This notice has been sent to officials of the Jamestown S'Klallam Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Mr. Tim Johnson, Naval Ordnance Center, Pacific Division, Port Hadlock Detachment, Port Hadlock, WA 98339; telephone: (360) 396-5236, before January 19, 1999. Repatriation of the human remains and associated funerary objects to the Jamestown S'Klallam Tribe may begin after that date if no additional claimants come forward.

Dated: December 11, 1998.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

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DEPARTMENT OF JUSTICE

Office of the Attorney General

[A.G. Order No. 2196–98]

RIN 1105–AA56

Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as Amended

AGENCY: Department of Justice.

ACTION: Final guidelines.

SUMMARY: The United States Department of Justice is publishing Final Guidelines to implement the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act as amended by Megan's Law, the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, and section 115 of the General Provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998.

EFFECTIVE DATE: December 17, 1998.

SUPPLEMENTARY INFORMATION: The Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. 104–236, 110 Stat. 3093 (the ''Pam Lychner Act''), and section 115 of the General Provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. 105–119, 111 Stat. 2440, 2461 (the ''CJSA''), amended section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, 108 Stat. 1796, 2038 (codified at 42 U.S.C. 14071), which contains the Jacob Wettlering Crimes Against Children and Sexually Violent Offender Registration Act (the ''Wetterling Act'' or ''the Act''). These legislative changes require conforming changes in the Final Guidelines for the Jacob Wetterling Act and Megan's Law (Pub. L. 104–145, 110 Stat. 1345) that were published by the Department of Justice on July 21, 1997, in the **Federal Register** (62 FR 39009).

The Wettlerling Act generally sets out minimum standards for state sex offender registration programs. States that fail to comply with these standards within the applicable time frame will be subject to a mandatory 10% reduction of formula grant funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program (42 U.S.C. 3756), which is administered by the Bureau of Justice Assistance of the Department of Justice. Any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance. Information concerning compliance review procedures and requirements appears in part VIII of these guidelines.

The Wetterling Act's requirements for compliance may be divided into three categories, each of which carries a different compliance deadline, depending on the legislation from which it derives:

1. *Original requirements.* Many of the provisions of the current formulation of the Wetterling Act derive from the original version of the Act, which was enacted on September 13, 1994, or from the Megan's Law amendment to the Act. These include, for example, the basic requirements to register offenders for at least 10 years; to take registration information from offenders and to inform them of registration obligations when they are released; to require registrants to update address information when they move; to verify the registered address periodically; and to release registration information as necessary for public safety. The deadline for compliance with these features of the Act was September 12, 1997, based on the specification of 42 U.S.C. 14071(g) that states have three years from the Act's original enactment date (i.e., September 13, 1994) to achieve compliance. However, 42 U.S.C. 14071(g) allows a two-year extension of the deadline for states that are making good faith efforts to achieve compliance, and states that have been granted this extension have until September 12, 1999, to comply with these features of the Act.

2. *Pam Lychner Act requirements.* The Pam Lychner Act's amendments to the Wetterling Act created a limited number of new requirements for state registration programs, including a requirement that the perpetrators of particularly serious offenses and recidivists be subject to lifetime registration. The time frame for compliance with these new requirements is specified in section 10(b) of the Pam Lychner Act—three years from the Pam Lychner Act's enactment date of October 3, 1996, subject to a possible extension of two years for states that are making good faith efforts to come into compliance. Hence, barring an extension, states will need to comply with these features of the Act by October 2, 1999.

3. *CJSA requirements.* CJSA amendments made extensive changes to the Wetterling Act, many of which afford states greater flexibility in achieving compliance. Under the effective date provisions in section 115(c) of the CJSA, states immediately have the benefit of amendments that afford them greater discretion and can rely on these amendments in determining what changes (if any) are needed in their registration programs to comply with the Act. For example, the Act as amended by CJSA affords states discretion concerning the procedures to be used in periodic verification of registrants' addresses, in contrast to the Act's original requirement that a specific verification-form procedure be used. In light of this change, effective immediately, states have discretion concerning the particular procedures that will be used in address verification.

While the CJSA's amendments to the Wetterling Act were largely in the direction of affording states greater discretion, the CJSA did add some new requirements to the Wetterling Act. For example, the CJSA added provisions to promote registration of sex offenders in states where they work or attend school (as well as states of residence) and to promote registration of federal and military sex offenders. The time frame for compliance with new requirements under the CJSA amendments, as specified in section 115(c)(2) of the CJSA, is three years from the CJSA's enactment date of November 26, 1997, subject to a possible extension of two years for states that are making good faith efforts to come into compliance, Hence, barring an extension, states will need to comply with these features of the Act by November 25, 2000.

The final guidelines in this publication identify and discuss separately all of the requirements that states will need to meet by each of the three specified deadlines, thereby making it clear when states will need to be in compliance with each element of

the Wetterling Act to maintain eligibility for full Byrne Formula Grant funding.

Summary of Comments on the Proposed Guidelines

On June 19, 1998, the U.S. Department of Justice published Proposed Guidelines in the **Federal Register** (63 FR 33696) to implement the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act as amended by Megan's Law, the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, and section 115 of the General Provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998. The comment period expired on August 18, 1998.

Following the publication of the proposed guidelines, the Department received 9 comment letters, primarily from state law enforcement agencies. These letters contained numerous comments, questions and recommendations, all of which were considered carefully in developing the Final Guidelines. A summary of the comments and responses to them are provided in the following paragraphs.

A. Offense Coverage

One respondent commented that some states appear to be imposing registration requirements on individuals convicted of consensual adult sodomy. As the guidelines state, such offenses are not among the offenses for which the Act requires registration, and registration of persons convicted of such offenses would not further the Act's objectives.

B. Basic Registration Requirements

1. Initial Registration Requirement

One respondent asked about the applicability of the Act's requirements in relation to an offender who is released from custody and immediately moves to another state. In such cases, the state must: (1) inform the offender of the pertinent registration requirements and take information on the offender as prescribed in the Act; and (2) have procedures that ensure that notice is provided promptly to an agency responsible for registration in the state to which the offender moves, as with any other offender who is moving interstate (42 U.S.C. 14071(b)(1), (2) and (5)). The final guidelines include language that clarifies these requirements.

2. Duration of Registration

Two respondents commented on the minimum registration period required by the Act. One respondent noted that its state law currently allows discontinuance of registration ''upon restoration of civil rights,'' while another noted that its state law allows discontinuance of registration after seven years in certain circumstances. As the guidelines state, for persons convicted of offenses within the Act's offense categories, registration may be discontinued prior to 10 years *only* if the underlying conviction is reversed, vacated, or set aside, or if the registrant is pardoned. Thus, laws allowing discontinuance of registration for such persons prior to ten years for any other reasons would not be in compliance with the Act.

The requirement of registration for at least 10 years, like the other requirements of the Act, does not have to be applied retroactively to offenders who were convicted prior to the establishment of a conforming registration program. Hence, it is a matter of state discretion whether to allow termination of registration for such offenders after some shorter period of time.

C. Registration in Certain Interstate Contexts

1. Offense Coverage

One respondent inquired whether an offender's new state of residence, or a state in which an offender works or attends school, must register the offender if he or she does not fall into the categories of registration offenses specified in the state's sex offender registration laws. The Act requires states to register—or, in the case of non-resident workers and students, to accept registration information from—persons convicted of the offenses described in 42 U.S.C. 14071(a)(3)(A)–(B) or a comparable range of offenses. Thus, a state must register (or, for non-resident workers and students, accept registration information from) at least those persons to comply with the Act. The coverage of any offenses beyond those offenses is a matter of state discretion. Thus, for example, the Act does not require a state to accept registration information from a non-resident worker or student if that person's state of residence is registering the person on the basis of an offense that is outside of the Act's offense coverage requirements.

2. Notification to Other States

One respondent asked whether, to comply with the Act, a state must enact a statutory requirement providing for notification to other states when an offender moves interstate, or whether it could rely on informal practice to do so. As the guidelines state, in determining compliance, the Act does not require that it standards be implemented by statute. Thus, in assessing compliance with the Act, the totality of a state's rules governing the operation of its registration and notification system will be considered, including administrative policies and procedures as well as statutes. However, a completely informal practice, not adopted by statute and not included in an articulated administrative policy or procedure, would not be sufficient.

D. Requirements Related to Non-Resident Workers and Students

1. General Requirement

One respondent commented that the requirement that non-resident workers and student register both in the state in which they reside and the state in which they are employed places a burden on the non-resident state. The Act itself requires that states accept registration information from out-of-state workers and students (42 U.S.C. 14071(b)(7)). The guidelines cannot alter requirements appearing in the statute.

2. Procedures for Accepting Registration Information

One respondent asked whether states may comply with the requirement to accept registration information concerning non-resident workers and students by having local law enforcement agencies collect the information and then transfer it to the state. This approach is consistent with the Act.

One respondent asked whether registration information must be collected directly from the non-resident workers and students, or whether states may enter into agreements to exchange information on such persons. The Act requires states to ''ensure that procedures are in place to accept registration information from'' these categories of offenders (42 U.S.C. 14071(b)(7)). Thus, states must have some mechanism in place to accept registration information from non-resident workers and students. Should states also wish to enter into agreements for information exchange with other states, they are free to do so under the Act.

3. Offenders to Whom the Registration Requirements Apply

One respondent asked how the number of days of employment in the state should be calculated. More specifically, the respondent asked how to deal with employment involving

travel through several states, and whether work-related travel through a state or any amount of time spent working during a day should be counted towards or as a ''day'' of employment in the state. As the guidelines state, the Act requires states to accept registration information from non-residents who are employed ''full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year'' (42 U.S.C. 14071(a)(3)(F). The Act and guidelines do not provide more specific rules concerning such questions as whether traveling through a state in the course of employment constitutes being employed in the state, or whether there is a lower limit on the amount of time worked during a day that will count as part-time employment. Thus, the resolution of those issues is a matter of state discretion.

One respondent inquired as to the definition of part-time student. The Act defines a ''student'' as a ''person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education.'' (42 U.S.C. 14071(a)(3)(G)). The Act and guidelines do not further define the term ''part-time.'' Thus, is left to the states to apply this term in a manner consistent with the Act.

E. Requirements Related to Federal and Military Offenders

One respondent expressed interest in the federal government's role in sex offender registration, including the National Sex Offender Registry (NSOR) and the registration of federal and military offenders. Another respondent noted that, in order for the state to notify federal authorities if a federal or military offender fails to register, some mechanism must be established to alert the state when such an offender moves into the state. Procedures for state participation in NSOR are described in the guidelines, and the FBI will issue formal regulations governing the operation of NSOR. As the guidelines explain, recent legislation requires federal and military authorities to give notice to state and local authorities concerning the release to their areas of federal and military sex offenders. The responsible federal agencies are in the process of establishing procedures to implement these requirements.

F. Requirements Related to Aggravated Offenders and Recidivist

1. Application of Lifetime Registration Requirement

Two respondents questioned whether the lifetime registration requirements for aggravated offenders and recidivist apply retroactively or prospectively. The final guidelines clarify that the Act requires states to register for life offenders convicted for an aggravated offense, and recidivist convicted of the current offense, where such convictions occur after the adoption by the state of the lifetime registration requirement. However, states remain free to apply the lifetime registration requirement retroactively to offenders convicted prior to their adoption of the requirement, if they so wish. The lifetime registration requirement for aggravated offenders and recidivist was enacted by the Pam Lychner Act, and thus carriers a deadline of October 3, 1999, with a possible two-year extension for states making good faith efforts to comply.

One respondent asked how far back a state must look in determining whether an offender has a prior offense that would qualify him or her as a recidivist. There is no time limit under the Act on prior qualifying convictions. As the final guidelines make clear, in determining whether a person has a qualifying prior conviction, states must rely on the methods they normally use in searching criminal records.

2. Definition of Aggravated Offenses

One respondent sought clarification on the aggravated offenses for which lifetime registration is required. As the guidelines state, ''aggravated offense'' refers to state offenses comparable to aggravated sexual abuse as defined in federal law (18 U.S.C. 2241), which principally encompasses: (1) engaging in sexual acts in involving penetration with victims of any age through the use of force or the threat of serious violence; and (2) engaging in sexual acts involving penetration with victims below the age of 12. Thus, states can comply with the provision by requiring lifetime registration for persons convicted of the state offenses that cover such conduct, i.e., (1) engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence; and (2) engaging in sexual acts involving penetration with victims below the age of 12.

G. Requirements Related to Sexually Violent Predators

1. Waiver

Several respondents expressed concern over the particular requirements regarding sexually violent predators. For example, two respondents noted that their state either does not use a board of experts to designate sexually violent predators or does not include certain representatives on the board that they use. The Act requires that the determination whether a person is a sexually violent predator be made by a court after considering the recommendation of a board with a specified composition (42 U.S.C. 14071(a)(2)(A)). However, the Act also allows the Attorney General to grant a waiver from these requirements where a state has established alternative procedures or legal standards for designating a person as a sexually violent predator (42 U.S.C. 14071(a)(2)(B)). As a result, as the guidelines state, the approach taken to determining whether an offender is a sexually violent predator will be treated as a matter of state discretion.

In addition, the Act allows the Attorney General to approve ''alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders'' in lieu of the specific measure set forth in the Act regarding sexually violent predators (42 U.S.C. 14071(a)(2)(C)). States that wish to request approval under this provision should do so during the compliance review process. States also may consider the adoption of alternative measures at any time after coming into compliance with the Act, and may seek approval from the reviewing authority for such later-developed alternatives.

2. Documentation of Treatment

Two respondents expressed concern with the requirements that the registration information collected on sexually violent predators must include documentation of treatment. The Act requires that, for registrants who have been designated as ''sexually violent predators'' under the Act's definition, the initial registration information must include ''documentation of treatment received for any mental abnormality or personality disorder of the person'' (42 U.S.C. 14071(b)(1)(B)). As the guidelines note, however, in determining whether offenders have received treatment, the officers responsible for obtaining the initial registration information may rely on information that is readily available to them, either from existing records on the offender, and may comply with the

requirement to document an offender's treatment history simply by noting that the offender received treatment. Of course, states that wish to include more detailed information about offenders' treatment histories are free to do so.

3. Termination of Sexually Violent Predator Status

One state recommend that its law allows certain sexually violent predators to obtain certificates of rehabilitation that terminate sexually violent predator status. As the guidelines make clear, the Act requires lifetime registration once it has been determined that a registrant is a sexually violent predator. Thus, a state would not be in compliance with this feature of the Act if its were to allow registration to be terminated for a person who has been found to be a sexually violent predator on the basis of a later determination that the person has been ''rehabilitated'' or is no longer a sexually violent predator. However, as noted in the guidelines and in (G)(1) above, the Attorney General may approve alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders in lieu of the specific measures set forth in the Act regarding sexually violent predators (42 U.S.C. 14071(a)(2)(C)).

H. The National Sex Offender Registry (NSOR)

One respondent had specific questions regarding the interface of its offender tracking system with NSOR. Procedures for state participation in NSOR are described in the guidelines, and the FBI will issue formal regulations governing the operation of NSOR. As the guidelines note, funding is available through the National Sex Offender Registry Assistance Program of the Bureau of Justice Statistics of the United States Department of Justice to facilitate state participation in NSOR and to upgrade state sex offender registries.

Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as Amended

1. General Purposes and Principles of Interpretation

These guidelines carry out a statutory directive to the Attorney General in subsection (a)(1) of the Wetterling Act (42 U.S.C. 14071(a)(1)) to establish guidelines for state registration programs under the Act. Before turning to the specific provisions of the Act, five general points should be noted concerning the Act's interpretation and application.

First, the general objective of the Act is to assist law enforcement and protect the public from convicted child molesters and violent sex offenders through requirements of registration and appropriate release of registration information. The Act is not intended to, and does not have the effect of, making states less free than they were under prior law to impose such requirements. Hence, the Act's standards constitute a floor for state programs, not a ceiling. States do not have to go beyond the Act's minimum requirements to maintain eligibility for full Byrne Grant funding, but they retain the discretion to do so, and state programs do often contain elements that are required under the Act's standards. For example, a state may have a registration system that covers broader classes of offenders than those identified in the Act, requires address verification for registered offenders at more frequent intervals than the Act prescribes, or requires offenders to register for a longer period of time than the period specified in the Act. Exercising these options creates no problem of compliance because the Act's provisions concerning duration of registration, covered offenders, and other matters do not limit state discretion to impose more extensive or stringent requirements that encompass the Act's baseline requirements.

Second, to comply with the Wetterling Act, states do not have to revise their registration systems to use technical definitions of covered sex offenses based on federal law. Rather, subject to certain constraints, they may use their own criminal law definitions and categories in defining registration requirements. This point is explained more fully below.

Third, the Act's definitions of covered offense categories are tailored to its general purpose of protecting the public from persons who molest or sexually exploit children and from other sexually violent offenders. Hence, these definitions do not include all offenses that involve a sexual element. For example, offenses consisting of consensual acts between adults are not among the offenses for which registration is required under the Act, and requiring registration for persons convicted of such offenses would not further the Act's objectives.

Fourth, the Wetterling Act contemplates the establishment of programs that will prescribe registration and notification requirements for offenders who are subsequently convicted of offenses in the pertinent categories. The Act does not require states to attempt to identify and to prescribe such requirements for offenders who were convicted prior to the establishment of a conforming program. Nevertheless, the Act does not preclude states from prescribing registration and notification requirements for offenders convicted prior to the establishment of the program.

Fifth, the Act sets minimum standards for state registration and notification programs but does not require that its standards be implemented by statue. In assessing compliance with the Act, the totality of a state's rules governing the operation of its registration and notification program will be considered, including administrative policies and procedures as well as statutes.

2. Related Litigation

Some state registration and notification systems have been challenged on constitutional grounds. The majority of courts, and all federal appeals courts, that have dealt with the issue thus far have held that systems like those contemplated by the Wetterling Act do not violate released offenders' constitutional rights. *See e.g., Roe* v. *Office of Adult Probation,* 125 F.3d 47 (2d Cir. 1997) (Connecticut probation office notification policy); *Russell* v. *Gregoire,* 124 F.3d 1079 (9th Cir. 1997) (Washington state act), *cert. denied,* 118 S.Ct. 1191 (1998); *Doe* v. *Pataki,* 120 F.3d 1263 (2d Cir. 1997) (New York act), *cert. denied,* 118 S.Ct. 1066 (1998); *E.B.* v. *Verniero,* 119 F.3d 1077 (3d Cir. 1997) (New Jersey notification provisions), *cert. denied,* 118 S.Ct. 1039 (1998); *Artway* v. *Attorney General,* 81 F.3d 1235 (3d Cir. 1996) (New Jersey registration provision); *Doe* v. *Kelley,* 961 F. Supp. 1105 (W.D. Mich. 1997) (Michigan notification provisions); *Doe* v. *Weld,* 954 F. Supp. 425 (D. Mass. 1996) (Massachusetts registration of juvenile offenders); *State* v. *Pickens,* 558 N.W.2d 396 (Iowa 1997); *Arizona Dep't of Public Safety* v. *Superior Court,* 949 P.2d 983 (Ariz. App. 1997); *Opinion of the Justices to the Senate,* 423 Mass. 1201, 668 N.E. 2d 738 (Mass. 1996); *Doe* v. *Poritz,* 142 N.J. 1, 662 A.2d 367 (N.J. 1995); *State* v. *Ward,* 123 Wash. 2d 488, 869 P.2d 1062 (Wash. 1994). The United States has filed ''friend of the court'' briefs in several of these cases, arguing that sex offender registration and community notification do not impose punishment for purposes of the Ex Post Facto and Double Jeopardy Clauses or violate privacy or liberty interests guaranteed by the federal Constitution.

In a few other cases, however, courts have found that certain applications or

provisions of some state systems violate the United States Constitution or provisions of a state constitution. *See, e.g., Doe* v. *Attorney General,* 426 Mass. 136, 686 N.E. 2d 1007 (Mass. 1997) (holding that the Massachusetts act implicates liberty and property interests protected by the Massachusetts constitution, so that the act could not be applied to Doe—who had been convicted of ''indecent assault'' for sexually suggestive touching of an undercover police officer in an area known for consensual sexual activity between adult males—without a prior hearing to determine if he individually presented any threat to persons for whose protection the act was passed; the court did not rule out the possibility that a categorical ''dangerousness'' determination could be justified by certain other conviction offenses); *State* v. *Myers,* 260 Kan. 669, 923 P.2d 1024 (Kan. 1996) (holding that due to the breadth of offenses subject to Kansas registration act and the potentially unlimited scope of notification, Kansas notification provisions violate the Ex Post Facto Clause), *cert. denied,* 117 S.Ct. 2508 (1997). The New Jersey Supreme Court in *Doe* v. *Poritz* (above) also found a state law privacy interest requiring certain procedural protections, and those procedures were further elaborated upon by the Third Circuit in *E.B.* v. *Verniero* (above).

In addition, when these guidelines were written, there were appeals pending in the Second Circuit, *see Doe* v. *Pataki,* 3 F. Supp. 2d 456 (S.D.N.Y. 1998) (finding a federally protected liberty interest sufficient to trigger due process concerns and that New York's law did not provide sufficient due process), appeal pending, 2d Cir. No. ____, in the Sixth Circuit, *see Cutshall* v. *Sundquist,* 980 F. Supp. 928 (M.D. Tenn. 1997) (holding that the Tennessee notification provisions implicate federal and state law privacy and employment interests, requiring procedural protections prior to notification), *appeal pending,* 6th Cir. Nos. 97–6276 & 97–6321, and in the Third Circuit, *see Paul* v. *Verniero,* 3d Cir. No. 97–5791 (from district court's rejection of constitutional privacy challenge to community notification). There was also ongoing litigation in federal district court in Minnesota and in state courts in Ohio and Pennsylvania.

3. Summary and Text of Guidelines

The following guidelines explain the interpretation and application of the Wetterling Act's standards for registration programs and related requirements. All citations in these guidelines to the Act are to the Act's current text, reflecting the Megan's Law, Pam Lychner Act, and CJSA amendments. The detailed explanation is preceded by a table that summarizes the organization of the guidelines, the major elements of the Act, and the time for compliance with each element under the enacting legislation.

Summary and Deadlines for Wetterling Act Compliance

Text of Detailed Guidelines for Wetterling Act Compliance

I. Ten-year Minimum Registration for Persons Convicted of a Criminal Offense Against a Victim Who Is a Minor or a Sexually Violent Offense [September 12, 1997; Possible Two-year Extension]

To comply with subsections (a)(1) and (b)(6)(A) of the Wetterling Act, a state registration program must require current address registration for a period of 10 years for persons convicted of ''a criminal offense against a victim who is a minor'' or a ''sexually violent offense.'' This requirement derives from the Wetterling Act as originally enacted. The time for compliance is accordingly that provided in 42 U.S.C. 14071(g)—Sept. 12, 1997, or Sept. 12, 1999, for states that have received a two-year extension based on good faith efforts to achieve compliance.

The interpretation and application of this requirement are as follows:

A. ''States'' to Which the Act Applies

For purposes of the Act, ''state'' refers to the political units identified in the provision defining ''state'' for purposes of eligibility for Byrne Formula Grant funding (42 U.S.C. 3791(a)(2)). Hence, the ''states'' that must comply with the Act's standards for registration programs to maintain full eligibility for such funding are the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Marina Islands.

B. Duration of Registration

Subsection (b)(6)(A) provides that the registration requirement must remain in effect for 10 years following the registrant's release from prison or placement on parole, supervised release, or probation. States may choose to establish longer registration periods, and are required to do so under the Act's standards for certain types of offenders as discussed in parts IV and V of these guidelines. Registration requirements of shorter duration than 10 years are not consistent with the Act. Hence, for example, a state program would not be in compliance with the Act if it allowed registration obligations to be waived or terminated before the end of the 10 year period on such grounds as a finding of rehabilitation or a finding that registration (or continued registration) would not serve the purposes of the state's registration provisions. However, if the underlying conviction is reversed, vacated, or set aside, of if the registrant is pardoned, registration (or continued registration) is not required under the Act.

Also, in light of a proviso in subsection (b)(6), a state need not require registration ''during ensuing periods of incarceration.'' The reference to subsequent ''incarceration'' should be understood to include periods of civil commitment, as well as imprisonment for the commission of another criminal offense, since a state may conclude that it is superfluous to carry out address registration and verification procedures while the registrant is in either criminal or civil confinement. To comply with the Act, a state that does waive registration during subsequent criminal

or civil confinement must require that registration resume when the registrant is released, if time remains under the registration period required by the Act.

C. Coverage of Offenses

1. *''Criminal offense against a victim who is a minor''.* The Act requires registration of any person convicted of a ''criminal offense against a victim who is a minor.'' Subsection (a)(3)(A) defines the relevant category of offenses. The general purpose of the definition is to ensure comprehensive registration for persons convicted of offenses involving sexual molestation or sexual exploitation of minors. ''Minor'' for purposes of the Act means a person below the age of 18.

The specific clauses in the Act's definition of ''criminal offense against a victim who is a minor'' are as follows:

(1)–(2) Clauses (i) and (ii) cover kidnaping of a minor (except by a parent) and false imprisonment of a minor (except by a parent). All states have statutes that define offenses—going by such names as ''kidnaping,'' ''criminal restraint,'' or ''false imprisonment''—whose gravamen is abduction or unlawful restraint of a person. States can comply with these clauses by requiring registration for persons convicted of these statutory offenses whose victims were below the age of 18. It is a matter of state discretion under these clauses whether registration should be required for such offenses in cases where the offender is a parent of the victim.

(3) Clause (iii) covers offenses consisting of ''criminal sexual conduct toward a minor.'' States can comply with this clause by requiring registration for persons convicted of all statutory sex offenses under state law whose elements involve physical contact with a victim—such as provisions defining crimes of ''rape,'' ''sexual assault,'' ''sexual abuse,'' or ''incest''—in cases where the victim was a minor at the time of the offense. Coverage is not limited to cases where the victim's age is an element of the offense (such as prosecutions for specially defined child molestation offenses). It is a matter of state discretion under this clause whether registration should be required for sex offenses that do not involve physical contact, such as exhibitionism offenses.

(4) Clause (iv) covers offenses consisting of solicitation of a minor to engage in sexual conduct. The notion of ''sexual conduct'' should be understood in the same sense as in clause (iii). Hence, states can comply with clause (iv) by consistently requiring registration, in cases where the victim was below the age of 18, based on:

—A conviction for an offense involving solicitation of the victim under a general attempt or solicitation provision, where the object offense would be covered by clause (iii), and

—A conviction for an offense involving solicitation of the victim under any provision defining a particular crime whose elements include soliciting or attempting to engage in sexual activity involving physical contact.

(5) Clause (v) covers offenses consisting of using a minor in a sexual performance. This includes both live performances and using minors in the production of pornography.

(6) Clause (vi) covers offenses consisting of solicitation of a minor to practice prostitution. The interpretation of this clause is parallel to that of clause (iv). States can comply with clause (vi) by consistently requiring registration, in cases where the victim was below the age of 18, based on:

—A conviction for an offense involving solicitation of the victim under a general attempt or solicitation provision, where the object offense is a prostitution offense, and

—A conviction for an offense involving solicitation of the victim under any provision defining a particular crime whose elements include soliciting or attempting to get a person to engage in prostitution.

(7) Clause (vii) covers offenses consisting of any conduct that by its nature is a sexual offense against a minor. This clause is intended to ensure coverage of convictions under statutes defining sex offenses in which the status of the victim as a minor is an element of an offense, such as specially defined child molestation offenses, and other offenses prohibiting sexual activity with underage persons. States can comply with this clause by including convictions under these statutes in the registration requirement. A proviso at the conclusion of the Act's definition of ''criminal offense against a victim who is a minor'' allows states to exclude from registration requirements persons convicted for conduct that is criminal only because of the age of the victim if the perpetrator is 18 years of age or younger. Whether registration should be required for such offenders is a matter of state discretion under the Act.

(8) Considered in isolation, clause (viii) gives states discretion whether to require registration for attempts to commit offenses described in clauses (i) through (vii). However, state discretion to exclude attempted sexual offenses against minors is limited by other provisions of the Act, since any verbal command or attempted persuasion of the victim to engage is sexual conduct would bring the offense within the scope of the solicitation clause (clause (iv), and make it subject to the Act's mandatory registration requirements. Hence, the simplest approach for states is to include attempted sexual assaults on minors (as well as completed offenses) uniformly as predicates for the registration requirement.

2. *''Sexually violent offense''.* The Act prescribes a 10-year registration requirement for offenders convicted of a ''sexually violent offense,'' as well as for those convicted of a ''criminal offense against a victim who is a minor.'' Subsection (a)(3)(B) defines the term ''sexually violent offense.'' The general purpose of the definition is to require registration of persons convicted of rape or rape-like offenses—i.e., non-consensual sexually assaultive crimes involving penetration—regardless of the age of the victim. The definition refers specially to any criminal offense that consists of aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18 of the United States Code, or as described in the state criminal code), or an offense that has as its elements engaging in physical contact with another person with intent to commit such an offense.

In light of this definition, there are two ways in which a state can satisfy the requirement of registration for persons convicted of ''sexually violent offenses'':

First, a state can comply by requiring registration for offenders convicted for criminal conduct that would violate 18 U.S.C. 2241 or 2242—the federal ''aggravated sexual abuse'' and ''sexual abuse'' offenses—if prosecuted federally. (The part of the definition relating to physical contact with intent to commit aggravated sexual abuse or sexual abuse does not enlarge the class of covered offenses under the federal law definitions, because sections 2241 and 2242 explicitly encompass attempts as well as completed offenses.)

Second, a state can comply by requiring registration for offenders convicted of the state offenses that correspond to the federal offenses described above—i.e., the most serious sexually assaultive crime or crimes under state law, covering non-consensual sexual acts involving penetration— together with state offenses (if any) that have as their elements engaging in physical contact with another person with intent to commit such a crime.

Like the other requirements of the Act, the requirement to register persons convicted of sexually violent offenses, regardless of the age of the victim,

establishes only a baseline for state registration programs. Whether registration should be required for additional offenses against adult victims is a matter of state discretion under the Act.

3. *''Comparable * * * range of offenses''.* As a result of language added by the CJSA amendments, states need not comply exactly with the specific offense coverage requirements in subparagraph (A) or (B) of subsection (a)(3). Rather, a state may comply with the Act by requiring registration for persons convicted of offenses in a ''range of offenses specified by State law which is comparable to or which exceeds'' the range of offenses described in the Act.

This change reflects a practical recognition by Congress that exact state compliance with the Act's offense coverage specifications may be difficult because of the degree of detail in the Act's definitions and because of the variations among different jurisdictions in the terminology and categorizations used in defining sex offenses. *See* H.R. Rep. No. 256, 105th Cong. 1st Sess. 15 (1997). As a result, Congress was concerned that some states ''may inadvertently find themselves out of compliance with the Watterling Act'' because of the state registration provisions ''are not exactly congruent'' with the Act's offense categories, ''even if the offenses covered by the [state] program are much broader in other respects then required by the Wetterling Act.'' *Id.* The language concerning coverage of a ''comparable'' range of offenses was added to address this concern.

States should aim to have their registration offenses fully encompass the offense categories described in the Act and will be assured of compliance with the Act's offense coverage requirements if they do so. However, in light of the CJSA amendments affording a degree of flexibility concerning offense coverage, inadvertent departures from the Act's offense category specifications will not necessarily result in a finding of non-compliance. Such departures will be allowed if, in the judgment of the reviewing, they do not substantially undermine the objective of comprehensive registration for persons convicted of crimes involving sexual molestation or sexual exploitation of minors, and persons convicted of rape or rape-like crimes against victims of any age.

In addition, in assessing compliance, the reviewing authority may consider whether a state program imposes registration requirements that are broader in other respects than the offense coverage specifications of the Act. For example, consistently requiring registration for persons convicted of attempted offenses, and of sexual assaults against adult victims other than rape-like offenses, goes beyond the Act's mandatory standards. Such additional coverage may be considered by the reviewing authority in deciding whether the overall offense coverage under a state program ''is comparable to or * * * exceeds'' the Act's offense coverage specifications.

D. Coverage of Offenders

1. *Resident offenders convicted in other states.* In addition to the Act's requirement that states register their own offenders in the pertinent categories, subsection (b)(7) of the Act requires states, as provided in these guidelines, to include in their registration programs residents who were convicted in other states.

To comply with this requirement, states must apply the Act's standards to residents who were convicted in other states of a criminal offense against a victim who is a minor or a sexually violent offense (as defined in the Act). Specifically, states must require such persons to promptly provide current address information to the appropriate authorities when they establish residence in the state, and thereafter must apply to such persons all of the Act's standards relating to treatment of registered offenders following release including reporting of subsequent changes of address, periodic address verification, criminal penalties for registration violations, and release of registration information as necessary for protection of the public. States also should be aware that it is a federal offense for registered offenders to change residence to another state without notifying the new state of residence and the FBI. *See* 42 U.S.C. 14072 (g)(3) and (i).

The durational requirements for registration of offenders convicted in other states are the same as those for in-state offenders—registration for at least 10 years or for life as provided in subsection (b)(6) of the Act. If a portion of the applicable registration period has run while the registrant was residing in another state, a new state of residence may give the registrant credit for that period. For example, if a person required to register for 10 years under the Act's standards has lived for six years following release in the state of conviction, another state to which the registrant moves at that point does not have to require registration for more than the four remaining years.

2. *Juvenile delinquents and offenders.* The Act's registration requirements depend in all circumstances on conviction for certain types of offenses. Hence, states are not required to mandate registration for juveniles who are adjudicated delinquent—as opposed to adults convicted of crimes and juveniles convicted as adults—even if the conduct on which the juvenile delinquency adjudication is based would constitute an offense giving rise to a registration requirement if engaged in by an adult. However, nothing in the Act prohibits states from requiring registration for juvenile delinquents, and the conviction of a juvenile who is prosecuted as an adult does count as a conviction for purposes of the Act's registration requirements.

3. *Tribal offenders.* The Act does not impose any requirements relating to registration of persons convicted of sex offenses in Indian tribal courts. However, a sex offender convicted in an Indian tribal court whose presence is unknown to state authorities or Indian tribal authorities raises the same public safety concerns as an unregistered offender convicted of a similar offense in a state court. States are accordingly encouraged to require registration for sex offenders subject to their jurisdiction who were convicted in Indian tribal courts and to work with tribal authorities to ensure effective registration for such persons.

4. *Protected witnesses.* The Act requires current address registration but does not dictate under what name a person must be required to register. Hence, the Act does not preclude states from taking measures for the security of registrants who have been provided new identities and relocated under the federal witness security program (*see* 18 U.S.C. 3521 *et seq.*) or comparable state programs. A state may provide that the registration system records will identify such a registrant only by his or her new name and that the registration system records will not include the true pre-location address of the registrant or other information from which his or her original identity or participation in a witness security program could be inferred. States are encouraged to make provision in their laws and procedures for the security of such registrants and to honor requests from the United States Marshals Service and other agencies responsible for witness protection to ensure that the identities of these registrants are not compromised.

States should also be aware that 18 U.S.C. 3521(b)(1)(H), enacted by section 115(a)(9) of the CJSA, specifically authorizes the Attorney General to adopt regulations to ''protect the

confidentiality of the identity and location'' of protected witnesses who are subject to registration requirements, ''including prescribing alternative procedures to those otherwise provided by Federal or State law for registration and tracking of such persons.'' The Attorney General's policy, to the maximum extent allowed by security considerations, is to require the registration of all federally protected witnesses who otherwise would be required to register. However, in the Attorney General's discretion, the Attorney General will decide on a case-by-case basis whether these registrations will utilize new identities, modified listings, or other special conditions or procedures that are warranted to avoid inappropriately jeopardizing the safety of the protected witnesses.

II. Registration and Tracking Procedures; Penalties for Registration Violations [September 12, 1997; Possible Two-year Extension]

Paragraphs (1)(A) and (2)(A) of subsection (b) of the Act set out general duties for states in relation to offenders required to register who are released from prison or who are placed on any form of post-conviction supervised release (''parole, supervised release, or probation''). The duties include taking registration information, informing the offender of registration obligations, making the information available at the state level and to local law enforcement, and transmission of conviction data and fingerprints to the FBI. Paragraphs (4)–(5) of subsection (b) of the Act contain requirements that are designed to ensure that registration information will be updated when the registrant changes address and that registrants will continue to be required to register when they move from one state to another during the registration period. Subsection (b)(3)(A) states that ''State procedures shall provide for verification of address at least annually.''

These requirements generally derive from the Wetterling Act as originally enacted. The time for compliance is accordingly that provided in 42 U.S.C. 14071(g)—Sept. 12, 1997, or Sept. 12, 1999, for states that have received a two-year extension based on good faith efforts to achieve compliance. However, one aspect of subsection (b)(1)(A)—a requirement to inform offenders that they must register in states where they work or attend school, in clause (iii)—derives from the CJSA and consequently is subject to a longer deadline for compliance as discussed in part V of these guidelines.

A. Initial Registration Procedures

1. *Taking of registration information and informing offenders of registration obligations.* Subsection (b)(1)(A) provides that ''a State prison officer, the court, or another responsible officer or official'' must carry out specified duties in relation to persons who are required to register. The purpose of this provision is to ensure that offenders are made aware of their registration obligations and to preclude ''honor systems'' in which the initial registration depends on the offender's reporting the information on his own. States have discretion under the Act concerning what types of officials or officers will be made responsible for these initial registration functions.

The specific duties set out in subparagraph (A) of paragraph (1) include: (i) informing the person of the day to register and obtaining the information required for registration (i.e., address information), (ii) informing the person that he must report subsequent changes of address in the manner provided by state law, (iii) informing the person that if he moves to another state, he must report the change of address in the manner provided by state law and comply with any registration requirement in the new state of residence, (iv) obtaining fingerprints and a photograph if they have not already been obtained, and (v) requiring the person to read and sign a form stating that these requirements have been explained.

In addition, the CJSA amended subparagraph (A)(iii) to require that the person be informed that he also must register in states where he works or attends school. States must comply with this new requirement by November 25, 2000 (subject to a possible two-year extension), as explained in part V of these guidelines.

These informational requirements, like other requirements in the Act, only define minimum standards. Hence, states may require more extensive information from offenders. For example, the Act does not require a state to obtain information about a registrant's expected employment when it releases him, but a state may legitimately wish to know if a convicted child molester is seeking or has obtained employment that involves responsibility for the care of children.

As a second example, states are strongly encouraged to collect DNA samples, where permitted under applicable legal standards, to be typed and stored in state DNA databases. States are also urged to participate in the Federal Bureau of Investigation's (FBI's) Combined DNA Index System (CODIS). CODIS is the FBI's program of technical assistance to state and local crime laboratories that allows them to store and match DNA records from convicted offenders and crime scene evidence. The FBI provides CODIS software, in addition to user support and training, free of charge, to state and local crime laboratories for performing forensic DNA analysis. CODIS permits DNA examiners in crime laboratories to exchange forensic DNA data on an intrastate level and will enable states to exchange DNA records among themselves through the national CODIS system. Thus, collection of DNA samples and participation in CODIS greatly enhance a state's capacity to investigate and solve crimes involving biological evidence, especially serial and stranger rapes.

2. *Transmission of registration information.* Paragraph (2)(A) of subsection (b) states, in part, that the registration information must be promptly made available to a law enforcement agency having jurisdiction where the registrant expects to reside and entered into the appropriate state records system. The purpose of this provision is to ensure that registration information will be available both to local law enforcement and at the state level.

States have discretion under the Act concerning the specific mechanisms and procedures for carrying out this requirement. For example, a state may provide that the responsible official or officer is to transmit the registration information concurrently to an appropriate local law enforcement agency and to the agency responsible for maintenance of the information at the state level, or may provide that the information is to be provided in the first instance only to the local agency or to the state agency, which then transmits it to the other. States also have discretion concerning the form of notification or transmission. For example, in meeting the requirement to make the information available to a law enforcement agency where the registration will reside, permissible options include written notice, electronic transmission of registration information, and provision of on-line access to registration information.

While the Act generally leaves states discretion concerning specific procedures for taking and transmitting registration information, it does require that the information be ''promptly'' made available to the appropriate recipient agencies (both state and local). This requirement precludes procedures under which lengthy delays are allowed

in the transmission or forwarding of the information. For example, in relation to registrants released from prison, state procedures must ensure: (1) that the registration information taken from the offender will be transmitted prior to release or within a short time (e.g., five days) thereafter, and (2) that there is no long delay in any subsequent forwarding of the information required for compliance with the Act, such as provision of the information to an appropriate local law enforcement agency by a state agency if only the state agency receives the information in the first instance.

The Act leaves states discretion in determining which state record system is appropriate for storing registration information, and which agency will be responsible at the state level for the maintenance of this information. As discussed in Part VI of these guidelines, however, states will be required effective November 25, 2000, to participate in the National Sex Offender Registry (NSOR), which is administered by the FBI. States can ensure that they will be able to freely exchange registration information with the FBI's records systems and comply with the requirement of participation in NSOR by making a ''criminal justice agency'' as defined in 28 CFR 20.3(c) responsible for the registration information at the state level. This continues to leave states with broad discretion concerning the designation of responsibility for the state registry, since ''criminal justice agency'' is defined broadly in the rule and generally includes, *inter alia*, law enforcement agencies, correctional and offender supervision agencies, and agencies responsible for criminal identification activities or criminal history records.

In addition to requiring procedures that ensure the prompt availability of the initial registration information both to local law enforcement and at the state level, paragraph (2)(A) of subsection (b) requires the prompt transmission of conviction data and fingerprints of registrants to the FBI. This should not be understood as requiring duplicative transmission of conviction data and fingerprints to the FBI at the time of initial registration if the state already has sent this information to the FBI (e.g., at the time of conviction).

3. *Fingerprinting.* The final subsection of the Wetterling Act—which should be designated as subsection (h) but is designated as a second subsection (g) because of a technical drafting error in section 115(a)(3) of the CJSA—relates to a requirement under the Pam Lychner Act that certain offenders register directly with the FBI. In conjunction with other provisions of the Pam Lychner Act, it requires that fingerprints be obtained from such offenders by the FBI or by a local law enforcement official pursuant to regulations issued by the Attorney General. However, section 115(a)(7) of the CJSA deferred the effective date for direct FBI registration of certain offenders and issuance of related regulations. Hence, the final subsection of the Wetterling Act does not impose any requirements on the states at the present time.

B. Change of Address Procedures

1. *Intrastate moves.* Subsection (b)(4) provides that registrants are to report changes of address in the manner provided by state law. It further provides that state procedures must ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and is entered into the appropriate state records or data system.

The purpose of this provision is to ensure that current address information will continue to be available both to local law enforcement and at the state level. To comply with this part of the Act, states must require registrants to report changes of address within the state in a manner that ensures that information concerning the new address will promptly be made available to local law enforcement in the new place of residence and at the state level. Thus, states must require registrants to report changes of address prior to moving, or by some short time (e.g., 10 days) after moving.

States have discretion under the Act concerning specific mechanisms and procedures for reporting the updated address information and ensuring that it reaches the appropriate recipients. For example, many states require the registrant to notify local law enforcement agencies (e.g., local sheriffs' offices) in the place he is leaving and the place to which he is going and then require one of these local agencies to notify the agency responsible for maintenance of registration information at the state level. Alternatively, a state may require the registrant to directly notify a central registration agency at the state level, which then makes the information available to an appropriate local law enforcement agency. Another possibility is to require the registrant to report the change of address to a third party, such as a probation officer responsible for his supervision, who then is responsible for notifying a law enforcement agency in the new place of residence and the state registration agency.

The choice among these alternatives or the election of other alternatives beyond those described is a matter of state discretion. States will be in compliance as long as the procedures adopted ensure the prompt availability of the updated address information to law enforcement in the relevant local jurisdiction and at the state level.

2. *Interstate moves.* Subsection (b)(5) states that a registrant who moves to another state must report the change of address to the responsible agency in the state he is leaving and must comply with any registration requirement in the new state of residence. It further provides that the procedures of the state the registrant is leaving must ensure that notice is provided promptly to any agency responsible for registration in the new state of residence, if that state requires registration.

The purpose of this provision is to ensure a gap-free nationwide network of state registration programs that reliably tracks all offenders throughout the applicable period of registration and ensures that offenders cannot evade registration obligations by moving from one state to another. Hence, a state's procedures must require the registrant to report his departure to a responsible agency in the state, and must provide for prompt notice of the registrant's move by an agency in the state to the responsible registration authority in the new state of residence. An ''honor system'' approach, under which it is left to the registrant to notify the registration authority in the new state of residence on his own, does not satisfy the Act's requirements.

As discussed in part I.D.1 of these guidelines, the Wetterling Act's registration requirements ''follow the registrant'' if he moves to another state, and any state in which he establishes residence must include him in its registration program if registration is still required under the Wetterling Act's standards. This includes requiring the registrant to continue to register for at least the remainder of the Act's minimum ten-year registration period and to register for life if he is in a lifetime registration category under subsection (b)(6)(B) of the Act. Hence, the state a registrant is leaving is strongly encouraged to provide as part of its notice to the new state of residence sufficiently detailed information concerning the registrant's offenses and status to enable the new state to register him without difficulty in the appropriate category and for the appropriate amount of time.

In some instances, an offender convicted in a state may never be registered in that state as a resident,

because the offender goes to live in another state immediately upon release from imprisonment or sentencing to probation. The requirement under subsection (b)(5) that the state of conviction promptly notify a responsible registration agency in the state where the offender will reside remains applicable in such situations. In addition, a number of the Act's requirements under subsection (b)(1)–(2) remain relevant and applicable in relation to such an offender. These include: taking information concerning the offender's expected place of residence; informing the offender of the obligation to comply with any registration requirement in the state where he will reside and also to register in a state where he works or attends school; obtaining fingerprints and a photograph, if they have not already been obtained; obtaining a signed acknowledgment; and ensuring that conviction data and fingerprints are promptly transmitted to the FBI.

C. Periodic Address Verification

Subsection (b)(3)(A) requires that state procedures provide for the verification of registrants' addresses at least annually. The purpose of the requirement of periodic address verification is to ensure that the authorities will become aware if a registrant has moved away from the registered address and has failed to report the change of address. Such procedures are obviously important for effective tracking of sex offenders and enforcement of registration requirements.

As a result of change made by the CJSA amendments, the particular approach to address verification is a matter of state discretion under the Act. For example, some states verify addresses by having the responsible state or local agency annually send to the registered address a non-forwardable address verification form, which the registrant is required to sign and return with 10 days or some other limited period. This is one means by which states may comply with the verification requirement under subsection (b)(3)(A). The legislative history of the CJSA amendments to the Act noted other possible approaches: ''A review of State sex offender registry laws indicates that some States require registrants to appear in person periodically at local law enforcement agencies to verify their address (and for such purposes as photographing and fingerprinting). Some States assign caseworkers to verify periodically that registrants still reside at the registered address. These * * * procedures effectively verify registrants' location, and impress on registrants that they are under observation by the authorities, in addition to making law enforcement agencies aware of the presence and identity of registered sex offenders in their neighborhoods.'' H.R. Rep. No. 256, 105th Cong., 1st Sess. 17 (1997).

D. Penalties for Registration Violations

Subsection (d) provides that a person required to register under a state program established pursuant to the Act who knowingly fails to register and keep such registration current shall be subject to criminal penalties. Accordingly, states that wish to comply with the Act must have criminal provisions covering this situation.

The requirement of criminal penalties for registration violations under the Act applies both to a state's own offenders who are required to register and to persons convicted in other states who are required to register because they have moved into the state to reside.

The Act neither requires states to allow a defense for offenders who were unaware of their legal registration obligations nor precludes states from doing so. As a practical matter, states can ensure that offenders are aware of their obligations through consistent compliance with the Act's provisions for advising offenders of registration requirements at the time of release and obtaining a signed acknowledgment that this information has been provided.

As discussed in part V of these guidelines, the Act as amended by the CJSA includes provisions that are designed to promote the registration of federal and military offenders and of non-resident workers and students. The CJSA amendments did not apply the Act's mandatory requirement of criminal penalties under state law for registration violations to federal and military offenders who reside in the state or to non-resident workers and students. However, Congress recognized the desirability of fully incorporating such offenders into state registration programs by statute, *see* H.R. Rep. No. 256, 105th Cong., 1st Sess. 18 (1997), and the availability of substantial sanctions for registration violations by all types of sex offenders is important to realize the Act's objective of a comprehensive, nationwide sex offender registration system. Hence, states are strongly encouraged to provide criminal penalties for registration violations by all offenders within the scope of the Act, regardless of whether the registrant is present in the state as a resident, worker, or student, and regardless of whether registration is premised on a conviction under the law of a state or under federal or military law.

III. Release of Registration Information [September 12, 1997; Possible Two-Year Extension]

Subsection (e) of the Act governs the disclosure of information collected under state registration programs.

This part of the Act derives from the federal Megan's Law amendment to the Wetterling Act (Pub. L. No. 104–145, 110 Stat. 1345), which is subject to the same deadline for compliance as the original provisions of the Act under 42 U.S.C. 14071(g). Hence, the deadline for compliance is Sept. 12, 1997, or Sept. 12, 1999, for states that have received a two-year extension based on good faith efforts to achieve compliance.

Paragraph (1) of subsection (e) provides that information collected under a state registration program may be disclosed for any purpose permitted under the laws of the state. Hence, there is no requirements under the Act that registration information be treated as private or confidential to any greater extent than the state may wish.

Paragraph (2) of subsection (e) provides that the state or any agency authorized by the state shall release relevant information as necessary to protect the public. To comply with this requirement, a state must establish a conforming information release program that applies to offenders required to register on the basis of convictions occurring after the establishment of the program. States do not have to apply new information release standards to offenders whose convictions predate the establishment of a conforming program, but the Act does not preclude states from applying such standards retroactively to offenders convicted earlier if they so wish.

The principal objective of the information release requirement in paragraph (2) of subsection (e) is to ensure that registration programs will include means for members of the public to obtain information concerning registered offenders that is necessary for the protection of themselves or their families. Hence, a state cannot comply with the Act by releasing registration information only to law enforcement agencies, to other governmental or non-governmental agencies or organizations, to prospective employers, or to the victims of registrants' offenses. States also cannot comply by having purely permissive or discretionary authority for officials to release registration information. Information must be released to members of the public as necessary to protect the public from registered offenders. This disclosure

requirement applies both in relation to offenders required to register because of conviction for ''a criminal offense against a victim who is a minor'' and those required to register because of conviction for a ''sexually violent offense.''

States do, however, retain discretion to make judgments concerning the circumstances in which, and the extent to which, the disclosure of registration information to the public is necessary for public safety purposes and to specify standards and procedures for making these determinations. Several different approaches to this issue appear in existing state laws.

One type of approach, which is consistent with the requirements of the Act, involves particularized risk assessments of registered offenders, with differing degrees of information release based on the degree of risk. For example, some states classify registered offenders in this manner into risk levels, with registration information limited to law enforcement uses for offenders in the ''low-risk'' level; notice to organizations with a particular safety interest (such as schools and other child care entities) for ''medium risk'' offenders; and notice to neighbors for ''high risk'' offenders.

States also are free under the Act to make judgments concerning the degree of danger posed by different types of offenders and to provide information disclosure for all offenders (or only offenders) with certain characteristics or in certain offense categories. For example, states may decide to focus particularly on child molesters, in light of the vulnerability of the potential victim class, and on recidivists, in light of the threat posed by offenders who persistently commit sexual offenses.

Another approach by which states can comply with the Act is to make information accessible to members of the public on request. This may be done, for example, by making registration lists open for inspection by the public, or by establishing procedures to provide information concerning the registration status of identified individuals in response to requests by members of the public. As with proactive notification systems, states that have information-on-request systems may make judgments about which registered offenders or classes of registered offenders should be covered and what information will be disclosed concerning these offenders.

States are encouraged to involve victims and victim advocates in the development of their information release programs, and in the process for particularized risk assessments of registrants if the state program involves such assessments.

A proviso at the end of paragraph (2) of subsection (e) states that the identify of the victim of an offense that requires registration under the Act shall not be released. This proviso safeguards victim privacy by prohibiting disclosure of victim identity to the general public in the context of information release programs for registered offenders. It does not bar the dissemination of victim identity information for law enforcement or other governmental purposes (as opposed to disclosure to the public) and does not require that a state limit maintenance of or access to victim identity information in public records (such as police and court records) that exist independently of the registration system. Because the purpose of the proviso is to protect the privacy of victims, its restriction may be waived at the victim's option.

So long as the victim is not identified, the proviso in paragraph (2) does not bar including information concerning the characteristics of the victim and the nature and circumstances of the offense in information release programs for registered offenders. For example, states are not barred by the proviso from releasing such information as victim age and gender, a description of the offender's conduct, and the geographic area where the offense occurred. However, states are encouraged to avoid unnecessarily including information that may inadvertently result in the victim's identity becoming known, such as identifying a specific familial relationship between the offender and a victim who still lives in the area.

Concerns have been raised that the disclosure of registration information to the public under ''community notification'' programs may result in criminal acts or other reprisals against registrants. While currently available information does not indicate that this has been a significant problem under state programs, states are encouraged to consider including measures in their programs in minimize any possibility of misuse of the information released under the program. For example, some states include in their informational notices statements that the information is provided only for legitimate protective purposes, and that criminal acts against registrants will result in prosecution. As a further example, some states provide special training for officers responsible for community notification and/or hold community meetings in connection with the provision of notice of the community concerning a registrant's presence.

IV. Special Registration Requirements Under the Pam Lychner Act for Recidivists and Aggravated Offenders [October 2, 1999; Possible Two-Year Extension]

Subsection (b)(6)(B)(i)–(ii) of the Act requires lifetime registration for persons in two categories: (1) registrants who have a prior conviction for an offense for which registration is required by the Act, and (2) registrants who have been convicted of an ''aggravated offense.''

This requirement derives from an amendment to the Wetterling Act enacted by the Pam Lychner Act. The time for compliance is accordingly that provided in section 10(b) of the Pam Lychner Act—Oct 2, 1999, subject to a possible two-year extension for states making good faith efforts to come into compliance.

Subsection (b)(6)(B)(i) requires lifetime registration for certain recidivists. States can comply with this provision by requiring offenders to register for life where the following conditions are satisfied: (1) the current offense is one for which registrations is required by the Act—i.e., an offense in the range of offenses specified in subsection (a)(3)(A)-(B) or a comparable range of offenses, and (2) the offender has a prior conviction for an offense for which registration is required by the Act. There is no time limit under the Act on qualifying prior convictions. In determining whether a person has a qualifying prior conviction, states may rely on the methods they normally use in searching criminal records.

Subsection (b)(6)(B)(ii) requires lifetime registration for persons convicted of an ''aggravated offense,'' even on a first conviction. ''Aggravated offense'' refers to state offenses comparable to aggravated sexual abuse as defined in federal law (18 U.S.C. 2241), which principally encompasses: (1) engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence, and (2) engaging in sexual acts involving penetration with victims below the age of 12. Hence, states can comply with this provision by requiring lifetime registration for person convicted of the state offenses which cover such conduct.

A state is not in compliance with subsection (b)(6)(B) (i) or (ii) if it has a procedure or authorization for terminating the registration of convicted offenders within the scope of these provisions at any point in their lifetimes. However, if the underlying conviction is reversed, vacated, or set aside, or if the registrant is pardoned, registration (or continued registration) is

not required under the Act. Likewise, if the applicability of the lifetime registration requirement is premised on a prior conviction pursuant to subsection (b)(6)(B)(i), it becomes inapplicable if the prior conviction is reversed, vacated, or set aside, or if the registrant is pardoned for the prior conviction offense.

The proviso in subsection (b)(6) that registration need not be required ''during ensuing periods of incarceration'' applies to registrants subject to lifetime registration. Hence, states are not required to carry out address registration and verification procedures for such registrants during subsequent periods in which the registrant is imprisoned or civilly committed. To comply with the Act, a state that does waive registration for such registrants during subsequent criminal or civil confinement must require that registration resume when the registrant is released.

As with the other requirements of the Act, a state may impose the lifetime registration requirement for recidivist and aggravated offenders prospectively, so that it applies only to offenders required to register on the basis of convictions occurring after the state has adopted the requirement. Hence, it is sufficient for compliance with the Act if lifetime registration is imposed on: (1) all offenders convicted of an aggravated offense after the lifetime registration requirement is adopted; and (2) all recidivist convicted of an offense for which registration is required under the Act after the lifetime registration requirement is adopted (regardless of when the prior qualifying conviction occurred). Of course, states remain free to apply the lifetime registration requirement retroactively to offenders convicted prior to its adoption if they so wish.

V. Special Registration Requirements Under the CJSA Amendments Relating to Sexually Violent Predators, Federal and Military Offenders, and Non-resident Workers and Students [November 25, 2000; Possible Two-Year Extension]

Subsections (a)(2), (3)(C)–(E), (b)(1)(B), (b)(3)(B), and (b)(6)(B)(iii) of the Act prescribe heightened registration requirements for persons who are determined to be ''sexually violent predators'' under specified procedures. These provisions also, however, allow the approval of alternative procedures and of alternative measures of comparable or greater effectiveness in protecting the public.

Subsection (b)(7) of the Act requires states, as provided in these guidelines, to ensure that procedures are in place to accept registration information from: (1) residents convicted of a federal offense or sentenced by a court martial, and (2) nonresident offenders who have crossed into another state in order to work or attend school.

Because these requirements, in their current form, derive from the CJSA, the time for compliance is that provided in section 115(c)(2) of the CJSA—Nov. 25, 2000, subject to a possible two-year extension for states making good faith efforts to come into compliance.

A. Heightened Sexually Violent Predator Registration or Alternative Measures

1. *Heightened sexually violent predator registration.* Subparagraphs (B)–(E) of subsection (a)(3) contain the Act's definition of ''sexually violent predator'' and related definitions. Subparagraph (C) defines ''sexually violent predator'' to mean a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses. Subparagraph (D) essentially defines ''mental abnormality'' to mean a condition involving a disposition to commit criminal sexual acts of such a degree that it makes the person a menace to others. The definition of ''personality disorder'' is a matter of state discretion since the Act includes no specification on this point. For example, a state may choose to utilize the definition of ''personality disorder'' that appears in the Diagnostic and Statistical Manual of Medical Disorders: DSM–IV. American Psychiatric Association, *Diagnostic and Statistical Manual of Medical Disorders* (4th ed. 1994). Subparagraph (E) defines ''predatory'' to mean an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

A state that wishes to comply with the Act's provisions concerning sexually violent predator registration must adopt some approach to deciding when a determination will be sought as to whether a particular offender is a sexually violent predator. However, the specifics are a matter of state discretion. For example, a state might commit the decision whether to seek classification of an offender as a sexually violent predator to the judgment of prosecutors, or might provide that a determination of this question should be undertaken routinely when a person is convicted of a sexually violent offense and has a prior history of committing such crimes. Similarly, the Act affords states discretion with regard to the timing of the determination whether an offender is a ''sexually violent predator.'' A state may, but need not, provide that a determination on this issue be made at the time of sentencing or as a part of the original sentence. It could, for example, be made instead when the offender has served a term of imprisonment and is about to be released from custody.

Subparagraphs (A) and (B) of subsection (a)(2) govern the procedures for making the sexually violent predator determination. Subparagraph (A) states that the determination is to be made by a court after considering the recommendation of a board composed of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives of law enforcement agencies. However, subparagraph (B) allows the Attorney General to waive these requirements where a state has established alternative procedures or legal standards for designating a person as a sexually violent predator.

The waiver authority under subparagraph (B), which was added by the CJSA amendments, recognizes that a judicial determination informed by the recommendations of a board of mixed composition is not the only approach states may validly adopt to secure appropriate input and make fair determinations. For example, at a sentencing proceeding or other hearing to determine sexually violent predator status, a state might provide for input concerning psychological assessment through expert testimony; input from the law enforcement perspective through the prosecutor's presentation; and input from the perspective of victims through allocution or testimony by the victim(s) of the underlying sexually violent offense or offenses. Moreover, judicial determinations concerning sexually violent predator status are not the only legitimate approach since, for example, a state may decide to assign responsibility for such determinations to a parole board or other administrative agency with adjudicatory functions. Because there are many valid approaches that states may devise, the particular approach taken to determine whether an offender is a sexually violent predator as defined in the Act will be treated as a matter of state discretion under the Act.

For registrants who have been determined to be ''sexually violent predators'' under the Act's definitions, the Act prescribes three special registration requirements:

First, subsection (b)(1)(B) provides that the initial registration information obtained from a sexually violent

predator must include ''the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person.'' In determining whether offenders have received treatment, the officers responsible for obtaining the initial registration information may rely on information that is readily available to them, either from existing records or the offender, and may comply with the requirement to document an offender's treatment history simply by noting that the offender received treatment. If states want to require the inclusion of more detailed information about offenders' treatment history, however, they are free to do so.

Second, subsection (b)(3)(B) requires quarterly address verification for sexually violent predators, as opposed to the annual address verification required for registrants generally under subsection (b)(3)(A). Part II.C of these guidelines provides a general explanation of the Act's address verification requirement.

Third, subsection (b)(6)(B)(iii) requires lifetime registration for sexually violent predators. This requirement is unqualified. While language in subsection (a)(1)(B) of the Act alludes to possible termination of sexually violent predator status under subsection (b)(6)(B), this is a relic of earlier versions of the Act that has no referent in the Act's current text following the Pam Lychner Act and CJSA amendments.

Hence, for example, a state is not in compliance with the Act's requirements if it allows registration to be terminated for a person who has been found to be a sexually violent predator on the basis of a later determination that the person is no longer a sexually violent predator or has been rehabilitated. However, if the underlying conviction for a sexually violent offense is reversed, vacated, or set aside, or if the registrant is pardoned for that offense, registration (or continued registration) as a sexually violent predator is not required under the Act. Moreover, the proviso in subsection (b)(6) that registration need not be required ''during ensuing periods of incarceration'' applies to sexually violent predators. Hence, states are not required to carry out address registration and verification procedures when a sexually violent predator is subsequently imprisoned or civilly committed. To comply with the Act, a state that does waive registration for sexually violent predators during subsequent criminal or civil confinement must require that registration resume when the registrant is released.

2. *Alternative measures of comparable or greater effectiveness.* Subparagraph (C) of subsection (a)(2) authorizes the Attorney General to approve ''alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders in lieu of the specific measures set forth in this section regarding sexually violent predators.'' A state that wishes to have ''alternative measures'' approved under subparagraph (C) must make a request for such approval to the reviewing authority.

The authorization to approve alternative measures under subparagraph (C) was added by the CJSA, reflecting Congress's recognition that few states followed the Act's specific provisions concerning sexually violent predators; that it would be difficult for many states to do so; and that states can ''incorporate other features into their systems which further the objective of protecting the public from particularly dangerous sex offenders.'' H.R. Rep. No. 256, 105th Cong., 1st Sess. 15 (1997).

The legislative history of the CJSA identified a number of factors that would be pertinent to a determination whether a state has adopted alternative measures of comparable or greater effectiveness:

For example, some State programs have registration periods for broadly defined categories of sex offenders which are much longer than the basic 10-year registration period under the Wetterling Act. This may provide more protection for the public than heightened registration requirements limited to a relatively small class of offenders who would be classified as sexually violent predators * * *. Moreover, some States require civil commitment, lifetime supervision, or very long periods of imprisonment for sexually violent predators or broader classes of serious sex offenders. [Subsection (a)(2)] makes it clear that alternative approaches like these can be approved if a State's approach is equally effective or more effective in protecting the public from particularly dangerous sex offenders. H.R. Rep. No. 256, 105th Cong., 1st Sess. 15 (1997).

Hence, for example, the reviewing authority will approve a state system as providing alternative measures ''of comparable or greater effectiveness'' if the state applies the principal heightened registration requirements under the Act's sexually violent predator provisions—i.e., lifetime registration and quarterly address verification—to a class of offenders that is generally broader than ''sexually violent predators.'' Since ''sexually violent predators'' are, by definition, a subclass of persons convicted of a ''sexually violent offense,'' a state has obviously adopted an alternative measure of comparable or greater effectiveness if it requires lifetime registration and quarterly address verification uniformly for persons in the broader class of those convicted of a ''sexually violent offense''.

For states that follow other approaches, the determination whether ''alternative measures of comparable or greater effectiveness'' have been adopted will be made on a case-by-case basis.

B. Federal and Military Offenders; Non-resident Workers and Students

Subsection (b)(7) of the Act requires states, as provided in these guidelines, to ensure that procedures are in place to accept registration information from: (1) residents convicted of federal offenses or sentenced by courts martial, and (2) nonresident offenders who cross into other states in order to work or attend school.

This requirement was added to close two gaps in the Wetterling Act standards for registration programs. First, Congress was concerned about the lack of any provision for registration of persons convicted of federal sex offenses—such as those defined in chapters 109A, 110, and 117 of title 18, United States Code—and the lack of any provision for registration of persons convicted of sexual offenses under the Uniform Code of Military Justice while in the armed forces. Second, Congress was concerned about the commission of offenses by registered offenders at or near their places of work or study, where the local authorities are unaware of the offenders' presence in those areas because they reside in a different state. The new provisions relating to registration of federal and military offenders, and non-resident workers and students, were added to address these concerns.

1. *Federal and military offenders.* In relation to federal and military offenders, states can comply with the new requirement under subsection (b)(7) by accepting in their registration programs address information from such offenders who reside in the state, where the federal conviction or court martial sentence was for a criminal offense against a victim who is a minor or a sexually violent offense (as defined in the Act).

Congress did not otherwise make the Act's mandatory standards for state registration programs applicable to federal and military offenders. Congress, however, did note that ''it would be preferable that States fully incorporate federal offenders [and] persons sentenced by courts martial * * * into their registration and notification programs by statute.'' H.R. Rep. No. 256, 105th Cong., 1st Sess. 18 (1997). As a practical matter, the presence in a state of a sex offender whose whereabouts are unknown to the authorities poses the same potential danger to the public, regardless of whether the offender was convicted in a state court for a state offense or for a comparable offense under federal or military law.

Hence, as a matter of sound policy, states are strongly encouraged to subject federal and military offenders to the full panoply of registration requirements and procedures established for state offenders, including reporting of subsequent changes of address following the initial registration, periodic address verification, criminal penalties for registration violations, and release of registration information as necessary for protection of the public. Some states currently put sex offenders convicted in federal or military courts on the same footing as state offenders under their registration programs; all states are encouraged to adopt this approach.

States should be aware that the CJSA enacted provisions that impose complementary obligations on federal authorities to facilitate state registration of federal and military offenders. Specifically, provisions in section 115(a)(8) of the CJSA require federal and military authorities to notify state and local law enforcement and registration agencies concerning the release or subsequent movement to their areas of federal and military sex offenders. In addition, under amendments in section 115(a)(8) of the CJSA, federal sex offenders are required to register in states where they reside, work, or attend school as mandatory conditions of probation, parole, and post-imprisonment supervised release. State and local officers accordingly are encouraged to notify federal authorities of any failure by such offenders to register, so that appropriate action can be taken with respect to their federal release status. States also should be aware that section 115 of the CJSA amended the federal failure-to-register offense (42 U.S.C. 14072(i)) in order to bring within its scope federal and military sex offenders who fail to register.

2. *Non-resident workers and students.* Subsection (b)(7)(B) of the Act requires states to accept registration information from non-residents who have come into the state to work or attend school. Related provisions appear in subsections (a)(3)(F)–(G) and (c). As specified in these provisions, the workers from whom registration information must be accepted include those who have any sort of full-time or part-time employment in the state, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year. The students from whom registration information must be accepted include those who are enrolled in any type of school in the state on a full-time or part-time basis.

The Act's provisions regarding non-resident workers and students sometimes refer to persons who cross into another state ''in order to work or attend school'' and sometimes refer to persons who are or may be in another state where the person ''is employed,'' ''carries on a vocation,'' or ''is a student.'' These are merely terminological variations; the Act's various references to non-resident workers and students all refer to the same classes of persons, as defined above.

States can comply with the Act's requirement to accept registration information from non-resident workers and students by accepting registration information from such persons, where the person would be required to register in his state of residence under the Act's standards. The ''registration information'' the state must accept from such a registrant to comply with the Act is, at a minimum, information concerning the registrant's place of employment or the school attended in the state and his address in his state of residence. States are free to accept or require more extensive information if they wish, such as information concerning any place of lodging the registrant may have in the state for purposes of work or school attendance.

Congress did not otherwise make the Act's mandatory standards for state registration programs applicable to non-resident workers and students, but did note that ''it would be preferable that States fully incorporate * * * offenders crossing State borders to work or go to school * * * into their registration and notification programs by statute.'' H.R. Rep. No. 256, 105th Cong., 1st Sess. 18 (1997). States are encouraged to include measures in their registration systems that will ensure effective registration of non-resident workers and students, including provision of criminal penalties under state law for such offenders who fail to register and release of registration information concerning such offenders as necessary for public safety. States also should be aware that section 115 of the CJSA amended the federal failure-to-register offense (42 U.S.C. 14072(i)) in order to bring within its scope non-resident workers and students who fail to register.

In addition to requiring states to accept registration information from non-resident workers and students, the CJSA amendments added, as part of subsection (b)(1)(A)(iii), a requirement to inform a registrant in the initial registration process that he must register in a state where he is employed, carries on a vocation, or is a student. As discussed in Part II.A of these guidelines, subsection (b)(1)(A) of the Act has always required that offenders be informed of the general duty to register, of the duty to report subsequent changes of address, and of the duty to register in any state of residence. States can readily supplement their procedures for informing offenders of registration obligations to include the information that the offender also must register in any state where he is employed, carries on a vocation, or is a student.

VI. Participation in the National Sex Offender Registry [November 25, 2000; Possible Two-Year Extension]

Subsequent (b)(2)(B) of the Act requires states to ''participate in the national database established under section 14072(b)''—i.e., the National Sex Offender Registry (NSOR)—''in accordance with guidelines issued by the Attorney General, including transmission of current address information and other information on registrants to the extent provided by the guidelines.''

This requirement derives from the amendment of the Wetterling Act by section 115(a)(2)(B) of CJSA. The time for compliance is accordingly that provided in section 115(c)(2) of CJSA—Nov. 25, 2000, subject to a possible two-year extension for states making good faith efforts to come into compliance. At the present time, many states are already participating in NSOR, and the remainder are strongly encouraged to do so as promptly as possible.

States should be aware that participation in NSOR is a condition for determining that a state has a ''minimally sufficient'' sex offender registration program as defined in 42 U.S.C. 14072(a)(3). Pursuant to section 115(a)(7) of the CJSA, states have until October 2, 1999, to establish ''minimally sufficient'' programs (subject to a possible two-year extension for states

making good faith efforts). In states that have not established ''minimally sufficient'' programs by that time, the FBI will be required to directly register sex offenders convicted in the state, and there will be correlative responsibilities on such states to facilitate FBI registration of their sex offenders as provided in 42 U.S.C. 14072 (h)(1) and (k). Hence, the failure of a state to participate in NSOR by October 2, 1999, may result in otherwise avoidable federal intervention in sex offender registration in the state.

States should also be aware that under the National Sex Offender Registry Assistance Program (NSOR–AP), funding is available from the Bureau of Justice Statistics of the United States Department of Justice to facilitate state participation in NSOR and upgrade state sex offender registries. States desiring additional information concerning this funding program should contact the Bureau of Justice Statistics.

In accordance with 42 U.S.C. 14072(b), the FBI has established an interim version of NSOR (the ''Interim Registry'') to track the whereabouts and movement of persons required to register under sex offender registration programs. The Interim Registry functions as a ''pointer'' system, indicating on an individual's FBI Identification Record the fact that the individual is a registered sex offender and the name and location of the state agency that maintains the offender's registration information.

The FBI will be issuing regulations concerning state participation in NSOR. To participate in NSOR under current procedures, states must submit the following information on registrants to the FBI: the name under which the person is registered; the registering agency's name and location; the date of registration; and the date registration expires. Upon the submission of this information, a notice indicating that an individual is a registered sex offender and listing the information will be included on the individual's FBI Identification Record.

The FBI is in the process of modifying the National Crime Information Center (NCIC) to establish a new crime information system that will be known as ''NCIC 2000.'' NCIC 2000, which is expected to go on-line in mid-1999, will include a Convicted Sexual Offender Registry File that will serve as the permanent National Sex Offender Registry (the ''Permanent Registry''). In the Permanent Registry, sex offender registration information will be entered directly into the NCIC Convicted Sexual Offender Registry File, via the NCIC communication circuit, and will include such information as the offender's name and address and details regarding the conviction resulting in registration. States will receive further guidance concerning participation in the Permanent Registry through future modifications of regulations and guidelines.

VII. Good Faith Immunity [Available to States Immediately]

Subsection (f) states that law enforcement agencies, employees of law enforcement agencies, independent contractors acting at the direction of such agencies, and state officials shall be immune from liability for good faith conduct under the Act. Inclusion of this provision in the Act was necessary to protect state actors and contractors involved in registration and notification programs from unwarranted exposure to liability, since the states cannot legislate immunities to liability under federal causes of action. This part of the Act does not impose any requirement on states and the character of state law provisions regarding the scope of immunity or liability will not be considered in the compliance review under the Act.

VIII. Compliance Review; Consequences of Non-Compliance

The time states have to comply with the Act's requirements depends on the legislation from which the requirements derive, as specified in these guidelines. Thus, the initial deadline for complying with requirements derived from the Wetterling Act as originally enacted or from Megan's Law was September 12, 1997, and the deadline is now September 12, 1999, for states that have received a two-year extension based on good faith efforts to achieve compliance. Requirements deriving from the Pam Lychner Act must be complied with by October 2, 1999, subject to a possible two-year extension for states making good faith efforts to comply. Requirements deriving from the CJSA must be complied with by November 25, 2000, subject to a possible two-year extension for states making good faith efforts to comply.

These deadlines set outer limits for state compliance to avoid a reduction of Byrne Formula Grant funding. States are strongly encouraged to attempt to achieve compliance with all parts of the Act as quickly as possible to maximize the benefits of the Act's reforms.

States that fail to come into compliance within the specified time periods will be subject to a mandatory 10% reduction of Byrne Formula Grant funding, and any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance. If a state's funding has been reduced because it has failed to comply with the Act's requirements by an applicable deadline, the state may regain eligibility for full funding in later program years by establishing compliance with all applicable requirements of the Act in such later years.

States are encouraged to submit information concerning existing and proposed sex offender registration provisions to the Bureau of Justice Assistance with as much lead-time as possible. This will enable the reviewing authority to assess the status of state compliance with the Act and to suggest any necessary changes to achieve compliance before the funding reduction goes into effect. At the latest, state submissions must be provided on the following timetable:

To maintain eligibility for full Byrne Formula Grant funding following September 12, 1999—the end of the implementation period for the Act's original requirements and Megan's Law, for states that have received the two-year ''good faith'' extension—such states must submit to the Bureau of Justice Assistance by July 12, 1999, information that shows compliance, in the reviewing authority's judgment, with the requirements described in parts I, II, and III of these guidelines.

To maintain eligibility for full Byrne Formula Grant funding following October 2, 1999—the end of the implementation period for the Pam Lychner Act requirements, absent an extension—states must submit to the Bureau of Justice Assistance by July 12, 1999, information that shows compliance, in the reviewing authority's judgment, with the requirements described in part IV of these guidelines, or a written explanation of why compliance cannot be achieved within that period and a description of the good faith efforts that justify an extension of time (but not more than two years) for achieving compliance.

To maintain eligibility for full Byrne Grant funding following November 25, 2000—the end of the implementation period for the CJSA requirements, absent an extension—states must submit to the Bureau of Justice Assistance by September 25, 2000, information that shows compliance, in the reviewing authority's judgment, with the requirements described in parts V and VI of these guidelines, or a written explanation of why compliance cannot be achieved within that period and a description of the good faith efforts that justify an extension of time (but not

more than two years) for achieving compliance.

After the reviewing authority has determined that a state is in compliance with the Act,the state will be required as part of the Byrne Formula Grant application process in subsequent program years to certify that the state remains in compliance with the Act.

Dated: December 10, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–33377 Filed 12–16–98; 8:45 am]

BILLING CODE 4410–BB–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. General Electric Company; Response to Public Comments

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b) through (h), that a Public Comment and the Response of the United States have been filed with the United States District Court for the District of Montana, Missoula Division, in *United States* v. *General Electric Company,* Civil Action No. 96–121–M–CCL. Copies of the Complaint, proposed Final Judgment, Competitive Impact Statement, Public Comment, and the Response of the United States are available for inspection at the Department of Justice in Washington, D.C., in Room 215, 325 Seventh Street, N.W., and the Office of the Clerk of the United States District Court for the District of Montana, 301 South Park, Room 542, Helena, Montana 59626.

The Complaint in this case, filed in August 1996, alleged that General Electric had entered into agreements that violated Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, by requiring hospitals that licensed certain diagnostic software from GE to agree not to compete with GE in unrelated service markets. On July 14, 1998, the United States filed a proposed Final Judgment and a Stipulation signed by the parties allowing for entry of the Final Judgment following compliance with the Tunney Act. The United States also filed a Competitive Impact Statement (''CIS''), which it published, along with the proposed Final Judgment, in the **Federal Register.** *See* 63 FR 40737 (1998).

The proposed Final Judgment enjoins GE from agreeing with any licensee that the licensee will not service third-party medical equipment, or from otherwise restraining the licensee from providing third-party service as a condition of licensing certain advanced service materials. The proposed Final Judgment also requires GE to implement a compliance program, and provides procedures that the United States may utilize to determine and secure GE's compliance.

Under the Tunney Act, interested parties have 60 days from the date the proposed Final Judgment and CIS are published in the **Federal Register** to submit to the United States any comments they have on the Judgment. The 60-day period for public comments relating to this matter expired on September 28, 1998. The United States received only one Comment. The Comment and the Responses thereto, are hereby published in the **Federal Register** and have been filed with the Court.

Rebecca P. Dick,

Director of Civil Non-Merger Enforcement, Antitrust Division.

Ronald S. Katz, Esq.,

General Counsel, ISNI, Coudert Brothers, 4 Embarcadero Center, Ste. 3300, San Francisco CA 94111, Telephone: 415–986–1300.

United States District Court for the District of Montana Missoula Division

United States of America, Plaintiff, v. General Electric Company, Defendant. CV 96–121–M–CCL, PUBLIC COMMENT OF INDEPENDENT SERVICE NETWORK INTERNATIONAL PURSUANT TO 15 U.S.C. § 16(b), (d).

Pursuant to 15 U.S.C. § 16(b), (d), of the Antitrust Procedures and Penalty Acts (''APPA'') Independent Service Network International (''ISNI''), a trade association of 157 maintainers of high technology equipment, including medical equipment of the type at issue in this matter,[1] submits this public comment to the Competitive Impact Statement (''CIS'') published in the **Federal Register** at 63 FR 40737.

I. Introduction

This proposed consent decree grants GEMS the right to commit a *per se* violation of the antitrust laws, i.e., to prohibit hospital service organizations from licensing GEMS' advanced service materials unless the hospital agrees that such service materials may not be used by part-time employees. As will be detailed below, there is no justification for such a limitation, which could well distort the market, particularly in sparsely populated areas like Montana. Because *per see* violations of the antitrust laws are by definition contrary to public policy, it is not possible for the Court to make a determination that this consent decree is in the public interest pursuant to § (e) of the APPA.

A public interest determination is particularly important in this case because it involves the cost of healthcare, a subject important to all Americans, and because GEMS has a high market share in the relevant markets, which it has extended through recent aggressive transactions unopposed by the Government. Therefore, pursuant to APPA § (f) and based on the showing detailed below, ISNI respectfully requests that the Court not make a determination that this consent decree is in the public interest. ISNI also respectfully requests that the Court authorize ISNI to appear at any hearing that the court may convene in order to determine whether this consent decree is in the public interest.

II. ISNI and its Interest in this Proceeding

ISNI, an association of 157 independent service organizations (''ISOs''), i.e., organizations servicing equipment manufactured by others (see Betzner Decl., Exhibit B for a list of members), is a non-profit corporation incorporated in the District of Columbia. In competition with the Service organizations of manufacturers, the members of ISNI service various types of high-technology equipment, including medical equipment of the type that is the subject of the CIS. ISNI's members account for over $1.5 billion in commerce.

The purpose of ISNI for the past fourteen years has been to promote and maintain a closer union and organization of ISOs. Specifically ISNI develops educational methods to increase awareness about ISOs and studies economic and legal problems confronting them. ISNI also serves as a clearing house for information and data relating to its members' businesses and ISNI promotes better relations among providers, distributors and manufacturers of supplies and services.

ISNI appears in Appendix C of the Pre-discovery Disclosure Statement of the United States filed in this matter on May 16, 1997. Page C–1 of that

[1] InnoServ Technologies, Inc., which General Electric Medical Systems (''GEMS'') is attempting to acquire, is a member of ISNI, but, because of conflict of interest considerations, has not been informed of or consulted about this public comment. Similarly, this comment is not intended to express any views of Serviscope, an ISNI member acquired by GEMS in August, 1998. See attached Declaration of Claudia Betzner, para. 6.

The Innoserv conflict arises from another simultaneous consent decree between the U.S. and General Electric, described in a CIS at 63 FR 39894. Although that CIS informs the D.C. District Court about this consent decree, the CIS in this case, for reasons known only to the parties, does not inform this Court about that consent decree. That the two decrees are related is evidenced by the GEMS press release on the consent decrees, which stated that GEMS settled this suit in order ''to obtain clearance to complete the Innoserv acquisition * * *'' See attached Declaration of Claudia Betzner, Exhibit A.