

troverly or the citizenship of the parties, to enforce any provision of this chapter or any regulation or term or condition of a license issued pursuant to this chapter or to order the Administrator to perform such act or duty, as the case may be.

**(b) Notice**

No civil action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation to the Administrator and to any alleged violator; or

(B) if the Administrator or the Attorney General has commenced and is diligently prosecuting a civil or criminal action with respect to such matters in a court of the United States, but in any such action any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to 60 days after the plaintiff has given notice of such action to the Administrator.

Notice under this subsection shall be given in such a manner as the Administrator shall prescribe by regulation.

**(c) Right of Administrator or Attorney General to intervene**

In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

**(d) Award of costs**

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such an award is appropriate.

**(e) Other remedies not restricted**

Nothing in this section shall restrict any right which any person or class of persons may have under any statute or common law to seek enforcement or to seek any other relief.

(Pub. L. 96-320, title I, § 114, Aug. 3, 1980, 94 Stat. 990.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 96-320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

**§ 9125. Judicial review**

Any person suffering legal wrong, or who is adversely affected or aggrieved by the Administrator's decision to issue, transfer, modify, renew, suspend, or terminate a license may, not later than 60 days after such decision is made, seek judicial review of such decision in the United States Court of Appeals for the District of Columbia. A person shall be deemed to be aggrieved by the Administrator's decision within the meaning of this chapter if he—

(1) has participated in the administrative proceedings before the Administrator (or if he

did not so participate, he can show that his failure to do so was caused by the Administrator's failure to provide the required notice); and

(2) is adversely affected by the Administrator's action.

(Pub. L. 96-320, title I, § 115, Aug. 3, 1980, 94 Stat. 990.)

REFERENCES IN TEXT

This chapter, referred to in introductory provisions, was in the original "this Act", meaning Pub. L. 96-320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

**§ 9126. Exempt operations**

**(a) Test platforms**

The provisions of this subchapter shall not apply to any test platform which will not operate as an ocean thermal energy conversion facility or plantship after conclusion of the testing period.

**(b) Commercial demonstration ocean thermal energy conversion facilities or plantships**

The provisions of this subchapter shall not apply to ownership, construction, or operation of any ocean thermal energy conversion facility or plantship which the Secretary of Energy has designated in writing as a demonstration project for the development of alternative energy sources for the United States which is conducted by, participated in, or approved by the Department of Energy. The Secretary of Energy, after consultation with the Administrator, shall require such demonstration projects to abide by as many of the substantive requirements of this subchapter as he deems to be practicable without damaging the nature of or unduly delaying such projects.

(Pub. L. 96-320, title I, § 116, Aug. 3, 1980, 94 Stat. 991; Pub. L. 98-623, title VI, § 602(e)(4), Nov. 8, 1984, 98 Stat. 3412.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-623 substituted "facility or plantship" for "facility or platform".

**§ 9127. Periodic review and revision of regulations**

The Administrator and the Secretary of the department in which the Coast Guard is operating shall periodically, at intervals of not more than every 3 years, and in consultation with the Secretary of Energy, review any regulations promulgated pursuant to the provisions of this subchapter to determine the status and impact of such regulations on the continued development, evolution, and commercialization of ocean thermal energy conversion technology. The results of each such review shall be included in the next annual report required by section 9165<sup>1</sup> of this title. The Administrator and such Secretary are authorized and directed to promulgate any revisions to the then effective reg-

<sup>1</sup> See References in Text note below.

ulations as are deemed necessary and appropriate based on such review, to ensure that any regulations promulgated pursuant to the provisions of this subchapter do not impede such development, evolution, and commercialization of such technology. Additionally, the Secretary of Energy is authorized to propose, based on such review, such revisions for the same purpose. The Administrator or such Secretary, as appropriate, shall have exclusive jurisdiction with respect to any such proposal by the Secretary of Energy and, pursuant to applicable procedures, shall consider and take final action on any such proposal in an expeditious manner. Such consideration shall include at least one informal hearing pursuant to the procedures in section 553 of title 5.

(Pub. L. 96-320, title I, § 117, Aug. 3, 1980, 94 Stat. 991.)

#### REFERENCES IN TEXT

Section 9165 of this title, referred to in text, was omitted from the Code.

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

### SUBCHAPTER II—MARITIME FINANCING FOR OCEAN THERMAL ENERGY CONVERSION

#### § 9141. Determinations under Merchant Marine Act, 1936

(a)(1) For the purposes of chapter 535 of title 46, any ocean thermal energy conversion facility or plantship licensed pursuant to this chapter, and any vessel providing shipping service to or from such an ocean thermal energy conversion facility or plantship, shall be deemed to be a vessel operated in the foreign commerce of the United States.

(2) The provisions of paragraph (1) of this subsection shall apply for taxable years beginning after December 31, 1981.

(b) For the purposes of the Merchant Marine Act, 1936 (46 U.S.C. 1177 et seq.),<sup>1</sup> any vessel documented under the laws of the United States and used in providing shipping service to or from any ocean thermal energy conversion facility or plantship licensed pursuant to the provisions of this chapter shall be deemed to be used in, and used in an essential service in, the foreign commerce or foreign trade of the United States, as defined in section 109 of title 46.

(Pub. L. 96-320, title II, § 201, Aug. 3, 1980, 94 Stat. 991.)

#### REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (b), was in the original “this Act”, meaning Pub. L. 96-320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal En-

<sup>1</sup> See References in Text note below.

ergy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

The Merchant Marine Act, 1936, referred to in subsec. (b), is act June 29, 1936, ch. 858, 49 Stat. 1985, which was classified principally to chapter 27 (§1101 et seq.) of the former Appendix to Title 46, Shipping. Most of this Act was repealed and restated mainly as subtitle V of Title 46, Shipping, by Pub. L. 109-304, §§ 8, 19, Oct. 6, 2006, 120 Stat. 1555, 1710. For complete classification of this Act to the Code, see Tables. For disposition of sections of the former Appendix to Title 46, see Disposition Table preceding section 101 of Title 46.

#### CODIFICATION

In subsec. (a)(1), “chapter 535 of title 46” substituted for “section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177)” and in subsec. (b), “section 109 of title 46” substituted for “section 905(a) of the Merchant Marine Act, 1936 (46 U.S.C. 1244(a))” on authority of Pub. L. 109-304, § 18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted chapter 535 and section 109 of Title 46, Shipping.

### SUBCHAPTER III—ENFORCEMENT

#### § 9151. Prohibited acts

It is unlawful for any person who is a United States citizen or national, or a foreign national in or on board an ocean thermal energy conversion facility or plantship or on board any vessel documented or numbered under the laws of the United States, or who is subject to the jurisdiction of the United States by an international agreement to which the United States is a party—

(1) to violate any provision of this chapter; or any rule, regulation, or order issued pursuant to this chapter; or any term or condition of any license issued to such person pursuant to this chapter;

(2) to refuse to permit any Federal officer or employee authorized to monitor or enforce the provisions of sections 9120 and 9153 of this title to enter or board an ocean thermal energy conversion facility or plantship or any vessel documented or numbered under the laws of the United States, for purposes of conducting any search or inspection in connection with the monitoring or enforcement of this chapter or any rule, regulation, order, term, or condition referred to in paragraph (1) of this section;

(3) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer or employee in the conduct of any search or inspection described in paragraph (2) of this section;

(4) to resist a lawful arrest for any act prohibited by this section; or

(5) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person subject to this section knowing that the other person has committed any act prohibited by this section.

(Pub. L. 96-320, title III, § 301, Aug. 3, 1980, 94 Stat. 994; Pub. L. 98-623, title VI, § 602(a)(9), Nov. 8, 1984, 98 Stat. 3411.)

#### REFERENCES IN TEXT

This chapter, referred to in pars. (1) and (2), was in the original “this Act”, meaning Pub. L. 96-320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally