

Initial Statement of Reasons

Definition of Employee, 2009

[Published August 21, 2009]

**Title 14 of the California Code of Regulations (CCR)
Chap. 4, Subchapter 7, Article 1, 2, 6.5 and 6.8**

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 PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THESE REGULATIONS ARE INTENDED TO ADDRESS

The Public Resources Code (PRC) §§ 4526.5 and 4571 provide that a timber operator must be licensed and is one who conducts timber operations, except a person who is engaged in timber operations as an employee with wages as their sole compensation. Further, PRC §4528.5 broadens the exemption for employees with wages as their sole compensation to the entire Z'berg-Nejedly Forest Practice Act (FPA). Since the concept of "...employee with wages as his sole compensation" appears straight forwards, the Board of Forestry and Fire Protection has never sought to further define the terms. However, in a recent Timber Operator Licensing denial action, this lack of definition became a significant legal debate and resulted in an adverse ruling by an Administrative Law Judge who pointed to the lack of any guidance from the Board of Forestry and Fire Protection.

The language contained in PRC §4526.5 which exempts employees has been in-place since the inception of the Z'berg-Nejedly Forest Practice Act. While this section's interpretation and enforcement was generally straight forward and caused little problem, the subtlety and interrelationship of it became clear when it was applied to Licensed Timber Operators (LTOs) whose license had been denied or revoked.

Historically, LTOs who had lost their license simply had their spouses, sons or friends obtain a Timber Operator License and continued to conduct work with immunity. The difficulty then was attempting to obtain the necessary evidence to try and prove who was really "in-charge" of the operation in a closely held private business, particularly

involving a spouse. In 1996, the Associated California Loggers sponsored a bill which made numerous changes in the LTO licensing law, including the addition of PRC §4576.1 which added considerable language related to financial arrangements and effectively eliminated much of the circumvention using licensed surrogate individuals. However, it was never considered that the exemption for “employee with wages as sole compensation” could be sufficiently misinterpreted so as to negate and void the application PRC §4576.1 to an LTO whose license had been denied.

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 operators 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

ALTERNATIVES TO THE REGULATIONS CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Board has considered several alternatives to the proposed regulation.

Alternative 1: Not provide clarifying definition of an employee

This alternative would not contribute to remedying the stated problem and was therefore rejected.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The Board has not identified any significant adverse environmental effects as a result of the proposed rules. The proposed regulation results in no additional physical impact to the environment.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board has not identified any alternative that would lessen any adverse impact on small business.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The Board staff estimated the regulation would not have a significant adverse economic impact on any business. The proposed amendments do not change the statutory or regulatory requirements or responsibilities of an LTO, employee of an LTO, or subcontractor of an LTO. The clarification of who need not be licensed may reduce costs to small businesses who routinely subcontract with an LTO and would, therefore, not need to be licensed themselves.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The State Board of Forestry and Fire Protection consulted the following listed information and/or publications as referenced in this *Initial Statement of Reasons*. Unless otherwise noted in this *Initial Statement of Reasons*, the Board did not rely on any other technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

PURSUANT TO GOVERNMENT CODE § 11346.2(B)(5)

In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Initial Statement of Reasons*; the Board has directed the staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

PROPOSED TEXT

The following revisions or additions to the existing rule language are represented in the following manner:

UNDERLINE indicates an addition to the California Code of Regulations, and

~~strikeout~~ indicates a deletion from the California Code of Regulations.

All other text is existing rule language.