

Section 10: Law Enforcement Contracts



Objectives

- Understand the legislative history and regulatory basis for Law enforcement contracts.
- Understand the rationale for these contracts.
- Be able to develop a Law Enforcement Contract.
- Be able to develop and implement a Quality Assurance Surveillance Plan.
- Understand the potential of these contracts as a “tool” for addressing unique or special problems.
- Understand some of the typical problems.



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Legislative History



- Section 120 of WRDA of 1976 (PL-94-587)
- Amended by PL 96-536

Rationale / Reason

- ✦ Criminal Activity
- ✦ Corps Exercises No Traditional Police Powers
- ✦ Proprietary Interest
- ✦ State and Local Laws Remain in Effect
- ✦ Magnitude of COE Recreation Program and Geographical Dispersion
- ✦ Local Agencies Have Not and Routinely Cannot Respond Satisfactorily During Peak Visitation



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Regulation / Guidance

- ER 1130-2-550
- EP 1130-2-550
- 26 August 1993, CIR Information Letter No. 93-7
- 10 May 1996, Recreation Policy Letter No. 96-01

Plan of Operation

- ◆ Patrol Areas
- ◆ Description of Services
- ◆ Costs
 - Personnel
 - Equipment
- ◆ Contacts
 - Corps
 - Law Enforcement Agency
- ◆ Billing Procedures



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Patrol Calendars

- Exhibit to Plan of Operations
- Eliminates Need for Extensive Text
- Easily Modified to Vary Patrol to Prevent Element of Predictability
- Keep it Simple - Don't Attempt to Show too Much Information

SCHEDULE OF LAW ENFORCEMENT SERVICES
 CONTRACT NO. LACM69-96-C-0031
 PROJECT - YATESVILLE LAKE
 FOR MAY 1996

DAMPSITE AREA
 EXHIBIT A
 SERVICE AREAS A, B, & C
 (Dumpsite, Maintenance Building & Office Compound)

Max equipment hours this month 66
 Max man-hours this month 66

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
			1 8PM - 10PM (2)	2	3 9PM - 12AM (3)	4 10PM - 12AM (2)
5 1PM - 4PM (3)	6	7 7PM - 9PM (2)	8	9 9PM - 11PM (2)	10 8PM - 12AM (4)	11 9PM - 12AM (3)
12 1PM - 4PM (3)	13 7PM - 9PM (2)	14	15 6PM - 8PM (2)	16	17 8PM - 12AM (4)	18 10PM - 1AM (3)
19 12PM - 3PM (3)	20	21 7PM - 9PM (2)	22	23 8PM - 10PM (2)	24 10PM - 1AM (3)	25 10PM - 2AM (4)
26 3PM - 8PM (5)	27 MEMORIAL DAY 1PM - 9PM (8)	28	29 7PM - 9PM (2)	30	31 8PM - 10PM (2)	



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(10) Method of Patrol Verification: _____

(11) Extra duties (foot patrols, close gates, clear areas, check physical security) _____

(12) Minimum proposed personnel qualifications: _____

(13) Daily Log: COE _____ COOPERATOR _____

(14) Billing Procedure: Monthly by 5th, 2 copies invoice or other _____

(15) Cost Per Man Hour: _____ Max. No. Hours: _____
Cost Per Equip. Hour: _____ Max. No. Hours: _____

(16) Limit of payment for Contract Period: (_____

SIGNATURES

_____ (NAME)	_____ (NAME)	_____ (NAME)
_____ (TITLE)	_____ (TITLE)	_____ (TITLE)
_____ (DATE)	_____ (DATE)	_____ (DATE)

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Orientation

- Required by ER 1130-2-550.
- Forum For Orienting All Personnel.
- Must Be Done Before Start of Work.
- Generally Conducted by Park Manager.



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Quality Assurance Surveillance Plan

- ◆ Means of documenting performance
- ◆ Basis for addressing poor performance
- ◆ Supports management decisions regarding payment, termination, patrol schedule changes, Etc.

Verifying Performance

Inspection Methods

- ▶ Random
- ▶ Planned
- ▶ Impromptu



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Documentation

Corps

- Inspection Checklist
- Time Clock
- Park Attendant
- Radio Contact



Contractor

- Daily Law Enforcement Log

Diversifying Service to Address Unique or Special Problems

- ☀ Resource Protection
- ☀ “Stakeout” of Vandal Prone Areas
- ☀ Enforcement of Special Restrictions
 - Alcohol Restrictions
 - Quiet Hours
 - Close Day Use Areas at Night



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Potential Problems

- Enforcement
- Patrolling Outgrants
- Calls off Site
- Completion of Daily Law Enforcement Log
- Ranger Riding with Officer
- Boat Patrols



Potential Problems cont.

- Officer Qualifications
- Payment for Orientation
- Rates Paid Officers
- Failure to Perform Patrols
- Court Cost Associated with Citations



Section 10: Law Enforcement Contracts

 DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:
CECC-L (715wv)

26 AUG 1993

CIR INFORMATION LETTER NO. 93-7

MEMORANDUM FOR: Commander, Huntsville Division, CEHND-OC

SUBJECT: Applicability of the Service Contract Act to USACE Law Enforcement Contracts Under the Water Resources Development Act

1. This office has recently received a number of inquiries relating to the applicability of the Service Contract Act (SCA) to certain Corps of Engineers programs. Specifically, this office has been asked whether the SCA and the Contract Work Hours and Safety Standards Act (CWSSA) apply to contracts entered into under Section 120 of the Water Resources Development Act of 1976 (WRDA) (P.L. 94-587, 90 Stat. 29240 as amended by Section 101 of Public Law 96-816 (94 Stat. 3168)).
2. Section 120 of the WRDA provides authority for the Secretary of the Army, acting through the Chief of Engineers, to contract with States and their political subdivisions for the purpose of obtaining increased law enforcement services at water resources development projects under the jurisdiction of the Secretary of the Army. I have been advised that some districts have not incorporated the SCA/CWSSA labor standards provisions based on guidance previously furnished by this office in 1982. As a result of subsequent correspondence on this issue from the Department of Labor (DOL) I have decided to review this matter.
3. By way of background, it is noted that the 1982 memorandum was prepared by this office in response to a request for comments relating to then-proposed revisions to ER 1130-2-418 "Project Operation, Law Enforcement Service Contracts at Civil Works Water Resource Projects." In examining this issue it appears that during the intervening years, considerable weight has been attached to the following conclusion within the 1982 memorandum:

Since the authority of Section 120 was intended to provide for increased State and local law enforcement services to members of the general public at Corps projects during peak periods of visitation and was not intended to provide for contracts the principal purpose of which is the furnishing of services to the United States, the provisions of the Service Contract Act are not applicable to the agreements entered pursuant to Section 120.

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SUBJECT: Applicability of the Service Contract Act to USACE Law Enforcement Contracts Under the Water Resources Development Act

4. The DOL has advised the Corps that notwithstanding the above conclusion, they view Section 2 (a) of the Service Contract Act as applicable to such services. The DOL maintains that the statutory language is clear. The Act applies to "any contract entered into by the United States or the District of Columbia in excess of \$2,500, except as provided in Section 7 of this Act...the principal purpose of which is to furnish services in the United States through the use of service employees.. " (Emphasis added.) In this regard, there is no limitation in the Act regarding the beneficiary of contract services, nor is there any indication in the legislative history that only contracts for services of direct benefit to the government, as distinguished from the general public, are subject to the Act. (see 29 CFR 4.133 (a)).
5. It is also noted that the 1982 memorandum devotes considerable attention to the relevance of the Federal Grant and Cooperative Agreement Act of 1977 (P.L. 95-224, 92 Stat. 3, 41 USC 501 et seq) to the issue of whether such increased law enforcement service agreements are Federal contracts. In this regard, the DOL has noted that its regulations state that the method of procurement utilized by the contracting agency is not controlling in determining SCA coverage. (see 29 CFR 4.107 (b)). In considering the subject law enforcement contracts, the DOL has concluded that all other criteria relating to the application of the SCA have been satisfied.
6. The 1982 memorandum further indicated that "(s)ince the agreements to be entered into to implement the Section 120 program would not involve laborers or mechanics as intended and described by the Congress in connection with the Contract Work Hours and Safety Standards Act, the provisions of that Act are not applicable to such agreements." The DOL has advised this Office that Section 103 (a) of the CWSSA extends coverage of the Act to watchmen and guards. The DOL has determined, therefore, that the law enforcement officers performing patrol duties under this contract are guards and watchmen for purposes of the CWSSA and that the provisions of this Act apply to law enforcement contracts.
7. This Office has been advised that certain districts may have encountered difficulties with regard to the SCA wage determinations furnished by the DOL in response to the district's requests for law enforcement service wage rates. Specifically, wage decisions have been furnished which appear to reflect wage rates higher than those that are generally paid by the particular Sheriff's or Police



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Department with which the District has contracted. Since the wages for the employees of these departments are generally established by legislative actions of the respective civil jurisdictions it has been observed that there should be no discrepancy between the compensation furnished by these departments and what is deemed by the DOL to be prevailing for affected employees. Further, since such contracts are essentially sole source procurements, the DOL has advised that, for purposes of predetermining SCA wage rates, the DOL will adopt as prevailing the wages schedule for the respective police or sheriff's department.

8. In view of the above, you are advised that SCA provisions and applicable wage rates should be incorporated within contracts for law enforcement services under Section 120 of the Water Resources Development Act of 1976. Further, the provisions of the CWSSA are to be incorporated within these contracts. Thus, to the extent that covered employees perform contract work in excess of forty hours, they would be entitled to the required overtime premium.

9. In submitting SCA wage rate requests to the DOL, contracting officers are advised to clearly indicate that the subject solicitation will be a sole-source type procurement. The DOL has recommended that such information be furnished within Box 6, Services to Be Performed of the Standard Form SF 98, Notice of Intention to Make a Service Contract. If there are any questions concerning this matter, please contact Gregory Noonan of this office at Telephone No. 202-272-0037.

FOR THE COMMANDER:

Enclosure


LESTER EDELMAN
Chief Counsel



DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CECN-ON

10 MAY 1995

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS

SUBJECT: Recreation Policy Letter 96-01 -- Visitor/Ranger Safety

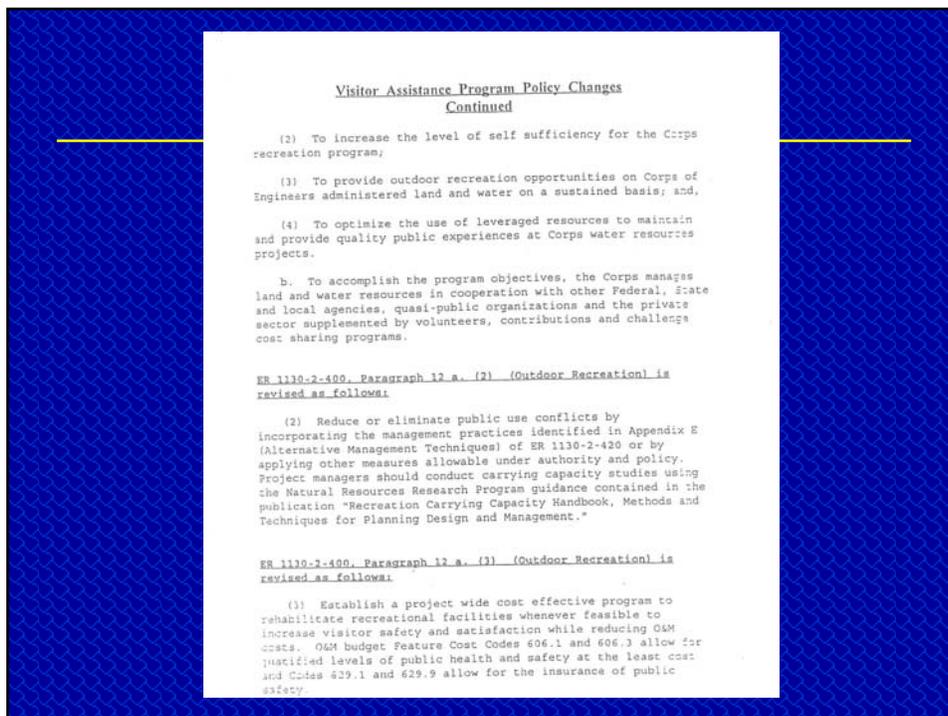
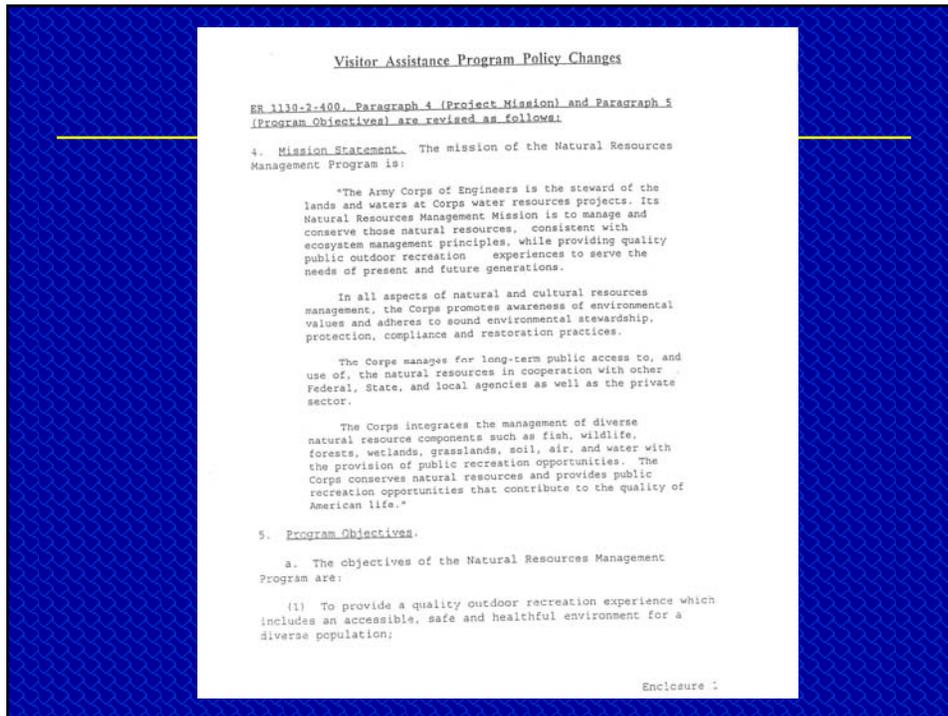
1. This memorandum provides policy on a number of issues regarding the U.S. Army Corps of Engineers Visitor Assistance Program as it pertains to visitor and ranger safety. These policies are a result of a comprehensive program review conducted by the Visitor/Ranger Safety Review Task Force in 1995. The task force submitted their report of 54 program recommendations in September 1995.
2. The enclosed policy changes are in response to 26 of these recommendations and are effective immediately. These changes will be incorporated into the next update of the appropriate regulations and pamphlets.
3. Decisions in response to the remaining 28 recommendations will follow the receipt of reports from task forces conducting in depth review and analysis of those issues.

Encl


STANLEY J. BENEG
Major General, USA
Director of Civil Works



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Visitor Assistance Program Policy Changes Continued

ER 1130-2-400, Paragraph 17 (Outdoor Recreation) is revised to include the following additional paragraph:

d. Night Closures of Day Use Areas. Unattended day-use areas will be closed at night if such a restriction on public access is considered necessary by the manager in order to provide adequate visitor safety and resource protection. Prior to any such closure, consideration will be given to alternatives that accommodate the continued authorized use of the facilities while providing the necessary levels of safety and protection. Users of those facilities will be fully informed concerning the details of any closure, and wherever appropriate, will be provided opportunities to provide input into such decisions.

ER 1130-2-400, Paragraph 18 (Sale or Storage of Alcoholic Beverages) is revised to include the following additional paragraph:

18. Sale, Storage or Restrictions of Alcoholic Beverages.
(new title)

c. District Commanders have the authorization under 36 CFR Chapter III, Part 327.13 (Title 36) to prohibit the possession or use of alcohol at selected areas and projects within their jurisdiction. To determine the need for such restrictions, periodic joint natural resource management and security assessments will be conducted at all water resources development projects, with an annual visitation of 20,000 visitor hours or more, regarding the need to ban alcohol consumption/possession on project-administered lands and waters. Commanders will insure that initial assessments are completed by 30 May 1997. Additional assessments will be conducted as appropriate.

Visitor Assistance Program Policy Changes Continued

ER 1130-2-404 is revised to include the following additional paragraph:

17. Security Measures.

a. Managers will comply with Army regulations governing the security and storage of funds, particularly AR 37-103, Disbursing Operations for Finance and Accounting Offices.

b. As a minimum, managers will consider the following options to enhance the security of personnel handling funds as well as safeguarding the funds themselves:

- (1) Collect and deposit funds frequently to reduce the amount stored on-hand.
 - (2) Vary the times of collection and deposit to avoid developing patterns and becoming a target.
 - (3) Vary the routes to and from collection and deposit, if possible, to avoid patterns.
 - (4) Maximize the use of credit cards to reduce the cash stored on hand.
 - (5) Contract for private security to collect and deposit funds.
 - (6) Include collection and deposit of funds in cooperative law enforcement agreements.
 - (7) Ensure personnel collecting and storing funds work in pairs and have reliable communication equipment (radios or cellular phones) available at all times.
- c. District security managers will assist operations project managers in assessing the criminal threat to their operation and recommending protective measures.
- d. District security managers will review the security of personnel and funds during biennial physical security inspections.



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Visitor Assistance Program Policy Changes Continued

ER 1130-2-418, Paragraph 5 (Policy) is revised to include the following additional paragraph:

f. In addition to the enforcement of state or local laws, cooperative agreements for law enforcement services may be used for other related activities such as, but not restricted to, patrols in remote areas, serving bench warrants, fee collection and other services, as determined by the project manager. The activities included in an agreement are dependent on what can be negotiated with the law enforcement agency. In no case will agreements include the provision of water safety patrols or the enforcement of state boating laws.

ER 1130-2-420, Paragraph 5 (Policy) is revised as follows:

5. Policy. It is the policy of the Corps of Engineers to provide safe and healthful recreation opportunities while protecting and enhancing project resources. The protection of facilities or the enforcement of rules will always be secondary to the safety of Corps personnel, contract employees, and visitors. Managers and rangers will strive to be visible to the public, primarily to help and assist them, and secondarily, to enforce 36 CFR Chapter III, Part 327 (Title 36).

(Note: Paragraphs 5 a. and 5 b. remain unchanged)

c. The role of the ranger is defined as a Regulation Enforcer with full citation authority of 36 CFR Chapter III, Part 327. Available use of force options includes visual presence, verbal persuasion/detention and unarmed self defense. The authority of managers and park rangers is limited to the enforcement of rules and regulations as designated in Title 36 and does not extend to arrest authority or the enforcement of state and local laws, including game laws. This authority is applicable to:

(1) All water areas of any water resource development project administered by the Chief of Engineers, without regard to ownership of underlying land;

Visitor Assistance Program Policy Changes Continued

(2) All lands owned in fee by the Federal Government; and,

(3) All facilities of any such water resources development project.

ER 1130-2-420, Paragraphs 11 b,c,d (Vehicles and Vessels), are revised as follows:

b. Manager and ranger vehicles and vessels may be equipped with a fixed spot light on the operator's side. Vehicles may be equipped with a single removable warning light which is acceptable to the states in terms of color and placement. Lights mounted behind the grill, which are inconspicuous to the public when not in use, are authorized. Fixed roof or external grill-mounted warning lights are not authorized. The purpose of this equipment is for visitor assistance and not the enforcement of state/local laws. District offices will periodically review the use of these lights to ensure compliance with this paragraph.

c. Managers may equip vehicles and vessels with a public address system and warning siren. The equipment will not be visible to the public and will be used with discretion in emergency situations. Exceptions may be made for vessels depending upon the size and design of the hull.

d. All manager and ranger vehicles will be equipped, at a minimum, with first aid kits, fire extinguishers, blood-borne pathogen handling kits, rescue throw bags, binoculars, camera and flash light. All vessels will be furnished with the same equipment except that they will have US Coast Guard and state-required safety equipment, marine-use fire extinguishers and/or pumps. Districts and projects may provide additional equipment for manager and ranger vehicles and vessels as required.



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Visitor Assistance Program Policy Changes Continued

ER 1130-2-420, Paragraph 12 (Communications), is revised as follows:

12. Communications.

- a. Managers will provide reliable communication equipment in support of natural resources management activities. Authorized communication equipment may include cellular phones and multiple frequency programmable scanning radios (fixed and hand held) with local/state law enforcement interface, state wildlife/boating officer interface, appropriate rescue/fire interface, weather channels, and separate frequencies for overlapping projects. Corps base stations may be located off project lands and local law enforcement agency base stations may be placed on Corps property, as necessary, to obtain reliable communications.
- b. Managers will determine the most reliable communication system for their project. However, if radios are selected over cellular phones, project managers will ensure that a base station is staffed continuously while personnel are on duty in the field. If continuous staffing is impossible, cellular phones should be provided.
- c. Park attendants will be provided with either telephone or radio communication system to enhance their safety as well as that of visitors. When warranted, park attendants may be issued portable radios.
- d. The installation of public telephones at entrance stations, beaches, and other public use areas is encouraged to enhance visitor safety. Where feasible, telephones should permit the caller to contact the operator without depositing coins. A listing of appropriate emergency telephone numbers such as fire, medical, police, rescue, and Corps officials should be placed in recreation areas near the location of public telephones.
- e. District commanders will ensure that surveys are conducted periodically to confirm that reliable communication equipment is available to personnel, is located in vehicles and vessels, and is in serviceable condition.

Visitor Assistance Program Policy Changes Continued

ER 1130-2-420, Paragraph 13e (Other Training), is revised as follows:

e. Other Training.

- (1) All personnel performing visitor assistance duties must receive a minimum of 24 hours of personal protection/unarmed self defense, situation evaluation and tactical communication training within two years of employment. This training can be obtained through HQUSACE-sponsored courses (where available) or locally-sponsored courses. Local courses must strictly adhere to Corps authority and policy and must be approved by HQUSACE prior to implementation. Instructors must be fully knowledgeable and supportive of the philosophy, objectives and authority limitations of the visitor assistance program.
- (2) Managers and supervisors will assure that individuals who perform Visitor Assistance duties are provided first aid, cardiopulmonary resuscitation, blood-borne pathogen and other appropriate health training, and offered preventive inoculations in order that they be qualified to perform immediate, on-site emergency medical treatment to injured personnel and visitors. Employees shall receive the equivalent of Red Cross "Advance First Aid and Emergency Care" course. Increased first aid training up to Emergency Medical Technician Basic (EMT Basic) is authorized for a minimum number of selected permanent staff members at the discretion of the manager. Refresher medical training may be required to maintain certification.
- (3) Obtaining preventive inoculations for blood-borne pathogens is a condition of employment for park rangers and other personnel with visitor assistance responsibilities who are hired on or after the effective date of this policy.
- (4) To complement visitor assistance training, manager and permanent ranger personnel shall receive, at the district or project level, training on defensive driving, cultural resource protection, historic property protection, water safety, and boat licensing and operation. Where necessary, training in a second language other than English is highly recommended.



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Visitor Assistance Program Policy Changes
Continued

ER 1130-2-420, Paragraph 13 (Training) is revised to include the following additional paragraph:

g. All Natural Resource Management program staff shall receive training in accordance with this paragraph and EP 690-2-2, Career Development Guide for Civil Works Natural Resources Management Team Members. Project managers are responsible for ensuring that permanent, seasonal and temporary rangers with visitor assistance responsibilities receive the prescribed training. Temporary employees who perform visitor assistance duties and enforce Title 36 will receive the same visitor assistance training provided to permanent and seasonal rangers with similar duties.

