



**NOTICE OF DIRECT FINAL
RULEMAKING AND REQUEST FOR
COMMENTS ON CHANGES TO
ARTICLE I AND ARTICLE II: PART 1
OF THE RESERVATION AIR CODE**



The Southern Ute Indian Tribe/State of Colorado Environmental Commission is seeking comments from interested persons on certain changes to the Commission's Reservation Air Code (RAC).

I. Dates. This action is effective on January 17, 2023 without further notice, unless the Commission receives relevant adverse comments by December 18, 2022. If the Commission receives relevant adverse comments, it will publish a timely withdrawal in the same manner in which this notice was published informing the public this action will not take effect.

The revisions to the RAC will become effective upon approval by the EPA.

II. Authority under which the changes are proposed.

Authority is vested in the Southern Ute Indian Tribe/State of Colorado Environmental Commission by the *Intergovernmental Agreement Between the Southern Ute Indian Tribe and the State of Colorado Concerning Air Quality Control on the Southern Ute Indian Reservation* dated December 13, 1999 ("IGA"), tribal law (Resolution of the Council of the Southern Ute Indian Tribe # 00-09), State law (C.R.S. § 24-62-101), and federal law (Act of October 18, 2004, Pub. L. No. 108-336, 118 Stat.1354) to adopt rules and regulations for air quality programs applicable to all lands within the exterior boundaries of the Southern Ute Indian Reservation. The Commission's direct final rulemaking authority can be found in section IV.G. of the Commission's Procedural Rules.

III. Submission of comments.

Please provide any comments no later than December 18, 2022. Please submit your comments to Danny Powers, Air Quality Program Manager for the Southern Ute Indian Tribe, by one of the following methods:

- E-mail: airquality@southernute-nsn.gov
- Mail: Southern Ute Indian Tribe/State of Colorado Environmental Commission, c/o Danny Powers, Air Quality Program Manager, Southern Ute Environmental Programs Division, P.O. Box 737 MS# 84, Ignacio, Colorado, 81137

IV. Supplementary information and summary description of RAC changes.

The Commission is proposing to revise RAC Article I and Article II Part 1, by:

(1) updating the “major source” definition in RAC § 1-103 (38) for consistency with EPA’s updated “major source” definition in 40 CFR 70.2;

(2) removing outdated provisions concerning the transition of EPA-issued Part 71 permits to tribally-issued Part 70 permits from RAC §§ 2-104, 2-106, 2-107, and 2-118;

(3) revising RAC §§ 2-106 and 2-110 to require permittees to use the most current forms provided by the Tribe;

(4) updating the permit application completeness determination and permit issuance language in RAC § 2-107;

(5) adding a new provision in RAC § 2-111 to require permittees to apply for an administrative permit revision to incorporate new and revised New Source Review permits into their Title V operating permit;

(6) updating RAC § 2-111 to clarify that submitting a minor permit revision application does not authorize construction or modification of a source;

(7) correcting typographical errors and incorrect incorporation by reference citations and making certain other administrative improvements to RAC language (e.g., replacing the use of certified mail with electronic mail with delivery and read receipts).

These revisions are described in more detail below.

First, the Commission is updating the “major source” definition in RAC § 1-103 (38) to align the definition with EPA’s updated “major source” definition in 40 CFR 70.2 of the federal Part 70 operating permit program. The updated definition at 40 CFR 70.2 better aligns the definition with the June 3, 2016, oil and gas source aggregation rule published at 81 Fed. Reg. 35622.

Second, the Commission is removing language relating to the three-year permit transition plan for the transition of federally-issued Part 71 permits to tribally-issued Part 70 permits. These revisions remove obsolete RAC provisions. All EPA-issued Part 71 permits were transitioned to Tribe-issued Part 70 permits pursuant to a three-year permit transition plan approved concurrently by EPA at the time of EPA’s approval of the Tribe’s Part 70 operating permit program on March 2, 2012. Since that time, all initial Part 70 operating permits have undergone five-year permit renewal issuances. Therefore, the transition plan-related permit provisions are no longer needed in the RAC.

Third, the Commission is revising language in RAC §§ 2-106 and 2-110 to require permittees submitting forms to the Tribe for permitting or compliance purposes to use the most current forms provided by the Tribe. The Tribe’s permitting and compliance forms have been developed to encompass the requirements of the RAC and applicable regulations, and to be compatible with the Tribe’s compliance database.

Fourth, the Commission is updating the permit application completeness determination and permit issuance timeline language in RAC § 2-107. These revisions have been made to clarify the Tribe's permit application completeness deadline of 60 days for initial applications, renewal applications, and significant permit revisions. The revisions also clarify the 30-day completeness deadline for minor permit revisions. Finally, the Commission is revising the timelines for the Tribe to take final action on complete permit applications for clarity and consistency with the analogous language in 40 CFR Part 70. The Commission is making no changes to the timelines for the Tribe to take action on final permit issuances.

Fifth, the Commission is adding a requirement to RAC § 2-111 for Part 70 sources operators to apply for administrative permit revisions to add new or revised New Source Review (NSR) permits to their Part 70 permits within 10 working days of the NSR permit becoming effective. NSR permits are an applicable requirement of the Part 70 operating permit program and can be added to permits administratively, due to the permits having already undergone the public comment process during the NSR permit issuance process.

Sixth, the Commission is clarifying in RAC § 2-111 that a permittee's filing of a minor permit revision application is not authorization to construct or modify a source. The permittee is responsible for determining and receiving the appropriate New Source Review preconstruction permitting authorizations for construction or modification of a source.

Finally, the Commission is correcting numerous typos and making certain revisions to promote administrative clarity. Additionally, the Commission is correcting several incorrect incorporations by reference citations to correctly align the RAC with the federal standards at 40 CFR Part 70 or to correctly cross reference other RAC citations. The Commission considers these revisions to be administrative in nature.

The Commission is publishing this direct final action without a prior proposed rule because it views the changes as noncontroversial and anticipates no adverse comments. If the Commission receives adverse comment, it will publish a timely withdrawal in the same manner this notice has been published informing the public that the action will not take effect. It also will publish a notice of proposed rulemaking and will address the comments on the direct final action as part of that proposed rulemaking.

V. Where a complete copy of the RAC and RAC changes can be obtained.

A copy of the RAC and a redlined version showing the changes is available upon request from the Tribe's Air Quality Program Manager who can be contacted by e-mail, phone, or mail, at the addresses or phone number noted below. The RAC and the exhibit showing the changes also is available at the following website:

<https://www.southernute-nsn.gov/justice-and-regulatory/epd/public-comments/>

For further information contact: Danny Powers, Program Manager, Air Quality Program, Southern Ute Indian Tribe, P.O. Box 737 MS#84, Ignacio, Colorado, 81137; telephone number (970) 563-2256; e-mail dpowers@southernute-nsn.gov.