

**Board of Forestry and Fire Protection  
Title 14 of the California Code of Regulations**

**[Published August 21, 2009]**

**NOTICE OF PROPOSED RULEMAKING**

**Definition of Employee, 2009**

**Title 14 of the California Code of Regulations (14 CCR)**

The Board of Forestry and Fire Protection (Board) proposes to amend and adopt the regulations of Title 14 of the California Code of Regulations (14 CCR) described below after considering all comments, objections, and recommendations regarding the proposed action.

**Adopt**

- § 1022.4 Licensed Timber Operator Responsibilities**
- § 1022.5 Subcontractors to a Licensed Timber Operator**
- § 1024.6 Employee with Wages as Sole Compensation 1024.6**

**Amend**

- § 1035.3 Licensed Timber Operator Responsibilities**
- § 1090.12 Licensed Timber Operator Responsibilities**
- § 1092.14 Licensed Timber Operator Responsibilities**

**PUBLIC HEARING**

The Board will hold a public hearing starting at 8:00 A.M., on Wednesday, October 7, 2009, at the Resources Building Auditorium, 1<sup>st</sup> Floor, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code section 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

**WRITTEN COMMENT PERIOD**

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M., Monday, October 5, 2009. The Board will consider only written comments received at the Board office by that time (in addition to those written comments received at the public hearing). The Board requests, but does not require, that persons who submit written

comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection  
Attn: Christopher Zimny  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection  
Room 1506-14  
1416 9<sup>th</sup> Street  
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

[board.public.comments@fire.ca.gov](mailto:board.public.comments@fire.ca.gov)

## **AUTHORITY AND REFERENCE**

Public Resources Code (PRC) sections 4551 and 4551.5 authorizes the Board to adopt such rules and regulations as it determines are reasonably necessary to enable it to implement, interpret or make specific sections 4512, 4513 4570-4578 of the Public Resources Code. Reference: Public Resources Code sections 4512, 4513, 4524, 4551, 4551.5, 4527, 4528.5, and 4570-4578.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Public Resources Code (PRC) §§ 4526.5 and 4571 provides that a Licensed Timber Operator (LTO) is a timber operator who is licensed and conducts timber operations.

These and other PRC sections except a person who is engaged in timber operations as an employee with wages as their sole compensation from the need for a timber operator's license. Recent legal rulings have indicated that the concept of "...employee with wages as his sole compensation" is not a defined term sufficient for use in Timber Operator Licensing denial actions and for guidance to the regulated public. The proposed

regulation provides an explicit definition for an “employee” as it relates to a licensed timber operator to improve the clarity of the employment characteristics that define an employee. The proposed regulation further consolidates and clarifies the responsibilities of an LTO and deletes redundant Forest Practices Rules that describe the responsibilities of the LTO.

## **SPECIFIC PURPOSE OF THE REGULATION**

The proposed amendments provide guidance for the regulated public, Department and Administrative Law Judges on the characteristics of an employment arrangement that define an “employee” thereby exempting the employee from needing a timber operations license to conduct timber operations.

The proposed regulation also clarifies licensed timber operator (LTO) responsibilities related to those who are “subcontractor” to the LTO. Finally the proposed regulation deletes redundant regulatory sections that specify LTO responsibilities.

The proposed adoption of 14 CCR § 1022.4 and 1022.5 consolidate the LTO responsibilities contained in other subsections for the FPRs into a single location in the FPRs. It also contains clarifying language on the responsibilities relative to subcontractors of the LTO.

The proposed adoption of 14 CCR § 1024.6 explicitly define an “employee” and the characteristics of an employee.

The proposed adoption of 14 CCR § 1035.3, 1090.12, and 1092.14 deletes redundant regulatory sections that specify LTO responsibilities. The LTO responsibilities deleted from these sections are reinserted in 14 CCR 1022.4

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None are known.
- Costs or savings to any State agency: None are known.
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC 17500: None are known.
- Other non-discretionary cost or savings imposed upon local agencies: None are known.
- Cost or savings in federal funding to the State: None are known.

- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None are known.
- Potential cost impact on private persons or directly affected businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Effect on small business: None. The Board has determined that the proposed amendments will not affect small business because there are no costs related to the regulation.
- Significant effect on housing costs: None are known.
- Adoption of these regulations will not create or eliminate jobs within California.
- Adoption of these regulations will not: (1) create new businesses or eliminate existing businesses within California; or (2) affect the expansion of businesses currently doing business within California.

The proposed Rules do not conflict with, or duplicate Federal regulations.

## **BUSINESS REPORTING REQUIREMENT**

The regulation does not require a report, which shall apply to businesses.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5(a) (13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## **CONTACT PERSON**

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection  
 Attn: Christopher Zimny  
 Regulations Coordinator

P.O. Box 944246  
Sacramento, CA 94244-2460  
Telephone: (916) 653-9418

The designated backup person in the event Mr. Zimny is not available is Doug Wickizer, California Department of Forestry and Fire Protection, at the above address and phone (916) 653-5602.

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action, using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above referenced information is also available on the CDF web site at:

[http://www.fire.ca.gov/BOF/board/board\\_proposed\\_rule\\_packages.html](http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html)

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or

- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

/s/ Christopher Zimny

---

Christopher Zimny  
Regulations Coordinator  
Board of Forestry and Fire Protection