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SUBJECT: Basis for Assigning a P-Code for Noise Overexposure

Scope

This Program Information Bulletin (PIB) affects surface and underground coal and metal/nonmetal mines.

Purpose

Recently the Mine Safety and Health Administration (MSHA) has become aware that there are some misconceptions concerning the noise rule. This PIB clarifies several misunderstandings concerning P-codes. In the paragraphs below, you will find an explanation of what a P-code is, and the circumstances under which P-codes are assigned.

Information

MSHA has acknowledged that there are instances where all feasible engineering and administrative controls are being used and a miner's noise exposure cannot be reduced to the permissible exposure level. MSHA uses the letter "P" as an action code in its database to designate that an overexposure condition remains even though all feasible engineering and administrative controls are in place. Thus, a "P-code" is an administrative device that allows MSHA to track these situations. The term P-code derives from the requirement to wear protective equipment, i.e. the mine operator must provide the appropriate hearing protection to the affected miner and the miner must wear the hearing protection.

A P-code is not a petition for modification, because § 101(c) of the Mine Act only allows a petition for modification for mandatory safety standards. A P-code simply provides MSHA with a means of tracking special overexposure situations. A P-code does not establish an alternative method of compliance with the noise standard. Therefore, mine operators may not apply for P-codes. In addition, P-codes are not assigned to pieces of equipment or to areas of a mine. MSHA will determine the suitability of a P-code on a case-by-case basis. The agency will identify the principal noise source(s) that contributed to the miner's overexposure and will include them in the documentation of the conditions that constitute grounds for a P-code. If the District

Manager (DM) believes a P-code is warranted, the DM reviews the situation in consultation with field enforcement staff, headquarters' officials, and MSHA technical experts.

There are two scenarios involving a miner's overexposure to noise where the use of a code would be appropriate. In the first scenario, an MSHA inspector would determine that a miner's full-shift exposure exceeds the PEL. If MSHA also determines that: (1) all feasible engineering and administrative controls have already been implemented and are maintained; (2) all affected miners are enrolled in a Hearing Conservation Program that complies with each element of 30 CFR § 62.150; (3) hearing protection has been provided by the mine operator and is being worn by the affected miners; and, (4) the mine operator has posted (on the mine bulletin board) and provided affected miners with copies of any procedures for administrative controls being used, then a P-code will be assigned for the circumstances leading to the affected miner's overexposure. These circumstances include the job or occupation the miner is performing, the area where the miner works, and the equipment the miner is using or that is a source of the overexposure. A P-code will be assigned only if the mine operator has fully complied with each of the above requirements. Under this scenario, an operator would not receive a citation prior to the P-code being assigned.

In the second scenario, an MSHA inspector would determine that a miner's full-shift exposure exceeds the PEL. However, unlike the first scenario, MSHA would also have determined that the mine operator has failed to fully comply with some aspect of 30 CFR § 62.130. A citation would be issued because the mine operator has failed to: (1) implement or maintain all feasible engineering and administrative controls; or (2) enroll all affected miners in a Hearing Conservation Program that complies with each element of 30 CFR § 62.150; or (3) ensure that hearing protection has been provided to the affected miners and is being worn by the affected miners; or (4) post (on the mine bulletin board) and provide affected miners with copies of any procedures for administrative controls. In this scenario, a citation would be issued and an abatement period would be set. If compliance with the PEL still cannot be achieved through the implementation of (1) through (4) above, a P-code will be assigned and the citation will be terminated.

Once a P-code has been assigned, a mine operator must continue to abide by all of the noise requirements of Part 62. MSHA will review and re-evaluate all P-codes periodically to determine whether conditions have changed. A P-code can be

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withdrawn if the original justification for the P-code is no longer valid, i.e. if: (1) a mine operator fails to comply with the minimum specified engineering and administrative controls; or (2) a full-shift dosimeter sample demonstrates that the operator has reduced the affected miner's exposure to the PEL; or (3) new feasible technology becomes available and the mine operator refuses to implement the technology; or

(4) the mine operator fails to comply with any of the requirements of 30 CFR § 62.130.

Background

Overexposure to occupational noise continues to be a pervasive health problem. As such, MSHA would like to offer its assistance to mine operators in the implementation of the noise standard.

Authority

30 CFR Part 62

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Internet Availability

This information bulletin may be viewed on the Internet by accessing <http://www.msha.gov/REGS/COMPLIAN/PIB/PIB2004.htm>

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