TABLE 2.10–101.—ANNUAL VESSEL INSPECTION FEES FOR U.S. AND FOREIGN VESSELS REQUIRING CERTIFICATE OF INSPECTION—Continued

Less than 100 gross tons and:	
Less than 65 feet in length	300
65 feet or more in length	600
100 gross tons or more and:	
Certified for fewer than 150 passengers	2,215
Certified for 150 or more passengers	2,525
* * * * * * *	
Small Passenger Vessels:	
Less than 65 feet in length	300
65 feet or more in length	600
* * * * * * *	

Dated: March 21, 1997.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–10231 Filed 4–18–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 6

[Docket No. OST–96–1421]

RIN 2105–AB73

Implementation of Equal Access to Justice Act in Agency Proceedings

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation is updating its regulation concerning the Equal Access to Justice Act to reflect current statutory requirements. The change is made on the Department's initiative in response to the President's Regulatory Reinvention Initiative.

DATES: This rule is effective May 21, 1997.

FOR FURTHER INFORMATION CONTACT: Alexander J. Millard, Office of the General Counsel, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4102, Washington, DC 20590, telephone (202) 366–9285, or S. Reid Alsop, Office of the Chief Counsel, Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4230, Washington, DC 20590, telephone (202) 366–1371.

SUPPLEMENTARY INFORMATION: On June 6, 1996, the Department published a notice of proposed rulemaking (NPRM) in the **Federal Register** (at 61 FR 28831) proposing to update its regulation (49 CFR part 6) providing for the award of attorney fees and other expenses under the Equal Access to Justice Act to eligible individuals and entities who are parties to certain administrative proceedings before the Department and its various operating administrations. No comments were filed in response to this NPRM. The Department is, therefore, adopting the proposal with only minor editorial corrections in § 6.5.

Regulatory Analyses and Notices

This final rule is considered to be a non-significant rulemaking under DOT's regulatory policies and procedures, 44 FR 11034. The final rule was not subject to review by the Office of Information and Regulatory Affairs pursuant to Executive Order 12866.

The impact of this rule is so minimal that no further regulatory evaluation has been prepared. Indeed, the changes that are being made merely track various statutory changes that have been enacted since the Department's adoption of its original final rule in 1983.

The final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. I certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule is merely updating the regulation to reflect current statutory requirements. Finally, the rule will not result in any unfunded mandate to state, local or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

List of Subjects in 49 CFR Part 6

Claims, Equal access to justice, Transportation Department.

For the reasons discussed in the preamble, 49 CFR part 6 is hereby amended to read as follows:

PART 6—IMPLEMENTATION OF EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

1. The authority citation for part 6 is revised to read as follows:

Authority: 5 U.S.C. 504; 28 U.S.C. 2412.

§ 6.1 [Amended]

2. Section 6.1 is amended by removing the second sentence.

3. Section 6.3 is revised to read as follows:

§ 6.3 Applicability.

Section 6.9(a) applies to any adversary adjudication pending before the Department on or after October 1, 1981. In addition, applicants for awards must also meet the standards of § 6.9(b) for any adversary adjudication commenced on or after March 29, 1996.

4. In § 6.5, paragraph (a) is revised to read as follows:

§ 6.5 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Department of Transportation. These are adjudications under 5 U.S.C. 554 in which the position of the Department is represented by an attorney or other representative who enters an appearance and participates in the proceeding. Coverage of the Act begins at designation of a proceeding or issuance of a charge sheet. Any proceeding in which the Department may prescribe or establish a lawful present or future rate is not covered by the Act. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise ''adversary adjudications.'' For the Department of Transportation, the types of proceedings covered include, but may not be limited to: Coast Guard suspension or revocation of licenses, certificates or documents under 46 U.S.C. 7701 et seq.; Coast Guard class II civil penalty proceedings

under the Clean Water Act, 33 U.S.C. 1321(b)(6)(B)(ii); Coast Guard class II penalty proceedings under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9609(b); suspension and revocation of Certificates of Registry proceedings for Great Lakes Pilots pursuant to 46 CFR Part 401; National Highway Traffic Safety Administration (NHTSA) automotive fuel economy enforcement under 49 U.S.C. Chapter 329 (49 CFR Part 511); Federal Highway Administration (FHWA) enforcement of motor carrier safety regulations under 49 U.S.C. 521 and 5123 (49 CFR 386); the Department's aviation economic enforcement proceedings conducted by its Office of Aviation Enforcement and Proceedings pursuant to 49 U.S.C. Subtitle VII, 14 CFR Chapter II. Also covered are any appeal of a decision made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before an agency board of contract appeals as provided in section 8 of that Act (41 U.S.C. 607), any hearing conducted under Chapter 38 of title 31, and the Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb et seq.

* * * * *

5. In § 6.7, paragraph (a) is amended by removing the citation ''5 U.S.C. 551(3)'' and adding the citation ''5 U.S.C. 504(b)(1)(B)''; paragraph (b)(1) is amended by removing the words ''1 million'' and adding the words ''2 million''; paragraphs (b)(2) and (b)(5) are amended by removing the words ''5 million'' and adding the words ''7 million''; and paragraph (b)(6) is added to read as follows:

§ 6.7 Eligibility of applications.

* * * * *

(b)(6) For the purposes of § 6.9(b), eligible applicants include small entities as defined in 5 U.S.C. 601.

* * * * *

6. In § 6.9, paragraphs (a) and (b) are revised and paragraphs (c) and (d) are added to read as follows:

§ 6.9 Standards for awards.

(a) An eligible applicant may receive an award for fees and expenses incurred by that party in connection with a decision in favor of the applicant in a proceeding covered by this Part, unless the position of the Department over which the applicant has prevailed was substantially justified or special circumstances make the award sought unjust. The burden of proof that an award should not be made to an eligible applicant is on the Department where it has initiated the proceeding. No presumption arises that the Department's position was not substantially justified simply because the Department did not prevail. Whether or not the position of the Department was substantially justified shall be determined on the basis of the administrative record, as a whole, in the adversary adjudication for which fees and other expenses are sought. The ''position of the Department'' means, in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the Department upon which the adversary adjudication may be based.

(b) In the context of a Departmental proceeding to enforce a party's compliance with a statutory or regulatory requirement, if the demand by the Department is substantially in excess of the amount awarded to the government pursuant to the decision of the adjudicative officer and is unreasonable when compared with such decision, under the facts and circumstances of the case, the adjudicative officer shall award to an eligible applicant party the fees and expenses related to defending against the excessive demand, unless the applicant party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this paragraph shall be paid only as a consequence of appropriations provided in advance. As used in this section, ''demand'' means the express demand of the Department which led to the adversary adjudication, but does not include a recitation by the Department of the maximum statutory penalty (I) in the administrative complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.

(c) The decision of the Department on the application for fees and other expenses shall be the final administrative decision under this section.

(d) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding.

§ 6.11 [Amended]

7. In § 6.11, paragraph (b) is amended by removing the figure ''$75.00'' and adding the figure ''$125.00''.

§ 6.25 [Amended]

8. In § 6.25, paragraph (c) is amended by removing the words ''an identify'' and adding words ''and identify''.

Issued this 24th day of March 1997 at Washington, DC.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 97–10192 Filed 4–18–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[FRA Docket No. RSOR 13, Notice No. 10]

RIN 2130–AA86

Roadway Worker Protection

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: On December 16, 1996, FRA published its Final Rule on Roadway Worker Protection (61 FR 65959), which was the product of the agency's first regulatory negotiation. This rule promulgates standards to protect roadway workers while working on or near railroad tracks. In this document, FRA responds to concerns raised by two parties in petitions for reconsideration of the final rule.

EFFECTIVE DATE: January 15, 1997.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, P.E., Bridge Engineer, Office of Safety, FRA, 400 Seventh Street S.W., Room 8326, Washington, D.C. 20590 (telephone: 202–632–3340); Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 400 Seventh Street S.W., Washington, D.C. 20590 (telephone: 202–632–3309); or Cynthia Walters, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street S.W., Room 8201, Washington, D.C. 20590 (telephone 202–632–3188).

SUPPLEMENTARY INFORMATION: On December 16, 1996, FRA published its final rule on Roadway Worker Protection which established standards for the protection of roadway workers who are working on or about railroad track. This rule represents the efforts of an Advisory Committee chartered to conduct FRA's first negotiated rulemaking. On January 6, 1997, the Association of American Railroads filed a petition for reconsideration of the final rule. The AAR's petition specifically alleges:

- Section 214.337 of the final rule imposes significant additional costs on the railroad industry without commensurate safety gains;
- The Advisory Committee did not participate in the economic evaluation of the final rule; and
- FRA has failed to provide a reasoned response to a significant concern raised on the record by AAR and its members.