

Composition of the Board of Mine Safety

The Board of Coal Mine Safety (BCMS) is a seven member independent board that adopts the Department of Environmental Protection's (DEP) mine safety regulations. It is chaired by the Secretary of the Department of Environmental Protection.

The seven members of the Board include the Secretary of the Department of Environmental Protection, three members who represent the viewpoint of coal mine operators in the Commonwealth and three members who represent the viewpoint of the working miners in the Commonwealth. Members are appointed for three year terms. The terms are staggered so that the board will appoint or reappoint members each year. For a current membership list, see BCMS web page.

The Regulatory Function of the Mine Safety Board

The BCMS has been established to promulgate regulations with respect to mine safety in underground bituminous mines. Regulations may be proposed to the Board through three separate mechanisms. The first mechanism is through a proposal developed and presented by the DEP to the Board. The second mechanism is through a petition by a member of the Board. The third mechanism is through a petition by the public.

1). Proposed Regulations Developed by the Department

When the Board directs the Department to develop or the Department develops a rulemaking the first step is for the Department to develop a summary that will include the following information:

- (1) The reason the Department is suggesting the proposed regulation. This shall include factual and legal contentions if applicable as well as supporting documentation that justifies the need for the regulation.
- (2) The types of persons, businesses and organizations likely to be impacted by this proposal

The summary will be presented to the board for discussion and approval to move forward with the rulemaking.

If the BCMS concurs with the Department to develop the rulemakings the Department will present at the next BCMS meeting a draft of the proposed regulations for the Board to review and comment.

At the following meeting the Department will present a complete proposed rulemaking package for action by the Board.

2) Proposed Regulation Developed based on a petition from a Board member

A request from a board member shall be submitted to the Secretary of the Department of Environmental Protection, Rachel Carson State Office Building, Post Office Box 2063, Harrisburg, Pennsylvania 17105-2063 or at a BCMS meeting or shall be raised directly at a Board meeting for discussion. The request shall include the following:

1. Suggested regulatory language if the petition requests that the BCMS adopt or amend regulations.
2. If the petition requests that the BCMS repeal existing regulations, a specific citation of the regulation(s) to be repealed.
3. The reason the board member(s) is requesting this action from the BCMS. This shall include factual and legal contentions if applicable as well as supporting documentation which establish the board member's justification for the requested action by the BCMS.

Once a petition from a board member(s) has been received by the Department, the Board's regulatory counsel will examine the petition to determine if it meets the following conditions:

- (1) The petition requests an action that can be taken by the BCMS.
- (2) The requested action does not conflict with federal law or state law.

Once the Department has determined that the petition meets the conditions identified above, the Department will notify the BCMS of its determination. The notification shall happen within 30 calendar days of receipt of the petition. If the Department determines that the petition is not appropriate for submittal to the BCMS because it does not meet each of the conditions in the board's petition procedures, the Department's notification shall state the reasons for its determination and give the board member(s) the opportunity to complete the petition or modify the request.

At the next BCMS meeting occurring at least 15 days after the Department's determination that a petition is appropriate for consideration by the BCMS, the Chairperson of the BCMS shall inform the BCMS of the petition for rulemaking, the nature of the request. The Chairperson shall give the board member or a designee the opportunity to make an oral presentation on why the BCMS should accept the petition.

The BCMS may refuse to accept a petition if the Board determines that one or more of the following conditions exists:

- (1) The BCMS has within the previous 2 years considered the issue addressed by the petition for rulemaking as part of an earlier decision concerning the adoption, amendment or deletion of a regulation.
- (2) The action requested by the board member concerns a matter currently in litigation.
- (3) The requested action is not appropriate for rulemaking by the BCMS due to statutory or regulatory considerations.
- (4) The petition involves an issue previously considered by the BCMS, and it does not contain information that is new or sufficiently different to warrant reconsideration of that decision. If a request does present new or sufficiently different information, this information must have been either unavailable at the time of the BCMS's previous decision or not contained in the record of the proceeding in which the previous decision was made.

If the BCMS accepts the request, the Department will prepare a proposed rulemaking consistent with the Board's Direction. Upon completion of the rulemaking, the Department will send a copy of the regulatory package to the board member. Within 30 days of the mailing of the rulemaking, the board member may submit to the Department a written response to the regulatory package. The regulatory package and the board member's response would be presented to the BCMS at their next meeting.

3) Regulation developed from a petition received from a member of the public

A petition from the public shall be submitted on forms supplied by the Department to the Secretary of the Department of Environmental Protection, Rachel Carson State Office Building, Post Office Box 2063, Harrisburg, Pennsylvania 17105-2063, and shall contain the following information:

- (1) The petitioner's name, address and telephone number.
- (2) A description of the action requested in the petition and one of the following:
 - (i) Suggested regulatory language if the petition requests that the BCMS adopt or amend regulations.
 - (ii) A specific citation to the regulations to be repealed if the petition requests that the BCMS repeal existing regulations.
- (3) The reason the petitioner is requesting this action from the BCMS. This shall include factual and legal contentions if applicable as well as supporting documentation which establish the petitioner's justification for the requested action by the BCMS.
- (4) The types of persons, businesses and organizations likely to be impacted by this proposal.

Once a petition from the public has been received by the Department, the Board's regulatory counsel will examine the petition to determine if it meets the following conditions:

- (1) The petition is complete as required in accordance with the board's petition procedures.
- (2) The petition requests an action that can be taken by the BCMS.
- (3) The requested action does not conflict with federal law or state law.

Once the Department has determined that the petition meets the necessary standards, the Department will notify the BCMS and the petitioner of its determination. The notification shall happen within 30 calendar days of receipt of the petition. If the Department determines that the petition is not appropriate for submittal to the BCMS because it does not meet each of the conditions in the board's petition procedures, the Department's notification shall state the reasons for its determination and give the petitioner 30 days to complete the petition or modify the request.

At the next BCMS meeting occurring at least 15 days after the Department's determination that a petition is appropriate for consideration by the BCMS, the Chairperson of the BCMS shall inform the BCMS of the petition for rulemaking, the nature of the request and the petitioner. The Chairperson shall give the petitioner or the petitioner's representative the opportunity to make a 10-minute oral presentation on why the BCMS should accept the petition. The Department will also make a recommendation on whether the BCMS should accept the petition.

The BCMS may refuse to accept a petition if it determines that one or more of the following conditions exist:

- (1) The BCMS has within the previous 2 years considered the issue addressed by the petition for rulemaking as part of an earlier decision concerning the adoption, amendment or deletion of a regulation.
- (2) The action requested by the petitioner concerns a matter currently in litigation.
- (3) The requested action is not appropriate for rulemaking by the BCMS due to policy or regulatory considerations.
- (4) The petition involves an issue previously considered by the BCMS, and it does not contain information that is new or sufficiently different to warrant reconsideration of that decision. If a petition does present new or sufficiently different information, this information must have been either unavailable at the time of the BCMS's previous decision or not contained in the record of the proceeding in which the previous decision was made.

If the BCMS accepts the petition, the Department will prepare a rulemaking. Upon completion of the rulemaking, the Department will send a copy of the

regulatory package to the petitioner. Within 30 days of the mailing of the rulemaking, the petitioner may submit to the Department a written response to the regulatory package. The regulatory package and the petitioner's response would be presented to the BCMS at their next meeting.