DEPARTMENT OF JUSTICE

Office of Redress Administration, Civil Rights Division; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Redress Payments for Japanese Americans: Guidelines for Individuals Who Involuntarily Relocated to Japan During the War, and Guidelines under *Ishida* v. *United States.*

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the Federal Register.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact the Office of Redress Administration Clearance Officer, 202–219–6900, or Telephone Device for the Deaf (TDD) 202–219–4710, Civil Rights Division, U.S. Department of Justice, Room N1519, 200 Constitution Avenue, NW, Washington, DC 20001 or P.O. Box 66260, Washington, DC 20035–6260. Additionally, comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Comments may be submitted to DOJ via facsimile to 202–514–1534.

Request for Emergency Approval

Overview of This Information Collection

(1) Type of information collection. Existing Collection in Use without an OMB Number.

(2) The title of the form/collection. Redress Payments for Japanese Americans: Guidelines for Individuals Who Involuntarily Relocated to Japan During the War and Guidelines under *Ishida* v. *United States.*

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: None. Two forms are used to collect the information. Office of Redress Administration, Civil Rights Division, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: Individuals or households. Other: None. This collection contains the forms which persons of Japanese ancestry will use to apply for redress compensation under the Civil Liberties Act of 1988.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond. 140 respondents: Declaration at 10 minutes per response; 2,000 respondents: Declaration at 10 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection. 356 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: March 28, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–8345 Filed 4–3–96; 8:45 am]

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Office of the Attorney General

[AG Order No. 2014–96]

RIN 1105–AA36

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

AGENCY: Department of Justice.

ACTION: Final guidelines.

SUMMARY: The United States Department of Justice (DOJ) is publishing Final Guidelines to implement the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.

EFFECTIVE DATE: April 4, 1996.

FOR FURTHER INFORMATION CONTACT: Bonnie J. Campbell, Director, Violence Against Women Office, U.S. Department of Justice, Tenth and Pennsylvania Avenue, NW, Washington, DC 20530, 202–616–8894.

SUPPLEMENTARY INFORMATION: Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, 108 Stat. 1796, 2038 (codified at 42 U.S.C. 14071), contains the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (hereafter referred to as the ''Jacob Wetterling Act'' or ''the Act''). The Act provides a financial incentive for states to establish 10-year registration requirements for persons convicted of certain crimes against minors and sexually violent offenses, and to establish a more stringent set of registration requirements for a sub-class of highly dangerous sex offenders, characterized as ''sexually violent predators.'' States that fail to establish such systems within three years (subject to a possible two year extension) face a 10% reduction in their Byrne Formula Grant funding (under 42 U.S.C. 3756), and resulting surplus funds will be reallocated to states that are in compliance with the Act.

Summary of Comments on the Proposed Guidelines

On April 12, 1995, the U.S. Department of Justice published Proposed Guidelines in the Federal Register (60 FR 18613) to implement the Jacob Wetterling Act. The original 90 day comment period expired on July 11, 1995. To ensure the public ample opportunity to review and comment on the Proposed Guidelines, on September 14, 1995, the Department published a notice in the Federal Register to reopen the comment period for an additional 45 days (60 FR 47760). In addition, the Department mailed copies of the Proposed Guidelines to state registration authorities and requested their comments. The extended comment period closed on October 30, 1995.

Following the publication of the Proposed Guidelines, the Department of Justice received 19 letters, mostly from state officials. These letters contained numerous comments, questions, and recommendations, all of which were carefully considered in developing the Final Guidelines. A summary of the comments and responses to them are provided in the following paragraphs.

A. Coverage of the Jacob Wetterling Act

One respondent expressed concern that the Act does not provide for sex offender registration and notification in relation to military offenders who are convicted in court martial proceedings, in prosecutions under the federal criminal code, or in prosecutions by foreign host nations. In order to extend registration as far as possible to categories of convicted sex offenders who may not be within the scope of the statute as presently formulated, the Guidelines have been revised to encourage states to consider including federal and military sex offenders within their registration programs.

B. ''Sexually Violent Predator'' Determinations

1. Necessity for Determination

A number of respondents questioned the need for a two-tier registration system under which states must adopt means for determining whether an offender is a ''sexually violent predator'' and follow more stringent registration procedures for offenders so classified. The Department recognizes that this scheme may require states to make changes in their existing registration systems. The two-tier scheme was established by the Act, however, and cannot be modified by the Guidelines, absent legislative changes. As explained in the Final Guidelines, a two-tier approach can be dispensed with only if a state is willing to subject all persons convicted of a ''sexually violent offense'' to the more stringent registration requirements and standards provided by the Act for ''sexually violent predators.''

2. State Board of Experts

A number of commenters posed questions about the composition and activities of the state boards of experts that will assist sentencing courts in determining whether an offender is a ''sexually violent predator''. In particular, respondents questioned the necessity for using such boards, inquired as to what qualification experts must possess to serve on the boards, and raised concerns about the timing of the ''sexually violent predator'' determination. One commenter also expressed concerns about the ability of small states to assemble panels of experts.

States wishing to comply with the Act must utilize boards of experts to assist sentencing courts in making ''sexually violent predator'' determinations because the statue expressly requires this procedure. The Guidelines have been clarified to address commenters' other concerns, however. In particular, the Guidelines make clear that states are free to (1) determine who qualifies as an expert for purposes of board participation, (2) utilize out-of-state experts, and (3) decide at what point the ''sexually violent predator'' determination will be made.

3. Definition of ''Sexually Violent Predator''

A number of commenters expressed concerns about the definition of ''sexually violent predator'' and sought various clarifications in the definition. The Guidelines have not been changed to reflect these concerns. The Act itself contains definitions of ''sexually violent predator'' and the component term ''mental abnormality.'' The Guidelines cannot alter definitions appearing in the statute. Since the Act does not define the component term ''personality disorder,'' the Guidelines already provide that the definition of this term is a matter of state discretion.

4. Required Documentation

One respondent expressed concern about the extent of documentation required by the Act concerning treatment received by a ''sexually violent predator'' for a mental abnormality or personality disorder. The Guidelines have been modified to reflect this concern. Under the Final Guidelines, states may comply with the requirement to document an offender's treatment history simply by noting that the offender received treatment.

The respondent also proposed that the Guidelines clarify that documentation of treatment history is a one-time event. However, this change is unnecessary because nothing in the Act or Guidelines states or suggests that the treatment history of a ''sexually violent predator'' must be updated following the initial submission of information.

5. Interaction with Insanity Defense

One respondent raised questions about the possible interaction between a determination that an offender is a ''sexually violent predator'' and the insanity defense. The commenter questioned whether a state may classify an offender as a ''sexually violent predator'' only when the offender successfully raised an insanity defense, and also questioned whether a determination that an offender is a ''sexually violent predator'' could bolster the offender's insanity claim.

The Guidelines have not been revised to reflect these concerns because there is no relationship between the two legal categories. Of course, if an offender had successfully raised an insanity defense, he could not be convicted for the offense charged, and no registration requirement based on that offense would arise under the Jacob Wetterling Act. Further, because the elements in the statutory definition of ''sexually violent predator'' do not establish the necessary elements of an insanity defense under state laws, a state could conclude that an offender is a ''sexually violent predator,'' though the offender could not successfully raise an insanity defense. Finally, with regard to an offender who was classified as a ''sexually violent predator'' in connection with a previous prosecution and conviction, the Act does not contemplate any impact from that determination on the offender's ability to raise an insanity defense in a later prosecution.

C. State Law Enforcement Agency

1. Designation of Agency

One commenter posed questions concerning how, when, and by whom the state law enforcement agency responsible for registration matters is to be designated, and another expressed concerns about the types of entities that may be selected. The Guidelines have been revised to clarify that states have discretion with regard to the means by which an agency is designated as the state law enforcement agency, the timing of such a designation, and the agencies that may be designated.

2. Necessity for using a State Agency

A number of respondents questioned the necessity for using a state agency to receive registration information and conduct address verification. These commenters noted that in several states, registration and verification is conducted at the county or local level, rather than at the state level.

The Guidelines have not been revised to reflect these concerns. Although the Act provides that registration information is to be shared with local law enforcement agencies, it requires that this information be submitted to a *state* law enforcement agency and that the state agency also conduct address verification. These procedures, which are set forth clearly in the Act, cannot be modified by the Guidelines, absent statutory changes.

D. Public Access to Registration Information

One commenter expressed concern about the effect of the Act on a state's ability to disseminate registration information to the public. The Guidelines have not been modified to reflect this concern because they already

afford states the maximum discretion in this area that is consistent with the terms of the Act. The Guidelines make it clear that any restrictions placed by the Act on the disclosure of information do not constrain the release of information that a state would have independently of the operation of the registration system. Further, the Guidelines note and elaborate on the Act's provisions that registration information may be disclosed for certain law enforcement and background check purposes, and as necessary for public safety. The Guidelines also provide that states have discretion concerning the nature and extent of disclosure (including community notification and access to information on request by members of the public) that is necessary for public safety.

E. Compliance Review

One commenter suggested that the Department provide states with written feedback concerning their compliance with the Act no later than the date on which a state receives its Byrne Formula Grant Funding. This recommendation has not been adopted in the Guidelines because the Department is still in the process of developing compliance review procedures. States will be notified about these procedures as they are developed.

Final Guidelines

These guidelines carry out a statutory directive to the Attorney General, in section 170101)a)(1), to establish guidelines for registration systems under the Act. Before turning to the specific provisions of the Act, four general points should be noted concerning its interpretation and application.

First, states that wish to achieve compliance with the Jacob Wetterling Act should understand that its requirements constitute a floor for state registration systems, not a ceiling, and that they do not risk the loss of part of their Byrne Formula Grant funding by going beyond its standards. For example, a state may have a registration system that covers a broader class of sex offenders than those identified in the Jacob Wetterling Act, or requires address verification for such offenders at more frequent intervals than the Act prescribes, or requires offenders to register for a longer period of time than the period specified in the Act.

Exercising these options creates no problem of compliance, since the provisions in the Jacob Wetterling Act concerning duration of registration, covered offenders, and other matters, do not preclude states from imposing additional or more stringent requirements than encompass the Act's baseline requirements. The general objective of the Act is to protect people from child molesters and violent sex offenders through registration requirements. It is not intended, and does not have the effect, of making states *less* free than they were under prior law to impose registration requirements for this purpose.

Second, states that wish to achieve compliance with the Jacob Wetterling Act also should understand that they may, within certain constraints, use their own criminal law definitions in defining registration requirements, and will not necessarily have to revise their registration systems to use technical definitions of covered sex offenses based on federal law. This point will be explained more fully below.

Third, the Jacob Wetterling Act contemplates the establishment of programs that will impose registration requirements on offenders who are subsequently convicted of offenses in the pertinent categories. The Act does not require states to attempt to identify and impose registration requirements on offenders who were convicted of offenses in these categories prior to the establishment of a conforming registration system. Nevertheless, the Act does not preclude states from imposing any new registration requirements on offenders convicted prior to the establishment of the registration system.

Fourth, the Act gives states wide latitude in designing registration programs that best meet their public safety needs. For instance, the Act allows states to release relevant information necessary to protect the public, including information released through community notification programs. Some state registration and notification systems have been challenged on constitutional grounds. A few courts have struck down registration requirements in certain cases. *See Rowe* v. *Burton,* 884 F. Supp. 1372 (D. Alaska 1994) (on motion for preliminary relief); *State* v. *Babin,* 637 So.2d 814 (La. App. 1994), *writ denied,* 644 So.2d 649 (La. 1994); *State* v. *Payne,* 633 So.2d 701 (La. App. 1993), *writ denied,* 637 So.2d 497 (La. 1994); *In re Reed,* 663 P.2d 216 (Cal. 1983) (en banc). However, a majority of courts that have dealt with the issue have held that registration systems like those contemplated by the Jacob Wetterling Act do not violate released offenders' constitutional rights.

Some recent decisions have held that aspects of New Jersey's community notification program violate due process guarantees, or violate ex post facto guarantees as applied to persons who committed the covered offense prior to enactment of the notification statute. *See Artway* v. *Attorney General of New Jersey,* 876 F. Supp. 666 (D.N.J. 1995) (appeal pending); *W.P.* v. *Poritz,* No. 96–97 (JWB) (D.N.J. Mar. 15, 1996); *Diaz* v. *Whitman,* No. 94–6376 (JWB) (D.N.J. Jan. 6, 1995). However, the Department of Justice believes that the New Jersey community notification statute at issue in those cases does not violate the Ex Post Facto Clause and that the Fourteenth Amendment's Due Process Clause of its own force does not require recognition of such a liberty interest on the part of offenders affected by that statute, and has filed ''friend of the court'' briefs in cases challenging the New Jersey law. Moreover, the New Jersey Supreme Court, in *John Doe* v. *Deborah Poritz,* 662 A.2d 367 (N.J. 1995), upheld the New Jersey statute, although it imposed certain procedural protections under federal and state law.

There has been ongoing litigation over the validity of notification systems in other states as well. *see, e.g., Doe* v. Pataki, No. 96 Civ. 1657 (DC) (S.D.N.Y.); *Nitz* v. *Otte,* No. A95–486CI (JWS) (D. Alaska Jan. 25, 1996) (appeal pending).

The remainder of these guidelines address the provisions of the Jacob Wetterling Act in the order in which they appear in Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994.

General Provisions—Subsection (a)(1)–(2)

Paragraph (1) of subsection (a) of § 170101 directs the Attorney General to establish guidelines for state programs that require:

(A) Current address registration for persons convicted of ''a criminal offense against a victim who is a minor'' or ''a sexually violent offense,'' and

(B) Current address registration under a different set of requirements for persons who are determined to be ''sexually violent predators.''

For purposes of the Act, ''state'' should be understood to encompass the political units identified in the provision defining ''state'' for purposes of eligibility for Byrne Formula Grant funding (42 U.S.C. 3791(a)(2)) in light of the tie-in between compliance with the Act and the allocation of Byrne Formula Grant funding. Hence, the ''states'' that must comply with the Act to maintain full eligibility for such funding are the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

Paragraph (2) of subsection (a) states that the determination whether a person is a ''sexually violent predator'' (which brings the more stringent registration standards into play), and the determination that a person is no longer a ''sexually violent predator'' (which terminates the registration requirement under those standards), shall be made by the sentencing court after receiving a report by a state board composed of experts in the field of the behavior and treatment of sexual offenders.

''State board'' in paragraph (2) should be understood to mean a body or group containing two or more experts that is authorized by state law or designated under the authority of state law. Beyond the requirement that a board must be composed of experts in the field of the behavior and treatment of sexual offenders, the Act affords states discretion concerning the selection and composition of such boards. For example, a state could establish a single permanent board for this purpose, could establish a system of state-designated boards, or could authorize the designation of different boards for different courts, time periods, geographic areas or cases. In addition, the Act permits states to set their own standards concerning who qualifies as an expert in the field of the behavior and treatment of sexual offenders for purposes of board participation, and to utilize qualifying experts from outside the state to serve on the boards.

As noted above, subsection (a)(1) requires states to register persons convicted of certain crimes against minors and sexually violent offenses, but states are free to go beyond the Act's minimum standards and include other classes of offenders within their sex offender registration programs. For example, states are encouraged to require sex offenders convicted in federal or military courts who reside in their jurisdictions to register. Although the Act does not require states to register such offenders, the presence of any convicted sex offender in the state—whether the offender was prosecuted in a state, federal, or military court—raises similar public safety concerns. Some states, including Washington and California, already require sex offenders convicted in federal or military courts to register.

Definition of ''Criminal Offense Against a Victim Who is a Minor''—Subsection (a)(3)(A)

The Act prescribes a 10-year registration requirement for persons convicted of a ''criminal offense against a victim who is a minor.'' Subparagraph (A) of paragraph (3) of subsection (a) defines the term ''criminal offense against a victim who is a minor.'' ''Minor'' should be understood to mean a person below the age of 18, consistent with the normal understanding.

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

(1) Clauses (i) and (ii) cover kidnapping of a minor (except by a parent) and false imprisonment of a minor (except by a parent). All states have statutes that define offenses—going by such names as ''kidnapping,'' ''criminal restraint,'' or ''false imprisonment''—whose gravamen is abduction or unlawful restraint of a person. States can comply with these clauses by requiring registration for persons convicted of these statutory offenses whose victims were below the age of 18. The Act does not require inclusion of these offenses in the registration requirement when the offender is a parent, but states may choose to require registration for parents who commit these offenses.

(2) Clause (iii) covers offenses consisting of ''criminal sexual conduct toward a minor.'' Such offenses include convictions under general provisions defining sexually assaultive crimes—such as provisions defining crimes of ''rape,'' ''sexual assault,'' or ''sexual abuse''—in cases where the victim is in fact a minor. Coverage is not limited to cases where the victim's age is an element of the offense (such as prosecutions for specially defined child molestation offenses).

States can comply with clause (iii) by requiring registration for persons convicted of all statutory sex offenses under state law whose elements involve physical contact with a victim, where the victim was below the age of 18 at the time of the offense. Offenses that do not involve physical contact, such as exhibitionism, are not subject to the Act's mandatory registration requirements pursuant to clause (iii), but states are free to require registration for persons convicted of such offenses as well if they so choose.

(3) Clause (iv) covers offenses consisting of solicitation of a minor to engage in sexual conduct. This covers any conviction for an offense involving the solicitation of conduct that would be covered by clause (iii) if carried out.

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

(5) Clause (vi) covers offenses consisting of solicitation of a minor to practice prostitution.

(6) Clause (vii) covers offenses consisting of any conduct that by its nature is a sexual offense against a minor. This clause is intended to insure uniform coverage of convictions under statutes defining sex offenses in which the status of the victim as a minor is an element of an offense, such as specially defined child molestation offenses, and other offenses prohibiting sexual activity with underage persons. States can comply with this clause by including convictions under these statutes uniformly in the registration requirement.

(7) Considered in isolation, clause (viii) gives states discretion whether to require registration for attempts to commit offenses described in clauses (i) through (vii). However, any verbal command or attempted persuasion of the victim to engage in sexual conduct would bring the offense within the scope of the solicitation clause (clause (iv)), and make it subject to the Act's mandatory registration requirements. Moreover, this provision must be considered in conjunction with the Act's requirement of registration for persons convicted of a ''sexually violent offense,'' which does not allow the exclusion of attempts if they are otherwise encompassed within the definition of a ''sexually violent offense.''

Hence, state discretion to exclude attempted sexual offenses against minors from registration requirements pursuant to clause (viii) is limited by other provisions of the Act. The simplest approach for states would be to include attempted sexual assaults on minors (as well as completed offenses) uniformly as predicates for the registration requirement.

At the conclusion of the definition of ''criminal offense against a victim who is a minor,'' the Act states that (for purposes of the definition) conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger. For example, suppose that state law prohibits sexual relations with a person below the age of 16, where the defendant is more than 4 years older than the victim. Suppose further that an 18-year-old is convicted of violating this prohibition by engaging in consensual sexual relations with a 13-year-old, where the conduct would not violate state law but for the victim's age. Under the provision, if a state did not require such an offender to register, the state would still be in compliance with the Act. However, here again, states are free to go beyond the Act's baseline requirements. The exemption of certain offenders based on age from

the Act's mandatory registration requirements does not bar states from including such offenders in their registration systems if they wish. Moreover, the scope of subsection (a)(3)(A)'s exemption is also limited by other provisions of the Act that require registration of persons convicted of ''sexually violent offenses'' (as defined in (a)(3)(B)), with no provision excluding younger offenders where the criminality of the conduct depends on the victim's age.

Since the Act's registration requirements depend in all circumstances on conviction of certain types of offenses, states are not required to mandate registration for juveniles who are adjudicated delinquent—as opposed to adults convicted of crimes and juveniles convicted as adults—even if the conduct on which the juvenile delinquency adjudication is based would constitute an offense giving rise to a registration requirement if engaged in by an adult. However, states remain free to require registration for juvenile delinquents, and the conviction of a juvenile who is prosecuted as an adult does count as a conviction for purposes of the Act's registration requirements.

Definition of ''Sexually Violent Offense''—Subsection (a)(3)(B)

The Act prescribes a ten-year registration requirement for offenders convicted of a ''sexually violent offense,'' as well a for those convicted of a ''criminal offense against a victim who is a minor.''

Subparagraph (B) of paragraph (3) defines the term ''sexually violent offense'' to mean any criminal offense that consists of aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18, United States Code, or as described in the State criminal code), or an offense that has as its elements engaging in physical contact with another person with intent to commit such an offense. In light of this definition, there are two ways in which a state could satisfy the requirement of registration for persons convicted of ''sexually violent offenses'':

First, suppose that a state has offenses in its criminal code that are designated ''aggravated sexual abuse'' and ''sexual abuse,'' or has a definitional provision that characterizes certain offenses in its criminal code (however denominated) as constituting ''aggravated sexual abuse'' and ''sexual abuse'' for registration purposes or other purposes. Such a state could comply simply by requiring registration for all offenders who are convicted of these state offenses, and all offenders convicted of any state crime that has as its elements engaging in physical contact with another person with intent to commit such an offense.

Second, a state could comply by requiring registration for offenders convicted for criminal conduct that would violate 18 U.S.C. 2241 or section 2242—the federal ''aggravated sexual abuse'' and ''sexual abuse'' offenses—if subject to federal prosecution. (The second part of the definition in subparagraph (B) of paragraph (3), relating to physical contact with intent to commit aggravated sexual abuse or sexual abuse, does not enlarge the class of covered offenses under the federal law definitions, since sections 2241 and 2242 explicitly encompass attempts as well as completed offenses.)

Specifically, 18 U.S.C. §§ 2241–42 generally proscribe non-consensual ''sexual acts'' with anyone, ''sexual acts'' with persons below the age of 12, and attempts to engage in such conduct. ''Sexual act'' is generally defined (in 18 U.S.C. 2246(2)) to mean an act involving any degree of genital or anal penetration, oral-genital or oral-anal contact, or direct genital touching of a victim below the age of 16 in certain circumstances even without penetration.

States that elect this second option—requiring registration for offenses that consist of aggravated sexual abuse or sexual abuse as defined in federal law provisions (18 U.S.C. 2241–42)—do not necessarily have to refer to these federal statutes in their registration provisions, but could alternatively achieve compliance by requiring registration for the state law offenses that encompass types of conduct proscribed by 18 U.S.C. 2241–42. Moreover, a state does not have to have sex offenses whose scope is congruent with 18 U.S.C. 2241–42 to take the latter approach. If state law does not criminalize some types of conduct that are covered by 18 U.S.C. 2241–42, then a person who engages in the conduct will not be subject to prosecution and conviction under state law, and there will be no basis for a registration requirement. On the other hand, if state sex offenses are defined more broadly than 18 U.S.C. 2241–42, then states are free to require registration for all offenders convicted under these state provisions (notwithstanding their greater breadth), and this would be sufficient to ensure coverage of convictions for criminal conduct that would violate 18 U.S.C. §§ 2241–42 if subject to federal prosecution.

Definition of ''Sexually Violent Predator''—Subsection (a)(3)(C)–(E)

Offenders who meet the definition of ''sexually violent predator'' are subject to more stringent registration requirements than other sex offenders.

(1) Subparagraph (C) defines ''sexually violent predator'' to mean a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(2) Subparagraph (D) essentially defines ''mental abnormality'' to mean a condition involving a disposition to commit criminal sexual acts of such a degree that it makes the person a menace to others. There is no definition of ''personality disorder'' in the Act; hence, the definition of this term is a matter of state discretion. For example, a state may choose to utilize the definition of ''personality disorder'' that appears in the Diagnostic and Statistical Manual of Mental Disorders: DSM–IV. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (4th ed. 1994).

(3) Subparagraph (E) defines ''predatory'' to mean an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

As noted earlier, the Act provides that the determination whether an offender is a ''sexually violent predator'' is to be made by the sentencing court with the assistance of a board of experts. The Act does not require, or preclude, that all persons convicted of a sexually violent offense undergo a determination as to whether they satisfy the definition of ''sexually violent predator.'' It also does not specify under what conditions such an inquiry must be undertaken. A state that wishes to comply with the Act must adopt some approach to this issue, but the specifics are a matter of state discretion. For example, a state might provide that the decision whether to seek classification of an offender as a ''sexually violent predator'' is a matter of judgment for prosecutors, or might provide that a determination of this question should be undertaken routinely when a person is convicted of a sexually violent offense and has a prior history of committing such crimes.

Similarly, the Act affords states discretion with regard to the timing of the determination whether an offender is a ''sexually violent predator.'' A sate may, but need not, provide that a determination on this issue be made at the time of sentencing or as a part of the

original sentence. It could, for example, be made instead by the sentencing court when the offender has served a term of imprisonment and is about to be released from custody. In addition, a determination whether an offender is a ''sexually violent predator'' need not be made by the judge who imposed the original sentence, so long as the determination is made in the same court that imposed the sentence.

As with other features of the Jacob Wetterling Act, the sexually violent predator provisions only define baseline requirements for states that wish to maintain eligibility for full Byrne Formula Grant funding. States are free to impose these more stringent registration requirements on a broader class of offenders, and may use state law categories or definitions for that purpose, without contravening the Jacob Wetterling Act.

If a state chooses to subject all persons convicted of a ''sexually violent offense'' to the more stringent registration requirements and standards provided by the Act for ''sexually violent predators,'' then a particularized determination that an offender is a ''sexually violent predator'' would have no practical effect and would be superfluous. Hence, if a state elected this approach, it would not be necessary for the state to have ''sexually violent predator'' determinations made by the sentencing court, or to constitute boards of experts to advise the courts concerning such determinations, prior to the commencement of registration. In a state that eschewed particularized ''front end'' determinations of ''sexually violent predator'' status in this manner, however, it would still be necessary to condition termination of the registration requirement on a determination by sentencing court (assisted by a board of experts) pursuant to section 170101(b)(6)(B) of the Act that the person does not suffer from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.

Specifications concerning State Registration Systems under the Act—Subsection (b)

Paragraph (1) of subsection (b) sets out duties for prison officials and courts in relation to offenders required to register who are released from prison, or who are placed on any form of post-conviction supervised release ''parole, supervised release, or probation'').

The duties, set out in subparagraph (A) of paragraph (1), include: (i) informing the person of the duty to register and obtaining the information required for registration (i.e., address information), (ii) informing the person that he must give written notice of a new address within 10 days to a designated state law enforcement agency if he changes residence, (iii) informing the person that, if he changes residence to another state, he must inform the registration agency in the state he is leaving, and must also register the new address with a designated state law enforcement agency in the new state within 10 days (if the new state has a registration requirement), (iv) obtaining fingerprints and a photograph if they have not already been obtained, and (v) requiring the person to read and sign a form stating that these requirements have been explained.

Beyond these basic requirements, which apply to all registrants, subparagraph (B) of paragraph (1) of subsection (b) requires that additional information be obtained in relation to a person who is required to register as a ''sexually violent predator.'' The information that is specifically required under subparagraph (B) is the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person. The Act does not require that prison officials or courts conduct an investigation to determine the offender's treatment history. For purposes of documenting the treatment received, prison officials and courts may rely on information that is readily available to them, either from existing records or the offender. In addition, prison officials and courts may comply with the requirement to document an offender's treatment history simply by noting that the offender received treatment for a mental abnormality or personality disorder. If states want to require the inclusion of more detailed information about the offender's treatment history, however, they are free to do so.

States that wish to comply with the Act will need to adopt statutes or administrative provisions to establish the duties specified in subsection (b)(1) and ensure that they are carried out. These informational requirements, like other requirements in the Act, only define minimum standards, and states may require more extensive information from offenders. For example, the Act does not require that information be obtained relating to registering offenders' employment, but states may legitimately wish to know if a convicted child molester is seeking or has obtained employment that involves responsibility for the care for children.

As a second example, although it is not required under the Act, states are strongly encouraged to collect DNA samples from registering offenders to be typed and stored in state DNA databases. States also are urged to participate in the FBI's Combined DNA Index System (CODIS). CODIS is the FBI's program of technical assistance to state and local crime laboratories that allows them to store and match DNA records from convicted offenders and crime scene evidence. The FBI provides CODIS software, in addition to user support and training, free of charge, to state and local crime laboratories for performing forensic DNA analysis. CODIS permits DNA examiners in crime laboratories to exchange forensic DNA data on an intrastate level, and will enable states to exchange DNA records among themselves through the national CODIS system. Thus, collection of DNA samples and participation in CODIS greatly enhances a state's capacity to investigate and solve crimes involving biological evidence, especially serial and stranger rapes.

Paragraph (2) of subsection (b) states that the responsible officer or court shall forward the registration information to a designated state law enforcement agency within three days after receipt of the information. The Act leaves states discretion in designating an agency as the responsible ''state law enforcement agency,'' including the means by which such a designation is made, the timing of such a designation, and the agencies that may be designated. States are not required to select the state police as the designated agency, and may choose any agency with functions relating to the enforcement of law or protection of public safety. For example, states may designate as the pertinent ''State law enforcement agency'' a correctional agency, a crime statistics bureau or criminal records agency, or a department of public safety. States also are permitted to employ a private contractor to carry out the functions of the designated state law enforcement agency.

After receiving the registration information from the responsible officer or court, the designated state law enforcement agency must immediately enter the information into the appropriate state law enforcement record system and notify a law enforcement agency having jurisdiction where the person expects to reside. The Act leaves states discretion in determining which state record system is appropriate for storing registration information. States that wish to achieve compliance with the Act, however, may need to modify state record systems if

they are not currently set up to receive all the types of information that the Act requires from registrants.

The state law enforcement agency is also required to transmit immediately the conviction data and fingerprints to the Federal Bureau of Investigation. No changes will be required in the national records system because the Act only requires transmission of conviction data and fingerprints, which the FBI already receives. The Act should not be understood as requiring duplicative transmission of conviction data and fingerprints to the FBI at the time of initial registration if the state already has sent this information to the FBI (e.g., at the time of conviction).

Paragraph (3) of subsection (b) relates to verification of the offender's address. In essence, annual verification of address with the designated state law enforcement agency is required for offenders generally, through the return within ten days of an address verification form sent by the agency to the registrant. However, the verification intervals are 90 days (rather than a year) for ''sexually violent predators.'' As noted earlier, these are baseline requirements which do not bar states from requiring verification of address at shorter intervals than those specified in the Act.

Paragraph (4) requires the designated state law enforcement agency to notify other interested law enforcement agencies of a change of address by the registrant. Specifically, when a registrant changes residence to a new address, the designated law enforcement agency must (i) notify a law enforcement agency having jurisdiction where the registrant will reside, and (ii) if the registrant moves to a new state, notify the law enforcement agency with which the offender must register in the new state (if the new state has a registration requirement).

Paragragph (5) further requires an offender who moves out of state to register within ten days with a designated state law enforcement agency in his new state of residence (if the new state has a registration requirement). This partially reiterates the requirements concerning notice of changes of address by the offender that were described above.

Subparagraph (A) of paragraph (6) states that the registration requirement remains in effect for ten years. As noted earlier, states may choose to establish longer registration periods.

Subparagraph (B) of paragraph (6) states that the registration requirement for ''sexually violent predators'' under the Act terminates upon a determination that the offender no longer suffers from a mental abnormality or personality disorder that would make him likely to engage in a predatory sexually violent offense. This provision does not require review of the offender's status at any particular interval. For example, a state could set a minimum period of 10 years before entertaining a request to review the status of a ''sexually violent predator,'' the same period as the general minimum registration period for sex offenders under the Act.

Moreover, this termination provision only affects the requirement that a person register as a ''sexually violent predator'' under subparagraph (B) of subsection (a)(1) of the Jacob Wetterling Act. It does not limit states in imposing more extensive registration requirements under their own laws, and does not limit any registration requirement that arises independently under other provisions of the Jacob Wetterling Act from the person's conviction of a ''criminal offense against a victim who is a minor'' or a ''sexually violent offense.''

Criminal Penalties for Registration Violations—Subsection (c)

The Act provides that a person required to register under a state program established pursuant to the Act who knowingly fails to register and keep such registration current shall be subject to criminal penalties. Accordingly, states that wish to comply with the Act will need to enact criminal provisions covering this situation as part of, or in conjunction with, the legislation defining their registration systems, if they have not already done so. If the violation by a registrant consists of failing to return an address verification form within 10 days of receipt, the state may allow a defense if the registrant can prove that he did not in fact change his residence address, as provided in subsection (b)(3)(A)(iv).

Release of Registration Information—Subsection (d)

Subsection (d) governs the disclosure of ''information collected under a State registration program.'' Restrictions on the release of information under this subsection do not constrain the release of information that a state would have independently of the operation of the registration system. For example, a state will normally have criminal history information about an offender, and will often have current address information as part of general probation or parole supervision requirements, independently of any special requirements imposed as part of the sex offender registration system. The Act does not limit the release of such information.

Subsection (d) states specifically that the information collected under a state registration program shall be treated as private data, except under specified conditions.

The first condition under which disclosure is authorized—paragraph (1)—is that ''such information may be disclosed to law enforcement agencies for law enforcement purposes.'' This exemption permits use of the information for all law enforcement purposes, including all police, prosecutorial, release supervision, correctional, and judicial uses.

Paragragph (2) in subsection (d) says that registration information may be disclosed to government agencies conducting confidential background checks. ''Confidential'' should be understood to mean a background check where information is disclosed to an interested party or parties—such as a background check conducted by a government agency that provides information concerning prospective employees to public or private employers—as opposed to release of the information to the general public. Release to the public, and other non-law enforcement, non-background check uses, are governed by paragraph (3).

Paragragph (3) in subsection (d) says that the designated state law enforcement agency, and any local law enforcement agency authorized by the state agency, may release relevant information that is necessary to protect the public concerning a specific person required to register under this section. The Act does not impose any limitations on the standards and procedures that states may adopt for determining when public safety necessitates community notification. For example, states could implement this authority by engaging in particularized determinations that individual offenders are sufficiently dangerous to require community notification concerning the offender's presence. Alternatively, states could make categorical judgments that protection of the public necessitates community notification with respect to all offenders with certain characteristics or in certain offense categories.

Releases of information for public-protection purposes short of general community notification—such as giving notice about an offender's location to the victims of his offenses, or to agencies or organizations in specified categories—are also permitted under paragraph (3).

The language in paragraph (3), like that in paragraphs (1) and (2), is permissive, and does not require states

to release information. Paragraph (3) also does not deprive states of the authority to exercise centralized control over the release of information, or if the state prefers, to generally authorize local agencies to release information as necessary. In addition to permitting proactive community notification and other notification, as discussed above, paragraph (3) and other provisions of the Act do not bar states from making registration information available upon request, if it is determined that such access is necessary for the protection of the public concerning who are required to register.

A proviso at the end of paragraph (3) in subsection (d) states that the identity of the victim of an offense that requires registration under the Act shall not be released. The purpose of this proviso is to protect the privacy of victims, and its restrictions may accordingly be waived at the victim's option. The proviso only applies to paragraph (3), and does not limit the disclosure of victim identity pursuant to paragraphs (1) and (2), relating to law enforcement uses and confidential background checks.

Immunity for Good Faith Conduct—Subsection (e)

Subsection (e) states that law enforcement agencies, employees of law enforcement agencies, and state officials shall be immune from liability for good faith conduct under the Act.

Compliance—Subsection (f)

States have three years from the date of enactment (i.e., September 13, 1994) to come into compliance with the Act unless the Attorney General grants an additional two years where a state is making good faith efforts at implementation. States that fail to come into compliance within the specified time period will be subject to a mandatory 10% reduction of Byrne Formula Grant funding, and any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance. The reallocated funds will be distributed among complying states in proportion to their populations.

States are encouraged to submit descriptions of their existing or proposed registration systems for sex offenders to the Department of Justice as promptly as possible. States may find it convenient, for example, to submit such descriptions in conjunction with their applications for Byrne Formula Grant funding. These submissions will enable the Department of Justice to review the status of state compliance with the Act, and to suggest any necessary changes to achieve compliance before the funding reduction goes into effect.

To maintain eligibility for full Byrne Formula Grant funding following the end of the three-year implementation period provided by the Act, states will be required to submit information that shows compliance with the Act in at least one program year, or an explanation of why compliance cannot be achieved within that period and a description of good faith efforts that justify an extension of time (but not more than two years) for achieving compliance. States will also be required to submit information in subsequent program years concerning any changes in sex offender registration systems that may affect compliance with the Act.

Dated: March 27, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–8186 Filed 4–3–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree in *United States* versus *American Recovery Company, et al.*, Civil Action No. 95–1590, was lodged on March 22, 1996 with the United States District Court for the Western District of Pennsylvania. The Consent Decree requires defendant Thomas A. Mekis & Sons, Inc. to pay $14,135 to reimburse a portion of the United States' past costs associated with the investigation and clean up of the Municipal & Industrial Disposal Company Superfund Site (''Site''), located in Elizabeth Township, Pennsylvania.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* versus *American Recovery Company, et al.*, DOJ Ref. #90–11–2–949.

The proposed consent decree may be examined at the office of the United States Attorney, 633 Post Office & Courthouse, 7th & Grant Streets, Pittsburgh, PA 15219; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–8194 Filed 4–3–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Amendment to Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed Amendment to Consent Decree in *United States* v. *Citizens Util. Co. of Ill.*, Civil Action No. 92 C 5132, was lodged on March 27, 1996, with the United States District Court for the Northern District of Illinois. The Amendment to Consent Decree modifies the injunctive relief provisions of a Consent Decree entered by the Court on March 23, 1995, to permit Citizens' to implement either the remedial program described in the original decree or an alternative remedial program set out in the Amendment to Consent Decree. The purpose of both the original remedial program and the alternative remedial program is to ensure that Citizens achieves and maintains compliance with its National Pollutant Elimination Discharge System (''NPDES'') permit for the West Suburban Treatment Plant No. 1 (''WSB #1''), a wastewater treatment plant owned and operated by citizens in Bolingbrook, Illinois. The original remedial program included the construction of improvements and implementation of operational changes at WSB #1, primarily to improve the plant's secondary treatment capacity. The alternative remedial program, if elected by Citizens, would include connecting WSB #1 to a nearby publicly-owned treatment plant operated by the Town of Bolingbrook and thereafter eliminating all direct discharges from WSB #1, except for limited discharges of excess flow form an equalization lagoon in accordance with terms and conditions of the NPDES permit for the WSB #1 facility.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be