

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2005 MAR 16 P 1:39

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Office of Miners' Health, Safety & Training TITLE NUMBER: 56 CSR 2

CITE AUTHORITY: 22A-1-6 and 22A-1-38

AMENDMENT TO AN EXISTING RULE: YES  NO

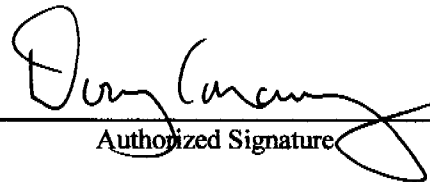
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 2

TITLE OF RULE BEING PROPOSED: Rules Governing Safety Provisions for  
Clearing Crews

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Authorized Signature

**SCANNED**

#11.40



# BUREAU OF COMMERCE

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Bob Wise, Governor • Betty Carver, Commerce Bureau Chief

December 17, 2004

Doug Conaway, Director  
Office of Miners' Health, Safety  
and Training  
1615 Washington Street, East  
Charleston, West Virginia 25311

Dear Director Conaway:

Upon review of your request to file a procedural rule under Title 56, Series 2, which governs safety provisions for timber clearing crews on mine property in the State of West Virginia, I find your proposed rule satisfactory and approve your filing of the regulations.

Sincerely,

A handwritten signature in cursive script that reads "Betty Carver".

Betty Carver  
Commerce Bureau Chief

/cfd

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: March 16, 2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* WV Office of Miners' Health, Safety & Training  
1615 Washington Street East  
Charleston, West Virginia 25311-2126  
304 558-1425 x13 304 558-4875 (fax)

LEGISLATIVE RULE TITLE: Title 56, Series 2

1. Authorizing statute(s) citation 22A-1-6 and 22A-1-38

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
December 21, 2004

b. What other notice, including advertising, did you give of the hearing?  
On December 21, 2004 -  
Mailed notice to all WV Surface Mine Operations and Timbering, Logging,  
and Clear Cutting Independent Contractors of Public Hearing Date  
(February 7, 2005) and Comment Period (December 23, 2004 - February 7, 2005)

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
Comment Period: December 23, 2004 - February 7, 2005  
Public Hearing: February 7, 2005

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received \_\_\_\_\_

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

March 16, 2005

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Doug Conaway, Director

WV Office of Miners' Health, Safety & Training

1615 Washington Street East

Charleston, West Virginia 25311-2126

(304) 558-1425 extension 13

(304) 558-4875 (fax)

email: jdconaway@mines.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

n/a

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

n/a

b. Date of hearing or comment period:

n/a

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c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

n/a

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d. Attach findings and determinations and reasons:

Attached n/a

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**STATE OF WEST VIRGINIA  
BOB WISE, GOVERNOR**

**OFFICE OF MINERS' HEALTH,  
SAFETY AND TRAINING  
Doug Conaway, Director**

1815 Washington Street, East  
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**Region Four**  
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(304) 469-4059/Fax

## **BRIEF SUMMARY OF RULE 56 CSR 2**

The agency's mission is to protect the health and safety of all persons working on mine property in West Virginia. Surface mining companies employ clear-cutting crews to cut trees and brush in advance of mining. Timbering & clear cutting is a very hazardous activity and so far this year two (2) clear cutters have died on WV mine property. This is a very specialized occupation and current WV mining laws are not specific enough to address the safety and training concerns that presently exist. This rule is a part of an organized effort by WV MHST to prevent any further injury or death of clear cutters on mine property.



STATE OF WEST VIRGINIA  
BOB WISE, GOVERNOR

OFFICE OF MINERS' HEALTH,  
SAFETY AND TRAINING  
Doug Conway, Director

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**SPECIFIC STATEMENT OF CIRCUMSTANCES  
WHICH REQUIRE THE RULE TO BE FILED AS  
EMERGENCY 56 CSR 2**

In December 2004 the State of West Virginia experienced the second (2<sup>nd</sup>) death this year on mine property due to tree clearing activities. No rules or regulations exist to help the agency train and regulate this very hazardous component of surface mining.

The current coal demand is causing existing operations to expand mine operations as quickly as possible and has lead to an increase in new mines and independent contractor activity.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 56 CSR 2 Safety Provisions for Clearing Crews

Type of Rule:  Legislative  Interpretive  Procedural

Agency: WV Office of Miners Health, Safety & Training

Address: 1615 Washington Street East  
Charleston, West Virginia 25311-2126

Phone Number: 304558-1425 x13 Email: jdconaway@mines.state.wv.us

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

THE PROPOSED RULE WILL HAVE NO FINANCIAL EFFECT ON THE AGENCY'S BUDGET. ALL INSPECTION AND TRAINING WILL BE ACCOMPLISHED THROUGH THE EXISTING AGENCY STAFF.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	- 0 -	- 0 -	- 0 -
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues			

Rule Title: 56 CSR 2 Safety Provisions for Clearing Crews

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

N/A

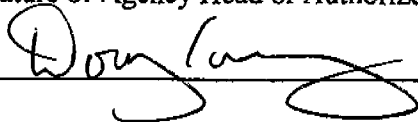
### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

N/A

Date: DECEMBER 17, 2004

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_

**TITLE 56  
LEGISLATIVE RULE  
OFFICE OF MINERS' HEALTH, SAFETY & TRAINING**

**FILED**

2005 MAR 16 P 1:49

**SERIES 2  
RULE GOVERNING SAFETY PROVISIONS FOR CLEARING CREWS**

WEST VIRGINIA  
SECRETARY OF STATE

**56-2-1. General.**

1.1. Scope. -- This rule governs safety provisions for clearing crews while on mine property in the State of West Virginia. It is not intended to extend to commercial logging operations that may be on mine property and are regulated by OSHA and the WV Division of Forestry.

1.2. Authority. -- W. Va. Code 22A-1-6 and W. Va. Code 22A-1-38.

1.3. Filing Date. -- December 17, 2004

1.4. Effective Date. -- December 17, 2004

1.5. Applicability. -- This rule applies to each mine operator and independent contractor registered with the WV Office of Miners' Health, Safety and Training as required by West Virginia Code 22A-6-2-63.

**56-2-2. Effect of Law and Rule.**

2.1. This rule has the effect of law and violations are a violation of law and so cited with the same effect as law.

**56-2-3. Definitions**

3.1 Arch - An open-framed trailer or built-up framework used to suspend the leading ends of trees or logs when they are skidded.

3.2 Backcut (felling cut) - The final cut in a felling operation.

3.3 Ballistic nylon - A nylon fabric of high tensile properties designed to provide protection from lacerations.

3.4 Buck - To cut a felled tree into logs.

3.5 Butt - The bottom of the felled part of a tree.

3.6 Cable yarding - The movement of felled trees or logs from the area where they are felled to the landing on a system composed of a cable suspended from spars and/or towers. The trees or logs may be either dragged across the ground on the cable or carried while suspended from the cable.

3.7 Clearing Crew (Land Clearing) - Persons employed by the mine operator/independent contractor to clear and grub vegetation in preparation of, or during, mining operations.

3.8 Chock - A block, often wedge shaped, which is used to prevent movement; e.g., a log from rolling, a wheel from turning.

3.9 Choker - A sling used to encircle the end of a log for yarding. One end is passed around the load, then through a loop eye, end fitting or other device at the other end of the sling. The end

that passed through the end fitting or other device is then hooked to the lifting or pulling machine.

3.10. Competent Person - A person designated by the mine operator/independent contractor who has a minimum of twelve (12) months experience in the clear cutting industry and is familiar with the normal hazards associated therein.

3.11. Danger tree - A standing tree that presents a hazard to employees due to conditions such as, but not limited to, deterioration or physical damage to the root system, trunk, stem or limbs, and the direction and lean of the tree.

3.12. Debark - To remove bark from trees or logs.

3.13. Deck - A stack of trees or logs.

3.14. Designated person - An employee who has the requisite knowledge, training and experience to perform specific duties.

3.15. Domino felling - The partial cutting of multiple trees which are left standing and then pushed over with a pusher tree.

3.16. Employer - The person or entity that directly employs the clearing crew. It may be an independent contractor or in some cases it may be the production operator.

3.17. Fell (fall) - To cut down trees.

3.18. Feller (faller) - An employee who fells trees.

3.19. Grounded - The placement of a component of a machine on the ground or on a device where it is firmly supported.

3.20. Guarded - Covered, shielded, fenced, enclosed, or otherwise protected by means of suitable enclosures, covers, casings, shields, troughs, railings, screens, mats, or platforms, or by location, to prevent injury.

3.21. Independent Contractor - Any firm, corporation, partnership or individual that contracts to perform services or construction at a coal mine.

3.22. Landing - Any place where logs are laid after being yarded, and before transport from the work site.

3.23. Limbing - To cut branches off felled trees.

3.24. Lodged tree (hung tree) - A tree leaning against another tree or object which prevents it from falling to the ground.

3.25. Log - A segment sawed or split from a felled tree, such as, but not limited to, a section, bolt, or tree length.

3.26. Machine - A piece of stationary or mobile equipment having a self-contained power plant that is operated off-road and used for the movement of material. Machines include, but are not limited to, tractors, skidders, front-end loaders, scrapers, graders, bulldozers, swing yarders, log stackers, log loaders, and mechanical felling devices, such as tree shears and feller bunchers. Machines do not include airplanes or aircraft (e.g., helicopters).

3.27. Production Operator - Any owner, lessee or other person who operates, controls or supervisors at a coal mine.

3.28. Rated capacity - The maximum load a system, vehicle, machine or piece of equipment was designed by the manufacturer to handle.

3.29. Root wad - The ball of a tree root and dirt that is pulled from the ground when a tree is uprooted.

3.30. Serviceable condition - A state or ability of a tool, machine, vehicle or other device to operate as it was intended by the manufacturer to operate.

3.31. Skidding - The yarding of trees or logs by pulling or towing them across the ground.

3.32. Slope (grade) - The increase or decrease in altitude over a horizontal distance expressed as a percentage. For example, a change of altitude of 20 feet (6 m) over a horizontal distance of 100 feet (30 m) is expressed as a 20 percent slope.

3.33. Snag - Any standing dead tree or portion thereof.

3.34. Spring pole - A tree, segment of a tree, limb, or sapling, which is under stress, or tension due to the pressure or weight of another object.

3.35. Tie down - Chain, cable, steel strips or fiber webbing and binders attached to a truck, trailer or other conveyance as a means to secure loads and to prevent them from shifting or moving when they are being transported.

3.36. Undercut - A notch cut in a tree to guide the direction of the tree fall and to prevent splitting or kickback.

3.37. Vehicle - A car, bus, truck, trailer or semi-trailer owned, leased or rented by the employer that is used for transportation of employees or movement of material.

3.38. Winching - The winding of cable or rope onto a spool or drum.

3.39. Yarding - The movement of logs from the place they are felled to a landing.

#### **56-2-4. Personal Protective Equipment.**

4.1. The employer shall assure that personal protective equipment, including any personal protective equipment provided by an employee, is maintained in a serviceable condition.

4.2. The employer shall assure that personal protective equipment, including any personal protective equipment provided by an employee, is inspected before initial use during each work shift. Defects or damage shall be repaired or the unserviceable personal protective equipment shall be replaced before work is commenced.

4.3. The employer shall provide, at no cost to the employee, and assure that each employee handling wire rope wears, hand protection which provides adequate protection from puncture wounds, cuts and lacerations.

4.4. The employer shall provide, at no cost to the employee, and assure that each employee who operates a chain saw wears leg protection constructed with cut-resistant material, such as ballistic nylon. The leg protection shall cover the full length of the thigh to the top of the boot on each leg to protect against contact with a moving chain saw. Exception: This requirement does not apply when an employee is working as a climber if the employer demonstrates that a greater hazard is posed by wearing leg protection in the particular situation, or when an employee is working from a vehicular mounted elevating and rotating work platform.

4.5. The employer shall assure that each employee wears foot protection, such as heavy-duty logging boots that are waterproof or water repellent, cover and provide support to the ankle. The employer shall assure that each employee who operates a chain saw wears foot protection that is constructed with cut-resistant material, which will protect the employee against contact with a running chain saw. Sharp, calk-soled boots or other slip-resistant type boots may be worn where the employer demonstrates that they are necessary for the employee's job, the terrain, the timber type, and the weather conditions, provided that foot protection otherwise required by West Virginia Surface Mine Regulations is met.

4.6. The employer shall provide, at no cost to the employee, and assure that each employee who works in an area where there is potential for head injury from falling or flying objects wears head protection as stated in West Virginia Surface Mine Regulations.

4.7. The employer shall provide, at no cost to the employee, and assure that each employee wears the following:

4.8. Eye protection where there is potential for eye injury due to falling or flying objects, face protection where there is potential for facial injury such as, but not limited to, operating a chipper. Logger-type mesh screens may be worn by employees performing chain-saw operations and yarding. The employee does not have to wear a separate eye protection device where face protection covering both the eyes and face is worn.

#### **56-2-5. Emergency Provisions.**

5.1. Each worksite shall have first-aid kits that are equipped and located in accordance with OSHA Logging Operations Standards found in 1910 CFR.

5.2. In accordance with West Virginia Surface Mine Regulations, 56-3-48.3, emergency arrangements shall be provided for the mine site.

5.3. Each worksite in accordance with the West Virginia Surface Mine Regulations 56-3-48.4 shall be provided with emergency communications.

#### **56-2-6. Seat Belts.**

6.1. Seat belts - For each vehicle or machine (equipped with ROPS/FOPS or overhead guards), including any vehicle or machine provided by an employee, the employer should assure:

- (a) That a seat belt is provided for each vehicle or machine operator;
- (b) That each employee uses the available seat belt while operating the vehicle or machine;
- (c) That each employee securely and tightly fastens the seat belt to restrain the employee within the vehicle or machine cab;
- (d) That each machine seat belt meets the requirements of the Society Of Automotive Engineers Standard SAE J386, June 1985, "Operator Restraint Systems for Off-Road Work Machines".
- (e) That seat belts are not removed from any vehicle or machine. The employer shall replace each seat belt which has been removed from any vehicle or machine that was equipped with seat belts at the time of manufacture; and
- (f) That each seat belt is maintained in a serviceable condition.

#### **56-2-7. Environmental Conditions.**

7.1. All work shall terminate and each employee shall move to a place of safety when environmental conditions, such as but not limited to, electrical storms, strong winds which may affect the fall of a tree, heavy rain or snow, extreme cold, dense fog, fires, mudslides, and darkness, create a hazard for the employee in the performance of the job.

#### **56-2-8. Work Areas.**

8.1. (a) Employees shall be spaced and the duties of each employee shall be organized so the actions of one employee will not create a hazard for any other employee.

(b) Work areas shall be assigned so that trees cannot fall into an adjacent occupied work area. The distance between adjacent occupied work areas shall be at least two tree lengths of the trees being felled. The distance between adjacent occupied work areas shall reflect the degree of slope, the density of the growth, the height of the trees, the soil structure and other hazards reasonably anticipated at that work site. A distance of greater than two tree lengths shall be maintained between adjacent occupied work areas on any slope where rolling or sliding of trees or logs is reasonably foreseeable.

(c) Each employee performing a logging operation at a logging work site shall work in a position or location that is within visual or audible contact with another employee.

(d) The employer shall account for each employee at the end of each work shift.

#### **56-2-9. Signaling and Signal Equipment.**

9.1 (a) Hand signals or audible contact, such as but not limited to, whistles, horns, or radios, shall be utilized whenever noise, distance, restricted visibility, or other factors prevent clear understanding of normal voice communications between employees.

(b) Engine noise, such as from a chain saw, is not an acceptable means of signaling. Other locally and regionally recognized signals may be used.

(c) Only a designated person shall give signals, except in an emergency.

#### **56-2-10. Overhead Electric Lines.**

10.1. Clearing operations near overhead electric lines shall be done in accordance with the requirements of the West Virginia Surface Mine Regulations, 56-3-37.

10.2. The employer shall notify the power company immediately if a felled tree makes contact with any power line. Each employee shall remain clear of the area until the power company advises that there are no electrical hazards.

#### **56-2-11. Flammable and Combustible Liquids.**

11.1. (a) Flammable and combustible liquids shall be stored, handled, transported, and used in accordance with the requirements the West Virginia Surface Mine Regulations 56-3-45.2 and 56-3-45.3.

(b) Flammable and combustible liquids shall not be transported in the driver compartment or in any passenger-occupied area of a machine or vehicle.

(c) Each machine, vehicle and portable powered tool shall be shut off during fueling. Diesel-powered machines and vehicles may be fueled while they are at idle, provided that continued operation is intended and that the employer follows safe fueling and operating procedures.

(d) Flammable and combustible liquids, including chain-saw and diesel fuel, may be used to start a fire, provided the employer assures that in the particular situation its use does not create a hazard for an employee.

## **56-2-12. Explosives and Blasting Agents.**

12.1. Explosives and blasting agents shall be stored, handled, transported, and used in accordance with the requirements of the West Virginia Surface Mine Regulations, 56-3-32.

## **56-2-13. Hand and Portable Powered Tools General Requirements.**

13.1. The employer shall assure that each hand and portable powered tool, including any tool provided by an employee, is maintained in serviceable condition.

The employer shall assure that each tool, including any tool provided by an employee, is inspected before initial use during each work shift. At a minimum, the inspection shall include the following:

13.2. (a) Handles and guards to assure that they are sound, tight-fitting, properly shaped, free of splinters and sharp edges, and in place;

(b) Controls, to assure proper function;

(c) Chain-saw chains, to assure proper adjustment;

(d) Chain-saw mufflers, to assure that they are operational and in place;

(e) Chain brakes and nose shielding devices, to assure that they are in place and function properly;

(f) Heads of shock, impact-driven and driving tools, to assure that there is no mushrooming;

(g) Cutting edges, to assure that they are sharp and properly shaped; and

(h) All other safety devices, to assure that they are in place and function properly.

13.3. The employer shall assure that each tool is used only for purposes for which it has been designed.

13.4. When the head of any shock, impact-driven or driving tool begins to chip, it shall be repaired or removed from service.

13.5. The cutting edge of each tool shall be sharpened in accordance with manufacturer's specifications whenever it becomes dull during the work shift.

13.6. Each tool shall be stored in the provided location when not being used at a work site.

13.7. Racks, boxes, holsters or other means shall be provided, arranged and used for the transportation of tools so that a hazard is not created for any vehicle operator or passenger.

## **56-2-14. Chain Saws.**

14.1. (a) Each chain saw shall be equipped with a chain brake and shall otherwise meet the requirements of the ANSI B175.1-1991 "Safety Requirements for Gasoline-Powered Chain Saws".

(b) Each gasoline-powered chain saw shall be equipped with a continuous pressure throttle control system, which will stop the chain when pressure on the throttle is released.

(c) The chain saw shall be operated and adjusted in accordance with the manufacturer's instructions.

(d) The chain saw shall be fueled at least 10 feet (3 m) from any open flame or other source of ignition.

(e) The chain saw shall be started at least 10 feet (3 m) from the fueling area.

(f) The chain saw shall be started on the ground or where otherwise firmly supported. Drop starting a chain saw is prohibited.

(g) The chain saw shall be started with the chain brake engaged.

(h) The chain saw shall be held with the thumbs and fingers of both hands encircling the handles during operation unless the employer demonstrates that a greater hazard is posed by keeping both hands on the chain saw in that particular situation.

(i) The chain-saw operator shall be certain of footing before starting to cut. The chain saw shall not be used in a position or at a distance that could cause the operator to become off-balance, to have insecure footing, or to relinquish a firm grip on the saw.

(j) Prior to felling any tree, the chain-saw operator shall clear away brush or other potential obstacles, which might interfere with cutting the tree or using the retreat path.

(k) The chain saw shall not be used to cut directly overhead.

(l) The chain saw shall be carried in a manner that will prevent operator contact with the cutting chain and muffler.

(m) The chain saw shall be shut off or the throttle released before the feller starts his retreat.

(n) The chain saw shall be shut down or the chain brake shall be engaged whenever a saw is carried further than 50 feet (15.2 m). The chain saw shall be shut down or the chain brake shall be engaged when a saw is carried less than 50 feet if conditions such as, but not limited to, the terrain, underbrush and slippery surfaces, may create a hazard for an employee.

#### **56-2-15. Machines, General Requirements.**

15.1. (a) The employer shall assure that each machine, including any machine provided by an employee, is maintained in serviceable condition.

(b) The employer shall assure that each machine, including any machine provided by an employee, is inspected before initial use during each work shift. Defects or damage shall be repaired or the unserviceable machine shall be replaced before work is commenced.

(c) The employer shall assure that operating and maintenance instructions are available on the machine or in the area where the machine is being operated. Each machine operator and maintenance employee shall comply with the operating and maintenance instructions.

#### **56-2-16. Machine Operation.**

16.1. (a) The machine shall be started and operated only by a designated person.

(b) Stationary logging machines and their components shall be anchored or otherwise stabilized to prevent movement during operation.

(c) The rated capacity of any machine shall not be exceeded.

(d) To maintain stability, the machine must be operated within the limitations imposed by the manufacturer as described in the operating and maintenance instructions for that machine on any slope which is greater than the maximum slope recommended by the manufacturer.

(e) Before starting or moving any machine, the operator shall determine that no employee is in the path of the machine.

(f) The machine shall be operated only from the operator's station or as otherwise recommended by the manufacturer.

(g) The machine shall be operated at such a distance from employees and other machines such that operation will not create a hazard for an employee.

(h) No employee other than the operator shall ride on any mobile machine unless seating, seat belts and other protection equivalent to that provided for the operator are provided.

(i) No employee shall ride on any load.

(j) Before the operator leaves the operator's station of a machine, it shall be secured as follows:

1. The parking brake or brake locks shall be applied;
2. The transmission shall be placed in the manufacturer's specified park position; and
3. Each moving element such as, but not limited to blades, buckets, saws, and shears shall be lowered to the ground or otherwise secured.

(k) If a hydraulic or pneumatic storage device can move the moving elements such as, but not limited to, blades, buckets, saws and shears, after the machine is shut down, the pressure or stored energy from the element shall be discharged as specified by the manufacturer.

(l) The rated capacity of any vehicle transporting a machine shall not be exceeded.

(m) The machine shall be loaded, secured and unloaded so that it will not create a hazard for any employee.

(n) For safe operation of equipment on slopes the operator shall follow the manufacturer's specifications and limitations of the mobile equipment, wire ropes, and all attachments.

#### **56-2-17. Protective Structures.**

17.1. Each tractor, skidder, swing yarder, log stacker, log loader and mechanical felling device, such as tree shears or feller-buncher, placed into initial service after February 9, 1995, shall be equipped with falling object protective structure and/or rollover protection. The employer shall replace FOPS or ROPS, which have been removed from any machine. Exception: This requirement does not apply to machines, which are capable of 360-degree rotation. ROPS shall be tested, installed, and maintained in serviceable condition.

17.2. Each machine manufactured after August 1, 1996, shall have ROPS tested, installed, and maintained in accordance with the Society of Automotive Engineers SAEJ1040, April 1988, "Performance Criteria for Rollover Protective Structures (ROPS) for Construction, Earthmoving, Forestry, and Mining Machines".

17.3. FOPS shall be installed, tested and maintained in accordance with the Society of Automotive Engineers SAE J231, January 1981, "Minimum Performance Criteria for Falling Object Protective Structures (FOPS)".

17.4. ROPS and FOPS shall meet the requirements of the Society of Automotive Engineers SAE J397, April 1988, "Deflection Limiting Volume-ROPS/FOPS Laboratory Evaluation".

17.5. Each protective structure shall be of a size that does not impede the operator's normal movements.

17.6. The overhead covering of each cab shall be of solid material and shall extend over the entire canopy.

17.7. Each machine manufactured after August 1, 1996, shall have a cab that is fully enclosed with mesh material with openings no greater than 2 inches (5.08 cm) at its least dimension. The cab may be enclosed with other material(s) where the employer demonstrates such material(s)

provides equivalent protection and visibility. Exception: Equivalent visibility is not required for the lower portion of the cab where there are control panels or similar obstructions in the cab, or where visibility is not necessary for safe operation of the machine.

17.8. Each machine manufactured on or before August 1, ~~1996~~ 1996, shall have a ~~cab~~ cab, which meets the requirements specified in the above paragraph or a protective canopy for the operator which meets the following requirements:

(a) The protective canopy shall be constructed to protect the operator from injury due to falling trees, limbs, saplings or branches which might enter the compartment side areas and from snapping winch lines or other objects;

(b) The lower portion of the cab shall be fully enclosed with solid material, except at entrances, to prevent the operator from being injured from obstacles entering the cab;

(c) The upper rear portion of the cab shall be fully enclosed with open mesh material with openings of such size as to reject the entrance of an object larger than 2 inches in diameter. It shall provide maximum rearward visibility; and

(d) Open mesh shall be extended forward as far as possible from the rear corners of the cab sides so as to give the maximum protection against obstacles, branches, etc., entering the cab area.

(e) The enclosure of the upper portion of each cab shall allow maximum visibility.

(f) When transparent material is used to enclose the upper portion of the cab, it shall be made of safety glass or other material that the employer demonstrates provides equivalent protection and visibility.

(g) Transparent material shall be kept clean to assure operator visibility.

(h) Transparent material that may create a hazard for the operator, such as but not limited to, cracked, broken or scratched safety glass shall be replaced.

(i) Deflectors shall be installed in front of each cab to deflect whipping saplings and branches. Deflectors shall be located so as not to impede visibility and access to the cab.

(j) The height of each cab entrance shall be at least 52 inches (1.3 meters) from the floor of the cab.

(k) Each machine operated near cable yarding operations shall be equipped with sheds or roofs of sufficient strength to provide protection from breaking lines.

#### **56-2-18. Overhead Guards.**

18.1. Each forklift shall be equipped with an overhead guard meeting the requirements of the American Society of Mechanical Engineers, ASME B56.6-1992 (with addenda), "Safety Standard for Rough Terrain Forklift Trucks".

#### **56-2-19. Machine Access.**

19.1. Machine access systems, meeting the specifications of the Society of Automotive Engineers, SAE J185, June 1988, "Recommended Practice for Access Systems for Off-Road Machines", shall be provided for each machine where the operator or any other employee must climb onto the machine to enter the cab or to perform maintenance.

19.2. Each machine cab shall have a second means of egress.

19.3. Walking and working surfaces of each machine and machine workstation shall have a slip resistant surface to assure safe footing.

19.4. The walking and working surface of each machine shall be kept free of waste, debris and any other material, which might result in fire, slipping, or falling.

#### **56-2-20. Exhaust Systems.**

20.1. The exhaust pipes on each machine shall be located so exhaust gases are directed away from the operator. The exhaust pipes on each machine shall be mounted or guarded to protect each employee from accidental contact.

20.2. The exhaust pipes shall be equipped with spark arresters.

Engines equipped with turbochargers do not require spark arresters.

20.3. Each machine muffler provided by the manufacturer, or their equivalent, shall be in place at all times the machine is in operation.

#### **56-2-21. Brakes.**

21.1. Service brakes shall be sufficient to stop and hold each machine and its rated load capacity on the slopes over which it is being operated.

21.2. Each machine placed into initial service on or after September 8, 1995 shall also be equipped with: back-up or secondary brakes that are capable of stopping the machine regardless of the direction of travel or whether the engine is running; and parking brakes that are capable of continuously holding a stopped machine stationary.

#### **56-2-22. Guarding.**

22.1. Each machine shall be equipped with guarding to protect employees from exposed moving elements, such as but not limited to, shafts, pulleys, belts on conveyors, and gears.

22.2. Each machine used for debarking, limbing and chipping shall be equipped with guarding to protect employees from flying wood chunks, logs, chips, bark, limbs and other material.

22.3. The guarding on each machine shall be in place at all times the machine is in operation.

#### **56-2-23. Vehicles.**

23.2. The employer shall assure that each vehicle/mobile equipment used to perform any clearing operation is maintained in safe condition.

23.3. The employer shall assure that each vehicle/mobile equipment used to perform any clearing operation is inspected before initial use during each work shift. Defects shall be recorded on a form approved by the Director and shall be signed by the person performing the examination. Imminent danger equipment defects shall be corrected before the equipment is put into operation.

23.4. The employer shall assure that operating and maintenance instructions are available in each vehicle/mobile equipment. Each vehicle/mobile equipment operator and maintenance employee shall comply with the operating and maintenance instructions.

23.5. Mounting steps and handholds shall be provided for each vehicle/mobile equipment wherever it is necessary to prevent an employee from being injured when entering or leaving the vehicle/mobile equipment.

23.6. The seats of each vehicle/mobile equipment shall be securely fastened.

#### **56-2-24. Tree Harvesting Felling.**

##### **24.1. General requirements."**

(a) Trees shall not be felled in a manner that may create a hazard for an employee, such as but not limited to, striking a rope, cable, power line, or machine.

(b) The immediate supervisor shall be consulted when unfamiliar or unusually hazardous conditions necessitate the supervisor's approval before cutting is commenced.

(c) While manual felling is in progress, no yarding machine shall be operated within two tree lengths of trees being manually felled. Exception: This provision does not apply to yarding machines performing tree-pulling operations.

(d) No employee shall approach a feller closer than two tree lengths of trees being felled until the feller has acknowledged that it is safe to do so, unless the employer demonstrates that a team of employees is necessary to manually fell a particular tree.

(e) No employee shall approach a mechanical felling operation closer than two tree lengths of the trees being felled until the machine operator has acknowledged that it is safe to do so.

(f) Each danger tree shall be felled, removed or avoided. Each danger tree, including lodged trees and snags, shall be felled or removed using mechanical or other techniques that minimize employee exposure before work is commenced in the area of the danger tree. If the danger tree is not felled or removed, it shall be marked and no work shall be conducted within two tree lengths of the danger tree unless the employer demonstrates that a shorter distance will not create a hazard for an employee.

(g) Each danger tree shall be carefully checked for signs of loose bark, broken branches and limbs or other damage before they are felled or removed. Accessible loose bark and other damage that may create a hazard for an employee shall be removed or held in place before felling or removing the tree.

(h) Felling on any slope where rolling or sliding of trees or logs is reasonably foreseeable shall be done uphill from, or on the same level as, previously felled trees.

24.2. Domino felling of trees is prohibited. (Note): The definition of domino felling does not include the felling of a single danger tree by felling another single tree into it.

#### **56-2-25. Manual Felling.**

25.1. Before felling is started, the feller shall plan and clear a retreat path. The retreat path shall extend diagonally away from the expected felling line unless the employer demonstrates that such a retreat path poses a greater hazard than an alternate path. Once the back cut has been made the feller shall immediately move a safe distance away from the tree on the retreat path. Before each tree is felled, conditions such as, but not limited to, snow and ice accumulation, the wind, the lean of tree, dead limbs, and the location of other trees, shall be evaluated by the feller and precautions taken so a hazard is not created for an employee.

25.2. Each tree shall be checked for accumulations of snow and ice. Accumulations of snow and ice that may create a hazard for an employee shall be removed before felling is commenced in the area or the area shall be avoided.

25.3. When a spring pole or other tree under stress is cut, no employee other than the feller shall be closer than two trees lengths when the stress is released.

25.4. An undercut shall be made in each tree being felled unless the employer demonstrates that felling the particular tree without an undercut will not create a hazard for an employee. The undercut shall be of a size so the tree will not split and will fall in the intended direction.

25.5. A back cut shall be made in each tree being felled. The back cut shall leave sufficient hinge wood to hold the tree to the stump during most of its fall so that the hinge is able to guide the tree's fall in the intended direction.

25.6. The backcut shall be above the level of the horizontal facecut in order to provide an adequate platform to prevent kickback. Exception: The backcut may be at or below the horizontal facecut in tree pulling operations. (Note): This requirement does not apply to open face felling where two angled facecuts rather than a horizontal facecut are used.

#### **56-2-26. Limbing and Bucking.**

26.1. Limbing and bucking on any slope where rolling or sliding of trees or logs is reasonably foreseeable shall be done on the uphill side of each tree or log.

26.2. Before bucking or limbing wind-thrown trees, precautions shall be taken to prevent the root wad, butt or logs from striking an employee. These precautions include, but are not limited to, chocking or moving the tree to a stable position.

#### **56-2-27. Chipping (in-woods locations).**

27.1. Chipper access covers or doors shall not be opened until the drum or disc is at a complete stop.

27.2. Infeed and discharge ports shall be guarded to prevent contact with the disc, knives, or blower blades.

27.3. The chipper shall be shut down, locked and tagged out when an employee performs any servicing or maintenance.

27.4. Detached trailer chippers shall be chocked during usage on any slope where rolling or sliding of the chipper is reasonably foreseeable.

#### **56-2-28. Yarding.**

28.1. No log shall be moved until each employee is in the clear.

28.2. Each choker shall be hooked and unhooked from the uphill side or end of the log, unless the employer demonstrates that it is not feasible in the particular situation to hook or unhook the choker from the uphill side. Where the choker is hooked or unhooked from the downhill side or end of the log, the log shall be securely chocked to prevent rolling, sliding or swinging.

28.3. Each choker shall be positioned near the end of the log or tree length.

28.4. Each machine shall be positioned during winching so the machine and winch are operated within their design limits.

28.5. No yarding line shall be moved unless the yarding machine operator has clearly received and understood the signal to do so. When in doubt, the yarding machine operator shall repeat the signal and wait for a confirming signal before moving any line.

28.6. No load shall exceed the rated capacity of the pallet, trailer, or other carrier.

28.7. Towed equipment, such as but not limited to, skid pans, pallets, arches, and trailers, shall be attached to each machine or vehicle in such a manner as to allow a full 90 degree turn; to prevent overrunning of the towing machine or vehicle; and to assure that the operator is always in control of the towed equipment.

28.8. The yarding machine or vehicle, including its load, shall be operated with safe clearance from all obstructions that may create a hazard for an employee.

28.9 Each yarded tree shall be placed in a location that does not create a hazard for an employee and an orderly manner so that the trees are stable before bucking or limbing is commenced.

### **56-2-29. Loading and Unloading.**

29.1. The transport vehicle shall be positioned to provide working clearance between the vehicle and the deck.

29.2. Only the loading or unloading machine operator and other personnel the employer demonstrates are essential shall be in the loading or unloading work area during this operation.

29.3. No transport vehicle operator shall remain in the cab during loading and unloading if the logs are carried or moved over the truck cab, unless the employer demonstrates that it is necessary for the operator to do so. Where the transport vehicle operator remains in the cab, the employer shall provide operator protection, such as but not limited to, reinforcement of the cab.

29.4. Each log shall be placed on a transport vehicle in an orderly manner and tightly secured. The load shall be positioned to prevent slippage or loss during handling and transport.

29.5. Each stake and chock, which is used to trip loads shall be so constructed that the tripping mechanism is activated on the side opposite the release of the load.

29.6. Each tie down shall be left in place over the peak log to secure all logs until the unloading lines or other protection the employer demonstrates is equivalent has been put in place. A stake of sufficient strength to withstand the forces of shifting or moving logs, shall be considered equivalent protection provided that the logs are not loaded higher than the stake.

29.7. Each tie down shall be released only from the side on which the unloading machine operates unless a remote control device releases the tie down or the employee making the release is protected by racks, stanchions or other protection capable of withstanding the force of the logs.

29.8. The transport vehicle operator shall assure that each tie down is tight before transporting the load. While enroute, the operator shall check and tighten the tie downs whenever there is reason to believe that the tie downs have loosened or the load has shifted.

29.9. Each deck shall be constructed and located so it is stable and provides each employee with enough room to safely move and work in the area.

### **56-2-30. Pre-shift/On-shift Examination.**

30.1. Prior to the beginning of any shift a designated competent person shall visit and carefully examine all work areas for dangerous conditions. Upon completion of the examination, the competent person shall record the results in a book prescribed by the Director, before persons

enter the work area. This book shall be kept at the work area and made available for inspection by an authorized representative of the Director.

30.2. The designated competent person shall examine all work areas under his supervision for hazards at least once every four (4) hours during each working shift, or more often if necessary for safety. The competent person shall record the results of the on shift examination in a book prescribed by the Director.

30.3. Should the competent person find a place to be in a dangerous condition, they shall not leave the place until it has been made safe, or shall remove the persons working therein until the place is made safe.

30.4. The competent person shall also record any dangerous conditions and practices found during the examination in a book provided for that purpose.

#### **56-2-31. Safety Meetings.**

31.1. The employer shall have weekly safety meetings with all employees which shall provide training in the working practices and conditions at the work area and rules and regulations applicable thereto.

#### **56-2-32. Training.**

32.1. The employer shall provide training for each employee, including supervisors, at no cost to the employee.

32.2. As soon as possible but not later than ninety (90) days from the effective date of these guidelines all employees shall receive a minimum of sixteen (16) hours of training. This training shall consist of:

- (a) Four (4) hours of general surface mine safety.
- (b) Eight (8) hours of task specific safety (clear cutting).
- (c) Four (4) hours of first aid and emergency procedures.

32.3 Before any new employee begins work they shall receive the 16-hours of training described in Section 32.2.

WEST VIRGINIA OFFICE OF MINERS HEALTH SAFETY AND TRAINING

1615 WASHINGTON STREET EAST

CHARLESTON, WEST VIRGINIA 25311

TRANSCRIPT OF PUBLIC HEARING

RULES AND REGULATIONS GOVERNING  
SAFETY PROVISIONS FOR CLEAR CUTTING CREWS

TITLE 56, SERIES 2

FEBRUARY 7, 2005

February 7, 2005  
10:00 a.m.

**Conducting Hearing:**

C. A. Phillips, Deputy Director, WV Office of MHST  
Terry Farley Keen, Surface Inspector, WV Office of MHST

**Persons Attending:**

Cinda B. Francis, WV Forestry Association  
David G. Lilly, WV Division of Forestry  
Jason Burke, Gilbert PLC Lumber  
Richard Breton, M.G.C. Inc.  
Mark Heath, Spilman, Thomas & Battle

Mr. Phillips: Good morning, I am C. A. Phillips, Deputy Director with Office of Miners Health, Safety and Training. For the record today's date is February 7, 2005. The West Virginia Office of Miners Health, Safety and Training will be conducting this public hearing pertaining to safety provisions for clearing crews, Title Number 56, CSR 2. A little bit of history of what brought the emergency regulations about, in December 2004 the State of West Virginia experienced the second death this year on mine property due to clear cutting activities. No rules or regulations exist to help the agency train and regulate this very hazardous component of surface mining. The current coal demand is causing existing operations to expand mine operations as quickly as possible and has lead to an increase of new mines and independent contractor activity. Written comments from the WV Department of Forestry, Director Charles R. Dye and the Office of Miners Health Safety and Training surface inspection staff have been submitted for their review and these are the comments for the record. At this time we will open the hearing to those who would like to comment on the emergency regulation and I would ask you to step forward and sit in the maroon chair, if you can get to it. It is kind of tight. Our first commenter, Mr. Lilly.

Mr. Lilly: Yes.

Mr. Phillips: If you would please for the record please state your name and the agency or corporation you represent.

Mr. Lilly: My name is David Lilly and I am with the WV Division of Forestry. We had submitted written comments and I guess the biggest concern was the meshing of your rules with the Logging Sediment Control Act, which is the regulation of logging in West Virginia. And we require notifications to be filed for timbering operations and there is a number of things, the training is similar and we were just concerned mainly if a licensed logger would also be doing land clearing if they would need to file both paperwork with you and also with us. Or who regulates the operation if it is a commercial timber operation doing the land clearing. So it was more or less just trying to clear up who did what. And if there was any overlap that the two agencies need to address.

Mr. Phillips: Mr. Lilly at this time if I may, Director Conaway is up the street in a meeting and he and I talked about this just briefly. If the clear cutting crew is doing this particular cutting commercially for the timber to be resold that we will not have any regulation pertaining to that particular operation. But if it is clearing for the vegetation in preparation for strip mining then our regulations will apply.

Mr. Lilly: Okay. That sounds reasonable. As far as the sedimentation restrictions, things like that, if it is with the land clearing then that is covered under the mining permit. Is that correct?

Mr. Keen: Yes it would be.

Mr. Lilly: Okay. All right. Based on complaints and things, of who does what on that? Okay. The terminology used in your rules as far as clear cutting versus land clearing. That was one thing that might cause some differences, just based on meanings. Did you all discuss that?

Mr. Phillips: No sir, not at this time. Director Conaway was going to take the written comments that were submitted from Mr. Dye and review those comments and make recommendations or amendments that may have to be made to the regulation.

Mr. Lilly: Okay. Those were the biggest items.

Mr. Phillips: Okay, thank you sir. Next, anyone else wishing to comment?

Mr. Breton: This is more like a question. Are you going to go through these or..

Mr. Phillips: Your name please.

Mr. Breton: Richard Breton. B-r-e-t-o-n.

Mr. Keen: Go through what? What have you got, Richard?

Mr. Breton: Sixteen hours. Maybe some comment on it. What don't apply here...

Mr. Keen: What is your question.

Mr. Breton: Well, if you could just make it little bit clearer.

Mr. Keen: I have been developing a sixteen-hour course. We have pretty well got it put together. The first day we are going to cover - go completely through the regulations, from start to finish. We are going to discuss proper cuts, retreat pass, the whole thing. Then the second day we are going to address just general surface mining, communications, approaching large equipment and then we are going to put on four hours of general first aid. I have a class syllabus set up already. This is what we will look at.

Mr. Breton: What about when you come up to new employees? When you hire somebody new, do they have to go through that...

Mr. Keen: Now that will have to be a question you will have to direct toward Mr. Conaway. I don't know.

Mr. Breton: Okay, I was just ...it was just a question...I thought...

Mr. Keen: I have asked that question too. Right now we are just trying to get who's out there doing the work today trained.

Mr. Breton: Okay. Good.

Mr. Keen: We've discussed, I think it is still up in the air - about a certification for clearing crews or something who knows - we still don't know how this is going to turn out. Right now we are trying to make this as easy and painless on you as possible. We are going to do it at no charge. I will do the training, I am

going to travel wherever you need me to go around the state and do this training.

Mr. Breton: What about the eight hours, will this take the place of the eight-hour training.

Mr. Keen: Now that is between you and MSHA. We have no control - I have been talking with MSHA. I have met with them. I have asked them to include this, count this as your eight hours so you won't have to get another day. But you need to work with me on that too. You need to contact MSHA and ask them to count this.

Mr. Breton: Okay.

Mr. Keen: Because all these requirements are in their eight-hour training. I don't see why they would not. Only thing is we are stepping on other people's toes that do that for a living, that eight hour retraining.

Mr. Breton: I understand that was just my question, if that eight-hour will be... if that what we are doing at the end of February will be counted for ...

Mr. Keen: Well I would like for it to. What we have done, - what the Director has allowed me to do. If you have just recently had your eight-hour training we are going to count that as your eight hours in general surface mining. But it's had to been a

real recent training or going to be real recent, so we can kind of skip around it.

Mr. Breton: Okay that is all I need.

Mr. Phillips: Richard, if I may ask you a question. You mentioned new hires or new employees.

Mr. Breton: Yea, after you take his class.

Mr. Phillips: After the class. Okay.

Mr. Breton: I was wondering if the eight hour we do from MSHA would be good enough for him to start working or will he have to do the sixteen too. It is just my question.

Mr. Keen: I have asked that question and I haven't gotten answer on that yet. I wish Mr. Conaway was here – he may could answer that for us.

Mr. Breton: Well you might know more by the time we take the class.

Mr. Keen: Yea, by the time we have the class. I think I have you set up for the 22<sup>nd</sup>..

Mr. Breton: Yea, the 22<sup>nd</sup> and 23<sup>rd</sup>. Thank you.

Mr. Phillips: Anyone else. I'm sorry come back Richard. No problem.

Mr. Breton: It is about one more thing on this. About the full screen around the equipment. Let me find where it is at.

Mr. Keen: I knew that was going to come up. It will be on page nine, I think.

Mr. Breton: Can you be more specific about it.

Mr. Keen: On which part? You know if you can't use steel mesh everywhere, which we know you can't. You can come up with something equivalent to keep limbs and things from coming in on the operator. There have been a lot of injuries and deaths due to limbs coming through the cabs of these machines.

Mr. Breton: The only problem we have got is with the door. It's mesh, it's metal, it bends easy and we have that before - we tried that about four years ago, after about a month they don't open or they don't shut no more.

Mr. Keen: Now there is a safety glass and things out there you can buy in place of that. We use already on dozers around stockpiles and things. You could probably look at that and go with that it is an unbreakable airline type safety glass.

Mr. Breton: Our concern, when will burn timber, we seen before dozer flipping on the side, beside hot pile. If you get - there is no way out of it because one side will be blocked.

Mr. Keen: You got two doors.

Mr. Breton: Yea I know, one door be blocked and the other one with the machine on its side it might be you can't open the door or something. I think maybe it is too ...

Mr. Keen: Well, those are good concerns. That would be something again we would have to go over with the director. Maybe this is a waiver or something we can apply for, if we have a problem.

Mr. Breton: Yea because sometime we work close to ponds...

Mr. Keen: Yea I agree. We know we got some problems in these regulations, they are emergency regulations we done this in a hurry and we have already submitted some changes to the director we are waiting to hear back on. We'll work with you and we are going to try and use common sense on how we enforce this. We are willing to listen. I will be doing most of the enforcement for awhile I guess, won't I C.A.

Mr. Phillips: Yes.

Mr. Breton: So what's in here that's not 100 percent it will stay that way, it's workable.

Mr. Keen: No, it's a work in progress.

Mr. Breton: Oh, that's good.

Mr. Phillips: Next.

Mr. Burke: My name is Jason Burke with Gilbert PLC Lumber. I just want to clarify some things that you and Mr. Lilly talked about. First of all, will you define a clear cutting crew? As far as what you believe it to be.

Mr. Phillips: Go ahead Terry read it.

Mr. Keen: The definition we got. Clearing crew: persons employed by the mine operator or independent contractor to clear and grub vegetation in preparation of or during mining operations.

Mr. Burke: Okay. We have contractors that are not per say clear cutting crews but we get ahead of future, like within a year or two of mine permits that are going to come in and do some activity. Does that fall in with your ...

Mr. Keen: Is their activity logging, commercial logging?

Mr. Burke: It is commercial logging.

Mr. Keen: No it will won't. If you are just going in there...if a coal company calls you up and says I need you to come in and clear cut this area so we can mine it. Or clear cut this area so I can put in a belt line. Or clear cut this area for a right-of-way for a power line for us to run our shovels. You are actually working for the mine operator, but if you are in there in advance of getting the permits off bonded property, just doing logging. No that will fall back with OSHA.

Mr. Burke: What if they take some of that wood out and sell it would that then fall back on you, your regulation.

Mr. Keen: We've covered that too in our regulations just in case, we got a few small operator who do like to sell their timber. So we are going to try and look at that too, but still the main thing is you are still cutting and moving that timber in preparation of mining. That is the main goal for the timber to be removed and yea would probably fall under us.

Mr. Heath: So Terry you are saying that it is sold...If you sell something...if you are clear cutting.

Mr. Keen: I have a few small operators doing that. Pritchard Mining is a big one. He likes to pile up his logs. If he has oak or something that is sellable he likes to save that. It is money in his pocket. I can't deny him that, it is his property. But he is still clearing that land in preparation of mining. That's the whole reason for taking the logs.

Mr. Burke: What if he is not actually clearing the land, just more or less just high grade.

Mr. Keen: Just logging.

Mr. Burke: Just logging.

Mr. Keen: I don't see where we would have jurisdiction, as long as it is not on bonded permitted property. We never in the past, we had fatality at Cannelton a few years ago we were called in, when we got there we looked at the maps, they were just ahead of the bonded property doing commercial logging, we backed off, called OSHA and turned it over to them.

Mr. Burke: Okay, answers that for me. Thank you.

Mr. Phillips: Thank you Jason. Anyone else have any comments. Go ahead Mark Heath.

Mr. Heath: What's your envision then, if you are cutting everything down then you will define that as clear cutting material. Leaving trees, taking logs...

Mr. Keen: I think the definition is pretty clean, it says grub, preparation of or during mining.

Mr. Phillips: For the record any other questions or comments.

Mr. Burke: I have just one. The clear cutting do they have to follow the Sediment Control Act or are they pretty much able to do what they have to do to.

Mr. Keen: They should fall under DEP - under surface mining.

Mr. Burke: As far as actual reclamation, water bars.

Mr. Keen: For this kind of clearing you are not going to have that. They are just dropping trees, pushing them in a hollow, and burning them. The mine comes in, all that area is going to be stripped, it is going to be removed anyway.

Mr. Burke: Just curious. Thank you.

Mr. Phillips: Anymore questions or comments. If not that concludes our hearing for today. Thank you so much for coming. Has everyone signed the sheet?

WV OFFICE OF MINERS HEALTH, SAFETY AND TRAINING  
 PUBLIC HEARING  
 TITLE 56 SERIES 2  
 RULES GOVERNING SAFETY PROVISIONS FOR CLEARING CREWS

February 7, 2005  
 1615 WASHINGTON STREET EAST  
 CHARLESTON, WV 25311-2126  
 10:00 AM

ATTENDEES:

1	Please sign on first line Print name under signature	Company and Address	SUBMITTING COMMENT		Written Public	
			Y	N	Y	Y
1	<i>Cinda B. Francis</i> Cinda B. Francis	WV Forestry Assoc. PO Box 718 Ripley, WV 25271		<input checked="" type="checkbox"/>		
2	<i>David G. Lilly</i> David G. Lilly	1900 Kanawha Blvd, E Division of Forestry Charleston, WV 25305	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
3	<i>Jason Buckle</i> Jason Buckle	Coibest PLC Lumber PO Box 279 Cabins Creek, WV 25035	<input checked="" type="checkbox"/>			
4	<i>Richard B. Bretton</i> RICHARD BRETTON	M. G. C. INC.	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
5	<i>Mark Heck</i>	Splawey Thruout B. Hg PO Box 2773			<input checked="" type="checkbox"/>	
6	<i>Terry L. Keen</i> Terry L. Keen	Charleston WV 25311-0273 WV DMHSIT				
7	<i>C.A. Phillips</i>	WV DMHSIT				



Joe Manchin III  
Governor

Charles R. Dye  
Director/State Forester

**DIVISION OF FORESTRY**  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0180  
(304) 558-2788/FAX (304) 558-0143  
Web Address: [www.wvforestry.com](http://www.wvforestry.com)

February 1, 2005

Doug Conaway, Director  
Office of Miners' Health, Safety and Training  
1615 Washington Street, East  
Charleston, WV 25311

RE: Rules for Safety Provisions for Clearing Crews

Dear Mr. Conaway:

The following comments are recommended for your review to address possible conflicts with the existing **WV Logging Sediment Control Act, State Code 19-1B-1-14** and associated **Rules, 22 CSR 2 and 22 CSR 3**, concerning licensing and logger certification, that are administered by the WV Division of Forestry.

#### Terminology

- 56-2-3.10 Clearcutting is a forestry silvicultural practice used for tree species reproduction in a forest for even aged management. Would land clearing industry be more appropriate than clear cutting industry?
- 56-2-24 Tree Harvesting is the process of felling, skidding, processing, loading, and transporting of forest products versus Tree Felling that is the process of cutting down standing trees. Harvesting implies a product is involved and has value for further use and disposition.
- 56-2-32.2 Training: again use of clear cutting versus felling of trees.

#### Possible conflicts:

- When a Clearing Crew and a Timbering Operation are "one in the same".
- In requirements for filing a Notification for conducting a Timbering Operation with the WV Division of Forestry.



State of West Virginia  
Joa Manchin III, Governor  
WV Office Of Miners' Health, Safety & Training  
Doug Conaway, Director  
1615 Washington Street East • Charleston, West Virginia • 25311-2126  
Telephone 304-558-1425 • Fax 304-558-1282  
[www.wvminesafety.org](http://www.wvminesafety.org)

To: Doug Conaway, Director

From: Terry Keen

Date: January 28, 2005

Subject: Recommended Changes to Safety Provisions for Clearing Crews

.....  
On January 24, 2005, a meeting with the surface and contractor inspectors was held at the Mine Academy in Beckley. During that meeting, we reviewed the safety provisions for clearing crews and the following changes and corrections were recommended.

**56-2-4 Personal Protective Equipment**

4.8 Eye protection where there is potential for eye injury due to falling or flying objects, face protection where there is potential for facial injury such as, but not limited to, operating a chipper. Logger-type mesh screens and eye protection shall be worn by employees performing chain-saw operations and yarding.

4.9 Hearing protection shall be provided by the employer, at no cost to the employee, and the employer shall assure all employees operating machinery, such as chain saws, etc. wear proper hearing protection.

**56-2-17 Protective Structures**

17.8 Each machine manufactured on or after August 1, 1996 shall have a cab, which meets the requirements specified in the above paragraph or a protective canopy for the operator which meets the following requirements:

**56-2-23. Vehicles/Mobile Equipment**

23.2. The employer shall assure that each vehicle/mobile equipment used to perform any clearing operation is maintained in safe condition.

23.3. The employer shall assure that each vehicle/mobile equipment used to perform any clearing operation is inspected before initial use during each work shift. Defects shall be recorded on a form approved by the Director and shall be signed by the person performing the examination. Imminent danger equipment defects shall be corrected before the equipment is put into operation. A record of the examination shall be kept for thirty days.

23.4. The employer shall assure that operating and maintenance instructions are available for all vehicles/mobile equipment. Each vehicle/mobile equipment operator and maintenance employee shall comply with the operating and maintenance instructions.

23.5. Mounting steps and handholds shall be provided for each vehicle/mobile equipment wherever it is necessary to prevent an employee from being injured when entering or leaving the vehicle/mobile equipment.

23.6. The seats of each vehicle/mobile equipment shall be securely fastened.

**56-2-32 Training**

32.3 All persons hired after the effective date of these regulations shall attend the clear cutter sixteen-hour course.

c: C. A. Phillips, Deputy Director



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**RESPONSE TO WRITTEN AND ORAL COMMENTS  
TITLE 56 – SERIES 2**

In an attempt to answer any questions on this regulation, the agency has been conducting the 16-hour training to employees of operations involved in clearing activities. These classes are being conducted free of charge to the company and employees and we have made arrangements to travel to various locations in the state to complete this training and will continue until all have received this initial training. As part of the training we are reviewing the new regulation with all attendees.

As a result of the written comments and oral comments the following changes you made to in a response to answer those concerns submitted.

Under Section 1.1 – added language that would address comments concerning commercial logging operations and outlining the regulating authorities for those activities.

Under Definitions Section 3.7: Added clarification of clearing crews added the language (land clearing).

Under Section 23 – added language, mobile equipment so that section would apply to all equipment involved in the clearing operation.

Under Section 24 – changed Section to Tree Felling.

Under Section 32 – added Section 32.3 to address training for new employees hired for clearing operations.



STATE OF WEST VIRGINIA  
BOB WISE, GOVERNOR

OFFICE OF MINERS' HEALTH,  
SAFETY AND TRAINING  
Doug Conaway, Director

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**Region Two**  
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Welch, WV 24801-2311  
(304) 438-8421  
(304) 438-2100/Fax

**Region Three**  
137 Peach Ct., Suite #2  
Danville, WV 25053  
(304) 369-7823  
(304) 369-7826/Fax

**Region Four**  
142 Industrial Drive  
Oak Hill, WV 25901-9714  
(304) 469-8100  
(304) 469-4059/Fax

## MEMORANDUM

TO: WV Surface Mine Operations  
Timbering / Logging / Clear Cutting  
Independent Contractors

FROM: Doug Conaway, Director *Doug Conaway*

DATE: December 21, 2004

RE: Emergency Regulation / Title 56, Series 2  
**Rules Governing Safety Provisions for Clearing Crews**

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Please find enclosed an emergency rule that has been filed with the Secretary of State's office on December 17, 2004.

This rule addresses clear cutting operations that are on mining property to remove trees and brush in advance of mining activity.

This rule is not intended to regulate commercial timbering or logging operations.

A forty-five (45) day comment period begins December 23, 2004 and ends February 7, 2005. All written comments should be mailed to the address below:

**Attention: Doug Conaway, Director**  
**WV Office of Miner's Health, Safety & Training**  
**1615 Washington Street East**  
**Charleston, West Virginia 25311-2126**

A public hearing on this rule will be held on Monday, February 7, 2005 beginning at 10:00 a.m. in the Conference Room located on the 2<sup>nd</sup> floor of the WV Office of Miners' Health, Safety and Training.

**Public Hearing:** February 7, 2005  
10:00 a.m.  
WV Office of Miner's Health, Safety & Training  
2<sup>nd</sup> Floor Conference Room  
1615 Washington Street East  
Charleston, West Virginia 25311-2126

JDC:ks  
Enclosures




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WV Office Of Miners' Health, Safety & Training  
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Telephone 304-558-1425 • Fax 304-558-1282  
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**MEMORANDUM**

**TO:** WV Coal Mining Industry  
Clear Cutting Independent Contractors  
Interested Parties

**FROM:** Doug Conaway, Director 

**DATE:** January 26, 2005

**RE:** Training For Clear Cutting Crews

---

In accordance with regulations filed by the West Virginia Office of Miners' Health, Safety and Training on December 17, 2004 "Governing Safety Provisions for Clearing Crews", Title 56, Series 2, Section 32 of the rule requires employees, including supervisors to receive sixteen (16) hours of training.

**56-2-32. Training.**

32.1 The employer shall provide training for each employee, including supervisors, at no cost to the employee.

32.2 As soon as possible but not later than ninety (90) days from the effective date of these guidelines all employees shall receive a minimum of sixteen (16) hours of training. This training shall consist of:

- (a) Four (4) hours of general surface mine safety.
- (b) Eight (8) hours of task specific safety (clear cutting).
- (c) Four (4) hours of first aid and emergency procedures.

Please be advised that two classes are being provided for conducting the required sixteen hours of training. Each training session will begin at 8:00 a.m. and consist of two days at the National Mine Health and Safety Academy in Beckley, West Virginia.

The training session dates being offered are: February 22 - 23, 2005  
February 24 - 25, 2005

You should contact the WV Office of MHST Oak Hill Regional Office at (304) 469-8100 to register your employees to attend one of the training sessions.

JDC:ks



*State of West Virginia*  
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WV Office Of Miners' Health, Safety & Training  
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February 2, 2005

Priscilla Mitchem  
National Mine Health and Safety Academy  
1301 Airport Road  
Beckley, West Virginia 25801

Dear Pat and Priscilla:

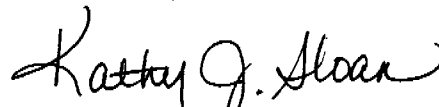
The WV Office of Miners' Health, Safety and Training would like to request the use of two (2) classrooms for the period of March 14-15, 2005. The classrooms need to seat 20-25 people and be equipped with VCR and Projectors.

The purpose for the classrooms is to conduct a 16-hour training class for industry persons in accordance with recent regulations that were filed involving clear cutting crews.

We understand that all overnight lodging accommodations are full, however if any rooms should become available we would like to reserve five (5) lodging rooms and meal cards for approximately 5 instructors.

All costs associated with this training are covered under the WV State Grants Program.

Sincerely,

  
Kathy J. Sloan  
Administrative Secretary

/kjs

cc: Terry Keen - R4



*State of West Virginia*  
**Joe Manchin III, Governor**

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February 24, 2005

Priscilla Mitchem  
National Mine Safety & Health Academy  
1301 Airport Road  
Beaver, West Virginia 25813

Dear Ms. Mitchem:

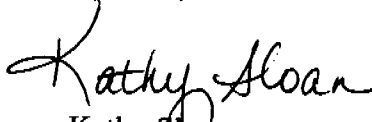
The WV Office of Miners' Health Safety and Training would like to request and reserve one (1) classroom (seating 25) for Wednesday, March 16, 2005 for the purpose of conducting clear cutting training for Massey supervisors.

The instructors for this class will be Terry Keen and Phil Adkins.

Overhead Projector and screen will be required for the purpose of teaching this class. No lodging is requested, only two meal cards.

All cost associated with this training will be covered by the WV State Grants Program. Thank you for your assistance in this matter.

Sincerely,

  
Kathy Sloan  
Administrative Aide

**FAXED 2-24-2005**  
**304 256-3251**



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March 9, 2005

Priscilla Mitchem  
National Mine Safety & Health Academy  
1301 Airport Road  
Beckley, West Virginia 25813

Dear Ms. Mitchem:

The WV Office of Miners' Health, Safety and Training would like to request the use of two (2) classrooms, seating of at twenty-four (24) persons. The dates we are requesting is March 24 and March 25, 2005 for the purposing of conducting required 16-hour safety training for clear cutting crews.

The two (2) classrooms need to be equipped with a VCR and one (1) of the classrooms a laptop computer as well as the VCR. The instructors for these training classes will be Terry Keen and Phil Adkins.

Please issue meal cards for Mr. Keen and Mr. Adkins. No lodging is requested. The WV State Grants Program will cover all costs associated with this training.

Any questions you have concerning this request please contact me at 304-558-1425 extension 12. Thank you for your assistance in this matter.

Sincerely,

*Kathy Sloan*  
Kathy Sloan  
Administrative Aide

/kjs

3-9-05  
faxed  
✓



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**AMENDMENTS TO PROPOSED RULE AS A RESULT OF  
COMMENTS RECEIVED AND PUBLIC HEARING  
AND REASONS FOR AMENDEMENTS TO PROPOSED RULE  
Title 56, Series 2  
Rules Governing Safety Provisions for Clearing Crews**

It was determined from written comments received and comments made at the public hearing that three (3) items need to be addressed.

1. The question was asked, "Is the rule intended to apply to commercial logging operators that are on mine property"?  
The answer to that question is "No", those activities are governed by OSHA and WV Division of Forestry, and this rule would not extend to any commercial logging operation.

To further clarify this point we added language in Section 1.1. Scope of Rule to state the intent and to whom it covers.

2. Training needs to be extended to new employees of clearing crews. A section was added in Section 32 to state the 16-hour training is for new employees prior to beginning work.
3. The WV Division of Forestry asked to clarify a few definitions that would help limit any confusion or misinterpretation of this rule therefore land clearing was added and tree harvesting was replaced with tree felling.