2004 CIVIL/CRIMINAL PENALTIES—SUMMARY ALL PENALTIES PAID IN CALENDAR 2004 (1/1/2004–12/31/2004)—Continued

[The following acronyms are used in this table: SCSSV (surface controlled subsurface safety valve); SSV (surface safety valve); PSHL (pressure safety high/low); LSH (level safety high); INC (incident of non-compliance); ESD (emergency shutdown device); H_2S (Hydrogen Sulfide)]

Operator name and Case No.	Violation and date(s)	Penalty paid and date paid	Regulation(s) violated (30 CFR)
Murphy Exploration & Production Company—USA, G–2004–010.	The required surface safety valve (SSV–2) for Well CA–7 was found capped in the open position and inadvertently left bypassed for 8 days.	$40,000 10/21/04	
	3/25/04–4/1/04	.....	250.803(c)
Apache Corporation (Island Operators Co. Inc.), G–2004–015.	The main safety panel for the Water Bath Heater, the Fired Component, and the Water Bath Pump was found in the bypassed position and it was not flagged or being monitored by personnel.	$5,000 12/22/04	
	6/21/04–6/21/04	.....	250.803(c)
Aera Energy LLC., P–2004–001	Aera was issued INC G–110 on 7/12/02 after a pipeline riser leak and oil spill. Aera appealed to IBLA. Through the DOI Solicitor, Aera proposed to settle the appeal with a payment of $25,000. MMS accepted Aera's offer on 1/22/04. The INC was not withdrawn and Aera paid $25,000 as a civil penalty.	$25,000 2/4/04	
			250.107(a)

Total Penalties Paid: 1/1/04–12/31/04
21 Cases: $885,750

The purpose of publishing the penalties summary is to provide information to the public on violations of special concern in OCS operations and to provide an additional incentive for safe and environmentally sound operations.

Dated: February 15, 2005.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 05–4994 Filed 3–14–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

[Docket No. OAG 107; A.G. Order No. 2760–2005]

RIN 1105–AB08

Guidelines for the PROTECT Act Amendments to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act

AGENCY: Department of Justice.

ACTION: Notice; Proposed guidelines.

SUMMARY: The United States Department of Justice is publishing Proposed Guidelines to implement amendments to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act enacted by the PROTECT Act.

DATES: Comments must be received by May 16, 2005.

ADDRESSES: Comments may be mailed to David J. Karp, Senior Counsel, Office of Legal Policy, Room 4509, Main Justice Building, 950 Pennsylvania Avenue, NW., Washington, DC 20530. Comments may also be submitted by the Internet at *OLPREGS@USDOJ.GOV*. Electronically submitted comments must include Docket No. OAG 107 in the subject box.

SUPPLEMENTARY INFORMATION: Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, 108 Stat. 1796, 2038 (codified at 42 U.S.C. 14071) contains the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (the ''Wetterling Act''). The Wetterling Act provides standards for state sex offender registration and community notification programs, and directs the Attorney General to issue guidelines for such programs. The main set of current Wetterling Act guidelines was published on January 5, 1999, in the **Federal Register** (64 FR 572, with corrections at 64 FR 3590), and a supplementary set of guidelines for the Campus Sex Crimes Prevention Act amendment to the Wetterling Act was published on October 25, 2002, in the **Federal Register** (67 FR 65598). States that fail to comply with the Wetterling Act's standards (as implemented and explained in the Attorney General's guidelines) are subject to a mandatory 10% reduction of the formula grant funding available under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program (42 U.S.C. 3756), which is administered by the Bureau of Justice Assistance of the Department of Justice.

Subsequent to the publication of the current Wetterling Act guidelines, the Wetterling Act was amended by sections 604 and 605 of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, or PROTECT Act, Pub. L. 108–21, 117 Stat. 650, 688 (2003). These amendments provide that the means by which a State provides information to the public concerning registered sex offenders must include an Internet site, and add child pornography production and distribution offenses to the list of crimes against children for which registration is required under the Wetterling Act's standards. Supplementary guidelines are necessary to take account of the PROTECT Act amendments to the Wetterling Act.

Section 604 of the PROTECT Act, relating to Internet sites for sex offender information, states that ''[e]ach State shall implement the amendment made by this section within 3 years after the date of enactment of this Act''—*i.e.*, by April 29, 2006—''except that the Attorney General may grant an additional 2 years to a State that is making a good faith effort to implement the amendment.'' The amendment in section 605 of the PROTECT Act, relating to registration for child pornography production and distribution offenses, took effect at the time of its enactment, *i.e.*, on April 30, 2003.

Proposed Guidelines

I. Internet Sites for Sex Offender Information

The community notification provisions of the Wetterling Act that predate the PROTECT Act—paragraph (1) and the first sentence of paragraph (2) of 42 U.S.C. 14071(e)—have both permissive and mandatory aspects. The permissive aspect appears in paragraph (1), which makes it clear that the Act

does not place any ceiling on the states' disclosure of registration information. *See* 64 FR at 581 (''there is no requirement [] under the Act that registration information be treated as private or confidential to any greater extent than the state may wish'').

The mandatory aspect appears in the first sentence of paragraph (2), which generally requires States to release relevant information that is necessary to protect the public from registered offenders: ''The State * * * shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section * * *.'' 42 U.S.C. 14071(e)(2). This creates a floor for the disclosure of registration information—States that wish to comply with the Wetterling Act's standards must release, by some means, information concerning registered offenders to the public as necessary for public safety. Section 604 of the PROTECT Act added a second sentence to paragraph (2), which provides that the means used to effectuate the required public disclosure of registration information must include an Internet site: ''The release of information under this paragraph shall include the maintenance of an Internet site containing such information that is available to the public and instructions on the process for correcting information that a person alleges to be erroneous.''

In greater detail, the pre-existing community notification requirement of section 14071(e)(2), and its supplementation by the PROTECT Act amendment, are as follows:

With respect to the first sentence of section 14071(e)(2), the Attorney General's guidelines explain that the principal objective is to ensure that registration programs will include means for members of the public to obtain information concerning registered offenders that is necessary for the protection of themselves or their families. Hence, it is not sufficient to release registration information only to law enforcement agencies, to other (public or private) agencies or organizations, to prospective employers, or to the victims of registrants' offenses. Nor are purely permissive or discretionary information release programs sufficient. Rather, the release of information concerning registrants to members of the public is required as necessary to protect the public, both with respect to offenders required to register because of conviction for ''a criminal offense against a victim who is a minor'' and those required to register because of conviction for a ''sexually violent offense.'' *See* 64 FR at 581–82.

Under the first sentence of section 14071(e)(2), however, ''[s]tates do * * * retain discretion to make judgments concerning the circumstances in which, and the extent to which, the disclosure of registration information to the public is necessary for public safety purposes and to specify standards and procedures for making these determinations.'' 64 FR at 582. The guidelines accordingly note that, consistent with the Wetterling Act, states may adopt different approaches concerning the class or classes of registrants on whom information will be made available to the public, and the particular means by which the information will be made publicly available. *See* 64 FR at 582.

The amendment enacted by section 604 of the PROTECT Act added a second sentence to section 14071(e)(2), which requires that the means by which a State releases to the public ''such information''—*i.e.*, information concerning ''specific person[s] required to register''—must include the maintenance of an Internet site that contains this information. 42 U.S.C. 14072(e)(2) (as amended). In other words, states must protect the public by posting on-line information concerning specific registrants that the public can access. Prior to the enactment of the PROTECT Act, most States had already established publicly accessible Web sites containing information on registered sex offenders, and the Supreme Court rejected challenges to the constitutionality of State programs including such sites in *Connecticut Department of Public Safety* v. *Doe,* 538 U.S. 1 (2003), and *Smith* v. *Doe,* 538 U.S. 84 (2003).

While the new language added by section 604 of the PROTECT Act states that the means of disclosing to the public information concerning registered sex offenders ''shall include the maintenance of an Internet site,'' 42 U.S.C. 14071(e)(2), it does not otherwise alter the general principles of the Wetterling Act's community notification provisions. Thus, States retain discretion to make judgments concerning the necessary extent of such disclosure for public safety purposes, in conformity with the understanding of the pre-existing provision (first sentence) in section 14071(e)(2). States accordingly may make judgments concerning which class or classes of their registrants will be subject to disclosure of information through the Internet, what specific information will be included on the site concerning these registrants, and the means by which this information can be searched.

Existing sex offender Web sites show variations on these points, which do not create any problem concerning compliance with section 14071(e)(2) as amended: Some States include information on all (or nearly all) of their registrants on the Internet, while others limit the registrants subject to Internet disclosure based on risk classifications or other criteria. In addition to registrants' names, the information included on sex offender Web sites commonly includes photographs of registrants, information about registrants' offenses, and information about registrants' locations, but states differ on particulars. States commonly set up their Web sites to allow searches by name and by geographic area (such as zip code), but State-to-State variations occur in this area as well. Links to existing state Web sites may be found at: *http://www.usdoj.gov/criminal/ceos/statesexoffender.html* and *http://www.fbi.gov/hq/cid/cac/states.htm.*

Beyond the general requirement—appearing already in the first sentence of section 14071(e)(2)—that the information included on the Internet site must include relevant information necessary to protect the public, the new language added by the PROTECT Act requires that the site include ''instructions on the process for correcting information that a person alleges to be erroneous.'' A State could comply with this requirement, for example, by including on its Web site information identifying the state agency responsible for correcting erroneous information, and advising persons that they can contact this agency if they believe that information on the site is erroneous. The language added by the PROTECT Act does not attempt to prescribe in any greater detail the specific standards or procedures that States will use to determine whether information on their sex offender Web sites is accurate. These standards and procedures accordingly remain a matter of State discretion, subject to compliance with other aspects of the Wetterling Act, such as section 14071(b)(3)'s provision for periodic verification of address information.

The first sentence of section 14071(e)(2) provides that the identity of the victims of registration offenses is not to be released, and this constraint applies to Internet disclosure as well as to disclosure through other forms of community notification. The existing guidelines explain the meaning and application of this limitation. *See* 64 FR at 582 (middle column). Otherwise, the Wetterling Act does not impose any ceiling on the release of registration

information or other information concerning registrants, and no compliance problems arise from including more (rather than less) information on sex offender Web sites.

II. Registration for Child Pornography Production and Distribution Offenses

Section 14071(a)(3)(A) sets out the list of ''criminal offense[s] against a victim who is a minor'' for which registration is required under the Wetterling Act's standards. Section 605 of the PROTECT Act added to this list a new clause (viii) as follows: ''production or distribution of child pornography, as described in section 2251, 2252, or 2252A of Title 18.'' The cross-referenced provisions are key statutes proscribing conduct related to child pornography in the chapter of the federal criminal code entitled ''Sexual Exploitation and Other Abuse of Children.''

The Wetterling Act's standards already encompassed registration for child pornography production offenses in some measure prior to the PROTECT Act amendment. Specifically, 42 U.S.C. 14071(a)(3)(A)(v) referred to ''use of a minor in a sexual performance,'' and the Attorney General's guidelines explained that this includes ''both live performances and using minors in the production of pornography.'' 64 FR at 577. However, there was nothing comparable to the PROTECT Act amendment's coverage of child pornography distribution (as opposed to production) offenses in the previous Wetterling Act provisions.

These guidelines interpret the new language relating to child pornography production and distribution offenses in section 14071(a)(3)(viii) to mean that registration is required for offenses whose gravamen is: (i) Creating or participating in the creation of sexually explicit visual depictions of minors, or (ii) making such depictions available to others. In greater detail, the principles governing state compliance with this provision are as follows:

A. Coverage Based on Substance Rather Than Terminology

Under section 14071(a)(3)(viii), States must require registration for offenses that substantively cover child pornography production or distribution, even if those offenses do not specifically use the words ''produce'' or ''distribute'' in defining their elements. This understanding is consistent with the interpretation of all other Wetterling Act offense coverage requirements as relating to substance, not terminology. For example, section 14071(a)(3)(A)(i) and (ii) generally include in the offense coverage list ''kidnapping of a minor'' and ''false imprisonment of a minor.'' This does not mean that registration is required only when the statute defining an offense explicitly uses the words ''kidnapping'' or ''false imprisonment.'' Rather, the Attorney General's guidelines explain: ''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.'' 64 FR at 577.

The same principle—offense coverage based on substance rather than terminology—applies to the PROTECT Act provision for child pornography offenses. For example, if a State has an offense that prohibits ''selling, transferring, or disseminating'' child pornography, that is substantively a distribution offense, and States must require registration for persons convicted of such offenses to comply with the Wetterling Act's standards.

B. Relationship to the Federal Child Pornography Offenses

Section 14071(a)(3)(A)(viii) refers to ''production or distribution of child pornography, as described in section 2251, 2252, or 2252A of Title 18.'' The offense elements in the referenced Federal statutes involve some complexity, including complications resulting from their intermixture with the statutes' specifications of the grounds supporting Federal jurisdiction, and from the related technical definitions in 18 U.S.C. 2256. In identifying State offenses for which registration is required, it is not sufficient for States to apply the exact specifications of these Federal offenses and definitions, and to require registration only for State offenses that are defined in the same way. Reading section 14071(a)(3)(A)(viii) to require registration only for State offenses that are fully congruent with the referenced Federal crimes would effectively nullify it, because there are unlikely to be any State offenses whose elements exactly mirror all the definitional particulars and elements (especially jurisdictional elements) of these Federal crimes.

Section 14071(a)(3)(A)(viii) also cannot properly be understood to mean that States need to parse through the underlying facts of particular convictions, and to match them up to the elements of the referenced Federal crimes to determine whether registration is required. The prefatory language in section 14071(a)(3)(A) does not require coverage of offense conduct that exactly matches the Federal law categories listed in that provision. Rather, it refers to coverage of a range of offenses which is ''comparable to'' the listed categories. This statutory standard was adopted in part to obviate compliance problems resulting from ''the degree of detail in the Act's definitions and * * * variations among different jurisdictions in the terminology and categorizations used in defining sex offenses.'' 64 FR at 578.

Hence, the interpretation and application of section 14071(a)(3)(A) must effectuate the legislative intent to ensure registration for child pornography production and distribution offenses in a meaningful way, while also respecting the legislative policy to avoid unnecessary impediments to State compliance that would result from requiring the direct application of detailed Federal law definitions. These guidelines implement these policies by providing that a State covers a comparable range of offenses with respect to the new clause (viii) if it requires registration for the State offenses that are directed against substantially the types of production or distribution activities addressed in 18 U.S.C. 2251, 2252, or 2252A, even though the State's definition of these offenses will not be exactly congruent with the corresponding Federal crimes. Considering the nature of the conduct proscribed by the referenced Federal crimes, this means that a State achieves compliance by requiring registration for all State offenses whose gravamen is: (i) Creating or participating in the creation of sexually explicit visual depictions of minors, or (ii) making such depictions available to others.

As noted above, production offenses of this type, which involve using minors in making pornography, were at least partially included in the Wetterling Act's offense coverage categories even before the PROTECT Act, as one form of ''use of a minor in a sexual performance'' under 42 U.S.C. 14071(a)(3)(A)(v). However, in light of the PROTECT Act's addition of an express reference to child pornography production offenses, States should review their statutes to ensure that they consistently require registration for offenses whose gravamen is creating or participating in the creation of sexually explicit visual depictions of minors. Federal offenses of this type appear in 18 U.S.C. 2251(a)–(c).

With respect to distribution offenses, there are generally two sorts of offenses that may satisfy the criterion for coverage under the new clause (viii)—*i.e.*, offenses whose gravamen is making

sexually explicit visual depictions of minors available to others.

First, the Supreme Court has held that proscribing the distribution of sexually explicit visual depictions of actual minors does not violate the First Amendment, even if the depictions do not meet the general legal definition of obscenity. *See Ashcroft* v. *Free Speech Coalition,* 535 U.S. 234, 249–50 (2002); *New York* v. *Ferber,* 458 U.S. 747 (1982). An example of a Federal offense of this type appears in 18 U.S.C. 2252A(a)(3)(B)(ii), which generally proscribes distribution of material containing ''a visual depiction of an actual minor engaging in sexually explicit conduct.'' States whose laws define comparable offenses must require registration by persons convicted of these offenses in order to comply with the Wetterling Act's standards following the PROTECT Act amendment.

Second, States may define offenses that specially proscribe or punish the distribution of obscene material depicting a minor. An example of a Federal offense of this type appears in 18 U.S.C. 2252A(a)(3)(B)(i), which generally proscribes distribution of material containing ''an obscene visual depiction of a minor engaging in sexually explicit conduct.'' States whose laws define comparable offenses must likewise require registration by persons convicted of these offenses in order to comply with the Wetterling Act's standards following the PROTECT Act amendment.

The distribution offenses for which registration must be required include offenses that are defined in terms of advertising or otherwise offering to provide to others sexually explicit visual depictions of minors, as well as offenses defined in terms of the actual transfer of such depictions. *See* 18 U.S.C. 2251(d), 2252A(a)(3)(B) (distribution offenses under the Federal statutes defined to include advertisements and offers).

The application of the foregoing principles does not require States to undertake further inquiry concerning the underlying facts in cases involving offenses whose statutory definitions are not concerned with child pornography. For example, if a person is convicted under a statute that generally proscribes the distribution of obscene material, without distinctions based on the age of the individual or individuals portrayed in the material, registration for such a conviction is not necessary to satisfy the offense coverage specification of section 14071(a)(3)(A)(viii), though it may be possible factually that an individual portrayed in the material is a minor. Rather, it is sufficient if a State requires registration for its statutory offenses that are defined in terms of the production or distribution of child pornography, as explained above.

C. Coverage of All Relevant Offenses

If a State has several offenses that satisfy the criteria for coverage under 42 U.S.C. 14071(a)(3)(A)(viii), as explained above, it must include all of them as registration offenses to comply with the Wetterling Act's standards. For example, if a State has a general child pornography distribution offense, and a separate offense of distributing child pornography through the Internet, a conforming State program must include registration by persons convicted of either offense.

This understanding is consistent with the application of the Wetterling Act's offense coverage requirements in relation to other categories. For example, if a State has a number of offenses of soliciting a minor to practice prostitution (section 14071(a)(3)(A)(vi))—*e.g.*, a general one, and a more specific one concerned with solicitation through the Internet—the Wetterling Act's standards would not be satisfied unless both were included as registration offenses. The same principle applies to offenses that fall under section 14071(a)(3)(A)(viii).

D. Production and Distribution Versus Possession

The Federal child pornography statutes that are cross-referenced in 42 U.S.C. 14071(a)(3)(A)(viii) include possession offenses—*see* 18 U.S.C. 2252(a)(4), 2252A(a)(5)—but section 14071(a)(3)(A)(viii) only refers to child pornography ''production or distribution'' as described in those statutes. Hence, States do not have to require registration for offenses that involve only possession, as opposed to production or distribution, of child pornography.

E. A Floor Rather Than a Ceiling for Offense Coverage

Like the other features of the Wetterling Act, 42 U.S.C. 14071(a)(3)(A)(viii) is part of a set of minimum standards for State sex offender registration programs, and does not limit State discretion to prescribe more stringent or extensive registration requirements. Hence, for example, though the Act does not require registration for child pornography possession offenses, a State may choose to require registration for such offenses, as well as for child pornography production and distribution offenses. Going beyond the Wetterling Act's minimum standards does not adversely affect compliance with the Act's standards or eligibility for full Byrne Formula Grant funding.

III. Application of the Requirements

As with other standards of the Wetterling Act, a State must apply the new standards under sections 604 and 605 of the PROTECT Act to offenders who are convicted after the State updates its registration program to comply with these standards. States are free to apply the new standards as well to offenders who were convicted prior to the establishment of a conforming registration program, but a State's decision on this point does not affect compliance with the Wetterling Act. *See* the Attorney General's guidelines, 64 FR at 575 (middle column, third full paragraph).

IV. Procedure for Compliance

Section 604 of the PROTECT Act, relating to Internet sites for sex offender information, provides that each State ''shall implement the amendment made by this section within 3 years after the date of enactment of this Act, except that the Attorney General may grant an additional 2 years to a State that is making a good faith effort to implement the amendment made by this section.'' 42 U.S.C. 14071 note. Since the PROTECT Act was enacted on April 30, 2003, the compliance deadline for States in relation to the establishment of Internet sites that comply with the second sentence of section 14071(e)(2) is April 29, 2006, subject to a possible extension until April 29, 2008, based on good faith efforts. Byrne Formula Grant awards to States that are not in compliance by the applicable deadline are subject to a mandatory 10% reduction in light of section 14071(f)(2).

States are encouraged to submit information concerning existing or contemplated Internet sites that comply with section 14071(e)(2) with as much lead-time as possible. This will enable the reviewing authority to assess the status of State compliance and to suggest any necessary changes to achieve compliance before the funding reduction goes into effect. At the latest, to maintain eligibility for full Byrne Formula Grant funding following April 29, 2006, States must submit to the Bureau of Justice Assistance by February 29, 2006, information that shows compliance, in the reviewing authority's judgment, with the Internet site requirement of section 14071(e)(2), or a written explanation of why compliance cannot be achieved within that period and a description of the good faith efforts that justify an

extension of time (but not more than two years) for achieving compliance.

Section 605 of the PROTECT Act, relating to the inclusion of child pornography production and distribution offenses as registration offenses under section 14071(a)(3)(A), went into effect at the time of its enactment on April 30, 2003. Byrne Formula Grant awards to States that are not in compliance with this requirement are subject to a mandatory 10% reduction in light of section 14071(f)(2). States are encouraged to submit information concerning existing or proposed provisions that comply with this requirement as soon as possible, if they have not already done so, in order to enable the reviewing authority to assess the status of State compliance and to suggest any necessary changes to achieve compliance.

In some instances, States have already submitted information bearing on their registration program's compliance with the offense coverage requirements of section 605 of the PROTECT Act, and the reviewing authority may already have reviewed such submissions in order to assist the States as promptly as possible, even prior to the issuance of formal guidelines. While these earlier reviews must be understood as provisional in character, and subject to further review under these guidelines as necessary or appropriate, no further submission may be needed from States which already provided information to the reviewing authority for purposes of review. However, in light of the articulation of standards in these guidelines, such States should review offense coverage under their existing or proposed registration provisions, and should supplement their previous submissions if necessary. As noted above, States which have not yet submitted information to the reviewing authority bearing on compliance with section 605 of the PROTECT Act should do so as soon as possible.

If a State's Byrne Formula Grant funding is reduced because of a failure to comply with the amendments enacted by section 604 or 605 of the PROTECT Act, the State may regain eligibility for full funding in later program years by establishing compliance with all applicable standards of the Wetterling Act in such later years. As noted above, the general guidelines for the Wetterling Act were published on January 5, 1999, and appear at 64 FR 572 (with corrections at 64 FR 3590, January 22, 1999), and supplementary guidelines for the Campus Sex Crimes Prevention Act amendment to the Wetterling Act were published on October 25, 2002, and appear at 67 FR 65598. The PROTECT Act amendments which these supplementary guidelines address are only parts of the Wetterling Act's standards. To maintain eligibility for full Byrne Formula Grant funding, States must comply with all of the Wetterling Act's standards.

After the reviewing authority has determined that a State is in compliance with the Wetterling Act, the State has a continuing obligation to maintain its system's consistency with the Wetterling Act's standards, and will be required as part of the Byrne Formula Grant application process in subsequent program years to certify that the State remains in compliance with the Wetterling Act.

Dated: March 7, 2005.

Alberto R. Gonzales,

Attorney General.

[FR Doc. 05–5021 Filed 3–14–05; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 04–65]

Glenn Anthony Routhouska, D.O.; Denial of Registration

On April 29, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Glenn Anthony Routhouska, D.O. (Respondent), proposing to deny his application for a DEA Certificate of Registration as a practitioner pursuant to 21 U.S.C. 823(f) as being inconsistent with public interest. The Order to Show Cause also notified Respondent that should no request for a hearing be filed within 30 days, his hearing right would be waived.

The Order to Show Cause was sent by certified mail to Respondent at his address of record at 106 North Keech, Fairfield, Texas 75840. According to the return receipt, it was received on Respondent's behalf on May 5, 2004. After more than 30 days had passed without a request for a hearing or other response from Respondent or anyone acting on his behalf, the investigative file was forwarded to the DEA Deputy Administrator for final agency action pursuant to 21 CFR 1301.43(d) and (e).

Prior to final action being completed, Respondent, unrepresented by counsel, filed a belated request for a hearing in a letter which was received by the DEA Office of Administrative Law Judges on August 20, 2004. In it he stated he was on probation with the Texas State Board of Medical Examiners and that upon initially reading the Order to Show Cause, he thought ''that a hearing was useless until I was off probation.'' On September 8, 2004, at the Government's request, the investigative file was returned to the Office of Chief Counsel for further action.

On August 30, 2004, because Respondent's request for a hearing was filed nearly four months after the Order to Show Cause had been issued, Administrative Law Judge Mary Ellen Bittner issued a Memorandum to the Parties affording the Government an opportunity to object to Respondent's request for a hearing.

On September 9, 2004, the Government filed a motion to deny Respondent request for a hearing and on September 24, 2004, Judge Bittner issued her Memorandum to the Parties, Ruling, and Order Terminating the Proceedings. In that Order, she concluded Respondent had failed to show good cause for the belated filing and granted the Government's motion, terminating proceedings before the Administrative Law Judge and ordering the matter transmitted to the Deputy Administrator for issuance of a final order pursuant to 21 CFR 1316.67. On January 10, 2005, the investigative file and related documents were returned by the Chief Counsel to the Deputy Administrator for final agency action.

The Deputy Administrator finds as follows: (1) Respondent was properly served with the Order to Show Cause and notified that if no request for a hearing was filed within 30 days of its receipt, his hearing right would be deemed waived and a final order entered, without a hearing, based upon the investigative file and record as it then appeared; (2) respondent's request for a hearing was not filed until August 20, 2004, almost two and one-half months after expiration of the 30 day filing deadline; and (3) the Administrative Law Judge granted the Government's motion to deny a hearing and ordered the proceeding terminated. The Deputy Administrator therefore concludes Respondent is deemed to have waived his hearing right and after considering material from the investigative file and record in this matter, now enters her final order without a hearing, pursuant to 21 CFR 1301.43(d) and (e) and 1316.67.

According to information in the investigative file, Respondent, who practiced family medicine out of his office in Fairfield, Texas, was previously registered with DEA as a practitioner under Certificate of Registration BR206348, authorized to handle Schedule II through V controlled