Securities and Exchange Act of 1934 (15 U.S.C. 78n(d)(1)) and Regulation 14(D) (17 CFR 240.14d–1 through 240.14d–101) or that is subject to comparable foreign laws.

(3) *Application of special rule*—(i) *General rule.* Except as provided in paragraph (e)(3)(ii) of this section, paragraph (d) of this section applies to triangular reorganizations described in paragraph (a)(1) of this section occurring on or after May 31, 2007.

(ii) *Binding commitment exception.* Paragraph (d) of this section shall not apply to triangular reorganizations described in paragraph (a)(1) of this section entered into pursuant to a written agreement that was (subject to customary conditions) binding before May 31, 2007, and all times afterward, but only to the extent that—

(A) S acquired the P stock before May 31, 2007; or

(B) S had a commitment to acquire the P stock from an unrelated person pursuant to a written agreement that was (subject to customary conditions) binding before May 31, 2007, and all times afterward, or pursuant to a tender offer announced before May 31, 2007, that is subject to section 14(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78n(d)(1)) and Regulation 14(D) (17 CFR 240.14d–1 through 240.14d–101) or that is subject to comparable foreign laws.

(4) *Treatment of S stock as property*—(i) *General rule.* Except as provided in paragraph (e)(4)(ii) of this section, the treatment of S stock as property under paragraph (a)(2)(ii) of this section applies to triangular reorganizations described in paragraph (a)(1) of this section occurring on or after *May 23, 2008.*

(ii) *Binding commitment exception.* The treatment of S stock as property under paragraph (a)(2)(ii) of this section shall not apply to triangular reorganizations described in paragraph (a)(1) of this section occurring on or after May 23, 2008 entered into pursuant to a written agreement that was (subject to customary conditions) binding before May 23, 2008 and all times afterward, but only to the extent that—

(A) S acquired the P stock before *May 23, 2008;* or

(B) S had a commitment to acquire the P stock from an unrelated person pursuant to a written agreement that was (subject to customary conditions) binding before May 23, 2008 and all times afterward, or pursuant to a tender offer announced before May 23, 2008, that is subject to section 14(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78n(d)(1)) and Regulation 14(D) (17 CFR 240.14d–1 through 240.14d–101) or that is subject to comparable foreign laws.

(5) *Expiration.* The applicability of this section expires May 23, 2011.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: May 16, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–11653 Filed 5–23–08; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 261

RIN 0596–AC30

Clarifying Prohibitions for Failure To Maintain Control of Fires That Damage National Forest System Lands

AGENCY: Forest Service, USDA.

ACTION: Notice of final rule.

SUMMARY: This final rule revises regulations to establish a new prohibition for starting and negligently failing to maintain control of a prescribed fire. Proof of criminal negligence is required for this offense. The rule also clarifies that the prohibition for causing and failing to maintain control of all other fires is a strict liability offense, not requiring proof of criminal intent. In implementing the National Fire Plan, the Forest Service has encouraged adjacent landowners to develop integrated fire management plans for the use of prescribed fire for the restoration and protection of private lands adjacent to National Forest System lands. Without these changes, adjacent landowners might be discouraged from using prescribed fire.

DATES: This rule is effective June 26, 2008.

ADDRESSES: The public may inspect comments received at USDA Forest Service, State and Private Forestry, 1400 Independence Avenue, SW., Washington, DC. Visitors are encouraged to call ahead to 202–205–1331 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Denny Truesdale, State and Private Forestry, 202–205–1588. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following outline contains the contents of the **SUPPLEMENTARY INFORMATION** section of this final rule:

Background
Regulatory Certifications
  Regulatory Impact
  Environmental Impact
  Federalism
  Consultation With Tribal Governments
  No takings Implications
  Controlling Paperwork Burdens on the Public
  Energy Effects
  Civil Justice Reform
  Unfunded Mandates
List of Subjects in Part 261

Background

A new paragraph (c) is added to section 261.1, Scope, to clarify that unless criminal intent (''*mens rea*'') is expressly required in the provision setting forth the offense, strict liability would apply. Whether criminal intent is a required element of an offense is a question of statutory construction. Where a statute or regulation does not expressly require criminal intent, ''silence on this point by itself does not necessarily suggest that Congress intended to dispense with the conventional *mens rea* element * * *'' *Staples* v. *United States*, 511 U.S. 600, 605 (1994). As a general rule, absent a clear indication of legislative intent, courts require proof of intent for criminal offenses. See *Id.* at 605, for a discussion of cases that support this well-established principle.

However, the general presumption that some guilty intent or purpose is required does not apply to ''public welfare offenses.'' These are offenses that typically impose penalties to serve as an effective means of regulation. *Id.* At 606 (''[i]n construing such statutes, we have inferred from silence that Congress did not intend to require proof of *mens rea* to establish an offense''). Public welfare offenses are those that ''are not of the nature of positive aggressions or invasions, with which the common law so often dealt, but are in the nature of neglect where the law requires care, or inaction where it imposes duty.'' *Morissette* v. *United States*, 342 U.S. 246, 255 (1952). Public welfare offenses ''render[s] criminal a type of conduct that a reasonable person should know is subject to stringent public regulation and may seriously threaten the community's health and safety.'' *Liparota* v. *United States*, 471 U.S. 419, 426 (1985). A person should know that the use of Federal lands is subject to stringent regulation, and that

action or inaction in violation of such regulation can cause irreparable harm to the public or the land and its resources.

The clarification to section 261.1 states the agency's long-standing interpretation of its criminal prohibitions as public welfare offenses and confirms that, as such, they generally are strict liability offenses. Proof of criminal intent is required only where expressly provided by the specific prohibition.

To this end, section 261.5(e) is revised to remove the term ''allowing.'' Section 261.5(e) currently prohibits ''allowing a fire to escape from control.'' The term ''allowing'' has been interpreted differently by courts in some cases to require proof of criminal intent. *United States* v. *Semenza*, 835 F.2d 223 (9th Cir. 1987); *United States* v. *Osgudthorpe*, 13 F. Supp.2d 1215 (D. Utah, 1998). In other cases, courts have found that the term does not require proof of criminal intent. *United States* v. *Larson*, 746 F.2d 455 (8th Cir. 1984), citing *United States* v. *Wilson*, 438 F.2d 525 (9th Cir. 1971). The revision clarifies that the prohibition in section 261.5(e) is a strict liability offense.

In addition to removing the term ''allowing,'' section 261.5(e) is also revised to limit its application to fires that are not prescribed fires. As clarified, the prohibition is a strict liability offense for causing and failing to maintain control of a fire that is not a prescribed fire that damages National Forest System (NFS) lands.

Section 261.5 also is revised to add a new prohibition to address prescribed fires. Paragraph (g) is added to prohibit the negligent failure to maintain control of a prescribed fire that damages NFS lands. This prohibition is not a strict liability offense. It requires proof that the offender acted with criminal negligence. Section 261.2 is revised to add a definition of ''prescribed fire.'' The term is defined to mean a planned and intentionally lit fire allowed to burn within the applicable requirements of Federal or State laws, regulations, or permits. Many States do not have laws establishing requirements for prescribed fires. Under the definition, if a prescribed fire is allowed under applicable law (even if the law does not limit how the burn is to be conducted) and the fire was intentionally lit and planned to some extent, section 261.5(g) applies and the Federal government would need to prove that the defendant acted with criminal negligence.

The distinction between failure to maintain control of a prescribed fire (requiring proof of criminal negligence) and another fire (requiring no proof of criminal intent) is necessary to support efforts to reduce hazardous fuels on properties adjacent to National Forest System lands. These efforts are intended to restore ecosystems and, by doing so, protect communities in the wildland urban interface. In implementing the National Fire Plan, the Forest Service and the Department of the Interior land managing agencies have increased the amount of prescribed burning on lands under their jurisdiction. The agencies also have encouraged adjacent landowners to develop integrated fire management plans, including the use of prescribed fire, for the restoration and protection of private lands. If the prohibition for lighting and failing to maintain a prescribed fire were a strict liability offense, adjacent landowners might be discouraged from using prescribed fire as a tool on their lands out of concern that, if the fire were to escape control, they could be cited for a criminal violation without regard to whether they acted with criminal intent. New paragraph (g) alleviates this impediment.

Response to Comments

A 60-day comment period on the proposed rule was initiated on April 2, 2007 (72 FR 15641). Several respondents replied. One respondent had two recommendations, another respondent is a timber industry associate, and the other respondents' comments were outside the scope of this rule.

The first respondent had two recommendations. The first was a change in recovering damages from the Forest Service during fire suppression actions. This would require legislative changes to the Federal Tort Claim Act and is not part of this rule. The second recommendation was for changes to a State of Oregon statute and is also not covered by this rule.

The second respondent had several comments. The first: ''* * * this proposed rule sets a higher bar for finding adjacent landowners liable for damage caused by 'prescribed fires' * * * while defining 'all other fires' as strict liability offenses. In short, the rule would allow the Forest Service to hold a neighboring landowner, or their contractors, liable for any escaped fire—even if their conduct in the burning activity was fully legal and without criminal intent.'' *The respondent includes an example:* ''All fires—broadcast, spot burning, jackpot burning, pile burning—should not be defined as subject to this proposed rule, if they were intentionally started and are compliant with federal laws, state and local laws, regulations, and permits.''

All of the examples used by the respondent are included under the definition for a prescribed fire in this rule. The standard of negligence would apply, not strict liability, since an intentionally lit fire, whether a broadcast burn or any of the other ignition techniques listed that is fully in compliance with state and/or local laws meets the definition of a prescribed burn.

The respondent states: ''The only cases where negligence applies should be those where fires started illegally.'' This is actually the opposite of the intent of the rule. Negligence requires a higher standard of proof and is used for fires started legally—for example, prescribed fires that are lit in compliance with applicable laws. For all other fires, the standard of strict liability is applied.

There is a comment on Forest Service liability to private landowners which the respondent notes is outside the scope of this rule.

Another comment covers the use of this rule regarding fires started by a purchaser of a timber sale contract on National Forests. Nothing in the rule supercedes the requirements, terms, or clauses in a timber sale contract, or any other type of contract, including a contract for prescribed fire on National Forest System land. The respondent cites timber sale contract standard clause B7.5 that sets the purchaser's responsibility for fires caused by negligence or fault. This rule does not change those responsibilities in either current or future contracts, nor will the rule supercede any state law in regards to the collection or recovery of suppression costs.

No changes to the rule are made in response to the comments from the two respondents.

Regulatory Certifications

Regulatory Impact

This rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this is a non-significant rule as defined by E.O 12866. This rule will not have an annual effect of $100 million or more on the economy, nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor state or local governments. This rule would not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations

of recipients of such programs. Therefore, it has been determined that this rule is not an economically significant regulatory action.

This rule also has been considered in light of the Regulatory Flexibility Act, as amended, (5 U.S.C. 601 *et seq.*). In promulgating this rule, publication of an advance notice of proposed rulemaking was not required by law. Further, it has been determined that this rule will not have a significant economic impact on a substantial number of small business entities as defined by that act. Therefore, it has been determined that preparation of a regulatory flexibility analysis is not required for this rule.

Environmental Impact

Section 31.11a of Forest Service Handbook 1909.15 (69 FR 40591; July 6, 2004) excludes from documentation in an environmental assessment or environmental impact statement ''civil and criminal law enforcement and investigative activities.'' This rule clearly falls within this category of actions and the agency has determined that no extraordinary circumstances exist which would require preparation of an environmental assessment or an environmental impact statement. Moreover, this rule itself has no impact on the human environment. Therefore, it has been determined that preparation of an environmental assessment or an environmental impact statement is not required in promulgating this rule.

Federalism

The agency has considered this rule under the requirements of E.O. 12612 and has made a preliminary assessment that the rule will not have substantial direct effects on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment on federalism implications is necessary at this time.

Consultation With Tribal Governments

This rule has been reviewed under E.O. 13175 of November 6, 2000, ''Consultation, and Coordination with Indian Tribal Governments.'' This rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nor does this rule impose substantial direct compliance costs on Indian tribal governments or preempt tribal law. Therefore, it has been determined that this rule does not have tribal implications requiring advance consultation with Indian tribes.

No Takings Implications

This rule has been reviewed for its impact on private property rights under E. O. 12630. It has been determined that this rule does not pose a risk of taking private property; in fact, the rule honors access to private property pursuant to statute and to outstanding or reserved rights.

Controlling Paperwork Burdens on the Public

This rule does not contain any record keeping or reporting requirements or other information collection requirements as defined in 5 CFR Part 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR Part 1320 do not apply.

Energy Effects

This rule has been reviewed under E.O. 13211 of May 18, 2001, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' This rule will not have a significant adverse effect on the supply, distribution, or use of energy. Nor has the Office of Management and Budget designated this rule as a significant energy action. Therefore, it has been determined that this rule does not constitute a significant energy action requiring the preparation of a Statement of Energy Effects.

Civil Justice Reform

This rule revision has been reviewed under E.O. 12988 of February 5, 1996, Civil Justice Reform. The revision: (1) Preempts all state and local laws and regulations that are found to be in conflict with or that would impede its full implementation; (2) does not retroactively affect existing permits, contracts, or other instruments authorizing the occupancy and use of National Forest System lands, and (3) does not require administrative proceedings before parties may file suit in court challenging these provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this rule on state, local, and tribal governments, and on the private sector. This rule does not compel the expenditure of $100 million or more by any state, local, or tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

List of Subjects in 36 CFR Part 261

Law enforcement, National forests.

■ Therefore, for the reasons set forth in the preamble, the Forest Service amends Part 261 of Title 36 of the Code of Federal Regulations as follows:

PART 261—PROHIBITIONS

■ 1. The authority citation for part 261 continues to read:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 472, 551, 620(f), 1133(c), (d)(1), 1246(i).

Subpart A—General Prohibitions

■ 2. In § 261.1, add paragraphs (c) and (d) to read as follows:

§ 261.1 Scope.

* * * * *

(c) Unless an offense set out in this part specifies that intent is required, intent is not an element of any offense under this part.

(d) None of these prohibitions apply to any person engaged in fire suppression actions.

■ 3. In § 261.2, add a definition for ''Prescribed fire'' to read as follows:

§ 261.2 Definitions.

* * * * *

Prescribed fire means a planned and intentionally lit fire allowed to burn within the requirements of Federal or State laws, regulations, or permits.

* * * * *

■ 4. Amend § 261.5 by revising paragraph (e) and by adding paragraph (g) to read as follows:

§ 261.5 Fire.

* * * * *

(e) Causing and failing to maintain control of a fire that is not a prescribed fire that damages the National Forest System.

* * * * *

(g) Negligently failing to maintain control of a prescribed fire on Non-National Forest System lands that damages the National Forest System.

Dated: May 19, 2008.

Mark Rey,

Under Secretary, NRE.

[FR Doc. E8–11731 Filed 5–23–08; 8:45 am]

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