

Rule 432-Federal New Source Review (FNSR)

*(Adopted September 28, 2006) (Proposed Repeal /Adoption May26, 2011)*

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**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.

**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 Requirements* 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 5.1 and 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 on May 26, 2011.**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. Actual emissions reductions shall be real, enforceable, quantifiable, surplus, and permanent.
- 4.3 **Allowable Emissions:** The emissions rate of a stationary source calculated using the maximum rated capacity of the source, unless the source is limited by federally enforceable limits which restrict operating rate or hours or both, and the most stringent of the following:



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.

**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 on a pollutant and emissions unit basis which is deemed to be acceptable and feasible based on methodology and criteria specified by the APCO.

**4.13 Emission Reduction Credits (ERCs):** Reductions of actual emissions from an emission unit that have been calculated and certified in accordance with an approved DISTRICT rule or an upwind district's approved rule and banked or transferred in accordance with the requirements of Rule 431-*Emission Reduction Credits*.

**4.14 Emissions Limitation:** One or a combination of practically enforceable permit conditions specific to an emissions unit which restricts its maximum emissions, 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 regulated NSR 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 Fugitive Emissions** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- 4.18 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.
- 4.19 Interpollutant Offset:** A precursor pollutant provided to offset a non-attainment pollutant.
- 4.20 Lowest Achievable Emission Rate (LAER):** The same as BACT as defined in this Rule.
- 4.21 Major Modification:** A modification to a major stationary source which results in a significant net emissions increase of the pollutant for which the source is classified as a major stationary source. Significant increases shall be determined as follows:
- 4.21.1** Carbon monoxide: 100 tpy;
  - 4.21.2** Nitrogen oxides: 40 tpy;
  - 4.21.3** Sulfur dioxide: 40 tpy;
  - 4.21.4** Ozone: 40 tpy of VOCs or 40 tpy of nitrogen oxides;
  - 4.21.5** PM10: 15 tpy
  - 4.21.6** PM2.5: 15 tpy of direct PM2.5 emissions or 40 tpy of sulfur dioxide emissions or 40 tpy of nitrogen oxide emissions
  - 4.21.7** Lead: 0.6 tpy
  - 4.21.8** A significant increase at a Class 1 area.
- 4.22 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 volatile organic compounds shall also be considered a major source for ozone. In addition, any physical change, which would constitute a major stationary source by itself, occurring at a stationary source not otherwise qualifying as a major stationary source, makes the source a major stationary source. Emissions associated with emissions units that are exempt from permit requirements under Rule 401-*Permit Exemptions* shall not be included in determining if a source is a major source unless the unit emits greater than 2 pounds per day of any pollutant. The fugitive emissions associated with an emissions unit or 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.

- 4.23 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:
- 4.23.1** Routine maintenance or repair.
  - 4.23.2** A change in ownership.
- 4.24 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.
- 4.25 Net Emissions Increase:** 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:
- 4.25.1** An increase or decrease in actual emissions has not been relied on in issuing a permit which is in effect when the application for the project was submitted.
  - 4.25.2** An increase in actual emissions is only creditable to the extent the new level of actual emissions exceeds the old level.
  - 4.25.3** A decrease in actual emission is only creditable to the extent that:
    - 4.25.3.1** The old level of actual emissions or allowable emissions, whichever is lower, exceeds the new level of actual emissions;
    - 4.25.3.2** It is enforceable at the time the actual construction of the project begins;
    - 4.25.3.3** It is surplus; and
    - 4.25.3.4** It has approximately the same quantitative significance for public health and welfare as attributed to the increases from the proposed project.
- 4.26 Non-attainment Pollutant:** Any pollutant, as well as any precursors of such pollutant, which has been designated non-attainment by EPA as codified in 40 CFR 81.305 for specific portions of Butte County.
- 4.27 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.
- 4.28 PM<sub>10</sub>:** Particulate matter with aerodynamic diameter less than or equal to a

nominal 10 microns.

- 4.29 **PM2.5:** Particulate matter with an aerodynamic diameter less than or equal to nominal 2.5 microns.
- 4.30 **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.
- 4.31 **Permanent:** Actual emissions reductions that continue or endure for the duration of any project utilizing the resulting ERCs as offsets.
- 4.32 **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 a legally and practicably enforceable permit condition.
- 4.33 **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:

<u>PRECURSOR</u>	<u>SECONDARY AIR</u>
Volatile 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

- 4.34 **Project:** All emissions units associated with the scope of an application

submitted in accordance with Rule 400 for a new or modified stationary source including any emissions units indirectly affected.

- 4.35 Proposed Emissions:** The potential to emit for a new or post-modified emissions unit which will be incorporated into the permit as legally and practically enforceable permit conditions.
- 4.36 Quantifiable:** Ability to estimate emission reductions in terms of their amount and characteristics in a manner that is reliable and can be replicated.
- 4.37 Real:** Actually occurring, implemented, and not artificially devised.
- 4.38 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.
- 4.39 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.
- 4.40 Replacement Unit:** A replacement of an emissions unit authorized with a valid Permit to Operate provided all the following criteria are met:
- 4.40.1** The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.
  - 4.40.2** The emissions unit is identical to, or functionally equivalent to, the replaced emissions unit.
  - 4.40.3** The replacement does not alter the basic design parameters of the process unit.
  - 4.40.4** The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.
- 4.41 Reduced Sulfur Compounds:** The sulfur compounds hydrogen sulfide, carbon disulfide, and carbonyl sulfide.
- 4.42 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, volatile organic compounds (VOC), nitrogen oxides (NO<sub>x</sub>), sulfur dioxides (SO<sub>x</sub>), PM<sub>2.5</sub>, and lead.
- 4.43 Significant Increase at a Class 1 Area:** Any emissions rate or any net

emissions increase associated with a major stationary source which would construct within 10 kilometers of a Class I area and have an impact on such area equal to or greater than 1 microgram per cubic meter (24-hour average).

**4.44 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:

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

**4.44.2** 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.

**4.45 Surplus:** The amount of actual emission reductions that are 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) at the time of use. 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.

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

**4.45.1.1** The federally-approved California SIP;

**4.45.1.2** 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;

**4.45.1.3** 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

**4.45.1.4** 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.

**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(s) or modification of an existing emissions unit(s) which results in an emissions increase for the emissions unit exceeds the following amounts:

<u>Pollutant</u>	New Stationary Source (TPY)	Major Modification (TPY)
Nitrogen oxides	100	40
Particulate matter (PM-2.5)	100	15
Volatile organic compounds	100	40
Sulfur oxides	100	40

**5.2 Offset Requirements:**

**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 reduction in emissions as calculated pursuant to Section 6.

**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 major source shall provide offsets for all emission increases of the nonattainment pollutant for which the source is classified as a major source.

**5.2.4.2** A major modification of a nonattainment pollutant at an existing major source, shall provide offsets for the emissions difference between the potential to emit after the modification and the actual emissions before the modification of that nonattainment pollutant.

**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.

**5.2.6** A source subject to the offset requirements shall be subject to the Public Notice and Publication Actions of Rule 400-*Permit Requirements*.

**5.3 Location of Offsets and Offset Ratios**

**5.3.1** Required offsets can only be provided from a nonattainment area, with the same or higher nonattainment classification, for the same pollutant or precursor of that 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.

**5.3.4** The APCO may impose offset ratios greater than the requirements specified in this Rule based upon an air quality impact analysis.

**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.

**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.

**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 associated with an emissions unit or 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(a) (iv)(C).
- 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 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 nonattainment 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 potential to emit for the stationary source 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 4.42, 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.

**7.6** 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 **Error! Reference source not found.** 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.