

the revised PCB human health water quality criterion if approved.

When the Commission directed the executive director in 2005 to initiate rulemaking on updated PCB criteria, in accordance with a recommendation of the TAC, it also asked her to work with State regulatory agencies and EPA (collectively, "co-regulators") to develop recommendations for implementing criteria for bioaccumulative toxic pollutants such as PCBs that would be "consistent with the existing Clean Water Act National Pollutant Discharge Elimination System (NPDES) framework while * * * reflecting principles of adaptive management" and to solicit public comment on these recommendations (DRBC Resolution No. 2005-19 par's. 3-4). It is expected that Stage 2 TMDLs issued by EPA will include as an appendix a TMDL implementation plan developed by DRBC and its co-regulators. The implementation plan, which will take the form of a guidance document, will explain how the load allocations assigned by the TMDL to nonpoint sources and the wasteload allocations assigned to point sources can be achieved consistent with the Clean Water Act and principles of adaptive management.

According to the 2003 and 2006 TMDLs, actual loadings of PCBs to the Delaware Estuary and Bay respectively are in some cases orders of magnitude above those needed to allow attainment of the designated use. The EPA's 2003 Delaware Estuary TMDL report projects that "due to the scope and complexity of the problem that has been defined through these TMDLs, achieving the estuary water quality standards for PCBs will take decades." (U.S. Environmental Protection Agency Regions II and III, *Total Maximum Daily Loads for Polychlorinated Biphenyls (PCBs) for Zones 2-5 of the Tidal Delaware River*, December 15, 2003, p. xiii). As required by Section 4.30.9 of the DRBC *Water Quality Regulations*, adopted by DRBC Resolution No. 2005-9 on May 18, 2005, the largest point source dischargers of PCBs to the Delaware Estuary and Bay have already undertaken pollutant minimization plans designed to locate the sources of PCBs entering their wastewater and stormwater systems and contain or remove them. The TMDL implementation plan developed by the co-regulators recognizes that many point source dischargers already have reduced their PCB loadings in an effort to meet their TMDL wasteload allocations assigned by the Stage 1 TMDLs. Some point source dischargers are expected to achieve their required reductions soon; however, others will require an

extended period of time, including in some instances decades, to achieve the PCB loading reductions needed to meet their assigned wasteload allocations. The implementation plan developed by the co-regulators will accommodate these dischargers through the use of compliance schedules consistent with the Clean Water Act and applicable regulations. It is understood that those dischargers who cannot achieve their wasteload allocations within a single five-year permit cycle notwithstanding good faith efforts to do so as soon as possible will be given additional time, even if this requires compliance schedules extending well beyond a single five-year permit cycle.

Subjects on which Comment is Expressly Solicited. Public comment is solicited on all aspects of the proposed rule. Without limiting the foregoing, the Commission has identified certain subject matters on which it expressly seeks comment. First, comments are solicited on the assumptions applied in developing the criterion, including the appropriate cancer risk level. (See DRBC Resolution No. 2005-19, par. 2). In accordance with current DRBC regulations, that level is 10^{-6} , or one additional cancer in every one million humans exposed for 70 years. (See WQR, § 3.10.3 D.4). The assumptions applied in developing the revised PCB criterion of 16 picograms per liter are set forth in a basis and background document that is available on the DRBC Web site, <http://DRBC.net>. The second area on which the Commission expressly seeks comment is best approaches for implementing water quality criteria for bioaccumulative pollutants consistent with the NPDES framework and principles of adaptive management. (See DRBC Resolution No. 2005-19, par. 4). The third is the implementation plan developed by the co-regulators, which is posted on the Commission's Web site, <http://DRBC.net>.

FOR FURTHER INFORMATION CONTACT: The text of the proposed rule, relevant DRBC resolutions, the basis and background document and the co-regulators' implementation plan for the proposed criterion will be available on the DRBC Web site, <http://DRBC.net>, on or before August 17, 2009. For further information, please contact Commission Secretary Pamela M. Bush, 609-883-9500 ext. 203.

Dated: August 4, 2009.

Pamela M. Bush,

Commission Secretary.

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DEPARTMENT OF JUSTICE

28 CFR Part 58

[Docket No: EOUST 103]

RIN 1105-AB16

Procedures Governing Administrative Review of a United States Trustee's Decision To Deny a Chapter 12 or Chapter 13 Standing Trustee's Claim of Actual, Necessary Expenses

AGENCY: Executive Office for United States Trustees ("EOUST"), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking ("rule") sets forth the procedures for a chapter 12 or chapter 13 standing trustee ("trustee") to obtain administrative review of a United States Trustee's decision to deny a trustee's claim that certain expenses are actual and necessary for the administration of bankruptcy cases. Section 1231(b) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), codified at 28 U.S.C. 586(e), requires that: Trustees exhaust all administrative remedies pertaining to a denial of a claim of actual, necessary expenses before seeking judicial review; and the Attorney General prescribe procedures for administrative review of such denials. This rule ensures that the process for administratively reviewing a United States Trustee's denial of a trustee's request for expenses is fair and effective.

DATES: Submit comments on or before October 13, 2009.

ADDRESSES: Comments on the rule may be submitted via <http://www.regulations.gov>, by telefax to (202) 307-2397, or by postal mail to EOUST, 20 Massachusetts Ave., NW., 8th Floor, Washington, DC 20530. To ensure proper handling of comments, please reference "Docket No. EOUST 103—Trustee Expenses" on all written and electronic correspondence.

FOR FURTHER INFORMATION CONTACT: Ramona D. Elliott, General Counsel, or Larry Wahlquist, Office of General Counsel, at (202) 307-1399 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. If you want to submit

personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <http://www.regulations.gov>.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph. Comments filed after the end of the comment period may be considered to the extent feasible.

Discussion of Rule

The administration of all chapter 12 and 13 bankruptcy cases is entrusted to private persons who are case or standing trustees under the supervision and oversight of a regional United States Trustee. As distinguished from case or standing trustees, United States Trustees are employees of the Department of Justice. A standing trustee is appointed by the United States Trustee under 28 U.S.C. 586 and administers more than one chapter 13 or chapter 12 case, as opposed to a case trustee who is appointed under 11 U.S.C. 1302 or 11 U.S.C. 1202 and who administers only the case to which the trustee is appointed. This rule addresses the right, conferred by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), of a standing trustee to obtain administrative review when the trustee's request for projected expenses, referred to as a "claim of actual, necessary expenses" in 28 U.S.C. 586(e)(3), is denied by the United States Trustee.

When a debtor files for bankruptcy relief under chapter 12 or chapter 13, the debtor proposes a plan to pay his or

her creditors a percentage of the amounts owed to creditors over a specified period of time and obtains court approval of this plan. This process is termed confirming a chapter 12 or chapter 13 plan. Once the bankruptcy court confirms the plan, the trustee will oversee the payment of creditors pursuant to the plan. The debtor pays plan payments to the trustee and the trustee then disburses the appropriate amounts to creditors.

As part of the process of administering debtors' cases, a trustee incurs expenses. A trustee is authorized to collect a specified percentage of disbursed funds from debtors' plan payments to pay for these expenses. However, before incurring expenses, a trustee obtains approval from the United States Trustee. As the first step in obtaining United States Trustee approval for expenses, the United States Trustee requires that the trustee submit a budget for the anticipated expenses for the fiscal year ending each September 30th. Next, these projected expenses are evaluated by the United States Trustee who will either approve the expenses or require modifications to the proposed budget. Once the United States Trustee approves the trustee's budget, the trustee is notified of this approval, and pursuant to 28 U.S.C. 586(e), the trustee's compensation, and a specified percentage fee that the trustee may collect from debtors' plan payments, is authorized. This fee is to be used for payment of the approved expenses incurred during the fiscal year.

When a trustee realizes that expenses for the current year might exceed the approved amount, a trustee must submit a request to the United States Trustee, and obtain approval, before incurring expenses above the approved amount. This request must be submitted when the increase to an individual expense line item is greater than both 10% of the budgeted amount and \$5,000.00. Expenses for certain items require prior United States Trustee approval regardless of amount. These expenses currently are increases in the amount budgeted for employee expenses, increases in office lease obligations, payments to the standing trustee or relative of the standing trustee, and expenses for any item not originally contained in the approved budget. These expenses are set forth in the Chapter 13 Trustee Handbook, which is posted on the EOUST web site. If any other expenses are added to this list, the United States Trustee will notify trustees via email or regular mail at least 30 days before including the new expenses in a revision to the Handbook.

If a trustee disagrees with the United States Trustee's denial of the trustee's request for expenses, the trustee may seek administrative review of the denial under the procedures identified in this rule. The Director of the EOUST will conduct a de novo review of the United States Trustee's decision to determine whether the record supports the United States Trustee's decision and whether the decision was an appropriate exercise of the United States Trustee's discretion or contrary to law.

With the passage of BAPCPA, Congress directed the Attorney General to prescribe procedures implementing administrative review for trustees when a claim of actual, necessary expenses is denied. The Attorney General delegated this authority to the Director, Executive Office for United States Trustees. In response to this congressional mandate, the Director publishes this rule, which establishes such procedures. This rule imposes requirements only upon standing trustees who are supervised by United States Trustees. In addition, this rule addresses only the United States Trustee's denial of a trustee's claim of actual, necessary expenses. This rule does not address the suspension or termination of trustees. EOUST will publish another notice of proposed rulemaking that addresses the suspension or termination of trustees with a RIN number of 1105-AB12.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b), The Principles of Regulation. This rule is not a "significant regulatory action" as defined by Executive Order 12866 and, accordingly, this rule has not been reviewed by the Office of Management and Budget.

The Department has also assessed both the costs and benefits of this rule as required by section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. The costs considered in this regulation include the costs for prosecuting an administrative appeal of the United States Trustee's denial of a trustee's claim of actual, necessary expenses. The anticipated costs are the compiling, photocopying and mailing of the requested records. However, none of these costs are new. This rule simply codifies the current practice for obtaining administrative review of the United States Trustee's decision.

The benefits of this rule include the codification of the process for a trustee to obtain administrative review of the United States Trustee's denial of a

trustee's claim of actual, necessary expenses. These benefits justify its costs in complying with Congress' mandate to prescribe procedures to implement 28 U.S.C. 586(e).

Executive Order 13132

This rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This rule does not contain an information collection under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). If a trustee wishes to appeal a United States Trustee's decision, the trustee submits a request for review to the Director detailing the specific factual circumstances supporting the trustee's argument.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Director has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that this rule does not impose any new costs upon trustees that did not already exist under the current administrative review process. In addition, the costs of compiling, photocopying and mailing records are de minimis.

Unfunded Mandates Reform Act of 1995

This rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This rule does not include a federal mandate that may result in the annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than the annual threshold established by the Act (\$100 million). Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et*

seq. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, and innovation; or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 58

Administrative practice and procedure, Bankruptcy, Credit and debts.

Accordingly, for the reasons set forth in the preamble, Part 58 of chapter I of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 58—[AMENDED]

1. The authority citation for part 58 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 11 U.S.C. 109(h), 111, 521(b), 727(a)(11), 1141(d)(3), 1202; 1302, 1328(g); 28 U.S.C. 509, 510, 586, 589b.

2. Add § 58.11 to read as follows:

§ 58.11 Procedures Governing Administrative Review of a United States Trustee's Decision to Deny a Chapter 12 or Chapter 13 Standing Trustee's Claim of Actual, Necessary Expenses.

(a) The following definitions apply to § 58.11 of this Part. These terms shall have these meanings:

(1) The term "claim of actual, necessary expenses" means the request by a chapter 12 or chapter 13 standing trustee for the United States Trustee's approval of the trustee's projected expenses for each fiscal year budget, or for an amendment to the current budget when an increase in an individual expense line item is greater than both 10% of the budgeted amount and \$5,000.00. Expenses for certain items require prior United States Trustee approval regardless of amount;

(2) The term "Director" means the person designated or acting as the Director of the Executive Office for United States Trustees;

(3) The term "final decision" means the determination issued by the Director based upon the review of the United States Trustee's decision to deny all or part of a trustee's claim of actual, necessary expenses;

(4) The term "notice" means the written communication from the United States Trustee to a trustee that the trustee's claim of actual, necessary expenses has been denied in whole or in part;

(5) The term "request for review" means the written communication from

a trustee to the Director seeking review of the United States Trustee's decision to deny, in whole or in part, the trustee's claim of actual, necessary expenses;

(6) The term "trustee" means an individual appointed by the United States Trustee under 28 U.S.C. 586(b) to serve as the standing trustee for chapter 12 or chapter 13 cases in a particular region; and

(7) The term "United States Trustee" means, alternatively:

(i) The Executive Office for United States Trustees;

(ii) A United States Trustee appointed under 28 U.S.C. 581;

(iii) A person acting as a United States Trustee;

(iv) An employee of a United States Trustee; or

(v) Any other entity authorized by the Attorney General to act on behalf of the United States under this rule.

(b) The United States Trustee may issue a decision to deny a trustee's claim of actual, necessary expenses. Reasons for denial include, but are not limited to, finding any of the following:

(1) The trustee failed to provide to the United States Trustee sufficient justification for the expense;

(2) The trustee failed to demonstrate to the United States Trustee that the expense is a cost effective use of funds;

(3) The trustee failed to demonstrate to the United States Trustee that the expense is reasonably related to the duties of the trustee;

(4) The trustee failed to obtain authorization from the United States Trustee prior to making an expenditure that was not provided for in the current budget;

(5) The trustee failed to provide the United States Trustee with documents, materials, or other information pertaining to the expense;

(6) The trustee failed to timely submit to the United States Trustee accurate budgets or requests for amendment of budgets to cover the additional expense; or

(7) The trustee failed to demonstrate to the United States Trustee that the expense is directly related to office operations.

(c) Before issuing a notice of denial, the United States Trustee shall communicate in writing with the trustee in an attempt to resolve any dispute over a claim of actual, necessary expenses:

(1) For disputes involving the trustee's projected expenses for the upcoming fiscal year budget, the United States Trustee shall either resolve the dispute or issue a written notice of denial no later than October 31 of the

current calendar year, or, if the United States Trustee has requested additional information, 30 days from the deadline for submission of the additional information if such deadline is after October 1, unless the trustee and United States Trustee agree to a longer period of time. Any projected expenses not specifically disputed shall be approved in the ordinary course and the trustee's fee shall be set on an interim basis;

(2) For disputes over amendments to the current year budget, the United States Trustee shall either resolve the dispute or issue a written notice of denial within 30 days of the trustee's amendment request, or, if the United States Trustee has requested additional information, 30 days from the deadline for submission of the additional information, unless the trustee and United States Trustee agree to a longer period of time. Any portion of the amendment not specifically disputed shall be approved in the ordinary course;

(3) If the United States Trustee does not resolve the dispute or issue a written notice of denial within the timeframes identified in (c)(1) or (c)(2) of this section, the trustee's claim of actual, necessary expenses shall be deemed denied.

(d) The United States Trustee shall notify a trustee in writing of any decision denying a trustee's claim of actual, necessary expenses. The notice shall state the reason(s) for the decision and shall reference any documents or communications relied upon in reaching the decision. The United States Trustee shall provide to the trustee copies of any such non-privileged documents that were not supplied to the United States Trustee by the trustee. The notice shall be sent to the trustee by overnight courier, for delivery the next business day.

(e) The notice shall advise the trustee that the decision is final and unreviewable unless the trustee requests in writing a review by the Director no later than 30 calendar days from the date of the notice to the trustee.

(f) The decision to deny a trustee's claim of actual, necessary expenses shall take effect upon the expiration of a trustee's time to seek review from the Director or, if the trustee timely seeks such review, upon the issuance of a written final decision by the Director.

(g) The trustee's request for review shall be in writing and shall fully describe why the trustee disagrees with the United States Trustee's decision, and shall be accompanied by all documents and materials the trustee wants the Director to consider in reviewing the United States Trustee's

decision. The trustee shall send the original and one copy of the request for review, including all accompanying documents and materials, to the Office of the Director by overnight courier, for delivery the next business day. In order to be timely, a request for review shall be received at the Office of the Director no later than 30 calendar days from the date of the notice to the trustee. The trustee shall also send a copy of the request for review to the United States Trustee by overnight courier, for delivery the next business day.

(h) The United States Trustee shall have 30 calendar days from the date of the trustee's request for review to submit to the Director a written response regarding the matters raised in the trustee's request for review. The United States Trustee shall provide a copy of this response to the trustee by overnight courier, for delivery the next business day.

(i) The Director may seek additional information from any party, in the manner and to the extent the Director deems appropriate.

(j) In reviewing the decision to deny a trustee's claim of actual, necessary expenses, the Director shall determine:

(1) Whether the decision is supported by the record; and

(2) Whether the decision constitutes an appropriate exercise of discretion.

(k) The Director shall issue a written final decision no later than 90 calendar days from the receipt of the trustee's request for review, or, if the Director has requested additional information, 30 days from the deadline for submission of the additional information, unless the trustee agrees to a longer period of time. The Director's final decision on the trustee's request for review shall constitute final agency action.

(l) In reaching a final decision the Director may specify a person to act as a reviewing official. The reviewing official may not be under the supervision of the United States Trustee who denied the trustee's claim of actual, necessary expenses. The reviewing official's duties shall be specified by the Director on a case-by-case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, and such other duties as the Director shall prescribe in a particular case.

(m) This rule does not authorize a trustee to seek review of any decision to change maximum annual compensation, to decrease or increase appointments of trustees in a region or district, to change the trustee's percentage fee, or to suspend, terminate, or remove a trustee.

(n) A trustee must exhaust all administrative remedies before seeking redress in any court of competent jurisdiction.

Dated: August 6, 2009.

Clifford J. White III,

Director, Executive Office for United States Trustees.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2009-0474; FRL-8945-8]

Revisions to the California State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVAPCD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_x) and particulate matter (PM) emissions from boilers of various capacities. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by September 14, 2009.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2009-0474, by one of the following methods:

1. *Federal eRulemaking Portal:* www.regulations.gov. Follow the on-line instructions.

2. *E-mail:* steckel.andrew@epa.gov.

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an "anonymous access" system, and EPA will not know