

**FISH AND WILDLIFE SERVICE
ENGINEERING AND CONSTRUCTION**

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OVERVIEW

5.1 What is the purpose of this chapter? This chapter provides policy and guidance on:

A. Professional registration of U.S. Fish and Wildlife Service (Service) employees responsible for development and approval of infrastructure designs, and

B. Compliance with individual state professional registration requirements for registered professionals in the Service, Architect-Engineer (A-E) firms, and Design-Build (D-B) contractors.

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5.2 What is the scope of this chapter? This policy applies to:

- A.** All Service employees involved with planning, design, and construction of projects on Service lands, regardless of funding type or source; and
- B.** Service professionals who, in the scope of employment, are the designer of record for any project not on Federal lands or on non-Federal facilities.

5.3 What are the authorities for this chapter? Following are our Federal authorities for this policy, followed by information on state requirements.

A. Federal Authorities:

- (1)** Federal Acquisition Regulation (FAR), Construction and Architect-Engineer Contracts (48 CFR 36).
- (2)** Office of Personnel Management (OPM) *Final Standard for All Professional Engineering Positions*, 0800, 12/15/2016.
- (3)** 305 Departmental Manual (DM) 3, Integrity of Scientific and Scholarly Activities.
- (4)** 370 DM 410, Human Capital Training and Development.

B. State Requirements for Professional Licensing and Certifications: Under the doctrine of Federal supremacy, Service engineering staff generally are not required to comply with state registration requirements. Similarly, no state has the legal authority to require the Federal Government to submit permit applications, certifications, and designs for state review or approval. However, Congress has waived these Federal supremacy principles for some requirements, as described below:

- (1)** Federal Government professionals must submit permit applications, certifications, and designs for state review and approval for projects falling under the following six statutes: the Clean Water Act; Safe Drinking Water Act; Clean Air Act; Resource Conservation and Recovery Act (RCRA); Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); and Noise Control Act. Federal compliance with state law is subject to change, so employees should consult with their servicing Office of the Solicitor on questions and issues related to state compliance.
- (2)** Courts interpret congressional waivers of Federal supremacy very strictly to include only the exact types of state requirements that Congress names in the waiver. Because Congress does not specify licenses and professional registration in any of the environmental waivers, a state rule requiring licensing of Federal Government engineers and architects in that state (or in any state), or requiring execution of documents by professional engineers and architects licensed in the particular state where the work is located (or in any state), is generally not enforceable. This is true whether or not the state professional registration statute exempts Federal employees from its requirements.

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(3) The Federal Government is obliged to comply with Federal agency requirements, such as U.S. Environmental Protection Agency (EPA) regulations for stormwater discharges from construction activities, which require that a registered professional engineer sign any submission of certifications to EPA.

(4) The Public Buildings Amendments Act of 1988 states that buildings constructed or altered by a Federal agency must comply with nationally recognized model building codes and with local zoning laws and other local requirements. This Act provides for state and local government consultation, review, and inspection at the request of the local municipality, and that the Federal agency involved should give due consideration to state and local government recommendations. This voluntary consultation does not alter the principles of Federal supremacy stated above.

5.4 What terms do you need to know to understand this chapter?

A. Construction Projects. Construction projects include new construction, rehabilitation, deferred maintenance, force-account repairs, and demolition projects built on Service lands by or for the Service, regardless of funding type or source. We classify construction projects as either exempt or non-exempt. For more information on construction projects, including the definitions of exempt and non-exempt projects, see [360 FW 1](#).

B. Engineering Services. Engineering services include, but are not limited to, qualified engineering review and approvals, feasibility studies, surveys, engineering assessments, technical assistance, cost estimates, design and constructability reviews, peer reviews, value engineering studies (see [360 FW 3](#)), architectural and engineering design, project management, construction management (see [360 FW 4](#)), and environmental compliance services. Service employees, consultants under direct contract to the Service, or consultants provided under cooperative agreements (i.e., not contractually responsible to the Service) may provide engineering services.

C. Engineer of Record or Designer of Record. The engineer/designer of record is the person who is in "responsible charge," which means the person who is responsible for the development, management, and technical oversight of the project. Non-Federal engineers serving in this capacity must be in good standing with state licensing requirements during project development and at the time of project certification. The Regional Engineer is the "Engineer of Record" for all engineering projects developed by Service staff.

D. Professional Liability. Professional liability means a legal obligation for an error, omission, or a negligent act that occurs when performing one's duties. As Government employees within the scope of their duties, registered Service professionals, including, but not limited to engineers, architects, and landscape architects, who sign and seal their work in the scope of their employment do so on behalf of the Service. Responsibility for damages caused by a wrongful or negligent act by a Service professional within the scope of his or her employment rests solely with the Federal Government.

E. Professional Registration. To be professionally registered, a person must meet the

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education, experience, and test requirements set by the State Board of Technical Registration or state equivalent for a particular field of expertise. We use the terms “professional registration” and “licensure” interchangeably in this chapter as it applies to architects, engineers, landscape architects, and surveyors. Professional registration must be current at the time of project signing/certification. OPM defines the Professional Engineering series for the Federal Government ([see OPM Series 800](#)).

F. Signing, Sealing, Initialing, Stamping, or Certifying. These are ways in which personnel indicate that they are currently registered professionals and certify the project or portion of a larger project under their management meets all appropriate professional standards and complies with applicable local, state, and Federal environmental and building codes, permits, and regulations. In this chapter, we combine these words into the phrase “signed and sealed” to convey the person takes professional responsibility.

RESPONSIBILITIES AND GENERAL POLICY

5.5 Who implements the policy for professional registration and signature on design documents and what are their responsibilities? See Table 5-1.

Table 5-1: Responsibilities for Engineering Professional Liability and Registration

These employees...	Are responsible for...
A. The Director	Approving or declining to approve Servicewide policy.
B. The Assistant Director – Business Management and Operations	Overseeing implementation of engineering policy.
C. Regional Directors	Ensuring that Regional staff comply with this policy.
D. The Chief, Division of Engineering (DEN) in Headquarters	<p>(1) Serving as the person in responsible charge for management of construction Servicewide as we describe in 360 FW 1, and</p> <p>(2) Determining budget and approval levels for professional training for staff pursuing professional registration.</p>
E. Contracting Officers	<p>Working in conjunction with the Regional Engineer and the Chief, DEN to:</p> <p>(1) Confirm that engineering/construction contracts contain registered professional certification when required;</p> <p>(2) Ensure that a qualified engineering review and approval (including professional certification on non-exempt construction projects) is completed before</p>

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These employees...	Are responsible for...
	<p>beginning procurement actions for construction materials or services (in the case of D-B services, this qualified engineering review would be completed before the Notice to Proceed is issued for construction); and</p> <p>(3) For projects that the Engineering program has not designed, ensure that the review, approval, and professional certification requirements on non-exempt construction projects comply with 360 FW 1.</p>
<p>F. Regional Engineer (REN), also called “servicing Chiefs of Engineering” in this chapter</p>	<p>(1) Serving as the person in responsible charge for management of the Regional Engineering office,</p> <p>(2) Determining when an engineering/construction contract requires a registered professional certification,</p> <p>(3) Ensuring that employees are assigned projects that are at the employee's appropriate skill and professional level, and</p> <p>(4) Determining budget and approval for training for staff pursuing professional registration.</p>
<p>G. Regional Engineering Staff</p>	<p>(1) Identifying projects requiring certification as early as possible and completing documentation;</p> <p>(2) Exercising professional diligence;</p> <p>(3) If pursuing professional registration, working with the REN and their supervisors regarding their career development plans;</p> <p>(4) If professionally registered, maintaining professional registration; and</p> <p>(5) If assigned a project for which they do not have the appropriate credentials, notifying their supervisors and the REN. Although this situation does not require project reassignment, it does require documentation that the design was prepared under the “responsible charge” of a Registered Engineer.</p>
<p>H. Non-Engineering Staff (These are Service employees who may do construction project work,</p>	<p>Meeting the requirements in this and the other chapters in Part 360 of the Service Manual when working on non-exempt construction projects.</p>

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These employees...	Are responsible for...
but who do not work for the Regional Engineer or the Chief, DEN.)	

5.6 What are the Service’s objectives for this policy? Our objectives are to:

- A.** Improve the professional capabilities, technical competence, and public credibility of Service professional staff;
- B.** Encourage appropriate career development activities;
- C.** Promote professional responsibility; and
- D.** Enhance Service capabilities to deliver innovative and sustainable solutions to the Nation’s engineering challenges.

5.7 What are the requirements for professional registration?

A. General. States require registration of professionals to protect the public’s health, welfare, safety, and property. Because the Service supports the states in this effort (even though agencies of the Federal Government are not legally required to comply with state law in this area), we encourage engineers and architects to obtain an appropriate professional registration in their field of work.

B. Professional Registration for Key Positions. In the past, the Service did not require professional registration for incumbent key technical management positions and key technical positions that will be “the designer of record.” In December 2016, OPM released the *Final Standard for All Professional Engineering Positions* (Standard), which outlines when registration or licensure should be a factor for appointment. If one of the following criteria are met, then the hiring manager and Human Resources Specialist should include professional registration as essential for acceptable performance:

- (1)** Responsibility for final approval of designs of major structures and facilities involving public safety where such compliance with state laws meets an essential need of the engineering organization to provide objective evidence to Service management and the public that engineers of proven competence perform the work.
- (2)** Responsibility for engineering determinations concerning contract awards or other major aspects of design and construction work that engineers in the private sector will perform, where registration or licensure is essential to ensuring the Service has full confidence and respect to achieve cooperation on critical engineering issues.

C. Engineering Positions. Key engineering positions should be evaluated based on the OPM Standard. Those that meet the criteria in section 5.7B should have registration or licensure as a position element. If a supervisor identifies a position that is currently filled as requiring a

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professional engineer, we waive the requirement for registration or licensure for the duration of the employee's incumbency. However, we encourage that employee to pursue professional registration.

PAYING FOR PROFESSIONAL REGISTRATION

5.8 What is the policy for paying for employee expenses related to professional registration?

A. Training Budgets. Appropriate training is an important element of any employee's Individual Development Plan (IDP). Service supervisors and other managers should provide training budgets that allow for appropriate training activities, including steps toward professional registration (e.g., exam preparation courses, professional development hours, etc.) to foster career development and to help ensure proficiency for performing the work.

B. Expenses for Training. The Service may reimburse employees for expenses required to obtain and maintain appropriate professional registration. Fiscal rules authorize the Service to pay only for time and expenses incurred for training required primarily for the performance of a team member's official duties. Training may also be authorized to comply with a state's continuing education requirements to maintain registration. As with all professional credentialing expenses, prior supervisor approval is required, and the reimbursement for these expenses is allowable, but not mandatory.

C. Expenses for Licensing Examinations. Because a professional credential is desirable, but not required by law, a supervisor must certify that the credential is job-related before we may reimburse the expense of a licensing exam (see [section 5.8C\(4\)](#) for procedures).

(1) If approved by the employee's supervisor and after receiving notification that the employee passed the exam, each employee is allowed one reimbursement per fiscal year for job-related professional exam fees or registration renewal fees.

(2) The employee's supervisor may choose to or not to reimburse an employee for professional credentials/licenses beyond that one-time per fiscal year reimbursement.

(3) The supervisor must not approve reimbursement for exam expenses (and all associated fees) for missed or failed exams.

(4) Procedures:

(a) The employee and supervisor must discuss payment for review classes and exam fees before the employee registers for class, and the supervisor must provide his/her approval in writing to the employee. The employee's IDP must include the need for the exam.

(b) Retroactive payments are not authorized for review classes.

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(c) The exam location the employee selects should be the most economical for the Government if he/she plans to request reimbursement.

(d) Travel and temporary duty (TDY) costs for employees who work outside the continental United States (OCONUS) but who must take an exam in the continental United States (CONUS) may be paid at the discretion of the employee's program and supervisor.

(e) If the exam occurs on a normal workday for the employee, on the day of the exam the employee or his/her timekeeper records the time as "Official Time." The labor cost is allocated to the employee's office/program overhead account. If the exam is not on a normal workday, the Service must not grant official time to take it.

(f) When the employee passes the exam, he/she may request reimbursement of expenses for travel, per diem, and the exam fees. If the employee does not pass the exam, he/she should not submit expenses, and the supervisor must not approve them.

D. Expenses for License Renewal. Generally, we allow each employee one reimbursement annually for the license renewal most closely related to his/her current duties, but the supervisor may authorize more than one license renewal if it is justified by mission requirements. Reimbursements for renewals are not employee entitlements and are subject to the availability of funds. Any renewal reimbursement funds should come from the fund that pays the employee's salary.

(1) At least 10 calendar days before the employee plans to pay for a renewal, he/she must request in writing (email is adequate) his/her supervisor's approval for the Service to reimburse the cost.

(2) The supervisor must approve or disapprove the request in writing and include a justification for the decision. An employee must receive supervisor approval before the Service can reimburse him/her.

E. Maintaining Credentials. The Service encourages employees with professional registration credentials to maintain them. We expect the employee to communicate with the REN or supervisor if he/she plans to allow a registration to lapse, or if the registration has lapsed. The Chief of Engineering in Headquarters and the REN have discretion about whether or not to reimburse employees for expenses to reinstate a lapsed registration.

F. Association Membership Prohibition. The Service must not use appropriated funds to pay individual membership fees or dues for associations. We can use appropriated funds to pay for "agency" membership if the membership is a necessary expense, is not directly tied to one person (i.e., an individual's name is not on the membership), and will further the mission of the Service as a whole. See 212 FW 4 for more information.

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SIGNING AND SEALING DOCUMENTS

5.9 Who signs and seals design documents as a registered professional?

A. Servicing Chiefs of Engineering or their equivalent must sign design documents determined to need sealing by a registered professional. They will review and approve, as warranted, all appropriate in-house design documents and associated certifications, as well as all appropriate permit applications that Service personnel prepare. Their approval is indicated by their signature and date on appropriate design documents and permit applications, as well as Service certifications required during or after construction. When a state or local authority requests it, a registered Service professional at a duty station may also sign and seal documents, or portions of documents, prepared by in-house Service personnel.

B. Service professionals who, in the scope of employment, are the designer of record for any project not on Federal lands or at non-Federal facilities may sign appropriate design documents when a state or local authority requests that they do so. The complete set of design documents may be signed and sealed by the currently registered designer of record. Documents that we send to Federal, state, or local authorities that contain initials, signatures, or seals must include a statement that the documents are executed in accordance with this policy for clarification and for liability reasons. For example, the cover sheet for the project plans and specifications must include a statement such as the following:

“This project was designed by Region (applicable Region) of the U.S. Fish and Wildlife Service. The signatures and registration designations of individuals appear on these project documents within the scope of their employment as required by Service policy.”

C. The Service must require that A-E contractors meet the clauses in FAR Part 36.609. A-E contractors must prepare or review and approve design documents, permit applications, or certifications as required by their contract.

(1) If the A-E contract requires signature and a stamp or seal for specific document sections for various engineering disciplines, such as structural, mechanical, electrical, or fire protection designs, then an A-E professional(s) registered in those specialties and overseeing the production of those documents must sign and seal the documents or sections appropriately.

(2) The designer(s) of record must sign and stamp (or seal) the complete set of design documents.

D. A D-B contractor’s designer(s) of record must prepare or review and approve their work by affixing their signature and stamp or seal on design documents, permit applications, or certifications as required by the construction contract and applicable state laws or regulations.

5.10 What are the requirements that contractors must follow for signing and sealing deliverables from A-E contracts and D-B contracts?

A. A-E contracts must require the contractor to sign and stamp or seal and date at least one set

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of design documents, permit applications, or certifications.

B. D-B contracts must require the contractor to submit signed and stamped or sealed design documents, permit applications, or certifications prepared by registered professionals.

C. The deliverables under every contract must include:

(1) One set of properly signed, dated, and stamped or sealed drawings;

(2) A certified cover document showing—for each discipline—the name, stamp, or seal of the professional who supervised the work and the date each stamp or seal was affixed; and

(3) An electronic equivalent that indicates—for each discipline—the name, stamp, or seal of the professional who supervised the work and the date each stamp or seal was affixed.

REVISIONS TO SIGNED AND SEALED DOCUMENTS

5.11 What procedures should the Service follow to change designs after professional certification?

A. In-House Designs. If a design document, permit application, or certification that an in-house designer created is changed by someone other than the original professional, we must maintain a clear record of internal responsibility for the change.

(1) Accordingly, when a change is prepared by someone other than the original professional, the person making the change must develop a written record before implementing it. The record should show the date, signature, and title of the individual making the change.

(2) If the change is significant, such as changes impacting the design intent or details of implementation, the person making the change must consult with the original designer and receive his/her written concurrence. Editorial changes, such as changes to the cover sheet, are not considered significant.

(3) If the original designer is no longer with the Service, then the person making the change must consult with and receive concurrence from the professional who assumed the original designer's role.

(4) If there is a conflict between the original professional and acceptance of a management-directed change, the person proposing the change must get clearance from his/her supervising technical professional(s) and document that clearance.

B. A-E Contractor Designs. Only the original designer(s) may make changes to A-E contractor-prepared design documents, permit applications, and certifications.

(1) If someone other than the original A-E designer(s) seeks to change a document prepared under an A-E contract:

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(a) The A-E contractor may successfully argue that it is relieved of some responsibility for the original design, and

(b) The Government may have difficulty enforcing A-E liability under FAR 36.608.

(2) The Service must maintain a clear record of internal responsibility for the change as we describe in section 5.11A(1) – (4).

C. D-B Contractor Designs. No one other than the original designer(s) may make changes to D-B contractor-prepared design documents, permit applications, and certifications. The D-B contractor must make any changes required and recertify them.

COORDINATION AND LIABILITY

5.12 What public protection and personal liability is afforded by this policy?

A. Registered Service professionals who sign, initial, stamp, or seal their work in the scope of their employment do so on behalf of the Service. The Federal Government is solely responsible for damages caused by a Service professional's negligent or wrongful acts undertaken within his/her scope of employment as defined by relevant state law.

B. Supervisors must exercise "responsible charge" over work they supervise, which means they must exercise effective, direct control and personal supervision to control the work. Supervisors have this responsibility whether or not they indicate their professional credentials and stamp or seal work performed under their supervision.

C. The Service must not use a private sector-registered architect or engineer to seal Service in-house designs and other documents.

D. The above statements of law and policy do not impact "administrative liability," which means that a Service employee may remain personally responsible in an administrative action from any relevant state licensing agency based on negligent or wrongful acts (e.g., revoke his/her licensure).

5.13 How does the Service partner with states regarding state-specific registration matters? To resolve state-specific registration matters, duty stations and programs should convey the Service's commitment to work with each state within the context of Federal supremacy. We encourage duty stations and programs to identify state officials and agencies responsible for engineering and other professional registration matters to initiate dialogue about partnering and to build relationships to address and satisfy public interest issues.

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5.14 How does the Service handle other specific project certification requirements? The Service recognizes there are other industry standards and state requirements citing specific licensing and certifications affecting engineering and construction projects outside the scope of this policy. Employees should bring these issues to the attention of their servicing Chief of Engineering.

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DEPUTY DIRECTOR

Date: November 17, 2017