

NATIONAL MEDIATION BOARD**29 CFR Part 1208****Freedom of Information Act, Implementation; Fee Schedule**

AGENCY: National Mediation Board.

ACTION: Final rule.

SUMMARY: The National Mediation Board (NMB) is amending its rules implementing the Freedom of Information Act (FOIA), as provided by the Freedom of Information Reform Act of 1986 which requires that the NMB promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of FOIA requests and establishing procedures and guidelines for determining when such fees should be waived or reduced. The revisions substantially conform to the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget in the **Federal Register** of March 27, 1987.

DATES: This rule is effective August 19, 1998.

FOR FURTHER INFORMATION CONTACT: Ronald M. Etters, General Counsel, 1301 K Street, N.W., Suite 250, Washington, DC 20572, Telephone (202) 523-5944.

SUPPLEMENTARY INFORMATION: On February 13, 1998, the National Mediation Board published a proposed rule under the FOIA. See 63 FR 7331, Feb. 13, 1998. Interested parties were afforded an opportunity to participate in the rulemaking through submission of written comments on the proposed rule. The NMB received no written comments. The Freedom of Information Reform Act of 1986 (Pub. L. 99-570) requires agencies to adopt regulations that conform to the Act regarding procedures and fees for obtaining copies of agency records. The Reform Act specifically required the Office of Management and Budget (OMB) to develop and issue a schedule of fees and guidelines pursuant to notice and comment. That Act also required agencies to publish their own regulations for those same purposes based upon the OMB guidelines. The regulations represent NMB's response to that requirement. They are based upon the OMB guidelines.

Executive Order 12291

This rule is not a "major rule" under Executive Order 12291 because it is not "likely to result in: (1) An annual effect on the economy of \$100 million or more; (2) A major increase in costs or prices for consumers, individual

industries, Federal, State, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets." Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply because the rule does not impose any significant economic requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

These regulations will not result in any implications pursuant to the Paperwork Reduction Act.

List of Subjects in 29 CFR Part 1208

Freedom of information.

In consideration of the foregoing, the NMB amends 29 CFR Part 1208 as follows:

PART 1208—AVAILABILITY OF INFORMATION

1. The authority citation for part 1208 is revised to read as follows:

Authority: 5 U.S.C. 552; 45 U.S.C. 151-163.

2. Section 1208.2 is revised to read as follows:

§ 1208.2 Production or disclosure of material or information.

(a) *Requests for identifiable records and copies.* (1) All requests for National Mediation Board records shall be filed in writing by mailing, faxing, or delivering the request to the Chief of Staff, National Mediation Board, Washington, DC 20572.

(2) The request shall reasonably describe the records being sought in a manner which permits identification and location of the records.

(i) If the description is insufficient to locate the records, the National Mediation Board will so notify the person making the request and indicate the additional information needed to identify the records requested.

(ii) Every reasonable effort shall be made by the Board to assist in the identification and location of the records sought.

(3) Upon receipt of a request for the records the Chief of Staff shall maintain records in reference thereto which shall include the date and time received, the name and address of the requester, the

nature of the records requested, the action taken, the date the determination letter is sent to the requester, appeals and action thereon, the date any records are subsequently furnished the number of staff hours and grade levels of persons who spent time responding to the request, and the payment requested and received.

(4) All time limitations established pursuant to this section with respect to processing initial requests and appeals shall commence at the time a written request for records is received at the Board's offices in Washington, D. C.

(i) An oral request for records shall not begin any time requirement.

(ii) [Reserved]

(b) *Processing the initial request—(1) Time limitations.* Within 20 working days (excepting Saturdays, Sundays, and working holidays) after a request for records is received, the Chief of Staff shall determine and inform the requester by letter whether or the extent to which the request will be complied with, unless an extension is taken under paragraph (b)(3) of this section.

(2) Such reply letter shall include:

(i) A reference to the specific exemption or exemptions under the Freedom of Information Act (5 U.S.C. 552) authorizing the withholding of the record, a brief explanation of how the exemption applies to the record withheld.

(ii) The name or names and positions of the person or persons, other than the Chief of Staff, responsible for the denial.

(iii) A statement that the denial may be appealed within thirty days by writing to the Chairman, National Mediation Board, Washington, D. C. 20572, and that judicial review will thereafter be available in the district in which the requester resides, or has his principal place of business, or the district in which the agency records are situated, or the District of Columbia.

(3) *Extension of time.* In unusual circumstances as specified in this paragraph, the Chief of Staff may extend the time for initial determination on requests up to a total of ten days (excluding Saturdays, Sundays, and legal public holidays). Extensions shall be granted in increments of five days or less and shall be made by written notice to the requester which sets forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph "unusual circumstances" means, but only to the extent necessary to the proper processing of the request:

(i) The need to search for and collect the requested records from field facilities or other establishments that are

separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency or another division having substantial interest in the determination of the request, or the need for consultation among two or more components of the agency having substantial subject matter interest therein.

(4) *Treatment of delay as a denial.* If no determination has been dispatched at the end of the ten-day period, or the last extension thereof, the requester may deem his request denied, and exercise a right of appeal, in accordance with paragraph (c) of this section. When no determination can be dispatched within the applicable time limit, the responsible official shall nevertheless continue to process the request; on expiration of the time limit he shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial and to appeal to the Chairman of the Board in accordance with paragraph (c) of this section and he may ask the requester to forego appeal until a determination is made.

(c) *Appeals to the Chairman of the Board.* (1) When a request for records has been denied in whole or in part by the Chief of Staff or other person authorized to deny requests, the requester may, within thirty days of its receipt, appeal the denial to the Chairman of the Board. Appeals to the Chairman shall be in writing, addressed to the Chairman, National Mediation Board, Washington, DC 20572.

(2) The Chairman of the Board will act upon the appeal within twenty working days (excluding Saturdays, Sundays and legal public holidays) of its receipt unless an extension is made under paragraph (c)(3) of this section.

(3) In unusual circumstances as specified in this paragraph (c)(3), the time for action on an appeal may be extended up to ten days (excluding Saturdays, Sundays and legal public holidays) minus any extension granted at the initial request level pursuant to paragraph (b)(3) of this section. Such extension shall be made written notice to the requester which sets forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph (c)(3) "unusual circumstances" means,

but only to the extent necessary to the proper processing of the appeal:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency or another division having substantial interest in the determination of the request or the need for consultation among components of the agency having substantial subject matter interest therein.

(4) *Treatment of delay as a denial.* If no determination on the appeal has been dispatched at the end of the twenty-day period or the last extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of the United States, as specified in 5 U.S.C. 552(a)(4). When no determination can be dispatched within the applicable time limit, the appeal will nevertheless continue to be processed; on expiration of the time limit the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to seek judicial review in the United States district court in the district in which he resides or has his principal place of business, the district in which the Board records are situated or the District of Columbia. The requester may be asked to forego judicial review until determination of the appeal.

(d) *Indexes of certain records.* The National Mediation Board at its office in Washington, DC will maintain, make available for public inspection and copying, and publish quarterly (unless the Board determines by order published in the **Federal Register** that such publication would be unnecessary or impracticable) a current index of the materials available at the Board offices which are required to be indexed by 5 U.S.C. 552(a)(2).

(1) A copy of such index shall be available at cost from the National Mediation Board, Washington, DC 20572.

(2) [Reserved].

3. Section 1208.6 is revised to read as follows:

§ 1208.6 Schedule of fees and methods of payment for services rendered.

(a) *Definitions.* For the purposes of this section the following definitions apply:

(1) *Direct costs* means those expenditures which the National Mediation Board actually incurs in searching for, duplicating, and, in the case of commercial requesters, reviewing documents to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (the basic rate of pay for the employee plus sixteen percent of the rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting the facility in which the records are stored.

(2) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page and line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming.

(3) *Duplication* refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audiovisual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(4) *Review* refers to the process of examining documents located in response to a commercial use request (see paragraph (a)(5) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) *Commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the NMB will look first to the use which a requester will put the document requested. Where the NMB has reasonable cause to doubt the use is not clear from the request itself, the National Mediation Board may seek additional clarification before assigning the request to a specific category.

(6) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education,

an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research.

(7) *Non-commercial scientific institution* refers to an institution that is not operated on a commercial basis as that term is defined in paragraph (a)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) *Representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. These examples are not intended to be all inclusive. In the case of "freelance" journalists, they may be regarded as working for a news organization if they demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the NMB may also look to the past publication record of a requester in making this determination.

(b) *Exceptions of fee charges.* (1) With the exception of requesters seeking documents for a commercial use, the NMB will provide the first 100 pages of duplication and the first two hours of search time without charge. The word "pages" in this paragraph (b) refers to paper copies of standard size, usually 8.5" X 11", or their equivalent in microfiche or computer disks. The term "search time" in this paragraph (b) is based on a manual search for records. In applying this term to searches made by computer, when the cost of the search as set forth in paragraph (d)(2) of this section equals the equivalent dollar amount of two hours of the salary of the person performing the search, the NMB will begin assessing charges for computer search.

(2) The NMB will not charge fees to any requester, including commercial use requesters, if the cost of collecting the fee would be equal to or greater than the fee itself.

(3) (i) The NMB will provide documents without charge or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(ii) In determining whether disclosure is in the public interest under paragraph (b)(3)(i) of this section, the NMB will consider the following factors:

(A) *The subject of the request.* Whether the subject of the requested records concerns "the operations or activities of the government";

(B) *The informative value of the information to be disclosed.* Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(C) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* Whether disclosure of the requested information will contribute to "public understanding";

(D) *The significance of the contributions to the public understanding.* Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(E) *The existence and magnitude of a commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(F) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(iii) A request for a fee waiver based on the public interest under paragraph (b)(3)(i) of this section must address the factors of paragraph (b)(3)(ii) of this section as they apply to the request for records in order to be considered by the Chief of Staff.

(c) *Level of fees to be charged.* The level of fees to be charged by the NMB in accordance with the schedule set forth in paragraph (d) of this section, depends on the category of the requester. The fee levels to be charged are as follows:

(1) A request for documents appearing to be for commercial use will be charged to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought.

(2) A request for documents from an educational or non-commercial scientific institution will be charged for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or

scientific (if the request is from a non-commercial scientific institution) research.

(3) The NMB shall provide documents to requesters who are representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages.

(4) The NMB shall charge requesters who do not fit into any of the categories above such fees which recover the full direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. All requesters must reasonably describe the records sought.

(d) The following fees shall be charged in accordance with paragraph (c) of this section:

(1) *Manual searches for records.* The salary rate (i.e., basic pay plus sixteen percent) of the employee(s) making the search. Search time under this paragraph and paragraph (d)(2) of this section may be charged for even if the NMB fails to locate responsive records or if records located are determined to be exempt from disclosure.

(2) *Computer searches for records.* The actual direct cost of providing the service, including computer search time directly attributable to searching for records responsive to a FOIA request, runs, and operator salary apportionable to the search.

(3) *Review of records.* The salary rate (i.e., basic pay plus sixteen percent) of the employee(s) conducting the review. This charge applies only to requesters who are seeking documents for commercial use and only to the review necessary at the initial administrative level to determine the applicability of any relevant FOIA exemptions, and not at the administrative appeal level or an exemption already applied.

(4) *Certification or authentication of records.* \$2.00 per certification or authentication.

(5) *Duplication of records.* Fifteen cents per page for paper copy reproduction of documents, which the NMB determined is the reasonable direct cost of making such copies taking into account the average salary of the operator and the cost of the reproduction machinery. For copies of records prepared by computer, such as tapes or printouts, the NMB shall charge the actual cost, including operator time, of production of the tape or printout.

(6) *Forwarding material to destination.* Postage, insurance and special fees will be charged on an actual cost basis.

(7) *Other costs.* All other direct costs of preparing a response to a request

shall be charged to requester in the same amount as incurred by NMB.

(e) *Aggregating requests.* When the NMB reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the NMB will aggregate any such requests and charge accordingly.

(f) *Charging interest.* Interest at the rate prescribed in 31 U.S.C. 3717 may be charged those requesters who fail to pay fees charged, beginning on the thirtieth day following the billing date. Receipt of a fee by the NMB, whether processed or not, will stay the accrual of interest. If a debt is not paid, the agency may use the provisions of the Debt Collection Act of 1982, (Pub. L. 97-365, 96 Stat. 1749) including disclosure to consumer reporting agencies, for the purpose of obtaining payment.

(g) *Advance payments.* The NMB will not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) The NMB estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250. Then the NMB will notify the requester of the likely cost and obtain satisfactory assurances of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charge in a timely fashion (i.e., within thirty days of the date of the billing), in which case the NMB requires the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester. When the NMB acts under paragraph (g)(1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., twenty working days from receipt of initial requests and twenty working days from receipt of appeals from initial denial, plus permissible extension of these time limits) will begin only after the NMB has received fee payments described in this paragraph (g).

(h) *Payment.* Payment of fees shall be made by check or money order payable to the United States Treasury.

Dated: August 11, 1998.

Stephen E. Crable,

Chief of Staff.

[FR Doc. 98-21978 Filed 8-18-98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 009-0090a FRL-6142-3]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from the Ventura County Air Pollution Control District (VCAPCD). This action will remove these rules from the Federally approved SIP. The intended effect of this action is to remove rules from the SIP that are no longer in effect in VCAPCD, in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the removal of these rules from the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on October 19, 1998, without further notice, unless EPA receives adverse comments by September 18, 1998. If EPA receives such comment, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of these rules, along with EPA's evaluation report for each rule, are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted requests for rescission are also available for inspection at the following locations: Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board,
Stationary Source Division, Rule
Evaluation Section, 2020 "L" Street,
Sacramento, CA 95814
Ventura County Air Pollution Control
District, 669 County Square Drive,
Bakersfield, CA 93003

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1200.

SUPPLEMENTARY INFORMATION:

I. Applicability

The VCAPCD rules being removed from the California SIP include: Rule 61, Effluent Oil Water Separators, adopted July 5, 1983; Rule 65, Gasoline Specifications, adopted May 23, 1972; and Rule 66, Organic Solvents, adopted on June 24, 1975. These rules were repealed by VCAPCD on October 4, 1988, October 22, 1985, and July 9, 1996, respectively, and submitted by the California Air Resources Board (CARB) to EPA on March 26, 1990, June 4, 1986, and October 18, 1996, respectively, for removal from the SIP.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Ventura County Area. 43 FR 8964, 40 CFR 81.305. The rules being addressed in this action were originally adopted by the VCAPCD as part of VCAPCD's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. These rules were originally adopted to control volatile organic compound (VOC) emissions from oil water separators, motor vehicle fuels, and organic solvents. Since the adoption of these rules, the VCAPCD has adopted other rules that regulate the same sources covered by Rule 61 and Rule 66. The requirements in Rule 65 are covered by statewide regulations. VCAPCD subsequently repealed these three rules because they had been replaced by the provisions contained in other rules. These other rules have all been approved into the Federally enforceable SIP. As a result, VCAPCD submitted requests to EPA, through CARB, for the removal of Rule 61, Rule 65, and Rule 66 from the California SIP.

III. EPA Action

The VCAPCD rules that are being rescinded by today's action are listed below. EPA previously approved all these rules into the California SIP: