

Form I-259 shall also be served on the agent for the vessel or aircraft. If the vessel or aircraft upon which the alien crewman arrived in the United States has departed from the United States, the agent or owner of the vessel or aircraft shall be directed by means of a notice on Form I-259 to effect the deportation of the alien crewman from the United States. Pending deportation, the alien crewman shall be continued in custody, unless the district director authorizes his release on parole under such conditions, including the posting of a suitable bond, as the district director may prescribe.

[32 FR 4342, Mar. 22, 1967]

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

Sec.

258.1 Limitations—General.

258.2 Exceptions.

258.3 Action upon arrival.

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

SOURCE: 57 FR 40834, Sept. 8, 1992, unless otherwise noted.

§ 258.1 Limitations—General.

(a) *Longshore work defined.* Longshore work means any activity relating to the loading and 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, in the United States or the coastal waters thereof.

(1) Longshore work is not included in the term “normal operation and service on board a vessel” for the purposes of section 101(a)(15)(D)(i) of the Act except as provided in sections 258 (c) or (d) of the Act.

(2) A vessel that uses nonimmigrant crewmen to perform longshore work, other than the activities allowed in particular circumstances under § 258.2 (a)(2), (b), or (c) of this part, shall be subject to a fine under section 251(d) of the Act.

(b) *Port defined.* For purposes of this section, the term *port* means a geographic area, either on a seacoast, lake, river, or other navigable body of

water, which contains one or more publicly or privately owned terminals, piers, docks, or maritime facilities, which is commonly regarded as a port by other government maritime related agencies, such as the Maritime Administration.

§ 258.2 Exceptions.

Any master or agent who uses nonimmigrant crewmen to perform longshore work at any United States port under the exceptions provided for in paragraphs (a)(2), (b), or (c) of this section must so indicate on the crew manifest and shall note under which exception the work will be performed.

(a) *Hazardous cargo.* (1) The term *longshore work* does not include the loading and unloading of any cargo for which the Secretary of Transportation has prescribed regulations under authority contained in chapter 37 of title 46, United States Code, section 311 of the Federal Water Pollution Control Act, section 4106 of the Oil Pollution Act of 1990, or section 105 or 106 of the Hazardous Materials Transportation Act.

(2) In order to invoke the hazardous cargo exception for safety and environmental protection, the master or agent shall note on the manifest that the vessel is a qualifying tanker or carries hazardous dry bulk cargo.

(i) All tankers qualify for the hazardous cargo exception, including parcel tankers, except for a tanker that has been gas-freed to transport non-hazardous dry bulk commodities.

(ii) In order for a vessel to qualify for the hazardous cargo exception as a dry bulk hazardous cargo carrier, the master or agent must show the immigration officer the dangerous cargo manifest that is required by Coast Guard regulation 46 CFR 148.02-3(a) to be kept near the bridge house.

(b) *Prevailing practice exception.* (1) Nonimmigrant crewmen may perform longshore work under this exception if:

(i) There is in effect in the local port one or more collective bargaining agreements, each covering at least 30 percent of the persons performing longshore work at the port, and each of which permits the longshore activity to be performed by the nonimmigrant crewman, or