Rule 432-Federal New Source Review (FNSR)

(Draft 10/14/10)

(Adopted September 28, 2006) Proposed Repeal /Adoption December 9, 2010

RULE 432 CONTENTS

RULE 432

1 PURPOSE:

1.1 The purpose of this Rule is to establish pre-construction review requirements for new and modified major stationary sources and major modifications of air pollution for use of Best Available Control Technology (BACT), offsets, analysis of air quality impacts, to ensure that the operation of such sources does not interfere with the attainment or maintenance of ambient air quality standards, and all other applicable requirements.

1.2 This rule regulates all non-attainment pollutants for major sources and major modifications for Federal purposes.

1.3 This Rule shall provide for no net increase in emissions from new or modified major stationary sources which emit, or have the potential to emit, 100 tons per year or more of any non-attainment pollutant or its precursors.

2 APPLICABILITY:

2.1 This Rule shall apply to all new and modified major stationary sources which are subject to Butte County Air Quality Management District (DISTRICT) Rule 400-*Permit Requirement*s and, after construction, emit or may emit any nonattainment regulated NSR pollutants.

2.2 The regulations in effect at the time of any application for an Authority to Construct for a new or modified major source is deemed complete shall apply to that source, except when a new federal requirement not yet incorporated in this Rule applies to the new or modified major source.

2.3 The provisions of Sections 5.1and 5.2 are not applicable to portable, temporary or replacement emissions units unless the units are major sources.

3 EFFECTIVE DATE: This Rule shall become effective upon the date of adoption.

4 DEFINITIONS: Unless otherwise defined below, the terms used in this Rule are the same, in order of priority, as defined in Rule 430-*State New Source Review* and Rule 101-*Definitions*:

4.1 Actual Emissions: The actual rate of emissions measured or estimated which most accurately represent the emissions from an emissions unit.

4.2 Actual Emissions Reduction (AER): A reduction in actual emissions from an emissions unit selected for emission offsets or banking. Actual emissions reductions shall be calculated pursuant to Section 6 of this Rule and shall be real, enforceable, quantifiable, surplus, and permanent.

4.3 Affected Pollutant: All pollutants (and the precursors to such pollutants) for which an ambient air quality standard has been established by the EPA or the CARB, all pollutants regulated by the EPA under the Clean Air Act or by the CARB under the Health and Safety Code, including reactive organic compounds, nitrogen oxides, sulfur oxides, PM_{10}, $PM_{2.5}$, carbon monoxide, total suspended particulates, ethylene, lead, asbestos, beryllium, mercury, vinyl chloride, fluorides, sulfuric acid mist, hydrogen sulfide, total reduced sulfur, and reduced sulfur compounds. Also, all of the pollutants which the EPA, the CARB, or the DISTRICT, after notice and opportunity for public comment and/or public hearing, determine may have a significant adverse effect on the environment, public health, or the public welfare.

4.4 Ambient Air Quality Standards: Health and welfare-based standards set by the U.S. Environmental Protection Agency for outdoor air which identify the maximum acceptable average concentrations of air pollutants during a specific period of time. There are both federal and State ambient air quality standards. For purposes of applicability of this Rule to the State Implementation Plan (SIP), all references to ambient air quality standards shall be interpreted as National Ambient Air Quality Standards.

4.5 Annual: A period of twelve (12) consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month.

4.6 Baseline Actual Emissions (Historic Actual Emissions): Actual emissions of the existing emissions unit averaged over the two (2) year period immediately preceding the date of application, unless:

4.6.1 If the last two (2) years are unrepresentative of normal operations as determined by the APCO, then two (2) consecutive years of the last five (5) years, which are representative of normal operations as determined by the APCO, may be used; or

4.6.2 Where an emissions unit has been in operation for less than two (2) years, a shorter averaging period of at least one (1) year may be used, providing it represents the full operational history of the emissions unit; or,

4.6.3 If, at any time during the specified period, actual emissions exceeded allowed emission levels, then actual emissions shall be reduced to reflect emission levels that would have occurred if in compliance with all applicable limitations and rules.

4.7 Best Available Control Measures (BACM): Most effective measures for controlling small or dispersed particulates and other emissions from sources such as roadway dust, soot and ash from woodstoves and open burning of rush, timber, grasslands, or trash.

4.8 Best Available Control Technology (BACT): he most stringent emissions limitation or control technique of the following:

4.8.1 Achieved in practice for such class and category of source; or

4.8.2 Contained in any SIP approved by the EPA for such class and category of source. A specific limitation or control technique shall not apply if the owner of the proposed emission unit demonstrates to the satisfaction of the APCO that such a limitation or control is not presently achievable; or

4.8.3 Contained in an applicable New Source Performance Standard; or

4.8.4 Any other emission control device or technique, alternative basic equipment, different fuel or process, determined to be technologically feasible and cost-effective by the APCO for such a class or category of sources. The cost-effective analysis shall be performed in accordance with the methodology and criteria specified by the APCO.

4.9 Complete Application: An application that contains all information required by the DISTRICT to adequately evaluate the nature and extent of potential emissions of the new or modified emissions unit proposed for use submitted in the manner and form prescribed by the APCO.

4.10 Control Efficiency: The percentage by which a control device or technique reduces emissions from an emissions unit.

4.11 Contiguous Property: Two or more parcels of land with a common boundary or separated solely by a public or private roadway or other public right-of-way.

4.12 Cost-Effective: A cost per pound of emission reduction which is deemed to be acceptable and feasible, on a pollutant and emissions unit basis, by the APCO.

4.13 Emission Reduction Credits (ERCs): Reductions of actual emissions from an emission unit that is certified by the District and banked in accordance with the requirements of Rule 430-*Emission Reduction Credits.*

4.14 Emissions Limitation: One or a combination of permit conditions specific to an emissions unit which restricts its maximum annual emissions in tons per year, at or below the emissions associated with the maximum design capacity. An emissions limitation must be:

4.14.1 Contained in the latest Authority to Construct and contained in or enforceable by the latest Permit to Operate for the emissions unit; and

4.14.2 Enforceable on an annual basis.

4.15 Emissions Unit: An identifiable operation or piece of process equipment such as an article, machine, or other contrivance which emits, may emit, or results in the emission of any affected pollutant directly or as fugitive emissions.

4.16 Enforceable: Verifiable and legally binding. Enforceable, for the purposes of

federal requirements, means all federally enforceable limitations and conditions enforceable by the administrator, including: NSPS; NESHAP; requirements within any applicable State Implementation Plan; any permit requirement established pursuant to 40 CFR 52.21, 51.160-166; or federal operating permit requirements,

4.17 Fluorides: Elemental fluorine and all fluoride compounds.

4.18 Fugitive Emissions means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

4.19 Historic Emissions: The potential to emit of an existing emissions unit prior to modification. For a new emission unit, the historic emissions are equal to zero.

4.20 Impact Analysis: An air quality modeling analysis used to estimate the maximum ground level concentration of any pollutant subject to this Rule. Maximum ground level concentration added to background levels shall be compared to ambient air quality standards.

4.21 Interpollutant Offset: A precursor pollutant provided to offset a non-attainment pollutant.

4.22 Internal Emission Reductions: As reviewed and approved by the APCO, the sum of increases and decreases in actual emissions of a nonattainment pollutant at a stationary source that have occurred in the contemporaneous period starting five (5) years prior from the date the application for the project was submitted and provided:

4.22.1 An increase in actual emissions is only creditable to the extent the new level of actual emissions exceeds the old level.

4.22.2 A decrease in actual emission is only creditable to the extent that:

4.22.2.1 The old level of actual emissions or allowable emissions, if more stringent, exceeds the new level of actual emissions;

4.22.2.2 It is enforceable at the time the actual construction of the project begins;

4.22.2.3 It is surplus; and

4.22.2.4 It has approximately the same quantitative significance for public health and welfare as attributed to the increases from the proposed project.

4.23 Like-kind Equipment: Equipment that is identical in function, similar in design, has air contaminants of the same nature, and has capacity, production rate, and actual air contaminant emissions that are equal to or less than currently permitted equipment.

4.24 Lowest Achievable Emission Rate (LAER): The same as BACT as defined in

this Rule.

4.25 Major Modification: Modification to a major stationary source which results in a net emission increase for any nonattainment regulated NRS pollutant greater than the limitations in Section 5.1.

4.26 Major Stationary Source: Any stationary source which emits, or has the potential to emit, 100 TPY or more of any nonattainment regulated NSR pollutant. A major stationary source for nitrogen oxides or reactive organic compounds shall also be considered a major source for ozone. The fugitive emissions of a stationary source shall not be included in determining whether the source is a major stationary source unless the source is a category source or sources included in 40 CFR 51.165.

4.27 Modification: Any physical change or operational change to an existing emissions unit, including changing hours of operation or production rate, which would necessitate a change in permit conditions. A modification to a stationary source shall include any modification of its permitted emissions units or addition of any new emissions units. A reconstructed stationary source shall be treated as a new stationary source and not as a modification. A modification also occurs when there is an increase of emissions from an emissions unit which is not subject to a daily emissions limitation. The following shall not be considered a modification:

4.27.1 Routine maintenance or repair.
4.27.2 A change in ownership.
4.27.3 A replacement source.

4.28 Net Air Quality Benefit: A net improvement in air quality resulting from actual emissions reductions impacting the same general area affected by the new or modified source.

4.29 Non-attainment Pollutant: Any pollutant, as well as any precursors of such pollutant, which has been designated non-attainment by EPA in the Federal Register for Butte County or the portion of Butte County designated as the PM2.5 Nonattainment Area.

4.30 Offset: An emission reduction that compensates for an increase in an affected pollutant from a new or modified stationary source subject to the requirements of Section 5.2.

4.31 PM10: Particulate matter with aerodynamic diameter less than or equal to a nominal 10 microns.

4.32 PM2.5: Particulate matter with an aerodynamic diameter less than or equal to 2.5 microns.

4.33 PM2.5 Nonattainment Area: The portion of Butte County which lies west of the line described as follows: (Mount Diablo Base and Meridian) Beginning at the intersection of the Butte-Yuba county line and the township line common to T18N R6E and T19N R6E, west to the township line common to T18N R6E and T19N R6E, then north along the range line common to R5E and R6E, then west along the township line common to T21N and T20N, then north along the range line common to R4E and R5E, then west along the township line common to T24N and T23N to the Butte-Tehama County boundary.

4.34 Permanent: Actual emission reductions that continue or endure for the duration of any project utilizing the resulting ERCs as offsets.

4.35 Potential to Emit: The maximum annual capacity of an emission unit to emit a pollutant under its physical and operational design. Any physical or operational limitation on the annual capacity of the unit to emit a pollutant, including pollution control equipment and restrictions in hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on annual emissions is incorporated into the applicable permit as an enforceable permit condition.

4.36 Precursor: A directly-emitted pollutant that, when released to the atmosphere, forms, or contributes to the formation of a secondary pollutant for which an ambient air quality standard has been adopted. The following precursor relationships shall be used:

PRECURSOR	**SECONDARY AIR**
Reactive organic compounds	Photochemical oxidants (ozone) The organic fraction of PM10
Nitrogen oxides	Nitrogen dioxide The nitrate fraction of PM10 and PM2.5 Photochemical oxidants (ozone)
Sulfur oxides	Sulfur dioxide Sulfates The sulfate fraction of PM10 and PM2.5

4.37 Project: All emissions units associated with the scope of an application submitted in accordance with Rule 400 for new or modified stationary sources including any emissions units indirectly affected.

4.38 Proposed Emissions: The potential to emit for a new or post-modified emissions unit.

4.39 Quantifiable: Ability to reliably and replicably estimate emission reductions in terms of their amount and characteristics.

4.40 Reactive Organic Compound or Reactive Organic Gas (ROC or ROG): Any organic chemical compound containing at least one atom of carbon having a high enough vapor pressure under normal conditions to significantly vaporize into the earth's atmosphere, excluding any Exempt Compound as defined in District Rule 101-*Definitions*.

4.41 Real: Actually occurring, implemented, and not artificially devised**.**

4.42 Reasonably Available Control Technology (RACT): The lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

4.43 Reconstructed Source: Any source undergoing physical modification where the fixed capital cost of the new components exceeds 50% of the fixed capital cost of a comparable entirely new stationary source. Fixed capital cost means that capital needed to provide all the depreciable components.

4.44 Replacement Source: A routine replacement of all or part of an emissions unit authorized with a valid Permit to Operate with an identical or like-kind equipment provided:

4.44.1 The resulting emissions are less than or equal to those from the original equipment; and

4.44.2 There is no increase in capacity or production rate; and

4.44.3 The replacement equipment performs the same function; and

4.44.4 The replacement equipment is not a reconstructed source.

4.45 Reduced Sulfur Compounds: The sulfur compounds hydrogen sulfide, carbon disulfide, and carbonyl sulfide.

4.46 Regulated NSR Pollutant: A pollutant for which an Ambient Air Quality Standard has been established by the EPA and the precursors to such pollutants, including but not limited to, reactive organic compounds (ROC), nitrogen oxides (NOx), sulfur dioxides (SOx), PM10, PM2.5, carbon monoxide (CO), and lead.

4.47 Stationary Source (Facility): Any building, structure, or emissions unit which emits or may emit any regulated NSR pollutant directly or as a fugitive emission, including all pollutant-emitting activities which are:

4.47.1 Located on one or more contiguous or adjacent properties, and which may be separated by a public right-of-way; and,

4.47.2 Under the same or common ownership, operation, or control, or which

are owned or operated by entities which are under common control and belong to the same industrial grouping, either by virtue of falling within the same two-digit Standard Industrial Classification (SIC) Code or by virtue of being part of a common industrial process, manufacturing process, or connected process involving a common raw material.

4.48 Surplus: The amount of emission reductions that are, at the time of generation of an Emissions Reduction Credit (ERC), not otherwise required by federal, state, or local law, not required by any legal settlement or consent decree, and not relied upon to meet any requirement related to the California State Implementation Plan (SIP). However, emission reductions required by a state statute that provides that the subject emission reductions shall be considered surplus may be considered surplus for purposes of this Rule if those reductions meet all other applicable requirements.

4.48.1 Examples of federal, state, and local laws, and of SIP-related requirements, include, but are not limited to, the following:

4.48.1.1 The federally-approved California SIP;

4.48.1.2 Other adopted state air quality laws and regulations not in the SIP, including but not limited to, any requirement, regulation, or measure that: (1) the District or the state has included on a legally-required and publicly-available list of measures that are scheduled for adoption by the District or the State in the future; or (2) is the subject of a public notice distributed by the District or the State regarding an intent to adopt such revision;

4.48.1.3 Any other source- or source-category specific regulatory or permitting requirement, including, but not limited to, Reasonable Available Control Technology (RACT), New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), Best Available Control Measures (BACM), Best Available Control Technology (BACT), and the Lowest Achievable Emission Rate (LAER); and

4.48.1.4 Any regulation or supporting documentation that is required by the federal Clean Air Act but is not contained or referenced in 40 C.F.R. Part 52, including but not limited to: assumptions used in attainment and maintenance demonstrations (including Reasonable Further Progress demonstrations and milestone demonstrations), including any proposed control measure identified as potentially contributing to an enforceable near-term emissions reduction commitment; assumptions used in conformity demonstrations; and assumptions used in emissions inventories.

4.49. Total Reduced Sulfur Compounds means the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide.

5 REQUIREMENTS: Any emissions unit subject to this Rule shall be subject to the following requirements:

5.1 Best Available Control Technology (BACT): An applicant shall apply BACT to any new emissions unit or modification of an existing emissions unit which results in an emissions increase and the potential to emit for the emissions unit exceeds the following amounts:

Pollutant	New Stationary Source (TPY)	Major Modification (TPY)
Fluorides		3
Hydrogen sulfide		7
Lead		.6
Nitrogen oxides	100	40
Particulate matter (PM-2.5)	100	15
Reactive organic compounds	100	40
Reduced sulfur compounds		10
Sulfur oxides	100	40
Sulfuric acid mist		10
Total reduced sulfur compounds		10

5.2 Offset Requirements, General:

5.2.1 Emission reductions shall be required from emission sources to offset annual emission increases of nonattainment pollutants or their precursors associated with a new major stationary source or major modification at a stationary source and may be provided by internal emission reductions as approved by the APCO.

5.2.2 Offsets shall be real, permanent, enforceable, surplus at time of use, and quantifiable.

5.2.3 A stationary source's potential to emit shall be calculated pursuant to Section 6 of this Rule.

5.2.4 Offsets shall be required under the following conditions:

5.2.4.1 A new stationary source with a potential to emit of a nonattainment pollutant or its precursors equal to or exceeding 100 tons per year shall provide offsets for all of the nonattainment pollutant increases.

5.2.4.2 For a major modification at an existing major source, the emissions difference between the potential to emit after the modification and the actual emissions before the

modification.

5.2.5 Offsets shall not be required for increases in carbon monoxide if the applicant demonstrates to the satisfaction of the APCO, through an impact analysis, that the ambient air quality standards are not violated in the areas to be affected, and such emissions will not cause or contribute to a violation of ambient air quality standards.

5.3 Location of Offsets and Offset Ratios

5.3.1 Required offsets can only be provided from a nonattainment area for the same pollutant or precursor of a pollutant.

5.3.2 Use of offsite offsets must result in a net air quality benefit, as determined by the APCO

5.3.3 Offset ratios and the corresponding distances from the proposed stationary source shall be:

5.3.3.1 on-site, at a ratio of 1:1;

5.3.3.2 within 20 miles, at a ratio of 1.2:1;

5.3.3.3 from 20 miles to 50 miles, at a ratio of 1.5:1;

5.3.3.4 over 50 miles, at a ratio of 2:1.

5.4 Interpollutant Offsets: The APCO and EPA may approve interpollutant offsets on a case-by-case basis provided that the applicant demonstrates through the use of an air quality impact analysis to the satisfaction of the APCO and EPA that the emission increases from the new or modified source will result in a net air quality benefit and will not cause or contribute to a violation of any ambient air quality standard. The APCO may impose offset ratios greater than the requirements of this Rule based upon an air quality impact analysis.

5.5 Public Notice and Publication Actions: For the types of sources subject to this requirement, the APCO shall:

5.5.1 Publish within ten (10) calendar days following a preliminary decision to issue an Authority to Construct permit for an emissions unit in at least one (1) newspaper of general circulation in the District, a notice stating the preliminary decision of the APCO noting how pertinent information may be obtained, how to request a hearing on the proposed item, and inviting written public comment for a thirty (30)-day period following the date of publication.

5.5.2 No later than the date of publication, transmit the preliminary decision, the application analysis, and copies of the notice submitting for publication to the applicant.

5.5.3 No later than the date of publication, transmit the preliminary decision and copies of the permit application, analysis, and notice submitted for publication to EPA.

5.5.4 No later than the date of publication, make available for public inspection the applicable information submitted in the application, the preliminary decision, the application analysis, and copies of the notice

submitting for publication.

6 EMISSION AND OFFSET CALCULATIONS: The following provisions shall be used to calculate emission increases and decreases from all new and modified emissions units located at a stationary source.

6.1 BACT – Emissions Increase: The emissions increase for each emissions unit related to the project for the purposes of determining BACT applicability shall be calculated as the proposed emissions minus the Baseline Actual Emissions. Calculations shall be performed separately for each emissions unit for each calendar quarter.

6.2 Offsets - Emissions Increase or Decrease: The emissions increase or decrease for each emissions unit related to the project for the purposes of determining Offset applicability shall be calculated as the proposed emissions, minus the Baseline Actual Emissions. Emission increases or decreases shall be calculated for each emission unit and the project as a whole.

6.3 Project Emissions: If a project consists of more than one emission unit, the total emissions from all emissions units shall be summed for each pollutant to determine the emissions increase for the project.

6.4 Fugitive Emissions: The fugitive emissions of a stationary source shall not be included in determining whether a stationary source is a major stationary source or major modification to a stationary source unless the source belongs to one of the categories of sources included in 40 CFR 51.165.

6.5 Calculation Periods: The emissions increase or decrease for a project shall be calculated on an annual basis for each pollutant.

6.6 Potential To Emit - Stationary Sources: The potential to emit of a new or modified stationary source shall be calculated as the sum of the potential to emit for all emissions units, based on emission limitations established by any current Permit to Operate, Authority to Construct permit, and pending application.

6.7 Quantity of General Offsets Required: If offsets are required pursuant to Section 5.2.4, the quantity of offsets to be provided shall be determined as follows:

6.7.1 If offsets have already been provided by a stationary source for a particular pollutant, then multiply the net emissions increase calculated for the project by the appropriate offset ratio based on pollutant and location as specified in Section 5.3, or

6.7.2 If no offsets have been provided previously by a new major stationary source for a particular pollutant, then multiply the stationary source's

potential to emit by the appropriate offset ratio based on pollutant and location as specified in Section 5.3.

7 ADMINISTRATIVE REQUIREMENTS: The following administrative requirements shall apply to any new major source or major modification regulated by this Rule. Power plants over 50 megawatts shall be subject to the additional requirements of Section 9.

7.1 Terms: All terms used in Section 7.5 of this Rule shall be as defined in 40 CFR (Code of Federal Regulations) section 51.165 (a)(1), as it exists on July 1, 2010, except that:

7.1.1 The term "reviewing authority" as used in 40 CFR section 51.165 shall mean the Butte County Air Quality Management District,

7.1.2 The term "major stationary source" as used in 40 CFR section 51.165 means a stationary source which has the potential to emit of any nonattainment regulated NSR pollutant in excess of the new major source limitations in Section 5.1, and

7.1.3 The term "significant" as used in 40 CFR section 51.165 means a rate of emissions that would equal or exceed of any nonattainment regulated NSR pollutant in excess of the major modifications limitations in Section 5.1.

7.1.4 All terms used in 40 CFR section 51.165 (f) shall be as defined in 40 CFR section 51.165 (a)(1), as it exists on July 1, 2010, except that the term "reviewing authority" as used in that section shall mean the Butte County Air Quality Management District.

7.2 Alternative Siting: For all new major sources or for any major modifications for which an analysis of alternative sites, sized and production processes is required under Section 173(a)(5) of the Clean Air Act, the applicant shall prepare an analysis functionally equivalent to the requirements of Division 13 of the Public Resources Code (California Environmental Quality Act-CEQA). The District will not issue an Authority to Construct unless the APCO has concluded, based on the information included in the Alternative Siting Analysis that the benefits of the proposed source significantly outweigh the environmental and social cost imposed as a result of its location, construction, or modification.

7.3 Certification of Compliance: The owner or operator of the proposed new or modified source has certified that all existing major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in California which are subject to emission limitations are in compliance, or on an expeditious schedule for compliance, with all applicable emission limitations and standards.

7.4 Potential Visibility Impacts: The APCO shall consult with the Federal Land Manager on a proposed major stationary source or major modification that may impact visibility in any Class 1 Area, in accordance with 40 CFR 51.307.

7.5 STANDARDS: Major modifications are federal major modifications, unless the applicant demonstrates that the proposed major modification meets the criteria of at least one of the following exclusions:

7.5.1 Less-Than-Significant Emissions Increase Exclusion: An emissions increase for the project, or a net emissions increase for the project, as determined pursuant to 40 CFR section 51.165 (a)(2)(ii)(B) through (D), and (F), that is not significant for a given regulated NSR pollutant, as defined in 4.46, is not a federal major modification for that pollutant.

7.5.1.1 To determine the post-project projected actual emissions from existing units, the provisions of 40 CFR section 51.165 (a)(1)(xxviii) shall be used.

7.5.1.2 To determine the pre-project baseline actual emissions, the provisions of 40 CFR section 51.165 (a)(1)(xxxv)(A) through (C) shall be used.

7.5.1.3 If the project is determined not to be a federal major modification pursuant to the provisions of 40 CFR section 51.165 (a)(2)(ii)(B) through (D) and (F), but there is a reasonable possibility that the project may result in a significant emissions increase, the owner or operator shall comply with all of the provisions of 40 CFR section 51.165 (a)(6) and (a)(7).

7.5.2 Plantwide Applicability Limit (PAL) Exclusion: A major modification that does not cause emissions to exceed a pre-established PAL, as defined in 40 CFR section 51.165 (f)(2)(v), for the respective pollutant, is not a federal major modification for that pollutant.

7.5.2.1 For the purposes of this exclusion, a PAL must be established by a permitting action prior to the major modification permitting action.

7.5.2.2 All PALs shall be established according to the provisions of 40 CFR section 51.165 (f)(1) through (15).

7.5.2.3 All PALs shall comply with the requirements under 40 CFR section 51.165 (f)(1) through (15) to either maintain, renew or retire the PAL.

7.5.3 If an applicant can demonstrate that the proposed major modification does not constitute a federal major modification, the major modification shall not be subject to the alternative siting and benefits analysis as specified in Section 7.2.

8 AIR QUALITY IMPACT ANALYSIS: In no case shall emissions from a new or modified emissions unit cause or worsen the violation of an ambient air quality standard. The APCO may require an applicant to use an air quality model to estimate the effects of a new or modified emissions unit. For the purpose of performing an impact analysis, the following shall apply:

8.1 Air quality models shall be consistent with the requirements specified in 40 CFR Part 51, Appendix W ("Guidelines on Air Quality Models"), unless the APCO finds that such model is inappropriate for use. After making such a finding, the APCO may designate an alternative model only after allowing for public comment and only with the concurrence of CARB and EPA;

8.2 All modeling costs associated with the site of a new or modified emissions unit shall be borne by the applicant;

8.3 In performing an air quality impact analysis, if the proposed stack height is higher than is dictated by good engineering practices, as published in the Federal Register; Volume 50, Number 130; Monday, July 18, 1985, then the actual height used for the purposes of modeling shall be calculated in accordance with good engineering practices.

9 POWER PLANTS: This section shall apply to all power plants proposed to be constructed in the DISTRICT and for which a Notice of Intention (NOI) or Application for Certification has been accepted by the California Energy Commission (CEC). The APCO may apply for reimbursement of all costs incurred, including lost fees, in order to comply with the provisions of this section.

9.1 Intent to Participate and Preliminary Report: Within fourteen (14) days of receipt of an NOI, the APCO shall notify CARB and the CEC of the DISTRICT's intent to participate in the NOI proceeding. If the DISTRICT chooses to participate in the NOI proceeding, the APCO shall prepare and submit a report to CARB and the CEC prior to the conclusion of the non-adjudicatory hearing specified in Section 25509.5 of the Public Resources Code. That report shall include, at a minimum:

9.1.1 A preliminary specific definition of BACT for the proposed facility; and

9.1.2 A preliminary discussion of whether there is a substantial likelihood that the requirements of this Rule and all other DISTRICT Regulations can be satisfied by the proposed facility; and

9.1.3 A preliminary list of conditions which the proposed facility must meet in order to comply with this Rule or any other applicable DISTRICT Regulation.

The preliminary determinations contained in the report shall be as specific as possible within the constraints of the information contained in the NOI.

9.2 Determination of Compliance Review: Upon receipt of an Application for Certification (AFC) for a power plant, the APCO shall conduct a Determination of Compliance review. This determination shall consist of a review identical to that which would be performed if an application for an Authority to Construct had been received for the power plant. If the information contained in the AFC does not meet the requirements of this Rule, the APCO shall, within twenty (20)

calendar days of receipt of the AFC, so inform the Commission, and the AFC shall be considered incomplete and returned to the applicant for re-submittal.

9.3 Equivalency of Application: The APCO shall consider the AFC to be equivalent to an application for an Authority to Construct during the Determination of Compliance review, and shall apply all provisions of this Rule which apply to an application for an Authority to Construct.

9.4 Need for Additional Information: The APCO may request from the applicant any information necessary for the completion of the Determination of Compliance review. If the APCO is unable to obtain the information, the APCO may petition the presiding Commissioner for an order directing the applicant to supply such information.

9.5 Preliminary Determination: Within one hundred and eighty (180) days of accepting an AFC as complete, the APCO shall make a preliminary written decision on:

9.5.1 Whether the proposed power plant meets the requirements of this Rule and all other applicable DISTRICT Regulations; and

9.5.2 In the event of compliance, what permit conditions will be required, including the specific BACT requirements and a description of required mitigation measures. The preliminary written decision under Section 8.5 of this Rule shall be treated as a preliminary decision under Section 5.4.2 of Rule 400-*Permit Requirements*, and shall be finalized by the APCO only after being subject to the public notice and comment requirements of Section 5.5 of this Rule. The APCO shall not issue a Determination of Compliance unless all requirements of this Rule are met.

9.6 Determination of Compliance: Within two hundred and forty (240) days of the filing date, the APCO shall issue and submit to the CEC a Determination of Compliance or, if such a determination cannot be issued, shall inform the CEC. A Determination of Compliance shall confer the same rights and privileges as an Authority to Construct only when and if the Commission approves the AFC, and the Commission certificate includes all conditions of the Determination of Compliance.

9.7 Equivalency of Determination of Compliance to Authority to Construct: A Determination of Compliance shall confer the same rights and privileges as an Authority to Construct provided the CEC approves the Application for Certification and the certificate granted by the CEC includes all the conditions of the Determination of Compliance.

9.8 Permit to Operate: Any applicant receiving a certificate from the CEC Pursuant to this Section and in compliance with all conditions of the certificate shall be issued a Permit to Operate by the APCO.