



United States Department of the Interior

NATIONAL PARK SERVICE

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Policy Memorandum 14-01

To: All Employees

From: Director *Jonathan B. Jarvis*

Subject: Interpretation of 36 CFR 2.52 - Free Distribution of Message-Bearing Items

One of the challenges of managing a park is to balance the many disparate uses of various park areas by visitors. This includes the use of park areas for First Amendment activities, which includes demonstrations and the sale or distribution of “printed matter” in designated areas. The regulation found at 36 CFR 2.52 defines the term “printed matter.” This memorandum clarifies that other message-bearing items may also be distributed in designated areas under 36 CFR 2.52 if it is done free of charge and without asking for payment or a donation. This guidance augments the procedures contained in Director’s Order #53: Special Park Uses, and Reference Manual 53. This policy guidance is effective immediately.

Background. The purpose of this Policy Memorandum is to ensure uniform application of 36 CFR 2.52 in park areas and in a manner consistent with the sales regulation of the National Capital Region (NCR) at 36 CFR 7.96(k). In the mid-1990s a group challenged the NCR’s special sales regulation as infringing on their First Amendment rights. In upholding the constitutionality of the NCR sales regulation as “content neutral” and “narrowly tailored to serve significant government interests,” the U.S. Court of Appeals for the District of Columbia Circuit also held that the regulation allowed “ample alternative channels of communication.” The court specifically observed, “[I]n fact, as the Park Service stresses, ISKCON’s members may display and give the audio tapes and beads to members of the public so long as they do not try to exact a payment or request a donation in exchange for them.” *ISKCON of Potomac v. Kennedy*, 61 F.3d 949, 958 (D.C. Cir. 1995).

Authority. Amendment I of the U.S. Constitution states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The NPS Organic Act (16 USC 1) provides that Federal parkland is to be enjoyed in such manner and by such means as will leave it unimpaired for the enjoyment of future generations. Rules and regulations are created as necessary and proper for the use and management of the parks. Based upon First Amendment jurisprudence, a particular park area’s purpose may be

considered when determining where First Amendment activity may occur. First Amendment activity remains subject to appropriate time, place, and manner restrictions to protect legitimate government interests, including protecting park resources and values as mandated by the NPS Organic Act.

Policy. Section 5.3 of title 36 CFR prohibits commercial activities in park areas except when the activities are authorized by a permit, contract or other written agreement with the United States, or by special regulations applicable to a park area. Superintendents are authorized by 36 CFR 2.52 to issue special park use permits for the sale or distribution of “printed matter,” which the regulation defines as “message-bearing textual printed material such as books, pamphlets, magazines, and leaflets, provided that it is not solely commercial advertising.” Sales under this regulation whether authorized by a permit or small group exception, should continue to be limited to these defined items.

However, in order to ensure that our interpretation of 36 CFR 2.52 accommodates the exercise of First Amendment rights, and that it is uniformly applied, this Policy Memorandum requires that in interpreting and applying the regulation that superintendents will allow the **free distribution** of message-bearing items to the public other than printed matter, so long as the activity occurs within an area designated as available for First Amendment activities under 36 CFR 2.51(c)(1) and otherwise complies with 36 CFR 2.52.

Examples of message-bearing items that may be distributed for free include CDs, DVDs, and other readable electronic media. Such items must be distributed free of charge, and individuals may not ask or demand payment or request a donation in exchange for the item, which would violate 36 CFR 5.3.

Notwithstanding the foregoing, parks should continue to enforce the service-wide regulations at 36 CFR 5.1 and 5.3 governing commercial advertisements and business operations. This Policy Memorandum amends any other inconsistent guidance and is to be implemented immediately.

The National Park Service intends to promulgate a rule to address this issue, during which it will solicit public comments. For additional information, please contact Lee Dickinson, Special Park Uses Program Manager, Visitor and Resource Protection at 202-513-7092.