

**APPALACHIAN & OHIO RAILROAD**  
**GENERAL TERMS AND CONDITIONS FOR TARIFFS & DEREGULATED QUOTES**

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**APPALACHIAN & OHIO RAILROAD, INC.**

**FREIGHT CIRCULAR 4**

**GENERAL TERMS AND CONDITIONS**

**FOR**

**TARIFFS (GOVERNING REGULATED COMMODITIES)  
AND  
QUOTES (GOVERNING DEREGULATED COMMODITIES)**

**ISSUED: March 1, 2017**

**EFFECTIVE: April 1, 2017**

**ISSUED BY**

**Kevin McEwan**

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**200 Clark Street**

**Paducah, KY 42003**

# **APPALACHIAN & OHIO RAILROAD**

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### **1. Application**

The Terms and Conditions in this Circular are applicable to and made a part of any Tariff or Deregulated Quote (hereinafter referred to singly as an "Authority" or collectively as "Authorities") making reference to this Circular, unless otherwise provided in the Authority.

### **2. Cancellation of This Circular**

This publication may not be cancelled by A&O unless any and all Authorities subject to the rules and conditions herein have either expired or have been cancelled.

### **3. Amendment of This Circular**

This Circular, once issued and effective, shall not be amended by A&O. In the event A&O desires to change provisions which govern future Authorities, it shall issue a new publication which shall pertain only to those Authorities making specific reference thereto.

### **4. Term of an Authority**

An Authority shall become effective on the date specified in the Authority and shall expire on the date specified in the Authority, however Railroad may unilaterally cancel an Authority upon providing not less than twenty (20) days written notice, which may be provided by US Mail, Facsimile or email.

### **5. Transportation Particulars**

Railroads agree to provide rail transportation service with reasonable dispatch over their lines for Customer at the rates, terms and conditions set forth in the Authority.

### **6. Shipment Description and Instructions**

Shipments will be accompanied by a bill of lading and/or billing instructions referencing the Authority's identification number, and containing the appropriate Standard Transportation Commodity Code (STCC) and routing instructions. Any notation made on the shipping order which is in any way inconsistent with the terms of the Authority, or which purports to enlarge, modify or change the Authority is void and of no effect. For purposes of determining the date on which a shipment was made, the waybill date will govern.

### **7. Shipping Limitations**

The name of only one consignor, one origin, one consignee and one destination shall appear on a Shipment Instruction. No shipments shall be made as "Order Notify" shipments.

### **8. Loading and Unloading**

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,

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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.

### **9. Car Supply**

If a Railroad is to furnish cars, such Railroad will do so on a non-guaranteed basis subject to availability and distribution considerations. If Customer is to furnish cars, Customer will obtain any necessary OT5 authority. If a particular Authority provides for No Mileage Rates applicable in privately-owned or leased equipment, then Railroad(s) will not be liable for, and Customer shall hold Railroad(s) harmless against, mileage, per diem or other charges in connection with the use of Customer furnished cars.

### **10. Incorporation of Documents; Conflict in Terms and Conditions**

The Authority incorporates the provisions of the Uniform Straight Bill of Lading, as well as AAR and other industry standards, requirements and procedures, including, but not limited to the Bureau of Explosives BOE 6000-series, Directory of Hazardous Materials Shipping Description (Issued by RAILINC), Official Railroad Station List OPSL 6000-series, Official Railway Equipment Register RER-series, Standard Transportation Commodity Code STCC 6001-series, Uniform Freight Classification UFC 6000-series, A&O Circular 5-Series (Credit and Payment Terms) and A&O Tariffs 4000-Series (Coal), 7500-Series (Percent of Revenue Fuel Surcharge), 8001-Series (General Rules and Accessorial Services), 8500-Series (Mileage Based Fuel Surcharge), and 9000-Series (Demurrage and Storage). In the event of conflict of terms, the other provisions of the Authority and then this Circular shall govern.

### **11. Participating Railroads**

Customer acknowledges that it may not be party to, and may not have access to, any agreements for the divisions of rates or revenues associated with the Authority.

### **12. Payment of Charges - Extension of Credit**

Payment of all rates and charges that may accrue and become due from Customer to A&O in connection with an Authority shall be made within the time frames set forth in, and subject to the finance charges, late charges, and other provisions of A&O Circular 5-Series (Credit and Collection Terms). If Customer fails to pay all rates and charges as required by this paragraph, A&O may, without limitation, cancel or suspend its credit privileges. Customer may not set off or withhold any payment due to any Railroad.

### **13. Claims for Overpayment of Charges**

Claims for overpayment of charges must be in writing and received by A&O no later than one year after delivery of shipment or tender of delivery of shipment. Any lawsuit

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for overpayment of charges must be filed within two years after delivery or tender of delivery of shipment. Any claim or lawsuit not filed within the periods set forth in the preceding sentences or under eight-five dollars (\$85) per Shipment Instruction is waived by Customer.

### **14. Diversion or Reconsignment in Transit**

If a shipment is diverted or reconsigned in transit while on the tracks of the A&O, the provisions of Tariff A&O 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 Authority, provisions published for their individual accounts, as the case may be, will apply.

### **15. Fuel Rate Adjustment**

A&O will apply a fuel adjustment to the line haul rates and charges as provided for in the Authority, and according to the terms of the applicable fuel surcharge publication.

### **16. Return Shipments**

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 Authority Rate applicable to the inbound shipment at the level in effect on the date shipment is tendered for return movement.

### **17. Changes in Railroad Operations**

Railroads are not obligated to continue ownership, maintenance (including weight standards), or operation of any rail lines. Railroads will not be liable for any consequential damages or increased transportation costs incurred by Customer as a result of Railroad's discontinuation of ownership, maintenance (including weight standards), or operation of any rail lines.

### **18. Damage Claims**

Claims for loss, damage or delay to any commodity shipped pursuant to the Authority shall be governed by the provisions of 49 USC §11706, 49 CFR §1005, and related decisions. A&O liability for loss or damage is contingent upon A&O or its agent receiving immediate notification of all noted visible losses or damages discovered during the unloading of a rail car. Loss or damage discovered other than between 8:00 A.M. and 5:00 P.M. Central Time, Monday through Friday, shall be reported no later than 24 hours following unloading from rail car, Saturdays, Sundays, and Holidays excluded. Concealed damage must be reported immediately upon discovery and made available for inspection at point of delivery. All loss or damage may be reported at the following telephone number: 270-444-4424.

Any claim for loss or damage must be filed within nine (9) months of the date the shipment was delivered, or in the case of failure to make delivery, then within nine (9) months after a reasonable time for delivery. Any lawsuit or other action for the enforcement or liability for loss of damage must be instituted within two years after A&O first declines the claim. Any claim or lawsuit not filed within the periods set forth in the preceding sentences is waived by Customer. Loss and damage claims submitted to A&O should be sent or delivered to:

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Manager Customer Accounting  
Appalachian & Ohio Railroad  
200 Clark Street  
Paducah, KY 42003  
Phone (270)444-4424

### **19. Agent**

Any third party performing any obligation of Customer or A&O is considered to be such party's agent. Customer acknowledges and agrees that it shall be responsible for any charges or damages incurred or caused by its agents in connection with the Authority. For the avoidance of doubt, no other rail carrier shall be deemed A&O's agent in connection with any rail transportation provided in connection with the Authority.

### **20. Indemnification**

Upon delivery to and acceptance by Customer of the commodity transported, 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.

Any Railroad that is a party to an Authority 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 Authorities referencing this Circular.

### **21. Joint Liability**

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

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(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.

### **22. Railcars Transporting Hazardous Chemicals**

Equipment used shall be privately owned or leased cars as described in the Authority 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 CFR. 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.

### **23. Force Majeure**

A party shall be excused from its performance under the Authority if and to the extent prevented or delayed by the following natural or deemed force majeure conditions: Act of God; authority of law; major weather impediments; fire; explosion; labor disputes; embargo; war; insurrection; threatened or actual act of terrorism; derailment; or other like causes beyond its control. The term for which any rates are offered shall not be extended due to the force majeure condition. The party claiming force majeure' shall notify all other parties as soon as practical upon the beginning and ending of the force majeure condition.

### **24. Applicable Law**

The Authority and these Terms shall be construed (except for matters referring to or traditionally governed by or construed under federal laws, regulations, or case law) according to the laws of the State of West Virginia without regard to its conflict of laws rules. The forum for any litigation arising out of the Authority shall be the federal or state courts of the State of West Virginia, as appropriate.

## **EXPLANATION OF ABBREVIATIONS**

A&O	The Appalachian & Ohio Railroad, Inc
CFR	Code of Federal Regulations
EPA	Environmental Protection Agency

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**EXPLANATION OF TERMS**

- Railroad(s)     A&O or any other railroad who, by becoming a party to an A&O Authority referencing this Circular becomes a party to the provisions contained herein.
- Customer        Any shipper, receiver, consignor or consignee who receives the benefit of the terms contained in an Authority.