4. In § 871.102, paragraph (b) is amended by removing ''$5,000'' and adding in its place ''$25,000'' and by removing ''Chief Benefits Director'' and adding in its place ''Under Secretary for Benefits''.

5. In § 871.102, in paragraph (c) the second sentence is amended by removing ''Chief Benefits Director'' and adding in its place ''Under Secretary for Benefits''.

6. In § 871.102, paragraph (d) is amended by removing ''$200'' and adding in its place ''$500''.

7. In § 871.102, in paragraph (e) the first sentence is amended by removing ''listed with him/her'' and adding in its place ''assigned''; the second sentence is amended by removing ''$200'' and adding in its place ''$500'' and by removing ''his/her'' and adding in its place ''the''; and the third sentence is amended by removing ''$200'' and adding in its place ''$500''.

871.103 [Removed]

8. Section 871.103 is removed.

871.105 [Removed]

9. Section 871.105 is removed.

871.106 [Amended]

10. In § 871.106, in paragraph (b) the second sentence is amended by removing ''or material men'' and is amended by removing ''his/her'' and adding in its place ''the subcontractor's''.

Subpart 871.2—Vocational Rehabilitation and Counseling Program

11. Section 871.200 is revised to read as follows:

871.200 Scope of subpart.

This subpart establishes policy and procedures for the vocational rehabilitation and counseling program as it pertains to contracts for training and rehabilitation services, approval of institutions (including rehabilitation facilities), training establishments, and employers under 38 U.S.C. Chapter 31, and contracts for counseling services under 38 U.S.C. Chapters 30, 31, 32, 35, and 36 and 10 U.S.C. Chapters 106, 107, and 1606.

(Authority: 10 U.S.C. ch. 106, 107, 1606; 38 U.S.C. 501, ch. 30, 31, 32, 35, 36; 40 U.S.C. 486(c))

871.201–3 [Amended]

12. Section 871.201–3 is amended by removing ''Veterans Health Services and Research Administration'' and adding in its place ''Veterans Health Administration''.

871.207 [Amended]

13. In § 871.207, paragraph (b)(2) is amended by removing ''Veterans Administration'' and adding in its place ''Department of Veterans Affairs''.

[FR Doc. 96–11277 Filed 5–6–96; 8:45 am]
BILLING CODE 8320–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 228

Decision of the United States Supreme Court Concerning an Agency Interpretation of the Federal Hours of Service Laws; Change in Agency Interpretation; Enforcement Policy Regarding Violations of Laws as Previously Interpreted

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

ACTION: Statement of agency policy and interpretation.

SUMMARY: Notice is hereby given that, in accordance with the decision of the United States Supreme Court in *Brotherhood of Locomotive Engineers* v. *Atchison, Topeka and Santa Fe R.R.*, all time spent awaiting the arrival of a deadhead vehicle for transportation to the point of final release, when no additional services are required of railroad carrier employees, shall be treated by FRA as time neither on nor off duty for purposes of the Federal hours of service laws (''HSL''), throughout the entire nation. FRA is amending its current interpretive statement to reflect this Supreme Court decision.

EFFECTIVE DATE: January 8, 1996.

FOR FURTHER INFORMATION CONTACT: Edward R. English, Director, Office of Safety Assurance and Compliance, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: 202–366–9252); or David H. Kasminoff, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: 202–366–0628).

SUPPLEMENTARY INFORMATION:

Public Participation

In this notice FRA is announcing that it has changed its interpretation of the HSL (49 U.S.C. 20102, 21101–21108, 21303, and 21304), consistent with a unanimous decision of the United States Supreme Court, concerning the treatment of time spent awaiting the arrival of deadhead transportation to the point of final release. Notice and comment procedures are unnecessary with regard to the general statement of policy and interpretation issued by this notice because such a statement is excepted from notice and comment procedure by virtue of 5 U.S.C. 553(b)(3)(A). Statements of policy are also an exception to the general requirement of publication at least 30 days prior to the effective date. *See* 5 U.S.C. 553(d)(2).

Effect of this Notice

On January 8, 1996, the United States Supreme Court issued its decision in the case of *Brotherhood of Locomotive Engineers* v. *Atchison, Topeka and Santa Fe R.R.*,____ U.S. ____, 116 S.Ct. 595, affirming the decision of the United States Court of Appeals for the Seventh Circuit in the case of *Atchison, Topeka, and Santa Fe Railway Co.* v. *Peñ*a, 44 F.3d 437 (1994). Both cases concern FRA's interpretation of the HSL as they pertain to the status of train crewmembers waiting for the arrival of deadhead transportation to their point of final release. The Supreme Court unanimously held that such time, when no additional services are required of railroad carrier employees, should be classified as limbo time (*i.e.*, neither on- nor off-duty time) for HSL purposes.

The Supreme Court's holding coincided with the position that FRA had traditionally taken until the agency changed its interpretation of the HSL in late 1992. Prior to that change, FRA had considered an employee to be on duty during the time spent waiting for the arrival of deadhead transportation to the employee's point of final release *only* if the employee actually had duties to perform. If the railroad carrier had relieved the employee of all responsibility, FRA had considered such time spent merely waiting for the deadhead vehicle to arrive as limbo time.

However, on September 22, 1992, in response to lawsuits filed by the United Transportation Union and the Brotherhood of Locomotive Engineers, a three-judge panel of the United States Court of Appeals for the Ninth Circuit held that such time spent waiting for transportation was to be considered on-duty time. *United Transportation Union* v. *Skinner*, 975 F.2d 1421 (9th Cir. 1992). The Ninth Circuit includes Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. Although FRA disagreed with the Ninth Circuit's legal rationale, FRA recognized both the ambiguity of the HSL's pertinent provisions and the reasonableness of the court's ultimate conclusion as to the

proper reading of those provisions. Accordingly, in the interest of uniform application of the HSL and to promote the safety of railroad operations, FRA decided to treat the Ninth's Circuit opinion as binding throughout the entire nation. That shift in agency policy was announced in an October 28, 1992 letter to the Association of American Railroads (AAR), and was later published in the Federal Register. 58 Fed. Reg. 18,193 (1993).

FRA had always believed that both the Ninth Circuit's interpretation of the relevant HSL provisions, and what became the Seventh Circuit's interpretation, were reasonable. While FRA adopted the Ninth Circuit's interpretation in 1992 primarily to achieve national uniformity, the contrary decision of the Seventh Circuit in 1994 made that goal impossible to achieve until the Supreme Court finally resolved the split between the circuit courts. Moreover, upon review of the Seventh Circuit's unanimous, *en banc* decision, FRA concluded that the Seventh Circuit's reading of the pertinent HSL provisions was better reasoned than the decision of the Ninth Circuit. Accordingly, FRA stated in a March 1, 1995 letter to AAR that, effective March 6, 1995, with respect to locations outside of the territory of the Ninth Circuit, FRA would revert to its prior view that all time spent merely waiting on a train for the arrival of deadhead transportation to the employee's point of final release would be treated as limbo time.

Now that the Supreme Court has resolved the split in the circuits, this means that effective January 8, 1996, FRA treats an employee merely required to remain on a train—*at a location in any state in the nation*—while awaiting the arrival of deadhead transportation to the employee's point of final release, as neither on nor off duty; the employee's status most closely resembles, and is part and parcel of, deadheading from duty.

However, as FRA has long maintained, if an employee is required to perform service of any kind during that period (*e.g.*, protecting the train against vandalism, observing passing trains for any defects or unsafe conditions, flagging, shutting down locomotives, checking fluid levels, or communicating train consist information via radio), he or she will be considered as on duty until all such service is completed. Moreover, the Supreme Court's decision addressed the situation in which a crew that has expired under the laws is called upon to perform nonoperational duties (*i.e.*, commingled duties) while it waits for the arrival of the deadhead vehicle after the expiration of the maximum 12 hours. The Court made clear that the laws account for that circumstance by treating such time as time on duty pursuant to 49 U.S.C. 21103(b)(3) (commingled service provision). Of course, where a railroad carrier's operating rules clearly relieve an employee of all duties during the waiting period and no duties are specifically assigned, the employee's waiting time will be considered limbo time.

Consistent with the Supreme Court's holding, FRA is ceasing all enforcement activity concerning alleged violations of the HSL and hours of duty records and reporting regulations (49 CFR Part 228, Subpart B) occurring anywhere in the United States involving only the awaiting deadhead issue. Allegations of excess service involving only this issue are no longer being investigated by FRA. Moreover, all case files containing violation reports involving only this issue, regardless of the location or the date of the alleged violation, will soon be terminated. FRA's Office of Chief Counsel will provide the legal department of each railroad impacted by the Supreme Court's decision with a complete list of the case files that are affected by this policy change.

Although time spent awaiting the arrival of deadhead transportation to the employee's point of final release will now constitute limbo time and FRA will enforce the laws accordingly, FRA remains concerned about instances in which employees are held on trains for long periods of time while awaiting the arrival of deadhead transportation in the absence of any valid emergency that might explain such an occurrence. To the extent that the waiting periods are extremely lengthy, current scientific information concerning sleep cycles and the effects of fatigue on safety-sensitive performance indicates that the waiting periods could contribute to the cumulative exhaustion of the employee. This cumulative exhaustion could occur even though the employee receives the legally required rest period upon arrival at the point of final release. Accordingly, it is FRA's expectation that the railroad carriers will voluntarily employ their best efforts to minimize the time that employees spend waiting for the arrival of deadhead transportation. FRA also urges the railroad carriers to devise pilot projects under the laws, pursuant to 49 U.S.C. 21108, that might reduce the awaiting-deadhead time in return for flexibility on other hours of service issues.

FRA is amending its current interpretive statement in Appendix A to 49 CFR Part 228 to reflect the fact that, in addition to computing time spent in deadhead transportation from the final duty assignment of the work tour to the point of final release as limbo time (time neither on- nor off- duty), all time spent awaiting the arrival of a deadhead vehicle for transportation to the point of final release, when no additional services are required of the railroad employee, shall also be treated by FRA as limbo time for purposes of the laws.

List of Subjects in 49 CFR Part 228

Penalties, Railroad employees, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 228 is amended as follows:

PART 228—[AMENDED]

1. The authority citation for 49 CFR Part 228 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107–20108, 20111, 20112, 21101–21108, 21303–21304, as amended; 49 U.S.C. App. 1655(e), as amended; 49 CFR 1.49(d), (m).

2. Appendix A to Part 228 is amended: By revising the second paragraph of *Deadheading*, under the undesignated centerheading ''Train and Engine Service,'' to read as follows:

Appendix A to Part 228—Requirements of the Hours of Service Act: Statement of Agency Policy and Interpretation

* * * * *

Train and Engine Service

* * * * *

Deadheading. * * *

All time spent awaiting the arrival of a deadhead vehicle for transportation from the final duty assignment of the work tour to the point of final release is considered limbo time, *i.e.*, neither time on duty nor time off duty, provided that the employee is given no specific responsibilities to perform during this time. However, if an employee is required to perform service of any kind during that period (*e.g.*, protecting the train against vandalism, observing passing trains for any defects or unsafe conditions, flagging, shutting down locomotives, checking fluid levels, or communicating train consist information via radio), he or she will be considered as on duty until all such service is completed. Of course, where a railroad carrier's operating rules clearly relieve the employee of all duties during the waiting period and no duties are specifically assigned, the waiting

time is not computed as either time on duty or time off duty.

* * * * *

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 96–11224 Filed 5–6–96; 8:45 am]

BILLING CODE 4910–06–P

Federal Highway Administration

49 CFR Part 397

RIN 2125–AD90

Transportation of Hazardous Materials Regulations; Technical Amendment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This document makes a technical amendment to correct the authority citation for 49 CFR part 397. A citation which was erroneously deleted will be reinserted, and other specific references will be added to update this authority citation.

EFFECTIVE DATE: May 7, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Nathan C. Root, Office of Motor Carrier Research and Standards, (202) 366–4009 or Raymond W. Cuprill, Office of Chief Counsel, (202) 366–0834. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

In 1988, in the course of making other changes to part 397, the Federal Highway Administration (FHWA) inadvertently eliminated from the authority citation the reference to section 204 of the Interstate Commerce Act, as amended (formerly found at 49 U.S.C. 304). The FHWA did not intend to eliminate this reference, and with this rulemaking, the FHWA is simply reinserting into the authority citation this reference (now codified at 49 U.S.C. 31502). The FHWA is also adding to the authority a reference to 49 U.S.C. 31136 (formerly section 206 of the Motor Carrier Safety Act of 1984). This citation refers to the authority of the Secretary of Transportation to prescribe regulations on commercial motor vehicle safety. In addition, the FHWA is amending in the authority section the current reference to 49 U.S.C. 5101 *et seq.* in order to reflect the specific sections of the law—49 U.S.C. 5112 and 5125—that provide the authority for the regulations found in subparts C through E of 49 CFR part 397.

Rulemaking Analyses and Notices

This final rule simply revises the authority citation for the FHWA's Transportation of Hazardous Materials regulations to remove an incorrect reference and to insert several references, one of which was used previously but was then erroneously removed. Thus, the FHWA believes that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B). Similarly, due to the editorial nature of this final rule, the FHWA has determined that prior notice and opportunity for comment are not required under the Department of Transportation's regulatory policies and procedures. It is not anticipated that provision of a comment period would result in the receipt of useful information. In this final rule, the FHWA is not exercising discretion in a way that could be meaningfully affected by public comment.

In addition, the FHWA finds that good cause exists to dispense with the 30-day delay in the effective date required by 5 U.S.C. 553(d) due to the minor and technical nature of these amendments. Thus, the FHWA is proceeding directly with a final rule which will be effective on its date of publication.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

Because this rule simply makes minor, technical corrections to the authority citation for 49 CFR part 397, this rulemaking is not likely to have an annual effect on the economy of $100 million or more. It is also not expected to cause an adverse effect on any sector of the economy. In addition, no serious inconsistency or interference with another agency's actions or plans will result. Thus, the FHWA has determined that this action is not a significant regulatory action under Executive Order 12866. Neither is it a significant rulemaking under the Department of Transportation's regulatory policies and procedures because it also does not concern a matter about which there is substantial public interest or controversy; it will not have a substantial effect on State and local governments or raise a major transportation safety problem; in addition, it will not initiate a substantial regulatory program or change in policy. Therefore, a full regulatory evaluation is not warranted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based upon this evaluation, the FHWA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

The FHWA has reviewed this action to ensure its compliance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not raise sufficient federalism issues to warrant the preparation of a separate Federalism Assessment. This final rule will not preempt any State law or State regulation, and no additional costs or burdens will be imposed on the States. In addition, this rule will have no effect on the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has reviewed this action to ensure compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will have no effect on the quality of the environment. Thus, an environmental impact statement is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 397

Hazardous materials transportation, Highway safety, Highways and roads, Motor carriers, Motor vehicle safety.