

## DEPARTMENT OF JUSTICE

## 28 CFR Part 72

[Docket No. OAG 157; AG Order No. 5244–2021]

RIN 1105–AB52

**Registration Requirements Under the Sex Offender Registration and Notification Act****AGENCY:** Office of the Attorney General, Department of Justice.**ACTION:** Final rule.

**SUMMARY:** The Department of Justice is adopting a rule that specifies the registration requirements under the Sex Offender Registration and Notification Act (“SORNA”). The rule in part reflects express requirements of SORNA and in part reflects the exercise of authorities SORNA grants to the Attorney General to interpret and implement SORNA’s requirements. SORNA’s requirements have previously been delineated in guidelines issued by the Attorney General for implementation of SORNA’s requirements by registration jurisdictions.

**DATES:** This rule is effective January 7, 2022.

**FOR FURTHER INFORMATION CONTACT:** David J. Karp, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Washington, DC, 202–514–3273.

**SUPPLEMENTARY INFORMATION:** This rule finalizes a proposed rule, Registration Requirements Under the Sex Offender Registration and Notification Act (OAG 157; RIN 1105–AB52) (published August 13, 2020, at 85 FR 49332).

**Overview**

The Sex Offender Registration and Notification Act (“SORNA”), which is title I of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109–248, 34 U.S.C. 20901 *et seq.*, establishes national standards for sex offender registration and notification in the United States. SORNA has a dual character, imposing registration obligations on sex offenders as a matter of Federal law that are federally enforceable under circumstances supporting Federal jurisdiction, *see* 18 U.S.C. 2250, and providing minimum national standards that non-Federal jurisdictions are expected to incorporate in their sex offender registration and notification programs, subject to a reduction of Federal funding for those that fail to do so, *see* 34 U.S.C. 20912(a), 20926–27.

The Justice Department’s Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and

Tracking (“SMART Office”) administers the national standards for sex offender registration and notification under SORNA and assists all jurisdictions in implementing the SORNA standards in their programs. *See id.* 20945. As provided by SORNA, the Department of Justice also (i) prosecutes SORNA violations by sex offenders committed under circumstances supporting Federal jurisdiction, *see* 18 U.S.C. 2250; (ii) assists in the enforcement of sex offender registration requirements through the activities of the U.S. Marshals Service, *see* 34 U.S.C. 20941; (iii) operates, through the Federal Bureau of Investigation, the National Sex Offender Registry, which compiles the information obtained through the sex offender registration programs of the states and other registration jurisdictions and makes it available on a nationwide basis for law enforcement purposes, *see id.* 20921; and (iv) operates the Dru Sjodin National Sex Offender Public website, *www.nsopw.gov*, which provides public access through a single national site to the information about sex offenders posted on the public sex offender websites of the various registration jurisdictions, *see id.* 20922.

SORNA generally directs the Attorney General to “issue guidelines and regulations to interpret and implement [SORNA].” *Id.* 20912(b). SORNA also authorizes the Attorney General to take more specific actions in certain contexts.

One such provision is 34 U.S.C. 20913. That section states in subsection (b) that sex offenders are generally to register initially before release from imprisonment, or within three business days of sentencing if not sentenced to imprisonment, but it provides further in subsection (d) that the Attorney General has “the authority to specify the applicability of the requirements of [SORNA] to sex offenders convicted before the enactment of [SORNA] or its implementation in a particular jurisdiction, and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with subsection (b).” As discussed below in connection with 28 CFR 72.3, section 20913(d) is not a constitutionally impermissible delegation of legislative authority. Rather, it enables the Attorney General to effectuate the legislative intent that SORNA apply to all sex offenders, regardless of when they were convicted.

Another relevant provision lists several types of information that sex offenders must provide for inclusion in sex offender registries, and states that

sex offenders must also provide “[a]ny other information required by the Attorney General.” *Id.* 20914(a)(8). This provision as well is not an impermissible delegation of legislative authority, but rather is instrumental to the Attorney General’s effectuating the legislative objective to “protect the public from sex offenders and offenders against children” by “establish[ing] a comprehensive national system for the registration of those offenders.” *Id.* 20901; *see* 73 FR at 38054–57; 76 FR at 1637. The Attorney General’s exercise of the authority under section 20914(a)(8) is limited to requiring additional information that furthers the legislative public safety objective or the implementation or enforcement of SORNA’s provisions. How that has been done is explained below in connection with 28 CFR 72.6 and 72.7.

The Attorney General has exercised these authorities in previous rulemakings and issuances of guidelines under SORNA, as detailed in the rulemaking history and section-by-section analysis below, and the interpretations and policy decisions in this rule follow those already adopted in existing SORNA-related documents. The present rule provides a concise and comprehensive statement of what sex offenders must do to comply with SORNA’s requirements.

In addition to SORNA’s original provisions, described above, this rulemaking draws on and implements provisions of the International Megan’s Law to Prevent Child Exploitation and Other Sexual Crimes Through Advanced Notification of Traveling Sex Offenders (“International Megan’s Law”), Public Law 114–119. Section 6 of International Megan’s Law amended SORNA by (i) redesignating, in 34 U.S.C. 20914(a), former paragraph (7) as paragraph (8) and adding a new paragraph (7) that requires a sex offender to provide for inclusion in the sex offender registry information relating to intended travel outside the United States, including several specified types of information “and any other itinerary or other travel-related information required by the Attorney General”; (ii) adding a new subsection (c) to 34 U.S.C. 20914 that requires sex offenders to provide and update registration information required by SORNA “in conformity with any time and manner requirements prescribed by the Attorney General”; and (iii) adding a new subsection (b) to SORNA’s criminal provision, 18 U.S.C. 2250, that specifically reaches international travel reporting violations.

This rulemaking is not innovative in terms of policy. Many of the requirements it articulates reflect

express SORNA requirements. These include, inter alia, statutory specifications about (i) where and when sex offenders must register; (ii) several categories of required registration information; (iii) how long sex offenders must continue to register, including different registration periods for sex offenders in different tiers and lifetime registration for those in the highest tier; and (iv) a requirement to appear periodically to verify the registration information. See 34 U.S.C. 20911(2)–(4), 20913, 20914(a)(1)–(7), 20915, 20918.

Other features of the rule reflect exercises of the Attorney General's powers to implement SORNA's requirements. These include additional specifications regarding information sex offenders must provide, how and when they must report certain changes in registration information, and the time and manner for complying with SORNA's registration requirements by sex offenders who cannot comply with SORNA's normal registration procedures. On these matters, however, the rule embodies the same policies as those appearing in the previously issued SORNA guidelines and prior rulemakings under SORNA.

The rule also makes no change in what registration jurisdictions need to do to substantially implement SORNA in their registration programs, a matter that will continue to be governed by the previously issued guidelines for SORNA implementation.

While this rule does not make new policy, as discussed above, it is expected to have a number of benefits. The rule will facilitate enforcement of SORNA's registration requirements through prosecution of noncompliant sex offenders under 18 U.S.C. 2250. By providing a comprehensive articulation of SORNA's registration requirements in regulations addressed to sex offenders, it will provide a more secure basis for prosecution of sex offenders who engage in knowing violations of any of SORNA's requirements. It will also resolve a number of specific concerns that have arisen in past litigation or could be expected to arise in future litigation, if not clarified and resolved by this rule. For example, as discussed below, the amendment of § 72.3 in the rule will ensure that its application of SORNA's requirements to sex offenders with pre-SORNA convictions is given effect consistently, resolving an issue resulting from the decision in *United States v. Defarnette*, 741 F.3d 971 (9th Cir. 2013).

Beyond the benefits to effective enforcement of SORNA's requirements, the rule will benefit sex offenders by providing a clear and comprehensive

statement of their registration obligations under SORNA. This statement will make it easier for sex offenders to determine what they are required to do and thus facilitate compliance.

By facilitating the enforcement of, and compliance with, SORNA's registration requirements, the rule will further SORNA's public safety objectives. See 34 U.S.C. 20901. More consistent adherence to these requirements will enable registration and law enforcement authorities to better track and monitor released sex offenders in the community and enhance the basis for public notification regarding registered sex offenders that SORNA requires. See *id.* 20920, 20923.

Effective September 1, 2017, the provisions of SORNA, formerly appearing at 42 U.S.C. 16901 *et seq.*, were recodified in a new title 34 of the United States Code, and now appear at 34 U.S.C. 20901 *et seq.* See [http://uscode.house.gov/editorial\\_reclassification/t34/index.html](http://uscode.house.gov/editorial_reclassification/t34/index.html). United States Code citations of SORNA provisions in this rule accordingly differ from the corresponding citations in earlier sources and documents.

#### Rulemaking History

This rule is the tenth document the Attorney General has published pursuant to the statutory directive to the Attorney General to issue guidelines and regulations to interpret and implement SORNA. See 34 U.S.C. 20912(b). The previous SORNA-related documents are as follows:

(1) Interim rule entitled, "Applicability of the Sex Offender Registration and Notification Act," published at 72 FR 8894 (Feb. 28, 2007). The interim rule solicited public comments, and the comment period ended on April 30, 2007. The interim rule added a new part 72 to title 28 of the Code of Federal Regulations, entitled "Sex Offender Registration and Notification." The interim rule provided that "[t]he requirements of the Sex Offender Registration and Notification Act apply to all sex offenders, including sex offenders convicted of the offense for which registration is required prior to the enactment of that Act." 28 CFR 72.3.

(2) Proposed guidelines, published at 72 FR 30210 (May 30, 2007), whose general purpose was to provide guidance and assistance to registration jurisdictions in implementing the SORNA standards in their sex offender registration and notification programs. The proposed guidelines solicited public comment, and the comment period ended on August 1, 2007.

(3) Final guidelines for registration jurisdictions regarding SORNA implementation entitled, "The National Guidelines for Sex Offender Registration and Notification" (the "SORNA Guidelines"), published at 73 FR 38030 (July 2, 2008).

(4) Proposed supplemental guidelines for SORNA implementation, published at 75 FR 27362 (May 14, 2010), whose general purpose was to address certain issues arising in SORNA implementation that required that some aspects of the SORNA Guidelines be augmented or modified. The proposed supplemental guidelines solicited public comment, and the comment period closed on July 13, 2010.

(5) Final rule entitled, "Applicability of the Sex Offender Registration and Notification Act," published at 75 FR 81849 (Dec. 29, 2010). This rule finalized the February 28, 2007, interim rule providing for SORNA's applicability to all sex offenders, including those with pre-SORNA convictions.

(6) Final supplemental guidelines for SORNA implementation entitled, "Supplemental Guidelines for Sex Offender Registration and Notification" (the "SORNA Supplemental Guidelines"), published at 76 FR 1630 (Jan. 11, 2011).

(7) Proposed supplemental guidelines, published at 81 FR 21397 (Apr. 11, 2016), whose general purpose was to afford registration jurisdictions greater flexibility in their efforts to substantially implement SORNA's juvenile registration requirement. These proposed supplemental guidelines solicited public comment, and the comment period closed on June 10, 2016.

(8) Final supplemental guidelines regarding substantial implementation of SORNA's juvenile registration requirement entitled, "Supplemental Guidelines for Juvenile Registration Under the Sex Offender Registration and Notification Act," published at 81 FR 50552 (Aug. 1, 2016).

(9) Proposed rule entitled, "Registration Requirements Under the Sex Offender Registration and Notification Act," published at 85 FR 49332 (Aug. 13, 2020). The proposed rule solicited public comments and the comment period closed on October 13, 2020.

#### Summary of Comments

The Department of Justice received over 700 comments on this rulemaking from individuals and organizations. Most of the comments amounted to general criticisms of sex offender registration or SORNA. Some of the

comments proposed specific changes to the provisions of the proposed rule. Having carefully considered all comments, the Department of Justice has concluded that the regulations in this rulemaking should be promulgated without change from the proposed rule, except for amendment of § 72.8(a)(1)(i)–(ii) to specify the circumstances in which SORNA violations may result in Federal criminal liability. The ensuing discussion summarizes the principal issues that were raised in the public comments.

#### General Comments

Most of the comments received amounted to general criticisms of sex offender registration or associated public notification requirements. Comments of this nature generally argued that sex offender registration is of little or no value in protecting public safety and that any value it may have is outweighed by adverse effects on sex offenders and their families. Some comments in this class proposed that sex offender registration be restricted, if not entirely eliminated, such as by narrowly limiting the sex offenders or sex offenses for which registration is required, ending disclosure of information about sex offenders to the general public, setting shorter registration periods, or providing broader means for terminating registration. Some of these comments criticized requirements in this rule that track express statutory requirements, including the statutory requirements relating to the jurisdictions in which sex offenders must register, the information sex offenders must provide, the duration of registration periods, and reporting and verification of certain information through in-person appearances. *See* 34 U.S.C. 20913–16, 20918.

These comments could not be accepted in this rulemaking because the Attorney General has no authority to repeal the requirements enacted by Congress in SORNA or the sex offender registration laws of non-Federal jurisdictions. This rule interprets and implements SORNA, as directed by 34 U.S.C. 20912(b). The Attorney General's regulatory authority under SORNA does not include second-guessing the underlying legislative policy judgments or nullifying the measures that Congress has adopted in the law. *See* 73 FR at 38036.

Some comments criticized the rule's specification of registration requirements which, wholly or in part, do not appear expressly in SORNA. The matters criticized included requirements to provide information about actual and purported dates of

birth and Social Security numbers, temporary lodging away from residence, passports and immigration documents, and professional licenses. In addition to comments criticizing the extent of the information required by the rule, some comments in this class criticized requirements adopted by the Attorney General to keep registration information up to date. These include requirements to report in advance departure from a jurisdiction, the requirement to report within three business days changes relating to remote communication identifiers, temporary lodging, and vehicle information, and the requirement to report international travel at least 21 days in advance.

The Attorney General has adopted these measures in the exercise of powers that SORNA provides to interpret and implement SORNA, specify required registration information, and prescribe time-and-manner requirements for providing and updating the information. *See* 34 U.S.C. 20912(b), 20914(a)(7)–(8), (c). Each of these measures is justified as a means of furthering SORNA's objective of protecting the public from sex offenders and offenders against children by establishing a comprehensive national registration system, *see id.* 20901, or as a means of implementing or enforcing SORNA's provisions. The specific reasons for the various requirements are explained in the section-by-section analysis below. The comments received provided no persuasive grounds to abrogate or modify these requirements.

Some comments argued that SORNA or this rule are unconstitutional on various grounds, such as the prohibitions of cruel and unusual punishment, double jeopardy, and ex post facto laws, the right to travel, and the requirement of due process. Claims of this nature are familiar to the Department of Justice, having been raised in litigative challenges to SORNA and rejected by the Federal courts. *See, e.g., Willman v. Att'y Gen.*, 972 F.3d 819, 824–27 (6th Cir. 2020). The comments provided no persuasive reason to believe that any aspect of SORNA or this rule is unconstitutional.

Some comments objected to the application of SORNA's requirements to sex offenders whose offenses or convictions predate SORNA, as provided in § 72.3 in this rule. Section 72.3 is necessary to implement Congress's intent that SORNA apply to all sex offenders, regardless of when they were convicted. *See Reynolds v. United States*, 565 U.S. 432, 442–45 (2012); *id.* at 448–49 & n. (Scalia, J., dissenting) (agreeing that Congress intended for SORNA to apply to all sex

offenders); *Gundy v. United States*, 139 S. Ct. 2116, 2123–30 (2019) (plurality opinion). The section-by-section analysis below provides further explanation of the provisions and rationale of § 72.3.

Some comments objected to substantive restrictions imposed on sex offenders in some jurisdictions, such as restrictions on where they can live, prohibitions of proximity to schools or children, or exclusion from some types of employment. These comments are not germane to this rule, which articulates SORNA's registration requirements for sex offenders, because SORNA's requirements are informational in nature and do not restrict where sex offenders can go or what they can do. *See* 73 FR at 38032. A similar response applies to comments that were critical of requirements under other laws that identification documents, such as passports and drivers' licenses, include notations identifying the holders as sex offenders. These comments are misdirected in relation to this rule because SORNA does not impose such requirements, and, where they are prescribed by other laws, the Attorney General has no authority to rescind or modify them by rulemaking.

Some comments criticized public disclosure of information about sex offenders, arguing that access to information in the sex offender registries should be limited to law enforcement or otherwise narrowly restricted. These comments concern the scope of disclosure of sex offender information by registration jurisdictions and, as such, are not germane to this rule, which concerns SORNA's registration requirements for sex offenders. Disclosure of sex offender information is separately addressed in statutory provisions that are not implicated by this rulemaking and in the SORNA Guidelines and SORNA Supplemental Guidelines. *See* 34 U.S.C. 20916(c), 20920, 20922–23; 73 FR at 38042, 38058–61; 76 FR at 1632–33, 1636–37.

Some comments supported issuance of this rule. The benefits perceived by these commenters included protecting public safety, clarifying SORNA's registration requirements for sex offenders, and promoting compliance with those requirements.

#### A Comment Proposing 10 Changes in the Rule

A lengthy comment proposed 10 specific changes in the rule:

(i) The comment proposed that the rule and each discrete requirement therein should be revised to say that registrants need only comply when

circumstances supporting Federal jurisdiction are present. Section 72.8(a)(1)(i)–(ii) in the final rule reproduces the required jurisdictional circumstances under 18 U.S.C. 2250, making clear the conditions that must be satisfied to support Federal criminal liability for SORNA violations. It would be misleading or incorrect to state that sex offenders need not comply with the requirements set forth in this rule in a broader sense, absent grounds supporting Federal jurisdiction, because those requirements are widely paralleled in the sex offender registration laws of the states and other non-Federal jurisdictions. *See* National Institute of Justice, *Tracking Sex Offenders: Federal Law, Resources Have Led to Marked Improvement of State Registries, But More Work Is Needed* (Nov. 13, 2020) (“At least half the states met implementation thresholds for 13 of the 14 SORNA standard areas; 75% of the states met the thresholds for at least nine areas; and 92% of the states met them for at least half of the SORNA areas.”). Sex offenders accordingly may be subject to criminal penalties under state law for violating these requirements, regardless of whether grounds for Federal jurisdiction exist. While § 72.8(a)(1)(i)–(ii) has been revised in the final rule to state explicitly the scope of Federal jurisdiction to prosecute SORNA violations under 18 U.S.C. 2250, the comment was not persuasive that the jurisdictional limitation should be referenced repeatedly throughout the rule, since the statement in § 72.8(a)(1)(i)–(ii) is clear.

(ii) The comment proposed that the rule incorporate a clear statement that a registrant’s duty to act under SORNA arises only when the registrant travels interstate and that travel has a nexus to the alleged SORNA violation. In referring to a registrant’s “duty” to act, the comment apparently meant amenability to Federal prosecution under 18 U.S.C. 2250 in case of a violation. The proposed change is legally incorrect. The grounds of Federal jurisdiction under section 2250 include grounds other than interstate travel, such as conviction for a Federal sex offense or travel in foreign commerce, and section 2250 specifies no required “nexus” between interstate travel and the charged SORNA violation beyond the temporal sequencing implied by the provision’s language and structure. *See Carr v. United States*, 560 U.S. 438, 446 (2010).

(iii) The comment argued, based on the Supreme Court’s decision in *Nichols v. United States*, 136 S. Ct. 1113 (2016), that the rule’s requirements to report

departure from a jurisdiction and termination of residence in a jurisdiction under § 72.7(d) and (g) exceed the Attorney General’s powers under 34 U.S.C. 20914(a) and (c). Adopting these requirements is within the Attorney General’s powers under SORNA, and consistent with the *Nichols* decision, as explained in the section-by-section analysis below.

(iv) The comment proposed that the rule state that § 72.7(g) absolves registrants of a duty to report information required by SORNA when state law or the local agency does not require that information. The proposed statement is legally incorrect because SORNA’s requirements exist independently of state law requirements, *see Willman*, 972 F.3d at 821–24, and it is not needed to avoid unfairness to sex offenders based on differences between SORNA’s requirements and state law requirements. Section 72.8(a)(1)(iii) in this rule explains that sex offenders are not held liable under 18 U.S.C. 2250 for violation of registration requirements of which they are unaware, and noncompliance with SORNA may be excused where compliance is prevented by circumstances beyond their control, such as a jurisdiction’s failure to carry out a necessary complementary role. These principles apply to all requirements under SORNA, including the requirement of § 72.6 to provide specified types of information for inclusion in the registry. Hence, a sex offender is not held liable for failing to provide a type of information if he is unaware of a requirement to provide that information, as may be the case if a jurisdiction does not request that information in its registration forms, and failure to provide any type of information may be excused if a jurisdiction will not accept that information for inclusion in its registry.

(v) The comment asserted that the interpretation of the affirmative defense of 18 U.S.C. 2250(c), in the analysis statement’s discussion of §§ 72.7(g) and 72.8, violates due process because it shifts the burden of proof to defendants. However, § 72.8(a)(1)(iii) explains that liability under 18 U.S.C. 2250(a)–(b) is conditioned on the defendant’s being aware of the requirement he is charged with violating. The regulation and the accompanying analysis do not impose on the defendant a burden of proving that he lacked such awareness. Section 72.8(a)(2) states that there is an affirmative defense to liability for noncompliance with SORNA in certain circumstances, pursuant to 18 U.S.C. 2250(c). The regulation and the accompanying discussion do not change

the burden of proof on this defense, which Congress has expressly made an “affirmative defense.” *Id.*

(vi) The comment asserted that § 72.6(b), requiring the reporting of remote communication identifiers, violates the First Amendment on grounds of ambiguity and because, the comment claimed, it infringes on the right to anonymous speech unless accompanied by restrictions on public disclosure of the identifiers. The rule’s specification of covered identifiers is similar to a statutory definition in 34 U.S.C. 20916(e)(2) and sufficiently definite. The conditions for disclosure of sex offender information by registration jurisdictions are beyond the scope of this rulemaking, which concerns the registration requirements for sex offenders under SORNA. Separate statutory provisions and the SORNA Guidelines and SORNA Supplemental Guidelines specify those conditions, which include restrictions on the disclosure of remote communication identifiers. *See* 34 U.S.C. 20916(c); 73 FR at 38059–60; 76 FR at 1633, 1637.

(vii) The comment asserted that § 72.8 is deficient because it does not expressly refer to the required jurisdictional predicates under 18 U.S.C. 2250. As formulated in this final rule, § 72.8 sets forth those jurisdictional predicates.

(viii) The comment asserted that the rule is impermissibly vague in a number of respects, including its definition of remote communication identifiers, the requirement that sex offenders lacking fixed residence addresses or places of employment report the relevant locations with whatever definiteness is possible under the circumstances, the requirement that sex offenders report information concerning places they are staying when away from their residences for seven or more days, and the meaning of a “clean record” that may reduce the registration period for certain sex offenders. However, the specification of covered remote communication identifiers in § 72.6(b) is similar to a statutory definition in 34 U.S.C. 20916(e)(2) and sufficiently definite. Where sex offenders do not have definite places of residence or employment, the information they provide under § 72.6(c)(1) and (c)(3) as to where they are living or working must be of a less definite nature, and it is reasonable to require that the information be provided with whatever definiteness is possible under the circumstances. The matter is further explained in the section-by-section analysis below and in 73 FR at 38056. The information required by § 72.6(c)(2)

is “temporary lodging information” and a related provision, § 72.7(e), requires sex offenders to report this information to their residence jurisdictions within three business days. The two provisions adequately convey that a sex offender, within three business days of returning to his residence, must report to the residence jurisdiction the places he has lodged while away from his residence for seven or more days. Section 72.5(c) refers to a “clean record” as described in 34 U.S.C. 20915(b)(1), so the meaning set forth in that statutory provision applies.

(ix) The comment proposed that § 72.5(c) should clarify that clean record reductions for tier I offenders and (juvenile delinquent) tier III offenders are automatic. Section 72.5(c) states that satisfaction of the clean record requirement reduces the registration period for the affected classes of sex offenders. The conditions a sex offender must satisfy to effect such a reduction are those specified in the applicable statute: “(A) not being convicted of any offense for which imprisonment for more than 1 year may be imposed; (B) not being convicted of any sex offense; (C) successfully completing any periods of supervised release, probation, and parole; and (D) successfully completing of [sic] an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General.” 34 U.S.C. 20915(b)(1).

(x) The comment stated that the rule should be revised to include a federalism assessment and other requirements under Executive Order 13132 and the Unfunded Mandates Reform Act. However, the relevant regulatory certifications below are correct as they are. This rule satisfies the requirements of Executive Order 13132 and the Unfunded Mandates Reform Act.

#### *A Comment Proposing 13 Changes or Sets of Changes in the Rule*

Another comment proposed the following changes in the rule:

(i) The comment argued that § 72.5, relating to the duration of the registration period under SORNA, should be changed in various ways. It first argued that § 72.5 as drafted conflicts with a provision of the Fair Credit Reporting Act, which, the comment asserted, states that arrests and convictions may only be reported on background checks for seven years after release from prison. The reference is apparently to 15 U.S.C. 1681c, which generally “prohibits [consumer] reporting agencies from disclosing any arrest record or other adverse item more than seven years old but permits them

to report ‘records of convictions of crimes’ no matter how long ago they occurred.” *Aldaco v. RentGrow, Inc.*, 921 F.3d 685, 687 (7th Cir. 2019) (quoting 15 U.S.C. 1681c(a)). Section 72.5 describes the duration of registration required by SORNA. See 34 U.S.C. 20915. It does not affect what may be included in consumer reports and does not conflict with the Fair Credit Reporting Act. The comment also stated that § 72.5 should be changed to establish standardized procedures for determining sex offenders’ tiers, how long each offender will remain on the registry, and what restrictions can be placed on registrants in compliance with their constitutional rights, and should create a way for tier II offenders to petition for early removal from the registry. The procedures for registration jurisdictions to determine sex offenders’ tiers are outside the scope of this rulemaking, but the SORNA Guidelines provide related guidance. See 73 FR at 38052–54. The duration of registration under SORNA is governed by statutory criteria, see 34 U.S.C. 20915, and cannot be changed by rulemaking. The statutes include no provision for reducing the registration periods of tier II offenders. *Id.* Assessing what restrictions can constitutionally be placed on sex offenders, such as restrictions on where sex offenders may live or work, is outside the scope of this rulemaking, which concerns SORNA’s registration requirements for sex offenders.

(ii) The comment criticized § 72.6(b), relating to remote communication identifiers, as likely violating the First Amendment and overly vague. The comment provided no persuasive reason to believe that § 72.6(b) is unconstitutional. The description of covered remote communication identifiers in § 72.6(b) is similar to a statutory definition appearing in 34 U.S.C. 20916(e)(2) and sufficiently definite.

(iii) The comment claimed that § 72.6(c)(2)’s requirement to report temporary lodging information violates a constitutional right to travel because, the comment asserted, most places of lodging will not knowingly allow sex offenders to stay at their locations if a sex offender’s travel plans are disclosed to them. The rule requires sex offenders to report temporary lodging information within three business days, not in advance, and it requires reporting of the information to the sex offender’s residence jurisdiction, not the premises where he intends to stay. See § 72.7(e). The comment provided no persuasive reason to believe that this requirement violates any constitutional right.

(iv) The comment proposed to eliminate § 72.6(c)(3), on the ground that disclosure of sex offenders’ employment information will adversely affect the employers and adversely affect the sex offenders’ ability to obtain employment. Section 72.6 only requires sex offenders to provide employment information to registration jurisdictions. It does not address the public disclosure of such information and, more broadly, the conditions for disclosure of information about sex offenders are outside the scope of this rulemaking. The SORNA Guidelines separately address the disclosure of sex offender information, including employment information. See 73 FR at 38042–43, 38059.

(v) The comment claimed that § 72.6(c)(4)’s requirement to provide school attendance information violates a right to attend public schools without hindrance from the government and a First Amendment right of free association because, the comment asserted, most colleges and universities will not allow registered sex offenders to enroll. However, SORNA requires school attendance information, see 34 U.S.C. 20914(a)(5), and that requirement cannot be abrogated by rulemaking. Section 72.6(c)(4) requires sex offenders to provide school attendance information for inclusion in the registries. It does not require or encourage schools to deny enrollment to registered sex offenders, and any schools that have such a policy would potentially deny admission to registered sex offenders regardless of whether SORNA or this rule requires sex offenders to provide school attendance information for inclusion in the registries. The comment provided no persuasive reason to believe that this requirement violates any provision of the Constitution.

(vi) With respect to § 72.6(d), which requires reporting of international travel information, the comment stated that the U.S. government should be prohibited from providing travel plans to foreign nations. Congress made a contrary judgment in International Megan’s Law, whose purposes include, as stated in its title, “[t]o protect children and others from sexual abuse and exploitation, including sex trafficking and sex tourism, by providing advance notice of intended travel by registered sex offenders outside the United States to the government of the country of destination”. Public Law 114–119; see *Doe v. Kerry*, Case No. 16–cv–0654–PJH, 2016 WL 5339804 (N.D. Cal. Sept. 23, 2016), *appeal dismissed*, No. 16–17100, 2017 WL 5514566 (9th Cir. 2017)

(explaining the background and purposes of International Megan's Law and rejecting a constitutional challenge).

(vii) The comment claimed that § 72.6(g)'s requirement to disclose professional licenses violates a right to engage in commerce because states may revoke such licenses if notified that the licensee is a registered sex offender. The rule does not require states to revoke professional licenses issued to registered sex offenders. Whether and to what extent criminal histories including sex offenses should be disqualifying for professional licenses, such as licenses to teach children or to be care providers for persons in vulnerable populations, are matters for the states' judgment. The comment provided no persuasive reason to believe that requiring sex offenders to report professional licenses is unconstitutional.

(viii) With respect to § 72.8, the comment asserted that the jurisdictional predicate of travel in interstate or foreign commerce in 18 U.S.C. 2250 should be interpreted to apply only on the basis of business-related travel. There is no basis for such a restriction; it would depart from the interpretation of travel in interstate or foreign commerce in other federal laws; and it would conflict with SORNA's objective of reliably tracking sex offenders as they relocate among jurisdictions or travel abroad.

(ix) With respect to § 72.6(c)(3), which requires sex offenders to report the names and addresses of places of employment, the comment argued that this information should not be made public. The matter is outside the scope of this rulemaking, which concerns the registration requirements for sex offenders under SORNA, not the conditions for disclosure of sex offender information by registration jurisdictions. The SORNA Guidelines address the latter issue, including disclosure of employment information. *See* 73 FR at 38042–43, 38059.

(x) The comment took issue with the regulatory certification below relating to Executive Orders 12866 and 13563. The comment assumed that the requirements in this rule are new requirements and hence will result in increased costs for sex offenders and registration jurisdictions. The premise is incorrect. As the regulatory certification explains, there are no new costs for registration jurisdictions because their requirements under SORNA continue to be those articulated in the previously issued SORNA Guidelines and SORNA Supplemental Guidelines. Likewise, for sex offenders, the requirements articulated in the rule either appear expressly in SORNA or have previously

been articulated by the Attorney General in the SORNA Guidelines and SORNA Supplemental Guidelines. This rule will not change the registration procedures of the registration jurisdictions or make those procedures more time-consuming or expensive. There is accordingly no reason to change the relevant regulatory certification.

(xi) The comment took issue with the regulatory certification below relating to Executive Order 13132 (Federalism), claiming that this rule will have a significant impact on the relationship between the states and the Federal government by creating Federal criminal penalties for sex offenders who violate SORNA's requirements and by creating funding reductions for states that do not implement SORNA's requirements in their registration programs. The premise of this comment is incorrect because the relevant Federal criminal penalties and funding incentive have existed since SORNA's enactment in 2006. *See* 18 U.S.C. 2250; 34 U.S.C. 20927.

(xii) The comment took issue with the regulatory certification relating to subtitle E of title II of the Small Business Regulatory Enforcement Fairness Act of 1996 (the "Congressional Review Act"), assuming that the rule will result in novel requirements to provide and disclose sex offenders' employment information with adverse effects on sex offenders and their employers. The assumption is incorrect because the requirements relating to employment information have existed for many years in SORNA and the SORNA Guidelines. *See* 34 U.S.C. 20914(a)(4); 73 FR 38042–43, 38059.

(xiii) With respect to § 72.6(c)(2), the comment stated that the rule must forbid a sex offender's home jurisdiction from routinely notifying a jurisdiction to which a registrant plans to travel or notifying a place of lodging that a registrant plans to stay there. The comment argues that such notification violates a constitutional right to travel because the destination jurisdictions may impose unwanted requirements and restrictions on sex offenders if it is known they are coming and the temporary lodging providers may not allow registered sex offenders to stay on their properties. However, the rule requires sex offenders to report temporary lodging information within three business days, not in advance. *See* § 72.7(e). If the residence jurisdiction knows about the sex offender's travel plans in advance anyway, and conveys the information to the destination jurisdiction or persons therein, no persuasive reason appears to believe that doing so is unconstitutional. Be that

as it may, this rule concerns the registration requirements for sex offenders under SORNA, and the conditions for disclosure of information about sex offenders by registration jurisdictions, including temporary lodging information, are outside of its scope. The SORNA Guidelines separately address the conditions for such disclosure. *See* 73 FR at 38058–61.

#### *A Comment Proposing 24 Changes in the Rule*

Another comment proposed 24 changes in the rule:

(i) With respect to § 72.1, the comment stated that subsection (b) should be revised to allow states to adopt requirements less stringent than SORNA without fear of losing federal funds, or alternatively, clarify the existing rule that states may adopt registration requirements that are substantially similar to SORNA. The matter is outside the scope of this rulemaking, which is concerned with the registration requirements for sex offenders under SORNA, not the requirements for registration jurisdictions. The funding reduction or reallocation for jurisdictions that do not substantially implement SORNA is a statutory matter and cannot be abrogated by rulemaking. *See* 34 U.S.C. 20927. The SORNA Guidelines and SORNA Supplemental Guidelines explain the substantial implementation requirement and the funding incentive. *See* 73 FR at 38047–48; 76 FR at 1638–39.

(ii) With respect to § 72.3, the comment proposed removing the application of SORNA based on pre-SORNA offenses, or specifying that SORNA does not apply to sex offenders not already required to register prior to SORNA's enactment. That conflicts with Congress's intent that SORNA apply to all sex offenders, regardless of when they were convicted, as discussed above and in the section-by-section analysis below.

(iii) With respect to § 72.5, the comment proposed clarifying that classification of sex offenders should be based upon the risk posed by offenses as represented by tier levels, and revising subsection (c) to allow reductions for all levels consistent with scientific research or recidivism risk. SORNA specifies the criteria for its tier classifications and the conditions for reducing registration periods. *See* 34 U.S.C. 20911(2)–(4); 20915. These matters are determined by statute and cannot be changed by rulemaking.

(iv) With respect to § 72.6(b), relating to remote communication identifiers, the comment proposed clarifying that IP

addresses are not required and proposed stating that requiring telephone numbers of “known associates” is a violation of privacy laws. Section 72.6(b) requires that sex offenders provide the designations they use for purposes of routing or self-identification in internet or telephonic communications or postings, including email addresses and telephone numbers. The specification of required information, which is similar to a statutory definition appearing in 34 U.S.C. 20916(e)(2), is sufficiently clear as drafted, and does not require sex offenders to provide IP addresses or the telephone numbers of “known associates.”

(v) With respect to § 72.6(c), relating to provision of information concerning residence, temporary lodging, employment, and school attendance, the comment proposed providing grace periods for registration to reflect that loss of housing and employment can occur without warning and that it may take time to locate a replacement. SORNA and the rule generally allow three business days to report changes in residence, employment, and school attendance, or temporary lodging information. *See* § 72.7(c), (e). There is no need to stipulate a “grace period” for sex offenders who have nothing within the scope of § 72.6(c) to report, as may be the case with a sex offender who has just lost his residence or job and has no expectation about where he will be living or working in the future.

(vi) The comment proposed eliminating § 72.6(c)(2), relating to temporary lodging information, or alternatively, specifying that this information is not part of the public record and may not be promulgated by third-party sites without penalty. The section-by-section analysis below explains the justification for requiring temporary lodging information. The conditions for public disclosure of information about sex offenders by registration jurisdictions, including temporary lodging information, are outside the scope of this rulemaking, which is concerned with the registration requirements for sex offenders under SORNA. The SORNA Guidelines separately address disclosure of sex offender information by registration jurisdictions and do not require registration jurisdictions to disclose sex offenders’ temporary lodging information on the public sex offender websites. *See* 73 FR at 38059. The Attorney General has no authority to create penalties for third-party sites that disclose sex offenders’ temporary lodging information.

(vii) With respect to § 72.6(c)(3), relating to employment information, the comment proposed defining place of employment. Section 72.6(c)(3) is sufficiently clear as drafted, requiring the name and address of any place where a sex offender is or will be an employee or, for sex offenders who are or will be employed but with no fixed place of employment, other information describing where the sex offender works or will work with whatever definiteness is possible under the circumstances. In referring to place of employment, the language of § 72.6(c)(3) tracks the statutory requirement that sex offenders provide “[t]he name and address of any place where the sex offender is an employee or will be an employee,” 34 U.S.C. 20914(a)(4).

(viii) With respect to § 72.6(c)(1), the comment proposed defining residence, specifically asking how a person registers a residence address if he is transient or homeless. The comment identified no lack of clarity in § 72.6(c)(1) that would require further definition. A person who has no residence address cannot, of course, report a residence address. For such situations, § 72.6(c)(1) provides that “if the sex offender has no present or expected residence address,” then the sex offender must provide “other information describing where the sex offender resides or will reside with whatever definiteness is possible under the circumstances.”

(ix) With respect to § 72.6(d) and (e), relating to information about international travel and passports and immigration documents, the comment proposed that the rule prohibit this information from becoming part of the public record. The conditions for public disclosure by registration jurisdictions of information about sex offenders, including information about their international travel and their passports and immigration documents, are outside the scope of this rulemaking, which concerns the registration requirements for sex offenders under SORNA. Disclosure of sex offender information is addressed in statutes not implicated by this rulemaking and in the SORNA Guidelines and SORNA Supplemental Guidelines, which do not require inclusion of international travel, passport, and immigration document information on the public sex offender websites. *See* 73 FR at 38059.

(x) With respect to § 72.6(f), relating to vehicle information, the comment asked for evidence that watercraft and aircraft have been used in the commission of sexual offenses to justify the collection of information about such vehicles. As the section-by-section analysis below

explains, vehicle information may be useful to help prevent flight, facilitate investigation, or effect an apprehension if a sex offender commits new offenses or violates registration requirements. This rationale applies to watercraft and aircraft, as well as land vehicles, whether or not the particular vehicles are used in committing sex offenses.

(xi) The comment proposed to specify in § 72.6(g), relating to information about professional licenses, that professional licensing shall not be denied based on conviction for a sexual offense unless it has a relationship to the responsibilities of the job. SORNA imposes no professional or occupational disqualifications on sex offenders, and the matter is outside the scope of this rulemaking, which concerns the registration requirements for sex offenders under SORNA. The Attorney General has no authority to prohibit or restrict any professional or occupational disqualifications for sex offenders that states may adopt.

(xii) The comment said that § 72.6 should be revised because SORNA does not require public disclosure of certain types of information about sex offenders, mentioning specifically employer name, information about tier I sex offenders (not convicted of a specified offense against a minor), and non-sexual offenses. The requirements and exceptions for public disclosure of information about sex offenders by registration jurisdictions are outside the scope of this rulemaking, which concerns the registration requirements for sex offenders under SORNA, and they are not within the subject matter of § 72.6, which identifies types of information sex offenders must provide for inclusion in the registries. Public disclosure of sex offender information is separately addressed in statutes not germane to this rulemaking and in the SORNA Guidelines and SORNA Supplemental Guidelines, which do not require registration jurisdictions to include on their public sex offender websites the types of information referenced in this part of the comment. *See* 73 FR at 38059.

(xiii) The comment said that the regulations should require accurate information (about sex offenders), provide penalties for inaccurate information or for use of the information to harm the family of the person required to register, and discourage third-party dissemination of information. These matters are outside the scope of this rulemaking, which concerns the registration requirements for sex offenders under SORNA. SORNA independently directs registration jurisdictions to “include instructions on

how to seek correction of information that an individual contends is erroneous” on their public sex offender websites. 34 U.S.C. 20920(e). It further directs that these websites “shall include a warning that information on the site should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported address,” and that “[t]he warning shall note that any such action could result in civil or criminal penalties.” *Id.* § 20920(f).

(xiv) With respect to § 72.7(b), regarding periodic in-person verification of registration information, the comment proposed providing an alternative to in-person verification in instances of natural disasters. The in-person verification requirement is statutory, *see* 34 U.S.C. 20918, and cannot be changed by rulemaking. However, § 72.8(a)(2) in this rule explains that noncompliance with SORNA’s requirements (including its in-person appearance requirements) may be excused if compliance is prevented by circumstances beyond the sex offender’s control, circumstances that could include the exigencies presented in natural disasters.

(xv) With respect to § 72.8, regarding criminal liability under 18 U.S.C. 2250, the comment proposed (a) providing that the penalty for state violations shall be governed by state law, (b) providing a defense for individuals compliant with state law, and (c) providing a defense for persons with out-of-state convictions who fail to register through good-faith belief that registration is not required. These proposed changes are in part legally incorrect and in part already covered. Congress enacted SORNA’s criminal provision to provide Federal criminal penalties for both state and Federal sex offenders who violate SORNA’s requirements under circumstances supporting Federal jurisdiction. *See* 18 U.S.C. 2250(a)–(b); 34 U.S.C. 20911(1), (5)–(8). SORNA’s requirements apply to both state and Federal sex offenders regardless of whether they are paralleled in state law registration requirements. *See Willman*, 972 F.3d at 821–24 and § 72.3 in this rule. As provided in § 72.8(a)(1)(iii), sex offenders are not subject to liability under 18 U.S.C. 2250 for violating registration requirements of which they are unaware, a limitation that applies regardless of whether their convictions are in-state or out-of-state.

(xvi) The comment proposed establishing that these regulations are not intended to replace the legislative process. With respect to the Federal legislative process, this rule interprets and implements Congress’s decisions in

SORNA, *see* 34 U.S.C. 20912(b), and does not supplant or replace them. Rather, the many comments proposing that this rule abrogate SORNA’s requirements seek the replacement of the Federal legislative process with inconsistent rulemaking. The Attorney General’s actions in this rulemaking are not exercises of Federal legislative power barred by the non-delegation doctrine, as explained in the section-by-section analysis below. With respect to state legislative processes, the Attorney General has no authority over what state legislatures choose to do and cannot replace their processes by rulemaking.

(xvii) The comment proposed providing that (state) judicial precedents apply in the case of any rules that conflict with state supreme court decisions. State judicial decisions finding state registration laws to be in conflict with the state constitution do not affect the validity of the corresponding requirements under SORNA. However, SORNA allows such decisions to be taken into account in determining whether states have substantially implemented SORNA’s requirements in their registration programs. *See* 34 U.S.C. 20927(b).

(xviii) The comment proposed clarification of the process for classification of out-of-state offenders. The process by which states classify out-of-state offenders is outside the scope of this rulemaking, which concerns the registration requirements for sex offenders under SORNA. The SORNA Guidelines provide guidance to the states and other registration jurisdictions regarding the application of SORNA’s tiering criteria to all sex offenders, including out-of-state offenders. *See* 73 FR at 38052–54.

(xix) The comment proposed discouraging the inclusion of non-essential information in the public sex offender websites. The matter is outside the scope of this rulemaking, which concerns the registration requirements for sex offenders under SORNA. Other provisions of SORNA and the SORNA Guidelines and SORNA Supplemental Guidelines address the types of information that should or should not be included on the public websites, or whose inclusion or exclusion is within the discretion of the registration jurisdictions. *See* 34 U.S.C. 20920; 73 FR at 38058–61; 76 FR at 1636–37.

(xx) The comment proposed encouraging states to provide penalties for vigilantism. All states already have criminal penalties for unlawful violence against persons, including sex offenders, whether by vigilantes or others, and the Department of Justice rejects and condemns all unlawful violence against

persons, including sex offenders. SORNA’s standards provide that public sex offender websites “shall include a warning that information on the site should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported address” and “note that any such action could result in civil or criminal penalties.” 34 U.S.C. 20920(f).

(xxi) The comment proposed encouraging states to use risk assessment and other proven methods for the identification, treatment, and termination of low-risk offenders. The criteria for classification of sex offenders and early termination of registration are statutory and cannot be changed by rulemaking. *See* 34 U.S.C. 20911(2)–(4), 20915. Assessment of sex offenders for purposes of treatment is outside the scope of this rulemaking, which concerns the registration requirements for sex offenders under SORNA.

(xxii) The comment proposed discouraging states from utilizing residency restrictions or other proximity restrictions. SORNA does not prescribe or encourage residency or other proximity restrictions, and the matter is outside the scope of this rulemaking, which concerns the registration requirements for sex offenders under SORNA.

(xxiii) The comment proposed discouraging states from lifetime registration for all, and instead recommending adoption of SORNA’s tiered registration periods as provided in § 72.5. SORNA’s requirements generally constitute a floor rather than a ceiling for state registration programs. *See* 73 FR at 38032–35, 38046. Whether registration jurisdictions choose to adopt more stringent registration requirements than SORNA’s minimum national standards, including longer registration periods, is a matter within their discretion. *See id.* Recommending that states go no further than SORNA’s requirements is not necessary for the purposes of this rulemaking, which articulates the registration requirements for sex offenders under SORNA, and the comment was not persuasive that the rule should incorporate such a recommendation. In responding to public comments of a similar nature, the SORNA Guidelines noted that “many jurisdictions have adopted durational requirements for registration that . . . may . . . exceed the . . . SORNA minimum . . . such as making lifetime registration the norm in relation to registrants generally.” 73 FR at 38034. Consequently, “taking the SORNA standards as a ceiling . . . would require many jurisdictions to reduce or

eliminate requirements that they were free to adopt . . . and currently apply,” which “is not plausibly the objective of a law (SORNA) enacted with the general purpose of strengthening sex offender registration and notification in the United States.” *Id.*

(xxiv) The comment proposed providing that International Megan’s Law, residency restrictions, and other regulatory measures only apply for the duration of registration. International Megan’s Law added the international travel reporting requirements of SORNA and related authorities, appearing in 34 U.S.C. 20914(a)(7), (c) and implemented by §§ 72.6(d), 72.7(f) of this rule. In common with the other requirements under SORNA appearing in this rule, those requirements continue to apply until the end of the SORNA registration period. Whether registration jurisdictions choose to impose such requirements for longer periods than the registration periods prescribed by SORNA is within their discretion. *See* 73 FR at 38046. Residency restrictions, where they exist, are based on the laws of the jurisdictions that choose to adopt them. SORNA does not require such restrictions, the Attorney General has no authority to specify their duration, and they are outside the scope of this rulemaking.

#### *A Comment Proposing Five Changes in the Rule*

Another comment proposed five changes in the rule:

(i) The comment stated that the Attorney General should disclose all “ex parte contacts” with United States Attorneys because, the comment asserted, some parts of the rule (such as § 72.3) appear to be targeting common defenses raised by sex offenders accused of failing to register and hence may be the product of litigation strategy rather than reasoned rulemaking. The comment reflects a false opposition between addressing issues that have arisen in litigation and reasoned rulemaking. This rulemaking carries out a statutory directive to the Attorney General to issue regulations to interpret and implement SORNA, *see* 34 U.S.C. 20912(b), in furtherance of SORNA’s objective of protecting the public from sex offenders by establishing a comprehensive national system for their registration, *see id.* 20901. In carrying out this responsibility, the Attorney General reasonably resolves issues and problems that have arisen in SORNA implementation, including those arising in the enforcement of SORNA by means of the criminal provision Congress has enacted for that purpose, 18 U.S.C. 2250.

(ii) The comment said that the rule, for fair notice reasons, should specify that other uncodified legislative rules imposing registration duties on sex offenders under SORNA are abrogated. The comment did not identify “legislative rules” outside of these regulations that it was referring to or provide a persuasive reason for declaring that such rules are abrogated. This rule encompasses all current regulations issued by the Attorney General under SORNA. The other SORNA-related final documents the Attorney General has published in the **Federal Register**, listed in the “rulemaking history” section above, are guidelines that provide guidance and assistance to registration jurisdictions in implementing SORNA. Section 72.8(a)(1)(iii) in this rule moots fair notice concerns by explaining that sex offenders are not held liable under 18 U.S.C. 2250 for violating registration requirements of which they are unaware.

(iii) The comment said that the Attorney General, for Tenth Amendment and fair notice reasons, should specify that states are permitted to impose less stringent registration requirements than SORNA’s standards and that registrants fully comply with SORNA by complying with state registration laws even if the state has not implemented SORNA. However, this rule articulates SORNA’s registration requirements for sex offenders; it does not compel states to do anything. States are afforded a funding incentive to substantially implement SORNA’s requirements in their registration programs, a statutory condition that cannot be abrogated by rulemaking. *See* 34 U.S.C. 20927. Section 72.8(a)(1)(iii) in this rule moots fair notice concerns by explaining that sex offenders are not held liable under 18 U.S.C. 2250 for violating requirements of which they are unaware, and § 72.8(a)(2) further explains that noncompliance with SORNA may be excused where compliance was prevented by a state’s failure to carry out a necessary complementary role. The notion that sex offenders need only comply with SORNA’s registration requirements where state law imposes the same requirements is incorrect as a matter of law. *See Willman*, 972 F.3d at 821–24.

(iv) Section 72.5(b) in the rule states that the registration period of a sex offender sentenced to imprisonment begins to run when he is released from custody. The comment asserted to the contrary that a sex offender’s registration period begins to run when the registrant is convicted, for three

reasons. First, the comment argued that there is no reason to suspend the running of the registration period during the sex offender’s initial confinement. This argument is question-begging because it assumes that the registration period is already running before the sex offender is released. Second, the comment asserted that § 72.5(b)’s interpretation of SORNA is implausible because it would mean that a sex offender must initially register before the registration period has begun, given the requirement of 34 U.S.C. 20913(b)(1) that a sex offender initially register before completing his sentence of imprisonment. However, SORNA logically requires that a sex offender be advised of his registration obligations and initially registered shortly before his release from custody, *see* 34 U.S.C. 20919(a), because that is the point at which he is about to be released into the community and the post-release tracking and notification functions of sex offender registration are initially implicated. *See* 73 FR at 38062–63. Third, the comment asserted that running the registration period from conviction provides a readily ascertainable starting date and is consistent with Congress’s decision to base sex offenders’ registration duties on the crimes for which they have been convicted. Running the registration period from release likewise provides a definite starting point that is consistent with SORNA’s tiering criteria for sex offenders and the associated registration periods. *See* 34 U.S.C. 20911(2)–(4), 20915. The section-by-section analysis below provides further explanation regarding the commencement of sex offenders’ registration periods under SORNA and why the starting point is release from custody for an imprisoned offender.

(v) The comment argued that § 72.7(f) violates a constitutional right to travel by requiring sex offenders to report intended international travel at least 21 days in advance because, the comment asserted, it makes registrants liable for felony convictions every time they travel without providing 21 days’ notice. It further asserted that Congress’s failure to incorporate the 21-day notice requirement into International Megan’s Law evinces a congressional judgment that the requirement is unnecessary and unduly burdensome, and that advance notice of less than 21 days may afford Federal authorities adequate time to notify destination countries. However, the Attorney General initially adopted the 21-day advance notice requirement in the SORNA Supplemental Guidelines, reflecting the judgment of

the responsible Federal agencies concerning the time needed for effective notification regarding international travel by sex offenders, but recognizing that exceptions to that requirement may be necessary and appropriate in certain circumstances. See 76 FR at 1637–38. This rule follows the same approach, generally requiring 21-day advance notice, but allowing later notice when a sex offender does not anticipate a trip abroad that far in advance. See §§ 72.6(d), 72.7(f), 72.8(a)(2) Ex. 3, and the accompanying discussion in the section-by-section analysis below. The analysis explains that “[t]he 21-day advance notice requirement is designed to provide relevant agencies . . . sufficient lead time for any investigation or inquiry that may be warranted relating to the sex offender’s international travel, and for notification of U.S. and foreign authorities in destination countries, prior to the sex offender’s arrival in a destination country.” In SORNA, as amended by International Megan’s Law, Congress empowered the Attorney General to prescribe “time and manner requirements” in conformity with which sex offenders must “provide and update information . . . relating to intended travel outside the United States,” 34 U.S.C. 20914(c), which Congress would not logically have done if it deemed unnecessary and unduly burdensome the 21-day advance notice requirement that the Attorney General had already adopted in the SORNA Supplemental Guidelines. The comment provided no persuasive reason to believe that any constitutional right is violated by these aspects of the rule, which are within the scope of the express authority Congress has given the Attorney General to prescribe timing requirements for reporting international travel.

#### *A Comment Alleging Four Inconsistencies With SORNA*

A comment argued that this rule is inconsistent with SORNA in four respects.

(i) The comment claimed that § 72.3, providing in part that sex offenders must comply with SORNA’s requirements regardless of whether a jurisdiction has substantially implemented those requirements, is inconsistent with SORNA because Congress did not intend to punish sex offenders for jurisdictions’ failures to implement SORNA. However, § 72.3 accurately states the law. See *Willman*, 972 F.3d at 821–24. Section 72.8(a)(1)(iii) explains that sex offenders are not held liable for violating requirements under SORNA of which

they are unaware, and § 72.8(a)(2) explains that failure to comply with SORNA’s requirements may be excused where compliance is prevented by a jurisdiction’s failure to carry out a necessary complementary role. There is accordingly no punishment of sex offenders based on jurisdictions’ shortcomings.

(ii) The comment claimed that §§ 72.7(d) and 72.6(c), in requiring departure-notification by sex offenders in certain circumstances, conflict with 34 U.S.C. 20913(c), as interpreted by the Supreme Court in *Nichols*, 136 S. Ct. at 1117–19. However, as the section-by-section analysis below explains, the departure-notification provisions of the rule are premised on powers of the Attorney General under other provisions of SORNA and are consistent with *Nichols*.

(iii) The comment claimed that § 72.7(c) is inconsistent with SORNA in requiring that a sex offender must report changes in residence, employment, and school attendance in the jurisdictions in which they occur, because 34 U.S.C. 20913(c) only requires that a sex offender appear in person and report the change “in at least 1 jurisdiction involved” without further specification. However, the section-by-section analysis below explains that the specification of the relevant jurisdiction is within the Attorney General’s authority under 34 U.S.C. 20912(b) and 34 U.S.C. 20914(c) to interpret and implement SORNA and to prescribe the manner in which sex offenders must provide and update information required by SORNA. The analysis also explains the justification for this specification based on the purposes of SORNA’s in-person appearance requirements.

(iv) The comment proposed amending § 72.7(e) and (f), which require sex offenders to report to the residence jurisdiction information relating to remote communication identifiers, temporary lodging, vehicles, and international travel. Specifically, the comment said that sex offenders should be permitted to report such changes to any “involved jurisdiction,” as referenced in 34 U.S.C. 20913(c). In support of the proposed amendment, the comment argued that, for example, it could be nearly impossible for an offender who works long hours at a job in State A, but lives in State B, to report the required information in State B during normal business hours without having to miss work. However, § 72.7(e) and (f) do not require the reporting of information through in-person appearances, but rather allow reporting

by whatever means the jurisdiction allows, such as an email or phone call.

#### *Other Comments*

Other comments proposed additional changes to this rule, beyond those discussed above, but did not provide persuasive reasons for such changes. The proposals put forward by one or more commenters included the following:

A comment proposed that § 72.6(c)(2)’s requirement that a sex offender report temporary lodging when away from his residence for seven or more days should be changed to require such reporting only when the sex offender is away from his residence for 14 or more days. The reasons given by the comment were that vacation time is generally two weeks and, for families on opposite coasts, it is impossible to drive across the country, visit, and drive back within seven days. However, § 72.6(c)(2) does not prohibit sex offenders from traveling away from their residences for any amount of time. It just requires them to report to the residence jurisdiction within three business days lodging away from their residences for seven or more days. See § 72.7(e).

A comment objected to the requirement of § 72.6(f) that sex offenders provide information as to where any vehicle owned or operated by the sex offender is habitually parked, docked, or otherwise kept, on the ground that innocent people should not get dragged onto the registry because they allow a registered sex offender to visit. However, the referenced provision in § 72.6(f) does not require sex offenders to report the identities or addresses of people they visit. It just requires reporting where they habitually keep their vehicles. As the section-by-section analysis below explains, this information may be useful to help prevent flight, facilitate investigation, or effect an apprehension if a sex offender commits new offenses or violates registration requirements.

A comment objected that the rule would burden sex offenders who telework or telelearn with employers or schools in remote jurisdictions by requiring them to travel to those jurisdictions to register or report changes. However, § 72.4 in the rule requires a sex offender to register and keep the registration current in each jurisdiction in which the offender resides, is an employee, or is a student, and § 72.7(c) requires a sex offender to report a change in residence, employment, or school attendance through in-person appearance in the relevant jurisdiction. These provisions implement statutory requirements

appearing in 34 U.S.C. 20913(a), (c). They do not expand the range of jurisdictions in which sex offenders are required to register or report changes beyond those identified in the statute. In particular, §§ 72.4 and 72.7(c) do not require a sex offender to register or appear in a jurisdiction in which he has a telework or telelearning connection but no physical presence. *See* 73 FR at 38062. Nor do they require a sex offender to register in a jurisdiction in which he has some work-related presence but in which he does not regularly work or have a fixed place of employment. *See id.*

A comment requested clarification regarding (i) the state offenses for which SORNA requires registration and (ii) whether SORNA requires sex offenders to register in states whose own laws do not require registration by those offenders. Regarding the first question, SORNA identifies the types of offenses, including state offenses, for which it requires registration, *see* 34 U.S.C. 20911(1), (5)–(8), and the SORNA Guidelines provide further explanation, *see* 73 FR at 38050–52. If a sex offender does not know that he is required to register because he is unaware that the offense for which he was convicted gave rise to a duty to register, then he is not held liable under 18 U.S.C. 2250, which only penalizes violations of known registration obligations, as explained in § 72.8(a)(1)(iii) in this rule. Regarding the second question, SORNA's registration requirements are independent of state law registration requirements, *see Willman*, 972 F.3d at 821–24, but a sex offender's noncompliance with SORNA may be excused where compliance is prevented by a state's failure to carry out a necessary complementary role, as explained in § 72.8(a)(2) in this rule.

A comment proposed that the rule clarify Federal prosecutorial priorities with respect to SORNA violations in jurisdictions that have not implemented SORNA, suggesting that Federal prosecution be limited or forgone where the jurisdiction's laws do not impose the same requirements. However, as § 72.8(a)(1)(iii) in this rule explains, sex offenders are not held liable under 18 U.S.C. 2250 for violation of registration requirements of which they are unaware, and, as § 72.8(a)(2) explains, noncompliance with SORNA may be excused where compliance is prevented by circumstances beyond their control, such as a jurisdiction's failure to carry out a necessary complementary role. The comment was not persuasive that the Department of Justice should adopt a policy of not prosecuting sex offenders for violating known registration

obligations under SORNA, where nothing prevented those offenders from complying, just because the registration jurisdiction had not implemented some aspects of SORNA in its registration program. Federal prosecutorial priorities are usually not established by regulation, and addressing prosecutorial priorities is not necessary for purposes of this rulemaking, which articulates sex offenders' registration requirements under SORNA.

A comment asserted that § 72.3's application of SORNA's requirements to all sex offenders, regardless of when they were convicted, may violate due process because, at the state level, courts may determine whether particular sex offenders are required to register. Section 72.3 addresses the general scope of SORNA's application, not whether particular sex offenders are required to register under state law, and raises no due process issue.

A comment proposed adding to § 72.5 a provision requiring that a sex offender be removed from the sex offender registry if he receives a pardon, and that the offense be expunged from all court and law enforcement records. However, only pardons on the ground of innocence terminate registration obligations under SORNA, *see* 73 FR at 38050, and the Attorney General has no authority to require registration jurisdictions to expunge the records of sex offenders who are pardoned in those jurisdictions.

A comment asserted that § 72.6(g), which requires sex offenders to report professional licenses, is vague and not required by SORNA. Section 72.6 is sufficiently definite, requiring sex offenders to provide information concerning licensing that authorizes them to engage in an occupation or carry out a trade or business. Adopting this requirement is an exercise of the Attorney General's authority under 34 U.S.C. 20914(a)(8) to require sex offenders to provide other information, beyond that expressly described in the statute. The section-by-section analysis below explains that information concerning professional licenses may be helpful in locating a registered sex offender if he absconds, may provide a basis for notifying the responsible licensing authority if the offender's conviction of a sex offense may affect his eligibility for the license, and may be useful in crosschecking the accuracy and completeness of other information the offender is required to provide, *e.g.*, if the sex offender is licensed to engage in a certain occupation but does not provide name and address information for a place of employment as required by 34 U.S.C. 20914(a)(4).

A comment proposed generally replacing SORNA's in-person reporting requirements with reporting through remote communication technology. SORNA's requirements to report or verify certain information through in-person appearances are statutory and cannot be abrogated by rulemaking. *See* 34 U.S.C. 20913(c), 20918.

A comment proposed expanding the language in the rule about circumstances that may excuse noncompliance with SORNA's requirements to include public health emergencies and natural disasters. However, § 72.8(a)(2) in the rule makes clear that any uncontrollable circumstances preventing compliance with SORNA, regardless of their character, may excuse noncompliance under the conditions stated in 18 U.S.C. 2250(c).

A comment proposed encouraging registration jurisdictions to conform their registration regulations to SORNA to achieve uniformity across jurisdictions. Jurisdictions are encouraged to conform their registration requirements to SORNA's minimum national standards by the funding incentive of 34 U.S.C. 20927 and the extensive guidance and assistance that the Department of Justice provides to SORNA implementation through the SMART Office. *See* 76 FR at 1638. As § 72.1 in this rule notes, the adoption of more extensive or stringent requirements is within the discretion of the registration jurisdictions. The matter is explained in the section-by-section analysis below and in the SORNA Guidelines, *see* 73 FR at 38032–35, 38046. Making recommendations regarding jurisdictions' adoption of measures not required by SORNA is outside the scope of this rulemaking, which articulates SORNA's registration requirements for sex offenders.

#### Section-by-Section Analysis

The present rule expands part 72 of title 28 of the Code of Federal Regulations to provide a full statement of the registration requirements for sex offenders under SORNA. It revises the statement of purpose and definitional sections in 28 CFR 72.1 and 72.2. It maintains the existing provision in 28 CFR 72.3 stating that SORNA's requirements apply to all sex offenders, regardless of when they were convicted, and incorporates additional language in § 72.3 to reinforce that point. It also adds to part 72 provisions—§§ 72.4 through 72.8—articulating where sex offenders must register, how long they must register, what information they must provide, how they must register and keep their registrations current to

satisfy SORNA's requirements, and the liability they face for violations, following SORNA's express requirements and the prior articulation of standards for these matters in the SORNA Guidelines and the SORNA Supplemental Guidelines.

#### Section 72.1—Purpose

Section 72.1(a) states part 72's purpose to specify SORNA's registration requirements and their scope of application. It further notes that the Attorney General has the authority pursuant to provisions of SORNA to specify these requirements and their applicability as provided in part 72.

Section 72.1(b) states that part 72 does not preempt or limit any obligations of or requirements relating to sex offenders under other laws, rules, or policies. It further notes that states and other governmental entities may prescribe requirements, with which sex offenders must comply, that are more extensive or stringent than those prescribed by SORNA. This reflects the fact that SORNA provides minimum national standards for sex offender registration. It is intended to establish a floor rather than a ceiling for the registration programs of states and other jurisdictions, which can prescribe registration requirements binding on sex offenders under their own laws independent of SORNA. Jurisdictions accordingly are free to adopt more stringent or extensive registration requirements for sex offenders than those set forth in this part, including more stringent or extensive requirements regarding where, when, and how long sex offenders must register, what information they must provide, and what they must do to keep their registrations current. See 73 FR at 38032–35, 38046.

#### Section 72.2—Definitions

Section 72.2 states that terms used in part 72 have the same meaning as in SORNA. Hence, for example, references in the part to registration “jurisdictions” mean the 50 states, the District of Columbia, the five principal U.S. territories, and Indian tribes qualifying under 34 U.S.C. 20929. See *id.* 20911(10); 73 FR at 38045, 38048. Likewise, where the part uses such terms as sex offender (and tiers thereof), sex offense, convicted or conviction, sex offender registry, student, employee or employment, and reside or residence, the meaning is the same as in SORNA. See 34 U.S.C. 20911(1)–(9), (11)–(13); 73 FR at 38050–57, 38061–62.

#### Section 72.3—Applicability of the Sex Offender Registration and Notification Act

Section 72.3 carries forward in substance current 28 CFR 72.3, which states that SORNA's requirements apply to all sex offenders, including those whose sex offense convictions predate SORNA's enactment. This section was initially adopted on February 28, 2007, and amended on December 29, 2010. The section and its rationale are explained further in the interim and final rulemakings that adopted it. See 72 FR 8894; 75 FR 81849.

Section 72.3, and its modification by this rulemaking, are constitutionally sound. In *Smith v. Doe*, 538 U.S. 84 (2003), the Supreme Court upheld the retroactive application of sex offender registration requirements against an ex post facto challenge, in reviewing a state registration system whose major features paralleled SORNA's in many ways. The commonalities between SORNA and the state registration program upheld in *Smith* include required registration before release from imprisonment; provision of name, address, employment, vehicle, and other registration information; continued registration and periodic verification of registration information for at least 15 years; lifetime registration and quarterly verification for certain registrants convicted of aggravated or multiple sex offenses; and public internet posting of information about registrants. See *id.* at 90–91. The Federal courts have consistently rejected ex post facto challenges to SORNA itself. See, e.g., *United States v. Felts*, 674 F.3d 599, 605–06 (6th Cir. 2012).

Section 72.3 also is not premised on any constitutionally impermissible delegation of legislative authority to the executive branch of government. Congress intended that SORNA apply to all sex offenders, regardless of when they were convicted. See *Reynolds*, 565 U.S. at 442–45; *id.* at 448–49 & n. (Scalia, J., dissenting) (agreeing that Congress intended for SORNA to apply to all sex offenders). Congress authorized the Attorney General to specify the applicability of SORNA's requirements to sex offenders with pre-SORNA and pre-SORNA-implementation convictions, see 34 U.S.C. 20913(d), in order to effectuate that intent while enabling the Attorney General to address transitional issues presented in integrating the existing sex offender population into SORNA's comprehensive nationwide registration system. See *Reynolds*, 565 U.S. at 440–42; 72 FR at 8895–97; 73 FR at 38035–36, 38046, 38063–64; 75 FR at 81850–

52. In adopting § 72.3, the Attorney General implemented the relevant legislative policy—that SORNA's requirements should apply to all sex offenders—to the maximum, having found no reason to delay or qualify its implementation. Consequently, as an articulation of a legislative policy embodied in SORNA, the issuance of § 72.3 pursuant to 34 U.S.C. 20913(d) involved no exercise of legislative authority and did not contravene the non-delegation doctrine. See *Gundy*, 139 S. Ct. at 2123–30 (plurality opinion); *id.* at 2130–31 (Alito, J., concurring in the judgment); *id.*, Brief for the United States at 22–38.

Moreover, regardless of any question concerning the validity of 34 U.S.C. 20913(d), § 72.3 is adequately supported on the basis of the Attorney General's authority to issue guidelines and regulations to interpret and implement SORNA, appearing in 34 U.S.C. 20912(b). In § 72.3, the Attorney General interpreted SORNA as intended by Congress to apply to all sex offenders regardless of when they were convicted—an interpretation endorsed by the Supreme Court, see *Reynolds*, 565 U.S. at 440–45; see also *Gundy*, 139 S. Ct. at 2123–31—and he implemented that legislative policy by embodying it in a clearly stated rule.

The same considerations apply to the amended version of § 72.3 adopted here, which effectuates more reliably the legislative policy judgment that SORNA's requirements should apply to all sex offenders by restating the current rule with additional specificity, but which involves no change in substance. In comparison with the current formulation of § 72.3, this rule adds a second sentence stating that (i) all sex offenders must comply with all requirements of SORNA, regardless of when they were convicted; (ii) this is so regardless of whether a registration jurisdiction has substantially implemented SORNA or any particular SORNA requirement; and (iii) this is so regardless of whether a particular requirement or class of sex offenders is mentioned in examples in the rules or guidelines issued by the Attorney General.

The first part of the added sentence reiterates § 72.3's specification of SORNA's applicability to all sex offenders in the form of an affirmative direction to sex offenders, and it states explicitly that all of SORNA's requirements so apply.

The added sentence further states that the registration duties SORNA prescribes for sex offenders are not conditional on registration jurisdictions' having adopted SORNA's requirements

in their own registration laws or policies. For example, SORNA requires sex offenders to register in the states (and other registration jurisdictions) in which they reside, work, or attend school. *See* 34 U.S.C. 20913(a). All of the states have sex offender registration programs, which were initially established long before the enactment of SORNA. Hence, sex offenders are able to register in these existing state programs. The fact that a particular state has not modified its registration program at this time to incorporate the full range of SORNA requirements does not prevent a sex offender required to register by SORNA from registering in the state or excuse a failure to do so. *See, e.g., Felts*, 674 F.3d at 603–05.

The same principle applies in situations in which a jurisdiction's law does not track or incorporate a particular SORNA requirement affecting a sex offender. Consider a situation of this nature in which SORNA requires a sex offender to register but the law of the state in which he resides does not. This may occur, for example, because state law does not require registration based on the particular sex offense for which the offender was convicted, or because state law requires registration by sex offenders for shorter periods of time than SORNA, or because state law does not apply its registration requirements "retroactively" as broadly as § 72.3 applies SORNA's requirements to sex offenders with pre-SORNA convictions. Notwithstanding the absence of a parallel state law, the registration authorities in the state may be willing to register the sex offender because Federal law (*i.e.*, SORNA) requires him to register. *Cf. Doe v. Keathley*, 290 S.W.3d 719 (Mo. 2009) (state constitutional prohibition of retrospective laws does not preclude registration based on SORNA). If the state registration authorities are willing to register the sex offender, he is not relieved of the duty to register merely because state law does not track the Federal law registration requirement.

Hence, sex offenders can be held liable for violating any requirement stated in this rule, regardless of when they were convicted, and regardless of whether the jurisdiction in which the violation occurs has adopted the requirement in its own law. This does not mean, however, that SORNA unfairly holds sex offenders liable for failing to comply with its requirements, where the requirement is unknown to the sex offender or impossible for him to carry out. *Cf. Felts*, 674 F.3d at 605 (noting concern). Federal enforcement of SORNA's requirements occurs primarily through SORNA's criminal

provision, 18 U.S.C. 2250. That provision makes it a Federal crime for a person required to register by SORNA to knowingly fail to register or update a registration as required by SORNA under circumstances supporting Federal jurisdiction, such as conviction of a Federal sex offense or interstate or foreign travel. As discussed below, section 2250 holds sex offenders liable only for violations of known registration obligations, and it excuses failures to comply with SORNA under certain conditions if the noncompliance results from circumstances beyond the sex offenders' control.

Consider first the concern that sex offenders may lack notice regarding registration obligations. Under the procedures prescribed by SORNA, and under standard procedures that have generally been adopted by registration jurisdictions whether or not they have implemented SORNA's requirements, the registration of sex offenders normally involves (i) informing sex offenders of their registration duties, (ii) obtaining from sex offenders signed acknowledgments confirming receipt of that information, and (iii) having sex offenders provide the required registration information. *See* 34 U.S.C. 20919(a); 73 FR at 38062–63.

Registration procedures of this nature inform sex offenders of what they must do, and the acknowledgments obtained from them provide evidence that they were so informed. *See* 76 FR at 1638. If a jurisdiction that registers a sex offender has not fully revised its processes for conformity to SORNA, then it may not tell the sex offender about some of the registration requirements imposed by SORNA, such as those that the jurisdiction has not incorporated in its own laws. If the jurisdiction fails to inform a sex offender about some of SORNA's registration requirements, the sex offender then does not know about some of his registration obligations under SORNA based on the information received from the jurisdiction, and may not learn of them from other sources. In such cases, the possibility of liability under 18 U.S.C. 2250 continues to be limited to cases in which a sex offender "knowingly fails to register or update a registration as required by [SORNA]." The limitation to "knowing[ ]" violations provides a safeguard against liability based on unwitting violations of SORNA requirements of which a sex offender was not aware. Section 72.8(a)(1)(iii) of this rule, and the accompanying discussion below, provide further explanation about the limitation of liability under 18 U.S.C.

2250 to cases involving violation of known registration obligations.

The second concern about fairness involves situations in which a sex offender has failed to do something SORNA requires because it is impossible for him to do so. For example, as noted above, a jurisdiction with laws that do not require registration based on the particular offense for which a sex offender was convicted may nevertheless be willing to register him in light of his Federal law (SORNA) registration obligation. But alternatively, the jurisdiction's law or practice may constrain its registration personnel to register only sex offenders whom its own laws require to register. In such a case, it is impossible for the sex offender to register in that jurisdiction, though subject to a registration duty under SORNA. This is so because registration is by its nature a two-party transaction, involving a sex offender's providing information about where he resides and other matters as required, and acceptance of that information by the jurisdiction for inclusion in the sex offender registry. If the jurisdiction is unwilling to carry out its side of the transaction, then the sex offender cannot register.

Concerns of this nature are also addressed in SORNA's criminal provision, 18 U.S.C. 2250. Subsection (c) of section 2250 provides an affirmative defense to liability for SORNA violations if "(1) uncontrollable circumstances prevented the individual from complying; (2) the individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply; and (3) the individual complied as soon as such circumstances ceased to exist." A registration jurisdiction's law or practice that precludes registration of a sex offender, as described above, is a circumstance that the sex offender cannot control and to which he did not contribute, so he cannot be held liable for failure to register with that jurisdiction as SORNA requires.

The defense in section 2250(c) comes with the proviso that the defendant must comply with SORNA "as soon as [the preventing] circumstances cease[ ] to exist." For example, consider the case posed above of a jurisdiction that refuses to register sex offenders based on a particular offense for which SORNA requires registration, so that a sex offender residing in the jurisdiction who was convicted of that offense cannot register there. Suppose that the jurisdiction later progresses in its implementation of SORNA and becomes willing to register offenders who have been convicted for that sex offense. In

light of the proviso, the sex offender's obligation to register revives once the jurisdiction becomes willing to register him. That is fair, because the circumstance preventing his compliance with the SORNA registration requirement no longer exists.

Section 72.8(a)(2) of this rule, and the accompanying discussion below, provide further explanation about the contours of the impossibility defense under 18 U.S.C. 2250(c).

Returning to the text of § 72.3, the added sentence states at the end that sex offenders must comply with SORNA's requirements "regardless of whether any particular requirement or class of sex offenders is mentioned in examples in this regulation or in other regulations or guidelines issued by the Attorney General." In conjunction with the earlier statement in the provision that all sex offenders must comply with all SORNA requirements, the added language responds to a judicial decision that did not give full effect to the current regulation.

Section 72.3, as currently formulated, states that SORNA's "requirements . . . apply to all sex offenders," exercising the Attorney General's "authority to specify the applicability of the requirements of [SORNA] to sex offenders convicted before the enactment of [SORNA] or its implementation in a particular jurisdiction." 34 U.S.C. 20913(d); see *Reynolds*, 565 U.S. at 441–45 (explaining Congress's decision to give the Attorney General authority to apply SORNA's requirements to sex offenders with pre-SORNA convictions).

Nevertheless, in *United States v. DeJarnette*, 741 F.3d 971 (9th Cir. 2013), the court believed that the Attorney General had not made all of SORNA's requirements applicable to all sex offenders. The case concerned the applicability of SORNA's requirement that a sex offender register initially in the jurisdiction in which he is convicted, if it differs from his residence jurisdiction, see 34 U.S.C. 20913(a) (second sentence), where the sex offender's conviction predated SORNA's enactment. Notwithstanding 28 CFR 72.3, the court concluded that the Attorney General had not made this SORNA requirement applicable to sex offenders with pre-SORNA convictions, if they were already subject to state law registration requirements. *DeJarnette*, 741 F.3d at 982. The decision was largely premised on the fact that the particular SORNA requirement at issue was not mentioned in relation to that particular class of sex offenders in the examples of sex offenders subject to SORNA's requirements in 28 CFR 72.3

and the SORNA Guidelines. *DeJarnette*, 741 F.3d at 976–80.

The sentence added to § 72.3 by this rulemaking will foreclose future decisions of this nature and ensure that § 72.3's application of SORNA's requirements to all sex offenders is given effect consistently.

The rule includes one further change in § 72.3, affecting the first example in the provision. The example as currently formulated describes a sex offender convicted in 1990 and released following imprisonment in 2007, and says that the sex offender is subject to SORNA's requirements. In *Reynolds*, the Supreme Court held that SORNA's requirements did not apply to sex offenders with pre-SORNA convictions prior to the Attorney General's exercise of the authority under 34 U.S.C. 20913(d) to specify SORNA's applicability to those offenders. 565 U.S. at 434–35. It follows that SORNA's requirements did not apply to such sex offenders before the Attorney General's original issuance of 28 CFR 72.3 on February 28, 2007. Example 1 in § 72.3 might be misunderstood as suggesting the contrary, *i.e.*, that a sex offender with a pre-SORNA conviction released from imprisonment at any time in 2007 was immediately subject to SORNA's requirements. Hence, to avoid any possible inconsistency or apparent inconsistency with the Supreme Court's decision in *Reynolds*, the rule changes the example by substituting a later year for 2007.

#### *Section 72.4—Where Sex Offenders Must Register*

Section 72.4 tracks SORNA's express requirement that a sex offender must register and keep the registration current in each jurisdiction in which the sex offender resides, is an employee, or is a student, and must also initially register in the jurisdiction in which the offender was convicted if that jurisdiction differs from the jurisdiction of residence. See 34 U.S.C. 20913(a); 73 FR at 38061–62.

#### *Section 72.5—How Long Sex Offenders Must Register*

Section 72.5 sets out SORNA's requirements regarding the duration of registration. SORNA classifies sex offenders into three "tiers," based on the nature and seriousness of their sex offenses and their histories of recidivism. See 34 U.S.C. 20911(2)–(4); 73 FR at 38052–54. The tier in which a sex offender falls affects how long the offender must continue to register under SORNA. The required registration periods are generally 15 years for a tier I sex offender, 25 years for a tier II sex offender, and life for a tier III sex

offender. See 34 U.S.C. 20915(a); 73 FR at 38068. Paragraph (a) in § 72.5 reproduces these requirements.

Paragraph (a) of § 72.5 provides an exception "when the sex offender is in custody or civilly committed," incorporating in substance an express proviso appearing in SORNA, 34 U.S.C. 20915(a). The exception and proviso mean that SORNA does not require a sex offender to carry out its processes for registering or updating registrations during subsequent periods of confinement, *e.g.*, when imprisoned because of conviction for some other offense following his release from imprisonment for the sex offense. This reflects that "the SORNA procedures for keeping up the registration . . . generally presuppose the case of a sex offender who is free in the community" and that "[w]here a sex offender is confined, the public is protected against the risk of his reoffending in a more direct way, and more certain means are available for tracking his whereabouts." 73 FR at 38068. However, registration jurisdictions may see incremental value in requiring sex offenders to carry out their processes for registering and updating registrations during subsequent confinement and are free to do so, though SORNA does not require it.

The proviso relating to custody or civil commitment does not pertain to or limit SORNA's requirement that initial registration is to occur while the sex offender is still imprisoned following conviction for the predicate sex offense. See 34 U.S.C. 20913(b)(1), 20919(a). Rather, as indicated above, it affects a sex offender's registration obligations under SORNA if he is later reincarcerated after his release. The proviso relating to custody or civil commitment also does not mean that the running of the SORNA registration period is suspended during such subsequent confinement, and does not otherwise affect the commencement or duration of a sex offender's registration period under SORNA.

For example, consider a sex offender, released in 2010 from imprisonment for a sex offense conviction, whom SORNA requires to register for 25 years as a tier II sex offender, and suppose the sex offender is subsequently convicted during the registration period for committing a robbery and imprisoned for three years for the latter offense. SORNA's registration requirement for that sex offender terminates in 2035, although he was incarcerated for three years of the 25-year SORNA registration period. Sex offenders should keep in mind, however, that their registration jurisdictions are free to impose more

extensive requirements than SORNA, including longer registration periods. Hence, the basic registration period under the law of a jurisdiction in which such a sex offender is registered may be longer than 25 years. And even if the basic registration period under the jurisdiction's law is the same as the 25 years required by SORNA, the jurisdiction may choose not to credit the three years the sex offender spent in prison for the robbery towards the running of the registration period under state law. *See* 73 FR at 38032–35, 38046, 38068. Expiration of the SORNA registration period accordingly does not obviate the need for sex offenders to check with registration jurisdictions whether they remain subject to registration requirements under the jurisdictions' laws.

As provided in paragraph (b) of § 72.5, the registration period under SORNA begins to run upon release from imprisonment following a sex offense conviction, or at the time of sentencing for a sex offense where imprisonment does not ensue. *See* 73 FR at 38068. The sex offender's release from imprisonment, which marks the start of the registration period for an incarcerated sex offender, may occur later than the end of the sentence imposed for the sex offense itself. For example, suppose that a sex offender is convicted for a fatal sexual assault upon a victim, resulting in a sentence of three years of imprisonment for the sexual assault and a concurrent or consecutive sentence of 25 years of imprisonment for murder. Or consider a case in which a sex offender is sentenced to three years of imprisonment for a sexual assault and at a later time he is sentenced to 25 years of imprisonment for an unrelated murder, while still imprisoned for the sex offense. Or suppose that a sex offender is already serving a 25-year prison term for an unrelated murder, when he is sentenced to three years of imprisonment for a sexual assault. In all such cases, the registration period under SORNA starts to run when the sex offender actually completes his imprisonment and is released. It does not start to run while the sex offender is still imprisoned but has completed the portion of the sentence attributable to the sex offense.

This conclusion follows from the general design and specific requirements of SORNA's registration procedures. SORNA provides that incarcerated sex offenders must initially register "before completing a sentence of imprisonment with respect to the [registration] offense." 34 U.S.C. 20913(b)(1). SORNA further states that the correlative responsibilities of

registration officials in effecting the initial registration are to be carried out "shortly before release of the sex offender from custody." *Id.* 20919(a); *see* 73 FR at 38063 (explaining requirement to register shortly before release from custody). Thereafter, sex offenders must "keep the registration[s] current" for specified periods of time, depending on their "tier[s]." 34 U.S.C. 20915(a). In light of these provisions, the registration period is logically understood as being framed at the start by the release from custody and at the end by the termination of the specified time period.

Considering specifically cases in which a sex offender is serving an aggregate prison term for multiple crimes, 34 U.S.C. 20913(b)(1) requires registration "before completing a sentence of imprisonment *with respect to* the offense giving rise to the registration requirement." (Emphasis added). It does not require registration "before completing a sentence of imprisonment *for* the offense giving rise to the registration requirement." The broader "with respect to" language is best understood to mean that the relevant prison term under section 20913(b)(1) is not the specific sentence imposed for the predicate sex offense alone, but rather is the full related sentence of imprisonment, including any prison time imposed for other crimes. The corresponding language in section 20919(a) supports this understanding, requiring initial registration of the sex offender "shortly before release of the sex offender from custody." This language does not signify that initial registration is to occur when the sex offender is about to complete the portion of an aggregate sentence attributable specifically to the sex offense, though the sex offender will remain in custody because he is serving additional time for another offense or offenses. Rather, by its terms, section 20919(a) contemplates that initial registration will occur shortly before the sex offender is actually released, and section 20913(b)(1) must be understood in the same way, because section 20913(b)(1) and section 20919(a) describe the same transaction (initial registration) from different perspectives.

For example, consider the case of a sex offender convicted and sentenced for a fatal sexual assault, resulting in a three-year prison term for the sexual assault and a concurrent or consecutive 25-year sentence for murder. Suppose that the sexual assault involved was a sexual contact offense against an adult victim, resulting in the classification of the sex offender as a tier I sex offender and a registration period of 15 years. *See*

34 U.S.C. 20911(2)–(4), 20915(a)(1). If the registration period started to run at the end of the first three years of the sex offender's incarceration, then the 15-year registration period would expire long before the sex offender's release, because of the extension of his imprisonment by the murder sentence. This result would be at odds with section 20919(a)'s direction that sex offenders are to be initially registered "shortly before release . . . from custody," because the sex offender's registration obligation under SORNA would be a thing of the past by that time, and also with the requirements under sections 20913 and 20915(a)(1) that the sex offender register and keep the registration current for 15 years, because his registration period would be over before he registered in the first place.

In addition to the inconsistency with the statutory provisions discussed above, starting the running of the registration period upon the conclusion of the portion of a sentence attributable to the registration offense would result in arbitrary differences in registration requirements, depending on fortuities in the structuring of criminal sentences or their descriptions in judgments. For example, considering again the case of a fatal sexual assault, suppose that the resulting sentence involves a three-year prison term for the sexual assault, followed by a consecutive 25-year prison term for murder. As discussed above, the assumed 15-year registration period for the sexual assault would then run out long before the sex offender's release, and he would never have to register at all. But suppose the sentence is cast instead as a 25-year prison term for murder, followed by a consecutive three-year prison term for the sexual assault. The completion of the prison term for the sexual assault would then coincide with the sex offender's release from prison, and he would have to register and keep the registration current for 15 years. Because the ordering of the sexual assault and murder sentences has no relevance to the public safety purposes served by sex offender registration, the discrepancy between the two cases as to resulting registration requirements would be irrational. For this reason as well, the registration period under SORNA starts to run when the sex offender is actually released, and not at an earlier time upon completion of the portion of an aggregate sentence specifically attributable to the predicate sex offense.

By way of comparison, an offender's term of post-imprisonment supervised release for a sex offense does not start to run until he is released from prison,

including in cases in which the offender's release is delayed by his serving additional prison time for another offense or offenses. This is not unfair or illogical; it rationally reflects the nature of supervision as a measure designed for overseeing and managing offenders following their release. While sex offender registration differs from supervision in being a non-punitive, civil regulatory measure, *see, e.g., Smith*, 538 U.S. at 92–106; *Felts*, 674 F.3d at 605–06, it is likewise concerned with the post-release treatment of sex offenders in the community. Hence, as with periods of supervision, it is rational for an offender's registration period for a sex offense to begin to run when he is released from prison, including in cases in which the offender's release is delayed by his serving additional prison time for other criminal conduct. This reflects the nature of registration as a measure designed for tracking and monitoring sex offenders following their release.

The principle that the registration period under SORNA commences on release also applies to cases in which the sex offender is not imprisoned for the sex offense *per se* but is imprisoned because of conviction for another offense. For example, suppose that a sex offender is convicted of sexually assaulting and robbing a victim, resulting in a sentence of probation for the sexual assault and a sentence of five years of imprisonment for the robbery. Considering the relevant statutory provisions, section 20913(b)(2) makes applicable an alternative time for initial registration—three business days after sentencing—only “if the sex offender is not sentenced to a term of imprisonment.” Correspondingly, section 20919(a) provides for initial registration immediately after sentencing, rather than shortly before release from custody, only “if the sex offender is not in custody.” These provisions, by their terms, do not apply to a sex offender who remains in custody, though on the basis of an offense other than the predicate sex offense. Hence, cases of this nature must fall under the requirement of sections 20913(b)(1) and 20919(a) to effect initial registration shortly before the sex offender's release, and the consequences are the same as in the cases discussed above involving aggregate prison terms for the registration offense and other crimes. Where the sex offender receives a non-incarcerative sentence for the registration offense and a prison term for another offense, the registration period starts upon the sex offender's release, so that once registered and out

in the community he must keep the registration current for the full registration period specified in 34 U.S.C. 20915, and not just for a truncated period reduced by his incarceration for another offense.

In terms of underlying policy, registration is by definition concerned with tracking sex offenders in the community following their release. *See* 73 FR at 38044–45. The tiers and the associated registration periods under SORNA reflect categorical legislative judgments as to how long sex offenders should be tracked following release for public safety purposes. These judgments do not come into play until the sex offender is released. When that happens may be affected by many factors—such as the length of the prison term the sex offender receives for the sex offense; whether the sex offender makes parole (in a state system having parole) or gets good-conduct credit; whether the jurisdiction adopts an early release program because of prison crowding; and whether the sex offender gets additional prison time because of sentencing for other offenses, related or unrelated to the sex offense.

Whatever the reasons may be, it is logical to start a post-release tracking regime—*i.e.*, registration—when the sex offender is actually released. Initial registration is to occur “shortly before” that, as 34 U.S.C. 20919(a) requires, “in light of the underlying objectives of ensuring that sex offenders have their registration obligations in mind when they are released, and avoiding situations in which registration information changes significantly between the time the initial registration procedures are carried out and the time the offender is released.” 73 FR at 38063.

Hence, the registration period under SORNA starts to run when a sex offender is released from imprisonment, and not at an earlier time when the specific sentence for the registration offense has been served, if the two times differ. This follows from the features of the statutory provisions discussed above, from the absurdities entailed by a different interpretation, and from the basic character of registration as a post-release tracking measure. To the extent that there might be any uncertainty or argument to the contrary, the Attorney General in this rule exercises his authority under 34 U.S.C. 20912(b) to interpret and implement SORNA's provisions affecting the duration of registration in the manner stated.

Paragraph (c) in § 72.5 sets out SORNA's reduction of its registration period for certain sex offenders who maintain a “clean record” in accordance

with statutory standards. The specific “clean record” conditions are that the sex offender not be convicted of any felony or any sex offense, successfully complete any period of supervision, and successfully complete an appropriate sex offender treatment program (certified by a registration jurisdiction or the Attorney General). The SORNA registration period is reduced by five years for a tier I sex offender who maintains a clean record for 10 years, and reduced to the period for which the clean record is maintained for a tier III sex offender required to register on the basis of a juvenile delinquency adjudication who maintains a clean record for 25 years. *See* 34 U.S.C. 20915(a), (b); 73 FR at 38068–69.

#### *Section 72.6—Information Sex Offenders Must Provide*

Section 72.6 sets out the registration information sex offenders must provide. Much of the specified information is expressly required by SORNA, *see* 34 U.S.C. 20914(a)(1)–(7), and the remainder reflects SORNA's direction that sex offenders must provide “[a]ny other information required by the Attorney General,” *id.* 20914(a)(8).

In general terms, the required information comprises (i) name, birth date, and Social Security number; (ii) remote communication identifiers (including email addresses and telephone numbers); (iii) information about places of residence, non-residential lodging, employment, and school attendance; (iv) international travel; (v) passports and immigration documents; (vi) vehicle information; and (vii) professional licenses. By providing basic information about who a sex offender is, where he is, how he gets around, and what he is authorized to do, these requirements implement SORNA and further its public safety objectives.

Paragraph (a)(1) of § 72.6 requires that a sex offender provide his name, including any alias, which is an express SORNA requirement. *See* 34 U.S.C. 20914(a)(1); 73 FR at 38055.E0.

Paragraph (a)(2) of § 72.6 requires a sex offender to provide date of birth information, a requirement the Attorney General has adopted in the SORNA Guidelines and this rule because date of birth information is regularly utilized as part of an individual's basic identification information and hence is of value in helping to identify, track, and locate registered sex offenders. The paragraph requires that any date that the sex offender uses as his or her purported date of birth must be provided, in addition to the actual date of birth, because sex offenders may, for example,

provide false date of birth information in seeking employment that would provide access to children or other potential victims. *See* 73 FR at 38057.

Paragraph (a)(3) of § 72.6 requires that a sex offender provide his Social Security number, which is an express SORNA requirement. *See* 34 U.S.C. 20914(a)(2). The paragraph further requires provision of any number that a sex offender uses as his purported Social Security number. The Attorney General has adopted the latter requirement—already appearing in the SORNA Guidelines in 2008—because sex offenders may, for example, attempt to use false Social Security numbers in seeking employment that would provide access to children or other potential victims. *See* 73 FR at 38055.

Paragraph (b) of § 72.6 requires a sex offender to provide all remote communication identifiers that he uses in internet or telephonic communications or postings, including email addresses and telephone numbers. A provision of the Keeping the internet Devoid of Sexual Predators Act of 2008 (KIDS Act), Public Law 110–400, directed the Attorney General to use the authority under paragraph (7) of 34 U.S.C. 20914(a) [now designated paragraph (8)] to require sex offenders to provide internet identifiers. The Attorney General has previously exercised that authority to require the specified information in the SORNA Guidelines. *See* 34 U.S.C. 20916(a); 73 FR at 38055; 76 FR at 1637. The Attorney General has exercised the same authority to require telephone numbers—a requirement also already appearing in the SORNA Guidelines—for a number of reasons, including facilitating communication between registration personnel and sex offenders, and addressing the potential use of telephonic communication by sex offenders in efforts to contact or lure potential victims. *See* 73 FR at 38055.

Paragraph (c)(1) of § 72.6 requires a sex offender to provide residence address information or other residence location information if the sex offender lacks a residence address. Providing residence address information is an express SORNA requirement. *See* 34 U.S.C. 20914(a)(3). In the SORNA Guidelines, and now in this rule, the Attorney General has adopted the requirement to provide other residence location information for sex offenders who do not have residence addresses, such as homeless sex offenders or sex offenders living in rural areas that lack street addresses, because having this type of location information serves the same public safety purposes as knowing the whereabouts of sex offenders with

definite residence addresses. *See* 73 FR at 38055–56, 38061–62.

Paragraph (c)(2) of § 72.6 requires a sex offender to provide information about temporary lodging while away from his residence for seven or more days. In the SORNA Guidelines, and now in this rule, the Attorney General has adopted this requirement because sex offenders may reoffend at locations away from the places in which they have a permanent or long-term presence, and indeed could be encouraged to do so to the extent that information about their places of residence is available to the authorities but information is lacking concerning their temporary lodgings elsewhere. The benefits of having this information include facilitating the successful investigation of crimes committed by sex offenders while away from their normal places of residence and discouraging sex offenders from committing crimes in such circumstances. *See* 73 FR at 38056.

Paragraph (c)(3) of § 72.6 requires a sex offender to provide employer name and address information, or other employment location information if the sex offender lacks a fixed place of employment. Providing employer name and address information is an express SORNA requirement. *See* 34 U.S.C. 20914(a)(4). The Attorney General has adopted, in the SORNA Guidelines and this rule, the requirement to provide other employment location information for sex offenders who work but do not have fixed places of employment—*e.g.*, a long-haul trucker whose “workplace” is roads and highways throughout the country, a self-employed handyman who works out of his home and does repair or home improvement work at other people’s homes, or a person who frequents sites that contractors visit to obtain day labor and works for any contractor who hires him on a given day. The Attorney General has adopted this requirement because knowing where such sex offenders are in the course of employment serves the same public safety purposes as knowing the whereabouts of sex offenders who work at fixed locations. *See* 73 FR at 38056, 38062.

Paragraph (c)(4) of § 72.6 requires a sex offender to provide the name and address of any place where the sex offender is or will be a student, an express SORNA requirement. *See* 34 U.S.C. 20914(a)(5); 73 FR at 38056–57, 38062.

Paragraph (d) of § 72.6 requires a sex offender to provide information about intended travel outside of the United States. This is an express SORNA requirement, added by International

Megan’s Law. *See* 34 U.S.C. 20914(a)(7); Public Law 114–119, sec. 6(a)(1). A related provision in § 72.7(f) of this rule requires sex offenders to report international travel information at least 21 days in advance. Exercising the general authority under paragraph (8) of 34 U.S.C. 20914(a) [then designated paragraph (7)] to expand the required range of registration information, the Attorney General initially adopted these requirements in the SORNA Supplemental Guidelines, *see* 76 FR at 1637–38, even before the enactment of International Megan’s Law, for a number of reasons:

(i) Realizing SORNA’s public safety objectives requires that registered sex offenders be effectively tracked as they leave and return to the United States, and that other sex offenders who enter the United States be identified, so that domestic registration and law enforcement authorities know about the sex offenders’ presence in the United States and can ensure that they register while here as SORNA requires. To that end, SORNA directs the Attorney General to establish and maintain a system for informing relevant registration jurisdictions about persons entering the United States whom SORNA requires to register. *See* 34 U.S.C. 20930. Sections 72.6(d) and 72.7(f) of this rule are part of that system, requiring registered sex offenders to inform their registration jurisdictions about travel abroad, including information that encompasses both their departure from and return to the United States. Beyond this direct benefit, learning about sex offenders’ entry into the United States may depend on notice from the authorities of the countries they come from—authorities who may expect reciprocal notice about sex offenders traveling to their countries from the United States. Having U.S. sex offenders inform their registration jurisdictions of travel abroad provides information that is used by U.S. authorities, including the U.S. Marshals Service and INTERPOL Washington-U.S. National Central Bureau, to notify the authorities in the destination countries about sex offenders traveling to their areas. These foreign authorities may in return advise U.S. authorities about sex offenders traveling to the United States from their countries, facilitating the notification of domestic registration jurisdictions about the sex offenders’ presence that section 20930 contemplates. *See* 73 FR at 38066; 76 FR at 1637.

(ii) Sex offenders traveling abroad may remain subject in some respects to U.S. jurisdiction, *e.g.*, because a sex offender intends to go to an overseas

U.S. military base or to work as or for a U.S. military contractor in another country. In such cases, the intended travel of the sex offender may implicate the same public safety concerns in relation to communities abroad for which the United States has responsibility as it does in relation to communities within the United States. See 73 FR at 38067; 76 FR at 1637–38.

(iii) More broadly, for a sex offender disposed to reoffend, it may be attractive to travel to foreign countries where law enforcement is weaker (or perceived to be weaker), where sexually trafficked children or other vulnerable victims may be more readily available, and where the registration and notification measures to which the sex offender is subject in the United States are inoperative. The United States does not wish to export the public safety threat posed by its sex offenders to other countries. Requiring sex offenders in the United States to inform their registration jurisdictions about international travel provides a basis for notifying foreign authorities in the destination countries, which helps to reduce the resulting risks. If these sex offenders do reoffend in other countries, the resulting human harm to victims is no less because it occurs in a foreign country, and the United States' image and foreign relations interests may be adversely affected as well. Sex offenders from the United States who commit sex offenses in other countries may be subject to prosecution under various Federal laws, which reflect the United States' policy of, and commitment to, combating the commission of crimes of sexual abuse and exploitation internationally as well as domestically. See, e.g., 18 U.S.C. 1591, 2251(c), 2260, 2423. Consistent tracking of international travel by sex offenders helps to deter and prevent such crimes, and to facilitate their investigation if they occur.

Beyond creating a general requirement to report travel outside of the United States at least 21 days in advance, the SORNA Supplemental Guidelines authorized the requirement of more definite information about international travel plans. 76 FR at 1638 (additional directions may be issued by the SMART Office "concerning the information to be required in sex offenders' reports of intended international travel, such as information concerning expected itinerary, departure and return dates, and means and purpose of travel"); see Notice of International Travel, <https://smart.ojp.gov/sorna/notice-international-travel> (providing such directions). Section 72.6(d) in this rule specifically directs sex offenders

traveling abroad to report information regarding any anticipated itinerary, dates and places of departure, arrival, or return, carrier and flight numbers for air travel, destination countries and address or contact information therein, and means and purpose of travel. More detailed information of this type is needed because notice only that a sex offender intends to travel somewhere outside of the United States at some time three weeks or more in the future would be inadequate to realize the objectives of international tracking of sex offenders—objectives that include, as discussed above, notification as appropriate of U.S. and foreign authorities in destination countries for public safety purposes, preventing and detecting the offenders' commission of sex offenses in other countries, and reliably tracking sex offenders as they leave and enter the United States for purposes of enforcing registration requirements. Requiring the specified information concerning international travel is justified by its value in furthering these objectives. See 73 FR at 38066–67; 76 FR at 1634, 1637–38.

Congress endorsed these objectives and the stated conclusion in International Megan's Law, whose purposes include "[t]o protect children and others from sexual abuse and exploitation, including sex trafficking and sex tourism, by providing advance notice of intended travel by registered sex offenders outside the United States to the government of the country of destination [and] requesting foreign governments to notify the United States when a known sex offender is seeking to enter the United States." Public Law 114–119; see 162 Cong. Rec. H390–94 (Feb. 1, 2016) (explanation in House floor debate on passage). As noted above, the measures adopted by International Megan's Law in support of its international notification system include an express requirement that sex offenders report intended international travel, making this requirement a permanent feature of SORNA that exists independently of regulatory action. See 34 U.S.C. 20914(a)(7); Public Law 114–119, sec. 6(a)(1).

Section 72.6(d) in this rule follows the new SORNA travel information provision added by International Megan's Law, which states that sex offenders must provide "[i]nformation relating to intended travel of the sex offender outside the United States, including any anticipated dates and places of departure, arrival, or return, carrier and flight numbers for air travel, destination country and address or other contact information therein, means and purpose of travel, and any other

itinerary or other travel-related information required by the Attorney General." 34 U.S.C. 20914(a)(7). A sex offender must report all anticipated information in these categories in relation to both the United States and destination countries as the language of § 72.6(d) makes clear. For example, a sex offender who is leaving the United States must report any anticipated date and place of departure from the United States, and also any anticipated date and place of return to the United States if the sex offender expects to return. Likewise, with respect to each foreign country to be visited, the sex offender must report any anticipated date and place of arrival in that country and any anticipated date and place of departure from that country.

Paragraph (e) of § 72.6 requires a sex offender to provide information concerning any passport or passports he has, and concerning documents establishing his immigration status if he is an alien. The passports referenced in the paragraph include passports of all types and nationalities, not just U.S. passports. Where the sex offender has multiple passports, as may occur, for example, in cases involving dual citizenship, the paragraph's reference to "each passport" the sex offender has means that the sex offender must report all of his passports. The Attorney General has included information about passports and immigration documents as required registration information in the SORNA Guidelines and in this rule because having this type of information in the registries serves various purposes. These include locating and apprehending registrants who may attempt to leave the United States after committing new sex offenses or registration violations, facilitating the tracking and identification of registrants who leave the United States but later reenter while still required to register, see 34 U.S.C. 20930, and crosschecking the accuracy and completeness of other types of information that registrants are required to provide—e.g., if immigration documents show that an alien registrant is in the United States on a student visa but the registrant fails to provide school attendance information as required by 34 U.S.C. 20914(a)(5). See 73 FR at 38056.

Paragraph (f) of § 72.6 requires a sex offender to provide information concerning any vehicle owned or operated by the sex offender, information concerning the license plate number or other registration number or identifier for the vehicle, and information as to where the vehicle is habitually kept. In part, the paragraph reflects the express SORNA requirement

in 34 U.S.C. 20914(a)(6) that a sex offender provide “[t]he license plate number and a description of any vehicle owned or operated by the sex offender.” This includes, in addition to vehicles registered to the sex offender, any vehicle that the sex offender regularly drives, either for personal use or in the course of employment. See 73 FR at 38057. The remainder of the paragraph reflects the Attorney General’s requirement (previously adopted in the SORNA Guidelines) of additional vehicle-related information that serves similar purposes or may be useful to help prevent flight, facilitate investigation, or effect an apprehension if the sex offender commits new offenses or violates registration requirements. See *id.*

Paragraph (g) of § 72.6 requires a sex offender to provide information concerning all licensing of the offender that authorizes him to engage in an occupation or carry out a trade or business. The Attorney General has adopted this requirement, initially in the SORNA Guidelines and now in this rule, because information of this type (i) may be helpful in locating a registered sex offender if he absconds, (ii) may provide a basis for notifying the responsible licensing authority if the offender’s conviction of a sex offense may affect his eligibility for the license, and (iii) may be useful in crosschecking the accuracy and completeness of other information the offender is required to provide—*e.g.*, if the sex offender is licensed to engage in a certain occupation but does not provide name or place of employment information as required by 34 U.S.C. 20914(a)(4) for such an occupation. See 73 FR at 38056.

#### *Section 72.7—How Sex Offenders Must Register and Keep the Registration Current*

SORNA requires sex offenders to register and keep the registrations current in jurisdictions in which they reside, work, or attend school. Section 72.7 sets out the procedures for doing so, addressing the timing requirements for registering and updating registrations, the jurisdictions to which changes in registration information must be reported, and the means for reporting such changes. In general terms, the section requires (i) initial registration before release from imprisonment, or within three business days after sentencing if the sex offender is not imprisoned; (ii) periodic in-person appearances to verify and update the registration information; (iii) reporting of changes in name, residence, employment, or school attendance; (iv) reporting of intended departure or

termination of residence, employment, or school attendance in a jurisdiction; (v) reporting of changes relating to remote communication identifiers, temporary lodging information, and vehicle information; (vi) reporting of international travel; and (vii) compliance with a jurisdiction’s rules if a sex offender has not complied with the normal time and manner specifications for carrying out a SORNA requirement.

The requirements articulated in this section in part appear expressly in SORNA and in part reflect exercises of the powers SORNA confers on the Attorney General to further specify its requirements. The authorities relied on include the following:

SORNA directs the Attorney General to issue rules and guidelines to “interpret and implement” its provisions, which include the basic requirement that each sex offender must “register . . . and keep the registration current.” 34 U.S.C. 20912(b), 20913(a). Previously in the SORNA Guidelines, see 73 FR at 38062–67, and now in this rule, the Attorney General interprets his authority to “interpret and implement” SORNA as including the authority to articulate a comprehensive, gap-free set of procedural requirements for registering and updating registrations. Authority of this nature is needed to implement SORNA in conformity with the legislative objective of protecting the public from sex offenders by establishing a comprehensive national system for their registration. 34 U.S.C. 20901. Beyond the public safety need, this understanding of section 20912(b) “takes Congress to have filled potential lacunae” in SORNA in a manner consistent with fair notice concerns, empowering the Attorney General to eliminate any “vagueness and uncertainty” regarding how sex offenders are to comply with SORNA’s registration requirements. *Reynolds*, 565 U.S. at 441–42.

The Attorney General’s authority to interpret and implement SORNA includes in particular the authority to adopt additional specifications regarding the time and manner in which its requirements must be carried out. For example, SORNA expressly requires that sex offenders must appear in person to report changes of name, residence, employment, and student status within three business days of such changes. 34 U.S.C. 20913(c). But SORNA does not expressly require the reporting within a particular timeframe of changes relating to other types of registration information that also bear directly and importantly on the identification, tracking, and location of sex offenders. These include

remote communication identifiers (such as email addresses), temporary lodging information, international travel information, and vehicle information, as described in § 72.6(b), (c)(2), (d), and (f) of this rule. Absent a requirement that changes in these types of information be reported promptly, the information in the registries about these matters could become seriously out of date, which would in turn impair SORNA’s basic objective of effectively tracking and locating sex offenders in the community following their release. See 73 FR at 38044–45, 38066–67. The Attorney General accordingly has adopted definite timing requirements for reporting changes in these types of information, previously in the guidelines for SORNA implementation, and now in § 72.7(e)–(f) in this rule.

Adopting such rules reflects an exercise of the Attorney General’s authority to “interpret and implement” SORNA, 34 U.S.C. 20912(b), and more specifically to interpret and implement SORNA’s requirement that sex offenders must “keep the registration current,” *id.* 20913(a). While the heading of subsection (c) of section 20913 is “[k]eeping the registration current,” the heading only signifies that the subsection sets out an updating rule for the most basic types of registration information. It does not signify that nothing more can be required to keep the registration current. The contrary is evident from section 20915(a), which specifies the duration of required registration under SORNA. Section 20915(a) uses the same terminology, stating that a sex offender “shall keep the registration current” for the relevant period of time. Obviously, in providing that a sex offender must “keep the registration current” for a specified period, section 20915(a) defines the period of time during which a sex offender must continue to comply with all of SORNA’s requirements, given the absence of any other provision in SORNA specifying how long sex offenders must comply with its various requirements. Among other consequences, this means that sex offenders must appear in person periodically to verify and update their registration information, as required by section 20918, for the specified period of time—not just that they must report changes in name, residence, employment, and school attendance, as provided in section 20913(c), for the specified period of time. That consideration alone demonstrates that section 20913(c) does not exhaust SORNA’s requirements for “keep[ing] the registration current.”

Regarding other matters, such as changes in registration information relating to remote communication identifiers, temporary lodging, vehicles, and international travel, the Attorney General has understood the authority to interpret and implement SORNA's requirement to keep the registration current as including the authority to adopt specific time and manner requirements for the reporting of such changes. Congress ratified this understanding in the KIDS Act. In that Act, Congress provided that (i) "[t]he Attorney General, using the authority provided in [34 U.S.C. 20914(a)(8)], shall require that each sex offender provide to the sex offender registry those internet identifiers the sex offender uses or will use" and (ii) "[t]he Attorney General, using the authority provided in [34 U.S.C. 20912(b)], shall specify the time and manner for keeping current information required to be provided under this section." 34 U.S.C. 20916(a)–(b). Notably, Congress did not find it necessary to make new grants of authority to the Attorney General for these purposes and instead directed the Attorney General to utilize the pre-existing authorities under SORNA to require internet identifier information and specify the time and manner for keeping it current. This confirms that the section 20912(b) authority includes the authority to adopt additional time and manner requirements in the rules and guidelines the Attorney General issues.

SORNA directs sex offenders to provide for inclusion in the sex offender registry several expressly described types of registration information and, in addition, "[a]ny other information required by the Attorney General." *Id.* 20914(a)(8). The section 20914(a)(8) authority underlies the specification of required types of registration information in § 72.6 in this rule beyond those expressly set forth in section 20914(a)(1)–(7). The section 20914(a)(8) authority also provides an additional, independent legal basis for various requirements in § 72.7, including a number of timing rules it incorporates.

In relation to some types of required registration information under this rule, which may be based wholly or in part on the exercise of the Attorney General's authority under section 20914(a)(8), a timing requirement is inherent in the nature of the information that must be reported. This is true of the requirement under § 72.7(d) to report if a sex offender will be commencing residence, employment, or school attendance elsewhere or will be terminating residence, employment, or school attendance in a jurisdiction. It is

likewise true of the requirement under § 72.7(f) to report intended international travel. Because these provisions constitute requirements to report present intentions regarding expected future actions, the information they require necessarily must be reported in advance of the expected actions.

Section 20914(a)(8) also provides an additional, independent legal basis for more specific timeframe requirements appearing in § 72.7 of this rule. One of these requirements is that intended international travel is to be reported at least 21 days in advance of the travel, as provided in § 72.7(f). In substance, this is a requirement that a sex offender report to the residence jurisdiction an intention to travel outside of the United States at some time 21 days or more in the future. Viewing the expected timing of the travel as an aspect of the required information, it is within the Attorney General's authority under 34 U.S.C. 20914(a)(8) to require sex offenders to provide "[a]ny other information"—and following the adoption of section 20914(a)(7) by International Megan's Law, within the Attorney General's more specific authority under the latter provision to require "any other . . . travel-related information." Essentially the same point applies to the rule's specification that sex offenders must report within three business days changes relating to certain types of registration information the Attorney General has required. Section 72.7(e) directs reporting of changes in information within that timeframe relating to remote communication identifiers, temporary lodging, and vehicles. Viewed as requirements to report the information that certain actions or occurrences have taken place within the preceding three business days, these requirements are within the Attorney General's authority under 34 U.S.C. 20914(a)(8).

Turning to another SORNA provision supporting time and manner requirements, 34 U.S.C. 20913(d) authorizes the Attorney General to specify the applicability of SORNA's requirements to sex offenders convicted before the enactment of SORNA or its implementation in a particular jurisdiction "and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with subsection (b)." The cross-referenced "subsection (b)" is the SORNA provision that requires sex offenders to register initially before release from imprisonment, or within three business days of sentencing if the sex offender is not imprisoned. As discussed below in connection with

§ 72.7(a)(2) of this rule, sex offenders released from Federal or military custody and sex offenders convicted in foreign countries generally are unable to register prior to release. The section 20913(d) authority to prescribe registration rules for sex offenders "unable to comply with subsection (b)" accordingly provides one of the legal bases for the alternative timing rules in § 72.7(a)(2), which direct registration by sex offenders in the affected classes within three business days of entering a jurisdiction following release.

The authorities described above—under 34 U.S.C. 20912(b), 20913(d), and 20914(a)(8)—provided the basis for the Attorney General's adoption of time and manner specifications for complying with SORNA's registration requirements in previously issued guidelines under SORNA. More recently, International Megan's Law added an express, general grant of authority to the Attorney General to make such specifications. The relevant provision is 34 U.S.C. 20914(c), which reads as follows: "(c) TIME AND MANNER.—A sex offender shall provide and update information required under subsection (a), including information relating to intended travel outside the United States required under paragraph (7) of that subsection, in conformity with any time and manner requirements prescribed by the Attorney General."

The cross-referenced "subsection (a)" is SORNA's list of all the registration information that sex offenders must provide. Hence, the new section 20914(c) requires sex offenders to comply with the Attorney General's directions regarding the time and manner for providing and updating all registration information required by SORNA. In addition to empowering the Attorney General to specify the time and manner for reporting particular types of registration information, this provision enables the Attorney General to specify the time and manner for registration. This is so because registration on the part of a sex offender consists of providing required registration information to the registration jurisdiction for inclusion in the sex offender registry. Given that the Attorney General has the authority under section 20914(c) to specify the time and manner for a sex offender's provision of each required type of registration information, it follows that the Attorney General has the authority under section 20914(c) to specify the time and manner for a sex offender's provision of the required types of information collectively, which constitutes registration under SORNA.

#### Paragraph (a)—Initial Registration

Paragraph (a)(1) of § 72.7 tracks SORNA's general rule that a sex offender must initially register—that is, register for the first time based on a sex offense conviction—before release from imprisonment, or within three business days of sentencing in case of a non-incarcerative sentence. *See* 34 U.S.C. 20913(b) (initial registration by sex offenders); *id.* 20919(a) (complementary duties of registration officials); 73 FR at 38062–65 (related explanation in guidelines).

Paragraph (a)(2)(i) of § 72.7 addresses the situation of sex offenders who are released from Federal or military custody or sentenced to a Federal or military sex offense. There is no separate Federal registration program for such offenders. Hence, Federal authorities cannot register these offenders prior to their release from custody or near the time of sentencing. This is in contrast to the authorities of the SORNA registration jurisdictions—the states, the District of Columbia, the five principal U.S. territories, and qualifying Indian tribes—who may register their sex offenders prior to release or near sentencing as provided in 34 U.S.C. 20913(b), 20919(a). SORNA instead enacted special provisions under which Federal correctional and supervision authorities (i) are required to inform Federal (including military) offenders with sex offense convictions that they must register as required by SORNA and (ii) must notify the (non-Federal) jurisdictions in which the sex offenders will reside following release or sentencing so that these jurisdictions can integrate the sex offenders into their registration programs. *See* 18 U.S.C. 4042(c); Public Law 105–119, sec. 115(a)(8)(C), as amended by Public Law 109–248, sec. 141(i) (10 U.S.C. 951 note); 73 FR at 38064; *see also* 18 U.S.C. 3563(a)(8); *id.* 3583(d) (third sentence); *id.* 4209(a) (second sentence) (mandatory Federal supervision condition to comply with SORNA); 34 U.S.C. 20931 (requiring the Secretary of Defense to provide to the Attorney General military sex offender information for inclusion in the National Sex Offender Registry and National Sex Offender Public website).

The timing rule adopted for such situations is that sex offenders released from Federal or military custody or convicted of Federal or military sex offenses but not sentenced to imprisonment must register within three business days of entering or remaining in a jurisdiction to reside, *see* 73 FR at 38064, which parallels SORNA's normal timeframe for registering or updating a

registration following changes of residence, *see* 34 U.S.C. 20913(c). Section 72.7(a)(2)(i) refers to a sex offender entering “or remaining” in a jurisdiction to reside because, for example, a Federal sex offender released from a Federal prison located in a state may remain in that state to reside, rather than relocating to some other state. In such a case, the three-business-day period for registering with the state runs from the time of the sex offender's release.

In terms of legal authority, the requirement of § 72.7(a)(2)(i) is supported by the Attorney General's authority to interpret and implement SORNA's requirement to register in the jurisdiction of residence, 34 U.S.C. 20912(b), 20913(a); the Attorney General's authority under section 20913(d) to prescribe rules for the registration of sex offenders who are unable to comply with section 20913(b)'s timing rule for initial registration; and the Attorney General's authority under section 20914(c) to adopt time and manner specifications for providing and updating registration information, which includes the authority to adopt time and manner specifications for registration as discussed above. Viewing a sex offender's being released from Federal or military custody and taking up residence in a jurisdiction as a change of residence, this requirement is also supportable as a direct application of section 20913(c).

Paragraph (a)(2)(ii) of § 72.7 addresses the situation of persons required to register on the basis of foreign sex offense convictions. Registration by the convicting state is not an available option under SORNA in such cases because foreign states are not registration jurisdictions under SORNA. *See* 34 U.S.C. 20911(10). Also, there may be no domestic jurisdiction in which SORNA requires such offenders to register—if they are not residing, working, or attending school in the United States at the time they are released from custody or sentenced in the foreign country—but SORNA's requirements will apply if they travel or return to the United States. The rule adopted for foreign conviction situations is that the sex offender must register within three business days of entering a domestic jurisdiction to reside, work, or attend school, *see* 73 FR at 38050–51, 38064–65, which parallels SORNA's normal timeframe for registering or updating a registration following changes of residence, employment, or student status, *see* 34 U.S.C. 20913(c).

In terms of legal authority, this requirement is supported by the Attorney General's authority to interpret and implement SORNA's requirement to register in jurisdictions of residence, employment, and school attendance, 34 U.S.C. 20912(b), 20913(a); the Attorney General's authority under section 20913(d) to prescribe rules for the registration of sex offenders who are unable to comply with section 20913(b)'s timing rule for initial registration; and the Attorney General's authority under section 20914(c) to adopt time and manner specifications for providing and updating registration information, which includes the authority to adopt time and manner specifications for registration as discussed above. Insofar as a sex offender's travel or return to the United States following a foreign conviction involves a change of residence, employment, or student status, this requirement is also supportable as a direct application of section 20913(c).

#### Paragraph (b)—Periodic In-Person Verification

Paragraph (b) of § 72.7 sets out the express requirement of 34 U.S.C. 20918 that sex offenders periodically appear in person in the jurisdictions in which they are required to register, allow the jurisdictions to take current photographs, and verify their registration information, with the frequency of the required appearances determined by their tiering. *See* 73 FR at 38067–68.

The second sentence of paragraph (b), exercising the Attorney General's authority under 34 U.S.C. 20912(b), interprets and implements section 20918's requirement of verifying the information in each registry to include correcting any information that is out of date or inaccurate and reporting any new registration information. With respect to most types of registration information, other provisions of § 72.7 require reporting of changes within shorter timeframes than the intervals between periodic in-person appearances for verification. Hence, a sex offender who has complied with SORNA's requirements is likely to have reported changes in most types of registration information prior to his next verification appearance. But § 72.7 does not specially address the time and manner for reporting changes in some types of registration information. *See* § 72.6(a)(2)–(3), (e), (g) (requiring as well information concerning actual and purported dates of birth and Social Security numbers, passports and immigration documents, and professional licenses). Sex offenders can

keep their registrations current with respect to the latter categories of information by reporting any changes in their periodic verifications. *See* 73 FR at 38067–68.

Paragraph (c)—Reporting of Initiation and Changes Concerning Name, Residence, Employment, and School Attendance

Paragraph (c) of § 72.7 is based on SORNA's express requirement that “[a] sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least 1 jurisdiction involved pursuant to [34 U.S.C. 20913(a)] and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry.” 34 U.S.C. 20913(c); *see* 73 FR at 38065–66.

While SORNA provides a definite timeframe for reporting these changes (within three business days), specifies a means of reporting (through in-person appearance), and requires reporting of a change in “at least 1 jurisdiction,” it does not specify the particular jurisdiction in which each kind of change—*i.e.*, change in name, residence, employment, or school attendance—is to be reported. As discussed earlier, the Attorney General's authority under 34 U.S.C. 20912(b) to interpret and implement SORNA includes the authority to further specify the manner in which changes in registration information are to be reported where there are such gaps or ambiguities in SORNA's statutory provisions. In addition, the Attorney General now has express authority under 34 U.S.C. 20914(c) to prescribe the manner in which all required registration information is to be provided and updated. Exercising those authorities in paragraph (c) in § 72.7, the Attorney General interprets and implements the requirement of section 20913(c), and prescribes the manner in which sex offenders must provide and update information about name, residence, employment, or student status, by specifying the particular jurisdiction in which a sex offender must appear to report the changes section 20913(c) describes—in the residence jurisdiction to report a change of name or residence, in the employment jurisdiction to report a change of employment, and in the jurisdiction of school attendance to report a change in school attendance. *See* 73 FR at 38065.

For example, suppose that a sex offender resides in state A and commutes to work in State B. Pursuant to 34 U.S.C. 20913(a), the sex offender must register in both states—in State A

as his residence state, and in State B as his employment state. Suppose that the sex offender changes his place of residence in State A and continues to work at the same place in State B. Logically, the sex offender should carry out his in-person appearance in State A to report his change of residence in State A, rather than in State B, where his contact with the latter state (employment) has not changed. Conversely, varying the example, suppose that the sex offender changes his place of employment from one employer to another in State B, but continues to reside in the same place in State A. The sex offender should carry out his in-person appearance in state B to report his change of employment in State B, rather than in State A, where his contact with the latter state (residence) has not changed.

These conclusions follow from the underlying policies of SORNA's in-person appearance requirements, which aim to provide opportunities for face to face encounters between sex offenders and persons responsible for their registrations in the local areas in which they will be present. Such encounters may help law enforcement personnel to familiarize themselves with the sex offenders in their areas, thereby facilitating the effective discharge of their protective and investigative functions in relation to those sex offenders, and helping to ensure that their responsibilities to track those offenders are taken seriously and carried out consistently. Likewise, from the perspective of sex offenders, face to face encounters with officers responsible for their monitoring in the local areas where they are present may help to impress on them that their identities, locations, and past criminal conduct are known to the authorities in those areas. Hence, there is a reduced likelihood of their avoiding detection and apprehension if they reoffend, and this may help them to resist the temptation to reoffend. *See* 73 FR at 38065, 38067.

These policies are furthered by sex offenders appearing in person to report changes in residence, employment, and school attendance in the jurisdictions in which the changes occur, rather than in other jurisdictions where they may be required to register, but within whose borders there has been no change in the location of the sex offender. Section 72.7(c) in the rule accordingly provides that changes in the most basic types of location information—residence, employment, school attendance—are to be reported through in-person appearances in the jurisdictions in which they occur. Section 72.7(c) also provides definiteness regarding the

reporting of name changes under 34 U.S.C. 20913(c), providing that such changes are to be reported in the residence jurisdiction, as the jurisdiction in which a sex offender is likely to have his most substantial presence and contacts.

Paragraph (d)—Reporting of Departure and Termination Concerning Residence, Employment, and School Attendance

Paragraph (d) of § 72.7 requires sex offenders to inform the jurisdictions in which they reside if they will be commencing residence, employment, or school attendance in another jurisdiction or outside of the United States, and to inform the relevant jurisdictions if they will be terminating residence, employment, or school attendance in a jurisdiction. The Attorney General has previously articulated these requirements in the SORNA Guidelines. *See* 73 FR at 38065–67. These requirements are not part of the requirement under 34 U.S.C. 20913(c) to report certain changes through in-person appearances and they may be reported by any means allowed by registration jurisdictions in their discretion. *See* 73 FR at 38067.

Paragraph (d)(1) of § 72.7, relating to notice about intended commencement of residence, employment, or school attendance outside of a jurisdiction, and paragraph (d)(2), relating to notice about termination of residence, employment, or school attendance in a jurisdiction, are complementary, each applying in certain situations that may be outside the scope of the other. For example, § 72.7(d)(1) requires a sex offender to inform his residence jurisdiction if he will be starting a job in another jurisdiction, even if he will continue to reside where he has resided and will not be terminating any existing connection to the residence jurisdiction. Section 72.7(d)(2) requires a sex offender to inform a jurisdiction of his intended termination of residence, employment, or school attendance in that jurisdiction “even if there is no ascertainable or expected future place of residence, employment, or school attendance for the sex offender.” 73 FR at 38066.

Regarding the underlying legal authority for § 72.7(d), its informational requirements overlap with types of information 34 U.S.C. 20914(a) expressly requires sex offenders to provide, which include information as to where a sex offender “will reside,” “will be an employee,” or “will be a student.” *Id.* 20914(a)(3)–(5). To the extent § 72.7(d) goes beyond the registration information that SORNA expressly requires, it is a straightforward exercise of the Attorney

General's authority under 34 U.S.C. 20914(a)(8) to require any additional registration information.

Even before the enactment of International Megan's Law, the Attorney General's implementation authority under 34 U.S.C. 20912(b) was understood to include the authority to specify time and manner requirements for providing and updating registration information, as discussed above. Currently, section 20914(c) confers express authority on the Attorney General to adopt the time and manner requirements set forth in § 72.7(d)—*i.e.*, that (i) intended commencement of residence, employment, or school attendance in another jurisdiction or outside the United States is to be reported to the residence jurisdiction (by whatever means it allows) prior to any termination of residence in that jurisdiction and prior to commencing residence, employment, or school attendance in the other jurisdiction or outside of the United States; and (ii) intended termination of residence, employment, or school attendance in a jurisdiction is to be reported to the jurisdiction (by whatever means it allows) prior to the termination of residence, employment, or school attendance in the jurisdiction. Section 72.7(d)'s requirement that the intended actions or changes are to be reported prior to the termination of residence, employment, or school attendance in the relevant jurisdiction ensures that the reporting requirement applies while the sex offender is still subject to the requirement to register and keep the registration current in the jurisdiction pursuant to 34 U.S.C. 20913(a). This approach avoids any question about the validity of requiring a sex offender to provide or update information in a jurisdiction in which he is no longer required to register under SORNA.

The exercise of the authorities described above in § 72.7(d) furthers SORNA's objective of creating a "comprehensive national system for the registration of [sex] offenders," 34 U.S.C. 20901, which reliably tracks sex offenders as they move away from and into registration jurisdictions. A sex offender's departure from a jurisdiction in which he is registered may eventually be discovered—*e.g.*, because he fails to appear for the next periodic verification of his registration, *see id.* 20918—even if he does not affirmatively notify the jurisdiction that he is leaving. But considerable time may elapse before that happens, leaving a cold trail for law enforcement efforts to locate the sex offender, if he does not register in the destination jurisdiction as SORNA requires.

For example, for a sex offender who decides to change his residence from one state to another, § 72.7(d) requires the sex offender to inform the state he is leaving prior to his departure, and § 72.7(c) requires him to inform the destination state within three business days of his arrival there. Under SORNA's procedures for information sharing among registration jurisdictions, the state of origin in such a case directly notifies the identified destination state. *See* 34 U.S.C. 20921(b), 20923(b)(3); 73 FR at 38065; 76 FR at 1638. If the sex offender then fails to appear and register as expected in the destination state, appropriate follow-up ensues, which may include investigative efforts by state and local law enforcement and the U.S. Marshals Service to locate the sex offender, issuance of a warrant for his arrest, and entry of information into national law enforcement databases reflecting the sex offender's status as an absconder or unlocatable. *See* 34 U.S.C. 20924; 73 FR at 38069. In the context of this system, the requirement of § 72.7(d) for a sex offender to notify the residence jurisdiction concerning his departure is an important element. It helps to ensure that agencies and officials responsible for sex offender registration and its enforcement are promptly made aware of major changes in the location of sex offenders, and thereby reduces the risk that sex offenders will disappear in the interstices between jurisdictions.

In so doing, § 72.7(d) resolves certain potential problems in the operation of SORNA's registration system following the Supreme Court's decision in *Nichols v. United States*, 136 S. Ct. 1113 (2016), and a similar earlier decision by the Eighth Circuit Court of Appeals, *United States v. Lunsford*, 725 F.3d 859 (8th Cir. 2013). *Nichols* involved a sex offender who abandoned his residence in Kansas and relocated to the Philippines, without informing the Kansas registration authorities of his departure. The issue in the case was whether *Nichols* had violated 34 U.S.C. 20913(c), which requires a sex offender "not later than three business days after each change of name, residence, employment, or student status" to "appear in person in at least 1 jurisdiction involved pursuant to subsection (a) and inform that jurisdiction of all changes" in the required registration information.

The Court noted that subsection (a) of section 20913 mentions three jurisdictions as possibly "involved"—"where the offender resides, where the offender is an employee, and where the offender is a student"—which would not include the state of Kansas after *Nichols* had moved to the Philippines.

*Nichols*, 136 S. Ct. at 1117 (quoting 34 U.S.C. 20913(a)). The Court further noted that section 20913(c) requires appearance and registration within three business days *after* a change of residence, and *Nichols* could not have appeared in Kansas after he left the state. *Id.* at 1117–18. The Court accordingly concluded that *Nichols*' failure to inform Kansas of his departure was not a violation of section 20913(c), since Kansas was no longer an "involved" jurisdiction in which section 20913(c) may require a sex offender to report changes in residence. *Id.* at 1118.

Applying the same reasoning to the domestic context, if a sex offender terminates his residence in a state and thereafter takes up residence in another state, he cannot violate section 20913(c) by failing to inform the state he is leaving. For, following the termination of residence in that state, it is no longer a "jurisdiction involved" for purposes of section 20913(c).

There is no comparable problem, however, with § 72.7(d)'s requirement that a sex offender inform a jurisdiction in which he resides of his intended departure from the jurisdiction, because § 72.7(d) does not depend on the requirements of section 20913(c). Rather, § 72.7(d) is grounded in the requirement of section 20914(a) that sex offenders provide certain information, including "[a]ny other information required by the Attorney General," and the requirement of section 20914(c) that they report the required information in the "time and manner . . . prescribed by the Attorney General."

The Attorney General's exercise of his authorities under section 20914(a) and 20914(c) to require sex offenders to inform their registration jurisdictions that they will be going elsewhere in no way conflicts with *Nichols*' conclusion that section 20913(c) does not require such pre-departure notice of intended relocation. Section 20914(a)(8) says that sex offenders must provide "[a]ny other information required by the Attorney General." The statute does not say that sex offenders must provide "[a]ny other information required by the Attorney General, *except for information about intended departure from the jurisdiction.*" *Nichols*' interpretation of section 20913(c) provides no basis for reading such an unstated limitation into section 20914(a)(8). Likewise, *Nichols* provides no basis for reading unstated limitations into the Attorney General's authority—now expressly granted by section 20914(c)—to prescribe time and manner requirements for providing and updating registration information, which adequately supports § 72.7(d)'s

requirement that a sex offender inform the jurisdiction in which he resides about intended departure prior to any termination of residence and before going elsewhere.

The Attorney General's adoption of the § 72.7(d) requirements is also consistent with the Supreme Court's analysis of particular arguments and issues in *Nichols*. The salient points are as follows:

First, the Court in *Nichols* noted that the predecessor Federal sex offender registration law (the "Wetterling Act") required a sex offender to "report the change of address to the responsible agency in the State the person is leaving," while SORNA contains no comparable provision that expressly requires sex offenders to notify jurisdictions they are leaving. 136 S. Ct. at 1118 (quoting 42 U.S.C. 14071(b)(5) (2000)). However, SORNA does not attempt to articulate all the particulars of its registration requirements for sex offenders, instead authorizing the Attorney General to complete the regulatory scheme through interpretation and implementation of SORNA. *See, e.g.*, 34 U.S.C. 20912(b), 20913(d), 20914(a)(8), 20914(c). Given the extent of the Attorney General's powers under SORNA, it was not necessary for Congress to include an express provision in SORNA requiring sex offenders to notify jurisdictions they are leaving. Nor can there be any doubt that requiring such notification is now within the terms of the Attorney General's powers under SORNA, as discussed above. Indeed, 34 U.S.C. 20923(b)(3)—which provides that a jurisdiction's officials are to inform each jurisdiction "from or to which a change of residence, employment, or student status occurs"—contemplates the Attorney General's adoption of requirements like those appearing in § 72.7(d). For if sex offenders were not required to advise the jurisdictions they leave of their departure and destination, those jurisdictions could not inform the jurisdictions "to which" sex offenders relocate.

Second, the Court in *Nichols* rejected an argument that a jurisdiction necessarily remains "involved" for purposes of section 20913(c) if the sex offender continues to appear on the jurisdiction's registry as a current resident. The Court responded that section 20913(a) gives jurisdictions where the offender resides, is an employee, or is a student as the only possibilities for an "involved" jurisdiction, and does not include a jurisdiction "where the offender appears on a registry." 136 S. Ct. at 1118. The Court said "[w]e decline the . . .

invitation to add an extra clause to the text of § [20]913(a)." *Id.* In contrast, § 72.7(d) in this rule does not require the addition of an extra clause to section 20913(a). It involves the exercise of the Attorney General's authorities under SORNA to include the information described in § 72.7(d) in the information that a sex offender must provide to the jurisdictions described in the actual clauses of section 20913(a)—*i.e.*, those in which he resides, is an employee, or is a student.

Third, the Court rejected an argument that *Nichols* was required to inform Kansas of his intended departure based on 34 U.S.C. 20914(a)(3)'s direction to sex offenders to provide information about where they "will reside." The Court noted that "§ [20]914(a) merely lists the pieces of information that a sex offender must provide if and when he updates his registration; it says nothing about whether the offender has an obligation to update his registration in the first place." 136 S. Ct. at 1118. In context, the Court's point was that section 20914(a)(3) just specifies a type of information sex offenders must provide, and does not say when they must provide it, so section 20914(a)(3) does not in itself require sex offenders to provide change of residence information in advance when they leave a jurisdiction. For example, without more, section 20914(a)(3) might be taken to entail that sex offenders must advise where they "will reside" when initially registering before release from imprisonment, *see* 34 U.S.C. 20913(b)(1), but not necessarily that they give advance notice to their registration jurisdictions of expected future residence on subsequent relocations.

However, this understanding of section 20914(a)(3) does not imply any limitation on the Attorney General's authority to require a sex offender to "update his registration in the first place," *Nichols*, 136 S. Ct. at 1118, on the basis of 34 U.S.C. 20914(c), which directs that "[a] sex offender shall provide and update information required under subsection (a) . . . in conformity with any time and manner requirements prescribed by the Attorney General." Nor does it imply any limitation on the Attorney General's authority under SORNA to require sex offenders to report the full range of information described in § 72.7(d). In § 72.7(d), as discussed above, the Attorney General exercises these authorities to require sex offenders to inform jurisdictions of intended departure and expected future residence prior to any termination of residence in a jurisdiction.

Finally, the Court in *Nichols* rejected an argument that *Nichols* had to notify Kansas of his departure on the theory that he engaged in two changes of residence—the first when he abandoned his residence in Kansas, and the second when he checked into a hotel in the Philippines. 136 S. Ct. at 1118–19. Section 72.7(d) in this rule, however, does not assume any such multiplicity in changes of residence. Rather, it establishes a freestanding requirement to inform registration jurisdictions in advance of termination of residence and commencement of intended future residence.

At the end of the *Nichols* decision, the Court noted that—considering the International Megan's Law amendments to SORNA—"[o]ur interpretation of the SORNA provisions at issue in this case in no way means that sex offenders will be able to escape punishment for leaving the United States without notifying the jurisdictions in which they lived while in this country." 136 S. Ct. at 1119. The Court noted the addition of a new subsection (b) to 18 U.S.C. 2250, which "criminalized the 'knowin[g] fail[ure] to provide information required by [SORNA] relating to intended travel in foreign commerce,'" and the addition of 34 U.S.C. 20914(a)(7), which requires sex offenders to provide information about intended international travel. 136 S. Ct. at 1119 (brackets in original) (quoting 18 U.S.C. 2250(b)(2)). The Court concluded: "We are thus reassured that our holding today is not likely to create 'loopholes and deficiencies' in SORNA's nationwide sex-offender registration scheme." *Id.* (quoting *United States v. Kebodeaux*, 570 U.S. 387, 399 (2013)).

Section 72.7(d) in this rule similarly helps to ensure that the interpretation of 34 U.S.C. 20913(c) in *Nichols* and *Lunsford* does not create "loopholes and deficiencies" in the operation of SORNA's tracking system, in relation to both domestic and international relocations. For example, consider a sex offender who terminates his residence in a state without informing the state. Suppose the sex offender is later found elsewhere in the United States, but he cannot be shown to have taken up residence—or to have been employed or a student—in another jurisdiction after leaving the original state of residence. In light of *Nichols*, section 20913(c) does not require the sex offender to report his relocation to the original state because it is no longer an "involved" jurisdiction after he leaves, and there may be no other relevant jurisdiction in which he must report the change, *i.e.*, one in which he presently resides, is employed, or is a student. However,

with § 72.7(d) in effect, a sex offender in this circumstance will have violated 34 U.S.C. 20914(a) and (c)'s requirements to provide registration information, including "[a]ny other information" prescribed by the Attorney General, in the time and manner prescribed by the Attorney General. At a minimum, in the case described, the sex offender would have failed to provide the information that he is terminating his residence in the original state of residence prior to his termination of residence in that state, contravening § 72.7(d).

Hence, § 72.7(d) provides an additional safeguard against registered sex offenders simply disappearing without informing anyone about their relocation. The consequences for noncompliant sex offenders include potential prosecution by registration jurisdictions, which have been encouraged to adopt departure notification requirements similar to § 72.7(d) in their registration laws by the Attorney General's prior articulation of those requirements in the SORNA Guidelines. See 73 FR at 38065–66. The consequences of noncompliance with § 72.7(d) will also include potential Federal prosecution under 18 U.S.C. 2250 for violations committed under circumstances supporting Federal jurisdiction.

Sex offenders must comply both with the requirements of § 72.7(c) and with the requirements of § 72.7(d). For example, suppose a sex offender changes residence from State A to State B. It is not sufficient if (i) the sex offender complies with § 72.7(d) by telling State A that he is leaving and going to State B, but (ii) he fails to appear in State B and register there as required by § 72.7(c), and then (iii) he attempts to excuse his failure to comply with § 72.7(c) on the ground that State A could have told State B about his relocation. Likewise, it is not sufficient if the sex offender in such a case (i) complies with § 72.7(c) by registering in State B, but (ii) he fails to inform State A about the intended relocation prior to his departure, and then (iii) he attempts to excuse his failure to comply with § 72.7(d) on the ground that State B could have told State A about his relocation. As discussed above, appearance and registration by sex offenders in jurisdictions in which they commence residence, employment, or school attendance, as required by § 72.7(c), and notification by sex offenders to jurisdictions in which they terminate residence, employment, or school attendance, as required by § 72.7(d), both serve important purposes in SORNA's registration system as articulated in this rule and the

previously issued SORNA guidelines. Compliance with both requirements is necessary to the seamless and effective operation of that system for the reasons explained above.

#### Paragraph (e)—Reporting of Changes in Information Relating to Remote Communication Identifiers, Temporary Lodging, and Vehicles

Paragraph (e) requires sex offenders to report to their residence jurisdictions within three business days changes in remote communication identifier information, temporary lodging information, and vehicle information. In terms of legal authority, as discussed earlier, these requirements are supportable on the basis of the Attorney General's authority to interpret and implement SORNA's requirement to keep the registration current, the Attorney General's authority to expand the information that sex offenders must provide to registration jurisdictions, and the Attorney General's authority to prescribe the time and manner for providing and updating registration information. See 34 U.S.C. 20912(b), 20913(a), 20914(a)(8), (c), 20916(b); 73 FR at 38066; 76 FR at 1637. (The SORNA Guidelines state that such changes are to be reported "immediately" and explain at an earlier point that "immediately" in the context of SORNA's timing requirements means within three business days, see 73 FR at 38060, 38066.) SORNA does not require that these changes be reported through in-person appearances and they may be reported by any means allowed by registration jurisdictions in their discretion. See *id.* at 38067.

#### Paragraph (f)—Reporting of International Travel

Paragraph (f) of § 72.7 requires sex offenders to report intended travel outside of the United States to their residence jurisdictions. The expected travel must be reported at least 21 days in advance and, if applicable, prior to any termination of residence in the jurisdiction. Reporting of information about intended international travel is an express SORNA requirement following SORNA's amendment by International Megan's Law. See 34 U.S.C. 20914(a)(7); Public Law 114–119, sec. 6(a). The underlying reasons for requiring reporting of international travel are explained above in connection with § 72.6(d) of this rule.

The 21-day advance notice requirement is designed to provide relevant agencies, including the U.S. Marshals Service and INTERPOL Washington-U.S. National Central Bureau, sufficient lead time for any

investigation or inquiry that may be warranted relating to the sex offender's international travel, and for notification of U.S. and foreign authorities in destination countries, prior to the sex offender's arrival in a destination country. The requirement that the intended international travel be reported prior to any termination of residence in the jurisdiction—potentially an issue in cases in which the sex offender is terminating his U.S. residence and relocating to a foreign country—ensures that a SORNA violation has occurred in case of noncompliance while the sex offender is still residing in the jurisdiction and hence required by 34 U.S.C. 20913(a) to register and keep the registration current in that jurisdiction. The requirement to report intended international travel at least 21 days in advance applies in relation to all international travel, including both cases in which the sex offender is temporarily traveling abroad while maintaining a domestic residence and cases in which the sex offender is terminating his residence in the particular jurisdiction or the United States.

The rule recognizes, however, that reporting of intended international travel 21 days in advance is not possible in some circumstances. Section 72.8(a)(2) of the rule generally addresses situations in which sex offenders cannot comply with SORNA requirements because of circumstances beyond their control, and it specifically addresses inability to comply with the timeframe for reporting of international travel in Example 3 in that provision.

In terms of legal authority, the requirement to report intended international travel to the residence jurisdiction at least 21 days in advance and prior to any termination of residence is supportable as an exercise of the express authority of the Attorney General under 34 U.S.C. 20914(c), which states in part that "[a] sex offender shall provide and update . . . information relating to intended travel outside the United States . . . in conformity with any time and manner requirements prescribed by the Attorney General." As discussed above, the international travel reporting requirement, including its associated timeframe requirement, is also supportable on the basis of other SORNA authorities of the Attorney General, which were relied on in SORNA guidelines preceding the addition of 34 U.S.C. 20914(a)(7), (c) by International Megan's Law. These authorities include the Attorney General's authority under 34 U.S.C. 20914(a)(8) to expand the range of

required registration information and the Attorney General's authority under 34 U.S.C. 20912(b) to issue rules to interpret and implement SORNA's requirement to keep the registration current.

**Paragraph (g)—Compliance With Jurisdictions' Requirements for Registering and Keeping the Registration Current**

Paragraph (g) of § 72.7 requires sex offenders to register and keep the registration current in conformity with the time and manner requirements of their registration jurisdictions, where they have not done so in the time and manner normally required under SORNA.

SORNA generally requires sex offenders to register initially before release from imprisonment or within three business days of sentencing, but it recognizes that sex offenders may be unable to comply with these requirements in some circumstances. The difficulty can arise in cases in which a jurisdiction has no provision for registering certain sex offenders as required by SORNA at the time of their release—or even no registration program at all at that time—but the jurisdiction can register them later as it progresses in its implementation of SORNA's requirements. The SORNA Guidelines provide guidance to registration jurisdictions about integrating previously excluded sex offenders into their registration programs in such circumstances and ensuring that these sex offenders fully comply with SORNA's requirements. See 73 FR at 38063–64; see also *Smith*, 538 U.S. 84 (application of new sex offender registration requirements to previously convicted sex offenders does not violate the constitutional prohibition on ex post facto laws).

Because the normal timeframe for initial registration under SORNA may be past in these situations, SORNA authorizes the Attorney General to prescribe rules for registration. Specifically, 34 U.S.C. 20913(d) gives the Attorney General the authority to specify the applicability of SORNA's requirements to sex offenders with pre-SORNA or pre-SORNA-implementation convictions, “and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with” SORNA's initial registration requirements. More broadly, as discussed above, the Attorney General's general authority under 34 U.S.C. 20912(b) to interpret and implement SORNA includes the authority to fill gaps in SORNA's time and manner

requirements for registering and keeping the registration current, and 34 U.S.C. 20914(c) expressly requires sex offenders to provide and update registration information required by SORNA in the time and manner prescribed by the Attorney General.

In section 72.7(g) in this rule, the Attorney General exercises his authorities under 34 U.S.C. 20912(b), 20913(d), and 20914(c) to require sex offenders to register and keep their registrations current in the time and manner specified by their registration jurisdictions, where the sex offenders have not registered or kept the registrations up to date in the time and manner normally required by SORNA as articulated in the earlier portions of § 72.7. This requirement complements the directions to registration jurisdictions in the SORNA Guidelines about integrating previously excluded sex offenders and previously omitted SORNA requirements into their registration programs, with suitable timeframes and procedures, as the jurisdictions progress with SORNA implementation. See 73 FR at 38063–64. Of course sex offenders are independently required by the laws of their registration jurisdictions to comply with the jurisdictions' time and manner specifications for registering and updating their registrations. The effect of § 72.7(g) is to adopt the jurisdictions' time and manner specifications as SORNA requirements in the situations it covers.

Section 72.7(g)(1) includes four examples. The first example concerns a situation in which a state does not register sex offenders before release, but a sex offender can register soon after release in conformity with the state's procedures. The second example concerns a situation in which a jurisdiction does not register certain sex offenders at all at the time of their release or entry into the jurisdiction, but a sex offender in the excluded class becomes able to register at a later time and is directed by the jurisdiction to do so after it extends its registration requirements.

As the Supreme Court noted in *Reynolds*, SORNA, in section 20913(b), “says that a sex offender must register before completing his prison term, but the provision says nothing about when a pre-Act offender who completed his prison term pre-Act must register. . . . Pre-Act offenders . . . might, on their own, reach different conclusions about whether, or how, the new registration requirements applied to them. A ruling from the Attorney General [under section 20913(d)], however, could diminish or eliminate those

uncertainties. . . .” 565 U.S. at 441–42. In § 72.7(g), the Attorney General exercises his authorities under sections 20912(b), 20913(d), and 20914(c) to “eliminate those uncertainties” in conformity with Congress's intent concerning the filling of “potential lacunae” in SORNA, 565 U.S. at 441–42. Section 72.7(g) fills the gaps in such cases by adopting the timing rules and procedures of the relevant registration jurisdictions. This applies in relation to sex offenders who do not register initially in conformity with SORNA because they were convicted and released before SORNA's enactment, as described by the Court in *Reynolds*, and in relation to all other sex offenders who do not register in accordance with the normal time and manner requirements under SORNA, e.g., because of shortfalls in a jurisdiction's registration requirements that may later be corrected or that allow registration in some variant way.

The third example in § 72.7(g)(1) concerns a sex offender in a jurisdiction that initially has no procedure for sex offenders to periodically update registrations through verification appearances as required by SORNA, but the jurisdiction later directs the sex offender to do so after it incorporates this aspect of SORNA into its registration program. Since the periodic verification appearances required by 34 U.S.C. 20918 fall under SORNA's requirement to keep the registration current and involve updating the registration information required by SORNA, it is within the Attorney General's authority under 34 U.S.C. 20912(b) and 20914(c) to specify the time and manner for the verifications where SORNA's verification requirement or normal timeframes for verifications have not been followed. Section 72.7(g)(1) directs sex offenders to comply with the jurisdiction's requirements for periodic verification in such situations.

The fourth example in § 72.7(g)(1) concerns a sex offender who does not provide particular information within the time required by SORNA because a jurisdiction's informational requirements fall short of SORNA's requirements but are later brought into line. The example illustrates the point by reference to email addresses. As provided in § 72.6(b), sex offenders must include this information when they register and, as provided in § 72.7(e), they must report any subsequent changes within three business days. Where the normal reporting time is past when a jurisdiction decides to include a type of information in its sex offender registry,

§ 72.7(g)(1) requires sex offenders to comply with the jurisdiction's directions to provide the information at a later time.

Section 72.7(g)(2) provides that, in a prosecution under 18 U.S.C. 2250, § 72.7(g)(1) does not relieve a sex offender of the need to show an inability to comply with SORNA as an affirmative defense to liability. The situations described in § 72.7(g)(1), which may involve noncompliance with SORNA's requirements because of deficits in registration jurisdictions' requirements or procedures, overlap with situations in which a sex offender may have a defense under 18 U.S.C. 2250(c) because he was prevented from complying with SORNA by circumstances beyond his control. However, the purpose and effect of § 72.7(g)(1) are to hold sex offenders to compliance with the registration rules and procedures of registration jurisdictions in the situations it covers. Section 72.7(g) does not, in any case, relieve sex offenders of the obligation to comply fully with SORNA if able to do so or shift the burden of proof to the government to establish that a registration jurisdiction's procedures would have allowed a sex offender to register or keep the registration current in conformity with SORNA. Rather, the defense under 18 U.S.C. 2250(c) is an affirmative defense, as that provision explicitly provides, and as §§ 72.7(g)(2) and 72.8(a)(2) in this rule reiterate.

#### Section 72.8—Liability for Violations

Section 72.8 of the rule explains the liability of sex offenders for SORNA violations and limitations on that potential liability.

##### Paragraph (a)(1)—Offense

SORNA's criminal provision, 18 U.S.C. 2250, provides criminal liability for sex offenders based on SORNA violations.

Section 72.8(a)(1)(i) in the rule refers to potential criminal liability under 18 U.S.C. 2250(a). Section 2250(a) authorizes imprisonment for up to 10 years based on a knowing failure to register or update a registration as required by SORNA. Federal criminal liability may result under this provision when the violation occurs under circumstances supporting Federal jurisdiction as specified in the statute. These jurisdictional circumstances include (i) violation of SORNA by sex offenders convicted of sex offenses under Federal (including military) law, the law of the District of Columbia, Indian tribal law, or the law of a U.S. territory or possession; and (ii) travel in interstate or foreign commerce or

entering, leaving, or residing in Indian country. Section 2250(a) reaches all types of SORNA violations, including failure to register or keep the registration current in each jurisdiction of residence, employment, or school attendance, as required by 34 U.S.C. 20913; failure to provide or update registration information required by 34 U.S.C. 20914; or failure to appear periodically and verify the registration information, as required by 34 U.S.C. 20918.

Section 72.8(a)(1)(ii) in the rule refers to potential criminal liability under 18 U.S.C. 2250(b), which was added by International Megan's Law. *See* Public Law 114–119, sec. 6(b). Section 2250(b) defines an offense that specifically reaches violations of SORNA's international travel reporting requirement. The provision authorizes imprisonment for up to 10 years for a sex offender who (i) knowingly fails to provide information required by SORNA relating to intended travel in foreign commerce and (ii) “engages or attempts to engage in the intended travel in foreign commerce.” The jurisdictional language in section 2250(b) reaches cases in which the contemplated travel is not carried out, in addition to those in which the sex offender does travel abroad. For example, consider a sex offender who (i) purchases a plane ticket to a foreign destination but (ii) fails to report the intended international travel as required by SORNA and (iii) does not actually leave the country because the unreported travel is detected by the authorities who arrest him at the airport. The attempted travel in foreign commerce provides a sufficient jurisdictional basis for Federal prosecution under section 2250(b).

Section 72.8(a)(1)(iii) in the rule explains the condition for liability under 18 U.S.C. 2250(a)–(b) that the defendant “knowingly” fail to comply with a SORNA requirement. The “knowingly” limitation ensures that sex offenders are not held liable under section 2250 for violations of registration requirements they did not know about. However, this does not require knowledge that the requirement is imposed by SORNA. State sex offenders, for example, are likely to be instructed in the registration process regarding many of the registration requirements appearing in SORNA, which are widely paralleled in state registration laws, such as the need to report changes in residence, employment, internet identifiers, and vehicle information; the need to report intended international travel; and the need to appear periodically to update

and verify registration information. The acknowledgment forms obtained from sex offenders in registration often provide a means of establishing their knowledge of the registration requirements in later prosecutions for violations. *See* 76 FR at 1634–35, 1638. But sex offenders may not be informed that the registration requirements they are subject to are imposed by a particular Federal law, SORNA. This does not impugn the fairness or propriety of holding sex offenders liable under 18 U.S.C. 2250 for knowingly violating a registration requirement that is in fact imposed by SORNA, so long as they are aware of an obligation from some source to comply with the requirement. *See, e.g., United States v. Elkins*, 683 F.3d 1039, 1050 (9th Cir. 2012); *United States v. Whaley*, 577 F.3d 254, 261–62 (5th Cir. 2009). Section 72.8(a)(1)(iii) makes these points about 18 U.S.C. 2250's knowledge requirement in the rule.

##### Paragraph (a)(2)—Defense

Subsection (c) of 18 U.S.C. 2250 provides an affirmative defense to liability under certain conditions where uncontrollable circumstances prevented a sex offender from complying with SORNA, so long as the sex offender complied as soon as the preventing circumstances ceased. Section 72.8(a)(2) in the rule reproduces this affirmative defense provision and provides examples of its operation.

Registration is a reciprocal process, involving the provision of registration information by sex offenders, and the registration jurisdiction's acceptance of the information for inclusion in the sex offender registry. The circumstances preventing compliance with SORNA under section 2250(c) accordingly may be a registration jurisdiction's failure or refusal to carry out the reciprocal role needed to effect registration, or the updating of a registration, as required by SORNA.

Example 1 in § 72.8(a)(2) illustrates this type of situation, describing a case in which a sex offender cannot appear and report an inter-jurisdictional change of residence within three business days because the office with which he needs to register will not meet with him for a week. The case implicates both 34 U.S.C. 20913(a)'s requirement that a sex offender register in each jurisdiction in which he resides and 34 U.S.C. 20913(c)'s requirement that sex offenders report changes of residence within three business days. These provisions' net effect is that a sex offender establishing residence in a new jurisdiction must register there but with a three-business-day grace period. In the

case described, 18 U.S.C. 2250(c) would excuse the failure to report within the three-business-day timeframe. However, the inability to meet section 20913(c)'s specific timeframe does not obviate the need to comply with section 20913(a)'s requirement to register in each state of residence. Nothing prevents the sex offender from complying with this registration requirement once the office is willing to meet with him, so he will need to appear and carry out the registration at the appointed time in order to have the benefit of the 18 U.S.C. 2250(c) defense.

Example 2 in § 72.8(a)(2) also illustrates a situation in which the circumstance preventing compliance with SORNA is a failure by the registration jurisdiction to carry out a necessary reciprocal role. The specific situation described in the example is a state's refusal to register sex offenders based on the offense for which the sex offender was convicted. For example, SORNA requires registration based on conviction for child pornography possession offenses, *see* 34 U.S.C. 20911(7)(G), but some states that have not fully implemented SORNA's requirements in their registration programs may be unwilling to register a sex offender on the basis of such an offense. Section 2250(c)'s excuse of the failure to register terminates if the state subsequently becomes willing to register the sex offender, because the circumstance preventing compliance with SORNA no longer exists. However, liability based on a continuing failure by the sex offender to comply with SORNA in such a case—following a change in state policy or practice allowing compliance—depends on the sex offender's becoming aware of the change since, as discussed above, 18 U.S.C. 2250 does not impose liability for violation of unknown registration obligations. *Cf.* 73 FR at 38063–64 (direction to registration jurisdictions to instruct sex offenders about new or additional registration duties in connection with SORNA implementation).

Example 3 in § 72.8(a)(2) describes a situation in which the circumstance preventing compliance with SORNA relates to the situation of the sex offender rather than the registration jurisdiction. The second sentence of § 72.7(f) in the rule requires in part that a sex offender report intended international travel 21 days in advance, which he cannot do if he does not anticipate a trip abroad that far in advance. In such a case, as described in the example, 18 U.S.C. 2250(c) would excuse a sex offender's failure to report the travel 21 days in advance. *Cf.* 76 FR

at 1638 (“[R]equiring 21 days advance notice may occasionally be unnecessary or inappropriate. For example, a sex offender may need to travel abroad unexpectedly because of a family or work emergency.”). However, inability to comply with the 21-day timeframe in a particular case does not prevent a sex offender from otherwise complying with SORNA's requirements to inform the residence jurisdiction about intended international travel, appearing in 34 U.S.C. 20914(a)(7) and in §§ 72.6(d) and 72.7(f) in this rule. Hence, once the intention to travel exists, the sex offender must inform the registration jurisdiction to avoid liability under 18 U.S.C. 2250.

#### Paragraph (b)—Supervision Condition

Section 72.8(b) recounts that, for sex offenders convicted of Federal offenses, compliance with SORNA is a mandatory condition of probation and supervised release. *See* 18 U.S.C. 3563(a)(8), 3583(d) (third sentence). Violation of this condition may result in revocation of release. *See* 18 U.S.C. 3565(a)(2), 3583(e)(3). Section 72.8(b) also notes that compliance with SORNA is a mandatory condition of parole for sex offenders convicted of Federal offenses, *see* 18 U.S.C. 4209(a) (second sentence), a requirement of narrow application given the abolition of parole in Federal cases, except for offenses committed before November 1, 1987.

#### Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities for the purposes of that Act because the regulation only articulates SORNA's registration requirements for sex offenders.

#### Executive Orders 12866 and 13563—Regulatory Planning and Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), Principles of Regulation, and Executive Order 13563, “Improving Regulation and Regulatory Review.” The regulation expands part 72 of title 28 of the Code of Federal Regulations to provide a concise and comprehensive statement of what sex offenders must do to comply with SORNA's requirements, following express requirements appearing in SORNA and previous exercises of authority SORNA grants to the Attorney General to interpret and implement

SORNA. The justification of these requirements as means of furthering SORNA's objectives is explained in the preamble to this regulation and in previous SORNA-related documents, including the rulemaking entitled “Applicability of the Sex Offender Registration and Notification Act,” 75 FR 81849 (final rule), 72 FR 8894 (interim rule); the SORNA Guidelines, 73 FR 38030; and the SORNA Supplemental Guidelines, 76 FR 1630. The Office of Management and Budget has determined that this rule is a “significant regulatory action” under Executive Order 12866, section 3(f), and accordingly this rule has been reviewed by the Office of Management and Budget.

The Department of Justice expects that the rule will not entail new costs and will result in a number of benefits. For registration jurisdictions, there are no new costs because their requirements under SORNA continue to be those articulated in the previously issued SORNA guidelines. Likewise, for sex offenders, the requirements articulated in the rule either appear expressly in SORNA or have previously been articulated by the Attorney General in the SORNA guidelines. The procedures by which sex offenders register will continue to depend on the registration processes of the jurisdictions that register them, which will not be made more time-consuming or expensive or otherwise changed by this rule.

In terms of benefits, the rule will provide in one place a clear, concise, and comprehensive statement of sex offenders' registration requirements under SORNA. This will reduce any expenditure by sex offenders of time or money required for inquiry with state or Federal authorities or others to resolve uncertainties, or required in attempting to comply with perceived registration requirements under SORNA that go beyond the requirements the Attorney General has actually specified. The clarity provided by this rule will make it easier for sex offenders to determine what SORNA requires them to do and thereby facilitate compliance with SORNA.

There are also expected benefits for the government. As the preamble explains, the rule's comprehensive articulation of SORNA's registration requirements in regulations addressed to sex offenders will provide a secure basis for Federal prosecution of knowing violations of any of SORNA's requirements. It will resolve specific problems that have arisen in past litigation or can be expected to arise in future litigation if not clarified and resolved by this rule, thereby avoiding

the expenditure of litigation resources on these matters. As discussed in the preamble, previously or potentially litigated matters this rule elucidates include such issues as the starting point and duration of registration periods under SORNA, the applicability of SORNA's requirements to all sex offenders regardless of when they were convicted, the particular jurisdictions in which sex offenders are required to report changes in registration information, the requirement that relocating sex offenders notify a registration jurisdiction prior to departure, the time frame for reporting intended international travel, the *mens rea* (state of mind) requirement for violation of SORNA's criminal provision (18 U.S.C. 2250), and the contours of the impossibility defense under that provision.

As explained in the existing SORNA guidelines, SORNA aims to prevent the commission of sex offenses, and to bring the perpetrators of such offenses to justice more speedily and reliably, by enabling the authorities to better identify, track, and monitor released sex offenders and by informing the public regarding the presence of released sex offenders in the community. *See* 73 FR at 38044–45. Hence, by facilitating the enforcement of, and compliance with, SORNA's registration requirements, and enhancing the basis for public notification, the rule is expected to further SORNA's public safety objectives and reduce the time and resources required in achieving these objectives.

#### **Executive Order 13132—Federalism**

This regulation will not have substantial direct effects on the states, on the relationship between the national Government and the states, or on the distribution of power and responsibilities among the various levels of government. There has been substantial consultation with state officials regarding the interpretation and implementation of SORNA. The previously issued SORNA Guidelines and SORNA Supplemental Guidelines articulate the requirements for implementation of the SORNA standards by states and other jurisdictions in their sex offender registration and notification programs, requirements that are not changed by this regulation's provision of a separate statement of the registration obligations of sex offenders under SORNA. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

#### **Executive Order 12988—Civil Justice Reform**

This regulation meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988.

#### **Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995. This rule adds provisions to part 72 of title 28 of the Code of Federal Regulations that articulate SORNA's registration requirements for sex offenders, including where, when, and how long sex offenders must register, what information they must provide, and how they must keep their registrations current. The Attorney General has previously addressed these matters and has resolved them in the same way in the SORNA Guidelines, appearing at 73 FR 38030, and in the SORNA Supplemental Guidelines, appearing at 76 FR 1630. Those previously issued sets of guidelines determine what state, local, and tribal jurisdictions must do to achieve substantial implementation of the SORNA standards in their registration programs. Reiteration of some of these requirements in a concise set of directions to sex offenders in this rule will not change what jurisdictions need to do to implement SORNA or affect their costs in doing so.

#### **Congressional Review Act**

This rule is not a "major rule" as defined by the Congressional Review Act, 5 U.S.C. 804(2). The Department of Justice will submit the report required by 5 U.S.C. 801 to each House of Congress and the Comptroller General.

#### **List of Subjects in 28 CFR Part 72**

Crime, Information, Law enforcement, Prisoners, Prisons, Probation and parole, Records.

Accordingly, for the reasons stated in the preamble, amend chapter I of title 28 of the Code of Federal Regulations by revising part 72 to read as follows:

### **PART 72—SEX OFFENDER REGISTRATION AND NOTIFICATION**

Sec.

72.1 Purpose.

72.2 Definitions.

72.3 Applicability of the Sex Offender Registration and Notification Act.

72.4 Where sex offenders must register.

72.5 How long sex offenders must register.

72.6 Information sex offenders must provide.

72.7 How sex offenders must register and keep the registration current.

72.8 Liability for violations.

**Authority:** 34 U.S.C. 20901–45; Pub. L. 109–248, 120 Stat. 587; Pub. L. 114–119, 130 Stat. 15.

#### **§ 72.1 Purpose.**

(a) This part specifies the registration requirements of the Sex Offender Registration and Notification Act (SORNA), 34 U.S.C. 20901 *et seq.*, and the scope of those requirements' application. The Attorney General has the authority to specify the requirements of SORNA and their applicability as provided in this part pursuant to provisions of SORNA, including 34 U.S.C. 20912(b), 20913(d), and 20914(a)(8), (c).

(b) This part does not preempt or limit any obligations of or requirements relating to sex offenders under other Federal laws, rules, or policies, or under the laws, rules, or policies of registration jurisdictions or other entities. States and other governmental entities may prescribe registration requirements and other requirements, with which sex offenders must comply, that are more extensive or stringent than those prescribed by SORNA.

#### **§ 72.2 Definitions.**

All terms used in this part have the same meaning as in SORNA.

#### **§ 72.3 Applicability of the Sex Offender Registration and Notification Act.**

The requirements of SORNA apply to all sex offenders. All sex offenders must comply with all requirements of that Act, regardless of when the conviction of the offense for which registration is required occurred (including if the conviction occurred before the enactment of that Act), regardless of whether a jurisdiction in which registration is required has substantially implemented that Act's requirements or has implemented any particular requirement of that Act, and regardless of whether any particular requirement or class of sex offenders is mentioned in examples in this regulation or in other regulations or guidelines issued by the Attorney General.

*Example 1 to § 72.3.* A sex offender is federally convicted of aggravated sexual abuse under 18 U.S.C. 2241 in 1990 and is released following imprisonment in 2009. The sex offender is subject to the requirements of SORNA and could be held criminally liable under 18 U.S.C. 2250 for failing to register or keep the registration current in any jurisdiction

in which the sex offender resides, is an employee, or is a student.

*Example 2 to § 72.3.* A sex offender is convicted by a state jurisdiction in 1997 for molesting a child and is released following imprisonment in 2000. The sex offender initially registers as required but relocates to another state in 2009 and fails to register in the new state of residence. The sex offender has violated the requirement under SORNA to register in any jurisdiction in which he resides, and could be held criminally liable under 18 U.S.C. 2250 for the violation because he traveled in interstate commerce.

#### § 72.4 Where sex offenders must register.

A sex offender must register, and keep the registration current, in each jurisdiction in which the offender resides, is an employee, or is a student. For initial registration purposes only, a sex offender must also register in the jurisdiction in which convicted if that jurisdiction is different from the jurisdiction of residence.

#### § 72.5 How long sex offenders must register.

(a) *Duration.* A sex offender has a continuing obligation to register and keep the registration current (except when the sex offender is in custody or civilly committed) for the following periods of time:

(1) 15 years, if the offender is a tier I sex offender;

(2) 25 years, if the offender is a tier II sex offender; and

(3) The life of the offender, if the offender is a tier III sex offender.

(b) *Commencement.* The registration period begins to run:

(1) When a sex offender is released from imprisonment following conviction for the offense giving rise to the registration requirement, including in cases in which the term of imprisonment is based wholly or in part on the sex offender's conviction for another offense; or

(2) If the sex offender is not sentenced to imprisonment, when the sex offender is sentenced for the offense giving rise to the registration requirement.

(c) *Reduction.* If a tier I sex offender has maintained for 10 years a clean record, as described in 34 U.S.C. 20915(b)(1), the period for which the sex offender must register and keep the registration current under paragraph (a) of this section is reduced by 5 years. If a tier III sex offender required to register on the basis of a juvenile delinquency adjudication has maintained a clean record, as described in 34 U.S.C. 20915(b)(1), for 25 years, the period for which the sex offender must register

and keep the registration current under paragraph (a) of this section is reduced to the period for which the clean record has been maintained.

#### § 72.6 Information sex offenders must provide.

Sex offenders must provide the following information for inclusion in the sex offender registries of the jurisdictions in which they are required to register:

(a) *Name, date of birth, and Social Security number.* (1) The name of the sex offender, including any alias used by the sex offender.

(2) The sex offender's date of birth and any date that the sex offender uses as his purported date of birth.

(3) The Social Security number of the sex offender and any number that the sex offender uses as his purported Social Security number.

(b) *Remote communication identifiers.* All designations the sex offender uses for purposes of routing or self-identification in internet or telephonic communications or postings, including email addresses and telephone numbers.

(c) *Residence, temporary lodging, employment, and school attendance.* (1) The address of each residence at which the sex offender resides or will reside or, if the sex offender has no present or expected residence address, other information describing where the sex offender resides or will reside with whatever definiteness is possible under the circumstances.

(2) Information about any place in which the sex offender is staying when away from his residence for seven or more days, including the identity of the place and the period of time the sex offender is staying there.

(3) The name and address of any place where the sex offender is or will be an employee or, if the sex offender is or will be employed but with no fixed place of employment, other information describing where the sex offender works or will work with whatever definiteness is possible under the circumstances.

(4) The name and address of any place where the sex offender is a student or will be a student.

(d) *International travel.* Information relating to intended travel outside the United States, including any anticipated itinerary, dates and places of departure from, arrival in, or return to the United States and each country visited, carrier and flight numbers for air travel, destination country or countries and address or other contact information therein, and means and purpose of travel.

(e) *Passports and immigration documents.* Information about each

passport the sex offender has and, if the sex offender is an alien, information about any document or documents establishing the sex offender's immigration status, including passport or immigration document type and number.

(f) *Vehicle information.* The license plate number and a description of any vehicle owned or operated by the sex offender, including watercraft and aircraft in addition to land vehicles. If a vehicle has no license plate but has some other type of registration number or identifier, then the registration number or identifier must be provided. Information must also be provided as to where any vehicle owned or operated by the sex offender is habitually parked, docked, or otherwise kept.

(g) *Professional licenses.* Information concerning all licensing of the sex offender that authorizes the sex offender to engage in an occupation or carry out a trade or business.

#### § 72.7 How sex offenders must register and keep the registration current.

(a) *Initial registration—(1) In general.* Except as provided in paragraph (a)(2) of this section, a sex offender must register before release from imprisonment following conviction for the offense giving rise to the registration requirement, or, if the sex offender is not sentenced to imprisonment, within three business days after being sentenced for that offense.

(2) *Special rules for certain cases.* The following special requirements apply:

(i) *Federal and military offenders.* A sex offender who is released from Federal or military custody, or who is convicted for a Federal or military sex offense but not sentenced to imprisonment, must register within three business days of entering or remaining in a jurisdiction to reside following the release or sentencing.

(ii) *Foreign convictions.* A sex offender required to register on the basis of a conviction in a foreign country must register within three business days of entering any jurisdiction in the United States to reside, work, or attend school.

(b) *Periodic in-person verification.* A sex offender must appear in person, allow the jurisdiction to take a current photograph, and verify the information in each registry in which the offender is required to register. In carrying out the required verification of information in each registry, the sex offender must correct any information that has changed or is otherwise inaccurate and must report any new registration information. A sex offender must appear

in person for these purposes not less frequently than—

(1) Each year, if the offender is a tier I sex offender;

(2) Every six months, if the offender is a tier II sex offender; and

(3) Every three months, if the offender is a tier III sex offender.

(c) *Reporting of initiation and changes concerning name, residence, employment, and school attendance.* A sex offender who enters a jurisdiction to reside, or who resides in a jurisdiction and changes his name or his place of residence in the jurisdiction, must appear in person in that jurisdiction and register or update the registration within three business days. A sex offender who commences employment or school attendance in a jurisdiction, or who changes employer, school attended, or place of employment or school attendance in a jurisdiction, must appear in person in that jurisdiction and register or update the registration within three business days.

(d) *Reporting of departure and termination concerning residence, employment, and school attendance.* (1) A sex offender residing in a jurisdiction must inform that jurisdiction (by whatever means the jurisdiction allows) if the sex offender will be commencing residence, employment, or school attendance in another jurisdiction or outside of the United States. The sex offender must so inform the jurisdiction in which he is residing prior to any termination of residence in that jurisdiction and prior to commencing residence, employment, or school attendance in the other jurisdiction or outside of the United States.

(2) A sex offender who will be terminating residence, employment, or school attendance in a jurisdiction must so inform that jurisdiction (by whatever means the jurisdiction allows) prior to the termination of residence, employment, or school attendance in the jurisdiction.

(e) *Reporting of changes in information relating to remote communication identifiers, temporary lodging, and vehicles.* A sex offender must report within three business days to his residence jurisdiction (by whatever means the jurisdiction allows) any change in remote communication identifier information, as described in § 72.6(b), temporary lodging information, as described in § 72.6(c)(2), and any change in vehicle information, as described in § 72.6(f).

(f) *Reporting of international travel.* A sex offender must report intended travel outside the United States, including the information described in § 72.6(d), to his residence jurisdiction (by whatever

means the jurisdiction allows). The sex offender must report the travel information to the jurisdiction at least 21 days in advance of the intended travel and, if the sex offender is terminating his residence in the jurisdiction, prior to his termination of residence in the jurisdiction.

(g) *Compliance with jurisdictions' requirements for registering and keeping the registration current.* (1) A sex offender who does not comply with a requirement of SORNA in conformity with the time and manner specifications of paragraphs (a) through (f) of this section must comply with the requirement in conformity with any applicable time and manner specifications of a jurisdiction in which the offender is required to register.

*Example 1 to paragraph (g)(1).* A sex offender convicted in a state does not initially register before release from imprisonment, as required by 34 U.S.C. 20913(b)(1) and paragraph (a)(1) of this section, because the state has no procedure for pre-release registration of sex offenders. Instead, the state informs sex offenders that they must go to a local police station within seven days of release to register. The sex offender must comply with the state's requirements for initial registration, *i.e.*, the offender must report to the police station to register within seven days of release.

*Example 2 to paragraph (g)(1).* A sex offender does not register when he is released from custody, or does not register upon entering a jurisdiction to reside as required by 34 U.S.C. 20913(c) and paragraph (c) of this section, because the jurisdiction, at the time, does not register sex offenders based on the offense for which he was convicted. The jurisdiction later sends the sex offender a notice advising that it has extended its registration requirements to include sex offenders like him and directing him to report to a specified agency within 90 days to register. The sex offender must report to the agency to register within the specified timeframe.

*Example 3 to paragraph (g)(1).* A sex offender registers as required when released from imprisonment or upon entering a jurisdiction to reside, but the jurisdiction has no procedure for sex offenders to appear periodically in person to update and verify the registration information as required by 34 U.S.C. 20918 and paragraph (b) of this section. The jurisdiction later sends the sex offender a notice advising that it has adopted a periodic verification requirement and directing the sex offender to appear at a designated time and place for an initial update meeting.

The sex offender must appear and update the registration as directed.

*Example 4 to paragraph (g)(1).* A sex offender does not report his email address to the jurisdiction in which he resides when he initially registers, or within three business days of a change as required by paragraph (e) of this section, because email addresses are not among the information the jurisdiction accepts for inclusion in its registry. The jurisdiction later notifies the sex offender that it has extended the registration information it collects to include email addresses and directs him to send a reply within a specified time that provides his current email address. The sex offender must comply with this direction.

(2) In a prosecution under 18 U.S.C. 2250, paragraph (g)(1) of this section does not in any case relieve a sex offender of the need to establish as an affirmative defense an inability to comply with SORNA because of circumstances beyond his control as provided in 18 U.S.C. 2250(c) and § 72.8(a)(2).

#### § 72.8 Liability for violations.

(a) *Criminal liability*—(1) *Offense.* (i) A sex offender may be liable to criminal penalties under 18 U.S.C. 2250(a) if the sex offender—

(A) Is required to register under SORNA;

(B)(1) Is a sex offender as defined for the purposes of SORNA by reason of a conviction under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States; or

(2) Travels in interstate or foreign commerce, or enters or leaves, or resides in, Indian country; and

(C) Knowingly fails to register or update a registration as required by SORNA.

(ii) A sex offender may be liable to criminal penalties under 18 U.S.C. 2250(b) if the sex offender—

(A) Is required to register under SORNA;

(B) Knowingly fails to provide information required by SORNA relating to intended travel in foreign commerce; and

(C) Engages or attempts to engage in the intended travel in foreign commerce.

(iii) As a condition of liability under 18 U.S.C. 2250(a)–(b) for failing to comply with a requirement of SORNA, a sex offender must have been aware of the requirement he is charged with violating, but need not have been aware

that the requirement is imposed by SORNA.

(2) *Defense.* A sex offender may have an affirmative defense to liability, as provided in 18 U.S.C. 2250(c), if uncontrollable circumstances prevented the sex offender from complying with SORNA, where the sex offender did not contribute to the creation of those circumstances in reckless disregard of the requirement to comply and complied as soon as the circumstances preventing compliance ceased to exist.

*Example 1 to paragraph (a)(2).* A sex offender changes residence from one jurisdiction to another, bringing into play SORNA's requirement to register in each jurisdiction where the sex offender resides and SORNA's requirement to appear in person and report changes of residence within three business days. See 34 U.S.C. 20913(a), (c). The sex offender attempts to comply with these requirements by contacting the local sheriff's office, which is responsible for sex offender registration in the destination jurisdiction. The sheriff's office advises that it cannot schedule an appointment for him to register within three business days but that he should come by in a week. The sex offender would have a defense to liability if he

appeared at the sheriff's office at the appointed time and registered as required. The sex offender's temporary inability to register and inability to report the change of residence within three business days in the new residence jurisdiction was due to a circumstance beyond his control—the sheriff office's refusal to meet with him until a week had passed—and he complied with the requirement to register as soon as the circumstance preventing compliance ceased to exist.

*Example 2 to paragraph (a)(2).* A sex offender cannot register in a state in which he resides because its registration authorities will not register offenders on the basis of the offense for which the sex offender was convicted. The sex offender would have a defense to liability because the state's unwillingness to register sex offenders like him is a circumstance beyond his control. However, if the sex offender failed to register after becoming aware of a change in state policy or practice allowing his registration, the 18 U.S.C. 2250(c) defense would no longer apply, because in such a case the circumstance preventing compliance with the registration requirement would no longer exist.

*Example 3 to paragraph (a)(2).* A sex offender needs to travel to a foreign country on short notice—less than 21 days—because of an unforeseeable family or work emergency. The sex offender would have a defense to liability for failing to report the intended travel 21 days in advance, as required by § 72.7(f), because it is impossible to report an intention to travel outside the United States before the intention exists. However, if the sex offender failed to inform the registration jurisdiction (albeit on short notice) once he intended to travel, 18 U.S.C. 2250(c) would not excuse that failure, because the preventing circumstance—absence of an intent to travel abroad—would no longer exist.

(b) *Supervision condition.* For a sex offender convicted of a Federal offense, compliance with SORNA is a mandatory condition of probation, supervised release, and parole. The release of such an offender who does not comply with SORNA may be revoked.

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**Merrick B. Garland,**  
*Attorney General.*

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