

1992—Subsec. (a)(1). Pub. L. 102-486, §2802, designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(2)(A), (C). Pub. L. 102-486, §2804, inserted “or any amendment to a combined construction and operating license” after “any amendment to an operating license”.

Subsec. (b). Pub. L. 102-486, §2805, inserted “or any final order allowing or prohibiting a facility to begin operating under a combined construction and operating license” before “shall be subject to judicial review”.

1983—Subsec. (a). Pub. L. 97-415 designated existing provisions as par. (1) and added par. (2).

1962—Subsec. (a). Pub. L. 87-615 substituted “construction permit for a facility” and “construction permit for a testing facility” for “license for a facility” and “license for a testing facility” respectively, and authorized the commission in cases where a permit has been issued following a hearing, and in the absence of a request therefor by anyone whose interest may be affected, to issue an operating license or an amendment to a construction permit or an operating license without a hearing upon thirty days’ notice and publication once in the Federal Register of its intent to do so, and to dispense with such notice and publication with respect to any application for an amendment to a construction permit or to an operating license upon its determination that the amendment involves no significant hazards consideration.

1957—Subsec. (a). Pub. L. 85-256 required the Commission to hold a hearing after 30 days notice and publication once in the Federal Register on an application for a license for a facility or a testing facility.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1992 AMENDMENT

Subsec. (a)(1)(B) of this section, as added by section 2802 of Pub. L. 102-486, applicable to all proceedings involving combined license for which application was filed after May 8, 1991, see section 2806 of Pub. L. 102-486, set out as a note under section 2235 of this title.

##### AUTHORITY TO EFFECTUATE AMENDMENTS TO OPERATING LICENSES

Pub. L. 97-415, §12(b), Jan. 4, 1983, 96 Stat. 2073, provided that: “The authority of the Nuclear Regulatory Commission, under the provisions of the amendment made by subsection (a) [amending this section], to issue and to make immediately effective any amendment to an operating license shall take effect upon the promulgation by the Commission of the regulations required in such provisions.”

##### REVIEW OF NUCLEAR PROLIFERATION ASSESSMENT STATEMENTS

No court or regulatory body to have jurisdiction to compel performance of or to review adequacy of performance of any Nuclear Proliferation Assessment Statement called for by the Atomic Energy Act of 1954 [this chapter] or by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, see section 2160a of this title.

##### ADMINISTRATIVE ORDERS REVIEW ACT

Court of appeals exclusive jurisdiction respecting final orders of Atomic Energy Commission, now the Nuclear Regulatory Commission and the Secretary of Energy, made reviewable by this section, see section 2342 of Title 28, Judiciary and Judicial Procedure.

#### § 2240. Licensee incident reports as evidence

No report by any licensee of any incident arising out of or in connection with a licensed activity made pursuant to any requirement of the Commission shall be admitted as evidence in any suit or action for damages growing out of any matter mentioned in such report.

(Aug. 1, 1946, ch. 724, title I, §190, as added Pub. L. 87-206, §16, Sept. 6, 1961, 75 Stat. 479; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

#### § 2241. Atomic safety and licensing boards; establishment; membership; functions; compensation

(a) Notwithstanding the provisions of sections 556(b) and 557(b) of title 5, the Commission is authorized to establish one or more atomic safety and licensing boards, each comprised of three members, one of whom shall be qualified in the conduct of administrative proceedings and two of whom shall have such technical or other qualifications as the Commission deems appropriate to the issues to be decided, to conduct such hearings as the Commission may direct and make such intermediate or final decisions as the Commission may authorize with respect to the granting, suspending, revoking or amending of any license or authorization under the provisions of this chapter, any other provision of law, or any regulation of the Commission issued thereunder. The Commission may delegate to a board such other regulatory functions as the Commission deems appropriate. The Commission may appoint a panel of qualified persons from which board members may be selected.

(b) Board members may be appointed by the Commission from private life, or designated from the staff of the Commission or other Federal agency. Board members appointed from private life shall receive a per diem compensation for each day spent in meetings or conferences, and all members shall receive their necessary traveling or other expenses while engaged in the work of a board. The provisions of section 2203 of this title shall be applicable to board members appointed from private life.

(Aug. 1, 1946, ch. 724, title I, §191, as added Pub. L. 87-615, §1, Aug. 29, 1962, 76 Stat. 409; amended Pub. L. 91-560, §10, Dec. 19, 1970, 84 Stat. 1474; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

#### Editorial Notes

##### REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, known as the Atomic Energy Act of 1954, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

##### CODIFICATION

In subsec. (a), “sections 556(b) and 557(b) of title 5” substituted for “sections 7(a) and 8(a) of the Administrative Procedure Act [5 U.S.C. 1006(a), 1007(a)]” on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

##### AMENDMENTS

1970—Subsec. (a). Pub. L. 91-560 required that two members of the board should have such technical or other qualifications the Commission deems appropriate to the issues to be decided.

**§ 2242. Temporary operating license**

**(a) Fuel loading, testing, and operation at specific power level; petition, affidavit, etc.**

In any proceeding upon an application for an operating license for a utilization facility required to be licensed under section 2133 or 2134(b) of this title, in which a hearing is otherwise required pursuant to section 2239(a) of this title, the applicant may petition the Commission for a temporary operating license for such facility authorizing fuel loading, testing, and operation at a specific power level to be determined by the Commission, pending final action by the Commission on the application. The initial petition for a temporary operating license for each such facility, and any temporary operating license issued for such facility based upon the initial petition, shall be limited to power levels not to exceed 5 percent of rated full thermal power. Following issuance by the Commission of the temporary operating license for each such facility, the licensee may file petitions with the Commission to amend the license to allow facility operation in staged increases at specific power levels, to be determined by the Commission, exceeding 5 percent of rated full thermal power. The initial petition for a temporary operating license for each such facility may be filed at any time after the filing of: (1) the report of the Advisory Committee on Reactor Safeguards required by section 2232(b) of this title; (2) the filing of the initial Safety Evaluation Report by the Nuclear Regulatory Commission staff and the Nuclear Regulatory Commission staff's first supplement to the report prepared in response to the report of the Advisory Committee on Reactor Safeguards for the facility; (3) the Nuclear Regulatory Commission staff's final detailed statement on the environmental impact of the facility prepared pursuant to section 4332(2)(C) of this title; and (4) a State, local, or utility emergency preparedness plan for the facility. Petitions for the issuance of a temporary operating license, or for an amendment to such a license allowing operation at a specific power level greater than that authorized in the initial temporary operating license, shall be accompanied by an affidavit or affidavits setting forth the specific facts upon which the petitioner relies to justify issuance of the temporary operating license or the amendment thereto. The Commission shall publish notice of each such petition in the Federal Register and in such trade or news publications as the Commission deems appropriate to give reasonable notice to persons who might have a potential interest in the grant of such temporary operating license or amendment thereto. Any person may file affidavits or statements in support of, or in opposition to, the petition within thirty days after the publication of such notice in the Federal Register.

**(b) Operation at greater power level; criteria, effect, terms and conditions, etc.; procedures applicable**

With respect to any petition filed pursuant to subsection (a) of this section, the Commission may issue a temporary operating license, or amend the license to authorize temporary oper-

ation at each specific power level greater than that authorized in the initial temporary operating license, as determined by the Commission, upon finding that—

(1) in all respects other than the conduct or completion of any required hearing, the requirements of law are met;

(2) in accordance with such requirements, there is reasonable assurance that operation of the facility during the period of the temporary operating license in accordance with its terms and conditions will provide adequate protection to the public health and safety and the environment during the period of temporary operation; and

(3) denial of such temporary operating license will result in delay between the date on which construction of the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the temporary operating license, and the date when such facility would otherwise receive a final operating license pursuant to this chapter.

The temporary operating license shall become effective upon issuance and shall contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for the extension thereof. Any final order authorizing the issuance or amendment of any temporary operating license pursuant to this section shall recite with specificity the facts and reasons justifying the findings under this subsection, and shall be transmitted upon such issuance to the Committees on Natural Resources and on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate. The final order of the Commission with respect to the issuance or amendment of a temporary operating license shall be subject to judicial review pursuant to chapter 158 of title 28. The requirements of section 2239(a) of this title with respect to the issuance or amendment of facility licenses shall not apply to the issuance or amendment of a temporary operating license under this section.

**(c) Hearing for final operating license; suspension, issuance, compliance, etc., with temporary operating license**

Any hearing on the application for the final operating license for a facility required pursuant to section 2239(a) of this title shall be concluded as promptly as practicable. The Commission shall suspend the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence. Issuance of a temporary operating license under subsection (b) of this section shall be without prejudice to the right of any party to raise any issue in a hearing required pursuant to section 2239(a) of this title; and failure to assert any ground for denial or limitation of a temporary operating license shall not bar the assertion of such ground in connection with the issuance of a subsequent final operating license. Any party to a hearing required pursuant to section 2239(a) of this title on the final operating license for a facility for which a temporary operating license has been issued under subsection (b), and any member of