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**MINING OPERATIONS AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Keven J. Stratton**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to mining operations.

**Highlighted Provisions:**

This bill:

- ▶ amends definitions related to the Agriculture, Industrial, or Critical Infrastructure Materials Protection Areas provisions;
- ▶ requires actions to be brought before the Board of Oil, Gas, and Mining;
- ▶ restricts the time for seeking a challenge of a vested mining use;
- ▶ modifies rights of a mine operator with a vested mining use;
- ▶ amends definitions related to the regulation of mining;
- ▶ modifies the authority of the board and division;
- ▶ addresses review of notice of intentions;
- ▶ enacts provisions related to review of a permit order;
- ▶ addresses surety requirements;
- ▶ addresses withdrawal of approved notice of intention;
- ▶ clarifies requirements for revised notice of intentions; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 17-41-101, as last amended by Laws of Utah 2022, Chapter 72

32 17-41-501, as enacted by Laws of Utah 2009, Chapter 376

33 17-41-502, as enacted by Laws of Utah 2009, Chapter 376

34 40-8-4, as last amended by Laws of Utah 2022, Chapter 72

35 40-8-7, as last amended by Laws of Utah 2008, Chapter 382

36 40-8-13, as last amended by Laws of Utah 2013, Chapter 243

37 40-8-14, as last amended by Laws of Utah 2011, Chapter 125

38 40-8-16, as last amended by Laws of Utah 1989, Chapter 22

39 40-8-18, as last amended by Laws of Utah 2003, Chapter 35

40 ENACTS:

41 40-8-13.1, Utah Code Annotated 1953



43 *Be it enacted by the Legislature of the state of Utah:*

44 Section 1. Section 17-41-101 is amended to read:

45 **17-41-101. Definitions.**

46 As used in this chapter:

47 (1) "Advisory board" means:

48 (a) for an agriculture protection area, the agriculture protection area advisory board  
49 created as provided in Section 17-41-201;

50 (b) for an industrial protection area, the industrial protection area advisory board  
51 created as provided in Section 17-41-201; and

52 (c) for a critical infrastructure materials protection area, the critical infrastructure  
53 materials protection area advisory board created as provided in Section 17-41-201.

54 (2) (a) "Agriculture production" means production for commercial purposes of crops,  
55 livestock, and livestock products.

56 (b) "Agriculture production" includes the processing or retail marketing of any crops,  
57 livestock, and livestock products when more than 50% of the processed or merchandised  
58 products are produced by the farm operator.

59 (3) "Agriculture protection area" means a geographic area created under the authority  
60 of this chapter that is granted the specific legal protections contained in this chapter.

61 (4) "Applicable legislative body" means:

62 (a) with respect to a proposed agriculture protection area, industrial protection area, or  
63 critical infrastructure materials protection area:

64 (i) the legislative body of the county in which the land proposed to be included in the  
65 relevant protection area is located, if the land is within the unincorporated part of the county; or

66 (ii) the legislative body of the city or town in which the land proposed to be included in  
67 the relevant protection area is located; and

68 (b) with respect to an existing agriculture protection area, industrial protection area, or  
69 critical infrastructure materials protection area:

70 (i) the legislative body of the county in which the relevant protection area is located, if  
71 the relevant protection area is within the unincorporated part of the county; or

72 (ii) the legislative body of the city or town in which the relevant protection area is  
73 located.

74 (5) "Board" means the Board of Oil, Gas, and Mining created in Section 40-6-4.

75 (6) "Critical infrastructure materials" means sand, gravel, or rock aggregate.

76 (7) "Critical infrastructure materials operations" means the extraction, excavation,  
77 processing, or reprocessing of critical infrastructure materials.

78 (8) "Critical infrastructure materials operator" means a natural person, corporation,  
79 association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or  
80 other organization or representative, either public or private, including a successor, assign,  
81 affiliate, subsidiary, and related parent company, that:

82 (a) owns, controls, or manages a critical infrastructure materials operation; and

83 (b) has produced commercial quantities of critical infrastructure materials from the  
84 critical infrastructure materials operations.

85 (9) "Critical infrastructure materials protection area" means a geographic area created  
86 under the authority of this chapter on or after May 14, 2019, that is granted the specific legal  
87 protections contained in this chapter.

88 (10) "Crops, livestock, and livestock products" includes:

89 (a) land devoted to the raising of useful plants and animals with a reasonable

90 expectation of profit, including:

91 (i) forages and sod crops;

92 (ii) grains and feed crops;

93 (iii) livestock as defined in Section 59-2-102;

94 (iv) trees and fruits; or

95 (v) vegetables, nursery, floral, and ornamental stock; or

96 (b) land devoted to and meeting the requirements and qualifications for payments or

97 other compensation under a crop-land retirement program with an agency of the state or federal

98 government.

99 (11) "Division" means the Division of Oil, Gas, and Mining created in Section

100 40-6-15.

101 (12) "Industrial protection area" means a geographic area created under the authority of

102 this chapter that is granted the specific legal protections contained in this chapter.

103 (13) "Mine operator" means a natural person, corporation, association, partnership,

104 receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or

105 representative, either public or private, including a successor, assign, affiliate, subsidiary, and

106 related parent company, that, ~~as of~~ on or before January 1, 2019:

107 (a) owns, controls, ~~or~~ manages, or is listed in a notice of intention filed under Title

108 40, Chapter 8, Utah Mined Land Reclamation Act, as an owner of a mining use under a large

109 mine permit issued by the division or the board; and

110 (b) has ~~produced~~ caused commercial quantities of a mineral deposit to be produced

111 from the mining use under the large mine permit.

112 (14) "Mineral deposit" means the same as that term is defined in Section 40-8-4.

113 (15) "Mining protection area" means land where a vested mining use occurs, has

114 occurred, or will occur when the area has not been disturbed or excavated, including each

115 surface or subsurface land or mineral estate that a mine operator with a vested mining use owns

116 or controls.

117 (16) "Mining use":

118 (a) means:

119 (i) the full range of activities, from prospecting and exploration to reclamation and

120 closure, associated with the exploitation of a mineral deposit; and

121 (ii) the use of the surface and subsurface and groundwater and surface water of an area  
 122 in connection with the activities described in Subsection (16)(a)(i) that have been, are being, or  
 123 will be conducted; and

124 (b) includes, whether conducted on-site or off-site:

125 (i) any sampling, staking, surveying, exploration, or development activity;

126 (ii) any drilling, blasting, excavating, or tunneling;

127 (iii) the removal, transport, treatment, deposition, and reclamation of overburden,  
 128 development rock, tailings, and other waste material;

129 (iv) any removal, transportation, extraction, beneficiation, or processing of ore;

130 (v) any smelting, refining, autoclaving, or other primary or secondary processing  
 131 operation;

132 (vi) the recovery of any mineral left in residue from a previous extraction or processing  
 133 operation;

134 (vii) a mining activity that is identified in a work plan or permitting document;

135 (viii) the use, operation, maintenance, repair, replacement, or alteration of a building,  
 136 structure, facility, equipment, machine, tool, or other material or property that results from or is  
 137 used in a surface or subsurface mining operation or activity;

138 (ix) any accessory, incidental, or ancillary activity or use, both active and passive,  
 139 including a utility, private way or road, pipeline, land excavation, working, embankment, pond,  
 140 gravel excavation, mining waste, conveyor, power line, trackage, storage, reserve, passive use  
 141 area, buffer zone, and power production facility;

142 (x) the construction of a storage, factory, processing, or maintenance facility; [~~and~~]

143 (xi) the acquisition, ownership, and control as inventory of contiguous or partly  
 144 contiguous mineral bearing properties or parcels, regardless of whether actual excavation or  
 145 land disturbance has occurred; and

146 [~~(xi)~~] (xii) an activity described in Subsection [~~40-8-4(17)(a)~~] 40-8-4(18)(a).

147 (17) (a) "Municipal" means of or relating to a city or town.

148 (b) "Municipality" means a city or town.

149 (18) "New land" means surface or subsurface land or mineral estate that a mine  
 150 operator gains ownership or control of after January 1, 2019, regardless of whether that land or  
 151 mineral estate is included in the mine operator's large mine permit.

152 (19) "Off-site" means the same as that term is defined in Section 40-8-4.

153 (20) "On-site" means the same as that term is defined in Section 40-8-4.

154 (21) "Planning commission" means:

155 (a) a countywide planning commission if the land proposed to be included in the  
156 agriculture protection area, industrial protection area, or critical infrastructure materials  
157 protection area is within the unincorporated part of the county and not within a planning  
158 advisory area;

159 (b) a planning advisory area planning commission if the land proposed to be included  
160 in the agriculture protection area, industrial protection area, or critical infrastructure materials  
161 protection area is within a planning advisory area; or

162 (c) a planning commission of a city or town if the land proposed to be included in the  
163 agriculture protection area, industrial protection area, or critical infrastructure materials  
164 protection area is within a city or town.

165 (22) "Political subdivision" means a county, city, town, school district, local district, or  
166 special service district.

167 (23) "Proposal sponsors" means the owners of land in agricultural production,  
168 industrial use, or critical infrastructure materials operations who are sponsoring the proposal  
169 for creating an agriculture protection area, industrial protection area, or critical infrastructure  
170 materials protection area.

171 (24) "State agency" means each department, commission, board, council, agency,  
172 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,  
173 unit, bureau, panel, or other administrative unit of the state.

174 (25) "Unincorporated" means not within a city or town.

175 (26) "Vested mining use" means a mining use:

176 (a) by a mine operator; and

177 (b) that existed or was conducted or otherwise engaged in before a political subdivision  
178 prohibits, restricts, or otherwise limits a mining use.

179 Section 2. Section 17-41-501 is amended to read:

180 **17-41-501. Vested mining use -- Conclusive presumption.**

181 (1) (a) A mining use is conclusively presumed to be a vested mining use if the mining  
182 use existed or was conducted or otherwise engaged in before a political subdivision prohibits,

183 restricts, or otherwise limits the mining use.

184 (b) Anyone claiming that a vested mining use has not been established has the burden  
185 of proof to show by clear and convincing evidence that the vested mining use has not been  
186 established.

187 (2) A vested mining use:

188 (a) runs with the land; and

189 (b) may be changed to another mining use without losing its status as a vested mining  
190 use.

191 (3) The present or future boundary described in the large mine permit of a mine  
192 operator with a vested mining use does not limit:

193 (a) the scope of the mine operator's rights under this chapter; or

194 (b) the protection that this chapter provides for a mining protection area.

195 (4) (a) A mine operator with a vested mining use shall file a declaration for recording  
196 in the office of the recorder of the county in which the vested mining use is located.

197 (b) A declaration under Subsection (4)(a) shall:

198 (i) contain a legal description of the land included within the vested mining use; and

199 (ii) provide notice of the vested mining use.

200 (5) (a) A person seeking to challenge a vested mining use shall file the challenge with  
201 the board.

202 (b) A person shall file a challenge under this Subsection (5) by no later than the later  
203 of:

204 (i) May 1, 2024; or

205 (ii) one year after receiving actual notice of the vested mining use.

206 (c) If a person does not file a challenge under this Subsection (5) within the time frame  
207 described in Subsection (5)(b), the declaration described in Subsection (4) is considered to be  
208 conclusively established for all purposes.

209 Section 3. Section **17-41-502** is amended to read:

210 **17-41-502. Rights of a mine operator with a vested mining use -- Expanding**  
211 **vested mining use.**

212 (1) Notwithstanding a political subdivision's prohibition, restriction, or other limitation  
213 on a mining use adopted after the establishment of the mining use, the rights of a mine operator

214 with a vested mining use include the rights to:

215 (a) progress, extend, enlarge, grow, or expand the vested mining use to any surface or  
216 subsurface land or mineral estate [~~that~~ if, on or before January 1, 2019, the mine operator  
217 owns or controls the surface or subsurface land or mineral estate;

218 (b) expand the vested mining use to any new land that:

219 (i) is contiguous and related in mineralization to surface or subsurface land or a  
220 mineral estate that the mine operator already owns or controls;

221 (ii) contains minerals that are part of the same mineral trend as the minerals that the  
222 mine operator already owns or controls; or

223 (iii) is a geologic offshoot to surface or subsurface land or a mineral estate that the  
224 mine operator already owns or controls;

225 (c) use, operate, construct, reconstruct, restore, extend, expand, maintain, repair, alter,  
226 substitute, modernize, upgrade, and replace equipment, processes, facilities, and buildings on  
227 any surface or subsurface land or mineral estate that the mine operator owns or controls;

228 (d) increase production or volume, alter the method of mining or processing, and mine  
229 or process a different or additional mineral than previously mined or owned on any surface or  
230 subsurface land or mineral estate that the mine operator owns or controls; and

231 (e) discontinue, suspend, terminate, deactivate, or continue and reactivate, temporarily  
232 or permanently, all or any part of the mining use.

233 (2) (a) As used in this Subsection (2), "applicable legislative body" means the  
234 legislative body of each:

235 (i) county in whose unincorporated area the new land to be included in the vested  
236 mining use is located; and

237 (ii) municipality in which the new land to be included in the vested mining use is  
238 located.

239 (b) A mine operator with a vested mining use is presumed to have a right to expand the  
240 vested mining use to new land.

241 (c) Before expanding a vested mining use to new land, a mine operator shall provide  
242 written notice:

243 (i) of the mine operator's intent to expand the vested mining use; and

244 (ii) to each applicable legislative body.



245 (d) (i) An applicable legislative body shall:

246 (A) hold a public meeting or hearing at its next available meeting that is more than 10  
247 days after receiving the notice under Subsection (2)(c); and

248 (B) provide reasonable, advance, written notice:

249 (I) of:

250 (Aa) the intended expansion of the vested mining use; and

251 (Bb) the public meeting or hearing; and

252 (II) to each owner of the surface estate of the new land.

253 (ii) A public meeting or hearing under Subsection (2)(d)(i) serves to provide sufficient  
254 public notice of the mine operator's intent to expand the vested mining use to the new land.

255 (e) After the public meeting or hearing under Subsection (2)(d)(ii), a mine operator  
256 may expand a vested mining use to new land without any action by an applicable legislative  
257 body, unless there is clear and convincing evidence in the record that the expansion to new land  
258 will imminently endanger the public health, safety, and welfare.

259 (3) If a mine operator expands a vested mining use to new land, as authorized under  
260 this section:

261 (a) the mine operator's rights under the vested mining use with respect to land on which  
262 the vested mining use occurs apply with equal force after the expansion to the new land; and

263 (b) the mining protection area that includes land on which the vested mining use occurs  
264 is expanded to include the new land.

265 Section 4. Section **40-8-4** is amended to read:

266 **40-8-4. Definitions.**

267 As used in this chapter:

268 (1) "Adjudicative proceeding" means:

269 (a) a division or board action or proceeding determining the legal rights, duties,  
270 privileges, immunities, or other legal interests of one or more identifiable persons, including  
271 actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right,  
272 permit, or license; or

273 (b) judicial review of a division or board action or proceeding specified in Subsection  
274 (1)(a).

275 (2) "Applicant" means a person who has filed a notice of intent to commence mining

276 operations, or who has applied to the board for a review of a notice or order.

277 (3) (a) "Approved notice of intention" means a formally filed notice of intention to  
278 commence mining operations, including revisions to the notice of intention that is approved  
279 under Section [40-8-13](#).

280 (b) An approved notice of intention is not required for small mining operations.

281 (4) (a) "Basalt" means fine-grained mafic igneous rock formed in the tertiary or  
282 quaternary periods.

283 (b) A Utah Geological Survey published map or a United States Geological Survey  
284 published map that classifies material as "basalt" is prima facie evidence that the material  
285 meets the requirements of Subsection (4)(a). An unmapped area may be classified by a Utah  
286 Geological Survey geologist or a professional geologist licensed in the state.

287 (5) "Board" means the Board of Oil, Gas, and Mining.

288 (6) "Boulder" means a naturally occurring consolidated rock fragment greater than 75  
289 millimeters in size that is associated with unconsolidated material and detached from bedrock.

290 (7) "Complete notice of intention" means a notice of intention in a form supplied by  
291 the division on which an operator has provided a satisfactory response to each applicable  
292 request for information.

293 [~~7~~] (8) "Conference" means an informal adjudicative proceeding conducted by the  
294 division or board.

295 [~~8~~] (9) (a) "Deposit" or "mineral deposit" means an accumulation of mineral matter in  
296 the form of consolidated rock, unconsolidated material, solutions, or occurring on the surface,  
297 beneath the surface, or in the waters of the land from which any product useful to man may be  
298 produced, extracted, or obtained or which is extracted by underground mining methods for  
299 underground storage.

300 (b) "Deposit" or "mineral deposit" excludes sand, gravel, rock aggregate, basalt,  
301 boulders, water, geothermal steam, and oil and gas as defined in Chapter 6, Board and Division  
302 of Oil, Gas, and Mining, but includes oil shale and bituminous sands extracted by mining  
303 operations.

304 [~~9~~] (10) "Development" means the work performed in relation to a deposit following  
305 the deposit's discovery but before and in contemplation of production mining operations, aimed  
306 at preparing the site for mining operations, defining further the ore deposit by drilling or other

307 means, conducting pilot plant operations, constructing roads or ancillary facilities, and other  
308 related activities.

309 ~~[(10)]~~ (11) "Division" means the Division of Oil, Gas, and Mining.

310 ~~[(11)]~~ (12) "Emergency order" means an order issued by the board in accordance with  
311 Title 63G, Chapter 4, Administrative Procedures Act.

312 ~~[(12)]~~ (13) (a) "Exploration" means surface-disturbing activities conducted for the  
313 purpose of:

314 (i) discovering a deposit or mineral deposit;

315 (ii) delineating the boundaries of a deposit or mineral deposit; and

316 (iii) identifying regions or specific areas in which deposits or mineral deposits are most  
317 likely to exist.

318 (b) "Exploration" includes:

319 (i) sinking shafts;

320 (ii) tunneling;

321 (iii) drilling holes and digging pits or cuts;

322 (iv) building of roads, and other access ways; and

323 (v) constructing and operating other facilities related to the activities described in this  
324 Subsection ~~[(12)(b):]~~ (13)(b).

325 ~~[(13)]~~ (14) "Gravel" means a naturally occurring unconsolidated to moderately  
326 consolidated accumulation of rock and mineral particles, the dominant size range being  
327 between 4 millimeters and 75 millimeters, that has been deposited by sedimentary processes.

328 ~~[(14)]~~ (15) "Hearing" means a formal adjudicative proceeding conducted by the board  
329 under the board's procedural rules.

330 ~~[(15)]~~ (16) (a) "Imminent danger to the health and safety of the public" means the  
331 existence of a condition or practice, or a violation of a permit requirement or other requirement  
332 of this chapter in a mining operation, which condition, practice, or violation could reasonably  
333 be expected to cause substantial physical harm to persons outside the permit area before the  
334 condition, practice, or violation can be abated.

335 (b) A reasonable expectation of death or serious injury before abatement exists if a  
336 rational person, subjected to the same conditions or practices giving rise to the peril, would not  
337 expose the rational person to the danger during the time necessary for abatement.

338            [~~(16)~~] (17) (a) "Land affected" means the surface and subsurface of an area within the  
339 state where mining operations are being or will be conducted, including:

- 340            (i) on-site private ways, roads, and railroads;
- 341            (ii) land excavations;
- 342            (iii) exploration sites;
- 343            (iv) drill sites or workings;
- 344            (v) refuse banks or spoil piles;
- 345            (vi) evaporation or settling ponds;
- 346            (vii) stockpiles;
- 347            (viii) leaching dumps;
- 348            (ix) placer areas;
- 349            (x) tailings ponds or dumps; and
- 350            (xi) work, parking, storage, or waste discharge areas, structures, and facilities.

351            (b) Lands are excluded from Subsection [~~(16)~~](a) (17)(a) that would:

352            (i) be includable as land affected, but which have been reclaimed in accordance with an  
353 approved plan, as may be approved by the board; and

354            (ii) include lands in which mining operations have ceased before July 1, 1977.

355            (c) "Large exploration operation" means an exploration operation that is not a small  
356 exploration operation.

357            [~~(17)~~] (18) (a) "Mining operation" means activities conducted on the surface of the  
358 land for the exploration for, development of, or extraction of a mineral deposit, including  
359 surface mining and the surface effects of underground and in situ mining, on-site  
360 transportation, concentrating, milling, evaporation, and other primary processing.

361            (b) "Mining operation" does not include:

362            (i) the extraction of sand, gravel, rock aggregate, and boulders;

363            (ii) the extraction of basalt for an area not to exceed 50 acres under active surface  
364 mining;

365            (iii) the extraction of oil and gas as defined in Chapter 6, Board and Division of Oil,  
366 Gas, and Mining;

367            (iv) the extraction of geothermal steam;

368            (v) smelting or refining operations;

369 (vi) off-site operations and transportation;  
370 (vii) reconnaissance activities; or  
371 (viii) activities that will not cause significant surface resource disturbance or involve  
372 the use of mechanized earth-moving equipment, such as bulldozers or backhoes.

373 ~~[(18)]~~ (19) "Notice" means:

374 (a) notice of intention, as defined in this chapter; or

375 (b) written information given to an operator by the division describing compliance  
376 conditions at a mining operation.

377 ~~[(19)]~~ (20) "Notice of intention" means a notice ~~[to commence mining operations]~~,  
378 including revisions to the notice to:

379 (a) commence small mining operations, including small exploration operations; or

380 (b) commence large mining operations, including large exploration operations.

381 ~~[(20)]~~ (21) "Off-site" means the land areas that are outside of or beyond the on-site  
382 land.

383 ~~[(21)]~~ (22) (a) "On-site" means the surface lands on or under which surface or  
384 underground mining operations are conducted.

385 (b) A series of related properties under the control of a single operator, but separated  
386 by small parcels of land controlled by others, are considered to be a single site unless an  
387 exception is made by the division.

388 ~~[(22)]~~ (23) "Operator" means a natural person, corporation, association, partnership,  
389 receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or  
390 representative, either public or private, owning, controlling, or managing a mining operation or  
391 proposed mining operation.

392 ~~[(23)]~~ (24) "Order" means written information provided by the division or board to an  
393 operator or other parties, describing the compliance status of a permit or mining operation.

394 ~~[(24)]~~ (25) "Owner" means a natural person, corporation, association, partnership,  
395 receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or  
396 representative, either public or private, owning, controlling, or managing a mineral deposit or  
397 the surface of lands employed in mining operations.

398 ~~[(25)]~~ (26) "Permit area" means the area of land indicated on the approved map  
399 ~~[submitted by the operator with the application or notice to conduct mining operations]~~ in a

400 notice of intention.

401 [~~26~~] (27) "Permit" means a permit or notice to conduct mining operations issued by  
402 the division.

403 (28) "Permit order" means an order issued by the division that:

404 (a) approves a notice of intention to commence large mining operations or revise large  
405 mining operations;

406 (b) disapproves a notice of intention to commence large mining operations or revise  
407 large mining operations;

408 (c) accepts as complete, and approves the amount and form of surety for, a notice of  
409 intention to commence small mining operations or revise small mining operations;

410 (d) accepts as complete, and approves the amount and form of surety for, a notice of  
411 intention to conduct small exploration operations or revise small exploration operations; or

412 (e) approves a notice of intention to conduct large exploration operations or revise  
413 large exploration operations.

414 [~~27~~] (29) "Permittee" means a person holding, or who is required by Utah law to  
415 hold, a valid permit or notice to conduct mining operations.

416 [~~28~~] (30) "Person" means an individual, partnership, association, society, joint stock  
417 company, firm, company, corporation, or other governmental or business organization.

418 [~~29~~] (31) "Reclamation" means actions performed during or after mining operations  
419 to shape, stabilize, revegetate, or treat the land affected in order to achieve a safe, stable  
420 ecological condition and use that is consistent with local environmental conditions.

421 (32) "Review proceeding" means a proceeding under this chapter to resolve a challenge  
422 to a permit order.

423 [~~30~~] (33) (a) "Rock aggregate" means those consolidated rock materials associated  
424 with a sand deposit, a gravel deposit, or a sand and gravel deposit that were created by alluvial  
425 sedimentary processes.

426 (b) "Rock aggregate" excludes any solid rock in the form of bedrock, other than basalt,  
427 that is exposed at the surface of the earth or overlain by unconsolidated material.

428 [~~31~~] (34) "Sand" means a naturally occurring unconsolidated to moderately  
429 consolidated accumulation of rock and mineral particles, the dominant size range being  
430 between .004 millimeters to 4 millimeters, that has been deposited by sedimentary processes.

431 (35) "Small exploration operations" means exploration operations that disturbs or will  
 432 disturb:

433 (a) 20 or less surface acres at any given time in an unincorporated area of a county; or

434 (b) 10 or less surface acres at any given time in an incorporated area of a county.

435 ~~[(32)]~~ (36) "Small mining operations" means mining operations that disturb or will  
 436 disturb 20 or less surface acres at any given time in an unincorporated area of a county or 10 or  
 437 less surface acres at any given time in an incorporated area of a county.

438 ~~[(33)]~~ (37) "Unwarranted failure to comply" means the failure of a permittee to prevent  
 439 the occurrence of a violation of the permit or a requirement of this chapter due to indifference,  
 440 lack of diligence, or lack of reasonable care, or the failure to abate a violation of the permit or  
 441 this chapter due to indifference, lack of diligence, or lack of reasonable care.

442 Section 5. Section **40-8-7** is amended to read:

443 **40-8-7. Board and division -- Authority.**

444 (1) The board and the division may require:

445 (a) that a notice of intention [~~for all mining operations~~] be filed with~~[-and approved~~  
 446 ~~by,]~~ the division, before the mining operation commences or continues pursuant to Sections  
 447 [40-8-13](#) and [40-8-23](#);

448 (b) the reclamation of lands affected by mining operations after the effective date of  
 449 this chapter having due regard for innate differences in mineral deposits;

450 (c) [~~for mining operations, including small mining operations,]~~ for small mining  
 451 operations, the furnishing and maintenance of reasonable surety to guarantee that the land  
 452 affected is reclaimed as required by rules made by the board in accordance with Title 63G,  
 453 Chapter 3, Utah Administrative Rulemaking Act

454 (d) for large mining operations, the furnishing and maintenance of reasonable surety to  
 455 guarantee that the land affected is reclaimed according to approved plans consistent with  
 456 on-site conditions;

457 ~~[(d)]~~ (e) that the operator rehabilitate, close, or mitigate the impacts of each drill hole,  
 458 shaft, or tunnel as required under Section [40-8-13](#);

459 ~~[(e)]~~ (f) that the operator pay legally determined public liability and property damage  
 460 claims resulting from mining operations;

461 ~~[(f)]~~ (g) that every operator who conducts mining operations in the state maintain

462 suitable records and make periodic reports to the division as required under this chapter;

463 ~~[(g)]~~ (h) that with respect to all mining operations, a notice of intention is filed with  
464 and, if required by this chapter, approved by the division before any such mining operations are  
465 commenced or continued pursuant to Section 40-8-23;

466 ~~[(h)]~~ (i) the suspension of mining operations in an emergency situation;

467 ~~[(i)]~~ (j) the payment of fixed, uniform, and nonescalating permit fees; or

468 ~~[(j)]~~ (k) that mining operations be conducted to minimize or prevent hazards to public  
469 health and safety.

470 (2) ~~[No rule established]~~ A rule made by the board with respect to mined land  
471 reclamation ~~[shall]~~ may not have retroactive effect on existing reclamation plans included as a  
472 part of an approved notice of intention to commence mining operations ~~[which]~~ that was  
473 approved ~~[prior to]~~ before the effective date of the rule.

474 (3) The board may ~~[promulgate]~~ make rules relating to the surety for mining operations  
475 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

476 (4) The board may make rules, in accordance with Title 63G, Chapter 3, Utah  
477 Administrative Rulemaking Act, that provide for division action within a shorter time than  
478 provided in this chapter.

479 Section 6. Section 40-8-13 is amended to read:

480 **40-8-13. Notice of intention required before mining operations -- Assurance of**  
481 **reclamation required in notice of intention -- When contents confidential -- Approval of**  
482 **notice of intention not required for small mining operations -- Procedure for reviewing**  
483 **notice of intention.**

484 (1) (a) Before ~~[any]~~ an operator begins mining operations, or continues mining  
485 operations pursuant to Section 40-8-23, the operator shall file a notice of intention for each  
486 individual mining operation with the division.

487 (b) The notice of intention referred to in Subsection (1)(a) shall include:

488 (i) identification of all owners of any interest in a mineral deposit, including any  
489 ownership interest in surface land affected by the notice;

490 (ii) copies of underground and surface mine maps;

491 (iii) locations of drill holes;

492 (iv) accurate area maps of existing and proposed operations; and



493 (v) information regarding the amount of material extracted, moved, or proposed to be  
494 moved, relating to the mining operation.

495 (c) The notice of intention for small mining operations shall include a statement that  
496 the operator shall conduct reclamation as required by rules [~~promulgated~~] made by the board.

497 (d) The notice of intention for mining operations, other than small mining operations,  
498 shall include a plan for reclamation of the lands affected as required by rules [~~promulgated~~]  
499 made by the board.

500 (2) The division may require that the operator rehabilitate, close, or mitigate the  
501 impacts of each drill hole, shaft, or tunnel when no longer needed as part of the mining  
502 operation.

503 (3) Information provided in the notice of intention, and its attachments relating to the  
504 location, size, or nature of the deposit that is marked confidential by the operator shall be  
505 protected as confidential information by the board and the division and is not a matter of public  
506 record unless the board or division obtains a written release from the operator, or until the  
507 mining operation has been terminated as provided in Subsection 40-8-21(2).

508 [~~(4) (a) Within 30 days from the receipt of a notice of intention, the division shall  
509 complete its review of the notice and shall make further inquiries, inspections, or examinations  
510 that are necessary to properly evaluate the notice.~~]

511 [~~(b) The division shall notify the operator of any objections to the notice and shall  
512 grant the operator a reasonable opportunity to take action that may be required to remove the  
513 objections or obtain a ruling relative to the objections from the board.~~]

514 (4) (a) A notice of intention for small mining operations shall be reviewed as provided  
515 in this Subsection (4).

516 (b) Within 30 days after the receipt of a notice of intention, the division shall complete  
517 the division's review of the notice of intention and notify the operator in writing that the notice  
518 of intention is complete or incomplete.

519 (c) If the notice of intention is incomplete, the division shall give the operator a  
520 reasonable opportunity to take action that may be required to complete the notice of intention.

521 (d) Within 30 days after receipt of a complete notice of intention, the division shall  
522 issue a permit order.

523 (e) Before issuing a permit order for small mining operations, the division shall give

524 the operator written notice of a deficiency and shall grant the operator a reasonable opportunity  
525 to take action that may be required to remove the deficiency. The division may extend the time  
526 for issuing a permit order if the operator requests additional time to address a deficiency.

527 ~~[(5)] (f) Except for the form and amount of surety, an approval of a notice of intention~~  
528 ~~for small mining operations is not required.~~

529 ~~[(6) The notice of intention for mining operations other than small mining operations;]~~

530 (5) (a) A notice of intention for large mining operations shall be reviewed as provided  
531 in this Subsection [(6)] (5).

532 ~~[(a) Within 30 days after receipt of a notice of intention or within 30 days following the~~  
533 ~~last action of the operator or the division on the notice of intention, the division shall make a~~  
534 ~~tentative decision to approve or disapprove the notice of intention.]~~

535 ~~[(b) The division shall:]~~

536 ~~[(i) mail the information relating to the land affected and the tentative decision to the~~  
537 ~~operator; and]~~

538 ~~[(ii) publish the information and the decision, in abbreviated form:]~~

539 ~~[(A) one time only, in all newspapers of general circulation published in the county~~  
540 ~~where the land affected is situated;]~~

541 ~~[(B) in a daily newspaper of general circulation in Salt Lake City, Utah; and]~~

542 ~~[(C) as required in Section 45-1-101.]~~

543 ~~[(c) The division shall also mail a copy of the abbreviated information and tentative~~  
544 ~~decision to the zoning authority of the county in which the land affected is situated and to the~~  
545 ~~owner of record of the land affected.]~~

546 ~~[(d) (i) Any person or agency aggrieved by the tentative decision may file a request for~~  
547 ~~agency action with the division.]~~

548 ~~[(ii) If no requests for agency action are received by the division within 30 days after~~  
549 ~~the last date of publication, the tentative decision on the notice of intention is final and the~~  
550 ~~division shall notify the operator.]~~

551 ~~[(iii) If written objections of substance are received, the division shall hold an informal~~  
552 ~~adjudicative proceeding.]~~

553 ~~[(e) This Subsection (6) does not apply to exploration.]~~

554 ~~[(7) Within 30 days after receipt of a notice of intention concerning exploration~~

555 ~~operations other than small mining operations, the division will review the notice of intention~~  
556 ~~and approve or disapprove it.]~~

557 (b) Within 30 days after receipt of a notice of intention, the division shall complete the  
558 division's review of the notice of intention and notify the operator in writing that the notice of  
559 intention is complete or incomplete.

560 (c) If the notice of intention is incomplete, the division shall give the operator a  
561 reasonable opportunity to take action that may be required to complete the notice of intention.

562 (d) Within 30 days after receipt of a complete notice of intention, the division shall:

563 (i) publish notice of the notice of intention and the opportunity for public comment:

564 (A) one time only in all newspapers of general circulation published in the county  
565 where the land affected is situated;

566 (B) one time in a newspaper of general circulation in Salt Lake City, Utah;

567 (C) as required in Section [45-1-101](#); and

568 (D) on the division's public website; and

569 (ii) mail notice of the notice of intention to the zoning authority of the county or  
570 municipality in which the land affected is situated and to the owner of record of the land  
571 affected.

572 (e) The division shall allow 30 days from the day on which the division publishes  
573 notice on the division's website for public comment on the notice of intention. Public comment  
574 shall be submitted to the division, in writing, as provided by rule.

575 (f) Within 15 days after the close of the public comment period, the division shall  
576 review the public comments received, and the division may hold a non-adjudicative informal  
577 conference to review any comment that the division determines to be substantive.

578 (g) If the division determines that a non-adjudicative informal conference is necessary,  
579 the division shall:

580 (i) hold the non-adjudicative informal conference within 45 days after the end of the  
581 period to review public comments specified in Subsection (5)(f); and

582 (ii) issue a permit order within 45 days after the date of the non-adjudicative informal  
583 conference.

584 (h) If the division does not hold a conference under Subsection (5)(g), the division  
585 shall issue a permit order within 45 days after the end of the period for the division to review

586 public comments specified in Subsection (5)(f).

587 (i) Before issuing a permit order for large mining operations, the division shall give the  
588 operator written notice of any deficiency and shall grant the operator a reasonable opportunity  
589 to take action that may be required to remove the deficiency. The division may extend the time  
590 for issuing a permit order if the operator requires additional time to address a deficiency.

591 (j) Notice of the permit order shall be provided to the operator and posted on the  
592 division's website.

593 (6) An operator may convert a small mining operation to a large mining operation or  
594 may convert a large mining operation to a small mining operation by filing a notice of intention  
595 with the division requesting the conversion. The division shall review the notice of intention  
596 according to the procedures provided in this section for the resulting operation.

597 (7) At any given time, land may only be permitted under one notice of intention.

598 Section 7. Section **40-8-13.1** is enacted to read:

599 **40-8-13.1. Procedures for review of permit orders.**

600 (1) As used in this section, "party" means:

601 (a) the division;

602 (b) the operator;

603 (c) the municipality or county in which the proposed mining operation at issue in the  
604 permit order is located; or

605 (d) a person granted intervention by the board.

606 (2) (a) Review of a permit order may be obtained by filing a petition for review before  
607 the board.

608 (b) Only a party may file a petition for review of a permit order.

609 (c) A party who files a petition for review shall file the petition within 30 days after the  
610 day on which the permit order is issued.

611 (3) A petition for review shall:

612 (a) be filed and served in accordance with the board rules;

613 (b) include the name and address of each person to whom a copy of the petition for  
614 review is sent;

615 (c) if known, include the division's file number or other reference number assigned to  
616 the adjudicative proceeding;

- 617 (d) state the date on which the petition for review is served;  
618 (e) include a statement of the petitioner's position, including, as applicable:  
619 (i) the legal authority under which the petition for review is requested;  
620 (ii) the legal authority under which the board has jurisdiction to review the petition for  
621 review;  
622 (iii) each of the petitioner's arguments in support of the petitioner's requested relief;  
623 (iv) a detailed description of any permit condition to which the petitioner is objecting;  
624 (v) any modification or addition to a permit that the petitioner is requesting;  
625 (vi) a demonstration that the division's permit decision is based on a finding of fact or  
626 conclusion of law that is clearly erroneous; and  
627 (vii) a claim for relief.  
628 (f) A party who files a petition for review may only raise an issue or argument in the  
629 party's petition for review or during the review proceeding that:  
630 (i) is within the board's jurisdiction;  
631 (ii) is supported with information or documentation that:  
632 (A) is cited with reasonable specificity; and  
633 (B) sufficiently enables the board to fully consider the substance and significance of  
634 the issue; and  
635 (iii) if a public comment period was provided during the permit application process,  
636 the party raised during the public comment period or at a non-adjudicative informal conference  
637 unless the issue or argument was not reasonably ascertainable before or during the public  
638 comment period.  
639 (4) A person seeking to intervene in a review proceeding shall file a petition to  
640 intervene in accordance with rules made by the board. A person who is not a party may not  
641 participate in a review proceeding under this section or under Title 63G, Chapter 4,  
642 Administrative Procedures Act, unless granted the right to intervene by the board.  
643 (5) In a proceeding to review a permit order, the operator and the division are parties to  
644 the proceeding regardless of who files the petition for review and the operator and division do  
645 not need to file a separate petition to intervene.  
646 (6) Review of a permit order is subject to Title 63G, Chapter 4, Administrative  
647 Procedures Act.

648 Section 8. Section **40-8-14** is amended to read:

649 **40-8-14. Surety requirement -- Forfeiture of surety.**

650 (1) (a) After receiving notification that a notice of intention for mining operations has  
651 been approved, but ~~[prior to]~~ before commencement of those operations, the operator shall  
652 provide surety to the division, in a form and amount determined by the division or board as  
653 provided in this section.

654 (b) In determining the amount of surety under this section, the division may use the  
655 average cost of reclamation per acre.

656 (c) The board shall annually establish a figure representing the average cost of  
657 reclamation per acre after receiving a presentation from the division concerning the average  
658 cost of reclamation per acre and providing opportunity for public comment.

659 (2) (a) Except as provided in Subsection (3), the division shall approve the amount and  
660 form of surety.

661 (b) In determining the amount of surety to be provided, the division shall consider:

662 (i) the magnitude, type, and costs of approved reclamation activities planned for the  
663 land affected; and

664 (ii) the nature, extent, and duration of operations under the approved notice.

665 (c) The division shall approve a fixed amount estimated to be required to complete  
666 reclamation at any point in time covered by the notice of intent.

667 (d) (i) The division shall determine the amount of surety required for notices of  
668 intention, by using cost data from current large mining sureties.

669 (ii) The costs shall be adjusted to reflect the nature and scope of activities in the  
670 affirmative statement filed under Subsection **40-8-18(4)**.

671 (e) (i) In determining the form of surety to be provided by the operator, the division  
672 shall approve a method acceptable to the operator consistent with the requirements of this  
673 chapter.

674 (ii) The form of surety that the operator may provide includes~~[, but is not limited to,]~~  
675 the following:

676 (A) collateral;

677 (B) a bond or other form of insured guarantee;

678 (C) deposited securities; or

679 (D) cash.

680 (3) (a) If the operator proposes reclamation surety in the form of a written contractual  
681 agreement, the board shall approve the form of surety.

682 (b) In making this decision, the board shall consider:

683 (i) the operator's:

684 (A) financial status;

685 (B) assets within the state;

686 (C) past performance in complying with contractual agreements; and

687 (D) facilities available to carry out the planned work;

688 (ii) the magnitude, type, and costs of approved reclamation activities planned for the  
689 land affected; and

690 (iii) the nature, extent, and duration of operations under the approved notice.

691 (4) In determining the amount and form of surety to be provided under this section,  
692 consideration shall be given to similar requirements made on the operator by landowners,  
693 governmental agencies, or others, with the intent that surety requirements shall be coordinated  
694 and not duplicated.

695 (5) The liability under surety provisions shall continue until liability, in part, or in its  
696 entirety, is released by the division.

697 (6) (a) If the operator of a mining operation~~[, including a small mining operation,]~~ fails  
698 or refuses to carry out the necessary land reclamation as outlined in the ~~[approved]~~ notice of  
699 intention, the board may, after notice and hearing, declare any surety filed for this purpose  
700 forfeited.

701 (b) With respect to the surety filed with the division, the board shall request the  
702 attorney general to take the necessary legal action to enforce and collect the amount of liability.

703 (c) If surety or a bond has been filed with the Division of Forestry, Fire, and State  
704 Lands, the School and Institutional Trust Lands Administration, or any agency of the federal  
705 government, the board shall certify a copy of the transcript of the hearing and transmit it to the  
706 agency together with a request that the necessary forfeiture action be taken.

707 (d) The forfeited surety shall be used only for the reclamation of the land to which it  
708 relates, and any residual amount returned to the rightful claimant.

709 Section 9. Section **40-8-16** is amended to read:

710           **40-8-16. Approved notice of intention valid for life of operation -- Withdrawal of**  
711 **approval -- Procedure and basis.**

712           (1) An approved notice of intention or approved revision of it remains valid for the life  
713 of the mining operation, as stated in it, unless the board withdraws the approval as provided in  
714 Subsection (2).

715           (2) The board or the division ~~[shall]~~ may not withdraw approval of a notice of intention  
716 or revision of ~~[it]~~ a notice of intention, except as follows:

717           (a) ~~[Approval]~~ approval may be withdrawn ~~[in the event that]~~ if the operator  
718 substantially fails to perform reclamation or conduct mining operations so that the approved  
719 reclamation plan can be accomplished~~[-];~~;

720           (b) ~~[Approval]~~ approval may be withdrawn ~~[in the event that]~~ if the operator fails to  
721 provide and maintain surety as may be required under this chapter~~[-]; or~~

722           (c) ~~[Approval]~~ approval may be withdrawn ~~[in the event that]~~ if mining operations are  
723 continuously shut down for a period in excess of five years, unless the extended period is  
724 accepted upon application of the operator.

725           (3) ~~[Approval of]~~ The division may not withdraw approval of a notice of intention  
726 ~~[may not be refused, withheld, nor withdrawn by the division]~~ until the operator~~[-, who holds or~~  
727 ~~has applied for such approval,]~~ has had an opportunity to request a hearing before the board,  
728 present evidence, cross-examine, and participate fully in the proceedings. Based on the record  
729 of the hearing, the board will issue an order concerning the ~~[refusal, withholding, or]~~  
730 withdrawal of the approval of the notice of intention. If no hearing is requested, the division  
731 may ~~[refuse, withhold, or]~~ withdraw approval of a notice of intention.

732           (4) ~~[In the event that]~~ If the division or the board withdraws approval of a notice of  
733 intention or ~~[its]~~ a notice of intention's revision, ~~[all]~~ the mining operations included under the  
734 notice shall be suspended in accordance with procedures and schedule approved by the  
735 division.

736           Section 10. Section **40-8-18** is amended to read:

737           **40-8-18. Notice of intention to revise operations -- Procedure.**

738           (1) (a) Since mining operations and related reclamation plans may need to be revised to  
739 accommodate changing conditions or new technology, an operator conducting mining  
740 operations under ~~[an approved]~~ a notice of intention shall submit to the division a notice of



741 intention when revising mining operations.

742 (b) The notice of intention to revise mining operations shall be submitted in the form  
743 required by the rules promulgated by the board.

744 (2) (a) The notice of intention to revise mining operations will be designated as an  
745 amendment to the existing notice of intention by the division, based on rules promulgated by  
746 the board.

747 (b) An amendment of a notice of intention will be reviewed and considered for  
748 approval or disapproval by the division within 30 days of receipt of a notice of intention to  
749 revise mining operations.

750 (3) (a) A notice of intention to revise mining operations, if not designated as an  
751 amendment of a notice of intention as set forth in Subsection (2), shall be processed and  
752 considered for approval by the division in the same manner and within the same time period as  
753 an original notice of intention.

754 (b) The operator shall be authorized and bound by the requirements of the existing  
755 notice until the revision is acted upon and any revised surety requirements are established and  
756 satisfied.

757 (4) (a) If a change in the operation occurs, a mining operation representative shall  
758 submit an amendment to the notice of intention.

759 (b) Although approval of an amendment to the notice of intention by small mining  
760 operations is not required, a revised surety shall be filed by the permittee prior to implementing  
761 the amended notice of intention.

762 (5) A notice of intention to revise mining operations shall:

763 (a) include the information concerning the revision that would be required in an  
764 original notice of intention; and

765 (b) comply with the requirements relating to the revision that would apply to an  
766 original notice of intention, including the procedures of Section [40-8-13](#).