DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 94-070]

RIN 2115-AE98

Facsimile Filing of Instruments

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its vessel documentation regulations to provide for optional filing of commercial instruments by facsimile, and to establish a filing and recording handling fee for filing instruments by facsimile. The option of filing commercial instruments by facsimile complements the centralization of Coast Guard vessel documentation services. Facsimile filing of commercial instruments will assist the centralized vessel documentation center to deliver timely services to distant vessel documentation customers and is responsive to time sensitive matters. Filing commercial instruments by facsimile will further streamline the vessel documentation process.

EFFECTIVE DATE: This rule is effective on October 1, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Williams, National Vessel Documentation Center; (800) 799–8362.

SUPPLEMENTARY INFORMATION:

Drafting Information

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

Regulatory History

On March 6, 1995, the Coast Guard published a notice of proposed rulemaking titled "Facsimile Filing of Instruments" in the **Federal Register** (60 FR 12188). The Coast Guard received 11 letters commenting on the proposal. No public hearing was requested and none was held.

Background and Purpose

Significant changes to the vessel documentation program were made in 1988 by Pub. L. 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. This rule implements one aspect of the suggestions the report made concerning office automation.

On November 15, 1993, the Coast Guard published a final rule (58 FR 60266) revising 46 CFR Part 67 implementing the substantive changes made by the statute. That rule became effective on January 1, 1994. On June 15, 1995, the Coast Guard published a final rule (60 FR 31602) consolidating all vessel documentation functions in the National Vessel Documentation Center (NVDC) in Martinsburg, WV. That rule became effective on August 1, 1995. In accordance with that final rule, after August 1, 1995, all documents related to vessel documentation functions must be submitted to the NVDC. However, to assist the public in adjusting to the consolidation, all of the previous 14 regional vessel documentation offices will have someone present to receive documents relating to vessel documentation functions on behalf of the NVDC until September 30, 1995. After September 30, 1995, only the office in New Orleans, LA, will have persons attached to receive such documents.

Under subpart O of 46 CFR part 67, instruments to be filed and recorded with the Coast Guard are submitted to the National Vessel Documentation Center. Any instrument submitted for filing and recording must be a completed, executed instrument at the time it is submitted. Upon receipt of the instrument at or on behalf of the NVDC, it is stamped with a date and time received. If the instrument submitted meets the minimal requirements for filing, it is marked "Filed" and the stamped date and time received is noted as the date and time filed. If the instrument submitted does not meet the minimal requirements for filing, it is

rejected and returned to the submitter. Under the terms of 46 U.S.C. 31321(a)(2), filing the instrument with the Coast Guard is the legally significant act which makes it valid against third parties. If all of the necessary elements for recording the instrument are present when it is filed, it can be promptly recorded. Recording the instrument consists of indexing the filed instrument with a book and page number, which serves as a locator for the document, and placing it in the appropriate "book" according to its sequential page number(s). 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 period is provided for correction. If corrected within the 90-day period, the instrument may then be recorded and will retain the date and time originally filed. If the instrument is not corrected within the 90-day period, the filing is terminated and the instrument is returned. 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 regulations. However, the submission of an instrument by facsimile for filing will start the process earlier and will result in an earlier date and time of filing.

Discussion of Comments and Changes

Many of the comments addressed concerns beyond the scope of the proposed rule. For example, some comments wanted information regarding how to directly access the Coast Guard's vessel documentation data base and what kind of computer hardware and software were needed for that purpose. Other comments expressed concerns about the impact that consolidation of the Coast Guard's vessel documentation field offices would have on services and suggested that certain functions be privatized. These concerns will not be addressed in this rulemaking. Only those comments that pertain to the proposed rule will be addressed in this document.

One comment requested an extension of the comment period. The person submitting the comment represented an organization scheduled to meet late in the comment period to discuss the proposed rule. It is noted that the individual who requested the extension to the comment period did submit a comment, on behalf of the organization represented, within the original