

use temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such facility to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any cable or pipeline used to deliver such electricity, fresh water, or product to shore, and all other associated equipment and appurtenances of such facility, to the extent they are located seaward of the highwater mark;

(12) "ocean thermal energy conversion plant-ship" means any vessel which is designed to use temperature differences in ocean water while floating unmoored or moving through such water, to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such vessel to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any equipment used to transfer such product to other vessels for transportation to users, and all other associated equipment and appurtenances of such vessel;

(13) "plantship" means an ocean thermal energy conversion plantship;

(14) "person" means any individual (whether or not a citizen of the United States), any corporation, partnership, association, or other entity organized or existing under the laws of any nation, and any Federal, State, local or foreign government or any entity of any such government;

(15) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and any other Commonwealth, territory, or possession over which the United States has jurisdiction;

(16) "test platform" means any floating or moored platform, barge, ship, or other vessel which is designed for limited-scale, at sea operation in order to test or evaluate the operation of components or all of an ocean thermal energy conversion system and which will not operate as an ocean thermal energy conversion facility or plantship after the conclusion of such tests or evaluation;

(17) "thermal plume" means the area of the ocean in which a significant difference in temperature, as defined in regulations by the Administrator, occurs as a result of the operation of an ocean thermal energy conversion facility or plantship; and

(18) "United States citizen" means (A) any individual who is a citizen of the United States by law, birth, or naturalization; (B) any Federal, State, or local government in the United States, or any entity of any such government; or (C) any corporation, partnership, association, or other entity, organized or existing under the laws of the United States, or of any State, which has as its president or other executive officer and as its chairman of the board of directors, or holder of similar office, an individual who is a United States citizen and which has no more of its directors who are not United States citizens than constitute

a minority of the number required for a quorum necessary to conduct the business of the board.

(Pub. L. 96-320, § 3, Aug. 3, 1980, 94 Stat. 975; Pub. L. 98-623, title VI, § 602(a)(2), (e)(7), Nov. 8, 1984, 98 Stat. 3410, 3412.)

#### REFERENCES IN TEXT

This chapter, referred to in introductory provisions and pars. (4), (8), and (10), 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.

Act of July 2, 1890, as amended, referred to in par. (3), is act July 2, 1890, ch. 647, 26 Stat. 209, known as the Sherman Act, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act of October 15, 1914, as amended, referred to in par. (3), is act Oct. 15, 1914, ch. 323, 78 Stat. 730, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

Sections 73 and 74 of the Act of August 27, 1894, as amended, referred to in par. (3), are sections 73 and 74 of act Aug. 27, 1894, ch. 349, 28 Stat. 570. Sections 73 to 77 of such Act are known as the Wilson Tariff Act. Sections 73 to 76 enacted sections 8 to 11 of Title 15. Section 77 is not classified to the Code. For complete classification of this Act to the Code, see Short Title note under section 8 of Title 15 and Tables.

#### AMENDMENTS

1984—Par. (11). Pub. L. 98-623, § 602(a)(2), substituted "standing, fixed or moored in whole or in part seaward of the highwater mark" for "standing or moored in or beyond the territorial sea of the United States".

Pub. L. 98-623, § 602(e)(7), substituted "fresh water" for "freshwater".

#### TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

#### SUBCHAPTER I—REGULATION OF OCEAN THERMAL ENERGY CONVERSION FACILITIES AND PLANTSHIPS

### § 9111. License for ownership, construction, and operation of ocean thermal energy conversion facilities or plantships

#### (a) License requirement

No person may engage in the ownership, construction, or operation of an ocean thermal energy conversion facility which is documented under the laws of the United States, which is located in whole or in part between the highwater mark and the seaward boundary of the territorial sea of the United States, or which is connected to the United States by pipeline or cable, except in accordance with a license issued pursuant to this chapter. No citizen of the United States may engage in the ownership, construction or operation of an ocean thermal energy conversion plantship except in accordance with a license issued pursuant to this chapter, or in

accordance with a license issued by a foreign nation whose licenses are found by the Administrator, after consultation with the Secretary of State, to be compatible with licenses issued pursuant to this chapter.

**(b) Documented plantships; documented facilities; facilities located in territorial sea; facilities connected to United States by pipeline or cable**

The Administrator shall, upon application and in accordance with the provisions of this chapter, issue, transfer, amend, or renew licenses for the ownership, construction, and operation of—

(1) ocean thermal energy conversion plantships documented under the laws of the United States, and

(2) ocean thermal energy conversion facilities documented under the laws of the United States, located in whole or in part between the highwater mark and the seaward boundary of the territorial sea of the United States, or connected to the United States by pipeline or cable.

**(c) License issuance prerequisites**

The Administrator may issue a license to a citizen of the United States in accordance with the provisions of this chapter unless—

(1) he determines that the applicant cannot or will not comply with applicable laws, regulations, and license conditions;

(2) he determines that the construction and operation of the ocean thermal energy conversion facility or plantship will not be in the national interest and consistent with national security and other national policy goals and objectives, including energy self-sufficiency and environmental quality;

(3) he determines, after consultation with the Secretary of the department in which the Coast Guard is operating, that the ocean thermal energy conversion facility or plantship will not be operated with reasonable regard to the freedom of navigation or other reasonable uses of the high seas and authorized uses of the Continental Shelf, as defined by United States law, treaty, convention, or customary international law;

(4) he has been informed, within 45 days after the conclusion of public hearings on that application, or on proposed licenses for the designated application area, by the Administrator of the Environmental Protection Agency that the ocean thermal energy conversion facility or plantship will not conform with all applicable provisions of any law for which he has regulatory authority;

(5) he has received the opinion of the Attorney General, pursuant to section 9114 of this title, stating that issuance of the license would create a situation in violation of the antitrust laws, or the 90-day period provided in section 9114 of this title has not expired;

(6) he has consulted with the Secretary of Energy, the Secretary of Transportation, the Secretary of State, the Secretary of the Interior, and the Secretary of Defense, to determine their views on the adequacy of the application, and its effect on programs within their respective jurisdictions and determines on the basis thereof, that the application for a license is inadequate;

(7) the proposed ocean thermal energy conversion facility or plantship will be documented under the laws of a foreign nation;

(8) the applicant has not agreed to the condition that no vessel may be used for the transportation to the United States of things produced, processed, refined, or manufactured at the ocean thermal energy conversion facility or plantship unless such vessel is documented under the laws of the United States;

(9) when the license is for an ocean thermal energy conversion facility, he determines that the facility, including any submarine electric transmission cables and equipment or pipelines which are components of the facility, will not be located and designed so as to minimize interference with other uses of the high seas or the Continental Shelf, including cables or pipelines already in position on or in the seabed and the possibility of their repair;

(10) the Governor of any adjacent coastal State with an approved coastal zone management program in good standing pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) determines that, in his or her view, the application is inadequate or inconsistent with respect to programs within his or her jurisdiction;

(11) when the license is for an ocean thermal energy conversion facility, he determines that the thermal plume of the facility is expected to impinge on so as to degrade the thermal gradient used by any other ocean thermal energy conversion facility already licensed or operating, without the consent of its owner;

(12) when the license is for an ocean thermal energy conversion facility, he determines that the thermal plume of the facility is expected to impinge on so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation, unless the Secretary of State approves such impingement after consultation with such nation;

(13) when the license is for an ocean thermal energy conversion plantship, he determines that the applicant has not provided adequate assurance that the plantship will be operated in such a way as to prevent its thermal plume from impinging on so as to degrade the thermal gradient used by any other ocean thermal energy conversion facility or plantship without the consent of its owner, and from impinging on so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation unless the Secretary of State approves such impingement after consultation with such nation; or

(14) if a regulation has been adopted which places an upper limit on the number or total capacity of ocean thermal energy conversion facilities or plantships to be licensed under this chapter for simultaneous operation, either overall or within specific geographic areas, pursuant to a determination under the provisions of section 9117(b)(4) of this title, issuance of the license will cause such upper limit to be exceeded.

**(d) Issuance conditions; written agreement of compliance; disposal or removal requirements**

(1) In issuing a license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship, the Administrator shall prescribe conditions which he deems necessary to carry out the provisions of this chapter, or which are otherwise required by any Federal department or agency pursuant to the terms of this chapter.

(2) No license shall be issued, transferred, or renewed under this chapter unless the applicant, licensee or transferee first agrees in writing that (A) there will be no substantial change from the plans, operational systems, and methods, procedures, and safeguards set forth in his application, as approved, without prior approval in writing from the Administrator, and (B) he will comply with conditions the Administrator may prescribe in accordance with the provisions of this chapter.

(3) The Administrator shall establish such bonding requirements or other assurances as he deems necessary to assure that, upon the revocation, termination, relinquishment, or surrender of a license, the licensee will dispose of or remove all components of the ocean thermal energy conversion facility or plantship as directed by the Administrator. In the case of components which another applicant or licensee desires to use, the Administrator may waive the disposal or removal requirements until he has reached a decision on the application. In the case of components lying on or below the seabed, the Administrator may waive the disposal or removal requirements if he finds that such removal is not otherwise necessary and that the remaining components do not constitute any threat to the environment, navigation, fishing, or other uses of the seabed.

**(e) License transfer**

Upon application, a license issued under this chapter may be transferred if the Administrator determines that such transfer is in the public interest and that the transferee meets the requirements of this chapter and the prerequisites to issuance under subsection (c) of this section.

**(f) License eligibility**

Any United States citizen who otherwise qualifies under the terms of this chapter shall be eligible to be issued a license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship.

**(g) License term and renewal**

Licenses issued under this chapter shall be for a term of not to exceed 25 years. Each licensee shall have a preferential right to renew his license subject to the requirements of subsection (c) of this section, upon such conditions and for such term, not to exceed an additional 10 years upon each renewal, as the Administrator determines to be reasonable and appropriate.

(Pub. L. 96-320, title I, §101, Aug. 3, 1980, 94 Stat. 976; Pub. L. 98-623, title VI, §602(a)(3)-(5), (b), (e)(8)-(11), Nov. 8, 1984, 98 Stat. 3410-3412.)

REFERENCES IN TEXT

This chapter, referred to in text, 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.

The Coastal Zone Management Act of 1972, referred to in subsec. (c)(10), is title III of Pub. L. 89-454 as added by Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1280, which is classified generally to chapter 33 (§1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

AMENDMENTS

1984—Subsecs. (a), (b)(2). Pub. L. 98-623, §602(a)(3), (4), substituted "located in whole or in part between the highwater mark and the seaward boundary of the territorial sea" for "located in the territorial sea".

Subsec. (c)(1). Pub. L. 98-623, §602(b)(1), substituted "cannot or will not" for "cannot and will not".

Subsec. (c)(4). Pub. L. 98-623, §602(e)(8), substituted "regulatory authority" for "enforcement authority".

Subsec. (c)(5). Pub. L. 98-623, §602(b)(2), substituted "has not expired" for "has expired".

Subsec. (c)(6). Pub. L. 98-623, §602(e)(9), substituted "application for a license" for "application for license".

Subsec. (c)(7). Pub. L. 98-623, §602(a)(5), substituted "will be documented under the laws of a foreign nation" for "will not be documented under the laws of the United States".

Subsec. (c)(10). Pub. L. 98-623, §602(b)(3), (5), substituted "any adjacent" for "each adjacent" and "(16 U.S.C. 1451 et seq.)" for "(33 U.S.C. 1451 et seq.)".

Subsec. (c)(13). Pub. L. 98-623, §602(b)(4), substituted "or" for "and" after the semicolon at the end.

Subsec. (c)(14). Pub. L. 98-623, §602(e)(10), substituted "if a regulation" for "when a regulation".

Subsec. (d)(2). Pub. L. 98-623, §602(e)(11), substituted "applicant, licensee" for "licensee".

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.

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

**§ 9112. Procedure**

**(a) Rules and regulations**

The Administrator shall, after consultation with the Secretary of Energy and the heads of other Federal agencies, issue regulations to carry out the purposes and provisions of this chapter, in accordance with the provisions of section 553 of title 5, without regard to subsection (a) thereof. Such regulations shall pertain to, but need not be limited to, application for issuance, transfer, renewal, suspension, and termination of licenses. Such regulations shall provide for full consultation and cooperation with all other interested Federal agencies and departments and with any potentially affected coastal State, and for consideration of the views of any interested members of the general public. The Administrator is further authorized, consistent with the purposes and provisions of this