Clarity of This Regulation

We are required by E.O.'s 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Literature Cited

U.S. Fish and Wildlife Service. 2003. Final Environmental Impact Statement: Double-Crested Cormorant Management. Available at *http://www.fws.gov/migratorybirds/issues/cormorant/finaleis/CormorantFEIS.pdf*.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we propose to amend part 21 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 21—MIGRATORY BIRD PERMITS

1. The authority citation for part 21 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

§ 21.47 [Amended]

2. Amend § 21.47(f) by removing the number ''2009'' and adding in its place the number ''2014.''

§ 21.48 [Amended]

3. Amend § 21.48(f) by removing the number ''2009'' and adding in its place the number ''2014.''

Dated: November 25, 2008.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–29018 Filed 12–5–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[FWS–R9–MB–2008–0064; 91200–1231–9BPP]

RIN 1018–AV66

Migratory Bird Permits; Removal of Rusty Blackbird and Tamaulipas (Mexican) Crow From the Depredation Order for Blackbirds, Cowbirds, Grackles, Crows, and Magpies, and Other Changes to the Order

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose a change in the regulations governing control of depredating blackbirds, cowbirds, grackles, crows, and magpies at 50 CFR 21.43. Because of long-term evidence of population declines throughout much of their ranges, we propose to remove the Rusty Blackbird (*Euphagus carolinus*) and the Mexican (Tamaulipas) Crow (*Corvus imparatus*) from the list of species that may be controlled under the depredation order. After this change, a depredation permit would be necessary to conduct control actions to take either of these species. We also propose to add a requirement to use nontoxic shot or bullets when a firearm is used to control any species listed under the order, and we propose to add a requirement to report on control actions taken under the order.

DATES: We will accept comments received or postmarked on or before March 9, 2009.

ADDRESSES: You may submit comments on the proposed rule by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AV66; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203–1610.

We will not accept e-mails or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide (*see* the Public Comments section below for more information).

Information Collection: See ''Paperwork Reduction Act'' in **SUPPLEMENTARY INFORMATION** for information on submitting comments on the proposed information collection requirements.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, VA 22203–1610, or telephone 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service is the Federal agency delegated the primary responsibility for managing migratory birds. This delegation is authorized by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). Part 21 of title 50 of the Code of Federal Regulations covers migratory bird permits. Subpart D deals specifically with the control of depredating birds and presently includes eight depredation orders. A depredation order is a regulation that allows the take of specific species of migratory birds, at specific locations, and for specific purposes without a depredation permit. The depredation order at 50 CFR 21.43 for blackbirds, cowbirds, grackles, crows, and magpies allows take when individuals of an included species are ''found committing or about to commit depredations upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance.''

Rusty Blackbird

The Rusty Blackbird is highly dependent upon wooded wetlands and breeds further north than any other blackbird in North America. It breeds mainly in Alaska and Canada and occurs in the contiguous United States during migration and winter. For a map of the species' geographic distribution, go to: *http://www.birds.cornell.edu/AllAboutBirds/BirdGuide/Rusty_Blackbird_dtl.html#range.* Estimates of the Rusty Blackbird's global breeding population have varied and continue to vary considerably. A good recent estimate is perhaps 1.3 million (P. Blancher, Environment Canada, unpublished data).

Greenberg and Droege (1999) wrote, ''All of the evidence to date indicates that the Rusty Blackbird was once abundant but has been experiencing a chronic decline since the mid-1800s. This decline may be accelerating, with total decreases estimated at

approximately 90 percent by three independent population surveys.'' This evidence of sharp decline, coupled with the species' low population density, has made it a conservation concern; the Rusty Blackbird is included on both Audubon's WatchList (National Audubon Society 2008) and the Partners In Flight Watch List (where it is labeled as ''moderately abundant or widespread [but] with declines or high threats''; Rich *et al.* 2004). Additionally, it is labeled a species of ''Special Concern'' by the Committee on the Status of Endangered Wildlife in Canada, and as ''Vulnerable'' to extinction in the wild by the World Conservation Union (BirdLife International 2004).

Three lines of evidence have raised concerns about the Rusty Blackbird's population status. First, the species is now rare or absent from at least some boreal forest areas where it was once common (Greenberg and Droege 1999). Second, Breeding Bird Survey (BBS) data indicate that the species has declined dramatically over the past few decades, with the highest rates of decline occurring in the central and eastern portion of the boreal forest. Since 1966, abundance of the Rusty Blackbird has declined by 12.8 percent annually across the BBS survey (Sauer *et al.* 2007). However, BBS survey coverage is concentrated at the southern extent of the Rusty Blackbird's breeding range and thus the BBS trend may not be representative of the entire population. Third, Christmas Bird Count (CBC) data analysis indicates a 5.1 percent annual decline throughout the species' winter range from 1965–66 to 2002–03 (Niven *et al.* 2004). CBC data are considered more reliable for detecting changes in Rusty Blackbird abundance than are BBS data since only a small area of the species' breeding range is covered by BBS routes, whereas a large portion of its winter range is covered by CBC surveys (Machtans *et al.* 2007, Niven *et al.* 2004).

Conversion of wooded wetland habitats on both breeding and wintering grounds is a compelling explanation for the species' decline. However, acid precipitation in the boreal forest (Greenberg and Droege 1999) and dessication of boreal wetlands (Greenberg *et al.* unpublished data) are other suspected contributing factors.

Avery (1995) reported that Rusty Blackbirds make up less than 1 percent of mixed-species winter roost concentrations, and that the effects of roost control on populations are unknown. However, Greenberg and Droege (1999) seemed to believe that bird control programs are not an important cause of the species' decline.

Despite uncertainty about the significance of blackbird control in the Rusty Blackbird's decline, given the long-term downward trend and special conservation status of the species, we have decided that we should remove the Rusty Blackbird from the list of species that may be controlled under the depredation order at 50 CFR 21.43. After this change, any take of this species would require a depredation permit (50 CFR 21.41) or other applicable MBTA permit.

Tamaulipas Crow

In 50 CFR 10.13, the List of Migratory Birds (the bird species protected under the MBTA), *Corvus imparatus* is the ''Mexican Crow.'' However, the species is currently recognized by the common name ''Tamaulipas Crow'' by the American Ornithologists' Union Committee on Classification and Nomenclature. We consider ''Tamaulipas Crow'' to be synonymous with ''Mexican Crow.''

The Tamaulipas Crow is a small glossy crow of northeast Mexico, with a total distribution limited to about 350 miles from the Texas/Mexico border area south to northern Veracruz, Mexico (Howell and Webb 1995). The species frequents semiarid brushlands and can be found in association with humans in villages, ranches, and garbage dumps (Oberholser 1974). The Tamaulipas Crow was first discovered in the United States in August 1968 when three birds were observed near the mouth of the Rio Grande in Cameron County, Texas; a week later, approximately 1,000 birds were seen in the same vicinity (Oberholser 1974, Arvin *et al.* 1975). Breeding in the United States was first documented in Brownsville, Texas, in 1989, and the species has bred sporadically in that area since then (Brush 2005). Lockwood and Freeman (2004) described the Tamaulipas Crow as a ''Very rare to casual visitor to southern Cameron County, primarily in the vicinity of the Brownsville Sanitary Landfill. Although formerly a common winter resident and very rare summer resident, this species now barely maintains a toe-hold in southern Texas.''

Recent observations by ornithologists indicate that the total distribution (and possibly the population) of the Tamaulipas Crow have declined considerably since the late 20th century, although quantitative data are lacking. The species is listed in the ''yellow'' category on Audubon's WatchList, due to its limited range (National Audubon Society 2008), but has the rank of ''Least Concern'' on the World Conservation Union's Red List (BirdLife International 2004). However, concerns about rapid population decline in the northern part of its range are too recent to be reflected in the Red List. In the Partners in Flight species assessment database, the Tamaulipas Crow is listed as a Species of Regional Importance, and it needs ''Management Attention,'' according to the Rocky Mountain Bird Observatory (2005).

Because of the extremely limited distribution of this species in the United States, and its apparent rapid decline in numbers, we propose to remove the Tamaulipas Crow from the list of species that may be controlled under the depredation order at 50 CFR 21.43. After this change, any take of this species would require a depredation permit (50 CFR 21.41) or other applicable MBTA permit.

Additional Regulatory Changes

We also propose to require the use of nontoxic ammunition for all take of migratory birds under this depredation order to prevent toxicity hazards to other wildlife. Further, we propose to require reporting of control actions taken under the order to give us data on the number of each species taken each year to better monitor the effects of such take on populations of those species. We expect the respondents to be mostly State and Federal wildlife damage management personnel who undertake blackbird control to protect crops. We also propose to make the list of species to which the depredation order applies more precise by listing each species that may be controlled under the order.

Public Comments

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire comment, including any personal identifying information, will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this

proposed rule is not significant under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions).

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action would not have a significant economic impact on a substantial number of small entities because neither the Rusty Blackbird nor the Tamaulipas Crow are species that frequently cause depredation problems and, where they might do so, depredation permits could be issued to alleviate such problems. There are no costs associated with this regulations change except that persons needing a depredation permit to take Rusty Blackbirds or Tamaulipas Crows will have to pay the $100 application fee for a depredation permit. We estimate the number of people likely to apply for such a permit to be no more than 25 per year. We certify that because this proposed rule would not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This proposed rule is not a major rule under the SBREFA (5 U.S.C. 804(2)).

a. This proposed rule would not have an annual effect on the economy of $100 million or more.

b. This proposed rule would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, Tribal, or local government agencies; or geographic regions.

c. This proposed rule would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This proposed rule would not ''significantly or uniquely'' affect small governments. A small government agency plan is not required. Actions under the proposed regulation would not affect small government activities in any significant way.

b. This proposed rule would not produce a Federal mandate of $100 million or greater in any year. It would not be a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications. A takings implication assessment is not required. This proposed rule does not contain a provision for taking of private property.

Federalism

This proposed rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under Executive Order 13132. It would not interfere with the ability of States to manage themselves or their funds. No significant economic impacts are expected to result from the proposed change in the depredation order.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act

This proposed rule contains a collection of information that we are submitting to the Office of Management and Budget (OMB) for review and approval under Sec. 3507(d) of the Paperwork Reduction Act (PRA). We are proposing to require that any person or agency acting under the depredation order provide an annual report to the appropriate Regional Migratory Bird Permit Office. We plan to collect the following information for each species taken:

(1) Number of birds taken,

(2) Months and years in which the birds were taken,

(3) State(s) and county(ies) in which the birds were taken, and

(4) The purpose for which birds were taken (such as for protection of agriculture; human health and safety, property, or natural resources).

We propose to collect this information so that we will be able to determine how many birds of each species are taken each year and whether the control actions are likely to affect the populations of those species.

Title: Depredation Order for Certain Migratory Birds, 50 CFR 21.43.

OMB Control Number: None. This is a new collection.

Service Form Number(s): None.

Type of Request: New collection.

Affected Public: State and Federal wildlife damage management personnel, perhaps farmers.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Estimated Annual Number of Respondents: 250.

Estimated Total Annual Responses: 250.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 500.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of the reporting burden, including:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments

to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves this collection of information and assigns an OMB control number and the regulations become effective, you are not required to respond. The OMB is required to make a decision concerning the collection of information of this proposed regulation between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by January 7, 2009. This does not affect the deadline for the public to comment on the proposed regulations.

National Environmental Policy Act

We have completed a Draft Environmental Assessment (DEA) on this proposed regulations change. The DEA is a part of the administrative record for this proposed rule. In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4332(C)) and Part 516 of the U.S. Department of the Interior Manual (516 DM), removal of the Rusty Blackbird and Tamaulipas Crow from the depredation order and adding requirements for nontoxic shot or bullets will not have a significant effect on the quality of the human environment, nor would it involve unresolved conflicts concerning alternative uses of available resources.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian Tribes and have determined that there are no potential effects. This proposed rule would apply to Tribes and any control actions that Tribes carry out on their lands, but it would not interfere with the ability of Tribes to manage themselves or their funds.

Energy Supply, Distribution, or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 addressing regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule change would not be a significant regulatory action under E.O. 12866, nor would it significantly affect energy supplies, distribution, or use. This action would not be a significant energy action and no Statement of Energy Effects is required.

Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that ''The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter'' (16 U.S.C. 1536(a)(1)). It further states that the Secretary must ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat'' (16 U.S.C. 1536(a)(2)). We have concluded that the proposed regulation change would not affect listed species.

Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Literature Cited

Arvin, J., J. Arvin, C. Cottam, and G. Unland. 1975. Mexican Crow Invades South Texas. The Auk 92:387–390.

Avery, M.L. 1995. Rusty Blackbird (*Euphagus carolinus*). Number 200 in The Birds of North America, A. Poole and F. Gill, editors. The Academy of Natural Sciences, Philadelphia, and The American Ornithologists' Union, Washington, DC.

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List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we propose to amend part 21

of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 21—MIGRATORY BIRD PERMITS

1. The authority citation for part 21 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106–108, 113 Stat. 1491, Note following 16 U.S.C. 703.

2. Revise § 21.43 as follows:

§ 21.43 Depredation order for blackbirds, cowbirds, grackles, crows, and magpies.

You do not need a Federal permit to control the species listed in the table below if they are committing or about to commit depredations on ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner that they are a health hazard or other nuisance:

Blackbirds	Cowbirds	Grackles	Crows	Magpies
Brewer's (*Euphagus cyanocephalus*).	Bronzed (*Molothrus aeneus*).	Boat-tailed (*Quiscalus major*).	American (*Corvus brachyrhynchos*).	Black-billed (*Pica pica*).
Red-winged (*Agelaius phoeniceus*).	Brown-headed (*Molothrus ater*).	Common (*Quiscalus quiscula*).	Fish (*Corvus ossifragus*) ...	Yellow-billed (*Pica nuttalli*).
Yellow-headed (*Xanthocephalus xanthocephalus*).	Shiny (*Molothrus bonariensis*).	Great-tailed (*Quiscalus mexicanus*).	Northwestern (*Corvus caurinus*).	
		Greater Antillean (*Quiscalus niger*).		

(a) If you use a firearm to kill migratory birds under the provisions of this section, you must use nontoxic shot or nontoxic bullets to do so. *See* § 20.21(j) of this chapter for a listing of approved nontoxic shot types.

(b) If you exercise any of the privileges granted by this section, you must allow any Federal, State, tribal, or territorial wildlife law enforcement officer unrestricted access at all reasonable times (including during actual operations) over the premises on which you are conducting the control. You must furnish the officer whatever information he or she may require about your control operations.

(c) You may kill birds under this order only in a way that complies with all State, tribal, or territorial laws or regulations. You must have any State, tribal, or territorial permit required to conduct the activity.

(d) You may not sell, or offer to sell, any bird killed pursuant to this section, or any of its plumage, but you may possess, transport, and otherwise dispose of the bird or its plumage.

(e) Any person or agency acting under this depredation order must provide to the appropriate Regional Migratory Bird Permit Office an annual report for each species taken. You can find the addresses for the Regional Migratory Bird Permit Offices in § 2.2 of subchapter A of this chapter. You must submit your report by January 31st of the following year, and you must include the following information:

(1) Your name, address, phone number, and email address;

(2) The species and number of birds taken;

(3) The months in which the birds were taken;

(4) The State(s) and county(ies) in which the birds were taken; and

(5) The general purpose for which the birds were taken (such as for protection of agriculture, human health and safety, property, or natural resources).

(f) The Office of Management and Budget has approved the information collection requirements associated with this depredation order and assigned OMB Control No. 1018–XXXX. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. You may send comments on the information collection requirements to the Service's Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 1849 C Street, NW., Washington, DC 20240.

Dated: November 25, 2008.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–29017 Filed 12–5–08; 8:45 am]

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