

incurred. This mechanism would not satisfy the chapter 154 requirement regarding payment of reasonable litigation expenses.

(d) The state provides competency standards for the appointment of counsel representing indigent prisoners in capital cases in state postconviction proceedings.

Example 1. A state requires that postconviction counsel must have been a member of the state bar for at least five years and have at least three years of felony litigation experience. This standard is similar to that set by federal law for appointed counsel for indigent defendants in postconviction proceedings in federal capital cases, and in federal habeas corpus review of state capital cases, under 18 U.S.C. 3599(a)(2), (c). Because this state has adopted standards of competency, it meets this requirement.

Example 2. A state appoints counsel for indigent capital defendants in postconviction proceedings from a public defender's office. The appointed defender must be an attorney admitted to practice law in the state and must possess demonstrated experience in the litigation of capital cases. This state would meet the requirement of having established standards of competency for postconviction capital counsel.

Example 3. A state law requires some combination of training and litigation experience. For example, state law might provide that in order to represent an indigent defendant in state postconviction proceedings in a capital case an attorney must—(1) Have attended at least twelve hours of training or educational programs on postconviction criminal litigation and the defense of capital cases; (2) have substantial felony trial experience; and (3) have participated as counsel or co-counsel in at least five appeals or postconviction review proceedings relating to violent felony convictions. This State would meet the requirement of having established standards of competency for postconviction capital counsel.

Example 4. State law allows any attorney licensed by the state bar to practice law to represent indigent capital defendants in postconviction proceedings. No effort is made to set further standards or guidelines for such representation. Such a mechanism would not meet the requirement of having established standards of competency for postconviction capital counsel.

§ 26.23 Certification process.

(a) An appropriate state official may request that the Attorney General determine whether the state meets the requirements for certification under § 26.22.

(b) The request shall include:

(1) An attestation by the submitting state official that he or she is the "appropriate state official" as defined in § 26.21; and

(2) An affirmation by the state that it has provided notice of its request for certification to the chief or presiding justice or judge of the state's highest

court with jurisdiction over criminal matters.

(c) Upon receipt of a state's request for certification, the Attorney General will publish a notice in the **Federal Register**—

(1) Indicating that the state has requested certification;

(2) Listing any statutes, regulations, rules, policies, and other authorities identified by the state in support of the request; and

(3) Soliciting public comment on the request.

(d) The state's request will be reviewed by the Attorney General, who may, at any time, request supplementary information from the state or advise the state of any deficiencies that would need to be remedied in order to obtain certification. The review will include consideration of timely public comments received in response to the **Federal Register** notice under paragraph (c) of this section. The certification will be published in the **Federal Register** if certification is granted. The certification will include a determination of the date the capital counsel mechanism qualifying the state for certification was established.

(e) Upon certification by the Attorney General that a state meets the requirements of § 26.22, such certification is final and will not be reopened. Subsequent changes in a state's mechanism for providing legal representation to indigent prisoners in state postconviction proceedings in capital cases do not affect the validity of a prior certification or the applicability of chapter 154 in any case in which a mechanism certified by the Attorney General existed during state postconviction proceedings in the case. However, a state may request a new certification by the Attorney General to resolve uncertainties concerning or meet challenges to the applicability of chapter 154 in relation to federal habeas corpus review of capital cases from the state based on changes or alleged changes in the state's capital counsel mechanism.

Dated: December 5, 2008.

Michael B. Mukasey,

Attorney General.

[FR Doc. E8-29328 Filed 12-10-08; 8:45 am]

BILLING CODE 4410-18-P

POSTAL SERVICE

39 CFR Part 912

Procedures To Adjudicate Claims for Personal Injury or Property Damage Arising Out of the Operation of the U.S. Postal Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends the Postal Service's regulations concerning tort claims to clarify the procedure for amending claims, and to update mailing addresses.

DATES: *Effective Date:* December 11, 2008.

FOR FURTHER INFORMATION CONTACT:

Ruth A. Przybeck, Chief Counsel, National Tort Center, P.O. Box 66640, St. Louis, MO 63141-0640; telephone (314) 872-5120.

SUPPLEMENTARY INFORMATION:

Amendment of part 912 is necessary to clarify the procedure in § 912.5 for amending claims, and to update mailing addresses. This rule is a change in agency rules of procedure that does not substantially affect any rights or obligations of private parties. Therefore, it is appropriate for its adoption by the Postal Service to become effective immediately.

List of Subjects in 39 CFR Part 912

Administrative practice and procedure; Claims.

■ For the reasons set forth above, the Postal Service amends 39 CFR part 912 as follows:

PART 912—[AMENDED]

■ 1. The authority citation for part 912 continues to read as follows:

Authority: 28 U.S.C. 2671-2680; 28 CFR 14.1 through 14.11; 39 U.S.C. 409.

§ 912.4 [Amended]

■ 2. In § 912.4, remove the address "P.O. Box 66640, St. Louis, MO 63166-6640" and add "P.O. Box 66640, St. Louis, MO 63141-0640" in its place.

■ 3. In § 912.5, add paragraph (c) to read as follows:

§ 912.5 Administrative claim; when presented.

* * * * *

(c) Amendments shall be submitted in writing and signed by the claimant or his duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the Postal Service shall have six months in which to make final disposition of the claim as amended, and the claimant's

option under 28 U.S.C. 2675(a) shall not accrue until six months after the filing of an amendment.

§ 912.9 [Amended]

■ 4. Amend § 912.9 as follows:

- a. In paragraph (b), remove the address “P.O. Box 66640, St. Louis, MO 63166–6640” and add “P.O. Box 66640, St. Louis, MO 63141–0640” in its place.
- b. In paragraph (c), remove the address “P.O. Box 66640, St. Louis, MO 63166–6640” and add “P.O. Box 66640, St. Louis, MO 63141–0640” in its place.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E8–29299 Filed 12–10–08; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 19 and 27

[FRL–8750–4]

RIN 2020–AA46

Civil Monetary Penalty Inflation Adjustment Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this final Civil Monetary Penalty Inflation Adjustment Rule, as mandated by the Debt Collection Improvement Act of 1996 (DCIA), to adjust for inflation the statutory civil monetary penalties that may be assessed for violations of EPA-administered statutes and their implementing regulations. The Agency is required to review the civil monetary penalties under the statutes it administers at least once every four years and to adjust such penalties as necessary for inflation according to a formula specified in the DCIA. Table 1 of the regulations, which appears near the end of this rule, contains a list of all civil monetary penalty authorities under EPA-administered statutes and the applicable statutory amounts, as adjusted for inflation.

DATES: *Effective Date:* January 12, 2009.

FOR FURTHER INFORMATION CONTACT: David Abdalla, Special Litigation and Projects Division (2248A), Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2413.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note, each federal agency is required to issue regulations adjusting for inflation the statutory civil monetary penalties¹ (“civil penalties” or “penalties”) that can be imposed under the laws administered by that agency. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes. The DCIA requires adjustments to be made at least once every four years following the initial adjustment. EPA’s initial adjustment to each statutory civil penalty amount was published in the *Federal Register* on December 31, 1996 (61 FR 69360), and became effective on January 30, 1997. EPA’s second and most recent adjustment to each civil penalty amount was published in the *Federal Register* on February 13, 2004 (69 FR 7121) and became effective on March 15, 2004 (“the 2004 Rule”).

This rule, specifically Table 1 in 40 CFR 19.4, adjusts in accordance with the DCIA the maximum and, in some cases, the minimum amount of each statutory civil penalty that may be imposed for violations of EPA-administered statutes and their implementing regulations. Table 1 identifies the applicable EPA-administered statutes and sets out the inflation-adjusted civil penalty amounts that may be imposed pursuant to each statutory provision. This rule also clarifies that the adjusted penalty amounts in 40 CFR 19.4 are applicable to violations that occur after the effective date of this rule.

The formula provided by the DCIA for determining the cost-of-living adjustment to statutory civil penalties consists of a four-step process. The first step entails determining the inflation adjustment factor. This is done by calculating the percentage increase by which the Consumer Price Index² for all urban consumers (CPI-U) for the month

of June of the calendar year preceding the adjustment exceeds the CPI-U for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted.³ Accordingly, the inflation adjustment factor for the present adjustment equals the CPI-U for June 2007 (*i.e.*, June of the year preceding this year), divided by the CPI-U for June 2004. Given that the last adjustment was made and published on February 13, 2004, the inflation adjustment for most civil penalties set forth in this rule was calculated by comparing the CPI-U for June 2004 (189.7) with the CPI-U for June 2007 (208.352), resulting in an inflation adjustment factor of 9.83 percent. Certain civil penalties that had not been adjusted since the initial 1996 adjustment were adjusted by an inflation adjustment of 32.96 percent calculated comparing the CPI-U for June 1996 (156.7) with the CPI-U for June 2007 (208.352).

Once the inflation adjustment factor is determined, the second step is to multiply the inflation adjustment factor by the current civil penalty amount to calculate the raw inflation increase. The third step is to round this raw inflation increase according to the section 5(a) of the DCIA. The DCIA’s rounding rules require that any increase be rounded to the nearest multiple of: \$10 in the case of penalties less than or equal to \$100; \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and \$25,000 in the case of penalties greater than \$200,000. (*See* section 5(a) of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note.) Once the inflation increase has been rounded pursuant to the DCIA, the fourth step is to add the rounded inflation increase to the current civil penalty amount to obtain the new, inflation-adjusted civil penalty amount.

For most civil penalties, the amount of the last adjusted civil penalty reflected in Table 1 of the 2004 Rule

¹ Section 3 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note, defines “civil monetary penalty” to mean “any penalty, fine or other sanction that—(A)(i) is for a specific monetary amount as provided by federal law; or (ii) has a maximum amount provided for by federal law * * *.”

² Section 3 of the DCIA defines “Consumer Price Index” to mean “the Consumer Price Index for all-urban consumers published by the Department of Labor.” Interested parties may find the relevant Consumer Price Index, published by the Department of Labor’s Bureau of Labor Statistics, on the Internet. To access this information, go to the CPI Home Page at: [ftp://ftp.bls.gov/pub/special.requests/cpi/cpi.txt](http://ftp.bls.gov/pub/special.requests/cpi/cpi.txt).

³ Section 5(b) of the DCIA requires that statutory civil penalties be adjusted to reflect “the percentage (if any) for each civil monetary penalty by which—(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.”