



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CECW-ON

JUN 4 2003

MEMORANDUM THRU ACTING ASSISTANT SECRETARY OF THE ARMY
(CIVIL WORKS)

FOR THE ASSISTANT SECRETARY OF THE ARMY (MANPOWER & RESERVE
AFFAIRS)

SUBJECT: Inherent Government Responsibilities of Corps Park Rangers

1. On behalf of its park rangers, the U.S. Army Corps of Engineers requests that your office revisit your determination that Corps park rangers perform commercial as opposed to inherently governmental activities. I was surprised at this classification since, in years past, park ranger functions have been identified as "inherently governmental functions." While your office has changed the classification of park ranger activities, the relevant standard for determining inherently governmental activities has not changed since this last determination. The Office of Federal Procurement Policy (OFPP) Bulletin 92-1 defined inherently governmental activities as those functions so intimately related to the public interest as to mandate performance by government employees. The current OMB Circular A-76 still uses this definition. Therefore, I request reclassifying Corps park rangers functions as inherently governmental functions, or in the alternative, explaining why park rangers functions are now commercial under the unchanged standard.

2. The OFPP Bulletin defines governmental function as one that includes the discretionary exercise of Government authority. The bulletin goes on to define an inherently governmental function as having one of several specific characteristics. These characteristics are listed below along with an explanation of how park ranger's activities possess these characteristics.

Governmental functions typically involve the interpretation and execution of the laws of the United States to:

(a) bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise.

Corps park rangers assist the local District Commander in the creation of binding policies and regulations governing Corps recreational facilities. Additionally, park rangers assist in the award and administration of all Corps contracts for operation, maintenance, and construction at Corps recreational facilities. Corps park rangers administer and implement law enforcement agreements with State and local law enforcement officers. Since both the Federal and State governments share jurisdiction at Corps facilities, park rangers and local law enforcement must

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cooperate to enforce their respective laws and regulations. Therefore, park rangers oversee local law enforcement contracts, but only park rangers are authorized to enforce Federal laws and policies.

(b) determine, protect, and advance its economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

Corps park rangers protect the property of the Federal Government by issuing citations and levying fines on persons who violate Corps regulations under Title 36 of the Code of Federal Regulations. Park rangers issue citations and forward them to the Federal District Court. If the violation requires a mandatory appearance, or if the violator requests an appearance, a park ranger appears in Federal court as the *sole representative of the United States*. The court relies on the park ranger to explain the Corps regulations and justify issuing the citation. The park ranger's law enforcement role involves the discretionary exercise of governmental authority. Park rangers also protect Federal government property through Federal law enforcement and arrest powers. Congress empowered Corps park rangers with arrest powers and the power to carry firearms, but Corps policy has not implemented these powers. See 82 Stat. 1115.

Protecting the Federal lands for which the Corps acts as steward lays at the heart of a park ranger's duties. Park rangers enforce regulations under title 36 of the Code of Federal Regulations designed to protect and advance the nation's natural resources and the public's recreational experience.

(c) significantly affect the life, liberty, or property of private persons;

Park rangers enforce Federal laws and regulations at Corps recreational facilities to protect private persons. Corps regulations are designed to allow fair and safe use of Corps facilities for all members of the public. By keeping order and enforcing regulations at Corps facilities, park rangers safeguard the life, liberty and property of its visitors. Coast Guard officials do not patrol the waters at Corps recreational facilities and must rely on Corps park rangers to enforce Coast Guard regulations at these sites. For example, the Coast Guard must rely on park rangers to enforce its recent regulation requiring persons under 13 year of age to wear life jackets while on recreational water vessels.

Park rangers also protect the real and personal property of private landowners by preventing members of the public from encroaching on private property, such as shoreline property abutting Corps property or private boating docks.

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(d) exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriated and other Federal funds.

As stewards of Federal lands, Corps park rangers issue permits that regulate the public's use of those lands. These include permits for the clearing and sale of timber, the creation and sale of firewood and the leasing of land at recreation sites for private enterprise. Park rangers help decide the appropriate balance of use and preservation for public enjoyment. In addition to their role as stewards, park rangers collect special use fees at Corps recreational facilities that total an approximate \$36 million offset to the Corps appropriated funds each year.

3. Based on its bulletin, the OFPP also wrote Federal Acquisition Regulation Section 7.503 which includes a list of "examples of functions considered to be inherently governmental functions or which shall be treated as such." See FAR 7.503(a). Corps park rangers perform many of these duties including: the direct conduct of criminal investigations; the direction and control of agency employees; participating as voting members on source selection boards; approving any contractual documents; administering contracts; terminating contracts; determining whether contract costs are reasonable, allocable, and allowable; participating as voting member on performance evaluation boards; approval of Federal licensing; the administration of public trusts; the drafting of congressional testimony and responses.

4. I conclude that the typical Corps park ranger service functions involve inherently governmental discretionary authority that cannot be delegated to others pursuant to contract. This description is in accord with the definition of "Inherent Governmental Activities" contained in the OFPP Bulletin included in Circular A-76, and cited by OMB as their basis for implementing the A-76 studies. The activities and functions of Corps park rangers are not routine administrative activities. As the exercise of discretion is implemented under the Federal Citation Program, their decisions directly impact members of the public and involve independent deliberation and judgment that must be sustained by factual knowledge sufficient to warrant a criminal fine or penalty. These activities are intimately related to the public interest and trust and must be performed by government employees.

5. I ask that you give serious consideration to reclassifying the activities of U. S. Army Corps of Engineers park rangers as inherently governmental functions or, in the alternative, exempt park rangers from competitive sourcing under OMB Circular A-76.



ROBERT B. FLOWERS
Lieutenant General, USA
Commanding