Proposed Rules

Federal Register
Vol. 87, No. 70
Tuesday, April 12, 2022

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 258

[Docket No. USCBP–2022–0016]

RIN 1651–AB20

Procedures for Debarring Vessels From Entering U.S. Ports

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Immigration and Nationality Act (INA) requires the Department of Homeland Security (DHS) to debar from entering U.S. ports any or all 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. This document proposes to amend DHS regulations to set forth the procedures regarding the debarment of such vessels from entering U.S. ports.

DATES: Comments must be received on or before June 13, 2022.

ADDRESSES: Please submit comments, identified by docket number, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments via docket number [USCBP–2022–0016].

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov*. Due to relevant COVID–19-related restrictions, CBP has temporarily suspended its on-site public inspection of submitted comments.

FOR FURTHER INFORMATION CONTACT: R. Joseph O'Donnell, Jr., Fines, Penalties and Forfeitures Division, Office of Field Operations, U.S. Customs and Border Protection, at 202–344–1691 or *joseph.r.odonnell@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the notice of proposed rulemaking. The Department of Homeland Security (DHS or Department) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposal.

Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. Background

A. Purpose and Legal Authority

The Immigration and Nationality Act (INA) (Pub. L. 82–414, 66 Stat. 163 (1952)), as amended, addresses whether nonimmigrants may be admitted into the United States and, if so, under what conditions. Section 258 of the INA prohibits alien crew members (classified as nonimmigrants under INA 101(a)(15)(D)) from entering the United States in order to perform longshore work, subject to certain statutory exceptions. *See* 8 U.S.C. 1288; *see also* 8 U.S.C. 1101(a)(15)(D) and 1184(f). 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.[1] *See* INA 258(b)(2) (8 U.S.C. 1288(b)(2)). DHS regulations implementing this statutory prohibition are set forth in title 8 of the Code of Federal Regulations (CFR) parts 251 and 258.

The INA authorizes 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. Specifically, DHS is authorized to issue a fine for the illegal performance of longshore work and is required, upon notification of a violation from the Secretary of Labor, to debar any vessel owned or chartered by the violating entity from entering U.S. ports for a period not to exceed one year. *See* INA 251(d) and 258(c)(4)(E)(i) (8 U.S.C. 1281(d) and 1288(c)(4)(E)(i)); 8 CFR 258.1(a)(2). DHS has delegated to U.S. Customs and Border Protection (CBP) the authority to enforce and administer INA provisions relating to longshore work, including the authority to issue a fine and debar a vessel. *See* DHS Delegation No. 7010.3(B)(11) (Revision No. 03.1).

Although the regulations (8 CFR part 280) specify the procedures CBP will follow prior to imposing a fine for a violation of the INA, including how an entity may contest or seek mitigation of a fine, there currently are no regulations that specify the procedures for debarring vessels. This was illuminated in 2009 and 2010, when CBP received a notification of violation from the Secretary of Labor. CBP served the violating entity (identified in the notification received from the Secretary of Labor) a letter by registered mail indicating CBP's intent to debar the vessels owned or chartered by the violating entity. CBP provided the violating entity with the opportunity to request mitigation, meet with CBP, and present evidence and any briefs in support of the request for mitigation. CBP considered all of the relevant evidence and determined an appropriate debarment, which was communicated to the violating entity in writing by registered mail. In order to establish consistent, fair, and transparent

[1] *See, e.g.,* 49 CFR part 176.

debarment procedures, DHS proposes amending 8 CFR part 258 to set forth the debarment procedures. The proposed procedures generally codify the steps CBP took in its 2009 and 2010 debarments, which were the only times CBP has conducted debarments, while clarifying and formalizing the process and procedures for both CBP and the violating entity subject to the debarment.

B. INA Exceptions Authorizing Longshore Work by Nonimmigrant Crew Members

Subject to certain exceptions, nonimmigrant crew members are prohibited from performing longshore work in the United States or in U.S. coastal waters. *See* INA 258 (8 U.S.C. 1288); 8 CFR 258.1 and 8 CFR 258.2. The exceptions are (1) the prevailing practice exception; (2) the State of Alaska exception; and (3) the reciprocity exception. *See* 8 U.S.C. 1288(c)–(e); 8 CFR 258.2.[2] Prior to the performance of longshore work under any of the exceptions, the vessel master or agent who uses nonimmigrant crew members must comply with regulations and procedures of both the Department of Labor (DOL) and CBP. If the Secretary of Labor determines that the entity has failed to follow DOL regulations regarding these statutory exceptions and that a violation has occurred, the DOL will notify CBP as set forth below.

DOL Procedures and Enforcement

Pursuant to DOL regulations, in order to invoke either the prevailing practice exception (under certain circumstances) or the State of Alaska exception, the vessel master or agent who uses nonimmigrant crew members must file an attestation with the Secretary of Labor prior to the performance of any longshore work.[3] *See* 20 CFR 655.510 and 655.530–655.541. The attestation must specify which exception the vessel master or agent is invoking, contain the required attestation elements, and be accompanied by facts and evidence demonstrating that the particular exception is applicable. *See* 20 CFR 655.510 and 655.533.

The Secretary of Labor has the authority to investigate alleged violations of the INA relating to the performance of longshore work, including any violations arising out of an attestation. *See* 20 CFR 655.600 and 655.605. If the Secretary of Labor investigates an alleged violation and makes a final determination that the vessel master or agent has failed to meet a condition attested to or has misrepresented a material fact in an attestation, the Secretary must notify CBP of the violation. INA 258(c)(4)(E)(i) and 258(d)(5)(A) (8 U.S.C. 1288(c)(4)(E)(i) and 1288(d)(5)(A)). The Secretary of Labor may also impose a civil monetary penalty for each nonimmigrant crew member with respect to whom there has been a violation of the INA. INA 258(c)(4)(E)(i) (8 U.S.C. 1288(c)(4)(E)(i)); 20 CFR 655.620.

CBP Procedures and Enforcement

After filing any necessary attestation with the Secretary of Labor, the owner or master of a vessel intending to invoke one of the exceptions must deliver to CBP the Passenger List and Crew List (CBP Form I–418 or its electronic equivalent), indicate that nonimmigrant crew members will perform longshore work, and specify under which exception the work is permitted. *See* 8 CFR 251.1(a)(2) and 258.3. A vessel owner or operator must also submit any documentation required pursuant to 8 CFR 258.2. In order to rely on the exceptions that require an attestation, the vessel master or agent must present to CBP the notification received from the Secretary of Labor that the required attestation has been accepted. 8 CFR 258.2(b)(2)(iii).

Upon notification of a violation from the Secretary of Labor that the vessel master or agent has failed to meet a condition attested to or has misrepresented a material fact in an attestation, CBP is required 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. INA 258(c)(4)(E)(i) and 258(d)(5)(A) (8 U.S.C. 1288(c)(4)(E)(i) and 1288(d)(5)(A)).

Additionally, CBP may investigate violations of the INA relating to longshore work and may impose a monetary fine on an owner, agent, consignee, master, or commanding officer who permits nonimmigrant crew members to perform longshore work in a manner inconsistent with the INA. INA 251(d) (8 U.S.C. 1281(d)); 8 CFR 258.1(a)(2).

III. Proposed Amendments

This document proposes to add to the regulations the procedures CBP will follow in order to debar vessels from entering U.S. ports after receiving a notification of a violation from the Secretary of Labor pursuant to 8 CFR part 258. The relevant details are provided below.

Part 258

8 CFR part 258 sets forth the regulations regarding the limitations on the performance of longshore work by nonimmigrant crew members. Section 258.1 sets forth the general prohibition of nonimmigrants performing longshore work, other than pursuant to the specified exceptions, and provides definitions. Section 258.2 describes the exceptions under which nonimmigrant crew members may perform longshore work in the United States. Section 258.3 describes the actions a master or agent of a vessel must take in order to rely on one of the exceptions.

In this document, DHS proposes to add a new § 258.4, which will outline procedures for debarring vessels following notification from the Secretary of Labor, including how CBP determines the debarment and how the violating entity may request mitigation. In general, the proposed debarment procedures would require CBP to issue a notice of intent to debar, which would be served on the violating entity. CBP would also provide an opportunity for the violating entity to file an answer, submit documentary evidence, and request a mitigation meeting with CBP. The proposed procedures also require CBP to issue a final order of debarment. The details of proposed § 258.4 are set forth below.

A. Definitions Applicable to CBP's Debarment Proceedings

Proposed paragraph (a) 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 in CBP's debarment proceedings, would include instances in which the violating entity is experiencing technical difficulties affecting its ability to receive, process, or transmit relevant information or data; natural disasters that affect the violating entity's ability to retrieve, process, or transmit relevant information or data; or, other instances in which CBP, in its discretion, determines an undue hardship warrants an extension of the deadline for filing an answer. A mitigation meeting, for purposes of

[2] The exceptions are set forth in the Department of Labor regulations in title 20 of the CFR. For information on the reciprocity exception, see 20 CFR 655.500(a)(1)(i). For information on the prevailing practice exception, see 20 CFR 655.510. For information on the State of Alaska exception, see 20 CFR 655.530–655.541.

[3] An attestation is required in order to invoke the prevailing practice exception when there is no collective bargaining agreement or when the Secretary of Labor has announced that an attestation is required to use an automated self-unloading conveyor belt or vacuum-actuated system. *See* 8 U.S.C. 1288(c)(1)(A)(i) and 1288(c)(1)(B); 20 CFR 655.500(b)(2), 655.510(a), and 655.520.

CBP's debarment proceedings, would be 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. Mitigation in a debarment proceeding would mean 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.

B. Notice of Intent To Debar

Proposed paragraph (b) 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 and the rights of the violating entity. It provides that CBP will cause the notice of intent to debar to be served on the entity subject to the debarment by a method that demonstrates receipt by the addressee, such as certified mail with return receipt or express courier delivery, and provides that the date of service is the date of receipt.

It further provides that the notice of intent to debar will include the following information: The proposed period of debarment, not to exceed one year; the ports covered by the proposed debarment; a brief explanation of CBP's reasons for the proposed debarment; and the applicable statutory and regulatory authority for the proposed debarment. The notice will also notify the entity subject to the proposed debarment that it may file an answer and request a mitigation meeting and will set forth the procedures for doing so. The notice of intent to debar will also notify the violating entity 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.

C. Answer; Request for Mitigation Meeting

Proposed paragraph (c) covers the procedures relating to filing an answer and supporting documentation with CBP and requesting mitigation and a mitigation meeting. It provides that all notifications and correspondences between CBP and the violating entity with respect to the debarment proceedings will be done in writing and transmitted using certified mail or express courier.[4] It further provides that an entity that receives a notice of intent to debar will have 30 days from service of the notice to file an answer with CBP, but permits CBP, in its discretion, to extend the deadline for filing an answer up to an additional 30 days upon a showing of good cause.[5] It further provides that the answer must be filed by the entity identified in the notice of intent to debar, or its authorized representative. 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. The answer must set forth specific reasons why the proposed debarment should be mitigated and state whether a mitigation meeting is requested.[6] It further specifies that a mitigation meeting will be conducted if the entity subject to the proposed debarment requests one or if directed at any time by CBP.[7]

Proposed paragraph (c) also provides that if an entity requests mitigation, it must submit to CBP both an answer and documentary evidence in support of the request for mitigation. The entity is also permitted to file a brief in support of any arguments made. If a mitigation meeting is requested, the entity may present evidence in support of any request for mitigation at that time. CBP can require that the answer and any supporting documentation be in English or be accompanied by an English translation, certified by a competent translator.[8]

D. Disposition of Case

Proposed paragraph (d) states how CBP will determine a final order of debarment for each case. Specifically, proposed paragraph (d) states that if an entity that receives service of a notice of intent to debar does not timely file an answer or if the entity admits the allegations and does not request mitigation or a mitigation meeting, the proposed debarment will automatically become a final order of debarment 30 days after service of the notice of intent to debar. 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. 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. No appeal from a final order of debarment will be available.

E. Debarment

Proposed paragraph (e) states that CBP will determine a proposed debarment or a final debarment by considering the information received from the Secretary of Labor in the notice of violation, any evidence or arguments timely presented by the entity subject to the debarment, and any other relevant factors.[9] 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, including whether the debarment is likely to result in the loss of job opportunities for U.S. workers.

CBP will submit final orders of debarment to all U.S. ports of entry, prohibiting entry of the violating entity's vessel(s) during the debarment. CBP will send a notice of final order to each violating entity. CBP will also send a notice of final order to any entity that has submitted a request to CBP of interest in the debarment proceeding.

[4] A notice of intent to debar will debar only one violating entity. If there is more than one violating entity, separate notices will be issued to each.

[5] 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.

[6] 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 would include showing that a specific period of business activity (*i.e.,* fishing season) would 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.

[7] The violating entity may request a mitigation meeting to mitigate the length of the debarment period, the ports covered by the debarment, and the number of vessels subject to the debarment.

[8] *See, e.g.,* 8 CFR 204.1(f)(3), 274a.2(b)(1)(i)(A). *See also* 8 CFR 1003.33 (Department of Justice Executive Office for Immigration Review's rule on documents submitted to the immigration court).

[9] 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.

F. Notice of Completion of Debarment and Record

Proposed paragraph (f) states that upon completion of the debarment, CBP will send a notice 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. Additionally, proposed paragraph (g) states that CBP will keep a complete record of the debarment proceedings. CBP will retain the records for 5 years, after which the records will be sent to the National Archives. Records retention and access to records will conform to the Records Retention Schedule and Freedom of Information Act.

IV. Statutory and Regulatory Analysis

A. Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 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, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed this regulation.

Pursuant to section 258 of the INA, CBP is required to debar vessels. This rule does not create that requirement. Rather, this proposed 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 proposed 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 the agency's recorded history, in 2009 and 2010. As described above, the proposed rule would 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 CBP follows for debarring vessels 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); 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. This rule does not create that requirement. Rather, this proposed 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—in 2009 and in 2010. Furthermore, CBP is generally adopting existing practices, and costs to violating entities would not change as a result of this rule. Therefore, CBP certifies that this 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 proposed rule, so the provisions of the PRA do not apply.[10]

V. Signing Authority

This proposed 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, Seaman.

[10] The required DOL attestations are covered by OMB Control Number 1205–0309.

Proposed Regulatory Amendments

Amendments to the Regulations

For the reasons stated in the preamble, DHS proposes to amend part 258 of title 8 CFR (8 CFR part 258) as set forth below.

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 § 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, include: 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 1 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 Freedom of Information Act.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2022–07774 Filed 4–11–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0253; Airspace Docket No. 21–ANM–09]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Coeur D'Alene—Pappy Boyington Field, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E surface airspace, and the Class E airspace extending upward from 700 feet above the surface at Coeur D'Alene—Pappy Boyington Field, ID. These airspace modifications support the addition of the RNAV GPS RWY 2 Instrument Approach Procedure (IAP, and the removal of the VOR/DME RWY 2 IAP at the airport). Additionally, this action proposes updates to the legal description. The Airport's location and use of the term ''Notice to Airmen'' are not correct and will require modification. These actions will ensure the safety and management of IFR operations at the airport.

DATES: Comments must be received on or before May 27, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of