

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****49 CFR Part 562**

[Docket No. NHTSA–2016–0064]

RIN 2127–AL28

**Lighting and Marking on Agricultural Equipment**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Moving Ahead for Progress in the 21st Century Act (MAP–21), the agency is adding a new regulation to the CFR that sets forth requirements for lighting and marking on agricultural equipment to improve daytime and nighttime visibility. It standardizes lighting and marking requirements for agricultural equipment across the United States.

**DATES:** *Effective Date:* June 22, 2016.

*Compliance Date:* June 22, 2017.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 22, 2016.

**ADDRESSES:**

*Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590.

*Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

*Fax:* 202–493–2251.

*Docket:* For access to the docket to read background documents, go to <http://www.regulations.gov>, or the street address listed above. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:** For technical issues: Mr. Wayne McKenzie, Office of Crash Avoidance Standards, NHTSA, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590 (Telephone: (202) 366–0098) (Fax: (202) 366–7002).

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**I. Executive Summary**

On July 6, 2012, the President signed into law the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141. Section 31601 of MAP–21 contains a non-discretionary mandate concerning daytime and nighttime visibility of agricultural equipment that may be operated on public roads.<sup>1</sup> It requires NHTSA<sup>2</sup> to establish lighting and marking standards equivalent to an existing industry standard for agricultural equipment that may be operated on public roads.

This rulemaking implements that mandate by adopting the American Society of Agricultural and Biological Engineers (ASABE) Standard 279.14, a voluntary industry consensus standard, for originally manufactured agricultural equipment.

**II. Background**

NHTSA has not regulated the manufacture of most agricultural equipment in the past, because it did not have specific authority to do so. Under the National Traffic and Motor Vehicle Safety Act (49 U.S.C. Chapter 30101 *et. seq.*) (Safety Act), NHTSA is authorized to regulate motor vehicles and items of motor vehicle equipment. NHTSA has interpreted most types of agricultural equipment to be outside the definition of “motor vehicle” contained in the Safety Act, and therefore beyond NHTSA’s safety authority. As defined in the Safety Act, a motor vehicle means “a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways. . . .” (49 U.S.C. 30102). We have stated that vehicles equipped with tracks, agricultural equipment, and other vehicles incapable of highway travel are not motor vehicles. We have

also determined that certain vehicles designed and sold solely for off-road use (*e.g.*, airport runway vehicles and underground mining vehicles) are not motor vehicles, even if they may be operationally capable of highway travel. Also, vehicles are not motor vehicles if they were designed to be used primarily at off-road job sites and, although capable of being operated on public roads from one job site to another, use roads only incidentally to the primary purpose for which they were manufactured (*e.g.*, mobile cranes).<sup>3</sup>

Use of most agricultural equipment on the public roadways is intermittent and merely incidental to its primary off-road use. In a limited number of circumstances NHTSA has determined a piece of agricultural equipment to be a motor vehicle based on the specific factors listed above, such as its necessary and recurring use of public roads.<sup>4</sup> However, NHTSA does not consider the vast majority of pieces of agricultural equipment to be motor vehicles within the meaning of the Safety Act.

Consequently, States have been the primary sources of regulations for agricultural equipment lighting and marking. The result has been a varied landscape of regulations. NHTSA understands that this has created difficulties for manufacturers seeking to sell and market agricultural equipment that will meet all State on-road use requirements in multiple States. A national requirement for lighting and marking on agricultural equipment may reduce costs and increase efficiency for manufacturers selling agricultural equipment in multiple States.

As discussed in greater detail in Section VI below, ASABE’s development of voluntary standards has begun to standardize the requirements for agricultural equipment. Some States have adopted versions of ASABE Standard 279 as their requirement for lighting and marking on agricultural equipment.

MAP–21 contains a non-discretionary mandate requiring NHTSA to establish a Federal rule for lighting and marking on agricultural equipment that is equivalent to the ASABE lighting and marking standard. NHTSA is issuing this rule in response to that mandate.

<sup>3</sup> See *e.g.*, letter of interpretation to Ms. Melissa A. Burt on Jan. 12, 2005, available at [http://isearch.nhtsa.gov/files/Supreme\\_intl.html](http://isearch.nhtsa.gov/files/Supreme_intl.html) (last accessed May 31, 2016).

<sup>4</sup> See *e.g.*, *id.* (determining that the Truck Mount Feed Processor was a motor vehicle based on its more-than-incidental use of public roads and the fact that the vehicle is constructed using a chassis cab, which was not altered in ways that would limit it to off-road use).

<sup>1</sup> Section 31601 of MAP–21 was classified as a note to 49 U.S.C. 30111.

<sup>2</sup> Section 31601 of MAP–21 directs the Secretary of Transportation to promulgate this rule. This authority is delegated to the National Highway Traffic Administrator at 49 CFR 1.95.

This creates a federal, nationwide standard for lighting and marking on agricultural equipment, which may reduce the burden on manufacturers manufacturing agricultural equipment for sale in multiple States.

### III. Legislative Mandate Under MAP–21

Section 31601 of MAP–21 contains the non-discretionary requirement that NHTSA establish minimum lighting and marking standards for agricultural equipment that may be operated on public roads. Section 31601 requires NHTSA's standards to be equivalent to ASABE 279.14, or any successor standard. The term "agricultural equipment," as it applies in this section of MAP–21, has the meaning given the term "agricultural field equipment" in ASABE Standard 390.4, entitled "Definitions and Classifications of Agricultural Field Equipment," or any successor standard. Standard 390.4 defines "agricultural field equipment" as "any agricultural tractor,<sup>5</sup> self-propelled machine,<sup>6</sup> implement<sup>7</sup> or any combination thereof that is primarily designed for agricultural field operations." Additionally, "public road" is defined as "any road or street under the jurisdiction of and maintained by a public authority and open to public travel."

Given the clear and direct language contained in section 31601, NHTSA does not have the discretion to choose to base its standards on any standard other than ASABE Standard 279.14 or an equivalent standard, or to set a standard that differs in any way from ASABE Standard 279.14 or an equivalent standard.

NHTSA is required to promulgate the rule required by section 31601 within two years of MAP–21's enactment. At least once every five years after promulgating the rule, NHTSA is required to review it and update it consistent with the most recent revision of ASABE Standard 279.

Section 31601 also specifies that the promulgated rule may not prohibit the

operation on public roads of agricultural equipment that is equipped with lighting and marking materials and equipment that comply with revisions of ASABE Standard 279 that are later than the one reflected in the rule. The promulgated rule also may not prohibit the operation on public roads of agricultural equipment that is equipped with lighting and marking materials and equipment in addition to those required by the rule.

The promulgated rule may not require retrofitting of agricultural equipment manufactured before the effective date of the rule.

Section 31601 also contains the requirement that NHTSA establish such standards at least one year after the date on which the rule establishing such standards is promulgated. Accordingly, the compliance date for this rule is June 22, 2017.

Finally, section 31601(b)(1) requires that NHTSA consult with representatives from ASABE, appropriate Federal agencies, and with other appropriate persons prior to promulgating this rule. NHTSA met with representatives from ASABE, the Association of Equipment Manufacturers, and AGCO in April 2013 to consult with them regarding this rulemaking. We have also reached out to other agricultural equipment manufacturers. Additionally, NHTSA has identified the following appropriate Federal agencies and consulted with them regarding this rulemaking: the Federal Motor Carrier Safety Administration, the Occupational Safety and Health Administration, and the United States Department of Agriculture.

### IV. Notice and Comment Are Unnecessary

Generally, agencies may promulgate final rules only after issuing a notice of proposed rulemaking and providing an opportunity for public comment under procedures required by the Administrative Procedure Act (APA), as provided in 5 U.S.C. 553(b) and (c). However, 5 U.S.C. 553(b)(3)(B) provides an exception to these requirements when notice and public comment procedures are "impracticable, unnecessary, or contrary to the public interest."

NHTSA finds that notice and comment is unnecessary prior to adoption of this final rule because Congress statutorily mandated that NHTSA adopt specific existing lighting and agricultural marking standards. By incorporating these standards into federal regulation, NHTSA is performing a non-discretionary act.

MAP–21 expressly requires NHTSA to establish lighting and marking standards for agricultural equipment that are equivalent to ASABE Standard 279.14, or any successor standard. NHTSA is not aware of any other lighting and marking standard for agricultural equipment that is equivalent to ASABE Standard 279.14 or any successor standard. Because NHTSA's statutory authority is limited to either incorporating ASABE Standard 279.14, or an equivalent standard, NHTSA is unable to amend the rule to address any comments it may receive during a comment period. For this reason, a notice and comment period is unnecessary for this rulemaking.

Therefore, NHTSA may adopt this rule without issuing a notice of proposed rulemaking and receiving public comment, in accordance with the APA. For these same reasons, the rule will be effective on June 22, 2016.

### V. ASABE Standards Development

Since its inception in 1907, ASABE<sup>8</sup> has been an educational and scientific organization in the areas of agricultural, food and biological systems. Over the years, membership has grown to over 8,000 members in over 100 countries. Its involvement in the industry has evolved to include the creation and development of its own voluntary standards that have become widely accepted. Many States use ASABE standards as the basis for their own regulations. ASABE has developed a comprehensive standards development process that gives its Standards Committee members as well as the general membership population ample involvement and input in the journey from proposal to final adopted standard.

ASABE's standard creation is a 12 step process from start to finish that is supervised by ASABE's Standards Development and Oversight Committees.<sup>9</sup> After making it through the proposal phase, a draft standard is created that is voted on by all members of the Standards Development Committee. In order for it to be approved, at least 50% of the total Standards Development Committee must vote and it must receive 75% of those votes in favor. Upon receiving

<sup>5</sup> ASABE defines an agricultural tractor as "A traction machine, intended primarily for off-road usage, designed and advertised primarily to supply power to agricultural implements. . . ." ANSI/ASAE S390.4 JAN2005, 3.1.1–3.1.1.12.

<sup>6</sup> ASABE defines a self-propelled machine as "a machine designed with an integral power unit to provide mobility, tractive effort, and process power for performing agricultural operations." Examples include beet harvesters, combines, cotton pickers, forage harvesters, cotton strippers, and forage balers. ANSI/ASAE S390.4 JAN2005, 3.1.2–3.1.2.3.2.

<sup>7</sup> The ASABE definition further defines and lists agricultural implements as items that are pulled by or mounted on a tractor and used to perform agricultural field operations, such as planters or seed drills. ANSI/ASAE S390.4 JAN2005, 3.1.3–3.1.3.1.10.

<sup>8</sup> ASABE was founded as the American Society of Agricultural Engineers. The society changed its name to the American Society of Agricultural and Biological Engineers in 2005 to reflect its representation of biological engineers. ASABE: Engineering a Sustainable Tomorrow, available at [http://www.asabe.org/media/67573/timeline\\_reverse.pdf](http://www.asabe.org/media/67573/timeline_reverse.pdf) (last accessed May 31, 2016).

<sup>9</sup> ASABE Staff. (n.d.). Standards. In Standards Development Tools—Standardization Procedures, available at <http://www.asabe.org/standards.aspx> (last accessed May 31, 2016).

approval from the Standards Development Committee, it is sent to the Oversight Committee, which reviews both the standard and the voting results of the Standards Committee. After receiving approval from the Oversight Committee the standard is approved and published.<sup>10</sup>

**VI. Summaries of and Availability of ASABE Standards 390.4; “Definitions and Classifications of Agricultural Field Equipment” and 279.14; “Lighting and Marking of Agricultural Equipment on Highways”**

ASABE initially developed Standard 279, “Lighting and Marking of Agricultural Equipment on Highways,” in 1954. Since then, the standard has been modified and revised numerous times. ASABE continues to update it. It contains voluntary standards specified for lighting and marking for all types of agricultural field equipment (as defined in ASABE Standard 390) that may be operated on public highways and roads. ASABE defines “agricultural field equipment” as “any agricultural tractor,

self-propelled machine, implement or any combination thereof that is primarily designed for agricultural field operations.” Section 31601 of MAP-21 defines “agricultural equipment,” for purposes of this rulemaking, to be the same as ASABE’s definition for “agricultural field equipment.”

ASABE Standard 279.14 and the definition of “agricultural field equipment” at 390.4 are the versions of the standards that are expressly identified in MAP-21. MAP-21 states that NHTSA may establish a rule that is equivalent to these or any successor standards. MAP-21 additionally states that NHTSA may not prohibit the operation on public roads of agricultural equipment that is equipped with lighting and marking in accordance with later versions of the ASABE standard than the one incorporated at promulgation.

ASABE has updated both Standard 279, which is currently on version 279.18, and the definition section, which is currently on version 390.5, since MAP-21 became effective. Based

on our review, NHTSA does not believe that ASABE’s updates to these standards are significant for purposes of this rulemaking.

ASABE Standard 390.4 defines agricultural field equipment as “Agricultural tractors, self-propelled machines, implements, and combinations thereof designed primarily for agricultural field operations.”

At the present time, many States use various versions of the standard. States do not always incorporate the latest version of Standard 279 or update their standards to reflect the latest version. This has created a landscape with a variety of slightly differing standards by State. Adopting ASABE Standard 279.14, as mandated by Congress, may help standardize lighting and marking requirements for agricultural field equipment by establishing one federal requirement.

The lighting and marking<sup>11</sup> parameters of ASABE Standard 279.14 are as follows:

Category	Requirements
Tractors and Self-Propelled Equipment.	Two head lamps, two red tail lamps and at least two flashing amber warning lights must be mounted at the same height and spaced laterally as wide as possible. At least two flashing amber warning lights visible from both front and rear must be used when the machine is at least 3.7 m wide. Turn signals must be provided. For machines designed to exceed 40 km/h, at least two red rear facing stop lamps must be mounted that illuminate when operator has activated the brake control. If the machine is less than 1200 mm wide, only one stop lamp may be used. Machines that travel at less than 40 km/h may be equipped with red rear facing stop lamps. If equipped, then two red tail lamps must be mounted at the same height and spaced laterally as wide as possible. Two red retro reflective devices must be visible from the rear. Machines wider than 3.7 m shall have conspicuity material visible from both the front and rear. There are requirements for rotating beacons, if the agricultural equipment is equipped with them. One slow moving vehicle (SMV) identification emblem must be installed on the machine. There are CAN bus terminal receptacle requirements, if the agricultural equipment is equipped with them.
Non Self-Propelled Equipment.	Equipment that obscures the SMV emblem of the propelling machine shall be equipped with an additional visible SMV emblem. Equipment that extends more than 1.2 m to the left or right of the propelling machine shall have at least one strip of yellow retro reflective material visible from the front and at least one strip of red retro reflective material visible from the rear applied to indicate the extreme projections of the equipment. Equipment more than 3.7 m wide must have at least two strips of yellow retro reflective material visible to the front and at least two strips of red retro reflective material visible to the rear of the machine. Equipment extending more than 5 m to the rear of the propelling vehicle shall be equipped with at least one SMV emblem and shall have yellow retro reflective material visible from the left and right sides. Equipment that obscures the tail lamps, flashing warning lamp, or stop lamp of the propelling machine, shall be fitted as appropriate with lighting to take the place of the lamp(s) obscured. Equipment that obscures the front or rear flashing lamps of the propelling machine shall have at least two amber flashing lamps symmetrically mounted to the machine, visible from the front or rear of the machine. Turn indicators shall be provided if necessary due to obstruction of turn indicators on the tow vehicle. Stop lamps shall be provided for machines designed to travel at speeds above 40 km/h if necessary due to obstruction of turn indicators on the tow vehicle. All required lamps on non-self-propelled equipment shall be connected to a seven terminal plug conforming to SAE J560.

<sup>10</sup> ASABE Staff. (n.d.). Standards. In Standards Development Tools-Flow chart of the ASABE Standards Process, available at <http://www.asabe.org/standards.aspx> (last accessed May 16, 2016).

<sup>11</sup> Photometry testing, details, and limits are not reproduced here. To review these requirements, please see ASABE Standard 279.14, available in the DOT reading room.

Both of these ASABE standards are reasonably available to the public. You may obtain a copy from ASABE through their Web site at <http://www.asabe.org/publications/publications/standards.aspx> and by mail at ASABE, 2950 Niles Road, St. Joseph, Michigan 49085–9659. Additionally, you may inspect a copy at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 or at the National Archives and Records Administration.

## VII. NHTSA Is Incorporating ASABE Standards by Reference

To meet the statutory requirement to set standards, NHTSA is establishing a new standard at 49 CFR part 562. Section 31601 of MAP–21 requires that the lighting and marking standards established under that section be equivalent to ASABE Standard 279.14, or any successor standard. In response, NHTSA is incorporating ASABE Standard 279.14 in part 562 in its entirety.

NHTSA believes that it can provide a limited amount of compliance flexibility by incorporating version 279.14 into our standard, rather than the most current version of 279, because MAP–21 does not allow NHTSA to prevent operation on public roads of equipment meeting later versions of the standard. In other words, by incorporating version 279.14, we are allowing compliance with the version identified by Congress or any later version. We believe this approach is consistent with Congress's intent, because it incorporates the version identified by Congress, while also providing some limited compliance flexibility.

Section 31601 of MAP–21 gives the term “agricultural equipment” the same meaning as the term “agricultural field equipment” in ASABE Standard 390.4, or any successor standard. Accordingly, NHTSA is incorporating the ASABE Standard 390.4 definition of “agricultural field equipment” by reference. The ASABE definition for “agricultural field equipment,” which is the statutory definition for “agricultural equipment” under section 31601, includes tractors,<sup>12</sup> self-propelled

machines<sup>13</sup> and implements.<sup>14</sup> Part 562 will apply to new agricultural equipment that may be operated on a public road, specifically defined as “any road or street under the jurisdiction of and maintained by a public authority and open to public travel.”<sup>15</sup> Personal equipment used primarily by homeowners, such as lawn tractors, and lawnmowers, is beyond the scope of this rulemaking.

Section 31601 of MAP–21 also requires that NHTSA establish these lighting and marking standards for applicable agricultural equipment manufactured at least one year after the date on which the rule establishing such standards is promulgated. Accordingly, the date on which agricultural equipment subject to this rule must be compliant is June 22, 2017.

## VIII. Costs and Benefits

The majority of agricultural equipment that will be subject to the rule is produced by large, full-line equipment manufacturers, such as John Deere, Agco and Kubota. NHTSA believes that many of these large agricultural equipment manufacturers already build their products to comply with the latest version of ASABE Standard 279. As a result, NHTSA believes that the majority of pieces of agricultural equipment manufactured in the United States are already in compliance with ASABE Standard 279.14 or a successor standard.

Those that are not already compliant with ASABE Standard 279 could easily be made so for a very low cost or at no cost. For example, the reflective conspicuity tape necessary for compliance can be purchased for as low as 75 cents per foot. More expensive components, such as head and tail lights, which are required for some pieces of equipment, can be sourced on the open market for less than \$50.00 per set.

NHTSA believes that manufacturers may benefit from this rulemaking

<sup>13</sup> ASABE defines a self-propelled machine as “a machine designed with an integral power unit to provide mobility, tractive effort, and process power for performing agricultural operations.” Examples include beet harvesters, combines, cotton pickers, forage harvesters, cotton strippers, and forage balers. ANSI/ASAE S390.5 JAN2011, 3.1.2–3.1.2.3.2.

<sup>14</sup> The ASABE definition further defines and lists agricultural implements as items that are pulled by or mounted on a tractor and used to perform agricultural field operations, such as seed drills and planters. ANSI/ASAE S390.5 JAN2011, 3.1.3–3.1.3.10.

<sup>15</sup> This is more precise than the general description under the Safety Act that “motor vehicles” and “motor vehicle equipment” are those that are for use on “public streets, roads, and highways.” See 49 U.S.C. 30102(a)(6) and (7).

because it seeks to federally standardize lighting and marking requirements for agricultural equipment that may be operated on public roads. We acknowledge that manufacturers may still need to equip their pieces of agricultural equipment with additional lighting and marking, as required by State laws. Equipping agricultural equipment subject to this rulemaking with additional lighting and marking than that required by part 562 is expressly allowed by section 31601 of MAP–21, and accordingly by NHTSA's rule.

## IX. Rulemaking Analyses

### A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies require this agency to make determinations as to whether a regulatory action is “significant” and therefore subject to OMB review and the requirements of the aforementioned Executive Orders. Executive Order 12866 defines a “significant regulatory action” as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the potential impact of this rulemaking under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This action was not reviewed by the Office of Management and Budget under E.O. 12866 and E.O. 13563. The agency has considered the impact of this action under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979) and has determined that it is not “significant” under them.

This rule creates a standard based on a Congressional mandate for agricultural

<sup>12</sup> ASABE defines an agricultural tractor as “a traction machine, intended primarily for off-road usage, designed and advertised primarily to supply power to agricultural implements . . . .” ANSI/ASAE S390.5 JAN2011, 3.1.1–3.1.1.12.

equipment. It does not impose any additional requirements. The agency concludes that the impacts of the changes are not significant and that a preparation of a full regulatory evaluation is not required.

#### B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. No regulatory flexibility analysis is required if the head of an agency certifies the proposal or rulemaking will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a proposal or rulemaking effort will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rule under the Regulatory Flexibility Act. This rule establishes lighting and marking standards for agricultural equipment that may be operated on public roads, by adopting ASABE Standard 279.14, pursuant to section 31601 of MAP-21. NHTSA believes that a large number of agricultural equipment manufacturers are already in compliance with the requirements due to the existing ASABE industry standard and State regulations. Furthermore, those that are not already compliant with the requirements could easily be made so for a very low cost or at no cost. For example, the reflective conspicuity tape necessary for compliance can be purchased for as low as 75 cents per foot. Slightly more expensive components such as head and tail lights, which are required for some pieces of equipment, can be sourced on the open market for less than \$50.00 per set.

Because the materials needed to comply with ASABE Standard 279 are inexpensive and the majority of the market is already in compliance, the cost of this rule is expected to be minimal and it should not adversely affect small agricultural equipment manufacturers in a material way.

Accordingly, NHTSA certifies that this FR will not have a significant economic impact on a substantial number of small entities.

#### C. Executive Order 13132 (Federalism)

NHTSA has examined this FR pursuant to Executive Order 13132 and concluded that the rulemaking will not have sufficient federalism implications to warrant consultation with State and local officials, nor the preparation of a federalism summary impact statement. The rule will not have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

Section 31601 of MAP-21 does not have an express savings or preemption provision; therefore general principles of preemption apply to the regulation. Principles of preemption provide that State standards are preempted to the extent that they conflict with Federal regulations, and they are preempted if the State regulations frustrate the purpose of the Federal regulation.

NHTSA believes that most State lighting and marking requirements for agricultural equipment incorporate or are based on a version of ASABE Standard 279. This is the standard that NHTSA is adopting in this rulemaking. Therefore, we do not expect that the regulation will significantly differ from existing lighting requirements.

Under general principles of preemption, if it would not be possible to comply with the requirements of both the federal requirements and a State standard, the federal requirements would prevail. We believe that agricultural equipment operators and manufacturers will be able to comply with both State and federal standards in instances in which they differ. Moreover, as required by section 31601(d)(3) of MAP-21, this regulation does not prohibit the operation on public roads of agricultural equipment that is equipped with materials or equipment that are in addition to the minimum materials and equipment specified in this rule. ASABE Standard 279.14 provides a range of places on agricultural equipment for mounting lighting and marking materials and equipment in compliance with that standard. As a result, individuals may mount lighting and marking materials and equipment in addition to that required by this rule in order to comply with any differing State standard. For these reasons, the rule will not have “substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government.”

#### D. Executive Order 12988 (Civil Justice Reform)

When promulgating regulations, agencies are required by Executive Order 12988 to make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The fact that this rulemaking will not have a preemptive effect is discussed above in connection with Executive Order 13132. There is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

#### E. Executive Order 13609 (Promoting International Regulatory Cooperation)

The policy statement in section 1 of Executive Order 13609 provides, in part:

The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

NHTSA reiterates that its discretion is very limited under section 31601 of MAP-21. NHTSA is specifically required to adopt a standard equivalent to ASABE Standard 279.14 or a successor standard.

### F. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), “all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.” Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as SAE International (SAE).

Per section 31601 of MAP–21, NHTSA is incorporating ASABE Standard 279.14, in its entirety. ASABE is a voluntary consensus standards body, as described in Section V.

### G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995). In 2010 dollars, this threshold is \$136 million.<sup>16</sup> This rule is not expected to result in the expenditure by State, local, or tribal governments, in the aggregate, of more than \$136 million annually.

### H. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant adverse impact on the quality of the human environment.

### I. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, et. seq.), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. This rulemaking does not establish any new information collection requirements.

<sup>16</sup> Adjusting this amount by the implicit gross domestic product price deflator for the year 2010 results in \$136 million (110.644/81.533 = 1.36).1

### J. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public’s needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn’t clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

NHTSA considered and applied these plain language principles in the drafting of this FR.

### K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

### Regulatory Text

#### List of Subjects in 49 CFR Part 562

Agricultural equipment, Highway safety, Incorporation by reference.

■ In consideration of the foregoing, NHTSA amends 49 CFR Chapter IV, Subchapter B by adding part 562 as follows:

#### PART 562—LIGHTING AND MARKING OF AGRICULTURAL EQUIPMENT

Sec.

- 562.1 Scope and purpose.
- 562.3 Definitions.
- 562.5 Applicability.
- 562.7 Lighting and marking requirements for new agricultural equipment.
- 562.9 Compliance not affected by addition of certain materials and equipment.
- 562.11 Incorporation by reference.

**Authority:** Sec. 31601, Pub. L. 112–141, 126 Stat. 405; 49 U.S.C. 30111 note; delegation of authority at 49 CFR 1.95.

#### § 562.1 Scope and purpose.

This part establishes minimum lighting and marking standards for new agricultural equipment as required by the Moving Ahead for Progress in the

21st Century Act (Sec. 31601, Pub. L. 112–141).

#### § 562.3 Definitions.

*Agricultural equipment* has the meaning given the term “agricultural field equipment” in the ANSI/ASAE 390.4 JAN2005, “Definitions and Classifications of Agricultural Field Equipment” (incorporated by reference, see § 562.11).

*Public road* means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

#### § 562.5 Applicability.

This standard applies to new agricultural equipment that may be operated on a public road.

#### § 562.7 Lighting and marking requirements for new agricultural equipment.

New agricultural equipment that may be operated on a public road must meet the lighting and marking standards set forth in ANSI/ASAE 279.14 JUL2008, “Lighting and Marking of Agricultural Equipment on Highways” (incorporated by reference, see § 562.11).

#### § 562.9 Compliance not affected by addition of certain materials and equipment.

(a) *Successor standards.* Equipping new agricultural equipment that may be operated on a public road with lighting and marking materials and equipment that comply with a revision of ANSI/ASAE Standard 279 adopted after the version cited in § 562.7 does not affect compliance with the requirements of this part.

(b) *Additional materials and equipment.* Equipping new agricultural equipment that may be operated on a public road with lighting and marking materials and equipment that are in addition to the minimum requirements specified in § 562.7 does not affect compliance with the requirements of this part.

#### § 562.11 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect approved material at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 or at the National Archives and Records Administration. For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(a) American Society of Agricultural and Biological Engineers (ASABE) 2950

Niles Road, St. Joseph, Michigan 49085–9659, (269) 429–0300. <http://www.asabe.org/publications/publications/standards.aspx>.

(1) ANSI/ASABE 279.14 JUL2008, “Lighting and Marking of Agricultural Equipment on Highways,” approved August 2008, into § 562.7.

(2) ANSI/ASAE 390.4 JAN2005, “Definitions and Classifications of Agricultural Field Equipment,” approved February 2005, into § 562.3.

(b) [Reserved].

Issued on June 14, 2016, in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

**Mark R. Rosekind,**  
Administrator.

[FR Doc. 2016–14571 Filed 6–21–16; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS–R4–ES–2015–0144;  
4500030113]

RIN 1018–BA94

#### Endangered and Threatened Wildlife and Plants; Threatened Species Status for the Elfin-Woods Warbler With 4(d) Rule

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), determine threatened species status under the Endangered Species Act (Act), as amended, for the elfin-woods warbler (*Setophaga angelae*), a bird species in Puerto Rico. This rule will add this species to the List of Endangered and Threatened Wildlife. We are also adopting a rule under the authority of section 4(d) of the Act (a “4(d) rule”) that is necessary and advisable to provide for the conservation of the elfin-woods warbler.

**DATES:** This rule is effective July 22, 2016.

**ADDRESSES:** This final rule is available on the Internet at <http://www.regulations.gov> and <http://www.fws.gov/caribbean>. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at <http://www.regulations.gov>. Comments, materials, and documentation that we considered in this rulemaking will be

available by appointment, during normal business hours, at: U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:**

Mareliisa Rivera, Deputy Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, P.O. Box 491, Road 301 Km. 5.1, Boquerón, PR 00622; telephone 787–851–7297; facsimile 787–851–7440. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

*Why we need to publish a rule.* Under the Endangered Species Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule.

*This rule finalizes the listing of the elfin-woods warbler (*Setophaga angelae*) as a threatened species.* It includes provisions under the authority of section 4(d) of the Act that are necessary and advisable for the conservation needs of the elfin-woods warbler.

*The basis for our action.* Under the Act, we may determine that a species is a threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that this species is currently at risk throughout all of its range due to threats related to habitat modification on private lands under agricultural and other land use requiring vegetation clearance (Factor A) and to other natural or manmade factors, such as restricted distribution and lack of connectivity, genetic drift, hurricanes, and the effects of climate change (Factor E).

Under section 4(d) of the Act, the Secretary of the Interior has discretion to issue such regulations she deems necessary and advisable to provide for the conservation of the species. The Secretary also has the discretion to prohibit by regulation, with respect to a threatened species, any act prohibited by section 9(a)(1) of the Act.

Habitats within some of the physically degraded private lands

adjacent to elfin-woods warbler existing populations must be improved before they are suitable for the species; therefore, some activities that would normally be prohibited under 50 CFR 17.31 and 17.32 will contribute to the conservation of the elfin-woods warbler. For the elfin-woods warbler, the Service has determined that species-specific regulations authorized by section 4(d) of the Act are necessary and advisable to provide for the conservation of this species.

*Peer review and public comment.* We sought comments from independent specialists to ensure that our determination is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on the listing proposal. We considered all comments and information we received during the comment period.

**Previous Federal Action**

Please refer to the proposed listing rule (80 FR 58674, September 30, 2015) for a detailed description of previous Federal actions concerning the elfin-woods warbler.

**Summary of Comments and Recommendations**

In the proposed rule published on September 30, 2015 (80 FR 58674), we requested that all interested parties submit written comments on the proposal by November 30, 2015. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. On October 3, 2015, we published a newspaper notice in the *Primera Hora* inviting general public comment. We did not receive any requests for a public hearing.

*Peer Reviewer Comments*

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from six knowledgeable individuals with scientific expertise that included familiarity with the elfin-woods warbler and its habitat, biological needs, and threats. We received responses from four of the peer reviewers.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the listing of elfin-woods warbler. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve this final rule. Substantive peer reviewer comments are addressed in the following summary