HANDCRAFTS, GIFTS AND MERCHANDISE

A. LAW

P.L. 96-95; October 31, 1979

ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979

Prohibits the removal, sale, purchase, exchange and transportation of any archaeological resource from Federal lands and other lands where State and local laws exist to protect such resources.

P.L. 96-487; December 2, 1980

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

Section 803 permits the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tool or transportation and for the making and selling of handcraft articles out of non-edible by-products of fish and wildlife resources taken for consumption and customary trade.

B. REGULATION

36 C.F.R., §2.1

§ 2.1 Preservation of natural, cultural and archeological resources.

(a) Except as otherwise provided in this chapter, the following is prohibited:

(1) Possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state:

(i) Living or dead wildlife or fish, or the parts of products thereof, such as antlers or nests.

(ii) Plants or the parts or products thereof.

(iii) Nonfossilized and fossilized paleontological specimens, cultural or archeological resources, or the parts thereof.

(iv) A mineral resource or cave formation or the parts thereof.

(2) Introducing wildlife, fish or plants, including their reproductive bodies, into a park area ecosystem.

(3) Tossing, throwing or rolling rocks or other items inside caves or caverns, into valleys, canyons, or caverns, down hillsides or mountainsides, or into thermal features.

(4) Using or possessing wood gathered from within the park area: *Provided, however,* That the superintendent may designate areas where dead wood on the ground may be collected for use as fuel for campfires within the park area.

(5) Walking on, climbing, entering, ascending, descending, or traversing an archeological or cultural resource, monument, or statute, except in designated areas and under conditions established by the superintendent.

(6) Possessing, destroying, injuring, defacing, removing, digging, or disturbing a structure or its furnishing or fixtures, or other cultural or archeological resources.

(7) Possessing or using a mineral or metal detector, magnetometer, side scan sonar, other metal detecting device, or subbottom profiler.

This paragraph does not apply to:

(i) A device broken down and stored or packed to prevent its use while in park areas.

(ii) Electronic equipment used primarily for the navigation and safe operation of boats and aircraft.

(iii) Mineral or metal detectors, magnetometers, or subbottom profilers used for authorized scientific, mining, or administrative activities.

(b) The superintendent may restrict hiking or pedestrian use to a designated trail or walkway system pursuant to §§ 1.5 and 1.7. Leaving a trail or walkway to shortcut between portions of the same trail or walkway, or to shortcut to an adjacent trail or walkway in violation of designated restrictions is prohibited.

(c)(1) The superintendent may designate certain fruits, berries, nuts, or unoccupied seashells which may be gathered by hand for personal use or consumption upon a written determination that the gathering or consumption will not adversely affect park wildlife, the reproductive potential of a plant species, or otherwise adversely affect park resources.

(2) The superintendent may:

(i) Limit the size and quantity of the natural products that may be gathered or possessed for this purpose; or

(ii) Limit the location where natural products may be gathered; or

(iii) Restrict the possession and consumption of natural products to the park area.

(3) The following are prohibited:

(i) Gathering or possessing undesignated natural products.

(ii) Gathering or possessing natural products in violation of the size or quantity limits designated by the superintendent.

(iii) Unauthorized removal of natural products from the park area.

(iv) Gathering natural products outside of designated areas.

(v) Sale or commercial use of natural products.

(d) This section shall not be construed as authorizing the taking, use or possession of fish, wildlife or plants for ceremonial or religious purposes, except where specifically authorized by Federal statutory law, treaty rights, or in accordance with § 2.2 or § 2.3.

36 C.F.R. § 13.40-13.51 National Park System Units in Alaska

Regulations provide detailed information and procedures derived from P.L. 96-487, above.

C. POLICY

Management Policies Manual, Chapter VIII
Handcrafts, Gifts and Merchandise

Promoting the sale of United States made handcrafts including authentic Indian/Eskimo handcrafts relating to the cultural, historical, natural and geographic characteristics of park areas is encouraged and there shall be a continuing effort to enhance the scope and supply of local handcrafts where they exist and to establish them where they do not. In furtherance of this policy the revenue derived from the sale of United States handcrafts and authentic Indian/Eskimo handcrafts will be exempt from the franchise fee payment.

Concessioners may offer for sale merchandise that is customarily sold in similar types of retail outlets.

Foreign made merchandise is not to be encouraged but is not prohibited.

Merchandise that offends normal standards of taste or which violates conservation principles is not to be sold.

The sale of original prehistoric or historic archeological specimens, regardless of age, is inconsistent with the Service's conservation ethic and is, therefore, prohibited. The sale of clearly labeled replicas of artifacts is authorized.

D. PREFERRED MERCHANDISE

1. United States Handcrafts

For an item to be classified as a United States Handcraft that is subject to exclusion from the franchise fee computation, the following criteria must be satisfied.

a. It must be handcrafted by United States craftspeople residing and working within the fifty states, United States territories, United States possession or United States trust lands.

b. It must be predominantly individually produced under conditions not resembling an assembly line or factory system. The term "production crafts" defines those handcrafted items which are produced in quantity, but which retain the individual attention of handcraftspeople using individual handcraft processes, and are therefore considered handcraft.

c. It must be produced by using such devices or mechanical implements that allow the manual skill of the maker or makers to condition the overall shape and design of each individual item. For example: the potter's wheel, weaving loom, wood lathe, buffing machine, etc.

d. Jellies, jams, preserves and other prepared foods, even if "homemade" are not considered handcrafts. However, if the product is in a handcrafted container meeting the criteria stated above for United States handcrafts, it is considered handcraft.

e. In addition to the items commonly identified with handcrafts, hand processed photographs, handprints (block prints, silk screen prints, lithographs, etchings) sculpture and paintings are also considered handcrafted items.

2. Authentic United States Indian/Eskimo Handcrafts

To be sold and labelled as authentic handcrafts made by United States Indians/Eskimos, the article must meet the criteria in subparagraph 1 above and

also meet the following standards which comply with the Department's Indian Arts and Crafts Board definition for such handcrafts.

a. The item must be made entirely, including any components, by United States Indians/Eskimos residing within the United States. The use of findings, hand tools and equipment for buffing, polishing, grinding, drilling or sewing is permitted.

b. The item must be made only from natural materials except stabilized or treated turquoise is permissible.

c. No portion of the item can be made by machine except mechanically pressed silver beads which are permissible. When used, the item must be labeled "machine-made silver beads."

Items purported to be Indian/Eskimo handcrafted but are not because they do not meet all of the above criteria are considered imitations of Authentic United States Indian/Eskimo handcrafts. They do not qualify as handcrafted merchandise and will not be excluded from the franchise fee computation. They may, however, be preferred items if they meet the criteria of park related items in 3 below. The reason for this limitation is to encourage the making and selling of Authentic United States Indian/Eskimo handcrafts. Permitting the exclusion of the franchise fee on an imitation would dilute NPS' mission to protect our national heritage.

3. Park Related Items

Articles or items associated with or representative of the park or its geographical region should be displayed *in addition to * United States handcrafts. Items that should be strongly encouraged may include but not *be* limited to books, maps, merchancially printed photographs and prints (including scenes on calendars, china plates) jellies; jams and preserves and floral arrangements, etc.

Unless they meet the criteria stated for United States handcrafts, park related items are not to be excluded from the franchise fee computation.

4. Sources of Handcrafts

The Superintendents and/or the concessioner are encouraged to call upon the Indian Arts and Crafts Board of the Department of the Interior, concerning sources, availability or authenticity of United States Indian/Eskimo Handcrafts. In the case of handcrafts made by other than United States Indians/Eskimos, it is suggested that whenever possible, Superintendents and/or concessioners call upon local craft guilds as a resource. The WASO Concessions Office may be able to assist.

E. ACCEPTABLE MERCHANDISE

Items necessary for visitor use and enjoyment of the parks including but not limited to groceries, camping supplies, automobile needs, personal items, clothing, film, and gifts or souvenirs of types the public would generally expect to find available in a similar retail outlet located in a similar area to the park.

The following list is representative, but not all inclusive, of the types of merchandise which are acceptable:

1. Novelty type items which identify the park simply by area or name using a decal or picture of the area or of a popular feature, inscribed on such items as pennants, sweatshirts, T-shirts, linens, paper weights, stationery, etc.

2. Commercially or machine made Indian/Eskimo type merchandise.

3. Replicas of artifacts

4. Printed material including books, maps, posters, table mats, etc.

5. Games, toys, and books that appeal to children.

6. Items made from material symbolic or representative of those found in the general area, but not taken from National Park Service property and which comply with the following conditions:

a. Petrified wood, minerals and stones must have at least one face or surface of the item polished to distinguish it from the natural state as might be found in the park.

b. Packaged seeds or seeds of any flora used in making a handcraft item must be labelled as to origin.

c. Animal skins fabricated into such items as leather gloves, skirts or jackets; mukuluks; cowhide belts, purses, jackets, etc., are acceptable, provided * that the concessioner obtains a signed statement from the manufacturer stating that the animal skins were obtained from legally authorized sources; that the skins are not from threatened and/or endangered species as per 50 CFR 17, subpart B, and; the concessioner individually tags all merchandise of this type stating that animal skins were obtained from legally authorized sources and are not from threatened and/or endangered species.*

d. Other merchandise not restricted under Unacceptable Merchandise in Paragraph F below.

* 7. Outdated merchandise such as film and other items where spoilage is not a problem may be sold at a discount rate provided that it is properly labelled as being outdated and is displayed separately from merchandise which has not exceeded the manufacturers "Do not sell after" date. *

F. UNACCEPTABLE MERCHANDISE

1. General

While it is realized that no practicable objective standards can be devised for determining taste, intrinsic value and other subjective criteria, it is incumbent upon the National Park Service and its concessioners to scrupulously avoid displaying or offering for sale any article which persons of normal sensitivity might consider obscene, sexually oriented, suggestive, indecent, blasphemous, profane, vulgar, or in ridicule of established institutions and customs, or reflect a lack of concern with the environment.

In addition, the following items can not be offered for sale by concessioners:

a. Archaeological specimens, cave formations, and artifacts or objects and materials that are protected by any local, State, Federal or tribal laws now or hereinafter promulgated may not be incorporated as a part of a handcrafted item and sold, regardless of the origin of the material.

b. Plant materials and other natural materials from National Park Service areas cannot be incorporated into merchandise items as it is illegal to remove natural materials from these areas for commercial purposes.

c.* Animal skins or parts of animals which are obtained illegally or are from threatened and/or endangered species * are not to be sold or incorporated into merchandise.

d. All merchandise which is hazardous, harmful, or illegal.

e. Articles which are mislabeled as to character or origin (including handcrafts which are mislabeled as "Authentic" or "Genuine" United States Indian handcrafts), or otherwise misrepresented or which do not meet legal labeling requirements.

f. Merchandise * which is subject to spoilage and * has exceeded the producer's specific "Do not sell after" date.

2. Exception for Alaska Residents

Restrictions (b) and (c) above may not be applicable to certain Alaskan made articles. For specific information see 36 C.F.R. subparagraph 13.40-.51 and Section 803, ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT.

G. FOREIGN MERCHANDISE

Foreign made merchandise is not to be encouraged but is not prohibited. It is to be displayed in such a manner as not to conceal or upstage United States products and especially United States handcrafts.

H. LABELING AND DISPLAY

All items are to be labeled and displayed in such a way that the purchaser is not confused as to the price, origin (if foreign made, and whether or not it is handcrafted) of the item. Merchandise displays should effectively enhance a pleasant shopping environment and not distract from the overall ambience of the park and its specific mission. Stores should be well organized and departmentalized to the greatest extent possible.

1. Labeling

All merchandise must be properly marked individually or by display as to selling price. Acceptable methods include stickers, grease pencils and hang tags. Markings are to be neatly prepared and attached in a way that does not conceal labels of origin or other identification.

a. UNITED STATES HANDCRAFTS

Merchandise meeting the criteria established for United States handcrafts must be so labeled. The items may be identified by display provided the entire display is comprised of the same type United States handcrafts. The authenticity of such items must be clearly labeled and at the request of park management be verifiable by the concessioner.

b. IMITATIONS AND REPRODUCTIONS

Imitations of United States handcrafts and Authentic United States Indian/Eskimo handcrafts must be identified as such and in a way that the purchaser is not misled into thinking that the items are United States handcrafts.

c. FOREIGN MERCHANDISE

Foreign merchandise must be properly labeled to indicate the origin of production and/or assembly.

* d. MERCHANDISE FABRICATED FROM ANIMAL SKINS

Merchandise fabricated from animal skins must be properly labelled to indicate that skins were obtained from legally authorized sources and are not from threatened and/or endangered species. At the request of park management, the authenticity of such merchandise must be verifiable by the concessioner. *

2. Display

a. PREFERRED MERCHANDISE

Prominent sale areas are to be used and merchandising techniques practiced that promote and encourage the sale of Preferred Merchandise.

b. SIGNAGE

Amateur, handmade, non-professional signs and labels are to be used only in emergencies. If signs are handprinted, they should be done by a professional letter or sign painter.

I. DOCUMENTATION FOR MERCHANDISE EXEMPT FROM FRANCHISE FEE

1. United States Handcrafts

a. CERTIFICATION

Vendors, (or associations of producers) of handcrafted articles must certify in writing to the concessioner (for his/her benefit) that their products meet the criteria established in these Guidelines. See Exhibit 1 for a sample of Certification of Handcrafts. This should be done as part of the normal billing procedure or with an invoice certification statement such as, "The merchandise covered or so designated on this invoice meets the National Park Service criteria for United States Handcrafts and/or 'Authentic' United States Indian/Eskimo Handcrafts." The concessioner, when taking the franchise fee exclusion for handcraft sales, should be prepared to produce such certification at the park.

b. REQUIRED DOCUMENTATION FOR FRANCHISE FEE EXCLUSION

The concessioner must establish a system for tracking and verifying the total revenues claimed for exception from franchise fees.

The National Park Service will not allow any sale to be excluded from the franchise fee computation unless those sales are fully documented, certified and independently verifiable as United States handcraft. The following example shows a method which could be used to meet this requirement.

One example method:

- United States handcrafted items offered for sale would have special marking or color codes to easily distinguish the labels of franchise fee excludable items from other merchandise, and. . .

- When a United States handcrafted item is sold, a special register key would be used to record the sale if such a register is available, and. . .

- Separate accounts would be maintained to record inventories and purchases of handcrafted items.

J. APPEALS

The subjects of handcraft authenticity and of merchandise acceptability are by nature imprecise and honest differences of opinion can arise. Settlement of such differences should be at the lowest possible level and should include consultation with persons having a specialized knowledge of the particular field.

1. Park Level

a. INITIAL DETERMINATION

The Superintendent may:

(1) Refuse to accept a Certification of Handcraft when he/she has a basis for believing the item does not meet the criteria in paragraph D, above.

(2) Declare an item unacceptable under the criteria set forth in paragraph F.

b. INITIAL APPEAL

(1) The concessioner's appeal, if he/she desires to make one, should also be based on the criteria in paragraphs D and F. The concessioner and the Superintendent may bring in local experts, arrange a visit to the place of manufacture, consult with other parks or the region, and take any other steps which may facilitate agreement.

(2) The Superintendent's decision on the appeal must be in writing, provide reasons, and establish a reasonable deadline for appeal to the region.

2. Region

a. The concessioner's appeal must be in writing and set forth his/her basis.

b. The Regional Director's decision must include consideration of as many as possible of the following:

(1) Inspection of the merchandise or of photos,

(2) Consultation with knowledgeable parties, in or out of the National Park Service,

(3) Sending a representative (preferably with a concessioner representative) to the place of manufacture,

(4) Consultation with other parks, regions, or WASO who may have encountered the same item.

c. The decision must be in writing and establish a reasonable deadline for appeal to the Associate Director, Park Operations, WASO.

3. WASO

a. Upon receipt of an appeal, the Concessions Division will arrange for consultation with the Conference of National Park Concessioners. The Division also maintains a list of potential handcraft consultants.

b. The procedures for resolving each case will be agreed to as the situation requires between Concessions Division and the Conference. As a minimum, the Conference will be invited to submit written comments which will be included verbatim in a report from the Concessions Division to the Associate Director, Park Operations.

c. The decision of the Associate Director, Park Operations is final.

4. Action Pending Decision on Appeals

a. FRANCHISE FEES

During resolution of an appeal, the concessioner is to hold in escrow the franchise fees which would otherwise be payable on the item. Once a decision is made, unless there is to be further appeal, the franchise fee must be paid, if otherwise due, within thirty days.

b. UNACCEPTABLE ITEMS

Items will be removed from the shelf when the Superintendent determines that such items are unacceptable. They should not be restored unless the concessioner's appeal is upheld.

CERTIFICATION OF HANDCRAFTS

In order to comply with certain provisions contained in our contract with the National Park Service, and to encourage the sale of articles made by hand in the United States or its territories, the Park Service has set certain guidelines which define local handcrafts. Their definition is as follows:

1. They must be handcrafted by United States craftspeople residing and working within the fifty states, United States territories, United States possessions or United States trust lands.

2. They must be predominantly individually produced under conditions not in an assembly line or factory system. The term "production crafts" defines those handcrafted items which are produced in quantity, but which retain the individual attention of handcraftspeople using individual handcraft processes, and are therefore considered handcraft.

3. They must be produced by using such devices or mechanical implements that allow the manual skill of the maker or makers to condition to overall shape and design of each individual item. For example: the potters wheel, weaving loom, wood lathe, buffing machine, etc.

4. "Authentic" handcrafts made by United States Indians/Eskimos which are:

a. United States Indian/Eskimo handcrafted--meaning the skillful and expert use of the hands in making products, by Indians residing within the United States, and permits the use of findings, hand tools and equipment for buffing, polishing, grinding, drilling, or sewing.

b. Not made by machine or from unnatural material except stabilized or treated turquoise. Mechanically pressed silver beads are permissible provided the item is labeled "machine-made silver beads."

You, or your firm, supplies us (the concessioner) with the following items:

_____

_____

_____

_____

If these items meet the production standards listed above, will you kindly complete the certificate below and return same? If not hand delivered, you may mail this certificate to us prior to our placing an order with your company. Your cooperation will be appreciated.

Very truly yours,

(Concessioner)

****

I certify that the items listed above meet the National Park Service Production Standards for handcraft items as defined in their handcraft policy and guidelines.

Date	Firm Name	By