HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	Source section (U.S. Code)
31302(3)	New

Section 31302(1) makes all instruments filed for recording or recorded with the Secretary of Transportation available for public inspection. The only substantive change to law made by this subsection is the inclusion of instruments filed for recording, which is in keeping with the new requirements on filing of instruments made in section 31321.

Section 31302(2) requires the Secretary to provide the public with a certified copy of the material made available to the public under subsection (a). This subsection makes no substantive change to law.

Section 31302(3) requires the Secretary, on request, to issue a certificate containing the information included in instruments on file, such as certificates of ownership.

AMENDMENTS

2010—Pub. L. 111–281 struck out ''of Transportation'' after ''Secretary'' in introductory provisions.

§ 31303. Certain civil actions not authorized

If a mortgage covers a vessel and additional property that is not a vessel, this chapter does not authorize a civil action in rem to enforce the rights of the mortgagee under the mortgage against the additional property.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4740.)

HISTORICAL AND REVISION NOTES

Revised section	Source section (U.S. Code)
31303	46:954(b)

Section 31303 makes it clear that, if a mortgage covers a vessel and additional property that is not a vessel, this chapter does not authorize a civil action *in rem* in admiralty to enforce rights against the additional property. This section makes no substantive change to law.

§ 31304. Liability for noncompliance

(a) If a person makes a contract secured by, or on the credit of, a vessel covered by a mortgage filed or recorded under this chapter and sustains a monetary loss because the mortgagor or the master or other individual in charge of the vessel does not comply with a requirement imposed on the mortgagor, master, or individual under this chapter, the mortgagor is liable for the loss.

(b) A civil action may be brought to recover for losses referred to in subsection (a) of this section. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court shall award costs and attorney fees to the plaintiff.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4740.)

HISTORICAL AND REVISION NOTES

Revised section	Source section (U.S. Code)
31304	46:941(c)

Section 31304 imposes liability on the mortgagor if the mortgagor, master, or other individual in charge of the vessel does not comply with the statutory requirements. A civil action may be brought in a district court of the United States for losses incurred. If the plaintiff prevails, the court shall award costs and attorneys fees to the plaintiff. This section makes two substantive changes to law. First, is the broadening of its coverage from documented vessels covered by a preferred mortgage to any vessel covered by a mortgage that is filed or recorded under the chapter. The second substantive change repeals the liability on the United States Government for losses caused because the Secretary did not comply with statutory requirements. This is covered by the Federal Tort Claims Act due to the nondiscretionary responsibility of the Secretary.

§ 31305. Waiver of lien rights

This chapter does not prevent a mortgagee or other lien holder from waiving or subordinating at any time by agreement or otherwise the lien holder's right to a lien, the priority or, if a preferred mortgage lien, the preferred status of the lien.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4741.)

HISTORICAL AND REVISION NOTES

Revised section	Source section (U.S. Code)
31305	46:974

Section 31305 provides for the waiver of lien rights by the mortgagee or a person performing or supplying necessaries. This section makes no substantive change to law and is included only because of a like provision in current law. Without this provision the Committee believes these waivers would be permissible as a matter of law as they do not violate any public policy and on their face reflect an arms length transaction between the parties. The inclusion of this provision should not raise the implication that a similar provision is required for other matters that may be waivable as a matter of law.

HOUSE FLOOR STATEMENT

Section 31305 has been changed to clarify that the chapter does not prevent a mortgagee or other lien holder from waiving by contract the right to a lien, or the priority of that lien.

§ 31306. Declaration of citizenship

(a) Except as provided by the Secretary, when an instrument transferring an interest in a vessel is presented to the Secretary for filing or recording, the transferee shall file with the instrument a declaration, in the form the Secretary may prescribe by regulation, stating information about citizenship and other information the Secretary may require to show the transaction involved does not violate section 56102 or 56103 of this title.

(b) A declaration under this section filed by a corporation must be signed by its president, secretary, treasurer, or other official authorized by the corporation to execute the declaration.

(c) Except as provided by the Secretary, an instrument transferring an interest in a vessel is not valid against any person until the declaration required by this section has been filed.

(d) A person knowingly making a false statement of a material fact in a declaration filed under this section shall be fined under title 18, imprisoned for not more than 5 years, or both.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4741; Pub. L. 101–225, title III, § 303(1), Dec. 12, 1989, 103 Stat. 1923; Pub. L. 109–304, § 15(27), Oct. 6, 2006, 120 Stat. 1704; Pub. L. 111–281, title IX, § 913(a)(1), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31306	46:838

Section 31306(a) requires that a person submitting an instrument transferring interest in a vessel to the Secretary for recording is also to file a declaration stating information about citizenship and other information to show that the transfer is not in violation of section 9 of the Shipping Act, or section 37 of that Act in a national emergency. This section makes no substantive change to law.

Section 31306(b) requires that a declaration filed by a corporation must be signed by the president, secretary, treasurer, or other official authorized by the corporation to execute the declaration. This section makes no substantive change to law.

Section 31306(c) invalidates any instrument transferring an interest until the declaration is filed. This section makes no substantive change to law.

Section 31306(d) provides for a criminal penalty for a violation of this section. The amount of the fine is prescribed under title 18, United States Code, and may include imprisonment for not more than 5 years, or both. This section makes no substantive change to law.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–281 struck out ''of Transportation'' after ''provided by the Secretary''.

2006—Subsec. (a). Pub. L. 109–304 substituted ''section 56102 or 56103 of this title'' for ''section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835)''.

1989—Subsec. (a). Pub. L. 101–225, § 303(1)(A), substituted ''Except as provided by the Secretary of Transportation, when'' for ''When'' and ''Secretary for filing'' for ''Secretary of Transportation for filing''.

Subsec. (c). Pub. L. 101–225, § 303(1)(B), substituted ''Except as provided by the Secretary, an'' for ''An''.

§ 31307. State statutes superseded

This chapter supersedes any State statute conferring a lien on a vessel to the extent the statute establishes a claim to be enforced by a civil action in rem against the vessel for necessaries.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4741.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31307	46:975

Section 31307 provides for preemption of State laws to the extent a claim for necessaries is enforced by a civil action *in rem* in admiralty against the vessel.

§ 31308. Secretary of Commerce or Transportation as mortgagee

The Secretary of Commerce or Transportation, as a mortgagee under this chapter, may foreclose on a lien arising from a right established under a mortgage under chapter 537 of this title, subject to section 362(b) of title 11.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4741; Pub. L. 101–595, title VI, § 603(13), Nov. 16, 1990, 104 Stat. 2993; Pub. L. 109–304, § 15(28), Oct. 6, 2006, 120 Stat. 1704; Pub. L. 111–281, title IX, § 913(b), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31308	46:952 (last sentence)

Section 31308 allows the Secretary of Commerce or Transportation to foreclose on a lien arising from a right established under a mortgage under title XI of the Merchant Marine Act, 1936. This section makes no substantive change to law.

AMENDMENTS

2010—Pub. L. 111–281 substituted ''The Secretary of Commerce or Transportation, as a mortgagee under this chapter,'' for ''When the Secretary of Commerce or Transportation is a mortgagee under this chapter, the Secretary''.

2006—Pub. L. 109–304 substituted ''chapter 537 of this title'' for ''title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.)''.

1990—Pub. L. 101–595 substituted ''(46 App. U.S.C. 1271 et seq.)'' for ''(46 App. U.S.C. 1241 et seq.)''.

§ 31309. General civil penalty

Except as otherwise provided in this chapter, a person violating this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than $10,000.

(Pub. L. 100–710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4741.)

HISTORICAL AND REVISION NOTES

Revised section	*Source section (U.S. Code)*
31309	New

Section 31309 provides for a civil penalty of not more than $10,000 for a violation of this chapter or a regulation prescribed under this chapter.

SUBCHAPTER II—COMMERCIAL INSTRUMENTS

§ 31321. Filing, recording, and discharge

(a)(1) A bill of sale, conveyance, mortgage, assignment, or related instrument, whenever made, that includes any part of a documented vessel or a vessel for which an application for documentation is filed, must be filed with the Secretary to be valid, to the extent the vessel is involved, against any person except—

(A) the grantor, mortgagor, or assignor;

(B) the heir or devisee of the grantor, mortgagor, or assignor; and

(C) a person having actual notice of the sale, conveyance, mortgage, assignment, or related instrument.

(2) Each bill of sale, conveyance, mortgage, assignment, or related instrument that is filed in substantial compliance with this section is valid against any person from the time it is filed with the Secretary.

(3) The parties to an instrument or an application for documentation shall use diligence to ensure that the parts of the instrument or application for which they are responsible are in substantial compliance with the filing and documentation requirements.

(4) A bill of sale, conveyance, mortgage, assignment, or related instrument may be filed electronically under regulations prescribed by the Secretary.

(b) To be filed, a bill of sale, conveyance, mortgage, assignment, or related instrument must—

(1) identify the vessel;