

Final Rule for the Acceptance of Preferred Mortgages by States.

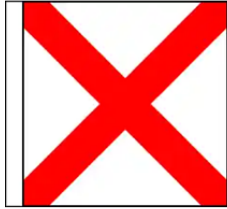
33 CFR Part 187; Uniform Certificate of Title Act for Vessels
(UCOTA-V).

CDR Joel C. Coito
Chief, Prevention Law Division
U.S. Coast Guard Office of Maritime & International Law

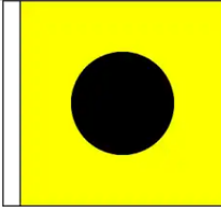
Maritime Law Association of the United States
Fall 2022 Meeting - San Diego, California

Purpose Behind the Rule

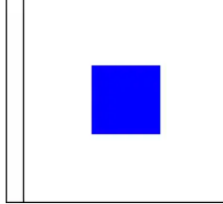
- Revise CG guidelines for State vessel titling systems so that they align with the UCOTA-V.
 - CG is not adopting UCOTA-V in its entirety because some sections are not applicable to the Federal Government.
- Increase State participation in the Vessel Identification System (VIS).
- Adopt UCOTA-V + Certify titling provisions with the Coast Guard + Participate in the VIS = State may confer preferred mortgage status.
- Title branding to prevent title washing.



Vessel



Identification



System



Benefits

- ✓ Uniformity
- ✓ Reduced transaction costs
- ✓ Increased fraud prevention
- ✓ Increased consumer protection
- ✓ Decreased risk to lenders
- ✓ Recovery and ID of vessels
- ✓ Increased efficiencies for interstate commerce

Basis and Regulatory History

- VIS enacted in 1988
- 46 U.S.C. 12501(a)
- 46 U.S.C. 31322(d)
- 46 U.S.C. 13107
- 33 CFR 187

Certification for preferred mortgage status— Eligibility requirements, Terms & Exclusivity

- State vessel titling system must meet the requirements of Subpart D, explained herein.
- State must comply with VIS participation requirements and make vessel information it collects available to the VIS.
- Section 187.302 specifies the terms a State must define.
- Title exclusivity.



Certificate of title required

- Apply for certificate of title no 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.



Application for certificate of title

- Only an owner may apply.
 - Provide elements listed in 187.307(b).
 - Except as otherwise provided, an application must contain a certificate of title signed by the owner which IDs the applicant as the owner.
 - If there is no such certificate of title, an application must be accompanied by a record that IDs the applicant as the owner.
 - Payment of all fees and taxes may be required.
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Creation and cancelation of certificate of title

- State must create certificate no later than 20 days after delivery of a proper application.
- Rejection/Cancelation:
 - Permissible -
 1. Application fails to comply with 33 CFR 187.307;
 2. Application lacks sufficient documentation to determine whether the applicant is entitled to a certificate;
 3. Fraud; or
 4. Application does not comply with State law.
 - Required –
 1. Documented or foreign-documented vessel.

Title brand

- “Hull Damage” must be indicated as a title brand designation no later than 20 days after the owner of record or an insurer applies for a new branded certificate of title, or the owner of record indicates on the certificate that the vessel is hull damaged and delivers the certificate to a transferee.

Perfection of security interest

- I. Apply for a certificate of title and ID the secured party.
 - Perfection occurs on the later of:
 - 1) Delivery of the application and fees to the State office; or
 - 2) Attachment of the security interest according to State law.
 - II. State office has created a certificate of title.
 - Apply to have security interest added to the certificate.
 - Perfection occurs on the later of:
 - 1) Delivery of the application and fees to the State office; or
 - 2) Attachment of the security interest according to state law.
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Cont. Perfection of security interest

- Assigning a perfected security interest:
 - State office need not receive a statement providing the assignee's name in order to continue perfected status.
 - Upon obtaining a release from the secured party, the purchaser of a vessel subject to a security interest takes free of that interest and the transferee's rights, unless the transfer is indicated on the certificate or in the office files.
- Security interest in a vessel arising under State law:
 - Interest is perfected when it attaches.
 - Interest becomes unperfected when the debtor obtains possession of the vessel, unless the interest is perfected under 33 CFR 187.315 before the debtor obtains possession.

Termination statement

- Deliver termination statement by the earlier of:
 1. 20 days after the secured party receives a demand from an owner if there is no obligation secured by the vessel; or
 2. If the vessel is a consumer good, 30 days after there is no such obligation.
- Security interest ceases to be perfected.
- If the security interest was indicated on the certificate of title, the office must create and deliver a new certificate.

Transfer of ownership

➤ Voluntary

- Transferor must sign the certificate and deliver it to the transferee. Transferee has right of specific performance.
- The creation of a certificate of title that IDs the transferee as owner of record.

➤ Secured Party's Transfer Statement

- A State office may reject a secured party's transfer statement for a permissible reason stated in 33 CFR 187.308(c).
- If not rejected, no later than 20 days after delivery and payment of fees the office must accept the statement and take administrative action to clarify the record.

➤ Operation of Law

- A State office may reject a transfer-by-law statement for a permissible reason stated in 33 CFR 187.308(c); or because the statement lacks sufficient documentation re. the transferee's ownership interest.
- If not rejected, no later than 20 days after delivery of the statement and payment of fees, the office must accept the statement and take administrative action to clarify the record.

Rights of purchaser other than secured party & Rights of secured party

- State law buyer in the ordinary course of business exception.
 - State law governs the effects of perfection and priority regarding the rights of a purchaser or creditor.
 - However, if a vessel is perfected by any method under this subpart and the State office creates a certificate of title that does not indicate that the vessel is subject to a security interest:
 1. A buyer not in the business of selling/leasing vessels of that kind takes free of the security interest if acting in good faith without knowledge of the interest, provides value, and receives possession of the vessel.
 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.
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