Rules and Regulations

Federal Register
Vol. 80, No. 115
Tuesday, June 16, 2015

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 293

[DHS Docket No. ICEB–2013–0002]

RIN 1653–AA66

Change to Existing Regulation Concerning the Interest Rate Paid on Cash Deposited To Secure Immigration Bonds

AGENCY: U.S. Immigration and Customs Enforcement, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is amending its regulations addressing the payment of interest on cash bond deposits to explicitly provide that the Department of the Treasury (Treasury) will set the interest rate. Treasury will notify the public of its interest rate determinations by publishing the rates on the Treasury Web site or via another mechanism. Under the existing regulation, the current rate of interest paid on deposits securing cash bonds is 3 percent per annum. 8 U.S.C. 1363(a); 8 CFR 293.2. This final rulemaking is consistent with the requirement of 8 U.S.C. 1363(a) that interest payments shall be ''at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum.''

DATES: This rule is effective August 17, 2015.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket ICEB–2013–0002 and are available online by going to *http://www.regulations.gov,* inserting ICEB–2013–0002 in the ''Search'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Don Benoit, Bonds Branch Supervisor, Burlington Finance Center, P.O. Box 5000, Williston, VT 05495–5000. Telephone: (802) 288–7630, email: *Donald.R.Benoit@ice.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Regulatory History and Information

On October 28, 2013, DHS published a notice of proposed rulemaking (NPRM) in the **Federal Register**, entitled *Change to Existing Regulation Concerning the Interest Rate Paid on Cash Deposited to Secure Immigration Bonds.* 78 FR 64183. We received two comments on the proposed rule. No public meeting was requested, and none was held.

II. Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
ICE U.S. Immigration and Customs Enforcement
INA Immigration and Nationality Act of 1952, as amended
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
§ Section symbol
U.S.C. United States Code

III. Basis and Purpose

A. Immigration Bonds Secured by Cash

U.S. Immigration and Customs Enforcement (ICE) may release certain aliens from detention during removal proceedings after a custody determination has been made pursuant to 8 CFR 236.1(c). As a condition of his/her release from custody, an alien may be required to post an immigration bond. Currently, about 91 percent of the immigration bonds issued each year is secured by cash (cash bonds). (Fiscal Year 2013 Total, Cash Bonds and Surety Bonds—on file with the Bonds Branch, ICE Financial Operations—Burlington). The other 9 percent of the immigration bonds are issued by surety companies (surety bonds) certified by the Department of the Treasury to post bonds on behalf of the Federal government pursuant to 31 U.S.C. 9304–9308 and 31 CFR part 223. ICE deposits cash pledged as security on cash bonds in a fund maintained by Treasury known as the Immigration Bond Deposit Account. These funds are held ''in trust'' for the obligor and currently earn simple interest at the rate of 3 percent per annum. 8 U.S.C. 1363(a); 8 CFR part 293. Immigration bonds are not in effect for a set period of time. They remain in effect until they are breached or canceled. On average, a cash bond is in effect for about 34 months. (Data on file with ICE Financial Operations—Burlington).

B. Payment of Interest on Cash Bond Deposits

In 1970, Congress added section 293 of the Immigration and Nationality Act (INA), as amended, to pay interest at a rate determined by the Secretary of the Treasury, not to exceed 3 per centum per annum, on cash received as security for immigration bonds. Public Law 91–313 (July 10, 1970) (codified at 8 U.S.C. 1363). Effective on the date of its publication in the **Federal Register**, July 23, 1971, the interest rate set by Treasury—3 per centum per annum—has been paid on cash bond deposits received after April 27, 1966. 36 FR 13677 (8 CFR part 293). Thus, since 1971, the Government has paid simple interest at the rate of 3 percent per year on cash deposited by bond obligors to secure immigration bonds. Interest is earned on a cash bond from the date the bond is issued until it is breached or canceled. The amount of interest earned varies depending on the face amount of the bond and the length of time it remains in effect. For example, a $5,000 cash bond in effect for 3 years would earn $450 in interest with a 3 percent per annum interest rate.

In the NPRM published on October 28, 2013, DHS proposed to modify the current 8 CFR 293.2, which states that ''effective from date of deposit occurring after April 27, 1966, the interest rate shall be 3 per centum per annum.'' DHS proposed to revise this provision to explicitly state that Treasury will set the interest rate directly. Thus, DHS proposed to utilize the rate set by Treasury in issuing interest payments, with DHS having no role in setting the rate. 78 FR 64183.

IV. Discussion of Comments and the Final Rule

The October 2013 NPRM provided for a public comment period of 60 days, which ended on December 27, 2013. During that time period, DHS received two public comments. One of the comments recommended the interest rate be set at the flat rate of one-half of one percent. DHS considered the comment and decided not to adopt it. As discussed above, Treasury possesses

the statutory authority to set the interest rate on cash received as security for immigration bonds. Public Law 91–313 (July 10, 1970) (codified at 8 U.S.C. 1363). DHS does not possess the statutory authority to set the rate in the manner suggested by the commenter.

The second comment, submitted by a bonding agency, opposed the rule because the rule did not specify that any change in the interest rate would only apply to cash bonds posted after Treasury issues a new interest rate. The commenter proposed keeping the current 3 percent interest rate for all bonds posted prior to the effective date of an interest rate change until the bond was breached or canceled. For bonds posted after the effective date of the rule, the commenter proposed applying the interest rate in effect at the time the bond was posted throughout the life of the bond.

DHS has decided against adopting this proposal. DHS understands that Treasury may set a fluctuating, market-based rate that will not exceed the statutory 3 percent ceiling. Assuming that Treasury sets such a rate, DHS will apply the new rate to all cash bond deposits as of the rate's effective date. Unless Treasury's published rate requires otherwise, DHS will adjust any Treasury-determined rate each time the rate changes. Consistent with 8 U.S.C. 1363, bond deposits will continue to receive the 3 percent rate until the new Treasury rate goes into effect. After the effective date of a new rate, DHS will apply the new Treasury rate to all bond deposits.

After considering different options for how to finalize this regulation, including the method proposed in the second comment, DHS has determined that unless Treasury's published rate requires otherwise, it will apply any new Treasury rate to all bond deposits regardless of when the bond was posted. DHS made this decision for a number of reasons. If DHS adopted the second comment and assigned a fixed interest rate based on the date the bond was posted, DHS would not be able to effectuate a determination by Treasury that a fluctuating rate be applied to cash bond deposits. Under 8 U.S.C. 1363(a), cash received as security on an immigration bond ''shall bear interest at a rate determined by the Secretary of the Treasury.'' The second comment's proposal—that DHS require multiple interest rates to be paid on bonds depending on the date the bond was posted—is inconsistent with the statutory language.

DHS's approach also has the advantage of applying any new interest rate uniformly to cash bond deposits. All deposits will continue to receive the 3 percent rate until a new interest rate goes into effect. As of the effective date of the new rate, the new rate will be applied to all of the deposits and, as the rate changes, each succeeding new rate will be applied to all of the deposits. This approach recognizes Treasury's broad discretion under statute to set an appropriate rate. This approach has the further advantage of allowing any new interest rate's budget impact to be monitored.

DHS has carefully considered how the new rule impacts the ability of an alien to secure a cash bond and expects that any effects will be negligible. For a variety of reasons, DHS believes that cash bond obligors are generally insensitive to changes in the bond interest rate. For instance, in DHS's experience, the vast majority of cash bond obligors are the alien's family members or friends who post bonds for the primary purpose of releasing the alien from custody. The interest earned on the cash deposits for these obligors is incidental to effectuating the alien's release. Moreover, if any cash bond obligors are so sensitive to a change in the bond's interest rate that they want to terminate their obligations under the bond, a process exists that allows the possible early surrender of the bonded alien. Any obligor may ask the DHS office that posted the bond to authorize surrender of the alien before being required to do so by DHS. Such a request may be granted at the discretion of the office where the bond was posted. If the request is granted, the bond would be canceled once the obligor effectuates surrender of the alien, and the cash deposit would be refunded.

Finally, the second commenter noted the possibility of unfair surprise if the interest rate were to change during the life of the bond, because ''the depositing party was advised of, and relied upon, the 3% interest rate at the time the cash deposit was made.'' While Treasury's initial determination of a 3 percent interest rate was published in a 1971 regulation, 8 CFR 293.2, DHS notes that, since 1970, it has been Treasury's statutory prerogative to determine the interest rate. The bond agreement between DHS and the bond obligor does not contain an interest rate as one of its terms and does not guarantee that the interest rate originally determined by Treasury would be in effect for the life of the bond. ICE Form I–352. Instead, by statute, Treasury is authorized to determine the interest rate, and DHS calculates the amount of interest earned based on the rate set by Treasury, the face amount of the bond, and the number of days that the bond was in effect. Even assuming a future change in the interest rate frustrates the expectations of an obligor who was aware of the 3 percent rate, ICE may nonetheless apply a new rate to a bond deposit after the new rate goes into effect because ICE will not be attaching new legal consequences to completed, past conduct. Instead, ICE will be applying the new rate to an open cash bond—an agreement whose fulfillment is still a work in progress. Until Treasury sets a new interest rate, cash deposits currently securing bonds will continue to receive the 3 percent interest rate. As described above, following implementation of a new interest rate, deposits could begin receiving a different rate. This approach will therefore have an exclusively future effect.

V. Statutory and Regulatory Requirements

DHS developed this rule after considering numerous statutes and executive orders related to rulemaking. The below sections summarize our analyses based on a number of these statutes and executive orders.

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

Executive Orders 12866 and 13563 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. The Office of Management and Budget (OMB) has not designated this rule a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, OMB did not review the proposed rule and has not reviewed the final rule.

The proposed and final rules explicitly state that Treasury is authorized by statute to set the interest rate paid on cash deposited to secure immigration bonds, provided that the rate cannot exceed 3 percent per year and cannot be less than 0. In deciding to propose this rule, DHS considered whether DHS would implement any possible future changes to the current fixed interest rate of 3 percent per annum that may be made by Treasury, through informal rulemaking or other means. DHS rejected this alternative. Because Congress authorized the Secretary of the Treasury to set the rate

directly, the approach that DHS proposed and adopts here is a more efficient and cost-effective process.

The proposed and final rules further do not make any changes to the current interest rate paid to cash bond obligors; under current law, a change to the current interest rate paid cannot be made except under Treasury's sole authority. As this rulemaking does not make any changes to the current fixed 3 percent per annum interest rate, this rule does not impose any costs on bond obligors.

As noted above, under current law, Treasury has the sole authority to set the interest rate that DHS uses to determine the amount of interest paid for cash immigration bonds. The rule provides that Treasury will set the interest rate directly and will publish the interest rate on the Treasury Web site or through another mechanism. This will save DHS resources by removing the intermediate step for DHS to implement Treasury's decision by informal rulemaking.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule does not impose any direct costs on small entities. Consequently, DHS certifies this final rule would not impose a significant economic impact on a substantial number of small entities. DHS received no public comments challenging this certification.

C. The Small Business Regulatory Enforcement Fairness Act of 1996

This final rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121. This rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

D. Paperwork Reduction Act of 1995

All Departments are required to submit to OMB for review and approval, any reporting or recordkeeping requirements inherent in a rule under the Paperwork Reduction Act of 1995, Pub. L. 104–13, 109 Stat. 163 (1995), 44 U.S.C. 3501–3520. This rule does not change or require a collection of information.

E. Federalism

A rule has implications for federalism under Executive Order 13132, *Federalism,* if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under the Order and have determined that it does not have implications for federalism.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. This rule will not result in such an expenditure.

G. Private Property

This rule will not cause a taking of private property or otherwise have takings implications under Executive Order 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights.*

H. Civil Justice Reform

This rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, *Civil Justice Reform,* to minimize litigation, eliminate ambiguity, and reduce burden. DHS has determined that this rule meets the requirements of E.O. 12988 because it does not involve any retroactive effects, preemptive effects, or any other matters addressed in E.O. 12988.

I. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and will not have a significant adverse effect on the supply, distribution, or use of energy.

J. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

K. National Environmental Policy Act

U.S. Department of Homeland Security Management Directive (MD) 023–01 establishes procedures that the Department and its components use to comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4375, and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500–1508. CEQ regulations allow federal agencies to establish categories of actions which do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 40 CFR 1508.4. DHS MD 023–01 lists the Categorical Exclusions that the Department has found to have no such effect. MD 023–01 app. A tbl.1.

This final rule amends 8 CFR part 293 to change the interest rate for immigration bonds secured by cash from a fixed rate of 3 percent per year to a rate determined by the Secretary of the Treasury, provided that the rate does not exceed 3 percent per year and is not less than 0. DHS has analyzed this rule under MD 023–01. ICE has determined that this action is one of a category of actions which does not individually or cumulatively have a significant effect on the human environment. This rule clearly fits within the two Categorical Exclusions found in MD 023–01, Appendix A, Table 1: A3(a): ''Promulgation of rules . . . of a strictly administrative and procedural nature''; and A3(d): ''Promulgation of rules . . . that interpret or amend an existing regulation without changing its environmental effect.'' This rule is not part of a larger action. This rule presents

no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this rule is categorically excluded from further NEPA review.

List of Subjects in 8 CFR Part 293

Administrative practice and procedure, Aliens, Bonds, Immigration, Interest rate.

Amendments to the Regulations

For the reasons discussed in the preamble, DHS amends 8 CFR part 293 as follows:

PART 293—DEPOSIT OF AND INTEREST ON CASH RECEIVED TO SECURE IMMIGRATION BONDS

■ 1. Revise the authority citation for part 293 to read as follows:

Authority: 8 U.S.C. 1363.

■ 2. Revise § 293.1 to read as follows:

§ 293.1 Computation of interest.

The Secretary of the Treasury determines the rate at which an immigration bond secured by cash shall bear interest, consistent with 8 CFR 293.2. Interest shall be computed from the deposit date to and including the refund date or breach date of the immigration bond. For purposes of this part, the deposit date shall be the date shown on the receipt for the cash received as security on an immigration bond. The refund date shall be the date upon which the interest is certified to the Treasury Department for payment. The breach date shall be the date the immigration bond was breached as shown on Form I–323—''Notice—Immigration Bond Breached.'' In counting the number of days for which interest shall be computed, the day on which the cash was deposited shall not be counted; however, the refund date or the breach date shall be counted.

■ 3. Revise § 293.2 to read as follows:

§ 293.2 Interest rate.

Interest on cash deposited to secure immigration bonds will be at the rate as determined by the Secretary of the Treasury, but in no case will exceed 3 per centum per annum or be less than zero. The rate will be published by Treasury on the Treasury Web site or through another mechanism.

■ 4. Revise § 293.3 to read as follows:

§ 293.3 Time of payment.

Interest shall be paid only at time of disposition of principal cash when the immigration bond has been cancelled or declared breached.

§ 293.4 [Removed]

■ 5. Remove § 293.4.

Jeh Charles Johnson,

Secretary of Homeland Security.

[FR Doc. 2015–14675 Filed 6–15–15; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2015–0722; Special Conditions No. 23–265–SC]

Special Conditions: Honda Aircraft Company, Model HA–420; Fire Extinguishing for Overwing Pylon Mounted Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Honda Aircraft Company model HA–420 airplane. This airplane will have a novel or unusual design feature associated with mounting the engines on the wings in close proximity to the aft fuselage. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 16, 2015.

We must receive your comments by July 16, 2015.

ADDRESSES: Send comments identified by docket number FAA–2015–0722 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Pretz, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri 64106; 816–329–3239, fax 816–329–4090, email *jeff.pretz@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has determined, in accordance with 5 U.S.C. 553(b)(3)(B) and (d)(3), that notice and opportunity for prior public comment hereon are unnecessary because the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Special condition No.	Company/Airplane Model
23–210–SC	Adam Aircraft Model A700.
23–245–SC	Cirrus Design Corporation Model SF50.
23–221–SC	Embraer S.A. Model EMB–500.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will consider all comments we receive on or before the closing date for comments. We will consider comments