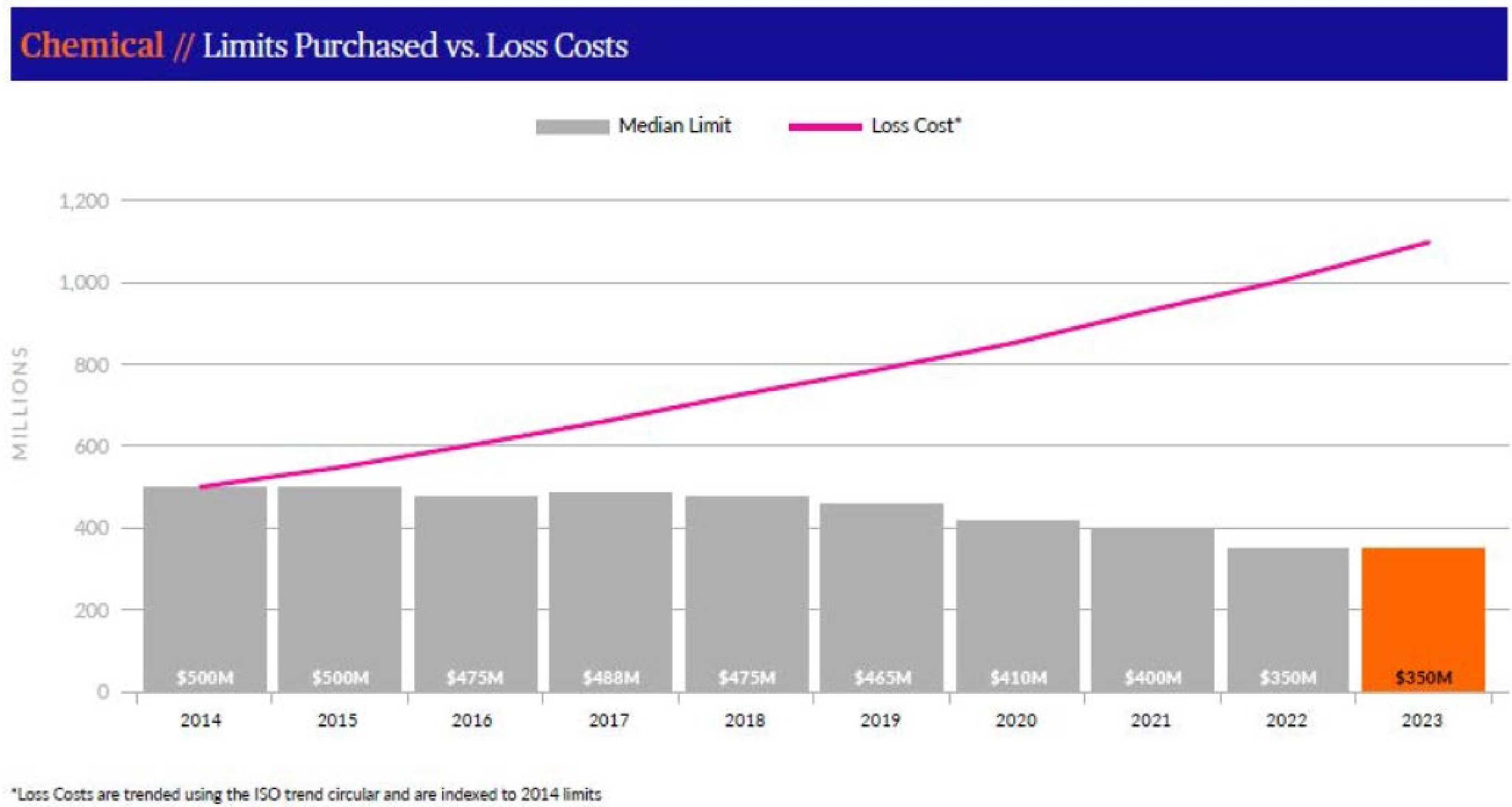
Sincerely,

Katie Farmer

Katie Farmer
President and Chief Executive Officer

cc: Chairman Robert Primus, Surface Transportation Board
Vice Chair Karen Hedlund, Surface Transportation Board
Member Patrick Fuchs, Surface Transportation Board
Member Michelle Schultz, Surface Transportation Board

ATTACHMENT


Chemical // Limits Purchased vs. Loss Costs
Median Limit
Loss Cost*
MILLIONS
1,200
1,000
800
600
400
200
0
$500M
$500M
$475M
$488M
$475M
$465M
$410M
$400M
$350M
$350M
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
*Loss Costs are trended using the ISO trend circular and are indexed to 2014 limits