

of the findings. These investigations may include an evaluation of the following:

- (1) Source, nature, and extent of occurrences;
- (2) Conditions under which the incident occurred;
- (3) Samples and tests;
- (4) Physical conditions at the time of the occurrence;
- (5) Charts, logs, and records related to the occurrence;
- (6) Whether the occurrence is isolated, continuous, or could recur;
- (7) Conditions indicating that the hazards of methane no longer exist or exist under circumstances more appropriately governed by a different category or subcategory;
- (8) The geology of the mine and the geological area in which the mine is located; and
- (9) Statements by witnesses, company officials, employees, and other persons having knowledge of the mine or the occurrence. Representatives of the mine operator, the miners and the appropriate State agency may participate in the investigation.

[52 FR 24941, July 1, 1987, as amended at 52 FR 41397, Oct. 27, 1987; 60 FR 33722, June 29, 1995]

§ 57.22005 Notice and appeal of placement or change in placement.

(a) The Administrator's determination of category or subcategory placement or change in placement shall become final upon the 30th day after it is served on the mine operator and representative of miners, unless a request for a hearing has been filed. Service of the Administrator's determination is complete upon mailing by registered or certified mail, return receipt requested.

(b) The mine operator or representative of miners may obtain review of the Administrator's determination by filing a request for a hearing with the Assistant Secretary of Labor for Mine Safety and Health, Mine Safety and Health Administration, 201 12th Street South, Arlington, VA 22202-5452 within 30 days of the Administrator's determination. Service of a request for hearing is completed upon mailing by registered or certified mail, return receipt requested. Requests for a hearing shall

be in writing and contain the following information:

- (1) Name, address, and mine identification number;
- (2) A concise statement of the reason why the Administrator's determination is inappropriate; and
- (3) A copy of the Administrator's determination.

(c) The mine operator shall post a copy of the Administrator's determination and the request for a hearing on the mine bulletin board, and shall maintain the posting until the placement becomes final.

(d) Promptly after receipt of the request for a hearing, the Assistant Secretary shall refer to the Chief Administrative Law Judge, United States Department of Labor, the following:

- (1) The request for a hearing;
- (2) The Administrator's determination; and
- (3) All information upon which the Administrator's determination was based.

(e) The hearing shall be regulated and conducted by an Administrative Law Judge in accordance with 29 CFR part 18, entitled, "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges." Once the Administrative Law Judge has made an initial decision and served each party, the decision shall be final on the 30th day after service, unless discretionary review is undertaken by the Assistant Secretary or an appeal is filed by the mine operator or representative of the miners under paragraph (f) of this section.

(f) Within 30 days after service of an initial decision of an Administrative Law Judge, the Assistant Secretary for Mine Safety and Health may undertake a discretionary review of the initial decision, or the mine operator, or representative of the miners may appeal the initial decision of the Administrative Law Judge to the Assistant Secretary.

(1) The Assistant Secretary shall give notice of discretionary review to the mine operator and representative of the miners. The mine operator or representative of the miners shall give notice of an appeal to the other party. The notice shall specify the suggested

§ 57.22101

changes and refer to the specific findings of fact, conclusions of law, and terms of the initial decision to be reviewed or appealed. The Assistant Secretary shall fix a time for filing any objections to the suggested changes and supporting reasons.

(2) The Assistant Secretary shall promptly notify the Administrative Law Judge of a discretionary review or an appeal. The entire record of the proceedings shall be transmitted to the Assistant Secretary for review.

(3) The Assistant Secretary shall make the final decision based upon consideration of the record of the proceedings. The final decision may affirm, modify, or set aside in whole or in part, the findings and conclusions contained in the initial decision. A statement of reasons for the action taken shall be included in the final decision. The final decision shall be served upon the mine operator and representative of the miners.

(g) Unless a decision by the Administrator for Metal and Nonmetal Mine Safety and Health, or the initial decision of the Administrative Law Judge, is appealed within 30 days, it becomes final, and is not subject to judicial review for the purposes of 5 U.S.C. 704. Only a decision by the Assistant Secretary shall be considered final Agency action for purposes of judicial review. Any such appeal must be filed in the appropriate circuit of the United States Court of Appeal.

(h) While a final decision of category placement is pending the following procedures shall apply:

(1) Where a mine has been classified as gassy prior to the effective date of these standards, existing gassy mines standards 30 CFR 57.21001 through 57.21101 (1986 Edition) shall continue to be applicable until placement is final.

(2) Where a mine has not been classified as gassy prior to the effective date of these standards and it is placed in Categories I through V, the mine shall comply with Category VI standards (§§ 57.22231, 57.22232, 57.22236, and 57.22238) until placement is final.

(3) Where a mine has been classified in Categories I through V after the effective date of these standards and category reassignment is being considered, the mine shall comply with the

30 CFR Ch. I (7–1–22 Edition)

standards applicable to the category to which presently assigned until category placement is final.

[52 FR 24941, July 1, 1987; 52 FR 27903, July 24, 1987, as amended at 67 FR 38385, June 4, 2002; 80 FR 52988, Sept. 2, 2015]

FIRE PREVENTION AND CONTROL

NOTE: The Category or Subcategory applicability of each standard appears in the parentheses of each standard's title line.

§ 57.22101 Smoking (I-A, II-A, III, and V-A mines).

Persons shall not smoke or carry smoking materials, matches, or lighters underground. The operator shall institute a reasonable program to assure that persons entering the mine do not carry such items.

§ 57.22102 Smoking (I-C mines).

(a) Persons shall not smoke or carry smoking materials, matches, or lighters underground or within 50 feet of a mine opening. The operator shall institute a reasonable program to assure that persons entering the mine do not carry such items.

(b) Smoking is prohibited in surface milling facilities except in designated, dust-free smoking areas.

§ 57.22103 Open flames (I-A, II-A, III, and V-A mines).

Open flames shall not be permitted underground except for welding, cutting, and other maintenance operations, and for igniting underground retorts in a Subcategory I-A mine. When using open flames in other than fresh air, or in places where methane may enter the air current, tests for methane shall be conducted by a competent person before work is started and every 10 minutes until the job is completed. Continuous methane monitors with audible alarms may be used after the initial test has been conducted as an alternative to the ten-minute interval testing requirement. Open flames shall not be used in atmospheres containing 0.5 percent or more methane.

§ 57.22104 Open flames (I-C mines).

(a) Open flames, including cutting and welding, shall not be used underground.