

**Representative Keven J. Stratton** proposes the following substitute bill:

**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:

- ▶ adds to the makeup of the board;
- ▶ 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:**

None

**Utah Code Sections Affected:**



26 AMENDS:

27 **17-41-101**, as last amended by Laws of Utah 2022, Chapter 72

28 **40-6-4**, as last amended by Laws of Utah 2020, Chapters 352, 373

29 **40-8-4**, as last amended by Laws of Utah 2022, Chapter 72

30 **40-8-7**, as last amended by Laws of Utah 2008, Chapter 382

31 **40-8-13**, as last amended by Laws of Utah 2013, Chapter 243

32 **40-8-14**, as last amended by Laws of Utah 2011, Chapter 125

33 **40-8-16**, as last amended by Laws of Utah 1989, Chapter 22

34 **40-8-18**, as last amended by Laws of Utah 2003, Chapter 35

35 ENACTS:

36 **40-8-13.1**, Utah Code Annotated 1953



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

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

40 **17-41-101. Definitions.**

41 As used in this chapter:

42 (1) "Advisory board" means:

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

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

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

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

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

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

56 (4) "Applicable legislative body" means:

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

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

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

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

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

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

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

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

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

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

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

78 (b) has produced commercial quantities of critical infrastructure materials from the  
79 critical infrastructure materials operations.

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

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

84 (a) land devoted to the raising of useful plants and animals with a reasonable  
85 expectation of profit, including:

86 (i) forages and sod crops;

87 (ii) grains and feed crops;

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

89 (iv) trees and fruits; or

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

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

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

93 government.

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

95 40-6-15.

96 (12) "Industrial protection area" means a geographic area created under the authority of  
97 this chapter that is granted the specific legal protections contained in this chapter.

98 (13) "Mine operator" means a natural person, corporation, association, partnership,  
99 receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or  
100 representative, either public or private, including a successor, assign, affiliate, subsidiary, and  
101 related parent company, that, as of January 1, 2019:

102 (a) owns, controls, or manages a mining use under a large mine permit issued by the  
103 division or the board; and

104 (b) has produced commercial quantities of a mineral deposit from the mining use.

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

106 (15) "Mining protection area" means land where a vested mining use occurs, including  
107 each surface or subsurface land or mineral estate that a mine operator with a vested mining use  
108 owns or controls.

109 (16) "Mining use":

110 (a) means:

111 (i) the full range of activities, from prospecting and exploration to reclamation and  
112 closure, associated with the exploitation of a mineral deposit; and

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

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

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

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

- 119 (iii) the removal, transport, treatment, deposition, and reclamation of overburden,  
120 development rock, tailings, and other waste material;
- 121 (iv) any removal, transportation, extraction, beneficiation, or processing of ore;
- 122 (v) any smelting, refining, autoclaving, or other primary or secondary processing  
123 operation;
- 124 (vi) the recovery of any mineral left in residue from a previous extraction or processing  
125 operation;
- 126 (vii) a mining activity that is identified in a work plan or permitting document;
- 127 (viii) the use, operation, maintenance, repair, replacement, or alteration of a building,  
128 structure, facility, equipment, machine, tool, or other material or property that results from or is  
129 used in a surface or subsurface mining operation or activity;
- 130 (ix) any accessory, incidental, or ancillary activity or use, both active and passive,  
131 including a utility, private way or road, pipeline, land excavation, working, embankment, pond,  
132 gravel excavation, mining waste, conveyor, power line, trackage, storage, reserve, passive use  
133 area, buffer zone, and power production facility;
- 134 (x) the construction of a storage, factory, processing, or maintenance facility; and
- 135 (xi) an activity described in Subsection [~~40-8-4(17)(a)~~] 40-8-4(18)(a).
- 136 (17) (a) "Municipal" means of or relating to a city or town.
- 137 (b) "Municipality" means a city or town.
- 138 (18) "New land" means surface or subsurface land or mineral estate that a mine  
139 operator gains ownership or control of, whether that land or mineral estate is included in the  
140 mine operator's large mine permit.
- 141 (19) "Off-site" means the same as that term is defined in Section 40-8-4.
- 142 (20) "On-site" means the same as that term is defined in Section 40-8-4.
- 143 (21) "Planning commission" means:
- 144 (a) a countywide planning commission if the land proposed to be included in the  
145 agriculture protection area, industrial protection area, or critical infrastructure materials  
146 protection area is within the unincorporated part of the county and not within a planning  
147 advisory area;
- 148 (b) a planning advisory area planning commission if the land proposed to be included  
149 in the agriculture protection area, industrial protection area, or critical infrastructure materials

150 protection area is within a planning advisory area; or

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

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

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

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

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

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

165 (a) by a mine operator; and

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

168 Section 2. Section 40-6-4 is amended to read:

169 **40-6-4. Board of Oil, Gas, and Mining created -- Functions -- Appointment of**  
170 **members -- Terms -- Chair -- Quorum -- Expenses.**

171 (1) (a) There is created within the Department of Natural Resources the Board of Oil,  
172 Gas, and Mining.

173 (b) The board shall be the policy making body for the Division of Oil, Gas, and  
174 Mining.

175 (2) (a) The board shall consist of [~~seven~~] nine members appointed by the governor with  
176 the advice and consent of the Senate and in accordance with Title 63G, Chapter 24, Part 2,  
177 Vacancies.

178 (b) No more than four members shall be from the same political party.

179 (c) In accordance with the requirements of Section 79-2-203, the members appointed  
180 under Subsection (2)(a) shall include the following:

- 181 (i) two members who are knowledgeable in mining matters;
- 182 (ii) two members who are knowledgeable in oil and gas matters;
- 183 (iii) one member who is knowledgeable in ecological and environmental matters;
- 184 (iv) one member who:
- 185 (A) is a private land owner;
- 186 (B) owns a mineral or royalty interest; and
- 187 (C) is knowledgeable in mineral or royalty interests; [~~and~~]
- 188 (v) one member who is knowledgeable in geological matters[-];
- 189 (vi) one member who is an attorney authorized to practice law in this state and who has
- 190 experience in natural resources issues, with a focus on the extractive industries; and
- 191 (vii) a mining or oil and gas land manager with expertise in mineral rights, mining
- 192 claims, title issues, leases, land access, vested mining interests, and related contracting.
- 193 (3) (a) Except as required by Subsection (3)(b), as terms of current board members
- 194 expire, the governor shall appoint each new member or reappointed member to a four-year
- 195 term.
- 196 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the
- 197 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
- 198 board members are staggered so that approximately half of the board is appointed every two
- 199 years.
- 200 (c) A member shall hold office until the expiration of the member's term and until the
- 201 member's successor is appointed, but not more than 90 days after the expiration of the
- 202 member's term.
- 203 (4) (a) When a vacancy occurs in the membership for any reason, the replacement shall
- 204 be appointed for the unexpired term by the governor with the advice and consent of the Senate.
- 205 (b) The person appointed shall have the same qualifications as the person's
- 206 predecessor.
- 207 (5) (a) The board shall appoint its chair from the membership.
- 208 (b) [~~Four~~] Five members of the board shall constitute a quorum for the transaction of
- 209 business and the holding of hearings.
- 210 (6) A member may not receive compensation or benefits for the member's service, but
- 211 may receive per diem and travel expenses in accordance with:

- 212 (a) Section 63A-3-106;
- 213 (b) Section 63A-3-107; and
- 214 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
- 215 63A-3-107.

216 (7) A member shall comply with the conflict of interest provisions described in Title  
217 63G, Chapter 24, Part 3, Conflicts of Interest.

218 Section 3. Section 40-8-4 is amended to read:

219 **40-8-4. Definitions.**

220 As used in this chapter:

221 (1) "Adjudicative proceeding" means:

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

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

228 (2) "Applicant" means a person who has filed a notice of intent to commence mining  
229 operations, or who has applied to the board for a review of a notice or order.

230 (3) (a) "Approved notice of intention" means a formally filed notice of intention to  
231 commence mining operations, including revisions to the notice of intention that is approved  
232 under Section 40-8-13.

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

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

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

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

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



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

246           ~~[(7)]~~ (8) "Conference" means an informal adjudicative proceeding conducted by the  
247 division or board.

248           ~~[(8)]~~ (9) (a) "Deposit" or "mineral deposit" means an accumulation of mineral matter in  
249 the form of consolidated rock, unconsolidated material, solutions, or occurring on the surface,  
250 beneath the surface, or in the waters of the land from which any product useful to man may be  
251 produced, extracted, or obtained or which is extracted by underground mining methods for  
252 underground storage.

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

257           ~~[(9)]~~ (10) "Development" means the work performed in relation to a deposit following  
258 the deposit's discovery but before and in contemplation of production mining operations, aimed  
259 at preparing the site for mining operations, defining further the ore deposit by drilling or other  
260 means, conducting pilot plant operations, constructing roads or ancillary facilities, and other  
261 related activities.

262           ~~[(10)]~~ (11) "Division" means the Division of Oil, Gas, and Mining.

263           ~~[(11)]~~ (12) "Emergency order" means an order issued by the board in accordance with  
264 Title 63G, Chapter 4, Administrative Procedures Act.

265           ~~[(12)]~~ (13) (a) "Exploration" means surface-disturbing activities conducted for the  
266 purpose of:

267           (i) discovering a deposit or mineral deposit;  
268           (ii) delineating the boundaries of a deposit or mineral deposit; and  
269           (iii) identifying regions or specific areas in which deposits or mineral deposits are most  
270 likely to exist.

271           (b) "Exploration" includes:

272           (i) sinking shafts;

273           (ii) tunneling;

274 (iii) drilling holes and digging pits or cuts;  
275 (iv) building of roads, and other access ways; and  
276 (v) constructing and operating other facilities related to the activities described in this  
277 Subsection [~~(12)(b)~~] (13)(b).

278 [~~(13)~~] (14) "Gravel" means a naturally occurring unconsolidated to moderately  
279 consolidated accumulation of rock and mineral particles, the dominant size range being  
280 between 4 millimeters and 75 millimeters, that has been deposited by sedimentary processes.

281 [~~(14)~~] (15) "Hearing" means a formal adjudicative proceeding conducted by the board  
282 under the board's procedural rules.

283 [~~(15)~~] (16) (a) "Imminent danger to the health and safety of the public" means the  
284 existence of a condition or practice, or a violation of a permit requirement or other requirement  
285 of this chapter in a mining operation, which condition, practice, or violation could reasonably  
286 be expected to cause substantial physical harm to persons outside the permit area before the  
287 condition, practice, or violation can be abated.

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

291 [~~(16)~~] (17) (a) "Land affected" means the surface and subsurface of an area within the  
292 state where mining operations are being or will be conducted, including:

- 293 (i) on-site private ways, roads, and railroads;
- 294 (ii) land excavations;
- 295 (iii) exploration sites;
- 296 (iv) drill sites or workings;
- 297 (v) refuse banks or spoil piles;
- 298 (vi) evaporation or settling ponds;
- 299 (vii) stockpiles;
- 300 (viii) leaching dumps;
- 301 (ix) placer areas;
- 302 (x) tailings ponds or dumps; and
- 303 (xi) work, parking, storage, or waste discharge areas, structures, and facilities.

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

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

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

308 (c) "Large exploration operation" means an exploration operation that is not a small  
309 exploration operation.

310 [(+7)] (18) (a) "Mining operation" means activities conducted on the surface of the  
311 land for the exploration for, development of, or extraction of a mineral deposit, including  
312 surface mining and the surface effects of underground and in situ mining, on-site  
313 transportation, concentrating, milling, evaporation, and other primary processing.

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

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

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

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

320 (iv) the extraction of geothermal steam;

321 (v) smelting or refining operations;

322 (vi) off-site operations and transportation;

323 (vii) reconnaissance activities; or

324 (viii) activities that will not cause significant surface resource disturbance or involve  
325 the use of mechanized earth-moving equipment, such as bulldozers or backhoes.

326 [(+8)] (19) "Notice" means:

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

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

330 [(+9)] (20) "Notice of intention" means a notice [~~to commence mining operations~~],  
331 including revisions to the notice to:

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

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

334 [(+20)] (21) "Off-site" means the land areas that are outside of or beyond the on-site  
335 land.

336 [(21)] (22) (a) "On-site" means the surface lands on or under which surface or  
337 underground mining operations are conducted.

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

341 [(22)] (23) "Operator" means a natural person, corporation, association, partnership,  
342 receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or  
343 representative, either public or private, owning, controlling, or managing a mining operation or  
344 proposed mining operation.

345 [(23)] (24) "Order" means written information provided by the division or board to an  
346 operator or other parties, describing the compliance status of a permit or mining operation.

347 [(24)] (25) "Owner" means a natural person, corporation, association, partnership,  
348 receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or  
349 representative, either public or private, owning, controlling, or managing a mineral deposit or  
350 the surface of lands employed in mining operations.

351 [(25)] (26) "Permit area" means the area of land indicated on the approved map  
352 [~~submitted by the operator with the application or notice to conduct mining operations~~] in a  
353 notice of intention.

354 [(26)] (27) "Permit" means a permit or notice to conduct mining operations issued by  
355 the division.

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

357 (a) approves a notice of intention to commence large mining operations or revise large  
358 mining operations;

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

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

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

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

367            [~~(27)~~] (29) "Permittee" means a person holding, or who is required by Utah law to  
368 hold, a valid permit or notice to conduct mining operations.

369            [~~(28)~~] (30) "Person" means an individual, partnership, association, society, joint stock  
370 company, firm, company, corporation, or other governmental or business organization.

371            [~~(29)~~] (31) "Reclamation" means actions performed during or after mining operations  
372 to shape, stabilize, revegetate, or treat the land affected in order to achieve a safe, stable  
373 ecological condition and use that is consistent with local environmental conditions.

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

376            [~~(30)~~] (33) (a) "Rock aggregate" means those consolidated rock materials associated  
377 with a sand deposit, a gravel deposit, or a sand and gravel deposit that were created by alluvial  
378 sedimentary processes.

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

381            [~~(31)~~] (34) "Sand" means a naturally occurring unconsolidated to moderately  
382 consolidated accumulation of rock and mineral particles, the dominant size range being  
383 between .004 millimeters to 4 millimeters, that has been deposited by sedimentary processes.

384            (35) "Small exploration operations" means exploration operations that disturbs or will  
385 disturb:

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

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

388            [~~(32)~~] (36) "Small mining operations" means mining operations that disturb or will  
389 disturb 20 or less surface acres at any given time in an unincorporated area of a county or 10 or  
390 less surface acres at any given time in an incorporated area of a county.

391            [~~(33)~~] (37) "Unwarranted failure to comply" means the failure of a permittee to prevent  
392 the occurrence of a violation of the permit or a requirement of this chapter due to indifference,  
393 lack of diligence, or lack of reasonable care, or the failure to abate a violation of the permit or  
394 this chapter due to indifference, lack of diligence, or lack of reasonable care.

395            Section 4. Section **40-8-7** is amended to read:

396            **40-8-7. Board and division -- Authority.**

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

398 (a) that a notice of intention [~~for all mining operations~~] be filed with[, and approved  
399 by,] the division, before the mining operation commences or continues pursuant to Sections  
400 40-8-13 and 40-8-23;

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

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

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

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

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

414 [~~(f)~~] (g) that every operator who conducts mining operations in the state maintain  
415 suitable records and make periodic reports to the division as required under this chapter;

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

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

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

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

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

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

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

432           Section 5. Section **40-8-13** is amended to read:

433           **40-8-13. Notice of intention required before mining operations -- Assurance of**  
434 **reclamation required in notice of intention -- When contents confidential -- Approval of**  
435 **notice of intention not required for small mining operations -- Procedure for reviewing**  
436 **notice of intention.**

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

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

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

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

444           (iii) locations of drill holes;

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

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

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

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

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

456           (3) Information provided in the notice of intention, and its attachments relating to the  
457 location, size, or nature of the deposit that is marked confidential by the operator shall be  
458 protected as confidential information by the board and the division and is not a matter of public  
459 record unless the board or division obtains a written release from the operator, or until the

460 mining operation has been terminated as provided in Subsection [40-8-21\(2\)](#).

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

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

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

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

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

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

476 (e) Before issuing a permit order for small mining operations, the division shall give  
477 the operator written notice of a deficiency and shall grant the operator a reasonable opportunity  
478 to take action that may be required to remove the deficiency. The division may extend the time  
479 for issuing a permit order if the operator requests additional time to address a deficiency.

480 ~~[(5)]~~

481 (f) Except for the form and amount of surety, an approval of a notice of intention for  
482 small mining operations is not required.

483 ~~[(6)]~~ (5) [The notice of intention for mining operations other than small mining  
484 operations;]

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

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

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



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

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

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

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

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

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

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

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

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

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

509 ~~[(7) Within 30 days after receipt of a notice of intention concerning exploration~~  
510 ~~operations other than small mining operations, the division will review the notice of intention~~  
511 ~~and approve or disapprove it.]~~

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

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

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

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

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

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

522 (C) as required in Section 45-1-101; and

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

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

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

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

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

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

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

539 (h) If the division does not hold a conference under Subsection (5)(g), the division  
540 shall issue a permit order within 45 days after the end of the period for the division to review  
541 public comments specified in Subsection (5)(f).

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

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

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

552 (7) Land may not at any given time be permitted under both a notice of intention for

553 small mining operations and a notice of intention for large mining operations.

554 Section 6. Section **40-8-13.1** is enacted to read:

555 **40-8-13.1. Procedures for review of permit orders.**

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

557 (a) the division;

558 (b) the operator;

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

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

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

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

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

567 (3) A petition for review shall:

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

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

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

573 (d) state the date on which the petition for review is served;

574 (e) include a statement of the petitioner's position, including, as applicable:

575 (i) the legal authority under which the petition for review is requested;

576 (ii) the legal authority under which the board has jurisdiction to review the petition for  
577 review;

578 (iii) each of the petitioner's arguments in support of the petitioner's requested relief;

579 (iv) a detailed description of any permit condition to which the petitioner is objecting;

580 (v) any modification or addition to a permit that the petitioner is requesting;

581 (vi) a demonstration that the division's permit decision is based on a finding of fact or  
582 conclusion of law that is clearly erroneous; and

583 (vii) a claim for relief.

584 (f) A party who files a petition for review may only raise an issue or argument in the  
585 party's petition for review or during the review proceeding that:

586 (i) is within the board's jurisdiction;

587 (ii) is supported with information or documentation that:

588 (A) is cited with reasonable specificity; and

589 (B) sufficiently enables the board to fully consider the substance and significance of  
590 the issue; and

591 (iii) if a public comment period was provided during the permit application process,  
592 the party raised during the public comment period or at a non-adjudicative informal conference  
593 unless the issue or argument was not reasonably ascertainable before or during the public  
594 comment period.

595 (4) A person seeking to intervene in a review proceeding shall file a petition to  
596 intervene in accordance with rules made by the board. A person who is not a party may not  
597 participate in a review proceeding under this section or under Title 63G, Chapter 4,  
598 Administrative Procedures Act, unless granted the right to intervene by the board.

599 (5) In a proceeding to review a permit order, the operator and the division are parties to  
600 the proceeding regardless of who files the petition for review and the operator and division do  
601 not need to file a separate petition to intervene.

602 (6) Review of a permit order is subject to Title 63G, Chapter 4, Administrative  
603 Procedures Act.

604 Section 7. Section **40-8-14** is amended to read:

605 **40-8-14. Surety requirement -- Forfeiture of surety.**

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

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

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

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

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

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

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

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

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

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

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

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

632 (A) collateral;

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

634 (C) deposited securities; or

635 (D) cash.

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

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

639 (i) the operator's:

640 (A) financial status;

641 (B) assets within the state;

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

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

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

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

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

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

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

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

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

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

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

666 **40-8-16. Approved notice of intention valid for life of operation -- Withdrawal of**  
667 **approval -- Procedure and basis.**

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

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

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

676 (b) ~~[Approval]~~ approval may be withdrawn ~~[in the event that]~~ if the operator fails to

677 provide and maintain surety as may be required under this chapter[-]; or

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

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

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

692 Section 9. Section **40-8-18** is amended to read:

693 **40-8-18. Notice of intention to revise operations -- Procedure.**

694 (1) (a) Since mining operations and related reclamation plans may need to be revised to  
695 accommodate changing conditions or new technology, an operator conducting mining  
696 operations under [~~an approved~~] a notice of intention shall submit to the division a notice of  
697 intention when revising mining operations.

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

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

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

706 (3) (a) A notice of intention to revise mining operations, if not designated as an  
707 amendment of a notice of intention as set forth in Subsection (2), shall be processed and

708 considered for approval by the division in the same manner and within the same time period as  
709 an original notice of intention.

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

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

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

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

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

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