

# DEPARTMENT OF HOMELAND SECURITY

## Bureau of Customs and Border Protection

[USCBP-2006-0119]

### Monetary Guidelines for Setting Bond Amounts for Importations Subject to Enhanced Bonding Requirements

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

**ACTION:** General notice; request for comments.

**SUMMARY:** This Notice serves to provide additional information on the process used to determine bond amounts for importations involving elevated collection risks and to seek public comment on that process. The process published in this Notice is in effect. Public comments will assist CBP in identifying factors that may further improve the process to ensure the bond amounts protect the revenue and facilitate trade. After consideration of the comments, a revised version of the Monetary Guidelines for Setting Bond Amounts Customs Directive 99-3510-004 July 23, 1991 (1991 Monetary Guidelines) will be published.

**DATES:** Comments must be received on or before December 26, 2006.

**ADDRESSES:** Commenters must submit comments, identified by *docket number*, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2006-0119.
- Mail: Trade and Commercial Regulations Branch, Office of Regulations and Rulings in the Office of International Trade, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

**Instructions:** All submissions received must include the agency name and docket number for this Notice. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of

Regulations and Rulings in the Office of International Trade, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

#### FOR FURTHER INFORMATION CONTACT:

David Genovese, Office of International Trade at [David.Genovese@dhs.gov](mailto:David.Genovese@dhs.gov), Tel: (202) 863-6020.

#### SUPPLEMENTARY INFORMATION:

##### Public Participation

Interested persons are invited to submit written data, views, or arguments on all aspects of this Notice. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this Notice. Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of this Notice, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

##### Background

A key CBP mission is to collect all import duties determined to be due to the United States. Under customs statutes and regulations release of merchandise prior to the determination of all duties that may be owed is ordinarily permitted, provided the importer posts a bond or other security to insure payment of duties and compliance with other applicable laws and regulations. Estimated duties are collected at entry, a bond is posted, and final duties await liquidation at a later point in time.

In the case of antidumping (AD) or countervailing duties (CVD) determined by the Department of Commerce (DOC) (which administers the AD/CVD laws in conjunction with the U.S. International Trade Commission), the administrative and judicial process for determining the appropriate rate of duty for AD/CVD merchandise may significantly delay the liquidation of an entry of AD/CVD merchandise. At liquidation, CBP follows DOC instructions regarding the applicable AD/CVD rate. CBP must collect the duties owed of whatever nature. However, importers have increasingly failed to pay additional AD/CVD duties determined to be due at liquidation. Recent defaults for AD/CVD supplemental bills are substantially higher than defaults that were the previous norm and are unprecedented. This troubling trend caused an internal

policy review of revenue protection strategies at CBP.

During the review, CBP reconsidered its general continuous bond formula which provides that the minimum continuous bond may be in an amount equal to the greater of \$50,000 or ten percent of the amount of the previous year's duties, taxes and fees. In response to the growing collection problem, CBP announced an enhanced customs bonding requirement for those continuous bonds that secure the promise to pay all duties finally determined to be due on certain merchandise subject to AD/CVD. *Amendment to Bond Directive 99-3510-004 for Certain Merchandise Subject to Antidumping Countervailing Duty Cases* (July 9, 2004) (July 2004 Amendment to the Bond Guidelines); see also *Clarification to the July 9, 2004 Amended Monetary Guidelines for Setting Bond Amounts* (August 10, 2005) (August 2005 Clarification). Application of the enhanced bonding requirement thus far has been limited in scope—having been applied to merchandise subject to the first antidumping orders involving aquaculture merchandise imposed after issuance of the July 2004 Amendment to the Bond Guidelines. Aquaculture is the industry sector with the highest share of total defaults in recent years.

CBP commenced its policy of reviewing the sufficiency of continuous bonds related to imports of AD/CVD merchandise with the release of its July 2004 Amendment to the Bond Guidelines. That document and the August 2005 Clarification were posted on CBP's Web site.

The bond guidelines are designed to ensure the amount of the continuous bond reflects a reasonable amount necessary to secure against non-payment of any additional revenue ultimately legally owed and not paid in cash deposits at entry. As noted earlier, U.S. laws and regulations afford importers the opportunity to post such bonds in order to facilitate prompt release of the goods at the border without creating an undue burden on importers or international trade and commerce.

CBP includes guidelines on determining sufficient bond amounts in its regulations at 19 CFR 113.13. The regulations direct CBP to review bonds periodically and to notify the principal in writing if CBP determines the bond amount is insufficient to adequately protect the revenue and ensure compliance with U.S. laws and regulations. The principal has 30 days from date of notification to remedy the deficiency. During those 30 days,

principals have frequently requested CBP to adjust its bond determination.

This Notice seeks public comment on the procedures for setting bond amounts on merchandise subject to increased default risk and, therefore, designated as Special Category Merchandise that may be subject to enhanced bonding requirements. An explanation of Special Category Merchandise appears later in this document under "Procedures for Setting Bond Amount." History of compliance with customs laws and regulations, ability to pay, existence of assets available as recourse for nonpayment, past payment history, similarity to previous circumstances giving rise to uncollected revenue problems, and other relevant factors will be considered in determining whether to reduce the bond amount otherwise required under the enhanced bond formula. Importers will be offered the opportunity to submit information on their financial condition related to the risk of non-collection for that importer and CBP will determine bond amounts based on that information, the importer's compliance history and other relevant information available to CBP. In the absence of a submission by the importer, CBP would calculate the bond amount using the formulas set forth below.

This document will be incorporated into the 1991 Monetary Guidelines and represents the comprehensive and exclusive statement of the policy and processes expressed in the July 2004 Amendment to the Bond Guidelines, the Bond Formulas posted on CBP's Web site, and the August 2005 Clarification. After consideration of any comments received, an incorporated policy will be published.

#### **Procedure for Setting Bond Amount**

In order to provide a consistent bond formula and to ensure the bond amounts protect the revenue and facilitate trade, CBP issued bond guidelines. Under the August 2005 Clarification, CBP indicated that it would designate Special Categories of Merchandise and designate Covered Cases within those Special Categories. CBP will continue to evaluate on an industry wide basis those types of merchandise where additional bond requirements may be needed. However, because importers are only affected when merchandise is subject to different bond requirements, CBP will only designate Special Categories, that is, merchandise for which an enhanced bond amount may be required.

#### *Designation of Special Categories*

- Special Categories may be designated when additional bond

requirements in the form of greater continuous entry bonds or other security may be required.

- At least 60 days before new bonding requirements take effect, CBP will provide public notice of designation of a Special Category in the Customs Bulletin and on the CBP's Web site (<http://www.cbp.gov>). The notice will solicit comment from affected parties and will provide a description of the reasons for the Special Category. Affected parties will have 30 days from the date the designation notice is published to submit comments.

- When conditions no longer exist that warrant the Special Category designation, the designation will be removed and the public will be notified through the Customs Bulletin and the CBP Web site.

#### *Criteria for Special Categories*

In considering which merchandise should be designated Special Category merchandise subject to enhanced bond requirements, the following criteria shall be considered:

1. Previous collection problems concerning the industry involved;
2. The similarity to previous imports or industries experiencing uncollected revenue problems;
3. Payment history;
4. Indications that liquidated duty rates may exceed existing security;
5. Any other factors that are deemed relevant.

All Special Categories will be monitored on a regular basis to determine whether a material change in factors has occurred so that the amount of the required bond for the Special Categories should be adjusted up or down or that the conditions that warranted the designations no longer exist.

#### *Continuous Bond Formulas for Special Category Merchandise*

CBP will review the sufficiency of bonds covering Special Category merchandise. Importers of Special Category merchandise may be required to obtain larger continuous bonds. In such circumstances, importers will be offered the opportunity to submit information on their financial condition related to the risk of non-collection for that importer, and CBP will determine bond amounts based on that information, the importer's compliance history, and other relevant information available to CBP. In the absence of a submission by the importer, CBP may calculate the bond amount using the formulas determined on the basis of the risk of non-collection posed by the Special Category merchandise. These

formulas may be adjusted in accordance with the revenue risks identified for future importations of designated Special Category merchandise.

For Special Category merchandise which is merchandise subject to AD/CVD, the formulas determined on the basis of the risk of non-collection will be based upon the importer's previous 12 months cumulative import value of merchandise subject to the AD/CVD Order and the rate that the DOC establishes in its Order or, if the bond amount is established after an administrative review, it will be calculated using the rate determined by DOC in the most recent administrative review. The amount of additional coverage will be calculated using the following formula:

- AD/CVD rate established in DOC Order (or the rate established in the most recently completed administrative review)  $\times$  previous 12 months' cumulative import value of subject merchandise.

For example, if an importer has imported \$1 million of the subject AD/CVD merchandise during the previous 12 months and the DOC rate is 40%, the importer's continuous bond amount will be increased by \$400,000.

For new importers with no prior history of imports who import Special Category merchandise subject to AD/CVD, the continuous bond will be calculated in accordance with the following formula:

- DOC deposit rate in effect on date of entry  $\times$  the importer's estimated annual value of imported goods subject to the case.

Periodic reviews will be conducted to monitor the sufficiency of the continuous bonds for Special Category merchandise. CBP may adjust the rates in the formulas set forth above to calculate different bond amounts as circumstances warrant. CBP is committed to protecting its ability to collect the amount of money determined to be due at liquidation and to requiring continuous bonds in an amount reasonably necessary to cover its additional financial risk.

Absent exceptional circumstances, the above formulas will determine the bond amounts where a submission has not been made by the principal. Nothing in this policy affects the CBP's authority to require additional security if CBP believes that acceptance of a transaction secured by a continuous bond would place the revenue in jeopardy or otherwise hamper the enforcement of customs laws or regulations.

### *Notice Timing and Adjustment Factors for Individual Importers*

In implementing the bond requirements for imports of Special Category merchandise, CBP shall:

(1) Provide the principal subject to the revised bond requirements with notice of the new bond requirements not less than 30 days before the revised requirements will take effect. Such notice will include a description of the rationale for the new requirements and offer the principal the opportunity to submit information on its financial condition related to the risk of non-collection of that principal, which CBP will use along with other information, such as the importer's compliance history, to determine bond amounts. The notice will inform the principal that in the absence of a submission by the principal, CBP may calculate the bond amount using the formulas determined on the basis of the risk of non-collection for the Special Category merchandise. The notice will provide examples of additional information that might be submitted in support of the former calculation, how the bond amount would be calculated if the formula were applied, and a description of the procedures for responding to the notice.

(2) Provide the principal 30 days from the date of the mailing of the notice to respond, including by providing evidence of factors that could support a bond amount other than that resulting from the formula. Such responses may be filed individually or by groups of principals who share common characteristics. Principals who import from the same foreign manufacturer/exporter share common characteristics. Depending upon available resources and workload, CBP shall endeavor to issue decisions to those who respond within 45 days of receipt of a complete, legible response and, in any event, shall issue decisions within a reasonable time. The new bond requirement will not take effect with respect to a principal until 14 days after the date of CBP's reply to the principal's response. The reply to the principal will include the rationale for the determination. In the absence of a submission by the principal, CBP may calculate the bond amount using the formulas determined on the risk of non-collection posed by the Special Category merchandise as provided in the notice. The bond requirement will take effect with respect to that principal 30 days after the date of the mailing of the notice.

(3) Consistent with 19 CFR 113.13(b), consider the following factors when determining a bond amount, other than the amount resulting from the formula,

for a principal who has responded in accordance with (2) above:

(a) The prior record of the principal regarding timely payment of duties, taxes and charges with respect to the transactions involving such payments;

(b) The prior record of the principal in complying with CBP demands for redelivery, the obligation to hold unexamined merchandise intact, and other requirements relating to enforcement and administration of CBP and other laws and regulations;

(c) The value and nature of the merchandise involved in the transaction(s) to be secured;

(d) The degree and type of supervision that CBP will exercise over the transaction(s);

(e) The prior record of the principal in honoring bond commitments, including the payment of liquidated damages and AD/CVD;

(f) Any additional information contained in any application for a bond, or contained in any request for adjustment of the bond amount, including information that provides proof of ability to pay such as independently audited financial statements, tax returns submitted by the principal, availability of assets, including securities in the United States and elsewhere, credit rating, and length of time in business; and

(g) Any other relevant information.

(4) If CBP determines that the principal has a record of compliance with customs laws and regulations and that the principal has demonstrated an ability to pay, CBP may decide not to require an increased bond amount even though the principal imports Special Category merchandise.

A request for reconsideration may be made by submitting a new bond application and CBP Form 301 at any time after six months from the date of the notice of new bond amount set forth in paragraph (1) above, if no response to CBP's notice was received under paragraph (2). If the principal filed a response under paragraph (2) requesting a bond amount other than that resulting from the formula, the principal may request further reconsideration at any time after six months from the date of the decision issued under paragraph (2). A request for reconsideration of the bond amount based on a material error by CBP that affects the bond amount may be made at any time.

At any time after CBP determines a bond amount for a principal below that provided by the formula, if the principal fails to remain compliant with customs laws and regulations, CBP will recalculate the principal's bond amount

in accordance with the formulas outlined in this notice.

### *Affected Parties*

This Notice affects only continuous bonds for imports of Special Category merchandise. This Notice does not affect laws and regulations regarding cash deposits or other security with respect to merchandise subject to AD/CVD proceedings. CBP notes those initial deposits and bonds sometimes are not sufficient to cover the final assessed duty liabilities. Defaults on such additional duty liability have increased.

Congress has provided CBP authority to require security in order to ensure the payment of all duties determined to be due to the United States, including any revenue collection gaps between estimated duty deposits and final assessed duties that the importer fails to satisfy. Please note that this Notice does not limit CBP's authority to require additional security under 19 CFR 113.13(d) and the requirements of the 1991 Monetary Guidelines remain in effect consistent with this Notice.

Dated: October 20, 2006.

**Deborah J. Spero**

*Acting Commissioner, Customs and Border Protection.*

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4900-FA-30]

### **Announcement of Funding Awards for the Housing Choice Voucher Family Self Sufficiency Program for Fiscal Year 2004**

**AGENCY:** Office of Public and Indian Housing, HUD.

**ACTION:** Announcement of funding awards.

**SUMMARY:** In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the Fiscal Year (FY) 2004 Notice of Funding Availability (NOFA) for the Family Self Sufficiency (FSS) Funding for FY2004. This announcement contains the consolidated names and addresses of those award recipients selected for funding based on the rating and ranking of all applications and the allocation of funding available for each state.