

DIVISION OF MINES	CHAPTER: IV Inspections
PROCEDURES MANUAL	
	PROCEDURE NO: 1.04.08
	ISSUE DATE: January 1, 1997
SUBJECT: Smoking Articles Inspection	LAST REVISED: 01/27/00;07/07

OBJECTIVE AND INTENT

To establish investigative procedures for the purpose of responding effectively to alleged felony acts related to carrying and for using smoker's articles in underground mines.

GENERAL

1. Upon notification from MSHA, anonymous complaint, or other sources, of alleged smoking underground, planning of the smoking articles complaint inspection should be coordinated by the affected DM Supervisor. The planning should include coordination with the MSHA District Manager or Assistant District Manager.
2. Suspicion of smoking underground while at the mine on any inspection:
 - Conduct search in the presence of a company agent and any witnesses.
 - Document witnesses and detailed notes of location.
 - In the event smoking articles are discovered, refer to "Enforcement Action".
3. If smoking articles are discovered by a company official in the possession of an employee while underground, and this is reported to DM, the following actions will be taken:
 - Require the official to record details in the company's record book (smokers' articles or preshift/onshift).
 - DM will receive the record book(s) and provide the company official a receipt for the records.
 - DM will request the person discovering the smoking articles to provide a detailed report of the incident and have the report notarized.
 - Evaluate the investigation and if justified, file a criminal complaint against the suspect.

4. Procedures for conducting searches of individuals.

- Have the person demonstrate to you that they have no smoking articles in their possession.
- Have the person open their dinner bucket, remove boots, turn out their pockets, etc.
- If they refuse, refer to procedure, “Enforcement Action”.

PROCEDURE

1. PLANNING A SMOKING ARTICLES INSPECTION

- A decision by DM and MSHA (if involved) will be made to determine what shift and if the inspection will be conducted on the working sections or as mining personnel are traveling to the surface. Usually, a particular shift will be indicated with the complaint, etc. Coal height, distance to working sections, and the element of surprise will be the critical evaluation factors as to whether to attempt to travel to the working sections or to inspect as mining personnel are traveling toward the surface.
- A decision by DM and MSHA (if involved) will be made to determine the number of inspectors necessary to complete the inspection. The number of inspectors selected will be based on the number of sections and number of mining personnel underground. A general rule of thumb is no less than three inspectors to send to each section or other areas of the mine where mining personnel are present in addition to an adequate number on the surface to maintain communication security.

2. CONDUCTING SMOKING ARTICLES INSPECTION

- A meeting should be conducted of appointed field staff, both DM and MSHA, at a designated location to finalize planning strategies.
- Select a route of travel to mine site that would avoid prior notification and if alternate routes of travel are possible, they should be coordinated. Anticipate notification of mining personnel by truck drivers.
- One DM vehicle should arrive first with the number of inspectors necessary to secure all surface telephones and account for all mining personnel on the surface. Upon initial arrival, a DM official will explain the purpose and scope of the inspection. This explanation will also include the penalty of violation of Section 45.1-161.84 of the Coal Mining Safety Laws of Virginia, in reference to pre-notification of inspections.

- The approach, direction and initial advance to the working section will be different in each mine. A critical factor to consider at this point is to initially advance to a specific location if a complaint or other information has revealed that a particular occupation was involved. Ex: roof bolting crew, miner crew, etc.
- When arriving at a working section, gather all mining personnel and travel to a designated inspection location. Upon initial approach to mining personnel on equipment, request that they bring their dinner buckets, coats, or other clothing, etc. Observe mining personnel very closely as traveling to the designated inspection location.
- Inspect the mine floor at the designated inspection location to make sure that no smoking articles, cigarette butts, etc., are already present in this area.
- Instruct mining personnel to position themselves at least three to four feet apart so as to improve confirmation of ownership of cigarette butts, etc., if thrown on the mine floor.
- Designated inspection personnel should closely observe mining personnel that are not being inspected for smoking articles. Look for personnel removing cigarettes, lighters and cigarette butts from pockets and attempting to throw them away. Cigarette butts found after the inspection begins should be cross-matched to cigarettes found on mining personnel; if such articles are found on the person or property of mining personnel.
- After the personnel inspection has been completed, inspect all equipment and unlocked tool boxes. Inspect locked tool boxes if mining personnel are available that have keys to such boxes. Also, inspect the working section for smoking articles that may have been hidden and cigarette butts thrown on the mine floor.

3. DISCOVERY OF SMOKING ARTICLES DURING INSPECTION

- Summon the DM and MSHA (if involved) officials in charge, mine officials, and applicable miner's representative to any location where smoking articles are found. All parties should acknowledge the presence and location of any articles found.
- One DM person should document the names, addresses and telephone numbers of any witnesses, and the name, birth date, telephone number, and address of any person found possessing smoking articles.

- The DM person in charge should document the location in detail of any smoking articles found. A sketch of the location of smoking articles and pertinent information would be helpful.
- The smoking articles should be placed in a paper bag (using surgical gloves if available).
- The paper bag should be properly identified (EX: #1, #2, #3, etc.), stating the contents and specific location in which the items were obtained.
- A record for all items taken as evidence will be provided with a copy given to the company official. The record will account for each item as identified.
- In the event that smoking articles are discovered in lunch buckets, coats, tool boxes, etc., attempt to identify the owner of these items. If identified, the person's name and other pertinent information should be documented on the record given to the company and on the identifying containers (paper bag) holding the items.
- Mining personnel on which smoking articles are found should be withdrawn to the surface with the inspection team.

4. COMPLETION OF INSPECTION

- Issue appropriate notices and/or orders as outlined in Procedure 5, "Enforcement Action".
- Confirm information, such as correct names, addresses, birth dates, and telephone numbers of suspected violators for possible issuance of criminal complaints.
- If a decision to file a criminal complaint is immediately made, the suspected violators may be informed of the Division of Mines' intention. A recommendation should be made that the suspect follow DM personnel to the Magistrate's Office to prevent having warrants served on them and being picked up by the police
- If a decision on filing a criminal complaint is not immediately determined, the suspect should be told that DM personnel will contact them should the decision be made to file a complaint. This would allow the suspect to meet DM at the Magistrate's Office and prevent them being picked up by the Sheriff's Department.

- If interviews of witnesses are needed, they should be conducted immediately. This procedure will enable obtaining accurate and complete testimonies prior to versions being changed or influenced. Document all questions and answers. Dates and times for interviews of any remaining mine personnel not immediately interviewed should be set. **Note: These are informal interviews. The person has the right to refuse to answer questions or stop interviews at any time.**

5. ENFORCEMENT ACTION

- If smoking articles are found during a search of a person or his personal property: (i) issue a violation to the individual person, referencing **Section 45.1-161.177 A** of the Coal Mine Safety Laws of Virginia; (ii) issue an imminent danger order to the licensed mine operator under **Section 45.1-161.91 A** (i) referencing **45.1-161.177 A** and a violation under **45.1-161.177 B** for an inadequate search program.
- If a person refuses to be searched: (i) issue a violation to the individual person referencing **Section 45.1-161.177C**; (ii) if management does not remove the person from the mine, issue the licensed mine operator a violation referencing **45.1-161.14 B**; (iii) if the licensed mine operator does not comply with the 45.1-161.14 B violation within a reasonable time, issue an **Order of Closure affecting the entire mine, for failure to abate (45.1-161.91A (IV))**.
- If smoking articles are found underground and no person is involved, issue the licensed mine operator a violation under **Section 45.1-161.177 B**. NOTE: DM personnel should be aware that cigarette butts are sometimes carried underground accidentally on the bottom of boots, in rock dust bags, drill bits, etc. This problem should be addressed with management.
- If smoking articles are found and the mine is closed, it may be necessary for the mine to remain closed until a joint meeting is held by DM with the operator, mine management, superintendent, general mine foreman, or any other top management deemed necessary.
- If interviews reveal that other suspects were carrying smoking articles underground, consult with the Assistant Attorney General and take appropriate actions.
- In the event facts show neglect or improper actions by certified persons, take appropriate actions with the Board of Coal Mining Examiners.