CADRS Dispute Resolution:
Learn About the Negotiation Process
CADRS

• **Independent**
  - CADRS reports to the Chairman to avoid conflict with other agency programs (e.g. licensing, enforcement, etc.)

• **Neutral**
  - CADRS staff do not advocate for any particular party in a dispute
  - CADRS staff are advocates for a fair process

• **Confidential**
  - CADRS staff will not share confidential information provided by parties with others within the Commission or disclose information to the public
  - CADRS staff may publish general statistical data that does not identify parties or other identifying information
Role of CADRS Mediators/Ombuds

• Bring parties to the table
• Ensure that parties are heard
• Educate parties about the negotiation process
• Facilitate communication and the negotiation process
Ombuds and Mediators Do NOT:

- Compel party participation
- Advocate for either party
- Disclose confidential information without parties’ consent
- Adjudicate disputes or order parties to take particular action
Role of Parties

• Consent to good faith use of Ombuds/Mediation
• Advance personal and mutual interests through negotiation process
• Leave, modify, or postpone negotiation process as desired
• Make and enter into binding settlement agreements
Requirements for Successful Settlement

Procedural
Emotional

Substantive
Negotiation Process for Parties

1. Identify Initial Positions for All Parties
2. Determine Parties Needs/Interests for All Parties
3. Identify Potential Resources for Settlement
4. Explore Negotiated Options for Settlement
5. Identify Objective Standards to Evaluate Settlement Options
Step 1: Identify Positions

• Position is what party is demanding to resolve the negotiation

• Example: Positions for Parties A & B:
  ➢ Party A demands $100 to resolve a dispute
  ➢ Party B refuses to pay $100

• Positions are the result of underlying needs or interests
Step 2: Identify Interests

• Party Positions are derived from underlying needs or interests
• Party interests are derived from procedural, emotional, substantive needs
• All three components necessary for successful resolution
  ➢ Procedural: Fair process (e.g. equal air-time)
  ➢ Emotional: Need for respect (e.g. listening, use of apology, etc.)
  ➢ Substantive: Commercial, economic, or other concerns
Steps 2: Identify Underlying Interest

Shipper Position

• Customer refuses to pay a revised invoice that has additional charges

Shipper Interest

• Procedural:
  • Need for Fair Objective Process/Business Dealings

• Emotional:
  • Need to be Heard
  • Saving Face
  • Relationships with others (e.g. nosiness partners, personal/familial)
  • Negative Past Dealings? (*Perceptions are key)

• Substantive:
  • Economic Interest (Low Price)
  • Interest in Shipping and Receiving Goods
  • Completing business transaction involving other third parties
Steps 2: Identify Underlying Interest

Carrier Position
• Cargo will not be released until invoice paid in full

Carrier Interest
• Procedural:
  • Need for Fair/Objective Process/Dealings
  • Multiple Customers= Desire for Consistency
• Emotional:
  • Need to be Heard
  • Recognition of Work Done
  • Reputation
• Substantive:
  • Prevent other shipments from being impacted (if LCL)
  • Ensuring cargo moves within free time
  • Economic/Commercial Interests: Receive and make payment to others in chain
Step 3: Explore Available Resources

- Parties identify personal, mutual, and third party resources to help satisfy underlying interests and needs
- Examples of resources include:
  - Rate
  - Time
  - Volume
  - Independent Opinion (e.g. shipment volume audit)
  - Confidentiality/Publicity
  - Opportunity/Future Business
  - Sharing
  - Legal Release (i.e. agree not to sue/terminate suit)
  - Apology
Step 4: Explore Settlement Options

- Compare Interests/Needs and Resources
- Prioritize Interests/Needs
- Identify Creative Options to Satisfy Interests/Needs
- Prioritize Interests/Needs
- Trade Lesser Priority Interests/Needs for Higher Interests/Needs
Step 5: Apply Objective Criteria

• Parties measure or evaluate settlement proposals using objective criteria to ensure fair proposals and options

• Some examples of objective criteria include:
  ➢ Industry Custom
  ➢ Trade Association Guidelines or Best Practices
  ➢ FMC or other government Regulations or Best Practices
  ➢ Tariff, Service Contract, NRA, NSA Terms (if interpretation not in dispute)
  ➢ Fair Market Value
  ➢ Equal Treatment
  ➢ Third Party Audit (e.g. Volume Disputes)
Step 5: Evaluating Settlement Options

- Does the proposed option satisfy each parties’ interests?
- Is the proposed option measurable by an objective standard?
- Does the option require outside parties or resources needed to perform?
- Is additional authority required to exercise the proposed option?
- Are the parties clear re: roles and responsibility?
Obtaining Assistance

Office of Consumer Affairs & Dispute Resolution Services
Email: complaints@fmc.gov
Phone: (866) 448-9586 (toll free)
       (202) 523-5807
Fax: (202) 275-0059