

(c) In the event that an evidentiary hearing is required or permitted by the adjudicative officer, such hearing and any related filings or other action required or permitted shall be conducted pursuant to the procedural rules governing adversary adjudications conducted by the Department component in which the underlying adversary adjudication was conducted.

§ 24.306 Decision on application.

The adjudicative officer shall promptly issue a decision on the application which shall include proposed written findings and conclusions on such of the following as are relevant to the decision:

- (a) The applicant's status as a prevailing party;
- (b) The applicant's qualification as a "party" under 5 U.S.C. 504(b)(1)(B);
- (c) Whether the Department's position as a party to the proceeding was substantially justified;
- (d) Whether special circumstances make an award unjust;
- (e) Whether the applicant during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy; and
- (f) The amounts, if any, awarded for fees and other expenses, with reasons for any difference between the amount requested and the amount awarded.

§ 24.307 Department review.

The decision of the adjudicative officer will be reviewed to the extent permitted by law by the Department in accordance with the Department's procedures for the type of proceeding involved. The Department will issue the final decision on the application.

§ 24.308 Judicial review.

Judicial review of final Department decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 24.309 Payment of award.

An applicant seeking payment of an award shall submit a copy of the final decision granting the award to the Department's Accounting Office for processing. A statement that review of the underlying decision is not being sought in the United States courts, or that the

process for seeking review of the award has been completed, must also be included.

PART 26—IMPLEMENTATION OF DEATH SENTENCES IN FEDERAL CASES

Sec.

- 26.1 Applicability.
- 26.2 Proposed Judgment and Order.
- 26.3 Date, time, place, and method of execution.
- 26.4 Other execution procedures.
- 26.5 Attendance at or participation in executions by Department of Justice personnel.

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

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

§ 26.1 Applicability.

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.

§ 26.2 Proposed Judgment and Order.

(a) Whenever this part becomes applicable, the attorney for the government shall promptly file with the sentencing court a proposed Judgment and Order. The proposed Judgment and Order shall state, in addition to any other matters required by law or otherwise appropriate, that:

- (1) The sentence shall be executed by a United States Marshal designated by the Director of the United States Marshals Service;
- (2) The sentence shall be executed by intravenous injection of a lethal substance or substances in a quantity sufficient to cause death;
- (3) The sentence shall be executed on a date and at a place designated by the Director of the Federal Bureau of Prisons; and
- (4) The prisoner under sentence of death shall be committed to the custody of the Attorney General or his authorized representative for appropriate detention pending execution of the sentence.