§ 301.38–2 [Amended]

■ 2. Amend § 301.38–2, in paragraph (a), by adding the words ‘‘, *Mahoberberis,* and *Mahonia*’’ after the word ‘‘*Berberis*’’ in the first sentence.

Done in Washington, DC, this 28th day of March 2024.

Donna Lalli,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2024–07038 Filed 4–3–24; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 258

[Docket No. USCBP–2022–0016]

RIN 1651–AB20

[CBP Dec. 24–07]

Procedures for Debarring Vessels From Entering U.S. Ports

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This final rule amends Department of Homeland Security (DHS) regulations by adding procedures regarding DHS's authority to debar from entering U.S. ports vessels owned or chartered by an entity found to be in violation of certain laws and regulations relating to the performance of longshore work by nonimmigrant crew members. The new procedures govern how U.S. Customs and Border Protection (CBP) provides notice to a vessel owner or operator of a debarment and how the owner or operator may request mitigation. The new procedures will ensure that the vessel debarment process is consistent, fair, and transparent.

DATES: This final rule is effective on May 6, 2024.

FOR FURTHER INFORMATION CONTACT: Lisa Santana Fox, Director, Fines, Penalties and Forfeitures Division, Office of Field Operations, U.S. Customs and Border Protection, at 202–344–2730 or *Lisa.K.SanatanaFox@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Legal Authority

Section 258 of the Immigration and Nationality Act of 1952 (INA) (Pub. L. 82–414, 66 Stat. 163), as amended, prohibits alien crew members (classified as nonimmigrants under section 101(a)(15)(D) of the INA, 8 U.S.C. 1101(a)(15)(D)) from entering the United States to perform longshore work,[1] subject to certain statutory exceptions. *See* INA 258, 8 U.S.C. 1288; *see also* INA 101(a)(15)(D) and 214(f), 8 U.S.C. 1101(a)(15)(D) and 1184(f). The INA authorizes the Department of Homeland Security (DHS) and the Secretary of Labor to investigate violations of, and enforce the INA provisions relating to, the performance of longshore work by nonimmigrant crew members. *See* INA 251(d) and 258(c)(4)(E)(i), 8 U.S.C. 1281(d) and 1288(c)(4)(E)(i); *see also* 20 CFR 655.600 and 655.605. The Secretary of Labor will notify the Secretary of Homeland Security (Secretary) if the Secretary of Labor determines that a violation has occurred. *See* INA 258(c)(4)(E)(i), 8 U.S.C. 1288(c)(4)(E)(i). The INA then directs the Secretary to debar any vessel or vessels owned or chartered by the violating entity from entering U.S. ports for a period not to exceed one year. *See* INA 258(c)(4)(E)(i), 8 U.S.C. 1288(c)(4)(E)(i); 8 CFR 258.1(a)(2). The Secretary has delegated to the Commissioner of U.S. Customs and Border Protection (CBP) the authority to enforce and administer INA provisions relating to longshore work, including the authority to debar a vessel. *See* DHS Delegation No. 7010.3(B)(11) (Revision No. 03.1).

DHS regulations implementing the longshore work requirements are set forth in title 8 of the Code of Federal Regulations (CFR) parts 251 and 258. *See* 8 CFR 251 and 258. However, DHS regulations do not include procedures for CBP to follow when debarring a vessel, nor do they state how a vessel owner or operator may request mitigation of a debarment. In 2022, DHS published a notice of proposed rulemaking (NPRM) to add procedures for how CBP would notify an entity of a debarment and how a vessel owner or operator, or its authorized representative, may request mitigation of the debarment. *See* 87 FR 21582 (April 12, 2022). The NPRM proposed procedures to generally codify the steps CBP took in 2009 and 2010, the only times CBP has imposed debarments. The purpose of the NPRM was to establish consistent, fair, and transparent debarment procedures for both CBP and the entity subject to the debarment.

The NPRM provided for a 60-day comment period, which closed on June 13, 2022. No comments were received. DHS is adopting the NPRM as final without change.

II. Procedures for Debarring Vessels From Entering U.S. Ports

This final rule adds 8 CFR 258.4, which specifies the procedures that CBP will take prior to issuing a debarment and describe how a vessel owner or operator, or its authorized representative, may request mitigation of the debarment. These new procedures are described below.

A. Definitions

Paragraph (a) of section 258.4 sets forth definitions for the following terms for purposes of CBP's debarment proceedings: good cause, mitigation, and mitigation meeting. Good cause, for purposes of extending the deadline for filing an answer, includes technical difficulties or natural disasters that affect the violating entity's ability to receive, process, or transmit relevant information or data; or other instances in which CBP, in its discretion, determines an undue hardship on the violating entity warrants an extension of the deadline for filing an answer. *See* 8 CFR 258.4(a).

Mitigation in a debarment proceeding means determining the length of the debarment, the ports covered by the debarment, and the vessels subject to the debarment. It does not include revocation of the requirement to debar. *See* 8 CFR 258.4(a).

CBP notes that a violating entity may mitigate its length of debarment by showing that a specific period of debarment would have a negative impact on the U.S. economy and/or U.S. citizens/consumers. Examples of this include showing that a specific period of business activity (*i.e.,* fishing season) will be negatively impacted if a vessel were debarred, or that a vessel will be transporting produce or a type of perishable consumer good to the United States within a specific time frame for which debarment would be detrimental.

Mitigation meeting is a personal appearance before a designated CBP official in which representatives of the violating entity can provide information and explain why CBP should mitigate the debarment. *See* 8 CFR 258.4(a).

[1] Longshore work is defined as any activity in the United States or in U.S. coastal waters relating to the loading or unloading of cargo, the operation of cargo-related equipment (whether or not integral to the vessel), and the handling of mooring lines on the dock when the vessel is made fast or let go. *See* INA 258(b)(1), 8 U.S.C. 1288(b)(1). Longshore work does not include the loading or unloading of certain cargo including oil and hazardous substances and materials for which the Secretary of Transportation has prescribed regulations governing cargo handling or storage; the manning of vessels and the duties, qualifications, and training of the officers and crew of vessels carrying such cargo; and, the reduction or elimination of discharge during ballasting, tank cleaning, and handling of such cargo. *See* INA 258(b)(2), 8 U.S.C. 1288(b)(2).

B. Notice of Intent To Debar

Paragraph (b) of section 258.4 sets forth the procedures pertaining to the issuance of a notice of intent to debar and specifies the information to be included in such notice. After receiving notice from the Secretary of Labor that an entity has violated the relevant statutes or regulations, CBP will serve a notice of intent to debar on the entity subject to the notice of violation. *See* 8 CFR 258.4(b)(1). Service will be by a method that demonstrates receipt, such as certified mail with return receipt or express courier delivery, by the entity identified in the notice of violation received from the Secretary of Labor. The date of service is the date of receipt. *See* 8 CFR 258.4(b)(3).

The notice of intent to debar will include specific information, including: the proposed period of debarment, not to exceed one year; the ports covered by the proposed debarment; a brief explanation of the reasons for the proposed debarment; the statutory and regulatory authority for the proposed debarment; a statement that the entity subject to the debarment may file an answer and request a mitigation meeting; the procedures for filing an answer and requesting a mitigation meeting, including the date by which the answer must be received and the address to which it may be submitted; and, a statement that in the absence of a timely filed answer, the proposed debarment will become final 30 days after service of the notice of intent to debar. *See* 8 CFR 258.4(b)(2)(i) through (vii).

C. Answer and Request for Mitigation Meeting

Paragraph (c) of section 258.4 describes how an entity should file an answer with CBP and how to request mitigation and a mitigation meeting. Any entity upon which the notice of intent to debar has been served, or its authorized representative, may file with CBP an answer that indicates the specific reasons why the proposed debarment should be mitigated and whether a mitigation meeting is requested. CBP must receive the answer within 30 days from the date of service of the notice of intent to debar. *See* 8 CFR 258.4(c)(1). As explained previously, the date of service of the notice of intent to debar is the date the entity received the notice. *See* 8 CFR 258.4(b)(3).

CBP, in its discretion, may extend the deadline for filing an answer up to an additional 30 days upon a showing of good cause as defined in 8 CFR 258.4(a). Upon receipt of a request to extend the deadline, CBP will respond within five business days by certified mail or express courier. *See* 8 CFR 258.4(c)(2)(iv).

The answer must by dated, typewritten or legibly written, signed under oath, and include the address at which the entity, or its authorized representative, desires to receive further communication. CBP may require that the answer and any supporting documentation be in English or be accompanied by an English translation, certified by a competent translator. *See* 8 CFR 258.4(c)(2)(i).

In addition to an answer, any entity responding to a notice of intent to debar must submit documentary evidence in support of any request for mitigation and may file a brief in support of any arguments made. The entity may also present evidence in support of any request for mitigation at a mitigation meeting. *See* 8 CFR 258.4(c)(2)(ii). A mitigation meeting will be conducted if the entity subject to the proposed debarment requests one in accordance with the requirements of this rule, or if directed at any time by CBP. *See* 8 CFR 258.4(c)(2)(iii).

D. Disposition of Case

Paragraph (d) of section 258.4 describes how CBP will determine a final order of debarment for each case. The proposed debarment specified in the notice of intent to debar will automatically become a final order of debarment 30 days after service of the notice of intent to debar if no answer is timely filed or if the answer admits the allegations and does not request mitigation or a mitigation meeting. *See* 8 CFR 258.4(d)(1). If CBP grants a good cause extension to the deadline for filing an answer, but no answer is timely filed, the proposed debarment will automatically become a final order of debarment when the time for filing an answer expires. *See* 8 CFR 258.4(c)(2)(iv) and (d)(1).

If an entity timely files an answer that requests mitigation or a mitigation meeting, CBP will determine a final debarment and will issue to the entity a final order of debarment in writing.[2] CBP will also send notice, by certified mail or express courier, to all interested parties, including the relevant U.S. ports of entry, that the entity subject to the debarment is debarred and stating the terms of the debarment. No appeal from a final order of debarment will be available. *See* 8 CFR 258.4(d)(2)–(3).

E. Debarment

Paragraph (e) of section 8 CFR 258.4 describes the information CBP will consider when determining a proposed debarment or a final debarment. It specifies that CBP, in determining a proposed and a final debarment, will consider the information received from the Secretary of Labor, any evidence or arguments timely presented by the entity subject to the debarment, and other relevant factors. *See* 8 CFR 258.4(e)(1). Other relevant factors include, but are not limited to: the entity's previous history of violations of any provision of the INA; the number of U.S. workers adversely affected by the violation; the gravity of the violation; the entity's efforts to comply in good faith with regulatory and statutory requirements governing performance of longshore work by nonimmigrant crew members; the entity's remedial efforts and commitment to future compliance; the extent of the entity's cooperation with the investigation; and, the entity's financial gain/loss due to the violation. CBP will also consider the potential financial loss, injury, or adverse effect to other parties, including U.S. workers, likely to result from the debarment. *See* 8 CFR 258.4(e)(2).

F. Notice of Completion of Debarment

Paragraph (f) of section 258.4 states that upon completion of any debarment, CBP will send notice, by certified mail or express courier, to all interested parties, including the entity subject to the debarment and the relevant U.S. ports of entry, that the entity subject to the debarment has completed the debarment and is once again permitted to enter U.S. ports.

G. Record

Paragraph (g) of section 258.4 states that CBP will keep a record of the debarment proceedings, which includes, but is not limited to, the materials exchanged between CBP and the parties. The provision further states that CBP will retain the records in accordance with CBP's Records Retention Schedule and the Freedom of Information Act. Currently, this means CBP will retain records for five years, after which the records will be sent to the National Archives.

III. Statutory and Regulatory Analysis

A. Executive Orders 12866 and 13563

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563

[2] The information received from the Secretary of Labor, evidence or arguments timely presented by the entity subject to the debarment, and any other relevant factors that CBP considers in its determination of the debarment will be disclosed in its final determination of debarment to the violating entity.

(Improving Regulation and Regulatory Review), direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, OMB has not reviewed this regulation.

Pursuant to section 258 of the INA, CBP has the authority to debar vessels. *See* INA 258, 8 U.S.C. 1288. This final rule does not create that requirement. Rather, this final rule would codify and clarify existing practice, with some exceptions, that CBP follows in carrying out that requirement. Accordingly, even without this rule, CBP still has the authority to debar vessels. This rule is being promulgated to avoid confusion and to have, in writing, a clear and consistent process for the debarment of vessels.

CBP has debarred vessels in only two instances in its recorded history, in 2009 and 2010. As described above, the final rule will generally codify the procedures CBP followed when debarring vessels in 2009 and 2010, with changes only to the type of mail service CBP uses to serve notices of intent to debar. The process for debarring vessels that CBP has followed is not changing as a result of this rule. Therefore, this rule has no economic impact on violating entities.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); or a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

As explained above, pursuant to section 258 of the INA, CBP is required to debar vessels in certain situations. This rule does not create such a requirement. Instead, this final rule would codify and clarify the existing procedures, with some exceptions, that CBP follows in carrying out that requirement. These procedures are seldom used, as CBP has debarred vessels in only two instances, once in 2009 and a second instance occurring in 2010. Furthermore, CBP is generally adopting existing practices, and accordingly, costs to violating entities will not change as a result of this final rule. CBP thus certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)) requires that CBP consider the impact of paperwork and other information collection burdens imposed on the public. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget. There is no information collection associated with this final rule, so the provisions of the PRA do not apply.[3]

D. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as amended, generally provides that before a major rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Under the Congressional Review Act, a major rule is one that is likely to result in an annual effect on the U.S. economy of $100,000,000 or more. *See* 5 U.S.C. 804(2). This final rule is not a ''major rule'' as defined by the Congressional Review Act.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. *See* 2 U.S.C. 1532(a). This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

[3] The required Department of Labor attestations are covered by OMB Control Number 1205–0309.

IV. Signing Authority

This regulation is being issued in accordance with 19 CFR 0.2(a) pertaining to the Secretary of Homeland Security's authority (or that of his delegate) to approve regulations that are not related to customs revenue functions.

List of Subjects in 8 CFR Part 258

Aliens, Longshore and harbor workers, Reporting and recordkeeping requirements, Seamen.

For the reasons stated in the preamble, DHS amends part 258 of title 8 of the Code of Federal Regulations as follows:

PART 258—LIMITATIONS ON PERFORMANCE OF LONGSHORE WORK BY ALIEN CREWMEN

■ 1. The authority citation for part 258 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1281; 8 CFR part 2.

■ 2. Add new § 258.4 to read as follows:

§ 258.4 Debarment of vessels.

(a) *Definitions.* The following definitions apply throughout this section:

Good cause, for purposes of extending the deadline for filing an answer, includes: technical difficulties or natural disasters that affect the violating entity's ability to receive, process, or transmit relevant information or data; or other instances in which CBP, in its discretion, determines that an undue hardship on the violating entity warrants an extension of the deadline for filing an answer.

Mitigation in a debarment proceeding means determining the length of the debarment, the ports covered by the debarment, and the vessels subject to the debarment. It does not include revocation of the requirement to debar.

Mitigation meeting is a personal appearance before a designated CBP official in which representatives of the violating entity can provide information and explain why CBP should mitigate the debarment.

(b) *Notice of intent to debar.*

(1) *Issuance of notice.* Upon receipt of a notice of violation from the Secretary of Labor pursuant to section 258 of the Immigration and Nationality Act (8 U.S.C. 1288(c)(4)(E)(i)), CBP will serve a notice of intent to debar on the entity subject to the notice of violation, as

provided in paragraph (b)(3) of this section.

(2) *Contents of notice.* The notice of intent to debar will include the following:

(i) The proposed period of debarment, not to exceed one year;

(ii) The ports covered by the proposed debarment;

(iii) A brief explanation of the reasons for the proposed debarment;

(iv) The statutory and regulatory authority for the proposed debarment;

(v) A statement that the entity subject to the debarment may file an answer and request a mitigation meeting pursuant to paragraph (c) of this section;

(vi) The procedures for filing an answer and requesting a mitigation meeting, including the date by which the answer must be received and the address to which it may be submitted; and

(vii) A statement that in the absence of a timely filed answer, the proposed debarment will become final 30 days after service of the notice of intent to debar.

(3) *Service.* The notice of intent to debar will be served by a method that demonstrates receipt, such as certified mail with return receipt or express courier delivery, by the entity identified in the notice of violation received from the Secretary of Labor. The date of service is the date of receipt.

(c) *Answer; request for mitigation meeting.*

(1) *General.* Any entity upon which the notice has been served, or its authorized representative, may file with CBP an answer that indicates the specific reasons why the proposed debarment should be mitigated and whether a mitigation meeting is requested. CBP must receive the answer within 30 days from the date of service of the notice of intent to debar.

(2) *Procedures.*

(i) *Form.* The answer must be dated, typewritten or legibly written, signed under oath, and include the address at which the entity or its authorized representative desires to receive further communications. CBP may require that the answer and any supporting documentation be in English or be accompanied by an English translation certified by a competent translator.

(ii) *Supporting documentation required.* In addition to an answer, any entity responding to a notice of intent to debar must submit documentary evidence in support of any request for mitigation and may file a brief in support of any arguments made. The entity may present evidence in support of any request for mitigation at a mitigation meeting.

(iii) *Mitigation meeting.* A mitigation meeting will be conducted if requested by the entity subject to the proposed debarment in accordance with the requirements of this section, or if directed at any time by CBP.

(iv) *Good cause extension.* CBP, in its discretion, may extend the deadline for filing an answer up to an additional 30 days from the original receipt of CBP's notice upon a showing of good cause. Upon receipt of a request to extend the deadline for filing an answer, CBP will respond to the request for an extension within 5 business days by certified mail or express courier.

(d) *Disposition of case.*

(1) *No response filed or allegations not contested.* If no answer is timely filed or the answer admits the allegations in the notice of intent to debar and does not request mitigation or a mitigation meeting, the proposed debarment specified in the notice of intent to debar automatically will become a final order of debarment 30 days after service of the notice of intent to debar. If CBP grants a good cause extension pursuant to paragraph (c)(2)(iv) of this section, and no answer is timely filed, the proposed debarment automatically will become a final order of debarment when the time for filing an answer expires.

(2) *Answer filed; mitigation meeting requested.* If an answer is timely filed that requests mitigation and/or a mitigation meeting, CBP will determine a final debarment in accordance with paragraph (e) of this section.

(3) *Unavailability of appeal.* The final order of debarment is not subject to appeal.

(4) *Notice of final order of debarment.*

(i) CBP will issue to the entity subject to the debarment a final order of debarment in writing.

(ii) CBP will send notice, by certified mail or express courier, to all interested parties, including the relevant U.S. ports of entry, that the entity subject to the debarment is debarred and stating the terms of the debarment.

(e) *Debarment.*

(1) *Generally.* In determining a proposed debarment and a final debarment, CBP will consider the information received from the Secretary of Labor, any evidence or arguments timely presented by the entity subject to the debarment, and any other relevant factors.

(2) *Other relevant factors.* Other relevant factors include, but are not limited to, the following:

(i) The previous history of violations of any provision of the INA by the entity subject to the debarment;

(ii) The number of U.S. workers adversely affected by the violation;

(iii) The gravity of the violation;

(iv) The efforts made by the entity subject to the debarment to comply in good faith with the regulatory and statutory requirements governing performance of longshore work by nonimmigrant crewmen;

(v) The remedial efforts by the entity subject to the debarment;

(vi) The commitment to future compliance by the entity subject to the debarment;

(vii) The extent of cooperation with the investigation by the entity subject to the debarment;

(viii) The extent of financial gain/loss to the entity subject to the debarment due to the violation; and

(ix) The potential financial loss, injury, or adverse effect to other parties, including U.S. workers, likely to result from the debarment.

(f) *Notice of completion of debarment.* Upon completion of any debarment, CBP will send notice, by certified mail or express courier, to all interested parties, including the entity subject to the debarment, and the relevant U.S. ports of entry, that the entity subject to the debarment has completed the debarment and is once again permitted to enter U.S. ports.

(g) *Record.* CBP will keep a record of the debarment proceedings which includes, but is not limited to, the materials exchanged between CBP and the parties. Records will be retained in accordance with CBP's Records Retention Schedule and the Freedom of Information Act.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2024–07169 Filed 4–3–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2024–0448; Special Conditions No. 25–859–SC]

Special Conditions: Jet Aviation AG, The Boeing Company Model 737–8 Series Airplane; Dynamic Test Requirements for Single Occupant Oblique Seats With or Without Airbags and/or 3-Point Restraints

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.