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DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 72

[Docket No. OAG 157; AG Order No. 4759-2020]

RIN 1105-AB52

Registration Requirements Under the Sex Offender Registration and Notification Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice is proposing 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: Written and electronic comments must be sent or submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Comments received by mail will be considered timely if they are postmarked on or before the last day of the comment period. The electronic Federal Docket Management System will accept electronic comments until midnight Eastern Time at the end of that day.

ADDRESSES: Comments may be mailed to Regulations Docket Clerk, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Room 4234, Washington, DC 20530. To ensure proper handling, please reference Docket No. OAG 157 on your correspondence. You may submit comments electronically or view an electronic version of this proposed rule at <http://www.regulations.gov>.

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: Posting of Public Comments. Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this rule. Nevertheless, if you still want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the

comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on

<http://www.regulations.gov>.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

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 proposed 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 proposed 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 proposed 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 non-compliant 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. DeJarnette*, 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/editorialreclassification/t34/index.html>. United States Code citations of SORNA provisions in this proposed rule accordingly differ from the corresponding citations in earlier sources and documents.

Rulemaking History

This proposed rule is the ninth 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).

Section-by-Section Analysis

The present proposed 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 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). 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 v. United States*, 139 S. Ct. 2116, 2123–30 (2019) (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 proposed 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 proposed 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 non-compliance 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 proposed § 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 proposed 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 proposes to change 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 e-mail 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.

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 e-mail 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); Pub. L. 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 *Information Required for Notice of International Travel*, http://ojp.gov/smart/international_travel.htm (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.” Pub. L. 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); Pub. L. 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 e-mail 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 for 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); Pub. L. 105–119, sec. 115(a)(8)(C), as amended by Pub. L. 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 non-compliant 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); Pub. L. 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 proposes to exercise 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 proposal 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 does not provide for sex offenders’ periodically updating 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 e-mail 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; or (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* Pub. L. 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-days 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 Department of Justice 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 proposed 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 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.

While the proposed rule is expected to result in cost reductions, as discussed above, additional information would be helpful in determining the extent of these savings. We accordingly seek comment on the extent to which this rule will result in reductions in time, expense, or other costs.

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.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a “major rule” as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.

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, chapter I of title 28 of the Code of Federal Regulations is proposed to be amended 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. 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. 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 e-mail 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. 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. 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. 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. A sex offender does not report his e-mail 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 e-mail 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 e-mail addresses and directs him to send a reply within a specified time that provides his current e-mail 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 who knowingly fails to register or update a registration as required by SORNA may be liable to criminal penalties under 18 U.S.C. 2250(a).

(ii) A sex offender who knowingly fails to provide information required by SORNA relating to intended travel outside the United States may be liable to criminal penalties under 18 U.S.C. 2250(b).

(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. 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. 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. 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.

Dated: July 15, 2020

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