

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Bombardier, Inc. (Formerly Canadair):**  
Docket 2003–NM–157–AD.

*Applicability:* Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7375 through 7632 inclusive, certificated in any category; equipped with landing gear control handle assemblies, Canadair Part Number (P/N) 601R50967–7 (Vendor P/N 7–45502–1) or Canadair P/N 601R50967–9 (Vendor P/N 7–45502–3).

*Compliance:* Required as indicated, unless accomplished previously.

To prevent an inability to lower or retract the landing gear using the landing gear control handle, which could result in use of Emergency Procedures using the landing gear manual release, accomplish the following:

##### Replacement

(a) Within 5,000 flight cycles after the effective date of this AD, or within one year after the effective date of this AD, whichever occurs first; replace the landing gear control handle with a new landing gear control handle, Canadair P/N 601R50967–11 (Vendor P/N 7–45502–5), per the Accomplishment Instructions of Bombardier Service Bulletin 601R–32–084, dated May 17, 2002.

##### Exception to Service Bulletin Reporting

(b) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

#### Maintenance Requirements Manual Revision

(c) Accomplishment of the actions in paragraph (a) of this AD constitutes terminating action for periodic crack inspections, as specified in Temporary Revision 2B–627 of Part 2 of the Maintenance Requirements Manual, Appendix B, Airworthiness Limitations.

#### Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

**Note 1:** The subject of this AD is addressed in Canadian airworthiness directive CF–2003–03, dated February 3, 2003.

Issued in Renton, Washington, on January 20, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–1911 Filed 1–28–04; 8:45 am]

**BILLING CODE 4910–13–P**

#### FEDERAL TRADE COMMISSION

##### 16 CFR Part 316

**RIN 3084–AA96**

#### Label For E-mail Messages Containing Sexually Oriented Material

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Federal Trade Commission (“FTC” or “Commission”) seeks comment on the proposed rule setting forth the mark that is to be included in commercial electronic mail (“e-mail”) that includes sexually oriented material. Section 5(d) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Public Law 108–187 (Dec. 16, 2003) (“CAN–SPAM Act” or “the Act”) directs the Commission to prescribe, within 120 days of enactment of that law, clearly identifiable marks or notices to be included in or associated with commercial e-mail that contains sexually oriented material. Pursuant to this mandate and its authority under section 13(a) of the Act, the Commission issues this Notice of Proposed Rulemaking and requests public comment on the proposed rule requiring that the prescribed mark be placed on certain commercial e-mail.

**DATES:** Written comments will be accepted until February 17, 2003. Due to the time constraints of this rulemaking procedure, the Commission does not contemplate any extensions of this comment period or any additional periods for written comments or rebuttal

comment. Comments that are not timely submitted and directly responsive to the specific questions set forth in Section G of this document may not be considered.

**ADDRESSES:** Comments should refer to “Proposed Mark for Sexually Oriented Spam, Project No. P044405.” Comments filed in paper form should also include this reference on their envelopes, and should be mailed or delivered, as prescribed in Section C of the Supplementary Information section, to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form (except comments containing any confidential material) should be sent, as prescribed in Section C of the Supplementary Information section, to the following email box: [adulthood@ftc.gov](mailto:adulthood@ftc.gov). All federal government agency rulemaking initiatives are also available online at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Jonathan Kraden, (202) 326–2614 (e-mail: [adulthood@ftc.gov](mailto:adulthood@ftc.gov)), Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

#### SUPPLEMENTARY INFORMATION:

##### Section A. The CAN–SPAM Act of 2003

On December 16, 2003, the President signed into law the CAN–SPAM Act. In enacting this legislation, Congress found, *inter alia*, as set forth in section 2 of the Act, that “some commercial e-mail contains material that many recipients may consider vulgar or pornographic in nature.”<sup>1</sup>

Indeed, citizens across the country have expressed concern over the increasing amount of unsolicited commercial e-mail that they receive and, most notably, the sexually explicit images that are often included in these e-mails.<sup>2</sup> This concern has prompted eighteen (18) states to enact legislation in recent years requiring a label to be attached to unsolicited commercial e-mails that include sexually explicit or

<sup>1</sup> CAN–SPAM Act at section 2(a)(5).

<sup>2</sup> A study done by FTC staff found that 17% of pornographic offers sent in a sampling of unsolicited commercial e-mail contained images of nudity that appeared automatically when a consumer opened the e-mail message. Over 40% of these sampled e-mails contained false statements in their “From” or “Subject” lines, making it more likely that recipients would open the messages without knowing that pornographic images would appear. False Claims In Spam, April 30, 2003, available at <http://www.ftc.gov/opa/2003/04/spamrpt.htm>.

obscene materials. While all of these state labeling requirements contain some variation on the words "ADULT" and "ADVERTISEMENT," the requirements often differ on the placement and spelling of these words.<sup>3</sup> The CAN-SPAM Act creates a federal labeling requirement for such e-mail messages, and section 5(d) of the Act directs the Commission to prescribe clearly identifiable marks or notices to be included in or associated with commercial e-mail that contains sexually oriented material.

### Section B. Proposed Mark For E-mail Messages Including Sexually Oriented Material

Pursuant to its mandate under section 5(d) of the Act and its authority under section 13(a) of the Act, and after consulting with the Department of Justice, the Commission hereby proposes that the phrase "SEXUALLY-EXPLICIT-CONTENT:" (hereinafter "Proposed Mark") be required to be displayed in capital letters as the first twenty-seven (27) characters in the subject line of any commercial e-mail message that includes sexually oriented material.<sup>4</sup> The Commission believes that this phrase, which is derived from the definition of sexually oriented materials in section 5(d)(4) of the CAN-SPAM Act, will provide the most accurate description of the images included in a commercial e-mail that includes sexually oriented materials.<sup>5</sup> For that reason, the Commission believes that the Proposed Mark will most clearly, conspicuously and effectively alert the recipient to the fact that an e-mail includes sexually oriented material that he or she may find objectionable.

In addition, the Commission added hyphens between the words in order to facilitate appropriate filtering. Specifically, the Commission is concerned that a filter set to block a simple English phrase like "sexually explicit content" could prevent delivery

<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 dashes between the three words. The colon (:) and the space following the phrase are the 26th and 27th characters and are included to set off the Proposed Mark and help make it more prominent.

<sup>5</sup> See § 5(d)(4) of the Act. Although the definition of "sexually oriented material" refers to "sexually explicit conduct," the Commission proposes substituting the word "content" for the word "conduct" in the Proposed Mark because the substance of an e-mail message is more accurately defined by use of the word "content."

of an e-mail from an anti-pornography group that used the phrase within the content of their message. Use of hyphens creates a unique mark calculated to avoid this problem. In addition, the Commission believes that the addition of dashes between the three words and a colon and a space after the phrase "SEXUALLY EXPLICIT CONTENT" will serve to set off the Proposed Mark and help to make it more unique and prominent.

The Commission also considered proposing use of the mark "adult advertisement." While many states across the country have labeling requirements that use abbreviated variations of the words "adult" and "advertisement," the Commission believes that use of the word "adult" in the proposed mark would not necessarily provide a recipient with the most effective notice of what that e-mail contains. There are many products or services (such as tobacco, alcohol, and gambling) that could be considered "adult" in nature. For this reason, the Commission believes that any proposed mark or notice must include some mention of the "sexual" images that a recipient can expect to see should he or she decide to open a labeled e-mail.

In addition to establishing the required mark, the proposed rule tracks the elements of section 5(d)(1) of the Act, requiring that an e-mail message that contains sexually oriented material include: Clear and conspicuous identification that the message is an advertisement or solicitation; a clear and conspicuous opt-out notice; a functioning return e-mail address or other Internet-based mechanism for opt-outs; a valid physical postal address of the sender; and a clear and conspicuous statement that to avoid viewing the sexually oriented material, a recipient should delete the email message without following a sender's provided instructions on how to access, or activate a mechanism to access, the sexually oriented material.

The proposed rule also tracks section 5(d)(2) of CAN-SPAM by exempting situations where a recipient has given his or her prior consent to receipt of a message. In addition, the proposed rule clarifies that certain terms taken from the Act and appearing in the proposed rule have the definitions prescribed by particular referenced sections of the Act.<sup>6</sup> Finally, § 316.1(d) is a severability

<sup>6</sup> Most of the terms listed in § 316.1(c) occur in the text of the proposed rule; several of them are not in the rule text, but are listed there because CAN-SPAM incorporates and defines them within the definition of another term. For example, the term "procure" is listed in the proposed rule's definitions [at § 316.1(c)(7)] because the Act defines

provision that provides that if any portion of the rule is found invalid, remaining portions will survive.

### Section C. Invitation To Comment

All members of the public are hereby given notice of the opportunity to submit written data, views, facts, and arguments concerning the Proposed Mark and the proposed rule. The Commission invites written comments to assist it in ascertaining the feasibility and effectiveness of the Commission's Proposed Mark and proposed rule. Comments may be filed with the Commission in either paper or electronic form, and must be filed on or before February 17, 2003.

1. A public comment filed in paper form should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential."<sup>7</sup>

2. A public comment that does not contain any material for which confidential treatment is requested may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word), as part of or as an attachment to an email message sent to the following email box: [adultlabel@ftc.gov](mailto:adultlabel@ftc.gov)

3. Regardless of the form in which they are filed, all timely and responsive comments will be considered by the Commission, and will be available (with confidential material redacted) for public inspection and copying on the Commission Web site at [www.ftc.gov](http://www.ftc.gov) and at its principal office. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC web site.

and includes that term in another defined term, "initiate," defined in the rule at § 316.1(c)(5).

<sup>7</sup> Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

### 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 be displayed in the subject line "is information originally supplied by the federal government." See 5 CFR 1320.3(c)(2).

### Section F. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–612, requires an agency to provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule and a Final Regulatory Flexibility Analysis ("FRFA") with the final rule, if any, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603–605. The FTC does not expect that the Proposed Mark will have a significant economic impact on a substantial number of small entities. This document serves as notice to the Small Business Administration of the agency's certification of no effect. Nonetheless, the Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed rule on small entities. Therefore, the Commission has prepared the following analysis.

#### 1. Reasons for the proposed rule.

Section 5(d) of the CAN-SPAM Act directs the Commission to prescribe, within 120 days of enactment of that law, clearly identifiable marks or notices to be included in or associated with commercial e-mail that contains sexually oriented material. The proposed rule is intended to fulfill the obligations imposed by section 5(d).

#### 2. Statement of objectives and legal basis.

The objectives of the proposed rule are discussed above. The legal basis for the proposed rule is § 5(d) of the CAN-SPAM Act.

3. *Description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.*

In general the proposed rule will apply to any person or entity who initiates, originates or transmits a commercial e-mail message that contains sexually oriented material. Determining a precise estimate of the number of small entities subject to the proposed rule, or describing those entities, is not readily feasible because the assessment of whether an e-mail message contains sexually oriented material turns on a number of factors that will require factual analysis on a case-by-case basis. The Commission invites comment and information on this issue.

4. *Description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement of including the Proposed Mark and the type of professional skills that will be necessary for inclusion of the Proposed Mark.*

The proposed rule does not impose any reporting or any specific recordkeeping requirements within the meaning of the Paperwork Reduction Act. The Proposed Mark would be included as the first twenty-seven (27) characters of the subject line of any commercial e-mail message that contains sexually oriented material. The Commission does not believe that the insertion of additional characters into the subject line of an e-mail will create a significant burden on persons or entities who initiate a commercial e-mail message that includes sexually oriented material. However, the Commission, as noted below, seeks further comment on the professional skills that will be needed to implement the proposed rule, the actual costs or expenditures, if any, of including the Proposed Mark in the subject line of commercial e-mail that contains sexually oriented material, and the extent to which these costs may differ or vary for small entities.

#### 5. *Identification of other duplicative, overlapping, or conflicting federal rules.*

The FTC has not identified any other federal statutes, rules or policies that would conflict with the requirement that the Proposed Mark be included as the first twenty-seven (27) characters of the subject line of any commercial e-mail message that contains sexually oriented material. However, the Commission is requesting comment and information about any statutes or rules that may duplicate or conflict with the proposed rule, as well as any state, local, or industry rules or policies that require labeling on commercial e-mail messages that include sexually oriented material.

6. *Discussion of significant alternatives to the proposed rule that would accomplish the stated objectives of the CAN-SPAM Act and that would minimize any significant economic impact of the proposed rule on small entities.*

Section 5(d) of the CAN-SPAM Act directs the Commission to prescribe clearly identifiable marks or notices to be included in or associated with commercial e-mail that includes sexually oriented material. The proposed rule is intended to fulfill the obligations imposed by § 5(d). However, the Commission recognizes that there are a number of variations and alternatives to the wording contained in the Proposed Mark and also considered the phrases "adult advertisement" and "sexually oriented material" before ultimately deciding on the Proposed Mark. The FTC welcomes comment on any significant alternatives, consistent with the purposes of the CAN-SPAM Act, that would minimize the economic impact of the proposed rule on small entities.

### Section G. Specific Issues for Comment

The Commission seeks comment on the proposed rule as set forth in this Notice. The Commission is particularly interested in receiving comments on the questions that follow. In responding to these questions, include detailed and factual supporting information whenever possible.

1. Are there any technical reasons why the Proposed Mark cannot be included in the subject line of e-mails that include sexually oriented materials?

2. Are there any technical reasons why the proposed rule will not be effective?

3. Are there any technical ways to make the proposed rule more effective?

4. Are there other notices or marks that would be more effective in achieving the objective of the statute, including, but not limited to, "ADULT ADVERTISEMENT" and "SEXUALLY ORIENTED MATERIAL"? Why?

5. Is the proposed rule adequate to inform a recipient that an e-mail may include content that is objectionable or offensive due to its sexual nature?

6. Is there additional information that a mark or notice should include to ensure that a recipient is made aware that an e-mail includes sexually oriented material?

7. Will the inclusion of the Proposed Mark aid a filtering program in blocking or filtering e-mail messages that include sexually oriented material?

8. Is there additional information that a mark or notice should include 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,**

Secretary.

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

BILLING CODE 6750-01-P

## 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 the 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 *et seq.*) 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