

§ 33.1-386. Submission of claims; initial investigation and notice of decision; appearance before Commissioner; further investigation and notice of decision; settlement.

A. Upon the completion of any contract for the construction of any state highway project awarded by the Commonwealth Transportation Board or by the Commonwealth Transportation Commissioner to any contractor, if the contractor fails to receive such settlement as he claims to be entitled to under the contract for himself or for his subcontractors or for persons furnishing materials for the contract for costs and expenses caused by the acts or omissions of the Department of Transportation, he may, within sixty days after the final estimate date, deliver to the Department of Transportation, through proper administrative channels as determined by the Department, a written claim for such amount to which he deems himself, his subcontractors, or his material persons entitled under the contract. The final estimate date shall be set forth in a letter from the Department to the contractor sent by certified mail. The claim shall set forth the facts upon which the claim is based, provided that written notice of the contractor's intention to file such claim shall have been given to the Department at the time of the occurrence or beginning of the work upon which the claim and subsequent action is based. Within ninety days from receipt of such claim, the Department shall make an investigation and notify the claimant in writing by certified mail of its decision. The claimant and the Department may, however, mutually extend such ninety-day period for another thirty days.

B. If dissatisfied with the decision, the claimant shall, within thirty days from receipt of the Department's decision, notify the Commonwealth Transportation Commissioner, in writing, that he desires to appear before him, either in person or through counsel, and present any additional facts and arguments in support of his claim as previously filed.

C. The Commissioner shall schedule such appearance to be held within thirty days of receiving the claimant's written request. The claimant and the Commissioner may, however, mutually agree to schedule such appearance to be held after thirty days but before sixty days from the receipt of the claimant's written request.

D. Within forty-five days from the date of the appearance before him, the Commissioner shall make an investigation of the claim and notify the contractor in writing of his decision. The claimant and the Commissioner may, however, mutually agree to extend such forty-five-day period for another thirty days. If the Commissioner deems that all or any portion of a claim is valid, he shall have the authority to negotiate a settlement with the contractor, but any such settlement shall be subject to the provisions of § [2.2-514](#).

E. Failure of the Department or the Commissioner to render a decision within the time period specified in subsections A and D, or within such other period as has been mutually agreed upon as provided in this section, shall be deemed a denial of the claim. Any mutual agreements for time extension permitted herein shall in no way extend the limitations set out in § [33.1-192.1](#).

If the Commissioner determines that a claim has been denied as the result of an administrative oversight, then the Department reserves the right to reconsider the claim.

(1976, c. 230; 1982, c. 320; 1991, c. 691; 1994, c. [67](#); 2001, c. [175](#); 2007, c. [162](#).)