

PROGRAM COMPLIANCE REVIEW COMMITTEE

VS.

DRC 2024-0001

COMMONWEALTH OF MASSACHUSETTS

APPEAL OF FINAL ORDER OF COMMITTEE

Pursuant to Section 5 of the IFTA Dispute Resolution Process, the Commonwealth of Massachusetts (hereinafter, “Commonwealth”) appeals from the Final Order of the Dispute Resolution Committee (hereinafter, “DRC”), dated September 13, 2024 (hereinafter, “Final Order”).

As set forth more fully below, the Commonwealth does not contest the factual findings adopted by the DRC. The Commonwealth acknowledges that, despite its diligent efforts, the Commonwealth, over the course of two successive review periods, failed to conduct the threshold number of fuel-tax audits it was tasked with performing under the terms of the IFTA Agreement (hereinafter, “Agreement”). In response to the DRC’s findings, the Commonwealth is in the process of implementing a plan not only to meet its audit requirements, but also to make up past deficiencies and to conduct the additional audits imposed by the DRC’s Final Order. *See* Attachment 1, *DOR Audit Plan*. The Commonwealth is willing to make this acknowledgment despite the fact, as stated at the recent hearing, that its capacity to perform these audits during the second review period was significantly impacted by the after-effects of a once-in-a-century, devastating worldwide pandemic. Although the Commonwealth will refrain from pointing to that catastrophic event in this appeal, the DRC’s action is particularly disproportional given that context.

The Commonwealth does, however, challenge the suite of sanctions levied against it by the DRC because of its audit shortfalls. As discussed below, the Agreement, and in particular the Dispute Resolution Process Manual (hereinafter, “DRP”), are both very specific about the discipline that the DRC may mete out against Member Jurisdictions that have failed to comply with their obligations under the Agreement. These listed sanctions are graduated in nature, are geared toward fostering future compliance, and, most crucially, were agreed to by all Member Jurisdictions subject to the Agreement. But the penalties imposed against the Commonwealth in this case appear nowhere in the Agreement or the DRP; completely ignore the remedies spelled out in the DRP; are inconsistent with the DRP’s prior practices; and are arbitrary and purely punitive in nature. Accordingly, they cannot stand.

The DRC’s Final Order in this matter violates not only the letter of the Agreement, but also its spirit and purpose. The IFTA mission statement states that the purpose of the Association is to “foster trust and cooperation among the jurisdictions through efficient and effective planning and coordination and oversight of activities necessary to administer the International Fuel Tax Agreement.” See <https://www.iftach.org/Aboutus.php>. Relatedly, in addition to enumerating available remedies, the DRP provides general criteria for the DRC to consider in promulgating a decision regarding a Member’s noncompliance with the Agreement. See *DRP, Section IV.A*. Among those criteria are (1) the consistency of the proposed action with the intent of the Agreement, (2) the positive and adverse effects on Member Jurisdictions and (3) the private and public costs of any proposed action, including administrative costs. *Id.*

The DRC’s Final Order does not meet these criteria for the following reasons: (1) the Final Order is inconsistent with the Agreement’s intent as explicated in that Agreement’s express language and the express language of the DRP; (2) the Final Order is punitive in nature and

establishes arbitrary and onerous audit criteria inconsistent with the compliance intent of the Agreement; (3) the Final Order is arbitrary and is punitive in nature to the extent that it will have a chilling effect on other Member Jurisdictions; and (4) the punitive nature of the Final Order will not only unfairly increase the Commonwealth's administrative burdens but will also result in significant litigation costs to both IFTA and the Commonwealth.

Pursuant to that Final Order, the DRC ordered the following:

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 $\frac{1}{4}$ 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.

The Board of Trustees (hereinafter, "Trustees") has the authority to hear an appeal of a DRC final order and to reverse or modify that order if (1) the DRC abused its discretion in deciding an issue or taking an action, or (2) the DRC made a significant error of an interpretation of the Agreement. *See* DRP, Section V., *Appeal to Board of Trustees*, pg. 15. As noted above, the Commonwealth does not dispute the facts found by the DRC and is taking steps to address those compliance issues going forward. *See* Attachment 1, *DOR Audit Plan*. However, the Commonwealth asserts that the DRC abused its discretion by ignoring the remedies provided in Section R1555.300.005 of the Agreement as further amplified in Section V. of the DRP to bring Member Jurisdictions into compliance; and made a significant error in its interpretation of the Agreement by imposing arbitrary and capricious fines and penalties where none are contemplated.

Therefore, for the reasons stated below, the Commonwealth asks that the Trustees to hear this appeal, to rescind those parts of the Final Order imposing fines and penalties, and to issue an order consistent with the language and intent of the Agreement and Section V. of the DRP (steps 1-6) to bring Member Jurisdictions into compliance before expulsion.

1. The Commonwealth states that pursuant to the Agreement, the DRC had no authority to issue the Order commanding the disgorgement of \$3,896,281.31 in unjust benefits purportedly received by the Commonwealth; to issue the Order requiring the Commonwealth to pay a punitive fine in the amount of \$328,000; to issue the Order withholding clearinghouse payments to the Commonwealth until the complete

assessment has been satisfied; and to issue the Order assessing an additional fine of \$1,000 for each “make-up” audit not completed by December 31, 2025.

2. The Agreement is authorized under the Compact Clause of the United States Constitution (Article 1, Section 10, Clause 3), and functions as a contract between and among the participating States. As a result, the Supreme Court has used contract law principles and remedies in adjudicating disputes arising under interstate compacts. *See Texas v. New Mexico*, 482 US 124, 128 (1987). As such, a compact is a legal document that must be construed and applied in accordance with its terms. *Id.* Thus, where a compact signatory is found to have breached a duty under a compact, a court and/or adjudicator should look to the contract’s terms to provide a sufficiently certain basis as to the nature of the remedies available. *Id.* at 129 (*citing*, Restatement (Second) of Contracts § 33(2), and Comment b). Restatement (Second) of Contracts § 33(2) Comment b, *Certainty in basis for remedy*, as cited in *Texas v. New Mexico*, reflects the fundamental policy that remedies for breach of contract must have a basis in the language of the contract itself.
3. Section R1555.300.005 of the Agreement provides as follows:

.300 Expulsion Process

.005 The IFTA, Inc. Board of Trustees shall request a resolution to expel a member jurisdiction which has failed to bring its IFTA program into compliance one year following its loss of voting power under the penalty provisions of the IFTA Dispute Resolution Process.

The Agreement does **not** give the Board of Trustees (hereinafter, “Board”) the authority to impose fines and/or penalties for a Member Jurisdiction’s failure to bring its program into compliance. The only remedies expressly authorized by the Agreement are the suspension of a noncompliant Member’s voting rights, and, where the noncompliance persists, the potential expulsion of the Member from IFTA – but only where a year has

elapsed since the Member was stripped of its voting rights and it still has not come into compliance.

4. Building upon this express authority, the “Remedies” section of the DRP provides the following six step serial process for bring Member Jurisdictions into compliance:

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 “Remedies” section of the DRP thus specifically contemplates an escalating series of sanctions calculated to “ensure a Member Jurisdiction’s compliance.” Where a member is found to be out of compliance with its obligations under the Agreement, the available sanctions begin with the member’s loss of its voting rights. If, after specified periods, the member remains out of compliance, its penalty then escalates: first by the doubling (and, later, tripling) of its membership dues, and ultimately by its expulsion from IFTA. This

set of remedies expands upon, but is generally consistent with, the language of the Agreement, Section R1555.300.005.

6. The DRC abused its discretion by ignoring these remedial steps in imposing the fines and penalties detailed above. Further, not only did the DRC ignore the DRP, it also, without notice, arbitrarily and unfairly ignored its own past practice in bringing Member Jurisdictions into compliance. The Commonwealth is aware of only one recent instance where the DRC imposed a penalty on a Member Jurisdiction, i.e., the State of New Jersey, which was sanctioned for non-compliance for the period 2005-2013. *See Attachment 2, New Jersey Finding and Order.* In that case, the State of New Jersey was also in non-compliance for two consecutive periods, as in this case, and so the facts in that case were substantially similar. The Board, however, did not impose fines and penalties for New Jersey's non-compliance as it did in this case, but instead followed the serial six-step process prescribed by the DRP's "Remedies" section for bringing a Member Jurisdiction into compliance as generally contemplated by section R1555.300.005 of the Agreement. The DRC's Final Order of fines and penalties in this case is not only inconsistent with the Agreement and the Remedies section of the DRP but was issued without notice to Member Jurisdictions of the DRC's putative authority or intention to deviate from past practice. The latter raises significant general legal and due process questions concerning proper notice and fundamental fairness to the Member Jurisdictions bound by the Agreement.
7. The Commonwealth acknowledges that the "Remedies" section of the DRP also includes the following general language:

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.

However, this provision is unsupported by the specific language of the Agreement.

Therefore, the application of this provision – certainly as the provision was applied in this case – violates the rule of contract that the remedy for a breach must have a basis in the Agreement. *See, e.g., Texas v. New Mexico*, 482 US at 130 (Special Master had no authority to order monetary damages because the Compact contained *no explicit provisions for monetary relief* for a breach) (emphasis added). Further, even assuming, without conceding, that the Agreement somehow permits the inclusion of this “broad discretion” provision, the DRC in this case impermissibly used its “broad discretion” to override the carefully calibrated progressive discipline spelled out in the DRP, and, instead, to invent fines and penalties that were nowhere stated or even suggested in the Agreement or the specific implementing language of the DRP. On a fundamental level, the purpose of an interstate compact is to codify the member states’ obligations to each other, and the consequences that will spring from a failure to meet these obligations. The Agreement, as enhanced by the DRP, properly fulfills this function, informing all Member Jurisdictions, in advance, of what may happen if they, for instance, fail to meet their audit quotas. To allow vague language about “broad discretion” to displace the agreed-upon remedial regime and to authorize the imposition of *ad hoc* fines and penalties is to negate the purpose of the written Agreement.

8. The Final Order provides for the Commonwealth to disgorge \$3,896,281.31, in “unjust benefits,” pay punitive fines of \$328,000.00, and incur a \$1,000 fine for each audit not

completed by December 31, 2025. As neither the Agreement nor the DRP authorizes such sanctions, both documents are necessarily silent as to how the DRC is to calculate such fines and penalties. Further, the \$3,896,281.31 disgorgement purportedly represents the sum the Commonwealth would have paid in salaries if it had hired a sufficient number of new auditors to meet its audit quota under the Agreement. As stated in the Final Order, “[t]he principle of Disgorgement is a legal remedy that requires a party that has profited from wrongful acts to give up those profits ... 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’s conception of “disgorgement” is wrong on several levels. First, the DRC does not explain (nor could it explain) how the Commonwealth, by failing to conduct the required number of audits, somehow “profited,” in the amount of \$3,896,281.31 of ill-gotten revenues that need to be disgorged. Second, the Commonwealth, at most, is liable for a sin of omission; it certainly did not commit “wrongful acts” that need to be deterred or disincentivized. The Commonwealth’s supposed “sin” is the same as that committed by the State of New Jersey as described in that State’s attached recent Order, where a much different analytical approach was taken. Third, no matter how it attempts to couch it, the DRC’s order of disgorgement is nothing but punitive, and its distribution is simply a windfall to other Member Jurisdictions. IFTA mission is to “foster trust and cooperation” among its Member Jurisdictions, not to set them off against each other or to punish them. In addition, Exhibit C, which the DRC cites as its proposed basis for distributing the fines and penalties imposed upon the Commonwealth is inscrutable, and does not even indicate what period or periods those apportionment numbers are based upon.

9. The Final Order also provides that IFTA shall withhold clearinghouse fuel use taxes belonging to the Commonwealth. Nothing in the Agreement allows for IFTA to take tax proceeds rightfully belonging to a sovereign U.S. state (and ultimately to the citizens of that state). Moreover, nothing in the Agreement could allow for this result, as the Commonwealth has not and would not agree to this consequence. The Order is simply a taking of property from the Commonwealth by IFTA and its Members Jurisdictions without notice or compensation, contrary to the law, including the Fifth and Fourteenth Amendments to the United States Constitution.

For the reasons stated above, the Commonwealth asks the Board to exercise its oversight powers under the Agreement and to modify the Final Order as follows:

1. Rescind the following provisions of the DRC Final Order: (1) Order mandating the disgorgement of \$3,896,281.31, (2) Order mandating the assessment of a punitive fine of \$328,000, (3) Order mandating an additional fine of \$1,000 for each “make-up” audit not completed by December 31, 2025, and (4) Order mandating clearing house payments to IFTA, Inc. be withheld until all assessments are completed.
2. Consistent with DOR’s Audit Plan, see Attachment 1, Order the Commonwealth to bring its IFTA program in compliance with its 3% audit requirement, in addition to its deficit and “make-up” audits by December 31, 2025, or otherwise, “suffer immediate loss of voting power and all Board and standing committee seats[]”, as provided by the DRP.

Respectively submitted

\s\ Steven Adamek

Steven Adamek,
IFTA Administrator
Commonwealth of Massachusetts
Department of Revenue
67 Millbrook Street, Suite 310
Worcester, Massachusetts 01606
(508) 792-7300 Ext. 22250

DATED: October 3, 2024

ATTACHMENT 1

Attachment 1, DOR Audit Plan

The Department of Revenue's ("DOR") initial goal is to increase productivity to the 25 cases/auditor level achieved in previous years based on improved practices and to continue to engage with other states about best practices. Based on what we are hearing, some of the other states are achieving greater productivity than the 25 DOR is initially seeking to achieve. Based on initial results, DOR is confident that our current auditors will be able to complete an average of 2 to 2.5 audits each month (24-30 cases per year). We will also seek to add 2 Desk Audit staff (TE 2) to the normal staffing level of the unit, adding enough extra capacity to ensure a comfortable margin over program obligations and cover the expected drop as DOR replaces staff who are retiring (it frequently takes up to 6 months or more before DOR can replace a retiring auditor.) This will ensure that DOR continues to meet our 3% requirement each year. DOR is also looking at peer states for how to integrate the new "records review" process into our compliance program.

This does not however directly address the backlog. DOR has 328 cases to make up and 15 months to do it. The proposal is to assign an additional 10 Tax Examiners to do desk audits. To the extent that field audit activity is required, it would be coordinated with the existing audit staff. At 25 audits each, this gets DOR 250 of the 328, but it is reasonable to assume that DOR can get to 30 by implementing some of the best practices the agency is still sifting through from other states. DOR would be looking to hire additional staff (who would be reassigned to other responsibilities when the catch-up project is completed.)

To allow DOR to ramp up as it goes through the hiring process, staff from other units with prior knowledge of general audit procedures and/or detailed case work from other functions, would be temporarily reassigned to starting IFTA cases as soon as they can be trained on the IFTA audit process. The training for the temporary transfers will commence on October 21st and we expect they will begin contacting taxpayers within a few weeks.

ATTACHMENT 2



**INTERNATIONAL
FUEL TAX
ASSOCIATION, INC.**

Manages
The International Fuel Tax Agreement

912 W. Chandler Blvd., B-7
Chandler, AZ 85225-4910
480-839-4382 / 480-839-8821 FAX
www.iftach.org

**IN THE MATTER OF THE IFTA PROGRAM COMPLIANCE REVIEW
COMMITTEE AND THE JURISDICTION OF NEW JERSEY
BEFORE THE IFTA DISPUTE RESOLUTION COMMITTEE**

FINDINGS ON REFERRAL

BY A MAJORITY OF THE DISPUTE RESOLUTION COMMITTEE:

The IFTA Articles of Agreement provides that the IFTA Dispute Resolution Process may be used to resolve a compliance matter where the Program Compliance Review Process has been completed, and, a Final Determination Finding of Non-Compliance has been issued by the Program Compliance Review Committee for certain articles of the governing documents, and, the recommendation for an initiation of a dispute has been approved by the member jurisdictions (IFTA Articles of Agreement R1555.100.015). Per the IFTA Dispute Resolution Process, the IFTA Dispute Resolution Committee (DRC) has the authority to hear and issue a Finding and Order on a Referral for Enforcement of a Final Determination Finding of Non-Compliance (IFTA Dispute Resolution Process Section III).

All references to the IFTA Articles of Agreement, the IFTA Procedures Manual, and the IFTA Audit Manual are references to said documents in effect at the time of the subject Referral and of this Order.

Statement of the Case and Finding

The Jurisdiction of New Jersey (Respondent) was the subject of a Program Compliance Review for the period of January 1, 2005 through December 31, 2008. New Jersey was cited in that review for failing to comply with Sections A310 and A320 of the IFTA Audit Manual. The average (of completed audits) over the review period was 1.91%. IFTA requires an average of 3% for the subject review period. Additionally, the so-called audit stratification requirements (A320) were not met. New Jersey was placed on a "Follow-Up Plan" which failed to achieve compliance. Subsequent to the follow-up efforts, New Jersey was subjected to a "Reassessment Plan"; that plan also failed to achieve compliance. The IFTA Program Compliance Review Committee issued a Final Determination Finding of Non-Compliance (Finding) to the Jurisdiction of New Jersey. The Finding was presented to the IFTA membership to determine whether the issue should be referred to the Dispute Resolution Committee. The IFTA membership voted to refer the issue. As to the issue of non-compliance with Sections A310 and A320 of the International Fuel Tax Agreement by the Respondent, the IFTA Dispute Resolution Committee affirms and adopts the Final Determination Finding of Non-Compliance as

issued by the IFTA Program Compliance Review Committee. Therefore, the Respondent is found to be non-compliant with A310 and A320.

General Comments

The Program Compliance Enforcement Process section of the IFTA Dispute Resolution Process is used when a Final Determination Finding of Non-Compliance (for non-compliance with certain articles of the governing documents) is presented to the membership for possible referral to the Dispute Resolution Committee. It is important to recognize that this part of the process is implemented only after a lengthy pattern of non-compliance with certain critical articles of the governing documents has occurred. In this case, the Referral for Enforcement is based on an issue of non-compliance with Sections A310 (Number of Audits) and A320 (Selection of Audits). The Program Compliance Review Process provides for multiple opportunities for a jurisdiction to bring itself into compliance with IFTA. Initially, a jurisdiction has complete ownership of a "compliance plan". Simply put, a jurisdiction knows how many audits it must perform and what stratification requirements exist on an annual basis. A basic tenet of membership is to comply with the governing documents. Failure to do so will result in a citation during a program compliance review. From there, the Program Compliance Review Committee (PCRC) may require a Follow-Up plan to be implemented. If the subject jurisdiction complies with the follow-up plan, the issue is considered resolved. If the follow-up plan fails, the PCRC may recommend that a Reassessment Plan be established. If a Reassessment is issued, the subject jurisdiction has yet another opportunity to become compliant with the subject article(s). If the subject jurisdiction complies with the Reassessment Plan, the issue is considered resolved. Failure to become compliant while under Reassessment may result in the issuance of a Final Determination Finding of Non-Compliance (Finding). A Finding issued for certain articles of the governing documents per Article R1555.100.015) results in a referral to the IFTA membership for consideration to take the subject jurisdiction to dispute. Consideration by the membership takes the shape of a vote by the member jurisdictions and must result in an affirmative vote of at least two-thirds of the members casting a vote. Thus, the issuance of a Referral for Enforcement (Referral) only occurs after numerous attempts at bringing a jurisdiction into compliance have taken place and the membership at large has determined that the issue is worthy of examination and resolution by the Dispute Resolution Committee (DRC) pursuant to the Dispute Resolution Process (DRP). The timeline to get to the point of a Referral is rather lengthy and the steps involved in the process ensure that a subject jurisdiction is afforded every opportunity to become compliant with IFTA.

Member jurisdictions have agreed to abide by the governing documents. The Membership Charter of each member jurisdiction includes verbiage related to complying with the auditing requirements of IFTA and an assurance that sufficient staff and resources would be dedicated to the program to ensure compliance. Every jurisdiction agreed in writing to these (among other) conditions; there can be no mistake as to their intent or interpretation. Throughout this process, the Respondent has attributed its failure to comply to a variety of issues; most notably, its budget and the lack of resources available to comply with the cited sections of the Agreement. While the DRC can understand the restrictions a limited budget can create, all member jurisdictions are held

accountable for complying with the Articles of Agreement and all sections of the governing documents. The Respondent is no less responsible for complying with IFTA than any other member jurisdiction. Thus, the Respondent must be held accountable for its actions of non-compliance.

The record is clear as to the Respondent's pattern of non-compliance. This pattern goes back nearly eight (8) years. Perhaps most troubling is the evidence which shows that while under both Follow-Up and Reassessment the percentage of completed audits on an annual basis *decreased* from the numbers which prompted the citing in the first place (2005-2.22%, 2006-2.02%, 2007-1.88%, 2008-1.55%, 2009-1.70%, 2010-1.27%, 2011-.95%). Despite repeated opportunities to voluntarily comply, it was not until this became a matter for the DRC to address that the Respondent pursued any steps to become compliant with IFTA. Those steps have not yet demonstrated that the Respondent is either in compliance today or will be in the very near future.

The Respondent has asked for a rather lengthy path to compliance (by calendar year 2018). Respectfully, this is not an appropriate request. Member jurisdictions are held accountable for the auditing requirements based on the subject program compliance review period. The DRC cannot, in good faith, grant the Respondent an extension of time that no other jurisdiction has been afforded. The Respondent has also identified various intended procedures designed to effect compliance. The DRC does not believe it is within its purview to determine the propriety of utilizing various procedures; rather, the DRC has been charged with addressing the issue(s) of non-compliance and prescribing an order to result in compliance. Lastly, the Respondent specifically requested certain measures of relief. The DRC examined each request and has determined that the requested measures of relief shall be denied.

A Referral for Enforcement is vastly different than other types of issues brought before the DRC. The issues of non-compliance which would result in a Referral are those which are viewed as critical to the continued success of IFTA. The IFTA membership has identified such articles as being worthy of bringing a fellow member before the DRC. The membership does not enter into this decision lightly; primarily because the members understand that such referrals could result in the ultimate penalty being imposed upon a fellow member (a Resolution for Expulsion). This is why the path to the dispute process (as it relates to a Referral for Enforcement) is necessarily lengthy. This is also why jurisdictions are given numerous opportunities to become compliant with the governing documents. The potential expulsion of an IFTA member jurisdiction would result in what can only be described as "grave consequences" not only for the subject jurisdiction, but all other affected member jurisdictions and perhaps most important of all, the motor carrier industry. Nevertheless, the DRC is charged with resolving the Referral by enforcing compliance upon the subject jurisdiction. Failure to bring the subject jurisdiction into compliance could result in penalties being imposed; up to and including the issuance of a Resolution for Expulsion. The DRC takes this obligation very seriously and must be resolute in its defense of the governing documents even though it may result in a very difficult decision. Ultimately, it will be up to the IFTA membership to decide the fate of a fellow member if a Resolution for Expulsion is issued.

After careful consideration of the evidence presented by the IFTA Program Compliance Review Committee, the Protest of Referral, and the Amended Protest of Referral presented by the Respondent, the IFTA Dispute Resolution Committee hereby addresses the following issues and presents its Order as follows:

ISSUE #1: Program Compliance Review Period 2005-2008

General Discussion

The Respondent failed to comply with Sections A310 and A320 for the years 2005 through 2008 as cited in the Program Compliance Review conducted on December 9 and 10, 2009. The Respondent also failed to comply with both the Follow-Up and Reassessment Plans issued by the IFTA Program Compliance Review Committee. There has been discussion by both the Respondent and the DRC as to whether the audit count and stratification shortfall for the review period of 2005-2008 should be made up. This shortfall approaches 530 audits. The DRC conducted multiple discussions as to what, if anything, should be done about the non-compliance in the period of 2005 through 2008. It is important to note and recognize that until the passage of IFTA Full Track Ballot 1-2009, there was no instrument available to the PCRC to enforce a Final Determination Finding of Non-Compliance for a failure to comply with Sections A310 and A320. Prior to the implementation of Ballot 1-2009 (January 2010), only a member jurisdiction could bring a fellow member to dispute. The DRC examined multiple possibilities to address the issue of non-compliance in the years 2005 through 2008. In several different venues, the Respondent has urged the DRC to be "reasonable" and not "unduly burdensome". While the shortfall in 2005-2008 is substantial, we believe an Order which would include a requirement to make up the shortfall (for 2005-2008) would be unduly burdensome. The DRC concludes that the use of resources to makeup what is an admittedly significant shortfall (for 2005-2008) would be counterproductive; the DRC has sought a reasonable approach to dealing with the shortfall while bringing the Respondent into compliance with IFTA for the current and future periods. Accordingly, the DRC issues the following order as it relates to the years 2005-2008:

Order

In accordance with Section III.B.21 of the IFTA Dispute Resolution Process, the IFTA Dispute Resolution Committee hereby immediately removes New Jersey's right to participate in any voting process of the membership (Voting Power), rescinds any and all Board and Standing Committee seats held by individuals representing New Jersey, and orders that the membership dues paid by New Jersey for the fiscal year 2012-2013 shall be doubled. IFTA, Inc. shall bill New Jersey for the additional dues within fifteen (15) days of this Order. The additional dues shall be paid within thirty (30) days of receipt of the bill from IFTA, Inc. Membership dues shall remain doubled for each succeeding fiscal year until either the Respondent is in compliance or the dues are further increased. Failure to timely pay the bill for the additional dues may result in the issuance of a Resolution for Expulsion by the IFTA, Inc. Board of Trustees. Said penalties shall be stayed until the appeal period is exhausted in accordance with Section IV.6 of the IFTA Dispute Resolution Process. Upon compliance with the affected Articles and Sections of the Agreement, voting privileges and committee seats shall be restored and the

membership dues for the next fiscal year will reduce to the amount assessed all jurisdictions in good standing.

ISSUE #2: Calendar Years 2012 and 2013

General Discussion

The Respondent has presented statistics for the calendar year 2012 for audits completed through August 2012. These statistics do not result in a high level of confidence that compliance for 2012 will be achieved. Nevertheless, the Respondent has proposed that it will comply with the auditing requirements for 2012 by the end of calendar year 2012. The DRC concurs that this will be a significant and necessary step toward compliance. The DRC also believes that compliance for calendar year 2013 is imperative. The path to compliance must be complete, but it should not be an extended process. The Respondent, despite its belief, has not taken any significant steps toward compliance. Thus, the DRC must enforce compliance upon the Respondent by setting a clear and definitive plan to either achieve the goal of compliance or risk the implementation of penalties pursuant to Section IV of the DRP. Accordingly, the DRC issues the following Order as it relates to calendar years 2012 and 2013:

Order

In accordance with Section III.B.22 of the IFTA Dispute Resolution Process, the IFTA Dispute Resolution committee hereby orders New Jersey to be in compliance with Sections A310 and A320 of the IFTA Audit Manual for calendar year 2012 by December 31, 2012 and for calendar year 2013 by December 31, 2013. Failure to be in compliance with Sections A310 and A320 for calendar year 2012 by December 31, 2012 shall result in New Jersey's membership dues for fiscal year 2012-2013 being tripled. Failure to be in compliance with Sections A310 and A320 for calendar year 2013 by December 31, 2013 shall result in New Jersey's membership dues for fiscal year 2013-2014 being tripled. In the event that New Jersey is not compliant per this Order and membership dues are tripled, IFTA, Inc. shall bill New Jersey for the additional dues within fifteen (15) days of the implementation of said penalty; said penalty shall be implemented not later than ten (10) days after a Finding of Non-Compliance with the stated goal(s) has been determined. The additional dues shall be paid within thirty (30) days of receipt of the bill from IFTA, Inc. If the membership dues for any fiscal year are tripled, they shall remain tripled until the Respondent is in compliance. Failure to timely pay the bill for the additional dues may result in the issuance of a Resolution for Expulsion by the IFTA, Inc. Board of Trustees. Said penalties shall be stayed until the appeal period is exhausted in accordance with Section IV.6 of the IFTA Dispute Resolution Process. Upon compliance with the affected Articles and Sections of the Agreement, the membership dues for the next fiscal year will reduce to the amount assessed all jurisdictions in good standing.

ISSUE #3: Program Compliance Review Period 2009-2013

General Discussion

The Respondent will be subject to a five-year program compliance review for the period of January 1, 2009 through December 31, 2013. Said review is scheduled to take place during 2014 per the program compliance review regional rotation calendar. As a member jurisdiction in the Northeast Region, New Jersey is one of sixteen jurisdictions to be reviewed during 2014. The DRC believes this review is critical and must show that New Jersey is in compliance with both Sections A310 and A320. The DRC cannot endorse allowing a jurisdiction to be non-compliant for two consecutive review periods. The DRC further disagrees with New Jersey's proposal that any "shortfall" for the first three years of the review period (2009 through 2011) should be made up by the end of calendar year 2018. Permitting this type of timeline would be unfair to all other member jurisdictions; specifically those in the Northeast Region. All other member jurisdictions are expected to be in compliance at the time of the review for the review period being examined; the DRC cannot, in good faith, grant New Jersey an extension that no other jurisdiction has been or will be afforded. Accordingly, the DRC issues the following Order as it relates to program compliance review period of 2009 through 2013:

Order

In accordance with Section III.B.22 of the IFTA Dispute Resolution Process, the IFTA Dispute Resolution Committee hereby orders New Jersey to be in compliance with Sections A310 and A320 of the IFTA Audit Manual for the program compliance review period of January 1, 2009 through December 31, 2013 by December 31, 2013. Failure to be in compliance with Sections A310 and A320 for the program compliance review period of January 1, 2009 through December 31, 2013 by December 31, 2013 shall result in the issuance of a Resolution for Expulsion by the IFTA, Inc. Board of Trustees to the IFTA membership for consideration in accordance with Article R1555.400 of the International Fuel Tax Agreement. If a Finding of Non-Compliance is issued, said penalty shall be implemented not later than ten (10) days after the Finding of Non-Compliance is issued. Said penalty shall be stayed until the appeal period is exhausted in accordance with Section IV.6 of the IFTA Dispute Resolution Process.

Additional Order

In accordance with Article R1510.200 and Section P1210 of the Agreement, the Respondent shall, in addition to the reporting requirements, immediate penalties levied, and compliance requirements stated in this Order, be subject to a Program Compliance Review for the period of January 1, 2009 through December 31, 2013. Said review shall take place on site in Trenton, New Jersey at date in early 2014 determined by the IFTA Program Compliance Administrator. Said review shall be conducted not earlier than January 2, 2014, but not later than February 28, 2014. Said review shall include, as observers, the Chairs of the IFTA Program Compliance Review Committee and the IFTA Dispute Resolution Committee.

ISSUE #4: Reporting Requirements

General Discussion

The Respondent has known about this issue of non-compliance for a significant number of years. To effect a timely and complete return to compliance by the Respondent, the DRC must monitor such progress. The DRC will monitor the progress toward compliance for calendar years 2012 and 2013. Monitoring shall take the shape of periodic reporting to the DRC. Accordingly, the DRC issues the following Order as it relates to the reporting requirements for calendar years 2012 and 2013:

Order

In accordance with Section III.B.22 of the IFTA Dispute Resolution Process, the IFTA Dispute Resolution Committee hereby orders New Jersey to submit a report containing all audits completed by calendar quarter for calendar years 2012 and 2013. For calendar quarters in calendar year 2012 already completed, the report shall be due within fifteen (15) days of the issuance of this Order. The reports shall reconcile with the data to be submitted by the Respondent in the IFTA Annual Report for calendar years 2012 and 2013. The report is due within fifteen (15) days after the close of the calendar quarter for which the report is due. Each report shall contain at least the following: Licensee Name, IFTA ID Number, Stratification Category (High, Low, Medium), the Audit Result, the Audit Completion Date, and the IFTA Transmittal said audit has been posted to. The aforementioned reports shall be submitted to the Executive Director of IFTA, Inc. by the due date stated. The first such failure to meet any reporting requirement or deadline will result in an immediate tripling of the Respondent's membership dues for the current fiscal year. Any subsequent failure to meet any reporting requirement or deadline may result in the issuance of a Resolution for Expulsion by the IFTA, Inc. Board of Trustees in accordance with Article R1555.400 of the International Fuel Tax Agreement in addition to the current fiscal year's membership dues being tripled. In the event that New Jersey is not compliant per this Order and membership dues are tripled, IFTA, Inc. shall bill New Jersey for the additional dues within fifteen (15) days of the implementation of said penalty; said penalty shall be implemented not later than ten (10) days after a Finding of Non-Compliance with the stated goal(s) has been determined. The additional dues shall be paid within thirty (30) days of receipt of the bill from IFTA, Inc. If the membership dues are tripled for any fiscal year for failure to comply with the Reporting Requirements of this Order, they shall remain tripled until the Respondent is in compliance. Failure to timely pay the bill for the additional dues may result in the issuance of a Resolution for Expulsion by the IFTA, Inc. Board of Trustees. In the event the Respondent fails to comply with the Reporting Requirements of this Order and the membership dues for a fiscal year have already been tripled for failure to comply with other requirements of this Order by stated dates certain, the membership dues shall remain tripled and a Resolution for Expulsion may be issued by the IFTA, Inc. Board of Trustees. Said penalties shall be stayed until the appeal period is exhausted in accordance with Section IV.6 of the IFTA Dispute Resolution Process. Upon compliance

with the Reporting Requirements of this Order, the membership dues for the next fiscal year will reduce to the amount assessed all jurisdictions in good standing.

ISSUED THIS 22nd DAY OF OCTOBER, 2012

FOR THE MAJORITY:

SEE ATTACHED SIGNATURE PAGES

Rick LaRose
Chair

Gary Frohlick
Vice-Chair

Rodney Richard

Mark Byrne

Marc Levasseur

Bernie Meagher

Gregg DalPonte

Rick Taylor

Scott Bryer

Doug Miller

Cindy Arnold

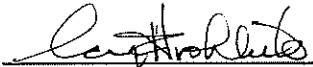
with the Reporting Requirements of this Order, the membership dues for the next fiscal year will reduce to the amount assessed all jurisdictions in good standing.

ISSUED THIS 22nd DAY OF OCTOBER, 2012

FOR THE MAJORITY:



Rick LaRose
Chair



Gary Frohlick
Vice-Chair

Rodney Richard

Mark Byrne

Marc Levasseur

Bernie Meagher

Gregg DalPonte

Rick Taylor

Scott Bryer

Doug Miller

Cindy Arnold

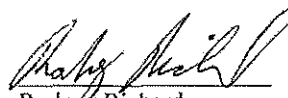
with the Reporting Requirements of this Order, the membership dues for the next fiscal year will reduce to the amount assessed all jurisdictions in good standing.

ISSUED THIS 22nd DAY OF OCTOBER, 2012

FOR THE MAJORITY:

Rick LaRose
Chair

Gary Frohlick
Vice-Chair



Rodney Richard

Mark Byrne

Marc Levasseur

Bernie Meagher

Gregg DalPonte

Rick Taylor

Scott Bryer

Doug Miller

Cindy Arnold

with the Reporting Requirements of this Order, the membership dues for the next fiscal year will reduce to the amount assessed all jurisdictions in good standing.

ISSUED THIS 22nd DAY OF OCTOBER, 2012

FOR THE MAJORITY:

Rick LaRose
Chair

Gary Frohlick
Vice-Chair

Rodney Richard

Mark Byrne

Mark Byrne

Marc Levasseur

Bernie Meagher

Gregg DalPonte

Rick Taylor

Scott Bryer

Doug Miller

Cindy Arnold

with the Reporting Requirements of this Order, the membership dues for the next fiscal year will reduce to the amount assessed all jurisdictions in good standing.

ISSUED THIS 22nd DAY OF OCTOBER, 2012

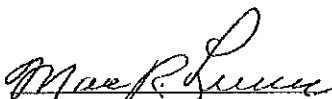
FOR THE MAJORITY:

Rick LaRose
Chair

Gary Frohlick
Vice-Chair

Rodney Richard

Mark Byrne


Marc Levasseur

Bernie Meagher

Gregg DalPonte

Rick Taylor

Scott Bryer

Doug Miller

Cindy Arnold

with the Reporting Requirements of this Order, the membership dues for the next fiscal year will reduce to the amount assessed all jurisdictions in good standing.

ISSUED THIS 22nd DAY OF OCTOBER, 2012

FOR THE MAJORITY:

Rick LaRose
Chair

Gary Frohlick
Vice-Chair

Rodney Richard

Mark Byrne

Marc Levasseur



Bernie Meagher

Gregg DalPonte

Rick Taylor

Scott Bryer

Doug Miller

Cindy Arnold

with the Reporting Requirements of this Order, the membership dues for the next fiscal year will reduce to the amount assessed all jurisdictions in good standing.

ISSUED THIS 22nd DAY OF OCTOBER, 2012

FOR THE MAJORITY:

Rick LaRose
Chair

Gary Frohlick
Vice-Chair

Rodney Richard

Mark Byrne

Marc Levasseur

Bernie Meagher



Gregg DalPonte

Rick Taylor

Scott Bryer

Doug Miller

Cindy Arnold

with the Reporting Requirements of this Order, the membership dues for the next fiscal year will reduce to the amount assessed all jurisdictions in good standing.

ISSUED THIS 22nd DAY OF OCTOBER, 2012

FOR THE MAJORITY:

Rick LaRose
Chair

Gary Frohlick
Vice-Chair

Rodney Richard

Mark Byrne

Marc Levasseur

Bernie Meagher

Gregg DalPonte


Rick Taylor

Scott Bryer

Doug Miller

Cindy Arnold

with the Reporting Requirements of this Order, the membership dues for the next fiscal year will reduce to the amount assessed all jurisdictions in good standing.

ISSUED THIS 22nd DAY OF OCTOBER, 2012

FOR THE MAJORITY:

Rick LaRose
Chair

Gary Frohlick
Vice-Chair

Rodney Richard

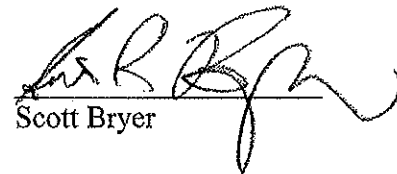
Mark Byrne

Marc Levasseur

Bernie Meagher

Gregg DalPonte

Rick Taylor



Scott Bryer

Doug Miller

Cindy Arnold

with the Reporting Requirements of this Order, the membership dues for the next fiscal year will reduce to the amount assessed all jurisdictions in good standing.

ISSUED THIS 22nd DAY OF OCTOBER, 2012

FOR THE MAJORITY:

Rick LaRose
Chair

Gary Frohlick
Vice-Chair

Rodney Richard

Mark Byrne


Marc Levasseur

Bernie Meagher

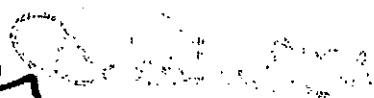
Gregg DalPonte

Rick Taylor

Scott Bryer



Doug Miller



Cindy Arnold

with the Reporting Requirements of this Order, the membership dues for the next fiscal year will reduce to the amount assessed all jurisdictions in good standing.

ISSUED THIS 22nd DAY OF OCTOBER, 2012

FOR THE MAJORITY:

Rick LaRose
Chair

Gary Frohlick
Vice-Chair

Rodney Richard

Mark Byrne

Marc Levasseur


Bernie Meagher

Gregg DalPonte

Rick Taylor

Scott Bryer

Doug Miller



Cindy Arnold