

*C. 2019 Addendum to the Federal Execution Protocol*

In July 2019, the then-Attorney General directed the Bureau of Prisons to adopt an Addendum to the Federal Execution Protocol that provided for the use of a single drug, pentobarbital. See Press Release, Department of Justice, Federal Government to Resume Capital Punishment After Nearly Two Decade Lapse (July 25, 2019), <https://www.justice.gov/opa/pr/federal-government-resume-capital-punishment-after-nearly-two-decade-lapse>; Memorandum for the Attorney General, *The Federal Bureau of Prisons' Federal Execution Protocol Addendum* (July 24, 2019); Memorandum for the Attorney General, *Summary of the Federal Bureau of Prisons' Federal Execution Protocol Addendum* (July 24, 2019); see also Addendum to BOP Execution Protocol: Federal Death Sentence Implementation Procedures (Effective July 25, 2019), available at [https://www.supremecourt.gov/DocketPDF/19/19-1348/145068/20200605210117775\\_2020%2006%2005%20Appendix.pdf](https://www.supremecourt.gov/DocketPDF/19/19-1348/145068/20200605210117775_2020%2006%2005%20Appendix.pdf) (at 210a).

The Bureau of Prisons indicated in a memorandum to the then-Attorney General that it had a “viable domestic source” to obtain pentobarbital and that the manufacturer is properly registered as a bulk manufacturer of pentobarbital. See Memorandum for the Attorney General, *Summary of the Federal Bureau of Prisons' Federal Execution Protocol Addendum* (July 24, 2019). The Bureau of Prisons also “secured a compounding pharmacy to store the [active pharmaceutical ingredient] and to convert the [active pharmaceutical ingredient] into injectable form as needed.” *Id.*

The 2019 Addendum, like at least one previous addendum, asserts that the “identities of personnel considered for and/or selected to perform death sentence related functions . . . shall be protected from disclosure to the fullest extent permitted by law.” Addendum to BOP Execution Protocol: Federal Death Sentence Implementation Procedures (Effective July 25, 2019). The 2019 Addendum also specifies other details such as defining the “qualified personnel” who can serve as the executioner(s); the number of rehearsals that non-medically licensed or certified qualified personnel must participate in prior to participating in an actual execution; dosage; identification of appropriate injection sites; the number of backup syringes; and how and when the condemned individual should be

escorted into the room, restrained, and monitored. *Id.*

From July 2020 to January 2021, the federal government executed thirteen death row inmates pursuant to the 2019 Addendum.

*D. 2021 Moratorium on Federal Executions Pending Review of Policies and Procedures*

As noted above, the Attorney General issued a moratorium on federal execution during the pendency of three reviews. The first, and the subject of this Request for Information, is a review to “assess the risk of pain and suffering associated with the use of pentobarbital.” The review may also “address any other relevant portion” of the 2019 Addendum. See Memorandum from the Attorney General, *Moratorium on Federal Executions Pending Review of Policies and Procedures* (July 1, 2021).

As noted in the Attorney General’s memorandum, although some medical experts have concluded that the use of pentobarbital may risk inflicting painful pulmonary edema, the Supreme Court found that this risk was insufficient “to justify last-minute intervention by a Federal Court” shortly before an execution was scheduled to occur. *Barr v. Lee*, 140 S. Ct. 2590, 2591 (2020) (per curiam). However, “[a] risk need not meet the Court’s high threshold for such relief, or violate the Eighth Amendment, to raise important questions about our responsibility to treat individuals humanely and avoid unnecessary pain and suffering.” Memorandum from the Attorney General, *Moratorium on Federal Executions Pending Review of Policies and Procedures* (July 1, 2021). To ensure that these considerations are taken into account, the Attorney General ordered this review.

### III. Solicitation of Comments

The Department of Justice requests information from individuals or organizations regarding the risk of pain and suffering associated with the use of pentobarbital and any other relevant portion of the 2019 Addendum. To contribute effectively to this review, all commenters are encouraged to provide comments that are responsive specifically to the topics of this review.

Dated: September 21, 2022.

**Hampton Y. Dellinger,**

*Assistant Attorney General, Office of Legal Policy.*

[FR Doc. 2022–20886 Filed 9–26–22; 8:45 am]

**BILLING CODE 4410–BB–P**

## DEPARTMENT OF JUSTICE

[Docket No. OLP 171]

### Request for Information Regarding the Manner of Execution Regulations

**AGENCY:** Department of Justice.

**ACTION:** Request for information.

**SUMMARY:** The Department of Justice is requesting information in the form of written comments that may include information, research, and data regarding 28 CFR part 26, which governs the implementation of federal executions. On November 27, 2020, the Department amended these regulations to expand the permissible methods of execution beyond lethal injection to “any other manner prescribed by the law of the State in which the sentence was imposed.” The amendments also authorized the use of state facilities and personnel in federal executions and made a number of procedural changes, including granting the Attorney General authority to make exceptions to the regulations and to delegate duties within the Department.

**DATES:** Electronic comments must be submitted, and written comments must be postmarked, on or before November 28, 2022.

**ADDRESSES:** You may submit comments, identified by Docket No. 171, through the Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.

- *Postal Mail or Commercial Delivery:* If you do not have internet access or electronic submission is not possible, you may mail written comments to Docket Clerk, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Ave. NW, Washington, DC 20530. To ensure proper handling, please reference the agency name and Docket No. OLP 171 on your correspondence.

- *Please note that comments submitted by email or fax may not be reviewed by DOJ.*

*Privacy Note:* The Justice Department’s policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:**

Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, (202) 514–8059 (this is not a toll-free number). If you use a

telecommunications device for the deaf (TDD) or a text telephone (TTY), please call the toll free Federal Information Relay Service (FIRS) at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation

Interested persons are invited to comment on this notice by submitting written data, views, or arguments.

##### II. Background

On July 1, 2021, Attorney General Merrick Garland issued a moratorium on federal executions pending a review of certain policies and procedures. See Memorandum from the Attorney General, *Moratorium on Federal Executions Pending Review of Policies and Procedures* (July 1, 2021), <https://www.justice.gov/opa/page/file/1408636/download>. In issuing the moratorium, the Attorney General noted that “[t]he Department of Justice must ensure that everyone in the federal criminal justice system is not only afforded the rights guaranteed by the Constitution and laws of the United States, but is also treated fairly and humanely. That obligation has special force in capital cases. Serious concerns have been raised about the continued use of the death penalty across the country, including arbitrariness in its application, disparate impact on people of color, and the troubling number of exonerations in capital and other serious cases.” *Id.*

The Attorney General noted that, in the last two years preceding the issuance of the moratorium, the Department had made a series of changes to its policies and procedures governing capital sentences, which were accompanied by the first federal executions in nearly two decades. *Id.* “To ensure that the Department’s policies and procedures are consistent with the principles articulated in [the] memorandum,” the Attorney General asked the Deputy Attorney General to supervise three reviews on this general subject.

The second of these reviews directs the Office of Legal Policy to consider whether and to what extent amendments made in November 2020 to federal regulations governing the manner of federal executions “should be modified or rescinded” and “to consider any other changes that should be made to the regulations.” *Id.* That review is the subject of this Request for Information.

##### A. Statutory and Regulatory Framework for Federal Executions

In 1993 (pursuant to 5 U.S.C. 301; 18 U.S.C. 4001(b), 4002; and 28 U.S.C. 509,

510), the Department of Justice issued regulations providing for lethal injection as the method of execution for federal capital crimes “except to the extent a court orders otherwise,” 28 CFR 26.3, and governing various tasks related to scheduling and carrying out the federal death sentences, 58 FR 4898 (Jan. 19, 1993); 28 CFR part 26 (effective through Dec. 27, 2020). Among other things, the regulations provided that, except as otherwise ordered by a court, a federal sentence of death shall be executed “[o]n a date and at a time designated by the Director of the Federal Bureau of Prisons,” “[a]t a federal penal or correctional institution designated by the Director of the Federal Bureau of Prisons,” and “[b]y a United States Marshal designated by the Director of the United States Marshals Service.” 28 CFR 26.3(a)(1)–(3) (effective through Dec. 27, 2020).

A year later, Congress enacted the Federal Death Penalty Act (“FDPA”), Public Law 103–322, 60002, 108 Stat. 1796, 1959 (1994), which provides that a federal death sentence shall be carried out “in the manner prescribed by the law of the State in which the sentence is imposed.” 18 U.S.C. 3596(a). If the law of the state in which the sentence is imposed “does not provide for implementation of a sentence of death,” then the FDPA instructs that “the court shall designate another state, the law of which does provide for the implementation of a sentence of death, and the sentence shall be implemented . . . in the manner prescribed by such law.” *Id.*

##### B. November 2020 Amendments to the Manner of Execution Regulations

On November 27, 2020, the Department of Justice amended the regulations governing the manner of federal executions “to provide the Federal Government with greater flexibility to conduct executions in any manner authorized by” the FDPA. 85 FR 75846, 75847 (Nov. 27, 2020). The amendments, which became effective on December 28, 2020, made a number of changes, detailed below.

Before the amendments were promulgated, the Department published a notice of proposed rulemaking (“NPRM”) on August 5, 2020. See *Manner of Federal Executions*, 85 FR 47324 (Aug. 5, 2020). By the end of the 30-day comment period on September 4, 2020, the Department had received 23 comments that were responsive to the proposed rule. These comments were addressed in the final rule, published in the **Federal Register** on November 27, 2020. 85 FR 75846–75853.

##### 1. Manner of Execution Amendments

The Department of Justice amended 28 CFR 26.3(a)(4) to provide that federal executions are to be carried out by lethal injection “or by any other manner prescribed by the law of the State in which the sentence was imposed or which has been designated by a court in accordance with 18 U.S.C. 3596(a).” In making this change, the Department noted that it “would ensure that the Department would be authorized to use the widest range of manners of execution permitted by law.” 85 FR at 75848.

The Department also amended section 26.4(a) so that the notice of the date of execution provided to a prisoner also stated the method of execution to be used. The amendments also added a new sentence at the end of the paragraph to read as follows: “If applicable law provides that the prisoner may choose among multiple manners of execution, the Director or his designee shall notify the prisoner of that option.” 28 CFR 26.4(a).

##### 2. Use of State Facilities Amendments

The November 2020 amendments authorized the use of state facilities and personnel in federal executions by striking “federal” before “penal or correctional institution” in section 26.3(a)(2) and by replacing “[b]y” with “[u]nder the supervision of” a United States Marshal in section 26.3(a)(3).

##### 3. Section 26.1

The amendments added a new provision, section 26.1(b), that authorized the Attorney General to vary from the regulations to the extent necessary to comply with applicable law. The provision reads: “Where applicable law conflicts with any provision of this part, the Attorney General may vary from that provision to the extent necessary to comply with the applicable law.” 28 CFR 26.1(b).

The November 2020 amendments also added a new provision, section 26.1(c), that stated that any task or duty assigned to any officer or employee of the Department of Justice under Part 26 may be delegated by the Attorney General to any other officer or employee of the Department of Justice.

##### 4. Section 26.2

The amendments removed section 26.2, which had required prosecutors to submit a proposed Judgment and Order to the court in cases in which the defendant was sentenced to death. The content of the Judgment and Order had included four basic points: (1) The sentence was to be executed by a United States Marshal, (2) by injection of a

lethal substance, (3) on a date and at a place designated by BOP, and (4) the prisoner under sentence of death was to be committed to the custody of the Attorney General or his designee for detention pending execution of the sentence.

#### 5. Section 26.3

In section 26.3(a)(3), the November 2020 amendments clarified that “qualified” personnel must carry out an execution, regardless of manner.

The amendments to section 26.3(a)(3) also provided that the sentence of death be executed under the supervision of a United States Marshal designated by the Director of the United States Marshals Service, assisted by additional qualified personnel who are selected by the Director of the United States Marshals Service and the Director of the Federal Bureau of Prisons, or their designees, and acting at the direction of the Marshal.

#### 6. Section 26.4

Section 26.4(a) provides that a prisoner will receive notice of the date designated for execution “at least 20 days in advance, except when the date follows a postponement of fewer than 20 days of a previously scheduled and noticed date of execution, in which case” the prisoner shall be notified “as soon as possible.” The November 2020 amendments placed responsibility for such notification with the “Director of the Federal Bureau of Prisons or his designee” instead of with the “Warden.”

Section 26.4(b) governs prisoner access to other persons in the week before the designated execution date, limiting such access to spiritual advisers, defense attorneys, family members, institution officials, and—upon the approval of the BOP Director or his designee—“such other proper persons as the prisoner may request.” The amendments clarified that the BOP Director or his designee may approve prisoner requests for types of visitors not listed in the regulation, eliminating a reference to the “Warden.”

Section 26.4(c) governs execution attendance, requiring certain official personnel to attend and imposing limits on the numbers and types of other persons whom the prisoner and officials may designate to attend. The amendments eliminated references to the “Warden,” thus eliminating the requirement that the Warden attend executions, while maintaining the requirement that the Marshal attend. The only other proposed change was to vest authority for selecting necessary personnel in the Marshal and the BOP

Director or his designee, instead of in the Marshal and the Warden.

#### 7. Section 26.5

The amendments to section 26.5 extended to non-Department of Justice employees (including contractors) existing protections that applied to Department of Justice employees, allowing them not to be in attendance at or to participate in any execution if such attendance or participation is contrary to the moral or religious convictions of the Department of Justice employee.

#### *C. 2021 Moratorium on Federal Executions Pending Review of Policies and Procedures*

As noted above, Attorney General Garland issued a moratorium on federal execution during the pendency of three reviews. The second, and the subject of this Request for Information, is a review “to consider whether and to what extent [the November 2020] amendments should be modified or rescinded” and “to consider any other changes that should be made to the regulations.” See Memorandum from the Attorney General, *Moratorium on Federal Executions Pending Review of Policies and Procedures* (July 1, 2021), <https://www.justice.gov/opa/page/file/1408636/download>.

### III. Solicitation of Comments

The Department of Justice requests information from individuals or organizations regarding whether the November 2020 amendments should be modified or rescinded and whether any other changes should be made to the regulations in 28 CFR part 26. To contribute effectively to this review, all commenters are encouraged to provide comments that are responsive specifically to the topics of this review.

The Department is particularly interested in responses to the questions below, although the Department would welcome any comment within the scope of this inquiry.

#### *Manner of Execution*

1. If a State authorizes two or more manners of execution (e.g., lethal injection and firing squad), what limitations or restrictions, if any, should be placed on the federal government’s ability or authority to choose which of those manners of execution it would employ for federal executions, both in contexts where the State provides the inmate a choice among methods as well as in contexts where the State does not have a choice provision but authorizes two or more permissible manners?

2. If the manner of execution prescribed by the law of the State in which the sentence is imposed was unconstitutional for violation of the 8th Amendment’s “cruel and unusual punishment” clause, how should the federal government implement the death sentence?

3. What obligation, if any, would the federal government have to independently analyze and assess the constitutional validity of state-law manners of execution before employing one?

4. If an inmate’s medical conditions made it likely that use of a State’s manner of execution would subject the inmate to unconstitutional pain and suffering, should the federal government be permitted to use an alternative form of execution? Who would determine and how would they determine that the inmate’s medical conditions made it likely that use of a State’s manner of execution would subject the inmate to unconstitutional pain and suffering?

5. Currently, the federal government only has the equipment and personnel to conduct executions by lethal injection. What logistical, practical, or legal steps would the federal government need to take to implement a State method of execution other than lethal injection?

#### *Use of State Facilities*

6. Are there logistical or practical concerns with allowing the federal government to make arrangements or agreements with the relevant State to use State equipment, facilities, and personnel for federal executions? Please explain.

#### *Notice*

7. When regulations, guidance, or policy regarding implementation of the death sentence is changed, what process should the federal government follow to ensure appropriate notice?

8. Should inmates and/or inmate’s counsel be notified of any potential deviations from the regulations? If so, how and by whom?

9. What limitations or modifications should be made, if any, to the Attorney General’s authority in 28 CFR 26.1(b) to vary from the regulations “to the extent necessary to comply with the applicable law”?

10. Should the notice requirement in 28 CFR 26.4 include notice to counsel? If so, how and by whom?

11. Are the time periods for notice provided in the regulations sufficient, for example, to permit the filing of a clemency petition or to request a stay of execution? If not, how much time should be allotted for notice and why?

*Delegation of Duties*

12. When duties are reassigned between Department of Justice components, what types of processes or protocols should be implemented to ensure transparency, effective implementation of the law, and consistency?

*Judgment and Order Filings*

13. What was the practical function that a Judgment and Order filing had in litigation?

*Definitions*

14. Are there any undefined terms in the regulations or statute that would benefit from a definition? If yes, please explain why the term should be defined and what the definition should be. In particular, please consider whether the following terms should be defined and, if so, what the definitions should be:

- “When a stay is lifted”
- “Promptly”
- “Qualified”

*Visitors and Witnesses*

15. What criteria should be applied regarding access to visitors in the week before the designated execution date?

16. What criteria should be applied to the selection of witnesses who are present during federal executions?

17. To what extent should the federal government limit the number of—or otherwise participate in the selection of—spiritual advisers, attorneys, friends, or relatives who may access a prisoner prior to a designated date of execution?

*Generally*

18. Are there particular provisions of the November 2020 amendments or the prior regulatory scheme that should be retained, modified, or rescinded and, if so, why?

19. Should any other changes be made to 28 CFR Ch. I, Pt. 26, Subpart A?

Dated: September 21, 2022.

**Hampton Y. Dellinger,**

*Assistant Attorney General, Office of Legal Policy.*

[FR Doc. 2022–20889 Filed 9–26–22; 8:45 am]

**BILLING CODE 4410–BB–P**

**DEPARTMENT OF JUSTICE****Parole Commission****Sunshine Act Meeting**

**DATE AND TIME:** Tuesday October 4, 2022, at 1 p.m.

**PLACE:** U.S. Parole Commission, 90 K Street NE, 3rd Floor, Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of April 2022 Quarterly Meeting minutes.

2. Verbal Pandemic Updates since October Quarterly Meeting from the Acting Chairman, Commissioner, Acting Chief of Staff/Case Operations Administrator, Case Services Administrator, Executive Officer, and General Counsel.

3. Vote on final rule to modify 28 CFR 2.86, Release on Parole, Recission for Misconduct.

5. Vote on final rule to modify 28 CFR 2.34, Recission of Parole.

6. Wrap-up on jurisdiction over military offenders.

7. Status of Transfer Treaty cases.

8. Update on status of treatment programs (RSAT and Reentry and Sanctions Center Treatment Program).

**CONTACT PERSON FOR MORE INFORMATION:** Jacquelyn Graham, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE, 3rd Floor, Washington, DC 20530, (202) 346–7010.

Dated: September 23, 2022.

**Patricia K. Cushwa,**

*Chairman (Acting), U.S. Parole Commission.*

[FR Doc. 2022–20986 Filed 9–23–22; 4:15 pm]

**BILLING CODE 4410–31–P**

**DEPARTMENT OF LABOR****Office of Federal Contract Compliance Programs****Notice of Request Under the Freedom of Information Act for Federal Contractors' Type 2 Consolidated EEO–1 Report Data; Correction**

**AGENCY:** Office of Federal Contract Compliance Programs, Labor.

**ACTION:** Notice; correction and extension of deadline to respond.

**SUMMARY:** The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) published a notice in the **Federal Register** on August 19, 2022, providing federal contractors instructions on how to object to the release of their Type 2 EEO–1 Report data, requested under the Freedom of Information Act (FOIA). The notice omitted a hyperlink and referenced a non-functional hyperlink for a collection that is not currently active. Additionally, this corrected notice extends the deadline for contractors to submit written objections to October 19, 2022.

**FOR FURTHER INFORMATION CONTACT:** Candice Spalding, Deputy Director, Division of Management and Administrative Programs, Office of

Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210. Telephone: 1–855–680–0971 (voice) or 1–877–889–5627 (TTY).

**SUPPLEMENTARY INFORMATION:****Corrections**

OFCCP makes the following corrections to its August 19, 2022, **Federal Register** notice (87 FR 51145):

On page 51145, column 3, lines 36–42 are corrected to remove the phrase, “see also EEO–1 Joint Reporting Committee, EEO–1 Instruction Booklet 1, [https://www.eeoc.gov/employers/eeo1survey/upload/instructions\\_form.pdf](https://www.eeoc.gov/employers/eeo1survey/upload/instructions_form.pdf) (describing the EEO–1 Report as “jointly developed by the EEOC and OFCCP”).

On page 51145, column 3, the last full sentence, “Although the EEOC and OFCCP jointly collect the EEO–1 data through the JRC, as a practical matter, because the JRC is housed at the EEOC, employers submit their data to the EEOC,” is corrected so the sentence reads as: “Employers submit their data to the EEOC.”

On page 51145, column 3, footnote 2 is removed in its entirety.

On page 51146, column 1, lines 11–12, the phrase “compliance surveys” is replaced with “data collections” so the sentence reads as: “Section 709(e) of Title VII of the Civil Rights Act of 1964 imposes criminal penalties and makes it unlawful for any officer or employee of EEOC from making public the employment data derived from any of its data collections prior to the institution of any proceeding under EEOC’s authority involving such information.”

On page 51146, column 2, line 6 is corrected to remove “[INSERT LINK]” and embed a hyperlink to the OFCCP website at <https://www.dol.gov/agencies/ofccp/submitter-notice-response-portal> and remove “15,000” and replace with “24,000,” to read, “Given OFCCP’s best estimate that the CIR FOIA request covers approximately 24,000 unique Covered Contractors, OFCCP is fulfilling its notification obligation through this **Federal Register** notice, a contemporaneous posting on the OFCCP website, and notification to all federal contractors and federal contractor representatives that have registered and provided electronic mail contact information through the agency’s Contractor Portal and/or have subscribed to OFCCP’s GovDelivery electronic mail listserv.”

**Extension of Deadline**

The August 19, 2022, **Federal Register** notice provided a deadline of September