

# **STAFF REPORT**

## **For Board Adoption Hearing**

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

Proposed Amended Rule Release Date: March 19, 2021

#### **Schedule of Meetings**

- Date of Public Workshop on Proposed Amended Rule:
  - 2:00 p.m., Thursday, April 7, 2021 via Teleconference

#### **Schedule of Hearing**

- Date of Board Adoption Hearing:
  - 10:00 a.m., Thursday, April 22, 2021, Butte County Association of Governments Board Room, 326 Huss Lane, CA 95928

**STAFF REPORT**

**For Board Adoption Hearing**

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

Proposed Amended Rule Release Date: March 19, 2021

Public Adoption Hearing: April 22, 2021 at 10:00 a.m.  
Butte County Association of Governments Board Room  
326 Huss Lane, Chico, CA 95928

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## **STAFF REPORT**

### *Executive Summary*

*The Butte County Air Quality Management District (District) proposes to amend Rule 432—Federal New Source Review (FNSR) to ensure that the rule meets the requirements for nonattainment areas in regards to the 2015 National Ambient Air Quality Standards (NAAQS) for Ozone (40 CFR 51.165). Based on U.S. EPA requirements (40 CFR 51.1314), the District should amend or certify Rule 432 no later than 3 years from the date of nonattainment designation for the 2015 Ozone SIP which is August 3, 2021. Removing interpollutant offsets due to a recent United States Court of Appeals decision (Case No. 15-1465) is the only proposed amendment. This rule will be submitted to the U.S. EPA for inclusion in the California State Implementation Plan (SIP).*

### **1.0 PURPOSE**

To amend Rule 432—Federal New Source Review (FNSR) to meet requirements for nonattainment areas in regards to the 2015 National Ambient Air Quality Standards (NAAQS) for Ozone (40 CFR 51.165).

### **2.0 APPLICABILITY**

Proposed amended Rule 432-*Federal New Source Review* is applicable to major sources and major modifications for implementing federal requirements.

### **3.0 DISCUSSION**

#### **Background:**

Rule 432 was most recently amended on March 23, 2017 and approved by U.S. EPA for inclusion into the California SIP effective July 6, 2018 (83 FR 26222). The approved Rule 432 included provisions allowing interpollutant offsets. Interpollutant offsets, also known as inter-precursor trading, is an optional, discretionary program for federal new source review allowed by U.S. EPA under the implementing regulations at 40 CFR 51.165 and Part 51 Appendix S. Interpollutant offset provisions allowed any new or modified major stationary source located in an ozone nonattainment area to satisfy the federal new source review emissions offset requirements for ozone with emissions reductions of volatile organic compounds (VOC) or oxides of nitrogen (NO<sub>x</sub>) interchangeably, subject to all statutory and regulatory offset requirements.

The allowance of interpollutant offsets (inter-precursor trading) was challenged in federal court. The U.S. Court of Appeals for the District of Columbia Circuit issued its opinion in *Sierra Club v. EPA* (Case No. 15-1465) on January 29, 2021, vacating the use of interpollutant offsets. In this proposed amended rule, the definition of interpollutant and the ability for the District to approve the use of interpollutant offsets has been removed.

## 4.0 REQUIREMENTS

### Clean Air Act General Requirements

The District was designated “non-attainment” for the 2008 8-hour Ozone NAAQS by U.S. EPA (77 FR 30088) and subsequently determined to meet that standard; however, the District was designated nonattainment for the 2015 Ozone NAAQS on June 4, 2018 (83 FR 25776). On December 6, 2018, the U.S. EPA promulgated a final rule detailing the nonattainment area implementation requirements for the 2015 Ozone NAAQS (83 FR 62998). These NNSR requirements were codified in 40 CFR 51.1314. This provision reads as follows:

*The requirements for nonattainment NSR for the ozone NAAQS are located in § 51.165. For each nonattainment area, the state shall submit a nonattainment NSR plan or plan revision for a specific ozone NAAQS no later than 36 months after the effective date of the area’s designation of nonattainment or redesignation to nonattainment for that ozone NAAQS.*

Accordingly, no later than August 3, 2021, the District is required to make a SIP submittal to satisfy this requirement. This proposed rule, as amended, meets the requirements for nonattainment areas in regards to the 2015 National Ambient Air Quality Standards (NAAQS) for Ozone set forth in 40 CFR 51.165.

### Rule 432-Federal New Source Review

Rule 432 establishes nonattainment air pollutants pre-construction review requirements for new and modified major stationary sources and major modifications. Table 1 below shows where proposed amended Rule 432 captures all the 2015 Ozone NAAQS SIP requirements.

<b>Table 1: 2015 Ozone NAAQS NNSR SIP Requirements</b>	
<b>40 CFR 51.165</b>	<b>BCAQMD Rule 432 Federal NSR</b>
(a)(1)(iv)(A)(I)(i)-(iv) and (2): Major source thresholds for ozone – VOC and NOx	<p><b>4.19 Major Modification:</b> A modification to a major stationary source which results in a significant net emissions increase of a nonattainment pollutant for which the source is classified as a major stationary source. A significant net emissions increase is one that equals or exceeds any of the following amounts:</p> <p><b>4.19.1</b> Carbon monoxide: 100 tons per year (tpy);</p> <p><b>4.19.2</b> Nitrogen oxides: 40 tpy;</p> <p><b>4.19.3</b> Sulfur dioxide: 40 tpy;</p> <p><b>4.19.4</b> Ozone: 40 tpy of Volatile Organic Compounds (VOCs) or 40 tpy of nitrogen oxides;</p> <p><b>4.19.5</b> PM10: 15 tpy</p> <p><b>4.19.6</b> PM2.5: 10 tpy of direct PM2.5 emissions or 40 tpy of sulfur dioxide emissions or 40 tpy of nitrogen oxide</p>

	<p>emissions</p> <p><b>4.19.7</b> Lead: 0.6 tpy</p> <p><b>4.19.8</b> A significant increase at a Class 1 area.</p>
(a)(1)(iv)(A)(3): Change constitutes a major source by itself	<p><b>4.20 Major Stationary Source:</b> 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 VOCs 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 of these Rules and Regulations shall not be included in determining if a source is a major source unless the unit emits greater than two (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(a)(1)(iv)(C).</p>
(a)(1)(v)(E): Significant net emissions increase of NOx is significant for ozone	<p><b>4.20 Major Stationary Source:</b> 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 VOCs 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 of these Rules and Regulations shall not be included in determining if a source is a major source unless the unit emits greater than two (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(a)(1)(iv)(C).</p>
(a)(1)(v)(F): Any emissions change of VOC in Extreme area triggers NNSR	<p><b>4.21 Modification:</b> 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</p>

	<p>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:</p> <p><b>4.21.1</b> Routine maintenance or repair.</p> <p><b>4.21.2</b> A change in ownership.</p>
(a)(1)(x)(A)-(C) and (E): Significant emissions rates for VOC and NOx as ozone precursors	<p><b>4.42 Significant Increase at a Class 1 Area:</b> Any emissions rate or any net emissions increase associated with a major stationary source which would construct within ten (10) kilometers of a Class I area and have an impact on such area equal to or greater than one (1) microgram per cubic meter (24-hour average).</p>
(a)(3)(ii)(C)(1)-(2): Provisions for emissions reduction credits	<p><b>5.2 Offset Requirements</b></p> <p><b>5.2.1</b> Emission reductions shall be required for emission units 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 a reduction in emissions as calculated pursuant to Section 6 of this Rule.</p> <p><b>5.2.2</b> Offsets shall be real, permanent, enforceable, surplus at time of use, and quantifiable.</p> <p><b>5.2.3</b> A stationary source's potential to emit shall be calculated pursuant to Section 6.</p> <p><b>5.2.4</b> Offsets shall be required under the following conditions:</p> <p><b>5.2.4.1</b> A new major source shall provide offsets for all emission increases of each nonattainment pollutant for which the source is classified as a major source.</p> <p><b>5.2.4.2</b> An existing stationary source which undergoes a major modification for a nonattainment pollutant shall provide offsets for the emissions difference between the potential to emit after the modification and the actual emissions before the modification for each nonattainment pollutant.</p> <p><b>5.2.5</b> A source subject to the offset requirements shall be subject to the Public Notice and Publication Actions of Rule 400.</p> <p><b>5.2.6</b> Offsets required by this Section shall be identified at the time of application and must be surrendered prior to operation of the permitted emissions unit.</p>
(a)(8): Requirements for VOC apply to NOx as ozone precursors	<p><b>4.32 Precursor:</b> A directly-emitted pollutant that, when released to the atmosphere, forms, or contributes to the formation of a secondary pollutant for which an ambient</p>

	<p>air quality standard has been adopted. The following precursor relationships shall be used:</p> <table border="0"> <thead> <tr> <th style="text-align: center;">PRECURSOR</th> <th style="text-align: center;">SECONDARY POLLUTANT</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Volatile compounds</td> <td>Photochemical oxidants (ozone) The organic fraction of PM10 and PM2.5</td> </tr> <tr> <td style="text-align: center;">Nitrogen oxides (NO<sub>x</sub>)</td> <td>Nitrogen dioxide  The nitrate fraction of PM10 and PM2.5 Photochemical oxidants (ozone)</td> </tr> <tr> <td style="text-align: center;">Sulfur oxides (SO<sub>x</sub>)</td> <td>Sulfur dioxide Sulfates The sulfate fraction of PM10 and PM2.5</td> </tr> <tr> <td style="text-align: center;">Ammonia (NH<sub>3</sub>)</td> <td>The ammonium fraction of PM2.5</td> </tr> </tbody> </table>	PRECURSOR	SECONDARY POLLUTANT	Volatile compounds	Photochemical oxidants (ozone) The organic fraction of PM10 and PM2.5	Nitrogen oxides (NO <sub>x</sub> )	Nitrogen dioxide  The nitrate fraction of PM10 and PM2.5 Photochemical oxidants (ozone)	Sulfur oxides (SO <sub>x</sub> )	Sulfur dioxide Sulfates The sulfate fraction of PM10 and PM2.5	Ammonia (NH <sub>3</sub> )	The ammonium fraction of PM2.5
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<p>(a)(9)(i)-(iii): Offset ratios for VOC and NO<sub>x</sub> for ozone nonattainment areas [subparagraphs (a)(9)(i)-(iii) were changed to (a)(9)(ii)-(iv)]</p>	<p><b>5.3 Location of Offsets and Offset Ratios</b></p> <p><b>5.3.1</b> 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.</p> <p><b>5.3.2</b> Use of offsite offsets must result in a net air quality benefit, as determined by the APCO.</p> <p><b>5.3.3</b> Offset ratios and the corresponding distances from the proposed stationary source shall be:</p> <p><b>5.3.3.1</b> on-site, at a ratio of 1:1;</p> <p><b>5.3.3.2</b> within 20 miles, at a ratio of 1.2:1;</p> <p><b>5.3.3.3</b> from 20 miles to 50 miles, at a ratio of 1.5:1;</p> <p><b>5.3.3.4</b> over 50 miles, at a ratio of 2:1.</p> <p><b>5.3.4</b> The APCO may impose offset ratios greater than the requirements specified in this Rule based upon an air quality impact analysis.</p>										
<p>(a)(12): Anti-backsliding</p>	<p><b>7.5 Limit Relaxation Provisions:</b> If any source or</p>										

provision(s), where applicable	modification becomes a major stationary source or major modification as defined in Section 4 of this Rule solely by virtue of a relaxation in any federally enforceable limitation which was established after August 7, 1980, on a capacity of the source or modification to emit a federal nonattainment pollutant or its precursor, such as a restriction on hours of operation, then the requirements of this Rule shall apply to such a source or modification as though construction had not yet commenced on the source or modification.
(i) Public participation requirements	<b>5.2.5</b> A source subject to the offset requirements shall be subject to the Public Notice and Publication Actions of Rule 400.

**5.0 COST IMPACTS/COST EFFECTIVENESS:**

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

**6.0 ALTERNATIVES:**

The Governing Board may choose to:

- a) Approve the rule as proposed;
- b) Direct staff to modify the proposed amended rule after receiving public comments during the hearing; or
- c) Take no action. U.S. EPA has given a deadline of August 3, 2021 to certify or amend Rule 432. If the District fails to make a submittal, Butte County could be subject to federal sanctions, including withholding of federal highway funds.

**7.0 ENVIRONMENTAL REVIEW AND COMPLIANCE**

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

**8.0 REQUIRED FINDINGS:**

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

<b>FINDING</b>	<b>DEFINITION</b>	<b>REFERENCE</b>
Authority	A District shall adopt Rules and regulations and do such acts as may be necessary or proper to execute the powers and duties granted to, and imposed upon, the District by this division and other statutory provisions.	California Health and Safety Code Division 26, Part 3, Sections 40000 and 40001, 40702, and 42300 et. seq., are provisions of law that provide the District with the authority to adopt rules.
Necessity	The District has demonstrated that a need for the Rule, or for Rule amendment or repeal.	Federal and State law requires the District maintain a minor and major source permitting program. The proposed rule provides the requirements to implement the federal requirements.
Clarity	The Rule is written or displayed so that its meaning can easily be understood by the persons directly affected by it.	There is no indication that the proposed amended rule is written in such a manner that persons affected by the rule cannot easily understand it.
Consistency	This Rule is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or State or federal regulations.	The District has found that the proposed amended rule is consistent with applicable statutory requirements.
Non-Duplication	The Rule does not impose the same requirements as an existing State or federal regulation, unless the District finds that the requirements are necessary and proper to execute the powers and duties granted to, and imposed upon, the District.	The proposed rule duplicates federal rules or regulations for permitting programs. The duplicative requirements are necessary in order to execute the powers and duties imposed upon the District.
Reference	Any statute, court decision, or other provision of law that the district implements, interprets, or makes specific by adopting, amending, or repealing a regulation.	California Health and Safety Code Division 26, Part 3, Sections 40000 and 40001, 40702, and 42300; Clean Air Act amendments of 1990 and related regulations.

## 9.0 ATTACHMENTS

<b>Attachment A</b>	Rule 432- <i>Federal New Source Review</i> (Proposed Amendments)
<b>Attachment B</b>	Notice of Public Workshop and Hearing
<b>Attachment C</b>	Draft Resolution of Adoption

**Attachment A**  
**Rule 432-Federal New Source Review (Proposed Amendment)**

Rule 432 Federal New Source Review (FNSR)

*(Adopted September 28, 2006; Repealed and Adopted May 26, 2011;*

*Amended April 24, 2014; Amended March 23, 2017; Proposed for Amendment April 22, 2021)*

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**RULE 432****1 PURPOSE**

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

**2 APPLICABILITY**

- 2.1** This Rule shall apply to all new major stationary sources and major modifications which are subject to Butte County Air Quality Management District (DISTRICT) Rule 400-*Permit Requirements*.
- 2.2** The regulations in effect at the time that 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 of this Rule are not applicable to portable, temporary or replacement emissions units unless the units are major sources or, if operating at a major source, installation will result in a major modification.

**3 EFFECTIVE DATE:** This Rule shall become effective on April 24, 2014.

**4 DEFINITIONS:** Unless otherwise defined below, the terms used in this Rule are the same as defined in Rule 101-*Definitions* of these Rules and Regulations.

- 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 emission unit or source, unless the emission unit or source is limited by federally enforceable conditions which restrict operating rate or hours or both, and the most stringent of the following:



- 4.5.6 Efficiency of a process unit is not a basic design parameter.
- 4.5.7 The replacement activity shall not cause the process unit to exceed any emission limitation, or operational limitation that has the effect of constraining emissions, that applies to the process unit and that is legally enforceable.
- 4.6 **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 brush, timber, grasslands, or trash.
- 4.7 **Best Available Control Technology (BACT):** The most stringent emissions limitation or control technique of the following:
- 4.7.1 Achieved in practice for such class and category of source; or
- 4.7.2 Contained in any SIP approved by the United States Environmental Protection Agency (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
- 4.7.3 Contained in an applicable New Source Performance Standard (NSPS); or
- 4.7.4 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.
- 4.8 **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.
- 4.9 **Contiguous Property:** Two (2) or more parcels of land with a common boundary or separated solely by a public or private roadway or other public right-of-way.
- 4.10 **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.
- 4.11 **Emission Reduction Credits (ERCs):** Reductions of actual emissions from an emissions 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 and Banking* of these Rules and Regulations.
- 4.12 **Emissions Limitation:** One (1) or a combination of practicably 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:

- 4.12.1** Contained in the latest Authority to Construct and/or contained in or enforceable by the latest Permit to Operate for the emissions unit; and
  - 4.12.2** Enforceable on a continuous, daily, monthly or rolling 12-month basis, as specified by the permit condition.
- 4.13 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 New Source Review (NSR) pollutant directly or as fugitive emissions.
- 4.14 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; National Emission Standards for Hazardous Air Pollutants (NESHAPs); requirements within any applicable SIP; any permit requirement established pursuant to 40 CFR 52.21, 51.160-166; or federal operating permit requirements.
- 4.15 Fugitive Emissions:** Those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- 4.16 Historic Actual Emissions:** Actual emissions of the existing emissions unit averaged, in tons per year, over a 24 consecutive month period immediately preceding the date of application, unless:
- 4.16.1** The last 24 months are unrepresentative of normal operations as determined by the APCO, then any 24 consecutive month period of the last five (5) years, which the APCO has determined are representative of normal operations, may be used; or
  - 4.16.2** An emissions unit has been in operation for less than 24 months, a shorter averaging period of at least twelve (12) consecutive months may be used, providing it represents the full operational history of the emissions unit; or,
  - 4.16.3** An emissions unit has been in operation for less than one (1) year, the baseline shall equal zero (0); or,
  - 4.16.4** At any time during the specified period, if actual emissions exceeded allowable emission levels, then actual emissions shall be reduced to reflect emission levels that would have occurred if the emissions unit operated in compliance with all applicable limitations and rules.
- 4.17 Impact Analysis:** An air quality modeling analysis used to estimate the maximum ground level concentration of any pollutant subject to this Rule.

~~4.18 **Interpollutant:** A pollutant interchanged for offset purposes for a non-attainment pollutant and/or precursor pollutant at a hierarchy and ratio determined by the APCO and EPA.~~

**4.194.18 Lowest Achievable Emission Rate (LAER):** The same as BACT as defined in this Rule.

**4.204.19 Major Modification:** A modification to a major stationary source which results in a significant net emissions increase of a nonattainment pollutant for which the source is classified as a major stationary source. A significant net emissions increase is one that equals or exceeds any of the following amounts:

**4.20.14.19.1** Carbon monoxide: 100 tons per year (tpy);

**4.20.24.19.2** Nitrogen oxides: 40 tpy;

**4.20.34.19.3** Sulfur dioxide: 40 tpy;

**4.20.44.19.4** Ozone: 40 tpy of Volatile Organic Compounds (VOCs) or 40 tpy of nitrogen oxides;

**4.20.54.19.5** PM10: 15 tpy

**4.20.64.19.6** PM2.5: 10 tpy of direct PM2.5 emissions or 40 tpy of sulfur dioxide emissions or 40 tpy of nitrogen oxide emissions

**4.20.74.19.7** Lead: 0.6 tpy

**4.20.84.19.8** A significant increase at a Class 1 area.

**4.214.20 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 VOCs 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* of these Rules and Regulations shall not be included in determining if a source is a major source unless the unit emits greater than two (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(a)(1)(iv)(C).

**4.224.21 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:

[4.22.14.21.1](#) Routine maintenance or repair.

[4.22.24.21.2](#) A change in ownership.

[4.234.22](#) **National Ambient Air Quality Standards (NAAQS):** Outdoor air quality standards established by the EPA under authority of the Clean Air Act (42 United States Code (U.S.C.) 7401, et seq.) which identify the maximum acceptable average concentrations of air pollutants during a specific period of time.

[4.244.23](#) **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.

[4.254.24](#) **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 five (5) years prior from the date the application for the project was submitted, and provided:

[4.25.14.24.1](#) 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.

[4.25.24.24.2](#) An increase in actual emissions is only creditable to the extent the new level of actual emissions exceeds the old level.

[4.25.34.24.3](#) A decrease in actual emissions is only creditable to the extent that:

[4.25.3.14.24.3.1](#) The old level of actual emissions or allowable emissions, whichever is lower, exceeds the new level of allowable emissions;

[4.25.3.24.24.3.2](#) It is enforceable at the time the actual construction of the project begins;

[4.25.3.34.24.3.3](#) It is surplus; and

[4.25.3.44.24.3.4](#) It has approximately the same quantitative significance for public health and welfare as attributed to the increases from the proposed project.

[4.264.25](#) **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.

[4.274.26](#) **Offset:** An emission reduction that compensates for an increase in an affected pollutant from a new or modified stationary source.

[4.284.27](#) **PM10:** Particulate matter with aerodynamic diameter less than or equal to a nominal ten (10) microns. Gaseous emissions which condense to form particulate matter at ambient temperatures shall be included.

[4.294.28](#) **PM2.5:** Particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 microns. Gaseous emissions which condense to form

particulate matter at ambient temperatures shall be included.

**4.304.29 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.

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

**4.324.31 Potential to Emit:** The maximum annual capacity of an emissions 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.

**4.334.32 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 POLLUTANT</u>
Volatile compounds	Photochemical oxidants (ozone) The organic fraction of PM10 and PM2.5
Nitrogen oxides (NOx)	Nitrogen dioxide The nitrate fraction of PM10 and PM2.5 Photochemical oxidants (ozone)
Sulfur oxides (SOx)	Sulfur dioxide Sulfates The sulfate fraction of PM10 and PM2.5
Ammonia (NH3)	The ammonium fraction of PM2.5

- 4.344.33 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.
- 4.354.34 Proposed Emissions:** The potential to emit for a new or post-modified emissions unit which will be incorporated into the permit as legally and practicably enforceable permit conditions.
- 4.364.35 Quantifiable:** Ability to estimate emission reductions in terms of their amount and characteristics in a manner that is reliable and can be replicated.
- 4.374.36 Real:** Actually occurring, implemented, and not artificially devised.
- 4.384.37 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.
- 4.394.38 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.
- 4.404.39 Replacement Unit:** A replacement of an emissions unit authorized with a valid Permit to Operate provided all the following criteria are met:
- 4.40.14.39.1** 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.
- 4.40.24.39.2** The emissions unit is identical to, or functionally equivalent to, the replaced emissions unit.
- 4.40.34.39.3** The replacement does not alter the basic design parameters of the process unit.
- 4.40.44.39.4** 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.
- 4.414.40 Reduced Sulfur Compounds:** The sulfur compounds hydrogen sulfide, carbon disulfide, and carbonyl sulfide.
- 4.424.41 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, VOCs, NOx, SOx, PM10, PM2.5, and lead.

**4.434.42 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 ten (10) kilometers of a Class I area and have an impact on such area equal to or greater than one (1) microgram per cubic meter (24-hour average).

**4.444.43 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:

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

**4.44.24.43.2** 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 and,

**4.44.34.43.3** Excluding non-road engines as defined in CAA Section 216.

**4.454.44 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 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.

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

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

**4.45.1.24.44.1.2** 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;

**4.45.1.34.44.1.3** Any other source or source-category specific regulatory or permitting requirement, including, but not limited to, RACT, NSPS, NESHAPs, BACM, BACT, and LAER; and

**4.45.1.44.44.1.4** 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.

**5 REQUIREMENTS:** Any emissions unit which emits a nonattainment pollutant and is otherwise 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) located at a new stationary source, any additions to an existing stationary source, or any modifications of an existing emissions unit(s) which results in a net emissions increase for the emissions unit equal to or exceeding the amounts specified below for new or modified sources, as applicable:

<u>Pollutant</u>	New Stationary Source (TPY)	Modified Source (TPY)
NO <sub>x</sub>	100	40
Particulate matter (PM-2.5)	100	10
VOCs	100	40
SO <sub>x</sub>	100	40

**5.2 Offset Requirements**

**5.2.1** Emission reductions shall be required for emission units 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 a reduction in emissions as calculated pursuant to Section 6 of this Rule.

**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.

**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 each nonattainment pollutant for which the source is classified as a major source.

**5.2.4.2** An existing stationary source which undergoes a major modification for a nonattainment pollutant shall provide offsets for the emissions difference between the potential to emit after the modification and the

actual emissions before the modification for each nonattainment pollutant.

**5.2.5** A source subject to the offset requirements shall be subject to the Public Notice and Publication Actions of Rule 400.

**5.2.6** Offsets required by this Section shall be identified at the time of application and must be surrendered prior to operation of the permitted emissions unit.

**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:** Excluding PM<sub>2.5</sub>, 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, removed 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 Historic Actual Emissions. Historic Actual Emissions for a new source or emission unit equals zero.

**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 Historical Actual Emissions. Emissions increases or decreases shall be calculated for each emissions unit and the project as a whole.

- 6.3 Project Emissions:** If a project consists of more than one emissions 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)(1)(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 complete application.
- 6.7 Quantity of Offsets Required:** For each nonattainment pollutant for which offsets are required pursuant to Section 5.2.4 of this Rule, multiply the net emissions increase calculated for the project by the appropriate offset ratio based on the nonattainment pollutant and location as specified in Section 5.3 of this Rule.
- 7 ADMINISTRATIVE REQUIREMENTS:** The following administrative requirements shall apply to any new major source or major modification regulated by this Rule. Power plants over fifty (50) megawatts shall be subject to the additional requirements of Section 8 of this Rule.
- 7.1 Alternative Siting:** 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.
- 7.2 Certification of Compliance:** The applicant shall provide a certification stating 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.
- 7.3 Potential Visibility Impacts**
- 7.3.1 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).

**7.3.2 Denial, Adverse Impact To Visibility Of A Class I Area:** The APCO shall deny any Authority to Construct or Permit to Operate for a new major stationary source or major modification if the APCO finds, after consideration of comments and an analysis from the Federal Land Manager, that the emissions from a proposed facility or modification would have an adverse impact on visibility, as defined in 40 CFR Section 52.21(b)(29), of a Class I area pursuant to 40 CFR Section 51.307(b)(2).

**7.4 Air Quality Impacts Analysis:** If the APCO determines that an Air Quality Impacts Analysis (AQIA) is necessary to determine if a project would cause a violation of the NAAQS, then the APCO may require an applicant to use an air quality model to estimate the effects of a new or modified emissions unit. If required by the APCO, the applicant shall provide an AQIA that complies with the AQIA requirements in Rule 400.

**7.5 Limit Relaxation Provisions:** If any source or modification becomes a major stationary source or major modification as defined in Section 4 of this Rule solely by virtue of a relaxation in any federally enforceable limitation which was established after August 7, 1980, on a capacity of the source or modification to emit a federal nonattainment pollutant or its precursor, such as a restriction on hours of operation, then the requirements of this Rule shall apply to such a source or modification as though construction had not yet commenced on the source or modification.

**8 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.

**8.1 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:

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

**8.1.2** 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

- 8.1.3** 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.

- 8.2 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 CEC, and the AFC shall be considered incomplete and returned to the applicant for re-submittal.

- 8.3 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.

- 8.4 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.

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

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

**8.5.2** 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 5.2.2 of Rule 400, and shall be finalized by the APCO only after being subject to the public notice and comment requirements of Sections 4.5 and 5.2.4.2 of Rule 400. The APCO shall not issue a Determination of Compliance unless all requirements of this Rule are met.

- 8.6 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.

- 8.7 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.
- 8.8 Permit to Operate:** Any applicant receiving a certificate from the CEC pursuant to this Section 8 and in compliance with all conditions of the certificate shall be issued a Permit to Operate by the APCO.

**Attachment B**  
**Notices of Public Workshops and Hearing**

## NOTICE OF PUBLIC WORKSHOP AND HEARING

The Butte County Air Quality Management District (District) Governing Board will hold a public workshop and hearing to consider adoption of a proposed amendment to Rule 432-*Federal New Source Review* to gain full State Implementation Plan approval of the Rule. The proposed amendment does not change the current implementation of the permit program. The time, date, and location of the public workshop and hearing are given below:

Public Workshop: 2:00 p.m. April 7, 2021 via Zoom (Zoom link on website or call)

Public Hearing: 10:00 a.m. April 22, 2021 Butte County Association of Governments Board Room, 326 Huss Lane, Chico, CA 95928

The Staff Report and proposed amended rule may be reviewed at the District office at the address below or on the District website: [www.bcaqmd.org](http://www.bcaqmd.org). For additional information please contact Patrick Lucey at (530) 332-9400, ext. 107. Written comments on the proposed rules must be submitted by April 18, 2021 to: Board Clerk, Butte County Air Quality Management District, 629 Entler Avenue, Suite 15, Chico, CA 95928.

DATED: March 19, 2021

BY: Stephen Ertle  
Air Pollution Control Officer

**Attachment C**  
**Proposed Resolution of Adoption**

**RESOLUTION 2021-08  
BEFORE THE BOARD OF DIRECTORS OF  
BUTTE COUNTY AIR QUALITY MANAGEMENT DISTRICT  
STATE OF CALIFORNIA**

**ADOPT PROPOSED AMENDMENT TO RULE 432—*FEDERAL NEW SOURCE REVIEW***

Resolution 2021-08 .....)  
Adopt Proposed Amended Rule 432—*Federal New Source Review (FNSR)* .....

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

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

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

AND WHEREAS, the Butte County Air Quality Management District Board last approved amendments to Rule 432 – *Federal New Source Review (FNSR)* on March 23, 2017 which were approved by U.S. EPA for inclusion in the California State Implementation Plan effective July 6, 2018 (83 FR 26222).

AND WHEREAS, The U.S. Court of Appeals for the District of Columbia Circuit issued its opinion in *Sierra Club v. EPA* (Case No. 15-1465) on January 29, 2021, vacating the use of interpollutant offsets. In this proposed amended rule, the definition of interpollutant and the ability for the District to approve the use of interpollutant offsets has been removed;

AND WHEREAS, the District staff has made notice of and held a public workshop meeting on the proposed amended rule on April 7, 2021 and received no public comments on the proposed amended rule;

AND WHEREAS, the Butte County Air Quality Management District Board conducted public hearing on April 22, 2021 concerning the proposed amended rule herein;

AND WHEREAS, Butte County Air Quality Management District staff will submit the amended rule, if approved, to the California Air Resources Board and U.S. EPA for inclusion in the California State Implementation Plan for the 2015 National Ambient Air Quality Standards for Ozone to meet federal requirements under 40 CFR 51.165;

THEREFORE, BE IT RESOLVED, that the Butte County Air Quality Management District Board hereby adopts proposed amendment to Rule 432-*Federal New Source Review (FNSR)* with an effective date of April 22, 2021, as proposed in the attachments to the March 19, 2021 Staff Report.

On Motion of \_\_\_\_\_, Seconded by \_\_\_\_\_, the foregoing resolution is hereby PASSED AND ADOPTED by the Air Quality Management District Board of Directors on this 22<sup>nd</sup> day of April, 2021 by the following:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
Stephen Ertle, Air Pollution Control Officer  
Butte County Air Quality Management District

I hereby attest that this is a true and correct copy of the action taken by the Butte County Air Quality Management District Board of Directors on April 22, 2021.

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