

MINING REGULATION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Doug Owens

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to small mining operations.

Highlighted Provisions:

This bill:

▶ provides that exceptions made for small mining operations do not apply if the small mining operations occur within certain classes of counties; and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

40-8-4, as last amended by Laws of Utah 2021, Chapter 39

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

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

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

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

Section 1. Section **40-8-4** is amended to read:



28 **40-8-4. Definitions.**

29 As used in this chapter:

30 (1) "Adjudicative proceeding" means:

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

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

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

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

42 (b) An approved notice of intention is not required for small mining operations unless
43 the small mining operations are located in whole or in part within a county of the first or
44 second class.

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

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

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

52 (6) "Conference" means an informal adjudicative proceeding conducted by the division
53 or board.

54 (7) (a) "Deposit" or "mineral deposit" means an accumulation of mineral matter in the
55 form of consolidated rock, unconsolidated material, solutions, or occurring on the surface,
56 beneath the surface, or in the waters of the land from which any product useful to man may be
57 produced, extracted, or obtained or which is extracted by underground mining methods for
58 underground storage.

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

62 (8) "Development" means the work performed in relation to a deposit following the
63 deposit's discovery but before and in contemplation of production mining operations, aimed at
64 preparing the site for mining operations, defining further the ore deposit by drilling or other
65 means, conducting pilot plant operations, constructing roads or ancillary facilities, and other
66 related activities.

67 (9) "Division" means the Division of Oil, Gas, and Mining.

68 (10) "Emergency order" means an order issued by the board in accordance with Title
69 63G, Chapter 4, Administrative Procedures Act.

70 (11) (a) "Exploration" means surface-disturbing activities conducted for the purpose of:

71 (i) discovering a deposit or mineral deposit;

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

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

75 (b) "Exploration" includes:

76 (i) sinking shafts;

77 (ii) tunneling;

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

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

80 (v) constructing and operating other facilities related to the activities described in this
81 Subsection (11)(b).

82 (12) "Gravel" means a naturally occurring unconsolidated to moderately consolidated
83 accumulation of rock and mineral particles, the dominant size range being between 4
84 millimeters and 75 millimeters, that has been deposited by sedimentary processes.

85 (13) "Hearing" means a formal adjudicative proceeding conducted by the board under
86 the board's procedural rules.

87 (14) (a) "Imminent danger to the health and safety of the public" means the existence
88 of a condition or practice, or a violation of a permit requirement or other requirement of this
89 chapter in a mining operation, which condition, practice, or violation could reasonably be

90 expected to cause substantial physical harm to persons outside the permit area before the
91 condition, practice, or violation can be abated.

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

95 (15) (a) "Land affected" means the surface and subsurface of an area within the state
96 where mining operations are being or will be conducted, including:

97 (i) on-site private ways, roads, and railroads;

98 (ii) land excavations;

99 (iii) exploration sites;

100 (iv) drill sites or workings;

101 (v) refuse banks or spoil piles;

102 (vi) evaporation or settling ponds;

103 (vii) stockpiles;

104 (viii) leaching dumps;

105 (ix) placer areas;

106 (x) tailings ponds or dumps; and

107 (xi) work, parking, storage, or waste discharge areas, structures, and facilities.

108 (b) Lands are excluded from Subsection (15)(a) that would:

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

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

112 (16) (a) "Mining operation" means activities conducted on the surface of the land for
113 the exploration for, development of, or extraction of a mineral deposit, including surface
114 mining and the surface effects of underground and in situ mining, on-site transportation,
115 concentrating, milling, evaporation, and other primary processing.

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

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

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

120 (iii) the extraction of oil and gas as defined in Chapter 6, Board and Division of Oil,

121 Gas, and Mining;

122 (iv) the extraction of geothermal steam;

123 (v) smelting or refining operations;

124 (vi) off-site operations and transportation;

125 (vii) reconnaissance activities; or

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

128 (17) "Notice" means:

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

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

132 (18) "Notice of intention" means a notice to commence mining operations, including
133 revisions to the notice.

134 (19) "Off-site" means the land areas that are outside of or beyond the on-site land.

135 (20) (a) "On-site" means the surface lands on or under which surface or underground
136 mining operations are conducted.

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

140 (21) "Operator" means a natural person, corporation, association, partnership, receiver,
141 trustee, executor, administrator, guardian, fiduciary, agent, or other organization or
142 representative, either public or private, owning, controlling, or managing a mining operation or
143 proposed mining operation.

144 (22) "Order" means written information provided by the division or board to an
145 operator or other parties, describing the compliance status of a permit or mining operation.

146 (23) "Owner" means a natural person, corporation, association, partnership, receiver,
147 trustee, executor, administrator, guardian, fiduciary, agent, or other organization or
148 representative, either public or private, owning, controlling, or managing a mineral deposit or
149 the surface of lands employed in mining operations.

150 (24) "Permit area" means the area of land indicated on the approved map submitted by
151 the operator with the application or notice to conduct mining operations.

152 (25) "Permit" means a permit or notice to conduct mining operations issued by the
153 division.

154 (26) "Permittee" means a person holding, or who is required by Utah law to hold, a
155 valid permit or notice to conduct mining operations.

156 (27) "Person" means an individual, partnership, association, society, joint stock
157 company, firm, company, corporation, or other governmental or business organization.

158 (28) "Reclamation" means actions performed during or after mining operations to
159 shape, stabilize, revegetate, or treat the land affected in order to achieve a safe, stable
160 ecological condition and use that is consistent with local environmental conditions.

161 (29) (a) "Rock aggregate" means those consolidated rock materials associated with a
162 sand deposit, a gravel deposit, or a sand and gravel deposit that were created by alluvial
163 sedimentary processes.

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

166 (30) "Sand" means a naturally occurring unconsolidated to moderately consolidated
167 accumulation of rock and mineral particles, the dominant size range being between .004
168 millimeters to 4 millimeters, that has been deposited by sedimentary processes.

169 (31) "Small mining operations" means mining operations that disturb or will disturb 20
170 or less surface acres at any given time in an unincorporated area of a county or 10 or less
171 surface acres at any given time in an incorporated area of a county.

172 (32) "Unwarranted failure to comply" means the failure of a permittee to prevent the
173 occurrence of a violation of the permit or a requirement of this chapter due to indifference, lack
174 of diligence, or lack of reasonable care, or the failure to abate a violation of the permit or this
175 chapter due to indifference, lack of diligence, or lack of reasonable care.

176 Section 2. Section **40-8-7** is amended to read:

177 **40-8-7. Board and division -- Authority.**

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

179 (a) that a notice of intention for [aH] mining operations be filed with, and approved by,
180 the division, before the mining operation commences or continues pursuant to Sections **40-8-13**
181 and **40-8-23**, except the board or division shall require that a notice of intention be approved by
182 the division for small mining operations located in whole or in part within a county of the first

183 or second class;

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

186 (c) for mining operations, including small mining operations, the furnishing and
187 maintenance of reasonable surety to guarantee that the land affected is reclaimed according to
188 approved plans consistent with on-site conditions;

189 (d) that the operator rehabilitate, close, or mitigate the impacts of each drill hole, shaft,
190 or tunnel as required under Section 40-8-13;

191 (e) that the operator pay legally determined public liability and property damage claims
192 resulting from mining operations;

193 (f) that every operator who conducts mining operations in the state maintain suitable
194 records and make periodic reports to the division as required under this chapter;

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

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

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

200 ~~[(j)]~~ (i) that mining operations be conducted to minimize or prevent hazards to public
201 health and safety.

202 (2) No rule established by the board with respect to mined land reclamation shall have
203 retroactive effect on existing reclamation plans included as a part of an approved notice of
204 intention to commence mining operations which was approved ~~[prior to]~~ before the effective
205 date of the rule.

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

208 Section 3. Section 40-8-13 is amended to read:

209 **40-8-13. Notice of intention required prior to mining operations -- Assurance of**
210 **reclamation required in notice of intention -- When contents confidential -- Approval of**
211 **notice of intention not required for some small mining operations -- Procedure for**
212 **reviewing notice of intention.**

213 (1) (a) Before any operator begins mining operations, or continues mining operations

214 pursuant to Section 40-8-23, the operator shall file a notice of intention for each individual
215 mining operation with the division.

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

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

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

220 (iii) locations of drill holes;

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

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

224 (c) The notice of intention for small mining operations shall include a statement that
225 the operator shall conduct reclamation as required by rules [~~promulgated~~] made by the board in
226 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

227 (d) (i) The notice of intention for mining operations[~~, other than small mining~~
228 ~~operations,~~] shall include a plan for reclamation of the lands affected as required by rules
229 [~~promulgated~~] made by the board in accordance with Title 63G, Chapter 3, Utah
230 Administrative Rulemaking Act.

231 (ii) This Subsection (1)(d) does not apply to small mining operations unless the small
232 mining operations are located in whole or in part within a county of the first or second class.

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

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

241 (4) (a) Within 30 days from the receipt of a notice of intention, the division shall
242 complete its review of the notice and shall make further inquiries, inspections, or examinations
243 that are necessary to properly evaluate the notice.

244 (b) The division shall notify the operator of any objections to the notice and shall grant

245 the operator a reasonable opportunity to take action that may be required to remove the
246 objections or obtain a ruling relative to the objections from the board.

247 (5) Except for the form and amount of surety, an approval of a notice of intention for
248 small mining operations is not required unless the small mining operations are located in whole
249 or in part within a county of the first or second class.

250 (6) The notice of intention for mining operations [~~other than small mining operations~~],
251 shall be reviewed as provided in this Subsection (6).

252 (a) Within 30 days after receipt of a notice of intention or within 30 days following the
253 last action of the operator or the division on the notice of intention, the division shall make a
254 tentative decision to approve or disapprove the notice of intention.

255 (b) The division shall:

256 (i) mail the information relating to the land affected and the tentative decision to the
257 operator; and

258 (ii) publish the information and the decision, in abbreviated form:

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

261 (B) in a daily newspaper of general circulation in Salt Lake City, Utah; and

262 (C) as required in Section 45-1-101.

263 (c) The division shall also mail a copy of the abbreviated information and tentative
264 decision to the zoning authority of the county in which the land affected is situated and to the
265 owner of record of the land affected.

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

268 (ii) If no requests for agency action are received by the division within 30 days after the
269 last date of publication, the tentative decision on the notice of intention is final and the division
270 shall notify the operator.

271 (iii) If written objections of substance are received, the division shall hold an informal
272 adjudicative proceeding.

273 (e) This Subsection (6) does not apply to exploration.

274 (f) This Subsection (6) does not apply to small mining operations unless the small
275 mining operations are located in whole or in part within a county of the first or second class.

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

279 (b) This Subsection (7) does not apply to small mining operations unless the small
280 mining operations are located in whole or in part within a county of the first or second class.

281 Section 4. Section **40-8-18** is amended to read:

282 **40-8-18. Notice of intention to revise operations -- Procedure.**

283 (1) (a) Since mining operations and related reclamation plans may need to be revised to
284 accommodate changing conditions or new technology, an operator conducting mining
285 operations under an approved notice of intention shall submit to the division a notice of
286 intention when revising mining operations.

287 (b) The notice of intention to revise mining operations shall be submitted in the form
288 required by the rules [~~promulgated~~] made by the board in accordance with Title 63G, Chapter
289 3, Utah Administrative Rulemaking Act.

290 (2) (a) The notice of intention to revise mining operations will be designated as an
291 amendment to the existing notice of intention by the division, based on rules [~~promulgated~~]
292 made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
293 Act.

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

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

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

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

306 (b) Although approval of an amendment to the notice of intention by small mining

307 operations is not required unless the small mining operations are located in whole or in part
308 within a county of the first or second class, a revised surety shall be filed by the permittee prior
309 to implementing the amended notice of intention.