

**Rule 428**      **New Source Review Requirements for New and Modified Major Sources in Federally Designated Nonattainment Areas**

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## **Part 1.0      Applicability Procedures**

### **1.1 Preconstruction Review Requirements**

The preconstruction review requirements of this rule apply to the proposed construction of any new major stationary source or any major modification located at an existing major stationary source, if the stationary source or modification is major for the regulated NSR pollutant for which the area it is to be located is designated nonattainment, as listed in 40 CFR 81.305, except as provided in 40 CFR 51.165(f)(1) through (15). All CFR references included in this rule refer to the CFR as of July 1, 2015.

### **1.2 Authority to Construct Requirement**

No new major stationary source or major modification to which the requirements of this rule apply shall begin actual construction without first obtaining an Authority to Construct issued pursuant to this rule.

### **1.3 Emission Calculation Requirements to Determine NSR Applicability**

The provisions set out in Sections 1.3.1 through 1.3.5 below shall be used to determine if a proposed project will result in a new major stationary source or a major modification to an existing stationary source. These provisions shall not be used to determine the quantity of offsets required for a project under Part 4 of this rule.

1.3.1 Except as otherwise provided in Section 1.4, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases: a significant emissions increase and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

1.3.2 The procedure for calculating (before beginning actual construction) whether a significant emissions increase will occur depends upon the type of emissions units being added or modified as part of the project, according to Sections 1.3.3 through 1.3.5. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source is contained in the definition of *Net Emissions Increase*. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

1.3.3 *Actual-to-Projected-Actual Applicability Test for Projects that Only Involve Existing Emissions Units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

1.3.4 *Actual-to-Potential Test for Projects that Only Involve Construction of a New Emissions Unit(s)*. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the PTE from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

1.3.5 *Hybrid Test for Projects that Involve Multiple Types of Emissions Units*. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in Sections 1.3.3 or 1.3.4 above, as applicable, with respect to each emissions unit, equals or exceeds the significant amount for that pollutant.

#### **1.4 Major Sources with Plantwide Applicability Limitations (PAL)**

For any major stationary source with a PAL permit for a regulated NSR pollutant, the major stationary source shall comply with the requirements in Part 9.

#### **1.5 Projects Which Rely On a Projected Actual Emissions Test**

The provisions of this Section shall apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units located at a major stationary source, other than a source with a PAL permit, if the owner or operator has determined that the project is not a major modification, but has a projected emission increase of at least 50% of the amount that is a *Significant Emission Increase*; and the owner or operator elects to use the method specified in paragraphs (a)(1)(xxviii)(B)(1) through (3) of the definition of *Projected Actual Emissions* to calculate emission increases from the project.

1.5.1 Before beginning actual construction of the project the owner or operator shall document and maintain a record of the following information:

- a. A description of the project;
- b. Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and
- c. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (B)(3) of the definition of *Projected Actual Emissions* and an explanation for why such amount was excluded, and any netting calculations, if applicable.

1.5.2 If the emissions unit is an existing emissions unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Section 1.5.1 to the APCO. Nothing in this Section shall be construed to require the owner or operator of such a unit to obtain any determination from the APCO before beginning actual construction, except such owner or operator may be subject to the requirements of District Rule 401.

1.5.3 The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that are emitted by any emissions unit identified pursuant to Section 1.5.1(b); and calculate and maintain a record of the annual emissions (in tpy on a calendar year basis) for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit that regulated NSR pollutant at such emissions unit.

1.5.4 If the emissions unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the APCO within sixty days after the end of each calendar year during which records must be generated under Section 1.5.3, setting out the unit's annual emissions during the calendar year that preceded submission of the report.

1.5.5 If the emissions unit is an existing emissions unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the APCO if the annual emissions, in tpy, from the project identified in Paragraph 1.5.1(b) exceed the baseline actual emissions by a significant amount for that regulated NSR pollutant, and if such emissions differ from the projected actual emissions (prior to exclusion of the amount of emissions under the definition of Projected Actual Emissions) as documented and maintained pursuant to Paragraph 1.5.1(c). Such report shall be submitted to the APCO within sixty days after the end of such year. The report shall contain the following:

- a. The name, address, and telephone number of the major stationary source;
- b. The annual emissions, as calculated pursuant to Section 1.5.3; and
- c. Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

1.5.6 The owner or operator of the source shall make the information required to be documented and maintained pursuant to this Section available for review upon a request for inspection by the APCO or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

1.5.7 A "reasonable possibility" under this Section occurs when the owner or operator calculates the project to result in either:

- a. A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined in this rule (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or
- b. A projected actual emissions increase that, added to the amount of emissions excluded under paragraph (B)(3) of the definition of *Projected Actual Emissions*, sums to at least 50 percent of the amount that is a "significant emissions increase," as defined in this rule (without reference

to the amount that is a significant net emissions increase), for the regulated NSR pollutant.

c. For a project for which a reasonable possibility occurs under Section 1.5.7(b), but not under Section 1.5.7(a), the provisions of Sections 1.5.2 through 1.5.5 do not apply to the project.

### **1.6 Secondary Emissions**

Secondary emissions shall not be considered in determining whether a stationary source would qualify as a major stationary source. If a stationary source is subject to this rule on the basis of the direct emissions from the stationary source, the requirements of Part 4, but no other provisions of this rule, must also be met for secondary emissions.

## **Part 2.0**      **Definitions**

### **2.1 Incorporation by Reference**

For the purposes of this rule, in addition to the definitions contained in Section 2.2, the definitions contained in Title 40 CFR 51.165(a)(1).

### **2.2 Additional Definitions**

For the purposes of this rule, the following definitions shall also apply.

“Class I area” means any area listed as Class I in 40 CFR Part 81 Subpart D, or otherwise designated as a mandatory Class I Federal area.

“Complete” means, in reference to an application, that the application contains all of the information necessary for processing the application.

“Emission Reduction Credit (ERC)” means reductions of actual emissions from emission units that are certified by an air district in accordance with applicable district rules and are issued by the air district in the form of ERC certificates.

“Internal emission reductions” are emission reductions which have or will occur at the same major stationary source as the proposed emission increase will occur.

“Local Permit Agency” or “Reviewing Authority” means the Northern Sierra Air Quality Management District.

“PM<sub>2.5</sub>” means particulate matter with an aerodynamic diameter smaller than or equal to a nominal 2.5 microns. Gaseous emissions which condense to form PM<sub>2.5</sub> shall also be counted as PM<sub>2.5</sub>.

“PM<sub>10</sub>” means particulate matter with an aerodynamic diameter smaller than or equal to a nominal 10 microns. Gaseous emissions which condense to form PM<sub>10</sub> shall also be counted as PM<sub>10</sub>.

“Permanent” means an emission reduction which is federally enforceable for the life of a corresponding increase in emissions.

“Project” means a physical change in, or change in the method of operation of, an existing stationary source.

“Shutdown” means the cessation of operation of any air pollution control equipment or process equipment for any purpose.

“Startup” means the setting into operation of any air pollution control equipment or process equipment for any purpose except routine phasing in of process equipment.

“Surplus” means the amount of emission reductions that are, at the time of generation or use 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. Examples of federal, state and local laws, and of SIP-related requirements, include, but are not limited to, the following:

2.2.1. The federally-approved California SIP;

2.2.2. 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;

2.2.3. 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

2.2.4. Any regulation or supporting documentation that is required by the federal Clean Air Act but is not contained or referenced in 40 CFR 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.

“Temporary source” means temporary emission sources such as pilot plants, and portable facilities which will be terminated or located outside the District after less than a cumulative total of 90 days of operation in any 12 continuous months.

“Volatile organic compounds (VOC)” is as defined in 40 CFR 51.100(s).

## **Part 3.0      Application Requirements**

### **3.1 Application Submittal**

The owner or operator of any proposed project determined to be a major stationary source or major modification pursuant to this rule shall submit a complete application to obtain an Authority to Construct on forms provided by the District and include the demonstrations listed in Sections 3.3 through 3.6 of this rule in the application submittal. Upon determining that an application is complete, the APCO shall communicate in writing to the applicant that the application has been determined to be complete. This determination establishes the application date. Designating an application complete for purposes of permit processing does not preclude the APCO from requesting or accepting any additional information.

### **3.2 Application Content**

At a minimum, an application for an Authority to Construct Permit shall contain the following information related to the proposed project:

3.2.1 An identification and description of all emission points, including information regarding all regulated NSR pollutants emitted by all emission units included in the project.

3.2.2 A process description of all activities, including design capacity, which may generate emissions of regulated NSR pollutants in sufficient detail to establish the basis for the applicability of standards and fees.

3.2.3 A projected schedule for commencing construction and operation for all emission units included in the project.

3.2.4 A projected operating schedule for each emissions unit included in the project.

3.2.5 A determination as to whether the project will result in any secondary emissions.

3.2.6 The emission rates of all regulated NSR pollutants, including fugitive and secondary emission rates, if applicable. The emission rates must be described in tons per year and for such shorter-term rates as are necessary to establish compliance using the applicable standard reference test method or other methodology specified (i.e., grams/liter, ppmv or ppmw, lbs/MMBtu).

3.2.7 The calculations on which the emission rate information are based, including fuel specifications, if applicable and any other assumptions used in determining the emission rates (e.g., HHV, sulfur content of natural gas).

3.2.8 The calculations, pursuant to Section 1.3, used to determine applicability of this rule, including the emission calculations (increases or decreases) for each project that occurred during the contemporaneous period.

3.2.9 The calculations, pursuant to Section 4.3, used to determine the quantity of offsets required for the proposed project.

3.2.10 Identification of existing emission reduction credits or identification of internal emission reductions, including related emission calculations and proposed permit modifications required to ensure emission reductions meet the offset integrity criteria of being real, surplus, quantifiable, permanent and federally enforceable or enforceable as a practical matter.

3.2.11 If applicable, a description of how performance testing will be conducted, including test methods and a general description of testing protocols.

### **3.3 Lowest Achievable Emission Rate (LAER)**

The applicant shall submit an analysis demonstrating that the Lowest Achievable Emission Rate (LAER) has been proposed for each emission unit included in the project which emits a NSR regulated pollutant for which the area the project is to be located in has been classified as nonattainment by EPA and for which the new stationary source or modification is classified as major.

### **3.4 Statewide Compliance**

The applicant shall demonstrate that each existing major stationary source owned or operated by the applicant in the State is in compliance with all applicable emission limitations and standards under the CAA or is in compliance with an expeditious compliance schedule which is federally enforceable.

### **3.5 Analysis of Alternatives**

The applicant shall submit an analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source that demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

### **3.6 Sources Impacting Class I Areas**

The applicant of a proposed new major source or major modification that may affect visibility of a Class I area shall provide the APCO with an analysis of impairment to visibility that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the project, as required by 40 CFR Section 51.307(b)(2) and 40 CFR Section 51.166(o).



### **3.7 Application Fees**

The applicant shall pay the applicable fees specified in Rule 603.

## **Part 4.0 Emissions Offsets**

### **4.1 Offset Requirements**

4.1.1 Pollutant-specific emissions shall be offset with federally enforceable ERCs or with internal emission reductions.

4.1.2 ERCs from one or more sources may be used, alone or in combination with internal emission reductions, in order to satisfy offset requirements.

4.1.3 Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may only be credited for offsets if such reductions are surplus, permanent, quantifiable, and federally enforceable; and

a. The shutdown or curtailment occurred after the last day of the base year for the attainment plan for the specific pollutant; or

b. The projected emissions inventory used to develop the attainment plan explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

### **4.2 Timing**

4.2.1 Internal emission reductions used to satisfy an offset requirement must be federally enforceable prior to the issuance of the Authority to Construct which relies on the emission reductions.

4.2.2 Except as provided by Section 4.2.3, the decrease in actual emissions used to generate ERCs or internal emission reductions must occur by no later than the commencement of operation of the new or modified major stationary source.

4.2.3 Where the new emission unit is a replacement for an emission unit that is being shut down in order to provide the necessary offsets, the APCO may allow up to one hundred eighty (180) calendar days for shakedown or commissioning of the new emission unit before the existing emission unit is required to cease operation.

### **4.3 Quantity**

The quantity of ERCs or internal emission reductions required to satisfy offset requirements shall be determined in accordance with the following:

4.3.1 The unit of measure for offsets, ERCs, and internal emission reductions shall be short tons per year (tpy). All calculations and transactions shall use emission rate values rounded to the nearest one one-hundredth (0.01) tpy.

4.3.2 The quantity of ERCs or internal emission reductions required shall be calculated as the product of the amount of increased emissions, as determined in accordance with Section 4.3.3, and the offset ratio, as determined in accordance with Section 4.3.4.

4.3.3 The amount of increased emissions shall be determined as follows:

- a. When the offset requirement is triggered by the construction of a new major stationary source, the amount of increased emissions shall be the sum of the PTE of all emissions units.
- b. When the offset requirement is triggered by a major modification of an existing major stationary source, the amount of increased emissions shall be the sum of the differences between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.
- c. The amount of increased emissions includes fugitive emissions if the stationary source is one of the categorical sources.

4.3.4 The ratios listed in Table 1 shall be applied based on the area's designation for each pollutant, as applicable. The offset ratio is expressed as a ratio of emissions increases to emissions reductions.

Table 1. Offset Ratio Requirements by Area Designation and Pollutant

Area Designation	Pollutant	Offset Ratio
Marginal Ozone Nonattainment Area	NO <sub>x</sub> or VOC	1:1.1
Moderate Ozone Nonattainment Area	NO <sub>x</sub> or VOC	1:1.15
Serious or Severe Ozone Nonattainment Area	NO <sub>x</sub> or VOC	1:1.2
PM <sub>10</sub> Nonattainment Area	PM <sub>10</sub> , SO <sub>x</sub> , NO <sub>x</sub>	1:1
PM <sub>2.5</sub> Nonattainment Area	PM <sub>2.5</sub> , SO <sub>x</sub> , NO <sub>x</sub> , VOC or Ammonia	1:1

#### **4.4 Emission Reduction Requirements**

4.4.1 Internal emission reductions or ERCs used to satisfy an offset requirement shall be:

- a. Real, surplus, permanent, quantifiable, and federally enforceable; and
- b. Surplus at the time of issuance of the Authority to Construct containing the offset requirements.

4.4.2 Permitted sources whose emission reductions are used to satisfy offset requirements must appropriately amend or cancel their Authority to Construct or

Permit to Operate to reflect their new reduced PTE, including practicably enforceable conditions to limit their PTE.

4.4.3 Emission reductions must be obtained from the same nonattainment area, except the APCO may allow emission reductions from another nonattainment area if the following conditions are met:

- a. The other area has an equal or higher nonattainment classification than the area in which the source is located;
- b. Emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located; and
- c. The offset ratio of emissions increases to emissions reductions shall be at least 1:1.2.

4.4.4 The use of ERCs shall not provide:

- a. Authority for, or the recognition of, any pre-existing vested right to emit any regulated NSR pollutant;
- b. Authority for, or the recognition of, any rights that would be contrary to applicable law; or
- c. An exemption to a stationary source from any emission limitations established in accordance with federal, state, or county laws, rules, and regulations.

#### **4.5 Restrictions on Trading Pollutants**

4.5.1 For the purposes of satisfying the offset requirements the APCO may approve interpollutant emission offsets for precursor pollutants on a case by case basis, except for PM<sub>2.5</sub>, which is subject to Section 4.5.4. In such cases, the APCO shall impose, based on an air quality analysis, emission offset ratios in addition to the requirements of Table 1. Interpollutant emission offsets must receive written approval by the U.S. Environmental Protection Agency.

4.5.2 PM<sub>10</sub> emissions shall not be allowed to offset Nitrogen Oxides or Volatile Organic Compound emissions in ozone nonattainment areas.

4.5.3 In no case shall the compounds excluded from the definition of Volatile Organic Compounds be used as offsets for Volatile Organic Compounds.

4.5.4 Interpollutant offsets between PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors are not allowed unless modeling has been used to demonstrate appropriate PM<sub>2.5</sub> interpollutant offset ratios as approved in a PM<sub>2.5</sub> Attainment Plan.

## **Part 5.0**      **Administrative Requirements**

### **5.1 Visibility**

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 I Area, in accordance with 40 CFR 51.307.

### **5.2 Ambient Air Quality Standards**

The APCO may require an analysis, based on an air quality model, to estimate the effects of a proposed new or modified stationary source in order to verify that its construction or modification would not prevent or interfere with the attainment or maintenance of any ambient air quality standard. The APCO shall take into account the mitigation of emissions through offsets pursuant to this rule and the impacts of transported pollutants on downwind pollutant concentrations. The APCO may impose, based on the analysis, offset ratios greater than those required in Section 4.3.4. The APCO may require that the cost of modeling be borne by the applicant.

### **5.3 Air Quality Models**

All estimates of ambient concentrations required pursuant to this rule shall be based on applicable air quality models, databases, and other requirements specified in 40 CFR Part 51, Appendix W (“Guideline on Air Quality Models”). Where an air quality model specified is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis. Written approval from the EPA must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment.

## **Part 6.0**      **Preliminary Decision**

### **6.1 Preliminary Decision**

Following acceptance of an application as complete, the APCO shall perform the evaluations required to determine compliance with all applicable District, state and federal rules, regulations, or statutes and shall make a preliminary written decision as to whether an Authority to Construct should be approved, conditionally approved, or denied. The decision shall be supported by a succinct written analysis. The decision shall be based on the requirements in force on the date the application is deemed complete, except when a new federal requirement not yet incorporated into this rule applies to the new or modified source.

### **6.2 Authority to Construct – Preliminary Decision**

Prior to issuance of a preliminary written decision to issue an Authority to Construct for a new major stationary source or major modification, the APCO shall determine:

- 6.2.1 That each emissions unit(s) that constitutes the project will not violate any applicable requirement of the District portion of the California State Implementation Plan (SIP); and

6.2.2 That the emissions from the new or modified stationary source will not interfere with the attainment or maintenance of any applicable national ambient air quality standard; and

6.2.3 That the emission limitation for each emission unit that constitutes the project specifies the lowest achievable emission rate (LAER) for such units, as LAER is defined in in this rule.

If the APCO determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission standard infeasible, the APCO may instead prescribe a design, operational or equipment standard. In such cases, the APCO shall make its best estimate as to the emission rate that will be achieved and must specify that rate in the application review documents. Any permits issued without an enforceable numerical emission standard must contain enforceable conditions which assure that the design characteristics or equipment will be properly maintained or that the operational conditions will be properly performed so as to continuously achieve the assumed degree of control. Such conditions shall be enforceable as emission limitations by private parties under section 304 of the CAA. The term "emission limitation" shall also include such design, operational, or equipment standards; and

6.2.4 The quantity of ERCs or internal emission reductions required to offset the project, pursuant to Section 4.3; and

6.2.5 That all ERCs or internal emission reductions required for the proposed project have been identified and that they have been made federally enforceable or legally and practicably enforceable; and

6.2.6 That the quantity of ERCs or internal emission reductions determined under Section 4.3.2 will be surrendered prior to commencing operation.

6.2.7 Temporary emission sources, such as pilot plants, portable facilities which will be relocated outside of the nonattainment area after a short period of time (not to exceed 12 months), and emissions resulting from the construction phase of a new source, are exempt from Sections 6.2.4, 6.2.5, and 6.2.6.

### **6.3 Authority to Construct Contents**

6.3.1 An Authority to Construct for a new major stationary source or major modification shall contain terms and conditions:

- a. which ensure compliance with all applicable requirements and which are enforceable as a legally and practicable matter.

b. sufficient to ensure that the major stationary source or major modification will achieve LAER in accordance with Sections 6.3.2 and 6.3.3.

6.3.2 A new major stationary source shall achieve LAER for each nonattainment pollutant for which it would have the potential to emit at levels which equal or exceed the major source threshold for that nonattainment pollutant.

6.3.3 A major modification shall achieve LAER for each nonattainment pollutant for which it would result in a significant emissions increase and significant net emissions increase at the stationary source. This requirement applies to each proposed emissions unit at which the emissions increase in the pollutant would occur as a result of a physical change, or change in the method of operation, in the emissions unit.

#### **6.4 Authority to Construct – Final Decision**

6.4.1 Prior to making a final decision to issue an Authority to Construct for a new major stationary source or major modification, the APCO shall consider all written comments that were submitted within 30 days after the notice of public comment is published and all comments received at any public hearing(s) in making a final determination on the approvability of the application and make all comments available, including the District's response to the comments, for public inspection in the same locations where the District made available preconstruction information relating to the proposed source or modification.

6.4.2 The APCO shall deny any application for an Authority to Construct if she/he finds that the project would not comply with the standards and requirements set forth in District, state, or federal rules or regulations.

6.4.3 The APCO shall make a final decision whether to issue or deny the Authority to Construct proposed in the preliminary decision after determining that the Authority to Construct will or will not ensure compliance with all applicable emission standards and requirements.

6.4.4 The APCO shall notify the applicant in writing of the final decision and make such notification available for public inspection at the same location where the District made available preconstruction information and public comments relating to the source.

### **Part 7.0 Source Obligations**

#### **7.1 Enforcement**

Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this rule, any changes to the application as required by the APCO, or conditions of the Authority to Construct shall be subject to enforcement action.

## **7.2 Termination**

Approval to construct shall terminate if construction is not commenced within eighteen months after receipt of such approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The APCO may extend the 18-month period once upon a satisfactory showing of good cause why an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen months of the projected and approved commencement date.

## **7.3 Compliance**

Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, state, or federal law.

## **7.4 Relaxation in Enforceable Limitations**

At such time that a particular stationary source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the stationary source or modification otherwise to emit a pollutant, then the requirements of this rule shall apply to the stationary source or modification as though construction had not yet commenced on the stationary source or modification.

## **Part 8.0 Public Participation**

After the APCO has made a preliminary written decision to issue an Authority to Construct for a new major stationary source or major modification, as specified in Sections 6.1 and 6.2, the APCO shall:

### **8.1 Opportunity to Comment**

Provide public notice in at least one newspaper of general circulation within the District stating the preliminary decision of the APCO, noting how pertinent information can be obtained, and inviting written public comment for a 30-day period following the date of public notice. The notice shall include the time and place of any hearing that may be held, including a statement of procedure to request a hearing (unless a hearing has already been scheduled).

### **8.2 Materials Availability**

No later than the date the notice of the preliminary written determination is published, make available in at least one location in each region in which the proposed source would be constructed, a copy of all materials the applicant submitted, a copy of all materials the applicant submitted, a copy of the preliminary decision, a copy of the proposed permit and a copy or summary of other materials, if any, considered in making the preliminary written decision.

### **8.3 Forwarding of Public Notice**

Send a copy of the public notice available to the applicant, EPA Region 9, any persons requesting such notice and any other identified interested parties, such as other State or local air pollution control agencies, the chief executives of the city and county where the source would be located, any comprehensive regional land use planning agency, and any State, Federal Land Manager, or Indian Governing body whose lands may be affected by emissions from the source or modification.

### **8.4 Provision for Public Hearing**

Provide opportunity for a public hearing for persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations, if in the APCO's judgment such a hearing is warranted. The APCO shall give notice of any public hearing at least 30 days in advance of the hearing.

## **Part 9.0 Plantwide Applicability Limits (PAL)**

If applicable and permissible, the APCO shall issue a Plantwide Applicability Limit (PAL) Permit according to the provisions contained in 40 CFR 51.165(f)(1) through (15).

## **Part 10.0 Invalidation**

If any provision of this rule or the application of such provision to any person or circumstance, is held invalid, the remainder of this rule or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.