

EVANSVILLE WESTERN RAILWAY



CIRCULAR EVWR 2-A

**RULES GOVERNING “A” SERIES TARIFFS
FOR REGULATED COMMODITIES**

RULES AND OTHER GOVERING PROVISIONS

This Circular applies only when a tariff issued by this Railroad makes specific reference hereto.

This Circular shall apply on interstate or intrastate traffic.

ISSUED: September 16, 2016

EFFECTIVE: September 16, 2016

ISSUED BY

**Larry Davis
Vice President Sales & Marketing
200 Clark Street
Paducah, KY 42003**

APPLICABILITY OF CIRCULAR - ITEM 1	3
OTHER GOVERNING PUBLICATIONS - ITEM 2	3
TERM OF AN A SERIES TARIFF - ITEM 3	3
DIVERSION OR RECONSIGNMENT IN TRANSIT - ITEM 4	3
TERMS OF SHIPMENT AND CREDIT - ITEM 5	3
RETURN SHIPMENTS - ITEM 6	3
NO MILEAGE RATES - ITEM 7	4
FORCE MAJEURE - ITEM 8	4
LINE ABANDONMENT - ITEM 9	4
INDEMNIFICATION - ITEM 10	4
JOINT LIABILITY - ITEM 11	5
LOADING AND UNLOADING - ITEM 12	5
RAILCARS TRANSPORTING HAZARDOUS CHEMICALS - ITEM 13	6
EXPLANATION OF ABBREVIATIONS	6
EXPLANATION OF TERMS	6

Applicability of Circular – Item 1

The provisions and rules of this Circular are incorporated by reference into all A Series tariffs published by EVWR that reference this Circular, except to the extent that any A Series tariff specifically excludes such any such provision(s).

Other Governing Publications – Item 2

In addition to the provisions set forth herein, provisions contained in the following publications also apply:

- UFC 6000-Series-Uniform Freight Classification Tariff with the exception of Rules 24 or 29 contained therein.
- STCC 6001-Series-Standard Transportation Commodity Code Tariff.
- OPSL 6000-Series-Official Railroad Station List Tariff.
- BOE 6000-Series-Bureau of Explosives Tariff
- EVWR 4000-Series-Unit Trains of Coal/Coke
- EVWR 5000 Series-Unit Trains Other than Coal/Coke
- EVWR 8001-Series-EVWR General Rules, Switching and Miscellaneous Charges Tariff.
- EVWR 8500-Series-Fuel Surcharge
- EVWR 9000-Series-EVWR Demurrage and Storage Rules Tariff.

Term of an A Series Tariff – Item 3

Tariffs shall become effective and expire on the dates specified therein, however any Railroad which is a party to a specific tariff shall have the unilateral right to withdraw from such tariffs upon 20 days written notice to the Customer. Tariffs generally have a fixed term length, however, tariffs are subject to change upon notice, provided that the price does not increase. Changes involving a price increase require not less than 20 days written notice to the Customer. Notices will be provided via US Mail, facsimile, or electronic mail.

Diversion or Reconsignment in Transit – Item 4

If a shipment is diverted or reconsigned in transit while on the tracks of the EVWR, the provisions of EVWR Tariff EVWR 8001-Series shall apply. If a shipment is diverted or reconsigned while on the track of one of the other Railroads who participate in a joint line tariff, provisions published for their individual accounts, as the case may be, will apply.

Terms of Shipment and Credit – Item 5

Shipments may be shipped prepaid or collect. When EVWR is the billing carrier, credit terms are as set forth in EVWR Circular 5, Credit and Collection Terms.

Return Shipments – Item 6

Should a shipment arrive at a destination and be rejected and not unloaded or partially unloaded, Customer may return the shipment to Origin, via the reverse of the inbound route,

and Railroads shall assess the rate which was applicable to the inbound shipment, but at the level in effect on the date shipment is tendered for return movement.

No Mileage Rates – Item 7

If a tariff provides for No Mileage Rates applicable in privately-owned or leased equipment, then the Customer agrees to indemnify Railroads for any and all claims received from a car owner for mileage allowance.

Force Majeure – Item 8

In the event any party cannot perform due to or as a result of the following causes: Acts of God, including, but not limited to flood, storm, earthquake, hurricane, tornado, or other severe weather or climatic conditions; acts of public enemy, war, blockade, insurrection, derailment, vandalism, sabotage, fire, accident, wreck, washout or explosion; labor strike or interference, lockout or labor dispute, shortage of diesel fuel, embargo or AAR service order or governmental law, orders or regulation, or breakage of machinery; and/or any like causes beyond the reasonable control of Customer or Railroad, the parties' obligations shall be suspended to the extent made necessary by the Force Majeure event at the affected origin(s) and/or destination(s) during any such disability period insofar as it applies to the affected location(s). Suspension shall not result in extension of the term of the tariff governing shipment(s) subject to the Force Majeure. The party claiming the Force Majeure shall take all reasonable steps to remove the Force Majeure event, and shall promptly notify the other party(ies) within a period of five (5) days, excluding weekends and holidays when it learns of the existence of a Force Majeure condition and will similarly notify the other party(ies) within a period of five (5) days, excluding weekends and holidays, when the Force Majeure is terminated.

Line Abandonment – Item 9

The publication of tariffs in no way obligates the Railroad to continue ownership, maintenance (including weight standards) or operations of any rail lines. Railroad will not be liable for any increased transportation costs or consequential damages that may result from such discontinuation.

Indemnification – Item 10

Upon delivery to and acceptance by Customer of the commodity transported under a subject tariff, Railroad and Railroad's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents (collectively 'Indemnitees') shall be relieved from any further obligation with regard to the disposition of the Commodity. Customer hereby agrees to release, defend, indemnify, and hold Railroad harmless for, from and against any and all losses, damages (including special, incidental, and consequential damages), suits, liabilities, fines, penalties, costs, causes of action, demands, judgments and expenses (including without limitation, court costs, attorneys' fees, and costs of investigation, removal and remediation and government oversight costs) environmental or otherwise (collectively 'Liabilities') of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) the

disposition of the Commodity, or the work performed by customer or a licensed EPA cleanup-disposal operator designated by Customer including but not limited to, damages caused by sudden pollution. Customer shall, at the sole option of Railroad, defend the Indemnitees at Customer's sole expense in any claim involving the same. The foregoing indemnification and hold harmless provision shall not apply to any Liabilities wholly caused by the sole negligence of any Indemnitee.

Each railroad party to a tariff represents and warrants that it is and will maintain the ability to be financially responsible for general liability (including contractual liability) insurance of not less than ten million dollars combined single incident limit for bodily injury and property damage. Customer agrees to keep in force general liability (including contractual liability) insurance of not less than ten million dollars combined single incident limit for bodily injury and property damage. Certification of insurance will be furnished by Customer to Railroad(s) party to tariffs referencing this Circular.

Joint Liability – Item 11

Each party shall indemnify ('Indemnifying Party') and hold harmless the other party for all judgments, awards, claims, demands, and expenses, including without limitation, attorneys' fees, environmental damage, hazardous materials damage, fines or penalties, for injury or death to all persons, including Railroad's and Customer's officers and employees, and for loss and damage to property belonging to any person whomsoever ('Loss or Damage'), arising during the transportation of the commodity, but only to the extent the Indemnifying Party's negligence causes or contributes to any such Loss or Damage. In the event the proximate cause of such Loss or Damage cannot be determined, any liability for such Loss or Damage shall be shared equally between Railroad and Customer.

Loading and Unloading – Item 12

Customer shall have the sole responsibility, at its sole expense, for properly packaging, labeling, marking, blocking, bracing, placarding, loading and unloading the commodity into or out of equipment to be transported. Customer shall comply with the loading rules of the Association of American Railroads and applicable federal, state and local loading rules as well as applicable federal, state and local requirements regarding the handling of the commodity. Customer shall further be responsible for insuring that the load limits of any equipment used for transporting the commodity are not exceeded. In the event it is discovered that equipment has been overloaded, Railroad may set out such equipment at a location convenient to Railroad and shall notify Customer by telephone, confirmed in writing, of the location of the overloaded equipment. Railroad may then either (1) contact customer in which event Customer shall have twenty-four (24) hours to remove excess weight; or (2) move the overloaded equipment to a location suitable for removal of the excess weight that meets with all federal, state and local requirements. In any event, Customer shall be responsible for performing and bearing all costs for movement of the overloaded railcar and removal of excess weight. Railroad will move the affected equipment to destination in such manner and time as is practicable after Railroad receives notice from customer that excess weight has been removed.

Railcars Transporting Hazardous Chemicals – Item 13

Equipment used shall be privately owned or leased cars as described in the tariff and the Official Railway Equipment Register and tendered to Railroad in accordance with all applicable hazardous material regulations of the United States Department of Transportation (DOT), as published in 49. Railroad is not obligated to accept privately owned or leased equipment that does not have OT-5 approval from Railroad. Customer shall indemnify and hold harmless Railroad for loss, damage or injury due to any defects in privately owned or leased equipment, improper loading practices, or failure to properly close, secure and tender loaded or empty equipment, as prescribed by DOT regulations. Customer shall indemnify and hold harmless Railroad for loss, damage or injury due to presence of any trace chemicals or contaminants in the commodity which are not described in the commodity's proper shipping name, as provided in CFR Section 172.01.

EXPLANATION OF ABBREVIATIONS

CFR	Code of Federal Regulations
EVWR	Evansville Western Railway

EXPLANATION OF TERMS

Railroad	EVWR or any other railroad who, by becoming a party to a EVWR A Series Tariff, becomes a party to the provisions contained in this Circular.
Customer	Any shipper, receiver, consignor or consignee who, by becoming a party to the involved EVWR A Series Tariff, and receives benefit of the terms contained therein, becomes a party to the provisions contained in this Circular.