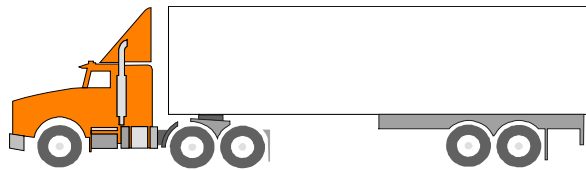
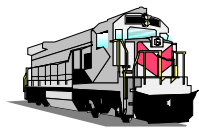




1 Company Name: _____

2 Effective Date: _____



United
States
Department of
Agriculture

STANDARD OPERATING AGREEMENT
GOVERNING INTERMODAL TRANSPORTATION

Revised October, 1999

USDA Standard Operating Agreement

Kansas City Commodity Office
Post Office Box 419205
Kansas City, MO 64141-6205

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PURPOSE

This **Standard Operating Agreement** is to establish the Trailer on Flatcar/Container on Flatcar (TOFC/COFC) service needs of the United States Department of Agriculture (USDA), Farm Service Agency, Kansas City Commodity Office (KCCO), operating as Commodity Credit Corporation (CCC), for the movement of its freight, and to ensure that the Intermodal Marketing Company (IMC) arranging for the transportation service has both the willingness and the capability to meet these needs. This **Standard Operating Agreement** applies to shipments for which KCCO has the responsibility for paying freight charges. USDA may amend this operating agreement when needed. If amendments are made, USDA will mail changes to the IMC for acceptance before implementation.

PART I

RULES

Item 10 **Definition of Intermodal Marketing Company**

a. Transportation service within the continental United States - A company accepting responsibility for USDA directed TOFC/COFC shipments by arranging for a:

- (1) motor carrier to deliver an empty trailer/container to a shipper and to pick up that loaded trailer/container for delivery to a rail carrier;
- (2) railroad to transport and deliver the trailer/container to a TOFC/COFC ramp; and
- (3) motor carrier to deliver the loaded trailer/container to the consignee and to pick up that empty trailer/container.

b. Transportation service to noncontiguous domestic trade locations (such as Hawaii, Puerto Rico, Guam or a US Trust Territory) - A company accepting responsibility for USDA directed TOFC/COFC shipments by arranging for a:

- (1) motor carrier to deliver an empty trailer/container to a shipper and to pick up that loaded trailer/container for delivery to a rail carrier or a U.S. flag water carrier;

(2) railroad and/or a U.S. flag water carrier to transport and deliver the trailer/container to a TOFC/COFC facility, a container freight station, a container yard, or other appropriate location, as directed by USDA; and

(3) motor carrier to deliver the loaded trailer/container to the consignee and to pick up that empty trailer/container when this service is requested.

c. Responsibility - The IMC accepts responsibility for USDA shipments by signing a bill of lading, and ensuring the shipment moves in intermodal service as described in paragraphs a. and b.

The IMC may not move a shipment exclusively over the road from origin to destination. On noncontiguous domestic trade shipments, USDA may require the IMC to submit a copy of the bill of lading to ensure a U.S. flag water carrier was utilized. Service provided in a manner other than that described in this item may be basis for USDA to discontinue doing business with the IMC.

Item 20 **Application of Rate Quotations**

Submitted rate quotations will provide for door to door service, and will provide for full liability in the event of any loss and/or damage to the freight while in the care of the IMC, or caused by the IMC or any carrier over whose line or route the property is transported.

For shipments totally within the continental United States, rates quoted will remain in effect for 30 days beyond the end of the USDA ship period, unless otherwise superseded. For noncontiguous domestic trade shipments, rates quoted will remain in effect for 45 days beyond the USDA ship period, unless otherwise superseded. The USDA ship period is the time (normally two weeks) during which USDA expects the shipment to move. The approximate time period will be indicated on the *Intermodal Marketing Company Rate Request* sent to the IMC by USDA.

Rate quotations will be inclusive of all accessorial charges, such as equipment size and type, split pick up and/or delivery service, container stuffing when applicable, and insulated trailer/container.

USDA will pay the IMC the rates and charges agreed to by the parties set forth in the *Intermodal Marketing Company Rate Request* on shipments for which USDA is obligated to pay the freight.

Each *Intermodal Marketing Company Rate Request* submitted must be signed by a duly authorized agent or official of the IMC submitting the rate request.

Item 30 **Definition of Shipment**

A shipment is defined as any quantity of goods, received on one bill of lading or shipping order, from one shipper, at one point of origin, on one day, consigned to one consignee, at one place of destination. Additional documentation to ship split pick ups and deliveries may be used and will constitute a single shipment.

Item 40 **Split Pick Up and Delivery Service**

Split pick up and delivery service to partially load and unload is defined as:

- a. **Split Pick Up Service** - Picking up a single shipment from two or more consignors' docks, platforms or facilities.
- b. **Split Delivery Service** - Delivering a single shipment to two or more consignees' docks, platforms or facilities.

Item 50 **Service Requirements, Including Detention**

The IMC agrees to:

- give at least 24 hours notice of arrival to consignees without charge;
- arrive at origin or destination as scheduled, in accordance with prearranged appointment;
- notify the shipper and **USDA, Export Operations Division (EOD), Traffic & Contract Administration Branch (TCAB)** at 816-926-6552 as soon as possible if unable to handle shipment; and
- allow six hours for loading or unloading non-palletized loads at each stop, and two hours for loading or unloading palletized loads at each stop.

Free time allowance is computed from the time of arrival or time of scheduled unloading, whichever is later. Charges for detention of trailers/containers held beyond free time will be for the account of shipper or consignee at point of detention.

Charges for this service, if any, shall be set out in Item 220, **Accessorial and Other Service Charges**.

Item 60 **Timely Receipt of Trailer/Container**

When the IMC calls to make an unloading appointment, as set out in Item 50, **Service Requirements, Including Detention**, and the consignee schedules an unloading appointment for a date beyond the free time detailed in Item 220, **Accessorial and Other Service Charges**, trailer/container storage charges may be assessed by the IMC. Charges for this service, if any, shall be set out in Item 220.

Item 70 **Refused or Unclaimed Shipments**

When shipments of freight are refused, unclaimed, or if an unloading appointment cannot be made, the IMC has the authority to place the shipment in storage after contacting **USDA, EOD, TCAB**, at 816-926-6552. The IMC shall be liable solely as a warehouse operator after the expiration of free time and be subject to the conditions set out in Part III, **TERMS AND CONDITIONS OF CARRIAGE**, Section 10.

No charges under this item will be made when actual delivery is accomplished within 24 hours after notice of arrival has been given.

No storage charge will be assessed when delivery cannot be accomplished due to riots, acts of God, the public enemy, authority of law, the existence of violence or such possible disturbance as may create reasonable apprehension of danger to persons or property.

Storage charges under this item will end when the IMC can deliver the freight as a result of action(s) taken by the IMC, consignee, consignor, or USDA.

Charges for this service, if any, shall be set out in Item 220, **Accessorial and Other Service Charges**.

Item 80 **Rejected Shipments**

At delivery, if a major portion of the shipment is damaged or frozen it may be rejected by the consignee. In these cases KCCO and the IMC will be immediately notified by telephone and a rejection notice will be forwarded to the IMC. The rejection notice states, in part:

- that CCC rejects the load;
- the IMC, at its expense, has the opportunity to have the product inspected unless the load was rejected due to freezing, as set out in Item 90, **Protection from Freezing**;
- salvage and disposal instructions; and
- a claim will be filed to recover the value of the loss.

Item 90 **Protection from Freezing**

KCCO requires protection from freezing for its shipments. The IMC wishing to transport USDA commodities agrees to accept full responsibility for any damage to product caused by freezing.

KCCO will be notified if a shipment arrives and the consignee suspects that the load may be frozen. To determine the extent of frozen commodities, the consignee may be requested to perform a sampling procedure developed by the Agricultural Marketing Service. These procedures require that samples be taken from the entire shipment. If the load is found to be frozen and is ultimately rejected to the IMC, no reinspection will be allowed.

Item 100 **Redelivery**

When a trailer/container, due to consignee's inability to receive freight, is stored by the IMC on other than railroad property under the provisions of Item 60, **Timely Receipt of Trailer/Container**, and is subsequently delivered to the consignee, a redelivery charge may be assessed. This service and charge, when applicable, will only be provided if agreed to beforehand by the IMC and consignee. Charges for this service, if any, shall be set out in Item 220, **Accessorial and Other Service Charges**.

Item 110 **Diversions and Reconsignment**

The IMC agrees to provide reconsignment or diversion service upon written request, or upon oral request confirmed in writing. The terms reconsignment and diversion are considered synonymous, and use of either will be considered to mean a change in the:

- name of the consignee within the original destination point;
- place of delivery within the original destination point;
- original destination point; or
- route or other instructions that require a change in billing or an additional movement of the shipment.

The IMC agrees to make a diligent effort to execute a request for reconsignment, and to immediately notify **USDA, EOD, TCAB** at 816-926-6552, if unable to effect such service. Charges for this service, if any, shall be set out in Item 220, **Accessorial and Other Service Charges.**

Item 120 **Equipment Ordered but Not Used**

When an order is placed with the IMC to pick up a shipment and, due to no disability, fault or negligence by the IMC, the trailer/container is not used, charges may be assessed against the shipper. Charges for this service, if any, shall be set out in Item 220, **Accessorial and Other Service Charges.** No charge will be assessed if the IMC is notified prior to the dispatching of the trailer/container that the shipment will not be tendered or that the trailer/container will not be used.

Item 130 **Loading and Unloading**

a. Loading - Shippers are liable for loading at origin. The IMC is responsible to ensure accurate counts, and that shipments have been loaded, blocked and braced in accordance with the appropriate Association of American Railroads (AAR) loading pamphlets, so that there will be no shifting of the commodity during normal transit and that it will arrive at destination in damage free condition.

b. Unloading - Consignees are liable for unloading. Dunnage will be removed and disposed of by the consignee.

c. Charges - If a consignee requests a driver to restack product onto pallets or perform any other service in relation to unloading, the consignee will be responsible for all charges, not USDA. Charges for this service, if any, shall be set out in Item 220, **Accessorial and Other Service Charges.** USDA does not pay for unloading services.

Item 140 **Insurance Coverage**

The IMC submitting rates is expected to provide certification of minimum insurance coverages of \$750,000 bodily injury and property damage liability and \$100,000 cargo liability per load. Insurance certificates mailed by the IMC's insurance agent must be on file with this office. Certificates must show shipments are covered door-to-door. The IMC shall ensure that its insurance agent timely file any changes to its insurance coverage with this office.

Non-compliance with the requirements of this item will preclude the IMC from handling USDA shipments.

Item 150 **General Qualifications of Service, Terms and Conditions**

a. Service - It is expressly understood and affirmed by the IMC and evidenced by signature herein, that any offer of rates by the IMC is hereby made subject to the terms and conditions of service, provided herein.

The IMC agrees to accept and transport the entire range of USDA shipments tendered to the IMC in straight or mixed loads in the same trailer/container. The IMC further agrees to furnish as required, split pick up and delivery service to partially load and/or unload in transit, and to deliver shipments within an acceptable delivery date range as may be established by USDA.

b. Equipment - The IMC agrees to utilize equipment that will insure delivery of product in good order. Insulated equipment should be utilized when necessary. All equipment furnished shall be in suitable condition for commodities shipped. All freight handled totally within the continental United States will be delivered in the same trailer/container utilized for pick up at the origin, except due to circumstances beyond the IMC's control. In such circumstances, **USDA, EOD, TCAB**, at 816-926-6552, will be immediately notified.

c. Railroads as Business Partners - The IMC is expected to have an ongoing business relationship with at least one rail company that will verify the IMC is operating in compliance with Item 10, **Definition of Intermodal Marketing Company**.

Item 160 **Freight Bill Payments**

To be considered a proper invoice, freight bills shall include, at a minimum, the Notice to Deliver number and the railroad owned or controlled trailer or container number in which the shipment moved. Freight bills shall include a proof of delivery. Proof of delivery shall include, at a minimum, date delivered, number of units delivered in good order, and the signature of the person receiving the shipment. Freight bills may be submitted to KCCO for payment by:

Mail: U.S. Department of Agriculture
Contract Reconciliation Division,
Freight Settlement and Invoicing Branch - Mail Stop 8758
P.O. Box 419205
Kansas City, MO 64141-6205

E-mail via the Internet: crdfsib@kcc.fsa.usda.gov

Fax: 816-926-6511

Payment of all freight bills will be made within 30 days of receipt as legislated by the Prompt Payment Act, at 31 USC 3901 through 3906. Payments made in excess of 30 days will include interest as set out in the Prompt Payment Act. Freight bill inquiries may be directed to 816-926-6547.

The IMC must be enrolled in the Automated Clearing House (ACH) system, which is the system KCCO uses for making electronic funds transfers. Enrollment in ACH can be accomplished by completing Standard Form 3881, **ACH Vendor/Miscellaneous Payment Enrollment Form**, and returning the completed form to:

USDA-KCCO-Export Operations Division - Mail Stop 8738
Attention: ACH
P.O. Box 419205
Kansas City, MO 64141-6205

Item 170 **Claims Procedures**

a. Loss and Damage - The IMC agrees to assume full liability for shipments transported under terms and conditions of this **Standard Operating Agreement**, and to issue a bill of lading for each shipment.

(1) The IMC agrees to comply with the terms of the Carmack Amendment to 49 USC in that claims for loss, damage and delay shall be administered in accordance with:

- Ex Parte No. 263, 340 ICC 515, February 24, 1972, including the Interstate Commerce Commission's (ICC) interpretation thereof expressed in its Order served April 18, 1972; and
- 49 CFR § 370 and § 1005, PRINCIPLES AND PRACTICES FOR THE INVESTIGATION AND VOLUNTARY DISPOSITION OF LOSS AND DAMAGE CLAIMS AND PROCESSING SALVAGE.

(2) The IMC agrees that salvage will be handled in accordance with 49 CFR § 370.11 and § 1005.6 and:

- completely obliterate all USDA markings or remove labels which bear such markings; or
- place a pressure sensitive sticker on all containers and container materials bearing USDA markings, which shall state, "SALVAGE BY (insert firm's name)", and "This container has not been used and shall not be used for shipment of Government commodities", or similar language.

(3) The IMC agrees to make an inspection, or arrange for an inspection to be made, within five Federal workdays after receipt of request from the consignee. The IMC inspection will include an examination of the damaged merchandise, the shipping containers, and any other action necessary to establish all the facts. If a shortage is involved, an inspector will check contents of the packages with the invoice, weigh the shipping container and contents, or conduct any other type of investigation necessary to establish that a loss has occurred. In either case inspection will be limited to a factual report. The consignee should cooperate with the IMC in every way possible to assist in the inspection. A written record of the IMC's findings shall be made in at least duplicate. The original of the report will be given to the consignee for claim support. Any inspection report shall be incorporated into the claim file. If the IMC does not make inspection within five Federal work days after receipt of request from consignee, USDA will consider the IMC to have waived the right to inspection and salvage.

(4) KCCO will establish a *prima facie* case in the event of loss and/or damage to a shipment in accordance with 49 CFR § 370 and § 1005 by supplying the IMC with, but not limited to, the following documentation:

- written communication containing facts sufficient to identify the shipment, asserting liability for the loss and/or damage and claim a specified amount of money;
- copy of the original bill of lading; and
- certification of the contract price or market value of the commodity.

It is agreed that once KCCO has established a *prima facie* case the burden of proof shifts to the IMC to prove freedom from negligence, and that the sole cause of the damage was due to one of the bill of lading exceptions as listed in Part III, **TERMS AND CONDITIONS OF CARRIAGE**, Section 2.

USDA, by contract with its shippers, requires shipments moving TOFC/COFC to be loaded in accordance with the appropriate AAR pamphlets. It is the IMC's responsibility, prior to shipment, to inspect and ensure the load is properly blocked and braced before moving over the road or by rail, and to comply with 49 CFR § 392.9, **Safe loading**.

b. Overcharge/Undercharge Claims - The IMC understands that claims for overcharges and undercharges shall be filed within 180 days from the date USDA receives the IMC's freight bill, and will be administered in accordance with 49 CFR 378. Overcharges and undercharges resulting from typographical or clerical errors, or duplicate payments may be filed anytime within 18 months of payment. KCCO will assert its claim to the IMC with all relevant documentation including, but not limited to:

- written communication containing facts sufficient to identify the shipment, asserting liability for the charges and claim a specified amount of money; and
- copy of the original freight bill.

c. Payment of Claims - Checks should be made payable to "Commodity Credit Corporation-Contract Reconciliation Division (CCC-CRD)" and mailed to:

USDA/DMD/DCB - Mail Stop 8528
P.O. Box 419205
Kansas City, MO 64141-6205

Loss and damage claims and overcharge claims may be offset pursuant to 7 CFR § 1403 if timely settlement has not been made. Freight payments may be assigned as set out in 7 CFR § 1404.

d. Questions - Any questions regarding USDA claims documentation and/or procedures may be addressed to **USDA, CRD, Freight Settlement & Invoicing Branch (FSIB)** at 816-926-6547.

Item 180 **USDA Review and Evaluation**

a. Rate Quotations - Rates submitted will be evaluated by **KCCO, EOD, TCAB** on the basis of the overall interests of USDA, total cost, quality of service and other factors.

b. Services - The services to be furnished by the IMC are for trailerloads/containerloads. All charges should be stated in dollars per load. All rate and accessorial items must be completed with a rate or charge, as applicable. The IMC not wishing to charge for an accessorial service must insert the words "**NO CHARGE**" in the proper space. Failure to publish a rate or charge or advise of "**NO CHARGE**" may render a submission non-responsive. **DO NOT CHANGE OR ALTER** any of this operating agreement and service agreement format provisions, nor make any statement in any transmittal letter which alters any of the rate quotes or service agreement provisions. To do so may render a submission non-responsive.

c. Notification - USDA will notify the IMC if service provided is not at an acceptable level. USDA may give the IMC an opportunity to correct the service deficiency before taking any other action. This operating agreement may be terminated by either party with no less than 30 days written notice.

Item 190 **Services Not Otherwise Specified**

When the IMC performs services that are required for normal movement of freight and such services are not identified in this operating agreement, or a shipment moves without a rate quotation covering that movement as set out in Item 20, **Application of Rate Quotations**, the charges for those services will be negotiated by **USDA, EOD, TCAB** and the IMC.

CHARGES

3 Item 210 Service Type Offered

Check one of the following:

- 3a** The IMC will submit rate quotations for transportation service within the continental United States.
- 3b** The IMC will submit rate quotations for transportation service to noncontiguous domestic trade locations.
- 3c** The IMC will submit rate quotations for transportation service within the continental United States and to noncontiguous domestic trade locations.

4 Item 220 Accessorial and Other Service Charges

a. Detention of Trailers/Containers - Detention time for delay of vehicles in excess of free time set out in Item 50, **Service Requirements, Including Detention**, will be **4a** \$ _____ per hour, subject to a maximum charge of **4b** \$ _____. This charge will be for the account of the responsible shipper/consignee, not USDA.

b. Storage of Trailers/Containers - The IMC will allow (check one of the following):

- 4c** 24 hours to make an unloading appointment; or
- 4d** more than 24 hours - specify **4e** _____ hours, for consignee to make an unloading appointment.

This time will begin (check one of the following):

- 4f** when notified; or
- 4g** at the first 12:01 a.m. following notification. For the purpose of determining free time, Saturdays, Sundays and Federal holidays will be excluded.

Storage time for delay of trailers/containers in excess of this free time will be 4h \$_____. per day, subject to a maximum charge of 4i \$_____. This charge will be for the account of the responsible shipper/consignee, not USDA.

c. Storage Charges - When the IMC places a shipment in storage due to the consignee's inability to receive the freight, as set out in Item 70, **Refused or Unclaimed Shipments**, a charge of 4j \$_____ per 4k _____ will be assessed. If no charge, so indicate. This charge will be for the account of the responsible shipper/consignee, not USDA.

d. Redelivery - When the IMC redelivers a load as set out in Item 100, **Redelivery**, the charge will be 4l \$_____. If no charge, so indicate. This charge will be for the account of the consignee, not USDA.

e. Diversion/Reconsignment of Shipments - Shipments diverted/reconsigned, as set out in Item 110, **Diversion and Reconsignment**, will be assessed a charge of 4m \$_____. If no charge, so indicate. If USDA directs the diversion/reconsignment, USDA will be responsible for this charge; otherwise, charges will be for the account of the party requesting the diversion/reconsignment.

f. Equipment Ordered but Not Used - Service provided as set out in Item 120, **Equipment Ordered but Not Used**, will be assessed a charge of 4n \$_____. If no charge, so indicate. This charge will be for the account of the responsible shipper, not USDA.

g. Loading/Unloading - When the IMC performs a loading and/or unloading service as set out in Item 130, **Loading and Unloading**, at the request of the shipper/consignee, the charge will be 4o \$_____. This charge will be for the account of the responsible shipper/consignee, not USDA.

h. Inability to Collect - If the IMC is unable to collect a charge listed in this item, it may send the bill along with the facts to **USDA, CRD, FSIB** at the address set out in Item 160, **Freight Bill Payments**. The IMC is deemed to be unable to collect a charge after three attempts to collect have been made without any response, or the party billed refuses payment. When submitting the bill to **USDA, CRD, FSIB**, the IMC should document its attempts to collect, or the billed party's refusal to pay. If the charge appears valid, and is supported by appropriate documentation, **USDA, CRD, FSIB** will assist the IMC in its collection efforts.

TERMS AND CONDITIONS OF CARRIAGE:

1. The IMC shall be liable for any and all loss, damage or delay to the freight caused by the IMC or any carrier over whose line or route the property is transported. Failure to issue a receipt of bill of lading does not affect the liability of the IMC, except as hereinafter provided. The IMC shall be liable for special, incidental and consequential damages for which they have actual or constructive notice.
2. No IMC shall be liable for any loss of or damage to the property described in the bill of lading, or for any delay caused solely by an act of God, the public enemy, the authority of law, or the act or default of the shipper or owner. Furthermore, no IMC shall be liable for any natural shrinkage of the said property or loss caused solely by the inherent vice of the property. The IMC shall have the burden of proving freedom from negligence and that one of the foregoing exceptions was the sole and proximate cause of the loss, damage or delay. The IMC's liability shall not be subject to the rule of contributory or comparative negligence.
3. The IMC shall be liable solely as a warehouse operator for loss, damage or delay occurring after actual or attempted tender of the property for delivery at destination. When tender of delivery of the property to the party entitled to receive it has been made, but delivery has been refused, or if the IMC is unable to make delivery, the IMC's liability as a warehouse operator will begin when the IMC has placed said property in a warehouse or storage facility under reasonable storage.
4. Except in the case of negligence of the IMC, no IMC shall be liable for delay of all or any of the property described in the bill of lading, caused by highway or railway obstruction, by faulty or impassable highway or railway, or by lack of capacity of any highway or railway, bridge or ferry. The IMC has the burden to prove freedom from such negligence.
5. No IMC is bound to transport said property by any particular schedule or in time for any particular market, or in any manner other than with reasonable dispatch.

The IMC shall have the right, in case of physical necessity, to forward said property by any IMC or route, provided the shipment moves in TOFC/COFC service between the point of shipment and the point of destination, without additional cost to shipper or consignee.

6. Claims for loss, damage or delay must be mailed within nine months of delivery or, in the case of failure to make delivery, within nine months after a reasonable time for delivery has elapsed. In no case shall said reasonable time be deemed to be less than 30 days from the scheduled or anticipated delivery date.

Suits for loss, damage or delay shall be instituted against any IMC no later than two years and one day from the day when written notice is received by the claimant from the IMC that the claim, or any part thereof, has been disallowed.

Any offer of compromise shall not constitute a disallowance of any part of the claim unless the IMC, in writing, informs the claimant that such part of the claim is disallowed and provides reasons for such disallowance; and communications received from the IMC's insurer shall not constitute a disallowance of any part of the claim unless the insurer, in writing, informs the claimant that such part of the claim is disallowed, provides a lawful reason for such disallowance and informs the claimant that the insurer is acting on behalf of the IMC.

7. The shipper or consignee or USDA shall pay the freight and all other lawful charges accruing on said property according to the agreement of the parties. The shipper or USDA shall be liable for the freight and all other applicable charges, except that if the shipper stipulates, by signature, in the space provided for that purpose on the face of the bill of lading that the IMC shall not make delivery without requiring payment of such charges and the IMC, contrary to such stipulation, shall make delivery without requiring such payment, the shipper or USDA shall not be liable for such charges.

The IMC agrees to indemnify and hold USDA harmless against and from any and all claims asserted against USDA by carriers, including reasonable costs and expenses incurred by USDA in reviewing, analyzing and assessing the carriers's claim, as well as those incurred in defending any such claim in a court of law or administrative tribunal.

USDA pays freight and any late interest charges per provisions of the Prompt Payment Act, as set out at 31 USC 3901-3906.

Nothing herein shall limit the right of the IMC to require at the time of shipment the prepayment or guaranty of the charges. If upon inspection it is ascertained that the articles shipped are not those described in the bill of lading, the IMC and **USDA, EOD, TCAB** may renegotiate the freight charges.

8. Claims for loss, damage and delay shall be administered in accordance with Ex Parte No. 263, 340 ICC 515, Feb 24, 1972, including the ICC's interpretation thereof expressed in its Order served April 18, 1972, and 49 CFR § 370 and § 1007, unless otherwise provided herein.

In addition, claimant may recover its administrative expenses incurred in connection with said claims.

9. The IMC agrees that claims for overcharges and undercharges shall be filed within 180 days from the date USDA receives the IMC's freight bill, and administered in accordance with 49 CFR 378, unless otherwise provided herein.

If a shipper or USDA wishes to dispute the original billing involving the applicability or reasonableness of the rate or charges to a mutually agreeable independent third party for resolution, the shipper or USDA must contest the billing by mailing or faxing a protest to the IMC within 180 days of the date it, or its agent, receives the original billing from the IMC. Overcharges and undercharges resulting from typographical or clerical errors, or duplicate payments may be filed anytime within 18 months of payment.

If the IMC seeks to assess additional charges, it must mail, fax, or E-mail its billing within 180 days from date of its original billing.

Once protested, disputes may be submitted to a mutually agreeable independent third party for resolution. If not resolved by the third party within 18 months of the delivery date, an action at law must be instituted to preserve the right to collect the amounts sought.

Nothing in this agreement or the law shall prohibit the IMC from making a voluntary refund of an overcharge, or a shipper's or USDA's voluntary payment of an undercharge, whether or not the original billing was contested within 180 days from the date USDA received the IMC's billing.

10. In the event that property has been refused by the consignee, or the IMC is unable to deliver the property for any reason, the IMC shall immediately notify USDA at 816-926-6552. Said notice shall be confirmed in writing by the IMC to **USDA, EOD, TCAB**, at the address listed at the bottom of this page, stating the time and date that free time shall expire and the storage charges to be applicable upon expiration of free time. Storage charges shall begin after 48 hours of the IMC's notification, exclusive of Saturdays, Sundays and Federal holidays.

USDA shall give disposition instructions to the IMC within 48 hours of its receipt of notice of the IMC's inability to deliver. If disposition is not received within said 48 hours, the IMC shall send a "Second and Final Notice of On Hand Freight" via fax or E-mail. If disposition instructions are not received within 48 hours of the "Second and Final Notice," the IMC may advertise in two newspapers of general circulation for two consecutive weeks that the goods on hand will be offered for sale at a general auction, stating the time and place of said sale. No later than ten days prior to the auction sale, the IMC shall send a copy of the auction notice to USDA via fax or E-mail.

11. When perishable property transported to the destination stated in the bill of lading is refused by the consignee or party entitled to receive it, or said consignee or party entitled to receive the property fails to receive it promptly, the IMC may, at its discretion, to prevent deterioration or further deterioration, sell the property to the best advantage at private or public sale. Provided there is sufficient time to notify the consignor or owner of the refusal of the property or the failure to receive it and to request disposition of the property, such notification shall be given, before the property is sold, in such manner as the exercise of due diligence requires, including telephone, fax, or E-mail.

12. The proceeds of any sale made under this **Standard Operating Agreement** shall be applied by the IMC to the payment of freight, demurrage, storage, and any other lawful charges, to the expense of notice, advertisement, sale, and other necessary expense, and to the expense of caring for and maintaining the property, if proper care of the property requires special expense. Should there be a balance remaining after all charges and expenses are paid, such balance shall be paid to the owner of the property.

13. Notice of loss or damage shall be given to the IMC on the delivery receipt by the consignee and confirmed by the driver. Concealed loss or damage shall be reported to the IMC or its agent within 15 working days, unless the claimant explains why the loss or damage could not reasonably have been reported within 15 days. When notice has first been given to the IMC after 15 days, claimant shall offer proof that the loss or damage did not occur after delivery to consignee, and the IMC shall resolve the claim in light of the said proof.

14. The IMC shall be liable for the number of shipping units or packages noted on the bill of lading, and shall deliver them in the same condition or unitized package as tendered at origin. If the IMC's driver is not able or is not given an opportunity to inspect and count the shipment prior

to acceptance by the IMC, the IMC should immediately contact **USDA, EOD, TCAB** at 816-926-6552.

15. No IMC hereunder will carry or be liable in any way for any documents, coin money, or for any articles of extraordinary value unless a special agreement to do so and a stipulated value of the articles are endorsed on the bill of lading.

INTERMODAL MARKETING COMPANY CERTIFICATION

1. I am authorized to and do hereby offer to the United States Department of Agriculture (USDA), pursuant to 49 USC § 13712 and 49 CFR § 1090, the transportation services herein described on a continuing basis effective on the date shown on the title page of this agreement, subject to the rate quotations, charges, and provisions herein to which the undersigned Intermodal Marketing Company is party as of (date of agreement) 5 _____.

We agree to submit rates using USDA's *Intermodal Marketing Company Rate Request*.

2. I agree to furnish USDA, along with submission of this **Standard Operating Agreement**;

- 6 certificates of insurance as stated in Item 140, **Insurance Coverage**; and
- 7 documentation from a rail company verifying that the company I represent operates as an IMC, as stated in Item 150, **General Qualifications of Service, Terms and Conditions**, in Part I of this agreement.

3. I certify that the rate quotations submitted have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such rates with any competitor.

4. This IMC's Federal Employer Identification Number (EIN) is 8_____.
I agree to timely notify USDA if this number changes.

5. I certify that this IMC is: (check all that apply)

- 9 Small business concern (total revenues, including commissions received, of less than \$6,000,000 last year);
- 10 Woman owned small business (at least 51%);
- 11 Small disadvantaged business. Please enclose certification from the Small Business Administration (SBA) classifying your company as a small disadvantaged business, or documentation confirming your company's participation in SBA's 8(a) Business Development Program.

Part IV

6. I understand that the IMC selected shall be entitled to all available traffic based on USDA's requirements for the period of this agreement and the IMC's ability to perform; however, USDA does not guarantee any volume of traffic.

7. I understand that the IMC bears the responsibility for timely notification to USDA when bank routing information related to ACH payments changes as a result of the IMC's own initiative. I agree to submit a new Standard Form 3881 when the IMC determines to change the ACH enrollment on file with the USDA.

8. By submission of this agreement, I certify compliance with all applicable Federal, State and Local Regulations.

12 SIGNATURE OF PARTY REPRESENTING IMC

12a Signature

12b Name and Title (Please print)

12c Address

12d Telephone Number

12e Fax Number

12f E-mail Address

USDA Standard Operating Agreement

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Standard Operating Agreement Governing Intermodal Transportation

PRIVACY ACT AND PUBLIC BURDEN STATEMENTS

The following statements are made in accordance with the Privacy Act of 1974 (5 USC 552a) and the Paperwork Reduction Act of 1995, as amended. The authority for requesting the following information is 49 CFR, Parts 1090-1099 (Intermodal Transportation). The information will be used to establish the intermodal transportation needs of the United States Department of Agriculture, Farm Service Agency, Kansas City Commodity Office for the movement of its freight, and to ensure that intermodal marketing companies (IMC) providing transportation service have both the willingness and capability to meet these needs. Failure to furnish the requested information will result in an IMC to be considered nonresponsive. This information may be provided to the Internal Revenue Service, Department of Justice, and/or other Federal and State law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 641, 651, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided.

Federal Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. Public reporting burden for this collection of information is estimated to average 60 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Agriculture, Kansas City Commodity Office (OMB No. 0560-0194), Chief, Planning and Analysis Division, Stop 8768, Kansas City, Missouri 64141-6205. Return this completed **Standard Operating Agreement** to the **Kansas City Commodity Office, Export Operations Division - Mail Stop 8738, P.O. Box 419205, Kansas City, MO 64141-6205.**

NONDISCRIMINATION STATEMENT

The U. S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA=s TARGET Center at 202-720-2600 (voice or TDD).

To file a complaint of discrimination, write USDA Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, S.W., Washington, DC, 20250-9410 or call 202-720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.