

## **Composition of the Board of Mine Safety**

The Board of Mine Safety (BMS) 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 board will appoint or reappoint members each year. For a current membership list, see BMS web page.

## **The Regulatory Function of the Mine Safety Board**

The BMS 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 possibilities. The first possibility is through a proposal developed and presented by the DEP to the Board. The second possibility is through a petition by a member of the Board. The third possibility is through a petition by the public.

### ***Proposed Regulations Developed by the Department***

When the Department initiates or is directed by the board to initiate a rulemaking the first step is for the Department to develop a summary that will include the following information:

- The reason the Department is suggesting the proposed regulation. This may include factual and legal contentions if applicable as well as supporting documentation.
- The types of persons, businesses and organizations likely to be impacted by this proposal

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

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

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

### ***Proposed Regulation Developed based on a petition from a Board member***

A petition 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 BMS meeting. The Petition shall contain the following information:

- The board member(s) name
  - A description of the action requested in the petition and one of the following:
  - Suggested regulatory language if the petition requests that the BMS adopt or amend regulations.
  - If the petition requests that the BMS repeal existing regulations, a specific citation of the regulation(s) to be repealed.
- The reason the board member(s) is requesting this action from the BMS. This may 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 BMS.
- The types of persons, businesses and organizations likely to be impacted by this proposal.

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:

- The petition is complete as required in accordance with the board's petition procedures.
- The petition requests an action that can be taken by the BMS.
- 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 BMS 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 BMS 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) 30 days to complete the petition or modify the request.

At the next BMS meeting occurring at least 15 days after the Department's determination that a petition is appropriate for consideration by the BMS, the

Chairperson of the BMS shall inform the BMS of the petition for rulemaking, the nature of the request. The Chairperson shall give the board member or a designee the opportunity to make a 10-minute oral presentation on why the BMS should accept the petition. The Department will also make a recommendation on whether the BMS should accept the petition.

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

- The BMS has, within the previous two 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.
- The action requested by the board member concerns a matter currently in litigation.
- The requested action is not appropriate for rulemaking by the BMS due to policy or regulatory considerations.
- The petition involves an issue previously considered by the BMS, 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 BMS's previous decision or not contained in the record of the proceeding in which the previous decision was made.

If the BMS 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 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 BMS at their next meeting.

### ***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:

- The petitioner's name, address and telephone number.
- A description of the action requested in the petition and one of the following:

- Suggested regulatory language if the petition requests that the BMS adopt or amend regulations.
  - A specific citation to the regulations to be repealed if the petition requests that the BMS repeal existing regulations.
- The reason the petitioner is requesting this action from the BMS. This may include factual and legal contentions if applicable as well as supporting documentation which establish the petitioner's justification for the requested action by the BMS.
- 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:

- The petition is complete as required in accordance with the board's petition procedures.
- The petition requests an action that can be taken by the BMS.
- 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 BMS 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 BMS 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 BMS meeting occurring at least 15 days after the Department's determination that a petition is appropriate for consideration by the BMS, the Chairperson of the BMS shall inform the BMS 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 BMS should accept the petition. The Department will also make a recommendation on whether the BMS should accept the petition.

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

- The BMS 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.
- The action requested by the petitioner concerns a matter currently in litigation.
- The requested action is not appropriate for rulemaking by the BMS due to policy or regulatory considerations.
- The petition involves an issue previously considered by the BMS, 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 BMS's previous decision or not contained in the record of the proceeding in which the previous decision was made.

If the BMS 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 BMS at their next meeting.