

§ 25.57

insurance carriers, which can be reasonably assumed are total loss vehicles. Such entities, however, are not required to report any vehicle that is determined not to meet the definition of salvage or junk after a good-faith physical and value appraisal conducted by qualified appraisal personnel, so long as such appraisals are conducted entirely independent of any other interests, persons or entities. Individuals and entities that handle less than five vehicles per year that are determined to be salvage, junk, or total loss are not required to report under the salvage-yard requirements.

(h) Scrap metal processors and shredders that receive automobiles for recycling where the condition of such vehicles generally prevent VINs from being identified are not required to report to the operator if the source of each vehicle has already reported the vehicle to NMVTIS. In cases where a supplier's compliance with NMVTIS cannot be ascertained, however, scrap metal processors and shredders must report these vehicles to the operator based on a visual inspection if possible. If the VIN cannot be determined based on this inspection, scrap metal processors and shredders may rely on primary documentation (*i.e.*, title documents) provided by the vehicle supplier.

§ 25.57 Erroneous junk or salvage reporting.

(a) In cases where a vehicle is erroneously reported to have been salvage or junk and subsequently destroyed (*i.e.*, crushed), owners of the legitimate vehicles are encouraged to seek a vehicle inspection in the current state of title whereby inspection officials can verify via hidden VINs the vehicle's true identity. Owners are encouraged to file such inspection reports with the current state of title and to retain such reports so that the vehicle's true history can be documented.

(b) To avoid the possibility of fraud, the operator may not allow any entity to delete a prior report of junk or salvage status.

28 CFR Ch. I (7–1–23 Edition)

PART 26—DEATH SENTENCES PROCEDURES

Sec.

Subpart A—Implementation of Death Sentences in Federal Cases

- 26.1 Applicability.
- 26.2 [Reserved]
- 26.3 Date, time, place, and manner of execution.
- 26.4 Other execution procedures.
- 26.5 Attendance at or participation in executions by Department of Justice personnel.

Subpart B—Certification Process for State Capital Counsel Systems

- 26.20 Purpose.
- 26.21 Definitions.
- 26.22 Requirements.
- 26.23 Certification process.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001(b), 4002, 3596, 3597; 28 U.S.C. 509, 510, 2261, 2265.

SOURCE: Order No. 1655–93, 57 FR 4901, Jan. 19, 1993, unless otherwise noted.

Subpart A—Implementation of Death Sentences in Federal Cases

§ 26.1 Applicability.

(a) The regulations of this part apply whenever a sentencing hearing conducted in a United States District Court has resulted in a recommendation or determination that a criminal defendant be sentenced to death for commission of an offense described in any federal statute.

(b) 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.

(c) Any task or duty assigned to any officer or employee of the Department of Justice by this part may be delegated by the Attorney General to any other officer or employee of the Department of Justice.

[57 FR 4901, Jan. 19, 1993, as amended by Order No. 4911–2020, 85 FR 75854, Nov. 27, 2020]

Department of Justice

§ 26.4

§ 26.2 [Reserved]

§ 26.3 Date, time, place, and manner of execution.

(a) Except to the extent a court orders otherwise, a sentence of death shall be executed:

(1) On a date and at a time designated by the Director of the Federal Bureau of Prisons, which date shall be no sooner than 60 days from the entry of the judgment of death. If the date designated for execution passes by reason of a stay of execution, then a new date shall be designated promptly by the Director of the Federal Bureau of Prisons when the stay is lifted;

(2) At a penal or correctional institution designated by the Director of the Federal Bureau of Prisons;

(3) Under the supervision of a United States Marshal (Marshal) designated by the Director of the United States Marshals Service, assisted by additional qualified personnel 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; and

(4) By intravenous injection of a lethal substance or substances in a quantity sufficient to cause death, such substance or substances to be determined by the Director of the Federal Bureau of Prisons, 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).

(b) Unless the President interposes, the United States Marshal shall not stay execution of the sentence on the basis that the prisoner has filed a petition for executive clemency.

[57 FR 4901, Jan. 19, 1993, as amended by Order No.4911-2020, 85 FR 75854, Nov. 27, 2020]

§ 26.4 Other execution procedures.

Except to the extent a court orders otherwise:

(a) The Director of the Federal Bureau of Prisons or his designee shall notify the prisoner under sentence of death of the manner of execution and 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 execution, in which case the Director of the Federal Bureau of Prisons or his designee shall notify the prisoner as soon as possible. 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.

(b) Beginning seven days before the designated date of execution, the prisoner shall have access only to his spiritual advisers (not to exceed two), his defense attorneys, members of his family, and the officers and employees of the institution designated in § 26.3(a)(2). Upon approval of the Director of the Federal Bureau of Prisons or his designee, the prisoner may be granted access to such other persons as the prisoner may request.

(c) In addition to the Marshal, the following persons shall be present at the execution:

(1) Necessary personnel selected by the Marshal and the Director of the Federal Bureau of Prisons or his designee;

(2) Those attorneys of the Department of Justice whom the Deputy Attorney General determines are necessary;

(3) Not more than the following numbers of persons selected by the prisoner:

(i) One spiritual adviser;

(ii) Two defense attorneys; and

(iii) Three adult friends or relatives; and

(4) Not more than the following numbers of persons selected by the Director of the Federal Bureau of Prisons or his designee:

(i) Eight citizens; and

(ii) Ten representatives of the press.

(d) No other person shall be present at the execution, unless leave for such person's presence is granted by the Director of the Federal Bureau of Prisons. No person younger than 18 years of age shall witness the execution.

(e) The Director of the Federal Bureau of Prisons or his designee should notify those individuals described in paragraph (c) of this section as soon as practicable before the designated time of execution.

§ 26.5

28 CFR Ch. I (7–1–23 Edition)

(f) No photographic or other visual or audio recording of the execution shall be permitted.

(g) After the execution has been carried out, qualified personnel selected by the Director of the Federal Bureau of Prisons or his designee shall conduct an examination of the body of the prisoner to determine that death has occurred and shall inform the Marshal and the Director of the Federal Bureau of Prisons or his designee of his determination. Upon notification of the prisoner's death, the Marshal shall ensure that appropriate notice of the sentence's implementation is filed with the sentencing court.

(h) The remains of the prisoner shall be disposed of according to procedures established by the Director of the Federal Bureau of Prisons.

[57 FR 4901, Jan. 19, 1993, as amended by Order No. 4911–2020, 85 FR 75854, Nov. 27, 2020]

§ 26.5 Attendance at or participation in executions by Department of Justice personnel.

No officer or employee of the Department of Justice or a State department of corrections, or any employee providing services to those departments under contract, shall be required, as a condition of that employment or contractual obligation, 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 officer or employee, or, if the employee is a medical professional, if the employee considers such participation or attendance contrary to medical ethics. For purposes of this section, the term “participation” includes personal preparation of the condemned individual and the apparatus used for execution and supervision of the activities of other personnel in carrying out such activities.

[57 FR 4901, Jan. 19, 1993, as amended by Order No. 4911–2020, 85 FR 75854, Nov. 27, 2020]

Subpart B—Certification Process for State Capital Counsel Systems

SOURCE: 78 FR 58183, Sept. 23, 2013, unless otherwise noted.

§ 26.20 Purpose.

Sections 2261(b)(1) and 2265(a) of title 28 of the United States Code require the Attorney General to certify whether a State has a mechanism for providing legal representation to indigent prisoners in State postconviction proceedings in capital cases that satisfies the requirements of chapter 154 of title 28. If the Attorney General certifies that a State has established such a mechanism, sections 2262, 2263, 2264, and 2266 of chapter 154 of title 28 apply in relation to Federal habeas corpus review of State capital cases in which counsel was appointed pursuant to that mechanism. These sections will also apply in Federal habeas corpus review of capital cases from a State with a mechanism certified by the Attorney General in which petitioner validly waived counsel, petitioner retained counsel, or petitioner was found not to be indigent, as provided in section 2261(b) of title 28. Subsection (b) of 28 U.S.C. 2265 directs the Attorney General to promulgate regulations to implement the certification procedure under subsection (a) of that section.

§ 26.21 Definitions.

For purposes of this part, the term—
Appointment means provision of counsel in a manner that is reasonably timely in light of the time limitations for seeking State and Federal postconviction review and the time required for developing and presenting claims in the postconviction proceedings.

Appropriate State official means the State attorney general, except that, in a State in which the State attorney general does not have responsibility for Federal habeas corpus litigation, it means the chief executive of the State.

Indigent prisoners means persons whose net financial resources and income are insufficient to obtain qualified counsel.

State postconviction proceedings means collateral proceedings in State court, regardless of whether the State conducts such proceedings after or concurrently with direct State review.

§ 26.22 Requirements.

The Attorney General will certify that a State meets the requirements

Department of Justice

§ 26.23

for certification under 28 U.S.C. 2261 and 2265 if the Attorney General determines that the State has established a mechanism for the appointment of counsel for indigent prisoners under sentence of death in State postconviction proceedings that satisfies the following standards:

(a) As provided in 28 U.S.C. 2261(c) and (d), the mechanism must offer to all such prisoners postconviction counsel, who may not be counsel who previously represented the prisoner at trial unless the prisoner and counsel expressly requested continued representation, and the mechanism must provide for the entry of an order by a court of record—

(1) Appointing one or more attorneys as counsel to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer;

(2) Finding, after a hearing if necessary, that the prisoner rejected the offer of counsel and made the decision with an understanding of its legal consequences; or

(3) Denying the appointment of counsel, upon a finding that the prisoner is not indigent.

(b) The mechanism must provide for appointment of competent counsel as defined in State standards of competency for such appointments.

(1) A State's standards of competency are presumptively adequate if they meet or exceed either of the following criteria:

(i) Appointment of counsel who have been admitted to the bar for at least five years and have at least three years of postconviction litigation experience. But a court, for good cause, may appoint other counsel whose background, knowledge, or experience would otherwise enable them to properly represent the petitioner, with due consideration of the seriousness of the penalty and the unique and complex nature of the litigation; or

(ii) Appointment of counsel meeting qualification standards established in conformity with 42 U.S.C. 14163(e)(1) and (2)(A), if the requirements of 42 U.S.C. 14163(e)(2)(B), (D), and (E) are also satisfied.

(2) Competency standards not satisfying the benchmark criteria in paragraph (b)(1) of this section will be deemed adequate only if they otherwise reasonably assure a level of proficiency appropriate for State postconviction litigation in capital cases.

(c) The mechanism must provide for compensation of appointed counsel.

(1) A State's provision for compensation is presumptively adequate if the authorized compensation is comparable to or exceeds—

(i) The compensation of counsel appointed pursuant to 18 U.S.C. 3599 in Federal habeas corpus proceedings reviewing capital cases from the State;

(ii) The compensation of retained counsel in State postconviction proceedings in capital cases who meet State standards of competency sufficient under paragraph (b);

(iii) The compensation of appointed counsel in State appellate or trial proceedings in capital cases; or

(iv) The compensation of attorneys representing the State in State postconviction proceedings in capital cases, subject to adjustment for private counsel to take account of overhead costs not otherwise payable as reasonable litigation expenses.

(2) Provisions for compensation not satisfying the benchmark criteria in paragraph (c)(1) of this section will be deemed adequate only if the State mechanism is otherwise reasonably designed to ensure the availability for appointment of counsel who meet State standards of competency sufficient under paragraph (b) of this section.

(d) The mechanism must provide for payment of reasonable litigation expenses of appointed counsel. Such expenses may include, but are not limited to, payment for investigators, mitigation specialists, mental health and forensic science experts, and support personnel. Provision for reasonable litigation expenses may incorporate presumptive limits on payment only if means are authorized for payment of necessary expenses above such limits.

§ 26.23 Certification process.

(a) An appropriate State official may request in writing that the Attorney General determine whether the State

Pt. 27

meets the requirements for certification under § 26.22 of this subpart.

(b) Upon receipt of a State's request for certification, the Attorney General will make the request publicly available on the Internet (including any supporting materials included in the request) and publish a notice in the FEDERAL REGISTER—

(1) Indicating that the State has requested certification;

(2) Identifying the Internet address at which the public may view the State's request for certification; and

(3) Soliciting public comment on the request.

(c) The State's request will be reviewed by the Attorney General. The review will include consideration of timely public comments received in response to the FEDERAL REGISTER notice under paragraph (b) of this section, or any subsequent notice the Attorney General may publish providing a further opportunity for comment. 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.

(d) A certification by the Attorney General reflects the Attorney General's determination that the State capital counsel mechanism reviewed under paragraph (c) of this section satisfies chapter 154's requirements. A State may request a new certification by the Attorney General to ensure the continued applicability of chapter 154 to cases in which State postconviction proceedings occur after a change or alleged change in the State's certified capital counsel mechanism. Changes in a State's capital counsel mechanism do not affect the applicability of chapter 154 in any case in which a mechanism certified by the Attorney General existed throughout State postconviction proceedings in the case.

(e) A certification remains effective for a period of five years after the completion of the certification process by the Attorney General and any related judicial review. If a State requests recertification at or before the end of that five-year period, the certification remains effective for an additional period extending until the completion of

28 CFR Ch. I (7–1–23 Edition)

the re-certification process by the Attorney General and any related judicial review.

PART 27—WHISTLEBLOWER PROTECTION FOR FEDERAL BUREAU OF INVESTIGATION EMPLOYEES

Subpart A—Protected Disclosures of Information

Sec.

27.1 Making a protected disclosure.

27.2 Prohibition against reprisal for making a protected disclosure.

Subpart B—Investigating Reprisal Allegations and Ordering Corrective Action

27.3 Investigations: The Department of Justice's Office of Professional Responsibility and Office of the Inspector General.

27.4 Corrective action and other relief; Director, Office of Attorney Recruitment and Management.

27.5 Review.

27.6 Extensions of time.

AUTHORITY: 5 U.S.C. 301, 3151; 28 U.S.C. 509, 510, 515–519; 5 U.S.C. 2303; President's Memorandum to the Attorney General, Delegation of Responsibilities Concerning FBI Employees Under the Civil Service Reform Act of 1978, 3 CFR p. 284 (1997).

SOURCE: Order No. 2264–99, 64 FR 58786, Nov. 1, 1999, unless otherwise noted.

Subpart A—Protected Disclosures of Information

§ 27.1 Making a protected disclosure.

(a) When an employee of, or applicant for employment with, the Federal Bureau of Investigation (FBI) (FBI employee) makes a disclosure of information to the Department of Justice's (Department's) Office of Professional Responsibility (OPR), the Department's Office of Inspector General (OIG), the FBI Office of Professional Responsibility (FBI OPR), the FBI Inspection Division (FBI-INSID) Internal Investigations Section (collectively, Receiving Offices), the Attorney General, the Deputy Attorney General, the Director of the FBI, the Deputy Director of the FBI, or to the highest ranking official in any FBI field office, the disclosure will be a "protected disclosure" if the person making it reasonably believes that it evidences: