

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region 5 is issuing a Notice of Intent to Delete the Spiegelberg Landfill Superfund Site (Site) located in Green Oak Township, Michigan from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the State of Michigan, through the Michigan Department of Environmental Quality, have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by May 13, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-1983-0002, by one of the following methods:

- <http://www.regulations.gov>: Follow on-line instructions for submitting comments.

- *E-mail*: Howard Caine, Remedial Project Manager, at caine.howard@epa.gov or Cheryl Allen, Community Involvement Coordinator, at allen.cheryl@epa.gov.

- *Fax*: Gladys Beard, Deletion Process Manager, at (312) 697-2077.

- *Mail*: Howard Caine, Remedial Project Manager, U.S. Environmental Protection Agency (SR-6J), 77 W. Jackson Boulevard, Chicago, IL 60604, (312) 353-9685, or Cheryl Allen, Community Involvement Coordinator, U.S. Environmental Protection Agency (SI-7J), 77 W. Jackson Boulevard, Chicago, IL 60604, (312) 353-6196 or (800) 621-8431.

- *Hand Delivery*: Cheryl Allen, Community Involvement Coordinator, U.S. Environmental Protection Agency (SI-7J), 77 W. Jackson Blvd., Chicago, IL 60604. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The normal business hours are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding holidays.

Instructions: Direct your comments to Docket ID no. EPA-HQ-SFUND-1983-0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any

personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information may not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at:

- U.S. Environmental Protection Agency—Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604, Hours: Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.
- Hamburg Township Library, 10411 Merrill Road., P.O. Box 247, Hamburg, MI 48139, (810) 231-1771, Hours: Monday through Thursday, 9 a.m. to 8 p.m.; Friday 12 p.m. to 6 p.m. and Saturday 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Howard Caine, Remedial Project Manager, U.S. Environmental Protection Agency (SR-6J), 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353-9685, caine.howard@epa.gov.

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" section of today's **Federal Register**, we are publishing a direct final Notice of

Deletion of the Spiegelberg Landfill Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the *Rules and Regulations* section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: April 5, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011-8880 Filed 4-12-11; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA-2011-0002; Internal Agency Docket No. FEMA-B-1188]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities

listed in the table below. The purpose of this proposed rule is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before July 12, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-1188, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4064, or (e-mail) luis.rodriquez1@dhs.gov.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal

Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4064, or (e-mail) luis.rodriquez1@dhs.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental

Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Sevier County, Utah, and Incorporated Areas				
Albinus Canyon	Approximately 400 feet downstream of Old U.S. Highway 89.	None	+5343	Unincorporated Areas of Sevier County.
East Koosharem Creek	Approximately 500 feet upstream of I-70	None	+5445	Town of Koosharem, Unincorporated Areas of Sevier County.
	Approximately 1,800 feet downstream of West 200 South Street.	None	+6870	
Indian Creek	Approximately 500 feet upstream of North 300 West Street.	None	+6975	Town of Joseph.
	Approximately 500 feet downstream of East 300 North Street.	None	+5416	
Indian Creek Split Flow	At the downstream side of I-70	None	+5504	Town of Joseph.
	Approximately 400 feet downstream of State Highway 118.	None	+5435	
	At the Indian Creek divergence	None	+5485	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Koosharem Creek	Approximately 1,700 feet downstream of West 200 South Street.	None	+6878	Town of Koosharem, Unincorporated Areas of Sevier County.
	Approximately 0.4 mile upstream of West 200 North Street.	None	+7037	
North Koosharem Creek	Approximately 700 feet downstream of North 200 East Street.	None	+6893	Town of Koosharem, Unincorporated Areas of Sevier County.
	Approximately 1,800 feet upstream of North 300 West Street.	None	+7033	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Joseph

Maps are available for inspection at 25 East 100 North Street, Joseph, UT 84739.

Town of Koosharem

Maps are available for inspection at 45 North Main Street, Koosharem, UT 84744.

Unincorporated Areas of Sevier County

Maps are available for inspection at 250 North Main Street, Richfield, UT 84701.

Yakima County, Washington, and Incorporated Areas

Cottonwood Creek	Approximately 970 feet downstream of Dazet Road ...	None	+1244	Unincorporated Areas of Yakima County.
	Approximately 2.08 miles upstream of Hubbard Road	None	+1831	
Cottonwood Creek Left Bank Overflow Downstream.	At the Cottonwood Creek confluence	None	+1293	Unincorporated Areas of Yakima County.
	At the Cottonwood Creek divergence	None	+1323	
Cottonwood Creek Left Bank Overflow Upstream.	Approximately 0.26 mile downstream of Canyon Road	None	+1406	Unincorporated Areas of Yakima County.
	Approximately 0.64 mile upstream of Canyon Road ...	None	+1475	
Cottonwood Creek Tributary 1.	At the Cottonwood Creek confluence	None	+1613	Unincorporated Areas of Yakima County.
	Approximately 0.53 mile upstream of Cottonwood Canyon Road.	None	+1668	
Secondary Tributary to Wide Hollow Tributary 2.	At the Tributary to Wide Hollow Creek Tributary 2 confluence.	None	+1519	Unincorporated Areas of Yakima County.
	Approximately 0.36 mile upstream of the Tributary to Wide Hollow Creek Tributary 2 confluence.	None	+1569	
Shaw Creek	At the Wide Hollow Creek confluence	None	+1179	City of Yakima, Unincorporated Areas of Yakima County.
	Approximately 160 feet upstream of Summitview Road.	None	+1438	
Shaw Creek—Wide Hollow Creek Overflow.	At the Wide Hollow Creek confluence	None	+1152	City of Yakima.
	Approximately 0.27 mile upstream of Westbrook Loop	None	+1182	
Shaw Creek—Wide Hollow Creek Walmart Overflow 1.	At the Wide Hollow Creek confluence	None	+1151	City of Yakima.
	Approximately 1,307 feet upstream of South 64th Avenue.	None	+1158	
Shaw Creek—Wide Hollow Creek Walmart Overflow 2.	At the Wide Hollow Creek confluence	None	+1149	City of Yakima.
	Approximately 1,236 feet upstream of South 64th Avenue.	None	+1160	
Shaw Creek Ditch 1	At the Shaw Creek confluence	None	+1431	Unincorporated Areas of Yakima County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 170 feet downstream of North 112th Avenue.	None	+1435	
Shaw Creek Left Bank Overflow.	At the Shaw Creek confluence	None	+1252	Unincorporated Areas of Yakima County.
	At the Shaw Creek divergence	None	+1270	
Shaw Creek North Pear Overflow.	At the Shaw Creek confluence	None	+1235	City of Yakima, Unincorporated Areas of Yakima County.
	Approximately 560 feet upstream of Orchard Avenue	None	+1284	
Shaw Creek Overflow	At the Shaw Creek confluence	None	+1187	City of Yakima, Unincorporated Areas of Yakima County.
	Approximately 0.3 mile upstream of South 91st Avenue.	None	+1222	
Shaw Creek Overflow South	At the Shaw Creek confluence	None	+1182	City of Yakima, Unincorporated Areas of Yakima County.
	Approximately 0.32 mile upstream of South 88th Avenue.	None	+1215	
Shaw Creek Tributary	At the Shaw Creek confluence	None	+1230	Unincorporated Areas of Yakima County.
	Approximately 160 feet downstream of South Mize Road.	None	+1407	
Tributary to Wide Hollow Creek Tributary 2.	At the Wide Hollow Creek Tributary 2 confluence	None	+1470	Unincorporated Areas of Yakima County.
	Approximately 0.42 mile upstream of Lynch Road	None	+1566	
Wide Hollow Creek	At the Yakima River confluence	+959	+958	City of Union Gap, City of Yakima, Unincorporated Areas of Yakima County.
	Approximately 1.08 miles upstream of Stone Road	None	+1733	
Wide Hollow Creek Mill Weir Overflow.	At the Wide Hollow Creek confluence	None	+958	City of Union Gap.
	At the Wide Hollow Creek divergence	None	+964	
Wide Hollow Creek Right Bank Overflow 1.	At the Wide Hollow Creek confluence	None	+1413	Unincorporated Areas of Yakima County.
	Approximately 0.32 mile upstream of Wide Hollow Road.	None	+1450	
Wide Hollow Creek Tributary 1.	At the Wide Hollow Creek confluence	None	+1482	Unincorporated Areas of Yakima County.
	Approximately 1.08 miles upstream of Cook Road	None	+1712	
Wide Hollow Creek Tributary 1 Midflow Split.	At the Wide Hollow Creek Tributary 1 confluence	None	+1647	Unincorporated Areas of Yakima County.
	At the Wide Hollow Creek Tributary 1 divergence	None	+1660	
Wide Hollow Creek Tributary 1 Left Bank Overflow.	Approximately 300 feet downstream of Stone Road ...	None	+1470	Unincorporated Areas of Yakima County.
	Approximately 0.7 mile upstream of Hollow Creek Lane.	None	+1545	
Wide Hollow Creek Tributary 2.	At the Wide Hollow Creek confluence	None	+1450	Unincorporated Areas of Yakima County.
	Approximately 0.45 mile upstream of Tieton Drive	None	+1594	
Wide Hollow Structure 116 Bypass.	At the Wide Hollow Creek confluence	None	+1370	Unincorporated Areas of Yakima County.
	At the Wide Hollow Creek divergence	None	+1378	
Wide Hollow Structure 125 Bypass.	At the Wide Hollow Creek confluence	None	+1430	Unincorporated Areas of Yakima County.
	At the upstream side of Wide Hollow Road	None	+1438	
Wide Hollow Structure 21 Bypass.	At the Ahtanum Creek confluence	None	+953	City of Union Gap, Unincorporated Areas of Yakima County.
	At the Wide Hollow Creek divergence	None	+975	
Wide Hollow Structure 36 Bypass.	At the Wide Hollow Creek confluence	None	+1012	City of Union Gap.
	At the Wide Hollow Creek divergence	None	+1016	
Wide Hollow Structure 47 Bypass.	At the Wide Hollow Creek confluence	None	+1045	City of Union Gap.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Wide Hollow Structure 86 Bypass.	At the Wide Hollow Creek divergence	None	+1050	Unincorporated Areas of Yakima County.
	At the Wide Hollow Creek confluence	None	+1203	
Wide Hollow Structure 99 Bypass.	At the Wide Hollow Creek divergence	None	+1217	Unincorporated Areas of Yakima County.
	At the Wide Hollow Creek confluence	None	+1264	
	At the Wide Hollow Creek divergence	None	+1280	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Union Gap

Maps are available for inspection at 102 West Ahtanum Road, Union Gap, WA 98903.

City of Yakima

Maps are available for inspection at 129 North 2nd Street, Yakima, WA 98901.

Unincorporated Areas of Yakima County

Maps are available for inspection at 128 North 2nd Street, Yakima, WA 98901.

Wirt County, West Virginia, and Incorporated Areas

Daley Run	Approximately 1,400 feet downstream of County Route 14/1.	None	+610	Unincorporated Areas of Wirt County.
	Approximately 500 feet downstream of County Route 14/1.	None	+610	
Little Kanawha River	Approximately 1.8 miles downstream of the Hughes River confluence.	None	+610	Unincorporated Areas of Wirt County.
	Approximately 4.2 miles downstream of the Hughes River confluence.	None	+610	
Tucker Creek	Approximately 1.4 miles downstream of State Route 5	None	+623	Unincorporated Areas of Wirt County.
	Approximately 650 feet downstream of State Route 5	None	+625	
	At the Little Kanawha River confluence	None	+623	
	Approximately 1.1 miles upstream of the Little Kanawha River confluence.	None	+623	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Wirt County

Maps are available for inspection at the Wirt County Courthouse, Corner Court of Washington Street, Elizabeth, WV 26143.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 30, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011-8852 Filed 4-12-11; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 390, and 395

[Docket No. FMCSA-2010-0167]

RIN 2126-AB20

Electronic On-Board Recorders and Hours of Service Supporting Documents

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for additional public comment.

SUMMARY: On February 1, 2011, FMCSA published a notice of proposed rulemaking (NPRM), which proposed that electronic on-board recorders (EOBR) be required for commercial motor vehicle (CMV) operators who must keep records of duty status (RODS) (EOBR 2). In the EOBR 2 NPRM and in a predecessor EOBR rulemaking published on April 5, 2010 (EOBR 1), the Agency advised that it is required by statute to ensure that electronic devices are not used to harass CMV drivers, although they can be used by motor carriers to monitor productivity. The Agency believes it satisfactorily addressed the statutory requirement in both its EOBR rulemaking proceedings. In light of recent litigation challenging the Agency's treatment of driver harassment in EOBR 1, however, FMCSA wishes to ensure that interested parties have a full opportunity to address this issue in the active EOBR 2 rulemaking.

DATES: Comments must be received on or before May 23, 2011.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Number (FDMS) in the heading of this document by any of the following methods. Do not submit the same comments by more than one method. However, to allow effective public participation before the comment period deadline, the Agency encourages use of the Web site that is listed first. It will provide the most efficient and

timely method of receiving and processing your comments.

• **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

• **Fax:** 1-202-493-2251.

• **Mail:** Docket Management Facility; U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

• **Hand Delivery:** Ground floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this regulatory action. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Refer to the Privacy Act heading on <http://www.regulations.gov> for further information.

Privacy Act: Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT Privacy Act system of records notice for the FDMS in the **Federal Register** published on January 17, 2008 (73 FR 3316) at <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

FOR FURTHER INFORMATION CONTACT: *For technical issues:* Ms. Deborah M. Freund, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001 or by telephone at (202) 366-5370. *For legal issues:* Mr. Charles Fromm, Assistant Chief Counsel for Enforcement and Litigation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001 or by telephone at (202) 366-3551.

SUPPLEMENTARY INFORMATION:

Regulatory Background and Authority

On April 5, 2010, the Agency issued a final rule (EOBR 1) (75 FR 17208) that provides new technical requirements for electronic on-board recorders (EOBR). The EOBR 1 final rule also requires the limited, remedial use of EOBRs for motor carriers with significant hours-of-service (HOS) violations. The EOBR 1 final rule requires a motor carrier found to have a 10 percent violation rate for

any HOS regulation listed in Appendix C of 49 CFR part 385 during a single compliance review to install and use EOBRs on all of its CMVs for a period of 2 years. The compliance date for the rule is June 4, 2012.

Subsequently, on February 1, 2011, the Agency published an NPRM that proposed to expand the scope of EOBR 1 to a broader population of motor carriers (EOBR 2) (76 FR 5537). Under the EOBR 2 NPRM, within 3 years of the effective date of the final rule, all motor carriers currently required to maintain RODS for HOS recordkeeping would be required to use EOBRs. In both EOBR rulemakings, FMCSA explained that DOT is directed by 49 U.S.C. 31137(a) to consider driver harassment in promulgating an EOBR rule. Section 31137(a) provides:

If the Secretary of Transportation prescribes a regulation about the use of monitoring devices on commercial motor vehicles to increase compliance by operators of the vehicles with hours of service regulations of the Secretary, the regulation shall ensure that the devices are not used to harass vehicle operators. However, the devices may be used to monitor productivity of the operators.

Although the Agency is not aware of any legislative history or case law concerning 49 U.S.C. 31137(a), FMCSA assessed this provision in the context of all existing legal authorities, permissible productivity monitoring, and related public comments. Based on these considerations, the Agency understands the term "harass" in Section 31137(a) to refer to harassment of drivers resulting from invasion of their privacy and has so interpreted the statutory language. FMCSA has addressed that pertinent statutory concern in this context in both the EOBR 2 NPRM (76 FR at 5552) and the EOBR 1 final rule (75 FR at 17220-21).

First, Section 31137(a) expressly permits use of EOBRs to monitor driver productivity. As a result, the statute permits carriers to use the devices for productivity-related purposes, which could include maintaining contact with drivers, monitoring driver progress, determining delivery and work schedules, and even requiring drivers to return to duty, so long as the drivers would not be put in violation of the HOS or other regulations. Section 31137(a) also expressly contemplates the use of monitoring devices to increase compliance with HOS regulations. As a result, the statute permits carriers to use the devices to monitor when, and for how long, drivers are in a particular duty status. Although some drivers might perceive such monitoring as a form of harassment,