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DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

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:** Notice of proposed rulemaking.

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**SUMMARY:** The Department of Homeland Security proposes to amend 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. In the future, Treasury will notify the public of its interest rate determinations by publishing the rates on the Treasury website or via another mechanism. 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 action 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:** Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before [insert date 60 days after date of

**publication in the FEDERAL REGISTER]** or reach the Mail or Hand Delivery/Courier address listed below by that date.

**ADDRESSES:** You may submit comments, identified by DHS Docket No. ICEB-2013-0002, by using any one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Bonds Branch, c/o Don Benoit, Bonds Branch Supervisor, Burlington Finance Center, P.O. Box 5000, Williston, VT 05495.
- Hand Delivery/Courier: Don Benoit, Bonds Branch Supervisor, Burlington Finance Center, 166 Sycamore Street, Williston, VT 05495, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. Contact telephone number (802) 288-7630.

To avoid duplication, please use only one of these three methods. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

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

## **SUPPLEMENTARY INFORMATION:**

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## **I. Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

**A. Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (ICEB-2013-0002), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "ICEB-2013-0002" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the mailing address, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

**B. Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being

available in the docket, go to <http://www.regulations.gov>, and insert “ICEB-2013-0002” in the “Search” box. Click on “Open Docket Folder,” and then click on “View Comment” or “View All” under the “Comments” section of the page. Individuals without internet access can make alternate arrangements for viewing comments and documents related to this rulemaking by contacting the Bonds Branch using the **FOR FURTHER INFORMATION CONTACT** information above. Please be aware that anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

### **C. Public meeting**

We do not now plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under ADDRESSES. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

## **II. Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
ICE	U.S. Immigration and Customs Enforcement
INA	Immigration and Nationality Act of 1952, as amended
§	Section symbol
U.S.C.	United States Code

## **III. Background**

### **A. Immigration Bonds Secured by Cash**

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. In FY 2012, there were a total of 56,501 immigration bonds posted. Of that, 51,451 were secured by cash, totaling almost \$274.9 million; the remaining approximately 9 percent of the immigration bonds posted were surety bonds, totaling almost \$39.4 million. (Fiscal Year 2012 Total, Cash Bonds and Surety Bonds – on file with the Bonds Branch, ICE Burlington Finance Center).

All types of immigration bonds (delivery bonds, voluntary departure bonds, order of supervision bonds, public charge bonds, maintenance of status bonds, and stowaway bonds) secured by cash deposits are included in this proposed rule. When a cash bond is posted, the bond obligor pledges an amount of money equal to the face amount of the bond as “security for the performance and fulfillment of the obligations” described in the bond form. ICE Form I-352, ¶ I (Rev. 03/08). ICE deposits cash pledged as security on immigration 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. By signing the pledge and power of attorney in the bond form, the obligor authorizes the United States to “collect or to assign and transfer” the amount of money deposited as security to satisfy any “damages, demands, or deficiencies arising by reason of” the bond’s breach. Id. ¶ I. In other words, the obligor agrees that, in case of default of any of the bond’s terms and conditions, the Government has the power to retain the cash

deposited to satisfy any damages, demands, or deficiencies arising from the default. ICE Form I-352, ¶ I (Rev. 03/08). When the bond is breached, only the interest that has accrued on the cash deposit is returned to the obligor. When the bond's terms and conditions are satisfied, the bond is cancelled. In this situation, both the cash deposit for the face amount of the bond and the interest are sent to the obligor.

### **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. Pub. L. 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.

### **C. Request for Comments**

Under current law, Treasury has the sole authority to set the rate of interest that DHS will use to calculate the amount of interest paid in this context. Accordingly, DHS does not (indeed, cannot) propose any changes to the current interest rate paid to cash bond obligors.

As explained above, current 8 CFR 293.2 states that “effective from date of deposit occurring after April 27, 1966, the interest rate shall be 3 per centum per annum.” In this action, DHS proposes to modify this provision to explicitly state that Treasury will

set the interest rate directly. Thus, DHS will utilize the rate set by Treasury in issuing interest payments, but will have no role in setting the rate.

Comments on matters committed by law to Treasury's sole discretion would be out-of-scope of this proposed rulemaking, however, commenters may have valuable input on the matters relevant to this rulemaking. DHS will consider all relevant comments and material received during the comment period and will respond to them in the final rule.

#### **IV. Regulatory Analyses**

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

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. 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 has not reviewed the proposed rule.

The proposed rule, if finalized, would 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 has rejected this alternative. Because Congress authorized the Secretary of the Treasury to set the rate

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

This proposed rule does not propose 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 propose any changes to the current fixed 3 percent per annum interest rate, this proposed 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 proposed rule would provide that Treasury will set the interest rate directly and will publish the interest rate on the Treasury website or through another mechanism. This would save DHS resources by removing the intermediate step for DHS to implement Treasury's decision by informal rulemaking.

#### **B. Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed 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 proposed rule, if finalized, would not impose a significant economic impact on a substantial number of small entities.

#### **C. The Small Business Regulatory Enforcement Fairness Act of 1996**

This proposed 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**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

**E. Federalism**

A rule has federalism implications under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments, 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 proposed rule under that Order and have determined that it does not have federalism implications.

**F. Unfunded Mandates Reform Act of 1995**

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 proposed rule would not result in such an expenditure.

### **G. Private Property**

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

### **H. Civil Justice Reform**

Executive Order 12988 requires agencies to conduct reviews on civil justice and litigation impact issues before proposing legislation or issuing regulations. The order requires agencies to exert reasonable efforts to ensure that the regulation identifies clearly preemptive effects, effects on existing federal laws or regulations, identifies any retroactive effects of the regulation, and other matters. DHS has determined that this proposed 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 proposed 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 proposed 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 C.F.R. 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 C.F.R. § 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.

The proposed rule would amend 8 C.F.R. 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.

ICE has analyzed this proposed rule under MD 023-01. ICE has made a preliminary determination 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 proposed 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 proposed rule is not part of a larger action. This proposed rule presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this proposed rule is categorically excluded from further NEPA review.

ICE seeks any comments or information that may lead to the discovery of any significant environmental effects from this proposed rule.

### **List of Subjects**

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 proposes to amend 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 website 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.

5. Remove § 293.4.

Rand Beers,

Acting Secretary of Homeland Security.

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