

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 Hard Rock, Metal, and Designated Mining Operations, 2 C.C.R. 407-1

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 Hard Rock, Metal and Designated Mining Operations, 2 C.C.R. 407-1. 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 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), Section 34-32-105(3), C.R.S., Section 34-32-106(1)(b) and (c), C.R.S. (Board has the duty to continually review the problems of mining and land reclamation and develop and promulgate standards for land reclamation plans), 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).

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 1 pm to 2 pm, 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 to be held on May 10th, 2019. 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. 407-1

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

Amendments to the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal, And Designated Mining Operations (2 C.C.R. 407-1).

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), and 34-32-108(1) 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.”

II. Purpose of revising the Rules

The primary purpose of the amendments include the deletion of the custom milling definition and exemption, clarifying and amending certain portions of the existing rules including the size of the required posted sign, an estimated completion date for Notices of Intent to Conduct Prospecting Activities, and general editorial clean up.

Discussion of Regulatory Amendments

I. Deleted Definition of Custom Mill:

Deleted Rule 1.1(12) Definition –

Custom Mill” is a mill that is not engaged in the processing of ore from any permitted mine that is owned or under common control with the milling facility or the entity operating the milling facility. An Applicant or Operator who intends to mill ores from other mining operations must submit adequate information to demonstrate that waste (material or stream) from such ores will be processed or disposed of in a manner to protect human health, property and the environment. "Custom Mill" does not include mills regulated by the Radiation Control Division of the Colorado Department of Public Health and the Environment under Part 18 of Rules and Regulations Pertaining to Radiation Control.

Deleted Rule 1.2.1 Reclamation Permit Exemption Specified by Rule –

The Board has determined that certain types of activities do not need reclamation permits either because the excavated substance is not a mineral as defined in Section 34-32-103(7), Colorado Revised Statutes 1984, as amended or because the activity is not a mining operation as defined by Section 34-32-103(8), C.R.S. 1984, as amended. Such activities include the following: (e) a custom mill.

II. Scope and Applicability of Deletion of Custom Mill Definition and Permit Exemption

The statutory definition of “Mining Operation” in the Colorado Mined Land Reclamation Act (“Act”) includes the following operations of affected lands: Transportation; concentrating; *milling*; evaporation; and other processing. § 34-32-103(8), C.R.S. “Custom Mill” is not defined or even mentioned in the Act. After several discussions with the Colorado Department of Public Health and the Environment, Hazardous Materials and Waste Management Division (HMWMD) the Division determined that the regulatory definition of Custom Mill was causing unnecessary confusion over jurisdiction and authority and that CDPHE was not actively regulating “custom mills.” An updated and revised MOU between HMWMD and the Division was executed in June of 2017 incorporating the changes. The revised MOU states: 1) Any person engaged in a mining operation shall obtain a MLRB permit. If mining operations include milling of ore or waste rock from a mining operation(s) subject to the provisions of the MLRA, then a Designated Mining Operation Reclamation Permit shall be obtained; and 2) Milling pursuant to a MLRB permit does not require a CD pursuant to Section 30-20-102(4). Mining operations disposing of their own waste under a “Colorado Mined Land Reclamation Act” permit will be regulated solely by DRMS.

III. Statutory language was added to Rule 1.5.6.

IV. The definition of “Off-site” in Rule 1.1(44) was amended for clarity.

V. Language was added to Rule 1.16 regarding property leases and the need for operators to notify the Office to 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. Rule 1.10 AMENDMENT TO A PERMIT was amended to allow for electronic submittals and reduce the amount of paperwork submitted.

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 3.1.11 Buildings and Structures to provide clarity to operators.

X. In response to public feedback, language further clarifying Rule 3.1.12 Signs and Markers was added regarding the size of signs.

XI. Language was added to Rule 6.3.3(g) EXHIBIT C – Mining Plan, that mirrors the statutory definition of “affected lands.”

XII. Rule 6.3.1 EXHIBIT G – Source of Legal Right-to-Enter was edited for clarity.

IXX. Language was added to Rule 6.4.4(j) EXHIBIT D – Mining Plan that includes the statutory definition of “affected lands.”

XX. Language was moved from Rule 7.2.10 and 7.2.11 to Rule 4.17.4 Specific Provisions – Designated Mining Operations, to provide clarity to operators. The language previously found in Rule 4.17.4 is proposed to be subsequently eliminated.

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).

Alternatives Considered and Why Rejected

The Division considered all of INFORM and Sheep Mountain Alliance’s comments. INFORM and Sheep Mountain Alliance commented that “an expansive definition of “milling”” should be added to the Rules and that the term “production” should be added to Rule 3.1.3. The Division does not believe that INFORM and Sheep Mountain Alliance’s suggested Rule changes are within the scope of this proposed rule-making.