

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.