

R647-3
Effective October 29, 2020

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Office of Administrative Rules

**R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-3. Small Mining Operations.**

R647-3-101. Filing Requirements and Review Procedures.

1. Prior to commencement of operations, a Notice of Intention to Commence Small Mining Operations (FORM MR-SMO) containing all the required information must be filed with and determined complete by the Division and the Division shall have approved the form and amount of reclamation surety. It is recommended that the notice of intention be filed with the Division at least thirty (30) days prior to the planned commencement of operations.

2. Within 15 days after receipt of a Notice of Intention, the Division will review the proposal and notify the operator in writing;

2.11. That the notice of intention is complete and all required information has been submitted; or,

2.12. That the notice of intention is incomplete, and additional information as identified by the Division will be required.

2.12.111. The Division will review and respond to any subsequent filings of information within 10 working days of receipt.

3. The Division will review and approve or disapprove:

3.11. The form and amount of reclamation surety (R647-3-111), and

3.12. All variances requested from Rules R647-3-107, 108, and 109, regardless of the number of surface acres of disturbance planned.

4. The operator must notify the Division no later than 30 days after beginning small mining operations.

5. A permittee's authorization under a notice of intention to conduct small mining operations shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

5.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for small mining operations.

5.12. Fees are due annually by the deadline in R647-3-117 for reports.

6. A permittee may avoid payment of the fee by complying with the following requirements:

6.11. A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

6.12. The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.

R647-3-102. Duration of the Notice of Intention.

The approved notice of intention, including any subsequent amendments or revisions, shall remain in effect for the life of the small mining operation. However, the approved notice of intention may be withdrawn, after notice and opportunity for Board hearing, in the event the operator fails to pay permit fees required by R647-3-101 ; to maintain and update adequate reclamation surety as required in R647-3-111; substantially fails to perform reclamation or conduct mining operations so that reclamation can be accomplished in

accordance with the reclamation practices in R647-3-109; or if mining operations are continuously shut down or in suspension for a period in excess of five (5) years, unless an extended period of suspension is approved upon application of the operator.

R647-3-103. Notice of Intention to Commence Small Mining Operations.

The notice of intention shall address the requirements of the following rules:

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R647-3-104. Operator(s), Surface and Mineral Owner(s).

The notice of intention shall include the following general information:

1. The name, permanent mailing address, and telephone number of the operator responsible for the small mining operation and reclamation of the site.

2. The name, and permanent mailing address of the surface landowner(s) and mineral owner(s) of all land to be affected by the mining operation.

3. The federal mining claim number(s), lease number(s) or permit number(s) of all mining claims, federal or state leases or permits included in the land affected.

4. A statement that the operator will conduct reclamation as required by these rules.

R647-3-105. Project Location and Map.

The notice of intention shall include a location map and an operations map. Each map shall be plotted at a scale to accurately identify locational landmarks and operations details.

1. The general location map shall be the scale of a USGS 7.5 minute series map or equivalent (1" = 2000') and identify new or existing access roads.

2. The operations map (1" = 200' or other scale as determined necessary by the Division) shall identify:

2.11. The area to be disturbed;

2.12. The location of any existing or proposed operations including access roads, drill holes, trenches, pits, shafts, cuts, or other planned small mining activities; and

2.13. Any adjacent previous disturbance for which the operator is not responsible.

R647-3-106. Operation Plan.

The operator shall provide a brief narrative description of the proposed mining operation as part of the notice of intention. The description should include the following information:

1. A statement giving general details of the type or method of mining operations proposed, and the type of minerals to be mined;

2. Estimated width and length of any new roads to be constructed;

3. An estimate of the total number of surface acres to be disturbed by the mining operation.

4. The amount of material (including mineral deposit, topsoil, subsoil, overburden, waste rock, or core hole material) to be extracted, moved, or proposed to be moved, relating to the mining operation.

R647-3-107. Operation Practices.

During operations, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare during operations. Methods to minimize hazards shall include but not be limited to:

1.11. The closing or guarding of shafts and tunnels to prevent unauthorized or accidental entry in accordance with MSHA regulations;

1.12. The disposal of trash, scrap metal and wood, and extraneous debris;

1.13. The plugging or capping of drill, core, or other exploratory holes as set forth in Rule R647-3-108.;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels are to be affected by the mining operation, then the operator shall take appropriate measures to avoid or minimize environmental damage.

3. Erosion Control - Operations shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5. Soils - Suitable soil material shall be removed and stored in a stable condition where practical so as to be available for reclamation.

6. Concurrent Reclamation - During operations, disturbed areas shall be reclaimed when no longer needed, except to the extent necessary to preserve evidence of mineralization for proof of discovery. Areas which have been disturbed but are not routinely or currently utilized shall be kept in a safe, environmentally stable condition.

R647-3-108. Hole Plugging Requirements.

Drill holes shall be properly plugged as soon as practical and shall not be left unplugged for more than 30 days without approval of the Division. The procedures outlined below are required for the surface and subsurface plugging of drill holes. The Division may approve an alternate plan, if the operator can prove to the satisfaction of the Division that another method will provide adequate protection to the groundwater resources and long term stability of the land. Dry holes and nonartesian holes which do not produce significant amounts of water may be temporarily plugged with a surface

cap to permit the operator to re-enter the hole for the duration of the operations.

1. Surface plugging of drill holes shall be accomplished by:

1.11. Setting a nonmetallic permaplug at a minimum of five (5) feet below the surface, or returning the cuttings to the hole and tamping the returned cuttings to within five (5) feet of ground level. The hole above the permaplug or tamped cuttings will be filled with a cement plug. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing.

1.12. If the area is tilled farmland, a five (5) foot cement plug must be placed above a permaplug or tamped cuttings so that the top of the cement plug is a minimum of three (3) feet below the ground surface. The hole above the cement plug is to be filled with soil. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing. The top of the casing and cap must be a minimum of three (3) feet below the ground surface.

2. Drill holes that encounter water, oil, gas or other potential migratory substances and are 2-1/2 inches or greater in surface diameter shall be plugged in the subsurface to prevent the migration of fluid from one strata to another. If water is encountered, plugging shall be accomplished as outlined below:

2.11. If artesian flow (i.e., water flowing to the surface from the hole) is encountered during or upon cessation of drilling, a cement plug shall be placed to prevent water from flowing between geologic formations and at the surface. The cement mix should consist of API Class A or H cement with additives as needed. It should weigh at least 13.5 lbs./gal., and be placed under the supervision of a person qualified in proper drill hole cementing of artesian flow. Artesian bore holes must be plugged in the described manner, prior to removal of the drilling equipment from the well site. If the surface owner of the land affected desires to convert an artesian drill hole to a water well, he must notify the Division in writing that he accepts responsibility for the ultimate plugging of the drill hole.

2.12. Holes that encounter significant amounts of nonartesian water shall be plugged by:

2.12.111. Placing a 50 foot cement plug immediately above and below the aquifer(s); or

2.12.112. Filling from the bottom up (through the drill stem) with a high grade bentonite/water slurry mixture. The slurry shall have a Marsh funnel viscosity of at least 50 seconds per quart prior to the adding of any cuttings.

R647-3-109. Reclamation Practices.

During reclamation, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:

1.11. The permanent sealing of shafts and tunnels;

1.12. The disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;

1.13. The plugging of drill, core, or other exploratory holes as set forth in Rule R647-3-108;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels have been affected by mining operations, then reclamation must be performed such that the channels will be left in a stable condition with respect to actual and reasonably expected water flow so as to avoid or minimize future damage to the hydrologic system.

3. Erosion Control - Reclamation shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5. Land Use - The operator shall leave the on-site area in a condition which is capable of supporting the postmining land use.

6. Slopes - Waste piles, spoil piles and fills shall be regraded to a stable configuration and shall be sloped to minimize safety hazards and erosion while providing for successful revegetation.

7. Highwalls - In surface mining and in open cuts for pads or roadways, highwalls shall be reclaimed and stabilized by backfilling against them or by cutting the wall back to achieve a slope angle of 45 degrees or less.

8. Roads and Pads - On-site roads and pads shall be reclaimed when they are no longer needed for operations. When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use.

9. Dams and Impoundments - Water impounding structures shall be reclaimed so as to be self-draining and mechanically stable unless shown to have sound hydrologic design and to be beneficial to the postmining land use.

10. Trenches and Pits - Trenches and small pits shall be reclaimed.

11. Structures and Equipment - Structures, rail lines, utility connections, equipment, and debris shall be buried or removed.

12. Topsoil Redistribution - After final grading, soil materials shall be redistributed on a stable surface, so as to minimize erosion, prevent undue compaction and promote revegetation.

13. Revegetation - The species seeded shall include adaptable perennial species that will grow on the site, provide basic soil and watershed protection, and support the postmining land use.

Revegetation shall be considered accomplished when:

13.11. The revegetation has achieved 70 percent of the premining vegetative ground cover. If the premining vegetative ground cover of the disturbed area is unknown, then the ground cover of an adjacent undisturbed area that is

representative of the premining conditions will be used as a standard. Also, the vegetation has survived three growing seasons following the last seeding, fertilization or irrigation, unless such practices are to continue as part of the postmining land use; or

13.12. The Division determines that the revegetation work has been satisfactorily completed within practical limits.

14. Where reseeding has occurred and the vegetation has survived one growing season, the reseeded area shall not be included for purposes of determining whether a mining operation is a small mining operation.

R647-3-110. Variance.

1. The operator may request a variance from Rule R647-3-107, 108, or 109 by submitting the following information which shall be considered by the Division on a site-specific basis:

1.11. The rule(s) as to where a variance is requested;

1.12. The variance requested and a description of the area that would be affected by the variance;

1.13. Justification for the variance;

1.14. Alternate methods or measures to be utilized.

2. A variance shall be granted if the alternative method or measure proposed will be consistent with the Act.

3. Any variance must be specifically approved by the Division in writing.

R647-3-111. Surety.

1. After receiving notification that the notice of intention is complete, but prior to commencement of operations, the operator must post a reclamation surety with the Division.

1.11. Failure to furnish and maintain reclamation surety may, after notice and opportunity for Board hearing, result in a withdrawal of the notice of intention as provided for in Section 40-8-16.

2. The Division will not require a separate surety where a reclamation surety in a form and amount acceptable to the Division is held by other governmental entities, provided that the cost estimate is accurate and the Division is named as co-beneficiary. Cooperative Agreements may be developed and entered into according to Section 40-8-22.

3. As part of the review of the notice of intention, the Division shall determine the required surety amount based on:

3.11. Site-specific calculations or estimates by the Division reflecting the cost the Division or a third party would incur to reclaim the site;

3.12. Site-specific calculations or estimates by the operator reflecting the cost the Division or a third party would incur to reclaim the site, if accurate and verifiable by the Division; or

3.13. The average dollars per acre costs for reclamation of similar operations, as determined by the Division, based upon approved surety amounts for current large mining operations.

3.14. In determining or verifying the amount of surety under Subsections 3.11 or 3.12, the Division shall use cost data from current sureties for large mining operations, adjusted as necessary to reflect the nature and scope of operations and reclamation under the notice of intention.

3.15. For the average dollars per acre in Subsection 3.13, the Board will annually approve the figure after a formal presentation from the Division and an opportunity for public comment.

4. The operator shall submit a completed Reclamation Contract (FORM MR-RC) with the required surety. The form and amount of the surety must be approved by the Division, except as provided in subpart 4.16. Acceptable forms may include:

4.11. A corporate surety bond from a surety company that is licensed to do business in Utah, that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better or a Financial Performance Rating (FPR) of 8 or better, according to the "A.M. Best's Guide". All surety companies also will be continuously listed in the current issue of the U.S. Department of the Treasury Circular 570. Operators who do not have a surety bond with a company that meets the standards of subsection 4.11 will have 120 days from the date of Division notification after enactment of the changes to subsection 4.11 to achieve compliance or face enforcement action. When the Division in the course of examining surety bonds, notifies an operator that a surety company guaranteeing its performance does not meet the standards of subsection 4.11, the operator has 120 days after notice from the Division by mail to correct the deficiency, or face enforcement action;

4.12. Federally-insured certificate of deposit payable to the State of Utah, Division of Oil, Gas and Mining;

4.13. Cash;

4.14. An irrevocable letter of credit issued by a bank organized to do business in the United States;

4.15. Escrow accounts; and

4.16. The Board may approve a written self-bonding agreement in the case of operators showing sufficient financial strength.

5. Surety shall be required until such time as the Division deems reclamation complete. The Division will promptly conduct an inspection when notified by the operator that reclamation is complete. The full release of surety shall be evidence that the operator has reclaimed as required by the Act.

5.11. A partial release of surety can be made by the Division if it determines that a substantial phase or segment of reclamation such as demolition, backfilling, regrading, or vegetation establishment has been successfully performed and the residual amount of retained surety is determined adequate to insure completion.

6. The amount of reclamation surety may be adjusted:

6.11. As required by a revision in the Notice of Intention under R647-3-115;

6.12. As a result of a periodic review by the Division conducted no more frequently than at 3 year intervals unless agreed to by the operator, which shall take into account inflation/deflation based upon an acceptable Costs Index; or

6.13. At the request of the operator.

7. Notwithstanding any other provision of these rules, for operations where the surety is in the form of a Board-approved agreement under Section 40-8-14(3), the Board shall retain the sole authority over the release, partial release, revision or adjustment of the surety amount, if any, which shall be in accordance with the agreement and the Act.

R647-3-112. Failure to Reclaim.

If the operator of a small mining operation fails or refuses to conduct reclamation as required by the complete notice of intention, and fails or refuses to comply with R647-3-107, R647-3-108, or R647-3-109, the Board may, after notice and hearing, order that:

1. Reclamation be conducted by the Division; and

2. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court; and

3. Any surety filed for this purpose be forfeited. With respect to the surety filed with the Division, the Board shall request the Attorney General to take the necessary legal action to enforce and collect the amount of liability. Where reclamation surety has been filed with another governmental agency, the Board shall notify such agency of the hearing findings, and seek forfeiture concurrence as necessary.

3.11. The forfeited surety shall be used only for the reclamation of the land to which it relates, and any residual amount returned.

R647-3-113. Notification of Suspension or Termination of Operations.

1. All mine operations are required to be maintained in a safe, clean, and environmentally stable condition. Active and inactive operations must continue to submit annual reports unless waived in writing by the Division.

2. The operator need not notify the Division of the suspension of small mining operations that does not exceed two (2) years.

3. In the case of a termination of mining operations or a suspension of mining operations that has exceeded, or is expected to exceed two (2) years, the operator shall:

3.11 Monitor and maintain the site in accordance with each requirement of the operation practices in R647-3-107.

3.12 Upon request, furnish the Division with such data as it may require to evaluate the status of the small mining operation, the status of compliance with these rules, and the probable future status of the land affected. Upon review of such data, the Division will take such action as may be appropriate. The Division may grant an extended suspension period beyond two years if warranted.

4. The operator shall give the Division prompt written notice of a suspension of small mining operations that has exceeded or is expected to exceed five (5) years, or of a shut down. Upon receipt of notification, the Division shall, within 30 days, arrange to inspect the property. The notice of suspension or shut down will include information about the status of the small mining operation, the status of compliance with these rules, the probable future status of the land affected, and if applicable the estimated date mining operations are to resume.

5. If the operator does not provide the notice required by R647-3-113.4, the Division shall serve written demand on the operator requiring that the operator provide the notice required by R647-3-113.4 within 30 days of receipt of the Division's demand letter.

6. An operator who has provided notice under R647-3-113.4 or R647-113.3, may remain in suspension so long as the operator:

6.11. Monitors the property as frequently as necessary, but no less than one time per year, to confirm the property is in a safe environmentally stable condition;

6.12. Maintains the property in a safe, environmentally stable condition in accordance with R647-3-107.1 through R647-3-107.4;

6.13. Maintains adequate reclamation surety; and

6.14. Continues to pay permit fees required by R647-3-101.5 and submits annual reports required by R647-3-117.

7. Small Mining operations that are in suspension for longer than five (5) years will be reevaluated on a regular basis and shall no less than every five years provide an update of the report required by R647-3-113.4 or .5 which shall be evaluated by the Division for compliance with requirements of R647-3-113.6.11 through 6.14.

8. The Division may require additional interim reclamation or stabilization measures reasonably necessary to ensure operator compliance with R647-3-113.6.12 for a small mining operation to remain in a continued state of suspension. In accordance with R647-3-113.5.12., the Division will periodically evaluate the reclamation surety for operations in suspension and require changes as needed.

9. The Division may, thirty (30) days after the operator's receipt of written notice and findings from the Division, determine mining operations are or have been shut down by demonstrating in written findings that the operator:

9.11. Failed to file the annual report under R647-3-117 and pay permit fees under R647-3-101.5; or

9.12. Failed to provide notice required by the Division under R647-3-113.4 and failed to respond to a request to file such notice under R647-3-117.5; or

9.13. Failed to maintain the property in a safe, environmentally stable condition in accordance with the requirements in R647-3-107.1 through 107.4 as applicable.

10. The operator may, within thirty (30) days of receipt of written notice and findings as set forth at R647-3-113.9.11, R647-3-113.9.12, or R647-3-113.9.13, provide a written justification for its failure or comply. If the Division finds the justification to be reasonable, the failure to comply excusable, or no undue prejudice from the non-compliance, the determination of shut down shall be withdrawn. Neither this provision, nor a written justification, if any, shall serve to preclude, limit or otherwise prejudice any other administrative remedies or procedures available to an operator under applicable laws or rules.

11. An operator who ends a suspension and resumes mining operations shall notify the Division within a reasonable time after resuming mining operations that the operator has resumed mining operations. If operations have been in suspension for more than five (5) years, or were shut down for more than five (5) years, resumption of mining shall require compliance through R647-3-111.

R647-3-114. Mine Enlargement.

Before enlarging a small mining operation beyond ten acres of surface disturbance in an incorporated area of a county or twenty acres in an unincorporated area of a county, the operator must file a Notice of Intention to Commence Large Mining Operations (FORM MR-LMO) and receive Division approval.

R647-3-115. Revisions.

1. Small mining operators are required to submit a revision to the complete notice of intention when a significant change(s) in the small mining operation occurs. A revision can be made by submitting a revised FORM MR-SMO (or similar form) and indicating the portion(s) of the operation which is being revised.

2. Division approval of a revision of small mining operations is not required but the operational change may not be implemented until the Division determines that the revised NOI is complete.

3. In the event the Division or the operator determine at the time a revision is submitted that the amount of the current surety does not accurately reflect the potential cost to complete reclamation at any point in time during the revised small mining operations, the Division may undertake a recalculation of the surety amount as provided in R647-3-111.3. If the recalculated amount is greater than the amount of the existing surety, the revised operations may not be implemented until a revised surety is approved by the Division.

4. If the acreage within an approved small mining operation is later annexed into an incorporated area of a county, the permit may continue as a small mining operation. If the operator of such small mining operation subsequently proposes an increase of the disturbed acres, the current definitions for small or large mining operations would apply as appropriate.

R647-3-116. Transfer of a Notice of Intention.

If an operator wishes to transfer a small mining operation to another party, an application form entitled, Transfer of Notice of Intention - Small Mining Operations (FORM MR-TRS) must be completed and filed with the Division. The new mine operator must post adequate reclamation surety and assume full responsibility for all disturbances of the permitted operation. The form and amount of surety must be approved by the Division for the transfer to be complete.

R647-3-117. Reports.

1. On or before January 31 of each year, unless waived in writing by the Division, each operator conducting small mining operations must file an operations and progress report (FORM MR-AR) describing its operations during the preceding calendar year, including:

1.11. The location of the operation and the number and date of the applicable Notice of Intention;

1.12. The gross amounts of ore and waste materials moved during the year, as well as the disposition of such materials;

1.13. New surface disturbances created during the year;

1.14. The reclamation work performed during the year;

1.15. A narrative description of ore extraction, on-site primary processing, exploration, site development work, maintenance, reclamation, and other work performed at the mine site during the year;

1.16. If notice has been provided or required pursuant to R647-3-113.4 or 113.5, the annual report shall include a narrative description of work performed to comply with R647-3-113.6.11 through 6.13;

1.17. The date suspension began or is anticipated to begin; and

1.18. Any other information required by the Division under R647-3-113.4 or 113.5.

2. The operator shall keep and maintain timely records relating to his performance under the Act and still make these records available to the Division upon request.

R647-3-118. Practices and Procedures; Appeals.

The Administrative Procedures, as outlined in the R647-5 Rules, shall be applicable to minerals regulatory proceedings.

R647-3-119. Confidential Information.

Information provided in the notice of intention relating to the location, size, and nature of the mineral deposit, and marked confidential by the operator, shall be protected as confidential information by the Board and the Division. The information will not be a matter of public record until a written release is received from the operator, or until the notice of intention is terminated.

KEY: minerals reclamation

Date of Enactment or Last Substantive Amendment: October 29, 2020

Notice of Continuation: January 24, 2018

Authorizing, and Implemented or Interpreted Law: 40-8-1 et seq.