

(ii) A member bank of the Federal Reserve System;

(iii) Any other banking institution or trust company organized under the laws of any state or of the United States, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this section, or

(iv) A receiver, conservator, or other liquidating agent of any institution or firm included in paragraphs (a)(7)(i), (ii), or (iii) of this section.

(b) *Delegation.* A Fund's board of directors may delegate to the Fund's investment adviser or officers or to a U.S. Bank or to a Qualified Foreign Bank the responsibilities set forth in paragraphs (c)(1), (c)(2), or (c)(3) of this section, *provided that:*

(1) The board determines that it is reasonable to rely on the delegate to perform the delegated responsibilities;

(2) The board requires the delegate to provide written reports notifying the board of the placement of the Fund's assets with a particular custodian and of any material change in the Fund's arrangements, with the reports to be provided to the board at such times as the board deems reasonable and appropriate based on the circumstances of the Fund's foreign custody arrangements; and

(3) The delegate agrees to exercise reasonable care, prudence and diligence such as a person having responsibility for the safekeeping of Fund assets would exercise, or to adhere to a higher standard of care, in performing the delegated responsibilities.

(c) *Selecting an Eligible Foreign Custodian.* A Fund may place and maintain in the care of an Eligible Foreign Custodian any investments (including foreign currencies) for which the primary market is outside the United States, and such cash and cash equivalents as are reasonably necessary to effect the Fund's transactions in such investments, *provided that:*

(1) The Foreign Custody Manager determines that the Fund's assets will be subject to reasonable care, based on the standards applicable to custodians in the relevant market, if maintained with the custodian, after considering all factors relevant to the safekeeping of such assets, including, without limitation:

(i) The custodian's practices, procedures, and internal controls, including, but not limited to, the physical protections available for certificated securities (if applicable), the method of keeping custodial records, and the security and data protection practices;

(ii) Whether the custodian has the requisite financial strength to provide reasonable care for Fund assets;

(iii) The custodian's general reputation and standing and, in the case of a Securities Depository, the depository's operating history and number of participants; and

(iv) Whether the Fund will have jurisdiction over and be able to enforce judgments against the custodian, such as by virtue of the existence of any offices of the custodian in the United States or the custodian's consent to service of process in the United States.

(2) *Contract.* The Fund's foreign custody arrangements must be governed by a written contract (or, in the case of a Securities Depository, by such a contract, by the rules or established practices or procedures of the depository, or by any combination of the foregoing) that the Foreign Custody Manager has determined will provide reasonable care for Fund assets based on the standards specified in paragraph (c)(1) of this section.

(i) Such contract shall include provisions that provide:

(A) For indemnification or insurance arrangements (or any combination of the foregoing) such that the Fund will be adequately protected against the risk of loss of assets held in accordance with such contract;

(B) That the Fund's assets will not be subject to any right, charge, security interest, lien or claim of any kind in favor of the custodian or its creditors except a claim of payment for their safe custody or administration or, in the case of cash deposits, liens or rights in favor of creditors of the custodian arising under bankruptcy, insolvency, or similar laws;

(C) That beneficial ownership for the Fund's assets will be freely transferable without the payment of money or value other than for safe custody or administration;

(D) That adequate records will be maintained identifying the assets as belonging to the Fund or as being held by a third party for the benefit of the Fund;

(E) That the Fund's independent public accountants will be given access to those records or confirmation of the contents of those records; and

(F) That the Fund will receive periodic reports with respect to the

safekeeping of the Fund's assets, including, but not limited to, notification of any transfer to or from the Fund's account or a third party account containing assets held for the benefit of the Fund.

(ii) Such contract may contain, in lieu of any or all of the provisions specified in paragraph (c)(2)(i) of this section, such other provisions that the Foreign Custody Manager determines will provide, in their entirety, the same or a greater level of care and protection for Fund assets as the specified provisions, in their entirety.

(3)(i) *Monitoring the Foreign Custody Arrangements.* The Foreign Custody Manager must have established a system to monitor the appropriateness of maintaining the Fund's assets with a particular custodian under paragraph (c)(1) of this section, and the contract governing the Fund's arrangements under paragraph (c)(2) of this section.

(ii) If an arrangement no longer meets the requirements of this section, the Fund must withdraw its assets from the custodian as soon as reasonably practicable.

(d) *Registered Canadian Funds.* Any Registered Canadian Fund may place and maintain outside the United States any investments (including foreign currencies) for which the primary market is outside the United States, and such cash and cash equivalents as are reasonably necessary to effect the Fund's transactions in such investments, in accordance with the requirements of this section, *provided that:*

(1) The assets are placed in the care of an overseas branch of a U.S. Bank that has aggregate capital, surplus, and undivided profits of a specified amount, which must not be less than \$500,000; and

(2) The Foreign Custody Manager is the Fund's board of directors, its investment adviser or officers, or a U.S. Bank.

May 12, 1997.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-12881 Filed 5-15-97; 8:45 am]

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## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### 29 CFR Part 1601

#### Increased Fine for Notice Posting Violations

AGENCY: Equal Employment Opportunity Commission.

**ACTION:** Final rule.

**SUMMARY:** In accordance with Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, this final rule adjusts for inflation the civil money penalty for violation of notice posting requirements.

**EFFECTIVE DATE:** This rule is effective on June 16, 1997.

**FOR FURTHER INFORMATION CONTACT:** Willie King, Director, Financial Management Division (202) 663-4224.

**SUPPLEMENTARY INFORMATION:**

**I. The Debt Collection Improvement Act of 1996**

In an effort to maintain the remedial impact of civil money penalties (CMPs) and promote compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (Pub. L. 101-410) was amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) to require Federal agencies to regularly adjust certain CMPs for inflation. As amended, the law requires each agency to make an initial inflationary adjustment for all applicable CMPs, and to make further adjustments at least once every four years thereafter for these penalty amounts.

The Debt Collection Improvement Act of 1996 further stipulates that any resulting increases in a CMP due to the calculated inflation adjustments (i) Should apply only to the violations that occur after October 23, 1996 (the Act's effective date) and (ii) should not exceed 10 percent of the penalty indicated.

*Method of Calculation*

Under the Act, the inflation adjustment is determined by increasing the maximum CMP amount per violation by the cost-of-living adjustment. The "cost-of-living" adjustment is defined as the percentage for each CMP by which the Consumer Price Index (CPI) for June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of such CMP was last set or adjusted pursuant to the law. Any calculated increase under this adjustment is subject to a specific rounding formula set forth in the Act and a ten percent limitation.

**II. EEOC Civil Money Penalties Effected by This Adjustment**

Under 42 U.S.C. § 2000e-10(a) and 29 CFR § 1601.30(a), every employer, employment agency, labor organization,

and joint labor-management committee controlling an apprenticeship or other training program that has an obligation under Title VII or the ADA must post notices describing the applicable provisions of Title VII and the ADA. Such notices must be posted in prominent and accessible places where notices to employees, applicants and members are customarily maintained.

Currently, 42 U.S.C. 2000e-10(b) and 29 CFR 1601.30(b) make failure to comply with the notice posting requirements punishable by a fine of not more than \$100 for each separate offense. Based on the inflation calculation described in Section I of this notice, we are adjusting the maximum penalty per violation to \$110.

**III. Waiver of Proposed Rulemaking**

In developing this final rule, we are waiving the usual notice of proposed rulemaking and public comment procedures set forth in the Administrative Procedure Act (APA) (5 U.S.C. 553). The APA provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, this rulemaking is required by the Debt Collection Improvement Act of 1996, and the Commission has no discretion in determining the amount of the published adjustment. Accordingly, we are issuing these revised regulations as a final rule.

**IV. Regulatory Impact Statement**

*Executive Order 12866*

This final rule is exempt from Office of Management and Budget (OMB) review under Executive Order 12866 because it is limited to the adoption of statutory language, without interpretation. As indicated above, the provisions contained in this final rulemaking set forth an inflation adjustment required by the Debt Collection Improvement Act of 1996. Moreover, it has been determined that this final rule is not significant. The great majority of employers and entities covered by these regulations comply with the posting requirement, and a result, we believe that any aggregate economic impact of these revised regulations will be minimal, affecting only those limited few who fail to post

required notices in violation of the regulation and statute.

*Regulatory Flexibility Act*

A regulatory flexibility analysis is only required by the Regulatory Flexibility Act (5 U.S.C. 601-612), when notice and comment is required by the Administrative Procedure Act or some other statute. As stated above, notice and comment is not required for this rule. For that reason, the requirements of the Regulatory Flexibility Act do not apply.

*Paperwork Reduction Act*

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

**List of Subjects in 29 CFR Part 1601**

Administrative practice and procedure.

For the Commission.

**Gilbert F. Casellas,**  
*Chairman.*

For the reasons set forth in the preamble, 29 CFR part 1601 is revised as follows:

**PART 1601—PROCEDURAL REGULATIONS**

1. The authority citation for part 1601 continues to read as follows:

**Authority:** 42 U.S.C. 2000e to 2000e-17; 42 U.S.C. 1111 to 12117.

2. Section 1601.30 is amended by revising paragraph (b) to read as follows:

**§ 1601.30 Notices to be posted.**

\* \* \* \* \*

(b) Section 711(b) of Title VII makes failure to comply with this section punishable by a fine of not more than \$110 for each separate offense.

[FR Doc. 97-12769 Filed 5-15-97; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Departmental Offices**

**31 CFR Part 1**

**Privacy Act of 1974; Implementation**

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Final Rule.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury issues a final rule to add the exemption claimed for the Pacific Basin Reporting Network—Treasury/Customs .171.

**EFFECTIVE DATE:** May 16, 1997.