

WE—VIEW—THE—SOUTH—SUNCS—57002

Colorado Department of Regulatory Agencies  
Office of Policy, Research and Regulatory Reform

## Colorado Coal Mine Board of Examiners



October 14, 2005

# STATE OF COLORADO

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**DEPARTMENT OF REGULATORY AGENCIES**  
Office of the Executive Director  
Tambor Williams  
Executive Director

1560 Broadway, Suite 1550  
Denver, CO 80202  
Phone: (303) 894-7855  
Fax: (303) 894-7885  
V/TDD: (303) 894-7880



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Bill Owens  
Governor

October 14, 2005

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Colorado Coal Mine Board of Examiners (Board). I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2006 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Article 22 of Title 34, C.R.S. The report also discusses the effectiveness of the Board and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,



Tambor Williams  
Executive Director

## 2005 Sunset Review

# Colorado Coal Mine Board of Examiners

Department of Regulatory  
Agencies

Bill Owens  
Governor

Tambor Williams  
Executive Director



## Executive Summary

### Quick Facts

**What is Regulated?** Employees of Colorado coal mines who are required by federal regulations to obtain a certificate of competency as a prerequisite to employment in Colorado coal mines.

**Who is Regulated?** The following positions are required to obtain a certificate of competency prior to employment in Colorado coal mines:

- Electricians
- Fire Bosses/Underground Mine Foremen
- Surface Mine Foremen
- Blasters
- Underground Shot-firers
- Surface Shot-firers

**How is it Regulated?** The Division of Minerals and Geology, located in the Department of Natural Resources, is responsible for the administration of the Colorado Coal Mine Board of Examiners (Board) through the Office of Active and Inactive Mines. The Board may issue, deny, renew or discipline holders of state-issued certificates of competency. The Board may promulgate rules under the authority of the Division of Minerals and Geology.

**What Does it Cost?** In fiscal year 03-04, the Board's direct expenses totaled \$12,049. The application fee is \$25.

**What Disciplinary Activity is There?** The Board has no history of discipline taken against holders of Colorado-issued certificates of competency.

**Where Do I Get the Full Report?** The full sunset review can be found on the internet at:  
<http://www.dora.state.co.us/opr/oprpublications.htm>

### Key Recommendations

#### **Continue the Colorado Coal Mine Board of Examiners until 2020.**

The Colorado Mine Safety and Training Program (MSTP) is recognized by the mining community and the federal Mine Safety and Health Administration (MSHA) as a national leader in mine safety and health training as well as training material development. In the past ten years, the Colorado MSTP has won nine national awards for its mine safety program, including the 2004 Grand Award at MSHA's National Training Material Competition. For these reasons and because of the low cost of regulation, this program should be continued.

#### **Repeal the requirement that appointees to the Board be confirmed by the Senate.**

In the modern era, the General Assembly has traditionally repealed this unnecessary and laborious requirement concerning membership on occupational regulatory boards. Subsequent to the last sunset review, the General Assembly added a provision allowing the Governor to remove any Board member for misconduct, incompetence, or neglect of duty. In light of that statutory addition, and considering that the Board members have limited and specific statutory duties and responsibilities, and acknowledging that no compelling need for checks and balances exists in this context, Senate confirmation is unnecessary.

#### **Repeal the legal standards of "reckless" and "intentional" in relation to the burden of proof necessary to sustain a disciplinary action against a holder of a certificate of competency.**

Between 2001 and 2004, an average of 84.25 coal miners were injured yearly, for a total of 341 coal miners injured over the four year span. In light of the number of injuries, the Board's lack of disciplinary activity may be due to the stringent burden of statutory proof the Board must meet to substantiate allegations, and subsequently discipline a holder of a certificate of competency. This should be amended to establish a more reasonable and consistent standard that encompasses an aspect of negligent conduct rather than reckless/willful conduct.

#### **Repeal the requirement that complaints be sworn to by the complainant.**

This is a burdensome requirement and could serve to reduce complaints against certificants who may have violated Colorado law.

## **Major Contacts Made In Researching the 2005 Sunset Review of the**

### **Colorado Coal Mine Board of Examiners**

Federal Mine Safety and Health Administration  
Colorado Mining Association  
Colorado Department of Natural Resources  
Colorado Division of Minerals and Geology  
Colorado Mine Safety and Training Program  
Colorado Office of Active and Inactive Mines  
Colorado Coal Mine Board of Examiners  
Office of the Colorado Attorney General  
Wyoming, Kentucky and West Virginia Coal Mining Officials

### **What is a Sunset Review?**

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with the public interest. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the rights of businesses to exist and thrive in a highly competitive market, free from unfair, costly or unnecessary regulation.

Sunset Reviews are Prepared By:  
Colorado Department of Regulatory Agencies  
Office of Policy, Research and Regulatory Reform  
1560 Broadway, Suite 1550 Denver, CO 80202  
[www.dora.state.co.us/opr](http://www.dora.state.co.us/opr)

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## **Background**

### *The Sunset Process*

The regulatory functions of the Colorado Coal Mine Board of Examiners (Board), in accordance with Article 22 of Title 34, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2006, unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies (DORA) to conduct an analysis and evaluation of the Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the Board should be continued for the protection of the public and to evaluate the performance of the Board and staff of the Colorado Department of Natural Resources (Department), Division of Minerals and Geology (Division), Office of Active and Inactive Mines (Office). During this review, the Board must demonstrate that there is still a need for the Board's oversight and that the regulation is the least restrictive regulation consistent with the public interest. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly. Statutory criteria used in sunset reviews may be found in Appendix A on page 15.

### *Methodology*

As part of this review, DORA staff attended numerous Board and coal industry meetings; interviewed Department and Board staff; reviewed Department and Board records and minutes, including complaint and disciplinary actions; interviewed officials with state and national professional associations; reviewed Colorado statutes and Board rules; and reviewed other states' laws.

### *Profile of the Profession*

Coal mining is an important and vital industrial section of the Colorado economy. Over 90 percent of Colorado's electricity comes from coal-fired power plants. Colorado produces some of the cleanest burning and environmentally compliant coal in the country. Colorado coal contains a much smaller percentage of sulfur and ash than coal produced in eastern coalfields, such as those in Kentucky or West Virginia. Colorado's low sulfur coal is in great demand nationally, partially in response to the implementation of the Federal Clean Air Act of 1990 (U.S. EPA, 2003), which mandates the lowering of air emissions for airborne pollutants, including those from coal-fired electrical plants. Coal mined in Colorado is a high-grade bituminous steam coal product that is considered clean air compliant, and its use allows other states to meet EPA standards.

Annual coal production in Colorado fluctuated between 3 million and 6 million tons before 1973, when production increased substantially. This was due, in part, to the increase in the number of coal-fired electrical plants nationwide. Colorado's annual coal production increased dramatically during the 1980s and 1990s primarily due to rising electricity demand and usage. According to the Division, over the last 30 years, Colorado's annual coal production rose from 5.3 million tons in 1974, to a record of approximately 40 million tons in 2004.

Many factors including favorable mining conditions, higher prices, increased demand, and a new, large underground mine, fueled record-breaking coal production in 2003 and 2004. Coal was produced from seven underground and five surface mines in eight Colorado counties in 2004, with Gunnison County as the state's top coal producer. It is predicted that Colorado's coal industry will continue to grow and produce over 41 million tons in 2005, thereby topping 2004's record production, which was an 11 percent increase from 2003's coal production. This constitutes the seventh time in eight years that the thriving coal industry broke state coal production records.

Colorado now ranks sixth nationally in annual coal production (see Table 1 below). With the high demand nationally for low sulfur coal, coupled with rising electrical usage and demand, Colorado's coal industry should continue to produce record numbers in the future.

**Table 1**

**Coal Mine Production by State (in millions of tons)**

Ranking	State	YTD 2005	YTD 2004	% Change from 2004
1	Wyoming	85,571	83,615	2.3
2	West Virginia	32,728	31,927	2.5
3	Kentucky	24,055	25,099	-4.2
4	Pennsylvania	12,730	14,917	-14.7
5	Texas	10,680	9,323	14.6
6	Colorado	9,084	8,802	3.2
7	Montana	8,802	7,789	13.0
8	Indiana	7,427	7,766	-4.4
9	Illinois	6,724	7,599	-11.5
10	Virginia	6,461	7,165	-9.8

Source: U.S. Department of Energy's Energy Information Administration (EIA) weekly data.

Colorado's coal production could have been even higher had railroad industry capacity not limited the transportation of Colorado coal to buyers, which are mostly power companies in the midwestern and southern states. For example, the three North Fork Valley mines produced a total of 18.2 million tons of coal in 2004, yet the railroad industry was only able to transport 17.3 million tons. Colorado's rapidly growing coal industry has currently reached the point where the railroad industry is unable to accommodate the increasing demand for rail transportation. Union-Pacific Corp. has acknowledged the problem and has indicated that it will be looking at expanding their service levels to increase the amount of coal transported out of Colorado in the future.

This recent boom in the coal mining industry came about several years ago when skyrocketing prices of natural gas sent utility companies searching for cheaper fuel sources to fire their power plants. New technology has also had a positive effect on the increase of coal production in Colorado. A “longwall” system is now utilized in underground coal mines, and this new machine accounts for over 30 percent of underground coal production in Colorado. Costing over \$40 million, a longwall is a giant shear machine that sweeps back and forth across a section of coal up to 800 feet in width and 7,000 feet in length, and slices off the coal. The cut coal then falls onto a conveyor belt and is carried out of the mine for cleaning, sizing, and preparation for transportation to the energy market. Longwall mining is one of the safest mining techniques and now accounts for a growing amount of underground coal production in Colorado.

The following table shows the amount of coal production per Colorado county (surface and underground mines), and sets forth the number of miners employed in the coal production industry.

**Table 2**  
**Coal Mine Production and Miners Employed**  
**January – December 2004**

<b>County</b>	<b>Number of Mines Surface / Underground</b>	<b>Surface Production (Tons)</b>	<b>Underground Production (Tons)</b>	<b>Total Production (Tons)</b>	<b>Miners Employed</b>
Delta	0/2	0	4,696,067	4,696,067	214
Garfield	0/1	0	289,495	289,495	22
Gunnison	0/2	0	13,140,207	13,140,207	589
La Plata	0/1	0	460,609	460,609	54
Moffat	2/0	8,216,648	0	8,216,648	380
Montrose	1/0	413,332	0	413,332	21
Rio Blanco	0/1	0	2,550,883	2,550,883	151
Routt	1/1	1,488,949	8,557,745	10,046,694	474
<b>Totals</b>	<b>4/8</b>	<b>10,118,929</b>	<b>29,695,006</b>	<b>39,813,935</b>	<b>1,905</b>

Source: Colorado Division of Minerals and Geology

The number of coal miners employed statewide has remained relatively consistent, with only a slight increase of miners over the past several years, even though production of coal has gone up steadily. This employment situation can be attributed to the significant upgrading of coal mine technology and equipment, which does not require an increase in employees to increase coal production. Due to the upgraded technology, Colorado’s average production per miner-hour was 8.6 tons in 2003 (up 3.7 percent from 2002), making Colorado one of the most productive coal mining states in the country (EIA coal data).

Colorado has nearly 16.5 billion tons in coal reserves, which, if mined at current levels of production, will last for approximately 400 years. The Colorado coal industry accounts for more than \$1 billion in direct sales, accounts for payroll and taxes in excess of \$250 million, and contributes a good deal more in indirect economic value to the state’s economy. Colorado coal miners have an average salary package of approximately \$80,000 per year, the highest among Colorado’s industrial sectors.

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As markets expand and production levels increase, the demand for experienced and inexperienced miners continues to grow. The skilled mining workforce continues to decrease as baby boom generation miners retire and a smaller number of young workers choose mining as a career. The importance and demand for Mine Safety and Training Program (MSTP) services to educate and train this new mining population in safe mining practices has never been higher. It is critical that the next generation of miners possess a high level of knowledge and skills to perform in the highly technical mining positions, while ensuring that the work environment remains safe and productive.

### *History of Regulation*

The Board was created in 1963 under article 3 of chapter 92, C.R.S. Its organic statute was repealed and reenacted in 1988, when the powers and duties of the Board were substantially modified. Today, the powers, duties, composition, and functions of the Board exist in Article 22 of Title 34, C.R.S. In 1995, the Board underwent its first sunset review, after which the Board's statutory directives were further modified by the Colorado General Assembly.

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## **Legal Framework**

### *Federal Regulation*

The federal government, through the federal Mine Safety and Health Administration (MSHA), inspects individual mines in Colorado for safety, environmental, and other potential violations of the Federal Mine Safety and Health Act of 1977. This act establishes, among other things, education and training as an important tool for preventing accidents and avoiding unsafe and unhealthful working conditions. This act also allows MSHA to fine or shutdown mines for violations of federal law.

Generally, MSHA does not report mining transgressions to the Colorado Coal Mine Board of Examiners (Board), unless a problem involves a fatality or other serious event. MSHA also has the authority to remove individual miners from a mine if MSHA inspectors deem an individual unsafe, including those miners whose position does not require certification. However, MSHA's approach to mine safety and oversight does not include any aspect of the certification process. Instead, MSHA allows and expects individual states to certify those miners employed in certified positions.

MSHA's approach to the mining industry is a three-prong approach:

- Policy and Development
- Enforcement
- Technical Assistance

MSHA has indicated that in the absence of a state certification program for coal miners, the federal agency would offer certification testing. However, the testing program is not set up at present, and even if needed, would take a very low priority in light of MSHA's directives and priorities. This would probably create a situation in which the coal mining industry would be unable to timely fill many coal-mining positions that require certification.

Other coal producing states have similar statutory certification provisions, primarily because MSHA places the certification process of individual coal miners in a low priority status. Some states, such as Wyoming, utilize a comprehensive statutory scheme that regulates almost every aspect of the coal mining industry.

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### *Composition of the Board*

The Board is statutorily located in the Office of Active and Inactive Mines, under the direction, management and control of the Division of Minerals and Geology (Division), in the Department of Natural Resources.

The Board is composed of four voting members and one *ex officio* member. The four voting members are appointed by the Governor with the consent of the Senate and serve terms of four years. The four voting members are currently employed in the Colorado mining industry in the following areas: coal miner of known experience and practice in underground coal mining; coal mine owner, operator, manager or other mine official in surface coal mining; coal mine owner, operator, manager or other mine official in underground mining; and a coal mine engineer experienced in coal mining. The Commissioner of Mines, or his designee, serves as an *ex officio*, non-voting member. The Governor fills vacancies created mid-term on the Board by appointment for the remainder of the unexpired term. The Governor may remove any Board member for misconduct, incompetence, or neglect of duties.

### *Powers and Duties of the Board*

The Board is authorized to perform and fulfill the following duties and responsibilities pursuant to section 34-22-102, Colorado Revised Statutes (C.R.S.).

- Establish criteria, including education, training, and work experience, for applicants for positions in coal mines for which certification is required by federal law, and examine said applicants accordingly;
- Establish the annual electrical retraining requirements;
- Issue certificates of competency to qualified applicants, and revoke certificates where appropriate;
- Assist the Division in developing curricula for the coal miner training programs; and
- Establish criteria for granting state certification of belt examiners, cable spicers, lamp and gas attendants, and shot-firers.

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## *Certificates of Competency*

Pursuant to section 34-22-105, C.R.S., certificates of competency are required for designated positions as a condition of employment for individuals working in or about coal mines in Colorado. The Board has the authority to recognize and accept certification by another state if certification requirements are substantially similar to the certification requirements in Colorado.

A certificate of competency may be revoked or suspended for reckless disregard of mining law; reckless disregard for compliance with health and safety standards; demonstrated incompetence in the mine which endangers life or property; or intentional withholding or altering of mine examination information or reports where life and property is endangered. The Board has the authority to decide the duration of any revocation of a certificate of competency, and such decision shall be set forth in the notice of revocation sent to the certificate holder.

A certificate of competency is valid as long as the miner remains in the coal mining industry, except for mine electricians, who must recertify yearly, and surface blasters who must recertify every five years. However, certificates of competency become null and void in the event that the certificate holder fails to remain actively employed in the coal mining industry for a period of five years.

## *Examination Qualifications*

Applicants are required to pay a fee of \$25 and successfully complete an examination prescribed and administered by the Board to demonstrate knowledge for competent performance for the position for which certification is sought. Prospective certificate holders must demonstrate that their eyesight and hearing abilities are sufficient and consistent with the practice and requirements of the coal mining industry. Renewals of certificates of competency shall be at no cost to the individual holding a valid certificate.

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## **Program Description and Administration**

The Colorado Coal Mine Board of Examiners (Board) is responsible for the education, training, testing, and subsequent certification of qualified candidates for those coal mining positions that require certification as a condition of employment. The Board prepares and administers these examinations in conjunction with the Board's administrative support group, the Mine Safety and Training Program (MSTP).

Pursuant to section 34-22-107(6), Colorado Revised Statutes (C.R.S.), the Board may revoke a certificate of competency upon a finding that the certificate holder is guilty of:

- Reckless disregard of applicable mining law;
- Reckless disregard for compliance with health and safety standards;
- Demonstrated incompetence in the mine which endangers life or property; or
- Intentional withholding or altering of mine examination information or reports where life or and property is endangered.

The Board also acts as a liaison with the coal mining industry and the Mine Safety and Health Administration (MSHA), the federal agency that is responsible for oversight of all aspects of the mining process.

Although the Board does not have direct statutory rulemaking authority, the Director of the Division of Minerals and Geology (Division), subject to the supervision and control of the Commissioner of Mines, is authorized to promulgate rules and regulations pursuant to section 34-21-104, C.R.S.

The Board's staff and associated personnel total approximately 0.7 full-time equivalent (FTE) employees, which includes a program administrator and a program assistant, as well as several environmental protection specialists associated with the MSTP.

Severance tax revenue from the coal mining industry and fees paid by certification applicants provide for the Board's expenditures and budget. Table 3 below delineates Colorado's share of the coal mining industry's tax and royalties for the five-year period ending fiscal year 03-04. It is anticipated that the tax and royalty revenues will increase in fiscal year 04-05 due to the general expansion of the Colorado coal industry.

**Table 3**

**Royalty and Tax Revenue (in millions)**

	<b>FY 99-00</b>	<b>FY 00-01</b>	<b>FY 01-02</b>	<b>FY 02-03</b>	<b>FY 03-04</b>
Property Tax Revenue	\$8.5	\$8.5	\$6.4	\$7.0	\$7.8
Severance Revenue	\$6.8	\$7.2	\$7.9	\$7.9	\$8.0
Federal Royalty Revenue	\$16.4	\$17.8	\$16.5	\$11.0	\$20.6
Totals	\$31.7	\$33.5	\$30.8	\$25.9	\$36.4

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## Certifications

The Board issues certificates of competency to qualified candidates who pass the examinations in the following mining occupations and whose certification is a condition of employment. Those certified positions are:

### Underground Mines

- Mine Foreman
- Fireboss
- Electrician
- Shot-firer

### Surface Mines

- Mine Foreman
- Blaster
- Electrician
- Shot-firer

Table 4 indicates the number of certificates issued by the Board in each mining occupation between the calendar years 2000 and 2004.

**Table 4**  
**Number and Types of Certificates Issued**

	2000	2001	2002	2003	2004
Electricians	26	23	30	34	33
Fire Boss/ Underground Mine Foreman	38	34	41	43	33
Surface Mine Foreman	12	8	15	13	18
Blaster	8	4	2	1	0
Underground Shot-firer	39	58	14	1	16
Surface Shot-firer	20	4	4	1	0
Totals	143	131	106	93	100

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## Examinations

The Board meets quarterly and conducts certification examinations two weeks after each Board meeting at different coal mining locations around the state. The Board works in conjunction with the Division's MSTP to assemble, conduct, and grade examinations; answer questions and correspondence from certification candidates and mine management; issue certificates and cards; and general follow-up and coordination with the federal Mine Safety and Health Administration (MSHA).

Examinations are designed by the Board to allow an applicant to demonstrate knowledge and competence for the specific mining position for which certification is sought, in addition to testing the applicant's general knowledge of federal and state mining laws and regulations. Table 5 breaks down the pass/fail rate by calendar year and position.

**Table 5****Number of Examinations Administered and Pass Rates**

	2000		2001		2002		2003		2004	
	Number of Applicants	Percent Passing								
Electricians	41	63	58	48	60	50	80	43	97	34
Fire Boss/ Underground Mine Foreman	76	50	110	31	97	42	103	42	87	38
Surface Mine Foreman	16	75	11	73	27	56	18	72	24	75
Blaster	12	67	6	67	5	40	1	100	0	0
Underground Shot-firer	39	100	73	79	19	74	1	100	22	73
Surface Shot- firer	21	95	6	97	8	50	1	100	0	0
Totals	205	70	264	50	216	49	204	46	230	51

*Financial and Budget Information*

Table 6 below sets forth the direct expenditures associated with the Board and its members. The MSTP provides administrative support and expertise to the Board under the authority of the Office of Active and Inactive Mines pursuant to section 34-21-101, C.R.S. In fiscal year 03-04, the MSTP generated \$44,445 in associated personal services expenditures.

**Table 6****Coal Mine Board of Examiners – Expenditures – Fiscal Year 03-04**

<b>Board's Direct Expenses</b>	
In-State Non-Employee Travel – Lodging and Meals Reimbursement	\$5,776
In State Non-Employee Travel – Vehicle Reimbursement	\$4,313
Board Member's Compensation (\$50/day)	\$1,900
Room Rental	\$60
Total	\$12,049

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## *Inspections*

The federal MSHA generally performs inspections of Colorado coal mines, and the Colorado MSTP conducts safety audits of active mines (upon request of mine management), and evaluates safety concerns at abandoned mines.

## *Complaints/Disciplinary Actions*

Complaints against Colorado coal miners who are employed in positions requiring certification may be commenced by the Office of Active and Inactive Mines upon its own motion for good cause shown, or by the filing of a written complaint, signed and sworn to by the complainant, stating the grounds on which the complaint is made, and a description of the facts and circumstances which gave rise to the complaint.

The Board, through the Office of Active and Inactive Mines, has the authority to investigate any such complaint to establish good cause prior to the initiation of disciplinary proceedings. A certificate holder must be given an opportunity to respond to the allegations in writing. In instances in which reasonable grounds exist to believe that the certificate holder has been guilty of deliberate or willful violation of applicable mining law, or where it is imperatively necessary for safety in the mines, the Director of the Office may suspend a certificate pending resolution of the allegations. Any proceeding to revoke or suspend a certificate of competency shall be conducted in accordance with the provisions of the State Administrative Procedure Act, set forth in sections 24-4-104 and 105 C.R.S.

During the past ten years, the Board has initiated and prosecuted only one disciplinary action against a Colorado certificate holder. In that matter, the complaint against the respondent mine examiner (now called fire boss) was filed on behalf of the United Mine Workers of America, Local 1984, and alleged that the respondent had performed “an insufficient pre-shift exam”, at the Deserado Mine located in Rangely, Colorado. After the Board heard and considered the evidence and arguments of all witnesses and exhibits, the Board determined that it had no reasonable grounds to revoke or suspend the respondent mine examiner’s certification.

The Board specifically held that the complainant did not show, by a preponderance of the evidence, that the mine examiner was guilty of reckless disregard of applicable mining law; reckless disregard for compliance with health and safety standards; demonstrated incompetence in the mine which endangers life or property; or intentional withholding or altering of mine examination information or reports where life and property is endangered. The Board further concluded that the evidence did not substantiate allegations of reckless actions or conduct that demonstrated a serious disregard for health and safety.

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## **Analysis and Recommendations**

### *Recommendation 1 – Continue the Colorado Coal Mine Board of Examiners until 2020.*

The Department of Regulatory Agencies recommends that the Colorado Coal Mine Board of Examiners (Board) be continued by the General Assembly. Although certification of certain positions that operate in coal mines does not directly protect the general public, this review concludes that the existing examination and certification requirements and process do provide a reasonable level of protection to persons that work in coal mines, and indirectly to the general public. Mining is an inherently dangerous and increasingly complex industry with the potential for serious harm to the miners themselves and the surrounding community.

The federal Mine Safety and Health Administration (MSHA) has indicated that in the absence of a state certification program for coal miners, the federal agency would offer certification testing. However, the testing program is not set up at present, and even if needed, would take a very low priority in light of MSHA's directives and priorities. This would probably create a situation in which the coal mining industry would be unable to timely fill many coal-mining positions that require certification.

The Board and the Mine Safety and Training Program (MSTP) jointly share a mission, which is to protect the health and safety of the mining community and the general public of Colorado from mining related hazards. This mission is accomplished through a combination of miner education and compliance training to meet federal health and safety standards, production and distribution of new and innovative safety training products, testing and certification of coal mine employees, and mine emergency and rescue training.

The Colorado MSTP is recognized by the mining community and the MSHA as a national leader in mine safety and health training as well as training material development. In the past ten years, the Colorado MSTP has won nine national awards for its mine safety program, including the 2004 Grand Award at MSHA's National Training Material Competition. For these reasons and because of the low cost of regulation, this program should be continued.

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*Recommendation 2 – Repeal the requirement that appointees to the Board be confirmed by the Senate.*

Section 34-22-102(3), Colorado Revised Statutes (C.R.S.), requires Senate confirmation of Board members. In the modern era, the General Assembly has traditionally repealed this unnecessary and laborious requirement concerning membership on occupational regulatory boards. Subsequent to the last sunset review, the General Assembly added a provision allowing the Governor to remove any Board member for misconduct, incompetence, or neglect of duty. In light of that statutory addition, and considering that the Board members have limited and specific statutory duties and responsibilities, and acknowledging that no compelling need for checks and balances exists, Senate confirmation is unnecessary.

*Recommendation 3 – Amend section 34-22-107(6)(a), (b), and (d), C.R.S., to repeal the legal standards of "reckless" and "intentional" in relation to the burden of proof necessary to sustain a disciplinary action against a holder of a certificate of competency.*

The Board has prosecuted only one disciplinary action since the last sunset report, and after considering all of the evidence in that case, the Board held that the respondent mine examiner did not violate the statutory provisions noted above. This is particularly noteworthy considering the Board's stated mission is to protect the health and safety of the mining community and the general public from mining related hazards.

Between 2001 and 2004, an average of 84.25 coal miners were injured yearly, for a total of 341 coal miners injured over the four year span. In light of the number of injuries, the Board's lack of disciplinary activity may be due to the stringent burden of statutory proof the Board must meet to substantiate allegations, and subsequently discipline a holder of a certificate of competency. This should be amended to establish a more reasonable and consistent standard that encompasses an aspect of negligent conduct rather than reckless/willful conduct.

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*Recommendation 4 – Repeal the requirement that complaints be sworn to by the complainant.*

Section 34-22-107(2), C.R.S., requires that all complaints be signed and sworn to by the complainant. This is a burdensome requirement and could serve to reduce complaints against certificants who may have violated Colorado law. This contention is supported by the fact that this Board has no disciplinary record in its entire existence. If the regulated professions are such a threat to safety that government oversight is essential, then it is appropriate to improve the enforcement process so that a complainant can notify the state of a possible violation of Colorado law without the complainant having to find and pay for a notary to administer an oath. Finally, a similar requirement does not exist for most other regulated professions and occupations in Colorado. The Board's statute should be brought up to date to better protect the citizens of Colorado.

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## **Appendix A – Sunset Statutory Evaluation Criteria**

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.