



MEMORANDUM

To: E.M. Miller, Jr., Chair, Drafting Committee
From: Professor Stephen L. Sepinuck
Date: June 11, 2009
Re: Uniform Certificate of Title Act for Vessels

Attached please find a draft of some preliminary portions of the Uniform Certificate of Title Act for Vessels. I present this draft for discussion during the Committee's conference call on June 17. If time permits, I also request the Committee's input on one significant policy question: whether the Act should comply with 33 C.F.R. Part 187, Subpart D (§§ 187.301–187.331).

State compliance with these regulations is not mandatory, although one main benefit does flow from compliance. If a state's titling law is certified by the U.S. Coast Guard as complying with these regulations, then security interests perfected pursuant to that titling law can qualify as a "preferred mortgage" under 46 U.S.C. § 31322(d). However, no state's titling law has yet been so certified. Moreover, preferred mortgages are available for federally documented vessels. Therefore, it is not clear how much need there is for preferred mortgages on undocumented vessels.

The drawbacks to compliance with those regulations are several, although perhaps none is by itself substantial. First, those regulations are quite extensive and cover some matters that might fairly be regarded as beyond the scope of a titling act. For example, the Act would have to require that dealers and manufacturers of covered vessels maintain for at least three years a record of any vessel bought, sold, or exchanged, and that they make such records available for inspection by the state. *See* 33 C.F.R. § 187.308.

Second, some of the requirements may not be consonant with customary business practices or the Committee's desire to permit the use of electronic certificates of title. For example, the state must require the seller of a titled vessel to deliver the title to the new owner. *See* 33 C.F.R. § 187.309. However, a secured party, not the seller, may have possession of the title certificate and no one would have possession of an electronic certificate. Similarly, space must be provided on the certificate for signing away an interest in the vessel, *see* 33 C.F.R. § 187.317(b), and this too seems incompatible with the use of electronic certificates.

Third, the regulations require that the certificate contain a great deal of information concerning the vessel. *See* 33 C.F.R. § 187.317(a). This includes the type of vessel (with ten authorized categories), the hull material (with seven authorized categories), the propulsion type, and the engine drive type. It is not clear whether or why all this information is necessary to a certificate of title statute.