inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Don M. Wrye, Vessel Documentation and Tonnage Survey Branch; (202) 267–1492.

#### SUPPLEMENTARY INFORMATION:

## **Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 94-070) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 81/2 by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under ADDRESSES. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

### **Drafting Information**

The principal persons involved in drafting this document are Lieutenant Commander Don M. Wrye, Project Manager, and C. G. Green, Project Counsel, Office of Chief Counsel.

# **Background and Purpose**

Significant changes to the vessel documentation program were made in 1988 by Public Law 100–710 (the "statute"). Among other things, the statute added chapter 313 to title 46, U.S. Code, to revise, consolidate, and codify into positive law the ship mortgage laws administered by the Department of Transportation. The statute made certain substantive changes to then-existing law to modernize ship mortgages and the filing and recording process.

The legislative history for the statute is contained in House Report No. 100–

918. That report noted that one of the primary purposes of chapter 313 of title 46, U.S. Code, is to provide third parties with notice of the existence of mortgages and liens. The report further advocates the use of a central computer system to facilitate access to data. The report noted that the "Secretary should also consider allowing private vessel documentation services to submit applications electronically, with appropriate paper document backup for legal purposes \* \* \*" This proposal would implement some of the suggestions the report made concerning office automation and should realize some of the benefits expected to flow from modernization.

On November 15, 1993, the Coast Guard published a final rule revising 46 CFR part 67 implementing the substantive changes made by the statute. The final rule became effective on January 1, 1994.

Under subpart O of the current regulations, instruments to be filed and recorded with the Coast Guard are first submitted to the appropriate port of record. An instrument submitted for filing and recording must be a completed, executed instrument at the time it is submitted. If the instrument submitted meets the minimal requirements for filing, it is filed and stamped with a date and time. If all of the necessary elements for recording the instrument are present when it is filed, it can be promptly recorded. If an instrument is filed but cannot be recorded because of an error or omission, the instrument is deemed "filed subject to termination" and a 90day window is provided for correction. If corrected within the 90-day period, the instrument may then be recorded with the recording date and time "relating back" to the date and time filed. If the instrument is not corrected within the 90-day period, the filing is terminated and the instrument is returned. In order to preserve the notice purpose of the statute, any instrument filed with the Coast Guard, even if the filing is terminated and the instrument not recorded, is indexed on the vessel's General Index or Abstract of Title (form CG–1332). Allowing for the submission of an instrument by facsimile for filing would not change any of the procedural steps provided in the current regulations. However, the submission of an instrument by facsimile for filing will start the process earlier, resulting in an earlier date and time for filing and recording purposes.

The Coast Guard is proceeding with the consolidation of its 14 regional vessel documentation offices into one central location. This centralization will

conclude the effort begun in 1983 when a number of field offices were consolidated into regional offices. Although most vessel documentation transactions are currently completed by ordinary mail, a number of persons have expressed concern with regard to centralization for those cases where "over-the-counter" service is desired. As an example, some lending institutions will not advance funds under a ship mortgage until assured that the mortgage has been filed and recorded so as to acquire preferred status. In such cases, the Coast Guard documentation officer will verify over the telephone that the mortgage has been filed and recorded and the lending institution will advance funds immediately. The Coast Guard anticipates that the desire for such service will continue. Therefore, the Coast Guard is contemplating further use of office automation technology as part of the centralization effort. One such use of office automation technology is the filing of certain forms and instruments by facsimile. This document proposes amendments to the Coast Guard's regulations to permit optional submission by facsimile of certain forms and instruments for filing.

# **Discussion of Proposed Rules**

The Coast Guard proposes to add to 46 CFR part 67 a new § 67.219 to provide for filing commercial instruments by facsimile submission. Paragraph (a) of proposed § 67.219 would limit the instruments that could be filed by facsimile submission to those identified as eligible for filing and recording in § 67.200. Those instruments are: bills of sale and similar instruments; deeds of gift; mortgages and assignments, assumptions, supplements, amendments, subordinations, satisfactions, and releases thereof; preferred mortgages and assignments, assumptions, supplements, amendments, subordinations, satisfactions, and releases thereof; interlender agreements affecting mortgages, preferred mortgages, and related instruments; and notices of claim of lien and assignments, amendments, and satisfactions and releases thereof. Paragraph (a) of proposed § 67.219 would also list the facsimile telephone number for the National Vessel Documentation Command to which facsimile submissions may be made. Finally, paragraph (a) of proposed § 67.219 would require that the vessel to which the instrument relates either be currently documented or be the subject of an application for documentation.