NO. 11-35940

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAUL EZRA RHOADES,
Petitioner-Appellant,

vs.

BRENT REINKE, *et al*.,
Respondent-Appellees.

Appeal from the United States District Court
for the District of Idaho
The Honorable Ronald E. Bush

PETITIONER-APPELLANT'S EXCERPTS OF RECORD

VOLUME III OF VI

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

PAUL EZRA RHOADES, Plaintiff, v. BRENT REINKE, et al., Defendants.	CAPITAL CASE Civil Action No. 11-445 EMERGENCY MOTION FOR PRELIMINARY INJUNCTION OR STAY OF EXECUTION Expedited Oral Argument and and Evidentiary Hearing Requested Execution Scheduled November 18, 2011

Plaintiff Paul Rhoades moves, pursuant to Federal Rule of Civil Procedure 65(a) and (b) and 28 U.S.C. §1651, for a preliminary injunction or stay or execution barring the Idaho

Department of Correction from executing him on November 18, 2011. A memorandum in support is being filed contemporaneously with this motion.

Respectfully submitted this 28th day of October, 2011.

/s/
Oliver W. Loewy
Teresa A. Hampton
Capital Habeas Unit

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of October, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which is designed to send a Notice of Electronic Filing to persons including the following:

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

PAUL EZRA RHOADES,	
Plaintiff,	**CAPITAL CASE**
v.	Civil Action No. 11-445
BRENT REINKE, *et al.*,	**MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR PRELIMINARY INJUNCTION OR STAY OF EXECUTION**
Defendants.	Expedited Oral Argument and Evidentiary Hearing Requested
	Execution Scheduled November 18, 2011

On September 22, 2011, Mr. Rhoades commenced this lawsuit seeking an order permanently enjoining the Idaho Department of Correction ("IDOC") from executing him based on a lack of protocol or based on what he denominated in his Complaint as the 2006 Protocol or the Draft Protocol.[1] Dkt. 001. On October 14, Defendants filed a Motion to Dismiss and supporting memorandum. Dkt.7-1 to 7-5 . In the supporting memorandum, Defendants revealed for the first time that the IDOC finally adopted that same day an "completely revised" SOP 135 setting out Idaho's execution procedures. Dkt. No. 7-1 at 11.

On October 19, 2011, the District Court for the Seventh Judicial District of Idaho entered an order in each of Mr. Rhoades's two capital cases directing the IDOC to execute Mr. Rhoades on November 18, 2011. Mr. Rhoades seeks a stay of execution or preliminary injunction barring the IDOC from executing him on November 18, 2011, and until resolution of this lawsuit. *See* Fed. R. Civ. Proc. 65.

A stay is required where the applicant " establish[es] that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Recources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). *Landrigan v. Brewer*, 625 F.3d 1132, 1133 (9th Cir. 2010) (district court properly stayed execution after applying *Winter* factors), *rev'd on certiorari review on different grounds*,

[1] '2006 Protocol' referred to the IDOC execution procedure policy in place and last reviewed in 2006. 'Draft Protocol' referred to the draft execution procedures which the IDOC provided the University of California, Berkeley School of Law, in May, 2011, in response to that school's public records request for the IDOC execution procedures. The IDOC had denied undersigned counsel's request in March, 2011, for those procedures.

131 S.Ct. 445 (2010). The standard for issuance of a preliminary injunction requires consideration of the same factors. *Nken v. Holder*, 556 U.S. 418, 129 S.CT. 1749, 1761 (2009). In *Baze v. Rees*, 553 U.S. 35 (2008), the Supreme Court held that a stay may not be granted unless the applicant shows that the lethal injection protocol "creates a demonstrated risk of severe pain" and "that the risk is substantial when compared to the known and available alternatives." *Id.* at 61. Further, a State "with a lethal injection protocol substantially similar to the protocol we uphold today [including daily experience] would not create a risk that meets this standard." *Id.*

For the reasons below, Idaho's execution procedures create a demonstrated risk of severe pain, does not provide safeguards relied upon in *Baze*, and is not substantially similar to the Kentucky protocol upheld in *Baze*. Mr. Rhoades meets the standard for a stay. This Court should enter an order enjoining or staying his execution pending resolution of this lawsuit.

Alternatively, a stay should be granted pending resolution of this lawsuit because the IDOC execution facility is incomplete, precluding the IDOC from complying with SOP 135.

I. RHOADES IS LIKELY TO SUCCEED ON THE MERITS

Incorporating the *Baze* safeguards into SOP 135 or adopting a one-drug protocol is a feasible, readily implemented procedure which would significantly reduce the substantial risk of severe pain created by SOP 135 as established below. *Baze*, 553 U.S. at 52. Other states, including Ohio, South Dakota, and Washington, have adopted a one-

drug protocol exclusively or as one of multiple alternatives. *See* Exhibits 1, 2, 3 (lethal injection protocols).

A. SOP 135 Clearly Creates A Demonstrated Risk Of Severe Pain.

IDOC adopted SOP 135 less than two weeks ago. Dkt.7-4 (SOP 135). SOP 135 provides for administering three chemicals through an intravenous catheter ("IV") in the following order: sodium pentothal ("thiopental"), an anesthetic; pancuronium bromide, a paralytic; and potassium chloride, a cardiac-arrest inducing chemical. *Id.* at 2-3. SOP 135 provides that, if the IDOC is unable to secure a sufficient amount of thiopental, then pentobarbital should substitute as the anesthetic. Thiopental is a barbiturate. Pentobarbital is also a barbiturate.

Pancuronium bromide is the second chemical administered in accordance with SOP 135. When an appropriate dose of pancuronium bromide is administered intravenously to a human being, motor weakness progresses to a total muscular paralysis. The paralytic effect starts first in the small muscles (eyes, jaw). It then progresses to the limbs. The paralytic effect progresses, finally, to the muscles of the rib cage and diaphragmatic muscles, which results in cessation of breathing. Pancuronium bromide does not affect consciousness and does not prevent the perception of pain.

Pancuronium bromide precludes an accurate assessment of consciousness by visual and auditory observations. Pancuronium bromide paralyzes all muscles that would otherwise move when an individual is in excruciating pain. Dkt. 1-5, Exhibit 17 at paras. 5, 17 (Sworn declaration of David Lubarsky, M.D., *Arthur v. Thomas, et al.*, No. 11-CV-438-MEF-TFM). A conscious individual who receives a therapeutic or greater dose of

pancuronium bromide would experience suffocation and be unable to move or otherwise respond. Exhibit 1 at para. 10.

Potassium chloride is the last chemical administered. Dkt. 7-4 at 36-37. At a sufficient dose, potassium chloride disrupts the normal electrical activity of the heart, inducing cardiac arrest. Potassium chloride does not affect consciousness and does not prevent the perception of pain. As it travels in the bloodstream from the site of the injection towards the heart, potassium chloride activates all of the nerve fibers inside the blood vessel. This activation causes an extraordinarily painful burning sensation absent anesthesia. Exhibit 4 at para. 7.

"The proper administration of [the anesthetic thiopental] ensures that the prisoner does not experience any pain associated with the paralysis and cardiac arrest caused by the second and third drugs." *Baze*, 553 U.S. at 44. If an anesthetic is not used or if it does not reach the brain, and the remaining chemicals are administered, the inmate will experience suffocation caused by the paralytic; then an extreme burning throughout his blood vessels as the potassium chloride is distributed; and, finally, cardiac arrest. Exhibit 4 at para. 10, 13, 20.

1. Botched Lethal Injection Executions Are a Contemporary Reality.

Botched lethal injection executions are not a new phenomenon, but they are a continuing one. Deborah W. Denno, *When Legislatures Delegate Death: The Troubling Paradox Behind State Uses of Electrocution And Lethal Injection And What It Says About Us*, 63 Ohio St. L.J. 63, 139-41 (2002) (listing by inmate name thirty-one botched lethal

injection executions between 1982 and 2001, and describing evidence of error). Denno's list includes cases where inmates needlessly suffered after the administration of the chemicals. For example, in each of the following botched executions, the protocol called for administering a series of the same types of chemicals in the same order as called for by SOP 135. When using thiopental, an anesthetic, the following botched executions were recorded:

- Witnesses reported that during his 1992 Oklahoma execution, Robyn Lee Parks "violently gagged and bucked in his chair after the drugs were administered." Denno at 140.

- Justin Lee May, executed by the State of Texas in 1992, "gasped and reared against his restraints during his nine-minute death." *Id.*

- After the chemicals started to flow into Luis M. Mata during his 1996 Arizona execution, his "head jerked, his face contorted, and his chest and stomach sharply heaved."

- Scott Dawn Carpenter, executed by the State of Oklahoma in 1997, "gasped and shook for three minutes following the injection."

Botched lethal injections continue even after *Baze*. Very recently, on June 23, 2011, the State of Georgia executed Roy Blankenship by lethal injection. In executing Mr. Blankenship, the State of Georgia used pentobarbital as the first chemical in its three-chemical protocol. An Associated Press reporter who witnessed Mr. Blankenship's execution wrote:

> He was laughing and chatting with a prison chaplain in the moments before his execution, at one point trying to converse with the observers sitting behind a glass window.
>
> As the injection began, he jerked his head toward his left arm and made a startled face while blinking rapidly. He

> soon lurched to his right arm, lunging with his mouth agape twice. He then held his head up, and his chin smacked as he mouthed words that were inaudible to observers.

Dkt. 1-4, Exhibit 6, p. 4 (Affidavit and attached newspaper article of Associated Press reporter Greg Bluestein, *DeYoung v. Owens*, No. 11-cv-2324-SCJ (N.D. Ga.)).

2. A Substantial Risk for Botched Executions: Problems Relating to the Initiation, Maintenance and Administration of Chemicals through IVs.

Absent proper training and practice in initiating and maintaining IVs, there is a substantial risk that an IV will not serve as a reliable mechanism for delivering chemicals into the bloodstream. Exhibit 4 at 5, 6, 20, passim. In the lethal injection context, this means that there is a substantial risk that an insufficient amount of anesthetic will reach the prisoner, leaving him to experience the pain and suffering caused by a paralytic chemical and a cardiac-arrest inducing chemical which do reach him. *Baze,* 553 U.S. at 53.

The necessary training and experience needed to avoid this substantial risk is reserved for advanced healthcare professionals. For example, the training of basic EMTs and phlebotomists—two kinds of healthcare professionals which SOP 135 allows to initiate and maintain IVs—does not cover establishing or maintaining IVs, or delivering any fluids through IVs. Dkt. 1-5, Exh. 23 at 21, Exh. 22.. Nor do these particular kinds of healthcare providers typically gain experience in these regards. *Id.*

Submitted in support of this motion is the affidavit from Mark J.S. Heath, M.D., a practicing anesthesiologist with approximately 21 years experience and an Assistant

Professor of Clinical Anesthesiology at Columbia University School of Medicine. In it, Dr. Heath addresses some potential difficulties in initiating and maintaining an IV and administering chemicals through an IV. When initiating an IV, the needle or cannula "may . . . puncture[], tear[], or otherwise perforate the wall of the vein[.]" Exhibit 1 at 6. After an IV is initiated, the cannula "can shift position so [some or all of] the fluid travels into the surrounding tissue rather than the blood vessel." *Id.* "Regardless the particular mechanism, inadvertent delivery of fluid into the tissues surrounding the vein is referred to as 'extravasation' and/or 'infiltration." *Id.*

Dr. Heath addresses the consequences of infiltration of IVs used during an SOP 135 execution:

> The Idaho lethal injection protocol mandates using pancuronium bromide and potassium chloride to execute inmates. Absent adequate anesthetic depth (i.e., a deep level of unconsciousness from which a highly noxious stimulation will not produce arousal), the infiltration of either of those chemicals into the surrounding tissue will result in severe pain and suffering. In particular, if all three drugs infiltrate into the tissue surrounding the vein, the first drug, thiopental, will not reach sufficient levels in the bloodstream to produce anesthesia. By contrast, the second drug, pancuronium, will reach sufficient levels to produce generalized paralysis. The third drug, potassium, causes a severe burning sensation when infiltrated into tissues. I do not know whether infiltrated potassium, in the doses contemplated in lethal injection procedures, will reach sufficient blood levels to cause cardiac arrest. The important point is that infiltration of the three lethal injection drugs, in part or in whole, is highly likely to produce an agonizing and torturous execution.

Exhibit 4 at para. 7.

Assessing whether an IV is infiltrated is a hands-on process in which a properly trained and experienced individual inspects the site, visually and tactilely "for swelling,

discoloration, and temperature changes, as well as monitoring of the IV equipment." Exhibit 4 at para. 11. Importantly, "[t]he signs of an infiltrated IV are often very subtle, and can easily be missed by an inexperienced practitioner. Indeed, even a highly experience practitioner may initially fail to detect an infiltrate IV, although the likelihood of this error occurring is reduced by accrued practice experience." *Id.* at para. 12.

IVs may also fail through leakage. "Leakage may occur anywhere there is fluid, including any of the various points of connection through which the fluid being administered flows." Exhibit 4 at para. 8. It may occur "where the IV line connects to the saline bag, where it connects to additional IV lines, at any point where additional lengths of tubing ("IV extension sets") are connected, at any point where an injection stopcock is inserted, at the site where the syringe (or needle on the syringe) is introduced to the IV apparatus, or where it connects to the hub of the cannula." Exhibit 4 at para. 8. Specific to Idaho,

> [T]he . . . protocol calls for using chemical filled syringes connected to a 3-Gang, 3-Way Manifold. For the chemicals to reach the inmate, the Manifold will need to be connected to the IV line, and there may be leakage at any of the resulting multiple points of connection.

Exhibit 4 at para. 9.

Importantly, "[i]nfiltration and leakage are not necessarily 'all-or-nothing' events. Nor are they mutually exclusive causes of IV failure." Exhibit 1 at para. 10.

> Using Idaho's lethal injection protocol as an example: infiltration and/or leakage could cause an insufficient amount of thiopental or pentobarbital to reach the prisoner's brain to sufficiently anesthetize him for the next two steps of the execution, paralysis

> and cardiac arrest. In this scenario, if partial or complete doses of the pancuronium bromide and potassium chloride are subsequently delivered into the inmate's bloodstream, the inmate would experience the extreme pain and suffering of conscious paralysis and cardiac arrest. Moreover, an insufficiently anesthetized person would experience burning in his or her veins upon administration of concentrated potassium chloride, and any amount of potassium chloride delivered to the surrounding tissue or to the bloodstream would cause extreme pain absent sufficient anesthetic. . . . Of note, the doses of pancuronium bromide and potassium chloride called for in the Idaho protocol are so large that the delivery of a fraction of the dose would lead to paralysis and possibly cardiac arrest.

Id.

3. The Supreme Court's Answer To The Substantial Risk Of Severe Pain: Particular Safeguards Must Be In Place.

Baze requires safeguards against the severe pain which an inmate will suffer if the IVs do not function properly. Initiating and maintaining a functioning, open and unblocked IV, and delivering chemicals through an IV are complex skills which require training, experience, and competence. The Supreme Court agreed "that, failing a proper dose of sodium thiopental that would render the prisoner unconscious, there is a substantial, constitutionally unacceptable risk of suffocation from the administration of pancuronium bromide and pain from the injection of potassium chloride." *Id.* at 53.

The Supreme Court approved the Kentucky lethal injection protocol but only because it included "several important safeguards to ensure that an adequate dose of sodium thiopental is delivered to the condemned prisoner." *Id.* at 55. Absent those safeguards, there is a substantial risk of serious harm in violation of the Eighth Amendment. *Id.* at 55. These safeguards are: relevant credentials; contemporary and

continuing daily experience; adequate in-house training; redundancy; and a meaningful consciousness check.

4. IDOC SOP 135 Contains None of the *Baze* Safeguards.

a. SOP 135 does not contain the "most significant" safeguard, a required medical credential "combined with at least one year of professional experience."

The first "most significant" safeguard on which the *Baze* court relied was that "members of the IV team must have at least one year of professional experience as a certified medical assistant, phlebotomist, EMT, paramedic, or military corpsman[.]" *Baze*, 533 U.S. at 55. Under the Kentucky protocol at issue in *Baze*, the IV team is responsible for establishing the IV lines. Exhibit 5 (Kentucky Protocol).

SOP 135's Medical Team is responsible for much more, including establishing the IV lines, "ensur[ing] the line is functioning properly through the procedure" and monitoring the offenders "level of consciousness." Dkt. 7-4 at 9. Additionally, SOP 135's Appendix A sets out a detailed description of the Medical Team members' responsibilities, which relate to IV initiation and maintenance, central line placement, consciousness checks, and EKG monitoring:

- "determine the best sites on the offender to insert a primary IV catheter and a backup IV catheter in two (2) separate locations in the peripheral veins utilizing appropriate medical procedures." Dkt. 7-4 at 39.

- "Both primary and backup IV lines will be placed [by the Medical Team] unless in the opinion of the Medical Team leader it is not possible to reliably place two (2) peripheral lines." *Id.*

- "To ensure proper insertion in the vein, the assigned Medical Team members should watch for the dark red flashback of blood at the catheter hub in compliance with medical procedures." *Id.*

- If the Medical Team Leader determines that "it is not possible to reliably place a peripheral line in the offender, a Medical Team member may utilize a central line catheter in the offender's femoral vein in the thigh if, in the opinion of a qualified Medical Team member, such a line may be reasonably placed. The Medical Team member responsible for placing a central line catheter in the offender's femoral vein shall have at least one year of regular and current professional experience conducting that procedure." *Id.* at 40.

- In the event a central line catheter is employed, the Medical Team member "will place the central line catheter in the offender's femoral vein utilizing appropriate medical procedures which includes the use of an ultrasound to assist in properly inserting the catheter and anesthetic such as Lidocaine." *Id.*

- "Continually monitor the offender's level of consciousness and electrocardiograph readings, maintaining constant observation of the offender using one or more of the following methods: direct observation, audio equipment, camera, and television monitor as well as any other medically approved method(s) deemed necessary by the medical team leader." *Id.* at 39.

SOP 135's main text and Appendix A also provides a detailed description of the Medical Team leader's duties, which related to IVs, delivery of chemicals through IVs, consciousness checks, EKG machines, and debribrillators:

- Seven to two days before an execution, the Medical Team leader is to "[e]nsure serviceability of all medical equipment including electrocardiogram (EKG) machines and/or defibrillator, and the

availability of graph paper [and] [e]nsure heart monitor lead lines are sufficient in length." *Id.* at 27.

- "Attach two (2) complete sets of the prepared and labeled syringes to the 3-Gang, 3-Way Manifold in the order in which the chemicals are to be administered." *Id.* at 35.

- Must, prior to attaching the syringes, check "the flow of each gauge on the manifold . . . by . . . running heparin/saline solution through the line to confirm there is no obstruction." *Id.*

- "After the Medical Team prepare all syringes with the proper chemicals and labels as provided in the applicable Chemical Chart, the Medical Team leader shall ensure the IV setup is completed." *Id*. at 39.

- "The insertion sites in order of preference shall be: arms, hands, ankles and feet, as determined medically appropriate by the Medical Team leader." *Id.*

- Must, "[o]nce the offender is secured, . . . attach the leads from the electrocardiograph to the offender's chest and confirm that the electrocardiograph is functioning properly[.]" *Id.*

- "[S]hall be responsible for monitoring the offender's level of consciousness." *Id.*

- Must opine whether "it is . . . possible to reliably place a peripheral line in the offender[.]" *Id.* at 40.

- "After the sodium pentothal/or pentobarbital and heparin/saline have been administered and before the Injection Team members begin administering the pancuronium bromide, the Medical Team leader shall confirm the offender is unconscious by direct examination of the offender. The Medical Team leader . . . will enter the room where the IMSI warden and offender are located to physically confirm the offender is unconscious by using all necessary medically appropriate methods." *Id.* at 40.

- While in the execution chamber to conduct a consciousness check, the Medical Team leader "will also confirm that the IV line remains affixed and functioning properly." *Id.* at 40.

SOP 135 provides that each Medical Team member possess one of the following credentials:

- Emergency Medical Technician;
- Licensed Practical Nurse (LPN) or Registered Nurse (RN);
- Military Corpsman;
- Paramedic;
- Phlebotomist;
- Physician Assistant;
- Physician; or
- Other medically trained personnel including those trained in the United States Military.

Dkt. 7-4 at 9.

Though SOP 135's Medical Team is responsible for IV initiation and maintenance as well as supervision of administering chemicals via IV, it does *not* require that Medical Team members "have at least one year of professional experience."

Additionally, while the minimum requirements for Medical Team membership includes certain skilled occupations—e.g., physician, registered nurse, licensed practical nurse, physician assistants, EMT, Paramedic—SOP 135 does not state that those workers be currently licensed or have any actual experience in initiating IV catheters. Consequently, a Medical Team member may have earned his qualifying credential years ago, have no intervening experience, and have no contemporary relevant and reliable skills. Some of the skilled occupations are unlicensed and require no certification or recertification. So, while individual Medical Team members may have earned their particular credentials in the distant past when they may have been competent in IV initiation and maintenance, they need not retain that competence today. This contrasts starkly with the *Baze* requirements which are designed as safeguards. Team membership

requirements which do not ensure relevant and adequate training and experience are not safeguards.

While the Medical Team is responsible for IV initiation and maintenance as well as supervising the administration of the chemicals via IV, it is the Injection Team which administers those chemicals. SOP 135 at 9 ("The Injection Team members shall be responsible for administering the chemicals[.]"). SOP 135 provides that each Injection Team members "have at least one year of medical experience as a certified medical assistant, phlebotomist, emergency medical technician, paramedic, or military medical corpsman."

Certified medical assistants, phlebotomists, and EMTs have no required training or experience in administering medicinal substances via IV push. Nor does SOP 135 require that the Injection Team members have any training or experience allowing them to acquire the skill set needed to fulfill their responsibility. This deficiency is not negated by the fact that the Injection Team leader reports directly to and take direction from the Medical Team leader, for SOP 135 does not require that the Medical Team leader have that training or experience in administering substances through an IV either. The minimum training and experience requirements are no greater for Medical Team Leaders than for regular Medical Team members.

IV medication administration is outside the scope of Certified Medical Assistant practice and certification. *See* Dkt. 1-5 at Ex. 21. According to Dr. Hodges, the Medical Director the Medical Assistant Program at the College of Western Idaho and a practicing physician:

> In my opinion[,] I cannot think of an incident [sic] in which it would be appropriate for a Medical Assistant to start or manage IV fluids, or administer intravenous medication.

Dkt. 1-5 at Ex. 21.

Regarding phlebotomists, a College of Western Idaho Phlebotomy instructor and nationally certified Phlebotomist with over twelve years' experience in the field writes:

> The [S]tate of Idaho does not regulate what training or experience a phlebotomist must have to work in Idaho. Anyone can start working in Idaho as a phlebotomist with no previous training or experience needed. . . .
>
> We do however have voluntary guidelines which the course at CWI [i.e.- College of Western Idaho] is modeled after. These national guidelines are set out by the Clinical Laboratory Standards Institute (CLSI). According to CLSI, phlebotomists are not allowed to start IV's or use implanted devices. This rule has proved true in my 12 years' experience, as I have never been allowed to access devices (including but not limited to starting IV's and administering medications). This is something I teach my students as out of their "scope of practice."

Dkt. 1-5 at Ex. 22.

EMTs are not trained in IV drug administration either. The State of Idaho licenses and regulates the training and scope of practice of Emergency Medical Technicians ("EMTs") and Paramedics. The Idaho legislature has invested the Idaho Emergency Medical Services Physician Commission ["EMS Physician Commission"] with the authority and obligation to "adopt appropriate rules defining the allowable scope of practice and acts and duties which can be performed by persons licensed by the EMS

bureau[.]" I.C. §56-1023(1). The EMS Physician Commission Standards Manual ("Standards Manual") fulfills this legislative mandate. Dkt. 1-5 at Ex. 23 (EMS Physician Commission Standards Manual).

The Standards Manual distinguishes between EMTs and Advanced EMTs ("AEMTs") for training and scope of practice purposes. Id. at 16-18, 21-24. The Standards Manual allows only Advanced EMTs and Paramedics to initiate an IV and administer non-medicinal substances via IV infusion. Id. at 22-23. The Standards Manual allows only Paramedics to administer medicinal substances via IV infusion or to administer any substance via IV push. Id. at 23.

In accordance with SOP 135, the Injection Team may be composed entirely of members with no training and experience allowing them to reliably administer any of the three chemicals.

Members of neither the SOP 135 Medical Team nor its Injection Team are required to have a medical credential "combined with one year of professional experience" relevant to their IV and injection responsibilities.

b. SOP 135 does not contain the second *Baze* requirement, daily experience.

SOP 135 does not require that Medical Team members "have daily experience establishing IV catheters." *Baze*, 553 U.S. at 55. Nor does SOP 135 require that the Medical Team members have experience in ensuring that the lines are functioning properly, mixing chemicals, preparing syringes, administering medication, or—critically—assessing levels of consciousness.

The fact that the SOP 135 requires no training or experience in any of these regards is clear from the fact that no such training or experience is necessary to qualify as a Basic EMT, Phlebotomist, or as some kinds of military corpsman. Dkt. 1-5, Exh. 22, 23. The daily experience necessary to meet *Baze* cannot be inferred. As Justice Alito notes in his concurring opinion in *Baze*, the American Medical Association, the American Nurses Association, and the National Association of Emergency Medical Technicians each have adopted positions forbidding participation in executions. *Baze*, 553 U.S. at 64-5. Additionally, the final credential category making one eligible for Medical Team membership, being "medically trained personnel," is so vague as to include those certified by the Red Cross in First Aid/CardioPulmonary Resuscitation/Automatic External Defibrillator or in Responding to Emergencies. Neither course of instruction includes training or experience with IVs or EKGs. *See* http://editiondigital.net/publication/?i=64159 (First Aid/CPR/AED manual) and http://editiondigital.net/publication/?i=55906 (Responding to Emergencies manual).

SOP 135 specifically provides that "[t]he Medical Team can be comprised of any combination of" the above enumerated disciplines. Dkt. 7-4 at 9. Notwithstanding ethical concerns, while SOP 135 does allow physicians to be Medical Team members, it does not *require* that a physician or anyone else with the needed training and experience be a member of the Medical Team. In short, the entire Medical Team, including the Medical Team leader, may consist of individuals with no relevant training or experience.

No one else charged with monitoring the execution process has the necessary medical training and experience either. The only individuals other than the offender authorized to be in the execution chamber are:

- Execution Escort Team members; (up to two [2] total);
- The director of the IDOC; and
- The IMSI warden.

Dkt. 7-4 at 15. Among these, only the IMSI warden is responsible for monitoring "the offender and the primary and backup IV sites for any potential problems and [he] shall immediately notify the Medical Team leader and director should any issue occur." *Id.* at 39.

If sufficient training and experience were present, the IMSI warden's monitoring responsibility *could* be a safeguard against the prisoner suffering severe pain, allowing reliable assessments of consciousness and IV functioning. However, SOP 135 does not require that the warden have any medical training and experience relevant to either assessment. Consequently, the warden cannot reliably assess the offender and the IV sites for any potential problems. Absent the warden's ability to competently assess these things, his presence is no safeguard against the prisoner suffering severe pain. Exhibit 4 at paras. 11, 12, 14, 15 & 21 (IV failure assessment is subtle and requires training and experience; consciousness assessment requires appropriate stimuli use not provided for in SOP 135).

SOP 135 does not require that the Medical Team have the necessary continuing, daily experience. Neither does SOP 135 require it of the Injection Team.

c. SOP 135 does not contain the third *Baze* safeguard, in-house training.

The *Baze* court relied on a third safeguard: that the "IV team members, along with the rest of the execution team, participate in at least 10 practice session per year." *Baze, 553* U.S. at 56. The court emphasized that those sessions "encompass a complete walk-through of the execution procedures, including the siting of IV catheters into volunteers." *Baze* at 55. SOP 135 does not require that the in-house training cover all (or any particular) aspects of its mandated execution procedures.

SOP 135's in-house training provision does not require that the training sessions involve anyone other than Medical Team members. Consequently, there is no requirement that the training be conducted by someone with the necessary skills which, in accord with SOP 135, every Medical Team member may lack. Nor does the training requirement extend to the Injection Team, creating a substantial risk of severe pain due to IV failure from improper rate or force of injection. Exhibit 4 at para. 13 (if injection rate or injection force is too high, can cause leakage at connection points, damage to vein wall, or the cannula to dislodge –any of which could result in inadequate anesthesia reaching the inmate).

SOP 135 requires that all Medical Team members participate in only "four (4) training sessions prior to participating in an actual execution[.]" Dkt. 7-4 at 10. Those individuals may have no daily experience—*indeed no prior training or experience at all*—in establishing and maintaining IVs. This means that a phlebotomist—a "credential" which requires no training or experience to acquire in Idaho, *see* Dkt. 1-5,

Exh. 22—or an individual certified in First Aid, Cardiopulmonary Resuscitation, and Automatic External Defibrillator use and who has no other medical training and experience, may become eligible for Medical Team membership after only four so-called training sessions, allowing them to establish an IV and then monitor it for proper functioning. This plainly violates *Baze*.

d. SOP 135 does not contain the fourth *Baze* safeguard, meaningful redundancy.

In addition to the training and contemporary and continuing experience safeguards, the Kentucky protocol includes a fourth safeguard – that the IV team prepare two sets of lethal injection chemicals before the execution commences as well as a primary and secondary IV line. The Supreme Court held, "These redundant measures ensure that if an insufficient dose of sodium thiopental is initially administered through the primary line, an additional dose can be given through the backup line before the last two drugs are injected." *Baze*, 553 U.S. at 55. These redundancies constituted a safeguard in Kentucky because that state's protocol requires that the chemical preparation and placement of the lines be accomplished by trained and experienced personnel.

SOP 135 likewise requires a backup IV, and backup chemical preparation and readiness as well. However, it does not require that the individuals initiating, maintaining, or delivering chemicals through the IV have any relevant training and experience in doing so. Where no such training and experience requirements exist, such as in Idaho, the redundancies do not become a safeguard. Having that same untrained

and inexperienced person do the task twice does not materially improve the chances of it being done correctly.

e. SOP 135 does not contain the final *Baze* safeguard, a meaningful consciousness check.

The Kentucky "protocol specifically requires the warden to redirect the flow of chemicals to the backup IV site if the prisoner does not lose consciousness within 60 seconds." Baze 553 U.S. at 56. This determination is made by a physical check of the offender.

SOP 135 provides for a consciousness check, which is to be performed after the administration of thiopental or pentobarbital and heparin/saline but before the administration of pancuronium bromide:

> The Medical Team leader, dressed in a manner to preserve his anonymity, will enter into the room where the IMSI warden and offender are located to physically confirm the offender is unconscious by using all necessary medically appropriate methods.

Dkt.7-4 at 40. All that can fairly be discerned from this is that the consciousness check is performed by the Medical Team leader, that it requires physical confirmation, and that it must use "all necessary medically appropriate methods." *Id.* Physical confirmation may mean merely direct visual and aural inspection. SOP 135 does not require that the Medical Team leader actually touch the offender or apply different noxious stimuli to him to determine the offender's level of unconsciousness. Visual and aural consciousness checks are inadequate to determine whether the offender is sufficiently unconscious to allow the administration of pancuronium bromide and potassium chloride without his experiencing the severe pain associated with those chemicals.

Dr. Heath notes that:

> A person who is unconscious but not aroused by lighter forms of stimulation may still be arousable by an intense or highly noxious stimulus. The levels of stimulation produced by pancuronium injection (which causes suffocation due to the inability to draw breath) or by potassium injection (which causes excruciating pain) are the types of highly noxious stimuli that could easily arouse an unconscious person and revert them to a state of consciousness in which they would experience the agonizing effects of pancuronium and potassium.

Exhibit 4 at para. 15. *See also* Dkt. 1-5 at pp. 40, 74 (Dr. Waisel testimony in *DeYoung v. Owens*, No. 1:11-cv-2324-SCJ (N.D. Ga. July 19, 2011)).

Requiring an appropriate consciousness check by an adequately trained individual experienced in conducting consciousness checks is an alternative which would significantly reduce the risk of needless severe pain inherent in administering the remaining two chemicals. A person experienced and either certified or adequately trained in conducting consciousness checks is necessary because discerning levels of consciousness is a nuanced skill.

> The sophistication necessary comes not only from theoretical knowledge, but from training under supervision and feedback and experience. Patients respond differently, and the educated eye needs to be able to give an increasing level of stimulation and needs to be looking for subtle signs, such as, . . . fluttering of the eyes, wincing, finger movement, toe movement, any of those, and it takes a practiced eye to do that.

Dkt. 1-5 at Ex. 15, pp. 74-5 (Dr. Waisel testimony, DeYoung v. Owens, et al., No. 11-CV-2324-SCJ (N.D. Ga.)). A person needs training in order to adequately assess an individual's consciousness following the administration of anesthesia. Id. at 75.

4. SOP 135 Allows For A "Cut Down" To Establish A Central Line.

SOP 135 contemplates that the Medical Team leader may opine that it is " not possible to reliably place a peripheral line in the offender." Dkt. 7-4 at 40. In that event, a "Medical Team member may utilize a central line catheter in the offender's femoral vein in the thigh. . .utlizing appropriate medical procedures which includes the use of an ultrasound to assist in properly inserting the catheter and anesthetic such as Lidocaine." *Id.* Among the medical procedures considered appropriate among medical professionals is a "cut down" (i.e.- making an incision in the thigh to access the femoral vein). This is a "dangerous" procedure which should "be performed only by a trained physician in a clinical environment with a patient under deep sedation." *Nelson v. Campbell*, 541 U.S. 637, 642 (2004) (paraphrasing affidavit of Dr. Mark J.S. Heath). SOP 135 contemplates the use of Lidocaine, a local anesthetic. However, there are alternative ways to establish a central line which are "'less invasive, less painful, faster, cheaper, and safer,'" including "'percutaneous central line placement.'" *Nelson*,541 U.S. at 646 (2004) (quoting affidavit of Dr. Mark J.S. Heath). The Sixth Circuit Court of Appeals rejected an Eighth Amendment attack on a lethal injection protocol which failed to explicitly ban the use of cut-down procedures, but it did so only because the director of the state department of correction represented that a cut-down procedure would not be used. *Cooey v. Strickland*, 589 F.3d 210, 228 (6th Cir. 2009).

5. SOP 135 Does Not Address What To Do In The Event The Offender Regains Consciousness After Or During The Administration Of Potassium Chloride.

Dr. Heath opines that "absent proper training and experience on the part of the personnel who are charged with placing the IV cannulae and injecting the drugs, there is a high risk that . . . an insufficient amount of anesthetic agent will reach the prisoner's brain[.]" Exhibit 4 at para. 20. He notes elsewhere in his affidavit that because IV failure is not all-or-nothing, a partial dose of the paralytic and potassium chloride could reach an offender, causing severe pain. Exhibit 4 at para. 10. The protocol does not contemplate a prisoner awakening from a non-fatal but still severely painful dose of potassium chloride. The protocol has no provision for relieving the offender's severe pain. This violates *Baze* and the Eighth Amendment prohibition against cruel and unusual punishment.

B. IDOC Officials Are Not Subjectively Blameless For Purposes Of The Eighth Amendment

To prevail on a claim of future harm as cruel and unusual punishment, "there must be a 'substantial risk of serious harm,' an 'objectively intolerable risk of harm' that prevents prison officials from pleading that they were 'subjectively blameless for purposes of the Eighth Amendment.' *Farmer v. Brennan*, 511 U.S. 825, 842, 846, and n.9 (1994)." *Baze*, 553 U.S. at 50; Dkt. 7-1 at 15 (Memorandum In Support Of Motion To Dismiss). In stating "a lethal injection protocol substantially similar to the protocol we uphold today would not create a risk that meets this standard[,]" the *Baze* court was referring to the "demonstrated risk of severe pain" standard which it grounded in *Farmer*.

Baze, 553 U.S. at 61. As the court held, "[T]he proffered alternatives must effectively address a 'substantial risk of serious harm.' *Farmer*, [511 U.S.] at 842." *Id.* at 52. Where the risk of severe pain is increased due to unattended matters within the prison's control, such as last minute, inadequately timed and rehearsed procedures due to inexplicable delays in crafting a protocol and constructing an execution chamber, the prison officials are not subjectively blameless. Their actions contributed to a substantial risk of serious harm or an objectively intolerable risk of harm. Where the prison officials were not subjectively blameless, the prison officials' failures constitute evidence meeting the petitioner's burden.

In the instant case, IDOC officials are not subjectively blameless. They have known since 2008 that they needed to establish execution procedures in compliance with *Baze.* Yet they adopted SOP 135 only two weeks ago. IDOC officials have known for several years that one or more death sentenced inmates' cases were drawing to a conclusion. Yet they chose to remodel an execution facility on a timetable precluding the SOP 135 required training of execution teams in time for an execution in accord with SOP 135. Exhibit 6 (news article noting incomplete facility). IDOC officials are not subjectively blameless where they prevent compliance with the SOP 135 in a way which increases the likelihood of a substantial risk of harm.

Here, IDOC officials' failure to adopt SOP 135 until 14 days ago and their failure to have a facility at which the Medical and Injection Teams may meet their training requirements unquestionably increases the likelihood of a substantial risk of harm. Together with the

IDOC officials' failure, the evidence Mr. Rhoades proffers above demonstrates a likelihood of success on the merits.

C. The IDOC Execution Facility Is So Incomplete As To Preclude SOP 135 Mandated Training

News media report that the IDOC execution facility is not complete. Exhibit 6 (Associated Press article noting that facility not yet complete).

SOP 135 requires that:

- each of the three teams—Escort, Medical, and Injection—conduct 10 training sessions annually,
- after receiving a death warrant, each of the teams will train weekly before the execution date,
- each team will participate in a minimum of four training sessions prior to participating in an actual execution, and
- in the 48 hours prior to any scheduled execution, each team must conduct at least two rehearsal sessions.

Dkt. 7-4 at 10. In light of the incomplete nature of the execution facility, none of the SOP 135 required weekly trainings can have been completed. Additionally, that required training cannot be completed before Mr. Rhoades's scheduled execution date.

II. Absent A Stay, Mr. Rhoades Will Suffer Irreparable Harm.

This second factor is incorporated in the *Baze* stay standard. Because the *Baze* safeguards are not incorporated in SOP 135, there is substantial likelihood that Mr. Rhoades will suffer irreparable harm—severe pain and suffering—should his execution move forward.

III. The Balance Of Equities Strongly Tips In Mr. Rhoades's Favor.

In March, 2011, the IDOC refused undersigned counsel's public records request for the IDOC execution protocol. Dkt. 1-4 at Exh. 13. In May, 2011, the IDOC provided to the University of California, Berkeley School of Law, a draft revision of the predecessor to SOP 135, a revision which they disclaimed and stated was not in effect. Dkt. 1-4 at Ex. 2, 3. Finally, two weeks ago, on October 14, the IDOC adopted and released for publication its final execution procedures. Dkt. 7-4. The predecessor to SOP 135 identified three chemicals to be used in executions, but it provided no specific procedures for using those chemicals to execute an inmate. Dkt. 1-4 at 23-4. The State variously describes SOP 135 as "extensively revised" and "completely revised" from the draft which the IDOC refused to provide undersigned counsel in March. Dkt. 7-1 at 4, 11. Defendants were long aware that they needed to create execution procedures in compliance with *Baze v. Kentucky*, 533 U.S. 35 (2008), but failed to adopt any specific procedures until earlier this month. *See* Dkt. 7-2 at 28 (IDOC Grievance Listing, noting 2009 grievances re execution process). In delaying both the construction of its facility and the drafting and release of SOP 135 until the eve of execution, IDOC has unclean hands and laches that tip the balance of equities strongly in Mr. Rhoades's favor.

IV. A Stay Or Injunction Is In The Public Interest

The public has a strong interest in the enforcement of federal Constitutional rights and against state government violation of those rights. It has an especially strong interest in the government not killing a citizen when the State's delays caused insufficient time for the court to resolve this matter in a deliberate fashion. The strong public interest is in

an orderly and deliberate decision of the important issues raised. If Idaho is to exact the ultimate penalty, it should only do so in a humane manner, without inflicting severe and unnecessary pain on the condemned inmate.

Conclusion

Mr. Rhoades meets his burden for a stay. He has established that SOP 135 creates a demonstrated risk of severe pain. That risk is substantial when compared to the known and available alternatives, a one-drug protocol or the incorporation of the *Baze* safeguards into SOP 135. The Court should issue a preliminary injunction or stay of execution pending the resolution of this lawsuit.

Dated this 28th day of October, 2011.

Respectfully submitted,

_____/s/_____
Oliver W. Loewy
Teresa A. Hampton
Capital Habeas Unit
Federal Defenders Services of Idaho, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of October, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which is designed to send a Notice of Electronic Filing to persons including the following:

Krista Howard

khoward@idoc.idaho.gov

/s/
Teresa A. Hampton

STATE OF OHIO

DEPARTMENT OF REHABILITATION AND CORRECTION

SUBJECT:	PAGE 1 OF 17
Execution	NUMBER: 01-COM-11
RULE/CODE REFERENCE: ORC 2949.22; 2949.25	SUPERSEDES: 01-COM-11 dated 04/11/11
RELATED ACA STANDARDS:	EFFECTIVE DATE: September 18, 2011
	APPROVED:

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Ohio Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

form

II. PURPOSE

The purpose of this policy is to establish guidelines for carrying out a court-ordered sentence of death.

III. APPLICABILITY

This policy applies to all individuals involved in carrying out a court-ordered death sentence in accordance with all applicable policies, administrative regulations, and statutes.

IV. DEFINITIONS

Auxiliary Team Member – A physician who has been designated by the Warden to provide advice and consultation as described in this policy.

Critical Incident Debriefing Team - A group selected by the Southern Ohio Correctional Facility (SOCF) Warden, and including the Religious Services Administrator (RSA), available to assist any persons involved in the execution process. A psychological debriefing process is available via DRC clinical staff and others to recognize stressors associated with executions and to work through them with affected staff as follows:

- Worker's own experiences of the execution including reactions and perceptions.
- Review any negative aspects and feelings.
- Review any positive aspects and feelings.
- Relationships with workers and/or family.
- Empathy (sharing) with others.
- Disengagement from execution experience.

- Integration of this experience into the professional work role for a positive future contribution to the overall team effort.
- Exploring religious convictions and feelings.

Death House - A physical location within the SOCF used for the execution of a death-sentenced prisoner.

Death Row – (1) A housing area at the Ohio State Penitentiary (OSP) that has been designated by the Director of the Department of Rehabilitation and Correction to house male prisoners who are committed to the Department with a sentence of death; (2) A housing area at the Ohio Reformatory for Women (ORW) that is similarly designated to house female prisoners committed to the Department with a sentence of death; (3) A housing area at the Mansfield Correctional Institution (MANCI) that has been designated by the Director of the Department of Rehabilitation and Correction to house male prisoners who are committed to the Department with a sentence of death who are determined to be seriously mentally ill pursuant to the criteria set forth in Department Policy 67-MNH-27, Transfer of Prisoners to the Ohio State Penitentiary, or whose medical needs are inconsistent with assignment to OSP pursuant to Department Policy 68-MED-13, Medical Classification. Death Row is also a reference to a housing status for prisoners sentenced to death; it is not a security classification.

Drug Administrator - Any qualified member of the Medical Team who administers any execution drug or witnesses the preparation and administration of any execution drug. A Drug Administrator shall be currently qualified under Ohio Law to administer and prepare drugs for intravenous and intramuscular injections. A Drug Administrator may also establish or assist in establishing IV connections.

Execution Team - A group consisting of no less than twelve (12) members designated by the Warden of the Southern Ohio Correctional Facility to carry out court-ordered executions. Their duties also include preparation and testing of equipment, carrying out pre- and post-execution activities, and counseling with the prisoner.

Execution Timeline - A record of events before and during an execution to include the specific information required to be recorded by this policy and other information at the discretion of the Execution Team.

Medical Team Member – A person who is a member of the Execution Team and who is currently qualified under Ohio Law to administer and prepare drugs for intravenous and intramuscular injections, or who has at least one year experience as a certified medical assistant, phlebotomist, EMT, paramedic or military corpsman.

Religious Services Administrator - The Religious Services Administrator is the coordinator and administrator for religious services for the Ohio Department of Rehabilitation and Correction (DRC). The RSA will provide counseling and support services for the offender and others consistent with the provisions of this directive.

Reprieve - The postponement of an execution.

Stay - A court-ordered suspension or postponement of a legal execution.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction to carry out the death penalty in a constitutional manner and as directed by Ohio Courts of Law. All execution processes shall be performed in a professional, humane, sensitive, and dignified manner. It is the responsibility of the Director to designate a penal institution where death sentences shall be executed. The Warden of that facility, or Deputy Warden in the absence of the Warden, is responsible for carrying out the death sentence on the date established by the Ohio Supreme Court.

The procedures set forth in this policy are to be strictly followed. Any situation that arises that would make following these policies difficult, impractical, or impossible shall be immediately reported to the Director or the Warden. Any variations of a substantial nature must be approved by the Director as described in this policy.

There will be no variations from the following requirements:

1. At least three Medical Team Members, two of whom are authorized to administer drugs under Ohio law, shall be used in the conduct of court-ordered executions.

2. The drugs required by this policy shall be used.

3. Functions required to be performed by medically-qualified persons, as described in this policy, shall be performed by Medical Team Members.

4. All Execution Team functions shall be performed by appropriately trained and qualified members of the Execution Team.

VI. PROCEDURES

A. General Guidelines

1. All prisoners sentenced to death by a court of law shall be transported to a reception center within the Department of Rehabilitation and Correction for initial processing. Upon completion of the reception process, the prisoner shall immediately be transferred to the designated institution: MANCI or OSP for male prisoners or ORW for female prisoners.

2. All court-ordered executions shall be carried out at the Southern Ohio Correctional Facility and will be planned to commence at 10:00 a.m. on the scheduled execution date, subject to developing circumstances.

3. Unless otherwise designated by the Director/designee, the prisoner shall remain on Death Row until transferred to the Death House for scheduled execution.

4. The Ohio Supreme Court shall designate the date of execution. Upon receipt of a scheduled execution date, the Warden of the institution housing the prisoner shall notify the Director, the RSA, and the Warden at SOCF.

5. Attendance at the execution is governed by the Ohio Revised Code, section 2949.25 and includes:

a. The Warden or Acting Warden of the institution where the execution is to be conducted, and such number of correction officers or other persons as the Warden or Acting Warden thinks necessary to carry out the death sentence.

b. The sheriff of the county in which the prisoner was tried and convicted.

c. The Director of the Department of Rehabilitation and Correction, or designee, and any other person selected by the Director/designee to ensure that the death sentence is carried out.

d. Such number of physicians and medical personnel as the Warden or Acting Warden thinks necessary. A physician may be designated by the Warden as an auxiliary member of the execution team, and whose role will be to provide consultation or advice as may be necessary. This physician shall attend such number of execution rehearsals as the Warden may consider necessary, but no less than one rehearsal per execution. The Auxiliary Team Member shall attend training sessions on topics identified in VI.B.4.b.i. – iv. below. It is anticipated that the Auxiliary Team Member may not routinely attend the executions, but would be available to provide consultation or advice in the event of some unanticipated circumstance.

e. The prisoner may select one of the following persons: the RSA, minister-of-record, clergy, rabbi, priest, imam, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination or sect, subject to the approval of the Warden.

f. Three persons designated by the prisoner who are not confined in any state institution subject to the approval of the Warden or Acting Warden based on security considerations.

g. Three persons designated by the immediate family of the victim, subject to the approval of the Warden or Acting Warden based on security considerations, as detailed in Department Policy 03-OVS-06, Victim Involvement in the Execution Process.

h. Representatives of the news media as the Director/designee authorize which shall include at least one representative of the following: a newspaper, a television station, and a radio station.

6. Given the gravity of the sentence to be carried out, it is imperative that these procedures be strictly adhered to and all actions by Department personnel in carrying out the sentence be fully documented as required by this policy. However, due to the difficult and sometimes unpredictable nature of the tasks to be performed in carrying out the sentence it may not always be possible to follow these procedures to the letter. Thus, variations from the requirements of the policy directive may sometimes be necessary. Any member of the Execution Team who determines for any reason it is difficult, impractical, or impossible to strictly follow the procedures in this policy directive shall

immediately report the same to the Warden or to the Director. The Director may then consult with the Warden and others as appropriate. Only the Director may authorize a deviation from the procedures in this policy directive. Any such deviation shall be documented as soon as possible.

B. Execution Preparation – Approximately thirty (30) days prior to the scheduled execution date

1. Notification

The Warden of the institution where the prisoner is housed shall notify the Director by memo when a firm date is scheduled for a prisoner's execution with copies going to the Regional Director, DRC Chief Counsel, Assistant Director, APA, Ohio State Highway Patrol (Portsmouth and Jackson), and the Office of Victim Services.

2. Execution Drugs

a. The Warden shall ensure a sufficient quantity of the drugs used for executions (pentobarbital, midazolam, and hydromorphone) are stocked within the SOCF Infirmary for a pending execution or anticipated future executions.

b. The Warden's assessment of what constitutes a sufficient quantity shall include ensuring a sufficient amount for a contingency against contamination or inadvertent loss.

c. At his discretion, the Warden may, at any time, direct the Health Care Administrator or the Health Care Administrator's designee to order execution drugs from a licensed pharmacist at the Central Pharmacy of the Department of Mental Health, or any other licensed pharmacist.

d. All drugs obtained shall be maintained in the Infirmary.

3. Assessment of Prisoner

a. Every possible effort shall be made to anticipate and plan for foreseeable difficulties in establishing and maintaining the intravenous (IV) lines. The prisoner shall be evaluated by appropriately trained medical staff at the parent institution not later than twenty-one (21) days before the execution to evaluate the prisoner's veins and plan for the insertion of the IV lines. This evaluation shall include a "hands-on" examination as well as a review of the medical chart to establish any unique factors which may impact the manner in which the Execution Team carries out the execution. Potential problems shall be noted and discussed, and potential solutions considered, in advance of the execution. Concerns or potential issues shall be communicated to the Warden or designee at SOCF as soon as possible.

b. Any evaluation that is conducted by a member of the institution medical staff shall be noted in the prisoner's medical chart.

c. The prisoner's medical condition shall be assessed in order to identify any necessary accommodations or contingencies that may arise from the prisoner's medical condition or history. Any medical condition or history that may affect the performance of the execution shall be communicated as soon as possible to the Warden of SOCF, who shall confer with others as necessary to plan such accommodations or contingencies. The fact of the assessment and any conclusions shall be documented in the prisoner's medical chart.

d. Any concerns for establishing or maintaining IV lines and any concerns or plans for medical accommodations or contingencies shall be communicated to the Execution Team in order that these things may be discussed and addressed in execution trainings or rehearsals.

e. An appropriate member of the mental health staff at the parent institution shall evaluate the prisoner not later than twenty-one (21) days before the execution to evaluate his or her stability and mental health in light of the scheduled execution. Any concerns or contingencies affecting the execution process shall be communicated to the Warden of SOCF as soon as possible. The fact of the assessment and any conclusions shall be documented in the prisoner's mental health chart. If the prisoner has no mental health file due to not being on the mental health caseload, the fact of the assessment and any conclusions shall be documented in the prisoner's medical chart.

4. Training

a. The Execution Team shall begin conducting training sessions no less than once per week until the scheduled date of execution. The training shall address any accommodations or contingencies that might be anticipated.

b. Training in the following topics shall be provided for every member of the Execution Team prior to service and at least once per year thereafter:

i. The general nature and effects of the execution drugs that are used during the execution process;

ii. Drug administration procedures, including the insertion of the IV needles and administration of intramuscular injections;

iii. Signs or symptoms of problems when administering drugs; and

iv. Any legal developments of significance.

5. Other Preparations

a. The RSA shall make contact with the prisoner to establish counseling and family contact information.

b. Prior to commencement of the initial training session, the Warden or the Team Leader shall verify and document the qualifications of the Medical Team members. Medical team members shall provide evidence of certification status at least once per year and upon any change in status.

c. The Team Leader shall ensure that each member of the Execution Team has received a copy of the current execution policy. Each member of the Execution Team shall sign for its receipt.

C. Execution Preparation - Approximately fourteen (14) days prior to the execution

1. The Warden of the institution where the prisoner is housed shall have the Execution Information Release (DRC1808) completed by the prisoner. This form will verify information on the prisoner, visitors, witnesses, spiritual advisor, attorney, requested witness, property, and funeral arrangements.

2. The names of official witnesses/media witnesses shall be supplied to the Warden, as outlined in this policy.

3. The names and relationships of the victim's witnesses shall be supplied to the Warden.

4. The RSA shall provide family information from the prisoner to the Warden.

D. Execution Preparation - Approximately twenty-four (24) hours prior to the scheduled execution

1. The prisoner shall be transferred from Death Row and housed in the Death House at SOCF. The prisoner shall be constantly monitored by at least three (3) members of the Execution Team. An Execution Timeline shall be maintained.

2. An Authorized Independently Licensed Mental Health Professional shall interview the prisoner periodically and submit progress reports to the Warden. All prisoner files shall be maintained in the Warden's office at SOCF, unless otherwise directed by the Warden.

3. The Warden shall establish a line of communication with DRC legal staff and the Attorney General's Office for notice of case status and/or other significant legal changes.

4. The RSA shall provide counseling and spiritual support unless the prisoner requests not to have contact.

5. Beginning with his/her arrival at SOCF, the prisoner shall not be forced to meet with non-staff visitors that he does not wish to see.

E. Execution Preparation - The following events shall take place upon the prisoner's arrival at the Death House

1. Once the prisoner is at SOCF, the Death House shall be restricted to the following:

Director/designee(s);

Warden;
Communications Chief/designee;
Institution Deputy Warden;
Administrative Assistant to the Warden;
Chaplain;
Physician;
Independently Licensed Mental Health Professional;
Chief of Security;
Maintenance Superintendent;
Any other person as deemed necessary by the Warden.

2. The prisoner shall be evaluated by medical staff on the day of arrival at SOCF to evaluate the prisoner's veins and plan for the insertion of the IV lines. This initial evaluation shall include a "hands-on" examination as well as a review of the medical chart. At a minimum, a "hands-on" examination shall also occur later that evening. Potential problems shall be discussed, and potential solutions considered. The performance of these two evaluations shall be noted in the Execution Timeline. Any relevant portion of the medical file may be kept in the Death House for appropriate reference as needed.

3. SOCF chaplains shall make periodic visits to the prisoner, if requested by the prisoner.

4. The Deputy Warden shall assign security personnel to staff entrances, checkpoints, and to assist the Ohio State Highway Patrol (OSHP).

5. The Team Leader shall ensure that the prisoner's property is inventoried in front of the prisoner. The prisoner will have previously, per paragraph C.1. specified who is to receive his or her personal effects. The Team Leader shall ensure that the Inmate Property Record Disposition and Release (DRC2055), correctly specifies this information, and the Team Leader shall sign it to confirm the review.

6. The prisoner shall, per paragraph C.1. specify in writing his/her request for funeral arrangements, which shall be recorded in the Execution Information Release, (DRC1808).

7. The prisoner shall be allowed contact visits with family, friends and/or private clergy, as approved by the Warden between the hours of 4:30 p.m. and 7:30 p.m. on the day prior to the scheduled execution. Cell front visits shall be permitted between the hours of 6:30 a.m. and 8:00 a.m. on the day of the scheduled execution. The attorney and spiritual advisor may continue to visit with the prisoner until 8:45 a.m. The Warden may increase the visiting opportunities at his discretion.

8. The Team Leader shall ask the prisoner to identify his or her special meal request. The special meal shall be served the day prior to the scheduled execution, at a time to be determined by the Managing Officer.

9. The Warden shall brief key personnel, to include medical and mental health staff, in order to allow intake information to be obtained.

10. The Warden shall receive updates from security personnel and the OSHP on crowd control, demonstrations, pickets, etc.

11. The Chief of Security or designee shall brief the Warden on the level of tension within the remainder of the prison population.

12. The Warden shall relay any out of the ordinary activity to the South Regional Director.

13. The Execution Team shall continue to prepare as needed.

F. Execution Preparation – Morning of Execution Day. At any time, as determined by the Team Leader, on the morning of the execution:

1. The prisoner shall be permitted to take a shower and dress in the designated clothing the morning of the execution.

2. Vein Assessment

A "hands-on" examination of the prisoner's veins shall be made before the IV is established. Potential problems shall be discussed, and potential solutions considered. The performance of this evaluation shall be noted in the Execution Timeline.

3. Drugs Obtained from Infirmary

a. The institution Health Care Administrator or a person designated by the Warden who is a person qualified under Ohio law to administer drugs shall take possession of the drugs pentobarbital, midazolam, and hydromorphone from the institution pharmacy storage area, and shall document possession of the drugs by signing form Order for Execution Medications (DRC2001). This person shall deliver the drugs to the Death House.

b. The Health Care Administrator or qualified designee shall give possession of the drugs to a Drug Administrator, in the presence of a second Drug Administrator. These persons shall complete form Order for Execution Medications (DRC2001).

c. The drugs shall be prepared for injection by a Drug Administrator. The preparation of the drugs shall be monitored by a second Drug Administrator who shall independently verify the preparation and dosage of the drugs. Both Drug Administrators shall document this in the form Order for Execution Medications (DRC2001).

4. Drug Preparation

a. One Drug Administrator shall prepare the execution drugs as follows:

i. Syringes 1 and 2: Five (5) grams of pentobarbital (under whatever generic or trade name it may be known or sold), 100 ml of a 50mg/mL solution shall be withdrawn and divided into two syringes labeled "1" and "2".

ii. Syringes 3 and 4: Five (5) additional grams of pentobarbital shall be obtained and kept available in the Equipment Room, but need not be withdrawn into syringes unless the primary dose of five grams proves to be insufficient for the procedure. Two additional syringes labeled "3" and "4" shall be kept available for contingent use.

iii. Syringes A and B: Drugs for intramuscular injection may be drawn up into syringes for use as needed if the decision is made to use an alternative method. Ten (10) mg of midazolam (under whatever generic or trade name it may be known or sold) shall be obtained or prepared with 5mg/mL concentration. Forty (40) mg of hydromorphone (under whatever generic or trade name it may be known or sold) shall also be obtained or prepared with 10 mg/mL concentration. The midazolam and hydromorphone in the amounts specified above shall be drawn into or mixed in a single syringe for intramuscular injection, which shall be labeled "A." A second such syringe shall be prepared if needed, and shall be labeled "B."

iv. Syringe C: A third syringe of sixty (60) mg of hydromorphone may also be prepared if needed and labeled as "C."

b. A second Drug Administrator shall witness the Drug Administrator's preparation of the execution drugs.

c. The drug preparation shall be documented as follows:

i. The Drug Administrator who prepared the execution drugs and the Drug Administrator who witnessed the preparation shall complete form Order for Execution Medications (DRC2001).

ii. A Drug Administrator shall inform the Command Center when the Execution Drugs are prepared, and the Command Center shall record in the Execution Timeline the time that the drugs were prepared.

5. Official witnesses to the execution will report to the institution. The victim's witnesses shall report to the Portsmouth Highway Patrol Post for escort to the institution by designated SOCF personnel.

6. The prisoner shall be allowed to have visits as described in E.7. above.

7. The RSA shall be present to counsel and provide spiritual support to the prisoner and staff.

8. All communication equipment shall be tested, including primary and secondary communication with both the Governor's Office and the Office of the Attorney General.

a. Primary communications shall be via a telephone line opened directly to the Command Center from the execution chamber. This line shall be tested one (1) hour prior to the scheduled execution. Other than testing, this line shall remain open.

b. Secondary communications shall be via cellular telephone.

c. In the event that both the primary and secondary communications are inoperable, the execution shall be delayed until communications are established.

G. Execution Preparation - Approximately fifteen (15) minutes prior to the scheduled execution

1. Witnesses Transported to Death House.

All authorized witness groups shall be escorted to the Death House separately by designated staff. Witnesses shall be escorted to viewing rooms before the death warrant is read.

2. Phone for Prisoner's Counsel

If the prisoner chooses to have his or her counsel as a witness, at all times after counsel enters the witness room, counsel shall have free access to the phone near the entrance door of the Death House.

a. The phone in the Death House foyer will enable counsel to call into the waiting room for prisoner's counsel in the prison compound where another person, whose presence is arranged by counsel for the prisoner and whose presence satisfies the prison's security concerns, and which person is acting on behalf of the prisoner and his or her counsel, will be situated during all times after the death warrant is read.

b. The Warden shall allow this other person to have access to his or her own laptop computer and to a phone that can connect that person to an outside line.

3. Death Warrant

The Warden shall read the death warrant to the prisoner.

4. Closed-Circuit Camera Activated

Immediately after the death warrant is read, the closed-circuit camera in the execution chamber shall be turned on so that witnesses in the witness rooms can view the subsequent activities in the execution chamber on the television screen in those rooms.

5. Prisoner Enters Execution Chamber

The Warden and Execution Team shall escort the prisoner to the execution chamber, assist the prisoner onto the bed and secure the straps. The team shall roll up the prisoner's sleeves or take other steps to ensure that the arms are plainly visible to persons in the chamber and to those in the equipment room.

6. Curtain Closed

Once the prisoner is secured to the bed, the curtain shall be closed, prior to the insertion of the IV needles. The closed-circuit camera shall remain on to allow the witnesses to view the establishment of IV site(s).

7. IV Site(s) Preparation & Establishment

a. The Medical Team shall enter the Execution Chamber to prepare IV site(s).

b. The Medical Team shall establish one or two viable IV sites.

i. The arm veins near the joint between the upper and lower arm shall be utilized as the preferred site for the IV injection.

ii. In the event that the Medical Team member is unable to establish an IV at a preferred site, the Medical Team member(s) may establish an IV at alternative site(s) for use by the Drug Administrator when administering execution drugs.

iii. The Execution Team may utilize a non-invasive device such as a light, if desired, to assist in locating a vein.

c. The Medical Team member(s) shall be allowed as much time as is necessary to establish viable IV site(s).

i. If the Medical Team member(s) are unable to establish viable IV site(s), the Medical Team members shall consult with the Warden.

ii. The Warden shall consult with the Director and others as necessary for the purpose of determining whether or how long to continue efforts to establish viable IV site(s) before proceeding to the alternative method of execution.

8. Confirming & Recording Establishment of IV Site(s)

a. A Medical Team member shall test the viability of the IV site with a low-pressure saline drip through IV tubing. If necessary, a heparin lock may be attached to the IV needle as an alternative to the saline drip.

b. The Warden, Team Leader, and a Drug Administrator shall all confirm the visibility of the IV sites.

c. The Medical Team member(s) shall exit the Execution Chamber and shall announce the number of attempts made to establish viable IV site(s) to the Command Center contact for capture on the timeline.

d. The Command Center shall record in the Execution Timeline the number of attempts.

9. Curtain Opened

The curtain shall be opened after the establishment of viable IV site(s) or upon a decision to use the alternative method. The curtain shall remain open during the remainder of the execution until the examination for the pronouncement of death, unless the execution is abandoned or halted.

10. Last Words

The Warden shall ask the prisoner if he has any last words. If the prisoner has a last statement, he will be allowed to make it while the witnesses are present in the adjacent viewing rooms, and are able to see him and hear him via microphone.

a. There shall generally be no restriction on the content of the prisoner's statement and no unreasonable restriction on the duration of the prisoner's last statement.

b. The Warden may impose reasonable restrictions on the content and length of the statement. The Warden may also terminate a statement that he or she believes is intentionally offensive to the witnesses.

H. Commencement of Execution

1. Execution by IV Injection

a. Upon the Warden's signal, a Drug Administrator shall intravenously administer the previously prepared syringes 1 and 2.

b. The low-pressure saline drip shall be allowed to flush saline through the line(s) following completion of the IV drug administration.

c. A second Drug Administrator shall be present in the equipment room to observe the administration of the execution drugs. This Drug Administrator shall announce the start and finish times of each injection to the Command Center contact for capture on the timeline.

d. The Command Center shall record in the Execution Timeline the start and finish times of each injection.

e. Following administration of the IV drugs, a Drug Administrator shall reenter the Execution Chamber to inspect the IV site for evidence of incontinence or infiltration and to listen to the prisoner for breathing and heart sounds.

f. At the completion of the process and after a sufficient time for death to have occurred, the curtain shall be closed and an appropriate medical professional shall evaluate the prisoner to confirm death. The curtain shall then be re-opened and the Warden shall announce the time of death. In the event that the appropriate medical professional cannot confirm that death has occurred, the curtain shall be reopened until an appropriate time has passed to reevaluate the prisoner.

2. Using Alternative IV Sites

a. The Team Leader, a Medical Team member, and the Warden shall observe the prisoner during the injection process to look for signs of swelling or infiltration at the IV site, blood in the catheter, and leakage from the lines and other unusual signs or symptoms.

b. The Execution Team shall communicate to the Drug Administrators any problems detected during the administration of the execution drugs.

c. The Drug Administrator who is administering the execution drugs shall determine whether it is necessary to use another viable IV site.

d. In the event that the Drug Administrator who is administering the execution drugs detects a problem in the administration of the drugs, the Drug Administrator shall use any other viable IV site. No prior consultation with the Warden or other members of the Execution Team is required.

e. Whenever it is necessary to change IV sites, the Drug Administrator shall administer a full dosage of the execution drug through the alternate, viable IV site using syringes 3 and 4.

f. In the event the Drug Administrator changes to another viable IV site, the Drug Administrator shall ensure the Command Center is informed. The Command Center shall record in the Execution Timeline any change in IV site(s).

3. Establishing Other IV Sites(s)

a. In the event there is no alternative viable IV site, the Medical Team shall consult with the Warden and Director.

b. The Warden, following consultation with the Director, shall determine whether to proceed with execution by IV injection or whether execution by intramuscular injection should be used.

c. In the event the Warden determines to proceed with execution by IV injection, the Execution Team shall repeat the steps in paragraphs VI.G.6. - 8 and continue with the execution as provided for in paragraph (VI)(H).

d. The Warden shall ensure the Command Center is informed of his decision. The Command Center shall record the Warden's decision in the Execution Timeline.

4. Alternative Execution by Intramuscular Injection

The Warden, following consultation with the Director, may order an execution by intramuscular injection if execution by IV injection is unfeasible, or if pentobarbital could not be obtained for use in the execution.

a. The execution drugs used for execution by intramuscular injection shall be prepared as provided for in VI.F.4.

b. A Drug Administrator shall enter the chamber at the direction of the Warden and shall administer an intramuscular injection of 10 mg midazolam and 40 mg hydromorphone, labeled syringe "A," into a large muscle of the prisoner, usually the deltoid or triceps muscle. Alternative sites may include the hip, thigh or other location as may be appropriate under the circumstances.

c. Five minutes after injection of Syringe A, a Drug Administrator shall re-enter the chamber to listen for breathing and heart sounds. If the prisoner is still breathing, the Drug Administrator shall administer the intramuscular injection of 10 mg midazolam and 40 mg hydromorphone, labeled syringe "B," into a large muscle.

d. Five minutes after injection of Syringe B, a Drug Administrator shall re-enter the chamber to listen for breathing and heart sounds. If the prisoner is still breathing, the Drug Administrator shall administer an intramuscular injection of 60 mg of hydromorphone only, labeled syringe "C," into a large muscle. This step shall be repeated until the prisoner is deceased.

e. At the completion of the process and after a sufficient time for death to have occurred, the curtain shall be closed and an appropriate medical professional shall evaluate the prisoner to confirm the fact of his or her death. The curtain shall then be re-opened and the Warden shall announce the time of death. In the event that the appropriate medical professional cannot confirm that death has occurred, the curtain shall be reopened until an appropriate time has passed to reevaluate the prisoner.

I. Post-Execution

1. The Warden, or his designee, shall notify the Director that the execution has been carried out.

2. The Medical Team shall remove the IV equipment and clean the IV sites.

3. The RSA or the prisoner's Spiritual Advisor shall anoint the body of the prisoner if requested by the prisoner.

4. The RSA shall coordinate the burial of the prisoner's body with local chaplains if the prisoner's family does not want the body.

5. The Execution Team shall remove the deceased from the execution bed and place him or her on a gurney.

6. Disposition of the body shall be in accordance with arrangements made prior to the execution at the prisoner's request.

7. The Warden shall sign and return the death warrant to the Court, indicating the execution has been carried out.

8. Prepared Execution Drugs

   a. One Drug Administrator shall properly dispose of any execution drugs that have been prepared for administration but not been utilized.

   b. A Second Drug Administrator shall witness the disposal.

   c. Both Drug Administrators shall document the disposal in form Order for Execution Medications (DRC2001).

9. Unprepared Execution Drugs

   a. One Drug Administrator shall properly return any unprepared execution drugs to the Infirmary.

   b. A Second Drug Administrator shall witness the return of the unprepared execution drugs.

   c. Both Drug Administrators shall document the return of the unprepared execution drugs in form Order for Execution Medications (DRC2001).

10. Recording Used Execution Drugs

    The Team Leader shall document the name or description, the expiration date, and the lot number of the execution drugs used.

11. After-Action Review

    Immediately following an execution, the Execution Team and the on-site administrators directly involved in the execution process shall meet to review the process of the execution. Any unique or unusual events shall be discussed, as well as opportunities for improvement and successful procedures. Actions and documentation of the events shall be reviewed to identify any discrepancies. Discrepancies from the policy directive shall be clearly described and noted in a written record. The record shall be signed and dated by the Warden.

12. Critical Incident Debriefing

    a. The Warden shall ensure that critical incident debriefings are available for the Execution Team and staff participants immediately following the execution.

    b. The Critical Incident Debriefing team shall conduct interviews in accordance with CIM guidelines.

    c. The RSA shall be available for debriefing for the family of the prisoner.

13. Quality Assurance Review

The Director shall designate a Special Assistant for Execution Policy and Procedures. The Special Assistant shall evaluate the performance of the Execution Team, review the conduct of court-ordered executions and report to the Director of the Department. His or her duties will consist of reviewing documentation, training, and professional qualifications, to ensure compliance with the written policy directive. The Special Assistant may utilize assistants as necessary to compile or assess the information, and may consult with others consistent with the confidentiality of the process. Whenever appropriate, the Special Assistant shall consult with a properly trained medical person when reviewing the medical aspects of the execution procedures. The Special Assistant will also provide consultation and advice concerning modifications in the written directive. The Special Assistant will prepare a report to the Director following each execution, with any suggestions or recommendations that are appropriate.

Related Department Forms:

Execution Information Release	DRC1808
Order for Execution Medications	DRC2001
Inmate Property Record Disposition and Release	DRC2055

ERM A.12(B) Capital Punishment Final Days Procedures

A. GENERAL

1. The punishment of death shall be inflicted within the walls of a building at the State Penitentiary. SDCL §23A-27A-32, 23A-27A-33. The South Dakota State Penitentiary (hereinafter SDSP) shall provide all proper equipment and appliances for the infliction of such punishment. SDCL §23A-27A-32, 23A-27A-33. The necessary setup includes a room, hereinafter referred to as the "Chemical Room," equipped with a one-way mirror that allows occupants to observe the Execution Chamber and the inmate after he is strapped to a gurney in the execution chamber.

2. Death shall be inflicted by administering intravenous injections of a substance or substances in a lethal quantity. The substance or substances and manner of execution shall be and remain consistent with state and federal constitutional requirements as identified herein.

3. The Warden or designee is responsible for having the chemicals for lethal injection and any other necessary items for use on the scheduled date of execution. Under the direction of the Warden or designee two complete sets of the substance or substances used to conduct an execution shall be kept in separate secure locations.

4. The Warden shall arrange for the attendance of South Dakota Department of Corrections (hereinafter SDDOC) staff, law enforcement officers and other persons he/she deems necessary and proper to perform the functions involved in conducting a scheduled execution. This shall include all those required by South Dakota statute to attend.

5. If at any time during the execution process the Governor stays, pardons, or commutes the sentence of the condemned person or if a court of competent jurisdiction issues a stay after an execution has commenced, the execution team shall stop the execution. Ambulance staff equipped with advanced life support capabilities, including a heart defibrillator and such supplies and equipment as would be needed to attempt to revive an individual who has been injected with one or more of the substances identified in Section D, shall be on standby at the SDSP.

B. QUALIFICATIONS OF EXECUTION TEAM MEMBERS

1. An execution carried out by intravenous injection shall be performed by person(s) trained to perform venipuncture and to administer intravenous injections. The person(s) shall be selected by the Warden and approved by the Secretary of Corrections. SDCL 23A-27A-32.

2. The person(s) selected by the Warden to mix the drugs and prepare the syringes shall demonstrate proficiency through relevant training and two years' experience in the preparation of syringes for intravenous administration and mixing and preparation of drugs for such administration.

3. The person(s) selected by the Warden to insert the intravenous needles into the veins of the prisoner and connect, monitor, and maintain intravenous lines shall be certified or licensed and have at least two (2) years' professional experience as one of the following: medical or osteopathic physician, physician assistant, registered nurse, certified medical assistant, licensed practical nurse, phlebotomist, paramedic, emergency medical technician, or military corpsman.

4. The person(s) selected by the Warden to administer the injections shall demonstrate proficiency through relevant training and two years' experience in the administration of drugs by intravenous injection.

C. PREPARATION OF CHEMICALS

1. The following identifies the contents of each syringe used in the course of the 3-Drug or 2-Drug executions.

SYRINGE LABELED/MARKED	CONTENTS
#1	Sodium Thiopental (1.5 grams in a 60 cc solution) or Pentobarbital (2.5 grams in a 50 cc solution)
#2	Sodium Thiopental (1.5 grams in a 60 cc solution provided Syringe #1 is also 1.5 grams of Sodium Thiopental in a 60 cc solution) or Pentobarbital (2.5 grams in a 50 cc solution provided Syringe #1 is also 2.5 grams of Pentobarbital in a 50 cc solution)
#3	Normal Saline (25 ml)
#4	Pancuronium Bromide (100 mg of 2 mg/ml concentration in a 50 cc solution)
#5	Normal Saline (25 ml)
#6	Potassium Chloride (120 mEq. in a 60 cc solution)
#7	Potassium Chloride (120 mEq. in a 60 cc solution)
Backup syringes (if needed):	
#8	Normal Saline (25 ml)
#9	Sodium Thiopental (1.5 grams in a 60 cc solution) or Pentobarbital (2.5 grams in a 50 cc solution)
#10	Sodium Thiopental (1.5 grams in a 60 cc solution provided Syringe #1 is also 1.5 grams of Sodium Thiopental in a 60 cc solution) or Pentobarbital (2.5 grams in a 50 cc solution provided Syringe #1 is also 2.5 grams of Pentobarbital in a 50 cc solution)
#11	Normal Saline (25 ml)
#12	Pancuronium Bromide (100 mg of 2 mg/ml concentration in a 50 cc solution)
#13	Normal Saline (25 ml)
#14	Potassium Chloride (120 mEq. in a 60 cc solution)
#15	Potassium Chloride (120 mEq. in a 60 cc solution)

2. The following identifies the contents of each syringe used in the course of the 1-Drug execution using Sodium Thiopental.

SYRINGE LABELED/MARKED	CONTENTS
#1	Sodium Thiopental (1.25 grams in a 50 cc solution)
#2	Sodium Thiopental (1.25 grams in a 50 cc solution)
#3	Sodium Thiopental (1.25 grams in a 50 cc solution)
#4	Sodium Thiopental (1.25 grams in a 50 cc solution)
#5	Normal Saline (25 ml)
Backup syringes (if needed):	
#6	Sodium Thiopental (1.25 grams in a 50 cc solution)
#7	Sodium Thiopental (1.25 grams in a 50 cc solution)
#8	Sodium Thiopental (1.25 grams in a 50 cc solution)
#9	Sodium Thiopental (1.25 grams in a 50 cc solution)

3. The following identifies the contents of each syringe used in the course of the 1-Drug execution using Pentobarbital.

SYRINGE LABELED/MARKED	CONTENTS
#1	Pentobarbital (2.5 grams in a 50 cc solution)
#2	Pentobarbital (2.5 grams in a 50 cc solution)
#3	Normal Saline (25 ml)
Backup syringes (if needed):	
#4	Pentobarbital (2.5 grams in a 50 cc solution)
#5	Pentobarbital (2.5 grams in a 50 cc solution)

4. Any person sentenced to death prior to July 1, 2007, may choose to be executed by the 3- or 1-Drug protocol set forth in this document, provided the SDDOC possesses the necessary substance or substances for the method chosen at the time scheduled for the inmate's execution, or in the manner provided by South Dakota law at the time of the person's conviction (2-Drug protocol set forth in this document). Any person sentenced to death prior to July 1, 2007, shall be executed using the 3- or 1-Drug protocol provided in this document using the substance or substances in the SDDOC's possession unless the inmate requests in writing to the Warden not less than seven (7) days prior to the scheduled execution date that the inmate wishes to be executed by the 2-Drug protocol set forth herein in accordance with South Dakota law as it existed prior to July 1, 2007.

5. For any inmate sentenced to death after July 1, 2007, the Warden shall elect the method of execution from one of the foregoing 3-, 2-, or 1-Drug methods for which the SDDOC possesses the necessary substance or substances at the time scheduled for the inmate's execution. The Warden will give consideration to, and make the effort to accommodate, the inmate's method of preference, provided the inmate selects 3-, 2-, or 1-Drug methods for which the SDDOC possesses the necessary substance or substances at the time scheduled for the inmate's execution.

D. PREPARATION FOR EXECUTION

1. The SDDOC staff selected to participate in the execution shall drill at least weekly for six to eight weeks prior to the scheduled date of execution. The warden shall schedule additional drills the week of the scheduled execution.

2. Not less than seven (7) days prior to the execution week announced in the Warrant of Death Sentence and Execution, a physician or other medical professional qualified to assess venous access shall examine the inmate. A written report shall be prepared describing the inmate's physical condition and any medical condition of the inmate that may lead to potential problems establishing an IV site. This report, along with a copy of the lethal injection protocol, shall be provided to the executioner(s) for review and consideration no later than one day before the scheduled date of execution.

3. All substances will be mixed or prepared as necessary no more than 8 hours prior to the execution and shall thereafter be maintained in accordance with manufacturers' instructions in temperatures not in excess of 22°C/71.6°F, or such temperature specifically called for by the manufacturer, until ready for use. All substances will be mixed or prepared in bright, un-dimmed light.

4. To provide notification of any last minute stay or appeal, arrangements shall be made to provide direct telephone access between the Warden, the chemical room, the Governor's office, the Chief Justice of the South Dakota Supreme Court or designee, and the Attorney General's office. The Governor, the Chief Justice, and Attorney General or their designees shall be provided with phone numbers to the Warden's office, the chemical room, and multiple backup phone numbers (such as personal cell phone numbers of the Warden and Deputy Warden). In addition, the Warden and Deputy Warden shall be equipped with SDSP issued radios.

5. On the date of the scheduled execution, the prisoner shall be escorted to the execution chamber and strapped to the gurney by the Tie Down Team.

6. On the date of execution, the chemical room shall be kept clear of all persons except for the Executioners, the Warden, and any SDDOC staff selected by the Warden to assist with the execution of the sentence of death.

7. The Tie Down Team Leader shall verify that all restraints are secure and so advise the Warden, at which time the Tie Down Team shall move to the hallway and stand by.

8. The IV team shall enter the chamber and establish two independent IV lines to the inmate's veins. The IV team will establish IV lines only in peripheral veins located in the inmate's arms, hands, legs, or feet, preferably one in each arm. In the event the IV team cannot establish peripheral vein lines, the IV team will establish central vein lines by percutaneous methods, but only if the IV team member establishing the central vein line can demonstrate current training, credentialing, and proficiency in establishing IV lines in central veins by percutaneous methods. The IV team will establish and secure the IV lines in such a way as to leave them visible for monitoring.

9. The gurney shall at all times be placed so that the inmate's head and face are visible to the Warden and to those in the chemical room. If the inmate desires, and if it will not interfere with the efficacy of the substance or substances being used for the execution, the inmate's head will be propped up by a firm, foam wedge-shaped cushion to better permit IV team members in the chemical room to see the inmate's face during the procedure.

10. Every effort will be extended to ensure that no unnecessary pain or suffering is inflicted on the inmate.

11. If the IV team cannot secure one (1) or more sites within one (1) hour, the Governor's Office shall be contacted by the Secretary and a request shall be made that the execution be scheduled for a later date during the week of the execution, as set forth in the Warrant of Death Sentence and Execution.

12. The IV team shall start a saline flow and a sufficient quantity of saline solution shall be injected to confirm that the IV lines have been properly inserted and are not obstructed. IV team members will continue to monitor IV functioning from within the chemical room.

E. INJECTION PROCEDURES—3 DRUG PROTOCOL

1. The Warden shall make a final check with those authorities cited in Section D(4) to ensure no last minute appeals or stays have been filed.

2. Upon completion of preparation for execution (D. above), the Warden or designee shall order that blinds in front of witness rooms be opened and that the microphone in front of the inmate's mouth be turned on. The Warden or designee shall ask the prisoner if he/she has any last words to say. Upon completion of the prisoner's last words, or in the discretion of the Warden, the Warden shall order that the execution proceed.

3. Upon the Warden's order to proceed, a designated team member will begin a rapid flow of lethal chemicals in the following order.

4. Syringe #1

5. Syringe #2

6. Syringe #3

7. If it appears to the Warden that the prisoner is not unconscious within three (3) minutes after administration of the sodium thiopental or pentobarbital, the Warden shall order the flow of chemicals ceased into the primary site. The backup IV shall be used with a new flow of sodium thiopental or pentobarbital.

8. The Warden and IV team shall assess and monitor the inmate's lack of consciousness by using all steps in a graded consciousness check – a sequence of increasingly strong stimulations to assess consciousness – starting with checking for movement, eyelash reflex, response to verbal commands and culminating in a physical stimulation that would be painful if the inmate were awake. If possible, a currently certified EMT or other medical professional qualified in assessing consciousness, whose identity may, at the Warden's discretion, remain confidential, will be in the execution chamber with the Warden to assist the Warden in determining that the inmate is unconscious following the injection of the sodium thiopental or pentobarbital and prior to the administration of the pancuronium bromide and potassium chloride.

9. The Warden and IV team shall continuously monitor the IV and infusion sites. If the inmate appears unconscious three (3) minutes after the initial or backup flow of sodium thiopental or pentobarbital is complete, the executioner(s) shall commence the rapid flow of the remaining chemicals as follows.

10. Syringe #4

11. Syringe #5

12. Syringe #6

13. Syringe #7

14. Ten (10) minutes after the third drug is administered, the person(s) responsible for pronouncing death shall examine the inmate in order to confirm death by checking the inmate's heartbeat, breathing, pulse and pupils. If the inmate's death is confirmed, the person(s) shall inform the Warden. If that person(s) is unable to confirm the inmate's death, the Warden shall order injection of the remaining backup syringes.

15. Once the person(s) responsible for pronouncing death has confirmed the inmate's death, the Warden shall announce "At approximately _____ a.m./p.m. the execution of [inmate's name] was carried out in accordance with the laws of the State of South Dakota" or a similar statement to that effect.

16. The microphone shall be turnned off and the curtains/blinds shall be drawn.

17. The witnesses shall be escorted out of the witness rooms and shall sign the Certificate of Execution as required by South Dakota law.

F. INJECTION PROCEDURES—2 DRUG PROTOCOL

1. The Warden shall make a final check with those authorities cited in Section D(4) to ensure no last minute appeals or stays have been filed.

2. Upon completion of preparation for execution (D. above), the Warden or designee shall order that blinds in front of witness rooms be opened and that the microphone in front of the inmate's mouth be turned on. The Warden or designee shall ask the prisoner if he/she has any last words to say. Upon completion of the prisoner's last words, or in the discretion of the Warden, the Warden shall order that the execution proceed.

3. Upon the Warden's order to proceed, a designated team member will begin a rapid flow of lethal chemicals in the following order.

4. Syringe #1

5. Syringe #2

6. Syringe #3

7. If it appears to the Warden that the prisoner is not unconscious within three (3) minutes after administration of the sodium thiopental or pentobarbital the Warden shall order the flow of chemicals ceased into the primary site. The backup IV shall be used with a new flow of sodium thiopental or pentobarbital.

8. The Warden and IV team shall assess and monitor the inmate's lack of consciousness by using all steps in a graded consciousness check – a sequence of increasingly strong stimulations to assess consciousness – starting with checking for movement, eyelash reflex, response to verbal commands and culminating in a physical stimulation that would be painful if the inmate were awake. If possible, a currently certified EMT or other medical professional qualified in assessing consciousness, whose identity may, at the Warden's discretion, remain confidential, will be in the execution chamber with the Warden to assist the Warden in determining that the inmate is unconscious following the injection of the sodium thiopental or pentobarbital and prior to the administration of the pancuronium bromide and potassium chloride.

9. The Warden and IV team shall continuously monitor the IV and infusion sites. If the inmate appears unconscious three (3) minutes after the initial or backup flow of sodium thiopental or pentobarbital is complete, the executioner(s) shall commence the rapid flow of the remaining chemicals as follows.

10. Syringe #4

11. Syringe #5

12. Ten (10) minutes after the second drug is administered, the person(s) responsible for pronouncing death shall examine the inmate. The person(s) responsible for pronouncing death shall enter the chamber and confirm death by checking the inmate's heartbeat, breathing, pulse and pupils. If that person(s) is not able to pronounce death, the Warden shall order injection of the remaining backup syringes.

13. Once the person(s) responsible for pronouncing death has confirmed the inmate's death, the Warden shall announce "At approximately _____ a.m./p.m. the execution of [inmate's name] was carried out in accordance with the laws of the State of South Dakota" or a similar statement to that effect.

14. The microphone shall be turned off and the curtains/blinds shall be drawn.

15. The witnesses shall be escorted out of the witness rooms and shall sign the Certificate of Execution as required by South Dakota law.

G. INJECTION PROCEDURES – 1 DRUG PROTOCOL (Sodium Thiopental)

1. The Warden shall make a final check with those authorities cited in Section D(4) to ensure no last minute appeals or stays have been filed.

2. Upon completion of preparation for execution (D. above), the Warden or designee shall order that blinds in front of witness rooms be opened and that the microphone in front of the inmate's mouth be turned on. The Warden or designee shall ask the prisoner if he/she has any last words to say. Upon completion of the prisoner's last words, or in the discretion of the Warden, the Warden shall order that the execution proceed.

3. Upon the Warden's order to proceed, a designated team member will begin a rapid flow of lethal chemicals in the following order.

4. Syringe #1

5. Syringe #2

6. Syringe #3

7. Syringe #4

8. Syringe #5

9. Ten (10) minutes after the drug is administered, the person(s) responsible for pronouncing death shall examine the inmate. The person(s) responsible for pronouncing death shall enter the chamber and confirm death by checking the inmate's heartbeat, breathing, pulse and pupils. If that person(s) is not able to pronounce death, the Warden shall order a second set of chemicals to be administered in the following order.

10. Syringe #6

11. Syringe #7

12. Syringe #8

13. Syringe #9

14. Ten (10) minutes after the second round of the drug is administered, the person(s) responsible for pronouncing death shall again examine the inmate. The person(s) responsible for pronouncing death shall enter the chamber and confirm death by checking the inmate's heartbeat, breathing, pulse and pupils.

15. Once the person(s) responsible for pronouncing death has confirmed the inmate's death, the Warden shall announce "At approximately _____ a.m./p.m. the execution of [inmate's name] was carried out in accordance with the laws of the State of South Dakota" or a similar statement to that effect.

16. The microphone shall be turned off and the curtains/blinds shall be drawn.

The witnesses shall be escorted out of the witness rooms and shall sign the Certificate of Execution as required by South Dakota law.

H. INJECTION PROCEDURES – 1 DRUG PROTOCOL (Pentobarbital)

1. The Warden shall make a final check with those authorities cited in Section D(4) to ensure no last minute appeals or stays have been filed.

2. Upon completion of preparation for execution (D. above), the Warden or designee shall order that blinds in front of witness rooms be opened and that the microphone in front of the inmate's mouth be turned on. The Warden or designee shall ask the prisoner if he/she has any last words to say. Upon completion of the prisoner's last words, or in the discretion of the Warden, the Warden shall order that the execution proceed.

3. Upon the Warden's order to proceed, a designated team member will begin a rapid flow of lethal chemicals in the following order.

4. Syringe #1

5. Syringe #2

6. Syringe #3

7. Ten (10) minutes after the drug is administered, the person(s) responsible for pronouncing death shall examine the inmate. The person(s) responsible for pronouncing death shall enter the chamber and confirm death by checking the inmate's heartbeat, breathing, pulse and pupils. If that person(s) is not able to pronounce death, the Warden shall order a second set of chemicals to be administered in the following order.

8. Syringe #4

9. Syringe #5

10. Ten (10) minutes after the second round of the drug is administered, the person(s) responsible for pronouncing death shall again examine the inmate. The person(s) responsible for pronouncing death shall enter the chamber and confirm death by checking the inmate's heartbeat, breathing, pulse and pupils.

11. Once the person(s) responsible for pronouncing death has confirmed the inmate's death, the Warden shall announce "At approximately _____ a.m./p.m. the execution of [inmate's name] was carried out in accordance with the laws of the State of South Dakota" or a similar statement to that effect.

12. The microphone shall be turned off and the curtains/blinds shall be drawn.

The witnesses shall be escorted out of the witness rooms and shall sign the Certificate of Execution as required by South Dakota law.

Douglas L. Weber Douglas L. Weber October 13, 2011

Douglas L. Weber, Chief Warden and Director of Prison Operations Date

U.S. Department of Justice

Office of the Deputy Attorney General

Washington, D.C. 20530

RM

Attorney General

SEP 29 2011

339107

September 23, 2011

Robert Mayer, Esquire
Deputy Attorney General
Office of the South Dakota Attorney General
1302 E Highway 14
Suite 1
Pierre, SD 57501-8501

Dear Mr. Mayer:

The Drug Enforcement Administration (DEA) has discovered that the South Dakota Department of Corrections is presently in possession of sodium thiopental which was imported without compliance with the Controlled Substance Act and, therefore, cannot be used.

The Department would like to assist the South Dakota Department of Corrections to rectify the deficiencies with respect to sodium thiopental. The DEA will provide you with a list of registered importers that South Dakota may use to legally import the substance. Alternatively, if South Dakota desires to obtain an importer registration, DEA will work expeditiously to process that request.

We understand the difficulty this situation may present for the State of South Dakota, and would like to work with you to promptly come to an appropriate resolution. If the State has any questions about the DEA regulations governing the Department of Correction's acquisition and use of other controlled substances, we will provide you with whatever assistance we have available.

Sincerely,

Deborah A. Johnston
Associate Deputy Attorney General

STATE OF SOUTH DAKOTA

OFFICE OF ATTORNEY GENERAL
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
www.state.sd.us/atg

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

October 5, 2011

Deborah A. Johnston
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Associate Deputy Johnston,

I would like to take this opportunity to address your recent concerns about the South Dakota Department of Corrections' importation of sodium thiopental, and to accept your invitation to assist South Dakota in importing substances for purposes of state enforcement of our criminal laws.

The concern regarding South Dakota's importation of sodium thiopental is misplaced. I am enclosing the Form 236, U.S. Customs Certification and Importation Declaration dated March 25, 2011, that DEA received when federal authorities cleared the shipment through customs. To further relieve your concerns, the imported sodium thiopental has independently tested positive for meeting the United States Pharmacopeia's sodium thiopental standards for safety and efficacy. If the DEA would similarly wish to independently test a sample of the sodium thiopental, the State is certainly willing to accommodate; however, the State must retain legal custody of sufficient amounts of the substance to preserve chain of custody and to assure its safety and efficacy for future use.

As you are aware, the Controlled Substance Act was enacted "to deal in a comprehensive fashion with the growing menace of drug abuse." H.R.Rep.No.91-1444, 91st Cong., 2nd Sess. at 3 (1971)

reprinted in 1970 U.S.C.A.N 4566, 4567. The lawful use of controlled substances for penal executions does not implicate the DEA's drug abuse prevention mission for penal executions. See *Delaware v. Deputy*, 644 A.2d 411, 419 (Del. 1994) (recognizing the lack of judicial authority construing either the CSA's or FDCA's purpose to include the prevention of lawful executions of inmates); U.S. Const., 10th Amendment.

Recent DEA actions with respect to other States' lethal injection substances provides justification to reiterate that the United States Supreme Court has made it abundantly clear that "the decision that capital punishment may be the appropriate sanction in extreme cases is an expression of the community's belief that certain crimes are themselves so grievous an affront to humanity that the only adequate response may be the penalty of death." *See Gregg v. Georgia*, 428 U.S. 153, 184 (U.S. 1976). In this vein, the next likely execution to be scheduled in South Dakota is Donald Moeller, who raped, sodomized, and stabbed to death a 9 year-old little girl 21 years ago. Two separate juries of South Dakota citizens sentenced Moeller to death for his crimes. Twenty-one years for a victim's family to await justice is disturbing, particularly in light of Congress' clear direction to the Department of Justice in the 2006 AEDP amendments to establish the rules for state death penalty certification procedures, a responsibility that appears to have gone unfulfilled.

I am encouraged by your referenced desire to assist the South Dakota Department of Corrections to rectify any perceived deficiencies with respect to sodium thiopental or in the alternative, to assist South Dakota to obtain an import registration by working to "expeditiously" process such a request. To further assist, I am again including South Dakota's submissions to DEA for an import registration filed on August 18, 2011.

Finally, there is presently no urgent need to confiscate South Dakota's sodium thiopental justifying an *ex parte* proceeding of any nature because no executions are scheduled. South Dakota is not willing to forfeit state property without proper notice and opportunity to be heard before a court and interim appeal if necessary, unless and until we have satisfactory replacement inventory.

Deborah Johnston
US DOJ

In conclusion, I welcome your offer to work with us "to promptly come to an appropriate resolution." Please feel free to contact either myself or Assistant Attorney General Paul Swedlund in my office to discuss how we may address any further concerns that you may have.

Sincerely,

Marty J. Jackley
ATTORNEY GENERAL

MJJ/lde
Enc.

cc: South Dakota Governor Dennis Daugaard
United States Attorney Brendan Johnson

Completed Internet Form - NOT FOR SUBMISSION
DEA Control Number - W11058099J
Submission Date: 08-18-2011

APPLICATION FOR REGISTRATION
UNDER CONTROLLED SUBSTANCES ACT OF 1970

Form DEA 225 - Completed
Internet Receipt. NOT FOR
SUBMISSION

Application Complete. Internet
confirmation no.: 2807384
Fee Paid: $0.00

NAME: APPLICANT OR BUSINESS (LAST)
South Dakota Department of Corrections

(First, MI)

TAX IDENTIFYING NUMBER AND/OR
466000364

SOCIAL SECURITY NUMBER

THE DEBT COLLECTION IMPROVEMENT ACT OF 1996 (PL 104-134) REQUIRES THAT YOU FURNISH YOUR FEDERAL TAXPAYER IDENTIFYING NUMBER TO DEA. THIS NUMBER IS REQUIRED FOR DEBT COLLECTION PROCEDURES SHOULD YOUR FEE BECOME UNCOLLECTABLE. IF YOU DO NOT HAVE A FEDERAL TAXPAYER IDENTIFYING NUMBER, USE YOUR SOCIAL SECURITY NUMBER.

PROPOSED BUSINESS ADDRESS. *(WHEN ENTERING A P.O. BOX, YOU ARE REQUIRED TO ENTER A STREET ADDRESS)*
3200 East Hwy 34

CITY
Pierre

STATE ZIP CODE
SD 57501 - 5070

APPLICANT'S BUSINESS PHONE NUMBER
605 - 773 - 3478

APPLICANT'S FAX NUMBER
605 - 773 - 3194

REGISTRATION CLASSIFICATION

1. BUSINESS ACTIVITY: IMPORTER

2. INDICATE HERE IF YOU REQUIRE ORDER FORM BOOKS. ☐

3. Drug Schedules. (Fill in all circles that apply)

☐ Schedule I ☐ Schedule II Narcotic ☐ Schedule II Non Narcotic ☐ Schedule III Narcotic ☑ Schedule III Non Narcotic ☐ Schedule IV ☐ Schedule V ☐ List 1

4. All Applicants must answer the following:

Are you currently authorized to prescribe, distribute, dispense, conduct research, or otherwise handle the controlled substances in the schedules for which you are applying under the laws of the state or jurisdiction in which you are operating or propose to operate?

State License No. [ ] State:
Expire Date: --

State Controlled Substance Lic. No. [ ]
Expire Date: --

1. Has the applicant ever been **convicted of a crime** in connection with controlled substance(s) under state or federal law, or is any such action pending? N

2. Has the applicant ever surrendered (for cause) or had a **federal** controlled substance registration revoked, suspended, restricted or denied, or is any such action pending? N

3. Has the applicant ever surrendered (for cause) or had a **state** professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation, or is any such action pending? N

4. If the applicant is a **corporation** (other than a corporation whose stock is owned or traded by the public), association, partnership, or pharmacy, has any officer, partner, stockholder or proprietor been **convicted of a crime** in connection with controlled substances under state or federal law, or ever surrendered, for cause, or had a federal controlled substance registration revoked, suspended, restricted or denied, or ever had a **state** professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation, or is any such action pending? N

U. S. Department of Justice / Drug Enforcement Administration

CONTROLLED SUBSTANCES IMPORT / EXPORT DECLARATION

(Read Instructions on reverse before completing)

OMB APPROVAL
No. 1117- 0009

See reverse for Privacy Act

1. CHECK ONE
- ☑ IMPORT DECLARATION — Nonnarcotic Substances in Schedules III, IV, V
- ☐ EXPORT DECLARATION — Nonnarcotic Substances in Schedules III, and IV and all substances in Schedule V

U.S. CUSTOMS CERTIFICATION

Date of Departure / Arrival

Name of Carrier / Vessel

Date of Certification

Signature of Customs Official

IMPORTER/EXPORTER (Name and Address)
SOUTH DAKOTA STATE PENITENTIARY
1600 N. NORTH DRIVE
SIOUX FALLS, SD 57104

DEA REGISTRATION NO. BD 9933549

BROKER OR FORWARDING AGENT, IF USED (Name and Address)
PHIL PATTERSON, INC.
1209 HARNEY ST.
OMAHA, NE 68102

2. CONTROLLED SUBSTANCES TO BE IMPORTED OR EXPORTED

2a. NAME AND QUANTITY OF DRUG or PREPARATION *(Enter names as shown on labels; numbers and sizes of packages; strength of tablets, capsules, etc., CSA Drug Code and NDC Number)*	2b. CONTROLLED SUBSTANCE CONTENT OF DRUG OR PREPARATION expressed as acid, base or alkaloid. *(Enter names of controlled substances contained in the drug; compound, or preparation)*	2c. DATE IMPORTED/EXPORTED AND ACTUAL QUANTITY *(Completed by registrant at time of transaction)*
THIOPENTAL SODIUM 1 GM IP FOR INJECTION BRAND "THIOSOL SODIUM" QTY 500 - 20X25 VIALS DRUG LICENSE NUMBER:21BZ-7/103/2135	THIOSOL SODIUM (THIOPENTONE INJECTION)	

3. ☑ FOREIGN ☐ DOMESTIC PORT OF EXPORTATION (last U.S. Customs Port) AND APPROX. DEPARTURE DATE
MUMBAI (BOMBAY) INDIA 3/17/11

☐ FOREIGN ☑ DOMESTIC PORT OF IMPORTATION (first U.S. Customs Port) AND APPROX. ARRIVAL DATE
NEWARK, NJ 3/18/11

4. MODE OF TRANSPORT; NAME OF VESSEL / CARRIER (if known)
AIR - CONTINENTAL AIRLINES FLT C0049

NAME OF ALL INTERMEDIATE CARRIERS
CEVA LOGISTICS - TRUCKER FROM NEWARK

5. NAME AND ADDRESS OF FOREIGN CONSIGNEE/CONSIGNOR
NEON LABORATORIES LTD.
143 Damji Shamji Industrial Complex
Chakala M.I.D.C., Mumbai, Maharashtra 400093, India

I hereby certify that the above named substance(s) to be ☑ Imported, ☐ Exported, are intended for ☐ Legitimate medical need, ☐ Scientific research, ☑ Other (If intended for reexport beyond the country of destination described in block 5 above, attach documentation per Title 21, CFR 1312.27.)

If used as "Export Declaration", attach documentation that importation is not contrary to the laws or regulations of the country of destination.

SIGNATURE OF AUTHORIZED INDIVIDUAL OF IMPORTER/ EXPORTER, BROKER OR FORWARDING AGENT	DATE	NAME OF FIRM AND TELEPHONE NUMBER
Douglas W Weber	Mar 25, 2011	SOUTH DAKOTA STATE PENITENTIARY (605) 367-5118

DEA Form 236
(Apr. 1988)

Previous edition dated 4/80 is OBSOLETE.

COPY 1

U. S. Department of Justice / Drug Enforcement Administration

CONTROLLED SUBSTANCES IMPORT / EXPORT DECLARATION

(Read Instructions on reverse before completing)

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U.S. CUSTOMS CERTIFICATION
Date of Departure / Arrival
Name of Carrier / Vessel
Date of Certification
Signature of Customs Official

IMPORTER/EXPORTER (Name and Address)
SOUTH DAKOTA STATE PENITENTIARY
1600 N. NORTH DRIVE
SIOUX FALLS, SD 57104

DEA REGISTRATION NO. BD 9933549

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PHIL PATTERSON, INC.
1209 HARNEY ST.
OMAHA, NE 68102

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NEWARK, NJ 3/18/11

4. MODE OF TRANSPORT; NAME OF VESSEL / CARRIER (if known)
AIR - CONTINENTAL AIRLINES FLT CO049

NAME OF ALL INTERMEDIATE CARRIERS
CEVA LOGISTICS - TRUCKER FROM NEWARK

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143 Damji Shamji Industrial Complex
Chakala M.I.D.C., Mumbai, Maharashtra 400093, India

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[signature]	Mar 25, 2011	SOUTH DAKOTA STATE PENITENTIARY (605) 367-5118

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COPY 3

U. S. Department of Justice / Drug Enforcement Administration

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Signature of Customs Official

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SOUTH DAKOTA STATE PENITENTIARY
1600 N. NORTH DRIVE
SIOUX FALLS, SD 57104

BROKER OR FORWARDING AGENT, IF USED (Name and Address)
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1209 HARNEY ST.
OMAHA, NE 68102

DEA REGISTRATION NO. BD 9933549

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[signature]	Mar 25, 2011	SOUTH DAKOTA STATE PENITENTIARY (605) 367-5118

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COPY 4

U. S. Department of Justice / Drug Enforcement Administration

CONTROLLED SUBSTANCES IMPORT / EXPORT DECLARATION

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Date of Certification
Signature of Customs Official

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1600 N. NORTH DRIVE
SIOUX FALLS, SD 57104

DEA REGISTRATION NO. BD 9933549

BROKER OR FORWARDING AGENT, IF USED (Name and Address)
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1209 HARNEY ST.
OMAHA, NE 68102

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NEWARK, NJ 3/18/11

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NAME OF ALL INTERMEDIATE CARRIERS
CEVA LOGISTICS - TRUCKER FROM NEWARK

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Daniel L Weber	Mar 25, 2011	SOUTH DAKOTA STATE PENITENTIARY (605) 367-5118

DEA Form 236 (Apr. 1988) - Previous edition dated 4/80 is OBSOLETE.

COPY 5

Armory Tempature Recordings

Oct-11	7:30	humidty %	4:00	humidty%	initials
1	Sat	NO	Work		AM
2	Sun				
3	66	44%	66	38%	
4	66	37%	66	37%	
5	66	39%	66	37%	
6	66	35%	66	36	
7	66	35%	65	37	
8	Sat	NO	Work		
9	Sun				
10	Columbus	Day	Holiday		
11	64	53%			
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31					

Armory Tempature Recordings

Sep-11	7:30	humidty %	4:00	humidty%	initials
1	70	54	71	54	
2	71	52	70	52	
3	69	51	69	51	
4	70	55	68	58	
5	68	52	68	55	
6	68	46	68	48	
7	70	52	53 ≠	69	
8	70	48	70	50	
9	68	50	70	53	
10					
11					
12	70	60	68	48	
13	68	48	68	50	
14	70	61	70	58	
15	71	58	70	56	
16	68	56	69	56	
17					
18					
19	66	55	68	58	
20	70	59	68	57	
21	68	50	68	51	
22	68	36	65	56	
23					
24					
25					
26	64	46	65	43	
27	68	38	68	38	
28	68	38	67	38	
29	66	36	66	35	
30	66	38	66	38	

Armory Tempature Recordings

Aug-11	7:30	humidty %	4:00	humidty%	initials
1	72		72		
2	71		71		
3	70	55	71	55	
4	71	58	71	56	
5	73	49	72	49	
6					
7					
8	73	63	73	58	
9	70	59	72	57	
10	73	56	71	56	
11	70	56	70	67	
12	72	53	71	54	
13					
14					
15	71	53	70	53	
16	71	55	71	54	
17	72	54	72	56	
18	72	54	71	53	
19	71	58	71	58	
20					
21					
22	71	58	72	58	
23	71	61	73	58	
24	73	60	73	57	
25	73	56	72	55	
26	71	55	72	56	
27					
28					
29	73	60	72	58	
30	72	56	72	56	
31	72	58	70	60	

Armory Tempature Recordings

Jul-11	7:30	4:00	Initials
12	76	74	
13	75	74	
14	75	74	
15	74	74	
16			
17			
18	74	75	
19	74	75	
20	76	74	
21	76	75	
22	76	74	
23			
24			
25	JPA	JPA	
26	76	75	
27	76	75	
28	75	75	
29	76	72	AM
30			

CERTIFICATE OF ANALYSIS [BOTTLES #1-#4]

PRODUCT: PENTOBARBITAL SODIUM USP CII
ITEM NUMBER: [redacted]
LOT NUMBER: [redacted] [DIFFERENT LOT # THAN BOTTLES #5-#8]
MFG. DATE: [redacted]2011
EXPIRATION: [redacted]2015

CAS: 57-33-0
MW: 248.2500000000
FORMULA: C11H17N2NaO3

TEST	SPECIFICATIONS	RESULTS
Aerobic Plate Count Bact	<300 cfu/g max *Alert at 100 cfu/g*	50 cfu/g max
Aerobic Plate Count Fung	<300 cfu/g max *Alert at 100 cfu/g*	50 cfu/g max
Assay	98.0-102.0 %	99.2 %
Baterial Endotoxins	<0.8 eu/mg max	0.06 eu/mg max
Completeness of solution	pass *After 1 minute, the solution is clear and free from undissolved solid.*	pass
Description	pass *White, crystalline granules or white powder, odorless or has slight characteristic odor; slightly bitter taste; solutions decompose on standing, heat accelerating the decomposition; aq solns are unstable.*	pass *White powder; odorless.*
Free Pentobarbital	<=3.5 %	0.4 %
Heavy metals	<=0.003 % max	0.003 % max
Identification	pass *A: UV- Passes test, B: Passes test. C: Passes test for Sodium.*	pass
Loss on drying	<=3.5 %	0.3 %
OVI	pass *meets the requirements.*	pass
pH	9.8-11.0	10.18
Related compounds	pass *6-IMINO-ETHYL-5-(1-METHYL-BUTYL) BARBITURIC ACID: NMT 0.2% 5-ETHYL-5-(1-ETHYL-PROPYL) BARBITURIC ACID: NMT 0.1% 5-ETHYL-5-(1,3-DIMETHYLBUTYL) BARBITURIC ACID: NMT 0.3% UNKNOWN IMPURITIES: NMT 0.1% TOTAL: NMT 0.5%*	pass *6-IMINO-ETHYL-5-(1-METHYL-BUTYL) BARBITURIC ACID: <0.05% 5-ETHYL-5-(1-ETHYL-PROPYL)BARBITURIC ACID: <0.05% 5-ETHYL-5-(1,3-DIMETHYLBUTYL) BARBITURIC ACID: <0.05% UNKNOWN IMPURITIES: <0.05% TOTAL: <0.05%*
Residual Solvents-Ethano	<0.5 % max	0.1002 % max
Residual Solvents-Toluen	<0.089 % max	0.0090 % max
Solubility	Pass *Very soluble in water: freely soluble in alcohol: practically insoluble in ether.*	Pass
Solution (Water) Color	pass	pass
Specified Organisms	pass *ABSENCE OF E. COLI, SALMONELLA, PSEUDOMONAS AERUGINOSA AND STAPHYLOCOCCUS AUREUS.*	pass

CERTIFICATE OF ANALYSIS [BOTTLES #5-#8]

PRODUCT: PENTOBARBITAL SODIUM USP CII
ITEM NUMBER: [redacted]
LOT NUMBER: [redacted] [DIFFERENT LOT # THAN BOTTLES #1-#4]
MFG. DATE: [redacted]2011
EXPIRATION: [redacted]2015

CAS: 57-33-0
MW: 248.2500000000
FORMULA: C11H17N2NaO3

TEST	SPECIFICATIONS	RESULTS
Aerobic Plate Count Bact	<300 cfu/g max *Alert at 100 cfu/g*	50 cfu/g max
Aerobic Plate Count Fung	<300 cfu/g max *Alert at 100 cfu/g*	50 cfu/g max
Assay	98.0-102.0 %	99.2 %
Baterial Endotoxins	<0.8 eu/mg max	0.08 eu/mg max
Completeness of solution	pass *After 1 minute, the solution is clear and free from undissolved solid.*	pass
Description	pass *White, crystalline granules or white powder, odorless or has slight characteristic odor; slightly bitter taste; solutions decompose on standing, heat accelerating the decomposition; aq solns are unstable.*	pass *White powder; odorless.*
Free Pentobarbital	<=3.5 %	0.4 %
Heavy metals	<=0.003 % max	0.003 % max
Identification	pass *A: UV- Passes test, B: Passes test. C: Passes test for Sodium.*	pass
Loss on drying	<=3.5 %	0.3 %
OVI	pass *meets the requirements.*	pass
pH	9.8-11.0	10.14
Related compounds	pass *6-IMINO-ETHYL-5-(1-METHYL-BUTYL) BARBITURIC ACID: NMT 0.2% 5-ETHYL-5-(1-ETHYL-PROPYL) BARBITURIC ACID: NMT 0.1% 5-ETHYL-5-(1,3-DIMETHYLBUTYL) BARBITURIC ACID: NMT 0.3% UNKNOWN IMPURITIES: NMT 0.1% TOTAL: NMT 0.5%*	pass *6-IMINO-ETHYL-5-(1-METHYL-BUTYL) BARBITURIC ACID: <0.05% 5-ETHYL-5-(1-ETHYL-PROPYL) BARBITURIC ACID: <0.05% 5-ETHYL-5-(1,3-DIMETHYLBUTYL) BARBITURIC ACID: <0.05% UNKNOWN IMPURITIES: <0.05% TOTAL: <0.05%*
Residual Solvents-Ethano	<0.5 % max	0.1002 % max
Residual Solvents-Toluen	<0.089 % max	0.0090 % max
Solubility	Pass *Very soluble in water: freely soluble in alcohol: practically insoluble in ether.*	Pass
Solution (Water) Color	pass	pass
Specified Organisms	pass *ABSENCE OF E. COLI, SALMONELLA, PSEUDOMONAS AERUGINOSA AND STAPHYLOCOCCUS AUREUS.*	pass

STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS	APPLICABILITY: PRISON		
	REVISION DATE: 3/8/10	PAGE NUMBER: 1 of 13	NUMBER: DOC 490.200
POLICY	TITLE: **CAPITAL PUNISHMENT**		

REVIEW/REVISION HISTORY:

Effective: 9/3/93
Revised: 6/15/98
Revised: 8/10/01
Revised: 6/21/07
Revised: 10/25/08
Revised: 3/8/10

SUMMARY OF REVISION/REVIEW:

III.B.2. and IX.A.4.d. - Added one drug protocol as primary and presumed method of execution
Attachment 1 - Removed Health Care Manager 2 from staff assignments
Added Superintendent Checklist Attachments 2 and 3 regarding one drug and 3 drug protocol

APPROVED:

Signature on file

ELDON VAIL, Secretary
Department of Corrections

3/5/10
Date Signed

APPENDIX B

STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS	APPLICABILITY: PRISON		
	REVISION DATE: 3/8/10	PAGE NUMBER: 2 of 13	NUMBER: DOC 490.200
POLICY	TITLE: **CAPITAL PUNISHMENT**		

REFERENCES:

DOC 100.100 is hereby incorporated into this policy; RCW 10.95.160-190; WAC 137-48-050; DOC 410.040 Incident Command System (ICS)

POLICY:

I. The Department has established procedures governing capital punishment to meet the requirements of RCW 10.95.160-190. These procedures set forth:

A. Security requirements for an Inmate Subject to the Death Penalty (ISDP),
B. Protocol for conducting an execution,
C. The care provided the ISDP while a valid Death Warrant is in force, and
D. The method of execution by lethal injection or hanging.

II. The Department Secretary designates the Assistant Secretary for Prisons to coordinate:

A. The responsibilities of the Washington State Penitentiary (WSP) Superintendent, and

B. A review of the procedures and all operational decisions in carrying out the execution, as well as the legal status of the Death Warrant.

DIRECTIVE:

I. ISDP Housing

A. Upon receipt of an ISDP and prior to receipt of a Death Warrant:

1. Male ISDPs shall be housed in a single person cell located in a segregated area of WSP.

2. Female ISDPs shall be housed in a segregated area of the Washington Corrections Center for Women (WCCW). Prior to the execution date, the female ISDP will be transported to WSP for housing and execution.

II. Pre-Execution Procedure

A. Consistent with RCW 10.95.190, a log shall be maintained with the Death Warrant in the Superintendent's Office.

B. Responsibilities are listed in the Execution Procedures and Assignments Checklist (Attachment 1).

C. Only staff assigned by the Superintendent will attend the execution. No facility staff will be required to participate in any part of the execution procedure.

III. Notification to ISDP

A. After receiving confirmation of a valid Death Warrant, the Superintendent will designate an Associate Superintendent to personally interview the ISDP regarding procedures relating to the execution.

B. The Associate Superintendent will provide the ISDP with a written summary of procedures, to include mail, visits, telephone usage, and available religious services. The ISDP will be informed of the following:

1. The date of the execution.

2. The punishment of death shall be by lethal injection.

   a. The primary and presumed method of execution will be an intravenous injection using a one drug protocol (thiopental sodium followed by a saline flush).

   b. The ISDP may elect an intravenous injection of the 3 drug protocol (thiopental sodium, normal saline flush, pancuronium bromide, normal saline flush, and a final injection of potassium chloride) as one alternate means of execution.

   c. The ISDP may elect hanging as another alternate means of execution.

   d. The procedure to be used will be determined 14 days prior to the execution and the method cannot be changed after that date. If the ISDP elects the 3 drug protocol or hanging, it must be stated in writing no later than 14 days prior to the execution date. The one drug protocol shall be the exclusive method of execution unless one of the alternate means is elected by the ISDP in writing.

3. Mail procedures for an ISDP with an active Death Warrant will be as follows:

   a. The Mail Room Sergeant will be instructed, in writing, to forward all incoming mail, unopened, to the designated Associate Superintendent, who will screen and exclude any items which may threaten the order and security of the facility with regard to the ISDP.

1) Mail intended to harass the ISDP will be considered a threat to the orderly operation of the facility and restricted per WAC 137-48-050.

2) Legal mail will be screened, not read.

b. The Mail Room Sergeant will maintain a log of all incoming and outgoing mail, noting the date and time of receipt and delivery. A separate log will be maintained for all legal mail.

4. All visits between the ISDP and authorized visitors will be no contact.

a. Visitation for an ISDP will be consistent with the visiting procedures of other offenders housed in the Intensive Management Unit (IMU).

b. Seven days prior to the execution, daily visits will be authorized in addition to visits with the attorney of record.

c. Twenty-four hours prior to the execution date, all visits and visitors require the approval/denial of the Superintendent.

d. After the ISDP is moved to the execution holding cell, visits will be restricted to approved clergy and the attorney of record.

5. The ISDP will have unlimited phone access during the daily yard period. Fourteen days prior to the execution date, an additional daily one hour yard will be provided.

a. There will be no limit on the number or duration of calls to and from the attorney of record.

b. Only calls from the attorney of record will be authorized following transfer to the execution holding cell.

IV. Media Relations

A. The Superintendent/designee will coordinate all requests for information concerning an execution.

1. A single event to provide representatives of major and local media an opportunity to access the chamber will be authorized by the Superintendent and coordinated by designated staff.

B. The Superintendent will establish procedures for selecting media witnesses as specified in the Witness Selection section of this policy.

1. No audio/electronic/video equipment, cameras, telephones, or recording/communication devices will be permitted in the chamber. Media witnesses will be subject to an electronic and pat search. Written consent for search will be required using DOC 21-575 Acknowledgment of Visitor Search Requirements.

2. The only items that are allowed in the chamber are pens, pencils, and writing tablets supplied by the facility.

C. Requests from media representatives for access to the Information Center must be submitted in writing.

1. Information Center access will not be permitted more than 3 hours prior to an execution.

D. Media access to a designated area of the facility parking lot will be permitted at a designated time the day prior to the execution.

E. Media will not be permitted to film or conduct interviews with facility staff without the prior authorization of the Superintendent/designee.

F. All normal facility security procedures will apply. Failure to comply with these procedures, Department policies, operational memorandums, or directions from authorized personnel may be cause for removal from the facility and/or facility grounds. The Superintendent may establish emergency rules and procedures.

V. Witness Selection

A. Not less than 20 days prior to an execution, individuals who wish to attend and witness the execution must submit a letter of request (e.g., application) to the Superintendent. The letter must designate the relationship to the ISDP and reason(s) for wishing to attend. Eligible individuals include:

1. Judicial officers (i.e., the Judge who signed the Death Warrant for the ISDP, the current Prosecuting Attorney or a Deputy Prosecuting Attorney of the county from which the final Judgment and Sentence and Death Warrant were issued, and the most recent attorney of record representing the ISDP),

2. Law enforcement representatives (i.e., officers responsible for investigating the crime for which the inmate was sentenced to death),

3. Media representatives,

4. Representatives of the families of the victims (i.e., immediate family or victim advocates of the immediate family), and

5. Representatives from the ISDP's immediate family.

B. Not less than 15 days prior to the execution, the Superintendent shall determine the total number of individuals, other than Department employees, who will be allowed to attend and witness the execution.

1. The Superintendent shall determine the number of witnesses allowed in each category of eligible individuals.

   a. No less than 5 media representatives will be included, with consideration given to news organizations serving communities affected by the crimes or the execution.

   b. Up to 2 law enforcement representatives will be included. The chief law enforcement officer of the jurisdiction where the crime was committed shall designate the law enforcement representatives.

2. Once the list is composed, the Superintendent shall serve the list on all parties who have submitted a letter (e.g., application) to witness the execution.

C. Not less than 10 days prior to the execution, the Superintendent shall file the witness list with the Superior Court from which the conviction and Death Warrant were issued. The witness list will be filed with a petition asking that the court enter an order certifying the list as a final order identifying the witnesses to attend the execution. The final order of the court certifying the witness list shall not be entered less than 5 days after the filing of the petition.

D. Unless a show cause petition is filed with the Superior Court from which the conviction and Death Warrant were issued within 5 days of the filing of the Superintendent's petition, the Superintendent's list, by order of the Superior Court, will become final and no other party will have standing to challenge its appropriateness.

E. In no case may the Superintendent or the Superior Court order or allow more than 17 witnesses to a planned execution, excluding required staff.

F. All witnesses must adhere to the facility's search and security provisions in regards to witnessing an execution and may be subject to emergency rules and procedures. Written consent for search will be required using DOC 21-575 Acknowledgment of Visitor Search Requirements.

VI. Execution Holding Cell

A. Prior to the execution, but no sooner than 24 hours before, the ISDP will be moved to the execution holding cell.

B. The holding cell will contain:

1. Bedding that includes a mattress, 2 sheets, 3 blankets, a pillow, and a pillow case,

2. Personal hygiene items that include 2 towels, a washcloth, and a bar of soap,

3. Approved personal items and clothing that include underwear, facility clothing, legal materials, religious items, jewelry, or other personal items as requested by the ISDP and approved by the Superintendent, and

4. Other personal items as requested by the ISDP and approved by the Superintendent to be retained by holding cell staff and issued as requested by the ISDP.

C. A female ISDP may be housed in the WSP Intensive Management Unit (IMU) prior to being moved to the execution holding cell.

D. Two correctional staff will be posted at the holding cell at all times and a complete log of activities will be maintained.

VII. Final Meal

A. At the meal period just prior to the time of execution, the ISDP will be allowed to provide his/her meal selection from a menu prepared and provided by the Food Service Manager. The Food Service Manager will ensure preparation and delivery of the meal to the ISDP.

VIII. Execution Preparation

A. The Superintendent will appoint individuals to support the execution process.

1. No staff will be required to participate in any part of the execution procedure.

2. Briefings and rehearsals will be conducted as necessary to ensure adequate preparation for the execution. For an execution by lethal injection, there shall be a minimum of 3 practice sessions preceding an execution that shall include the siting of intravenous (IV) lines.

B. Medical Review

1. A physical examination of the ISDP may be conducted to determine any special problems (e.g., collapsed veins, obesity, deterioration of bone or muscular structure) that may affect the execution process. The ISDP's height and weight will be measured during the examination.

2. Based upon the physical examination, the Superintendent may consult with appropriate experts to determine whether deviation from the policy is advisable to ensure a swift and humane death.

C. Crowd Control

1. The Superintendent will notify law enforcement agencies of the date of execution, enabling them to prepare for any traffic and crowd control issues that may arise.

2. Prior to the execution, the Superintendent will hold briefings for local and state law enforcement agencies to determine the manner and extent to which WSP and Department resources will support law enforcement in managing crowd control and potential external threats.

3. An area(s) will be designated for the general public.

4. The WSP Emergency Response Team (ERT) will provide crowd control for the protection of the WSP grounds.

   a. The ERT Commander(s) will be briefed by the Superintendent prior to the execution.

   b. In the event that protesters and/or onlookers gather, law enforcement assistance will be requested to direct them to the designated area.

IX. Execution Procedure

A. Lethal Injection

1. Lethal Injection Materials/Personnel

   a. All tubing, syringes, saline solution, and other apparatus will be on site and verified no later than 7 days prior to the execution.

b. The Superintendent will direct the acquisition of the appropriate quantities of lethal substance(s). These will be available and on site 7 days prior to the execution date.

c. The Superintendent will ensure the security and continued verification of all materials.

d. Lethal Injection Team members will have sufficient training or experience to carry out the lethal injection process without any unnecessary pain to the ISDP. Minimum qualifications include one or more years of professional experience as a certified Medical Assistant, Phlebotomist, Emergency Medical Technician, Paramedic, military corpsman, or similar occupation.

2. Lethal Injection Table

a. The Superintendent, in conjunction with the Plant Manager, will examine and verify that the lethal injection table is in working order with all restraints available.

3. Preparation of the Execution Area

a. The Lethal Injection Team will inspect the area designated for lethal injection and make any final recommendations to the Superintendent.

b. The Lethal Injection Team will assemble all necessary materials for transport to the chamber no less than one hour prior to the time of execution. The Lethal Injection Team Leader will secure the lethal substances and personally transport them to the chamber.

c. The solutions for injection will be prepared not more than 30 minutes prior to administration.

4. Execution Process

a. The Superintendent will direct that the ISDP be brought to the chamber. The Escort Team will place the ISDP on the lethal injection table and appropriately secure the ISDP to the table. The Escort Team will then leave the room.

b. The Lethal Injection Team will establish 2 IV lines and start a normal flow of saline through each line. The Lethal Injection Team will ensure that a slow, normal saline flow is maintained through each line.

c. The Superintendent will ask the ISDP if s/he has any last words.

d. Upon notification from the Superintendent, the Lethal Injection Team will introduce the following lethal solution(s) using a bolus injection into the tubing in the order specified:

1) The One Drug Protocol per the Superintendent's Checklist - One Drug Protocol (Attachment 2):

a) 5 g thiopental sodium
b) 50 cc normal saline

2) The 3 Drug Protocol per Superintendent's Checklist - 3 Drug Protocol (Attachment 3):

a) 3 g thiopental sodium
b) 50 cc normal saline
c) 100 mg pancuronium bromide
d) 50 cc normal saline
e) 240 mEq potassium chloride (KCl)
f) 50 cc normal saline

e. In the event the 3 drug protocol is used, the Superintendent shall observe the ISDP for signs of consciousness before the Lethal Injection Team administers the pancuronium bromide. If the Superintendent observes that the ISDP is conscious following the first dose of thiopental sodium, s/he shall direct the Lethal Injection Team to administer an additional 3 g dose of thiopental sodium.

f. Either line may be used for injection of the solution(s) as required.

g. The Lethal Injection Team Leader will signal the Superintendent when the solution(s) have been administered.

h. At a time deemed appropriate by the Superintendent, the curtains will be closed. The Superintendent will call for the physician to examine the body and make a pronouncement of death.

i. After the pronouncement of death, the Lethal Injection Team will remain in the area until directed to leave.

j. Post-execution procedures will be followed.

B. Hanging

1. The gallows area trap door(s) and release mechanisms will be inspected for proper operation.

2. A determination of the proper amount of drop of the ISDP through the trap door will be made. The following standard military execution drop chart will be used:

WEIGHT (Pounds)	DROP DISTANCE
120	8'1"
125	7'10"
130	7'7"
135	7'4"
140	7'1"
145	6'9"
150	6'7"
155	6'6"
160	6'4"
165	6'2"
170	6'0"
175	5'11"
180	5'9"
185	5'7"
190	5'6"
195	5'5"
200	5'4"
205	5'2"
210	5'1"
220 and over	5'0"

3. Equipment

   a. Hood – The hood will be a neutral color with an outer surface made of rough material, split at the open end so that it will come down over the chest and back.

   b. Collapse Board – A board will be provided for use in case the ISDP collapses.

   c. Restraints – Restraints will be used to ensure that the hands and arms of the ISDP are securely held to his/her front and sides.

   d. Rope –The rope will be manila hemp, at least ¾ inch and not more than 1¼ inches in diameter and approximately 30 feet in length.

The rope will be soaked and then stretched while drying to eliminate any spring, stiffness, or tendency to coil. The knot will be treated with wax, soap, or clear oils ensuring a smooth sliding action through the knot. The knot will be tied according to Army regulations.

4. Execution Process

a. Restraints will be placed on the ISDP by assigned staff.

b. The Escort Team will escort the ISDP to the gallows area. The ISDP will be placed, standing, in the spot designated by the Superintendent. The Superintendent will ask the ISDP if s/he has any last words.

c. The hood will be placed on the ISDP and leg restraints applied. If a collapse board appears to be necessary, the Escort Team will put the board in place.

d. The noose will be placed snugly around the ISDP's neck in such a manner that the knot is directly behind the left ear.

e. The Superintendent will direct the trapdoor be released.

f. The Escort Team will move to the lower floor location to assist with removal of the deceased ISDP. The curtains will be closed.

g. At a time deemed appropriate by the Superintendent, the physician will be called to make a pronouncement of death.

X. Post-Execution Procedure

A. The Assistant Secretary for Prisons will notify the Secretary and Incident Command Center of the time of death. Necessary calls to Headquarters will be made to the Department Emergency Operations Center.

B. The Superintendent will inform a designated staff of the time of death, who will then inform the witnesses.

C. The witnesses will be escorted out of the execution area immediately after the pronouncement of death.

D. The media witnesses will be escorted to the Information Center.

E. The Chaplain will provide official notification to the family of the time of death.

F. The body will be removed from the facility by a pre-determined route.

G. A post-trauma specialist and the Chaplain will be available to staff preceding, during, and after the execution. Staff will also be provided a confidential list of off-site locations where counseling and/or spiritual support will be available.

H. Within 20 days after the execution, the Superintendent shall return the Death Warrant to the clerk of the trial court from which it was issued, along with the log identified in the Pre-Execution Procedure section of this policy.

DEFINITIONS:

Words/terms appearing in this policy may be defined in the glossary section of the Policy Manual.

ATTACHMENTS:

Execution Procedures and Assignments Checklist (Attachment 1)
Superintendent's Checklist - One Drug Protocol (Attachment 2)
Superintendent's Checklist - 3 Drug Protocol (Attachment 3)

DOC FORMS:

DOC 21-575 Acknowledgment of Visitor Search Requirements

DEPARTMENT OF CORRECTIONS
WASHINGTON STATE PENITENTIARY
EXECUTION PROCEDURES AND ASSIGNMENTS CHECKLIST

Inmate:

Date of Execution:

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
Compliance Date: Approximately 30 days prior to the scheduled execution		
	Superintendent appoints an Execution Incident Commander.	
	Execution Incident Commander determines the Incident Command System (ICS) objectives, strategies, tactical direction, and organizational structure needed for the execution event and identifies planning elements required.	
	Execution Incident Commander develops a draft Incident Action Plan (IAP) for the execution and submits to the Superintendent for approval. The IAP will contain, at a minimum, all elements identified in this checklist.	
	ISDP is informed of the statutory requirements regarding the method of execution and is advised the Superintendent will request s/he submit his/her election of alternate method in writing.	
	ISDP is given opportunity to designate family members as witnesses.	
	ISDP has been provided a written summary of the procedures governing mail, visitation, telephone use, and available religious services.	
	Mail Room Supervisor is informed, in writing, of the ISDP's name and execution and instructed that: ☐ All incoming mail addressed to ISDP will be forwarded unopened to a designated Associate Superintendent ☐ A log will be maintained of all incoming/outgoing mail noting date and time of receipt and distribution ☐ A separate log will be maintained for legal mail	

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	The facility Public Information Officer has been informed of scheduled date and directed to prepare a media plan.	
	The Intensive Management Unit (IMU) Manager has been informed of mail, visit, telephone use, and available religious services as they apply to the ISDP.	
	ISDP is placed on 30 minute check. Observed behavior is entered in designated log.	
	Chaplain is assigned as Religious Specialist and briefed.	
	Sources and procedures for acquiring the substances necessary for lethal injection have been investigated. Plans being made for acquiring all necessary equipment essential to carry out either mode of execution.	
	Coordination meeting with local law enforcement is scheduled.	
	Lethal Injection Team or Hanging Team, as necessary, is identified and notified.	
	Individuals eligible to witness execution are identified. Appropriate letters sent.	
Compliance Date: Not less than 20 days prior to the execution		
	Superintendent completes changes to IAP and returns to the Execution Incident Commander.	
	Staff assigned an organizational role within the ICS structure are identified and briefed.	
	ICS organization completes identified planning elements, required forms, and documentation for the IAP.	
	Letters received from potential witnesses have been processed.	

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	The chamber has been inspected to ensure the following systems are functional: ☐ Plumbing ☐ Lighting ☐ Emergency Lighting ☐ Mechanical Systems ☐ Locking Systems ☐ Telephones ☐ Sanitation ☐ Furnishings ☐ Toilet Facilities	
	Execution Incident Commander ensures all staff assigned to positions within the chamber receive a briefing and notification of the date and time of "on-site" rehearsal.	
	Execution Incident Commander ensures a written report detailing the condition of the chamber has been submitted to the Superintendent citing any deficiencies. A schedule of corrective actions will be provided.	
Compliance Date: 15 days prior to the execution		
	All changes, improvements, or renovations to the chamber have been completed.	
	Total number of individuals to attend/witness the execution, other than staff, has been identified.	
	Witness applicants have been notified of the final witness list.	
Compliance Date: 14 days prior to execution		
	ISDP is authorized one additional hour of yard time each day.	
	ISDP is provided final opportunity to choose alternate method of execution.	
	All equipment has been procured for either mode of execution.	
	Notification to staff/ISDP for program changes if needed (e.g., visiting, etc.).	
	Arrangements made to ensure Death Certificate will be available. Superintendent is advised.	
Compliance Date: Not less than 10 days prior to the execution		

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	List of authorized witnesses is filed with Superior Court in county of conviction from which Death Warrant issued.	
	Physical examination is conducted, if needed.	
	The following have been checked: ☐ All equipment required for lethal injection ☐ All equipment required for hanging, if necessary.	
	Conduct at least 3 lethal injection practice sessions, if necessary, including siting of IV lines.	
	Gallows area trap door(s) and release mechanisms are inspected for proper operation, if necessary.	
	Proper amount of drop of ISDP through the trap door is determined, if necessary.	
	IAP specifically details crowd control strategies and tactics and identifies the operational supervisor/leader.	
Compliance Date: 7 days prior to the execution		
	Execution Incident Commander submits final IAP to the Superintendent and receives signature approval.	
	ISDP is authorized daily visits (in addition to with attorney of record).	
	Instructions are provided to staff on entrance and egress routes.	
	Mobile restroom facilities are placed in the designated demonstration area.	
	Post-execution handling of ISDP is coordinated.	
	Lethal solutions, if required, have been obtained and placed in security lock box.	
	The specific route and mode of body removal is determined and information transmitted to: ☐ Superintendent ☐ Execution Incident Commander ☐ Captain ☐ Shift Commander ☐ Washington State Patrol	
	Menu for final meal is prepared and presented to Superintendent for approval.	
Compliance Date: Approximately 5 days prior to the execution		

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	On-site rehearsal has been conducted with all Execution Event staff participating.	
	The holding cell area has been inspected and is ready for occupancy.	
	Security inspections of the entire chamber have been conducted.	
	The holding cell is prepared and equipped with: ☐ 1 Mattress ☐ 2 Sheets ☐ 3 Blankets ☐ 1 Pillow ☐ 1 Pillowcase ☐ 2 Towels ☐ 1 Washcloth ☐ 1 Bar of Soap	
	Chamber and all systems have been checked for operation and readiness. All equipment present and functional.	
	Notices are issued to any contract/volunteer staff and/or construction workers of planned suspension of their activities.	
	Arrangements for Death Certificate are confirmed and communicated to the Superintendent/Execution Incident Commander.	
Compliance Date: Approximately 4 days prior to the execution		
	Coordination briefings with local law enforcement agencies have been conducted.	
	All staff assignments made: ☐ Chamber Security Team ☐ Correctional Program Managers ☐ Captain ☐ Chamber Media Escort Team ☐ Visiting Room Media Monitor ☐ Chaplain ☐ Transport/Restraining Team ☐ Holding Cell Security Team ☐ Incident Command Post Staff (Security/Communication) ☐ Specialty Team Group Supervisor/ERT Leader ☐ Specialty Team Group Supervisor/SERT Leader	
	Staff escorts assigned for all non-WSP individuals attending.	

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
Compliance Date: 24 hours prior to execution		
	Superintendent approves all visitors.	
	ISDP is requested to designate disposition of his/her property/remains in writing.	
	A thorough security inspection of the entire chamber area, including search of cells, has been conducted.	
	Clocks are coordinated.	
	ISDP is moved from IMU to holding cell. Visitors limited to approved clergy and attorney of record.	
	Upon arrival at the holding cell, ISDP is informed of conditions of confinement.	
	The IAP is initiated and Incident Command Post opened and staffed.	
	Main facility is briefed at roll call of extraordinary security measures.	
	A designated staff to operate PBX reports for work.	
Execution Day		
	Chamber Access Security Team (Shift A) reports to duty station in chamber.	
	Cell Security Team (Shift A) reports to duty station in chamber.	
	Lethal solutions, if needed, are transferred to the injection room in the chamber.	
	Final meal is prepared and served to ISDP.	
	Chamber Access Security Team Shift B relieves Shift A.	
	Cell Security Team Shift B relieves Shift A.	
	Authorized media representatives are allowed access to the facility and are briefed by the Superintendent/designee.	
	All witnesses have been assigned escorts and allowed access to the facility.	
	All traffic through information desk area, visitor tunnel is cleared.	
	All staff designated as participants are at duty stations in the chamber.	

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	Department Secretary has been contacted by telephone from the Incident Command Post/Communications Center and an open line from the Department Emergency Operations Center to the chamber is established.	
	Incident Command Post/Communications Center contacts the Attorney General's Office by telephone and maintains an open line.	
	Lethal Injection Team enters and the equipment for injection mode and back-up equipment is tested, if necessary.	
	Hanging Team enters the gallows area and the equipment and back-up equipment is tested, if necessary.	
	Open line participants verify and concur no stay has been received. The time is _____ or later and the execution is to proceed.	
	Superintendent is in place in chamber.	
	ISDP is placed in restraints and escorted to the appropriate execution area.	
	All pre-execution preparations are completed. All participants are in place.	
	Assistant Secretary confirms that no stays have been granted.	
	Assistant Secretary informs Superintendent that there are no stays.	
	Superintendent signals the execution to proceed.	

DEPARTMENT OF CORRECTIONS
WASHINGTON STATE PENITENTIARY
SUPERINTENDENT'S CHECKLIST - ONE DRUG PROTOCOL

	SEQUENCE OF EVENTS	TIME OF COMPLETION
1	Assistant Secretary indicates there are no stays per the Execution Procedures and Assignments Checklist (Attachment 1).	
2	Superintendent orders the ISDP escorted to the execution chamber and strapped to the table.	
3	After the ISDP is secured to table, Superintendent checks restraints then restraint team exits execution chamber.	
4	Superintendent secures all doors to execution chamber prior to Lethal Injection Team's entry from the injection room.	
5	Lethal Injection Team enters chamber and runs IV lines to the ISDP, sites and inserts one primary IV line and one backup IV line in locations deemed suitable by the team members.	
6	The insertion site of preference shall be the following order: arms, hands, ankles and/or feet.	
7	To best ensure that a needle is inserted properly into a vein, the IV team members should look for the presence of blood in the valve of the sited needles.	
8	If the Lethal Injection Team cannot secure one or more sites within one hour, the Secretary shall contact the Attorney General's Office and request that the execution be scheduled for a later date.	
9	Lethal Injection Team starts a saline flow, checking to ensure regular drip of saline is flowing.	
10	Lethal Injection Team then moves back to the injection room.	
11	Superintendent rechecks all restraints and determines they are secure.	
12	Superintendent makes one final check with the Assistant Secretary stationed outside the execution room. No stay, then proceed.	
13	The Superintendent/designee notifies Incident Command Post (ICP) to begin moving witnesses to gallery.	
14	Gallery Security Team notifies Superintendent that gallery is seated.	
15	Superintendent opens the curtain and turns on the microphone.	
16	Superintendent states: "At this time, we will carry out the legal execution of (ISDP Name)"	
17	Superintendent asks the ISDP if s/he wants to make a final statement, 2 minutes allowed.	
18	Microphone is turned off.	

	SEQUENCE OF EVENTS	TIME OF COMPLETION
19	Upon the Superintendent's order to proceed (tape removed from small window), a designated Lethal Injection Team member begins a rapid flow of lethal chemicals in the following order: <u>One Drug Protocol:</u> 1) thiopental sodium (5 g) 2) normal saline (50 cc)	
20	Lethal Injection Team signals the completion of this dosage by placing another roll of tape in the small window.	
21	Superintendent closes the curtain.	
22	A Doctor is called to the chamber to pronounce death and then exit chamber. NOTE: If the Doctor is unable to pronounce death, Superintendent shall re-open the curtain and signal the IV team to proceed with the second dose of thiopental sodium followed by the normal saline flush to be administered in the back up IV location. Process begins again at Step #19.	
23	When death is pronounced, the Superintendent notes the time and states to the gallery attendant: "At approximately (Time) A.M. on (Date), the execution of (ISDP Name) was carried out in accordance with the laws of Washington State".	
24	Witnesses are escorted out of the gallery.	
25	Lethal Injection Team prepares the body for departure.	
26	Superintendent clears all areas for the departure of the Lethal Injection Team and escorts them out of the chamber.	

DEPARTMENT OF CORRECTIONS
WASHINGTON STATE PENITENTIARY
SUPERINTENDENT'S CHECKLIST - 3 DRUG PROTOCOL

	SEQUENCE OF EVENTS	TIME OF COMPLETION
1	Assistant Secretary indicates there are no stays per the Execution Procedures and Assignments Checklist (Attachment 1).	
2	Superintendent orders the ISDP escorted to the execution chamber and strapped to the table.	
3	After the ISDP is secured to table, Superintendent checks restraints then restraint team exits execution chamber.	
4	Superintendent secures all doors to execution chamber prior to Lethal Injection Team's entry from the injection room.	
5	Lethal Injection Team enters chamber and runs IV lines to the ISDP, sites and inserts one primary IV line and one backup IV line in locations deemed suitable by the team members.	
6	The insertion site of preference shall be the following order: arms, hands, ankles and/or feet.	
7	To best ensure that a needle is inserted properly into a vein, the IV team members should look for the presence of blood in the valve of the sited needles.	
8	If the Lethal Injection Team cannot secure one or more sites within one hour, the Secretary shall contact the Attorney General's Office and request that the execution be scheduled for a later date.	
9	Lethal Injection Team starts a saline flow, checking to ensure regular drip of saline is flowing.	
10	Lethal Injection Team then moves back to the injection room.	
11	Superintendent rechecks all restraints and determines they are secure.	
12	Superintendent makes one final check with the Assistant Secretary stationed outside the execution room. No stay, then proceed.	
13	The Superintendent/designee notifies Incident Command Post (ICP) to begin moving witnesses to gallery.	
14	Gallery Security Team notifies Superintendent that gallery is seated.	
15	Superintendent opens the curtain and turn on the microphone.	
16	Superintendent states: "At this time, we will carry out the legal execution of (ISDP Name)"	
17	Superintendent asks the ISDP if s/he wants to make a final statement, 2 minutes allowed.	
18	Microphone is turned off.	

	SEQUENCE OF EVENTS	TIME OF COMPLETION
19	Upon the Superintendent's order to proceed (tape removed from small window), a designated Lethal Injection Team member begins a rapid flow of lethal chemicals in the following order: 3 Drug Protocol: 1) thiopental sodium (3 g) 2) normal saline (50 cc)	
20	Lethal Injection Team signals the completion of this dosage by placing another roll of tape in the small window.	
21	NOTE: If it appears to the Superintendent that the ISDP is not unconscious within 60 seconds from the time the Lethal Injection Team signals completion of first dosage, the Superintendent shall stop the flow of thiopental sodium in the primary site and order that the backup IV be used with a new flow of thiopental sodium (Step #19). This direction will be given verbally through the small window.	
22	Once the Superintendent has determined the ISDP is unconscious, a second signal to proceed (place first roll of tape on top of second roll in small window) will be given for the injection of the remaining chemicals: 3) pancuronium bromide (100 mg) 4) normal saline (50 cc) 5) potassium chloride (240 mEq) 6) normal saline (50 cc)	
23	Lethal Injection Team signals once all chemicals have been administered by removing both rolls of tape.	
24	Superintendent closes the curtain.	
25	A Doctor is called to the chamber to pronounce death and then exit chamber. NOTE: If the Doctor is unable to pronounce death, the injection process will resume at Step #19.	
26	When death is pronounced, the Superintendent notes the time and states to the gallery attendant: "At approximately (Time) A.M. on (Date), the execution of (ISDP Name) was carried out in accordance with the laws of Washington State".	
27	Witnesses are escorted out of the gallery.	
28	Lethal Injection Team prepares the body for departure.	
29	Superintendent clears all areas for the departure of the Lethal Injection Team and escorts them out of the chamber.	

COUNTY OF NEW YORK

STATE OF NEW YORK

AFFIDAVIT OF MARK HEATH, M.D.

I, Mark Heath, M.D., swear under penalty of perjury that the following is true:

1. My name is Mark J.S. Heath, M.D.. I am over the age of eighteen and competent to testify to the truth of the matters contained herein.
2. I am a practicing anesthesiologist at Columbia University Medical Center in New York City and an Assistant Professor of Clinical Anesthesiology at Columbia University School of Medicine. I have been practicing clinical anesthesiology for approximately 21 years. I am a board certified anesthesiologist.
3. The placement and utilization of intravenous catheters ("IV catheters", also "IV cannulae" or "IV cannulas") represents an integral element of the practice of clinical anesthesiology. In my clinical practice, the care of every single patient includes the use of intravenous access.
4. A peripheral IV line consists of a short catheter (a few centimeters long) for insertion through the skin into a peripheral vein. Typically, the part of the catheter inserted into the vein consists of a cannula-over-needle device, in which a flexible plastic cannula is mounted on a hollow metal needle. After the tip of the needle is inserted into the appropriate position inside the vein, the catheter is threaded over the needle into the lumen of the vein, and the needle is then withdrawn and

discarded. The connecting hub of the catheter remains outside the skin. It is typically connected to an intravenous infusion line, or capped for later use.

5. Successfully placing an intravenous catheter is a complex task which requires training and experience. It requires knowing how to assess veins for suitability, how to insert the IV needle into the vein, and how to assess whether the needle and catheter are properly situated within the vein.

6. If the cannula is not properly sited in the vein, or if the vein is sufficiently fragile, fluid delivered through the IV may travel into the surrounding tissue rather than into the blood vessel. This can happen because the needle or cannula punctures, tears or otherwise perforates the wall of the vein, or if the cannula dislodges from the vein. Even if the cannula is initially properly inserted and secured, it can shift position so that fluid travels into the surrounding tissue rather than the blood vessel. Regardless the particular mechanism, inadvertent delivery of fluid into the tissues surrounding the vein is referred to as "extravasation" and/or "infiltration." (Some texts and practitioners draw a slight distinction between these two terms, while others do not).

7. The Idaho lethal injection protocol mandates using pancuronium bromide and potassium chloride to execute inmates. Absent adequate anesthetic depth (i.e., a deep level of unconsciousness from which a highly noxious stimulation will not produce arousal), the infiltration of either of those chemicals into the surrounding tissue will result in severe pain and suffering. In particular, if all three drugs in the protocol infiltrate into the tissue surrounding the vein, the first drug, thiopental,

will not reach sufficient levels in the bloodstream to produce anesthesia. By contrast, the second drug, pancuronium, will reach sufficient levels to produce generalized paralysis. The third drug, potassium, causes a severe burning sensation when infiltrated into tissues. I do not know whether infiltrated potassium, in the doses contemplated in lethal injection procedures, will reach sufficient blood levels to cause cardiac arrest. The important point is that infiltration of the three lethal injection drugs, in part or in whole, is highly likely to produce an agonizing and torturous execution.

8. IVs may also fail due to faulty equipment. Leakage may occur anywhere there is fluid, including any of the various points of connection through which the fluid being administered flows. Leakage may occur where the IV line connects to the saline bag, where it connects to additional IV lines, at any point where additional lengths of tubing ("IV extension sets") are connected, at any point where an injection stopcock is inserted, at the site where the syringe (or needle on the syringe) is introduced to the IV apparatus, or where it connects the hub of the cannula.

9. Leakage may also occur wherever another line is joined to the primary line to allow for the injection of chemicals. For example, the Idaho lethal injection protocol calls for using chemical filled syringes connected to a 3-Gang, 3-Way Manifold. For the chemicals to reach the inmate, the Manifold will need to be connected to the IV line, and there may be leakage at any of the resulting multiple points of connection.

10. Infiltration and leakage are not necessarily "all-or-nothing" events. Nor are they mutually exclusive causes of IV failure. In other words, an IV can partially or fully infiltrate and/or partially or fully leak. Using Idaho's lethal injection protocol as an example: infiltration and/or leakage could cause an insufficient amount of thiopental or pentobarbital to reach the prisoner's brain to sufficiently anesthetize him for the next two steps of the execution, paralysis and cardiac arrest. In this scenario, if partial or complete doses of the pancuronium bromide and potassium chloride are subsequently delivered into the inmate's bloodstream, the inmate would experience the extreme pain and suffering of conscious paralysis and cardiac arrest. Moreover, an insufficiently anesthetized person would experience burning in his or her veins upon administration of concentrated potassium chloride, and any amount of potassium chloride delivered to the surrounding tissue or to the bloodstream would cause extreme pain absent sufficient anesthetic. IV failures are not hypothetical risks. Because of infiltration, leakage, or any other of a number of potential problems with intravenous access, it is entirely possible that an insufficient amount of thiopental or pentobarbital could reach the inmate to anesthetize him against the severe suffering and pain caused by the subsequent delivery of full or partial doses pancuronium bromide and potassium chloride. Of note, the doses of pancuronium bromide and potassium chloride called for in the Idaho protocol are so large that the delivery of a fraction of the dose would lead to paralysis and possibly cardiac arrest.

11. Successfully assessing whether IV fluids have been successfully delivered or, rather, whether an IV has failed, requires training and experience. It is a hands-on process that requires includes both visual and tactile inspection of the IV site for swelling, discoloration, and temperature changes, as well as monitoring of the IV equipment.

12. The signs of an infiltrated IV are often very subtle, and can easily be missed by an inexperienced practitioner. Indeed, even a highly experienced practitioner may initially fail to detect an infiltrated IV, although the likelihood of this error occurring is reduced by accrued practice experience.

13. Another source of IV failure relates to the rate of injection and force of injection used for drugs being injected into the IV line. If the injection rate or injection force is too high, this could cause leakage at the connection points or damage to the wall of the vein. It could also cause the cannula to dislodge. In the context of Idaho's lethal injection protocol, either of these events could result in inadequate anesthesia while at the same time allowing sufficient pancuronium and or potassium to reach the inmate and cause a torturous death (or a torturous but failed execution).

14. The Idaho protocol makes the Medical Team leader responsible for assessing unconsciousness. In this context, the term "unconsciousness" is nuanced, and it is important to understand the interplay between unconsciousness and arousability. A person can be unconscious but easily aroused, for example by touching their shoulder or saying their name. Alternatively, a person can be unconscious but

unarousable, such that no stimulus, no matter how noxious or intense, can bring them to consciousness or elicit any response at all. Colloquially, a person who is unconscious and unarousable is often referred to as being "deeply unconscious". To some degree there is a parallel with the use of the term "anesthetized", in that anesthetic patients may be described as being "deeply anesthetized" or "lightly anesthetized", based on how responsive they are to various intensities of stimulation.

15. A person who is unconscious but not aroused by lighter forms of stimulation may still be arousable by an intense or highly noxious stimulus. The levels of stimulation produced by pancuronium injection (which causes suffocation due to the inability to draw breath) or by potassium injection (which causes excruciating pain) are the types of highly noxious stimuli that could easily arouse an unconscious person and revert them to a state of consciousness in which they would experience the agonizing effects of pancuronium and potassium. Whether or not pancuronium and potassium could exert this effect would depend in part on how much thiopental had reached the circulation (and thus reached the brain) of the prisoner.

16. The Idaho protocol contemplates using a central line catheter to achieve intravenous access in the event peripheral IV access cannot be achieved. The protocol directs placing a "central line catheter in the offender's femoral vein". This is a procedure which is associated with severe life-threatening and painful complications, and it does not appear that the prison has the necessary equipment

and systems in place to deal with these known and foreseeable complications. Until such equipment and systems are in place it would be improper and unduly risky to proceed with a lethal injection procedure.

17. Further, unlike other states, the Idaho protocol does not appear to place a time limit on efforts to initiate intravenous access. Thus, the protocol allows an excessive amount of time for allowing the prisoner to be subjected to incessant and futile needling in order to obtain intravenous access. The failure to impose a reasonable time limit on the attempts to obtain intravenous access renders the Idaho lethal injection protocol both intrinsically defective and defective when compared with the lethal injection protocols of other states.

18. Additionally, unlike other states, the Idaho lethal injection protocol does not appear to contemplate the possibility that the team will not be able to achieve intravenous access. The protocols of other states recognize this possibility--which is important given that the possibility has been actualized--and thus include instructions and guidance about initiating correspondence with high level state administrators to postpone the execution. The failure of the Idaho lethal injection protocol to incorporate such language renders it both intrinsically deficient and deficient with respect to the protocols of other states.

19. The Idaho protocol does not explicitly prohibit the use of a cutdown procedure for obtaining IV access. The protocol states (Appendix A, section F) “The Medical Team member will place the central line catheter in the offender’s femoral vein using appropriate medical procedures”. The protocol does not limit the universe of

"appropriate medical procedures", and while some executioners have considered a cutdown procedure to be appropriate for use in executions, the emerged "standard of care" in lethal injection protocols explicitly eschews this technique. The Idaho lethal injection protocol is thus both intrinsically deficient and deficient with respect to other states in its failure to explicitly forbid the use of cutdown procedures for obtaining intravenous access.

20. In summary, absent proper training and experience on the part of the personnel who are charged with placing the IV cannulae and injecting the drugs, there is a high risk that an IV will not serve as a reliable mechanism for delivering chemicals into the bloodstream. With particular regard to Idaho's lethal injection protocol, this means that there is a high risk that an insufficient amount of anesthetic agent will reach the prisoner's brain, leaving him to experience the pain and suffering caused by a paralytic chemical and a cardiac-arrest inducing chemicals which do reach his body.

21. In further summary, the inadequacies of the Idaho protocol's consciousness check procedures present a gratuitous and substantial risk that the prisoner will be subjected to the torturous effects of pancuroinum and potassium chloride.

22. Due to the litigation schedule in this case, I have had only a few hours to review the Idaho lethal injection protocol (which is very complicated and confusing compared with other states' protocols) and to draft this affidavit. Given more time I would be able to provide more opinions about the numerous problems with the Idaho protocol and would be able to provide more detail and support for the

opinions provided above. I reserve the right to supplement this affidavit if additional information is made available to me.

Dated this 28th__ day of October, 2011.

Mark J. S. Heath, M.D.

No. 07-5439

IN THE
Supreme Court of the United States

RALPH BAZE, et al,
Petitioners,

v.

JOHN D. REES, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF KENTUCKY

JOINT APPENDIX
VOLUME IV

REDACTED VERSION FOR PUBLIC RECORD

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PETITION FOR CERTIORARI FILED JULY 11, 2007
CERTIORARI GRANTED SEPTEMBER 25, 2007

KENTUCKY STATE PENITENTIARY

VISITING SCHEDULE FOR DEATH ROW INMATE

PRE-EXECUTION (DEATH WATCH)

ATTORNEYS/PARALEGALS REVISED 12/14/2004

DAILY [redacted] TO [redacted] CONTACT

24-HOUR ACCESS IN EVENT OF EMERGENCIES

PERSONAL VISITORS

DAILY BY APPOINTMENT [redacted] TO [redacted] CONTACT

DAY OF SCHEDULED EXECUTION [redacted] TO [redacted] CONTACT

MINISTERS

MONDAY THROUGH FRIDAY [redacted] TO [redacted]

INSTITUTIONAL CHAPLAIN [redacted] TO [redacted]

NEWS MEDIA

MONDAY THROUGH FRIDAY [redacted] TO [redacted] CONTACT

BY SPECIAL ARRANGEMENTS ONLY

VISITATION GUIDELINES

ANY ITEM BROUGHT IN BY ATTORNEYS/PARALEGALS, MINISTERS, OR NEWS MEDIA SUCH AS, BUT NOT LIMITED TO, CASSETTES, WIRELESS MIKES, BOOKS, OR MAIL MUST BE APPROVED IN ADVANCE BY THE WARDEN. NO ITEMS WILL BE ALLOWED IN BY PERSONAL VISITORS.

1. VISITS WILL BE CONDUCTED AT A DESIGNATED LOCATION.

2. NO MORE THAN FOUR VISITORS AT A TIME.

3. THE WARDEN RESERVES THE RIGHT TO DENY ACCESS TO THE INSTITUTION, ANY VISITOR OR PERSON, HE DEEMS A RISK TO THE SECURITY OF THE INSTITUTION.

REVISED 12/14/2004

PRE-EXECUTION MEDICAL ACTIONS CHECKLIST

ACTIONS TAKEN AFTER RECEIVING EXECUTION ORDER

ACTIONS	RESPONSIBILITY	COMPLETED/DATE/TIME
1. Notify Department of Corrections [redacted] and [redacted] [redacted] of receipt of Governor's Death Warrant (immediately).	_____	_____
2. Begin a special section of condemned's medical record for all medical actions (X – 14 days).	_____	_____
3. Nurse visits and checks on the condemned each shift, seven days a week, using the special medical section to record contacts and observations (X - 14 days).	_____	_____

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PRE-EXECUTION MEDICAL ACTIONS CHECKLIST
ACTIONS TAKEN AFTER RECEIVING EXECUTION ORDER
PAGE 2 of 4

REVISED 12/14/2004

ACTIONS	RESPONSIBILITY	COMPLETED/DATE/TIME
4. [redacted] personally observes and evaluates the condemned five (5) days per week, Monday through Friday (X - 14 days).		
5. Place the [redacted]'s documentation in the permanent record immediately after personal contact.		
6. Department of Corrections [redacted] or his designee reviews and initials nursing documentation in #3 daily (X - 14 days).		
7. [redacted] reviews nursing and doctor's documentation weekly.		

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PRE-EXECUTION MEDICAL ACTIONS CHECKLIST
ACTIONS TAKEN AFTER RECEIVING EXECUTION ORDER
PAGE 3 of 4 **REVISED 12/14/2004**

ACTIONS	RESPONSIBILITY	COMPLETED/DATE/TIME
8. Physical examination is completed by the [redacted] or his designee no later than seven (7) days prior to execution.		
9. Place the physical in the permanent medical record upon completion.		
10. [redacted] evaluation is completed by [redacted] no later than seven (7) days prior to execution.		
11. Place the psychiatric interview and psychiatric evaluation in the permanent medical record and send copies to the Warden.		

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PRE-EXECUTION MEDICAL ACTIONS CHECKLIST
ACTIONS TAKEN AFTER RECEIVING EXECUTION ORDER
PAGE 4 of 4

REVISED 12/14/2004

ACTIONS	RESPONSIBILITY	COMPLETED/DATE/TIME
12. [redacted] or his designee personally observes and evaluates the condemned's medical condition weekly.		
13. Place the [redacted] or his designee notes in the permanent record immediately after personal contact.		
14. Notify all medical staff to immediately notify the Warden, [redacted] or designee, and [redacted] of any change in the inmate's medical or psychiatric condition.		

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THE EXECUTION
LETHAL INJECTION

REVISED 12/14/2004

SEQUENCE OF EVENTS	RESPONSIBILITY	COMPLETED/DATE/TIME
1. At [redacted] the Warden orders the condemned escorted to the execution chamber and strapped to the gurney.		
2. The IV team members will be the members of the execution team who site and insert the IV lines.		
3. The team enters the chamber and runs the IV lines to the condemned inmate, site and insert one (1) primary IV line and one (1) backup IV line in a location deemed suitable by the team members.		
4. The insertion site of preference shall be the following order: arms, hands, ankles and/or feet, neck.		

REVISED 12/14/2004

SEQUENCE OF EVENTS	RESPONSIBILITY	COMPLETED/DATE/TIME
5. To best assure that a needle is inserted properly into a vein, the IV team members should look for the presence of blood in the valve of the sited needle.		
6. If the IV team cannot secure one (1) or more sites within one (1) hour, the Governor's Office shall be contacted by the Commissioner and a request shall be made that the execution be scheduled for a later date.		
7. The team will start a saline flow.		
8. The team will securely connect the electrodes of the cardiac monitor to the inmate and ensure the equipment is functioning.		

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REVISED 12/14/2004

SEQUENCE OF EVENTS	RESPONSIBILITY	COMPLETED/DATE/TIME
9. The team will then move to the hallway and stand by.		
10. The team leader will recheck all restraints and determine they are secure and so advise the Warden.		
11. The Warden will confirm that all is ready.		
12. The Warden will make one final check with the attorneys stationed outside the chamber.		
13. The Deputy Warden will open the curtain and turn on the microphone.		

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REVISED 12/14/2004

SEQUENCE OF EVENTS	RESPONSIBILITY	COMPLETED/DATE/TIME
14. The Warden states, "At this time we will carry out the legal execution of _____ (condemned name)."	_____	_____
15. The Warden asks the condemned if he wants to make a final statement (two (2) minutes allowed).	_____	_____
16. Upon the Warden's order to "proceed" and the microphone turned off, a designated team member will begin a rapid flow of lethal chemicals in the following order:		
1) Sodium Thiopental (3 gm.)		
NOTE: If it appears to the Warden That the condemned is not unconscious		

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SEQUENCE OF EVENTS	RESPONSIBILITY	COMPLETED/DATE/TIME
within 60 seconds to his command to "proceed", the Warden shall stop the flow of Sodium Thiopental in the primary site and order that the backup IV be used with a new flow of Sodium Thiopental.		
2) Saline (25 mg.)		
3) Pancuronium Bromide (50 mg)		
4) Saline 25 (mg)		
5) Potassium Chloride (240 meq).		

17. A designated team member will begin a stopwatch once the lethal injections are complete. If the heart monitor does

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REVISED 12/14/2004

SEQUENCE OF EVENTS	RESPONSIBILITY	COMPLETED/DATE/TIME
not indicate a flat line after ten (10) minutes and if during that time the physician and coroner are not able to pronounce death, the Warden will order a second set of lethal chemicals to be administered (Sodium Thiopental, Pancuronium Bormide, and Potassium Chloride). This process will continue until death has occurred.		
18. A designated team member will observe the heart monitor and advise the physician of cessation of electrical activity of the heart.		

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REVISED 12/14/2004

	SEQUENCE OF EVENTS	RESPONSIBILITY	COMPLETED/DATE/TIME
19.	The curtains shall be drawn when the Physician and coroner enter the chamber and confirm death by checking the condemned's pulse and pupils and so advise the Warden.	_____	_____
20.	The curtain will then be opened. The Warden turns on the microphone and states: "At approximately ___ p.m. the execution of _____ was carried out in accordance with the laws of the Commonwealth of Kentucky".	_____	_____
21.	The microphone is turned off and the curtains will be drawn.	_____	_____

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REVISED 12/14/2004

	SEQUENCE OF EVENTS	RESPONSIBILITY	COMPLETED/DATE/TIME
22.	The witnesses are escorted out of the witness room, first the media, inmate's witnesses, and then the victim's witnesses.		
23.	The team will prepare the body for departure.		
24.	Release body per prior arrangements.		
25.	Funeral director completes death certificate.		
26.	Not more than one (1) day after execution, the Warden shall return the copy of the judgment of the court pronouncing the death sentence, of the manner, time and place of its execution.		

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REVISED 12/14/2004

SEQUENCE OF EVENTS	RESPONSIBILITY	COMPLETED/DATE/TIME
27. Close out inmate account during next business day.		
28. Contact individual designated to receive condemned's personal property for pick up of property the next business day.		
29. Compile all documents pertaining to Execution and place in inmate file.		

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EXECUTION TEAM QUALIFICATIONS

1. The following people with at least one year of professional experience may be on the IV team:
   a) Certified Medical Assistant, or
   b) Phlebotomist, or
   c) Emergency Medical Technician, or
   d) Paramedic, or
   e) Military Corpsman
2. Prior to participating in an actual execution, the member of the IV team must have participated in at least two (2) practices.
3. Members of the IV team must remain certified in their profession and must fulfill any continuing education requirements in their profession.
4. The execution team shall practice at least ten (10) times during the course of one (1) calendar year.
5. Each practice shall include a complete walk through of an execution including the siting of two (2) IVs into a volunteer.
6. Execution team members, excluding IV team members, must have participated in a minimum of two (2) practices prior to participating in an actual execution.

STABALIZATION PROCEDURE AFTER THE EXECUTION HAS COMMENCED

1. In the event that a stay is issued after the execution has commenced, the execution team will stand down and medical staff on site will attempt to stabilize the condemned with the below listed equipment and personnel.

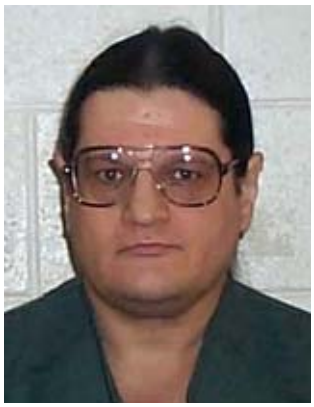
   A. The Warden will arrange for an ambulance and staff to be present on institutional property.

   B. A medical crash cart and defibrillator shall be located in the execution building.

AP Exclusive: Idaho prepares for execution with new death chamber, practice, boosted security

REBECCA BOONE Associated Press
First Posted: October 20, 2011 - 8:25 pm
Last Updated: October 20, 2011 - 8:25 pm

Photo Gallery:


Click to view (5 Photos)

BOISE, Idaho — The small cell holding Paul Ezra Rhoades sits across a hallway from the room in which he is scheduled to die in less than a month. His isolation cell is quiet as a worker brings in a tray of medicine.

The death chamber is silent, save for the faint hum of fluorescent lights.

It is all pristine: The cream-colored gurney unused, the wooden podium emblazoned with the Great Seal of Idaho not yet fitted with a microphone. No one has ever been killed in this room.

But the Idaho Department of Correction has been practicing the motions of an execution for years, anticipating that as many as three death row inmates will be put to death here before the end of 2013.

The first, 54-year-old Rhoades, is scheduled to die Nov. 18 unless he is granted clemency or a last-minute stay by the federal courts. He is already under 24-hour suicide watch in anticipation of the event.

Rhoades was sentenced to death for the sexual assault and murder of Idaho Falls teacher Susan Michelbacher, 34, whose bullet-ridden body was found in March 1987, and for the first-degree murder and kidnapping of Stacy Dawn Baldwin, 21, a Blackfoot convenience store clerk who was shot to death in February 1987.

Rhoades was also sentenced to life in prison without the possibility of parole for the March 1987 shooting death of Nolan Haddon, 21, a Blackfoot man who worked at an Idaho Falls convenience store.

"Our focus, if we are tasked with carrying out this order, is that we do so with professionalism, dignity and respect," Idaho Department of Correction Operations Chief Kevin Kempf said. "There are so many moving parts, and we don't want Murphy's

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law to show up. We need to think of every possibility."

The Correction Department gave The Associated Press an exclusive tour of the execution chamber Thursday. State officials decided to build it at the Idaho Maximum Security Institution two years ago, abandoning the single-wide trailer with dingy carpet and fake wood paneling that was used for the state's last execution in 1994.

The trailer still sits just a few yards away from the new structure, which was finished late last week. It's a short walk from the prison's cellblocks and past the recreation area to the one-story, brick building with small glass-block windows.

The state has already established its execution teams: An escort team to lead the condemned to the execution chamber; the medical team responsible for inserting the intravenous catheters, mixing the lethal chemicals and monitoring vital statistics; and the injection team responsible for actually administering the lethal injection. In all, about 20 people will be directly involved.

"We are going to be vigilant about the anonymity of all those people," Kempf said. "The execution team is made up of professional, well-trained people, in some cases from inside our department and in some cases from outside our department."

Department officials have tried to anticipate every possibility, said Idaho Department of Correction Director Brent Reinke. The Idaho State Police, Idaho National Guard and local law enforcement agencies will assist with security. A no-fly zone will be in place over the prison in the hours surrounding the execution. Separate areas will be cordoned off for those wishing to protest for and against the execution. The podium in the chamber, where the warden will stand throughout the execution, will be equipped with a phone for any last-minute commutation. A defibrillator will be on hand in case the condemned inmate has to be revived.

Two viewing rooms are also in place — a smaller one to hold the two witnesses there on behalf of Rhoades, chosen from his family, friends or attorneys, and a larger one to hold the myriad witnesses there on behalf of the state, the media and the victims' families.

Rhoades was moved from his death row unit to the isolation cell Wednesday after he was served with his official death warrant.

"It allows us to make sure that our focus is with those last 30 days, ensuring that the security is where it needs to be. If is he afforded a visit from his clergy or from a family member, it just allows us to make sure that takes place, as opposed to on that regular unit," Kempf said.

Anxieties are already higher for the other inmates at the prison, said Warden Randy Blades, in no small part because executions are a rarity in Idaho. The last inmate to be executed, Keith Wells in 1994, gave up all of his remaining appeals and asked the state to carry out his lethal injection. The previous execution was in 1957, when Raymond Allen Snowden was hanged at the old Idaho State Penitentiary for stabbing a woman to death.

It's also a weighty issue for the prison employees who will be involved in the process, Kempf said. But whether they are involved or not, all prison officials are keeping the victims' families in mind, he said.

"Our hearts, literally, are with the victims. This obviously cannot be a very easy time for them and certainly what they have gone through to get to this point is an incredible amount of tragedies," Kempf said. "That said, yes, this is impactful to our staff, to everyone involved in this thing. You have to have a level of toughness just to do this job every single day."

Correction Department officials have been in contact with the victims' families, Reinke said, and they haven't yet decided whether they will attend the execution.