

**§ 627.3 Definitions.**

\* \* \* \* \*

*Final Design.* Any design activities following preliminary design and expressly includes the preparation of final construction plans and detailed specifications for the performance of construction work.

\* \* \* \* \*

*Total Project Costs.* The estimated costs of all work to be conducted on a project including the environment, design, right-of-way, utilities and construction phases.

\* \* \* \* \*

**■ 4. Amend § 627.5 by:**

■ a. Amend paragraph (a) by adding the words “prior to authorizing the project for construction (as specified in 23 CFR 630.205)” at the end of the sentence.

■ b. Revise paragraphs (b) introductory text, (b)(1), (2) and (3),

■ c. Amend paragraph (b)(4) by removing the words “for which” and adding in its place “where”, and by adding the word “construction” between the words “the letting”.

■ d. Amend paragraph (b)(5) by removing the words “Federal-aid” and “the” and adding the words “that utilizes Federal-aid highway program funding” to the end of the sentence.

■ e. Revise paragraph (c).

■ f. Amend paragraph (d) by removing the words “any additional VE analysis” and adding in its place “additional VE analyses” and by adding the words “where there is a high potential for the project to benefit from a VE analysis” at the end of the sentence.

■ g. Revise paragraph (e) to read.

■ h. Add paragraph (f).

The revisions and additions read as follows:

**§ 627.5 Applicable projects.**

\* \* \* \* \*

(b) Applicable projects requiring a VE analysis shall include the following:

(1) Each project located on the National Highway System (NHS) (as specified in 23 U.S.C. 103) with an estimated total project cost of \$50 million or more that utilizes Federal-aid highway funding;

(2) Each bridge project located on the NHS with an estimated total project cost of \$40 million or more that utilizes Federal-aid highway funding;

(3) Any major project (as defined in 23 U.S.C. 106(h)), located on or off of the NHS, that utilizes Federal-aid highway funding in any contract or phase comprising the major project;

\* \* \* \* \*

(c) An additional VE analysis is not required if, after conducting a VE analysis required under this part, the

project is subsequently split into smaller projects in the design phase or the project is programmed to be completed by the letting of multiple construction projects. However, the STA may not avoid the requirement to conduct a VE analysis on an applicable project by splitting the project into smaller projects, or multiple design or construction projects.

\* \* \* \* \*

(e) A VE analysis is not required for projects delivered using the design build method of construction. While not required, FHWA encourages STAs and local public authorities to conduct a VE analysis on design build projects that meet the requirements identified in subsection (b) of this section.

\* \* \* \* \*

(f) A VE analysis is required on projects delivered using the Construction Manager/General Contractor (CM/GC) method of contracting, if the project meets the requirements identified in subsection (b) of this section.

\* \* \* \* \*

**§ 627.7 [Amended]****■ 5. Amend § 627.7 by:**

■ a. Amending paragraph (a) by removing the phrase “conducted for all applicable projects” and inserting the phrase “identified, conducted and approved VE recommendations implemented on all applicable projects (as defined in 627.5 of this part)”.

■ b. Amending paragraph (b) by adding the words “prior to the project being authorized for construction (as specified in 23 CFR 630.205).” to the end of the sentence.

**■ 6. Amend § 627.9 by:**

■ a. Revising paragraph (c).

■ b. Redesignating paragraphs (d), (e), (f), (g) and (h) as paragraphs (e), (f), (g), (h) and (i) respectively.

■ c. Adding a new paragraph (d) to read as follows:

The revisions and additions read as follows:

**§ 627.9 Conducting a VE analysis.**

\* \* \* \* \*

(c) When a STA or local public agency chooses to conduct a VE analysis for a project utilizing the design-build project delivery method the VE analysis must be performed prior to the release of the final Request for Proposals or other applicable solicitation documents.

\* \* \* \* \*

(d) For projects delivered using the CM/GC contracting method, a VE analysis is not required prior to the preparation and release of the RFP for the CM/GC contract.

The VE analysis is required to be completed and approved recommendations incorporated into the project plans prior to requesting a construction price proposal from the CM/GC contractor.

[FR Doc. 2013–20315 Filed 8–28–13; 8:45 am]

BILLING CODE 4910–22–P

**DEPARTMENT OF THE INTERIOR****National Park Service****36 CFR Part 12**

[NPS–WASO–REGS–13553; PXXVPAD0515]

RIN 1024–AE01

**National Cemeteries, Demonstration, Special Event**

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

**SUMMARY:** The National Park Service is proposing to revise the definition of the terms *demonstration* and *special event*, applicable to the national cemeteries administered by the National Park Service.

**DATES:** Comments must be received by October 28, 2013.

**ADDRESSES:** You may submit your comments, identified by Regulation Identifier Number (RIN) 1024–AE01, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail to: A.J. North, Regulations Program, National Park Service, 1849 C Street NW., MS–2355, Washington, DC 20240.

*Instructions:* All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For additional information, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** A.J. North, National Park Service Regulations Program, by telephone: 202–513–7742 or email: [waso\\_regulations@nps.gov](mailto:waso_regulations@nps.gov).

**SUPPLEMENTARY INFORMATION:****Background**

The National Park Service (NPS) is responsible for protecting and managing

fourteen national cemeteries, which are administered as integral parts of larger NPS historical units. A list of the national cemeteries managed by the NPS may be viewed at <http://www.cem.va.gov/cecm/cems/doi.asp>.

The national cemeteries administered by the NPS were established as national shrines in tribute to the gallant dead who have served in the Armed Forces of the United States. These cemeteries are to be protected, managed, and administered as suitable and dignified burial grounds and as significant cultural resources. In 1986, the NPS comprehensively revised the Part 12 rules that govern the NPS administered national cemeteries to comply with Federal statutory law and to update and standardize procedures for the operation of national cemeteries (51 FR 8976, March 14, 1986). As part of this revision, § 12.2 was amended to prohibit “conducting special events and demonstrations, except for official commemorative events on Memorial Day, Veterans Day, and other dates designated by the superintendent as having special historic and commemorative significance for the particular national cemetery.” As more extensively detailed at 51 FR 8977 (March 14, 1986), this is because these national cemeteries are intended to have a protected atmosphere of peace, calm, tranquility, and reverence where there is “a substantial governmental interest that exists in maintaining this protected atmosphere where individuals can quietly contemplate and reflect upon the significance of the contributions made to the nation by those interred.”

The term *demonstration* was added to § 12.3 and defined to mean “a demonstration, picketing, speechmaking, marching, holding a vigil or religious service or any other like form of conduct that involves the communication or expression of views or grievances, whether engaged in by one or more persons, that has the intent, effect or likelihood to attract a crowd or onlookers. This term does not include casual park use by persons that does not have an intent or likelihood to attract a crowd or onlookers.”

The term *special event* was also added and defined as “a sports event, pageant, celebration, historical reenactment, entertainment, exhibition, parade, fair, festival or similar activity that is not a demonstration, whether engaged in by one or more persons, that has the intent, effect or likelihood to attract a crowd or onlookers. This term does not include casual park use by persons that does not have an intent or likelihood to attract a crowd or onlookers.”

#### *Concerns Over the Definition of the Term “Demonstration”*

In *Boardley v. Department of the Interior*, 605 F.Supp. 2d 8 (D.D.C. 2009), the United States District Court for the District of Columbia noted that the NPS’s definition of the term *demonstration* in 36 CFR 2.51(a) and 7.96(g)(1)(i) could pose a problem on the scope of the agency’s discretion, insofar as it could be construed to allow NPS officials to restrict speech based on their determination that a person intended to draw a crowd with their conduct. The NPS had not applied, nor intended to apply, its regulations in an impermissible manner. Nevertheless, to address the District Court’s concerns in *Boardley*, the NPS narrowed the definition of *demonstration* in an interim general rule governing demonstration and the sale and distribution of printed matter for most of the National Park System (75 FR 64148, Oct. 19, 2010). This rule was amended and finalized on June 24, 2013 (78 FR 37713). In response to *Boardley*, the NPS also issued a final rule that narrowed the NPS’s National Capital Region definition of *demonstration* at § 7.96 (78 FR 14673, March 7, 2013).

The new definition of *demonstration* in 36 CFR 2.51 and 7.96 provided a “reasonably likely” standard—rather than an “effect, intent or propensity” standard—to ensure the necessary objectivity in the regulatory process, while negating the possibility of a permit being granted or rejected on impermissible grounds. The NPS also determined that the “reasonably likely” standard is easily and consistently understood.

#### **Proposed Rule**

The national cemeteries administered by the NPS have been set aside as resting places for members of the fighting forces of the United States. Many activities and events that may be appropriate in other park areas are inappropriate in a national cemetery because of its protected atmosphere of peace, calm, tranquility, and reverence. The NPS continues to maintain its substantial interest in maintaining this protected atmosphere in its national cemeteries, where individuals can quietly visit, contemplate, and reflect upon the significance of the contributions made to the nation by those who have been interred there.

The NPS also desires to maintain consistency in the regulations governing demonstrations and special events in park units, including national cemeteries. Accordingly, the proposed amended definition of the term

*demonstration* in § 12.3 would mirror the language now used 36 CFR 2.51 and 7.96. The proposed amended definition of the term *special event* in § 12.3 would also contain nearly identical language. To avoid the possibility of a decision based on impermissible grounds, the proposed rule would revise the § 12.3 definitions of *demonstration* and *special event* by eliminating the terms “intent, effect, or likelihood” and replacing them with the term “reasonably likely to draw a crowd or onlookers.” While these proposed revisions would not substantively alter the § 12.4 prohibition of special events and demonstrations within national cemeteries, it would more clearly and consistently define these terms.

#### **Compliance With Other Laws, Executive Orders, and Department Policy**

##### *Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

##### *Regulatory Flexibility Act (RFA)*

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

##### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers,

individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act (UMRA)*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

*Takings (Executive Order 12630).*

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

*Federalism (Executive Order 13132)*

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This proposed rule only affects use of NPS administered lands and waters. It has no outside effects on other areas. A Federalism summary impact statement is not required.

*Civil Justice Reform (Executive Order 12988)*

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

*Consultation With Indian Tribes (Executive Order 13175 and Department Policy)*

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We

have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

*Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*)*

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the PRA is not required.

*National Environmental Policy Act (NEPA)*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA of 1969 is not required because we have determined the rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, legal, and technical in nature. We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

*Effects on the Energy Supply (Executive Order 13211)*

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects in not required.

*Clarity of This Rule*

We are required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)) and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are

too long, the sections where you feel lists or tables would be useful, etc.

*Drafting Information:* The primary author of this regulation was C. Rose Wilkinson, National Park Service, Regulations and Special Park Uses, Washington, DC.

**Public Participation**

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section. All comments must be received by midnight of the close of the comment period. Bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted.

**Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**List of Subjects in 36 CFR Part 12**

Cemeteries, Military personnel, National parks, Reporting and recordkeeping requirements, Veterans.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR Part 12 as follows:

**PART 12—NATIONAL CEMETERIES**

- 1. The authority citation for Part 12 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, and 462(k); E.O. 6166, 6228, and 8428.

- 2. Revise the part heading as set forth above.

- 3. Amend § 12.3 by revising definitions of “Demonstration” and “Special event” to read as follows:

**§ 12.3 Definitions.**

\* \* \* \* \*

*Demonstration* means a demonstration, picketing, speechmaking, marching, holding a vigil or religious service, or any other like form of conduct that involves the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which is reasonably likely to attract a crowd or onlookers. This term does not include

casual park use by persons that is not reasonably likely to attract a crowd or onlookers.

\* \* \* \* \*

*Special event* means a sports event, pageant, celebration, historical reenactment, entertainment, exhibition, parade, fair, festival, or similar activity that is not a demonstration, engaged in by one or more persons, the conduct of which is reasonably likely to attract a crowd or onlookers. This term does not include casual park use by persons that is not reasonably likely to attract a crowd or onlookers.

\* \* \* \* \*

Dated: August 6, 2013.

**Rachel Jacobson,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2013-21060 Filed 8-28-13; 8:45 am]

**BILLING CODE 4312-EJ-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R07-OAR-2013-0482; FRL 9900-40-Region 7]

#### Approval and Promulgation of Implementation Plans; State of Missouri; St. Louis Area Transportation Conformity Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri on March 17, 2011. This revision proposes to amend the rule to provide more specificity to the interagency consultation process requirements and responsibilities. The revision to Missouri's rule does not add any additional requirements to the existing rule but merely adds language that better clarifies specific roles and responsibilities including the consultation groups' processes. Further, these revisions do not have an adverse affect on air quality. EPA's approval of this SIP revision is being done in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** Comments on this proposed action must be received in writing by September 30, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-OAR-2013-0482, by mail to: Steven Brown, Environmental Protection

Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Steven Brown at (913) 551-7718, or by email at [brown.steven@epa.gov](mailto:brown.steven@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: August 1, 2013.

**Mark Hague,**

*Acting Regional Administrator, Region 7.*

[FR Doc. 2013-20915 Filed 8-28-13; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA-2013-0095]

#### Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This document denies a rulemaking petition submitted by BMW Group, BMW of North America, LLC, to amend the Federal motor vehicle safety standard on occupant crash protection to permit optional certification using a seat belt interlock for front seat occupants as an alternative to the unbelted crash test requirements. The agency is denying the petition because the supporting material provided by the petitioner is not sufficient for the agency to fully evaluate the safety need, benefits, effectiveness, and acceptability of seat belt interlock systems. Furthermore, in 2012, the agency initiated the development of a research program on seat belt interlocks in light of its newly-acquired statutory authority to allow consideration of seat belt interlocks as a compliance option. The agency believes that making a determination to amend its performance standards prior to the completion of its research is premature.

**FOR FURTHER INFORMATION CONTACT:** *For Non-Legal Issues:* Ms. Carla Rush, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, Telephone: (202) 366-4583, Facsimile: (202) 493-2739.

*For Legal Issues:* Mr. William Shakely, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, Telephone: (202) 366-2992, Facsimile: (202) 366-3820.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

NHTSA's mission is to save lives, prevent injuries, and reduce economic losses resulting from motor vehicle crashes. Increasing seat belt use is one of the agency's highest priorities for carrying out this mission. For each percentage point gain in national seat belt usage, we estimate that 200 lives are saved each year. In 2012, the nationwide seat belt use reached a high of 86 percent for drivers and front seat passengers. To achieve this rate, we have relied on an array of agency initiatives, such as regulating and promoting the use of in-vehicle technologies, the Click It or Ticket program<sup>1</sup> and State primary enforcement laws, to encourage seat belt usage. Notwithstanding impressive gains in seat belt usage, data from the 2011 Fatality Analysis Reporting System (FARS) indicates that 52 percent of all

<sup>1</sup> <http://www.nhtsa.gov/CIOT>.