

The National Society of Professional Engineers’ Public Comment on Docket No. USCG-2012-0061

The National Society of Professional Engineers (NSPE) respectfully submits the following statement in response to the April 9th notice of proposed rulemaking (NPRM) and request for public comment by the US Coast Guard, Department of Homeland Security for the Deepwater Ports rule (USCG-2012-0061).

The US Coast Guard, a division of the Department of Homeland Security, has issued a notice of proposed rulemaking to revise its existing regulations for deepwater ports. A deepwater port, as defined in this rule, is “any fixed or floating manmade structure other than a vessel, or any group of structures, located beyond State seaward boundaries that are used or are intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to or from any State” (80 Fed. Reg. 19,145). As stated in the NPRM, “Above all, the revisions should help applicants assemble more complete applications, to help them meet the Coast Guard’s regulatory requirements within the strict time limitations mandated by the Deepwater Port Act of 1974, and without costly suspensions of the licensing process.” (80 Fed. Reg. 19,119).

While NSPE understands the Coast Guard’s aim to decrease delays in the licensing process and increase regulatory flexibility, as written, NSPE believes that the proposed revisions do so to the detriment of the health, safety, and welfare of the public, which is of paramount concern to the licensed Professional Engineer and the Department of Homeland Security. Specifically, NSPE is gravely concerned by the following proposed changes and their tremendous impact on safety and the existing regulatory structure that ably governs such protection:

From the NPRM (80 Fed. Reg. 19,122 and 19,126):

Section 148. 105(n): Add language for engineering geological survey (presently soil survey) data.

Change: Provide an alternative to the use of a professional engineer.

Nature of Change: Provide additional regulatory flexibility.

Discussion: Delay in securing the services of a professional engineer has stopped the clock in at least one instance. We would allow the use of others with equivalent professional competency.

Section 149.51: What construction drawings and specifications are required?

Change: Provide for use of foreign engineers.

Nature of change: Provide additional regulatory flexibility

Discussion: We would amend paragraph (b) to allow the use of foreign engineers who may not be registered professional engineers, if they possess equivalent qualifications.

NSPE's Response: The US Coast Guard proposes to allow unlicensed engineers from within the United States as well as foreign engineers to perform engineering services that only licensed professional engineers (PEs) can perform. Licensure of the engineering profession is conducted at the state level to protect the public health, safety and welfare.

The process to license professional engineers in all states and territories is among the most rigorous for any profession. All candidates for engineering licensure must (1) obtain a four-year accredited engineering degree, (2) demonstrate at least four additional years of progressive engineering experience to the satisfaction of the state licensure board (3) successfully complete an eight-hour national examination on the fundamentals of engineering and (4) successfully complete an eight-hour national examination on the principles and practice of engineering. In addition, approximately 40 states have mandatory continuing education requirements for professional engineers to maintain their professional engineering license. The public interest is best served by the licensure of all qualified individuals within the engineering profession.

Yet, this NPRM proposes to allow an individual with equivalent professional competency, explicitly calling for the use of "foreign engineers who may not be registered professional engineers, if they possess equivalent qualifications." Yet, NSPE would assert in the strongest terms that this simply is not possible. Licensure as a professional engineer is the highest credential an engineer can attain. The equivalent education, examination and experience requirements, if met, would result in licensure as a professional engineer. To encourage bringing in foreign engineers, who lack these qualifications, and are less familiar with state requirements and statutes, endangers the public safety. Moreover, unlike licensed PEs, foreign engineers are not subject to the state licensing system specifically designed to ensure that engineers practice within their area of competence. US PEs are subject to state engineering licensure board rules of professional conduct and are routinely disciplined for violating those rules with censures, fines, suspensions and licensure revocation for improper or incompetent practice. In contrast to the robust scrutiny to which US PE's are subject, non PEs and certainly non-US PEs are not subject to any regulatory oversight.

Perhaps of greatest concern is the proposed change to allow unlicensed engineers to submit design and construction plans on behalf of the licensee. NSPE asserts that this proposal directly violates state law, which requires a licensed professional engineer to stamp and seal certain documents. Even if one was similarly qualified, which we maintain they are not, it would still be illegal to stamp and seal these documents in at least certain cases. NSPE further contends that the public health, safety and welfare is best served by having qualified licensed professional engineers in "responsible charge" of the engineering services. The term "responsible charge" refers to the degree of control that a professional engineer is required to exercise over engineering decisions made personally or by others over which the professional engineer provides supervisory direction and control authority. In making and approving engineering decisions, the engineer with responsible charge should be physically present or, if not physically present, be available in a reasonable period of time, either personally or through the use of electronic communication devices. Responsible charge and direct supervision are not satisfied when drawings or other

documents are reviewed after preparation without involvement in the design and development process as described above.

NSPE understands the Coast Guard's interest in decreasing delays and increasing flexibility in the licensing process of deepwater ports. NSPE would be interested in further information from the Coast Guard regarding the number of instances in which it experienced a delay securing the services of a US professional engineer.

However, to increase expediency by weakening requirements and thereby endangering the public health, safety and welfare, would be to create a problem far greater than the solution. Unfortunately, we've seen that, without qualified licensed professional engineers performing engineering services, there can be major lapses resulting in damage to property and persons. We urge that the final rule reflect this by maintaining the requirement for a professional engineer and not "providing an alternative...(through) use of foreign engineers who may not be registered professional engineers".

The National Society of Professional Engineers appreciates the opportunity to comment on these proposed rules and welcomes any opportunity to provide further input or information.

The National Society of Professional Engineers is a member-centric, nimble, future-focused, and responsive organization, serving as the recognized voice and advocate of licensed Professional Engineers. Through education, licensure advocacy, leadership training, multidisciplinary networking, and outreach, NSPE enhances the image of its members and their ability to ethically and professionally practice engineering. Founded in 1934, NSPE serves more than 32,000 members and the public through 53 state and territorial societies and just over 400 chapters.