

BNSF Automotive Rules and Policies Guide



BNSF AUTOMOTIVE RULES AND POLICIES GUIDE

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This *BNSF Automotive Rules and Policies Guide (AR&PG)* replaces the January 20, 2009 *BNSF Automotive Rules and Policies Guide* for motor vehicle shipments.

This *Automotive R&PG* is available on <http://www.bnsf.com>. Any changes to this *R&PG* will be noted on the Web.

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GENERAL RULES



ITEM 1: RULES AND POLICIES GUIDE APPLICATION

TRANSPORTATION IN MULTI-LEVEL SERVICE

The *BNSF Automotive Rules and Policies Guide (AR&PG)* governs the transportation of new and used motor vehicles in multi-level non-articulated or articulated railcars for motor vehicle service by intrastate, interstate and foreign commerce.

This document specifies rules governing motor vehicle transportation on the BNSF Railway Company (referred to as BNSF) or transportation provided by BNSF as part of a continuous automotive movement and is subject to modification or cancellation at any time. (For personally owned vehicles, see Item 25: Personally Owned Vehicle Shipments.)

The *BNSF Automotive Rules and Policies Guide* in combination with a specific BNSF price authority (refer to Item 3: Price Authorities Application) constitutes an offer by BNSF to provide certain exempt transportation services. A separate agreement is made each time a shipment is tendered to BNSF according to the offer contained in the *BNSF Automotive Rules and Policies Guide* and the relevant price authority. When tendering a motor vehicle shipment, the Shipper warrants it has authority to enter into this agreement and agrees to be bound by the terms of the *BNSF Automotive Rules and Policies Guide*. Any party acting on behalf of the Shipper, the beneficial owner, or the receiver who accepts this shipment also agrees to be bound by the terms of the *BNSF Automotive Rules and Policies Guide*. (See Item 7: Complete Offer and Acceptance.) The Shipper is responsible for ensuring that all such parties are given notice of the applicability of the *BNSF Automotive Rules*

and Policies Guide. The effective price authority states the specific service locations (facilities) offered in accordance with the *BNSF Automotive Rules and Policies Guide*.

The Shipper must arrange for the transportation of motor vehicles beyond BNSF's rail lines and BNSF is not party to or liable for any portion of such arrangements. The interchange of railcars between BNSF and another railroad may be made only at normal (BNSF carload) rail interchange points, unless provided for in the price authority.

Any specific provisions take precedence over general provisions, unless otherwise stated.

See the Definitions Chapter for explanations of some terms used in this *AR&PG*.

TRANSPORTATION IN INTERMODAL SERVICE

Motor vehicles or other related automotive commodities moving in Intermodal (trailer and container) service are governed by the *BNSF Intermodal Rules and Policies Guide*, which can be found at <http://www.bnsf.com>.

TRANSPORTATION IN BOXCARS

Automotive parts or related commodities moving in boxcars are governed by the *BNSF Rules, Demurrage, and Storage Books 6100, 6200, 6004, and 6005 Series*, which can be found on the web at <http://www.bnsf.com>.

CREDIT AND COLLECTIONS



ITEM 2: CREDIT AND COLLECTIONS

BNSF's requirements regarding credit and collections are defined below.

BNSF CREDIT

1. The Shipper must establish credit (by completing the online credit application at <http://www.bnsf.com/customers/become-a-customer/credit-application/>) and receive approval from the BNSF Credit Department.
2. Without established credit, all motor vehicle shipments must be paid for on a cash basis (with a wire transfer) in advance of service. For shipments paid on a cash basis, the motor vehicles will be held at the automotive facility until payment is received. The Shipper will be responsible for storage charges, which will apply while the vehicle is detained at a BNSF Automotive facility. Storage charges will begin after the Shipper receives notice. (See Item 43: Storage.)
3. All payments (including, but not limited to, freight charges, accessorial service charges, surcharges, and other applicable charges) must be paid in U.S. funds by the Shipper in accordance with BNSF credit terms or individual contract terms. All charges for accessorial services will be assessed to the Shipper. (See Item 3: Price Authorities Application, Item 4: Surcharges and Special Assessments, and Item 5: Accessorial Services and Charges.)
4. If credit is extended, Shipper agrees to pay for the freight charges within fifteen (15) calendar days from the date of the invoice. Failure to comply with these terms may result in suspension of credit.
5. BNSF reserves the right, at its sole discretion, to cancel credit and to require payment in advance of service. BNSF reserves the right, at its sole discretion, to change the credit terms, including, but not limited to, the right to increase requirements for a security deposit, letter of credit, or other form of security arrangement.

BNSF COLLECTION

1. Payments for freight and other invoiced charges must be made by Electronic Funds Transfer (EFT) or Automated Clearing House (ACH).

If the Shipper is on a cash basis (paying by wire transfer), the payment must be received before or at the time the shipment is tendered to BNSF. A shipment tendered on a cash basis will be held by BNSF until payment is received. Send the wire transfer payment to Northern Trust Company, Chicago, IL, Swift #CNORUS44, Bank ABA # 071000152, BNSF Acct # 31099171.
2. In the event of an invoice error, BNSF will issue a balance due bill or refund. The Shipper must file for invoice errors (overcharges or refunds) within thirty-six (36) months of the shipment's movement or waybill date, and any incentive payments within ninety (90) days of the end of the incentive period.

Cargo (freight) claims are addressed in Section 6 of this Item and are not considered an overcharge or refund.
3. If the Shipper's bank dishonors any electronic funds transfer submitted by BNSF, the Shipper will be given written notice and the price authorities utilized may be terminated.
4. In the event a Shipper is delinquent on any outstanding BNSF payments or charges, unless under dispute, BNSF reserves the right to withhold and/or deduct any refunds and/or incentive payments due to the Shipper. Payments not made to BNSF within

the applicable payment terms are considered delinquent. (See Item 6: Invoice Disputes.)

5. In the event the Shipper fails to pay any undisputed invoiced charges within the credit period and fails to provide adequate documentation to dispute the charges within the credit terms, BNSF will apply a finance charge on all delinquent invoices. The finance charge will be the highest rate allowed by law. (See Item 6: Invoice Disputes.)
6. If filing a cargo (freight) or equipment claim, all outstanding payments or charges, including, but not limited to, the payments and charges for the claimed cargo and equipment, are due according to standard payment terms. If applicable, any reimbursement of payments will be handled in the claims process. (See Item 35: Vehicle Claims.)
7. In the event litigation becomes necessary to collect unpaid freight and other invoiced charges, the Shipper will also be responsible for all charges associated with the litigation, including, but not limited to, court costs, expenses, and attorney's fees.
8. BNSF will not make a claim for payment of freight and other charges incurred against any beneficial owner utilizing the Shipper's services where the beneficial owner has made payment for such charges to the Shipper. If the beneficial owner has not made payment for such services to the Shipper and the Shipper has not made payment for such services to BNSF within thirty (30) days of the provision of such services, then the Shipper grants BNSF the right to collect such charges directly from the beneficial owner and offset any amounts collected against the sums owed the BNSF. The granting of the right to pursue the collection of sums owed BNSF will not, in any way, discharge or modify the Shipper's obligations.
9. The Shipper and BNSF agree that in the event an order for relief is entered or an involuntary bankruptcy petition is filed against Shipper under the United States Bankruptcy Code, to the extent that payments due from beneficial owners for transportation services provided have not been made before the date

of such filing, the Shipper grants BNSF the right to collect such payments directly from the beneficial owners and offset such amount against the sums owed BNSF by the Shipper.

10. With respect to any BNSF claim against Shipper, the Shipper grants BNSF a right to offset against any and all of the Shipper's property in the possession or control of BNSF, including, but not limited to, any refunds or deposits held by BNSF. The right of offsetting granted in this Section will be effective only with respect to any liquidated amount that remains unpaid more than thirty (30) days after such amount becomes due and payable. It is further expressly understood that this section is in addition to and does not displace any legal rights to which BNSF may be entitled.
11. BNSF reserves the right to change the credit terms, including, but not limited to, the right to increase requirements for a security deposit, letter of credit, or other form of security arrangement in the event that there is a substantial change in the Shipper's ownership. A substantial change in the Shipper's ownership will occur when more than twenty-five percent (25%) of the Shipper's ownership interests will be transferred to the new owners.

ITEM 3: PRICE AUTHORITIES APPLICATION

PRICE AUTHORITY DEFINITION

A BNSF price authority states a rate or set of rates for a particular motor vehicle shipment (an individual vehicle or a railcar containing vehicles). These rates may be transmitted to the Shipper by printed copy, electronic facsimile (fax), electronic methods, or the Web (posted on <http://www.bnsf.com>).

A BNSF price authority applies only for the stated origin and destination locations named in the price authority.

All motor vehicle shipments are delivered only to the location or facilities stated on the price authority. (See Item 43: Storage and Item 29: Shipper General Liability.)

Intermediate or rail stop-offs are not permitted for motor vehicle shipments. Rail stop-offs are requests to detain a shipment and/or unload a

vehicle at any point between the origin and destination automotive facilities indicated on the price authority or the shipping instructions.

Transportation beyond any locations named in the price authority is not the responsibility of BNSF.

A price authority does not constitute shipping instructions. The price authority states certain rates, whereas a shipping instruction allows a Shipper to tender a motor vehicle shipment to BNSF utilizing a price authority. (See Item 8: Shipping Instructions.)

The Shipper is responsible for determining the correct price authority and rate at the time the motor vehicle shipment is tendered to BNSF. The Shipper must furnish the correct price authority on the shipping instructions. The applicable rate is based on the price authority in effect and stated on the shipping instructions when the motor vehicle shipment is tendered to BNSF. The price authority, stated on the shipping instructions when the shipment is tendered to BNSF, determines the rate (freight charge) and other applicable charges that are invoiced and due. (See Item 8: Shipping Instructions and Item 9: Shipping Instruction Changes.)

The stated price authority may not be changed after a motor vehicle shipment has been tendered to BNSF.

Failure of the Shipper to furnish the correct price authority will not relieve the Shipper from its obligation to pay charges based upon the price authority in effect and on the shipping instructions when the shipment is tendered to BNSF.

(See Items in the Credit and Collections Chapter and Item 1: Rules and Policies Guide Application.)

PRICE AUTHORITY TYPES

Described below are types of price authorities – Quote, Multi-party, Direct or Interline.

1. Quote

A special rate that is negotiated for a specific motor vehicle or railcar shipment of motor vehicles, based on certain factors (such as Shipper, commodity, volume, and equipment) and issued by a BNSF Marketing Representative. Any special quote will be immediately confirmed in writing. In the event of disagreement concerning an oral quotation, the written confirmation will take precedence.

2. Multi-party Agreements

A contractual arrangement between any or all of these parties (BNSF, Shipper, beneficial owner or Shipper's agents) established by a BNSF Marketing Representative. Only the rates or price authorities that are identified in a multi-party agreement or referred to a multi-party agreement will apply. Multi-party agreements include all transportation and price contracts, and tri-party agreements.

3. Direct or Interline

Price authorities (quotes or multi-party agreements) state if the rates can be used for direct (BNSF only) or interline (BNSF in conjunction with another railroad) transportation.

Interline price authority rates are either joint-line or Rule 11.

a. Joint-line (through rate)

A joint-line price authority is one price authority that applies to the entire movement from rail origin to rail destination on two or more railroads. The price authority indicates the interline route with the applicable carriers, and the rate includes all interchange charges unless otherwise noted.

Shipping instructions for joint-line shipments must be sent only to the origin carrier, who will forward the shipping instructions to the other carriers in the route.

b. Rule 11

A Rule 11 price authority or rate allows shipments to be interchanged from one railroad to another using each carrier's specific price authority. Thus, the Shipper combines each railroad's price authority to create an interline movement.

Shipping instructions for Rule 11 shipments must be sent only to the origin carrier. The origin carrier forwards all shipping information to the other carriers in the route. Rule 11 must be indicated on the original shipping instructions along with each price authority for the rail carriers involved in the movement. Even though all price authorities are stated only on the origin railroad's shipping instructions, each railroad will invoice the Shipper separately.

For interline shipments, Rule 11 can only be used if the price authority specifically states Rule 11 is applicable. If a Rule 11 notation is not on the price authority and another rate has not been provided, the rate assessed will be a Rule 11 rate from price authority BNSFQ 111123, which is on <http://www.bnsf.com>. Please contact your Marketing Representative for details on this price authority.

- c. Haulage or other
Other interline arrangements such as Voluntary Coordination Agreements (VCAs), haulage agreements, or trackage rights (alliances) are methods to market and price on other railroads. These agreements typically show a BNSF route (with BNSF incurring the interchange costs and the other railroad's charges).

PRICE AUTHORITY MODIFICATIONS

Unless a price authority specifically states that a rate or other term cannot be changed, BNSF reserves the right to modify any price authority at any time regardless of expiration date shown on the price authority. Each price authority is effective until expired, cancelled, or reissued by a BNSF Marketing Representative. In addition, BNSF reserves the right to adjust rates when the other carrier increases their portion of associated joint-line rates.

If a shipment is misidentified on the shipping instructions or other shipping documents, BNSF has the right to revoke the price authority and/or the BNSF transportation contract for that Shipper. (See Item 8: Shipping Instructions.)

These price authority modification provisions apply to all price authorities (including multi-party agreements).

(See Item 10: Service.)

ITEM 4: SURCHARGES AND SPECIAL ASSESSMENTS

All surcharges and special assessments will apply even if there is an inconsistent or contrary provision in a BNSF price authority, contract, or agreement (including multi-party agreements).

FUEL SURCHARGES

All BNSF Automotive transportation services of motor vehicle shipments will be subject to any fuel cost recovery surcharge implemented by BNSF or imposed on BNSF.

Any fuel surcharge levied will be available for viewing at <http://www.bnsf.com/customers/fuel-surcharge/> or may be obtained from a BNSF Marketing Representative.

OTHER SURCHARGES

In addition, BNSF may apply other types of surcharges, including, but not limited to, the APHS and COBRA border surcharges, on all transportation services and shipments provided by BNSF.

For information regarding other surcharges, please contact a BNSF Marketing Representative.

SPECIAL ASSESSMENTS

BNSF may require the Shipper to pay any costs, expenses, charges, fees, taxes, tolls, duties, levies, usage fees, access fees, surcharges, and special charges that apply to the transport by BNSF of applicable shipments that are imposed by, but are not limited to, any port authority, federal, state, local, or governmental agency. This includes, but is not limited to, the Alameda corridor (ACTA) surcharge.

ITEM 5: ACCESSORIAL SERVICES AND CHARGES

Accessorial charges may include, but are not limited to, load, unload, storage, shipping instruction changes, and inspection. The Shipper should refer to applicable Items for stated charges or contact a BNSF Representative for any other accessorial service charges. The applicable charges are those in effect on the date the charges are incurred.

If the Shipper requests and submits a BNSF authorization form for accessorial services, BNSF will make a diligent effort to execute the request.

The Shipper is responsible for any applicable accessorial charges and associated federal, state and local taxes, surcharges, or charges, regardless of BNSF obtaining an authorization.

(See Item 2: Credit and Collections, and a summary of some charges in Appendix C: Charges and Amounts.)

ITEM 6: INVOICE DISPUTES

A Shipper contending an erroneous charge shall pay the amount the Shipper believes is correct and provide a written explanation attached to the invoice. Shipper shall return the invoice and proposed corrections (to the address stated on the invoice) within the BNSF credit period or applicable contract terms, or file the invoice disputes electronically on secured <http://www.bnsf.com>.

Finance charges will apply on non-disputed delinquent invoices. (See Item 2: Credit and Collections and Item 43: Storage.)

The Shipper and receiver accept liability for price authority charges and any other applicable charges jointly and severally by tendering the shipment and/or accepting delivery.

SHIPPING INSTRUCTIONS



ITEM 7: COMPLETE OFFER AND ACCEPTANCE (MOVEMENT INITIATION)

COMPLETE OFFER

The complete offer to a Shipper consists of this *BNSF Automotive Rules and Policies Guide* and the price authority in effect at the time complete shipping instructions are given to BNSF. The complete offer will be accepted without change unless modified by an exception contained in one of the following:

- Price authority issued in writing by BNSF to the Shipper
- Separate written multi-party agreement signed by a BNSF Marketing Representative.

Any notation on the shipping instructions directing transportation by BNSF that is inconsistent with or attempts to change the terms of this offer:

- Will be interpreted as a notation made for the private benefit and information of a party other than BNSF
- Will not be a part of this offer, and will not be binding on BNSF.

ACCEPTANCE

The acceptance of an offer for a motor vehicle shipment is outlined below.

If BNSF is the origin carrier and the Shipper's facility is the origin, acceptance of the offer begins when the railcar is supplied to the Shipper and the Shipper furnishes complete shipping instructions to BNSF.

For motor vehicles tendered directly to a BNSF Automotive facility (vehicles not tendered to BNSF on a railcar), the transportation

agreement and offer of acceptance begins when BNSF accepts the motor vehicles accompanied by complete shipping instructions.

If BNSF is not the origin carrier, acceptance of the offer begins when BNSF receives the loaded railcar in interchange.

The transportation agreement must be confirmed by sending BNSF complete shipping instructions (via EDI or BNSF's Shipping Instructions Web application). (See Item 8: Shipping Instructions.)

ITEM 8: SHIPPING INSTRUCTIONS

Proper shipping instructions are necessary for BNSF to provide the correct transportation services and to invoice the appropriate rate. The Shipper is responsible for providing complete and accurate information on the shipping instructions as stated within this *BNSF Automotive Rules and Policies Guide*.

SHIPPING INSTRUCTIONS INFORMATION

All motor vehicle shipments must be tendered with complete shipping instructions (via EDI or BNSF's Shipping Instructions Web application). (For electronic interchange information, the eBusiness site is available at <http://www.bnsf.com/customers/support-services/bnsf.com-tools/>.)

Shipping instructions must be received prior to BNSF moving the motor vehicle shipment. (See Item 7: Complete Offer and Acceptance.)

When the Shipper loads motor vehicles into a railcar, all motor vehicles in a railcar must be billed on one (1) shipping instruction.

Motor vehicle shipments arriving at BNSF facilities with incomplete, missing, or incorrect shipping instructions may be held at origin and/or destination until complete and correct shipping instructions (sent via EDI or BNSF's Shipping Instructions Web application) are provided to BNSF. Storage charges will be assessed at origin and/or destination for shipments that are delayed while shipping instructions are completed or corrected. (See Item 43: Storage.)

If BNSF receives motor vehicles and does not receive applicable shipping instructions, the Shipper will be assessed \$150 per day per vehicle, in addition to storage and other applicable charges.

BNSF will not be responsible for delay or related costs, if the manufacturer fails to provide the haul-away carrier on the shipping instructions.

To change or add a haul-away carrier after receipt of the automotive shipment, the charge for shipping instructions changes will apply. (See Item 9: Shipping Instructions Changes.)

Shipping instructions are kept for a limited time. The shipping instructions will be deleted if the associated shipment has not been tendered within thirty (30) days. After this time, new shipping instructions must be sent to BNSF before tendering the shipment.

Any notation on the shipping instructions directing transportation by BNSF that is inconsistent with or attempts to change the terms of the complete offer (see Item 7: Complete Offer and Acceptance) will be interpreted as a notation made for the private benefit and information of a party other than BNSF and will not be a part of the offer.

The price authority stated on the shipping instructions cannot be changed after BNSF receives the shipment. (See Item 3: Price Authorities Application.)

To change shipping instructions, see Item 9: Shipping Instructions Changes. Shipments may be subject to charges when changing shipping instructions, depending upon the changes made and associated status of the shipment.

The Shipper is responsible for providing complete and accurate information as stated within this *BNSF Automotive Rules and Policies Guide*.

Misidentifications constitute any motor vehicle shipment information provided to BNSF that is erroneous or incomplete. Shipment misidentifications include improperly describing information deemed necessary throughout this *BNSF Automotive Rules and Policies Guide*, including, but not limited to, shipping instructions and information, commodity descriptions, shipment information, Shipper, or price authority. The Shipper will be assessed \$500 for a misidentified shipment, in addition to other applicable charges. BNSF has the right to inspect shipments to ensure shipping instructions accuracy and proper securement, but it is not required to perform such inspections. (See the Railcar Equipment and Vehicle Specifications Chapters.)

If a misidentified shipment occurs, BNSF has the right to revoke the price authority and/or the BNSF transportation contract for that Shipper. (See 3: Price Authorities Application.)

REQUIRED SHIPPING INSTRUCTIONS ELEMENTS

The shipping instructions are considered complete only when all the required elements stated in Appendix A: Shipping Instructions are provided to BNSF (via EDI or BNSF's Shipping Instructions Web application).

Additional shipping instructions are required for shipments crossing the Canadian or Mexican border. (See Appendix A: Shipping Instructions.) In addition, send a complete set of Customs documents to the connecting carrier to prevent delays. For shipments moving to Mexico, the Shipper will also be responsible for the following:

- For Southbound shipments moving to Mexico, if the export documentation is not available when the shipment reaches the United States/Mexico border, a \$500 charge will be assessed to the Shipper, and other applicable charges. If Customs inspections are required, the Shipper is responsible for providing and paying any drayage (trucking) to the Customs facility or location.
- For Northbound shipments moving from Mexico, the Shipper is responsible for hiring a United States Customs broker. Additional information on Mexico service can be found on the BNSF Mexico Marketing site at <http://www.bnsf.com/customers/where-can-i-ship/mexico/>.

ITEM 9: SHIPPING INSTRUCTIONS CHANGES

PRIOR TO TENDERING MOTOR VEHICLES TO BNSF

Prior to receiving a railcar loaded with motor vehicles or individual motor vehicles tendered to BNSF, changes to shipping instructions are allowed at no charge when sent via EDI or BNSF's Shipping Instructions Web application.

BNSF does not verify or compare information prior to receiving (having) the motor vehicles tendered to BNSF. The shipping instructions used for transporting and invoicing the motor vehicle shipments will be the shipping instructions that are accepted and processed within BNSF's transportation system at the time the shipment is tendered to BNSF.

If changes to the shipping instructions cause BNSF to make corrections, a \$400 charge will be assessed the Shipper, in addition to other

charges related to Shipping Instructions Changes, and other applicable charges.

CHANGES AFTER TENDERING MOTOR VEHICLES TO BNSF

Once the shipment has been tendered to BNSF, certain changes to the shipping instructions will not automatically be accepted. Changes or corrections that can be accepted automatically after a shipment has been tendered to BNSF may be submitted via EDI or the secured BNSF Shipping Instructions Modifications Web application.

Only one shipping instructions change may be made per shipment. BNSF will make a reasonable effort to execute the request, but is not responsible if the requested change cannot be made.

After the vehicles are loaded on the railcar, if shipping instructions elements are requested to be changed and it is determined a change can be accomplished, a \$200 charge per shipment will be assessed the Shipper for changing the shipping instructions, in addition to any other applicable changes related to shipping instruction changes, rate differentials, and other applicable charges.

Applicable changes include, but are not limited to, the Shipper, receiver, weight, shipping instructions cancellation, destination, haul-away carrier, and route.

Changing or correcting the destination on the shipping instructions is not practical once the vehicle(s) has been loaded to a railcar or the railcar is in transit. If it is determined that a change to the destination can be accomplished, then the charge will be \$200 per shipment (this is a per railcar charge when the railcar is loaded with same Shipper's vehicles or a per vehicle charge when there are mixed Shippers on one railcar with a maximum charge of \$200 per shipper), plus the charge for changing the shipping instructions, any applicable rate differential, and other applicable charges. Any change must still be valid for the price authority indicated on the shipping instructions when the shipment was tendered to BNSF.

No changes will be allowed on in-bond shipments without prior approval from a BNSF Automotive Customer Support Representative.

SERVICE**ITEM 10: SERVICE****SERVICE**

Automotive schedules can be found online at <http://www.bnsf.com/customers/what-can-i-ship/finished-vehicles/#%23subtabs-2>). Service schedules are subject to change without notification. BNSF will not be liable for failure to perform transportation services and such services are not guaranteed.

FORCE MAJEURE

BNSF will be excused from any obligation to perform transportation services when performance is prevented or delayed, in whole or in part, by an act of God, fire, hail, hurricane, high wind, flood, storm, earthquake, other severe weather or climatic conditions, civil or military authority, war, blockade, insurrection, riot, epidemic, lockout, strike or other labor disturbance, public enemy action, explosion, vandalism, commodity's inherent vice, sabotage, shortage of diesel fuel, embargo or AAR service order, wreck, derailment, BNSF and/or Shipper equipment, facilities, or mechanical breakdown, or any other catastrophic influence, and/or any like causes beyond the reasonable control of the Shipper or BNSF whether foreseeable or not, laws, Shipper's act or default, equipment design or condition that is not furnished by BNSF, or any occurrence that takes place when BNSF is not in actual possession of the vehicle.

(See Item 39: Laws and Regulations Compliance.)

SERVICE MODIFICATION

BNSF is not obligated to continue ownership, maintenance or operation of any rail line or Automotive facility and reserves the right to modify or discontinue any service or service offering, regardless of price authority type (including contractual agreements and interline agreements). (See Item 3: Price Authorities Application.) In such instances, BNSF will provide as much notice as possible to minimize the impact of necessary changes.

BNSF shall not be liable for any increased transportation costs, expenses, or consequential, special, or incidental damages that may result from such disposition, modification, or discontinuation of any service or service offering.

ITEM 11: EMBARGO

An embargo is a temporary measure to control shipments that threaten operations and warrants restrictions of such movements. The embargo is an order that prohibits further movement of, including, but not limited to, specific Shippers, commodities, or equipment.

Once Shippers are notified of an embargo, any motor vehicle shipment in question cannot be tendered to BNSF and is prohibited on BNSF until the embargo is lifted.

Failure to adhere to the embargo provisions or advise BNSF of any shipment in BNSF's custody or control will result in the Shipper being assessed \$10,000 per shipment, in addition to other applicable charges, expenses, and costs.

Failure to comply with an embargo places all aspects of liability with the Shipper. The Shipper is liable for any incident and all associated costs and expenses resulting from tendering an embargoed shipment including, but not limited to, distressed loads, derailments, loss of life, injury, destruction and contamination of property, equipment, cargo, and structures, remediation, restoration, and train and terminal operations. THE SHIPPER HOLDS BNSF HARMLESS FOR ANY OR ALL ACTS OF NEGLIGENCE IF THE PROVISIONS ARE NOT FOLLOWED.

ITEM 12: MEXICO OR CANADA SERVICE**GENERAL REQUIREMENTS**

Automotive shipments originating or terminating in Mexico or Canada must adhere to the

respective countries Customs' requirements and governmental regulations, in conjunction with applicable United States Customs, border, and other regulations.

Specific shipping instructions requirements for motor vehicle shipments crossing the border are stated in Item 3: Price Authorities Application and Item 8: Shipping Instructions.

The Shipper is responsible for any charges, costs, expenses, duties, taxes, and fees that are associated with a shipment's clearance at the border and Customs' inspections or examinations. In addition, the Shipper is responsible for any charges resulting from the shipment being delayed, detained, moved and stored at the border, an examination facility, or a BNSF facility.

For Northbound shipments moving from Mexico, the Shipper is responsible for hiring an U.S. Customs broker.

Additional information can be found on the BNSF Mexico Marketing site at <http://www.bnsf.com/customers/where-can-i-ship/mexico/> or the BNSF Canada Marketing site at <http://www.bnsf.com/customers/where-can-i-ship/canada/>.

DOCUMENT DELAY ON EXPORT TRAFFIC TO MEXICO

Unless otherwise provided, motor vehicle shipments moving from the United States to Mexico via any Texas-Mexico border crossing points are subject to the following provisions.

1. Document Delay Free Time and Charges
 - a. Seventy-two (72) hours free time will be allowed for the completion of all documentation required for the legal exportation from the United States and for importation of a shipment into Mexico.
 - b. Free time will be computed from the first 12:01 a.m. after "Despacho Previo" notification. "Despacho Previo" is a Mexican Customs' program to pre-document exports from the United States into Mexico prior to the interchange of railcars to a Mexican railroad. Sundays and holidays will be excluded in the computation of free time.
 - c. Following the expiration of free time, a Document Delay charge will be assessed until the railcar is released for entry into Mexico. The document delay charge will

be \$150 per day. An additional \$500 charge will be assessed at the time the shipment is released for export when 1) the railcar is physically located within 50 miles of the station where the railcar will enter into Mexico, and 2) the free time has expired.

- d. Sundays and holidays occurring after the expiration of the document delay free time will be chargeable days.
 - e. Contact the Border Support by calling 1-888-700-3075, option 3 for any questions.
2. Notification and Release
 - a. "Despacho Previo" notification will be sent or given by the BNSF to the Shipper, or party designated by the Shipper, after the railcar enters the BNSF computer system by means of the shipping instructions (including receipt of an interline waybill from a connecting rail carrier).
 - b. Railcars will be considered to be "released" for entry into Mexico when all of the following requirements have been met:
 - Any document delay charges have been paid to BNSF.
 - All requirements to export the shipment from the United States to Mexico have been met, and the required documents are furnished to the BNSF.
 - All requirements to import the shipments into Mexico have been met and proof furnished to the BNSF.
 - The Mexican rail carrier has received the shipping instructions.
 3. Holidays

The following United States and Mexican holidays will be recognized as holidays in the computation of document delay free time:

 - New Year's Day (1/1)
 - Constitution Day (2/5)
 - Birthday of Benito Juarez (3/21)
 - Good Friday (Friday before Easter Sunday)
 - Labor Day (5/1)
 - Independence Day (9/16)
 - Anniversary of Mexican Revolution (11/20)
 - Christmas Day (12/25).

ITEM 13: RAIL CARRIER BOND

MOVEMENT UNDER T&E BOND (TYPE 62)

The Shipper may use BNSF's carrier bond for shipments moving under a "transportation and exportation" (T&E) manifest entry under the following conditions.

1. Entering by Rail
BNSF's bond can be used for shipments entering the United States by rail from either Mexico or Canada and then exiting the United States by rail.

Shipments that transit the United States between Canada and Mexico and both enter and exit the United States on a railcar move under an electronic T&E or V-bond. An electronic (paperless) V-bond is created within the U.S. Customs Automated Manifest System (AMS) system, which is for Customs clearance of rail shipments crossing the borders. Additional information on the AMS can be found on the Customs Web site at http://www.cbp.gov/xp/cgov/trade/automated/automated_systems/ams/requirements.xml, on the BNSF Mexico Marketing site at <http://www.bnsf.com/customers/where-can-i-ship/mexico/>.

No charge will be assessed when using an AMS-generated electronic (paperless) T&E bond for the shipment moving on BNSF.

2. Moving from a Seaport
BNSF's bond can be used for Mexico or Canada bound shipments that are loaded at a seaport, shipped on BNSF, and then exit the U.S. by rail.

In order to request use of BNSF's bond, please contact BorderSupport@bnsf.com or 1-888-700-3075, option 3. A BNSF bond may be requested; however, BNSF is not obligated to authorize use of the bond. Upon approval, the form will be returned to the Shipper. The Shipper is responsible for obtaining Custom's signature and forwarding the form to the appropriate Custom's office at the export location.

The shipping instructions must indicate that the shipment is moving under a T&E bond and state the T&E bond number. If the equipment, T&E number, and bond status are missing on the shipping instructions, the Shipper will be assessed a \$150 charge per

shipment and other applicable charges. (See Item 3: Price Authorities Application and Item 8: Shipping Instructions.)

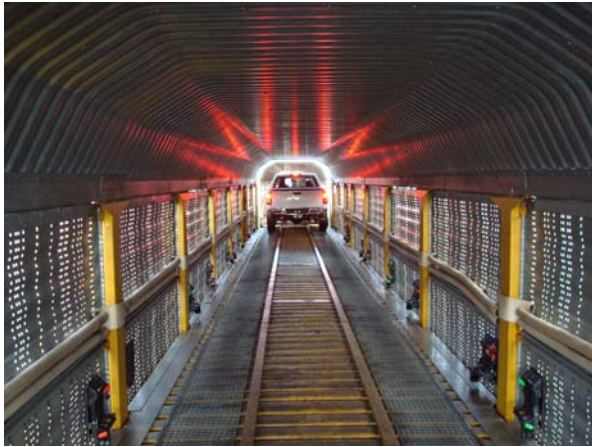
The Shipper will be assessed a \$150 charge per shipment to use a BNSF approved paper T&E (form 7512) bond, in addition to applicable charges.

GENERAL BOND CONDITIONS

The Shipper will be assessed a \$10,000 charge per shipment for inappropriate use of BNSF's bond, in addition to all other applicable charges, damages, expenses, or costs incurred.

THE SHIPPER GUARANTEES PAYMENT AND AGREES TO INDEMNIFY BNSF FROM AND AGAINST ALL LOSS AND LIABILITY FOR CUSTOMS DUTIES, TAXES, AND ANY OTHER REVENUE LOSS DUE TO ASSESSMENT UNDER THE STATUTES, RULES, OR REGULATIONS OF THE UNITED STATES CUSTOMS SERVICE AND INTERNAL REVENUE SERVICE. THIS APPLIES AFTER DELIVERY BY BNSF TO THE RECEIVER OR ITS DESIGNATED AGENT ON IN-BOND SHIPMENTS RESULTING, IN WHOLE OR IN PART, FROM ANY FAILURE BY THE SHIPPER OR ITS DESIGNATED AGENTS TO COMPLY WITH RULES OR REGULATIONS, INCLUDING, BUT NOT LIMITED TO, SHORTAGES, IRREGULAR DELIVERY OR NON-DELIVERY OF IN-BOND SHIPMENTS MOVING UNDER THIS *AUTOMOTIVE RULES AND POLICIES GUIDE*, REGARDLESS OF NEGLIGENCE OR ALLEGED NEGLIGENCE OF BNSF.

RAILCAR EQUIPMENT



ITEM 14: RAILCAR SPECIFICATIONS AND STANDARDS

BNSF will not provide concessions, payments, or movements for any railcars that do not meet the specifications and standards addressed in this Item, unless special arrangements are made with BNSF Marketing Representative prior to tendering the railcar to BNSF.

GENERAL REQUIREMENTS

Railcars must comply with the stated requirements.

1. The railcar must be fully enclosed, suitable design and construction to handle motor vehicles and to preserve and protect the equipment during transportation. In addition, the railcar must be suitable for standard loading and unloading processes.

See the AAR Manual of Standards and Recommended Practices for motor vehicles specifications as well as load and unload procedures for railcars. (See Item 41: Applicable Industry Publications.)

2. The height of an articulated railcar, including auto-racks, must not be more than 20 feet and 2 inches (20'2"). The maximum length BNSF can accept is 145 feet and 4 inches (145'4") for articulated railcars. Railcars that do not meet these clearance standards must have the approval of BNSF Automotive Marketing Representative before tendering the equipment to BNSF.

3. The railcar, including auto-racks and other apparatus on the railcar, must meet the AAR specifications and safety regulations.

In addition, all AAR equipment must be registered in UMLER.

4. Any railcar or equipment that does not meet AAR or BNSF specifications must be approved by an Automotive Marketing Representative before BNSF will accept (receive) the equipment.

The BNSF Mechanical, Clearance, and Automotive Equipment Departments must approve non-conventional auto-racks or specialty railcar or equipment used to transport motor vehicles, including, but not limited to, articulated railcars, aluminum railcars, Auto-Max, and Q2Trucked, before tendering the railcar to BNSF. If BNSF agrees to handle the non-conventional equipment, special arrangements and a price authority must be made.

5. When the Shipper fails to properly load and unload the railcar, the Shipper will be liable for any associated costs, expenses, and charges of damage to the vehicle(s) or the railcar that resulted from improper loading. (See Item 20: Vehicle Loading and Unloading by Shipper.)
6. BNSF has the right to inspect the shipment, but it is not required to perform such inspections. BNSF reserves the right to reject a railcar. (See Item 29: Shipper General Liability.)
7. The equipment must adhere to the specifications or requirements defined in the Railcar Equipment Chapter and other Items in this *BNSF Automotive Rules and Policies Guide*.
8. BNSF's offer to transport a motor vehicle shipment is subject to availability of appropriate equipment, which will be determined by BNSF at the time a shipment is requested or received by BNSF.
9. All railcars must be in a railcar pool that is recognized by BNSF or in the BNSF fleet.

ITEM 15: RAILCAR ORDERS

To order a railcar for transportation of motor vehicles on BNSF, railcars must be ordered two (2) weeks in advance by using BNSF's secured Automotive Forecast Tool. It can be found in the secured applications on <http://www.bnsf.com>.

Once railcar orders have been placed, the Shipper has the ability to adjust the forecast on a daily basis.

BNSF has the right to furnish any type or size of equipment that meets the railcar order.

ITEM 16: MAXIMUM RAILCAR WEIGHT AND OVERWEIGHT HANDLING

MAXIMUM VEHICLE WEIGHT

The Shipper will ensure the weight of the motor vehicles loaded on the railcar conform to government or regulatory safety and weight limitations. BNSF may, but is not required to, weigh any shipment.

The maximum gross weight that BNSF can accept or deliver per railcar is:

- 40,000 pounds per deck on a bi-level railcar
- 24,000 pounds per deck on a tri-level railcar.

Maximum gross weight for a bi-level or tri-level railcar consists of the total vehicle weight (including tying down, chocks, and other securement methods) multiplied by the number of motor vehicles (including tie-downs, chocks, and other securement methods) in the shipment. BNSF's weight requirements apply to all shipments, including railcars received in interchange.

OVERWEIGHT CHARGES

A Shipper who tenders an overweight shipment will arrange for and incur all costs of adjusting the shipment's weight, and will be responsible for all applicable storage charges and other applicable charges.

The Shipper will be responsible for storage charges, which will apply while the shipment is detained at a BNSF facility. Storage charges will begin after the Shipper receives notice of the overweight condition. No storage free time is provided for overweight shipments. (See Item 43: Storage.)

BNSF is not responsible for any fines (including, but not limited to, federal, state, and municipal), inspections, clean up, leaks, securement, transloading, vehicle damage,

storage, loading, unloading, additional transportation charges, or other expenses incurred due to weight non-compliance.

ITEM 17: PROHIBITED RAILCAR EQUIPMENT

PROHIBITED SHIPMENTS

Under no circumstance will the Shipper tender or BNSF knowingly accept the following prohibited railcar shipments:

- Railcars, for movement of motor vehicles, not fully enclosed or missing panels.

PROHIBITED LIABILITY

The prohibited equipment previously described will not be accepted by BNSF. The Shipper shall be liable for all damages arising directly or indirectly from failure to adhere to all prohibited equipment provisions. The Shipper shall be liable for any incident and all associated costs resulting from tendering prohibited equipment including, but not limited to, distressed loads, derailments, loss of life, injury, destruction and contamination of property, equipment, cargo, and structures, remediation, restoration, and train and terminal operations.

The Shipper agrees to indemnify and hold BNSF harmless for any damages, injury, death, or claims arising out of the Shipper's failure to comply with the requirements of this Item. THE SHIPPER HOLDS BNSF HARMLESS FOR ANY OR ALL ACTS OF NEGLIGENCE IF THE PROVISIONS ARE NOT FOLLOWED.

All costs and expenses to address prohibited items will be assessed the Shipper.

(See Item 14: Railcar Specifications and Standards and Item 18: Vehicle Specifications and Standards.)

VEHICLE SPECIFICATIONS



ITEM 18: VEHICLE SPECIFICATIONS AND STANDARDS

Motor vehicles tendered to BNSF must meet the following requirements.

1. The vehicle must be a suitable design and construction for safe movement and service on railcars, streets, and highways. The vehicle must be moveable on its own accord, including, but not limited to, have a live battery, contain gas, include keys (doors cannot be locked), must start, possess inflated tires, etc. All costs, expenses, and administrative fees to address or deal with such issues will be assessed to the Shipper. (See Items in the Vehicle Specifications Chapter.)
2. The vehicle must meet governmental safety regulations and licensing requirements in the jurisdictions of vehicle operation.
3. The motor vehicle must meet the requirements of the Department of Transportation 49 CFR 173.220. Motor vehicles are not subject to any of the hazardous material regulations when transported by rail (shipping papers, labeling, marking, placarding, or emergency information) as long as the motor vehicles' fuel tanks are securely closed per 49 CFR 173.220 (b) (4)(i). The motor vehicle battery per 49 CFR 173.220 (c) must be installed and a wet battery must be fastened in an upright position. The battery must be protected against short circuits and leakage, or

removed and packaged separately under 49 CFR 173.159.

4. Before BNSF will accept the motor vehicle, an Automotive Marketing Representative must approve any vehicle that does not meet the general requirements stated in this Vehicle Specifications Chapter. Contact a BNSF Automotive Marketing Representative for motor vehicle specifications.

ITEM 19: VEHICLE INSPECTIONS

The Shipper is responsible for performing a complete inspection of the vehicle prior to tendering to BNSF and providing the inspection record to BNSF.

Motor vehicles that enter or are stored at a BNSF Automotive facility must be for movement on BNSF. (See Item 23: Truck In / Truck Out and Items in the Haul-away Specifications Chapter.)

Motor vehicles may be inspected at origin or destination facilities. However, BNSF is not responsible if such inspections do not occur.

BNSF retains the right, without obligation, to inspect motor vehicles tendered to BNSF or while the vehicle is in BNSF's possession. This inspection also applies if the motor vehicles are tendered to BNSF in a railcar. This inspection by BNSF is to ensure the vehicle complies with safety requirements, shipping instructions, and other issues addressed in this *BNSF Automotive Rules and Policies Guide*. Failure of BNSF to inspect a vehicle shall not make BNSF responsible for any loss or damage that might have been discovered by such inspection and does not release the Shipper from complying with all terms in this *BNSF Automotive Rules and Policies Guide*.

The haul-away carrier picking up (obtaining) the vehicle may inspect the motor vehicle prior to departing a BNSF Automotive facility. (See Item 26: Vehicles Departing BNSF Facility.)

Upon inspection, if the haul-away finds vehicle loss or damage, the following conditions must be met. Severity vehicle damage levels are defined in the AAR Manual of Standards and Recommended Practices.

- Severity 1 and 2 damages must be documented on the load sheet prior to the vehicle departing the facility.
- Severity 3 damage or greater must be reported by the haul-away carrier prior to moving the vehicle from the bay or load line.

- Damages must be reported to the BNSF Automotive Facility Management and must be documented in BNSF's system before the vehicle departs the facility. The failure of the haul-away carrier to document and report damages prior to departure relieves BNSF of any damage claims. No supplemental or exception reporting will be permitted after the vehicle departs the facility.

In addition, BNSF is not responsible for any non-transportation related damages.

Inspections will be sub-coded to differentiate transportation related from other exception conditions. The Shipper will be liable for exceptions, which are not transportation related.

BNSF may modify the inspection and verification requirements at any facility by providing written notice to the haul-away carrier and Shipper.

(See Item 29: Shipper General Liability and the Liability / Claims Chapter.)

ITEM 20: VEHICLE LOADING AND UNLOADING BY SHIPPER

VEHICLE LOADING

The Shipper is responsible for proper loading methods when the origin is at the Shipper's facility or plant, including securement and any resulting damage to the motor vehicles or railcar.

Loading and railcar specifications can be referenced in the AAR Manual of Standards and Recommended Practices (see Item 41: Applicable Industry Publications).

Contact BNSF Load and Ride Solutions concerning proper loading techniques. (See Appendix D: Contacts.)

If a motor vehicle is found to be improperly secured, the Shipper will pay a charge of \$500 per occurrence, and incur all expenses to adjust or transfer the load, in addition to other applicable charges. If a railcar has to be set out of a train for reasons, including, but not limited to, equipment failures or commodity related problems, a \$5,000 charge will be assessed to the Shipper, plus other applicable charges.

The Shipper must attach seals on the railcar doors as applicable. It is the Shipper's responsibility to protect the safety and integrity of the motor vehicles, including, but not limited to, the application of security-type seals to the railcar for prevention of unauthorized access to the

cargo. The presence of a broken seal or missing seal alone does not deem the motor vehicles to be damaged. The Shipper is responsible for providing documented evidence that each railcar is properly protected with security seals when tendered to BNSF. Contact Load and Ride Solutions for any barrier seal questions at 1-800-832-5452.

When BNSF provides a railcar, the Shipper is responsible for inspecting and determining if the railcar is suitable to protect and preserve the motor vehicles during transit. If railcar problems are found, the Shipper should not load motor vehicles into a railcar and should contact BNSF Automotive Facility Management. BNSF will not be liable for loss or damage to cargo caused by defects in a railcar that the Shipper inspection could have discovered prior to loading.

TEST OR MONITOR REQUESTS

In order to request a ride quality test or to monitor shipments, contact Load and Ride Solutions (LARS). BNSF will make a reasonable effort to execute the request, but is not responsible if the test cannot be made.

If testing occurs, BNSF is not responsible for any failure of the device or consequences either directly or indirectly caused by the test or device failure. In addition, BNSF personnel may not be available to install or recover the test device. The Shipper may be responsible for the activation, placement, and recovery of the test device.

If test devices are available and performed with a BNSF provided device, the device must be returned to LARS within the time specified. In the event the device is not returned as specified, the Shipper will reimburse BNSF for the current list price of the device.

(See the Railcar Equipment Chapter.)

VEHICLE UNLOADING

The Shipper is responsible for unloading the motor vehicles (cargo) without damaging the railcar at the Shipper's facility or plant according to AAR standards and specifications. (See Item 41: Applicable Industry Publications.) Unless otherwise stated on the price authority, the receiver must completely unload the railcar, with the exception of chocking and securement hardware. Any special equipment must be returned to the railcar in its proper place. If the receiver fails to comply with these requirements, BNSF can reject the railcar. (See the Railcar Equipment Chapter.)

BNSF reserves the right to reject the railcar and assess storage charges until the railcar is returned. (See Item 43: Storage.)

ITEM 21: OVERSIZED VEHICLES

An oversized vehicle consists of the cargo (including securement apparatus) that exceeds the length, width, and/or height of any railcar.

Special arrangements must be made and approved prior to tendering the shipment to BNSF. Please contact your BNSF Automotive Marketing Representative for information on handling these shipments.

ITEM 22: PROHIBITED VEHICLES

PROHIBITED SHIPMENTS

Under no circumstance will the Shipper tender or BNSF knowingly accept the following prohibited shipments:

- Motor vehicles that are not drivable, including, but not limited to, a dead battery, out of (or low on) gas or fuel, no keys (locked doors), dead engine, flat tires, etc. Motor vehicles must be drivable in order to be parked at the facility, and to be loaded and unloaded onto the railcars.
- Motor vehicles must not contain any personal items or belongings including, but not limited to, electronic equipment, valuables, plants, live pets, suitcases, alcohol, drugs or firearms.

PROHIBITED LIABILITY

The prohibited vehicles described above will not be accepted by BNSF. The Shipper will incur a charge of \$500 per vehicle if a prohibited condition listed above is found. In addition, the Shipper shall be liable for all damages arising directly or indirectly from failure to adhere to all prohibited vehicle provisions. The Shipper shall be liable for any incident and all associated costs resulting from tendering prohibited equipment including, but not limited to, distressed loads, derailments, loss of life, injury, destruction and contamination of property, equipment, cargo, structures, remediation, restoration, and train and terminal operations.

The Shipper agrees to indemnify and hold BNSF harmless for any damages, injury, death, or claims arising out of the Shipper's failure to

comply with the requirements of this Item. THE SHIPPER HOLDS BNSF HARMLESS FOR ANY OR ALL ACTS OF NEGLIGENCE IF THE PROVISIONS ARE NOT FOLLOWED.

All costs and expenses to address prohibited issues will be assessed the Shipper.

(See Item 18: Vehicle Specifications and Standards and Item 21: Oversized Vehicles.)

ITEM 23: TRUCK IN / TRUCK OUT

Motor vehicles that enter or are stored at a BNSF Automotive facility must be for movement on BNSF. Motor vehicles that do not include BNSF transportation cannot be stored or reside at a BNSF facility, unless separate facility space agreements have been authorized and signed by the Shipper and BNSF. Contact a BNSF Automotive Marketing Representative for truck in and truck out approval and other information.

Truck in and truck out applies on motor vehicles that are delivered to a BNSF Automotive (origin) facility, but are not shipped by BNSF rail transportation to the final destination.

The motor vehicles will be unloaded from the haul-away carrier. The vehicles will be entered into BNSF's Auto Track system for inventory management purposes. (See Item 28: Haul-away Storage regarding vehicles trucked in and remaining on a haul-away carrier.)

For vehicles trucked in and trucked out, the Shipper or haul-away carrier will be charged \$50 per vehicle to enter the facility. Storage charges will apply. (See Item 43: Storage.)

BNSF will not be liable for any loss, damage, or expenses while these motor vehicles reside at a BNSF Automotive facility. (See Item 19: Vehicle Inspections and the Liability / Claims Chapter.)

This Item is not applicable for vehicle exchanges between haul-away carriers. (See Item 28: Haul-away Storage.)

ITEM 24: FACILITY OVERCAPACITY (SHIPPER'S VEHICLES)

If a BNSF Automotive facility is at capacity (full), BNSF has the right to either store the motor vehicle shipment en route or divert the shipment to another location determined by BNSF.

If the motor vehicles are stored in a railcar, the Shipper will be assessed the railcar storage charge and incur \$300 charge per railcar if BNSF diverts the railcar to another facility, in addition to

storage charges, freight charges, costs to deliver vehicles to a different destination, and other applicable charges. The unloading site is not responsible for additional charges to move vehicles to the final destination. If BNSF refuses to take the vehicle shipments (railcars) at a junction (interchange point or location), the Shipper will be responsible for the (rail) car hire.

ITEM 25: PERSONALLY OWNED VEHICLE SHIPMENTS

BNSF does not handle personally owned or private motor vehicles. For companies that can handle such shipments, please visit <http://www.bnsflogistics.com/solutions/carsontrack.html>.

HAUL-AWAY SPECIFICATIONS



ITEM 26: VEHICLES DEPARTING BNSF FACILITY

When the haul-away carrier retrieves (picks-up) vehicles from a BNSF facility, the haul-away carrier must present the bay tags and the load sheet to the facility personnel when departing the facility.

(See Item 19: Vehicle Inspections for reporting vehicle damage.)

ITEM 27: HAUL-AWAY FACILITY USE CHARGE

At some locations, a haul-away carrier may lease office space at BNSF Automotive facilities with appropriate Marketing approval.

If a haul-away carrier desires to be on-site, all expenses used to establish and maintain the office will be the haul-away carriers' responsibility.

The haul-away carrier may not perform maintenance or repairs without approval from the BNSF Facility Management.

Contact a Marketing Representative for associated terms and conditions.

ITEM 28: HAUL-AWAY STORAGE

Motor vehicles that enter or are stored at a BNSF Automotive facility must be for transportation on BNSF. Motor vehicles that do not include BNSF transportation service, cannot be stored or reside at a BNSF facility.

A haul-away carrier may not delay, detain, remain, rest, or store equipment at a BNSF Automotive facility without the authorization or

approval of the Facility Management. Authorization must be granted for each occurrence. If authorization is not granted for the respite, the haul-away carrier will be assessed \$500 per day, and other applicable charges.

If the haul-away carrier leaves a motor vehicle at a BNSF facility that is to be exchanged with another haul-away carrier, the haul-away carrier will be assessed \$500 per motor vehicle per day, in addition to other applicable charges. Item 23: Truck In / Truck Out is not applicable for vehicle exchanges between haul-away carriers.

The haul-away carrier will be liable for any incident and all associated costs, expenses, and charges, with a minimum charge of \$1,000, resulting from maintenance, repairs, or damages that occurred during a haul-away's respite, including, but not limited to, distressed shipments, vehicle damage, loss of life, injury, destruction and contamination of property, equipment, cargo, structures, remediation, restoration, and train or terminal operations.

BNSF will not be liable for any loss, damage, or expense incurred for the haul-away carrier, haul-away carrier's equipment, or vehicles stored on the haul-away carrier's equipment during the haul-away carrier's respite at a BNSF facility.

(See other related haul-away Items including, but not limited to, Item 8: Shipping Instructions if a haul-away carrier is not stated (or later modified) in the shipping instructions, Item 19: Vehicle Inspections required by the haul-away carrier, and Item 36: Private Insurance required for entering a BNSF facility.)

LIABILITY / CLAIMS



ITEM 29: SHIPPER GENERAL LIABILITY

LIABILITY OVERVIEW

As a general principle, and unless specifically set forth otherwise herein, liability under this *BNSF Automotive Rules and Policies Guide* will be allocated between the Shipper and BNSF, based upon the relative fault of either the Shipper or BNSF. However, in the event the Shipper fails to comply with any of the terms of this *BNSF Automotive Rules and Policies Guide*, the Shipper will bear all liability arising from such failure, regardless of the actual or alleged negligence of BNSF or failure of BNSF to detect, prevent or mitigate such failure on the part of the Shipper. Limits of liability may apply in certain circumstances such as cargo loss limits.

SHIPPER LIABILITY AND RESPONSIBILITIES

The Shipper will be liable to BNSF and agrees to indemnify, defend, release and hold BNSF harmless against any and all claims, liabilities, fines, charges, costs, delay and derailment expenses, damages, losses, liens, causes of action, suits, demands and expenses (including, without limitation court costs, attorneys' fees, and investigation, removal, remediation and governmental oversight costs), environmental or otherwise, of any nature, kind or description for injury or death to all persons, including BNSF's and Shipper's officers and employees, and for loss and damage to property belonging to any party or entity, directly or indirectly arising in any matter out of or resulting from any provisions, acts or omissions outlined in this Item.

The Shipper is responsible to fulfill the requirements of this *BNSF Automotive Rules and Policies Guide*, including, but not limited to:

1. Complying with all equipment requirements, specifications and standards, and providing equipment that is suitable for the motor vehicle and rail transportation. (See Items in the Railcar Equipment and Vehicle Specifications Chapters.)
2. Adhering to all of the general, vehicle and/or equipment provisions in the Railcar Equipment, Vehicle Specifications, and Haulway Specifications Chapters.
3. Properly securing and loading the vehicles in the railcar in accordance with the requirements set forth in this *BNSF Automotive Rules and Policies*. BNSF is not responsible for loss or damage to cargo and/or the railcar that is caused by vehicles that are improperly loaded or secured.
4. Providing seals on doors and all openings that are used for loading and/or unloading when the railcar contains motor vehicles.
5. Reporting any evidence of unauthorized entry or damage to motor vehicle or rail equipment and recording such items on the inspection report before the motor vehicle is removed from the BNSF premises. (See Item 30: BNSF General Liability Item and Item 35: Vehicle Claims.)
6. Tendering the shipment in accordance with applicable laws and regulations governing freight transportation or otherwise conforming to applicable laws or regulations. In addition, for shipments originating or terminating in other countries, the Shipper is responsible for adhering to the respective countries Customs requirements and governmental regulations, in conjunction with applicable United States Customs, border, and other regulations. (See the Service Chapter and Item 38: Governing Law and Jurisdiction.)
7. Tendering motor vehicles or railcars without any concealed or apparent defects or based on the commodity's inherent vice.

8. Tendering a railcar without defects. Shipper is responsible to inspect such equipment to determine if it is suitable to protect and preserve the cargo (motor vehicle) during transit and identify defects in the railcar that could have been discovered during the Shipper's proper inspection prior to loading. (See Railcar Equipment and Vehicle Specifications Chapters.)

Whenever the Shipper purchases insurance that covers all or part of the cargo (motor vehicle), equipment or liability covered hereunder, the Shipper hereby agrees that its insurer shall have no subrogation rights against BNSF.

IT IS EXPRESSLY INTENDED THAT WHEN THE SHIPPER IS TO INDEMNIFY BNSF PURSUANT TO THE FOREGOING OR ANY INDEMNITY OBLIGATION CONTAINED IN THIS *BNSF AUTOMOTIVE RULES AND POLICIES GUIDE*, SUCH INDEMNITY SHALL INCLUDE THE:

- NEGLIGENCE OR ALLEGED NEGLIGENCE OF BNSF, WHETHER ACTIVE OR PASSIVE, WHERE SUCH BNSF NEGLIGENCE IS A CAUSE (BUT NOT THE SOLE CAUSE) OF THE LOSS OR DAMAGE, INJURY OR DEATH.
- STRICT LIABILITY RESULTING FROM VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY BNSF, INCLUDING, BUT NOT LIMITED TO, CERCLA, THE FEDERAL EMPLOYERS LIABILITY ACT, SAFETY APPLIANCE ACT, BOILER INSPECTION ACT, AND OCCUPATIONAL HEALTH AND SAFETY ACT, WHENEVER EMPLOYEES OF SHIPPER OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF BNSF UNDER SUCH LAWS.
- NEGLIGENCE OR ALLEGED NEGLIGENCE OF BNSF IN DETECTING SHIPPER'S NON-CONFORMANCE WITH OBLIGATIONS CONTAINED IN THE *BNSF AUTOMOTIVE RULES AND POLICIES GUIDE* OR NON-CONFORMANCE TO APPLICABLE LAWS.

OBLIGATION TO DEFEND

The Shipper's obligation to indemnify will include the costs and expenses of defending all claims filed against BNSF for such damage, including, but not limited to, reasonable attorney's fees necessary to defend against claims or suits,

litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments. Upon tender of the defense for any claim or action against BNSF, the Shipper shall assume the defense of any lawsuit or other proceeding brought against BNSF by any entity, relating to any matter covered by the Shipper's indemnification obligation under this *BNSF Automotive Rules and Policies Guide*. In such event, the Shipper shall pay all costs incidental to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

NON-WAIVER

Acceptance by BNSF of a shipment not in compliance with this *BNSF Automotive Rules and Policies Guide* will not serve to release the Shipper from its obligations, including the obligation to defend and indemnify BNSF.

ITEM 30: BNSF GENERAL LIABILITY

BNSF shall not be liable for the following:

- Special, incidental, consequential, punitive or indirect damages.
- Loss and damage to cargo and/or equipment, injury or death to any person, or loss and damage to property that is greater than the percentage of BNSF's causal negligence in the event the loss of damage resulting from the concurrent negligence of BNSF and:
 - The Shipper, including, Shipper's employees, servants, contractors, invitees, directors, officers, or agents
 - Any other carrier participating in the shipment
 - A third party
 - An act of God, fire, high wind, flood, storm, earthquake, civil or military authority, embargo or AAR service order, war, blockade, insurrection, riot, public enemy action, epidemic, sabotage, lock out, strike or labor disturbance, wreck, explosion, derailment, equipment, facilities, mechanical breakdown, any other catastrophic influence, commodity's inherent vice, laws, Shipper's act or default, equipment's design or condition that is not furnished by BNSF, or any occurrence that takes place when BNSF is not in actual possession of the equipment.

- Any loss or damage, death or injury resulting from a shipment's delay in transportation (unless BNSF, upon the Shipper's request, agrees in writing in advance of the shipment to be responsible for such loss or damage), an interruption of rail service, BNSF decision to discontinue ownership, maintenance, or operation of any rail line or Automotive facility or to modify or discontinue any service or service offering, regardless of price authority type (including contractual agreements and interline arrangements). (See the Service Chapter and Item 3: Price Authorities Application.)

The language of this Item shall not create a liability for BNSF when a separate provision in this or any other Item states that the Shipper indemnifies BNSF regardless of BNSF's negligence. (See Item 29: Shipper General Liability.)

ITEM 31: GENERAL CARGO AND EQUIPMENT LIABILITY

The liability provisions in this Item also apply in event of loss or damage to cargo or equipment. For additional liability provisions, see Item 30: BNSF General Liability, Item 32: Vehicle (Cargo) Loss and Damage Liability, and Item 33: Equipment Loss and Damage Liability.

BNSF shall not be liable for loss or damage to cargo or equipment if the loss or damage is:

- Determined to be \$500 or less for new or used vehicles. Additionally, any loss or damage in excess of \$500 for used motor vehicles will be reduced by a \$500 deductible.
- Produced by failure of the Shipper or Shipper's agents to comply with the BNSF or AAR loading or securement specifications. (Contact Load and Ride Solutions for proper loading specifications.)
- Generated by failure of the Shipper or Shipper's agents to comply with obligations stated in this *BNSF Automotive Rules and Policies Guide*.
- Caused before BNSF takes actual possession of the equipment or after the point when the equipment is tendered to another railroad, on-dock operator, receiver, or another party. Once storage free time expires, BNSF's liability will only be that of a warehouseman.
- Caused by the Shipper's action or default, act of God, fire, high winds, flood, storm,

earthquake, civil or military authority, embargo or AAR service order, war, blockade insurrection, riot, public enemy action, epidemic, sabotage, lockout, strike or labor disturbance, wreck, explosion, derailment, equipment, facilities, mechanical breakdown, any other catastrophic influence, and/or any like causes beyond the reasonable control of Shipper or BNSF, whether foreseeable or not.

BNSF shall not be liable for loss or damage resulting from efforts to restore service interrupted as a result of an act of God.

Examples of an act of God include, but are not limited to, severe weather conditions such as high winds, hurricanes, floods, cold weather, hot weather, snowstorms, earthquakes, and heavy rains. With respect to act of God defense, weather related phenomena do not have to be unusual or severe, only that the event caused or precipitated the damage to the shipment.

Examples of actions by a government authority include, but are not limited to, the cross-border traffic delay caused by government authority, and requirements imposed by the United States Customs Office or by the Department of Homeland Security.

- Caused by the commodity's inherent vice, laws, or is caused by the rail equipment's design or condition that is not furnished by BNSF.
 - Examples of inherent vice or defective cargo include, but are not limited to, the rusting of metal, moisture or condensation, the deterioration of products over the normal life cycle or span of those products.
- Caused by any occurrence that takes place when BNSF is not in actual possession of the cargo (motor vehicle) or railcar equipment or without causal negligence on the part of BNSF. This includes loss or damage that occurs outside of the United States or Canada. Additionally, BNSF will not be liable for the portion of unlocated damage associated with movement outside of the United States or Canada.
- Caused by acts, omissions or negligence of the Shipper or Shipper's agents. (See Item 29: Shipper General Liability.)

Examples of Shippers' typical acts of default include, but are not limited to, improper securing or loading vehicles in the railcar or improper shipping instructions.

(See Item 30: BNSF General Liability, Item 32: Vehicle (Cargo) Loss and Damage Liability, and Item 33: Equipment Loss and Damage Liability.)

ITEM 32: VEHICLE (CARGO) LOSS AND DAMAGE LIABILITY

CARGO LOSS AND DAMAGE

BNSF SHALL NOT BE LIABLE FOR LOSS OR DAMAGE TO MOTOR VEHICLES UNLESS THERE ARE TRANSPORTATION RELATED INSPECTION RECORDS ESTABLISHING THAT BNSF WAS THE CAUSE OF THE LOSS OR DAMAGE. The claimant has the burden of proof to establish BNSF causation for the loss or damage.

In no event will BNSF's total liability for a motor vehicle (cargo) loss or damage exceed the maximum liability of:

- \$200,000 per bi-level
- \$300,000 per tri-level
- \$320,000 per articulated bi-level
- \$440,000 per Auto-Max
- \$20,000 per new vehicle not on a railcar
- \$20,000 per vehicle on a uni-level
- \$15,000 per used vehicle not on a railcar.

If the Shipper wishes to obtain a higher loss or damage limit, the Shipper has the options described in the Shipper Provided Insurance and Liability Opt-Out Section in this Item and Item 34: 49 USC 11706 Liability Terms. The liabilities and responsibilities of BNSF and the Shipper, as defined in Item 29: Shipper General Liability and this Item are independent of the value of the shipment.

CARGO SHORTAGES LIABILITY

BNSF shall not be liable for vehicles components or loosely shipped items found to be missing unless there is specific evidence of unauthorized entry into the railcar while it was in BNSF's possession. (See Item 19: Vehicle Inspections and Item 29: Shipper General Liability.)

SHIPPER PROVIDED INSURANCE AND LIABILITY OPT-OUT

For shipments with values exceeding BNSF's limited liability, the Shipper may elect under certain conditions to provide its own insurance for the motor vehicles. The Shipper can provide

insurance coverage outside the transportation contract.

The Shipper may choose from the three (3) liability terms depending on the value or terms required for the shipment:

1. The Shipper may elect to remain subject to BNSF's standard limited liability, which governs BNSF's liability for loss and damage to the cargo. (See Item 29: Shipper General Liability, Item 31: General Cargo and Equipment Liability, Item 32: Vehicle (Cargo) Loss and Damage Liability, and Item 33: Equipment Loss and Damage Liability.) If the Shipper requires a higher loss or damage limit, the Shipper may choose from Option 2 or 3 below.
2. The Shipper may obtain Shipper-supplied insurance.
3. The Shipper may request coverage under the terms of 49 USC 11706. (See Item 34: 49 USC 11706 Liability Terms.)

BY ACCEPTING THIS TRANSPORTATION OFFER WITHOUT FOLLOWING THE PROCEDURES FOR LIABILITY TERMS SET FORTH IN ITEM 34: 49 USC 11706 LIABILITY TERMS, THE SHIPPER ACKNOWLEDGES THAT IT HAS CHOSEN TO ACCEPT THE PRICE AUTHORITY RATE LEVELS AND TERMS AS DEFINED IN THIS *BNSF AUTOMOTIVE RULES AND POLICIES GUIDE*, INCLUDING, BUT NOT LIMITED TO, LIMITED BNSF VALUE AND LIABILITY TERMS AS STATED IN ITEM 29: SHIPPER GENERAL LIABILITY, ITEM 30: BNSF GENERAL LIABILITY, ITEM 31: GENERAL CARGO AND EQUIPMENT LIABILITY, ITEM 32: VEHICLE (CARGO) LOSS AND DAMAGE LIABILITY, AND ITEM 33: EQUIPMENT LOSS AND DAMAGE LIABILITY.

ITEM 33: EQUIPMENT LOSS AND DAMAGE LIABILITY

BNSF will only be responsible for equipment (such as railcars) structural damage when BNSF or its agents are negligent; provided however that the language of this Item shall not create liability for BNSF when a separate provision in this Item or any other Item states the Shipper indemnifies BNSF regardless of BNSF's negligence. (See Item 29: Shipper General Liability and Item 30:

BNSF General Liability.) BNSF can, without the owner's consent, repair any damage that BNSF is responsible for, or return the equipment to the owner at the origin or the nearest interchange point for the owner to repair.

Notwithstanding the foregoing, BNSF is not responsible for:

1. Any equipment (such as railcars) damage when the equipment does not comply with AAR specifications.
2. Cargo or equipment damage resulting from the equipment exceeding the height, length, width or other specifications as defined in the Railcar Equipment Chapter.
3. Equipment inspections to find failures or defects.
4. Damages arising from loss, damage or consequential loss of the equipment, or use sustained by the Shipper. BNSF's acceptance of the equipment does not waive the Shipper's liability for complying with Item 14: Railcar Specifications.
5. Any fines, costs or expenses, including, but not limited to, inspections, clean up, transloading, leaking, surveys, towing, non-damage repair costs, or other associated charges in the determination or movement of equipment for repair.
6. Equipment deemed to be lost that was not registered in AAR UMLER.
7. Any cost or expense for equipment that is damaged, lost, stolen, or destroyed while in the possession of the Shipper or Shipper's agent.

(See Item 30: BNSF General Liability and Item 31: General Cargo and Equipment Liability.)

ITEM 34: 49 USC 11706 LIABILITY TERMS

When applicable, 49 USC 11706 provides for full value liability and other liability terms for BNSF and the Shipper.

To make a shipment pursuant to the terms of 49 USC 11706, the Shipper must comply with all of the following procedures:

1. BNSF must be notified no less than forty-eight (48) hours before the shipment is

tendered to BNSF that the Shipper chooses 49 USC 11706 liability protection.

2. The Shipper has obtained a BNSF special price authority providing for 49 USC 11706 liability protection. Rates will be no less than 200% of the otherwise applicable price authority. The price authority must reference 49 USC 11706 liability terms.
3. The shipping instructions must state that the shipment is moving under the 49 USC 11706 liability terms and is subject to the special price authority.
4. The shipment must be prepaid. Collect shipments are not accepted.

ANY SHIPPER TENDERING A SHIPMENT FOR TRANSPORTATION WITHOUT COMPLYING WITH ALL OF THESE PROCEDURES WILL NOT BE SHIPPING PURSUANT TO 49 USC 11706 AND WILL BE SUBJECT TO THE BNSF LIMITED LIABILITY TERMS, INCLUDING, BUT NOT LIMITED TO, ITEM 29: SHIPPER GENERAL LIABILITY, ITEM 30: BNSF GENERAL LIABILITY, ITEM 31: GENERAL CARGO AND EQUIPMENT LIABILITY, ITEM 32: VEHICLE (CARGO) LOSS AND DAMAGE LIABILITY, AND ITEM 33: EQUIPMENT LOSS AND DAMAGE LIABILITY.

When BNSF's Shipper is not the initial shipper in the chain of transportation and/or does not have a beneficial ownership interest in the cargo, BNSF's Shipper, by shipping under this *BNSF Automotive Rules and Policies Guide*, represents and warrants that it has advised the initial shipper and/or beneficial owner of BNSF's cargo liability limitations, which will apply to the shipment and alternatively to the initial shipper's and/or beneficial owner's opportunity to request and obtain 49 USC 11706 coverage. If the shipment on BNSF is transported under the limited liability terms of Item 32: Vehicle (Cargo) Loss and Damage Liability and BNSF's Shipper has failed to advise the initial shipper and/or beneficial owner of such limited liability terms and these terms are found by a court of law to be unavailable to BNSF, then BNSF's Shipper agrees to defend, indemnify and hold harmless BNSF for any cargo damages awarded greater than the otherwise-applicable limited liability terms.

(See Item 29: Shipper General Liability, Item 30: BNSF General Liability, and Item 31: General Cargo and Equipment Liability.)

ITEM 35: VEHICLE (CARGO) CLAIMS

PAYMENTS BEFORE CLAIMS FILING

All outstanding payments or charges are due according to standard payment terms defined in Item 2: Credit and Collections, regardless of whether the Shipper is filing a cargo (freight) claim.

If applicable, any reimbursement of payments will be handled in the claims process outlined in this Item.

The *BNSF Automotive Rules and Policies Guide* is the governing document, and includes the applicable terms for liability and claims.

FILING CLAIMS TIME LIMIT

Regardless of the loss or damage cause, the Shipper must file claims for cargo loss or damage in writing. Claims must be received by BNSF within nine (9) months after the delivery date (unloaded at the rail destination), or in the event of non-delivery, claims must be received by the BNSF Claims department within nine (9) months of what would have been the reasonable delivery date.

INTERLINE CLAIMS SETTLEMENT

For the purposes of consistent and uniform interline claim handling and claim settlement, the specific terms relating to an interline claim will be shared with the associated interline rail carriers, regardless of a confidentially provision in an applicable transportation contract. Any unlocated loss or damage will be settled in accordance with the strictest or most limiting liability terms of the involved carriers.

NEW MOTOR VEHICLES

New motor vehicles with damage shall be classified as “repairable to new”, “repairable to other than new”, or “non-repairable”.

Regarding new motor vehicles determined to be “repaired to new” or “other than new”, BNSF will reimburse the Shipper for transportation, survey, repair, towing, or other reasonable costs associated with repairing the vehicle to “new” or “other than new” condition. Additionally, if a vehicle is determined to be “repairable to other

than new” status, BNSF shall provide settlement to the Shipper for the value of depreciation, which shall be calculated as 10% of the dealer’s cost.

Regarding new motor vehicles determined to be “non-repairable”, BNSF shall reimburse the Shipper the lower of these two amounts:

- Be sold at auction in an “as-is” damaged condition. BNSF will reimburse the Shipper the dealer’s invoice less the auction sale proceeds.
- Have a salvage allowance of 20% of vehicle’s dealer cost applied, and the Shipper retain the vehicle. BNSF will reimburse the Shipper the dealer’s invoice less the 20% salvage allowance.

In addition to other reasonable costs associated with the disposition of the vehicle.

(See Item 30: BNSF General Liability and Item 32: Vehicle (Cargo) Loss and Damage Liability.)

USED MOTOR VEHICLES

When the commodity is used motor vehicles, BNSF will only be responsible for damages caused by derailment, transportation related jumped chocks, theft, or vandalism of original factory installed equipment while in BNSF possession. Additionally, the damages must be documented at destination.

Regarding used motor vehicles determined to be “non-repairable”, BNSF will reimburse the Shipper the lower of these two amounts:

- Reimburse the Shipper the difference between the market value of the vehicle based on actual auction sales at the billed destination, at the time of loss, using a clean condition applicable vehicle year, make, model, mileage (adjusted for) and equipment, and the auction sale price of the vehicle in its “as-is” damaged condition.
- Reimburse the Shipper the market value of the vehicle less a 20% salvage allowance.

(See Item 30: BNSF General Liability and Item 32: Vehicle (Cargo) Loss and Damage Liability.)

FILING CLAIMS REQUIREMENTS

The cargo claim must be properly supported with documentation to establish loss and damage, monetary amount, quantity, and type of damage.

Only the Shipper or Shipper’s agent (the party indicated on the BNSF price authority and paying BNSF for the rail transportation) may initiate and maintain a claim for cargo loss and damage or a suit against BNSF. A party who is not associated with the price authority with BNSF will have no

claim or cause of action against BNSF for loss or damage to cargo, nor will such party's claim to BNSF or to any other entity be recognized as the Shipper's claim to BNSF without an assignment of rights to that entity by the Shipper.

The claim must comply with the minimum filing requirements contained in 49 CFR Section 1005.2 (b).

The claim must fully identify the rail shipment and request payment of a certain amount, or the claim will not be deemed filed.

1. Claims Requirements

The Shipper must include the following with each claim:

- a. A copy of the shipping instructions and other shipping documents.
- b. Repair records and invoices detailing the nature of the loss or damage as well as monetary loss.
- c. Examples of documents giving evidence of damage include load sheet, dealer delivery receipt, inspection reports, and photographs.

2. Claims Address

Loss or damage claims can be submitted (or claims information obtained) by email, web, mail, or fax:

Email: CargoClaims@BNSF.com

Web: <http://www.BNSF.com> - eCargoClaims.
(See instructions at <http://www.bnsf.com/customers/support-services/rail-freight-cargo-claims/> .)

Mail: Cargo Claims
BNSF Railway Company
P.O. Box 1738
Topeka, Kansas 66601-1738
Phone: 1-800-333-4686, option 2

Fax: 1-785-435-4120

3. Lawsuit Filing Time Limit

Filing a claim as defined in this Item is a prerequisite before the Shipper can bring a suit for loss or damage against BNSF. Provided the Shipper files a timely valid claim with BNSF concerning the alleged cargo loss or damage, the Shipper must file all loss or

damage suits against BNSF within nine (9) months from the date BNSF declines the claim on which the suit is based. Only a claim filed with BNSF and by BNSF's Shipper or Shipper's agent can qualify as a valid claim for recovery of amounts sought in connection with loss or damage to the cargo to which the claim pertains. In order for a claim from the Shipper to be recognized as a valid claim, the claim must meet all the requirements set forth in the *BNSF Automotive Rules and Policies Guide*.

4. Lawsuit Filing Location

All loss or damage suits filed against BNSF shall be filed in a United States Federal District Court in the location of the shipment's origination or termination on BNSF. If the United States Federal District court does not have jurisdiction, the suit shall be filed in the appropriate U.S. State Court where the shipment originated or terminated on BNSF.

ITEM 36: PRIVATE INSURANCE

This Item applies to all entities (including, but not limited to, the Shipper or haul-away carrier) that comes into a BNSF facility or are a party to services covered by this *BNSF Automotive Rules and Policies Guide* will provide and maintain a Certificate of Insurance for the motor vehicles.

The entity will, at its sole cost and expense, procure and maintain the following insurance coverage.

1. Commercial General Liability Insurance

Commercial general liability insurance shall contain broad contractual liability with a combined single limit of a minimum of \$1,000,000 for each occurrence and an aggregate limit of at least \$2,000,000, but in no event less than the amount otherwise carried by the Shipper. If a non-BNSF party directs locomotive switching, the non-BNSF party shall procure and maintain Commercial general liability insurance that contains broad contractual liability with a combined single limit of a minimum of \$5,000,000 for each occurrence and an aggregate limit of at least \$10,000,000.

Coverage must be purchased on a post 2004 Insurance Service Office (ISO) occurrence form or equivalent and include coverage for, but not limited to, the following:

- Bodily injury and property damage
- Personal injury and advertising injury
- Fire legal liability
- Products and completed operations.

This policy will also contain the following endorsements, which will be indicated on the certificate of insurance:

- The employee and workers compensation related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Any exclusion related to the explosion, collapse, and underground hazards shall be removed.

No other endorsements limiting coverage as respects to obligations under this *BNSF Automotive Rules and Policies Guide* may be included on the policy.

2. Business Automobile Insurance

Business automobile insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- All equipment owned, used, or hired.

3. Workers Compensation and Employers Liability Insurance

Workers Compensation and Employers insurance shall include coverage for, but not limited to:

- Shipper's statutory liability under the workers' compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease (policy limit), and \$500,000 by disease for each employee.
- If a non-BNSF party directs locomotive switching, all such coverage shall include coverage for the Federal Employers Liability Act and include an alternate employer endorsement naming BNSF as the alternate employer with coverage for the Federal Employers Liability Act. The term Alternate Employer as used herein

and above is being used solely as an insurance term of art. By the non-BNSF party's actions of obtaining insurance coverage as set forth above is in no way intending or evidencing an alternate or dual employment relationship with BNSF. The parties agree: (1) BNSF has no right to direct or control the non-BNSF party's employees with respect to the physical conduct or the performance of services; (2) BNSF does not supervise, nor does it have the right to supervise, details of Shipper's employees' work or the manner in which such work is accomplished; (3) BNSF retains no control over the details of the non-BNSF party's employees' work; and (4) BNSF has no right to select, hire, train or fire non-BNSF party's employees.

4. Other Provisions

Additional requirements for private insurance are outlined below.

a. For the Commercial General Liability, Business Automobile Insurance, and Workers Compensation and Employers Liability Insurance, the policies shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to BNSF
- Additional insured endorsement in favor of and acceptable to BNSF
- Separation of insureds
- The policy shall be primary and non-contributing with respect to any insurance carried by BNSF.

b. Where allowable by law, all policies (applying to coverage listed in this Item) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

c. The Shipper agrees to waive its right of recovery against BNSF for all claims and suits against BNSF. In addition, the Shipper's insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against BNSF for all claims and suits. The Shipper further waives its right of recovery, and its insurers also waive their right of

- subrogation against BNSF for loss of its owned or leased property or property under the Shipper's care, custody or control.
- d. Allocated Loss Expense shall be in addition to all policy limits for coverage referenced in this Item.
 - e. The Shipper is not allowed to self-insure without the prior written consent of BNSF. If granted by BNSF, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by the Shipper in lieu of insurance. Any and all BNSF liabilities that would otherwise, in accordance with the provisions of this Item, be covered by the Shipper's insurance will be covered as if the Shipper elected not to include a deductible, self-insured retention, or other financial responsibility for claims.
 - f. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify BNSF in writing at least thirty (30) days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance.
 - g. Any insurance policy shall be written by a reputable insurance company acceptable to BNSF or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
 - h. The Shipper WARRANTS that this Item has been thoroughly reviewed by the Shipper's insurance agent(s)/broker(s), who have been instructed by the Shipper to procure the insurance coverage required in this Item.
 - i. Not more frequently than once every five (5) years, BNSF may reasonably modify the required insurance coverage to reflect the current risk management practices in the railroad industry and underwriting practices in the insurance industry.
 - j. If any portion of the operation is to be subcontracted by the Shipper, the Shipper will require that the subcontractor:
 - Provide and maintain insurance coverage(s) as stated in this Item, naming BNSF as an additional insured
 - Release, defend and indemnify BNSF to the same extent and under the same terms and provisions, as the Shipper is required to release, defend and indemnify BNSF.
 - k. Failure to provide coverage as required by this Item shall entitle, but not require, BNSF to terminate the transportation contract immediately. Acceptance of a certificate that does not comply with this Item shall not operate as a waiver of Shipper's obligations hereunder.
 - l. The fact that insurance (including, without limitation, self-insurance) is obtained by the Shipper will not be deemed to release or diminish the liability of the Shipper including, without limitation, liability under the indemnity provisions of this Item. Damages recoverable by BNSF shall not be limited by the amount of the required insurance coverage.
 - m. For purposes of this Item, BNSF shall mean Burlington Northern Santa Fe LLC, BNSF Railway Company and the subsidiaries, successors, assigns and affiliates of each.
 - n. These insurance provisions are intended to be a separate and distinct obligation on the part of the Shipper. Therefore, these provisions will be enforceable and Shipper shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the services covered hereunder are performed.

RELEASE OF CLAIM INDEMNITY AGREEMENT

In addition to insurance requirements outlined in the previous Section, the "Release of Claim and Indemnity Agreement" must be signed by any party coming onto BNSF property and on file with

BNSF. The form can be accessed at <http://www.bnsf.com/customers/pdf/release-of-claims-and-indemnity-agrmt.pdf>.

ITEM 37: REJECTION RIGHTS

BNSF reserves the right to reject:

- Any motor vehicle shipment not complying with the *BNSF Automotive Rules and Policies Guide*, applicable industry publications, Department of Transportation requirements.
- Any equipment or shipment that BNSF deems unsafe, illegal or prohibited.
- Any equipment or shipment that does not meet federal, state or local laws and regulations (including, but not limited to, equipment gross axle weight, equipment size, securement, shipping instructions, loading, or cargo).

However, BNSF is not under any obligation to take action, and failure of BNSF to reject the shipment for non-compliance does not constitute a waiver of the *BNSF Automotive Rules and Policies Guide* requirements or any other applicable requirements and will not make BNSF responsible for loss, damage, or injury resulting from non-compliance. The Shipper and receiver remain jointly and severally liable for all expenses, costs, fines, charges, and damages (including, but not limited to, property and railcar) that result from the Shipper's failure to tender the shipment or railcar properly in accordance with applicable rules, laws, and regulations or Shipper's act of tendering unsafe, illegal or prohibited equipment or shipments.

(See Item 29: Shipper General Liability.)

ITEM 38: GOVERNING LAW AND JURISDICTION

The offer and the transportation agreement and contract are interpreted according to Texas State laws.

ITEM 39: LAWS AND REGULATIONS COMPLIANCE

BNSF may elect to take whatever action it deems reasonable to resolve the situation if a shipment at any point during transit:

- Is deemed unsafe, illegal, or prohibited.

- Does not meet BNSF, federal, state, or local laws and regulations (including, but not limited to, vehicle size, and securement).

However, BNSF is not under any obligation to take action. The Shipper and receiver remain jointly and severally liable for all expenses, costs, fines, penalties, and damages (including, but not limited to, property and equipment) due to the Shipper's failure to properly tender the shipment in accordance with applicable laws and regulations governing freight transportation.

THE SHIPPER WILL DEFEND AND INDEMNIFY BNSF FROM ALL FINES, ATTORNEY'S FEES AND COSTS ARISING FROM THE FAILURE TO CONFORM TO APPLICABLE LAWS, REGARDLESS OF THE NEGLIGENCE OR ALLEGED NEGLIGENCE OF BNSF IN DETECTING THE NON-CONFORMANCE. BNSF IS NOT RESPONSIBLE FOR ANY FINES, ATTORNEY'S FEES OR COSTS ARISING FROM FAILURE OF BNSF TO DETECT SHIPPER NON-CONFORMANCE TO APPLICABLE LAWS. The Shipper will, at its expense, accept BNSF's defense in any claim, action, or suit arising from the Shipper's failure of conforming to applicable laws and regulations.

ITEM 40: ARBITRATION

Any dispute that arises regarding or relating to the terms, interpretation, application, or enforcement of the transportation contract, price authority, shipping instructions or the *BNSF Automotive Rules and Policies Guide* shall be resolved by binding arbitration. Either party may provide written notification to the appropriate parties indicating the existence of a dispute that should proceed to arbitration. Written notice should include, but is not limited to, the issue(s) to be arbitrated and the issues, claims, or relief sought.

If the dispute cannot be resolved within thirty (30) days after notification, the dispute will be referred to an arbitrator (or arbitrator panel) and decided according to the rules and procedures of the American Arbitration Association (AAA). The decisions of the arbitrator (or panel) are final and binding for all parties involved in the dispute. The decision and award of the arbitrator will be rendered within thirty (30) days after the close of the arbitration proceeding.

Regardless of the above mentioned, arbitration is not available with regards to the following types of claims:

- Determining the validity or propriety of rate levels in any price authority.
- Involving claims for cargo (freight claims) due to loss, damage, or delay.

The arbitrator cannot modify or void any provisions of the transportation contract, or award punitive or exemplary damages.

The expenses, fees, and costs of the arbitration are to be divided equally among all parties involved. However, each party will pay its own attorney fees.

Judgment may be entered on the findings and/or awarded to the arbitrators in any court in the State of Texas. Each party expressly consents to this type of judgment.

ITEM 41: APPLICABLE INDUSTRY PUBLICATIONS

Applicable industry publications (or successors) also govern transportation services subject to the *BNSF Automotive Rules and Policies Guide* and are listed in Appendix B: Applicable Industry Publications. The applicable versions are the publications in effect at the time of shipment.

ITEM 42: STRIKE PROVISIONS

A request for relief from charges due to a strike by the Shipper's agents or employees, or by BNSF, agents or employees must be made in writing within fifteen (15) days of the strike's end. BNSF has sole discretion to grant or deny any or all relief from such charges.

STORAGE

**ITEM 43: STORAGE**

The rules and charges for storage of motor vehicles at BNSF Automotive facilities are outlined in this Item.

Storage free time and charges apply to the amount of time a motor vehicle remains at a BNSF Automotive facility waiting to be obtained (picked up) by a haul-away carrier or has a condition waiting to be addressed (such as Other Items stated in Section 2 below).

Notification occurs when BNSF advises the notify party that a motor vehicle is available to be obtained (picked up) or the shipment has a condition that needs to be addressed.

Storage charges are calculated using an averaging methodology (see Sections 4 and 5 of this Item).

The Shipper or payer of the transportation (freight) charges is responsible for payment of all storage charges.

1. Governing Storage Documents

The *BNSF Automotive Rules and Policies Guide* is the governing document for:

- New or used motor vehicles.

2. Other Items

Other Items throughout this *BNSF Automotive Rules and Policies Guide* refer to conditions when storage rules and charges would apply to vehicles including, but not limited to:

- Held for a cash payment (see Item 2: Credit and Collections).
- Facility Overcapacity (see Item 24: Facility Overcapacity).
- Improper, incomplete, or modified shipping instructions (see Item 8:

Shipping Instructions, Item 9: Shipping Instruction Changes and Section 4 of this Item).

- Limited liability (see Item 30: BNSF General Liability).
- Mexico or Canada service (see Item 12: Mexico or Canada Service).
- Overweight and oversized shipments (see Item 16: Maximum Railcar Weight and Overweight Handling and Item 21: Oversized Vehicles).
- Rejected railcar, shifted and inappropriately secured shipments set out of a train, or other issues (see Item 20: Vehicle Loading and Unloading By Shipper).
- Trucked In and Trucked Out (see Item 23: Truck In and Truck Out).

3. Storage Free Time

Storage free time is the amount of time a vehicle or associated railcar can remain at a BNSF Automotive facility or be detained without incurring storage charges.

Storage for all motor vehicle shipments unloaded from a railcar will begin at 12:01 a.m. following notification.

The time between when the motor vehicle is unloaded from the railcar and 12:01 a.m. (following notification) is considered free time (no storage charges).

There is no free time for motor vehicles trucked in and trucked out or when railcars are detained or rejected due to a Shipper's condition. (See Section 2 of this Item, Item 20: Vehicle Loading and Unloading By Shipper, Item 23: Truck In / Truck Out, and Item 24: Facility Overcapacity.)

4. Storage Charges Applications

Storage charges applications for all motor vehicle shipments:

- a. After storage free time has expired, the storage charge is \$7.50 per (debit) day (or fraction thereof) per motor vehicle when residing at a BNSF facility, in addition to other applicable charges.

The storage for motor vehicles detained on a railcar, such as at a Shipper's location or when a facility is at capacity, will incur \$300 per day (or fraction thereof). The debit/credit system as described in Section 5 of this Item does not apply on railcar storage. (See

Item 20: Vehicle Loading and Unloading By Shipper and Item 24: Facility Overcapacity.)

- b. If the manufacturer fails to provide the haul-away carrier on the shipping instructions, storage charges will apply. Storage charges will be assessed at origin or destination for vehicles that are delayed while shipping instructions or other conditions (as stated in Section 2) are waiting to be corrected.
 - c. The storage free time calculation or charges are not affected by BNSF moving shipments from one facility, location, or lot to another BNSF facility.
 - d. Storage charges as noted in this section do not apply to long-term storage governed by specific written agreements. Should a manufacturer need long term storage, contact your BNSF Marketing Representative.
 - e. Storage charges will continue until the vehicle departs (out-gates) from the BNSF facility.
 - f. The data source for monitoring and measuring vehicle storage (dwell) at the Automotive facilities is BNSF's management system.
 - g. Storage charge payments are due thirty (30) days from the invoice date. Finance charges will occur thirty (30) days after the invoice date. (See Item 2: Credit and Collections and Item 6: Invoice Disputes.) Storage disputes will not be accepted thirty (30) days after the invoice date.
5. Storage Calculations Applications
- a. The Shipper will be invoiced storage charges on a monthly basis. Charges will be calculated based on dwell at each BNSF facility.
 - b. After the motor vehicle is unloaded from the railcar, each vehicle receives two and three quarters (2.75) storage credits.

If a vehicle arrives one month and departs the facility another month, any remaining credits will be carried forward to the following month.

Storage credits will not apply to motor vehicles trucked in and trucked out or when railcars are detained or rejected due to a Shipper's condition (see Section 2 of this Item, Item 20: Vehicle Loading and Unloading By Shipper, Item 23: Truck In / Truck Out, and Item 24: Facility Overcapacity).

- c. Storage debits (charges) are calculated starting the day following rail unloading and will continue monthly until the vehicle departs (out-gates) the facility.
 - d. The storage debits and credits will accumulate for each facility and will not offset storage balances at other facilities. Excess credits from one month cannot be carried forward or used to offset charges in other months or at other facilities.
6. Storage Calculations
- a. At the end of the month, if the Shipper's storage credits exceed debits, no storage charges will be assessed for a particular facility. However, if storage debits exceed credits, the Shipper will be charged \$7.50 for each debit day (or fraction thereof) per facility. The debit storage charges will apply for each day that is not offset by a credit. The number of vehicles for each facility will be multiplied by the debit storage days. (For example, \$7.50 x (debit - credit storage days) x number of vehicles per facility.)

- b. Example storage calculations are shown below:
 - A Shipper moves 1,000 motor vehicles to a facility in a month. Each vehicle remains (dwells) on the facility for two (2) days. The Shipper would have:

$$2750 \text{ credits } (2.75 \text{ credits } \times 1000 \text{ vehicles})$$

$$- 2000 \text{ debits } (2 \text{ debits } \times 1000 \text{ vehicles})$$

$$= 750 \text{ credits}$$

Since the storage credits exceed debits, no storage charges would be assessed.

- A Shipper moves 1,000 motor vehicles to a facility in a month. Each vehicle remains (dwells) at the facility for four (4) days.

The Shipper would have:

$$\begin{array}{r} 2750 \text{ credits (2.75 credits x 1000 vehicles)} \\ - 4000 \text{ debits (4 debits x 1000 vehicles)} \\ \hline = 1250 \text{ debits} \end{array}$$

Since storage debits exceed credits, a storage charge of \$9375 would be assessed $((2750 - 4000) \times \$7.50)$.

DEFINITIONS

Accessorial Charges - Charges other than freight charges, for services that include, but are not limited to, load, unload, storage, overload, and inspection. The charges are referenced throughout this *BNSF Automotive Rules and Policies Guide* and some are outlined in the Appendix. The charges are considered payments due to BNSF and are billed on miscellaneous or freight bills, or invoices.

Actual Receiver - Party, or legal entity that receives freight at the final destination, generally the party accepting or using the freight.

Actual Shipper - Party or legal entity whose goods are being shipped, generally the manufacturer or producer.

Automated Clearing House (ACH) - Type of method to send electronic payments to BNSF. For ACH Debit, the receiver initiates funds transfer, and for ACH Credit, the sender initiates the funds transfer. Contact BNSF Credit and Collections to establish these types of payments. (See the Credit and Collections Item.)

Automotive Facility - See the facility definition.

Auto Track - The BNSF Automotive Facility Inventory Management System. BNSF and its contractor's or agents' use this system. (See the Truck In / Truck Out Item.)

Availability - Indicates the shipment is available to be picked up (obtained). Service schedules state when a shipment must be tendered to BNSF at the origin (cutoff day and time) in order to receive the associated destination (availability day and time). Notification occurs at the time of availability and continues until the shipment is picked up. (See the Storage Item.)

Bay Tags - BNSF created documents placed in the vehicles indicating information such as VIN, parking location, railcar, and dealership.

Beneficial Owner - This is the party or legal entity that owns or has title to the freight during transportation.

BNSF - This is the abbreviation for the BNSF Railway Company.

Bill of Lading - Shipping document or shipping instructions that are sent by the Shipper and initiates the movement of a motor vehicle or railcar. (See the Shipping Instructions Item.)

Cargo Claim - A claim for cargo damages. Cargo claims procedures are defined in the Vehicle Claims Item.

Cars On Track - A registered trademark of BNSF Logistics. This program is for shipments of personally owned private motor vehicles. See <http://www.bnsf.com> for additional details.

Cash Basis - If the Shipper is on a cash basis (paid by wire transfer) payment must be received before or at the time shipment is received. Railcars tendered by Shippers on a cash basis will be held by BNSF until payment is received. Cash is not accepted at an automotive facility. (See the Credit and Collections Item.)

Collect - This indicates that the freight payments are made to the destination rail carrier for an interline movement. This type of billing is stated on the price authority and must be indicated on the shipping instructions. Billing types are either collect or prepaid.

Commodity - Contents in a railcar (loaded or empty) described on the shipping instructions and price authority. The commodity corresponds to an associated STCC. This is also referred to as the motor vehicle, vehicle, shipment, freight, gross cargo, or lading.

Complete Offer - Shipper accepting the *BNSF Automotive Rules and Policies Guide* and the price authority in effect at the time the shipping instructions are given to BNSF. (See the Complete Offer and Acceptance Item.)

Contract Holder - A Shipper who signed a transportation contract (multi-party agreement) and typically has a special or multi-party price authority.

Conventional Auto-rack - Non-articulated, fully enclosed multi-level railcar, including AAR car types V1, V2 (excluding V295), V3, V4, V6, V8, and V9.

Customer Support - A BNSF Automotive customer relations group that handles service related problems.

Cutoff - Indicates the day and time that the shipment must be tendered to BNSF at the origin in order to receive the associated availability (day and time).

Day - Equates a twenty-four (24) hour period.

Daylight Savings Time - BNSF railroad operations and charges observe daylight savings time when in effect.

Delivery - Denotes to deliver a vehicle to the BNSF.

Domestic - Automotive shipments that move within North America without a prior or subsequent water movement.

DOT - An abbreviation for the Department of Transportation.

EDI - This is the abbreviation for Electronic Data Interchange.

Electronic Funds Transfer (EFT) - A method to send electronic payments to BNSF. See the definition for ACH. (See the Credit and Collections Item.)

Embargo - An embargo is a temporary measure to control shipments that threaten operations and warrant restrictions of such movements. An order that prohibits further movement of, including, but not limited to, specific Shippers, commodities, or equipment. Once Shippers are notified by BNSF of an embargo, any shipments in question cannot be tendered to BNSF and are prohibited on BNSF until the embargo is lifted. Failure to adhere to the embargo status or advise BNSF of any shipment in BNSF's custody or control can result in the Shipper being subject to a charge of \$10,000 per incident, in addition to other applicable charges.

Empty - Is a railcar that contains no commodities or contents. Empty is also a commodity description and has an associated STCC.

Equipment - All shipping devices as well as all types of equipment that may be used for handling or moving automotive shipments including, but not limited to, railcars, locomotives, tractor-trailers, and track structures. Also, see the definitions for shipment and motor vehicle.

Exempt - Not governed by federal regulatory boards.

Facility - Automotive ramp used to load and unload motor vehicles on the BNSF. It is a location owned, operated, or leased by BNSF for the storage or holding of motor vehicles.

Facility Space Agreement - Agreement between BNSF and Shipper to allocate a certain amount of space inside of a BNSF Automotive facility for the storage of motor vehicles.

Force Majeure - Acts of God and other conditions when BNSF is excused from any obligation to perform transportation services.

Free Time - Amount of time before charges apply.

Freight Bill - A bill or invoice for movement of vehicles. Other associated charges may be indicated on the freight bill or invoice.

Freight Charges - The price authority rate for movement of a vehicle or railcar as stated on an invoice or freight bill sent to Shipper for payment. Also considered payments due to BNSF.

Freight Claim - A claim for cargo damages. Freight claims procedures are defined in the Vehicle Claims Item.

Gross Cargo Weight - Total weight of cargo (lading), including securement devices.

Haul-away Carrier - These services obtain or deliver motor vehicles into or out of a facility. This can also be the person, legal entity(ies), party(ies), or agent(s), acting on behalf of the Shipper, receiver or haul-away carrier. Usually these are trucking services of motor vehicles.

In-gate - Means a vehicle arriving at and being received at a BNSF Automotive facility. If the vehicle is "in-the-gate," then the shipment has entered a BNSF facility.

Interchange - The transfer of a railcar from one rail carrier to another (as referenced in Price Authorities Application and Applicable Industry Publications Items). This is also referenced as an exchange of electronic information (EDI) or equipment.

Interline - The movement between two or more rail carriers. (See the Price Authorities Application Item for Joint-line, Rule 11, and other types of interline shipments and price authorities.) Proper shipping instructions are required for interline shipments.

Intermediate Stops - Rail stop-offs are not permitted on vehicle shipments. (See the Price Authorities Application Item.)

Intermodal - Transportation of commodities in trailer or container equipment moving in intermodal service. See the *BNSF Intermodal Rules and Policies Guide*.

International - Shipments with an immediate prior or subsequent water move or when the Shipper has proof of importation/exportation to or from the territories of the U.S., Hawaii, or foreign countries. International rates do not apply to shipments between the Continental U.S., Mexico, Canada, or Alaska.

Invoice - Considered a bill, freight bill, balance or payments due, miscellaneous bill, or a bill for transportation services, accessorial charges, finance charges, fuel surcharges, or other charges.

Joint-line - This is type of interline shipment. A joint-line price authority is one price authority that applies to the entire movement from rail origin to rail destination on two or more railroads. The rate includes all interchange charges unless otherwise noted. Send the shipping instructions only to the origin carrier, who forwards the shipping instructions to the other carriers in the route. (See the Price Authorities Application Item.)

Load - Considered placing the vehicle on a railcar.

Load Sheet - Haul-away carrier dispatch instructions (document) indicating the vehicles should be obtained (picked up) at a facility.

Manifest - A listing of the commodities and associated quantities within the railcar.

Marketing - A group handling the marketing and pricing of BNSF Automotive service offerings.

Multi-level - Type of articulated or non-articulated railcar including a uni-level, bi-level, or tri-level designed for movement of vehicles on the railroad.

Motor vehicles - Automobiles, vehicles, cars, trucks, passenger motor vehicles, or other commodities transported in multi-level railcars. These can be tendered to BNSF individually, by a haul-away carrier, or on a railcar.

Notification - BNSF advises the notify party that a vehicle is available for pick up, delivery, loading, unloading, or there is problem with the shipment. At destination, notification occurs when shipment is available (availability) and will continue until shipment is picked up. BNSF is not responsible for notification failures. (See the Storage Item.)

Notify Party - Party identified on the shipping instructions to be notified when the shipment is available or has a problem (typically the Shipper, receiver, haul-away carrier, or their agents, employees or contractors). Generally, notification will be to the Shipper for origin items (or problems), and to the specified notify party for destination items. The notify party is required to maintain facsimile communication capabilities twenty-four (24) hours per day, seven (7) days per week for notification purposes.

Out-gate - When a vehicle is removed from a BNSF Automotive facility.

Party - Includes, but is not limited to, individuals, person, sole proprietors, partnerships, corporations, associations, cooperatives, trusts, and other entities.

Payments - Amounts due or paid for the movement of a railcar (price authority rate) and any other charges incurred that are stated on an invoice or freight bill and sent to the Shipper for payment. This is also considered freight charges or invoiced amounts.

Pick Up - To retrieve a vehicle, such as obtaining a vehicle from a Shipper's facility or a BNSF facility.

Pier or Port - This is the loading or unloading of motor vehicles to or from steamships (vessels) and railcars at a pier, dock, or port facility. Also a seaport.

Prepaid - This indicates that the freight payments are made to the originating rail carrier on an interline shipment prior to the shipment's release. This type of billing is stated on the price authority and must be indicated on the shipping instructions. Types of billing are either prepaid or collect.

Price Authority - The document (such as special quotes or multi-party agreements) that states the rate for a movement. (See the Price Authorities Application Item.)

The correct price authority and associated information must be provided on the shipping instructions in order to apply the appropriate rate to a shipment. Once a vehicle has been tendered to BNSF, the price authority cannot be changed on the shipping instructions. (See the Shipping Instructions Item.)

Quote - Special negotiated rate (document) for a specific automotive shipment based on certain factors. This is a type of price authority. (See the Price Authorities Application Item.)

Railcar - A covered multi-level used to transport motor vehicles between origin and destination. (See the Railcar Equipment Chapter.)

Receiver - Party or legal entity receiving the shipment at destination and including receiver's agents, employees and independent contractors acting on behalf of the receiver. The party receiving a vehicle that may or may not be at the final destination.

Revenue Pre-Rate and Waybill (RPW) Solutions - BNSF's department that processes shipping instructions.

Rule 11 - This is a type of interline shipment. The Shipper uses applicable Rule 11 price authorities of two (or more) rail carriers for an interline move.

Rule 11 price authorities allow shipments to be interchanged to another railroad. Shipping

instructions should only be sent to the origin carrier. Rule 11 must be indicated on the original shipping instructions (bill of lading) along with each price authority for the rail carriers involved in the movement.

Service - Transportation between origin and destination locations specified on a price authority. Part of the service offering.

Service Schedules - Schedules provided to Shipper from BNSF that state the cutoff at origin, transit time, and delivery to BNSF destination facility. These are obtained from a BNSF Marketing Representative.

Shipment - Railcar, vehicle, motor vehicle, freight, equipment, traffic, movement, cargo, or lading tendered with shipping instructions at an origin for movement to a destination, regardless if it is a load or empty. The price charged per shipment is stated in the price authority.

Shipper - Party or legal entity that is shipping the vehicle from origin and including Shipper's agents, employees and independent contractors acting on behalf of the Shipper or receiver; usually the party sending the shipment instructions and payer of freight (transportation) and assessorial charges.

Shipping Instructions - A bill of lading sent via EDI or BNSF's Shipping Instructions Web application from the Shipper that must be tendered with each shipment. Also known as a Shipping Order or Shipping Document. (See the Shipping Instructions Item.)

STCC - This is an abbreviation for Standard Transportation Commodity Code, which is associated to a commodity. Both the actual commodity and STCC must be stated on the shipping instructions. (See the Shipping Instructions Item.)

Storage Charges - Charges associated with the period of time that a vehicle is held at a BNSF Automotive facility beyond notification and free time or has a condition waiting to be addressed. (See the Storage Item.)

Surcharges - All transportation services and shipments will be subject to any surcharge implemented by BNSF or imposed on BNSF,

regardless of price authority (including all multi-party, contracts, and other agreements). (See the Surcharge and Special Assessments Item.)

Transportation Agreement - A transportation agreement (complete offer) is created each time BNSF receives a shipment according to the offer contained in the *BNSF Automotive Rules and Policies Guide* and relevant price authority. (See the Complete Offer and Acceptance Item.)

Transportation Contract - A transportation contract is also a multi-party arrangement that allows the party to receive “contract-holder” types of price authorities. (See the Price Authorities Application Item.)

Truck In / Truck Out - To bring motor vehicles to a BNSF Automotive facility, store them, and then remove them by means of highway transport with no rail movement used to transport motor vehicles. (See the Truck In / Truck Out Item.)

Uniform Bill of Lading - A form of the bill of lading prescribed by the Surface Transportation Board, which is deemed to incorporate a bill as set forth in Title 49, Code of Federal Regulations, Part 1035. (See the Shipping Instructions definition and Item.)

Unload - Remove or unload a vehicle from a railcar.

Unlocated Damage - Loss and damage to motor vehicles where the cause cannot be determined by normal inspection.

Vehicles - See the motor vehicles definition.

Verification - Haul-away reported damage of Severity 3 damage or greater.

VIN - The abbreviation for Vehicle Identification Number. This is a motor vehicle alphanumeric legal identifier.

APPENDIX A: SHIPPING INSTRUCTIONS ELEMENTS

APPENDIX A: SHIPPING INSTRUCTIONS ELEMENTS

REQUIRED SHIPPING INSTRUCTIONS ELEMENTS

The shipping instructions are considered complete only when all the following required elements are provided to BNSF (via EDI or BNSF's Shipping Instructions Web application). For additional Shipping Instructions details, see Item 8: Shipping Instructions.

1. Railcar Equipment
 - Railcar initial and number, if loaded at Shipper's facility or an interline shipment
2. Commodity
 - Vehicle Identification Number (VIN) for each motor vehicle
 - Actual commodity description (proper shipping name)
 - Actual Standard Transportation Commodity Code (STCC)
 - Dealer codes, if applicable
3. Movement Information
 - Origin and destination automotive facility
 - Actual origin and destination
 - Shipper
 - Receiver
 - Haul-away carrier, if applicable
 - Route (use the exact route shown on the price authority)
 - Care of party
 - Notify party
 - If interline or Rule 11:
 - Final notify party and phone number
 - Rule 11 (specify yes or no) (see Item 3: Price Authorities Application)
 - If yes: Specify all other railroads' price authorities
 - In-bond: (specify yes or no)
 - If yes: specify railroad or Shipper's bond
 - If railroad bond: T&E Manifest Information (See Item 13: Rail Carrier Bond)
4. Price/Invoice
 - Price authority (document name). (See Item 3: Price Authorities Application.)
The price authority stated on the shipping instructions cannot be changed after the motor vehicle or railcar has been received by BNSF.
 - Freight charges payer
 - Prepaid or collect
5. Shipments to or from Mexico or Canada
Providing all of the following information for Canadian and Mexican traffic allows BNSF to forward accurate information. In addition, send a complete set of customs documents to the connecting carrier to prevent delays. (See Item 12: Mexico and Canada Service.)
 - Customs broker or Forwarding agent name, address, city, state/province, postal code, and phone number (provide in the special instructions field)
 - Actual shipper's name, address, city, state/province, postal code
 - Actual receiver's name, address, city, state/province, postal code
 - Actual importer's name (purchaser of goods), address, city, state/province, and phone number
 - Piece count (quantity) (must be in the comment field)
 - Route (complete route)
 - Weight (total weight and unit of measure)
 - Seal number
 - Actual commodity description (proper shipping name)
 - Actual STCC
 - Dollar value (stated in U.S. funds if moving in-bond)
 - Border notify party
 - ITN number (for shipments moving through Canada for export to a third country) or AES exemption citation (for shipments destined to Canada)
 - U.S. port of entry
 - Port of export
 - Carrier transporting goods
 - If shipment is moving in-bond using a Customs form 7512:
 - Entry number
 - Class of entry
 - Name and address receiving 7512 form.

APPENDIX B: APPLICABLE INDUSTRY PUBLICATIONS

APPENDIX B: APPLICABLE INDUSTRY PUBLICATIONS

The following publications (or successors) also govern transportation services subject to the *BNSF Automotive Rules and Policies Guide* in effect at the time BNSF's receives the motor vehicle.

UNIFORM FREIGHT CLASSIFICATION: 6000 SERIES

This publication provides commodity descriptions, general packaging requirements, and contract terms and conditions for a Uniform Bill of Lading.

Publisher: American Short Line and Regional Railroad Association for the National Railroad Freight Committee.

OFFICIAL OPEN PREPAY STATIONS LIST: OPSL 6000 SERIES

This publication identifies stations (such as automotive facilities) and operations. It also contains shipping instructions, station numbers, and freight station accounting code numbers.

Publisher: RAILINC.

STANDARD TRANSPORTATION COMMODITY CODE: STCC 6001

This publication contains commodity descriptions, including hazardous and explosive commodities.

Publisher: RAILINC.

AAR MANUAL OF STANDARDS AND RECOMMENDED PRACTICES, SECTION N

This publication covers approved practices for loading/unloading vehicles, operations and securement of vehicles in the railcars, standard vehicle inspection forms, and railcar and equipment standards and specifications for the transportation of vehicles.

Publisher: RAILINC.

APPENDIX C: CHARGES AND AMOUNTS

APPENDIX C: CHARGES AND AMOUNTS

CHARGES AND AMOUNTS

The Shipper is responsible for all charges and amounts mentioned throughout this *BNSF Automotive Rules and Policies Guide*. As reference, some of the Items, associated charges, and amounts are listed. See the appropriate Items for the complete details. All charges and amounts are subject to change. Multiple charges or amounts can be incurred when applicable.

ITEM	CHARGES/AMOUNTS
CREDIT AND COLLECTIONS	
Item 2: Credit and Collections - freight, accessorial, finance, other	as applicable
Item 3: Price Authorities Application - stated on shipping instructions Rule 11 - not indicated and no interline rate authority	as applicable BNSFQ 111123 rate
Item 4: Surcharges and Special Assessments	as applicable
Item 5: Accessorial Services and Charges	as applicable
Item 6: Invoice Disputes - finance charges on non-disputed charges	as applicable
SHIPPING INSTRUCTIONS	
Item 8: Shipping Instructions - awaiting Shipping Instructions Misidentified shipment Missing export documentation	\$150 per vehicle day \$500 per shipment \$500 per vehicle day
Item 9: Shipping Instructions Changes Incorrect information requires corrections or changes by BNSF Change destination, if can be accomplished - same Shipper Change destination, if can be accomplished - mixed Shippers	\$200 per shipment \$400 charge per shipment \$200 per railcar \$200 per shipper
SERVICE	
Item 11: Embargo	\$10,000 per railcar
Item 12: Mexico or Canada Service Mexico document delay charge Release of shipment	as applicable \$150 per day \$500 per shipment
Item 13: Rail Carrier Bond T&E missing or use of approved paper T&E bond Inappropriate use of BNSF's bond	\$150 per shipment \$10,000 per shipment
RAILCAR EQUIPMENT	
Item 14: Railcar Specification and Standards - improper loading	as applicable
Item 16: Maximum Railcar Weight and Overweight Handling - overweight	as applicable
Item 17: Prohibited Railcar Equipment	as applicable
VEHICLE SPECIFICATIONS	
Item 18: Vehicle Specifications and Standards - address non-compliance	as applicable
Item 20: Vehicle Loading and Unloading by Shipper - improper loading Misloaded or transloaded shipment Set out of a train	as applicable \$500 per load \$5,000 per set out
Item 22: Prohibited Vehicles Address non-compliance	\$500 per vehicle as applicable

APPENDIX C: CHARGES AND AMOUNTS

Item 23: Truck In and Truck Out - vehicles	\$50 per vehicle
Item 24: Facility Overcapacity - divert railcar to another facility	\$300 per railcar
HAUL-AWAY SPECIFICATIONS	
Item 27: Haul-away Facility Use Charge	as applicable
Item 28: Haul-away Storage	as applicable
Unauthorized haul-away storage	\$500 per day
Vehicle exchange	\$500 per vehicle per day
Maintenance, repair, or damages from an incident	as applicable, \$1,000 min.
LIABILITY / CLAIMS	
Item 29: Shipper General Liability - non-compliance	as applicable
Item 31: General Cargo and Equipment Liability	
Minimum loss and damage - new and used vehicles	\$500 per vehicle
Deductible for used vehicles	\$500 per vehicle
Item 32: Vehicle (Cargo) Loss and Damage Liability - limited liability	
Liability for vehicles on a bi-level railcar	\$200,000 per bi-level
Liability for vehicles on a tri-level railcar	\$300,000 per tri-level
Liability for vehicles on a articulated bi-level railcar	\$320,000 per articulated bi-level
Liability for vehicles on an Auto-Max railcar	\$440,000 per Auto-Max
Liability for new vehicles not on a railcar	\$20,000 per new vehicle
Liability for vehicles on a uni-level railcar	\$20,000 per uni-level vehicle
Liability for used vehicles not on a railcar	\$15,000 per used vehicle
Item 33: Equipment Loss and Damage	as applicable
Item 35: Vehicle Claims	as applicable
Item 36: Private Insurance	
Commercial general liability and business auto insurance	\$1,000,000 min.
Commercial liability insurance - aggregate limit	\$2,000,000
Non-BNSF locomotive switch operations - single limit	\$5,000,000 min.
Non-BNSF commercial liability insurance - aggregate limit	\$10,000,000
Employers liability insurance for accident, disease, employee	\$500,000 min.
Item 39: Laws and Regulations Compliance - charges	as applicable
STORAGE	
Item 43: Storage	
Vehicle storage - (debit-credit) x vehicles per BNSF facility	\$7.50 per day per vehicle
Storage per railcar	\$300 per railcar


APPENDIX D: CONTACTS

CONTACTS AND PHONE NUMBERS

Some of the contacts mentioned in this *BNSF Automotive Rules and Policies Guide*.

AREA / FUNCTION	CONTACT METHOD
Automotive Marketing	1-888-428-2673 http://www.bnsf.com/customers/what-can-i-ship/finished-vehicles/
Barrier Seals	1-800-832-5452 http://www.bnsf.com/customers/support-services/security-solutions/
Borders - Canada, Mexico	1-888-700-3075, option 3 http://www.bnsf.com/customers/where-can-i-ship/canada/ http://www.bnsf.com/customers/where-can-i-ship/mexico/
Claims	1-800-333-4686 Fax 1-785-435-4120 CargoClaims@BNSF.com http://www.bnsf.com/customers/support-services/rail-freight-cargo-claims/
Credit Department	1-817-352-4054 http://www.bnsf.com/customers/become-a-customer/credit-application/
Customer Support	1-888-428-2673
Product Recovery Team	1-800-333-4686 http://www.bnsf.com/customers/support-services/loading-and-shipment-safety/
Intermodal Marketing	1-888-428-2673 http://www.bnsf.com/customers/what-can-i-ship/domestic-containers-and-trailers/
Load & Ride Solutions (LARS)	1-800-333-4686 http://www.bnsf.com/customers/support-services/loading-and-shipment-safety/
Shipping Instructions Changes	1-888-428-2673 http://www.bnsf.com/customers/support-services/bnsf.com-tools/
T&E Bond	1-888-700-3075, option 3 BorderSupport@bnsf.com

ADVISORY

<h2>MarketingNews</h2>	
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<p>To: BNSF Automotive Customers</p>	<p>January 19, 2016</p>
<p style="text-align: center;">Updated Automotive Rules and Policies Guide</p>	
<p>The new <i>Automotive Rules and Policies Guide (R&PG)</i> will become effective February 1, 2016.</p> <p>This new <i>Automotive R&PG</i> replaces the previous version. To review the new version of the <i>R&PG</i>, visit www.bnsf.com and look under Customers, What Can I Ship, Automotive, Finished Vehicles, Policies, then Rules and Policies Guide, or click here.</p> <p><u>Highlights of some key changes are noted below*:</u></p>	
<p>Item 8: Shipping Instructions Charge for missing southbound export documentation changed from \$150 to \$500</p> <p>Item 9: Shipping Instructions Change - After Tendering to BNSF Charge for destination change with mixed Shippers was reduced from \$500 to \$200</p> <p>Item 24: Facility Overcapacity Charge for storage of a railcar increased from \$150 to \$300</p> <p>Item 31: General Cargo and Equipment Liability BNSF is not liable for amounts less than \$500</p> <p>Item 43: Storage Vehicle storage charge rose from \$5 to \$7.50 per day Railcar storage charge increased from \$150 to \$300 Storage credits were reduced from 3 to 2.75</p> <p>* Note: This list of changes is not exhaustive. Please review the new <i>Automotive R&PG</i>.</p> <p>If you have questions, please contact your BNSF Automotive Sales Representative at 888-428-2673.</p>	
<hr/>	<p>This Marketing News bulletin is posted on our Web site at www.bnsf.com.</p>

CHANGES

This is the current version of the *BNSF Automotive Rules and Policies Guide*. It includes the following changes since the effective date of February 1, 2016.

07/21/16 - Added word “related” to Item 35 - transportation related jumped chocks.

08/15/18 - Removed options for 1-888-428-2673, due to voice recognition software implementation.