

**Note: This document is DRAFT and is intended to give basic direction and explanations in reviewing draft rules for comments with draft date of October 14, 2010**

DRAFT  
**STAFF REPORT**

**Amendments to Regulation IV-Permitting:**

**Rule 400-Permit Requirements**  
**Rule 401-Exemptions**  
**Rule 430-New Source Review**  
**Rule 432-Federal New Source Review**

Draft Rules Release Date: October 9, 2010  
Proposed for Adoption Release Date: November 8, 2010

**Schedule of Meetings**

- Date of Public Workshop on Draft Rules:
  - 2:00 p.m., Thursday, October 21, 2010; District Office, 2525 Dominic Dr., Suite J, Chico, CA
  - 10:00 a.m., Wednesday, November 3, 2010; District Office, 2525 Dominic Dr., Suite J, Chico, CA
- Date of Public Workshop on Proposed Rules: 2:00 p.m., Thursday, November 18, 2010; District Office, 2525 Dominic Dr., Suite J, Chico, CA
- Date of Board Adoption Hearing: 10:00 a.m., Thursday, December 9, 2010, Chico City Council Chambers, 421 Main Street, Chico, CA

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- Rule 400-Permit Requirements**
- Rule 401-Exemptions**
- Rule 430-New Source Review**
- Rule 432-Federal New Source Review**

Draft Rules Release Date: October 9, 2010

District staff will address comments and revise draft rules and propose for adoption.

Proposed for Adoption Release Date: November 8, 2010

Public Adoption Hearing: December 9, 2010 at 10:00 a.m.  
Chico City Council Chambers  
421 Main Street, Chico, CA

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- Attachment A.** Draft Rule 400-*Permit Requirements*
- Attachment B.** Draft Rule 401-*Exemptions*
- Attachment C.** Draft Rule 430-*New Source Review*
- Attachment D.** Draft Rule 432-*Federal New Source Review*
- Attachment E.** Notice of Public Workshops and Hearing
- Attachment F.** Draft Resolution of Adoption

**DRAFT**  
**STAFF REPORT**

*Executive Summary*

*The District proposes a bifurcated approach for permitting minor and major sources for State and federal purposes to comply with the Clean Air Act requirements for permitting. Only those requirements of federal law are required to be submitted as a revision to the SIP; therefore, a proposed new, separate rule, Rule 432- Federal New Source Review, will be submitted as a SIP revision that contains the requirements necessary to satisfy federal laws and regulations, and omit provisions required by more stringent state laws. As discussed below, the District does not have a current NSR rule in the SIP and therefore is not subject to SB288 requirements.*

*In evaluating the amendments required to the current NSR Rule, the District recognized a need to combine administrative application and permit requirements from the various rules into one rule and set forth exemptions from permit requirements in separate rule.*

*The District has published notice of the intent to propose rules for adoption on November 8, 2010 and has set an adoption hearing date of December 9, 2010. The District is publishing draft new and amended rules on October 9, 2010 to obtain comments on the revised rules from the California Air Resources Board (CARB), the United States Environmental Protection Agency, the public and regulated entities prior to releasing final proposed versions of the rules for adoption.*

*This Staff report will be updated to include those comments and further legal clarification of the required actions at the time the rules are proposed for adoption.*

## **1.0 PURPOSE**

To re-codify and streamline existing permitting requirements in Regulation IV-PERMITS to prepare the rules for submittal in the District's State Implementation Plan.

## **2.0 APPLICABILITY**

The proposed new and amended rules affect all sources that emit or may emit air contaminants as the rules revise and re-codify the existing permitting application, review, and issuance requirements as well as sets thresholds for those sources that may emit less than significant emissions and be exempt from permitting requirements.

## **3.0 DISCUSSION**

### **Background:**

The Butte County Air Quality Management District's New Source Review (NSR) program was established in its current form in January 1993 to ensure that construction and operation of new and modified stationary sources do not interfere with progress towards attainment of the National and State Ambient Air Quality Standards. Because the District have been designated as nonattainment for failure to meet the federal 8-hour ground-level ozone standard and portions of the District have been designated as nonattainment for failure to meet the 1 hour PM<sub>2.5</sub> standard, the United States

Environmental Protection Agency (EPA) requires the District to implement measures to reduce sources of ozone and its precursors and PM2.5. The District makes its commitment to reduce pollution through the State Implementation Plan (SIP). The SIP is federally enforceable through EPA and the Federal Clean Air Act. A New Source Review, or Preconstruction Review, is required as part of the SIP. The purpose of the proposed amendment of the District's New Source Review Rule is to achieve a SIP approved NSR rule.

The District proposes a bifurcated approach for permitting minor and major sources for State and federal purposes to comply with the Clean Air Act requirements for permitting. Only those requirements of federal law are required to be submitted as a revision to the SIP; therefore, a proposed new, separate rule, Rule 432- *Federal New Source Review*, will be submitted as a SIP revision that contains the requirements necessary to satisfy federal laws and regulations, and omit provisions required by more stringent state laws. As discussed below, the District does not have a current NSR rule in the SIP and therefore is not subject to SB288 requirements.

In evaluating the amendments required to the current NSR Rule, the District recognized a need to combine administrative application and permit requirements from the various rules into one rule and set forth exemptions from permit requirements in separate rule.

### **Protect California Air Act of 2003 (SB 288)**

In September, 2003, the California legislature passed SB 288, which ostensibly prevents the weakening of State NSR rules. Health & Safety Code Section 42504 now states that no air district "may amend or revise its new source review rules or regulations to be less stringent than those that existed on December 20, 2002." This baseline is defined as "district rules that the district has adopted as of December 30, 2002; that the ARB submitted to the EPA for inclusion in the SIP; and that have been approved, or are pending approval by the EPA". This baseline does not apply to Butte County AQMD in that our NSR rule in place in 2002 had not been submitted to the EPA for inclusion in the SIP, had never been approved and was not pending approval.

The current version of the District's NSR rule was submitted for inclusion in the SIP in May 1993 but withdrawn in December 1994. The version of the District's NSR rule that was previously in the SIP were contained in Rules 4.3, 4.5A, 4.5B, 4-6, 4-6A, 4.9 and 4-11 which were rescinded by EPA action on May 2, 2001 as published in the Federal Register. The reason for this EPA action is unclear. Therefore, the District is drafting and proposing amended New Source Review rules at this time to prepare for a SIP submittal and the rules are not subject to SB288 restrictions.

## **4.0 REQUIREMENTS**

Summary of Significant Changes for Each Rule:

Below are a brief summary of the changes to the four rules subject to this review:

### **Rule 400-Permit Requirements**

The District intent is to combine the administrative permit application and review procedures found in the existing rules into one new rule. Since the revisions proposed require an extensive re-work of the existing Rule 400-*Permit Requirements*, the existing rule is proposed for repeal and a new rule proposed for adoption.

New Rule 400 includes:

- A description that the PURPOSE of the proposed new rule is to provide an orderly procedure for applying for and reviewing new and modified sources of air pollution.
- A reference that the categories of emissions units found in proposed new Rule 401-*Exemptions* are exempt from the requirements to obtain a permit.
- Definitions of terms used in applying, reviewing and acting on applications submitted for permits.
- The standards for approving or denying an application including that a potential source of air contaminants must have authority to construct, that the source must meet all applicable rules and regulations, requirements for notifying an applicant denied an application, and provisions to ensure with Health and Safety Code requirements related to toxic air contaminant. This section also includes provisions for the APCO to request information to assess the nature and extent of emissions, provisions to have a permit to operate an emissions unit, for renewing a permit and the review of existing conditions to ensure compliance with current applicable requirements, and mechanism to transfer a permit. The standards section contains requirements to provide monitoring and sampling stations as required by permit conditions, and to demonstrate compliance with permit emission limits by source performance test an emissions unit when required by the APCO. The section includes an indemnification clause in which the applicant agrees to indemnify and hold harmless the APCO and District for actions relating to permit requirements.
- Administrative requirements that allow for the receipt and processing of applications including time schedules for review and response, requirements to pay fees required by rule, a certification statement process for applicants, various steps in reviewing the application including a completeness determination, the APCO preliminary decision, and cancellation of an application. In addition this section includes the options for resolving an application and issuing a permit. Administrative requirements for permits after issuance including restrictions on defacing the permit, requirements to post the permit, procedures for the APCO to suspend, cancel, or recommend revocation of a permit, and procedures for an applicant or aggrieved party to appeal an APCO determination.
- Requirements and standards for monitoring and source testing methodologies and recordkeeping requirements to demonstrate compliance permit conditions and all applicable requirements.

### **Rule 401-Exemptions**

The existing Rule 401-*Standards for Granting an Application* requirements have been incorporated into the proposed new Rule 400 and therefore the existing rule is proposed for repeal. District staff has proposed to move, expand, and clarify the listing of emissions units that would not be subject to the permitting requirements of proposed new Rule 400 and include provisions to keep records to ensure compliance with the exemption criteria and a schedule of compliance for sources that are loss exempt status. This rule does not allow a source exempt from this rule to not comply with any other rule or regulation.

Rule 401 provide that an emissions unit would not be eligible for exemption if:

- The APCO determines the source needs a permit;
- The source has emission or potential emissions that exceed the Best Available Control Technology thresholds set in Rule 430-*State New Source Review*;
- The Title V permit program requires a source to obtain a permit;
- The source is subject to the New National Emissions Standards for Hazardous Air Pollutants (NESHAP) or the New Source Performance Standards (NSPS), except for internal combustion engines rated at less than 50 horsepower which are subject to an NSPS but will continue to not require a District permit; or
- The APCO determines the source is a significant source of toxic emissions.

The proposed new rule specifies that a permit application is not required for the source categories listed in the rule unless a specific determination by the APCO is required. In addition, the APCO is granted authority to request information from the person claiming an exemption to verify the source meets the exemption criteria.

The following source categories are included for exemptions subject to the thresholds and limitations in the rule:

- Combustion and heat transfer sources including steam cleaners, cooling towers, small boilers, space heaters, certain internal combustion engines, and certain process heaters like small crucibles and ceramic kilns.
- Food and beverage processing equipment including equipment used in eating establishments for human consumption, small coffee roasters, non-commercial barbeques, ovens at small bakeries, and small brewing operations.
- Small spray coatings, solvent cleaning and composting operations.
- Vehicles and mobile equipment.
- Residential and commercial uses including equipment at residences, ventilation or comfort air systems, refrigeration units not serving as pollution controls, and coatings applied to structures.
- Portable handheld and certain abrasive blasting equipment.
- Certain agricultural sources.
- Replacement equipment meeting the rule criteria.
- Small printing and reproduction operations.
- Certain wastewater facilities.
- Certain woodworking and fabrication operations
- Pilot tests for soil remediation projects
- Other low emitting sources meeting the specified limits in the proposed rule as determined by the APCO.

The proposed rule requires the owner or operator claiming an exemption to keep documentation of the applicable information that demonstrates compliance with the exemption criteria. This documentation must current for the previous two years.

If a source no loses exempt status with the adoption of this rule, it shall have 6 months to apply for a permit under the provisions of Rule 400. In addition, a source that was exempt and exceeds the limitations set by the proposed new rule shall have 30 days to submit an application for a permit or other written authorization from the APCO.

### **Rule 430-*State New Source Review***

Staff proposes to amend existing Rule 430-*New Source Review* to regulate all non-attainment pollutants for major and minor sources and all attainment or unclassified pollutants for State purposes. Most of the administrative requirements related to application review have been incorporated into Rule 400. The definitions have been amended to be compatible with the Rule's focus on State new source requirements. In additions, definitions that were in specific sections of the rule have been revised and moved into this section.

The "REQUIREMENTS" section of the amend rule continues to include the BACT thresholds for the criteria pollutants and their precursors. In addition, a BACT threshold has been added for PM2.5. Staff has proposed to remove the non-criteria pollutants previously included in this list that are reviewed under the District's toxic review program. The subsection on Offsets has been amended to clarify the requirements and update the descriptions of the calculation methods; however, no substantive changes to the procedures or calculation process are intended or proposed from the existing rule although the language is different.

The section on air quality analysis has been updated to reference the now codified modeling requirements by EPA.

The final section of the rule continues to facilitate the review of larger power plants over 50MW in size who permitting authority lies with the California Energy Commission. The section continues to demonstrate the parallel path of authorization between the CEC process and this Rule requirements; however, references to administrative requirements that have been moved to Rule 400 have been updated and a new paragraph explaining the equivalency of the Determination of Compliance to an Authority to Construct has been included to satisfy federal concerns on issuing a Permit to Operate without first granting an Authority to Construct.

### **Rule 432-*Federal New Source Review***

Proposed new rule will serve as the new source review rule for major source and major modifications for Federal purposes. A portion of the existing Rule 432-*Federal Major Modifications* will remain intact; however, due to the extensive changes, the District proposes to repeal the existing Rule 432 and propose a new Rule 432 for adoption. The proposed rule is formatted like Rule 430; however, the applicable thresholds and review periods have been changed to reflect federal requirements.

The existing Rule 430 lacked three major elements of the federal program requirements that are now included in the administrative requirements section of the proposed new rule. These include the Alternate Siting requirement, Certification of Compliance and Potential Visibility Impacts review.

The previous sections relating to federal New Source Review Reforms that were adopted by the District in September 2006 have been incorporated into the Standards requirements of this proposed new rule and references updated.

## 5.0 COST IMPACTS/COST EFFECTIVENESS:

The proposed rules do not implement an emission control measure and therefore is not subject to the cost effectiveness mandate. The proposed rule is administrative in nature and no additional costs to either the District or stakeholders are expected. In addition, because BACT requirements and feasible control measures are not involved, an incremental cost-effectiveness analysis under Health & Safety Code Section 40920.6 is not required.

## 6.0 ALTERNATIVES:

The Governing Board may choose to:

- a) Approve the rules as proposed;
- b) Direct staff to modify the proposed amended and new rules after receiving public comments during the hearing; or
- c) Take no action.

## 7.0 ENVIRONMENTAL REVIEW AND COMPLIANCE

Staff has determined that proposed amended and new rule are exempt from CEQA requirements and is therefore considered to be ministerial in nature and thus is statutorily exempt from CEQA, pursuant to state CEQA Guidelines Section 15268 – Ministerial Projects, as defined by CEQA Guidelines Section 15369.

## 8.0 REQUIRED FINDINGS:

Findings required by Division 26 of the California Health and Safety Code requires local districts to comply with a rule adoption protocol as set forth in Section 40727 of the Code. This section has been revised through legislative mandate to contain six findings that the District must make when developing, amending, or repealing a rule or regulation. These findings, and their definitions are included in the following table.

Table 7

<b>FINDING</b>	<b>DEFINITION</b>	<b>REFERENCE</b>
Authority	A District shall adopt Rules and regulations and do such acts as may be necessary or proper to execute the powers and duties granted to, and imposed upon, the District by this division and other statutory provisions.	California Health and Safety Code Division 26, Part 3, Sections 40000 and 40001, 40702, and 42300 et. seq., are provisions of law that provide the District with the authority to adopt these proposed rules.
Necessity	The District has demonstrated that a need for the Rule, or for Rule amendment or repeal.	Federal and State law requires the District maintain a minor and major source permitting program. The proposed rules collectively implement the state and federal requirements.
Clarity	The Rule is written or displayed so that its meaning can easily be	There is no indication that the proposed rules are written in such a

	understood by the persons directly affected by it.	manner that persons affected by the rule cannot easily understand it.
Consistency	This Rule is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or State or federal regulations.	The District has found that the proposed rule is consistent with applicable statutory requirements
Non-Duplication	The Rule does not impose the same requirements as an existing State or federal regulation, unless the District finds that the requirements are necessary and proper to execute the powers and duties granted to, and imposed upon, the District.	The proposed rule duplicates federal rules or regulations for permitting programs. The duplicative requirements are necessary in order to execute the powers and duties imposed upon the District.
Reference	Any statute, court decision, or other provision of law that the district implements, interprets, or makes specific by adopting, amending, or repealing a regulation.	California Health and Safety Code Division 26, Part 3, Sections 40000 and 40001, 40702, and 42300; Clean Air Act amendments of 1990 and related regulations.

## 9.0 REFERENCES

- Attachment A.**        **Draft Rule 400-Permit Requirements**
- Attachment B.**        **Draft Rule 401- Exemptions**
- Attachment C.**        **Draft Rule 430-State New Source Review**
- Attachment D**         **Draft Rule 432-Federal New Source Review**
- Attachment E.**        **Notice of Public Workshops and Hearing**
- Attachment F.**        **Draft Resolution of Adoption**

**Attachment A**  
**Draft Amended Rule 400-Permit Requirements**

**Attachment B**  
**Repeal and Draft New Rule 401-Exemptions**

**Attachment C**  
**Draft Amended Rule 430-State New Source Review**

**Attachment D**  
**Draft Amended Rule 432-*Federal New Source Review***

## **Attachment E**

### Notice of Public Workshops and Hearing

## NOTICE OF PUBLIC WORKSHOPS AND HEARING

**PUBLIC NOTICE IS HEREBY GIVEN**, pursuant to and in compliance with all public notice requirements in effect, that the Butte County Air Quality Management District (District) Governing Board of Directors will hold a Public Hearing on Thursday, December 9, 2010 at 10:00 a.m. to consider adoption of proposed modifications to Regulation IV-PERMITS, including amendments to Rule 430-*New Source Review* and the repeal of existing District Rule 400-*Permit Requirements*, Rule 401-*Standards for Granting Applications*, and Rule 432-*Federal Major Modifications*, and proposed adoption of new Rule 400-*Permit Requirements*, Rule 401-*Exemptions*, and Rule 432-*Federal New Source Review*. The draft/proposed rules collectively set forth standards and procedures for the review of applications for new sources of air pollution and for the modification and operation of existing sources and for the granting or denial of permits. The changes are proposed to update the regulations for current local, State and federal requirements and ensure the rules include all necessary provisions for submittal into the District's State Implementation Plan. The hearing will be held at the Chico City Council Chambers, 421 Main Street in Chico, CA.

**DRAFT RULES AND PUBLIC WORKSHOPS:** Prior to finalizing and releasing the proposed rules for adoption to Regulation IV, draft rules will be release October 9, 2010 and available for public and State and federal agencies review and comment. Two (2) workshops are planned to review the draft changes and receive public comment. The workshops are scheduled for Thursday, October 21, 2010 at 2:00 p.m. and for Wednesday, November 3, 2010 at 10:00 a.m. at the District office.

**PROPOSED RULES FOR ADOPTION WORKSHOP:** After receiving public and agency comments, the final rules proposed for adoption will be released on November 8, 2010 for further public review and comment. A public workshop will be held on Thursday, November 18, 2010 at 2:00 p.m. at the District Office.

**COMMENTS:** Interested parties may review the related Staff Report and the draft rules on or after October 9, 2010 and final proposed rules on or after November 8, 2010, either online at [www.bcaqmd.com](http://www.bcaqmd.com) or at the District Office at 2525 Dominic Drive, Suite J, Chico, CA. The District office telephone number is (530) 891-2882. The public may comment verbally or in writing prior to the time of the hearing. All written comments should be filed with the District BOARD CLERK, at the District Office, no later than December 2, 2010.

**HEARING:** All persons planning to attend the Public Hearing are advised that this item may be taken up after 10:00 a.m. pursuant to the order of items set forth in the Agenda. Comments, statements, or arguments relating to the matters publicized in this Notice may be presented orally or in writing. Following the Public Hearing on December 9, 2010, and without further notice, the District Board may take action consistent with the terms of this Notice.

DATED: October 9, 2010  
By: W. James Wagoner  
AIR POLLUTION CONTROL OFFICER

**Attachment E**

Draft Resolution of Adoption

**DRAFT RESOLUTION 2010-  
BEFORE THE BOARD OF DIRECTORS OF  
BUTTE COUNTY AIR QUALITY MANAGEMENT DISTRICT  
STATE OF CALIFORNIA**

Resolution 2010-.....)  
Repeal Existing Rules 400, 401, and 432.....)  
Adopt Proposed New Rule 400 .....)  
Adopt Proposed New Rule 401 .....)  
Adopt Proposed Amended Rule 430 .....)  
Adopt Proposed New Rule 432.....)

WHEREAS, the Butte County Air Quality Management District Board obtains its authority to adopt, amend, or repeal rules and regulations from California Health and Safety Code Sections 40000, 40001, 40701, 40702;

AND WHEREAS, the Butte County Air Quality Management District Board has determined that the proposed rules are written such that the meaning can be understood by the persons directly affected by it (Health and Safety Code Section 40727(b)(3));

AND WHEREAS, the Butte County Air Quality Management District Board has determined that the proposed rule adopted herein is in harmony with, and not in conflict with or contradictory to existing statutes, court decisions, or state or federal regulations (Health and Safety Code Section 40727(b)(4));

AND WHEREAS, the Butte County Air Quality Management District Board has determined that the repeal and adoption of new Rule 400, Permit Requirements, is necessary to streamline and clarify the administrative requirements for obtaining written authorization in the form of an Authority to Construct Permit or Permit to Operate;

AND WHEREAS, the Butte County Air Quality Management District Board has determined that the repeal of existing Rule 401 and adoption of new Rule 401, Exemptions, is necessary since the requirements of existing Rule 401 have been incorporated into amended Rule 400 to streamline and clarify the administrative requirements of permitting and the proposed new rule specifies and clarifies the size and nature of emissions units, operations and sources that do not require an Authority to Construct Permit or Permit to Operate and specifies recordkeeping requirements to ensure compliance with the exemption status;

AND WHEREAS, the Butte County Air Quality Management District Board has determined that the adoption of amended Rule 430, State New Source Review, is necessary to set forth the procedures to evaluate new and modified major and minor sources that emit or may emit nonattainment and attainment air pollutants to ensure the proposed or modified sources comply with all applicable rules, regulations and laws for State purposes;

AND WHEREAS, the Butte County Air Quality Management District Board has determined that the

adoption of amended Rule 432, Federal New Source Review, is necessary to ensure all major and major modifications to sources meet the applicable federal requirements prior to obtaining a permit;

AND WHEREAS, the Butte County Air Quality Management District Board has determined that the proposed amended Rule 400, new Rule 401 and amended Rule 430 do not duplicate local, state or federal rules or regulations for permitting programs;

AND WHEREAS, the Butte County Air Quality Management District Board has determined that the portions of the proposed amended Rule 432 duplicates federal rules or regulations for permitting programs and the duplicative requirements are necessary in order to execute the powers and duties imposed upon the District;

AND WHEREAS, the District staff has made notice of and held a public workshop meetings on the draft rules and received comments as included in the staff report, which are included herein as a record of those proceedings;

AND WHEREAS, the District staff has made notice of and held a public workshop meetings on the proposed amended, repealed and new rules and received comments as included in the board report, which are included herein as a record of those proceedings;

AND WHEREAS, the Butte County Air Quality Management District Board conducted public hearing on December 9, 2010 concerning the proposed rules herein;

THEREFORE, BE IT RESOLVED, that the Butte County Air Quality Management District Board hereby adopts, with an effective date of December 9, 2010, Rule 400-*Permit Requirements*, Rule 401-*Exemptions*, Rule 430-*New Source Review*, and Rule 432-*Federal New Source Review*, as proposed in the attachments to the November 8, 2010 staff report.

BE IT FURTHER RESOLVED, that the Butte County Air Quality Management District Board directs staff to prepare Rule 432-Federal New Source Review for submittal into the federal ozone and PM2.5 nonattainment State Implementation Plans.

On Motion of \_\_\_\_\_, Seconded by \_\_\_\_\_, the foregoing resolution is hereby PASSED AND ADOPTED BY THE Air Quality Management District Board of Directors on this 9th day of December, 2010 by the following:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

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W. James Wagoner, Air Pollution Control Officer  
Butte County Air Quality Management District

I hereby attest that this is a true and correct copy of the action taken by the Butte County Air Quality Management District Board of Directors on December 9, 2010

ATTEST: \_\_\_\_\_  
, Clerk of the Governing Board