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<sup>3</sup>The different state labels are "ADV:ADLT" (Alaska, Illinois, Indiana, Kansas, Maine, Missouri, New Mexico, South Dakota, and Tennessee); "ADV:ADULT" (Arkansas and Utah); "ADV-ADULT" (Louisiana, Minnesota, North Dakota, Oklahoma, and Pennsylvania); "ADV: ADULT ADVERTISEMENT" (Texas); and "ADULT ADVERTISEMENT" (Wisconsin).

<sup>4</sup>The phrase "SEXUALLY-EXPLICIT-CONTENT" comprises 25 characters, including the

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**Section D. Communications by Outside Parties to Commissioners or Their Advisors**

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. See 16 CFR 1.26(b)(5).

**Section E. Paperwork Reduction Act**

The Commission has determined that the proposed rule does not include a collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320). The Proposed Mark that the proposed rule requires to

ensure that a filtering program can effectively and efficiently filter such an e-mail?

9. Does the inclusion of punctuation (such as a colon or a dash) in the Proposed Mark in any way affect the ability of a filtering program to filter such an e-mail?

10. Would the proposed rule unduly burden either entities selling sexually oriented material through e-mail messages or those consumers who were interested in purchasing sexually oriented material offered to them through e-mail messages? How? Is this burden justified by offsetting benefits to consumers?

11. How can the Commission measure the effectiveness of the proposed rule in protecting consumers from unwanted sexually oriented e-mail messages?

12. Please describe what effect the proposed rule will have on small entities that initiate commercial e-mail messages that include sexually oriented material.

13. Please describe what costs will be incurred by small entities to "implement and comply" with the rule, including expenditures of time and money for: any employee training; acquiring additional professional skills; attorney, computer programmer, or other professional time; and preparing and processing relevant materials.

14. Are there ways the proposed rule could be modified to reduce the costs or burdens for small entities while still being consistent with the requirements of the CAN-SPAM Act?

15. Please identify any relevant federal, state, or local rules that may duplicate, overlap or conflict with the proposed rule. In addition, please identify any industry rules or policies that require small entities or other regulated entities to include clearly identifiable marks or notices with commercial e-mail that contains sexually oriented material.

16. Are the definitions set forth referencing the CAN-SPAM Act acceptable or would commenters prefer that the legal definitions themselves be imported into the proposed rule from the CAN-SPAM Act?

#### List of Subjects in 16 CFR Part 316

Advertising, Business and industry, Computer technology, Consumer protection, Labeling

Accordingly, the Commission proposes to add a new part 316 of title 16 of the Code of Federal Regulations as follows:

#### PART 316—RULES IMPLEMENTING THE CAN-SPAM ACT OF 2003

Sec. 316.1 Requirement to place warning labels on commercial electronic mail that contains sexually oriented material.

**Authority:** Pub. L. 108–187.

##### § 316.1 Requirement to place warning labels on commercial electronic mail that contains sexually oriented material.

(a) Any person who initiates, to a protected computer, the transmission of a commercial electronic mail message that includes sexually oriented material must:

(1) Include in the subject heading for the electronic mail message the phrase "SEXUALLY-EXPLICIT-CONTENT:" in capital letters as the first twenty-seven (27) characters at the beginning of the subject line;<sup>1</sup> and

(2) Provide that the matter in the message that is initially viewable by the recipient, when the message is opened by any recipient and absent any further actions by the recipient, include only the following information:

(i) The phrase "SEXUALLY-EXPLICIT-CONTENT:" in a clear and conspicuous manner;<sup>2</sup>

(ii) Clear and conspicuous identification that the message is an advertisement or solicitation;

(iii) Clear and conspicuous notice of the opportunity of a recipient to decline to receive further commercial electronic mail messages from the sender;

(iv) A functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that—

(A) A recipient may use to submit, in a manner specified in the message, a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(B) Remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message;

(v) A valid physical postal address of the sender; and

(vi) Any needed instructions on how to access, or activate a mechanism to access, the sexually oriented material, preceded by a clear and conspicuous

<sup>1</sup>The phrase "SEXUALLY-EXPLICIT-CONTENT" comprises 25 characters, including the dashes between the three words. The colon (:) and the space following the phrase are the 26th and 27th characters.

<sup>2</sup>This phrase consists of twenty-seven (27) characters and is identical to the phrase required in § 316.1(a)(1).

statement that to avoid viewing the sexually oriented material, a recipient should delete the email message without following such instructions.

(b) Prior Affirmative Consent.

Paragraph (a) of this section does not apply to the transmission of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

(c) Definitions:

(1) The definition of the term "affirmative consent" is the same as the definition of that term in section 3(1) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(2) The definition of the term "commercial electronic mail message" is the same as the definition of that term in section 3(2) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(3) The definition of the term "electronic mail address" is the same as the definition of that term in section 3(5) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(4) The definition of the term "electronic mail message" is the same as the definition of that term in section 3(6) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(5) The definition of the term "initiate" is the same as the definition of that term in section 3(9) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(6) The definition of the term "Internet" is the same as the definition of that term in section 3(10) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(7) The definition of the term "procure" is the same as the definition of that term in section 3(12) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(8) The definition of the term "protected computer" is the same as the definition of that term in section 3(13) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(9) The definition of the term "recipient" is the same as the definition of that term in section 3(14) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(10) The definition of the term "routine conveyance" is the same as the definition of that term in section 3(15) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(11) The definition of the term "sender" is the same as the definition of that term in section 3(16) of the CAN-SPAM Act of 2003, Public Law 108–187 (Dec. 16, 2003).

(12) The definition of the term "transactional or relationship messages"

is the same as the definition of that term in section 3(17) of the CAN-SPAM Act of 2003, Public Law 108-187 (Dec. 16, 2003).

(13) The definition of the term "sexually oriented material" is the same as the definition of that term in section 5(d)(4) of the CAN-SPAM Act of 2003, Public Law 108-187 (Dec. 16, 2003).

(d) Severability—The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission.

**Donald S. Clark,**

*Sec e a .*

[FR Doc. 04-1916 Filed 1-28-04; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP San Francisco Bay 03-026]

RIN 1625-AA00

#### Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a security zone extending approximately 150 feet into the navigable waters of the Oakland Estuary, Alameda, California, surrounding the United States Coast Guard Island Pier. This action is necessary to provide for the security of the military service members on board vessels moored at the pier and the government property associated with these valuable national assets. This security zone would prohibit all persons and vessels from entering, transiting through, or anchoring within a portion of the Oakland Estuary surrounding the Coast Guard Island Pier unless authorized by the Captain of the Port (COTP) or his designated representative.

**DATES:** Comments and related material must reach the Coast Guard on or before March 29, 2004.

**ADDRESSES:** You may mail comments and related material to the Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California 94501. The Waterways Management Branch maintains the public docket for

this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Waterways Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Doug Ebbers, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437-3073.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP San Francisco Bay 03-026), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

##### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

##### Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the conflict in Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The threat of maritime attacks is real as evidenced by the attack on the USS

*Cole* and the subsequent attack in October 2002 against a tank vessel off the coast of Yemen. These threats manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September 11, 2001 attacks and that such aggression continues to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks (67 FR 58317, September 13, 2002), and Continuation of the National Emergency with Respect to Persons Who Commit, Threaten To Commit, Or Support Terrorism (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02-07 advised U.S. shipping interests to maintain a heightened status of alert against possible terrorist attacks. MARAD more recently issued Advisory 03-05 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing foreign hostilities have made it prudent for U.S. ports and waterways to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *e eq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular proposed rulemaking, to address the aforementioned security concerns and to take steps to prevent a terrorist attack against these valuable national assets, the Coast Guard is proposing to establish a permanent security zone around and under the United States Coast Guard Island Pier. This security zone would help the Coast Guard to