

Social Security benefits as a wife, husband, widow, widower, mother or father, divorced or surviving divorced spouse.

\* \* \* \* \*

(d) \* \* \*

(1)(i) If you became eligible for a Government pension based on noncovered service after June 1983, we will reduce (to zero, if necessary) your monthly Social Security benefits as a wife, husband, widow, widower, mother or father, divorced or surviving divorced spouse by two-thirds the amount of your monthly pension.

(ii) If your Government pension is based in part on earnings from a nongovernmental entity, we will base the amount of the reduction on only the portion of the pension that is based on noncovered government service. We will not consider that portion of the pension that is attributable to the nongovernmental earnings in determining the amount of the reduction.

(iii) If the reduction is not a multiple of 10 cents, we will round it to the next higher multiple of 10 cents.

\* \* \* \* \*

[FR Doc. E7-15057 Filed 8-2-07; 8:45 am]

BILLING CODE 4191-02-P

## DEPARTMENT OF JUSTICE

### Bureau of Prisons

#### 28 CFR Part 549

[BOP Docket No. 1145]

RIN 1120-AB45

#### Civil Commitment of a Sexually Dangerous Person

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** In this proposed rule, the Bureau of Prisons (Bureau) provides definitions and standards relating to the certification of persons as sexually dangerous for the purpose of civil commitment, as authorized by The Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248) (Walsh Act), enacted July 27, 2006, which amended title 18 of the United States Code, Chapter 313.

**DATES:** Comments are due by October 2, 2007.

**ADDRESSES:** Submit comments to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this rule at <http://www.regulations.gov>. You may

also comment via the Internet to the Bureau at [BOPRULES@BOP.GOV](mailto:BOPRULES@BOP.GOV) or by using the <http://www.regulations.gov> comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

**FOR FURTHER INFORMATION CONTACT:** Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

#### SUPPLEMENTARY INFORMATION:

##### Posting of Public Comments

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

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <http://www.regulations.gov>.

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

This proposed rule provides definitions and standards for review by the Bureau of persons in its custody for certification to federal district courts as "sexually dangerous persons," as authorized by title 18 U.S.C. Chapter

313. The Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248) (Walsh Act), enacted July 27, 2006, amended title 18 of the United States Code, Chapter 313, to add a new section 4248. Section 4248 authorizes the Bureau to certify to federal district courts that certain persons are "sexually dangerous persons" for whom civil commitment is required. Certification stays the release of the person and initiates district court proceedings pursuant to 18 U.S.C. 4248(a), (b), (c), and (d).

The filing of the certificate by the Bureau stays the release of the person; however, the final determination that a person is "a sexually dangerous person" subject to civil commitment is made by the court after proceedings held pursuant to 18 U.S.C. 4248(b) and (c), which make applicable the procedures set forth in 18 U.S.C. 4247(b), (c), and (d). As provided in § 4248(b), the court may order that a psychiatric or psychological examination of the person be conducted, and that a psychiatric or psychological report be filed with the court. Pursuant to § 4248(c), a hearing shall be conducted in which the person shall be represented by counsel, and be afforded an opportunity to testify, present evidence, subpoena witnesses on his or her behalf, and confront and cross-examine witnesses who appear at the hearing. If the court finds by clear and convincing evidence that the person is a sexually dangerous person, the court shall commit him/her to the custody of the Attorney General as detailed in § 4248(d).

The Walsh Act also amended 18 U.S.C. 4247 to include a definition of "sexually dangerous person." The amended statute defines "sexually dangerous person" as "a person who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others." The amended statute defines "sexually dangerous to others" to mean that a person "suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released."

The statute does not define the terms "sexually violent conduct" or "child molestation" and the Bureau proposes these regulations to interpret them. Although the Bureau has, in part, looked to federal criminal statutes for language to assist in defining these terms, we do not rely upon the provisions themselves, case law interpretations of them, or other related statutory history. Rather, the Bureau's

primary intent is to create definitions of terms that are comprehensive, easily understood, familiar to the general public, and readily applicable by Bureau staff.

In addition to providing definitions for “sexually violent conduct” and “child molestation,” these regulations clarify the process by which the Bureau will determine whether a person in its custody has engaged or attempted to engage in sexually violent conduct or child molestation, and how the Bureau will assess whether such a person would be sexually dangerous to others if released.

#### **Section 549.70 Purpose and Application**

This section explains that the subpart provides definitions and standards for Bureau review of persons for certification to federal district courts as “sexually dangerous persons,” as authorized by title 18 U.S.C. Chapter 313.

The section further provides that the subpart applies to persons in Bureau custody, including those: (1) Under a term of imprisonment; (2) for whom all criminal charges have been dismissed solely for reasons relating to the person’s mental condition; or (3) in Bureau custody pursuant to 18 U.S.C. 4241(d).

The Bureau accordingly may consider whether any person in its custody should be certified as a sexually dangerous person. Persons the Bureau will review for this purpose include those under a term of imprisonment. Because these persons have been serving sentences in Bureau custody, staff will have documentation including, but not limited to, records and information generated in criminal or civil proceedings, information provided by the United States Attorneys’ offices or other federal or non-federal authorities, any statements or admissions by the person, and any available medical records. Additionally, the Bureau will have had the opportunity to provide mental health assessments, care, and treatment as indicated.

The Bureau will also review for certification persons in our custody for whom all criminal charges have been dismissed solely for reasons relating to the person’s mental condition, or pursuant to 18 U.S.C. 4241(d). For these persons, Bureau staff will have had the opportunity to provide forensic mental health studies, hospitalization, and care and treatment pursuant to other provisions in 18 U.S.C. Chapter 313. Additionally, Bureau staff will have had the opportunity to work closely with the

U.S. Attorneys’ offices who can provide evidence of conduct necessary for certification.

The final paragraph of this section states that the Bureau may certify that a person is a sexually dangerous person when review under this subpart establishes reasonable cause to believe that the person is a sexually dangerous person. This specifies the degree of informational or evidentiary support required for the Bureau to conclude that a person is a sexually dangerous person, and hence that civil commitment proceedings should be initiated under 18 U.S.C. 4248. The required support for such a certification by the Bureau is information sufficient to provide reasonable cause to believe that the person satisfies the relevant statutory criteria as set forth in 18 U.S.C. 4247(a)(5)–(6). The Bureau will consider any available information in its possession in determining whether there is a sufficient basis for a sexually dangerous person certification, and may transfer the person to a suitable facility for psychological examination in order to obtain information for this purpose.

#### **Section 549.71 Definition of “Sexually Dangerous Person”**

The Bureau defines this term as a person who has engaged or attempted to engage in sexually violent conduct or child molestation and has been assessed as sexually dangerous to others by a Bureau, or Bureau-contracted, mental health professional. This definition derives from 18 U.S.C. 4247(a)(5), as amended by the Walsh Act, which states that the term “sexually dangerous person” means a person who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others.”

Thus, the Bureau’s regulations contemplate a two-step analysis to determine whether a person is sexually dangerous. The first step involves a review of the person’s prior and current conduct to determine whether there is evidence of sexually violent conduct or child molestation. Relevant conduct may be any conduct of the person for which evidence or information is available, and is not limited to offenses for which he/she has been convicted or is presently incarcerated, or for which he/she presently faces charges. The Bureau will derive information regarding the person’s conduct from his/her Pre-Sentence Investigative Report, Statement of Reasons, Criminal Judgment, and any other available source, as indicated in § 549.70(c). This may include (but is not limited to) records and information generated in

criminal or civil proceedings, information provided by the United States Attorneys’ offices or other federal or non-federal authorities, any statements or admissions by the person, and any available medical records.

The second step of consideration involves an assessment by Bureau, or Bureau-contracted, mental health professionals whether the person will be sexually dangerous to others. This involves a psychiatric or psychological analysis of the person to assess whether he/she suffers from a serious mental illness, abnormality, or disorder as a result of which he/she would have serious difficulty in refraining from sexually violent conduct or child molestation if released. In this assessment as well, the Bureau will consider any available information in its possession, as indicated in §§ 549.75 and 549.70(c). Documents to be reviewed may include (but are not limited to) records and information generated in criminal or civil proceedings, information provided by the United States Attorneys’ offices or other federal or non-federal authorities, any statements or admissions by the person, and any available medical records.

Whereas the first step of analysis is a review of the person’s conduct, the second step is an assessment of whether a mental condition exists, and if so, how it will affect the person’s ability to refrain from sexually violent conduct or child molestation if released. If the criteria for both steps are met, the person qualifies for certification as a sexually dangerous person under the provisions of § 4248(a).

#### **Section 549.72 Definition of “Sexually Violent Conduct”**

The Bureau defines this term as any unlawful conduct of a sexual nature with another person (“the victim”) that involved the following (for each provision, we note the statutory derivation):

- The use or threatened use of force against the victim;
- Threatening or placing the victim in fear that the victim, or any other person, will be harmed. This, and the previous bulleted item’s, language derive from 18 U.S.C. 2241(a) and 2242(1);
- Rendering the victim unconscious and thereby engaging in conduct of a sexual nature with the victim. This language derives from 18 U.S.C. 2241(b)(1);
- Administering to the victim, by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance, and thereby substantially

impairing the ability of the victim to appraise or control conduct. This language derives from 18 U.S.C. 2241(b)(2)(A); or

- Engaging in such conduct with a victim who is incapable of appraising the nature of the conduct, or physically or mentally incapable of declining participation in, or communicating unwillingness to engage in, that conduct. This language derives from 18 U.S.C. 2242(2).

Sexually violent conduct also includes engaging in any conduct of a sexual nature with another person with knowledge of having tested positive for the human immunodeficiency virus (HIV), or other potentially life-threatening sexually-transmissible disease, without the informed consent of the other person to be potentially exposed to that sexually transmissible disease. This language acknowledges the growing concerns surrounding potential transmission of sexual diseases that have the potential to cause significant harm to the victim's health or even endanger life. Several states have enacted laws which criminalize such conduct, including Arkansas, California, Florida, Georgia, Idaho, Illinois, Iowa, Louisiana, Michigan, Missouri, Nevada, New Jersey, Oklahoma, South Carolina, South Dakota, Tennessee, Virginia, and Washington. The Bureau, therefore, treats exposing another to a potentially life-threatening sexually transmissible disease without his or her informed consent as sexually dangerous. Such conduct is similar in nature to the conduct of a poisoner, who uses no overt force or threat against the victim, but is properly regarded as a violent offender, in that he surreptitiously introduces an injurious substance into another's body.

The regulation does not require that the person be convicted of or presently charged with the conduct in question. As provided in § 549.70(c), all available evidence and information in Bureau possession may be used in determining whether the person has engaged in such conduct. For example, if a person is serving a term of imprisonment for an offense under chapter 109A, 110, or 117 or § 1591 of title 18 of the United States Code, it may be clear from the definition of the offense of conviction that he/she engaged or attempted to engage in sexually violent conduct or child molestation. But even if the offense for which the person is incarcerated is not facially sexual in nature, the available evidence or information, such as records and information generated in criminal or civil proceedings, information provided by the United States

Attorneys' offices or other federal or non-federal authorities, any statements or admissions by the person, and any available medical records, may show that he/she in fact engaged in such conduct.

Moreover, even if no actual or attempted sexually violent conduct or child molestation was involved in the offense for which the person is presently incarcerated, there may be evidence or information indicating that he/she engaged in such conduct in the past, such as records or information generated in state criminal proceedings or civil commitment proceedings, information provided by the United States Attorneys' offices or other federal or non-federal authorities, any statements or admissions by the person, and any available medical records.

Likewise, for a person in the custody of the Bureau for reasons other than serving a term of imprisonment, for whom charges were dismissed based on his/her mental condition, or committed under 18 U.S.C. 4241(d) for incompetency to stand trial or undergo post-release proceedings, information may be available from the U.S. Attorney's office concerning pending or dismissed charges, which shows that the person engaged or attempted to engage in sexually violent conduct or child molestation, or information may be available that he/she engaged or attempted to engage in such conduct at some time in the past.

Regardless of the source, any evidence of sexually violent conduct or child molestation in which the person engaged or attempted to engage may be considered—whether or not a conviction resulted, and whether or not the person's present custody is based on the conduct in question—and all available evidence and information may be taken into account in determining whether the person engaged or attempted to engage in such conduct.

In addition to being part of what must be found to have occurred in the past—that the person engaged or attempted to engage in “sexually violent conduct” or “child molestation”—these terms figure into the required assessment that the person is sexually dangerous to others, since that is defined to mean that the person suffers from a serious mental illness, abnormality, or disorder as a result of which he or she would have “serious difficulty in refraining from sexually violent conduct or child molestation if released.” 18 U.S.C. 4247(a)(6). The same definitions of “sexually violent conduct” and “child molestation” apply in the assessment of the person's ability to refrain from such conduct if released.

#### **Section 549.73 Definition of “Child Molestation”**

The Bureau defines this term as any unlawful conduct of a sexual nature with, or sexual exploitation of, a person under the age of 18 years.

As with “sexually violent conduct,” a determination that a person has engaged or attempted to engage in “child molestation” does not require that the person be convicted of or presently charged with the conduct in question, and all available evidence and information may be used in determining whether the person has engaged or attempted to engage in such conduct. The discussion above of § 549.72 provides more detailed discussion of these matters, and applies as well in relation to “child molestation.”

#### **Section 549.74 Definition of “Sexually Dangerous to Others”**

The Bureau defines this term to mean that a person suffers from a serious mental illness, abnormality, or disorder as a result of which he or she would have serious difficulty in refraining from sexually violent conduct or child molestation if released. This language derives from 18 U.S.C. 4247(a)(6).

As provided in § 549.70(c), the Bureau, or Bureau-contracted mental health professionals, may use all available information about conduct and mental condition to determine a person's sexual dangerousness to others. For example, it is not necessary that the person have been charged with or convicted of any criminal act related to the conduct being considered—a limitation that could prevent a mental health professional from considering probative and relevant evidence such as long-established patterns of behavior, admissions of criminal activity previously undetected by authorities, and statements of intent to commit future sexually violent crimes or acts of child molestation. By considering all conduct and other relevant information, a mental health professional can conduct a full assessment of a person's difficulty in refraining from committing a future sexually violent crime or child molestation.

#### **Section 549.75 Determining “Serious Difficulty in Refraining From Sexually Violent Conduct or Child Molestation if Released”**

This section explains that, when assessing a person's “serious difficulty in refraining from sexually violent conduct or child molestation if released,” Bureau, or Bureau-contracted, mental health professionals may consider, but are not limited to, any evidence:

- Of the person's repeated contact, or attempted contact, with one or more victims;

- Of the person's denial of or inability to appreciate the wrongfulness, harmfulness, or likely consequences of engaging in sexually violent conduct or child molestation;

- Established through interviewing and testing of the person, or other risk assessment tools, that are relied upon by mental health professionals;

- Established by forensic indicators of inability to control conduct, such as:

- (1) Offending while under supervision,

- (2) Engaging in offense(s) when likely to get caught,

- (3) Statement(s) of intent to re-offend, or

- (4) Admission of inability or difficulty to control behavior; or

- Indicating successful completion of, or failure to successfully complete, a sex offender treatment program.

These criteria are not meant to be an exhaustive list, but rather are illustrative of practical, probative, and relevant evidence used by mental health professionals when assessing patient risk.

#### *Executive Order 12866*

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was reviewed by OMB.

The Bureau has assessed the costs and benefits of this rule as required by Executive Order 12866 Section 1(b)(6) and has made a reasoned determination that the benefits of this rule justify its costs. This rule will have the benefit of avoiding confusion caused by the statutory change, while allowing the Bureau to operate under the definitions stated in the regulations. There will be no new costs associated with this rulemaking.

#### *Executive Order 13132*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

#### *Regulatory Flexibility Act*

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5

U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

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

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### *Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### **List of Subjects in 28 CFR Part 549**

Prisoners.

Dated: July 24, 2007.

**Harley G. Lappin,**

*Director, Bureau of Prisons.*

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we propose to amend 28 CFR part 549 as set forth below.

#### **Subchapter C—Institutional Management**

#### **PART 549—MEDICAL SERVICES**

1. Revise the authority citation for 28 CFR part 549 to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. 876b; 18 U.S.C. 3621, 3622, 3524, 4001, 4005, 4042, 4045, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4241–4248, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. Add a new subpart F, to read as follows:

#### **Subpart F—Civil Commitment of a Sexually Dangerous Person**

Sec.

549.70 Purpose and application.

549.71 Definition of "sexually dangerous person."

549.72 Definition of "sexually violent conduct."

549.73 Definition of "child molestation."

549.74 Definition of "sexually dangerous to others."

549.75 Determining "serious difficulty in refraining from sexually violent conduct or child molestation if released."

#### **Subpart F—Civil Commitment of a Sexually Dangerous Person**

##### **§ 549.70 Purpose and application.**

(a) This subpart provides definitions and standards for review of persons for certification to federal district courts as sexually dangerous persons, as authorized by title 18 U.S.C. Chapter 313, by Bureau of Prisons (Bureau), or Bureau-contracted, staff.

(b) This subpart applies to persons in Bureau custody, including those:

- (1) Under a term of imprisonment;

- (2) For whom all criminal charges have been dismissed solely for reasons relating to the person's mental condition; or

- (3) In Bureau custody pursuant to 18 U.S.C. 4241(d).

(c) The Bureau may certify that a person in Bureau custody is a sexually dangerous person when review under this subpart provides reasonable cause to believe that the person is a sexually dangerous person. In determining whether a person is a sexually dangerous person and should be so certified, the Bureau, or Bureau-contracted staff, will consider any available information in its possession, and may transfer the person to a suitable facility for psychological examination in order to obtain information for this purpose.

##### **§ 549.71 Definition of "sexually dangerous person."**

For purposes of this subpart, a "sexually dangerous person" is a person:

(a) Who has engaged or attempted to engage in:

- (1) Sexually violent conduct; or

- (2) Child molestation; and

(b) Has been assessed as sexually dangerous to others by a Bureau, or Bureau-contracted, mental health professional.

##### **§ 549.72 Definition of "sexually violent conduct."**

For purposes of this subpart, "sexually violent conduct" includes:

(a) Any unlawful conduct of a sexual nature with another person ("the victim") that involves:

- (1) The use or threatened use of force against the victim;

(2) Threatening or placing the victim in fear that the victim, or any other person, will be harmed;

(3) Rendering the victim unconscious and thereby engaging in conduct of a sexual nature with the victim;

(4) Administering to the victim, by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance, and thereby substantially impairing the ability of the victim to appraise or control conduct;

(5) Engaging in such conduct with a victim who is incapable of appraising the nature of the conduct, or physically or mentally incapable of declining participation in, or communicating unwillingness to engage in, that conduct; or

(b) Engaging in any conduct of a sexual nature with another person with knowledge of having tested positive for the human immunodeficiency virus (HIV), or other potentially life-threatening sexually-transmissible disease, without the informed consent of the other person to be potentially exposed to that sexually transmissible disease.

#### **§ 549.73 Definition of “child molestation.”**

For purposes of this subpart, “child molestation” includes any unlawful conduct of a sexual nature with, or sexual exploitation of, a person under the age of 18 years.

#### **§ 549.74 Definition of “sexually dangerous to others.”**

For purposes of this subpart, “sexually dangerous to others” means that a person suffers from a serious mental illness, abnormality, or disorder as a result of which he or she would have serious difficulty in refraining from sexually violent conduct or child molestation if released.

#### **§ 549.75 Determining “serious difficulty in refraining from sexually violent conduct or child molestation if released.”**

In determining whether a person will have “serious difficulty in refraining from sexually violent conduct or child molestation if released,” Bureau, or Bureau-contracted, mental health professionals may consider, but are not limited to, evidence:

(a) Of the person’s repeated contact, or attempted contact, with one or more victims;

(b) Of the person’s denial of or inability to appreciate the wrongfulness, harmfulness, or likely consequences of engaging or attempting to engage in sexually violent conduct or child molestation;

(c) Established through interviewing and testing of the person, or other risk

assessment tools, that are relied upon by mental health professionals;

(d) Established by forensic indicators of inability to control conduct, such as:

(1) Offending while under supervision;

(2) Engaging in offense(s) when likely to get caught;

(3) Statement(s) of intent to re-offend; or

(4) Admission of inability to control behavior; or

(e) Indicating successful completion of, or failure to successfully complete, a sex offender treatment program.

[FR Doc. E7-14943 Filed 8-2-07; 8:45 am]

BILLING CODE 4410-05-P

## **FEDERAL MEDIATION AND CONCILIATION SERVICE**

### **29 CFR Part 1401**

**RIN 3076-AA06**

### **Freedom of Information Act Regulations**

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Mediation and Conciliation Service (FMCS) proposes to amend its rules under the Freedom of Information Act (FOIA) primarily to effectuate various provisions under the 1996 Electronic FOIA Amendments. Previously, FMCS had issued a proposed rule on November 3, 1999. 64 FR 59697, Nov. 3, 1999. FMCS received no comments when the proposed rule was published in 1999. FMCS is now withdrawing that proposed rule and issuing a new revised proposed rule. The proposed revisions include a new response time for FOIA requests, procedures for requesting expedited processing, the availability of certain public information on FMCS’s Web site, and express inclusion of electronic records and automated searches along with paper records and manual searches. In addition, FMCS’s proposed amendments would update its fee schedule. FMCS is also updating the names and addresses of the various offices within the agency responsible for FOIA related activities.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before October 2, 2007.

**ADDRESSES:** Send comments to Michael J. Bartlett, Office of the General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Bartlett, (202) 606-3737.

**SUPPLEMENTARY INFORMATION:** In this rulemaking, FMCS proposes to amend its regulations at 29 CFR part 1401, subpart B under FOIA, 5 U.S.C. 552. The primary focus of these proposed amendments is to effectuate for this Agency various provisions under the 1996 Electronic FOIA Amendments, Public Law No. 104-231. Significant new provisions implementing the amendments are found at § 1401.21(a) (electronic reading room), (d) (pamphlets distribution), (e) (records disposition), § 1401.22 (deletion marking), § 1401.34(a), (b), (c), (d) (timing of responses), § 1401.34(d) (volume estimation), § 1401.36 (a) (definitions), (b) (fee schedules, lack of fees, fee waivers).

Proposed revisions to the FMCS fee schedule can be found at § 1401.36(b)(1) (i), (ii), (iv), (3)(v). The duplication charge will remain the same at twenty cents per page, while document search and review charges will increase to \$4.00 per each quarter hour or portion thereof for clerical time and \$10.00 per each quarter hour or portion thereof for professional time. The amount at or below which the Service will not charge a fee will decrease from \$50.00 to \$14.00.

Sections such as § 1401.32, § 1401.34(d), § 1401.35, § 1401.36(b)(2)(ii) are being revised to reflect minor language or organizational name changes within FMCS. Sections 1401.24 and 1401.37 are being removed because they are neither required by Law nor necessary to interpret the law.

### **List of Subjects in 29 CFR Part 1401, Subpart B**

Administrative practice and procedure, Freedom of information.

For the reasons stated in the preamble, FMCS proposes to amend 29 CFR part 1401, Subpart B as follows:

### **PART 1401—PUBLIC INFORMATION**

1. The authority citation for part 1401, Subpart B continues to read as follows:

**Authority:** Sec. 202, 61 Stat. 136, as amended; 5 U.S.C. 552.

2. Revise § 1401.20 to read as follows:

#### **§ 1401.20 Purpose and scope.**

This subpart contains the regulations of the Federal Mediation and Conciliation Service providing for public access to information under the Freedom of Information Act, 5 U.S.C. 552. It is the policy of the FMCS to disseminate information on matters of interest to the public and to disclose upon request information contained in