

(A) A concentration of 0.25 percent or more methane has not been detected in the mine atmosphere; and

(B) An ignition of methane has not occurred.

(6) *Category VI* applies to mines in which the presence of methane has not been established and are not included in another category or subcategory.

(b) Category or subcategory placement or change in placement shall include consideration of the following:

(1) The history and geology of the mine or of the geological area in which the mine is located;

(2) The ore body and host rock;

(3) The character, amount, duration, origin, and nature of methane emission and the presence of explosive dust and inert gases; and

(4) Whether or not conditions encountered during primary or access development are transient or permanent.

(c)(1) Gas samples for the purpose of category or subcategory placement or change in placement, and for determining action levels, shall be taken in the mine atmosphere. Gas samples taken to determine the nature and extent of an occurrence under § 57.22004 (c) and (d) may be taken at any location, including the source, point of entry and the mine atmosphere.

(2) Tests for methane shall be made with hand-held methanometers, methane monitors, atmospheric monitoring systems, devices used to provide laboratory analysis of samples, or with other equally effective sampling devices. However, only methane samples that have been confirmed by laboratory analysis shall be used for category or subcategory placement or change in placement.

(d) Each mine and mill shall be required to operate in accordance with the safety standards applicable to its particular category or subcategory.

§ 57.22004 Category placement or change in placement.

The Administrator for Metal and Nonmetal Mine Safety and Health (Administrator) shall be responsible for category and subcategory placement, change in placement, and notification of placement of mines.

(a) The Administrator's proposed notice of placement or change in place-

ment shall be sent to the mine operator and the appropriate representative of miners and shall include—

(1) The category or subcategory;

(2) The reasons for placement or change in placement;

(3) The data considered;

(4) The applicable standards and a time schedule for the mine operator to achieve compliance;

(5) Whether or not conditions encountered during primary or access development are transient or permanent; and

(6) Notification of the right to appeal the Administrator's determination under § 57.22005.

(b) The operator or the representative of the miners shall have the right to request of the Administrator reassignment of the mine to a more appropriate category or subcategory if, based on operating experience, the conditions set forth in § 57.22003(b) indicate that the hazards of methane exist under circumstances more appropriately governed by a different category or subcategory. In response to such a request, the procedures set forth in paragraph (d) of this section shall apply. While the request for category or subcategory reassignment is pending, the mine shall continue to operate under the standards for the category or subcategory to which originally assigned.

(c) MSHA shall be notified as soon as possible if any of the following events occur:

(1) An outburst that results in 0.25 percent or more methane in the mine atmosphere;

(2) A blowout that results in 0.25 percent or more methane in the mine atmosphere;

(3) An ignition of methane; or

(4) Air sample results that indicate 0.25 percent or more methane in the mine atmosphere of a Subcategory I-B, I-C, II-B, V-B or Category VI mine.

(d) The Administrator shall promptly appoint an MSHA committee to investigate occurrences reported in accordance with paragraph (c) of this section or requests filed in accordance with paragraph (b) of this section. Upon completion of an investigation, the committee shall make a written report of the findings. These investigations

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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, 1100 Wilson Blvd., Room 2322, Arlington, Virginia 22209-3939 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