

2024 Dispute Resolution Hearing Massachusetts - Index

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**INTERNATIONAL FUEL TAX ASSOCIATION
DISPUTE RESOLUTION COMMITTEE**

PROGRAM COMPLIANCE)	
REVIEW COMMITTEE)	DRC2024-001
)	
VS.)	
)	
THE STATE OF MASSACHUSETTS)	
)	

ORDER OF THE DISPUTE RESOLUTION COMMITTEE

The Dispute Resolution Committee Finds and Concludes:

1. Respondent failed to meet the required number of audits for the 2014-2018 and 2019-2023 audit cycles and finds Respondent out of compliance with Section A250 of the IFTA Audit Manual.
2. Respondent failed to meet the high/low distance audit requirement for the 2014-2018 and 2019-2023 audit cycles and finds the Respondent out of compliance with Section A260 of the IFTA Audit Manual.
3. Respondent unjustly benefited from non-compliance and caused damages to fellow jurisdictions and IFTA Inc.
4. Respondent's repeated and prolonged non-compliance warrants punitive actions.

The Dispute Resolution Committee Hereby Orders:

1. Respondent is ordered to disgorge \$3,896,281.31 in unjust benefits received by virtue of not conducting the required number of audits.
2. Respondent is ordered to complete its "deficit" audits (detailed in the FDFNC) by 12/31/25 in addition to the 3% requirement contained in the Agreement.
3. Respondent is ordered to pay a punitive fine in the amount of \$328,000. For every audit not completed by the 12/31/25 deadline, the jurisdiction shall pay an additional fine of \$1,000 for each "make-up" audit not completed. Additional sanctions, including but not limited to, those specified in Section V of the DRP will be considered by the DRC for continued noncompliance.
4. Respondent is ordered to follow an enhanced compliance plan and provide quarterly audit production reports to the PCRC on a quarterly basis. The respondent will, in each quarter, complete a proportionate share of their required audits plus ¼ of the audit deficit and report their production statistics to the PCRC.
5. The PCRC is ordered to monitor Respondent's compliance until the DRC deems the jurisdiction to be back in compliance with both A250 and A260 of the Audit Manual.

**INTERNATIONAL FUEL TAX ASSOCIATION
DISPUTE RESOLUTION COMMITTEE**

6. IFTA Inc. is ordered to withhold clearinghouse payments to Respondent until the disgorgement and penalty amounts are collected and distributed to the jurisdictions.
7. The Parliamentarian is directed to submit a draft of an order which will include a more detailed findings of fact, conclusions of law, and orders of the Committee to the DRC within 15 days of this order passing. This order will become effective when that draft is adopted as the complete order of the DRC.

**INTERNATIONAL FUEL TAX ASSOCIATION
DISPUTE RESOLUTION COMMITTEE**

PROGRAM COMPLIANCE)	
REVIEW COMMITTEE)	
)	DRC2024-0001
)	
VS.)	
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THE COMMONWEALTH OF)	
MASSACHUSETTS)	

HEARING: August 19, 2024
2024 International Fuel Tax Association Annual Board Meeting
St. Louis, Missouri
Before the Dispute Resolution Committee, Sitting en banc
Chairperson Scott Greenawalt (OK) Presiding

APPEARANCES: Paula Cole for the Program Compliance Review Committee
Steve Adamek, Commissioner for the Commonwealth of Massachusetts

FINAL ORDER OF THE COMMITTEE

THIS matter comes before the Dispute Resolution Committee (“DRC”) upon the Final Determination Finding of Noncompliance (“FDFNC”) issued by the Program Compliance Review Committee (“PCRC”) on June 11, 2024. In their submission the PCRC alleges that the Commonwealth of Massachusetts (“Respondent”) violated Section A250 of the IFTA Audit Manual in both the 2014-2018 and 2019-2023 Program Compliance Review cycles by failing to perform their required number of audits during those years. In their FDFNC, the PCRC further alleges that Respondent violated Section A260 of the IFTA Audit Manual by failing to meet the 25% high distance and 15% low distance audit requirements.

At the hearing on this matter, after taking roll and determining that a quorum was present, the Committee determined the PCRC’s submission was complete, and that notice and jurisdiction were proper and uncontested. Next the DRC took notice of the documents and evidence submitted to the Repository. The Committee Chair then introduced the parties to the dispute before the Committee. All parties were allowed to present argument, witnesses, and cross-examine testimony.

Following the presentations of the parties, the Committee opened the floor for comments from others who wished to be heard. The DRC then held the matter over for deliberation in an executive session and considered the issues before it.

After deliberating on the evidence before it, the arguments of the parties, and the obligations of the IFTA Agreement and Audit Manual, and all other relevant facts, the DRC exited the executive session and provided a summary of the deliberations that occurred during the executive session. Finally, after an opportunity to discuss and debate the proposal was given, the Committee voted unanimously to accept the following findings of fact, conclusions of law, and issued the below order in this cause:

FINDINGS OF FACT

1. It was not disputed, and the DRC finds that DRC jurisdiction over this matter is proper under the IFTA Articles of Agreement.
2. It was not disputed, and the DRC finds that notice of this proceeding was proper.
3. It was not disputed, and the DRC finds that the submissions necessary for hearing this dispute were complete.
4. Audit Count Requirement:
 - a. For the 2014-2018 PCRC Review cycle, Respondent admitted, and the DRC finds Respondent was required to perform 503 audits under A250 of the IFTA Audit Manual but only completed 430 audits, leaving a deficit of 73 audits for the period.
 - b. For the 2019-2023 PCRC Review cycle, Respondent admitted, and the DRC finds Respondent was required to perform 456 audits under A250 of the IFTA Audit Manual but only completed 201 audits resulting in a 255 audit deficit for the period. The Respondent also failed to complete the audit deficit of 73 audits from the previous Review cycle leaving a combined deficit of 274 audits for both Review cycles.
5. High Distance Audit Requirement:
 - a. For the 2014-2018 PCRC cycle Respondent admitted and the DRC finds Respondent was required to complete 129 high distance audits under A260 IFTA Audit Manual but only completed 83, falling short by 43 High Distance audits.
 - b. For the 2019-2023 PCRC cycle Respondent admitted and the DRC finds Respondent was required to complete 114 high distance audits under A260 IFTA Audit Manual but only completed 38, falling short by 76 High Distance audits.
6. Low Distance Audit Requirement:
 - a. For the 2019-2023 PCRC cycle Respondent admitted and the DRC finds Respondent was required to complete 68 Low distance audits under A260 IFTA Audit Manual but only completed 46, falling short by 22 Low Distance audits.
7. Improper Benefits:
 - a. The DRC finds Respondent unjustly benefited from its failure to comply with the obligations imposed upon it under A250 and A260 of the IFTA Audit Manual. The amount of this unjust benefit is estimated to be

\$3,896,281.31 based upon personnel cost submitted by the Respondent to the repository, (*see Exhibit A*),

8. Restitution Facts:
 - a. The DRC finds Respondent unjustly damaged fellow jurisdictions by its failure to comply with the obligations imposed upon it under A250 and A260 of the IFTA Audit Manual.
9. The DRC Finds that, prior to taking a vote on this issue, a draft of this proposal was projected onto a screen visible to the audience, (*see Exhibit B*). The draft was then read aloud, and the Chair announced that the proposal was open for discussion and debate. There were no questions or debate from the parties, audience or Committee, and accordingly the Chair called for a vote.
10. The vote to adopt these proposed findings, conclusions and orders was had, and the motion passed unanimously.

CONCLUSIONS OF LAW

1. The DRC jurisdiction over this matter is proper under R1555 of the IFTA Articles of Agreement.
2. Notice of this proceeding was proper.
3. The submissions necessary for hearing this dispute were complete.
4. That the PCRC has met its burden of proof and there is probable cause to believe:
 - a. Respondent violated Section A250 of the IFTA Audit Manual in both the 2014-2018 and 2019-2023 Program Compliance Review cycles by failing to perform the required number of audits.
 - b. Respondent violated Section A260 of the IFTA Audit Manual by failing to meet the 25% high distance audit requirement in both the 2014-2018 and 2019-2023 Program Compliance Review cycles, and the low distance audit requirement in the 2019-2023 Program Compliance Review cycle.

5. Disgorgement

The principal of Disgorgement is a legal remedy that requires a party that has profited from wrongful acts to give up those profits. The primary purpose of disgorgement is to prevent unjust enrichment and to make improper conduct unprofitable. Disgorgement is not intended to punish the wrongdoer but to remove any financial incentive or gain obtained through wrongful actions and provide specific and general deterrence so that neither the wrongdoer nor others will conclude that future violations may be in their financial best interests.

The DRC concludes Respondent must disgorge all wrongful benefit it received from failing to comply with its audit requirements. Specifically, the Respondent should not receive the benefit of personnel costs it avoided by failing to meet the audit requirements under the IFTA Audit Manual.

6. Restitution

The DRC further concludes that restitution is a legal remedy designed to restore an injured party to the position they would be in if a wrongful act had not occurred. It

aims to prevent unjust enrichment by ensuring that the party who caused the harm compensates the injured party for their losses.

The DRC concludes restitution should be applied in this matter and the Respondent should be required to conduct their required 3% audits in compliance with A250 and A260 of the Audit Manual in the future in addition to the audits they failed to conduct in the two previous Review cycles.

7. Repeated and Prolonged Non-Compliance

The DRC concludes Respondent's non-compliance for 10 years and shortfall of 274 total audits constitutes *Repeated and Prolonged Non-Compliance*. Accordingly, after evaluating the complete set of circumstances that led to non-compliance including both the aggravating and mitigating circumstances, the Committee finds punitive actions against the Respondent is warranted.

ORDER

THE DRC ORDERS that the findings of fact and conclusions of law herein, are hereby adopted as the findings of fact and conclusions of law of the Dispute Resolution Committee.

THE DRC FURTHER ORDERS Respondent to disgorge \$3,896,281.31 in unjust benefits it received due to its failure to conduct its required number of audits and meet the High/Low Distance requirements. This sum is to be collected by IFTA Inc., who will distribute the funds as detailed in Exhibit C.

THE DRC FURTHER ORDERS Respondent to pay a punitive fine in the amount of \$328,000, as detailed in Exhibit C.

THE DRC FURTHER ORDERS IFTA Inc. to withhold clearing house payments to the Respondent until the complete assessment has been satisfied and to take any other actions consistent with the Agreement to enforce this order.

THE DRC FURTHER ORDERS the Respondent to complete its "deficit" audits (detailed in the FDFNC) by 12/31/25 in addition to the 3% requirement contained in the Agreement.

THE DRC FURTHER ORDERS that for every audit not completed by the 12/31/25 deadline, the jurisdiction shall pay an additional fine of \$1,000 for each "make-up" audit not completed. Additional sanctions, including but not limited to, those specified in Section V of the DRP will be considered by the DRC for continued noncompliance.

THE DRC FURTHER ORDERS Respondent to follow a compliance plan, to be developed by the PCRC, which includes providing quarterly audit production reports, including the high/low distance requirements found in Section A260, to the PCRC. The respondent will, in each quarter, complete a proportionate share of their required audits plus ¼ of the audit deficit and report their production statistics to the PCRC.

THE DRC FURTHER ORDERS the PCRC to monitor Respondent quarterly for both quantity and quality of audits, and to provide the production reports from the monitoring to the DRC. This enhanced compliance monitoring requirements shall remain in effect until July 1, 2029.

IT IS SO ORDERED

Issued by:

SCOTT GREENAWALT Chairperson

UPON OPEN VOTE BY the Dispute Resolution Committee (DRC)

Of the International Fuel Tax Agreement (IFTA)

EXHIBIT A

Massachusetts Department of Revenue
 IFTA Audit Cost Request for January 1, 2014 thru December 31, 2023
 Based on Identified Tax Division FIES provided on 07/31/2024
 8/1/2024

Calendar year	Avg number of DOR IFTA Audit FIES	Avg Salary (includes Salary; fringe, and payroll tax)	Total IFTA Audit Payroll Costs	Travel reimbursements - Actuals	Indirect costs - Uses DOR Federally approved rate	Grand total costs by Calendar year	Audits Conducted	Audit Deficit	Cost per Audit	Savings
	(a)	(b)	c = (a) x (b)	d	e	f = c + d + e	From FDFNC	From FDFNC	j19 = g19/h19 Excludes G15	k19 = i19*j19
2014	7	\$104,874	\$734,117	\$18,330	\$79,863	\$832,309	108	7		
2015	6.5	\$111,247	\$723,108	\$14,470	\$81,368	\$818,946	97	0		
2016	6	\$118,677	\$712,065	\$15,746	\$71,849	\$799,660	125	27		
2017	4.25	\$121,348	\$515,729	\$9,131	\$55,328	\$580,187	59	-45		
2018	4.25	\$126,059	\$535,751	\$6,463	\$54,648	\$596,863	41	-62		
2019	5	\$125,528	\$627,638	\$5,419	\$60,641	\$693,699	47	-62		
2020	5	\$130,645	\$653,223	\$1,487	\$62,997	\$717,706	N/A	N/A		
2021	5	\$141,946	\$709,731	\$1,150	\$68,756	\$779,637	50	-63		
2022	5	\$150,960	\$754,799	\$2,937	\$73,623	\$831,359	56	-60		
2023	5	\$153,697	\$768,487	\$2,796	\$73,940	\$845,224	48	-70		
			\$6,734,647	\$77,930	\$683,013	\$7,495,590	631	-328	\$11,878.91	(\$3,896,281.33)

EXHIBIT B
INTERNATIONAL FUEL TAX ASSOCIATION
DISPUTE RESOLUTION COMMITTEE

PROGRAM COMPLIANCE REVIEW COMMITTEE)	DRC2024-001
)	
VS.)	
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THE STATE OF MASSACHUSETTS)	
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ORDER OF THE DISPUTE RESOLUTION COMMITTEE

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3. Respondent unjustly benefited from non-compliance and caused damages to fellow jurisdictions and IFTA Inc.
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3. Respondent is ordered to pay a punitive fine in the amount of \$328,000. For every audit not completed by the 12/31/25 deadline, the jurisdiction shall pay an additional fine of \$1,000 for each "make-up" audit not completed. Additional sanctions, including but not limited to, those specified in Section V of the DRP will be considered by the DRC for continued noncompliance.
4. Respondent is ordered to follow an enhanced compliance plan and provide quarterly audit production reports to the PCRC on a quarterly basis. The respondent will, in each quarter, complete a proportionate share of their required audits plus ¼ of the audit deficit and report their production statistics to the PCRC.
5. The PCRC is ordered to monitor Respondent's compliance until the DRC deems the jurisdiction to be back in compliance with both A250 and A260 of the Audit Manual.

**INTERNATIONAL FUEL TAX ASSOCIATION
DISPUTE RESOLUTION COMMITTEE**

6. IFTA Inc. is ordered to withhold clearinghouse payments to Respondent until the disgorgement and penalty amounts are collected and distributed to the jurisdictions.
7. The Parliamentarian is directed to submit a draft of an order which will include a more detailed findings of fact, conclusions of law, and orders of the Committee to the DRC within 15 days of this order passing. This order will become effective when that draft is adopted as the complete order of the DRC.

EXHIBIT C

Massachusetts

Sum of Amount					
Row Labels	Audit	%	Collections	Apportionment	Amount
	Collections		W/O Credits	% w/o Credits	
Total					
AB	\$69.02	0.000102	\$69.02	0.000094	\$ 397.53
AL	\$422.14	0.000621	\$422.14	0.000576	\$ 2,431.36
AR	\$1,121.81	0.001651	\$1,121.81	0.001530	\$ 6,461.17
AZ	-\$99.67	-0.000147	\$0.00	0.000000	\$ -
BC	\$14.89	0.000022	\$14.89	0.000020	\$ 85.76
CA	\$2,903.71	0.004273	\$2,903.71	0.003959	\$ 16,724.20
CO	\$185.80	0.000273	\$185.80	0.000253	\$ 1,070.13
CT	\$374,352.67	0.550832	\$374,352.67	0.510411	\$ 2,156,120.33
DE	\$408.63	0.000601	\$408.63	0.000557	\$ 2,353.54
FL	\$5,146.05	0.007572	\$5,146.05	0.007016	\$ 29,639.17
GA	-\$862.54	-0.001269	\$0.00	0.000000	\$ -
IA	\$277.74	0.000409	\$277.74	0.000379	\$ 1,599.67
ID	\$191.46	0.000282	\$191.46	0.000261	\$ 1,102.73
IL	\$2,755.31	0.004054	\$2,755.31	0.003757	\$ 15,869.47
IN	-\$640.74	-0.000943	\$0.00	0.000000	\$ -
KS	\$94.33	0.000139	\$94.33	0.000129	\$ 543.30
KY	\$939.20	0.001382	\$939.20	0.001281	\$ 5,409.41
LA	-\$210.63	-0.000310	\$0.00	0.000000	\$ -
MB	-\$2.52	-0.000004	\$0.00	0.000000	\$ -
MD	-\$5,663.62	-0.008334	\$0.00	0.000000	\$ -
ME	\$7,714.20	0.011351	\$7,714.20	0.010518	\$ 44,430.68
MI	\$966.08	0.001422	\$966.08	0.001317	\$ 5,564.23
MN	\$85.01	0.000125	\$85.01	0.000116	\$ 489.62
MO	\$397.61	0.000585	\$397.61	0.000542	\$ 2,290.07
MS	\$288.72	0.000425	\$288.72	0.000394	\$ 1,662.91
MT	-\$5.45	-0.000008	\$0.00	0.000000	\$ -
NB	\$412.28	0.000607	\$412.28	0.000562	\$ 2,374.57
NC	\$5,187.18	0.007633	\$5,187.18	0.007072	\$ 29,876.06
ND	-\$27.94	-0.000041	\$0.00	0.000000	\$ -
NE	\$568.86	0.000837	\$568.86	0.000776	\$ 3,276.40
NH	\$63,250.39	0.093068	\$63,250.39	0.086239	\$ 364,296.73
NJ	-\$44,662.75	-0.065718	\$0.00	0.000000	\$ -
NM	\$1,343.58	0.001977	\$1,343.58	0.001832	\$ 7,738.48
NS	\$200.87	0.000296	\$200.87	0.000274	\$ 1,156.93
NV	-\$281.21	-0.000414	\$0.00	0.000000	\$ -
NY	\$110,743.01	0.162950	\$110,743.01	0.150993	\$ 637,835.05
OH	\$903.46	0.001329	\$903.46	0.001232	\$ 5,203.57
OK	-\$383.45	-0.000564	\$0.00	0.000000	\$ -
ON	\$317.70	0.000467	\$317.70	0.000433	\$ 1,829.82
OR	\$0.00	0.000000	\$0.00	0.000000	\$ -
PA	\$45,597.11	0.067093	\$45,597.11	0.062169	\$ 262,620.96

QC	\$1,950.20	0.002870	\$1,950.20	0.002659	\$ 11,232.37
RI	\$86,390.82	0.127118	\$86,390.82	0.117790	\$ 497,576.26
SC	-\$873.16	-0.001285	\$0.00	0.000000	\$ -
SD	-\$103.96	-0.000153	\$0.00	0.000000	\$ -
TN	\$2,464.79	0.003627	\$2,464.79	0.003361	\$ 14,196.20
TX	\$483.15	0.000711	\$483.15	0.000659	\$ 2,782.75
UT	\$449.50	0.000661	\$449.50	0.000613	\$ 2,588.94
VA	\$490.08	0.000721	\$490.08	0.000668	\$ 2,822.66
VT	\$12,751.06	0.018762	\$12,751.06	0.017385	\$ 73,440.96
WA	\$16.31	0.000024	\$16.31	0.000022	\$ 93.94
WI	\$3.07	0.000005	\$3.07	0.000004	\$ 17.68
WV	\$1,575.75	0.002319	\$1,575.75	0.002148	\$ 9,075.68
WY	-\$3.37	-0.000005	\$0.00	0.000000	\$ -
Audit Collections	\$679,612.54	1.000000	\$ 733,433.55	1.000000	\$ 4,224,281.31

Amount Disgorgement Owed to Jurisdictions		\$ 3,896,281.31
Amount Penalty Owed to Jurisdictions		\$ 328,000.00
	Total	\$ 4,224,281.31

**INTERNATIONAL FUEL TAX ASSOCIATION
DISPUTE RESOLUTION COMMITTEE**

PROGRAM COMPLIANCE)	
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REVIEW COMMITTEE)	DRC2024-0001
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HEARING: August 19, 2024
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Chairperson Scott Greenawalt (OK) Presiding

APPEARANCES: Paula Cole for the Program Compliance Review Committee
Steve Adamek, Commissioner for the Commonwealth of Massachusetts

Rationale for the Decision

Introduction

The Dispute Resolution Committee (DRC) convened to address the Final Finding Determination of Noncompliance (FDFNC) issued by the Program Compliance Review Committee (PCRC) on June 11, 2024. The PCRC alleged that the Commonwealth of Massachusetts (Respondent) violated Sections A250 and A260 of the IFTA Audit Manual during the 2014-2018 and 2019-2023 Program Compliance Review cycles. This rationale elaborates on the DRC's decision, providing a clear explanation of the findings and conclusions justifying the order issued.

Summary of Evidence

The DRC reviewed all evidence presented during the hearing and in the record. The Respondent admitted to failing to perform the required number of audits and to meet the 25% high distance and 15% low distance audit requirements. Specifically:

- For the 2014-2018 PCRC Review cycle, the Respondent was required to perform 503 audits but completed only 430, leaving a deficit of 73 audits.

- For the 2019-2023 PCRC Review cycle, the Respondent was required to perform 456 audits but completed only 201, resulting in a deficit of 255 audits. The Respondent also failed to complete the 73 audit deficit from the previous cycle, leaving a combined deficit of 274 audits.
- For the 2014-2018 PCRC cycle, the Respondent was required to complete 129 high distance audits but completed only 83, falling short by 43 audits.
- For the 2019-2023 PCRC cycle, the Respondent was required to complete 114 high distance audits but completed only 38, falling short by 76 audits.
- For the 2019-2023 PCRC cycle, the Respondent was required to complete 68 low distance audits but completed only 46, falling short by 22 audits.

Discussion of Circumstances

The DRC considered both aggravating and mitigating circumstances. The Respondent's failure to meet audit requirements over two consecutive audit cycles and the significant shortfall in high and low distance audits were viewed as serious violations. The DRC acknowledged that the organizational unit responsible for administering the IFTA program might not have full control over their funding and/or operational priorities. The DRC also acknowledged the role of Covid-19's impact on all jurisdictions. The membership made an allowance for this by allowing jurisdictions to remove 2020 from the compliance calculations. However, the prolonged non-compliance and the substantial shortfall in audits indicated a systemic issue that needed to be addressed.

Legal and Regulatory Considerations

The DRC's jurisdiction over this matter is proper under R1555 of the IFTA Articles of Agreement. Notice of the proceeding was proper, and the submissions necessary for hearing the dispute were complete. The PCRC met its burden of proof, establishing probable cause to believe that the Respondent violated Sections A250 and A260 of the IFTA Audit Manual.

Resolution

1. Disgorgement:

The principle of disgorgement requires a party that has profited from wrongful acts to give up those profits. The primary purpose is to prevent unjust enrichment and make improper conduct unprofitable. The DRC concluded that the Respondent must disgorge the wrongful benefit it received from failing to comply with its audit requirements. Specifically, the Respondent should not retain the benefit of personnel costs it avoided by failing to meet the audit requirements.

To determine the proper disgorgement amount, the DRC estimated the amount the jurisdiction spent per audit over the 10-year period on its payroll, and then determined how much the jurisdiction would have spent had it fulfilled its audit obligations. The data for this calculation was provided to the Committee by the jurisdiction prior to the meeting.

In reaching its disgorgement estimate, the DRC calculated the cost per audit completed and then multiplied that figure by the number of missing audits. The results estimated that the jurisdiction had underfunded its audit program by \$389,628.13 per year, averaged out over a 10-year period. Accordingly, the DRC concluded that over the 10-year period, the jurisdiction had wrongfully benefited by saving \$3,896,281 on its payroll – which represents the amount it had underfund its IFTA audit program.

The rationale for ordering the disgorgement of these savings is not to punish the jurisdiction, but to make it clear that the cost of non-compliance is no cheaper than the cost of compliance. The DRC was concerned that allowing a jurisdiction to profit from non-compliance would create a moral hazard, encouraging all jurisdictions to underfund their audit programs. Accordingly, the DRC concluded that disgorgement was necessary to make the cost of non-compliance at least as expensive as the cost of compliance.

Prior to voting on this motion, the figures and rationale used in this calculation were openly discussed. When given the opportunity, no one from the jurisdiction disputed the theory that they had been unjustly enriched, nor the accuracy of the figures provided, nor suggested that there was any miscalculation in the estimated benefit the jurisdiction had received by failing to comply with the Agreement. Accordingly, the motion to adopt the order passed unanimously.

Restitution: Restitution aims to restore the injured parties to the position they would have been in if the wrongful act had not occurred. The DRC concluded that restitution should be applied in this matter. The Respondent should be required to conduct their required 3% audits in compliance with Sections A250 and A260 of the Audit Manual in the future, in addition to the audits they failed to conduct in the two previous Review cycles.

Repeated and Prolonged Non-Compliance: The Respondent's non-compliance over a 10-year period and the shortfall of 274 total audits constitute repeated and prolonged non-compliance. The DRC concluded that punitive actions against the Respondent are warranted to deter similar behavior in the future and ensure compliance with the IFTA Agreement.

Impact on Stakeholders

The DRC's decision aims to promote fairness and compliance within the IFTA framework. By requiring disgorgement and restitution, the decision ensures that jurisdictions are held accountable for their obligations and do not profit from non-compliance. The punitive actions serve as a deterrent to prevent future violations and encourage proper funding and execution of audit programs.

Conclusion

The DRC's decision is based on a thorough review of the evidence, consideration of mitigating and aggravating circumstances, and alignment with the IFTA Agreement and Audit Manual. The actions taken were necessary to promote fairness and to prevent jurisdictions from concluding that noncompliance with the Agreement was cheaper than compliance with the agreement.



IFTA

DISPUTE RESOLUTION PROCESS



This manual comprises the procedures of the Dispute Resolution Process created by R1555 of the International Fuel Tax Agreement.

In the event of a conflict of any provision contained in this manual with the provisions of the Agreement or of the Charter of the Committee, the Agreement, or this manual, as the case may be, shall prevail.

The language of the Dispute Resolution Process (DRP) encourages Jurisdictions to take issues to the Dispute Resolution Committee (DRC) before they take them to the courts: “Nothing in this article shall preclude a Jurisdiction from seeking judicial relief **after** exhausting its remedies under the Agreement. (emphasis added)”

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I. Committee Purpose

The Dispute Resolution Committee (DRC) is charged by this document and Section R1555 of the International Fuel Tax Agreement (the Agreement) to resolve disputes that arise under the Agreement. Further, where an issue has been brought before the Committee, the DRC is tasked with oversight of Agreement compliance.

The Committee is established as a means for quick resolution to issues of Agreement compliance and to provide rulings of various aspects of the Agreement.

The guiding principles of the DRC are that its role and function be fair, open, speedy, certain, flexible, expert, and enforceable.

II. Submitting Issues to the DRC

Before a Member Jurisdiction or Licensee brings an issue before the Committee against a Member Jurisdiction, the parties are expected to have made good-faith attempts to resolve their dispute. A good-faith attempt includes both parties taking steps to resolve their differences and settle the matter prior to filing a dispute with the Committee.

A. Timing Related to Submissions and Meetings

Annual Meeting of Membership: to meet with the requirements of Section R1555 of the Agreement and the Dispute Resolution Process ratified by the membership, in order for the DRC to be required to hear an issue, the issue must be properly submitted in writing and sent electronically to IFTA, Inc. (Repository) not later than 60 days prior to the pre-scheduled regular Annual Meeting of the Membership.

Issues that are submitted after the 60-day deadline may be heard at a Special Meeting subject to the approval of the Committee Chair.

Special Meetings: The DRC generally maintains a 60-day period from the date of the Repository receiving a written submission prior to convening a special meeting; however, the Committee Chair has discretion as to the amount of advance notice that is required prior to convening a Special Meeting.

The DRC requests the Repository distribute information relating to an issue according to the following timelines:

1. Notify the parties of a properly submitted issue at least 50 days, where possible, before a meeting of the Committee.
2. Provide public notice, along with a draft agenda, of a DRC meeting at least 30 days prior to the date of the meeting.
3. Provide copies of the public notice to all parties to an issue at least 30 days prior to the date of the meeting.

The Committee Chair may provide for a different schedule for the filing of documentation by parties to an issue to be considered by the Committee at a special or regular meeting.

Commentary

The DRC is guided by the general principle that parties to an issue and the public should be provided with information to be able to participate and respond to an issue before the DRC.

A party submitting an issue to the DRC is encouraged to submit well in advance of the deadline for the Annual Business Meeting to provide the Committee Chair and the Repository sufficient time help ensure that the submission meets the requirements of the Dispute Resolution Process and is heard at the Annual Business Meeting. If not submitted by the deadline the DRC may hold a special meeting to hear the dispute.

B. Required Information in the Submission

A complete submission of an issue to the DRC shall be in writing and shall at a minimum contain:

1. A formal request that the DRC hear and resolve the issue.
2. The question or issue of compliance to be resolved.
3. Relevant Agreement (section) references.
4. Supporting documents, including evidence of prior actions, if any, taken by the parties to resolve the issue.
5. A statement of the relief, resolution, or interpretation sought.

C. Recommended Information in the Submission

In addition to the required information, it is suggested that the submission be filed using the Standard DRC Submission form, and also include:

1. A brief explanation of the issue.
2. A statement of any attempts made to resolve the issue.
3. A statement of any change in reporting, record keeping, or other paperwork that would be required by the resolution, interpretation, or relief sought, together with any identified costs or benefits.
4. The name and affiliation of the person submitting the issue, with mailing address, telephone number, and e-mail address.
5. The persons, businesses, organizations, and Member Jurisdictions affected by the issue and by the relief sought.
6. Documents supporting the claims made or the relief requested.
7. Edited documents for distribution by the Repository that omits/blocks out any identification, other than the names of a party to the issue, of a private entity and the submitting party's own employees/agents - the Repository will not circulate materials that have not been properly edited to remove personal information.

The DRC requires all filings and supporting documents filed with the Repository be submitted electronically. For assistance, please contact IFTA, Inc.

D. Supplemental Information Relating to the Submission

Submissions to the DRC should be as complete as possible and include both the recommended and required information; however, supplemental information may be provided by the party submitting an issue; recognizing:

1. Materials should be received by the Repository at least 20 days in advance of the scheduled DRC meeting date;
2. Supplemental information may be provided to other parties to the issue by the Repository; and
3. Material received by the Repository less than 20 days prior to the DRC meeting is subject to not being considered by the Committee.

E. Additional Information by the Public or a Party to an Issue

The public or a party to an issue may also provide additional information to the Repository as outlined in the three points below:

1. A party to an issue may provide written responses and supporting materials;
2. Persons other than parties to an issue may provide written submissions and supporting materials; and
3. Additional information received by the Repository less than 20 days prior to the date of the meeting runs the risk of not being distributed to the DRC or other interested parties or being considered by the Committee.

F. Program Compliance Review Submissions to the DRC

Submissions to the DRC from the Program Compliance Review Committee under Sections R1555 of the Agreement to address an issue of Agreement compliance by a Member Jurisdiction must include:

1. The Final Determination Finding of Non-Compliance prepared by the Program Compliance Review Committee (in place of the Standard DRC Submission form and recommended information in the submission); and
2. A detailed report of all attempts to resolve the issue including, but not limited to, the Final Report, Activity Report, Audit Accountability Spreadsheet, Email correspondence, etc.

G. Completeness of Submissions

If one or more of the criteria required under this Dispute Resolution Process are not met the issue is deemed to be not submitted and the Committee is not permitted to consider the matter.

The Committee Chair will make the initial determination on the completeness of a submission for inclusion onto the Agenda. This decision is subject to consideration by the Committee if there is a question of completeness raised.

Items which have been deemed to be incomplete submissions are not included on the agenda. Items already placed on the agenda may be removed if they are deemed to be incomplete submissions by the Committee before or at the time of a DRC meeting.

It is the responsibility of the submitting party to edit the documents for distribution by the Repository by omitting/blocking out any identification and confidential information, other than the names of a party to the issue. The Repository will not circulate materials that have not been properly edited to remove personal information.

Commentary

It is the responsibility of the submitting party to ensure a complete submission.

Repository staff assists the Committee by receiving submissions, and:

1. Conducting a preliminary review of each submission received;
2. Advising the issuing party that the submission may be incomplete; and
3. Consulting the Committee Chair if there is uncertainty as to the completeness of a submission.

It is not the responsibility of the Repository staff to ensure a complete submission as that responsibility rests exclusively with the submitting party.

H. Withdrawing an Issue

An issue may be withdrawn by the party that submitted it at any time prior to a decision of the Committee on the issue.

I. Parties to an Issue

For purposes of these procedures, a party to an issue must be:

1. A Member Jurisdiction, a Licensee, or the Program Compliance Review Committee
2. A Member Jurisdiction alleged by the submission to be out of compliance with the Agreement; or
3. Other persons affected by the Committee's decision of the issue and which have received the approval of the Committee Chair to be treated as a party to the issue.

III. DRC Meetings

A. Annual Meeting

The regular annual meeting of the DRC shall, as outlined in the Charter, be at the IFTA Annual Meeting.

If the Committee has no issues before it or any business to conduct, the Committee is not required to meet at the Annual IFTA meeting.

B. Special Meetings

The Committee Chair may call additional special meetings of the Committee, as deemed necessary, for the following reasons/purposes:

1. to consider a dispute of special urgency;
2. to resume consideration of a dispute which has been continued.

The Committee may hold a special meeting in person, or virtually. Notice of a meeting will be provided by the Repository as soon as practicable.

C. Public and Transparent Meetings of the DRC

All Committee meetings are open and accessible to the public and the IFTA community; however, during a DRC meeting, the Committee may deliberate on (but not vote on) issues in a closed executive session.

All official motions and Committee votes are made in an open public meeting.

Outside of scheduled public meetings, subcommittees authorized by the Charter may meet to address DRC policies and procedures unrelated to specific issues brought before the Committee.

Commentary

In order for the Committee to most effectively serve its purpose, the DRC hearing process must not only be open, but must also be as accessible as possible. This is deemed necessary both to render the Committee's actions acceptable to the IFTA community at large and to allow the community to assist the Committee in reaching those decisions.

Informal meetings regarding any Dispute by Committee members are discouraged to reduce any perception that decisions or pre-determinations have been made outside of a public forum.

D. Notice of DRC Meetings

The Repository is requested by the DRC to provide public notice of a meeting. Public notice should include:

1. a draft agenda;
2. identification of the parties to the issue; and a summary description of the issue.

In addition to the public notice, the DRC requests that the Repository advise all parties to an issue of the posting of the public notice.

E. DRC Agenda

The Chair is responsible for preparing, with the assistance of Repository staff, an agenda for each meeting of the Committee.

Issues on the agenda should include:

1. a summary of the issue; and
2. a listing of all known parties to an issue.

New agenda items are those requiring official actions of the Committee which have been properly submitted to the Repository in accordance with the Dispute Resolution Process.

Items from previous DRC meetings are included on the agenda until the dispute has been resolved and considered to be concluded by the Committee and the resolution or conclusion has been recorded in the minutes of the Committee.

If time does not permit all agenda items to be heard at the meeting, remaining items will be addressed either on a subsequent remote or in person or at a future scheduled meeting as determined by the DRC.

Commentary

The agenda may also include housekeeping items relating to policies and procedures. Housekeeping items are not to be used as an opportunity to address items which relate to an item which would otherwise require a submission to the DRC.

The order of the published agenda and the projected time to hear an issue is not absolute and may be amended by the Committee Chair for a range of reasons, such as:

1. meeting the needs of the Committee;
2. meeting the needs of the parties before the Committee;
3. accommodating the often limited time available for meetings; and
4. removing items which have been withdrawn or deemed inadequate submissions.

A party to an issue that plans to be present should assume their agenda item could come up at any time in a DRC meeting and prepare accordingly.

F. DRC Hearing Procedures

The Committee Chair shall preside at Committee meetings. In the absence of the Committee Chair, the Committee Vice Chair shall preside at Committee meetings.

Meetings of the Committee are informal relative to judicial proceedings. Rules of evidence used in judicial proceedings are not required at meetings of the Committee.

The party who brings an issue against a member jurisdiction to the DRC has the burden of proof to establish based on a preponderance of the evidence that the other member jurisdiction is out of compliance of the Agreement. The same evidentiary standard exists for any claimed damages and proposed remedial actions requested.

Parties to a proceeding may represent themselves, or be represented by a third party including legal counsel.

If any party to an issue requests that a certified court reporter record the proceedings, or desires to have the proceedings taped (and transcribed), the provision of and cost of the court reporter service or the taping (and transcription) will be assumed by the party making the request. If a transcription of

the proceeding is taken, the party must provide a certified copy of the transcription to the Committee by sending the transcription to the Executive Director of IFTA Inc., within 30 days of the DRC decision, for distribution to all parties. The cost of the copy will be assumed by the party requesting the transcription.

If it is alleged at the Committee meeting by a Committee member or a party to the issue that an issue submitted is incomplete, the Committee shall determine whether this is so before taking up the issue on its merits. If the majority of the Committee agrees the submission is incomplete, the Committee must dismiss the issue.

If the Committee cannot determine whether a submission is complete, the question is to be resolved in favor of hearing the issue.

All parties to an issue as well as members of the public are to be provided an opportunity to be heard by the Committee at a public meeting on any issue under consideration by the Committee.

The Committee may, during the course of a hearing, move into executive session to deliberate on (but not vote on) issues before it. Executive sessions are closed to all but members of the Committee, Industry advisors to the Committee and Repository staff.

All official motions and subsequent voting on the official motions are to take place as part of a public hearing.

In presenting written or oral arguments to the Committee, the parties to an issue and the public should recognize that the Committee is comprised of members of the IFTA Community that are experts in various aspects of the Agreement and its administration – more times than not, members of the Committee are not trained in the practice of law nor are Committee members expected to have a legal background. The DRC will assign an individual to act as parliamentarian.

The time provided for parties to an issue and the public to be heard is balanced recognizing the time available for the Committee to hear issues before it and the need to focus on the issues at hand. Consequently, the DRC may limit the time allotted to parties to present and argue issues before the Committee.

When an agenda item with an issue is brought before the Committee, there is a common course of events; however, the course of events can change and should not be considered as absolute. Parties to an issue can generally expect the following process:

1. Committee Chair introduces the parties to the dispute before the Committee.
2. The party that submitted the issue (Complainant) to the DRC is given the opportunity to present the issue (with questions from the DRC)
3. The Respondent(s) is/are provided the opportunity to cross-examine any witnesses presented by the Complainant.
4. The DRC members are provided the opportunity to question any witness provided by the Complainant and/or the Respondent.
5. The Respondent(s) is/are given the opportunity to present their position (with questions from the DRC)
6. The Complainant is provided the opportunity to cross-examine any witnesses presented by the Respondent.
7. Following the Respondent's presentation, the Complainant will be given an opportunity to respond.
8. Following the presentations of the parties, the Committee will open the floor for comments from others who wish to be heard.
9. The DRC will then hold the issue over for deliberation (may be in an executive session)

After the DRC has deliberated on an issue, motion(s) from a voting member of the DRC will be put to the Committee.

Comments on the motion are invited from DRC members, the parties to the issue, then from the public.

The motion, if unchanged after comments, will be then put to a vote (majority) of the voting members of the DRC.

The motion and vote and date of decision will be recorded in the official minutes of the DRC hearing.

IV. DRC Decisions

A. Criteria for Decisions

When deciding an issue before it, the Committee as a general guideline considers:

1. The consistency of the proposed action with the provisions and the intent of the Agreement;
2. Positive and adverse effects on Jurisdictions and Licensees;
3. The desirability of recommending an Agreement amendment pursuant to Article XVI; and
4. Both public and private costs of any proposed action, including administrative costs.

Commentary

The Committee is not limited to the interpretation, resolution, or other relief requested by the party submitting the issue.

In reaching a determination, the DRC focuses on two key points:

1. the meaning of the Agreement; and
2. whether a Member is in compliance.

B. Discretion in Decisions

The DRC's discretion in deciding an issue is very wide and includes consideration of the expectations of the parties to an issue as well as the expectations the wider IFTA community has of the DRC process.

The DRC should try to resolve an issue brought before the Committee. Specifically, it should answer the questions the parties have asked, directly or indirectly, and give an answer in such a fashion that it provides guidance to the parties and to others who may find themselves similarly situated.

The Dispute Resolution Process provides the DRC full discretion with respect to deciding an issue before it (given the guidance provided herein). As part of exercising that discretion, the Committee may also reach a decision and rule that the issue, or a part of an issue, should first be resolved through the courts or a Jurisdiction's administrative proceedings.

After a discussion in the public meeting, in the event the DRC chooses not to take action on an item, the parties may resubmit the issue to the Committee or proceed with the options provided under this Dispute Resolution Process.

The degree of difficulty or importance of an issue should not by itself determine whether or not it is decided by the DRC. Arguably, an important or difficult issue is the kind that the DRC should decide, rather than have the matter taken to court and thus out of the hands of the IFTA community.

C. Timing of Decisions

The general expectation of the IFTA community is that the DRC try to render its decisions either on the same day an issue has been heard or on the following day.

When an issue arises of a complexity that will either take a longer time to hear than can fit within the time provided at an IFTA meeting or includes so many related issues that it will take longer for the Committee members to review, neither the Agreement nor the Charter bars the Committee from holding the issue over to another special meeting.

Where a decision cannot be made during the course of the same DRC meeting, the Committee will outline the process at the meeting where the issue was introduced and what steps the

Committee will undertake to come to a decision.

D. Summary of Deliberations

In order that the parties to a dispute as well as the IFTA community as a whole may better understand Committee decisions, the Committee is expected to provide a summary of discussions from deliberations at the next open session.

E. Issues in Administrative Proceedings or in Court

The Agreement encourages the Committee to decide issues before it; however, where an issue is the subject of an administrative or judicial proceeding, the Committee should consider ruling that the issue continue through the administrative or judicial proceedings.

Where an issue before the Committee is also the subject of either administrative or judicial proceedings, the Committee weighs various factors in determining whether to rule on the issue, rule that the issue be first resolved in the external proceedings, or decide not to rule, potentially subjecting the issue to a vote of the membership. The factors include:

1. the need to maintain the stability and consistency of the Agreement,
2. the uniformity of its administration and interpretation;
3. the need for the administrative apparatus of a Jurisdiction to operate without interference;
4. the desirability of keeping Agreement matters out of the courts; and
5. the need for the Committee to restrict itself to issues that are appropriate to its expertise.

Jurisdictions are encouraged to take their differences before the Committee rather than to the courts or external administrative proceedings. Disputes between Jurisdictions and Licensees coming before a court can involve serious threats to the uniformity of the Agreement's administration.

The language of the Dispute Resolution Process encourages Jurisdictions to take issues to the DRC before they take them to the courts: "Nothing in this article shall preclude a Jurisdiction from seeking judicial relief after exhausting its remedies under the Agreement. (emphasis added)"

Articles of Agreement, Section *R1555 defines dispute limitations.

F. Audit Findings

Audit and audit re-examination related appeals between Jurisdictions and licensees are subject to R1400 of the Agreement and in accordance with the administrative and appellate procedures of the Base Jurisdiction.

V. After a DRC Decision

Timing of Post DRC Meeting Items

The date of the decision of the DRC is the date a motion is passed by the Committee.

The Repository shall notify parties to an issue within 30 days of a decision.

Draft minutes of a meeting are circulated by the Repository approximately 2 weeks post-meeting for review by Committee members.

To meet the 30-day requirement of notifying the parties to an issue of a decision, Committee members are requested to complete their review of the decisions within approximately 25 days of a meeting.

A party to an issue has 45 days following the date of the Committee's decision to file an appeal with the Board through the Repository.

Official Record of Proceedings

The Repository will post the Docket and Findings pertaining to a dispute on the IFTA, Inc. website. Once approved by the DRC these will be posted to the IFTA, Inc. website at www.iftach.org on the DRC page.

Remedies

The DRC, through the authority established in this Dispute Resolution Process and R1555, is empowered to grant appropriate relief to a Member Jurisdiction or Licensee and may take action including but not limited to the following to ensure a Member Jurisdiction's compliance with the Agreement.

1. If the Respondent fails to bring its program into compliance by the date determined by the Committee, the Respondent shall suffer immediate loss of voting power and all Board and standing committee seats.
2. If the Respondent fails to bring its program into compliance after 60 days of its loss of voting power, the Respondent's membership dues for the current year will be double. The Committee may grant an extension beyond the 60-day period if it believes the Respondent is taking reasonable steps to come into compliance.
3. If the Respondent fails to be in compliance after one year of its loss of voting power and membership dues being doubled the Respondent's membership dues for the next fiscal year will be tripled and a resolution for expulsion may be issued pursuant to the IFTA Articles of Agreement.
4. If the Respondent fails to be in compliance after one year of its membership dues being tripled, a resolution for expulsion will be issued pursuant to the IFTA Articles of Agreement.
5. If the expulsion resolution fails, the Respondent's membership dues will remain tripled until its program is in compliance. Upon compliance, the Respondent's membership dues for the next fiscal year will reduce to the amount assessed all jurisdictions in good standing.
6. All penalties shall be stayed until the appeal period is exhausted.

The DRC has broad discretion in resolving disputes and may take actions that include remedies/sanctions intended to compensate the aggrieved jurisdiction(s) or licensee(s), and/or bring the non-compliant jurisdiction into compliance, and/or ensure the membership of achieved compliance. Punitive actions should only be imposed for repeated or prolonged noncompliance by

the non-compliant jurisdiction. The Committee should carefully consider punitive actions and evaluate the complete set of circumstances that led to non-compliance before taking such action.

Appeals to the Board of Trustees

The Board has the authority to hear an appeal from a decision of the Committee on an issue, but only where one or more of the following circumstances is alleged to exist:

1. The Dispute Resolution Committee made a procedural error in handling the issue,
2. The Dispute Resolution Committee abused its discretion in deciding the issue or taking an action, or
3. The Dispute Resolution Committee made a significant error of an interpretation of the Agreement.

A party wishing to appeal a decision of the dispute resolution committee to the Board shall, within 45 calendar days following the decision by the committee, file with the Repository a statement that:

1. Identifies the decision being appealed,
2. Describes specifically the circumstances that permit an appeal of the decision under this Section,
3. Requests the Board to hear the appeal, and
4. Is accompanied by supporting documents the party believes will be of assistance to the Board.

The Repository shall promptly distribute the statement to the members of the Board and shall notify the Member Jurisdictions of the filing of the appeal. At the discretion of the Board, the Board may hear the appeal at its next regularly scheduled meeting or may hold a special meeting for that purpose, either remotely or in person or dismiss the appeal for lack of merit.

The decision to hear an appeal is at the Board's discretion. If the Board decides not to hear the appeal the decision of the DRC becomes final. If the Board elects to hear the appeal, the Board shall determine whether the DRC made a procedural error, an error in interpretation of the agreement, or otherwise abused its discretion adjudicating the complaint. In doing so the Board shall review the record established at the DRC and may receive oral or written arguments from the parties.

After deliberating the Board shall issue a directive setting out with specificity the Board's determination that the action appealed from should be affirmed, reversed, remanded or modified, and the Board shall specify the grounds for such decision.

If the Board takes no action within 60 days of concluding the hearing of the appeal, the decision of the DRC shall become final.

Nothing in this article shall preclude a Member Jurisdiction from seeking judicial relief after exhausting its remedies under the Agreement.

Parties to an issue have the following options:

Sanctioned Party	Aggrieved Party
<ul style="list-style-type: none">~ Comply with the ruling of the DRC.~ File an appeal to the Board through the Repository within 45 days of the decision.~ If the Board does not hear the appeal, comply with the ruling of the DRC, or if the Board hears the appeal, comply with the direction of the Board.~ Seek judicial intervention after exhausting all remedies in the Agreement.	<ul style="list-style-type: none">~ Accept the ruling of the DRC.~ File an appeal to the Board through the Repository within 45 days of the decision.~ If the Board does not hear the appeal, accept the ruling of the DRC, or if the Board hears the appeal, accept the direction of the Board.~ If the sanctioned party fails to comply with a DRC order, following an outcome of any appeal to the Board, may notify the DRC of the failure to comply to the Order.~ Seek judicial relief after exhausting all remedies in the Agreement.

The ruling of the DRC remains in effect during the time period in which a party files an appeal with the Board (or awaits a decision from the Board regarding an appeal). The Board may, if the appeal is heard and ruled on by the Board, uphold, suspend or overturn part or all of a decision of the Committee.

Rationales for Decisions

In order that Committee decisions may be effectively used as precedent, it is expected that the Committee give a rationale when it renders a decision.

A rationale provided by the Committee will:

1. elaborate on the DRC's decision in plain language;
2. be completed and approved within 30 days of the decision;
3. be approved by the voting members of the Committee; and,
4. form part of the official record and be incorporated into the Agreement.

Recommendations to Board

The Committee may on occasion make a recommendation to the Board (including a recommendation of an Agreement amendment) following, or as part of, a decision to an issue. The DRC's recommendations are not binding on the Board.

The DRC may not sponsor a ballot for a change to the Agreement.

VI. Conflict of Interest

Where there is potential for a conflict of interest between a Committee member and a party to an issue that may bring into question objectivity and fairness of the Committee decision, the member should recuse themselves from the deliberation and voting on that issue. If a committee member is an agent of a party, the committee member shall recuse themselves from the Committee's activities relating to the dispute.

VII. **Appendices**

Summary of Timelines

Appendix A

Standard DRC Submission Form

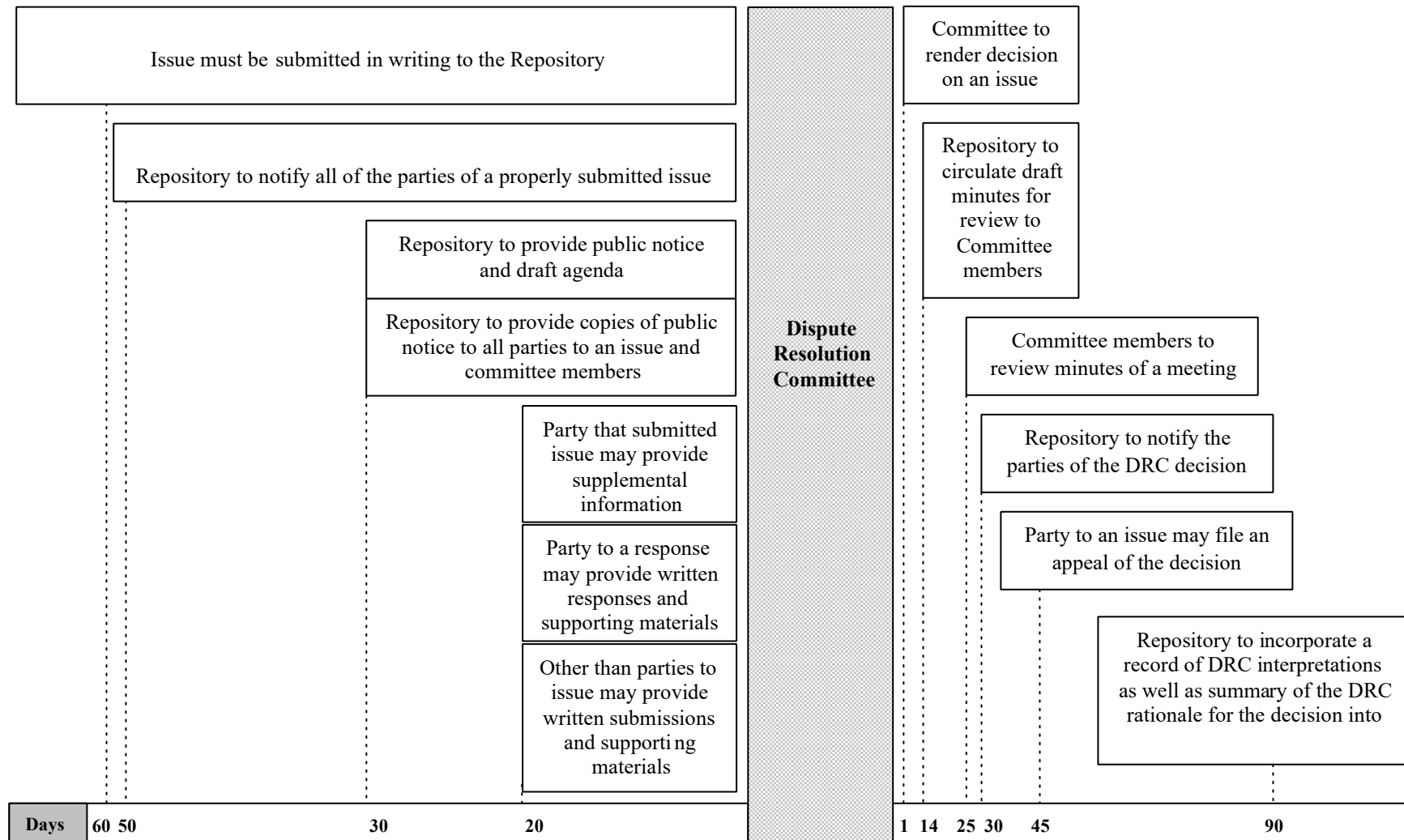
Appendix B

DRC Role & Function

Appendix C

Appendix A

Summary of Timelines



This summary of the timelines is intended as a guide only. Please refer to the IFTA Agreement and the body of the Dispute Resolution Process for the specific application of a deadline/timeline.

In the event of a conflict, the Agreement and body of the Dispute Resolution Process shall apply

Appendix B

International Fuel Tax Agreement

Dispute Resolution Hearing Request Submission Form

This submission form for the Dispute Resolution Committee to hear an issue of Agreement compliance is to be completed in full for each request. All submissions must comply with the Dispute Resolution Process of the International Fuel Tax Agreement.

Submission Date: _____

To be presented to the Dispute Resolution Committee for the meeting dated: _____

Party Submitting the Issue: _____

Principal Point of Contact:

Name: _____

Title: _____

Organization: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

Relevant Agreement References:

Article(s): _____ Section(s): _____

1. Please outline the question or issue of compliance to be resolved:
2. Please provide a brief explanation of the issue:
3. Provide an outline of any evidence of prior actions, if any, taken by the parties to resolve the issue.
4. Provide a statement of any changes in reporting, record keeping, or other paperwork that would be required by the resolution, interpretation or relief sought, together with identified costs or benefits.
5. Provide a statement of the proposed solution of the issue or other relief sought.

6. Identify the persons, businesses, organizations, and member jurisdictions that are affected by the issue and the relief sought.
7. Are you requesting a hearing in which evidence will be presented?

Yes

No, I want the matter decided on the documentation submitted with the application.

Notes:

- ~ Please attach documents that support the claims made or the relief requested.
- ~ Please note that submitted documents will be made available to all parties to an issue. It is the responsibility of the submitting party to edit the documents for distribution by the Repository by omitting/blocking out any identification and confidential information, other than the names of a party to the issue -- the Repository will not circulate materials that have not been properly edited to remove personal information.
- ~ Where an issue of Agreement noncompliance by a jurisdiction is being submitted by the Program Compliance Review Committee under Section 1555 of the Agreement, the Final Determination Finding of Noncompliance report prepared by the Program Compliance Review Committee for the jurisdiction may serve in place of items 1, 3, 4 and 5.
- ~ If this submission relates to an audit under review or appeal, please review section R1400 to determine if the DRC is eligible to hear the issue.

With the submission of this form, I/we formally request that the Dispute Resolution Committee of IFTA, Inc. hear and resolve this issue.

Name _____
(Printed)

Signature _____

Date _____

Appendix C

DRC Role & Function

The IFTA Agreement is a complex document that represents a complicated process administered by nearly five dozen sovereign entities in two countries. Disputes over the meaning and the application of the Agreement are bound to arise, and regularly do arise, both between a Jurisdiction and a Licensee and between Jurisdictions. These disputes can be, and often are, on a large scale. Not only do they sometimes involve large sums of money, but their resolution can determine administrative behavior that in turn can affect the behavior of thousands of business entities and ultimately inter-jurisdictional and international commerce.

It is a goal of the DRC to keep IFTA out of the courts as IFTA disputes are not well suited to resolution by the courts. If a high degree of uniformity, consistency, and certainty in Agreement administration is to be maintained – and it must be – it will be best if courts are not called on frequently to rule on IFTA matters. Involving the courts in IFTA matters has a number of problems. First, when a dispute involves two U.S. states, it must, under the U.S. federal system, go directly to the U.S. Supreme Court. This would be an unreasonably cumbersome (and in practice uncertain) means of dealing with IFTA issues except in the most unusual instances. Second, there would always be some tough jurisdictional issues if the dispute involved a state and a province, issues that would be very apt to color the validity of whatever decision might eventually be rendered. Third, nearly all issues concerning IFTA will be more or less technical in nature, involving rather difficult to understand matters of fuel tax administration. Although courts are obliged to handle highly technical matters in any number of areas, the results are frequently uncomfortable and discrepant. Finally, and most important of all, the effect of a decision of a court in one jurisdiction on all the other Member Jurisdictions of the Agreement is very uncertain.

The DRC provides a positive alternative to more basic ways of making IFTA policy; that is, by the membership at large. Many issues involving the Agreement have been settled over the years by discussion and eventual Member consensus, and others have been settled by Agreement amendment. Neither of these methods of issue resolution, however, is entirely appropriate for all matters that may arise. Some may demand speedier resolution than can be accommodated by true consensus building, and others may be inappropriate – as too unrepresentative or too fact specific – to be handled by amendment.

The need for an alternative mechanism to resolve specific issues made itself felt early in the life of the Agreement. To function properly as an alternative to policy making by the full membership, which is essentially a political process, the DRC needs to preserve certain elements of such policy making. To maintain the effectiveness of the DRC and its processes, the DRC must be:

Fair

The fairness of the DRC is not guaranteed or even mentioned in either the Agreement or Committee Charter – it is assumed. To maintain the DRC's considerable value, the DRC must be perceived as fair by the IFTA community – Members and industry alike.

Open

This is implied by the language of the Agreement, guaranteed by the Committee's Charter, and is a strong Board and DRC tradition. DRC meetings are open to the public like all other IFTA functions, and anyone is free within the framework of the meeting to contribute to the proceedings. This reflects the need for broad input to a decision-making process to maintain the respect of Jurisdictions and industry alike. If the process is not open, and perceived to be so, interested parties may be tempted to take the matter to the courts. Openness is a requisite if the Committee process is to be seen as fair.

Speedy

One of the advantages of taking an issue to the DRC for resolution instead of relying on what is apt to be a drawn-out process of building consensus, or a judicial process is that an answer can be had more quickly. Sometimes there are specific, pressing reasons for the speedy resolution of an issue – especially if an answer to an issue is needed for all Jurisdictions. While it may not be always possible, it is the stated goal of the Dispute Resolution Process for the DRC to issue a decision to an issue on the same day (or at least at the same meeting) the issue was heard.

Certain

If a party takes an issue to a forum designated to resolve issues, it expects a decision. The language of the Agreement and the Dispute Resolution Process urge the Committee to rule on the issues before them. This factor also implicates both the desirability of keeping IFTA out of the courts, and the determination of what types of issue the DRC should take up.

Flexible

The process of consensus-building is flexible; amending the Agreement is not. The Dispute Resolution Process has been informal and flexible, more like those of a mediation process or even a political body than like a court. This reflects the nature of the DRC as an alternative to the fundamental tendency of the Agreement to leave policy decisions to the membership as a whole – a process more political than judicial.

Expert

For its decisions to be properly respected, the members of the DRC should be experienced in Agreement policy and Agreement administration. This makes the DRC more appealing as an alternative to the courts.

Enforceable

The Agreement provides that decisions of the Committee are binding on the membership, and in practice they have proven to be enforceable. This factor again makes the DRC a reasonable alternative to the court system.