

CEMP-ES Regulation No. 1110-1-8152	Department of the Army U.S. Army Corps of Engineers Washington, DC 20314-1000	ER 1110-1-8152 8 Aug 95
	Engineering and Design PROFESSIONAL REGISTRATION	
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DEPARTMENT OF THE ARMY  
U.S. Army Corps of Engineers  
Washington, DC 20314-1000

ER 1110-1-8152

Regulation  
No. 1110-1-8152

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Engineering and Design  
PROFESSIONAL REGISTRATION

1. Purpose. This regulation provides policy and guidance concerning professional registration for engineer, architect, landscape architect, surveyor and geologist team members in all functional areas of the U.S. Army Corps of Engineers (USACE), as well as policy and guidance concerning USACE team members' and Architect-Engineer (A-E) contractor firms' compliance with individual state registration requirements.

2. Applicability. This regulation applies to HQUSACE elements, major subordinate commands (MSC), districts, laboratories, and field operating activities (FOA).

**3. References.**

- a. Federal Acquisition Regulation (FAR).
- b. AR 690-950, Civilian Personnel-Career Management.
- c. ER 690-1-958, Civilian Personnel-Army Civilian Career Program for Engineers and Scientists (Resources and Construction).
- d. Chief of Engineer's Memorandum For Commanders, dated 25 July 1994, subject: Professional Registration Requirements for Chief and Assistant Chief, Construction-Operations Positions.
- e. CECC-ZA legal opinion dated 6 November 1992, subject: State Regulation of Corps "In-House" Engineering Work.

4. Objectives. The objectives of this regulation are to advance professionalism in the USACE, ensure that the USACE can accomplish its missions, meet USACE customer/partner requirements, and assure state and local officials that the USACE is committed to working with them on professional registration issues. To further these objectives, USACE team members are encouraged to obtain professional registration to demonstrate individual growth and meet the requirements for advancement.

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This ER supersedes ER 1110-1-8152, Professional Registration, dated 1 December 1994.

5. Policy.

a. General. Professional registration is a means established by the states to ensure that the public's health, welfare, safety and property are protected. As a matter of policy, the USACE fully supports these purposes, although not legally required to do so; see reference 3.e. Accordingly, USACE strongly encourages its engineer, architect, landscape architect, surveyor and geologist team members to obtain state registration in their fields.

b. Professional Registration, Key Positions. The USACE requires professional registration for key technical management positions as identified in references 3.b. and 3.c., except as modified by reference 3.d. The USACE does not, however, require that registration be in any particular state.

c. Professional Registration, Additional Key positions. Requirements for professional registration for additional key positions are under continuous consideration in HQUSACE. Future decisions pertaining to positions requiring professional registration will be published in references 3.b. and/or 3.c.

d. Training for Career Development. USACE strongly encourages appropriate training to be included in Individual Development Plans (IDP) for team members at all organizational levels. Training budgets should be developed to provide appropriate career development as required for the performance of team members' duties.

e. Expenses for Training.

( 1 ) Obtaining a professional registration is a personal expense, and the fiscal rules do not permit the Government to reimburse a team member for expenses associated with training to obtain the team member's initial registration.

( 2 ) Fiscal rules permit the Government to pay for time and expenses incurred only for training required primarily for the performance of a team member's official duties, but that training may also be used to comply with continuing education (registration renewal) requirements.

(3) There are limited circumstances under which an agency may pay for the costs of training for additional licenses beyond the initial license that qualifies an employee for a position. The "head of the agency" must determine, under the Employees-Training Act, that members of a particular professional staff

should take a course, and the course must be directly related to the performance by the employee of official duties for the Government. (See reference 3 .e. , para 57, Appendix A. )

f. Expenses for Licensing Examinations. Payment by the Government for the cost of any (initial or subsequent) licensing examination is permitted only in two rare cases, inapplicable to the Corps. (See reference 3 .e. , para 56 & 57a, Appendix A. )

‡ Expenses for Association Memberships. Payment of dues for an employee's membership in a society or association is specifically prohibited by law. (See reference 3.e., para 57b, Appendix A.)

h. Signature and Indication of Registration.

(1) USACE team members identified in references 3.b., 3.c. and 3.d. will sign and indicate professional registration on design documents, permit applications and certifications. When administratively requested by state or local authorities, an operating MSC or district may also stamp or seal documents or portions thereof prepared in-house, although not legally required to do so.

( 2 ) A-E contractors will sign and stamp or seal design documents, permit applications or certifications as provided under the contract. When administratively requested by state or local authorities, an operating MSC or district may disclose this information, although not legally required to do so.

(3) The above practices will demonstrate USACE'S professionalism and foster partnering relationships with the states.

#### 6. Specific Procedures for Signature and Indication of Registration.

a. District chiefs and operating MSC directors of engineering (or their designated deputies) will sign and date all in-house design documents and associated certifications, as well as all appropriate permit applications executed by the USACE. District chiefs and operating MSC directors of construction and construction-operations (or their designated deputies) will sign and date certifications required during or after construction. Districts and operating MSC are encouraged to contact HQUSACE for guidance concerning unusual situations.

b. The responsible professional's signature shall be followed by "P.E." (Professional Engineer), "R.A." (Registered

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Architect) or another appropriate designation indicating that the signer is currently a registered professional. All documents may be sealed or stamped, rather than using the "P.E." or "R.A." designation, at the discretion of the district or operating MSC.

c. This responsibility may be further delegated to appropriate subordinate senior registered professionals. When a District chief or operating MSC director of construction-operations (or deputy) is not a registered professional, this responsibility shall be delegated to appropriate senior registered professionals. (See reference 3 .d. ) Any delegation must be reflected in the individual registered professional's position description and in specific written District or operating MSC procedures.

d. Individuals signing in accordance with this paragraph are required to do so within the scope of their employment. Any documents to be submitted to Federal, state or local authorities that contain initials, signatures or seals (or other indication of registration such as "P.E.") should contain a statement that the document is executed in accordance with Engineer Regulation (ER) 1110-1-8152. For example, the cover sheet for project plans and specifications will include a statement such as the following:

This project was designed by the (name of District) District of the U.S. Army Corps of Engineers. The initials or signatures and registration designations of individuals appear on these project documents within the scope of their employment as required by ER 1110-1-8152.

The purpose of this requirement is to establish a clear written record, to be used in case of litigation, that USACE employees who sign documents are doing so within the scope of their employment and specific written authority, and thus are not personally liable.

**7. Specific Procedures for Signing and Sealing or Stamping A-E Contract Deliverables.** A-E contracts will require the contractor to sign and stamp or seal and date at least one set of design documents, permit applications or certifications. The deliverables under each contract for A-E design services will include:

a. One set of properly signed, stamped or sealed and dated drawings;

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

c. 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.

8. Changing USACE/A-E Designs.

a. In-House Designs. If a design document, permit application or certification created in-house is changed by someone other than the original professional, a clear record of internal responsibility for the change must be maintained. Accordingly, when a change is prepared by someone other than the original professional - and before the change is implemented - a written record shall be made describing the change and the reason for making the change, and showing the signature and title of the individual making the change and the date. Significant changes, such as changes impacting the design intent, or details of implementation, shall only be made in consultation with the original designer, and with the written concurrence of the original designer.

b. A-E Contractor Designs. Changes to A-E contractor prepared design documents, permit applications and certifications should not be made by anyone other than the original designer. If a document prepared under an A-E contract is changed by someone else, the A-E may successfully argue that it is relieved of some responsibility for the original design, and the Government may have difficulty enforcing A-E liability under FAR 36.608, reference 3a. If a document created by a contract A-E is changed by someone other than the original professional, a clear record of internal responsibility for the change must be maintained. Accordingly, when a change is prepared by someone other than the original professional - and before the change is implemented - a written record shall be made describing the change and the reason for making the change and showing the signature and title of the individual making the change and the date. Significant changes, such as changes impacting the design intent, or details of implementation, shall only be made in consultation with the original designer, and with the written concurrence of the original designer.

State Requirements for Professional Licensing, Permit Applications, and Certifications. An extensive USACE effort to address professional registration issues began in the early 1990s. This effort was essentially completed with the issuance of the Chief Counsel's legal opinion; see reference 3.e. The

legal opinion concluded that, under the doctrine of Federal Supremacy, generally the USACE is not required to comply with state registration requirements. The Chief Counsel's legal opinion drew the following conclusions, which form the basis for the policy adopted by USACE senior management in this regulation:

a. The Supreme Court has specifically ruled that no state may legally require Federal employees to be licensed by the state. The Supreme Court has also generally ruled that no state has the legal authority to require the Federal Government to submit permit applications, certifications and designs for state review or approval. These general principles are true except in areas where Congress has waived the Federal Government's Supremacy.

b. In six environmental statutes, Congress has waived Federal Supremacy as to state substantive requirements, permits and certifications. The six environmental statutes are 1) Clean Water Act, 2) Safe Drinking Water Act, 3) Clean Air Act, 4) Resource Conservation and Recovery Act (RCRA), 5) Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and 6) Noise Control Act. Accordingly, the USACE must submit permit applications, certifications and designs for state review and approval for projects falling under these six statutes.

c. Congressional waivers of Federal Supremacy, however, are interpreted very strictly to include only the exact types of state requirements that Congress names in the waiver. Licenses and professional registration are not specified in any of the environmental waivers. Therefore, a state rule requiring licensing of USACE engineer or other team members in that state (or in any state), or requiring execution of documents by professional engineer or other team members licensed in the particular state where the work is located (or in any state), is generally not enforceable by the state against the USACE. This is true whether or not the state professional registration statute exempts Federal employees from its requirements.

d. The USACE is, however, obliged to comply with Federal agency requirements, such as the Environmental Protection Agency's (EPA) regulations, which require submission to EPA of certifications signed by registered professional engineers.

e. Statutory requirements concerning professional registration are an evolving area of law, however, and these principles could be modified by future legislation or litigation.

10. Public Protection and Personal Liability.

a. Registered professionals as well as other USACE engineer, architect, landscape architect, surveyor and geologist team members who sign, initial, stamp or seal their work do so on behalf of USACE.

b. Responsibility for damages caused by a USACE team member's negligent acts rests with the Federal Government, as long as the negligence occurred within the team member's scope of employment.

c. The policy and guidance in this regulation does not alter, increase or decrease any exposure to personal liability for the USACE team members who sign and/or certify designs within the scope of their employment; see paragraph 6.d. USACE team members have been signing or initialing their work, as a matter of routine, for many years, and this regulation does not change these routine practices nor individual liability.

d. The policy and guidance in this regulation require supervisors to exercise "responsible charge" over work they supervise, that is, exercise effective direct control and personal supervision, resulting in control over and detailed professional knowledge of, that work. Supervisors have this responsibility whether or not they indicate their professional credentials, and/or stamp or seal work performed under their supervision.

e. Using a private sector registered architect or engineer to seal in-house designs and other documents is unacceptable as a matter of policy and will not relieve the USACE from liability in the case of, for example, a design deficiency.

11. Partnering with States. In order to resolve state specific registration matters, districts and operating MSC should convey the USACE commitment to work with each state, while not unduly compromising Federal Supremacy. Districts and operating MSC are encouraged to identify state officials and agencies responsible for environmental and other professional registration matters, and initiate partnering dialogues and build relationships to address and satisfy public interest issues.

FOR THE COMMANDER:



ROBERT H. GRIFFIN  
Colonel, Corps of Engineers  
Chief of Staff

1 Appendix  
App A - Excerpt from  
Reference 3.e.

APPENDIX A  
Excerpt from Reference 3.e.

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**PAYMENT FOR LICENSING COSTS.**

56. The procurement and retention of a professional license which is necessary for the employee to perform the duties of his or her position is held to be a personal expense for which government reimbursement is not available.<sup>90</sup> In enforcing this policy, the Comptroller General has refused to authorize agency payment for training costs and license fees for a license, even when the license requirement was established after the employees were in the positions without holding the licenses.<sup>91</sup>

57. There are, however, limited circumstances under" which an agency may pay for the costs of training associated with obtaining additional professional licenses beyond the initial license that qualifies the employee for the position. The circumstances are set out in **Payment of Expenses for Bar Review Course, Bar Examination, and Court Admission.**<sup>92</sup> In that decision, the Comptroller General ruled that the costs of attending a state licensing review course

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<sup>90</sup> See 51 Comp. Gen. 701 supra; 46 Comp. Gen. 695 supra.

<sup>91</sup> See Use of agency funds for bar membership expenses, B-204021, 61 Comp. Gen. 357 (1982).

<sup>92</sup> **Payment of Expenses for Bar Review Course, Bar Examination, and Court Admission**, B-187525, October 15, 1976, unpublished decision. The decision concerned an attorney taking a bar review course leading to a license in California, after one of the U.S. District Courts there announced that it would not permit appearances by attorneys other than those admitted to the California bar.

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are properly payable, when the head of an agency determines, under the Government Employees' Training Act,<sup>93</sup> that members of a particular professional staff should take the course, and if the course is 'directly related to the performance by the employee of official duties for the government ..."<sup>94</sup>

a. The costs that are payable include tuition fees, books, perhaps travel and per diem and time to attend courses and study. The payable costs do not, however, include dues or licensing fees or the time to take professional examinations.

b. In addition, 5 U.S.C. §5946 specifically prohibits the payment of dues for an employee's membership in a society or association.

c. Payment by the Government for the cost of a licensing examination is only permitted in two rare cases, inapplicable here, when the examination is used as a "diagnostic tool" to determine deficiencies in an employee's knowledge and skills when the agency is unable to determine the deficiencies through supervisory evaluation or other agency resources<sup>95</sup> or when the training materials can be obtained only by paying the licensing fee.

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<sup>93</sup> 5 U.S.C. § 4101-4118.

<sup>94</sup> 5 U.S. C. § 4101(4) .

<sup>95</sup> **Expenses for Bar Review, B-187525, supra.**

<sup>96</sup> ~~See Department of Defense Payment of Instructors Licensing Fees, B-201052, 61 Comp. Gen. 162 (1981).~~