



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, NW
Washington, DC 20240

Policy Memorandum 22-01

To: Regional Directors
Superintendents of National Cemeteries

From: Director

Subject: Managing Special Events and Demonstrations in National Cemeteries

Purpose and Duration

National Park Service (NPS) regulations in [36 CFR part 12](#) govern the operation and maintenance of national cemeteries that are administered by the NPS. [Section 12.4](#) of these regulations addresses special events and demonstrations within national cemeteries. This Memorandum provides guidance to superintendents about how to manage special events and demonstrations consistent with section 12.4.

This Memorandum will remain in effect until amended, superseded, or rescinded by the Director.

Background

The NPS is responsible for protecting and managing 14 national cemeteries, which are administered as integral parts of larger historical units of the National Park System. National cemeteries are resting places for those who have served in the Armed Forces of the United States and their families. The NPS protects and administers national cemeteries as suitable and dignified burial grounds and as significant cultural resources. Activities that take place in national cemeteries are limited to those that are consistent with applicable legislation and that are compatible with maintaining the solemn commemorative and historic character of these areas. Many activities that may be appropriate and even facilitated or supported elsewhere in the National Park System are inappropriate in national cemeteries because of their protected atmosphere of peace, calm, tranquility, and reverence.

In 1986, the NPS promulgated regulations at [36 CFR part 12](#) to govern the operation and maintenance of national cemeteries administered by the NPS. In 2014, the NPS revised the definitions of the terms “demonstration” and “special event” in part 12. The regulations in part 12 are intended to provide a clear set of standards and procedures to govern the management of national cemeteries in a manner consistent with the purpose for their establishment. Topics addressed in part 12 include interments, headstones and markers, commemorative monuments, floral and commemorative tributes, and recreational activities.

[Section 12.4](#) establishes rules for special events and demonstrations in national cemeteries, and reads as follows:

§ 12.4 Special events and demonstrations.

Conducting a special event or demonstration, whether spontaneous or organized, is prohibited except for official commemorative events conducted for Memorial Day, Veterans Day and other dates designated by the superintendent as having special historic and commemorative significance to a particular national cemetery. Committal services are excluded from this restriction.

When the NPS promulgated this regulation in 1986, it stated that restricting special events and demonstrations furthers a substantial government interest in maintaining a protected atmosphere in national cemeteries where individuals can quietly contemplate and reflect upon the significance of the contributions made to the Nation by those interred. See, 51 Fed. Reg. 8976, 8977. The NPS stated that official commemorative events on a very limited number of occasions constitute the maximum extent that this protected atmosphere should be disturbed. The NPS noted that ample opportunities exist for persons desiring to conduct special events and demonstrations in areas adjacent to or near the national cemeteries. The justification provided by the NPS in 1986 for restricting special events and demonstrations was reaffirmed by the NPS in 2014. It is still valid today and is the basis for the guidance in this Memorandum.

Guidance for Superintendents

Demonstrations

The term “demonstration” is defined in [section 12.3](#) as follows:

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.

This definition includes examples of activities that may constitute a demonstration, but also refers to “any other like form of conduct.” This means that the examples provided in the definition are not a complete list of activities that could be considered a demonstration. The name or characterization of an activity may be helpful but does not answer the question of whether the activity is a demonstration.

The answer to this question depends upon two criteria – (1) whether the activity involves communication or expression of views or grievances; and (2) whether the activity is likely to attract a crowd or onlookers. If both criteria are met, then the activity is a demonstration.

Superintendents should use their best judgment to determine whether these criteria are met. When evaluating whether an activity involves the communication or expression of views or grievances, superintendents should consider whether communication or expression of views is

the primary purpose of the activity. Many activities involve communication that is secondary to another purpose for the activity. Using an example from the definition of a special event (discussed below), the speaking of rehearsed lines in a historical reenactment is a form of communication but is secondary to the purpose of the activity which is to commemorate an historic event. In contrast, the primary purpose of a picket line is the expression of views through communication. Communication or expression of views or grievances does not need to be audible in order to qualify as a demonstration. Whether an activity can be heard is one factor but is not determinative.

If an activity involves the communication or expression of views or grievances, the next question is whether the activity is reasonably likely to attract a crowd or onlookers. Superintendents should not consider the content of any communication or expression when making this determination. Other factors may be considered, however, such as the volume of the communication or expression of views, and whether amplification, signs, props, or other items are being used. The use of amplification and structures, such as stages, creates a presumption that an activity is reasonably likely to attract a crowd or onlookers.

If an activity is a demonstration, then it is prohibited by [section 12.4](#) without exception. The allowance in [section 12.4](#) for “official commemorative events,” discussed below, is a limited allowance for special events, not demonstrations. If an individual or group is denied a request to conduct a demonstration within a national cemetery, the superintendent should evaluate whether the demonstration could occur outside of the national cemetery in a designated First Amendment area and, if so, offer that as an alternative.

Special Events

The term “special event” is defined in [section 12.3](#) as follows:

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.

The definition of “special event” includes examples of activities that may constitute a special event, but also refers to “similar activity.” This means that the examples provided in the definition are not a complete list of activities that could be considered a special event. The name or characterization of an activity may be helpful but does not answer the question of whether the activity is a special event.

The answer to this question depends upon whether the activity is reasonably likely to attract a crowd or onlookers. If an activity is not a demonstration, meaning it does not involve the communication or expression of views or grievances under the guidance above, but it is reasonably likely to attract a crowd or onlookers, then it is a special event.

Superintendents should use their best judgment to determine whether an activity is reasonably likely to attract a crowd or onlookers. Like demonstrations, superintendents should not consider the content of any communication that is part of the activity to make this determination. Other

factors may be considered, however, such as the volume of the communication, and whether amplification, signs, props or other items are being used. The use of amplification and structures, such as stages, creates a presumption that an activity is reasonably likely to attract a crowd or onlookers.

If an activity is a special event, then it is prohibited by [section 12.4](#) except in limited circumstances. To be allowed, the special event must be “official” which means that it must be sponsored or co-sponsored by the NPS. Sponsorship and co-sponsorship by the NPS can take a number of forms, including planning, publicizing, hosting, financing or providing in-kind support for an event. Superintendents have discretion to decide whether to sponsor or co-sponsor an event. Superintendents may not, however, sponsor or co-sponsor an event that is not consistent with applicable legislation or is not compatible with maintaining the solemn commemorative and historic character of the national cemetery. This includes events that would occur on the days identified below.

Special events that are sponsored or co-sponsored by the NPS are further limited by [section 12.4](#) because they may only be conducted for Memorial Day, Veterans Day and other dates designated by the superintendent as having special historic and commemorative significance to a particular national cemetery. If the superintendent chooses to designate dates other than Memorial Day and Veterans Day, those dates must be listed in the compendium for the national cemetery. This list should be reviewed and updated, if necessary, on an annual basis under [36 CFR 1.7\(b\)](#).

For all national cemeteries, official commemorative events may occur on the following days because they commemorate military service or historical events that have some connection to military service:

- Armed Forces Day
- Flag Day
- Independence Day
- Memorial Day
- National Former POW Recognition Day
- National POW/MIA Recognition Day
- Veterans Day

Official commemorative events also may occur on days that are not listed above provided they have a special historic and commemorative significance for the particular national cemetery. Superintendents may designate dates that commemorate events that occurred at the site of the national cemetery (e.g., Dedication Day at Gettysburg National Cemetery) or those interred at the national cemetery (e.g., Wreaths Across America Day). Superintendents may consider the purposes declared by Congress for establishing the national cemetery when considering what other dates may be designated. The compendium should explain why those other dates have both an historic and commemorative significance for the particular national cemetery.

Official activities that are part of an event may occur on more than one date provided those dates include the day that qualifies for designation and are consecutive with each other. Special events, even if they are sponsored or co-sponsored by the NPS, may not occur on dates that

cannot be designated under this guidance. If an individual or group is denied a request to conduct a special event within a national cemetery, the superintendent should evaluate whether the special event could occur outside of the national cemetery in an appropriate location and, if so, offer that as an alternative.

Other Activities

If an activity is neither a demonstration nor a special event, then it is not subject to the restrictions in [section 12.4](#). Other activities include casual park use that is not reasonably likely to attract a crowd or onlookers, and activities that are addressed by other regulations in part 12, such as committal services, interments, disinterments and exhumations, and floral and commemorative tributes.

[Section 12.10](#) (Floral and commemorative tributes) allows superintendents to designate times where flowers in a metal or non-breakable container may be placed on graves. Although not specifically addressed in [section 12.10](#), superintendents may also designate times where other plant parts (e.g., wreaths) may be placed on graves, and allow flowers and other plants to be placed on graves without a rod or container if appropriate. Superintendents should designate times (including dates, if appropriate) for these activities in the compendium. Some activities may involve the placement of flowers and plants on graves but also include other elements, such as ceremonies, speeches, or organized gatherings. For these activities, the placement of flowers or plants may be allowed at the dates and times designated by the superintendent. Superintendents should use the guidance in this Memorandum to determine whether the other elements of the activities constitute a demonstration or special event and therefore are restricted by [section 12.4](#).

Recreational activity is prohibited by [section 12.11](#) and may not be allowed within a national cemetery under any circumstances. Superintendents may not issue permits for recreational activities.

All activities that occur within national cemeteries are subject to applicable regulations governing the use of national cemeteries, including those in part 12 and elsewhere in 36 CFR. Regulations located outside of part 12 (e.g., [36 CFR 2.50](#), [2.51](#), [7.96\(g\)](#)) that address demonstrations and special events do not apply in national cemeteries and should not be followed by superintendents. Soliciting or demanding gifts, money, goods or services is prohibited in national cemeteries under [36 CFR 2.37](#) because the preconditions for allowing these activities (a valid permit issued under [section 2.50](#), [2.51](#) and [2.52](#)) cannot occur in national cemeteries.

NPS educational activities are not considered special events under [section 12.4](#).

Permitting

Outside of national cemeteries, the NPS issues special use permits for special events and demonstrations within System units. Superintendents should not issue special park use permits for demonstrations within a national cemetery because demonstrations are categorically prohibited by [section 12.4](#). By policy, special park uses may not be initiated, sponsored or conducted by the NPS. For this reason, superintendents should not issue special use permits for

special events held in national cemeteries that are sponsored by the NPS.¹ Superintendents may issue special use permits for special events that are co-sponsored by the NPS if some degree of management control is needed to protect resources and the public interest.² Issuing a permit for a special event does not make the event “official” within the meaning of [section 12.4](#) and should not be done as a way to comply with those regulations.

The NPS may require special use permits for other activities in a manner that is consistent with NPS regulations. For example, [section 12.6](#) requires individuals to obtain a permit for disinterments. Still photography and filming may require a permit depending upon the nature of the activity and applicable law and policy.

Third Party Enforceability

This Memorandum is intended only to improve the internal management of the NPS and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

-----*End of Policy Memorandum*-----

¹ The only exception is for Battleground National Cemetery in Washington, DC. The superintendents of this national cemetery should follow the current policy applicable to all System units within the National Capital Area of issuing the NPS a permit for special events sponsored or co-sponsored by the NPS. Demonstrations and special events in Battleground National Cemetery are governed by the regulations in part 12 and the guidance in this Memorandum.

² Special use permits issued for co-sponsored special events in national cemeteries are not subject to the requirements in [36 CFR 2.50](#) because these regulations do not apply to special events in national cemeteries.