

## **INITIAL STATEMENT OF REASONS**

### **Hours of Work, Hours of Operation, and Log Hauling Exception, 2010**

**[Published December 10, 2010]**

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

Amend:

§ 925.7	Log Hauling [Santa Clara County]
§ 925.10	Hours of Work [Santa Clara County]
§ 926.9	Hours of Work [Santa Cruz County]
§ 926.10	Log Hauling [Santa Cruz County]
§ 927.5	Log Hauling [Marin County]
§ 928.5	Hours of Work [San Mateo County]
§ 928.6	Log Hauling [San Mateo County]
§ 945.4	Hours of Operation [Lake County]
§ 965.4	Log Hauling [Monterey County]

#### **PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATIONS ARE INTENDED TO ADDRESS**

The California State Board of Forestry and Fire Protection (Board) received a petition on May 20, 2010, pursuant to Government Code 11340.6, from the Central Coast Foresters Association requesting that regulatory action be taken to permit timber operations on the nationally observed Columbus Day holiday. The petition pertains to all counties which contain county Forest Practice Rules adopted by the Board pursuant to PRC 4516.5 including Santa Cruz, Santa Clara, San Mateo, Lake, Marin, and Monterey.

The above counties have specific Forest Practice Rules that prohibit timber operations, log hauling, or both on Saturdays, Sundays, and national holidays including Columbus Day. Because Columbus Day occurs during the final week of the regular logging season in most of those counties (regular logging season ends annually on October 15 and in Monterey County's regular logging season ends October 1), Registered Professional Foresters (RPF) typically propose that operations be permitted to occur thereafter under specified conditions. Such requests commonly make the case that the loss of even a single day of operations can result in the inability to complete timber harvesting projects prior to the onset of the winter period. For this reason, RPFs typically request Department of Forestry and Fire Protection (Cal Fire) to approve an alternative to the rule to allow for timber operations and/or log hauling. According to Cal Fire, approximately 95% of all approved harvesting plans in the counties of Santa Cruz, Santa Clara, and San Mateo, the three counties among the six in which the overwhelming majority of timber operations occurs, include an allowance for operations and hauling on Columbus Day. A poll of RPFs working in these three counties supports Cal Fire's observation.

In addition to adding an extra day of operations at a critical time of the year, this regulatory proposal would eliminate the necessity for submission, review, and Cal Fire approval of written exceptions to the standard rule on a plan by plan basis. Instead, operations and/or hauling on Columbus Day would become the standard rule. The rule proposal could result in cost and time savings to both the regulated public and Cal Fire.

Columbus Day is a federally established holiday that occurs annually on the second Monday in October. According to the Encyclopedia Britannica, the national holiday to honor the achievements of Italian maritime explorer, Christopher Columbus was created by a proclamation of President Roosevelt in 1937. Since then, many cities, counties, states, and countries have chosen not to endorse a celebration of Columbus. California does not presently observe Columbus Day as an official state holiday, though all of the counties identified in this rule proposal except Marin do observe the holiday.

With California not presently observing Columbus Day, the Board's action is now consistent with the practicality of providing state personnel for enforcement on the Columbus Day. During the period when the state observed the Columbus Day holiday, forest practice inspectors were not available for "on the ground" review of timber operations. With the change in the state's observance of the holiday, inspectors are now available to review operations on this date. This non-observance of the Columbus Day holiday by the state now provides the availability for Cal Fire to inspect operations being conducted on Columbus Day, ensuring appropriate conduct operations.

## **SPECIFIC PURPOSE AND NECESSITY OF THE REGULATIONS**

The purpose of the proposed regulatory amendments is to provide express permission for the occurrence of timber operations, log hauling, or both on any national holiday not observed by the State in the aforementioned counties that have their own additional Forest Practice Rules. This includes Columbus Day, which is the most important holiday for permitting timber operations because of its nearness to the end of the timber operations season (October 15<sup>th</sup>).

Amendments are proposed for the "Hours of Work" and "Log Hauling" rules for Santa Clara, Santa Cruz, San Mateo, Marin and Monterey counties. The "Hours of Operation" rule is being amended for Lake County. Each of these rules is amended to add the phrase "except those holidays not observed by the State of California". By adding this phrase, timber operations, including log hauling, would be permitted on Columbus Day.

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

The Board has evaluated several alternatives to the proposed regulation.

### **Alternative 1: No Action.**

This alternative would preserve the status quo with no amendments to the Forest Practice Rules. RPFs would continue to request Cal Fire's allowance for timber

operations and/or log hauling on Columbus Day, and Cal Fire would continue to exercise its discretion in approving or denying such requests.

**Alternative 2: Amend the Rules to Allow for Timber Operations and Hauling on All Holidays Not Observed by the State of California.**

This alternative would seek to amend the rules such that timber operations and log hauling could occur specifically on Columbus Day. This alternative provides an exception to the prohibition on operations on all nationally designated holidays. The Board did not select this alternative for the following reason: The Board considered public comments that addressed referencing Columbus Day as the sole national holiday for which operations should be permitted. The public comments indicated that by specifically permitting operations on Columbus Day, in some way this implies a disregard for the meaning or value of that particular holiday. The Board's intention of this regulation is not related to the merits of the Columbus Day holiday. The Board's intention is to provide an additional operational day that has been demonstrated to be economically important for timber operations in these counties. To avoid any implied interpretation about the meaning or value of Columbus Day, the Board has proposed language that would permit operations on any "holiday that is not observed by the State of California." This has the effect of allowing operations on Columbus Day, without the aforementioned implied interpretation about the meaning or value of the Columbus Day holiday.

**POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS**

The regulation as proposed would not have any potential for significant adverse environmental effects. Timber operations and log hauling under approved timber harvesting plans are subject to the full compliment of the California Forest Practice Rules. This includes careful analysis and mitigation as necessary of any and all identified potential adverse environmental impacts. These harvesting plans would likewise continue to be reviewed and approved at the discretion of the Department of Forestry and Fire Protection.

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

The Board finds that this proposed regulation would not have an adverse impact on small business. The express allowance for timber operations and/or log hauling on Columbus Day could result in cost savings to the owner of the timber to be harvested. This cost savings would be in the form of reduced paperwork requirements of RPFs and LTOs in the employ of a timber owner.

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

Reduction in the paperwork associated with harvesting plan approval essentially translates to cost savings for timber owners. The rule proposal would eliminate rather than create a regulatory burden for timber owners, RPFs, and LTOs.

## **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.

1. California Forest Practice Rules, 2010. Non-industrial Timber Management Plan. 14 CCR §1090, *et seq.*; *Report of Stocking.* 14 CCR §1075.
2. Personal communication with Cal Fire Division Chief, Rich Sampson, San Mateo-Santa Cruz Unit.
3. Personal communication with timberland owners' Eric and Catherine Moore, Santa Cruz County.
4. Personal communication with RPF's Nadiah Hamey and Matt Dias, Big Creek Lumber Company.
5. Petition from the Central Coast Foresters Association, May 18, 2010.

### **Pursuant to Government Code § 11346.2(b)(6)**

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

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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.

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