

**Authority:** 5 U.S.C. 301; 28 U.S.C. 509, 510; 31 U.S.C. 3801–3812; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

34. In § 71.2, in the definition of “Reviewing Official”, redesignate paragraphs (e) and (f) as paragraphs (f) and (g), respectively, and add a new paragraph (e) to read as follows:

**§ 71.2 Definitions.**

\* \* \* \* \*

(e) For the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the Chief Counsel, ATF;

\* \* \* \* \*

**PART 77—ETHICAL STANDARDS FOR ATTORNEYS FOR THE GOVERNMENT**

35. The authority citation for part 77 continues to read as follows:

**Authority:** 28 U.S.C. 530B.

**§ 77.2 [Amended]**

36. In § 77.2, in paragraph (a), add the words “the Chief Counsel for ATF and any attorney employed in that office;” following the words “the Chief Counsel for the DEA and any attorney employed in that office;”.

Dated: January 23, 2003.

**John Ashcroft,**  
*Attorney General.*

[FR Doc. 03–1896 Filed 1–29–03; 8:45 am]

**BILLING CODE 4410–19–P**

**DEPARTMENT OF JUSTICE**

**28 CFR Part 16**

**[AAG/A Order No. 005–2003]**

**Privacy Act of 1974; Implementation**

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice, Office of the Pardon Attorney (OPA), is exempting a Privacy Act system of records entitled “Executive Clemency Case Files/Executive Clemency Tracking System (JUSTICE/OPA–001)” from subsections (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), and (e)(5) of the Privacy Act. Information in this system relates to the investigation and evaluation of applicants for executive clemency and case-related correspondence regarding such applicants and the clemency process. The exemptions are necessary to avoid interference with clemency investigations and decision-making, when such interference could impair the Department of Justice’s ability to provide candid recommendations to the President for his ultimate decisions on clemency matters, and to prevent

unwarranted invasions of the personal privacy of third parties.

**EFFECTIVE DATE:** This final rule is effective January 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mary Cahill, (202) 307–1823.

**SUPPLEMENTARY INFORMATION:** On October 31, 2002 (67 FR 66348), a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have “a significant impact on a substantial number of small entities.”

**List of Subjects in Part 16**

Administrative practices and procedures, Courts, Freedom of Information and Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a, and delegated to me by Attorney General Order No. 793–78, 28 CFR Part 16 is amended as follows:

**PART 16—[AMENDED]**

1. The authority citation for Part 16 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Section 16.79 is revised to read as follows:

**§ 16.79 Exemption of Pardon Attorney System.**

(a) The following system of records is exempt from 5 U.S.C. 552a, subsections (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), and (e)(5): Executive Clemency Case Files/Executive Clemency Tracking System (JUSTICE/OPA–001). These exemptions apply only to the extent that information in this system of records is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(b) Exemption from the particular subsections is justified for the following reasons:

(1) From subsection (c)(3) because:

(i) The purpose of the creation and maintenance of the Executive Clemency Case Files/Executive Clemency Tracking System (JUSTICE/OPA–001) is to enable the Justice Department to prepare reports and recommendations to the President for his ultimate decisions on clemency matters, which are committed to exclusive discretion of the President pursuant to Article II, Section 2, Clause 1 of the Constitution.

(ii) Release of the disclosure accounting, for disclosures pursuant to

the routine uses published for this system, would permit the requester to obtain valuable information concerning the nature and scope of a clemency investigation, invade the right of candid and confidential communications among officials concerned with making recommendations to the President in clemency matters, and disclose the identity of persons who furnished information to the Government under an express or implied promise that their identities would be held in confidence.

(2) From subsection (c)(4) because the exemption from subsections (d)(1), (d)(2), (d)(3), and (d)(4) will make notification of disputes inapplicable.

(3) From subsections (d)(1), (d)(2), (d)(3), and (d)(4) is justified for the reasons stated in paragraph (b)(1) of this section.

(4) From subsection (e)(5) is justified for the reasons stated in paragraph (b)(1) of this section.

Dated: January 17, 2003.

**Paul R. Corts,**  
*Assistant Attorney General for Administration.*

[FR Doc. 03–2252 Filed 1–30–03; 8:45 am]

**BILLING CODE 4410–29–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[CA 273–0370a; FRL–7441–5]**

**Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District and Monterey Bay Unified Air Pollution Control District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) and the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portions of the California State Implementation Plan (SIP). The ICAPCD revision concerns the emission of particulate matter (PM–10) from agricultural burning. The MBUAPCD revision concerns the emission of PM–10 from incinerator burning. We are approving the local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on April 1, 2003 without further notice, unless EPA receives adverse comments by March 3, 2003. If we receive such comments, we

will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted rules and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rules and TSDs at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B-102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule

Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

A copy of a rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbtxt.htm>. This is not an EPA Web site and it may not contain the same version of the rule that was submitted to EPA. Readers should verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval and be aware that the official submittal is only available at the agency addresses listed above.

**FOR FURTHER INFORMATION CONTACT:** Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX; (415) 947-4118.

#### SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to EPA.

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#### I. The State's Submittal

##### A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the date that they were revised by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Revised	Submitted
ICAPCD .....	701	Agricultural burning .....	08/13/02	10/16/02
MBUAPCD .....	408	Incinerator burning .....	08/21/02	10/16/02

On December 3, 2002, this submittal was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

#### B. Are There Other Versions of These Rules?

We gave a limited approval and limited disapproval to a version of ICAPCD Rule 701 on July 11, 2001 (66 FR 36170). We approved a version of MBUAPCD Rule 408 on July 13, 1987 (52 FR 26148).

#### C. What Is the Purpose of the Submitted Rule Revisions?

The purpose of the submitted revised ICAPCD Rule 701 is to remedy the deficiency cited in the limited approval and limited disapproval action on July 11, 2001 (66 FR 36170).

The purposes of the submitted revised MBUAPCD Rule 408 are to reformat the rule and to remove the blanket exemption from the rule for burning household rubbish and yard trimmings at single- and two-family homes in all of San Benito County.

## II. EPA's Evaluation and Action

### A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing

requirements (see sections 110(l) and 193). Section 189(a) of the CAA requires moderate PM-10 nonattainment areas with significant PM-10 sources to adopt reasonably available control measures (RACM), including reasonably available control technology (RACT). RACM/RACT is not required for attainment areas unless required by a maintenance attainment plan. ICAPCD regulates a moderate PM-10 nonattainment area. MBUAPCD is a PM-10 attainment area. See 40 CFR 81.305.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *General Preamble Appendix C3—Prescribed Burning Control Measures* (57 FR 18072, April 28, 1992).
- *PM-10 Guideline Document*, EPA-452/R-93-008.

#### B. Do the Rules Meet the Evaluation Criteria?

The deficiency in ICAPCD Rule 701 was that the APCO had open-ended discretion to allow burning on No-Burn Days in case of imminent and substantial economic loss. The deficiency was remedied in paragraph B.1 with the addition that the APCO must limit the amount of acreage per

No-Burn Day and that the APCO may authorize such burning only when downwind populated areas are forecast by the ICAPCD to achieve the ambient air quality standards.

The cited changes improve MBUAPCD Rule 408 with increased stringency by eliminating a blanket exemption.

We believe the rules are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and RACM/RACT requirements. The TSDs have more information on our evaluation.

#### C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by March 3, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not

receive timely adverse comments, the direct final approval will be effective without further notice on April 1, 2003. This will incorporate these rules into the federally-enforceable SIP and will terminate all sanctions and Federal Implementation Plan implications associated with our June 11, 2001 action on a previous version of ICAPCD Rule 701.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this direct final rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### III. Background Information

#### A. Why Were These Rules Submitted?

PM-10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM-10 emissions. Table 2 lists some of the national milestones leading to the submittal of local agency PM-10 rules.

TABLE 2.—PM-10 NONATTAINMENT MILESTONES

Date	Event
March 3, 1978 .....	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977. 43 FR 8964; 40 CFR 81.305.
July 1, 1987 .....	EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM-10). 52 FR 24672.
November 15, 1990 .....	Clean Air Act Amendments of 1990 were enacted, Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.
November 15, 1990 .....	PM-10 areas meeting the qualifications of section 107(d)(4)(B) of the CAA were designated non-attainment by operation of law and classified as moderate pursuant to section 188(a). States are required by section 110(a) to submit rules regulating PM-10 emissions in order to achieve the attainment dates specified in section 188(c).

### IV. Administrative Requirements

Under Executive Order 12866 (58 FR 57135, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have

substantial direct effects 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996,

generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 1, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 12, 2002.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## **PART 52 [AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart F—California**

2. Section 52.220 is amended by adding paragraph (c)(302) to read as follows:

#### **§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*  
(302) New and amended regulations for the following APCDs were submitted on October 16, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Imperial County Air Pollution Control District.

(1) Rule 701, revised on August 13, 2002.

(B) Monterey Bay Unified Air Pollution Control District.

(1) Rule 408, adopted on September 1, 1974 and revised on August 21, 2002.

\* \* \* \* \*

[FR Doc. 03-2174 Filed 1-30-03; 8:45 am]

**BILLING CODE 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[CA 273-0370c; FRL-7441-7]**

### **Interim Final Determination to Stay and/or Defer Sanctions, Imperial County Air Pollution Control District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Interim final rule.

**SUMMARY:** EPA is making an interim final determination to stay and/or defer imposition of sanctions based on a proposed approval of revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern ICAPCD Rule 701.

**DATES:** This interim final determination is effective on January 31, 2003. However, comments will be accepted until March 3, 2003.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-

4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSD at the following locations:

Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbltxt.htm>. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX; (415) 947-4118.

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document, "we," "us" and "our" refer to EPA.

### **I. Background**

On July 11, 2001 (66 FR 36170), we published a limited approval and limited disapproval of ICAPCD Rule 701 as adopted locally on September 14, 1999 and submitted by the State on May 26, 2000. We based our limited disapproval action on certain deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after August 10, 2001 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On August 13, 2002, ICAPCD adopted revisions to Rule 701 that were intended to correct the deficiencies identified in our disapproval action. On October 16, 2002, the State submitted these revisions to EPA. In the Proposed Rules section of today's **Federal Register**, we have proposed approval of this submittal because we believe it corrects the deficiencies identified in our July 11, 2001 disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were

triggered by our July 11, 2001 disapproval.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed approval of revised ICAPCD Rule 701, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

### **II. EPA Action**

We are making an interim final determination to stay and/or defer CAA section 179 sanctions associated with ICAPCD Rule 701 based on our concurrent proposal to approve the State's SIP revision as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and/or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this