

290-RICR-30-00-5

TITLE 290 - DEPARTMENT OF TRANSPORTATION

CHAPTER 30 - BUSINESS, PROPERTY OWNERS, AND THE PUBLIC

SUBCHAPTER 00 - N/A

PART 5 - Practice and Procedure Relative to Contesting Unjust Administrative Actions Against Individuals and Small Businesses

5.1 Authority

The Part herein contained are promulgated pursuant to R.I. Gen. Laws § 42-92-4.

5.2 Purpose

To describe the process for individuals and small businesses to seek be reimbursed for a successful contestation against RIDOT administrative actions that they believe to be unfair or unjust.

5.3 Definitions

- A. For the purposes of this Part, the following terms shall have the following meaning:
1. "Adjudicative officer" means the presiding officer or deciding official who presides at the adversary adjudication.
 2. "Adjudicatory proceeding" means any proceeding conducted by or on behalf of the Department, whether administratively or quasi-judicially, which may result in the loss of benefits, the imposition of a fine, the denial, suspension or revocation of a license, or permit, or which may result in the compulsion or restrictions of the activities of a party.
 3. "Department" means the Department of Transportation, including any board, commission, or officer of the Department authorized by law to make rules or to determine contested cases; to bring any action at law or in equity.
 4. "Party" means any individual whose net worth is less than five hundred thousand dollars (\$500,000) at the time the Adjudicatory proceeding was first initiated; and, any individual, partnership, corporation, association, or

private organization doing business and located in the state, which is independently owned and operated, not dominant in its field, and which employ one hundred (100) or fewer persons at the time the Adjudicatory proceeding was initiated.

5. "Reasonable Litigation Expenses" means those expenses which were reasonably incurred by a party in Adjudicatory proceedings, including but not limited to, attorney's fees, witness fees of all necessary witnesses, and other such costs and expenses as were reasonably incurred, except that:
 - a. The award of attorney's fees may not exceed one hundred fifty dollars (\$150.00) per hour;
 - b. No expert witness may be compensated at a rate in excess of the highest rate or compensation for experts paid by this state; and
6. "Substantially Justified" means that the initial position of the Department, as well as the Department's position in the proceeding, has a reasonable basis in law and fact.

5.4 Procedures Governing Applications for Awards of Litigation Expense

- A. Any eligible party who intends to file a claim for an award of reasonable litigation expenses if it prevails, shall notify the director of the Department conducting the Adjudicatory proceeding by certified mail, within thirty (30) days after the date the proceeding is concluded.
- B. All claims for an award of reasonable litigation expenses shall be made on an application form to be supplied by the Department rendering the decision or order, and shall be filed with the Department within thirty (30) days of the conclusion of the Adjudicatory proceeding which gives rise to the right to recover such an award. The proceeding shall be deemed to be concluded when the agency or Adjudicative officer renders a ruling or decision.
 1. Eligible parties must provide:
 - a. Their name;
 - b. Address;
 - c. Name and address of their attorney;
 - d. Summary of their claim (legal basis for claim);

- e. List of witnesses applicant expects to call to substantiate claim;
 - f. List in detail litigation expenses incurred by applicant in the Adjudicatory proceedings and attached all relevant bills, invoices, affidavits and other documents necessary to substantiate application; and
 - g. Notarized signature.
- C. The Adjudicative officer may, in his or her discretion, permit a party to file a claim out of time upon a showing of proof and finding by such administrative officer that good and sufficient cause exists for allowing a claim to be so filed, and that such action will not substantially impede the adjudication of substantive issues.
- D. All claims filed pursuant to this Part shall conform to the general filing requirements of the Department and shall contain:
 - 1. A summary of the legal and factual basis for filing the claim;
 - 2. A list of witnesses, if any, that the claimant expects to be called to substantiate the claim if a separate hearing on said claim is conducted by the Department;
 - 3. A detailed breakdown of the reasonable litigation expenses incurred by the party in the Adjudicatory proceeding, including copies of invoices, bills, affidavits, or other documents all of which may be supplemented or modified at any time prior to the issuance of a final decision on the claim by the Adjudicative officer;
 - 4. A notarized statement swearing to the accuracy and truthfulness of the statements and information contained in the claim, and/or filed in support thereof.

5.5 Allowance of Awards

- A. Whenever a party which has provided the Department with timely notice of the intention to seek an award of litigation expenses as provided in these rules, prevails in contesting an agency action, and the Adjudicative officer finds that the Department was not Substantially justified in:
 - 1. The actions leading to the proceedings; and
 - 2. In the proceeding itself: an award shall be made of reasonable litigation expenses

- B. The decision of the Adjudicative officer to make an award shall be made a part of the record, shall include written findings and conclusions with respect to the award, and shall be sent to the claimant, unless the same is represented by an attorney, in which case the decision shall be sent to the attorney of record.
 - 1. No other agency official may review the award.
- C. Fees and other expenses awarded, shall be paid by the agency from any sums available to the agency.

5.6 Disallowance of Awards

- A. No award of fees or expenses may be made if the Adjudicative officer finds that the agency was Substantially justified in the actions leading to the proceeding and in the proceeding itself.
- B. The adjudicative officer may, at his or her discretion, deny fees or expenses if special circumstances made an award unjust.
- C. Notice of the decision disallowing an application for an award of fees and expenses shall be sent to the party by the agency via regular mail, provided however, that if the party is represented by an attorney said notice shall be sent by regular mail to the attorney of record.

5.7 Appeals

Any party aggrieved by the decision to award reasonable litigation expenses may bring an appeal to the court having jurisdiction to review the merits of the underlying decision of the agency adversary adjudication in the manner provided by the Administrative Procedures Act, R.I. Gen. Laws § 42-35-15.

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