

Regulation Development Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:**

Mark J. Palermo, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6082.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: February 25, 1999.

**David A. Ullrich,**

*Acting Regional Administrator, Region 5.*  
[FR Doc. 99-6497 Filed 3-17-99; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 011-0134 FRL-6309-7]

#### Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District, San Joaquin Valley Unified Air Pollution Control District, Siskiyou County Air Pollution Control District, and Bay Area Air Quality Management District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a limited approval of revisions to the California State Implementation Plan (SIP) which concerns the control of the sulfur content of fuels within the South Coast Air Quality Management District and the Siskiyou County Air Pollution Control District, emissions of sulfuric acid mist within the San Joaquin Valley Unified Air Pollution Control District and emissions of sulfur dioxide within the Bay Area Air Quality Management District.

The intended effect of proposing a limited approval of these rules is to regulate emissions of sulfur dioxide (SO<sub>2</sub>) in accordance with the

requirements of the Clean Air Act, as amended in 1990 (CAA or "Act"). EPA's final action on this proposed rulemaking will incorporate these rules into the federally approved SIP. EPA has evaluated the rules and is proposing a limited approval under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions.

**DATES:** Comments must be received on or before April 19, 1999.

**ADDRESSES:** Comments may be mailed to: Andrew Steckel, Rulemaking Office [AIR-4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rules and EPA's evaluation reports of the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket, 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109-7714.

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg Ave., Fresno, CA 93726.

Siskiyou County Air Pollution Control District, 525 South Foothill Dr., Yreka, CA 96097

South Coast Air Quality Management District, 21865 E. Copley Dr., Diamond Bar, CA 91765-4182.

**FOR FURTHER INFORMATION CONTACT:**

Stanley Tong, Rulemaking Office, [AIR-4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901 Telephone: (415) 744-1191.

**SUPPLEMENTARY INFORMATION:**

#### I. Applicability

The rules being proposed for approval into the California SIP include South Coast Air Quality Management District (SCAQMD) Rule 431.2, Sulfur Content of Liquid Fuels, San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4802, Sulfuric Acid Mist, Siskiyou County Air Pollution Control District (SCAPCD) Rule 4.14, Sulfur Content of Fuels and Bay Area Air Quality Management District (BAAQMD) Regulation 9 Rule 1, Sulfur

Dioxide. SCAQMD Rule 431.2 and SCAPCD Rule 4.14 were submitted by the California Air Resources Board (CARB) to EPA on December 31, 1990, BAAQMD Regulation 9 Rule 1 was submitted by CARB to EPA on September 14, 1992, and SJVUAPCD Rule 4802 was submitted by CARB to EPA on November 18, 1993.

#### II. Background

40 CFR 81.305 provides the attainment status designations for air districts in California. South Coast Air Quality Management District<sup>1</sup>, San Joaquin Valley Unified Air Pollution Control District, Siskiyou County Air Pollution Control District and Bay Area Air Quality Management District are listed as being in attainment for the national ambient air quality standards (NAAQS) for sulfur dioxide (SO<sub>2</sub>). Therefore, for purposes of controlling SO<sub>2</sub>, these rules need only comply with the general provisions of Section 110 of the Act.

Sulfur dioxide is formed by the combustion of fuels containing sulfur compounds. SCAQMD adopted Rule 431.2, Sulfur Content of Liquid Fuels, on May 4, 1990. SCAPCD adopted Rule 4.14, Sulfur Content of Fuels, on July 11, 1989. On December 31, 1990 the State of California submitted many rules for incorporation into its SIP, including SCAQMD Rule 431.2 and SCAPCD Rule 4.14. These rules were found to be complete on February 28, 1991 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V<sup>2</sup> and are being proposed for limited approval.

SJVUAPCD adopted Rule 4802, Sulfuric Acid Mist, on December 17, 1992. On November 18, 1993 the State of California submitted many rules for incorporation into its SIP, including SJVUAPCD Rule 4802. This rule was found to be complete on December 27, 1993 pursuant to EPA's completeness criteria and is being proposed for limited approval.

BAAQMD adopted Regulation 9 Rule 1, Sulfur Dioxide, on May 20, 1992. On September 14, 1992 the State of California submitted many rules for incorporation into its SIP, including BAAQMD Regulation 9 Rule 1. This rule was found to be complete on November

<sup>1</sup> This **Federal Register** action for the South Coast Air Quality Management District excludes the Los Angeles County portion of the Southeast Desert AQMA, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997.

<sup>2</sup> EPA adopted completeness criteria on February 16, 1990 (55 FR 5824) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

20, 1992 pursuant to EPA's completeness criteria and is being proposed for limited approval.

The following is EPA's evaluation and proposed action for these rules.

### III. EPA Evaluation and Proposed Action

In determining the approvability of an SO<sub>2</sub> rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

While the SCAQMD, SCAPCD, SJVUAPCD and BAAQMD are in attainment with the SO<sub>2</sub> NAAQS, many of the general SIP requirements regarding enforceability, for example, are still appropriate for these rules. In determining the approvability of these rules, EPA evaluated them in light of the "SO<sub>2</sub> Guideline Document", EPA-452/R-94-008.

On September 28, 1981, EPA approved into the SIP a version of Rule 431.2, Sulfur Content of Liquid Fuels, that had been adopted by the SCAQMD on February 2, 1979. Revisions to this rule were subsequently adopted, and then were superseded by the submitted version. In evaluating the submitted version, EPA reviewed materials associated with the SIP approved rule and the submitted version. SCAQMD submitted an amendment to Rule 431.2 on December 31, 1990 which includes the following significant changes from the current SIP rule:

- Sets a uniform limit of 0.05 percent by weight for the sulfur content in liquid fuels that are burned, purchased, sold or offered for sale to be burned.
- Requires stationary internal combustion engines operating on diesel or distillate fuel to use CARB compliant diesel fuel on and after October 1, 1993.
- Requires a person selling the fuel to provide the customer or user with specifications for the sulfur content of the fuel.
- Requires a monthly report be submitted to the SCAQMD documenting the liquid fuel consumption and applicable sulfur content used in refineries and power plants.
- Requires an annual report be submitted documenting the liquid fuel consumption and applicable sulfur content for all other commercial and industrial facilities with permitted combustion equipment.
- Adds sections for recordkeeping, definitions and test methods.

EPA has evaluated SCAQMD's submitted Rule 431.2 for consistency with the CAA, EPA regulations, and

EPA policy and has found that the revisions result in a clearer, more enforceable rule. Although SCAQMD's Rule 431.2 will strengthen the SIP, this rule contains the following deficiency which should be corrected.

- The rule allows Executive Officer discretion in approving alternate test methods to determine compliance with the sulfur limits of the rule. EPA also recommends the following improvements to the rule.

- A reference to a CARB specification for motor vehicle diesel fuel (Title 13, Section 2256), should be updated to reflect renumbering of the section which occurred in the year following the amendment of Rule 431.2

- The period of record retention specified should be consistent with the federal record retention requirement of 5 years.

A detailed discussion of the rule deficiency and recommendations for rule improvement can be found in the Technical Support Document for Rule 431.2 (2/12/99), which is available from the U.S. EPA, Region IX office.

There is currently no version of SJVUAPCD Rule 4802, Sulfuric Acid Mist, in the SIP. The submitted rule includes the following provisions:

- Limits the amount of effluent process gas that can be discharged into the atmosphere from sulfuric acid production units constructed or modified before August 17, 1971 to 0.30 pounds per short ton of acid produced, the production being expressed as 100 percent sulfuric acid.
- Prohibits any owner or operator of an existing sulfuric acid production unit that emits less than the allowable limit from allowing an increase of emissions beyond the level being emitted as of December 17, 1992. Such owners or operators must also utilize all acid mist emissions control equipment to reduce acid mist emissions to lowest possible levels.
- Establishes Method 8 of 40 CFR 60 Appendix A as the test procedure to be used to determine sulfuric acid mist emissions.

EPA has evaluated SJVUAPCD's submitted Rule 4802 for consistency with the CAA, EPA regulations, and EPA policy. Although SJVUAPCD's Rule 4802 will strengthen the SIP, this rule contains the following deficiency which should be corrected.

- The rule lacks recordkeeping requirements to confirm source compliance with sections 4.1 and 4.2 of the rule.

EPA also recommends the following improvements to the rule.

- The period of record retention specified should be consistent with the

federal record retention requirement of 5 years.

- A typographical error in Section 4.2 should be corrected so that the requirement reads: "The owner or operator of an existing sulfuric acid production *unit* which emits acid mist. \* \* \*."

There is currently no version of SCAPCD Rule 4.14, Sulfur Content of Fuels, in the SIP. The submitted rule supersedes an earlier submittal of Rule 4.14, adopted on January 24, 1989 and submitted to EPA on March 26, 1990. The submitted rule being acted on in this document includes the following provisions:

- Prohibits the burning of any liquid fuel or solid fuel having a sulfur content in excess of 0.5 percent by weight.
- Exempts sources from the above limit which obtain written approval from the Control Officer and remove sulfur compounds from combustion products or use a mixture of fuels to the extent that sulfur compound emissions are no greater than that which would be emitted using a liquid or solid fuel complying with the 0.5 percent by weight limit.

EPA has evaluated SCAPCD's submitted Rule 4.14 for consistency with the CAA, EPA regulations, and EPA policy. Although SCAPCD's Rule 4.14 will strengthen the SIP, this rule contains the following deficiencies which should be corrected.

- The rule lacks recordkeeping requirements to confirm source compliance with sections A. and B. of the rule.
- The rule lacks test methods to determine source compliance with sections A. and B. of the rule.

EPA also recommends the following improvement to the rule.

- The period of record retention specified should be consistent with the federal record retention requirement of 5 years.

On May 3, 1984, EPA approved into the SIP a version of BAAQMD Regulation 9 Rule 1, Sulfur Dioxide, that had been adopted by the BAAQMD on February 16, 1983. Revisions to this rule were subsequently adopted, and then were superseded by the submitted version. In evaluating the submitted version, EPA reviewed materials associated with the SIP approved rule and the submitted version. BAAQMD submitted an amendment to Regulation 9 Rule 1 on September 14, 1992 which includes the following significant changes from the current SIP rule:

- Deletes obsolete phased-in compliance dates for sulfur recovery plants at local refineries.

- Deletes duplicative standards and definitions for sulfur recovery plants.
- Cuts in half the one hour SO<sub>2</sub> limit to match the State SO<sub>2</sub> limits.
- Adds additional definitions.
- Adds standards for sulfur removal operations at petroleum refineries.
- Adds additional test methods for hydrogen sulfide, ammonia, and the sulfur content of crude oil.

EPA has evaluated BAAQMD's submitted Regulation 9 Rule 1 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions result in a clearer, more enforceable rule. Although BAAQMD's Regulation 9 Rule 1 will strengthen the SIP, this rule contains the following deficiency which should be corrected.

- The rule lacks recordkeeping for some of the source categories with emissions limits covered by the rule. EPA also recommends the following improvements to the rule.
- An apparent typographical error resulted in the sulfur dioxide limits changing from 0.04 ppm to 0.05 ppm over 24 hours when the ground level sulfur dioxide limit was moved from one section to another section.
- Test method ST-19B is marked as deleted from the BAAQMD Manual of Procedures. The rule should be updated to delete this test method.

A detailed discussion of the rule deficiencies and rule improvements can be found in the Technical Support Document for SJVUAPCD Rule 4802, SCAPCD Rule 4.14 and BAAQMD Regulation 9 Rule 1 (2/19/99), which is available from the U.S. EPA, Region IX office.

Because of the deficiencies identified for the rules being acted on in this document, they are not fully approvable and may lead to rule enforceability problems. Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3). Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to advance the Act's overarching air quality protection goals by strengthening the SIP. In order to strengthen the SIP by advancing the SO<sub>2</sub> air quality protection goal of the Act, EPA is proposing a limited approval of SCAQMD Rule 431.2, SJVUAPCD Rule 4802, SCAPCD Rule 4.14 and BAAQMD Regulation 9 Rule 1 under sections

110(k)(3) and 301(a) of the Act. However, this limited approval would not approve those measures as satisfying any other specific requirement of the Act, nor would it constitute full approval of the SIP submittals pursuant to section 110(k)(3). Rather, a limited approval of these rules by EPA would mean that the emission limitations and other control measure requirements become part of the California SIP and are federally enforceable by EPA. See, e.g. sections 302(q) and 113 of the Act.

It should be noted that the rules covered by this proposed rulemaking have been adopted by and are currently in effect in the air quality districts to which this action pertains. EPA's final limited approval action will not prevent the SCAQMD, SJVUAPCD, SCAPCD, BAAQMD or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

#### IV. Administrative Requirements

##### A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

##### B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful

and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

##### C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

##### D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not

significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

#### *E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### *F. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the

private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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

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

**Authority:** 42 U.S.C. 7401-7671q.

Dated: March 4, 1999.

**Laura Yoshii,**

*Deputy Regional Administrator, Region IX.*

[FR Doc. 99-6507 Filed 3-17-99; 8:45 am]

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### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 52**

[CA/AZ 211-0126 EC; FRL-6235-6]

**Approval and Promulgation of State Implementation Plans; California and Arizona State Implementation Plan Revisions: Maricopa County, Arizona; Antelope Valley Air Pollution Control District, San Diego County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, and Ventura County Air Pollution Control District**

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

**ACTION:** Proposed Rule.

**SUMMARY:** EPA is approving revisions to the Arizona and California State Implementation Plans (SIP) which concern the control of emergency air episodes.

The intended effect of this action is to protect the public from sudden and dangerous emissions of criteria pollutants in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the states' SIP submittals as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a

subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

**DATES:** Written comments must be received by April 19, 1999.

**ADDRESSES:** Comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, California 95812.

Arizona Department of Environmental Quality, 3003 North Central Avenue, Phoenix, Arizona 85012.

Maricopa County Environmental Services Department, Air Quality Division, 1001 North Central Avenue, Suite 201, Phoenix, Arizona 85004-1942.

Antelope Valley Air Pollution Control District, 315 West Pondera Street, Lancaster, California 93534.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, California 92123-1096.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, California 93721.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, California 93003.

**FOR FURTHER INFORMATION CONTACT:** Andrew Steckel, Air Rulemaking [AIR-4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105-3901, Telephone: (415) 744-1185.

**SUPPLEMENTARY INFORMATION:** This document concerns Maricopa County, Arizona Rule 600—Emergency Episodes, submitted to EPA on January 4, 1990 by the Arizona Department of Environmental Quality; Antelope Valley APCD, Rule 701—Air Pollution Emergency Contingency Actions, submitted to EPA on June 23, 1998; San Diego County Air Pollution Control District Rule 127—Episode Criteria Levels, Rule 128—Episode Declaration, and Rule 130—Episode Actions, submitted to EPA on January 28, 1992; San Joaquin Valley Unified APCD Rule 6010—General Statement, Rule 6020—Applicable Areas, Rule 6030—Episode Criteria Levels, Rule 6040—Episode Stages, Rule 6050—Division of