

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 187

[Docket No. USCG–2018–0160]

RIN 1625–AC28

#### Uniform Certificate of Title Act for Vessels

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes changes to its regulations for certifying a State's titling system for undocumented vessels to increase States' participation in the Vessel Identification System (VIS). The proposed changes would allow States that have adopted the recommendations of the model Uniform Certificate of Title Act for Vessels to certify their titling provisions with the Coast Guard. Once certified and participating in the VIS, a State is able to confer preferred mortgage status on financial instruments that apply to undocumented vessels, which benefits the owners of those vessels. While many of the proposed changes to the certification guidelines relate to the technical requirements of recording and maintaining titling documentation, the most significant change would be to implement a system of "branding" (permanently marking) titles for vessels that have sustained structural damage. This would help prevent a process known as "title washing," where severe vessel damage is concealed by transferring the title to a different State.

**DATES:** Comments and related material must be received by the Coast Guard on or before November 22, 2021. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before November 22, 2021.

**ADDRESSES:** You may submit comments identified by docket number USCG–2018–0160 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**Collection of information.** Submit comments on the collection of information discussed in section VI.D of this preamble both to the Coast Guard's online docket and to the Office of Information and Regulatory Affairs (OIRA) in the White House Office of

Management and Budget (OMB) using their website [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Comments sent to OIRA on collection of information must reach OMB on or before the comment due date listed on their website.

**FOR FURTHER INFORMATION CONTACT:** For information about this document call or email W. Vann Burgess, Boating Safety Division, Program Management and Operations Branch (CG–BSX–21), Coast Guard; telephone 202–372–1071, email [william.v.burgess@uscg.mil](mailto:william.v.burgess@uscg.mil).

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#### I. Public Participation and Request for Comments

The Coast Guard views public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If you cannot submit your material by using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions. Documents mentioned in this proposed rule, and all public comments, will be available in our online docket at <https://www.regulations.gov>, and can be viewed by following that website's instructions. Additionally, if you visit the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see the Department of Homeland Security's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

We do not plan to hold a public meeting, but will consider doing so if public comments indicate a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

#### II. Abbreviations

BLA Boating Law Administrator  
 BSX U.S. Coast Guard's Office of Auxiliary and Boating Safety  
 CFR Code of Federal Regulations  
 DHS Department of Homeland Security  
 DOT Department of Transportation  
 FR Federal Register  
 MOA Memorandum of Agreements  
 NCCUSL National Conference of Commissioners on Uniform State Laws  
 NBSAC National Boating Safety Advisory Council  
 NASBLA National Association of State Boating Law Administrators  
 NPRM Notice of proposed rulemaking  
 OMB Office of Management and Budget  
 PRA Paperwork Reduction Act of 1995  
 RA Regulatory Analysis  
 RFA Regulatory Flexibility Act of 1980  
 § Section  
 UCC Uniform Commercial Code  
 UCOTA–V Uniform Certificate of Title Act for Vessels  
 U.S.C. United States Code  
 VIS Vessel Identification System

#### III. Basis and Purpose

The purpose of this rulemaking is to revise Coast Guard guidelines for State vessel titling systems so that they align with the Uniform Certificate of Title Act for Vessels (UCOTA–V). As discussed in more detail below, we expect that aligning Coast Guard guidelines with UCOTA–V would increase States' participation in the Vessel Identification System (VIS), thereby benefitting the owners of undocumented vessels by providing them access to preferred mortgages.

The legal basis for this rulemaking is Title 46 of the United States Code (U.S.C.), sections 2103, 12501(a), and 31322(d). Section 2103 authorizes the Secretary of the department in which the Coast Guard is operating to issue regulations to carry out the provisions of Subtitle II, Vessels and Seamen, of Title 46 of the U.S.C., in which Section 12501(a) appears. Section 12501(a) requires the Secretary to establish a VIS

relating to, among other things, the ownership of vessels titled under the law of a State. Finally, section 31322(d) allows a mortgage that is filed, or “perfected” under State law, to be deemed “a preferred mortgage” if the Secretary certifies that the State titling system complies with the guidelines set forth in 46 U.S.C. 13107. The Secretary’s authority under these statutes has been delegated to the Coast Guard in Department of Homeland Security (DHS) Delegation No. 0170.1(II) (92.a) and (92.h). Pursuant to that authority, the Coast Guard has promulgated regulations governing the certification of State laws to determine eligibility for preferred mortgages.

#### IV. Background

##### A. Current 33 CFR Part 187, Subpart D

A mixture of both Federal and State laws govern the titling of vessels in the United States.<sup>1</sup> “Documented” vessels are typically larger commercial vessels documented with the Coast Guard National Vessel Documentation Center. Over 99 percent of vessels in the United States are not required to be documented and are considered “undocumented,” which the Coast Guard is not required to document. The registration and titling of these vessels falls under State law. State law governing the titling of vessels varies considerably from State to State, and many States do not have a certificate of title law for vessels.

While the Federal Government does not title undocumented vessels, it does have an interest in certain aspects of policy that would ordinarily be covered by State titling requirements. Specifically, the Coast Guard has an interest in information about vessels and their owners for both law enforcement and maritime domain awareness purposes. For these reasons, pursuant to statute, the Coast Guard created the VIS, which is a centralized database of information relating to these subjects.<sup>2</sup> However, the VIS relies on information generated by States through their titling and other recordation processes for information about undocumented vessels. Currently, only 38 States participate in the information exchange aspects of the VIS. Because participation in the VIS is voluntary and entirely at the States’ discretion, Congress created an incentive for States

to provide the requisite information, in the form of eligibility for preferred mortgages.

Under maritime law, a preferred mortgage is a mortgage that is filed—or perfected—in compliance with certain statutory requirements that are set forth in 46 U.S.C. 31321. A preferred mortgage creates a lien against the mortgaged vessel in the amount of the mortgage indebtedness (46 U.S.C. 31322 and 31325). A preferred mortgage is a perfected lien that has priority over certain other maritime liens and all non-maritime liens in an *in rem* admiralty foreclosure (46 U.S.C. 31326).<sup>3</sup> Acquiring a preferred mortgage is beneficial to the owners of vessels, because a preferred mortgage generally has a substantially lower interest rate than a mortgage secured by a non-perfected lien. While documented vessels are eligible for a preferred mortgage, undocumented vessels can receive such a mortgage only if the State in which it is titled satisfies the applicable Federal requirements and receives approval from the Coast Guard.<sup>4</sup>

To encourage States to participate in and share information with the VIS, the Coast Guard requires certification before maritime liens can be perfected. The guidelines that cover what a State must do to have its titling laws certified by the Coast Guard are located in Title 33 of the Code of Federal Regulations (CFR), part 187, and specifically in subpart D—State Vessel Titling Systems. In addition to the specific titling requirements, subpart D contains a requirement that the State must “comply with the VIS participation requirements of § 187.11 and subpart C of this part and make vessel information it collects available to VIS.”<sup>5</sup>

Despite the incentive of being able to provide owners of undocumented vessels access to preferred mortgages, currently no States have titling laws that comply with the Coast Guard guidelines in subpart D. This is because of a conflict between the guidelines in subpart D and provisions of the Uniform Commercial Code (UCC), specifically Articles 2 and 9, which govern the titling of property. Because most States rely on compliance with the UCC to facilitate an array of commercial transactions, they have been unable to modify their laws to comply with the Coast Guard’s certification guidelines in subpart D.

##### B. UCOTA–V

The National Conference of Commissioners on Uniform State Laws (NCCUSL) drafted UCOTA–V<sup>6</sup> with input from members of the National Association of State Boating Law Administrators (NASBLA), boat manufacturers and dealers, banking interests, and the Coast Guard, which continues to be supportive of it. Unanimously approved by the NCCUSL in July 2011, UCOTA–V provides a consistent consumer protection measure that allows the identification of vessels that have been deemed unsafe, preventing them from being sold without disclosure.

The NASBLA membership adopted UCOTA–V as a model act of the association at its annual business meeting in September 2011. Through one of its policy committees, NASBLA has continued to work with NCCUSL in promoting and supporting UCOTA–V adoption by the States. Currently, five States have adopted the act and five other States are at various stages of preparation to do so. The NCCUSL set forth several “principal objectives” when writing UCOTA–V. The objectives for UCOTA–V are to:

- (1) Qualify as a State titling law that the Coast Guard will approve;
- (2) Facilitate transfers of ownership of a vessel;
- (3) Deter and impede the theft of vessels by making information about the ownership of vessels available to both government officials and those interested in acquiring an interest in a vessel;
- (4) Accommodate existing financing arrangements for vessels;
- (5) Work seamlessly with the UCC;
- (6) Manage, to the extent possible, the complications that can arise from a vessel’s transition in or out of Federal documentation;
- (7) Provide clear rules on the consequences of compliance or noncompliance;
- (8) Impose minimal or no new burdens or costs on State titling offices; and
- (9) Protect buyers and others acquiring an interest in an undocumented vessel by requiring that the title for the vessel be branded if a casualty or sinking has caused significant damage to the vessel’s hull integrity.<sup>7</sup>

<sup>1</sup> As used throughout this notice of proposed rulemaking (NPRM), “State” means any of the 56 jurisdictions (50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands) that administer Coast Guard-approved recreational vessel numbering systems.

<sup>2</sup> See 46 U.S.C. 12501.

<sup>3</sup> A perfected lien is generally a lien that has been filed with the appropriate filing agent in order to make the securing interest in a collateral asset binding. See 46 U.S.C. 31321.

<sup>4</sup> See 46 U.S.C. 31322(d).

<sup>5</sup> See 33 CFR 187.301 and 33 CFR 187.201.

<sup>6</sup> A copy of UCOTA–V is located in the docket at <https://www.regulations.gov>, as indicated in the Public Participation and Request for Comments portion of this preamble.

<sup>7</sup> See 46 U.S.C. 12503, Information available to the system. In addition to the vessel identification

Various maritime interests recommended that the Coast Guard update its certification guidelines so that States that have adopted laws compliant with UCOTA-V can meet the certification guidelines. In 2014, the National Boating Safety Advisory Council (NBSAC), a group established under the Federal Advisory Committee Act to advise the Coast Guard, passed Resolution No. 2014-92-01 recommending that the Coast Guard initiate a rulemaking to revise subpart D based on UCOTA-V, for the following reasons:

- (1) The well-conceived and well-drafted nature of UCOTA-V;
- (2) The lack of State support for current subpart D;
- (3) The interest in complying with a revised subpart D to obtain the benefits of preferred mortgages;
- (4) Theft deterrence by facilitating interstate recovery of stolen vessels; and
- (5) Facilitation of greater participation in the VIS.<sup>8</sup>

In addition, NASBLA recommended the incorporation of UCOTA-V provisions as well. In response to an agency solicitation for regulatory reform proposals pursuant to Executive Order 13777 (Enforcing the Regulatory Reform Agenda),<sup>9</sup> NASBLA recommended that the Coast Guard revise subpart D to align Coast Guard certification requirements with the requirements of UCOTA-V. NASBLA noted that the current subpart D regulations “have become obsolete, fostered inefficiencies, and/or have become increasingly difficult to consistently apply.”<sup>10</sup>

Based on the recommendations of these two organizations, as well as our desire to increase State participation in the VIS, the Coast Guard is proposing revisions to subpart D to allow for any State adopting titling laws in accordance with the guidelines in UCOTA-V to meet Coast Guard certification requirements. We discuss

the specific proposed requirements for subpart D below.

## V. Discussion of Proposed Rule

For the reasons described above, this proposed rulemaking would revise subpart D of 33 CFR part 187 so that State titling laws modeled on UCOTA-V would meet the certification requirements of subpart D. We propose to replace the entire text of the existing subpart D with new guidelines that would accommodate States that adopt variants of the model code appropriate for their State commercial legal regimes. The Coast Guard is not proposing to incorporate UCOTA-V in its entirety because some sections of UCOTA-V are not applicable to the Federal Government. For example, included in UCOTA-V is a “savings clause” provision (see section 28 of UCOTA-V). Because the execution of the savings clause would be governed by State law applicable to vessel titling that existed prior to the adoption of UCOTA-V,<sup>11</sup> there is no Federal interest or need to apply Federal oversight of the application of a savings clause.

In short, so long as vessels have been properly registered through the State, the savings clause provision found in section 28 of UCOTA-V has no bearing on the Coast Guard’s regulatory regime. Therefore, we are not including UCOTA-V’s savings clause provision within this proposal. Instead, we are proposing certification guidelines that incorporate UCOTA-V, but with a number of policy or stylistic changes, such that the guidelines are flexible enough to allow for the variations in State law permitted by UCOTA-V.

In addition to the savings clause provision in section 28, the Coast Guard is proposing to omit the following sections of UCOTA-V that do not bear specifically on titling concerns.

*Section 1, Short title.* We are integrating the requirements of UCOTA-V into Coast Guard regulations, so we do not need to adopt the act’s title.

*Section 4, Supplemental principles of law and equity.* This provision concerns the interpretation principles of UCOTA-V and, while this is a general principle of the UCC, it is not needed for Coast Guard certification of a State’s titling law.

*Section 8, Creation and cancellation of certificate of title, subsection (f).* We are not incorporating subsection (f) of

section 8 because it is an optional provision for the States that “provides a procedure for the office to follow before canceling a certificate of title. It is intended for those states whose public records or other law does not already provide a procedure that ensures all interested parties are notified in advance and given an opportunity to be heard.”<sup>12</sup>

*Section 26, Uniformity of application and construction.* This provision also concerns interpretation principles and is not needed for Coast Guard certification.

*Section 27, Relation to electronic signatures in global and national commerce act.* This section describes the relation of a State’s law to certain Federal statutes concerning electronic signature, which is not relevant in the certification of State titling law.

*Section 28, Savings clause.* For the reasons discussed above, the Coast Guard is not incorporating section 28.

The Coast Guard also proposes a variety of stylistic changes. First, we propose keeping the general numbering scheme of the text of UCOTA-V in regulatory text, replacing references to “Section X” with the appropriate citation to the equivalent regulatory section, subsection, or paragraph. We would also replace certain words such as “shall” with “must,” as provided by the Federal Plain Language Guidelines.<sup>13</sup> Additionally, we would replace references to “the UCC” or specific sections of the UCC with references to “State law.”

We provide a section-by-section discussion of the proposed certification guidelines below.

*Section 187.7, What are the definitions of terms used in this part?*

We propose to rename this section *Definitions*. We propose to use most of the existing definitions within Section 187.7 and add new definitions from section 2 of UCOTA-V. If a definition from UCOTA-V differs from an existing regulatory definition (for example, the term “documented vessel” in UCOTA-V differs from the current definition in § 187.7), we would use the definition from UCOTA-V.

The definitions from UCOTA-V that we propose adding are as follows:

- Barge;
- Builder’s certificate;
- Buyer;
- Cancel;
- Certificate of title;

information made available by States. See NBSAC Resolution 2014-92-01 <https://homeport.uscg.mil/Lists/Content/DispForm.aspx?ID=483&Source=/Lists/Content/DispForm.aspx?ID=483>.

<sup>8</sup> See 46 U.S.C. chapter 125, (Vessel Identification System). Subsection (a) of section 12501 requires the Secretary of DHS to establish a system of information concerning vessels of the United States for law enforcement and other purposes. The Secretary is required to make available information from the system relating to the ownership of vessels documented under chapter 121 of title 46, numbered under chapter 123 of that title, and titled under the law of a State. See <https://cgmix.uscg.mil/VISInformation.aspx?VISOption> for more information regarding VIS.

<sup>9</sup> Executive Order 13777 was revoked by Executive Order 13992 (Volume 86 of the **Federal Register** (FR) at Page 7049 (Jan. 25, 2021)).

<sup>10</sup> Comment from NASBLA, available at <https://www.regulations.gov>, docket number USCG-2017-0480-0149.

<sup>11</sup> See the explanation contained in the table on page 57 of UCOTA-V which says: “States will decide under existing state law how they will treat vessels that were previously titled under state law prior to adoption of UCOTA-V.” Thus, previously existing state requirements do not bear on the titling issues that this proposal seeks to address.

<sup>12</sup> UCOTA-V, Section 8, Legislative Note, page 25.

<sup>13</sup> See Federal Plain Language Guidelines, Rev. 1, (May 2011) on p. 25. These can be accessed at <https://www.plainlanguage.gov/guidelines>.

- Electronic;
- Electronic certificate of title;
- Foreign-documented vessel;
- Good faith;
- Hull damaged;
- Lien creditor;
- Office;
- Owner of record;
- Purchase;
- Purchaser;
- Record;
- Secured party of record;
- Sign;
- State of principal operation;<sup>14</sup>
- Title brand;
- Transfer of ownership;
- Vessel number; and
- Written certificate of title.

*Subpart D heading and section titles.*

For clarification, we propose to revise the heading for subpart D from “Guidelines for State Vessel Titling Systems” to the more general “State Vessel Titling Systems.” We would also change the section titles in revised subpart D to better align with the section titles of UCOTA–V.

*Section 187.301.* We propose to clarify this section by replacing the language that says the Coast Guard “may certify” a State vessel titling system if it complies with the requirements of the subpart with “will certify.” We propose this change because, if the State’s titling system meets the requirements of this regulation, the state has met the Coast Guard’s requirements. Thus, the Coast Guard will certify the State’s titling system, thereby fulfilling the requirements set forth in 46 U.S.C. 31322(d)(1) for preferred mortgage status. The purpose of this regulation is for States to take advantages of sharing validated vessel information that meets the minimum requirements listed in regulations.

*Section 187.302 (new).* We propose moving the list of terms States must define from § 187.303 to this new section to keep the structure consistent with the rest of UCOTA–V. The new § 187.302(a) would incorporate the current requirement of § 187.303 that States define listed terms substantially as they are defined in § 187.7. The terms already listed in § 187.7 would not be removed or substantively changed, but some definitions would be rephrased, and several new terms would be added as recommended by UCOTA–V, section 2(a), which includes a list of definitions for States to adopt directly. In addition, the new § 187.302(b) would require States to define the terms listed in UCOTA–V section 2(b). These are

general terms derived from the UCC, which all States have adopted, or adopted in modified form. Finally, we would add a new § 187.302(c), incorporating UCOTA–V section 2(c), stating that subpart D definitions do not apply to any State or Federal law governing licensing, numbering, or registration if the same term is used in that law.

*Section 187.303.* We would revise § 187.303 to incorporate UCOTA–V section 3 applicability provisions. As described above, the current list of terms States must define would be moved to the new § 187.302.

*Section 187.304.* We would retain this section, without change, but would rename it to better match the rest of the subpart.

*Section 187.305.* This section currently specifies requirements for title applications. We would move the material on this topic to the revised § 187.307. The revised § 187.305 would incorporate UCOTA–V section 5, defining which State’s law governs vessels covered by title certificates.

*Section 187.306 (new).* This new section would incorporate the UCOTA–V section 6 discussion of when a title certificate is and is not required.

*Section 187.307.* The revised § 187.307 would incorporate UCOTA–V section 7 specifications for title application contents. Currently, this section mandates certain provisions that States must impose on vessel dealers and manufacturers. We would no longer require these dealer- or manufacturer-specific conditions because they are covered by the UCOTA–V provisions that we propose adopting.

*Section 187.308 (new).* This new section would incorporate the UCOTA–V section 8 provisions for creating and canceling title certificates, with the exception of optional paragraph (f), as detailed above in the discussion of UCOTA–V section 8.

*Section 187.309.* Section 187.309 currently covers requirements for voluntary title transfers (transfers other than by operation of law). Section 187.317 currently covers title certificate contents. Under our proposal, we would exchange these, so the revised § 187.309 would cover title certificate contents (an adaptation of UCOTA–V section 9) and the revised § 187.317 would cover requirements for voluntary title transfers (an adaptation of UCOTA–V section 17). We propose this change to better align with the structure of UCOTA–V.

*Section 187.310 (new).* This new section would incorporate UCOTA–V section 10 title brand provisions. We would incorporate these provisions to deter title washing and protect buyers

and others acquiring an interest in an undocumented vessel.

*Section 187.311.* This section currently requires new title certificates after vessel ownership transfers by operation of law. We propose moving this discussion to the new § 187.320. The revised § 187.311 would incorporate UCOTA–V section 11 requirements for maintenance of and access to State title certificate files.

*Section 187.312 (new).* This new section would incorporate UCOTA–V section 12, concerning the duties of the State and title holder upon creation of a title certificate.

*Section 187.313.* This section currently requires a State to honor evidence of vessel ownership from another State, country, or the Coast Guard. Under this proposal, we would move this discussion to § 187.328. The revised § 187.313 would incorporate UCOTA–V section 13, declaring the *prima facie* evidential value of title certificate contents.

*Section 187.314 (new).* This new section would incorporate UCOTA–V section 14, concerning the possession of a title certificate and judicial process against a certificate.

*Section 187.315.* This section currently provides that a State title is invalidated when exchanged for a certificate of documentation. The revised § 187.315 would incorporate UCOTA–V section 15 provisions for perfecting vessel security interests, which is currently addressed in § 187.323.

*Section 187.316 (new).* This new section would incorporate UCOTA–V section 16, concerning the termination of a security interest in a vessel. Currently, § 187.327 requires States to establish their own termination procedures. We propose removing and reserving § 187.327.

*Section 187.317.* To better align with UCOTA–V’s structure, we would exchange the provisions on the topics covered by § 187.309 with the topics covered by § 187.317, as discussed above at *Section 187.309*.

*Section 187.318 (new).* This new section would incorporate UCOTA–V section 18, concerning the effect of missing or incorrect title certificate information.

*Section 187.319.* This section currently covers applying for replacement or “redundant” title certificates. We propose moving this topic to the new § 187.322. The revised § 187.319 would incorporate UCOTA–V section 19, concerning the transfer of a vessel ownership interest by a secured party’s transfer statement.

<sup>14</sup> In UCOTA–V, this term is “State of principle [*sic*] use.”

*Section 187.320 (new).* This new section would incorporate UCOTA–V section 20, concerning ownership interest transfers by operation of law, which § 187.311 currently contains.

*Section 187.321.* This section currently requires a hull identification number to be assigned and affixed to a vessel upon proof of its ownership. We propose replacing the existing language with a substantively identical adaptation of UCOTA–V section 21, concerning applications for transferring ownership or for canceling a security interest that is not accompanied by a certificate of title. UCOTA–V recommends more specific requirements for recording hull identification numbers, which we would include in revised §§ 187.307, 187.309, 187.311, 187.315, and 187.325. For example, UCOTA–V requires the State to issue a hull identification number in cases where the State did not issue one to the vessel owner or operator upon original construction, such as an antique vessel built prior to November 1972.

*Section 187.322 (new).* This new section would incorporate UCOTA–V section 22, concerning replacement title certificates, which is currently addressed in § 187.319.

*Section 187.323.* This section currently specifies procedures for perfecting vessel security interests, which would be addressed in § 187.315. The revised § 187.323 would incorporate UCOTA–V section 23, concerning the rights of a vessel purchaser who is not a secured party.

*Section 187.324 (new).* This new section would incorporate UCOTA–V section 24, concerning the rights of secured parties.

*Section 187.325.* This section currently requires States to specify the procedure for assigning vessel security interests, which would be addressed in the revised § 187.315(f). The revised § 187.325 would incorporate UCOTA–V section 25, specifying certain requirements for the administrative operation of a State certificating authority, such as length of record retention and allowable fees.

*Section 187.327.* We would remove this section, which covers the discharge of a vessel security interest. This topic would be covered in the new § 187.316.

*Sections 187.329.* We would remove this section. It is not necessary to retain the requirement in § 187.329 for States to specify titling system forms, as UCOTA–V requirements for specific records would appear throughout revised subpart D. An example of this is in the title application and certificate provisions of §§ 187.306 through 187.310.

*Section 187.331.* We would remove this section. Section 187.331 requires States to retain title system information and make it available to government authorities. In the revised subpart D, similar requirements would appear in §§ 187.311(d) and 187.325(a).

## VI. Regulatory Analyses

The Coast Guard developed this NPRM after considering numerous statutes and Executive orders related to

rulemaking. Below, we summarize our analyses based on these statutes or Executive orders.

### A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. We developed an analysis of the costs and benefits of the proposed rule to ascertain its probable impacts. A regulatory analysis (RA) follows.

This RA provides an evaluation of the economic impacts associated with this proposed rule. Table 1 provides a summary of the proposed rule's costs and benefits. The Coast Guard requests public comments on all aspects of the following analysis. In particular, the Coast Guard requests comments on the categories of unquantified costs and benefits and potential costs listed in Table 1 below.

TABLE 1—SUMMARY OF THE PROPOSED RULE'S IMPACTS <sup>1</sup>

Category	Summary
Affected Population .....	56 States of which 18 are not currently in compliance with VIS requirements and 47 have not adopted UCOTA–V (subpart D) or started the process.
Costs (7-percent discount rate) .....	\$138,490 (10-year discounted cost). \$19,718 (annualized cost).
Unquantified Costs <sup>2</sup> .....	<ul style="list-style-type: none"> <li>• 2 States currently have legislative conflicts that may impact VIS participation. While the cost to negotiate and amend the legislation is estimated, the cost of labor to put forward and vote on the privacy legislation is difficult to quantify.</li> <li>• 47 States currently have legislative conflicts that may impact adopting UCOTA–V. While the cost to negotiate and amend the legislation is estimated, the cost of labor to put forward and vote on the privacy legislation is difficult to quantify.</li> </ul>
Potential Costs <sup>3</sup> .....	<ul style="list-style-type: none"> <li>• Costs to vessel owners, imposed by States without titling programs (7 States), who require vessel owners to obtain a title. Estimated potential cost of obtaining title is \$50 (<i>not in cost analysis</i>);</li> <li>• Costs to vessel owners, imposed by States without titling programs (7 States), who may experience opportunity costs for labor expended to obtain a title (<i>not in cost analysis</i>);</li> <li>• Costs to vessel owners, imposed by States with titling programs (47 States), who may impose additional costs or fees on vessel owners (<i>not in cost analysis</i>);</li> <li>• Cost to States to update website after reviewing rule (<i>not in cost analysis</i>);</li> <li>• Cost to States seeking to become VIS compliant to transfer data to the Coast Guard (<i>included in cost analysis</i>).</li> </ul>
Unquantified Benefits .....	Ability to obtain preferred mortgage status; lower transaction costs; deterrence to “title washing;” recovery of stolen vessels; identification of abandoned vessels; consumer protection; and security measures for financial entities; lower administrative burden and costs to the buyer.

<sup>1</sup> Figures are rounded to the nearest one dollar.

<sup>2</sup> Unquantified costs are defined as costs that are incurred as a direct or indirect result of the rulemaking, which are not quantified.

<sup>3</sup> Potential costs are defined as costs that may *potentially* be incurred as a direct or indirect result of the rulemaking.

This proposed rule has several goals. The Coast Guard intends to establish minimum requirements for States electing to become subpart D-compliant and to prescribe guidelines for State vessel titling systems. We also intend to provide guidance on how to obtain certification of compliance with State guidelines for vessel titling systems for the purpose of conferring preferred status on mortgages, instruments, or agreements under 46 U.S.C. 31322(d).

The proposed revisions would affect States that voluntarily seek to certify their State titling laws with the Coast Guard, pursuant to regulations under 33 CFR part 187, and to participate in the VIS. As such, the affected population for this proposed rule would include the 56 U.S. States.

The Coast Guard has been encouraging States to participate in the VIS since it has been in place in 2007, but some have chosen not to participate, primarily because of privacy laws regarding the sharing of personally identifiable information. The VIS comprises a nationwide information system for identifying recreational, commercial, and public vessels that are numbered. As of January 21, 2020, 38 States were participating in the VIS.<sup>15</sup> To encourage further participation, participating States have access to all VIS data.

As described later, the benefits of this proposed rule would include increased uniformity across States in their titling laws. In turn, this would lead to a reduction in transaction costs, increased fraud prevention (insurance fraud and fraud from illegitimately owned vessels), increased consumer protection, a decrease in risk to lenders, the recovery and identification of abandoned vessels, and increased efficiencies for interstate commerce. Even though there is no new requirement in the proposed rule for vessel owners to report vessel damage to the VIS directly, the insurance company would be required to provide the information to the State if the owners make claims to repair the vessels. Once the States provide the vessel information to the VIS, the system can track the vessel information and share with other States if the repaired boats are sold as boats with no damage outside the State.

More specifically, transaction costs would be lower because consumers may be able to get preferred loans which have lower interest rates. Also, a buyer's

administrative burden and costs when buying a vessel from a private party may be lessened because the buyer would not have to do extensive research to assure the vessel is being sold by the legitimate owner. In addition, some non-titling States require bonds when vessels are sold; this transaction cost may be eliminated with the adoption of UCOTA-V.

#### Affected Population

This proposed rule would potentially affect all 56 States. The affected population of the regulated public may be parsed by VIS participation and also by UCOTA-V adoption. As of January 21, 2020, 38 States were participating in the VIS,<sup>16</sup> 16 States were interested in joining the VIS, but had not signed a Memorandum of Agreements (MOA) on VIS participation, and two States were not able to comply with VIS requirements due to conflicts with their own state's privacy laws. Regarding UCOTA-V adoption, 47 of 56 States have not adopted UCOTA-V.<sup>17</sup>

#### Costs

The proposed rule would result in costs to the regulated public (State and territorial governments) and to the Coast Guard. Costs to the States may be divided between VIS compliance costs and UCOTA-V adoption (proposed subpart D compliance) costs. The proposed rule would not impose direct costs on vessel owners, as it would deter fraud by introducing penalties for providing false information. However, there is potential for indirect costs, as noted later.

Vessel owners are not required to take action as a result of the proposal. For example, this proposed rule does not require additional documentation from vessel owners. Transfer of title always requires a new title to be issued, which is common practice. There is no requirement other than a statement from the current owner declaring the vessel is, or has been, damaged. There is no other documentation required for proof of damage. There is no requirement for a statement from an insurer. This merely provides disclosure to a buyer.

The proposed changes of the NPRM would lead to changes in some States, which may have cost implications for vessel owners and the States. Below describes the potential costs to vessel

owners as a direct or indirect result of this proposed rule.

#### Potential Costs to Vessel Owners

The proposed rule would affect 56 States, all of which have vessel owners. In States that currently have a titling program for vessels, and that participate in the VIS, vessel owners would experience no incremental impact. In States with an existing titling program, vessel owners would be affected if the State changes or imposes additional fees through their legislative or regulatory process. States that are compliant with UCOTA-V (proposed subpart D) report that they did not impose any additional fees after the adoption of UCOTA-V provisions, and, according to the Coast Guard's Office of Auxiliary and Boating Safety (BSX), no State has signaled the intent to increase titling fees if their system becomes certified as UCOTA-V compliant. However, the Coast Guard cannot definitively conclude that recreational vessel owners would not face a cost increase as an indirect effect of these proposed changes. Nonetheless, we have not computed a cost due to the proposal to vessel owners in States with a titling system, due to the uncertainty of a potential cost increase.<sup>18</sup> The Coast Guard will revisit this evaluation further after reviewing the public comments it receives during the comment period of this proposed rule.

In States without a vessel titling program, recreational vessel owners may experience a cost increase because of this proposed rule. These States have not indicated to the Coast Guard how they would handle existing vessels once they have established a titling system. Existing vessels may be grandfathered in and permitted to be titled voluntarily by the owner, or States may require all vessel owners to obtain a title. A review of websites for States with a titling program demonstrated that the cost of vessel titles are generally \$50 or less.<sup>19</sup> Because the Coast Guard does not have information on how future titling programs would be operated, we have not computed the potential costs to obtain titles in these States as a cost in this rulemaking. We acknowledge that there may be some opportunity costs<sup>20</sup>

<sup>18</sup> According to BSX, recreational vehicle owners for the 10 compliant and semi-compliant States did not incur a cost increase.

<sup>19</sup> This statement is based on the Coast Guard's review of website information for 52 States (March 2020). For Virginia state fees, see <https://dwr.virginia.gov/boating/registration/procedure/>. For Florida state fees, see <https://www.flhsmv.gov/motor-vehicles-tags-titles/vessels/vessel-titling-registrations/>.

<sup>20</sup> The use of leisure time to obtain the title. The cost of this task may be calculated by the formula:

Continued

<sup>15</sup> <https://cgmix.uscg.mil/VISInformation.aspx?VISOption>. This page was last viewed on January 22, 2020. On that date the last update was January 21, 2020.

<sup>16</sup> VIS participation is defined by the existence of a signed MOA.

<sup>17</sup> The five States that have adopted UCOTA-V are Connecticut, the District of Columbia, Florida, Hawaii, and Virginia. The four States in the process of adopting UCOTA-V are Alabama, Georgia, Tennessee and Texas. This data is current as of January 21, 2020.

for labor expended to obtain the title and actual fees for the title.

No further action would be required by vessel owners. Vessel owners do not need to renumber their vessels as a result of the proposed rule, since existing hull numbers are unrelated to

titling. No equipment is required by vessel owners for compliance.

Table 2 below summarizes this section detailing potential costs of the proposed rule. All are considered indirect costs, as they are costs that may be imposed by the State on vessel

owners as a result of the proposed rule, but not mandated by the rule itself.

There are other potential costs of the rule detailed in future section. For a comprehensive list of all potential costs, please refer to Table 1.

TABLE 2—SUMMARY OF POTENTIAL COSTS

Task	Description	Party bearing cost	Potential direct or indirect cost of proposed rule
Obtaining a vessel title (Cost of title).	Costs to vessel owners, imposed by States without titling programs (7 States), that require vessel owners to obtain a title. Potential cost of obtaining title is \$50.	Vessel owners in 7 States ....	Potential indirect cost of proposed rulemaking.
Obtaining a vessel title (opportunity cost of obtaining title).	Costs to vessel owners, imposed by States without titling programs (7 States), who may experience opportunity costs for labor expended to obtain a title.	Vessel owners in 7 States ....	Potential indirect cost of proposed rulemaking.
N/A .....	Costs to vessel owners, imposed by States with titling programs (47 States) that may impose additional costs or fees on vessel owners.	Vessel owners in 47 States ...	Potential indirect cost of proposed rulemaking.

#### Costs to the Coast Guard

We estimate that the Government costs associated with this regulatory action would be labor costs for the Coast Guard to: (1) Process MOAs from the States; (2) coordinate with States; and (3) update the Coast Guard website. No additional equipment would be needed to perform these tasks under the proposed rule.

In order to process an MOA, it is first transmitted from the States to a Coast Guard compliance officer in BSX and then to the Commandant (or designee) for approval. To coordinate with the States, a Coast Guard compliance officer would engage with and respond to inquiries from the States. The Coast Guard estimates that a Coast Guard compliance officer would spend 0.25 hour to process an MOA from a State

and another 0.25 hour to transmit it to the Commandant (or designee) for approval. The Commandant or designee would spend 0.2 hour to approve an MOA (Cost = Count of MOAs × [(0.5 hour × Compliance officer's wage rate) + (0.2 hour × Commandant's wage rate)]).

As a result of this proposal, we estimate that the Coast Guard would need to engage with, respond to inquiries, and coordinate with States regarding VIS participation and UCOTA-V compliance. Eighteen States are not in the VIS. We estimate that a Coast Guard compliance officer would need to coordinate with each of these States for VIS participation.<sup>21</sup> To engage with and respond to inquiries from States, we estimate that the compliance officer would spend 0.5 hour per State's

inquiry to coordinate a response (Cost = 18 States × (0.5 hour × Compliance officer's wage rate)). For the 47 States needing to adopt UCOTA-V, we estimate that a Coast Guard compliance officer would spend 0.5 hour per State to assist (Cost = 47 States × (0.5 hour × Compliance officer's wage rate)).

Lastly, the Coast Guard would need to update its website with information on this proposed rule. We estimate that 1 hour would be needed by a computer technician and an additional 0.25 hour for a compliance officer to supervise and approve the update. This is a one-time task that is expected to occur in the first year of the final rule's enactment (Cost = [(0.25 hour × Coast Guard compliance officer's wage rate) + (1 hour × Federal computer technician's wage rate)]).

TABLE 3—SUMMARY OF COSTS TO THE COAST GUARD

Task	Time burden and responsible party	Cost	Applicable population	Direct or indirect cost of proposed rule
Process MOA from States ...	0.25 hours to process MOA ( <i>USCG Compliance officer</i> ). 0.25 hours to transmit for approval ( <i>USCG Compliance officer</i> ). 0.2 hours for approval ( <i>Commandant or designee</i> ).	(0.5 hours × USCG Compliance officer's wage rate) + (0.2 hour × Commandant or designee's wage rate) × 56 States.	One-time cost to the Coast Guard for all 56 States.	Direct.

One-half of the median household income. The Coast Guard followed the Department of Transportation's (DOT) guidance for valuing the opportunity cost of leisure time. Readers should consult the DOT Memorandum "Revised Departmental Guidance on the Valuation of a

Statistical Life," which may be found at <https://www.transportation.gov/sites/dot.gov/files/docs/2016%20Revised%20Value%20of%20Travel%20Time%20Guidance.pdf>.

<sup>21</sup> Readers may consult Coast Guard data at <https://cgmix.uscg.mil/VISInformation.aspx>. This

web page was last viewed on January 21, 2020. Sixteen States have initiated VIS participation, but have not completed an MOA. Two States do not participate.

TABLE 3—SUMMARY OF COSTS TO THE COAST GUARD—Continued

Task	Time burden and responsible party	Cost	Applicable population	Direct or indirect cost of proposed rule
Coordinate with States .....	0.5 hours for 18 States without VIS ( <i>USCG Compliance officer</i> ). 0.5 hours for 47 States needing to adopt UCOTAV ( <i>USCG Compliance officer</i> ).	18 States $\times$ (0.5 hour $\times$ USCG Compliance officer's wage rate). 47 States $\times$ (0.5 hour $\times$ USCG Compliance officer's wage rate).	One-time cost to the Coast Guard for 18 States. One-time cost to the Coast Guard for 47 States.	Direct.
Update Coast Guard Website.	1 hour to update ( <i>Federal computer technician</i> ). 0.25 hours to approve ( <i>USCG Compliance officer</i> ).	0.25 hour $\times$ USCG compliance officer's wage rate) + (1 hour $\times$ Federal computer technician's wage rate).	One-time cost to the Coast Guard.	Direct.

## Costs to the Regulated Public (States)

Compliance with the proposed rule would require a variety of tasks by the regulated public. This section documents the Coast Guard's assessment of the proposed rule's changes and the steps States would need to take as a result. Not all tasks would need to be carried out by all the States. In this section, the Coast Guard notes first the tasks that apply to all States. Next are the tasks that result from the proposed rule. We split these tasks into categories to better calculate the costs, since some tasks apply to some States and others apply to other States, depending on their current level of compliance with existing rules.

Below is a list of all costs to the regulated public:

## Costs to the Regulated Public—States

All 56 States would need to be familiarized with the proposed rule and complete the task of reviewing the State's website. Upon review of the State's procedures and websites, some States may need to make updates. These are discussed in more detail below.

The Coast Guard estimates that States would spend 0.5 hour to become familiarized with the proposed rule.<sup>22</sup> A manager would perform this task. A manager would spend another 0.5 hour to review the State's procedures and website to make a determination if anything would need to change in response to the proposed rule (Cost = 56 States  $\times$  0.5 hour  $\times$  State manager's wage rate). All 56 States may potentially need to update their websites, which would be accomplished by a computer

technician. The Coast Guard estimates that this task would take 1 hour and would be performed by a computer technician at the direction of a manager.<sup>23</sup> However, as the Coast Guard does not have an estimate on how many States would need to update their website, the cost is considered only a potential cost and is not factored into the cost analysis.

Although not explicitly required, some States may send email notifications or a press release to interested parties (*e.g.*, such as the media, recreational boaters, boating associations, the Coast Guard Auxiliary, etc.) Another 0.5 hour is estimated for a State manager to write a notification of regulatory change for the public.<sup>24</sup> We estimate these as one-time costs to the State.

TABLE 4—SUMMARY OF COSTS TO STATES

Task	Time burden and responsible party	Cost	Applicable population	Direct or indirect cost of proposed rule
Become familiarized with rule.	0.5 hours State manager .....	Cost = (56 States $\times$ 0.5 hour $\times$ State manager's wage rate) + (56 States $\times$ 0.5 hour $\times$ State manager's wage rate).	One-time cost to all 56 States.	Direct.
Review website .....	0.5 hours State manager .....			Direct.
Update website ( <i>Not included in cost analysis</i> ).	1 hour Computer technician	Cost = 1 hour $\times$ 56 States $\times$ Computer Technician's wage rate.	Potential one-time cost to all 56 States.	Potential direct cost.
Notification of change .....	0.5 hours State manager .....	Cost = 0.5 hour $\times$ 56 States $\times$ State manager's wage rate.	One-time cost to all 56 States.	Direct.

<sup>22</sup> This estimate is based on a previous Coast Guard rulemaking. In the 2014 final rule for Personal Flotation Devices Labeling and Standards (79 FR 56491), the Coast Guard estimated that the task would take 0.5 hour (<https://www.federalregister.gov/documents/2014/09/22/2014-22373/personal-flotation-devices-labeling-and-standards>). Time estimate can be found under Table 2, "State

Regulatory Review". No public comments were received on this estimate. This page was last viewed on May 21, 2021.

<sup>23</sup> The Coast Guard estimates a manager would spend 0.25 hour to provide direction and supervise and approve the work of a computer technician.

<sup>24</sup> This estimate is based on the Coast Guard's rule for Tankers Automatic Pilot Systems (83 FR 55272).

Please see <https://www.federalregister.gov/documents/2018/11/05/2018-24127/tankers-automatic-pilot-systems>, Table 3, "Write Notification of Regulatory Change", 4th Entry (0.5 hours). This estimate is defined as "Communicate regulatory change", which is an identical task undertaken by the State manager. This page was last viewed on May 21, 2021).



### Costs to the Regulated Public—States (VIS Compliance Costs)

Based on BSX data,<sup>25</sup> we estimate that there are two States currently not in compliance with any existing VIS requirements. Some States are in partial compliance with existing requirements for the VIS. Coast Guard data demonstrates that 16 States have initiated VIS participation, but are not in compliance because they do not have a signed MOA with the Coast Guard. The remaining 38 States have signed MOAs, which means they are participating in the VIS.

The 16 States that have initiated VIS activity, but do not have a signed MOA with the Coast Guard, would need to complete the following steps for an MOA. In order to comply, States would incur costs to: (1) Coordinate with the Coast Guard for data transfer; (2) prepare and submit a completed MOA and participation form; and (3) engage in coordination activities to complete a new user request form.

All the VIS-participating States would engage in activities to upload data to the VIS. However, according to Info-Link Technologies,<sup>26</sup> the contractor responsible for VIS updates, VIS data uploads for each State are often an automated process, where software automatically prepares and uploads a

data file each month. The economic impact of the data submission is zero as a result of Info-Link Technologies already bearing the cost for the data, which they receive from every State regardless of their participation in VIS. Thus, States that do not currently participate in VIS still engage in a virtual data submission with the contractor and will not incur an additional cost or time burden. As a result, we conclude that VIS data uploads would not produce costs to States new to VIS.

New VIS participants would need to complete the new user request form. We estimate that it would take 0.1 hour to complete the form. These estimates are based on data provided by Info-Link Technologies and the Coast Guard's Collection of Information entitled "Vessel Identification System," OMB Control Number: 1625-0070.<sup>27</sup>

Lastly, two States would have to address legislative conflicts with existing privacy laws that complicate or prevent VIS participation. We estimate that such a task would require that a manager to negotiate the changes with a State legislative committee. An attorney would draft the legislation. Unlike UCOTA-V, which has uniform legislation to follow for each State, privacy law amendments may take more

time to develop. Therefore, we estimate that a manager would spend 40 hours to negotiate legislative changes. Another 40 hours would be spent by an attorney to draft the legislative language. State laws are often voted in blocks and the labor to put the amended privacy legislation forward and to vote on it is considered to be unseverable. For that reason, we have not estimated a cost for this step. However, the Coast Guard would like to request comments from the public on any information regarding the estimated cost to draft and negotiate legislative changes. Presently, we use our current estimates for drafting and negotiating these changes but omit the cost of labor to put forward and vote on the legislation.

We computed a cost to transmit VIS data to the Coast Guard for 18 States on the basis that States may correspond with the Coast Guard to initiate the data transfer or may have issues in their computer systems preventing automatic data transfer. In the event that this occurs, the State may send spreadsheets to the Coast Guard, and a technician contracted to the Coast Guard would upload the data. However, we acknowledge that this is already a task under existing regulations and, in most cases, data is automatically transmitted.

TABLE 5—SUMMARY OF COSTS

[VIS compliance]

Task	Time burden and responsible party	Cost	Applicable population	Direct or indirect cost of proposed rule
Prepare and submit an MOA.	16 hours ( <i>State manager</i> ).	18 States × (16 hours × State Manager wage rate).	One-time cost for 18 States .....	Direct.
Complete New User request form.	0.1 Hour ( <i>State manager</i> ).	18 States × (0.1 hour × State Manager wage rate).	One-time cost for 18 States .....	Direct.
Coordinate with Coast Guard for data transfer.	1 hour ( <i>State manager</i> )	18 States × (1 hour × State Manager wage rate).	Potential one-time cost for States with issues with the automatic data transfer. ( <i>Even though considered potential, included in cost analysis due to potential correspondence to initiate data transfer or issues with automatic data transfer</i> ).	Direct (Potential).
Draft legislative language to amend privacy laws.	40 hours ( <i>State manager</i> ) 40 hours ( <i>State attorney</i> ).	2 States × [(40 hours × State Manager wage rate) + (40 hours × State attorney wage rate)].	One time cost for 2 States .....	Direct.

<sup>25</sup> <https://cgmix.uscg.mil/VISInformation.aspx>. This web page was last viewed on January 8, 2020.

<sup>26</sup> Email from Info-Link Technologies, Inc. to William Burgess, Compliance Officer, CG-BSX-1 dated February 5, 2020 (available in the docket

where indicated under the Public Participation and Request for Comments portion of this NPRM).

<sup>27</sup> During the renewal process for the collection of information request, no public comments were received on the estimate. In preparing this NPRM,

the Coast Guard reviewed data and revised the estimate for the duration of labor to upload VIS data. The revision better reflects the amount of time needed to perform periodic uploads of automated data.

Costs to the Regulated Public—States in UCOTA–V Adoption (Proposed Subpart D Compliance)

We base our cost estimates on all 56 States choosing to adopt UCOTA–V. As of January 16, 2020, five States have adopted UCOTA–V, and five States are developing legislation to become UCOTA–V-compliant.<sup>28</sup> Many of the remaining States have reported that they are waiting for the Coast Guard to promulgate a rule on UCOTA–V before going through the legislative process. In addition, States often wait for their neighboring States to adopt legislation that potentially has effects across State borders. Insurers and manufacturers have lobbied for the changes. For these reasons, the Coast Guard estimates that all 56 States would adopt UCOTA–V.

Currently, 47 States have not adopted UCOTA–V nor initiated legislation to adopt UCOTA–V. The cost analysis of UCOTA–V adoption focuses solely on these 47 States. In order to comply with the proposed rule, States would need to develop legislation and amend their computer systems to comport with UCOTA–V. As noted earlier, all States would post information on their website about this rulemaking; that task appears in a preceding section of this analysis.

In order to develop UCOTA–V legislation,<sup>29</sup> a State would require the labor of an attorney<sup>30</sup> to draft the legislation<sup>31</sup> for a State legislative committee to begin the legislative process. The Uniform Law Commission has developed legislative text for UCOTA–V which each State may use to develop its respective State law. For this reason, the labor for each State is relatively low. We estimate that an attorney would spend approximately 24 hours<sup>32</sup> to draft the legislative language.

<sup>28</sup> Email from Uniform Law Commission to William Burgess, Compliance Officer, Coast Guard (January 16, 2020) (available in the docket where indicated under the Public Participation and Request for Comments portion of this NPRM).

<sup>29</sup> For all uniform acts, the State's legislative drafting office mainly formats the bill to conform to the State's required format and fill in bracketed areas of the text. The Uniform Law Commission (ULC) (<https://www.uniformlaws.org/home>) also includes italicized legislative notes when they format the bill for the particular State. This allows the time to draft the bill to be relatively shorter than with other regulations.

<sup>30</sup> Each State has its own legislative drafting agency responsible for drafting legislation. The bill drafters are attorneys who draft bills for all the state legislators.

<sup>31</sup> As this is part of the State's normal legislative process, we do not anticipate any additional fees beyond the normal process for these bills.

<sup>32</sup> This estimate comports with previous estimated durations of making legislative changes at the State level. In the final rule for Personal Flotation Devices Labeling and Standards (79 FR 56491, USCG–2013–0263, RIN 1625–AC02), Coast Guard estimated that a change by legislative would

Given that State laws<sup>33</sup> are often voted in blocks, the labor to put UCOTA–V legislation forward and to vote on it is considered to be unseverable and, for that reason, we have not estimated a further cost on developing legislation.

States adopting UCOTA–V would need to update their procedures and websites to reflect the resulting changes. We estimate that 5 hours would be spent by a State manager to review and edit State procedures, manuals, policy documents and other information (Cost = (47 States × 5 hours × State manager's wage rate)).<sup>34</sup>

The remaining UCOTA–V compliance costs items would be: (1) Labor for a manager to coordinate with the Coast Guard to ensure the State's program meets UCOTA–V certification requirements (Cost = 47 States × (0.5 hour × State manager's wage rate)); (2) labor for an administrative assistant and a manager to assist with the conversion or update to a subpart D-compliant system (Cost = 47 States × [(0.25 hour × administrative assistant's wage rate) + (0.75 hour × State manager's wage rate)]); (3) labor for a manager to oversee conversion to a subpart D-compliant system (Cost = 47 States × 0.25 hour × State manager's wage rate); and (4) labor for a software developer to convert the system to a subpart D compliant system (Cost = 47 States × (12.6 hours × computer technician's wage rate)). These tasks and their calculations are shown in table 6.<sup>35</sup>

take 10 hours. No public comments were received on this estimate. Please see <https://www.federalregister.gov/documents/2014/09/22/2014-22373/personal-flotation-devices-labeling-and-standards>. The Coast Guard adjusted this estimate to reflect the more complex nature of this change.

<sup>33</sup> Some States may delegate the approval process of such changes to an administrative law committee rather than vote on it in the legislature. The process to develop the law and to put it forward for voting would be the same.

<sup>34</sup> This estimate comports with previous estimated durations of reviewing and editing manuals and policy documents. The Coast Guard reviewed previously approved OMB collections for the final rule for Marine Vapor Control Systems (RIN 1625–AB37, USCG–1999–5150, 80 FR 7539), the proposed rule for Revision of Crane Regulation Standards (RIN 1625–AB78, USCG–2011–0992, 78 FR 27913) and the final rule for Personal Flotation Devices Labeling and Standards (79 FR 56491, USCG–2013–0263, RIN 1625–AC02, 78 FR 27913). Previously approved collections of information may be found at Information Collection Review ([reginfo.gov](https://www.reginfo.gov)). No public comments were received on these estimates. The Coast Guard adjusted its estimate to reflect changes in complexity of the task.

<sup>35</sup> According to BSX, most States use an “off the shelf” system, so changes are easy and menu driven. Some States have older systems which would take more time to adjust, but the older systems are the exception, not the rule. The Coast Guard estimates the average number of hours of labor for a computer technician by using the average time spent on design and coding from a

For the 7 States that do not have an existing titling program, the labor tasks for amending State's computers to comport with UCOTA–V would be greater. We estimate that 24 hours would be spent by a computer technician in these States to amend the State's computers to comport with UCOTA–V, and that a manager would spend another 0.5 hour to review and approve the work. The Coast Guard requests comments from States on their assessment of tasks and costs that would result from the proposed rule.

BSX routinely contacts States regarding their vessel titling systems. There are currently 45 States titling vessels and 1 State that makes titling optional.<sup>36</sup> Provided that these States become compliant with the recent regulatory changes in the Standard Numbering System, Boating Accident Report Database, and VIS (33 CFR parts 173, 174, 181, and 187) by the required date, any changes made to the current titling systems should be minimal.

Coast Guard personnel attended the National Association of State Boating Law Administrators Workshop held in Lexington, KY from 23 to 28 February 2020. Approximately 40 boating administrators from the States were in attendance, and 4 stated they were contemplating adopting UCOTA–V. The four states are Wisconsin, Minnesota, Alaska, and South Carolina. None of these 4 states have conducted a complete cost analysis, but the initial projected cost ranged from minimal to about \$8,000.

The primary changes required would include the ability to mark a title as “branded,” and to add any numbered vessels that are not currently required to be titled. For example, Virginia adopted UCOTA–V and reprogrammed their system to accept the “branded” designation. According to the State of Virginia's Boating Law Administrator

University of South Carolina study on software developers. Readers can find the study at: <https://cse.sc.edu/job/how-software-developers-really-spend-their-time>. The study uses the average number of hours per week software developers spend designing and coding software. The Coast Guard considers this to be a reasonable rough proxy for the purpose of this analysis.

<sup>36</sup> Email from NASBLA Vessel Registration, Identification, and Titling Committee (VIRT) to William Burgess, Compliance Officer, Coast Guard, February 10, 2010. Available in the docket where indicated under the Public Participation and Request for Comments portion of the preamble.

(BLA),<sup>37</sup> this was accomplished at no cost to the State.<sup>38</sup>

The remaining 11 States that do not currently title vessels do title vehicles, and their vehicle titling systems could add vessels. As an example, Connecticut (previously a non-titling State) adopted UCOTA–V and its Department of Motor Vehicles began issuing titles for vessels.<sup>39</sup> This process is analogous to registering a motor vehicle. In other words, at the time a person buys a car, the owner must register and title the car with the cognizant state. Likewise, a vessel owner would now be able to register and title vessel at the same time

and in the same place. Connecticut did not incur any new costs associated with this transition since it used the existing infrastructure, and the change was completed as a part of an information technology update as per the State BLA.<sup>40</sup>

The 10 States that have adopted or have begun adopting the UCOTA–V model have engaged in the tasks noted in this text as costs of compliance. For example, they have already collaborated with the Coast Guard regarding their vessel titling system updates. These States would not incur additional costs because they elected to adopt the

UCOTA–V model prior to this regulation. These States would not require the use of a computer technician to upgrade the computer system because the conversion has taken place already. No further actions would be needed by States in this situation. As noted earlier, these States would already be familiar with and would have reviewed their existing procedures as a result of the rulemaking. The Coast Guard invites comments on any additional costs that would be incurred by States that are currently (pre-proposal) in the process of adopting UCOTA–V.

TABLE 6—SUMMARY OF COSTS FOR SUBPART D COMPLIANCE

Task	Time burden and responsible party	Cost	Applicable population	Direct or indirect cost
Draft UCOTA–V legislative language.	2 hours ( <i>State manager</i> ) 5 hours ( <i>State attorney</i> ).	47 States × [(2 hours × State manager wage rate) + (5 hours × State attorney wage rate)].	One-time cost for 47 States.	Direct.
Coordinate with Coast Guard for compliance and certification.	0.5 hours ( <i>State manager</i> )	47 States × (0.5 hour × State manager wage rate).	One-time cost for 47 States.	Direct.
Assist with update and convert to compliant computer system.	0.25 hours ( <i>admin assistant</i> ) 0.75 hours ( <i>State manager</i> ).	47 States × [(0.25 hour × admin assistant wage rate) + (0.75 hour × State manager wage rate)].	One-time cost for 47 States.	Direct.
Oversee update or conversion to compliant system.	0.25 hours ( <i>State manager</i> ).	47 States × (0.25 hour × State manager wage rate).	One-time cost for 47 States.	Direct.
Update or convert to a compliant system.	12.6 hours ( <i>computer technician</i> ).	47 States × (12.6 hours × computer technician wage rate).	One-time cost for 47 States.	Direct.
Amend State's computers to comport with UCOTA–V. ( <i>Applies to States without an existing titling program.</i> )	2 hours ( <i>computer technician</i> ) 0.25 hours ( <i>State manager</i> ).	7 States × [(2 hours × computer technician wage rate) + (0.25 hour × State manager wage rate)].	One-time cost for 7 States	Direct.
Update State procedures or processes..	5 hours ( <i>State manager</i> ) ...	47 States × (5 hours × State manager wage rate).	One-time cost for 47 States.	Direct.
Post updated procedures on website..	0.25 hours ( <i>State manager</i> ) 1 hour ( <i>computer technician</i> ).	24 States × [(0.25 hour × State manager wage rate) + (1 hour × computer technician wage rate)].	One-time cost for 24 States.	Direct.

#### Cost Calculations for the Proposed Rule

We discuss the derivation of cost data in the following paragraphs. We estimate the approximate loaded hourly

labor rates of State employees as follows: Manager (\$94.30); administrative assistant (\$33.81); computer technician (\$67.98); and lawyer (\$124.57). The loaded wage

factor is 1.74 for non-managerial State workers and 1.56 for managers at the State level, based on Bureau of Labor Statistics (BLS) data. See table 7 for details.

<sup>37</sup> According to the Virginia BLA, updates to the system are included as a part of routine information technology maintenance. <https://community.nasbla.org/blogs/thomas-guess/2018/08/23/ucotva-in-virginia>. The website is dated August 23, 2018. This page was last viewed on February 5, 2020.

<sup>38</sup> The governor of each State appoints a single agency to be the recipient and administrator of grant funds received from the State Recreational Boating Safety Grant Program, which is authorized under 46 U.S.C. Chapter 131. These State agencies in turn appoint a BLA to be the State's single point

of contact for the purposes of administering the grant program. Although duties can vary from State to State, their primary function is to administer the recreational boating safety program within the State. Every State and territory of the United States has an assigned BLA. The BLA for Virginia is an employee with the Virginia Department of Game and Inland Fisheries.

<sup>39</sup> No changes would be required to any State's systems to facilitate population of the VIS. Data received from the States for inclusion in the VIS would be handled by the Coast Guard contractor

and reformatted as necessary to populate the VIS database. We do not expect States to incur additional costs as the cost is already captured under the existing Coast Guard long-term contract for management and maintenance of the VIS.

<sup>40</sup> Conversation at the Boating Law Administrators Workshop (circa February 28, 2018 to March 1, 2018) with Ms. Eleanor Mariani, Boating Law Administrator, Connecticut, and William Burgess, Compliance Officer, Coast Guard.

TABLE 7—LOADED WAGE FACTOR CALCULATION (2020 DOLLARS)

Personnel category	Data source(s) <sup>1</sup>	Total compensation	Wage & salaries	Loaded wage factor
All Workers, State and Local Government .....	BLS Employer Costs for Employee Compensation, all workers in State and Local Government.	\$51.54	\$29.546	1.74
Managers, State and Local Government .....	BLS Employer Costs for Employee Compensation, Managers in State and Local Government.	64.02	41.02	1.56
Coast Guard Uniform Positions .....	2020 Military Active & Reserve Component Pay Tables <sup>2</sup> .	.....	.....	1.85

<sup>1</sup> A loaded wage rate is what a company pays per hour to employ a person, including the hourly wage and the cost of benefits (health insurance, vacation, etc.). To calculate the load factor, we used the series IDs CMU3019200000000D (for all workers) and CMU3010000100000D (for managers, professions and related occupations") using the multi-screen database. Visit Employer Cost for Employee Compensation: Multi-Screen Data Search: U.S. Bureau of Labor Statistics ([bls.gov](https://www.bls.gov)) and select "State and local government workers". Select "Total Compensation" and "Wages and salaries". Select "All workers" or "Managers, professional, and related occupations". Select "Public Administration". Select "All workers". Select "United States". Select "Cost of Compensation". Select "Not seasonally adjusted". Finally, use values for the 4th Quarter of 2020 to calculate the load factor by dividing total compensation by wages and salaries.

<sup>2</sup> <https://www.dfas.mil/militarymembers/payentitlements/Pay-Tables.html>. Data was posted on December 30, 2019 and web page was last updated January 27, 2020. This page was last viewed on February 20, 2020.

For all provisions with costs to the Government, we use publicly available data found on OPM's website under "Policy, Data, and Oversight" and in the Congressional Budget Office's report, "Comparing the Compensation of Federal and Private-Sector Employees, 2011 to 2015." We estimate labor costs attributed to the Government Coast Guard compliance officers, GS-14 managers, GS-13 computer technicians,

and the Commandant. We estimate the fully loaded labor costs for a GS-13 and GS-14 compliance officer at \$71.03 and \$79.48 respectively.<sup>41</sup> We use a weighted average of the wage rates (\$73.14) for calculations. We estimate the wage rate for a GS-14 manager at \$79.48, the wage rate for a GS-13 computer technician at \$79.48, and the wage rate for the Commandant (O-10) at \$163. This figure represents a loaded

wage rate for uniformed Coast Guard positions.<sup>42</sup>

For positions outside the Coast Guard, we use publicly available data from the BLS Occupational Compensation Survey to estimate wage rates for State and local positions that would be impacted by the proposed rule. We present the estimated wage rates and a summary of the data for the proposed rule in table 8.

TABLE 8—LOADED WAGE CALCULATION  
[2020]

Personnel category	Data source(s) <sup>1</sup>	Mean hourly wage	Load factor	Loaded wage
Computer Developer .....	Software Developers, Applications (OC 15-1256) <sup>2</sup> .....	\$54.94	1.74	\$95.60
Administrative Support .....	Secretaries and Administrative Assistants, Except Legal, Medical, and Executive (OC 43-6014) <sup>3</sup> .	19.43	1.74	33.81
General Manager .....	General and Operations Managers (OC 11-1021) in Management Occupations <sup>4</sup> .	60.45	1.56	94.30
Lawyer .....	Lawyers, Judges, and Related Workers (OC 23-1011) in the Legal Occupations <sup>5</sup> .	71.59	1.74	124.57
Coast Guard Commandant (O-10).	Military Active & Reserve Component Pay Tables <sup>6</sup> .....	88.11	1.85	163
Civilian Computer Technician (GS-13).	OPM Salary Table (2020) .....	42.736	1.66	71.03
Civilian Manager (GS-14) .....	OPM Salary Table (2020) .....	50.49	1.57	79.48
Coast Guard Compliance Officer (GS-13).	OPM Salary Table (2020) .....	42.73	1.66	71.03
Coast Guard Compliance Officer (GS-14).	OPM Salary Table (2020) .....	50.49	1.57	79.48
Coast Guard Compliance Officer (average) <sup>7</sup> .	Weighted average by the formula: [(0.75 × \$71.03 GS-13 Compliance Officers' wage rate) + (0.25 × \$79.48 GS-14 Compliance Officers' wage rate)].	.....	.....	73.14

<sup>1</sup> To calculate the loaded wages, we used Occupational Code 11-1021 (*General and Operations Managers*) for general managers, Occupational Code 43-6014 (*Secretaries, Except Legal, Medical, and Executive*) for clerical, and Occupational Code 15-1256 (*Software Developers and Software Quality Assurance Analysts and Testers*) for computer developer. Please see footnotes of Table 7 for instructions on calculating load factors.

<sup>41</sup> General Schedule (Pay & Leave: Salaries & Wages—OPM.gov). Labor costs calculated by 1) finding hourly wage rate for GS-level under "2020 General Schedule (Base)". Choose Step 5 value. 2) To calculate load factor, we go to <https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52637-federalprivatepay.pdf>. Use tables 2 and 4. Divide the total compensation by the wages for a Federal employee. Multiply by hourly

wage rate obtained from OPM. GS-13 falls under "Master's Degree" and GS-14 falls under "Professional/Doctorate Degree". For the Master's Degree we end up with a benefits to wage ratio, using this method, of \$74.80/\$45 = 1.66 and for the Professional/Doctoral Degree of \$81.70/\$51.90 = 1.56. Using these to obtain a fully burdened rate, we end up, for the GS-13 labor, \$42.73 × 1.66 = \$

\$71.03 and, for the GS-14 labor, \$50.49 × 1.56 = \$79.48.

<sup>42</sup> The load factor for uniformed positions is based on the Coast Guard's analysis of compensation and benefits of Coast Guard enlisted and commissioned personnel based on data found in <https://www.dfas.mil/militarymembers/payentitlements/Pay-Tables.html>. This page was last viewed on December 20, 2019.

<sup>2</sup> Software Developers and Software Quality Assurance Analysts and Testers (*bls.gov*).

<sup>3</sup> Secretaries and Administrative Assistants, Except Legal, Medical, and Executive (*bls.gov*).

<sup>4</sup> General and Operations Managers (*bls.gov*).

<sup>5</sup> Lawyers (*bls.gov*).

<sup>6</sup> <https://www.dfas.mil/militarymembers/payentitlements/Pay-Tables.html>.

<sup>7</sup> Coast Guard compliance officers consist of GS-13s and GS-14s. There are four Coast Guard employees who would complete this requirement (three GS-13s and one GS-14). To calculate the in-government wage rate, we calculated three-fourths of the GS-13 in-government wage rate (\$71.03) and one-fourth of the GS-14 in-government wage rate (\$79.48) and added them together to estimate a more accurate wage rate for the team that would complete this process.

We estimate the costs in this RA in 2020 dollars based on BLS wage rates. We estimate the total cost for States to

be \$182,607, undiscounted (not including Government costs). We estimate the total Government costs

associated with this proposed rule to be \$14,537. We show the summary of compliance costs in Table 9.

TABLE 9—ESTIMATED COST OF PROPOSED RULE <sup>1</sup>

CFR citation	Task <sup>2</sup>	Cost calculation	Total costs
Costs to Regulated Public (States):			
<i>General Compliance Costs (All States) (See Table 3) (One-time costs for States):</i>			
33 CFR 187 .....	Become familiar with NPRM .....	56 States × (0.5 hour × \$94.30/hour State manager).	\$2,640
33 CFR 187 .....	Review procedures and website .....	56 States × (0.5 hour × 94.30/hour State manager).	2,640
33 CFR 187 .....	Write press release or email .....	56 States × (0.5 hour × 94.30/hour State manager).	2,640
33 CFR 187 .....	Update website. ( <i>Potential cost, not used in analysis</i> ).	56 States × (1 hour × 95.60/hour computer technician).	Not in cost calculations
<i>Subtotal—General Compliance Costs (States).</i>	.....	.....	\$7,921
<i>VIS Compliance Costs (States) (See Table 5) (One-time costs for States):</i>			
33 CFR 187.7 .....	Prepare and submit an MOA .....	18 States × (16 hours × 94.30/hour State manager).	27,158
33 CFR 187.7 .....	Complete New User request form .....	18 States × (0.1 hour × 94.30/hour State manager).	170
33 CFR 187.7 .....	Coordinate with Coast Guard for data transfer. ( <i>Potential cost, but used in analysis</i> ).	18 States × (1 hour × 94.30/hour State manager).	1,697
33 CFR 187.7 .....	Draft legislative language to amend privacy laws.	2 States × [(40 hours × 94.30/hour State manager) + (40 hours × 124.57/hour State attorney)].	17,510
33 CFR 187.7 .....	Put forward and vote on the privacy legislation.	Applies to 2 States .....	Unquantified
<i>Subtotal—VIS Compliance Costs (States).</i>	.....	.....	46,535
<i>UCOTA-V Adoption (Proposed Subpart D) Compliance Costs (States) (See Table 6) (One-time costs for States):</i>			
33 CFR 187.306 .....	Draft UCOTA-V legislative language .....	47 States × [(2 hours × 94.30/hour State manager) + (5 hours × 124.57/hour State attorney)].	38,138
33 CFR 187.306 .....	Put forward and vote on the privacy legislation.	Applies to 47 States .....	Unquantified
33 CFR 187.306 .....	Coordinate with Coast Guard for compliance and certification.	47 States × (0.5 hour × 94.30/hour State manager).	2,216
33 CFR 187.312 .....	Assist with update and convert to compliant system.	47 States × [(0.25 hour × 33.81/hour admin assistant) + (0.75 hour × 94.30/hour State manager)].	3,721
33 CFR 187.312 .....	Oversee update or conversion to compliant system.	47 States × (0.25 hour × 94.30/hour State manager).	1,108
33 CFR 187.312 .....	Update or convert to a compliant system .....	47 States × (12.6 hours × 95.60/hour computer technician).	56,614
33 CFR 187.312 .....	Amend State's computers to comport with UCOTA-V.	7 States × [(2 hours × 95.60/hour computer technician) + (0.25 hour × 94.30/hour State manager)].	1,503

TABLE 9—ESTIMATED COST OF PROPOSED RULE <sup>1</sup>—Continued

CFR citation	Task <sup>2</sup>	Cost calculation	Total costs
33 CFR 187 .....	Update procedures or processes .....	47 States × (5 hours × 94.30/hour State manager).	22,161
33 CFR 187 .....	Post updated procedures on website .....	24 States × [(0.25 hour × 94.30/hour State manager) + (1 hour × 95.60/hour computer technician)].	2,860
<i>Subtotal: UCOTA-V (Proposed Subpart D) Compliance Costs (States).</i>			128,321
<i>Total Cost for Regulated Public (States).</i>			182,607
Federal Government Costs (One-time cost to Government for States affected):			
33 CFR 187.306 .....	Process New User request from States .....	18 States × (0.5 hour × 73.14/hour Compliance Officer).	658
33 CFR 187.306 .....	Process an MOA from States .....	18 States × [(0.2 hour × 163/hour Commandant) + (8.25 hours × 73.14/hour Compliance Officer)].	11,448
33 CFR 187.306 .....	Coordinate with 18 States for VIS .....	18 States × (0.5 hour × 73.14/hour Compliance Officer).	658
33 CFR 187.312 .....	Coordinate with 47 States on UCOTA-V certification.	47 States × (0.5 hour × 73.14/hour Compliance Officer).	1,682
33 CFR 187 .....	Update Coast Guard's website. (Initial year cost).	(1 hour × 71.03/hour computer technician) + (0.25 hour × 79.48/hour Federal manager).	91
<i>Total for Federal Government (Coast Guard).</i>			14,537
<i>Total for Regulated Public and Government.</i>			197,148

<sup>1</sup> Totals may not sum due to rounding. Undiscounted costs appear in the table.

<sup>2</sup> "Potential indirect costs" not included (See Table 2). Unquantified costs included but are not part of cost calculations.

#### Total Costs

Using a 7-percent discount rate, we estimate the total discounted cost of the proposed rule to be \$138,490 (rounded). The total annualized cost at a 7-percent discount rate is \$19,718 (rounded). See table 10.

For the projected cost to the regulated public, the Coast Guard expects all

States would comply within 10 years of this rule. However, we do not have specific information as to the rate of compliance. As such, we assume equal probability for each year; that is, we estimate 10 percent will comply each year for the next 10 years. Given this, the total cost to the regulated public, as shown in the table 9, is \$182,607. This

is \$18,261 (rounded) when averaged across 10 years.

For the cost to the Government, we assume that the \$91 website update will occur in the first year. Subtracting that, we calculate the annual cost over the next 9 years by dividing the total by 10 (\$1,445). The first year cost to Government will be \$1,445 + \$91, which is \$1,536.

TABLE 10—TOTAL ESTIMATED COST OF THE PROPOSED RULE  
[10-year Period of analysis, 7 and 3 percent discount rates \$2020] <sup>1</sup>

Year	Costs to the regulated public (states)			Costs to the government			Total estimated costs		
	Undiscounted	7%	3%	Undiscounted	7%	3%	Undiscounted	7%	3%
1 .....	\$18,261	\$17,066.07	\$17,728.83	\$1,536	\$1,435.51	\$1,491.26	\$19,797	\$18,501.59	\$19,220.10
2 .....	18,261	15,949.60	17,212.46	1,445	1,262.12	1,362.05	19,706	17,211.72	18,574.51
3 .....	18,261	14,906.17	16,711.13	1,445	1,179.55	1,322.38	19,706	16,085.72	18,033.51
4 .....	18,261	13,931.00	16,224.40	1,445	1,102.38	1,283.86	19,706	15,033.38	17,508.26
5 .....	18,261	13,019.63	15,751.84	1,445	1,030.27	1,246.47	19,706	14,049.89	16,998.31
6 .....	18,261	12,167.88	15,293.05	1,445	962.86	1,210.16	19,706	13,130.74	16,503.21
7 .....	18,261	11,371.85	14,847.62	1,445	899.87	1,174.92	19,706	12,271.72	16,022.54
8 .....	18,261	10,627.89	14,415.17	1,445	841.00	1,140.70	19,706	11,468.90	15,555.86
9 .....	18,261	9,932.61	13,995.31	1,445	785.98	1,107.47	19,706	10,718.60	15,102.78
10 .....	18,261	9,282.81	13,587.68	1,445	734.56	1,075.22	19,706	10,017.38	14,662.89
Total .....	182,607.00	128,255.52	155,767.47	14,537.00	10,234.12	12,414.49	197,148.00	138,489.64	168,181.97
Annualized ...	.....	18,260.70	18,260.70	.....	1,457.11	1,455.36	.....	19,717.81	19,716.06

<sup>1</sup> Totals may not sum due to independent rounding.

## Benefits

The proposed rule would amend the Coast Guard's existing regulations (see 33 CFR 187 subpart D, "Guidelines for State Vessel Titling Systems") to better align with UCOTA-V. The proposed rule would encourage uniformity amongst the States through the adoption of the UCOTA-V model, in its entirety or in part, and, as mentioned in the Background section of this NPRM, Section IV, it would follow recommendations by the NBSAC and NASBLA. Although the movement to harmonize State titling laws has existed for some time, not all States have pursued legislation. Some States have chosen to wait for the Coast Guard to pass the UCOTA-V regulation.

The proposal would also promote consumer protection against fraud. A large number of recreational vessels are resold annually. In 2017, there were approximately 981,600 pre-owned vessels sold in the United States.<sup>43</sup> Given this large number, the industry is vulnerable to the types of fraud UCOTA-V is designed to prevent.

The proposed rule would facilitate the procurement of secured loans on vessels. If the Coast Guard does not certify a State titling system, then a State cannot confer preferred mortgage status on a mortgage or security interest for a vessel, which functions as a security measure for financial entities. Many financial institutions require eligible vessels to be documented and to have their preferred mortgages recorded. A preferred mortgage is considered more secure, with less risk to the lender. This places the lender in a position to provide lower interest rates over longer terms to the consumer. In turn, the lender earns more over the term of the loan with less risk. More specifically, the lender would have a lower risk of loans defaulting; therefore, the lender's loan portfolio would provide better returns despite the lower interest rates offered to borrowers.

The consumer would benefit as well. With preferred loans, the borrower would have a loan with better terms. Relative to non-preferred loan, the consumer would pay less per month due to the lower interest rate on preferred loans.

In addition, consistent titling procedures across States would deter the practice of "title washing," whereby after the sale of a damaged vessel for salvage, the buyer makes cosmetic repairs and resells the vessel without

disclosing its previous damage. Recreational boaters may benefit from this proposed rule by being able to assist States and law enforcement in recovering their lost or stolen vessels.

Additionally, we intend the proposed rule to promote maritime security by facilitating State participation in the VIS. After the September 2001 terrorist attacks, a Coast Guard gap analysis showed that law enforcement agencies, including the Coast Guard, lacked the ability to easily and verifiably identify recreational vessels and their owners and operators, especially when a vessel is registered in a State other than that in which the law enforcement agency operates. This inability deprives law enforcement agencies of critical tools for deterring crime and maritime-based terrorism.

Since its inception in 2007, the VIS has remedied this inability by collecting and providing verifiable data for vessels in VIS-participating States. However, 16 States still do not participate in the VIS.<sup>44</sup> Facilitating full VIS participation by these States would enhance maritime security. Because of the high level of interest among the States in aligning their vessel titling systems with UCOTA-V, aligning our subpart D regulations with UCOTA-V would make it easier for States to obtain subpart D certification.

## Alternatives Considered

**Alternative 1—Take no action.** This alternative would allow existing regulations to remain in conflict with State laws and UCOTA-V. For States complying with the existing regulations, this alternative would result in them not receiving the benefits of deterred "title washing," recovery and identification of abandoned vessels, consumer fraud protection, and security measures for financial entities. Participation in the VIS would continue at its current low rate. This alternative would result in no additional costs, as no new regulations would be implemented, but would also result in no benefits, as there would be no changes to current practice. Therefore, we rejected this alternative.

**Alternative 2—This is the preferred alternative.** This alternative would change the guidelines in subpart D so that any State that adopts UCOTA-V and participates in the VIS would be in compliance. This would encourage compliance and participation and provide benefits to States, lenders, and consumers. The cost implications associated with this alternative are specified in the Costs section of this RA and assume 100 percent participation

from all 56 States. The total 7 percent discounted cost over 10 years would be \$176,570. The qualitative benefits would be increased mitigation of fraudulent ownership, the creation of uniformity amongst the States, which will help facilitate transfers of vessel ownership, to deter theft of vessels and aid law enforcement agencies by making recovery of stolen vessels across State lines easier, promote consumer protection, and facilitate making secured loans on vessels. Therefore, this is the preferred alternative.

**Alternative 3—This alternative would repeal existing guidelines for certification of State titling requirements and allow States to regulate vessel titling with no coordination or oversight.** This would remove the ability for States to establish separate programs to enable vessels to gain preferred mortgage status and discourage participation in the VIS. In this scenario, each State would have a unique vessel titling system; this alternative would produce varying costs and benefits, which may be beneficial to the States as they could customize a titling program to meet their specific needs. However, we are unable to estimate the costs due to the number of possibilities offered, and they would occur without coordination or oversight from the Coast Guard. Harmonization of regulations across States would be impossible. As this would not satisfy the goals of this potential regulatory action, we rejected this alternative.

## B. Small Entities

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) (RFA) and Executive Order 13272 (Consideration of Small Entities in Agency Rulemaking) require a review of proposed and final rules to assess their impacts on small entities. An agency must prepare an initial regulatory flexibility analysis unless it determines and certifies that a rule, if promulgated, would not have a significant impact on a substantial number of small entities.

Under the RFA, we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Based on the analysis above, this proposed rule would affect 56 States and U.S.

<sup>43</sup> <https://www.nmma.org/press/article/21678> ("U.S. Boat Sales Strong Heading into 2018, Poised for Another Year of Growth," January 9, 2018). Accessed and last viewed on December 26, 2019.

<sup>44</sup> As of January 21, 2020.

territories.<sup>45</sup> All governmental jurisdictions that would potentially be directly regulated by this rule have populations greater than 50,000. These entities are not considered to be small entities based on the Small Business Administration's definition of what is a small governmental jurisdiction.<sup>46</sup> Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to docket at the address in the **ADDRESSES** section of this preamble. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

#### C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### D. Collection of Information

This proposed rule would require a modification of an existing collection of information under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3520. As defined in 5 CFR 1320.3(c), “collection of information” comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for

reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

*Title:* Vessel Identification System.

*OMB Control Number:* 1625–0070.

*Summary of the Collection of*

*Information:* Public Law 100–710 (46 U.S.C. 12501) requires the establishment of a nationwide vessel identification system (VIS). The VIS provides participating States with access to data of vessels numbered by States. States voluntarily provide the VIS data. The States, boating public, and law enforcement would be the primary beneficiaries. To become part of the VIS, States must submit a Memorandum of Agreement (MOA) to the Coast Guard.

*Need for Information:* The VIS collects State-numbered vessel identification and ownership data and provides that data to law enforcement agencies in the States that choose to participate in the VIS. Participation in the VIS is entirely voluntary. In order to participate, States must comply with certain requirements to ensure the integrity and uniformity of the information provided to the VIS.

*Proposed Use of Information:* The Coast Guard would use this information to track vessel information and facilitate the recovery of stolen or missing vessels.

*Description of the Respondents:* The 50 States, District of Columbia, and 5 territories. The Coast Guard describes these as “56 States.”

*Number of Respondents:* As a result of the proposal, the Coast Guard anticipates that there would be two additional States joining the VIS annually until all States join. Over a 10 year period, this proposed rule would increase the number of respondents from 38 States to 56 States.

*Frequency of Response:* The number of responses per year of this proposed rule would vary by participating States. New MOA applications, VIS user requests, and VIS data uploads are required with the initial MOA application process. For existing participants, VIS user requests and VIS data uploads are required. Based on the current collection of VIS information data, the Coast Guard anticipates that each new participant will submit an MOA application once, a VIS user request once a year, and upload VIS data every 2 weeks.

*Burden of Response:* The burden of response includes three components—MOA applications, VIS data uploads, and VIS user requests. The burden for an MOA application, VIS data upload and VIS new user request form are: 16

hours, 0.6 hour, and 0.1 hour, respectively. An MOA application and a VIS new user request form would be prepared by a manager. A computer technician would handle the VIS data upload.

*Estimate of Total Annual Burden:*

This proposed rule would require additional hours for VIS data uploads (32 hours annually),<sup>47</sup> MOAs (32 hours annually), and VIS user requests (1 hour annually).<sup>48</sup> The proposed rule would increase the total burden by 64 hours (rounded from the actual 63.3 hours), from 5,792 hours to 5,856 hours.<sup>49</sup>

As required by 44 U.S.C. 3507(d), we will submit a copy of this proposed rule to OMB for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine, among other things:

- (1) How useful the information is;
- (2) Whether it can help us perform our functions better;
- (3) Whether it is readily available elsewhere;
- (4) How accurate our estimate of the burden of collection is;
- (5) How valid our methods for determining burden are;
- (6) How we can improve the quality, usefulness, and clarity of the information; and
- (7) How we can minimize the burden of collection.

If you submit comments on the collection of information, submit them to both the OMB and to the docket where indicated under **ADDRESSES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this proposed rule, OMB would need to approve the Coast Guard's request to collect this information.

#### E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

<sup>47</sup> Rounded from the actual 31.2 hours.

<sup>48</sup> Rounded from the actual 0.2 hour.

<sup>49</sup> Rounded from the actual 5,855.3 hours.

<sup>45</sup> See 46 U.S.C. 123. The only issuing authorities are the 56 States. Tribal governments are excluded legally as authorities from numbering and titling vessels.

<sup>46</sup> Small governmental jurisdictions are defined as governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.



The purpose of this rulemaking is to revise Coast Guard requirements for State participation in the Coast Guard-maintained VIS and guidelines for State vessel titling systems. The Coast Guard is mandated to establish and maintain the VIS, but State participation in the VIS is voluntary. Nothing in this proposed rule would require States to participate in the VIS. However, once electing to participate in the VIS, a State must comply with the VIS requirements to ensure integrity and uniformity of information. Likewise, requesting certification that a State vessel titling system complies with the guidelines is also voluntary, but such a system must comply with subpart D for voluntary certification. This proposed rule would not require States to request certification, change their existing titling systems, or otherwise preempt related State regulations. Therefore, the proposed rule is consistent with the principles of federalism and preemption requirements in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this proposed rule has implications for federalism under Executive Order 13132, please contact the person listed in the **FOR FURTHER INFORMATION** section of this preamble.

#### *F. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Although this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### *G. Taking of Private Property*

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with

Constitutionally Protected Property Rights).

#### *H. Civil Justice Reform*

This proposed rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, (Civil Justice Reform), to minimize litigation, eliminate ambiguity, and reduce burden.

#### *I. Protection of Children*

We have analyzed this proposed rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### *J. Indian Tribal Governments*

This proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### *K. Energy Effects*

We have analyzed this proposed rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### *L. Technical Standards*

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did

not consider the use of voluntary consensus standards.

#### *M. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

This proposed rule would be categorically excluded under paragraphs L54 and L57 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. Paragraph L54 pertains to regulations which are editorial or procedural and L57 pertains to regulations concerning documentation of vessels. This proposed rule involves changes to regulations for certifying a State's titling system for undocumented vessels. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### **List of Subjects in 33 CFR Part 187**

Administrative practice and procedure, Marine safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 187 as follows:

#### **PART 187—VESSEL IDENTIFICATION SYSTEM**

- 1. Revise the authority citation for part 187 to read as follows:

**Authority:** 46 U.S.C. 2103, 12501, 31322; Department of Homeland Security Delegation No. 0170.1(92).

- 2. Revise § 187.7 to read as follows:

##### **§ 187.7 Definitions.**

As used in this part—

*Approved numbering system* means a numbering system approved by the Secretary of Homeland Security under 46 U.S.C. Chapter 123.

*Barge* means a vessel that is not self-propelled or fitted for propulsion by sail, paddle, oar, or similar device.

*Builder's certificate* means a certificate of the facts of build of a vessel described in 46 CFR 67.99.

*Buyer* means a person who buys or contracts to buy a vessel.

*Cancel*, with respect to a certificate of title, means to make the certificate ineffective.

*Certificate of documentation* means Coast Guard Form CG-1270.

*Certificate of origin* means a record created by a manufacturer or importer as the manufacturer's or importer's proof of identity of a vessel, and includes a manufacturer's certificate or statement of origin and an importer's certificate or statement of origin, but excludes a builder's certificate.

*Certificate of ownership* means Coast Guard Form CG-1330.

*Certificate of title* means a record, created by the office or by a governmental agency of another State under the law of that State, which is designated as a certificate of title by the office or agency and is evidence of ownership of a vessel.

*Commandant* means the Commandant of the U.S. Coast Guard or an authorized representative of the Commandant of the U.S. Coast Guard.

*Dealer* means a person, including a manufacturer, in the business of selling vessels.

*Documented vessel* means a vessel covered by a certificate of documentation issued pursuant to 46 U.S.C. Section 12105, and excludes a foreign-documented vessel.

*Electronic* means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

*Electronic certificate of title* means a certificate of title consisting of information that is stored solely in an electronic medium and is retrievable in perceivable form.

*Foreign-documented vessel* means a vessel the ownership of which is recorded in a registry maintained by a country other than the United States, identifying each person having an ownership interest in a vessel, and includes a unique alphanumeric designation for the vessel.

*Good faith* means honesty in fact and the observance of reasonable commercial standards of fair dealing.

*Hull damaged* means compromised with respect to the integrity of a vessel's hull by a collision, allision, lightning strike, fire, explosion, running aground, or similar occurrence, or the sinking of a vessel in a manner that creates a significant risk to the integrity of the vessel's hull.

*Hull identification number* or *HIN* means the alphanumeric designation

assigned to a vessel under subpart C of 33 CFR part 181.

*Issuing authority* means either a State that has an approved numbering system or the Coast Guard in a State that does not have an approved numbering system.

*Lien creditor*, with respect to a vessel, means—

(1) A creditor that has acquired a lien on the vessel by attachment, levy, or the like;

(2) An assignee for benefit of creditors from the time of assignment;

(3) A trustee in bankruptcy from the date of the filing of the petition; or

(4) A receiver in equity from the time of appointment.

*Manufacturer* means any person engaged in the business of manufacturing or importing new vessels for the purpose of sale or trade.

*Office* means the State department or agency that creates certificates of title.

*Owner* means a person having legal title to a vessel.

*Owner of record* means the owner indicated in the files of the Office or, if the files indicate more than one owner, the one first indicated.

*Participating State* means a State certified by the Commandant as meeting the requirements of subpart C of this part.

*Person* means an individual or any form of legal or commercial entity.

*Purchase* means to take by any voluntary transaction that creates an interest in a vessel.

*Purchaser* means a person taking by purchase.

*Record* means information inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form.

*Secured party*, with respect to a vessel, means a person—

(1) In whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(2) Who is a consignor under State law as prescribed by State law related to security interests in goods; or

(3) Who holds a security interest arising under State law related to security interests in goods.

*Secured party of record* means the secured party whose name is indicated as the name of the secured party in the files of the office or, if the files indicate more than one secured party, the one first indicated.

*Security interest* means an interest in a vessel that secures payment or performance of an obligation if the interest is created by contract or otherwise as prescribed by state law related to security interests in goods.

*Sign* means, with present intent to authenticate or adopt a record, to—

(1) Make or adopt a tangible symbol; or

(2) Attach to or logically associate with the record an electronic symbol, sound, or process.

*State* means a State of the United States, the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, U.S. Virgin Islands, and any other territory or possession of the United States.

*State of principal operation* means the State on whose waters a vessel is or will be used, operated, navigated, or employed more than on the waters of any other State during a calendar year.

*Title brand* means a designation of previous damage, use, or condition that must be indicated on a certificate of title.

*Titled vessel* means a vessel titled by a State.

*Titling authority* means a State whose vessel titling system has been certified by the Commandant under subpart D of this part.

*Transfer of ownership* means a voluntary or involuntary conveyance of an interest in a vessel.

*Vessel* means every description of watercraft used or capable of being used as a means of transportation on water, except—

(1) A seaplane;

(2) An amphibious vehicle for which a certificate of title is issued pursuant to a state's motor vehicle certificate of title act or a similar statute of another state;

(3) Watercraft that operate only on a permanently fixed, manufactured course and the movement of which is restricted to or guided by means of a mechanical device to which the watercraft is attached or by which the watercraft is controlled;

(4) A stationary floating structure that—

(i) Does not have and is not designed to have a mode of propulsion of its own;

(ii) Is dependent for utilities upon a continuous utility hookup to a source originating on shore; and

(iii) Has a permanent, continuous hookup to a shore side sewage system.

(5) Watercraft owned by the United States, a State, or a foreign government or a political subdivision of any of them; and

(6) Watercraft used solely as a lifeboat on another watercraft.

*Vessel Identification System* or *VIS* means a system for collecting information on vessels and vessel ownership as required by 46 U.S.C. 12501.

*Vessel number* means the alphanumeric designation for a vessel issued pursuant to 46 U.S.C. 12301.

*Written certificate of title* means a certificate of title consisting of information inscribed on a tangible medium.

■ 3. Revise subpart D, consisting of §§ 187.301 through 187.325, to read as follows:

#### **Subpart D—State Vessel Titling Systems**

Sec.

- 187.301 Certification for preferred mortgage status—Eligibility requirements.
- 187.302 Terms States must define.
- 187.303 Applicability.
- 187.304 Titling exclusively in one State.
- 187.305 Law governing vessel covered by certificate of title.
- 187.306 Certificate of title required.
- 187.307 Application for certificate of title.
- 187.308 Creation and cancellation of certificate of title.
- 187.309 Content of certificate of title.
- 187.310 Title brand.
- 187.311 Maintenance of and access to files.
- 187.312 Action required on creation of certificate of title.
- 187.313 Effect of certificate of title.
- 187.314 Effect of possession of certificate of title; judicial process.
- 187.315 Perfection of security interest.
- 187.316 Termination statement.
- 187.317 Transfer of ownership.
- 187.318 Effect of missing or incorrect information.
- 187.319 Transfer of ownership by secured party's transfer statement.
- 187.320 Transfer by operation of law.
- 187.321 Application for transfer of ownership or termination of security interest without certificate of title.
- 187.322 Replacement certificate of title.
- 187.323 Rights of purchaser other than secured party.
- 187.324 Rights of secured party.
- 187.325 Duties and operation of office.

#### **Subpart D—State Vessel Titling Systems**

##### **§ 187.301 Certification for preferred mortgage status—Eligibility requirements.**

The Commandant, under 46 U.S.C. 31322(d)(1)(A) and 33 CFR 187.13, will certify a State whose vessel titling system meets the requirements of this subpart as eligible to have security interests that are perfected under its law deemed preferred mortgages under 46 U.S.C. 31322. The State must also comply with the VIS participation requirements of 33 CFR 187.11 and subpart C of this part and make vessel information it collects available to the VIS.

##### **§ 187.302 Terms States must define.**

(a) A State must define the terms “certificate of origin”, “dealer”, “documented vessel”, “issuing authority”, “manufacturer”, “owner”, “person”, “secured party”, “security interest”, “titling authority”, and “vessel” substantially as defined in 33 CFR 187.7.

(b) In addition to the definitions in 33 CFR 187.7, a State must also define the following terms as prescribed by State law related to security interests in goods:

- (1) *Agreement*;
- (2) *Buyer in ordinary course of business*;
- (3) *Conspicuous*;
- (4) *Consumer goods*;
- (5) *Debtor*;
- (6) *Knowledge*;
- (7) *Lease*;
- (8) *Lessor*;
- (9) *Notice*;
- (10) *Representative*;
- (11) *Sale*;
- (12) *Security agreement*;
- (13) *Seller*;
- (14) *Send*; and
- (15) *Value*.

(c) The definitions in 33 CFR 187.7 and paragraph (b) of this section do not apply to any State or Federal law governing licensing, numbering, or registration if the same term is used in that law.

##### **§ 187.303 Applicability.**

Subject to a savings clause provided under state law, this subpart applies to any transaction, certificate of title, or record relating to a vessel, even if the transaction, certificate of title, or record was entered into or created before the effective date of the state law.

##### **§ 187.304 Titling exclusively in one State.**

A State must require that all vessels required to be numbered in the State under 46 U.S.C. Chapter 123 be titled only in that State, if that State issues titles to that class of vessels.

##### **§ 187.305 Law governing vessel covered by certificate of title.**

(a) The local law of the State under whose certificate of title a vessel is covered governs all issues relating to the certificate from the time the vessel becomes covered by the certificate until the vessel becomes covered by another certificate or becomes a documented vessel, even if no other relationship exists between the State and the vessel or its owner.

(b) A vessel becomes covered by a certificate of title when an application for the certificate and the applicable fee are delivered to the office in accordance with this subpart or to the governmental agency that creates a certificate in another jurisdiction in accordance with the law of that jurisdiction.

##### **§ 187.306 Certificate of title required.**

(a) Except as otherwise provided in paragraphs (b) and (c) of this section, the owner of a vessel must deliver to the office of the State in which the vessel is

principally used an application for a certificate of title for the vessel, with the applicable fee, not later than 20 days after the later of—

- (1) The date of a transfer of ownership; or
  - (2) The date the State becomes the State of principal use.
- (b) An application for a certificate of title is not required for—
- (1) A documented vessel;
  - (2) A foreign-documented vessel;
  - (3) A barge;
  - (4) A vessel before delivery if the vessel is under construction or completed pursuant to contract; or
  - (5) A vessel held by a dealer for sale or lease.

(c) The office may not issue, transfer, or renew a certificate of number for a vessel issued pursuant to 46 U.S.C. 12301 unless it has created a certificate of title for the vessel or an application for a certificate for the vessel and the applicable fee have been delivered to the office.

##### **§ 187.307 Application for certificate of title.**

(a) Except as otherwise provided in §§ 187.310, 187.315, 187.319, 187.320, 187.321, and 187.322, only an owner may apply for a certificate of title.

(b) An application for a certificate of title must be signed by the applicant and contain—

- (1) The applicant's name, the street address of the applicant's principal residence, and, if different, the applicant's mailing address;
- (2) The name and mailing address of each other owner of the vessel;
- (3) The social security number or taxpayer identification number of each owner;
- (4) The hull identification number (HIN) for the vessel or, if none, an application for the issuance of a HIN for the vessel;
- (5) The vessel number for the vessel or, if none issued by the office, an application for a vessel number;
- (6) A description of the vessel as required by the office, which must include—

- (i) The official number for the vessel, if any, assigned by the Coast Guard;
- (ii) The name of the manufacturer, builder, or maker;
- (iii) The model year or the year in which the manufacture or build of the vessel was completed;
- (iv) The overall length of the vessel;
- (v) The vessel type, as described in 33 CFR 174.19;
- (vi) The hull material, as described in 33 CFR 174.19;
- (vii) The propulsion type, as described in 33 CFR 174.19;
- (viii) The engine drive type, as described in 33 CFR 174.19, if any; and

(ix) The fuel type, as described in 33 CFR 174.19, if any;

(7) An indication of all security interests in the vessel known to the applicant and the name and mailing address of each secured party;

(8) A statement that the vessel is not a documented vessel or a foreign-documented vessel;

(9) Any title brand known to the applicant and, if known, the jurisdiction under whose law the title brand was created;

(10) If the applicant knows that the vessel is hull damaged, a statement that the vessel is hull damaged;

(11) If the application is made in connection with a transfer of ownership, the transferor's name, street address, and, if different, mailing address, the sales price, if any, and the date of the transfer; and

(12) If the vessel was previously registered or titled in another jurisdiction, a statement identifying each jurisdiction known to the applicant in which the vessel was registered or titled.

(c) In addition to the information required by paragraph (b) of this section, an application for a certificate of title may contain an electronic communication address of the owner, transferor, or secured party.

(d) Except as otherwise provided in §§ 187.319, 187.320, 187.321, and 187.322, an application for a certificate of title must be accompanied by a certificate of title signed by the owner shown on the certificate which identifies the applicant as the owner of the vessel, or is accompanied by a record that identifies the applicant as the owner.

(e) If there is no certificate of title as discussed in paragraph (d) of this section, an application for a certificate of title must be accompanied by—

(1) If the vessel was a documented vessel, a record issued by the Coast Guard that shows the vessel is no longer a documented vessel and identifies the applicant as the owner;

(2) If the vessel was a foreign-documented vessel, a record issued by the foreign country which shows the vessel is no longer a foreign-documented vessel and identifies the applicant as the owner; or

(3) In all other cases, a certificate of origin, bill of sale, or other record that to the satisfaction of the office identifies the applicant as the owner.

(f) A record submitted in connection with an application is part of the application and the office must maintain it in its files.

(g) The office may require an application for a certificate of title to be

accompanied by payment or evidence of payment of all fees and taxes payable by the applicant under State law if in connection with the application or the acquisition or use of the vessel.

#### **§ 187.308 Creation and cancellation of certificate of title.**

(a) Unless an application for a certificate of title is rejected under paragraph (c) or (d) of this section, the office must create a certificate for the vessel in accordance with paragraph (b) of this section not later than 20 days after delivery to it of an application that complies with 33 CFR 187.307.

(b) If the office creates electronic certificates of title, it must create an electronic certificate unless in the application the secured party of record or, if none, the owner of record, requests that the office create a written certificate.

(c) Except as otherwise provided in paragraph (d) of this section, the office may reject an application for a certificate of title only if—

(1) The application does not comply with 33 CFR 187.307;

(2) The application does not contain documentation sufficient for the office to determine whether the applicant is entitled to a certificate;

(3) There is a reasonable basis for concluding that the application is fraudulent or issuance of a certificate would facilitate a fraudulent or illegal act; or

(4) The application does not comply with State law.

(d) The office must reject an application for a certificate of title for a vessel that is a documented vessel or a foreign-documented vessel.

(e) The office may cancel a certificate of title created by it only if the office—

(1) Could have rejected the application for the certificate under paragraph (c) of this section;

(2) Is required to cancel the certificate under another provision of this subpart; or

(3) Receives satisfactory evidence that the vessel is a documented vessel or a foreign-documented vessel.

#### **§ 187.309 Content of certificate of title.**

(a) A certificate of title must contain—

(1) The date the certificate was created;

(2) The name of the owner of record and, if not all owners are listed, an indication that there are additional owners indicated in the files of the office;

(3) The mailing address of the owner of record;

(4) The hull identification number (HIN);

(5) The information listed in § 187.307(b)(6);

(6) Except as otherwise provided in § 187.315(b), the name and mailing address of the secured party of record, if any, and if not all secured parties are listed, an indication that there are other security interests indicated in the files of the office; and

(7) All title brands indicated in the files of the office covering the vessel, including brands indicated on a certificate created by a governmental agency of another jurisdiction and delivered to the office.

(b) This subpart does not preclude the office from noting on a certificate of title the name and mailing address of a secured party that is not a secured party of record.

(c) For each title brand indicated on a certificate of title, the certificate must identify the jurisdiction under whose law the title brand was created or the jurisdiction that created the certificate on which the title brand was indicated. If the meaning of a title brand is not easily ascertainable or cannot be accommodated on the certificate, the certificate may state: "Previously branded in (insert the jurisdiction under whose law the title brand was created or whose certificate of title previously indicated the title brand)."

(d) If the files of the office indicate that a vessel was previously registered or titled in a foreign country, the office must indicate on the certificate of title that the vessel was registered or titled in that country.

(e) A written certificate of title must contain a form that all owners indicated on the certificate may sign to evidence consent to a transfer of an ownership interest to another person. The form must include a certification, signed under penalty of perjury, that the statements made are true and correct to the best of each owner's knowledge, information, and belief.

(f) A written certificate of title must contain a form for the owner of record to indicate, in connection with a transfer of an ownership interest, that the vessel is hull damaged.

#### **§ 187.310 Title brand.**

(a) Unless paragraph (c) of this section applies, at or before the time the owner of record transfers an ownership interest in a hull-damaged vessel that is covered by a certificate of title created by the office, if the damage occurred while that person was an owner of the vessel and the person has notice of the damage at the time of the transfer, the owner must—

(1) Deliver to the office an application for a new certificate that complies with

§ 187.307 of this part and includes the title brand designation “Hull Damaged”; or

(2) Indicate on the certificate in the place designated for that purpose that the vessel is hull damaged and deliver the certificate to the transferee.

(b) Not later than 20 days after delivery to the office of the application under paragraph (a)(1) of this section or the certificate of title under paragraph (a)(2) of this section, the office must create a new certificate that indicates that the vessel is branded “Hull Damaged”.

(c) Before an insurer transfers an ownership interest in a hull-damaged vessel that is covered by a certificate of title created by the office, the insurer must deliver to the office an application for a new certificate that complies with § 187.306 and includes the title brand designation “Hull Damaged”. Not later than 20 days after delivery of the application to the office, the office must create a new certificate that indicates that the vessel is branded “Hull Damaged”.

(d) An owner of record who fails to comply with paragraph (a) of this section, a person who solicits or colludes in a failure by an owner of record to comply with paragraph (a), or an insurer that fails to comply with paragraph (c) of this section is subject to penalty as prescribed by state law.

#### **§ 187.311 Maintenance of and access to files.**

(a) For each record relating to a certificate of title submitted to the office, the office must—

(1) Ascertain or assign the hull identification number (HIN) for the vessel in accordance with 33 CFR part 181;

(2) Maintain the HIN and all the information submitted with the application pursuant to § 187.307(b) to which the record relates, including the date and time the record was delivered to the office;

(3) Maintain the files for public inspection subject to paragraph (e) of this section; and

(4) Index the files of the office as required by paragraph (b) of this section.

(b) The office must maintain in its files the information contained in all certificates of title created under this subpart. The information in the files of the office must be searchable by the HIN of the vessel, the vessel number, the name of the owner of record, and any other method used by the office.

(c) The office must maintain in its files, for each vessel for which it has created a certificate of title, all title brands known to the office, the name of

each secured party known to the office, the name of each person known to the office to be claiming an ownership interest, and all stolen-property reports the office has received.

(d) Upon request, for safety, security, or law-enforcement purposes, the office must provide to Federal, State, or local government the information in its files relating to any vessel for which the office has issued a certificate of title.

(e) Except as otherwise provided by laws of the titling State, the information required under § 187.309 is a public record, but the information provided under § 187.307(b)(3) is not a public record.

#### **§ 187.312 Action required on creation of certificate of title.**

(a) On creation of a written certificate of title, the office must promptly send the certificate to the secured party of record or, if none, to the owner of record, at the address indicated for that person in the files of the office. On creation of an electronic certificate of title, the office must promptly send a record evidencing the certificate to the owner of record and, if there is one, to the secured party of record, at the address indicated for that person in the files of the office. The office may send the record to the person’s mailing address or, if indicated in the files of the office, an electronic address.

(b) If the office creates a written certificate of title, any electronic certificate of title for the vessel is canceled and replaced by the written certificate. The office must maintain in the files of the office the date and time of cancellation.

(c) Before the office creates an electronic certificate of title, any written certificate for the vessel must be surrendered to the office. If the office creates an electronic certificate, the office must destroy or otherwise cancel the written certificate for the vessel that has been surrendered to the office and maintain in the files of the office the date and time of destruction or other cancellation. If a written certificate being canceled is not destroyed, the office must indicate on the face of the certificate that it has been canceled.

#### **§ 187.313 Effect of certificate of title.**

A certificate of title is *prima facie* evidence of the accuracy of the information in the record that constitutes the certificate.

#### **§ 187.314 Effect of possession of certificate of title; judicial process.**

Possession of a certificate of title does not by itself provide a right to obtain possession of a vessel. Garnishment,

attachment, levy, replevin, or other judicial process against the certificate is not effective to determine possessory rights to the vessel. This subpart does not prohibit enforcement under State law, other than this subpart (33 CFR part 187 subpart D), of a security interest in, levy on, or foreclosure of a statutory or common-law lien on a vessel. Absence of an indication of a statutory or common-law lien on a certificate does not invalidate the lien.

#### **§ 187.315 Perfection of security interest.**

(a) Except as otherwise provided in this section or a savings clause provided under state law, a security interest in a vessel may be perfected only by delivery to the office of an application for a certificate of title that identifies the secured party and otherwise complies with 33 CFR 187.307. The security interest is perfected on the later of delivery to the office of the application and the applicable fee or attachment of the security interest as prescribed by State law related to security interests in goods.

(b) If the interest of a person named as owner, lessor, consignee, or bailor in an application for a certificate of title delivered to the office is a security interest, the application sufficiently identifies the person as a secured party. Identification on the application for a certificate of a person as owner, lessor, consignee, or bailor is not by itself a factor in determining whether the person’s interest is a security interest.

(c) If the office has created a certificate of title for a vessel, a security interest in the vessel may be perfected by delivery to the office of an application, on a form the office may require, to have the security interest added to the certificate. The application must be signed by an owner of the vessel or by the secured party and must include—

- (1) The name of the owner of record;
- (2) The name and mailing address of the secured party;
- (3) The hull identification number for the vessel; and
- (4) If the office has created a written certificate of title for the vessel, the certificate.

(d) A security interest perfected under paragraph (c) of this section is perfected on the later of delivery to the office of the application and all applicable fees or attachment of the security interest as prescribed by State law related to security interests in goods.

(e) On delivery of an application that complies with paragraph (c) of this section and payment of all applicable fees, the office must create a new certificate of title pursuant to 33 CFR

187.308 and deliver the new certificate or a record evidencing an electronic certificate pursuant to 33 CFR 187.312(a). The office must maintain in the files of the office the date and time of delivery of the application to the office.

(f) If a secured party assigns a perfected security interest in a vessel, the receipt by the office of a statement providing the name of the assignee as secured party is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor. Upon obtaining a release from the secured party indicated in the files of the office or on the certificate, a purchaser of a vessel subject to a security interest takes free of the security interest and of the rights of a transferee unless the transfer is indicated in the files of the office or on the certificate.

(g) This section does not apply to a security interest—

(1) Created in a vessel by a person during any period in which the vessel is inventory held for sale or lease by the person or is leased by the person as lessor if the person is in the business of selling vessels;

(2) In a barge for which no application for a certificate of title has been delivered to the office; or

(3) In a vessel before delivery if the vessel is under construction, or completed, pursuant to contract and for which no application for a certificate has been delivered to the office.

(h) This paragraph applies if a certificate of documentation for a documented vessel is deleted or canceled. If a security interest in the vessel was valid immediately before deletion or cancellation against a third party as a result of compliance with 42 U.S.C. 31321, the security interest is and remains perfected until the earlier of 4 months after cancellation of the certificate or the time the security interest becomes perfected under this subpart.

(i) A security interest in a vessel arising under State law related to security interests in goods is perfected when it attaches but becomes unperfected when the debtor obtains possession of the vessel, unless before the debtor obtains possession the security interest is perfected pursuant to paragraph (a) or (c) of this section.

(j) A security interest in a vessel as proceeds of other collateral is perfected to the extent provided in State law.

(k) A security interest in a vessel perfected under the law of another jurisdiction is perfected to the extent provided in State law.

#### **§ 187.316 Termination statement.**

(a) A secured party indicated in the files of the office as having a security interest in a vessel must deliver a termination statement to the office and, on the debtor's request, to the debtor, by the earlier of—

(1) Twenty days after the secured party receives a signed demand from an owner for a termination statement and there is no obligation secured by the vessel subject to the security interest and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vessel; or

(2) If the vessel is consumer goods, 30 days after there is no obligation secured by the vessel and no commitment to make an advance, incur an obligation, or otherwise give value secured by the vessel.

(b) If a written certificate of title has been created and delivered to a secured party and a termination statement is required under paragraph (a) of this section, the secured party, not later than the date required by paragraph (a), must deliver the certificate to the debtor or to the office with the statement. If the certificate is lost, stolen, mutilated, destroyed, or is otherwise unavailable or illegible, the secured party must deliver with the statement, not later than the date required by paragraph (a), an application for a replacement certificate meeting the requirements of 33 CFR 187.322.

(c) On delivery to the office of a termination statement authorized by the secured party, the security interest to which the statement relates ceases to be perfected. If the security interest to which the statement relates was indicated on the certificate of title, the office must create a new certificate and deliver the new certificate or a record evidencing an electronic certificate. The office must maintain in its files the date and time of delivery to the office of the statement.

(d) A secured party that fails to comply with this section is liable for any loss that the secured party had reason to know might result from its failure to comply and which could not reasonably have been prevented and for the cost of an application for a certificate of title under 33 CFR 187.307 or 187.322.

#### **§ 187.317 Transfer of ownership.**

(a) On voluntary transfer of an ownership interest in a vessel covered by a certificate of title, the following rules apply:

(1) If the certificate is a written certificate of title and the transferor's interest is noted on the certificate, the

transferor must promptly sign the certificate and deliver it to the transferee. If the transferor does not have possession of the certificate, the person in possession of the certificate has a duty to facilitate the transferor's compliance with this paragraph. A secured party does not have a duty to facilitate the transferor's compliance with this paragraph if the proposed transfer is prohibited by the security agreement.

(2) If the certificate of title is an electronic certificate of title, the transferor must promptly sign and deliver to the transferee a record evidencing the transfer of ownership to the transferee.

(3) The transferee has a right enforceable by specific performance to require the transferor comply with paragraph (a)(1) or (2) of this section.

(b) The creation of a certificate of title identifying the transferee as owner of record satisfies paragraph (a) of this section.

(c) A failure to comply with paragraph (a) of this section or to apply for a new certificate of title does not render a transfer of ownership of a vessel ineffective between the parties. Except as otherwise provided in 33 CFR 187.318, 187.319, 187.323(a), or 187.324, a transfer of ownership without compliance with paragraph (a) of this section is not effective against another person claiming an interest in the vessel.

(d) A transferor that complies with paragraph (a) of this section is not liable as owner of the vessel for an event occurring after the transfer, regardless of whether the transferee applies for a new certificate of title.

#### **§ 187.318 Effect of missing or incorrect information.**

Except as otherwise provided as prescribed by State law related to security interests in goods, a certificate of title or other record required or authorized by this subpart is effective even if it contains incorrect information or does not contain required information.

#### **§ 187.319 Transfer of ownership by secured party's transfer statement.**

(a) In this section, "secured party's transfer statement" means a record signed by the secured party of record stating—

(1) That there has been a default on an obligation secured by the vessel;

(2) The secured party of record is exercising or has exercised post-default remedies with respect to the vessel;

(3) By reason of the exercise, the secured party of record has the right to

transfer the ownership interest of an owner, and the name of the owner;

(4) The name and last known mailing address of the owner of record and the secured party of record;

(5) The name of the transferee;

(6) Other information required by 33 CFR 187.307(b); and

(7) One of the following:

(i) The certificate of title is an electronic certificate;

(ii) The secured party does not have possession of the written certificate of title created in the name of the owner of record; or

(iii) The secured party is delivering the written certificate of title to the office with the secured party's transfer statement.

(b) Unless the office rejects a secured party's transfer statement for a reason stated in 33 CFR 187.308(c), not later than 20 days after delivery to the office of the statement and payment of fees and taxes payable under State law in connection with the statement or the acquisition or use of the vessel, the office must—

(1) Accept the statement;

(2) Amend the files of the office to reflect the transfer; and

(3) If the name of the owner whose ownership interest is being transferred is indicated on the certificate of title—

(i) Cancel the certificate even if the certificate has not been delivered to the office;

(ii) Create a new certificate indicating the transferee as owner; and

(iii) Deliver the new certificate or a record evidencing an electronic certificate.

(c) An application under paragraph (a) of this section or the creation of a certificate of title under paragraph (b) of this section is not by itself a disposition of the vessel and does not by itself relieve the secured party of its duties under State law.

#### **§ 187.320 Transfer by operation of law.**

(a) In this section—

(1) “By operation of law” means pursuant to a law or judicial order affecting ownership of a vessel—

(i) Because of death, divorce or other family law proceeding, merger, consolidation, dissolution, or bankruptcy;

(ii) Through the exercise of the rights of a lien creditor or a person having a lien created by statute or rule of law; or

(iii) Through other legal process.

(2) “Transfer-by-law statement” means a record signed by a transferee stating that by operation of law the transferee has acquired or has the right to acquire an ownership interest in a vessel.

(b) A transfer-by-law statement must contain—

(1) The name and last known mailing address of the owner of record and the transferee and the other information required by 33 CFR 187.307(b);

(2) Documentation sufficient to establish the transferee's ownership interest or right to acquire the ownership interest;

(3) A statement that—

(i) The certificate of title is an electronic certificate of title;

(ii) The transferee does not have possession of the written certificate of title created in the name of the owner of record; or

(iii) The transferee is delivering the written certificate to the office with the transfer-by-law statement; and

(4) Except for a transfer described in paragraph (a)(1)(i) of this section, evidence that notification of the transfer and the intent to file the transfer-by-law statement has been sent to all persons indicated in the files of the office as having an interest, including a security interest, in the vessel.

(c) Unless the office rejects a transfer-by-law statement for a reason stated in 33 CFR 187.308(c) or because the statement does not include documentation satisfactory to the office as to the transferee's ownership interest or right to acquire the ownership interest, not later than 20 days after delivery to the office of the statement and payment of fees and taxes payable under State law in connection with the statement or with the acquisition or use of the vessel, the office must—

(1) Accept the statement;

(2) Amend the files of the office to reflect the transfer; and

(3) If the name of the owner whose ownership interest is being transferred is indicated on the certificate of title—

(i) Cancel the certificate even if the certificate has not been delivered to the office;

(ii) Create a new certificate indicating the transferee as owner;

(iii) Indicate on the new certificate any security interest indicated on the canceled certificate, unless a court order provides otherwise; and

(iv) Deliver the new certificate or a record evidencing an electronic certificate.

(d) This section does not apply to a transfer of an interest in a vessel by a secured party as prescribed by State law related to security interests in goods.

#### **§ 187.321 Application for transfer of ownership or termination of security interest without certificate of title.**

(a) Except as otherwise provided in 33 CFR 187.319 and 187.320, if the office

receives, unaccompanied by a signed certificate of title, an application for a new certificate that includes an indication of a transfer of ownership or a termination statement, the office may create a new certificate under this section only if—

(1) All other requirements under 33 CFR 187.307 and 187.308 are met;

(2) The applicant provides an affidavit stating facts showing that the applicant is entitled to a transfer of ownership or termination statement;

(3) The applicant provides the office with satisfactory evidence that notification of the application has been sent to the owner of record and all persons indicated in the files of the office as having an interest, including a security interest, in the vessel, at least 45 days have passed since the notification was sent, and the office has not received an objection from any of those persons; and

(4) The applicant submits any other information required by the office as evidence of the applicant's ownership or right to terminate the security interest, and the office has no credible information indicating theft, fraud, or an undisclosed or unsatisfied security interest, lien, or other claim to an interest in the vessel.

(b) The office may indicate in a certificate of title created under paragraph (a) of this section that the certificate was created without submission of a signed certificate or termination statement. Unless credible information indicating theft, fraud, or an undisclosed or unsatisfied security interest, lien, or other claim to an interest in the vessel is delivered to the office not later than 1 year after creation of the certificate, on request in a form and manner required by the office, the office must remove the indication from the certificate.

#### **§ 187.322 Replacement certificate of title.**

(a) If a written certificate of title is lost, stolen, mutilated, destroyed, or otherwise becomes unavailable or illegible, the secured party of record or, if no secured party is indicated in the files of the office, the owner of record may apply for and, by furnishing information satisfactory to the office, obtain a replacement certificate in the name of the owner of record.

(b) An applicant for a replacement certificate of title must sign the application, and, except as otherwise permitted by the office, the application must comply with 33 CFR 187.307. The application must include the existing certificate unless the certificate is lost, stolen, mutilated, destroyed, or otherwise unavailable.

(c) A replacement certificate of title created by the office must comply with 33 CFR 187.309 and indicate on the face of the certificate that it is a replacement certificate.

(d) If a person receiving a replacement certificate of title subsequently obtains possession of the original written certificate, the person must promptly destroy the original certificate of title.

**§ 187.323 Rights of purchaser other than secured party.**

(a) A buyer in ordinary course of business has the protections afforded by State law even if an existing certificate of title was not signed and delivered to the buyer or a new certificate listing the buyer as owner of record was not created.

(b) Except as otherwise provided in 33 CFR 187.317 and 187.324, the rights of a purchaser of a vessel who is not a buyer in ordinary course of business or a lien creditor are governed by State law.

**§ 187.324 Rights of secured party.**

(a) Subject to paragraph (b) of this section, the effect of perfection and nonperfection of a security interest and the priority of a perfected or unperfected security interest with respect to the rights of a purchaser or creditor, including a lien creditor, is governed by State law.

(b) If, while a security interest in a vessel is perfected by any method under this subpart, the office creates a certificate of title that does not indicate that the vessel is subject to the security interest or contain a statement that it may be subject to security interests not indicated on the certificate—

(1) A buyer of the vessel, other than a person in the business of selling or

leasing vessels of that kind, takes free of the security interest if the buyer, acting in good faith and without knowledge of the security interest, gives value and receives possession of the vessel; and

(2) The security interest is subordinate to a conflicting security interest in the vessel that is perfected under 33 CFR 187.315 after creation of the certificate and without the conflicting secured party's knowledge of the security interest.

**§ 187.325 Duties and operation of office.**

(a) The office must retain the evidence used to establish the accuracy of the information in its files relating to the current ownership of a vessel and the information on the certificate of title.

(b) The office must retain in its files all information regarding a security interest in a vessel for at least 10 years after the office receives a termination statement regarding the security interest. The information must be accessible by the hull identification number (HIN) for the vessel and any other methods provided by the office.

(c) If a person submits a record to the office, or submits information that is accepted by the office, and requests an acknowledgment of the filing or submission, the office must send to the person an acknowledgment showing the HIN of the vessel to which the record or submission relates, the information in the filed record or submission, and the date and time the record was received or the submission accepted. A request under this section must contain the HIN and be delivered by means authorized by the office.

(d) The office must send or otherwise make available in a record the following information to any person that requests it and pays the applicable fee:

(1) Whether the files of the office indicate, as of a date and time specified by the office, but not a date earlier than 3 days before the office received the request, any certificate of title, security interest, termination statement, or title brand that relates to a vessel—

(i) Identified by a HIN designated in the request;

(ii) Identified by a vessel number designated in the request; or

(iii) Owned by a person designated in the request.

(2) With respect to the vessel—

(i) The name and address of any owner as indicated in the files of the office or on the certificate of title;

(ii) The name and address of any secured party as indicated in the files of the office or on the certificate, and the effective date of the information; and

(iii) A copy of any termination statement indicated in the files of the office and the effective date of the termination statement.

(3) With respect to the vessel, a copy of any certificate of origin, secured party transfer statement, transfer-by-law statement under 33 CFR 187.320, and other evidence of previous or current transfers of ownership.

(e) In responding to a request under this section, the office may provide the requested information in any medium. On request, the office must send the requested information in a record that is in keeping with State rules of evidence.

Dated: September 10, 2021.

**J.W. Mauger,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.*

[FR Doc. 2021–20095 Filed 9–21–21; 8:45 am]

**BILLING CODE 9110–04–P**