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REGULATORY ANALYSIS

of the

Proposed Revisions

to the

Mineral Rules and Regulations

of the

COLORADO MINED LAND RECLAMATION BOARD

for

HARD ROCK, METAL AND DESIGNATED MINING OPERATIONS

by the

Division of Reclamation, Mining and Safety

April 9, 2010

This document is a Regulatory Analysis of the proposed revisions to the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal and Designated Mining Operations (Rules). The proposed revisions to the Rules were published in February, 2010. This document was prepared by the Division of Reclamation, Mining and Safety (Division), acting as staff to the Colorado Mined Land Reclamation Board,(Board) in response to requests from the Colorado Mining Association and Powertech (USA) Inc. that a regulatory analysis be conducted on the proposed rules pursuant to the Administrative Procedures Act (C.R.S. 24-4-103(4.5)(APA). As contemplated by the APA, this analysis addresses each of the proposed amendments and rules and provides information on affected classes, qualitative and quantitative impacts, the probable costs, a comparison of the probable costs and benefits, whether less costly or less intrusive methods exist for achieving the purpose of the proposed rule, and whether there are alternatives to the proposed rule.

Under the APA, any person may request a regulatory analysis of a proposed rule, and the request must be made at least fifteen days prior to the public rulemaking hearing. The requested regulatory analysis must be made available to the public at least five days prior to the hearing. If the agency has made a good faith effort to comply with the requirements of a regulatory analysis, the rule shall not be invalidated on the grounds that the contents of the regulatory analysis are insufficient or inaccurate. (C.R.S. 24-4-103(4.5)(d). Items included in a regulatory analysis are analysis of cost and benefits of inaction, alternate methods for achieving the purpose, and why alternates were rejected. However, many of the proposed rules are mandated by the legislation the General Assembly passed in 2008 as described below. Therefore less costly or alternate methods or inaction were not available.

Background and Scope of the Proposed Rules

Statutory Authority

The General Assembly delegated broad rulemaking authority to the Colorado Mined Land Reclamation Board respecting the administration of the Mined Land Reclamation Act (Act) at § 34-32-108, C.R.S. In addition, the General Assembly passed several pieces of legislation in 2008, which set forth new statutory requirements and increased the regulatory authority of the Board and the Division. Specifically, the Legislature passed Senate Bill ("SB") 08-228 concerning prospecting, codified at § 34-32-113, C.R.S; House Bill ("HB") 08-1161 concerning uranium mining, codified at §§ 34-32-103, 110, 112, 112.5, 115, 116, and 121.5, C.R.S; and SB-08-169 concerning fees, codified at § 34-32-127, C.R.S. In addition, the General Assembly set new fee amounts in 2007 in SB-07-185, codified at § 34-32-127, C.R.S. Further authority for the proposed new rules and amendments resides in §§ 34-32-112.5 and 116.5, C.R.S., which concern designated mining operations.

Purpose

The primary reason for adopting the proposed rules is to implement the legislation the General Assembly passed in 2008. In addition, the proposed rules update the existing rules to correspond to the changes required for the implementation of the legislation and also amend areas of the existing rules that need clarification, correction or to reflect new information or current practice or procedure.

The proposed new rules and amendments include edits and additions to numerous sections of the current rules, and include, among other amendments and additions, new definitions; changes to existing definitions; new permit application, reclamation and temporary cessation requirements for uranium mining; provisions regarding confidentiality and public disclosure of prospecting information, including a process to request hearings before the Board regarding confidentiality disputes; provisions concerning permit fees and costs of third party experts; changes to the designated mining operation process; and changes to the spill reporting requirements.

Legislation and Rules

As stated before, in 2008, the General Assembly passed three bills that affected the Act: SB-08-228 concerning prospecting, HB-08-1161 concerning uranium mining, and SB-08-169 concerning fees. In addition, the General Assembly set fees in 2007 in SB-07-185. The proposed rules implement all of these pieces of legislation.

Senate Bill 228

Prior to this bill, all information concerning a notice of intent to conduct prospecting was confidential unless the prospector filed a written release or the Board found that reclamation had been satisfactorily completed. With the passage of SB-08-228, all information in a notice or a modification of a notice filed on or after the effective date of this bill is public with the exception of information about mineral deposit location, size, or nature, and proprietary information, trade secrets and information that may cause harm to the competitive position of the prospector.

SB-08-228 provides that information designated by the prospector as exempt from disclosure shall remain confidential until a final determination is made by the Board. This bill requires the Board to promulgate rules to implement the bill, and requires the Board to consider the timing of disclosure of the prospector's identity.

This bill requires the Division to post on its website all information in a notice except that information exempt from disclosure.

House Bill 1161

This bill provided new requirements for uranium mining operations including, but not limited to:

(1) Making every uranium mining operation a designated mining operation (DMO), which subjects such operations to additional application and permitting requirements;

(2) Imposing new and additional permit application requirements for in situ leach (ISL) uranium mining operations such as (a) conducting a thorough baseline site characterization prior to submitting an application, (b) describing five similar ISL operations that demonstrate the applicant's ability to conduct the proposed operation without causing leakage into groundwater, and (c) submitting a certification of past and present violations of environmental protection requirements;

(3) Setting specific water quality requirements for reclamation of in situ leach mining operations; and

(4) Increasing the Board's authority to deny applications for in situ leach uranium mining operations if applicants fail to demonstrate by substantial evidence that they will reclaim affected groundwater to statutory standards or if they have past or present violations or a pattern of willful violations of environmental protection requirements of the Act or similar state and federal law.

Senate Bill 08-169

This bill set fees for applications and amendments. In addition, the bill requires an applicant for an in situ leach uranium mining permit, amendment or revision to pay the costs of the Division if the cost to review and process an in situ leach permit application, amendment or revision exceeds twice the fee for a permit application, amendment or revision. The costs include those of the Division, another division in the Department of Natural Resources and any consultant or other non-governmental agents that have specific expertise on the issue in question. The bill requires the Division to inform the applicant that the actual fee will exceed twice the value of the listed fee and to provide the applicant with a cost estimate of the actual charges for the review within ten (10) days after receipt of the application. The applicant may appeal the Division's estimate to the Board within ten (10) days after the applicant's receipt of the estimate.

Senate Bill 07-185

In 2007, the Legislature enacted changes to the fee schedule for permit applications, amendments and revisions. In addition, the bill requires an applicant for an oil shale mining permit, amendment or revision to pay the costs of the Division if the cost to review and process an oil shale permit application, amendment or revision exceeds twice the fee for a permit application, amendment or revision. The costs include those of the Division, another division in the Department of Natural Resources and any consultant or other non-governmental agents that have specific expertise on the issue in question. The bill requires the Division to inform the applicant that the actual fee will exceed twice the value of the listed fee and to provide the applicant with a cost estimate of the actual charges for the review within ten (10) days after receipt of the application. The applicant may appeal the Division's estimate to the Board within ten (10) days after the applicant's receipt of the estimate.

Stakeholder Process

In May 2009, the Division began an informal stakeholder process. The Division held its first stakeholder meeting on May 27, 2009 at which the Division provided an overview of its

proposed draft set of rules. The Division posted proposed regulations on its website on May 28, 2009. Throughout the stakeholder process, interested persons were given opportunities to submit written comments on each version of the draft and to orally discuss the draft and comments thereto at stakeholder meetings.

For the most part, the Division discussed the rules sequentially, with participants having an opportunity after each stakeholder meeting to submit written comments and then discuss their comments at the next stakeholder meeting. In total, the Division held eight stakeholder meetings: May 27, June 11, July 9, July 30, August 19, September 16, September 30. The Division posted a complete set of the proposed regulations with all edits indicated on the draft on October 20, set November 10 as the deadline for comments on that draft set, then held the final stakeholder meeting on December 3.

During the stakeholder process the Division received extensive written comments and heard oral comments during the stakeholder meetings. In addition, during stakeholder meetings frank discussion took place between the Division and the participants. In response to discussions and comments, the Division amended the proposed rules.

On February 10, 2010, the Division published the notice of public rulemaking in the *Colorado Register*. The Boar will commence the rulemaking hearing on the proposed rules on April 15, 2010.

REGULATORY ANALYSIS OF THE PROPOSED RULES

Following is the Division's response to the requirements of Section 24-4-103(4.5)(a)(I) through (VI) for each proposed rules:

Rule 1: GENERAL PROVISIONS AND REQUIREMENTS – PERMIT PROCESS

1.1 DEFINITIONS

24-4-103(4.5)(a):

(I) The classes of persons who will be affected by the proposed rule: Classes affected by the proposed definitions include the public, the regulated community, and the Division.

The classes that will bear the costs of the proposed rule: The Division does not anticipate costs to any classes with the adoption of these definitions, as the definitions themselves do not require any action on the part of the Division or the affected parties; they provide clarification for other requirements in the rules.

The classes that will benefit from the proposed rule: The public, the regulated community, and the Division will all benefit from the clarity provided by these proposed definitions.

(II) A description of the qualitative impact of the proposed rule: The qualitative impact of these proposed definitions is the elimination of any interpretation of the defined terms that is contrary to the legislative or regulatory intent.

A description of the quantitative impact of the proposed rule: The Division does not anticipate any quantitative impact with these proposed definitions, since their purpose is solely to provide clarification for other requirements of the rules.

- (III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The Division does not anticipate costs to any classes for the implementation and enforcement of these definitions, as the definitions themselves do not require any action on the part of the Division or the affected parties; they provide clarification for other requirements in the rules.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate costs to any other agencies with the adoption of these definitions, as the definitions themselves do not require any action on the part of any other agency; they provide clarification for other requirements in the rules.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues with the adoption of these definitions, as the definitions themselves do not require any action; they provide clarification for other requirements in the rules.

- (IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* The Division does not anticipate any cost of implementing the proposed definitions or of inaction as the definitions themselves do not require any action; the benefit of the proposed definitions is that they provide clarification for other requirements in the rules.

- (V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* Since the Division has not identified any costs associated with adoption of the proposed definitions, it is unlikely that there are less costly or less intrusive methods for achieving the purpose of the proposed rule.

- (VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency and the reasons these alternatives were rejected:* Alternative methods for achieving the purpose of the proposed rule would be defining terms within the Rules or leaving the terms undefined within the rules. Certain specific alternative definitions were also considered. For the definition of “affected surface water and groundwater” the following were considered:

- (1) “means, for purposes of the baseline site characterization and monitoring plan required for applications for in situ leach mining operations that surface water or groundwater affected or potentially affected by such mining operations,”
- (2) “means, for purposes of the baseline site characterization and monitoring plan required for applications for in situ leach mining operations that surface or groundwater affected or reasonably potentially affected by such mining operation. Affected surface and groundwater shall include groundwater and surface water within the affected land.

Reasonably potentially affected ground and surface water shall include groundwater and surface water within the affected land, groundwater and surface water up and down gradient of the affected land, and surface water at the point where proposed outfalls enter or impact receiving waters,”

- (3) “means, for purposes of the baseline site characterization and monitoring plan required for applications for in situ leach mining operations, that surface or groundwater affected or reasonably potentially affected by such proposed mining operation. Affected surface and groundwater shall include surface water and groundwater within the affected land. Reasonably potentially affected ground and surface water shall include surface water and groundwater within the affected land and in surrounding areas.”
- (4) “means for purposes of the baseline site characterization and monitoring plan required for applications for in situ leach mining operations that surface water or groundwater affected or reasonably potentially affected by such mining operation.”

The first of the above considered definitions was rejected as being too broad; the second and third were rejected as being confusing and not succinct. The fourth definition was chosen based on its clarity, consistency with the Act’s requirements, and similarity to language used in the current rules.

For “Baseline Site Characterization and Monitoring Plan,” the Division originally considered not including any specific definition, but determined that a definition would be helpful for clarifying that certain requirements apply specifically to ISL mines. In addition, the members of the regulated community requested that the Division add this definition.

For “Best Available Technology” the Division considered not including a definition and utilizing definitions of similar terms from Environmental Protection Agency regulations and the agencies in other states. Ultimately, those definitions were rejected as inappropriate in the context of the Mined Land Reclamation Act and HB-08-1161. Based on stakeholder comments, the Division considered the following definition:

“for purposes of establishing, designing and implementing groundwater reclamation plans for in situ leach mining operations, the best technologies, treatment techniques, reclamation techniques or other means that result in the most effective reclamation of groundwater, taking into consideration technical feasibility and cost effectiveness. In considering cost effectiveness, the financial condition of an operator shall not be a factor.”

In response, to stakeholder concerns, this definition was modified to the language currently contained in the proposed rule.

For “Excursion,” in response to stakeholder concern that the lack of definition would lead to uncertainty, the Division considered defining “excursion.” Because HB-08-1161 uses the term in a variety of contexts, however, the Division concluded that a universal definition would not be appropriate. The Division also considered defining excursion each time it

appears in the rules, but concluded that the context of each occurrence provided sufficient clarity.

For “Failure or Imminent Failure” the Division considered retaining the existing definition , but determined that the language created the potential for confusion and did not address the requirements of HB-08-1161. After attempting various revisions and considering stakeholder comment, the Division adopted language based explicitly on the statute.

The Division finds that the definitions are necessary to clarify the Rules and comply with legislative language and intent. With regard to specific definitions that were considered and rejected in favor of the definitions contained in the proposed rule, the Division determined that the definitions selected for the proposed rule have the best combination of clarity and succinctness of the definitions considered.

Rule 1: GENERAL PROVISIONS AND REQUIREMENTS – PERMIT PROCESS

1.2 SCOPE OF RULES AND ACTIVITIES THAT DO NOT REQUIRE A RECLAMATION PERMIT

24-4-103(4.5)(a):

(I) The classes of persons who will be affected by the proposed rule: The public, the regulated community, the Division, the Colorado Department of Public Health and Environment, other state agencies, and the federal government will all be affected by this proposed rule.

The classes that will bear the costs of the proposed rule: The Division does not anticipate any costs associated with the proposed rule. Therefore the Division has not identified any classes that would bear any cost of the proposed rule.

The classes that will benefit from the proposed rule: The public, the regulated community, the Division, the Colorado Department of Public Health and Environment, other state agencies, and the federal government will all benefit from the clarification of the authority of those agencies in relation to mining operations.

(II) A description of the qualitative impact of the proposed rule: This rule clarifies that the existing authority of other agencies is unaffected by the proposed rules.

A description of the quantitative impact of the proposed rule: The Division does not anticipate a quantitative impact of the proposed rule.

(III) The probable costs to the Division for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs with implementation of this proposed rule.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs to other agencies with implementation of this proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues with implementation of this proposed rule.

(IV) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction: The Division does not anticipate any cost of implementing the proposed rule. The benefit of the rule is that it provides clarification of agency authority. The cost of inaction is confusion over the effect on other agencies of the proposed rules. Given this, there is no benefit to inaction.

(V) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule: Since the Division has not identified any costs associated with adoption of the proposed rule, it is unlikely that there are less costly or less intrusive methods for achieving the purpose of the proposed rule.

(VI) A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency: An alternative method for achieving the purpose of the proposed rule would be to include a clause describing an agency's authority with each applicable rule. The Division could leave the rule out. However, the rule provides clarity concerning the effect of the proposed rules on other agencies' authority.

The reasons the alternative methods were rejected in favor of the proposed rule: This proposed approach is more direct and succinct.

Rule 1: GENERAL PROVISIONS AND REQUIREMENTS – PERMIT PROCESS

1.3 PUBLIC INSPECTION OF DOCUMENTS

24-4-103(4.5)(a):

(I) The classes of persons who will be affected by the proposed rule: Classes of persons affected by this proposed rule include the public, the regulated community, owners of land and minerals to be explored, the Division, Board, and other state and federal agencies.

The classes that will bear the costs of the proposed rule: The regulated community will bear costs in justifying confidentiality; the Division will bear costs in making notices of intent available for public review. Persons who request disclosure of confidential information will bear the costs of their request. The Board will bear the costs of hearings on these matters.

The classes that will benefit from the proposed rule: The public, the regulated community, owners of land and minerals to be explored, the Division and other state and federal agencies will all benefit from the proposed rule in that it will be easier to obtain information about where prospecting activities are being or have been conducted, and whether prospecting activities are being conducted in accordance with applicable laws.

(II) A description of the qualitative impact of the proposed rule: The qualitative impact of the rule will be increased availability of information for the public and other interested parties, which would be to their benefit.

A description of the quantitative impact of the proposed rule: The quantitative impact of the proposed rule would be the costs incurred by prospectors in preparing documents justifying the need for confidentiality of their notices of intent; this cost may be dependent on the scope of the prospecting proposed, e.g. regional prospecting vs. specific mineral targets, large deposit vs. small deposit targets, etc. The cost could run from a few hundred to tens of thousands of dollars. In addition, there would be costs associated with maintaining confidentiality (yearly paperwork) and potentially defending a confidentiality dispute before the Board. Moreover, persons requesting that confidential information be disclosed would bear the cost of such request, including preparation for and participation in a Board hearing. In addition, the Division would bear costs of preparation and participating in Board hearings regarding confidentiality disputes and the Board would bear the costs of conducting the hearings. Because of complex land and mineral ownership issues, outside experts and consultants may need to be hired by the applicant. The dispute resolution process is treated as a deficiency. Therefore, prospecting activity cannot commence until the dispute is resolved by the Board. This could result in minor delays to prospectors and minor costs to prospectors to defend confidentiality before the Board.

(III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* There will be a cost associated with additional hearings and motions before the Board on disputes.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: There will be no costs to any other agencies for the implementation and enforcement of the proposed rule.

Any anticipated effect on state revenues: There will be no effect on state revenues.

(IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* The Division anticipates minor costs to prospectors, requesting parties, the Board and the Division with the implementation of the proposed rule; there are no costs associated with inaction. The benefits of the proposed rule are increased public awareness; the benefits of inaction are a minor cost savings for prospectors. However, inaction may not comply with the language of SB-08-228 that the Board make final determinations as to confidentiality.

(V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* There are comparatively minor costs associated with implementing the rule, and a less costly method of achieving the purpose of the rule is unknown. The legislature has mandated the public availability of certain information contained in notices of intent to conduct prospecting and the Board make final determinations as to confidentiality; the Division does not believe there would be a less intrusive method for implementing the requirements of SB-08-228.

(VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* The Division considered a variety of alternatives to the procedures regarding confidentiality disputes outlined in the proposed rules. Some of

these alternatives included timelines for the appeal somewhat different than what is currently reflected in the proposed rule. The Division considered including a process that relied exclusively on written presentations by the parties to a confidentiality dispute. The Division also considered including no provisions regarding the resolution of confidentiality disputes and instead relying on existing procedures within the rules. Alternatives are having no process for confidentiality disputes or having shorter deadlines in the dispute process.

The reasons the alternative methods were rejected in favor of the proposed rule: After receiving stakeholder input requesting the opportunity to make oral presentations to the Board, the Division included provisions for oral presentations to the Board. Because SB-08-228 requires a Board decision on confidentiality and because confidential matters must be discussed in executive session, the Division concluded that the existing procedures were insufficient. The Division believes the proposed rules effectively comply with the SB-08-228 provisions.

Rule 1: GENERAL PROVISIONS AND REQUIREMENTS – PERMIT PROCESS

1.4 APPLICATION REVIEW AND CONSIDERATION PROCESS

24-4-103(4.5)(a):

- (I) *The classes of persons who will be affected by the proposed rule:* Classes of persons affected by the proposed rule include applicants for in situ leach (ISL) uranium permits, the Board, Division, the public, and owners of land and/or minerals to be mined.

The classes that will bear the costs of the proposed rule: The costs will be borne by applicants for ISL permits, the Board and the Division. This rule allows the Division to retain a third party consultant to assist with baseline plan review and monitoring of baseline activities. HB-08-1161 states that the cost of this third party expert is paid by the prospective applicant. Therefore, there may be additional costs to the prospective applicant for review of baseline plans and monitoring of baseline activities.

The classes that will benefit from the proposed rule: The public, the Division, the Board and owners of land and/or minerals to be mined will benefit from the proposed rule.

- (II) *A description of the qualitative impact of the proposed rule:* The Division anticipates that a beneficial qualitative impact of the proposed rule will be increased protection of the environment and aesthetic values.

A description of the quantitative impact of the proposed rule: The proposed rule contains numerous additional provisions that were added to comply with the mandates of HB-08-1161. Quantitative impacts of the rule include a positive impact from protection of the environment and preserved land values; negative impacts include the costs of compliance to applicants for ISL permits and to the Board and Division for costs to implement the requirements of the rule. Other provisions and quantitative impacts include:

- The rule clarifies the 365 day adequacy review process and sets requirements for Board hearings under certain circumstances at the conclusion of the 365 days. The permit applicants, the Board, the Division and third parties with standing participating in hearings will incur costs of preparing and participating in such hearings.
- The rule specifies that 110 permit applications for in situ leach mines are considered as 112d-3 permit applications, and must comply with designated mining operation requirements unless the applicant is exempted from designated mining operations status. This increases costs to 110 ISL applicants.
- In addition, the proposed rule requires all ISL applications to include Exhibits as specified in 6.4.21 (unless exempt from DMO status), 6.4.22, 6.4.23, 6.4.24, and 6.4.25. Costs are associated with preparing these Exhibits and the Division will have costs associated with the review of these Exhibits.
- The proposed rule requires prospective ISL applicants to confer with the Division and obtain Division approval of a baseline characterization plan and allows public comment on the plan. There may be costs to the applicant associated with preparation and conferring with the Division and obtaining the Division's approval of these plans.
- The proposed rule allows the Division to retain a third party expert to assist with oversight of baseline site characterization, monitoring of field operations, and review of baseline characterization information. The operator will bear the cost of hiring this third party expert. There are also costs to the Division associated with procurement, contracting and management of the contract for a third party expert.
- Specifies when the Board must or may deny ISL permit applications as prescribed by HB-08-1161. If the Board were to deny an application under any of these criteria, the applicant would incur the costs for preparation, submittal, and Division review of the application without the benefit of obtaining a permit. The most substantial of these costs are analyzed in the sections of this document under proposed rules 6.4.21, 22, 23 and 25. Other substantial costs are the cost of application fees and for the Division's review of the application paid for by the applicant analyzed in the section of this document under proposed rule 1.5, and the cost for the third party expert that may be engaged by the Division and paid by the applicant to assist with oversight of baseline site characterization, monitoring of field operations, and review of baseline characterization information.
- The rule allows ISL and oil shale applicants to appeal the Division's cost estimate for oil shale and ISL application review. The Board, Division and Applicant will incur costs regarding any appeal of the Division's cost estimate to review an ISL or oil shale application.

(III) The probable costs to Division for the implementation and enforcement of the proposed rule: The Division will incur costs for review of Exhibits required for ISL applications and of baseline characterization data and monitoring plans. These costs will be offset by permit fees and use of third party experts to be paid by applicants. In addition, the Division will incur cost for preparation and participation in hearings on ISL applications and appeals of cost estimates. The Division anticipates on two ISL applications per year.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate costs to any other agency for implementation and enforcement of the proposed rule, as the proposed rule does not require action on the part of any other agency.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

(IV) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction: The costs for the proposed rule are estimated at \$28,598 annually for the Division to process the two permit applications anticipated annually. The costs for the applicants includes preparation of a complete application and would be estimated at up to \$31,070 per application for payment of a third party to oversee the collection of baseline data. The actual cost of preparing an application will depend on the size of the proposed mine and site conditions. The ISL applicant will also have costs associated with exhibit preparation such costs are discussed under the rules involving the exhibits. The benefits of the proposed rule include protection of surface and groundwater resources, preservation of topsoil resources, wildlife protection, and protection of public health and safety. It should be noted that with the exception of the requirement for the applicant to cover the costs of a third party overseer for baseline data collection, and monitoring, baseline data collection costs would be incurred regardless of the proposed rules because the current regulations require baseline data collection. As to inaction, HB-08-1161 mandates the proposed items to be included in ISL applications. Accordingly, inaction is not an option.

(V) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule: The requirements in the proposed rules are a result of a legislative mandate. The Division believes there is not a less costly or intrusive method of achieving the explicit requirements set forth by the legislature.

(VI) A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency: Proposed Rule 4 contains numerous additional provisions that were added to comply with the mandates of HB-08-1161 including, but not limited to, new application requirements and exhibits for both 110 ISL and 112 ISL mining operations, pre-application requirements for all ISL mining operations, the requirement of a scientifically defensible baseline site characterization and monitoring plan, the ability of the Division to retain a third party expert to assist in the review of the baseline and monitoring plan, and provisions for Division or Board consideration and grounds for denial of an ISL permit application. The Division did draft proposed language in Rule 1.4.3(1)(b) that allows for public comment on baseline site characterization and monitoring plans. The alternate considered by the Division was not allowing any public comment to be received on baseline and monitoring plans. Therefore, public comment on baseline and monitoring plans would be received only when, and if, an application for an ISL operation was submitted for consideration.

(VI) A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency: The Division did not identify any alternative

methods for achieving the purpose of the proposed rule because of the mandates of HB-08-1161. The Division did consider not allowing public comment on baseline plans.

The reasons the alternative methods were rejected in favor of the proposed rule: The only alternate considered under Rule 1.4 by the Division was not to allow to the submittal of public comment on baseline site characterization and monitoring plans. This option was rejected because the Division recognizes that public comments on the baseline and monitoring plans will be received and that a clear structure and process for the receipt of that public comment is reasonable and within the Board's broad rulemaking authority.

Rule 1: GENERAL PROVISIONS AND REQUIREMENTS – PERMIT PROCESS

1.5 FEES

24-4-103(4.5)(a):

- (I) *The classes of persons who will be affected by the proposed rule:* Classes of persons affected by the proposed rule will be applicants/operators and the Division and the Board.

The classes that will bear the costs of the proposed rule: The Division, the Board, and applicants/operators will bear the costs of the proposed rule. Rule 1.5.2(2)(a) states that if the cost of application review exceeds twice the fee for such an application then that cost shall be paid by the applicant. This is statutory language from SB-08-169. The rule also implements the appeals process associated with the cost of permit application review. Because there is a new administrative process implemented here, there may be minor costs to the Board, the Division and the applicant associated with hearings before the Board regarding the fee dispute.

The classes that will benefit from the proposed rule: The Division, the state government, and ultimately the public will benefit from the proposed rule when application review and processing costs are offset by increased fees to the applicant with less general fund money being required to review and process applications.

- (II) *A description of the qualitative impact of the proposed rule:* A qualitative impact of this rule is potentially more thorough reviews of applications since additional financial resources would be available to hire consultants to assist in the review. Also an additional benefit of this rule would be continued adequate staffing due to traditional fee increases, which maintains consistency and timeliness in permit processing by the Division.

A description of the quantitative impact of the proposed rule: According to the fiscal notes for SB-08-169 and SB-07-185, the quantitative impact of this rule on applicants/operators will be an increase of 14% - 15% for all permit application fees; up to \$10,350 for oil shale applications; up to \$1,783 for oil shale application amendments; up to \$45,300 for in situ leach uranium operations where consultants are retained; and \$2,644 for hard rock operations on less than 10 acres and extracting less than 70,000 tons of material per year.

(III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The Division does not anticipate any costs for the implementation and enforcement of this proposed rule other than potential costs associated with an applicant dispute over permit application review fees that exceed twice the original fee amount.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs to any other agency for the implementation and enforcement of this proposed rule.

Any anticipated effect on state revenues: The fiscal notes for SB-08-169 and SB-07-185 estimate increased annual revenues of \$35,104 and \$147,687, respectively.

(IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* Implementation of the proposed rule will result in costs to applicants/operators as previously described, with zero or minimal costs to the Division; inaction will relieve the applicants/operators from the fee increases, but will reduce revenue to the Division, potentially resulting in Division staff reduction. In addition, certain increases in permit fees are mandated by the legislation and therefore inaction is not an option.

(V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* Fee increases could have been reduced, which would have been contrary to the legislation. The legislature imposed these fees - the Division is simply enacting the legislation as required.

(VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* Since the fees were a legislative mandate, the Division did not consider any alternative methods for achieving the purpose of the proposed rule.

The reasons the alternative methods were rejected in favor of the proposed rule: Alternative methods were rejected to ensure compliance with the legislation.

Rule 1: GENERAL PROVISIONS AND REQUIREMENTS – PERMIT PROCESS

1.6 PUBLIC NOTICE PROCEDURES

24-4-103(4.5)(a):

(I) *The classes of persons who will be affected by the proposed rule:* Classes of persons affected by the proposed rule will be the public, landowners within three miles of an ISL operation, local government, state and federal agencies, the Division, and the applicants/operators of mining operations.

The classes that will bear the costs of the proposed rule: The applicant/operator and the Division will bear the costs of the additional notices.

The classes that will benefit from the proposed rule: The public, landowners within three miles of an ISL operation, local government, state and federal agencies will benefit from the proposed rule.

- (II) *A description of the qualitative impact of the proposed rule:* The qualitative impact of the rule will be increased public awareness of and participation in the permitting process.

A description of the quantitative impact of the proposed rule: The quantitative impact will be the cost of the required notifications and publications.

- (III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The Division anticipates minor costs for the implementation and enforcement of the proposed rule.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate costs to any other agency, as there is no requirement for action on the part of any other agency.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

- (IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* The costs of the proposed rule are minimal (additional mailings, and extended newspaper notification); the costs of inaction would be zero. The benefits of the proposed rule are increased public participation in the application process; inaction would curtail public awareness and involvement. Inaction would also result in noncompliance with a legislative mandate.

- (V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* The Division did not identify less costly or less intrusive methods for achieving the purpose of the proposed rule, since the rule is consistent with the legislation requiring the rule change.

- (VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* No alternative methods were considered because the rule amendments are mandated by legislation.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

Rule 1: GENERAL PROVISIONS AND REQUIREMENTS – PERMIT PROCESS

1.7 SUBMISSION OF COMMENTS AND PETITIONS FOR A HEARING

24-4-103(4.5)(a):

- (I) *The classes of persons who will be affected by the proposed rule:* The classes of persons affected by the proposed rule are persons who provide written comments on a 110 ISL, 112

ISL, 110D or 112D permit application, applicants for the aforementioned permit applications, and the Division.

The classes that will bear the costs of the proposed rule: The Division does not anticipate any costs will result from the proposed rule.

The classes that will benefit from the proposed rule: The classes of persons that will benefit from the clarity afforded in the proposed rule are commenters/petitioners on a 110 ISL, 112 ISL, 110D or 112D permit application, applicants for the aforementioned applications, and the Division.

- (II) *A description of the qualitative impact of the proposed rule:* The proposed rule clarifies the process for commenting on a permit application or petitioning for a hearing on an application.

A description of the quantitative impact of the proposed rule: The Division does not anticipate a quantitative impact from the proposed rule; persons with standing can comment and petition under the existing rules.

- (III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The Division does not anticipate any additional costs as a result of implementation of the proposed rule.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate any additional costs to any other agency as a result of implementation of the proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

- (IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* There are no costs associated with implementation or inaction on the proposed rule; the benefit of the proposed rule is the clarification of the comment and petition process. The Division did not identify any benefit of inaction.

- (V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* The Division did not identify any costs to implement the rule, so it is unlikely that there are less costly methods for achieving its purpose.

- (VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* No alternative methods were considered given that the Division did not identify any cost associated with the proposed rule.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

Rule 1: GENERAL PROVISIONS AND REQUIREMENTS – PERMIT PROCESS

1.8 AMENDMENTS AND TECHNICAL REVISIONS TO A PERMIT APPLICATION

24-4-103(4.5)(a):

- (I) *The classes of persons who will be affected by the proposed rule:* The classes of persons who will be affected by the proposed rule include applicants submitting technical revisions to 110 ISL permit applications where objections have been received. The Division will also be affected.

The classes that will bear the costs of the proposed rule: This proposed rule provides that applicants revising 110 ISL permit applications must follow procedures and requirements for revising 112 applications. Therefore, applicants revising 110 ISL permit applications where objections have been received will be subject to extended timeframes for final decisions on permit applications.

The classes that will benefit from the proposed rule: Objectors and other interested members of the public will have a minimum of twenty days to review and comment on technical revisions to 110 ISL permit applications where objections have been received. The minimum twenty day period is potentially more time than is afforded under the existing rule 1.8, and thus may benefit objectors and other interested members of the public.

- (II) *A description of the qualitative impact of the proposed rule:* The rule will facilitate review and comment by objectors and interested members of the public on technical revisions to 110 ISL permit applications by establishing a minimum twenty day review and comment period. The rule will simplify the Division's processing of technical revisions to 110 ISL permit applications by mandating a minimum twenty day review period.

A description of the quantitative impact of the proposed rule: Applicants for 110 ISL permits who submit technical revisions to their applications may be subject to extended timeframes for final decisions on permit applications. The proposed rule 1.8 requires a minimum twenty day review and comment period for technical revisions to 110 ISL permit applications, whereas the current rule 1.8 directs the Division to establish the length of the review and comment period only as necessary to afford an adequate opportunity for a review of the technical revision by the Division and by any interested members of the public, which may have been less than twenty days.

- (III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The Division does not anticipate any additional costs with this amended rule.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: Other agencies (local governments, other state or federal agencies) interested in reviewing and commenting on technical revisions to 110 ISL permit applications will be assured a minimum twenty day comment period. These agencies will

incur no additional costs to review and comment under the proposed rule than would have been incurred under the current rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues. The Division does not charge fees for technical revisions to permit applications.

(IV) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction: There may be costs associated with potentially lengthened decision timeframes to 110 ISL permit applicants who revise their permit application; these delay costs do not accrue with inaction. Objectors and the members of the public interested in reviewing and commenting on technical revisions to 110 ISL permit applications benefit from a known minimum twenty day review and comment period. The Division will also potentially benefit from a mandated minimum review period, rather than having to establish the length of the review period on a case-by-case basis as under the current rule.

(V) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule: A less costly method would be inaction leaving rule 1.8 as is. However, HB-08-1161 requires that 110 ISL permit applications be filed pursuant to §34-32-112.5(3)(d), C.R.S., which are 112d-3 type permit applications. The proposed rule clarifies that technical revisions to 110 ISL permit applications where objections have been received are subject to the minimum twenty day review and comment period required for all 112 permit applications where objections have been received. The Division did not identify any less intrusive methods for achieving the purpose of the proposed rule.

(VI) A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency: No alternatives to the proposed rule were considered, as the proposed rule is a reasonable implementation of a statutory requirement.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

Rule 1: GENERAL PROVISIONS AND REQUIREMENTS – PERMIT PROCESS

1.10 AMENDMENT TO A PERMIT

24-4-103(4.5)(a):

(I) The classes of persons who will be affected by the proposed rule: The classes of persons who will be affected by the proposed rule include applicants for amendments to 110 ISL, 112 ISL, and Non In Situ Leach Mining 110d permits.

The classes that will bear the costs of the proposed rule: Applicants for amendments will be required to submit a revision fee ranging from \$1,750 to \$7,475; ISL applicants for a 110 permit amendment must pay a fee for a 112d permit amendment (If exempt from designated mining operation status, they must pay for a 112 permit amendment fee).

The classes that will benefit from the proposed rule: Applicants for amendments to 110 ISL, 112 ISL, and Non In Situ Leach Mining 110d permits will benefit from being allowed to apply for amendments to their permits.

- (II) *A description of the qualitative impact of the proposed rule:* The rule will allow operators of 110 ISL, 112 ISL, and Non In Situ Leach Mining 110d operations to apply for amendments to their existing permits.

A description of the quantitative impact of the proposed rule: Applicants for 110 ISL permit amendments will bear the cost of a 112d or 112 amendment application fee.

- (III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The Division anticipates additional costs with this proposed rule for processing 110 ISL amendment applications under 112 amendment procedures and requirements. However, the Division anticipates that the cost will be minimal given that there are not likely to be many applications for 110 ISL permit amendments. In addition, if there were not specific provisions in place for ISL operations, those operations would have been permitted as 110 or 112 operations under the existing rules. The number of amendments processed each year would not be dependent on ISL status.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: Other agencies (local governments, other state or federal agencies) may incur similar costs to what is expected by the Division when they review applicable parts of amendment applications. Again, these agencies would incur these costs regardless of the operation's ISL status.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

- (IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* There are minimal costs associated with the proposed rule and no cost with inaction. Operators will benefit from the ability to amend their approved permits.

- (V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* A less costly method would be to not allow for amendments of existing permits. The Division did not identify any less intrusive methods for achieving the purpose of the proposed rule.

- (VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* No alternatives to the proposed rule were considered, as the opportunity to amend an existing permit is afforded by statute.

The reasons the alternative methods were rejected in favor of the proposed rule: Alternative methods would be contrary to legislation.

Rule 1: GENERAL PROVISIONS AND REQUIREMENTS – PERMIT PROCESS

1.11 CONVERSIONS

24-4-103(4.5)(a):

- (I) *The classes of persons who will be affected by the proposed rule:* The classes of persons who will be affected by the proposed rule include the Division and existing permit holders.

The classes that will bear the costs of the proposed rule: The proposed rule sets forth that conversion requests require a new permit application and are for instances where an operator proposes an increase in affected land acreage that, if approved, would place the operation into a different class of permit based on affected land acreage. The proposed rule sets forth that conversion applications do not apply to operator requests for change in the status of a permit from a designated mining operation to a non-designated mining operation, and clarifies that such requests must comply with the exemption from designation requirements and procedures set forth in rule 7.2.6. Existing permit holders will bear the costs of filing new permit applications, and in the case of ISL permits, new baseline site characterization plans. However, the requirements under the existing rules are similar to the requirements under the proposed rules.

The classes that will benefit from the proposed rule: The Division and existing permit holders will benefit from the clarity and the consistency with statutory requirements the proposed rule provides.

- (II) *A description of the qualitative impact of the proposed rule:* The qualitative impact of the proposed rule revision is the clarity and consistency with the statutory requirement the rule provides.

A description of the quantitative impact of the proposed rule: The proposed rule revision clearly sets forth the processes for increasing affected land acreage to exceed the limitations in the class of permit currently held by the filing of a new permit application as is required by statute. In addition it clarifies the processes for requesting a change in the status of a permit from a designated mining operation to a non-designated mining operation, by directing operators to the exemption process contained in Rule 7. Operators applying for conversion of a 110 ISL permit to a 112 ISL permit under the proposed rule will be required to file a new baseline site characterization and monitoring plan, but sufficient baseline characterization and monitoring would have been required for such conversions under the existing rules. The structured guidance for baseline characterization and monitoring provided in the proposed rules may streamline the process creating a net quantitative benefit for operators and the Division.

- (III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The Division does not anticipate any costs for implementation and enforcement of the proposed rule. Operators applying for conversion of a 110 ISL permit to a 112 ISL permit under the proposed rule will be required to file a new baseline site

characterization and monitoring plan, but sufficient baseline characterization and monitoring would have been required for such conversions under the existing rules. Therefore, the costs for the Division to review these plans are minimally increased under the proposed rule due to the very specific and detailed requirements of HB-08-1161. The structured guidance for baseline characterization and monitoring provided in the proposed rules may streamline the process creating a net cost savings to the Division.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division did not identify any costs to any other agency for the implementation and enforcement of the proposed rule revision; the revised rule does not change the protocol for involvement of other agencies.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues as a result of the revised rule. The Division will continue to collect the \$1,725 conversion application fee for conversions submitted under §34-32-110(7) C.R.S. Conversions from designated to non-designated mining operations that will be disallowed under the proposed rule were not subject to that fee under existing rules.

(IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* The benefit of the proposed rule is consistency with the Act and clarification that the process used to exempt a mine from designated mining status is through rule 7.2.6; inaction leaves potentially confusing language in the rules that the conversion process could be used to convert a designated mining operation to a non-designated mining operation.

(V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* Rule 1.11 could be left as is, the inaction alternative. Operators could then continue to apply for conversion of designated mining operations to non-designated mining operations under rule 1.11. However, the requirements of rule 7.2.6 would still apply, making the inaction alternative potentially more costly, confusing and intrusive than the processes required under the proposed rule. Also under the inaction alternative, there would not be a rule clearly stating that a new baseline characterization and monitoring plan is required for conversion of a 110 ISL permit to a 112 ISL permit. However, the reclamation and environmental protection performance standards of existing rule 3.1 would still apply. Therefore, the explicitly stated baseline characterization and monitoring plan requirements under the proposed rule make the inaction alternative potentially more costly, confusing and intrusive than the processes required under the proposed rule. Based on the foregoing discussion, the Division has determined that there are no less costly or less intrusive methods for achieving the purpose of the proposed rule.

(VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* No other alternatives were seriously considered, in accord with the analysis described above.

The reasons the alternative methods were rejected in favor of the proposed rule: The Division believes the proposed rule is consistent with legislative mandates and will streamline permit conversion and designated mining operation exemption procedures compared to the existing rules.

Rule 1: GENERAL PROVISIONS AND REQUIREMENTS – PERMIT PROCESS

1.12 PERMIT TRANSFERS AND SUCCESSION OF OPERATORS

24-4-103(4.5)(a):

- (I) *The classes of persons who will be affected by the proposed rule:* The classes of persons affected by the proposed rule include existing permit holders of ISL permits, prospective transferees/successors of an existing ISL permit, the public, the Board and the Division.

The classes that will bear the costs of the proposed rule: Costs associated with the proposed rule would include costs to the prospective transferee to submit Exhibit Y and to the Division reviewing Exhibit Y of rule 6.4.25 for the successor operator. Also the Division, Board, third parties with standing and existing prospective ISL permittees would bear the cost of participating in Board appeals on such transfers. The reader is referred to the Division's analysis of rule 6.4.25.

The classes that will benefit from the proposed rule: Existing ISL permit holders and prospective transferees/successors of an existing ISL permit will benefit from the clarity of the proposed rule. The public will benefit from the guarantee that the Board will consider, consistent with HB-081161, the applicant's history of compliance in determining whether to approve the transfer.

- (II) *A description of the qualitative impact of the proposed rule:* Qualitative impacts of the proposed rule include the ability to transfer an ISL permit at minimal costs, and the assurance that the applicant's history of compliance will be considered in whether to approve a transfer application.

A description of the quantitative impact of the proposed rule: The Division anticipates there will be a minimal quantitative impact as a result of the proposed rule given that there is unlikely to be many requests for transfers of ISL permits.

- (III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The Division estimates it will process, at most, one ISL transfer annually. The costs to process one transfer are approximately 60 hours of staff time, or \$3,398.40. In addition the Division would incur costs involved in preparation and participation in Board appeal on transfers. This cost is in addition to the cost for reviewing Exhibit Y of rule 6.4.25 for the successor operator. The reader is referred to the Division's analysis of rule 6.4.25.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: Other state agencies would incur minor costs compiling compliance history information requested by operators to fulfill the requirements of the revised rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

(IV) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction: There are costs associated with the proposed rule or inaction as described below. The benefits of the proposed rule are the allowance for operators to transfer existing operations rather than reclaim and restart an operation and the assurance that applicant's history of compliance with applicable environmental laws will have been considered in whether to approve the transfer. Inaction would not allow for the transfer of ISL permits and would be inconsistent with the Act. There may be a cost to applicants who must appeal a denial of a request for transfer of a permit to the Board. There may be additional costs associated with compliance with rule 6.4.25 and provisions in HB-08-1161 certifying that no violations exist under the Act or analogous laws in other states or under federal law or if violations exist providing information on them.

(V) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule: Since there are minimal costs for implementing the proposed revisions to the rule and the proposed revisions are no more intrusive than the requirements of the Act, the Division has determined that there are not less costly or less intrusive methods for achieving the purpose of the proposed rule.

(VI) A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency: In the original draft regulations issued by the Division in May 2009, Rule 1.12 had minimal changes. Therefore, the alternate method originally considered by the Division was that Rule 1.12 would not contain language requiring compliance by the successor operator with Exhibit Y of Rule 6.4.25 regarding prior violations. In addition, the original draft of Rule 1.12 did not contain a separate appeals process specific to ISL mining operations as is currently contained in proposed Rule 1.12.2(2). The Division considered not requiring Exhibit Y for transfers of permits.

The reasons the alternative methods were rejected in favor of the proposed rule: During the informal stakeholder process the issue was raised that HB-08-1161 left a gap in regard to transfers of ISL mining operations. One of the intents of HB-08-1161 was to ensure that all operators of ISL sites would comply with the past violation provision. By leaving Rule 1.12 silent as to compliance of successor operators with the prior violation provisions, the rule would not be implementing the intent of HB-08-1161, therefore, the Division rejected this alternate method in favor of language that clearly requires successor operators of ISL mining operations to be held to the same requirements as original ISL mining operators.

The reasons the alternative methods were rejected in favor of the proposed rule: The Division believes that not requiring compliance with proposed rule 6.4.25 would be inconsistent with the requirement of regulations or the Act.

Rule 1: GENERAL PROVISIONS AND REQUIREMENTS – PERMIT PROCESS

1.13 CESSATION OF OPERATIONS—TEMPORARY FOR ALL MINING OPERATIONS OR PERMANENT FOR IN SITU LEACH MINING OPERATIONS

24-4-103(4.5)(a):

- (I) *The classes of persons who will be affected by the proposed rule:* The classes of persons affected by the proposed rule include permit holders of ISL operations, the public, and the Division.

The classes that will bear the costs of the proposed rule: The Division, the Board, entities with standing and ISL permittees will bear any potential costs associated with the proposed rule.

The classes that will benefit from the proposed rule: ISL permittees will benefit from the clarification of temporary cessation requirements for ISL mines provided by the proposed rule. The public will benefit from the detailed environmental protection requirements for temporary cessation specific to ISL mines provided in the proposed rule.

- (II) *A description of the qualitative impact of the proposed rule:* The qualitative impacts of the proposed rule are increased focus on groundwater protection at ISL mines entering temporary or permanent cessation.

A description of the quantitative impact of the proposed rule: The Division, the Board, entities with standing and ISL permittees may have to prepare for and participate in hearings on whether groundwater reclamation should be commenced during temporary cessation. Such hearings would not have been required under the existing rules. The Division evaluated whether the requirement under the proposed rule for ISL permittees requesting temporary cessation to provide a description of the groundwater monitoring and pumping regime that will be maintained during the period of cessation of operations, and a schedule for reporting monitoring data, would have a quantitative impact. The Division determined that there would be no quantitative impact as a result of this requirement of the proposed rule in that the existing rules require applicants for temporary cessation to provide a description of the measures to be taken to comply with reclamation requirements and/or other activities related to the performance standards of existing rule 3.1 while the mine is in Temporary Cessation.

- (III) *The probable costs to Division for the implementation and enforcement of the proposed rule:* The Division anticipates costs to prepare for and participate in hearings on ground water reclamation during temporary cessation that would not have been required under the existing rules.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs to any other agency to implement and enforce the revised rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

(IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* There are costs associated with the proposed rule for preparation and participation in Board hearings that would not have been required under the existing rule. The benefits of the proposed rule are clarification of temporary cessation requirements for ISL mines provided by the proposed rule and required by HB 08-1161 and increased focus on groundwater protection at ISL mines entering temporary cessation.

(V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* Elimination of proposed rules 1.13.5(2)(f) and (3)(d) was considered for the potential to be less costly and less intrusive while achieving the desired purpose. Although existing rule 1.13.5(2)(d) already achieves some of the desired purpose of ground water protection during temporary cessation, HB 08-1161 imposed specific notice and groundwater reclamation requirements. However, since the proposed rules 1.13.5(2)(f) and (3)(d) implement HB-08-1161 requirements and provide clarity and specific direction to compliance with an existing requirement of the current rules, they do not increase costs or intrusiveness. Rule 1.13.6(3)(b) requires the Board to conduct a hearing on whether ground water reclamation is required during temporary cessation of ISL mines. It would be less costly and less intrusive for the Division, the Board, and ISL permittees to eliminate this proposed rule. Proposed rule 1.13.6(3)(b) states that the Board may direct ISL permittees entering or in temporary cessation to commence ground water reclamation. The Board possesses this authority under the existing rules. Therefore, the proposed rule does not increase costs or intrusiveness.

(VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* No other alternatives were seriously considered as the alternatives that were identified are either not increasing costs or intrusiveness, or inconsistent with legislative mandate, or both.

The reasons the alternative methods were rejected in favor of the proposed rule: The Division believes the proposed rule is consistent with legislative mandates.

Rule 1: GENERAL PROVISIONS AND REQUIREMENTS – PERMIT PROCESS

1.14 TERMINATION

24-4-103(4.5)(a):

- (I) *The classes of persons who will be affected by the proposed rule:* The classes of persons affected by the proposed rule would be operators facing termination of their permits.

The classes that will bear the costs of the proposed rule: The Division has not identified any costs associated with the proposed rule.

The classes that will benefit from the proposed rule: Operators facing termination of their permits will benefit from the opportunity to comply with permit conditions and continue operations.

- (II) *A description of the qualitative impact of the proposed rule:* The proposed rule allows the Board flexibility in determining whether a permit is in temporary cessation or must be terminated.

A description of the quantitative impact of the proposed rule: The Division did not identify a quantitative impact of the proposed rule.

- (III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The Division does not anticipate any costs to implement and enforce this proposed rule. The Division will have already identified the conditions which are causing the permit to be eligible for termination, so no additional staff time would be required.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate costs to any other agency for implementation and enforcement of the proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

- (IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* There are no costs associated with the proposed rule or inaction. The benefits of the proposed rule are the flexibility afforded the Board in determining whether an operation is in temporary cessation or must be terminated, which in turn will allow an operator to remain in business. There are no benefits to inaction.

- (V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* Since there are no costs for implementing the proposed revisions to the rule, the Division has determined that there are no less costly methods for achieving the purpose of the proposed rule. The Division does not perceive the rule to be intrusive. The rule allows the Board to offer an option for compliance which the operator can choose to decline.

(VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* The Division did not identify any alternative method for achieving the purpose of the proposed rule.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 2: BOARD MEETINGS - PERMIT APPLICATION HEARINGS, DECISIONS AND APPEALS

2.6 PREHEARING PROCEDURES - MOTIONS, WITNESS AND EXHIBIT LISTS

24-4-103(4.5)(a):

(I) *The classes of persons who will be affected by the proposed rule:* The classes of persons affected by the proposed rule include the public, persons with party status and applicants for any 112, 112d, 110 ISL, or 112 ISL permit and the Division.

The classes that will bear the costs of the proposed rule: Classes that will bear the costs of the proposed rule will be those persons including the applicant, those with party status and the Division, presenting motions, responses, replies, witness lists, and exhibit lists to the Board.

The classes that will benefit from the proposed rule: The public and permittees will benefit from the clarification of the applicability of the rule.

(II) *A description of the qualitative impact of the proposed rule:* A qualitative impact of the proposed rule is the clarification of the applicability of the rule.

A description of the quantitative impact of the proposed rule: The Division has not identified a quantitative impact of the rule.

(III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The Division does not anticipate any costs to implement and enforce this proposed rule.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate costs to any other agency for implementation and enforcement of the proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

(IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* The costs of the proposed rule (costs of two additional copies of materials) are as much as \$100 paid by the persons presenting the materials.

All affected parties benefit by the clarity of the applicability of this rule. Inaction continues to cause confusion as to the applicability of the rule.

(V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* The number of copies specified is the minimum number to ensure that each participating member of a Board hearing has access to the materials being presented; either the Board or the presenter will have to bear that cost. Accordingly, the Division does not believe there are less costly or less intrusive methods for achieving the purpose of the proposed rule.

(VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* The Division did not identify any alternative method for achieving the purpose of the proposed rule.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 2: BOARD MEETINGS - PERMIT APPLICATION HEARINGS, DECISIONS AND APPEALS

2.8 HEARINGS

24-4-103(4.5)(a):

(I) *The classes of persons who will be affected by the proposed rule:* The classes of persons who will be affected by the proposed rule include any person who is required to or desires to appear before the Board and the Board Chairman.

The classes that will bear the costs of the proposed rule: The Division has identified minimal costs associated with the proposed rule. There will be some costs associated with legal motions requesting the ability to appear by phone, responses to those motions, and any costs in having the person appear by phone.

The classes that will benefit from the proposed rule: Any person who is required to or desires to appear before the Board by telephone may benefit from the proposed rule.

(II) *A description of the qualitative impact of the proposed rule:* Qualitative impacts of the rule are increased scheduling flexibility for parties appearing before the Board, and the elimination of travel time to and from the Board.

A description of the quantitative impact of the proposed rule: A quantitative impact of the rule is the decrease in travel expenditures for parties appearing before the Board.

(III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The Division anticipates minimal costs for the implementation and enforcement of the proposed rule. There will be some costs associated with legal motions

requesting the ability to appear by phone, and responses to those motions, and any costs in having the person appear by phone.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs to any other agency for the implementation and enforcement of the proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

(IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* There are minimal costs associated with the proposed rule. Benefits of the proposed rule are accommodation of the needs of persons appearing before the Board. The proposed rule also provides a much needed structure to the process of telephonic appearance requests. The current process lacks structure which leads to confusion. Under the proposed rule, the final determination regarding appearance by phone is made by the Board Chairman, as opposed to being made by the Division. Inaction would eliminate the motions and response process but may not allow parties to appear by telephone when such an appearance by phone is reasonable and justified. In addition, inaction does not solve the current problems the Division has with requests to appear by phone.

(V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* Since there are minimal costs associated with the proposed rule and the rule accommodates the needs of persons appearing before the Board, the Division has determined that the least costly option is not to allow telephonic appearances before the Board, therefore, there would be no expense associated with legal motions and responses, however, this option would not achieve the purpose of the proposed rule which is to allow telephonic appearances to parties when such an appearance is reasonable and justified.

(VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* The alternative considered by the Division was to leave the rule unaltered. Rule 2.8.1 has no language regarding the ability to appear at a formal hearing by phone. The only language regarding telephonic appearances is found in Rule 2.7.3(4) and this language is specific to pre-hearing conferences. The elimination of the proposed language in Rule 2.8.1 would leave the regulations silent regarding the ability to appear by phone at a formal Board hearing.

The reasons the alternative methods were rejected in favor of the proposed rule: Requests for telephonic appearance are commonly received by the Division and the process set forth in this rule is reasonable. Currently, the rules are silent regarding the ability to appear at a formal Board hearing by telephone. The current request process is not structured, has no timelines for when a request can be made, and often the ability of a party to appear by phone was determined by the Division, not the Board. The Division wanted to provide a clear, structured process to handle requests to appear by phone and the Board has

indicated to the Division that the Board should be included in the determination of whether a request is reasonable and justified. Therefore, the Division rejected the alternative option of leaving the Rule unaltered and is silent as to the ability to request telephonic appearances in favor of a clear and structured request process that ultimately is determined by the Board Chairman.

RULE 2: BOARD MEETINGS - PERMIT APPLICATION HEARINGS, DECISIONS AND APPEALS

2.9 RECONSIDERATION OF BOARD DECISIONS

The proposed revisions to Rule 2.9 are non-substantive in nature (the revision is to a rule number reference only); therefore the Division has not analyzed the rule for the purposes of CRS 24-4-103(4.5)(a).

RULE 3: RECLAMATION PERFORMANCE STANDARDS, INSPECTION, MONITORING, AND ENFORCEMENT

3.1 RECLAMATION PERFORMANCE STANDARDS

24-4-103(4.5)(a):

- (I) *The classes of persons who will be affected by the proposed rule:* The classes of persons affected by the proposed rule include operators of ISL operations and the public the Division and the Board.

The classes that will bear the costs of the proposed rule: ISL operators might bear a cost with the proposed rule if groundwater contamination results and groundwater reclamation is required to begin which may lead to abandonment of resource remaining in the ground.

The classes that will benefit from the proposed rule: The public will benefit from the proposed rule since it ensures protection of groundwater.

- (II) *A description of the qualitative impact of the proposed rule:* The qualitative impact of the rule is the protection of groundwater.

A description of the quantitative impact of the proposed rule: A quantitative impact of the rule on ISL operators is the possibility of lost revenue in the event that production must cease and groundwater reclamation must commence— abandonment of resource remaining in the ground.

- (III) *The probable costs to Division for the implementation and enforcement of the proposed rule:* The Division anticipates minimal costs for implementation of this rule, since it changes only the timing of reclamation, not the reclamation requirements. The proposed rule does not result in new costs to the Division for reviewing monitoring reports or inspecting

monitoring processes, as these are tasks conducted under the existing rules. The proposed rule does mandate board hearings and potential orders to commence ground water reclamation that might not have occurred under the existing rules, and preparation and participation in such hearings are a cost to the Division.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate costs to any other agency for the implementation and enforcement of the proposed rule, as it does not require action on the part of any other agency.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

(IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* The costs of the proposed rule are the possible loss of operator revenue; there are no costs associated with inaction. The benefits of the proposed rule are protection of groundwater and environmental values; inaction would ensure that operators could continue production regardless of groundwater effects but would not meet statutory mandate on reclamation requirements.

(V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* The Division did not identify less costly or less intrusive methods for achieving the purpose of the proposed rule, which is to compel immediate reclamation of groundwater should contamination occur or production operations cease and to ensure that groundwater reclamation is consistent with applicable water quality standards. The proposed rule is consistent with the statute.

(VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* The Division did not consider alternative methods for achieving the purpose of the proposed rule, as the statute is explicit on this requirement.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 3: RECLAMATION PERFORMANCE STANDARDS, INSPECTION, MONITORING, AND ENFORCEMENT

3.1.7 Groundwater – Specific Requirements

24-4-103(4.5)(a):

(I) *The classes of persons who will be affected by the proposed rule:* The classes of persons affected by the proposed rule include operators of ISL operations, the public, the Division and the Board.

The classes that will bear the costs of the proposed rule: ISL operators would bear the costs of undertaking reclamation to meet these standards and the Division would bear the costs of inspection and enforcement.

The classes that will benefit from the proposed rule: The public will benefit from the proposed rule since it ensures protection of groundwater and reclamation.

- (II) *A description of the qualitative impact of the proposed rule:* The qualitative impact of the rule is the protection of groundwater.

A description of the quantitative impact of the proposed rule: Under existing law, as set forth in the narrative standards for groundwater, ISL operators would be required to reclaim to the statutory standards. These requirements are equivalent to the requirements set forth in the proposed rule that ISL operators reclaim to baseline conditions or the table value standards. Accordingly, the proposed rule does not create costs for ISL operators beyond what is already required with regard to the standard of reclamation that must be achieved by statute. Reclamation of groundwater costs will vary depending upon site specific characteristics of the operation, such as depth to and hydraulic conductivity of the mineralized zone, availability and cost of fresh water near the mine, and efficiency of evaporation ponds and/or injection wells for waste water disposal at or near the mine. Therefore it is difficult to estimate the cost of groundwater reclamation under the proposed rule. However, based on the Division's experience with DMOs the cost to reclaim groundwater that has been affected by a mining operation typically runs into the millions of dollars. Thus the cost of groundwater reclamation is not specific to this proposed rule, is required under the existing rules, and is costly.

In addition, operators are required by this proposed rule to utilize best available technology when designing and carrying out reclamation operations to meet the standards described in the proposed rule. While cost effectiveness is a factor in determining what the best technology available is, the requirement to utilize the best available technology may mean that operators select more expensive materials and technologies, thus raising costs. The requirement that ISL operators prevent and remediate any degradation of preexisting groundwater uses may also increase operating costs in situations where additional measures, beyond those needed to meet the standards outlined above, are necessary to protect preexisting uses during and after completion of operation.

- (III) *The probable costs to Division for the implementation and enforcement of the proposed rule:* The Division anticipates minimal additional costs for implementation of this proposed rule, because it merely mirrors statutory requirements. Review of technology to ensure utilization of best available technology will require additional work by the Division. The Division estimates that 40 hours of staff time will be required for such review. Ensuring protection of existing uses will also require additional staff time in the event that measures to protect such uses must be reviewed by staff.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate costs to any other agency for the

implementation and enforcement of the proposed rule, as it does not require action on the part of any other agency.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

(IV) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction: The costs of the proposed rule are the costs of reclamation for the operator as described above. The benefits of the proposed rule are protection of groundwater and environmental values and compliance with statutory mandates. Inaction would allow operators to continue production regardless of groundwater effects but would not meet statutory mandate on reclamation requirements.

(V) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule: The Division did not identify less costly or less intrusive methods for achieving the purpose of the proposed rule, to ensure that groundwater reclamation is consistent with applicable water quality standards, and to ensure that lands impacted by ISL operations are reclaimed. The proposed rule is consistent with the statute.

(VI) A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency: The Division did not consider alternative methods for achieving the purpose of the proposed rule, as the statute is explicit on this requirement.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 4: PERFORMANCE WARRANTIES AND FINANCIAL WARRANTIES

4.2 FINANCIAL WARRANTY LIABILITY AMOUNT

24-4-103(4.5)(a):

(I) The classes of persons who will be affected by the proposed rule: The classes of persons affected by the proposed rule are applicants for mining permits, permittees, the public, the Board and the Division.

The classes that will bear the costs of the proposed rule: There are no costs associated with the proposed rule.

The classes that will benefit from the proposed rule: Applicants for mining permits, permittees, the public, the Board and the Division will benefit from the clarification afforded by the rule.

- (II) *A description of the qualitative impact of the proposed rule:* The qualitative impact of the rule is clarification of the differentiation of the automatic approval dates for ISL and non-ISL operations; for the purposes of determining when the financial warranty must be submitted for an application that has been automatically approved.

A description of the quantitative impact of the proposed rule: There is no quantitative impact of the proposed rule.

- (III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* There are no costs for the Division to implement and enforce the proposed rule; all operations are required to submit a financial warranty regardless of whether or not they are ISL sites.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs to any other agency for implementation or enforcement of this rule since it does not require action on the part of any other agency.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

- (IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* There are no costs associated with the proposed rule or inaction. The benefit of the proposed rule is clarification, and consistency with the statute. There would be no benefit from inaction.

- (V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* The proposed rule is only for clarification and implementation of the statute and is not costly or intrusive.

- (VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* The Division did not consider alternative methods for achieving the purpose of the proposed rule.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 4: PERFORMANCE WARRANTIES AND FINANCIAL WARRANTIES

4.17 RELEASE OF PERFORMANCE AND FINANCIAL WARRANTIES FOR MINING OPERATIONS

24-4-103(4.5)(a):

- (I) *The classes of persons who will be affected by the proposed rule:* The classes of persons affected by the proposed rule include the public and operators of mining operations.

The classes that will bear the costs of the proposed rule: There are no costs associated with the proposed rule.

The classes that will benefit from the proposed rule: The public and mine operators will benefit from the proposed rule since it clarifies who may file a request for release of reclamation responsibility.

- (II) *A description of the qualitative impact of the proposed rule:* The qualitative impact of the proposed rule is increased clarity.

A description of the quantitative impact of the proposed rule: There is no quantitative impact of the proposed rule.

- (III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* There will be no costs to the Division for the implementation and enforcement of the proposed rule, since it does not change the requirements of the rule.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: There will be no costs to any other agency for the implementation and enforcement of the proposed rule, since it does not change the requirements of the rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

- (IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* There are no costs associated with the proposed rule or inaction; the benefit of the proposed rule is clarification. There would be no benefit from inaction.

- (V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* The proposed rule is a clarification only; it is not costly or intrusive.

- (VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* The Division did not consider alternative methods for achieving the purpose of the proposed rule, given that the purpose is clarity.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 4: PERFORMANCE WARRANTIES AND FINANCIAL WARRANTIES

4.18 PUBLIC NOTICE AND FILING OF WRITTEN OBJECTIONS REGARDING A REQUEST FOR RELEASE OF FINANCIAL WARRANTY

24-4-103(4.5)(a):

- (I) *The classes of persons who will be affected by the proposed rule:* Classes of persons affected by the proposed rule include the public, operators, and the Division.

The classes that will bear the costs of the proposed rule: There are no costs associated with the proposed rule.

The classes that will benefit from the proposed rule: The public, operators, and the Division will all benefit from knowing who may submit written objections to a request for reclamation responsibility release and the timelines for filing said objections.

- (II) *A description of the qualitative impact of the proposed rule:* The qualitative impact is the clarification of who may submit written objections to a request for reclamation responsibility release and the timelines for filing said objections.

A description of the quantitative impact of the proposed rule: There is no monetary quantitative impact of the rule, but it will apply to all persons.

- (III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The Division does not anticipate any costs for the implementation and enforcement of the proposed rule.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs to any other agency for the implementation and enforcement of the proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

- (IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* There are no costs associated with the proposed rule or inaction; the benefit of the proposed rule is clarification. There would be no benefit from inaction.

- (V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* The proposed rule is a clarification only; it is not costly or intrusive.

- (VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* The Division did not consider alternative methods for achieving the purpose of the proposed rule.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 5: PROSPECTING OPERATIONS

5.1 NOTICE OF INTENT TO CONDUCT PROSPECTING OPERATIONS

24-4-103(4.5)(a):

- (I) *The classes of persons who will be affected by the proposed rule:* The classes of persons who will be affected by the proposed rule include the public, new applicants for Notices of Intent to Conduct Prospecting (NOI), current prospectors, landowners of land included in an NOI, the Board and the Division.

The classes that will bear the costs of the proposed rule: The classes that will bear the costs of the proposed rule include current prospectors who want to modify their NOI, applicants for a new NOI, the Board and the Division.

The classes that will benefit from the proposed rule: The classes that will benefit from the proposed rule include the public, landowners of land included in an NOI, existing prospectors and anyone who might potentially file an NOI.

- (II) *A description of the qualitative impact of the proposed rule:* The qualitative impact of the rule will be accessible information for the public, landowners, and potential prospectors, and the ability to comment on the NOI.

A description of the quantitative impact of the proposed rule: The quantitative impact of the proposed rule is the cost of preparing additional materials (borne by the prospector) and the costs the Division will incur in maintaining the prospecting web site. In addition, the dispute procedures in proposed Rule 1.3 may require costs as specified in this regulatory analysis for that rule.

- (III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The Division incurred initial costs of \$1,000.00 to post all of the non-confidential prospecting documents on its web site. There will not be any ongoing costs for maintaining this information, as scanning documents for the Division's electronic imaging system is part of its normal workflow and the web site has been permanently linked to the imaging system. In addition, the Division may incur costs for participation in hearings specified in the proposed Rule 1.3 and in reviewing any public comment submitted on an NOI.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs to any other agency as a result of the proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

- (IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* The costs of the proposed rule are minimal (\$100 to prospectors, none to the Division); there are no associated costs with inaction. The benefits of the proposed rule are allowing the public and landowners to know what the prospector has proposed and the Division has approved, and allowing potential prospectors to know whether prospecting has previously been undertaken in a certain area. This rule also allows for a 10 day public comment period on NOI's. However, this comment period falls within the 20 day time period the Division has to review the NOI. Therefore, there may be minimal cost to the Division associated with review of the public comment as well as minimal cost to the prospector to respond to the comment if a response is requested by the Division. The Division does not anticipate public comment leading to any delay in the NOI review process, therefore, there will not be any additional cost associated with procedural delay due to the

receipt of public comment. There may be costs considering hearings on confidentially disputes as specified in this analysis for proposed Rule 1.3.

(V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* Since the rule is consistent with the requirements of SB-08-228, the Division did not investigate less costly or less intrusive methods for achieving the purpose of the proposed rule.

(VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* The draft Rule 5.1 went through a series of modifications throughout the informal stakeholder process, ultimately ending up with the proposed draft rule 5.1.1(2) which leaves the original language unaltered, and draft Rule 5.1.3 which alters Office review of NOI's and adds public comment. In regard to Rule 5.1.1(2), the Division's original draft issued in May 2009, contained language that stated that only the applicant of an NOI may appeal the Division's determination regarding whether the proposed activities constitute mining or prospecting. Based on discussions during the informal stakeholder process, the Division removed this express language that only the applicant has standing to appeal. It was determined that the Board, not the Division, should determine what rights, if any, are associated with appealing the Division's prospecting vs. mining determination. Therefore, no changes were made to the current language in Rule 5.1.1(2). In regard to Rule 5.1.3 the Division's original draft contained no changes to this section. However, based on discussions during the informal stakeholder process and recognizing that the Division receives public comment on numerous prospecting sites, the Division believed that creating a structured process for the receipt of public comment was reasonable and within the Board's rulemaking authority. In regard to Rule 5.1.2, the language proposed is consistent with the explicit language of SB 228, therefore, no alternate methods were strongly considered.

The reasons the alternative methods were rejected in favor of the proposed rule: The Division rejected the original language in the May 2009 draft that allowed only the applicant to appeal a prospecting vs. mining determination because, as stated above, it was determined that such a determination of appeal rights should be made by the Board. As for the addition of a public comment period, the Division receives public comment on numerous prospecting sites and the Division believes the specific timeframe is reasonable. The proposed rule allows for public comment no later than 10 working days after the NOI is posted on the Division website. This 10 day time period falls within the 20 day time period in which the Division has to review the NOI. The alternate method of not including a public comment process was rejected because the Division currently receives public comment on NOI submittals and because the proposed rule clarifies the process associated with the public's ability to comment.

RULE 5: PROSPECTING OPERATIONS

5.2 CONFIDENTIALITY

24-4-103(4.5)(a):

- (I) *The classes of persons who will be affected by the proposed rule:* The classes of persons who will be affected by the proposed rule include the public, new NOI applicants, current prospectors, landowners of land included in an NOI, and the Division.

The classes that will bear the costs of the proposed rule: There minimal costs to prospectors who designate portions of NOIs as confidential and to the Division associated with the proposed rule.

The classes that will benefit from the proposed rule: The classes that will benefit from the proposed rule include the public, landowners of land included in an NOI, and anyone who might potentially file an NOI.

- (II) *A description of the qualitative impact of the proposed rule:* The qualitative impact of the rule will be readily available information for the public, landowners, and potential prospectors and protection of information the statute requires to be kept confidential.

A description of the quantitative impact of the proposed rule: Prospectors who choose to designate portions of NOIs confidential will incur costs to prepare duplicate maps and documents for the confidential and non-confidential files, and costs to prepare for and participate in board hearings if confidentiality designations are challenged. The Division will incur costs to maintain two sets of files for each NOI where sections are designated confidential, and costs to prepare for and participate in board hearings if confidentiality designations are challenged.

- (III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The Division will incur costs to maintain two sets of files for each NOI where portions are designated confidential, and costs to prepare for and participate in board hearings if confidentiality designations are challenged.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs to any other agency as a result of the proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

- (IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* There are no associated costs with inaction. The benefits of the proposed rule are reasonably implementing the mandates of SB-08-228 allowing the public and landowners to know what the prospector has proposed and the Division has approved, allowing potential prospectors to know whether prospecting has previously been undertaken in a certain area, and protecting information required to be kept confidential.

(V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* Since the rule is consistent with the requirements of SB-08-228, the Division did not investigate less costly or less intrusive methods for achieving the purpose of the proposed rule.

(VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* Since the rule is consistent with the requirements of SB-08-228, the Division did not consider any other alternatives to the rule.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 5: PROSPECTING OPERATIONS

5.6 ANNUAL REPORT

24-4-103(4.5)(a):

(I) *The classes of persons who will be affected by the proposed rule:* The classes of persons who will be affected by the proposed rule include the public, new NOI applicants, current prospectors, landowners of land included in an NOI, and the Division.

The classes that will bear the costs of the proposed rule: There are minimal costs to prospectors with multiple NOIs associated with the proposed rule.

The classes that will benefit from the proposed rule: The classes that will benefit from the proposed rule include the public, current prospectors and landowners of land included in an NOI.

(II) *A description of the qualitative impact of the proposed rule:* The qualitative impact of the rule will be readily available information for the public and landowners, while keeping information confidential as required by statute. In addition, the proposed rule changes the date on which a prospector must file an annual report from December 31 to anniversary date of the approval of the NOI.

A description of the quantitative impact of the proposed rule: The Division does not anticipate a monetary quantitative impact as a result of the proposed rule. Prospectors with multiple NOIs will bear costs of preparing annual reports throughout the calendar year, as opposed to having a single due date.

(III) *The probable costs to Division for the implementation and enforcement of the proposed rule:* The Division will incur no costs with implementation and enforcement of the proposed rule.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs to any other agency as a result of the proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

(IV) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction: There are no associated costs with the proposed rule or with inaction. The benefits of the proposed rule are allowing the public and landowners to know what activities have taken place during the year and implementing the mandates of SB-08-228. An additional benefit is keeping confidential information required by statute to be held confidential in annual reports submitted prior to June 2, 2008.

(V) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule: Since the rule is consistent with the requirements of SB-08-228, the Division did not investigate less costly or less intrusive methods for achieving the purpose of the proposed rule.

(VI) A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency: Since the rule is consistent with the requirements of SB-08-228, the Division did not consider any other alternatives to the rule.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 5: PROSPECTING OPERATIONS

5.7 FINAL REPORT

24-4-103(4.5)(a):

(I) The classes of persons who will be affected by the proposed rule: The classes of persons who will be affected by the proposed rule include the public, current prospectors, new NOI applicants, landowners of land included in an NOI, and the Division.

The classes that will bear the costs of the proposed rule: There are no costs associated with the proposed rule.

The classes that will benefit from the proposed rule: The classes that will benefit from the proposed rule include the public, prospectors and landowners of land included in an NOI.

(II) A description of the qualitative impact of the proposed rule: The qualitative impact of the rule will be readily available information for the public and landowners while also keeping information confidential as required by statute.

A description of the quantitative impact of the proposed rule: The Division does not anticipate a monetary quantitative impact as a result of the proposed rule, but it will apply to all prospectors, the public, and landowners of land included in an NOI.

(III) The probable costs to Division for the implementation and enforcement of the proposed rule: Division will incur no costs with implementation and enforcement of the proposed rule.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs to any other agency as a result of the proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

(IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* There are no associated costs with the proposed rule or with inaction. The benefits of the proposed rule are allowing the public and landowners to know what activities have taken place at a prospecting site; and keeping confidential information required by statute to be kept confidential.

(V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* Since the rule is consistent with the requirements of SB-08-228, the Division did not investigate less costly or less intrusive methods for achieving the purpose of the proposed rule.

(VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* Since the rule is consistent with the requirements of SB-08-228, the Division did not consider any other alternatives to the rule.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 5: PROSPECTING OPERATIONS

5.8 NO WAIVER OF ADMINISTRATIVE REQUIREMENTS

24-4-103(4.5)(a):

(I) *The classes of persons who will be affected by the proposed rule:* The classes of persons who will be affected by the proposed rule include the public, prospectors, and the Division.

The classes that will bear the costs of the proposed rule: There are no costs associated with the proposed rule.

The classes that will benefit from the proposed rule: The public will benefit from the proposed rule.

(II) *A description of the qualitative impact of the proposed rule:* The qualitative impact of the proposed rule is that the reporting requirements of the rules will be applied without exceptions.

A description of the quantitative impact of the proposed rule: There is no monetary quantitative impact of the proposed rule, but it will apply to all prospectors.

(III) *The probable costs to Division for the implementation and enforcement of the proposed rule:* The Division does not anticipate any costs for implementation and enforcement of the proposed rule.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs to any other agency for implementation and enforcement of the proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate an effect on state revenues.

(IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* There are no costs associated with the proposed rule or inaction; the benefit of the proposed rule is consistency in reporting requirements. The benefit of inaction would be operators being afforded flexibility in what is required. However, inaction would be inconsistent with the statute.

(V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* Since the proposed rule is required by SB-08-228, the Division determined that there are no less costly or less intrusive methods for achieving the purpose of the proposed rule.

(VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* Since the proposed rule is required by SB-08-228, the Division did not consider any alternative methods for achieving the purpose of the proposed rule.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 6: PERMIT APPLICATION EXHIBIT REQUIREMENTS

6.1 REQUIREMENTS FOR SPECIFIC OPERATIONS

24-4-103(4.5)(a):

(I) *The classes of persons who will be affected by the proposed rule:* The classes of persons who will be affected by the proposed rule include the public, ISL permit applicants, and the Division.

The classes that will bear the costs of the proposed rule: There are no anticipated costs to administer or comply with this rule, since it merely names the required exhibits for ISL operations. The costs, if any, associated with each exhibit are discussed under each specific exhibit.

The classes that will benefit from the proposed rule: The public will benefit from the proposed rule.

(II) *A description of the qualitative impact of the proposed rule:* The qualitative impact of the rule will be increased information and compliance with requirements for ISL applications.

A description of the quantitative impact of the proposed rule: The quantitative impact of the rule is a possible cost to applicants to prepare and submit the additional required information

(discussed in detail with each specific exhibit requirement), which will affect an estimated two applicants annually.

(III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* There are no anticipated costs to the Division for the implementation and enforcement of this rule, since it merely names the required exhibits for ISL operations. The costs, if any, associated with each exhibit are discussed under each specific exhibit.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: There are no anticipated costs to any other agency for the implementation and enforcement of this rule, since it merely names the required exhibits for ISL operations. The costs, if any, associated with each exhibit are discussed under each specific exhibit.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

(IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* There are no costs for this particular rule (costs, if any are discussed under each specific exhibit) or for inaction; the benefit of the rule will be additional information in ISL applications; and implementation of HB 08-1161 requirements. Inaction would benefit ISL applicants by decreasing the information required in support of an ISL application.

(V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* The Division has determined that, since the information contained in the exhibits is a requirement identified in HB-08-1161, there is no cost or less intrusive method of achieving the purpose of the proposed rule.

(VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* No alternative methods were considered.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 6: PERMIT APPLICATION EXHIBIT REQUIREMENTS

6.3 SPECIFIC PERMIT APPLICATION EXHIBIT REQUIREMENTS - 110 and NON IN SITU LEACH MINING OPERATIONS 110d LIMITED IMPACT OPERATIONS

24-4-103(4.5)(a):

(I) *The classes of persons who will be affected by the proposed rule:* 110 ISL applicants will be affected by the proposed rule; the proposed rule simply directs applicants for 110 ISL permits to existing and proposed rule 6.4 as required by HB-08-1161.

The classes that will bear the costs of the proposed rule: There are no anticipated costs with the proposed rule. The costs, if any, associated with each exhibit are discussed under each specific exhibit.

The classes that will benefit from the proposed rule: Applicants for 110 ISL permits, the public, and the Division will benefit from the changes the rule provides. The benefit of the proposed rule is the clarity of the requirements applicable to 110 ISL permit applications.

- (II) *A description of the qualitative impact of the proposed rule:* There are no qualitative impacts. The costs, if any, associated with each exhibit are discussed under each specific exhibit

A description of the quantitative impact of the proposed rule: There are no quantitative impacts. The costs, if any, associated with each exhibit are discussed under each specific exhibit.

- (III) *The probable costs to Division for the implementation and enforcement of the proposed rule:* There are no anticipated costs to the Division. The costs, if any, associated with each exhibit are discussed under each specific exhibit.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: There are no anticipated costs to any other agency.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

- (IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* There are no costs for this particular rule. The costs, if any, associated with each exhibit are discussed under each specific exhibit. The benefit of the rule will be clarity of the requirements applicable to ISL 110 permit applications. Inaction would benefit ISL applicants by decreasing the information required in support of a 110 ISL application.

- (V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* There are no less costly or less intrusive methods of achieving the purpose of the proposed rule.

- (VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* No alternative methods were considered.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 6: PERMIT APPLICATION EXHIBIT REQUIREMENTS

6.4 SPECIFIC EXHIBIT REQUIREMENTS - 112, 112 ISL or 110 ISL RECLAMATION OPERATION AND 112d DESIGNATED MINING OPERATIONS

24-4-103(4.5)(a):

- (I) *The classes of persons who will be affected by the proposed rule:* The classes of persons who will be affected by the proposed rule include the public, ISL permit applicants, and the Division.

The classes that will bear the costs of the proposed rule: There are no anticipated costs to administer or comply with this rule, because Rule 6.4 applies to all operations and the proposed rule merely clarifies that it is applicable to ISL operations, including 110 ISL operations.

The classes that will benefit from the proposed rule: The public will benefit from the proposed rule, since it clarifies and ensures that all applications will include exhibits required by Rule 6.4.

- (II) *A description of the qualitative impact of the proposed rule:* There is no qualitative impact of the revised rule, since it does not change any existing requirements. The exhibits named in Rule 6.4 would be required from any operator seeking a 112 permit.

A description of the quantitative impact of the proposed rule: The rule would apply to all applications for a 112, 112 ISL, 110 ISL, or 112d mining permit. The Division receives less than five of these types of applications (112 or 112d) annually, an estimated two of which would be for ISL permits. There is no monetary impact of this rule, the proposed rule merely clarifies the exhibits required for application for certain mining operations.

- (III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* There are no anticipated costs to the Division for the implementation and enforcement of this rule, since the proposed rule merely clarifies the exhibits required for application for certain mining operations.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: There are no anticipated costs to any other agency for the implementation and enforcement of this rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

- (IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* There are no costs for this particular rule or for inaction; the benefit is clarification that all applications, including those for ISL permits must provide the information required by Rule 6.4.

- (V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* The Division has determined that, since the information contained in the exhibits is a requirement identified in HB-08-1161, there is no cost or less intrusive method of achieving the purpose of the proposed rule.

- (VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* No alternative methods were considered.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 6: PERMIT APPLICATION EXHIBIT REQUIREMENTS

6.4 SPECIFIC EXHIBIT REQUIREMENTS - 112, 112 ISL or 110 ISL RECLAMATION OPERATION AND 112d DESIGNATED MINING OPERATIONS

6.4.19 Exhibit S – Proof of Mailing Notices to Affected Owners

24-4-103(4.5)(a):

- (I) *The classes of persons who will be affected by the proposed rule:* The persons affected by the proposed rule will be all applicants for mining operations, landowners within 200 feet of the boundary of the affected land for any operation, and landowners within three miles of the boundary of ISL operations.

The classes that will bear the costs of the proposed rule: The applicants for mining operations will bear the costs for this proposed rule.

The classes that will benefit from the proposed rule: The classes that will benefit from the proposed rule are landowners within 200 feet of the boundary of the affected land and landowners within three miles of the boundary of ISL operations.

- (II) *A description of the qualitative impact of the proposed rule:* The qualitative impact of the proposed rule will be increased awareness among landowners near the mining operations being proposed.

A description of the quantitative impact of the proposed rule: The quantitative impact of the rule for applicants will be the cost to purchase a proof of mailing certificate (currently \$1.15 per article) and to prepare and mail the notices and create the exhibit. The rule will impact all permit applicants and specifically an estimated two ISL applicants annually. Subdivided ownership density is highly variable across Colorado. Therefore the costs incurred will vary depending on the location of a proposed operation and the land parcel sizes within 200 feet or a three mile area as applicable. The costs could be from a few hundred to thousands of dollars. There are costs associated with the identification of landowners which may include research or review of tax records or other research for both surface and mineral right owners of record.

- (III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The Division does not anticipate any costs for the implementation and enforcement of the proposed rule.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs to any other agency for the implementation and enforcement of the proposed rule. Costs incurred by the postal service would be offset by the fee for proof of mailing certification.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

(IV) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction: The costs of filing proof of mailing would be minimal. The costs to ISL applicants would be hundreds to a few thousand dollars; the benefit would be that the land owners are aware of mining activities that may affect them.

(V) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule: There is no less costly or less intrusive method for achieving the purpose of the proposed rule, which is to ensure that permit applicants have notified landowners of mining applications as required by the statute.

(VI) A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency: No alternative methods were considered as proof of mailing notices ensures compliance with notice requirements is required by statute.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 6: PERMIT APPLICATION EXHIBIT REQUIREMENTS

6.4 SPECIFIC EXHIBIT REQUIREMENTS - 112, 112 ISL or 110 ISL RECLAMATION OPERATION AND 112d DESIGNATED MINING OPERATIONS

6.4.21 Exhibit U – Designated Mining Operation Environmental Protection Plan

24-4-103(4.5)(a):

(I) The classes of persons who will be affected by the proposed rule: The classes of persons who will be affected by the proposed rule include the public, applicants for uranium mining permits, and the Division.

The classes that will bear the costs of the proposed rule: The classes that will bear the costs of the proposed rule include applicants for uranium mining permits and the Division.

The classes that will benefit from the proposed rule: The public and environment will benefit from the proposed rule.

(II) A description of the qualitative impact of the proposed rule: The qualitative impact of the proposed rule is increased public health and safety afforded by the required environmental protection plan.

A description of the quantitative impact of the proposed rule: The quantitative impact of the proposed rule is the cost to uranium applicants to prepare Exhibit U (the Division estimates \$50,000 to \$100,000) each for an estimated two applicants annually, and the cost to the Division to review those exhibits (the Division estimates \$10,000 to \$15,000 for review).

These costs are about the same as would be incurred by applicants and the Division under the existing rules; the Division was in the process of making uranium mines DMOs on a case-by-case basis prior to HB-08-1161. However, HB-08-1161 makes explicit that all uranium mines are designated mining operations and imposed requirements for uranium and ISL permit applications. The estimated cost to applicants is based on engaging a multi-disciplinary team of outside consultants to address the broad range of topics required to be addressed in an Environmental Protection Plan. The team would review and analyze the baseline characterization information and conduct a detailed review of the applicant's mining and processing plans, and inspect the proposed mining and processing sites. The team and the applicant would meet with the Division to discuss their findings and approach and to gain clarification on any questions they have identified on process and substance. The team may make recommendations for changes to the mining and processing plans to facilitate environmental protection, and would prepare and assemble all of the information into an Environmental Protection Plan that will meet the requirements for Exhibit U to a uranium permit application. Such a project would require an estimated total of 280 to 560 hours of outside consultant time, the range being dependent on the size, scope, and setting of a particular proposed mine. The estimated cost to the Division is the cost for staff with a variety of expertise to review the plan provided and require changes determined to be necessary. The Division has reviewed a number of Environmental Protection Plans over the past fifteen years, from a variety of mine types and operation sizes. It is the Division's experience that multiple review and response iterations are necessary to obtain an approvable Environmental Protection Plan from applicants. Review of Environmental Protection Plans requires an estimated total of 175 to 265 hours of Division staff time, the range being dependent on the size, scope, and setting of a particular proposed mine.

(III) *The probable costs to Division for the implementation and enforcement of the proposed rule:* The costs to the Division would be the time required to review an additional two expected exhibits, approximately \$10,000 to \$15,000 for each Exhibit U submitted. Note: this is the cost to review an Environmental Protection Plan, Exhibit U only; the other exhibits included in a permit application would be reviewed at additional cost to the Division. Under §34-32-127(2)(a)(I)(O) C.R.S., applicants for ISL permits are required to pay the Division's costs to review and process the application if those costs are more than twice the value of the application fee. The application fee for an ISL permit under §34-32-112.5(3)(d) C.R.S. is \$8000. Therefore, depending on the actual cost to the Division to review Exhibit U and the other exhibits of an ISL application, a portion of the Division's costs might be paid by the applicant.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs to any other agency for the implementation or enforcement of the proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate an effect on state revenues.

(IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* The costs of the proposed rule are approximately \$50,000 to \$100,000 to the applicants and \$10,000 to \$15,000 to the Division for each exhibit U, some portion of which might be paid by applicants under 34-32-127(2)(a)(I)(O) C.R.S.; there are no monetary costs associated with inaction, but it would be contrary to the requirements of HB-08-1161. The benefits of the proposed rule are increased public health and safety; the benefits of inaction would be realized by applicants who would not be required to submit an Environmental Protection Plan, however, this would be contrary to HB-08-1161.

(V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* Since the purpose of the proposed rule is the implementation of HB-08-1161, which requires a specific Environmental Protection Plan for uranium operations, the Division has determined that there are no less costly or less intrusive methods for achieving the purpose of the proposed rule.

(VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* No alternative methods were considered given the legislative mandate.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 6: PERMIT APPLICATION EXHIBIT REQUIREMENTS

6.4 SPECIFIC EXHIBIT REQUIREMENTS - 112, 112 ISL or 110 ISL RECLAMATION OPERATION AND 112d DESIGNATED MINING OPERATIONS

6.4.22 Exhibit V – Description of ISL Mines Required for All In Situ Leach Mining Applications Regardless of Designated Mining Operation Status

24-4-103(4.5)(a):

(I) *The classes of persons who will be affected by the proposed rule:* The classes of persons who will be affected by the proposed rule include the public, users of groundwater adjacent to an ISL operation, applicants for ISL permits, and the Division.

The classes that will bear the costs of the proposed rule: The classes that will bear the costs of the proposed rule include applicants for ISL permits and the Division.

The classes that will benefit from the proposed rule: The public and groundwater users will benefit from the proposed rule.

(II) *A description of the qualitative impact of the proposed rule:* The qualitative impact of the proposed rule is increased public health and safety afforded by the required demonstration of the applicant's ability to conduct the proposed mining operation without leakage, migration or excursions of undesirable constituents as specified in the statute.

A description of the quantitative impact of the proposed rule: The quantitative impact of the proposed rule is the cost to prepare Exhibit V (the Division estimates \$40,000) to an

estimated two applicants annually, and the cost to the Division to review those exhibits (the Division estimates \$22,656). For applicants, it will be necessary to research, analyze, compile, and prepare report within information from at least five ISL mines to meet the requirements of the proposed rule. This will involve interaction with government regulatory agencies at state and local levels to access various permit and license files, which may or may not be available in electronic format, and interaction with ISL mine operators who may be competitors of the applicant to access mining information and data that may not be in the government files. Since there has only been one ISL operation in Colorado to date, and that was a test or pilot scale operation, the comparable mines are all located in other states or outside the USA. The applicant must engage outside consultants or use in house personnel to travel to other states to research ISL mine records and/or pay for copying and shipping of the files to be researched. In the case of the one pilot scale ISL mine that operated in Colorado, the Division's permit file has been archived and is not available in electronic format. It can be expected that similar circumstances will be encountered in efforts to research ISL permit files from closed mines in other locales. The research required to prepare the reports necessary to satisfy the proposed rule is likely to be time consuming, and therefore costly, leading to the Division's \$40,000 estimated cost to applicants. The basis for the estimated cost to the Division to review the Exhibit V required under the proposed rule is staff time that will be expended to check and verify the data and information provided by the applicant. Essentially, Division staff will conduct the same types of research as described above for the applicant, but on a more focused scale.

(III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The costs to the Division would be the time required to review the additional two expected exhibits, approximately 400 hours/\$22,656 per year. Under §34-32-127(2)(a)(I)(O) C.R.S., applicants for ISL permits are required to pay the Division's costs to review and process the application if those costs are more than twice the value of the application fee. The application fee for an ISL permit under §34-32-112.5(3)(d) C.R.S. is \$8000. Therefore, depending on the actual cost to the Division to review an Exhibit V and the other exhibits of an ISL application, a substantial portion of the Division's costs might be paid by the applicant.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs to any other agency for the implementation or enforcement of the proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate an effect on state revenues.

(IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* The annual costs of the proposed rule are approximately \$40,000 to the applicants and \$22,656 to the Division. There are no monetary costs associated with inaction, but it would be contrary to the requirements of HB-08-1161. The benefits of the proposed rule are increased public health and safety; the benefits of inaction

would be realized by applicants who would not be required to submit the required demonstration, but this would be contrary to HB-08-1161.

(V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* Since the purpose of the proposed rule is the implementation of HB-08-1161, which requires ISL applications to include a description of at least five ISL mining operations that demonstrates the ability of the applicant to conduct the proposed mining operation without any leakage, vertical or lateral migration, or excursion of any leaching solutions or ground-water-containing minerals, radionuclides, or other constituents mobilized, liberated, or introduced by the in situ leach mining process into any groundwater outside of the permitted in situ leach mining area, the Division has determined that there are no less costly or less intrusive methods for achieving the purpose of the proposed rule.

(VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* The Division considered a variety of factors that should be examined by applicants when making the demonstration. The Division originally proposed the following language in proposed rule 6.4.22(1)(c):

“(c) Any known accidents, failures, leaks, releases or spills that at all affected groundwater at each of the five referenced mining operations.”

In addition, this proposed rule originally referred to the “Comparison of ISL Mines” in both its title and text.

The reasons the alternative methods were rejected in favor of the proposed rule: In response to stakeholder comment stating that the “at all affected” language of 6.4.22(1)(c) was too broad, the Division revised the language to its current form. In response to stakeholder comment, the Division changed the language of the rule to match the statute.

RULE 6: PERMIT APPLICATION EXHIBIT REQUIREMENTS

6.4 SPECIFIC EXHIBIT REQUIREMENTS - 112, 112 ISL or 110 ISL RECLAMATION OPERATION AND 112d DESIGNATED MINING OPERATIONS

6.4.23 Exhibit W – Baseline Site Characterization – All In Situ Leach Mining Operations, Regardless of Designated Mining Operation Status

24-4-103(4.5)(a):

(I) *The classes of persons who will be affected by the proposed rule:* The classes of persons who will be affected by the proposed rule include the public, applicants for ISL permits, and the Division.

The classes that will bear the costs of the proposed rule: The classes that will bear the costs of the proposed rule include applicants for ISL permits and the Division.

The classes that will benefit from the proposed rule: The public, groundwater users and the environment will benefit from the proposed rule.

(II) *A description of the qualitative impact of the proposed rule:* The qualitative impact of the proposed rule is increased public awareness of baseline conditions, and protection of groundwater and the environment.

A description of the quantitative impact of the proposed rule: The quantitative impact of the proposed rule is the cost to prepare Exhibit W (the Division estimates \$500,000 to \$3,000,000) to an estimated two applicants annually, and the cost to the Division to review those exhibits (the Division estimates \$12,000 to \$100,000). These costs are about the same as would be incurred by applicants and the Division for necessary baseline site characterization under the existing rules. The estimated cost to applicants is based largely on the cost to collect and analyze ground water data sufficient to characterize baseline conditions; this is the overriding cost for Exhibit W. These costs are highly dependent on the size, scope, and setting of a particular proposed mine. For example, a medium size ISL operation may drill fifty monitoring wells for baseline ground water characterization, with an average well depth of five hundred feet. An average unit cost to drill, complete, and subsequently plug and abandon a monitoring well is \$60 per linear foot drilled. This example yields:

$$50 \text{ wells} \times 500 \text{ feet} \times \$60 = \$1,500,000$$

The cost to collect, analyze, and report ground water data from the wells, based on a unit cost of \$2000 per sampling event for sample collection, laboratory analysis, and data analysis, is estimated as follows:

$$50 \text{ wells} \times 8 \text{ sampling events} \times \$2000 = \$800,000$$

The number of monitoring wells required to characterize a proposed mine is highly variable, and dependent on the areal extent and configuration of mineralized zones and the areal extent and configuration of intervening non-mineralized zones. The Division's estimated range of costs for this proposed rule considers areas to be characterized from one thousand to ten thousand acres, with the mineralized zones underlying these areas being less than ten percent of those totals. The depth of required monitoring wells is highly variable, depending on the depth to mineralized zones, and the number and depth of water producing formations above and below mineralized zones. The cost to complete and sample monitoring wells is highly variable. Some wells may require dedicated pumps, which increase completion costs but reduce sampling costs. Some wells may have to be sampled using micro-purge technology; some wells may have to be bailed by hand. There is substantial baseline characterization required other than ground water characterization, including surface water characterization, climate characterization which may require installation of one or more dedicated weather stations, and baseline radiological characterization. These variables in potential mine size and setting leads to the relatively wide range of estimated costs to prepare Exhibit W stated above.

The estimated cost to the Division is the cost for staff with a variety of expertise, particularly focused on geochemistry, ground water hydrology, and ground water hydrogeology, to review the baseline characterization plan provided and require changes determined to be

necessary. The Division has reviewed a number of baseline characterization plans over the past fifteen years, from a variety of mine types and operation sizes. Baseline data collection may be inspected and audited by Division staff, which may include collection of split samples. Review of the data and analysis provided by applicants in Exhibit W is very time consuming as there are likely to be tens of thousands of data points from ground water quality data alone. Review and regulation of baseline characterization requires an estimated total of 210 to 1765 hours of Division staff time, the range being dependent on the size, scope, and setting of a particular proposed mine.

(III) The probable costs to the Division for the implementation and enforcement of the proposed rule: The costs to the Division would be the time required to review the additional two expected exhibits, approximately \$24,000 to \$200,000 per year. Under §34-32-127(2)(a)(I)(O) C.R.S., applicants for ISL permits are required to pay the Division's costs to review and process the application if those costs are more than twice the value of the application fee. The application fee for an ISL permit under §34-32-112.5(3)(d) C.R.S. is \$8000. Therefore, depending on the actual cost to the Division to review an Exhibit W and the other exhibits of an ISL application, a substantial portion of the Division's costs might be paid by the applicant. However, a considerable percentage of the estimated cost to the Division stated above is for the review and inspections involved in the planning for and collection of baseline information, which occurs prior to permit application and is not covered under §34-32-127(2)(a)(I)(O) C.R.S. However, under HB-08-1161, the Division is authorized to hire a third party to review baseline documents and monitor baseline activities with the prospective applicant paying for such costs. (See section 34-32112.5 (5) C.R.S.) Accordingly, the Division's costs may be offset as provided in HB-08-1161.

(IV) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction: The costs of the proposed rule are approximately \$500,000 to \$3,000,000 to the applicants and \$12,000 to \$100,000 to the Division, There are no monetary costs associated with inaction, but it would be contrary to the requirements of HB-08-1161. The benefits of the proposed rule are increased awareness of baseline conditions and protection of groundwater and the environment. The benefits of inaction would be realized by applicants who would not be required to submit the required baseline data, however, this would be contrary to HB-08-1161.

(V) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule: Since the purpose of the proposed rule is the implementation of HB-08-1161, which requires specific information to be included in the baseline characterization, the Division has determined that there are no less costly or less intrusive methods for achieving the purpose of the proposed rule.

(VI) A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency: No alternative methods were considered.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 6: PERMIT APPLICATION EXHIBIT REQUIREMENTS

6.4 SPECIFIC EXHIBIT REQUIREMENTS - 112, 112 ISL or 110 ISL RECLAMATION OPERATION AND 112d DESIGNATED MINING OPERATIONS

6.4.24 Exhibit X – Monitoring Plan – All In Situ Leach Mining Operations, Regardless of Designated Mining Operation Status

24-4-103(4.5)(a):

- (I) *The classes of persons who will be affected by the proposed rule:* The classes of persons who will be affected by the proposed rule include the public, water users adjacent to an ISL operation, applicants for ISL permits, and the Division.

The classes that will bear the costs of the proposed rule: The classes that will bear the costs of the proposed rule include applicants for ISL permits and the Division.

The classes that will benefit from the proposed rule: The public and water users will benefit from the proposed rule.

- (II) *A description of the qualitative impact of the proposed rule:* The qualitative impact of the proposed rule is increased public awareness afforded by the required plan to monitor surface and groundwater potentially affected by the in situ leach mining operation.

A description of the quantitative impact of the proposed rule: The quantitative impact of the proposed rule is the cost to prepare Exhibit X and implement the required plan (the Division estimates no direct cost as this is an extension of baseline characterization activities and would be required regardless of the proposed changes to the rules) to an estimated two applicants annually, and the cost to the Division to review those exhibits and monitoring data (the Division estimates no direct cost as this is an extension of baseline characterization activities and would be required regardless of the proposed changes to the rules). Process water excursion monitoring and management in the subsurface is a significant operational cost at ISL mines. This proposed rule does not result in any increased costs for monitoring over what is required under the existing rules.

- (III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The costs to Division would be the time required to review the additional two expected exhibits and monitoring data, but there is no direct cost as this is an extension of baseline characterization activities and would be required regardless of the proposed rule changes.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs to any other agency for the implementation or enforcement of the proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate an effect on state revenues.

(IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* As stated above there are no monetary costs associated with the proposed rule or with inaction. However, inaction would be contrary to the requirements of HB-08-1161. The benefits of the proposed rule are increased public awareness and groundwater protection. The benefits of inaction would be realized by applicants who would not be required to submit the required monitoring plan or conduct the monitoring required by the plan. However, this would be contrary to the statute requirements.

(V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* Since the purpose of the proposed rule is the implementation of HB-08-1161, which specifically requires a water monitoring plan, the Division has determined that there are not less costly or less intrusive methods for achieving the purpose of the proposed rule.

(VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* No alternative methods were considered.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 6: PERMIT APPLICATION EXHIBIT REQUIREMENTS

6.4 SPECIFIC EXHIBIT REQUIREMENTS - 112, 112 ISL or 110 ISL RECLAMATION OPERATION AND 112d DESIGNATED MINING OPERATIONS

6.4.25 Exhibit Y – Certification of Prior and Current Violations – All In Situ Leach Mining Operations, Regardless of Designated Mining Operation Status

24-4-103(4.5)(a):

(I) *The classes of persons who will be affected by the proposed rule:* The classes of persons who will be affected by the proposed rule include the public, applicants for ISL permits, applicants for a transfer of an ISL permit and the Division.

The classes that will bear the costs of the proposed rule: The classes that will bear the costs of the proposed rule include applicants for ISL permits, applicants for a transfer of an ISL permit, and the Division.

The classes that will benefit from the proposed rule: The public will benefit from the proposed rule.

(II) *A description of the qualitative impact of the proposed rule:* The qualitative impact of the proposed rule is increased public health and safety afforded by the assurance that the Board will consider known history of non-compliance in conjunction with an ISL application.

A description of the quantitative impact of the proposed rule: The quantitative impact of the proposed rule is the cost to prepare Exhibit Y (which will vary with the number of affiliates, officers, or directors of the applicant) for an estimated two applicants annually. The Division anticipates these costs will be minimal, since an applicant/operator could conduct an internal

survey of its affiliates, officers, and directors for the history of any violations. The Division will incur costs to review the history information, which will include querying regulatory agencies in Colorado and other states where any of the applicant/operator, its affiliates, officers, and/or directors have conducted mining operations (the Division estimates up to 200 hours, or \$11,328). These costs would also apply to transfer applicants and the Division in regard to a requested transfer of an ISL permit to another entity.

(III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The costs to the Division would be the time required to review the additional two expected exhibits, approximately 200 hours, or \$11,328.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs to any other agency for the implementation or enforcement of the proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate an effect on state revenues.

(IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* The costs of the proposed rule are minimal for the applicants and \$11,328 for the Division. There are no monetary costs associated with inaction, but it would be contrary to the requirements of HB-08-1161. The benefits of the proposed rule are increased public health and safety and public awareness. The benefits of inaction would be realized by applicants who would not be required to submit the required compliance history but this would be contrary to the statute.

(V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* Since the purpose of the proposed rule is the implementation of HB-08-1161, which specifically requires the compliance history, the Division has determined that there are no less costly or less intrusive methods for achieving the purpose of the proposed rule.

(VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* No alternative methods were considered.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 7: DESIGNATED MINING OPERATIONS (DMOs)

7.1 GENERAL PROVISIONS

24-4-103(4.5)(a):

(I) *The classes of persons who will be affected by the proposed rule:* The classes of persons who will be affected by the proposed rule include the public, uranium and non uranium mine operators, and the Division.

The classes that will bear the costs of the proposed rule: The class that will bear the costs of the proposed rule will be uranium mine operators, the Division, the Board, and persons who participate in Board hearings regarding designations.

The classes that will benefit from the proposed rule: The public and mining operations will benefit from the proposed rule.

- (II) *A description of the qualitative impact of the proposed rule:* The qualitative impact of the rule is the clarification that all uranium mines are DMOs and the inclusion of non uranium mines in the classification of designated mining operations, which in turn will trigger additional provisions to ensure the safety of those operations and protect public health and safety.

A description of the quantitative impact of the proposed rule: There is no direct quantitative impact of this proposed rule as it merely clarifies that uranium operations by statute are DMOs. Accordingly the designation process in the proposed rule does not apply. However, uranium operations can seek an exemption from DMO status.

- (III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The Division does not anticipate implementation and enforcement costs specific to this rule, but the rule will require compliance with certain other rules. The costs associated with those rules are discussed elsewhere in this document, as applicable.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate costs to any other agency for the implementation and enforcement of the proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate an effect on state revenues.

- (IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* There are no monetary costs associated with the proposed rule or inaction, but inaction would be contrary to the requirements of HB-08-1161. The benefits of the proposed rule are increased public health and safety, and implementation of the statute. The benefits of inaction would be realized by uranium mine operators not being subject to the additional requirements for designated mining operations, however this is contrary to the statute.

- (V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* Since there are no direct costs or required actions associated with this rule, and since HB-08-1161 specifies that all uranium mines will be designated mining operations unless specifically exempted, the Division has determined that there are not less costly or less intrusive methods for achieving the purpose of the proposed rule.

- (VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* No alternative methods were considered.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 7: DESIGNATED MINING OPERATIONS

7.2 DETERMINATION OF DESIGNATED MINING OPERATIONS

7.2.1 General Provisions

This proposed rule deleted a process. Please see analysis under 7.2.4.

RULE 7: DESIGNATED MINING OPERATIONS

7.2 DETERMINATION OF DESIGNATED MINING OPERATIONS

7.2.3. Operator/Applicant Concurs with Designation

The proposed revision to Rule 7.2.3 is non-substantive in nature (the revision is a rule number references only); therefore the Division has not analyzed the rule for the purposes of CRS 24-4-103(4.5)(a).

RULE 7: DESIGNATED MINING OPERATIONS

7.2 DETERMINATION OF DESIGNATED MINING OPERATIONS

7.2.4 Designation Disputes

24-4-103(4.5)(a):

(I) The classes of persons who will be affected by the proposed rule: The classes of persons who will be affected by the proposed rule include the public, operators/applicants for mining permits, the Board and the Division.

The classes that will bear the costs of the proposed rule: Applicant/operators, the Division, the Board, and persons with standing who participate in Boards hearings regarding designations will bear the costs of the proposed rule. The rule clarifies the existing public comment and appeals process for determinations of designated mining operations.

The classes that will benefit from the proposed rule: The public, operators/applicants, persons with standing, and the Division will benefit from the clarification provided by the proposed rule.

(II) A description of the qualitative impact of the proposed rule: The qualitative impact of the proposed rule is the concise explanation of appeal rights and requirements.

A description of the quantitative impact of the proposed rule: Entities involved in the appeal process will incur costs to prepare and participate in Board hearings.

(III) The probable costs to the Division for the implementation and enforcement of the proposed rule: The proposed process allows for the applicant/operator to appeal the

Division's DMO determination to the Board and allows third parties with standing to intervene in this appeals process. Therefore, there will be some cost associated to the appeals process. Also, the proposed process allows for complaint letters to be sent to the Division challenging the DMO status of an operation. Therefore, the Division will incur a cost due to more inspections of mine sites and evaluation of permit status and participation in Board hearings.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: There are no costs associated with the implementation and enforcement of the proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

(IV) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction: There are no costs for inaction; the proposed process allows for the applicant/operator to appeal the Division's DMO determination to the Board and allows third parties with standing to intervene in this appeals process. Therefore, there will be some associated cost for the appeals process. Also, the proposed process allows for complaint letters to be sent to the Division challenging the DMO status of an operation. Therefore, the Division will incur a cost due to more inspections of mine sites and evaluation of their permit status. The benefits of the proposed rule are clarity; there are no benefits with inaction.

(V) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule: The Division does not consider the proposed revisions to be costly or intrusive, so no less costly or less intrusive methods for achieving the proposed rule were identified.

(VI) A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency: No alternative methods were considered because leaving the process as is would continue a process that was confusing.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 7: DESIGNATED MINING OPERATIONS

7.2 DETERMINATION OF DESIGNATED MINING OPERATIONS

7.2.5 Existing Permit – Adequate for an Environmental Protection Plan

The proposed revision to Rule 7.2.5 is non-substantive in nature (the revision is a rule number references only); therefore the Division has not analyzed the rule for the purposes of CRS 24-4-103(4.5)(a).

RULE 7: DESIGNATED MINING OPERATIONS

7.2 DETERMINATION OF DESIGNATED MINING OPERATIONS

7.2.6 Exemption from Designation

24-4-103(4.5)(a):

- (I) *The classes of persons who will be affected by the proposed rule:* The classes of persons who will be affected by the proposed rule include the public, operators of DMOs seeking exemption from DMO status, and the Division.

The classes that will bear the costs of the proposed rule: The Division and operators of DMOs seeking exemption from DMO status will bear the costs of the proposed rule. The rule requires that the operator file a permit amendment in order to seek exemption.

The classes that will benefit from the proposed rule: The public, mine operators/applicants, and the Division will benefit from the clarification provided by the proposed rule.

- (II) *A description of the qualitative impact of the proposed rule:* The qualitative impact of the proposed rule is the explanation of how to seek exemption from designated mining operation status. The proposed rule clarifies that exemption from DMO status does not exempt operators from ISL requirements.

A description of the quantitative impact of the proposed rule: The quantitative impact is that operators of DMOs seeking an exemption must pay an amendment fee.

- (III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The Division will incur costs to review a DMO exemption amendment application; the Division's costs will be covered by the amendment fee.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: There are no costs associated with the implementation and enforcement of the proposed rule.

Any anticipated effect on state revenues: State revenues will increase by the amount of each amendment fee paid by operators of DMOs seeking exemption from DMO status.

- (IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* The costs of the proposed rule are the amount of each amendment fee paid by operators of DMOs seeking exemption from DMO status, the cost of preparing an amendment application and the cost to the Division to review the amendment application. The cost for inaction is that the Division would review DMO exemption requests without receiving an amendment fee on application. The benefits of the proposed rule are clarity and the requirement for operators of DMOs seeking exemption from DMO status to pay an amendment fee to cover the Division's costs to review the request.

(V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* The Division does not consider the proposed rule revisions to be costly or intrusive, so no less costly or less intrusive methods for achieving the proposed rule were identified.

(VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* No alternative methods were considered.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 7: DESIGNATED MINING OPERATIONS

7.2 DETERMINATION OF DESIGNATED MINING OPERATIONS

7.2.7 Appeal of Determination

24-4-103(4.5)(a):

(I) *The classes of persons who will be affected by the proposed rule:* The classes of persons who will be affected by the proposed rule include the public, operators/applicants for mining permits, persons with standing, and the Division.

The classes that will bear the costs of the proposed rule: This rule does not add an appeals process but instead clarifies the appeals process, so there are no new costs as a result

The classes that will benefit from the proposed rule: The public, operators/applicants, people with standing and the Division will benefit from the clarification provided by the proposed rule.

(II) *A description of the qualitative impact of the proposed rule:* The qualitative impact of the proposed rule is the explanation of the appeals process.

A description of the quantitative impact of the proposed rule: The quantitative impact is not monetary, and can potentially affect all of the public, people with standing, operators/applicants, and the Division.

(III) *The probable costs to Division for the implementation and enforcement of the proposed rule:* There are no costs associated with the implementation and enforcement of the proposed rule.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: There are no costs associated with the implementation and enforcement of the proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

(IV) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction: There are no costs for the proposed rule, or inaction. The benefit of the proposed rule is clarity. There are no benefits with inaction.

(V) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule: The Division does not consider the proposed revisions to be costly or intrusive, so no less costly or less intrusive methods for achieving the proposed rule were identified.

(VI) A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency: No alternative methods were considered.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 7: DESIGNATED MINING OPERATIONS

7.3 ENVIRONMENTAL PROTECTION FACILITIES - DESIGN AND CONSTRUCTION REQUIREMENTS

24-4-103(4.5)(a):

(I) The classes of persons who will be affected by the proposed rule: The classes of persons who will be affected by the proposed rule include the public, operators/applicants for uranium mining permits, and the Division.

The classes that will bear the costs of the proposed rule: Operators of uranium mine operations will bear any costs of this proposed rule.

The classes that will benefit from the proposed rule: The public and the environment will benefit from the proposed rule.

(II) A description of the qualitative impact of the proposed rule: The qualitative impact of the proposed rule is increased public health and safety, and the implementation of the mandates of HB-08-1161.

A description of the quantitative impact of the proposed rule: The quantitative impact is a possible cost to uranium operators/applicants owing to delays in the placement of materials while awaiting the Division's certification acceptance. It is estimated there will be as many as two affected operators annually. The Division has an established record of rapid turn around and acceptance of properly prepared and executed Environmental Protection Facilities certifications. Therefore, the costs of waiting for certification acceptance to operators with properly constructed facilities will be minimal.

(III) The probable costs to the Division for the implementation and enforcement of the proposed rule: There are no costs associated with the implementation and enforcement of the proposed rule.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: There are no costs associated with the implementation and enforcement of the proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

(IV) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction: There are possible monetary costs for the proposed rule incurred by the mine operator. Costs associated with inaction are risks to public health and safety; the benefits of the proposed rule are increased public safety, and compliance with HB-08-1161 requirements. Operators might benefit monetarily with inaction.

(V) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule: The specific requirements of HB-08-1161 mandated, so no less costly or less intrusive methods for achieving the proposed rule were identified.

(VI) A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency: No alternative methods were considered.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 8: EMERGENCY NOTIFICATION BY ALL OPERATORS, EMERGENCY RESPONSE PLAN FOR DESIGNATED MINING OPERATIONS AND EMERGENCY RESPONSE AUTHORITY OF THE OFFICE

8.1 SITUATIONS THAT REQUIRE EMERGENCY NOTIFICATION BY THE OPERATOR

24-4-103(4.5)(a):

(I) The classes of persons who will be affected by the proposed rule: The classes of persons affected by the proposed rule are the public, mining operations, including DMO and ISL operators, and the Division.

The classes that will bear the costs of the proposed rule: There may be minimal costs associated with the proposed rule for the operator to notify the Division.

The classes that will benefit from the proposed rule: The public and the Division will benefit from the proposed rule.

(II) A description of the qualitative impact of the proposed rule: The qualitative impact of the rule is increased public health and safety.

A description of the quantitative impact of the proposed rule: The quantitative impacts of the rule are monetarily minimal and will affect all ISL operators who experience a failure or imminent failure of structures designed to detect, prevent, minimize or mitigate adverse impacts to human health, wildlife, ground or surface water or the environment and/or failure

of structures designed to detect, prevent, minimize, or mitigate adverse impacts on groundwater. The proposed rule clarifies that all operators, DMOs and non-DMO's, must notify the Division of failure or imminent failure of any impoundment, embankment, stockpile or slope that poses a reasonable potential for danger to human health, property or the environment.

(III) The probable costs to the Division for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs for the implementation and enforcement of the proposed rule.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs to any other agency for the implementation and enforcement of the proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

(IV) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction: There are minimal or zero costs associated with the proposed rule or with inaction; the benefits of the proposed rule are increased public health and safety and compliance with statutory mandate. Uranium mine operators might benefit from inaction in that they would not be required to report the failure or imminent failure of a structure designed to detect, prevent, minimize, or mitigate adverse impacts. However, inaction would be inconsistent with the statute.

(V) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule: The Division has determined that there are not less costly methods for achieving the purpose of the proposed rule since there are no costs associated with compliance with the rule. The Division did not determine whether there were less intrusive methods of achieving the purpose of the rule, since the reporting requirement is mandated by HB-08-1161.

(VI) A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency: The Division considered leaving rule 8.1(b) unchanged. The Division did not consider alternative methods for achieving the purpose of the portion of the proposed rule pertaining to ISL mines since that portion is required by HB-08-1161.

The reasons the alternative methods were rejected in favor of the proposed rule: The Division determined that changing Rule 8.1(b) would make clearer the requirements applicable to designated mining operations as well as to ISL operations.

RULE 8: EMERGENCY NOTIFICATION BY ALL OPERATORS, EMERGENCY RESPONSE PLAN FOR DESIGNATED MINING OPERATIONS AND EMERGENCY RESPONSE AUTHORITY OF THE OFFICE

8.2 OPERATOR'S GENERAL NOTIFICATION RESPONSIBILITIES FOR REPORTING EMERGENCY CONDITIONS

24-4-103(4.5)(a):

- (I) *The classes of persons who will be affected by the proposed rule:* The classes of persons affected by the proposed rule are the public, mine operators, and the Division.

The classes that will bear the costs of the proposed rule: The existing rule requires operators to provide the Division a written report on emergency situations or conditions as soon as practical after the situation has been verbally reported and addressed. The proposed rule requires that the written report be submitted within five working days after the situation has been verbally reported and addressed. The proposed rule may result in increased costs to mine operators in some cases due to the required turn around on emergency event investigation and report preparation.

The classes that will benefit from the proposed rule: The public and Division will benefit from the proposed rule by having a written report of emergency situations or conditions at mine sites no later than five working days after the situation has been verbally reported and addressed.

- (II) *A description of the qualitative impact of the proposed rule:* The qualitative impact of the rule is potentially more rapid documentation available to the public and the Division of emergency situations or conditions at mine sites.

A description of the quantitative impact of the proposed rule: The quantitative impacts of the rule are potentially increased costs to mine operators to more quickly investigate and prepare written reports on emergency situations or conditions than was required under the existing rule.

- (III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The Division does not anticipate any costs for the implementation and enforcement of the proposed rule.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs to any other agency for the implementation and enforcement of the proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

- (IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* There are potential costs associated with the proposed rule to mine operators who must prepare a written report on emergency situations or conditions and

submit the written report to the Division within five working days after the situation or condition was verbally reported and addressed. Under the current rules, the written report is required, but the timeframe for submittal of the report is “as soon as practical,” with no hard deadline assigned. The tighter deadline for report submittal may require mine operators, depending on the nature of the emergency situation or condition, to bring in additional personnel, require overtime work, or bring in outside consultants to fully investigate and prepare the report within five working days. There are no costs with inaction. The benefits of the proposed rule are potentially more rapid documentation available to the public and Division of emergency situations or conditions at mine sites. Mine operators might benefit from inaction in that there would not be a hard deadline for the required follow up report of emergency situations or conditions.

(V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* Inaction is a less costly and intrusive method, which would leave in place the existing rule requirement that mine operators provide a written report to the Division of emergency situations or conditions as soon as practical after the emergency situation or condition is verbally reported and addressed. Also potentially less costly and intrusive would be adoption of a longer timeframe as a hard deadline for provision of the required written report, such as ten or twenty working days after the emergency situation is verbally reported and addressed.

(VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* The Division considered the inaction alternative and longer timeframes as deadlines for submittal of the required written report.

The reasons the alternative methods were rejected in favor of the proposed rule: Preparation and submittal of a written incident report within five working days after an emergency situation is verbally reported and addressed is reasonable and not overly burdensome to mine operators.

RULE 8: EMERGENCY NOTIFICATION BY ALL OPERATORS, EMERGENCY RESPONSE PLAN FOR DESIGNATED MINING OPERATIONS AND EMERGENCY RESPONSE AUTHORITY OF THE OFFICE

8.3 EMERGENCY RESPONSE PLAN FOR DESIGNATED CHEMICALS AND URANIUM OR URANIUM BY-PRODUCTS

24-4-103(4.5)(a):

(I) *The classes of persons who will be affected by the proposed rule:* The proposed rule will affect the public, operators of mines producing uranium and/or uranium by-products, and the Division.

The classes that will bear the costs of the proposed rule: Operators of DMOs will bear the costs of the proposed rule.

The classes that will benefit from the proposed rule: The public and the environment will benefit from the proposed rule.

- (II) *A description of the qualitative impact of the proposed rule:* The qualitative impact of the rule is increased public health and safety.

A description of the quantitative impact of the proposed rule: The quantitative impact of the rule is the cost to prepare the required emergency response plan, which will affect 35 uranium DMO operators, at a cost of roughly \$700 to \$10,000 per plan.

- (III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The Division estimates it will spend 150 hours reviewing emergency response plans, and estimates the cost at approximately \$8,496 annually.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs to any other agency for implementation of this proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate any impact on state revenues.

- (IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* The approximate costs associated with the proposed rule are \$700 to \$10,000 per plan for the operators and \$665 per plan for the Division; these costs are similar to what would be incurred absent the proposed rules, as the Division was designating uranium mines on a case-by-case basis. The variation in costs to mine operators to prepare the plans is largely based on the size and scope of the mine operation. Small mines have centralized and compact chemical storage and process facilities areas, which simplify spill prevention and response planning. Large mines typically have both central and satellite chemical storage and process facilities, making spill prevention and response planning more complex. Most mine operators and consultants that work in the mining industry are experienced and proficient in preparation of plans such as required under both the existing and proposed rule. Multiple federal, state, and local jurisdictions require plans not dissimilar to that required under the existing and proposed rule. The low end estimated \$700 cost per plan would be for small mines that would prepare the plan in-house with a few days of technical staff effort. The higher end estimated \$10,000 cost per plan is based on a large mine that would engage a consultant to inspect their facilities, make recommendations for improvements, and draft a plan as required under the existing and proposed rule. The \$665 estimated cost for the Division to review the plans is based on an average of twelve hours of Division staff time to review the plans, less for small mine plans, more for large mine plans. The Division has reviewed numerous emergency response plans for DMOs over the past fifteen years, and has direct experience with the amount of Division staff time such reviews require. The benefits of the proposed rule are increased public awareness; some operators would benefit from inaction of the new rule if they were not DMOs under the existing rules, with the savings of costs associated with development of the plan.

(V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* The Division determined that there are not less costly or less intrusive methods for achieving the proposed rule, which is to verify that each designated mining operation has an appropriate emergency response plan.

(VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* The Division did not consider alternative methods for achieving the purpose of the proposed rule, which is to ensure adequate emergency response plans at all designated mining operations.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 8: EMERGENCY NOTIFICATION BY ALL OPERATORS, EMERGENCY RESPONSE PLAN FOR DESIGNATED MINING OPERATIONS AND EMERGENCY RESPONSE AUTHORITY OF THE OFFICE

8.4 EMERGENCY RESPONSE AUTHORITY OF THE OFFICE

24-4-103(4.5)(a):

(I) *The classes of persons who will be affected by the proposed rule:* No new classes will be affected by the proposed rule. The proposed rule simply clarifies specific determinations the Division will make as to the existence of an emergency for ISL operations. The proposed rule adds two new grounds for emergency response authority.

The classes that will bear the costs of the proposed rule: No new classes will bear the costs of the proposed rule, as there will be no new costs. The proposed rule simply clarifies specific determinations the Division will make as to the existence of an emergency.

The classes that will benefit from the proposed rule: No classes will benefit from the proposed rule. The proposed rule simply clarifies specific determinations the Division will make as to the existence of an emergency.

(II) *A description of the qualitative impact of the proposed rule:* The proposed rule has no qualitative impact. The proposed rule simply clarifies specific determinations the Division will make as to the existence of an emergency.

A description of the quantitative impact of the proposed rule: The proposed rule has no quantitative impact. The proposed rule simply clarifies specific determinations the Division will make as to the existence of an emergency. The Division to date has never activated the emergency response system.

(III) *The probable costs to Division for the implementation and enforcement of the proposed rule:* The Division does not anticipate any costs to the Division to implement and enforce this rule, since the proposed rule simply clarifies specific determinations the Division will make as to the existence of an emergency.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate that there will be any costs to any other agency for the implementation and enforcement of the proposed rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

(IV) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction: As stated above, there are no costs of the proposed rule. The benefits of the proposed rule are that two new grounds under which the emergency response authority of the Division may be activated are added. A benefit for inaction is that specific new grounds for emergency response are not added. The Division believes that the proposed rule is consistent with the provisions of HB-08-1161.

(V) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule: The Division has determined that there are not less costly or less intrusive methods of achieving the purpose of the proposed rule.

(VI) A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency: The Division did not consider any alternative methods for achieving the purpose of the proposed rule.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A

RULE 8: EMERGENCY NOTIFICATION BY ALL OPERATORS, EMERGENCY RESPONSE PLAN FOR DESIGNATED MINING OPERATIONS AND EMERGENCY RESPONSE AUTHORITY OF THE OFFICE

8.8 EMERGENCY RESPONSE COST RECOVERY

24-4-103(4.5)(a):

(I) The classes of persons who will be affected by the proposed rule: The classes of persons who will be affected by the proposed rule are the public, operators and permittees of an operation for which the Division has initiated an emergency response, and the Division.

The classes that will bear the costs of the proposed rule: The costs of this proposed rule will be borne by the operator of an operation for which the Division has initiated an emergency response, if that operator is someone other than the permittee.

The classes that will benefit from the proposed rule: The public and the Division will benefit from the proposed rule.

(II) A description of the qualitative impact of the proposed rule: The qualitative impact of the proposed rule is that it is more equitable to permit holders of an operation for which the

Division has initiated an emergency response, if an operator of that permit is ultimately responsible for the activities necessitating the emergency response.

A description of the quantitative impact of the proposed rule: The quantitative impact of the rule is that the costs of any emergency response and costs to seek recovery of emergency response costs, which will vary by site, will be the responsibility of the operator. The Division to date has never activated the emergency response system.

(III) *The probable costs to the Division for the implementation and enforcement of the proposed rule:* The Division does not anticipate any costs for the implementation and enforcement of the proposed rule since the Division would incur the same costs whether attempting to collect from the operator or the permittee, and the proposed rule expands the Division's ability to recover funds expended in an emergency response.

The probable costs to any other agency for the implementation and enforcement of the proposed rule: The Division does not anticipate any costs to any other agency for the implementation and enforcement of this rule.

Any anticipated effect on state revenues: The Division does not anticipate any effect on state revenues.

(IV) *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction:* The probable costs of the proposed rule, which would be borne by the operator of a site requiring an emergency response, would be the costs of an emergency response and any costs incurred by the Division to recover emergency response costs. . Inaction would transfer those costs to the taxpayers and public. The benefit of the rule is that it affords the Division the opportunity to recoup public funds expended in an emergency response; inaction would be to the operator's benefit.

(V) *A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:* The Division has determined that there are not less costly or less intrusive methods for achieving the purpose of this proposed rule, which is the recovery of funds expended in an emergency response. The rule ensures that the costs and inconvenience of funding an emergency response is borne by those responsible for the response.

(VI) *A description of any alternative methods for achieving the purpose of the proposed rule that was seriously considered by the agency:* The Division did not consider any alternative methods for achieving the purpose of the proposed rule.

The reasons the alternative methods were rejected in favor of the proposed rule: N/A