

BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

NOTICE OF PUBLIC RULEMAKING HEARING

IN THE MATTER OF Amendments to the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials, 2 C.C.R. 407-4

TO ALL INTERESTED PARTIES AND TO WHOM IT MAY CONCERN:

The Colorado Mined Land Reclamation Board (“Board”) will consider promulgation of new rules and amendments proposed by the Division of Reclamation, Mining and Safety (“Division”) to the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials, 2 C.C.R. 407-4. The proposed amended rules are attached hereto as **Appendix A**. Please see **Appendix B**, the draft Statement of Basis and Purpose and Specific Statutory Authority for the proposed rule amendments the Division is seeking.

The Board will promulgate the new rules to make certain Board rules are more consistent, effective, and efficient pursuant to Executive Order D 2012-002. The Board may also amend areas of the existing rules that need clarification, correction, or to reflect new information or current practice or procedure. The primary purpose of the amendments are to incorporate Senate Bill 18-184, the new 111(1)(b) Special One-Time Excavation Operation Permit.

The Board’s authority to promulgate rules is derived from Section 34-32-104, C.R.S. (Board has full power and authority to carry out and administer the provisions of the Act), and Section 34-32-108(1), C.R.S. (Board has the authority to adopt and promulgate reasonable rules and regulations regarding administration of the Mined Land Reclamation Act), Section 34-32.5-104, C.R.S., Section 34-32.5-105, C.R.S., and Section 34-32.5-108, C.R.S.

NOTICE IS HEREBY GIVEN that the Board has scheduled the above entitled matter for a rulemaking hearing as follows:

Date: Wednesday/Thursday, May 22 and 23, 2019.

Time: Wednesday 9:00 a.m. or as soon thereafter as practical

Place: Department of Natural Resources
1313 Sherman Street, Room 318
Denver, CO 80203

Pre-hearing Conference. The Board will hold a pre-hearing conference on May 10, 2019, from 10 am to 11 am, at 1313 Sherman Street in Room 318, Denver, CO 80203.

Public Participation. The Board encourages the public to participate in the rulemaking hearing by commenting on the proposed regulations. To participate in this rulemaking as a party, a person or organization must file a written request for party status with the Board that shall include the following information: (1) name of the applicant and their representative (if different); (2) the street address, electronic mail address, and telephone and facsimile numbers of the applicant or their representative; and (3) a brief summary of any policy, factual, or legal issues the applicant has with the proposed regulations. Participation as a Party requires attendance at the Pre-hearing Conference, unless such party provides a fully executed proxy authorization form to the Pre-hearing Conference Officer and the party's authorized representative is present.

Persons who do not desire party status, but would like to participate in the rulemaking process, will be able to make their views known to the Board either by submitting comments in writing in advance of the rulemaking hearing, or by speaking during the public comment period allotted during the hearing. Depending on the number of people seeking to make oral comments at the hearing, the Board may limit such comments. Organized groups of individuals are urged to identify one spokesperson. Speakers are asked to be as concise as possible, and to avoid repeating comments made by others. The Board will consider all submissions. Persons or groups who would like to address the Board during the Rulemaking Hearing should notify the Board Secretary via e-mail at camille.mojar@state.co.us by May 6, 2019 and may attend the Pre-hearing Conference.. An estimate of the time needed for comments must be included in the e-mail notice.

Written Comments, Alternate Proposed Rules, Party Status. Written submissions prior to the hearing are encouraged, so that they can be distributed to the Board for review prior to the hearing. Written comments and alternate proposed rules shall be limited to five (5) pages, excluding exhibits, and shall succinctly summarize the factual and legal issues that arise from the rulemaking proposal and the submitting person's position on each issue.

Parties may submit alternate proposed rules, which will only be considered by the Board if the subject matter of the alternate proposed rules is consistent with and fits within the subject matter and scope of the rulemaking hearing. Any alternate proposed rule must include the following information: (1) a clear statement of the alternate proposed rule; (2) a statement of the Board's authority to promulgate the alternate proposed rule; (3) a statement describing how the alternate proposed rule is consistent with and fits within the subject matter and scope of the proposed rulemaking and (4) a clear and concise statement of the basis and purpose for the alternate proposed rule.

Request for Party status and all written comments and alternate proposed language must be received by May 6, 2019.

Filings by parties and interested persons must be submitted to the Board in hard copy and electronic copy as follows:

- (1) the original hard copy delivered via first-class mail to Camille Mojar, Board Secretary, 1313 Sherman Street, Room 215, Denver, Colorado, 80203; and
- (2) an electronic copy emailed, in portable document format (.pdf), to camille.mojar@state.co.us for posting to the Division website.

The Board may take actions, including without limitation, modifying or amending the existing rules described or proposed herein and making conforming modifications to other rules, which it determines are reasonably necessary.

In accordance with the Americans with Disabilities Act, if any party requires special accommodations as a result of a disability for this hearing, please contact Camille Mojar at (303) 888-3567 ext. 8136, prior to the hearing and arrangements will be made. Copies of the current and proposed Rules are available on the Division internet homepage at <http://mining.state.co.us> or available upon request at the Division Office.

MINED LAND RECLAMATION BOARD
OF THE STATE OF COLORADO

Camille Mojar, Board Secretary

DEPARTMENT OF NATURAL RESOURCES

Mined Land Reclamation Board

Division of Reclamation Mining and Safety

2 C.C.R. 407-4

**STATEMENT OF BASIS, SPECIFIC
STATUTORY AUTHORITY AND PURPOSE FOR**

**Amendments to the Mineral Rules and Regulations of the Colorado Mined Land
Reclamation Board for the Extraction of Construction Materials (2 C.C.R. 407-4)**

Basis and Purpose

I. Statutory Authority

These modifications to the Rules are made pursuant to the authority granted to the Mined Land Reclamation Board in Sections 34-32-104, 34-32-105(3), 34-32-106(1)(b), 34-32-108(1), 34-32.5-104, 34-32.5-105, and 34-32.5-108 C.R.S.

The specific authority for these rules is provided in Section 34-32-108(1), C.R.S. -- “The Board may adopt and promulgate reasonable rules and regulations respecting the administration of this article and article 32.5 of this title and in conformity therewith” and Section 34-32.5-108, C.R.S. – “The board may adopt and promulgate reasonable rules respecting the administration of this article.”

II. Purpose of revising the Rules

The primary purpose of the amendments are to incorporate Senate Bill 18-184 (the new 111(1)(b) Special One-Time Excavation Operation Permit), clarify and amend certain portions of existing rules, including the size of the required posted sign, an estimated completion date for Notices of Intent to Conduct Exploration Activities and general editorial clean up.

Regulatory Additions and Amendments

- I. Rule 111(1)(b) was added to incorporate Senate Bill 18-184 into the Rules and the statutory language was mirrored as closely as possible.
- II. The definition of “Mining Operation” in Rule 1.1(30) was amended to match the statutory definition.
- III. The definition of “Off-site” in Rule 1.1(33) was amended to read more clearly and be less confusing.
- IV. Rule 1.10 AMENDMENT TO A PERMIT was amended to allow for electronic submittals and reduce the amount of paperwork submitted.

- V. Language was added to Rule 1.16 regarding property leases and the need for operators to notify the Office when leases that affect legal right of entry are changed.
- VI. In response to public feedback, language regarding the size of signs was added to Rule 1.6.2 in order to ensure that permit application notices are visible to the public.
- VII. Language was added to Rule 2.8.1 to mirror the Hard Rock Rules and incorporate procedures for telephonic appearances at hearings.
- VIII. In response to past issues, the Division added language to Rule 3.1.3 Time Limit and Phased Reclamation to insure timely reclamation of sites.
- IX. Language was added to Rule 3.1.9 Topsoiling and 3.1.10 Revegetation to provide further clarification and to mirror the Hard Rock Rules.
- X. In response to public feedback, language further clarifying Rule 3.1.12 Signs and Markers was added regarding the size of signs.
- XI. In response to past issues, the Division added language to Rule 5 that limits prospecting activities to 5 years unless approved by the Office or Board. In addition, documentation of the legal right to enter was added as an NOI Application requirement.
- XII. Changes were made to Rule 5 to match with the Hard Rock Rules.
- XIII. Language was added to Rule 6.3.3(g) EXHIBIT C – Mining Plan that mirrors the statutory definition of “affected lands.”
- XIV. Rule 6.3.1 EXHIBIT G – Source of Legal Right-to-Enter was edited for clarity purposes.
- XV. Language was added to Rule 6.4.4(j) EXHIBIT D – Mining Plan that includes the statutory definition of “affected lands.”
- XVI. Rule 8.2.1 was edited to provide up-to-date contact information.

Stakeholder Involvement in the Process

The following describes the Division’s effort to work with and reach out to stakeholders.

I. Extent of Agency Consultation with Operators, Consultants, Environmental Organizations, and Government Representatives

The Division utilized various methods to inform individual industry representatives, industry trade associations, environmental organizations, and federal government agencies of the proposed regulatory revisions. These methods included:

1. Posting a Stakeholder Process Notification Request Form on the Division's website to notify stakeholders of upcoming stakeholder meetings and related draft documents.
2. The Division hosted 2 informal stakeholder meetings in both Grand Junction (2/7/19) and Denver (2/14/19).