

The Nuclear Waste Policy Amendments Act of 2019

Section-by-Section Analysis

Sec. 1. Short title; table of contents

This section provides the short title, the “Nuclear Waste Policy Amendments Act of 2019” and identifies the sections of the bill as follows: section 1, Short Title and Table of Contents; Title I, Monitored Retrievable Storage; Title II, Permanent Repository; Title III, DOE Contract Performance; Title IV, Benefits to Host Community; Title V, Funding; and, Title VI, Miscellaneous.

TITLE I – MONITORED RETREIVABLE STORAGE

Sec. 101. Monitored retrievable storage.

This section amends section 141(b) of the Nuclear Waste Policy Act of 1982 (NWPA) to direct the Secretary of Energy (Secretary) to complete a study of the need for and feasibility of the construction of one or more monitored retrievable storage facilities (MRS) and submit such report to Congress by June 1, 2021. The section also requires the Secretary to publish a request for information to help the Secretary evaluate options to enter into MRS agreements with respect to one or more MRS.

Section 101(b) makes conforming changes to allow for more than one MRS and by striking section 141(d) through (h), and adds definitions to section 2 of the NWPA for “MRS agreement” and “Department-owned civilian waste.”

Sec. 102. Authorization and priority.

This section amends section 142 of the NWPA to authorize the Secretary to site, construct, and operate one or more MRS and store, pursuant to a MRS agreement, Department-owned civilian waste at a non-Federal MRS that is licensed by the Nuclear Regulatory Commission (NRC or Commission). The section also directs the Secretary to prioritize storage at a non-Federal MRS unless the Secretary determines it is faster and less expensive for the Department of Energy (DOE) to site, construct, and operate an MRS. The Secretary must provide such determination to Congress within 30 days.

Sec. 103. Conditions for MRS agreements.

This section amends section 143 of the NWPA to prohibit the Secretary from entering into an MRS agreement for an MRS unless (1) the MRS holds a license pursuant to the Atomic Energy Act of 1954; (2) has approval to store Department-owned civilian waste at such facility from the governor of the state, any unit of general local government with jurisdiction over the area, and

any affected Indian tribe; (3) the Commission has issued a decision for a repository under section 114(d) of the NWPA, with the exception of the first agreement; and (4) the MRS agreement provides the quantity of high-level radioactive waste (HLW) and spent nuclear fuel (SNF) will not exceed the limits described in section 148(d)(3) and (4).

The new subsection 143(b) authorizes the Secretary to enter into one MRS agreement prior to the Commission issuing a final decision approving or disapproving the issuance of a construction authorization. For fiscal years 2021 through 2023 there is authorized the greater of \$50 million or an amount equal to 10 percent of the amounts appropriated from the Waste Fund in that fiscal year for the MRS agreement. For fiscal years 2024 through 20265, there is authorized an amount equal to 10 percent of amounts appropriated from the Waste Fund. The Secretary shall prioritize storage of Department-owned civilian waste from facilities that have ceased commercial operation at the first MRS facility. The Secretary is prohibited from storing spent nuclear fuel at the facility unless the Commission has issued a final decision or if the Secretary finds the decision is imminent. If a decision is imminent, the Secretary must notify Congress within seven days and provide a monthly report to Congress on the status of the license.

Sec. 104. Survey.

This section amends section 144 of the NWPA to allow the Secretary to survey and evaluate sites for an MRS based on listed criteria, including acceptability to state authorities, affected units of local government, and affected Indian tribes. The section would require the Secretary to issue a request for proposals for a MRS agreement with a non-Federal MRS before conducting any survey.

Sec. 105. Site selection.

This section amends section 145 of the NWPA to allow for more than one MRS site to be evaluated.

Sec. 106. Benefits agreement.

This section amends section 147 of the NWPA to allow a non-Federal entity subject to a MRS agreement to enter into a benefits agreement with the Secretary under section 170.

Sec. 107. Licensing.

This section amends section 148(c) of the NWPA to apply to a DOE MRS. It also amends section 148(d) of the NWPA to allow DOE to pursue an MRS agreement if the Commission disapproves of a construction authorization for a repository prior to MRS licensing.

Sec. 108. Financial assistance.

This section amends section 149 of the NWPA to qualify a non-Federal entity to receive financial assistance.

Title II – PERMANENT REPOSITORY

Sec. 201. Land withdrawal, jurisdiction, and reservation.

This section provides for the permanent withdrawal of lands described in subsection (c) and provides the Secretary jurisdiction over the withdrawal. The withdrawal is reserved by the Secretary for development, preconstruction testing and performance confirmation, licensing, construction, management and operation, monitoring, closure, post-closure, and other activities associated with the disposal of HLW and SNF under the NWPA.

Section 201(b) revokes previous public land orders and right-of-way within the withdrawal.

Section 201(c) describes the boundaries of the land subject to the withdrawal and requires the publication in the Federal Register and documentation of the copies of the described maps.

Section 201(d) describes the relationship of the withdrawal to lands previously withdrawn for use by the Department of Defense under subtitle A of title XXX of the Military Lands Withdrawal Act of 1999.

Section 201(e) assigns certain management responsibilities to the Secretary for lands in the withdrawal, including the development of a management plan for the lands; prioritizing Yucca Mountain Project activities; use by the Air Force under agreed terms and conditions with the Secretary; and related non-Yucca Mountain Project uses, such as grazing, hunting and trapping, and mining. The subsection provides for limited public access to continue the Nye County Early Warning Drilling Program, utility corridors, and other uses the Secretary considers consistent with the purposes of the withdrawal. The subsection also authorizes the Secretary to close a portion of the withdrawal or airspace above the withdrawal.

Section 201(f) provides that the United States and its departments and agencies shall be held harmless and shall not be liable for damages to persons or property as a result of mining, mineral leasing, or geothermal leasing activities conducted on the withdrawal.

Section 201(g) provides the Secretary authority to acquire lands and interests within the withdrawal.

Section 201(h) removes Federal, State, Interstate, and local requirements subject to section 6001(a) of the Solid Waste Disposal Act for material transported to a repository for disposal, or as, or after, such material is disposed of in a repository.

Section 201(i) defines terms used in this section consistent with the NWPA, in addition to defining the “withdrawal,” “Secretary concerned,” and “Project.”

Section 201(j) makes this section, except subsections (c), (e)(2)(A), (h), and (i) effective on the date that the Commission approves the issuance of a construction authorization under section 114(d) of the NWPA for the Yucca Mountain site.

Sec. 202. Application procedures and infrastructure activities.

This section amends section 114(d) of the NWPA to require NRC consideration of the construction authorization for the repository 30 months after the date of enactment of the Nuclear Waste Policy Amendments Act of 2019. The section increases the statutory cap on the quantity of spent nuclear fuel at the repository from 70,000 metric tons to 110,000 metric tons. It also allows for amendments to an approved construction authorization license to be considered using expedited, informal procedures and directs the Commission to decide on such amendments within one year, unless the Commission notifies Congress that the deadline needs to be extended. The subsection allows the Secretary to undertake infrastructure activities at the Yucca Mountain site considered necessary or appropriate to support the construction or operation of a repository or transportation to such site. Infrastructure activities include safety upgrades; site preparation; the construction of a rail line to connect the Yucca Mountain site with the national rail network; and construction, upgrade, acquisition or operation of electrical grids or facilities, other utilities, communication facilities, access roads, and nonnuclear support facilities.

Section 202(b) amends section 114(f)(6) of the NWPA to add certain actions that are not required for an environmental analysis. It prohibits the Commission from disapproving of the construction authorization, license to receive and possess or any other action, on the grounds that an infrastructure activity was undertaken. The section also provides that actions undertaken outside the geologic repository operations area do not require a license from the Commission.

Sec. 203 Pending repository license application.

This section provides that nothing in this Act or amendments made by this Act shall be construed to require the Secretary to amend or otherwise modify an application for a construction authorization pending as of the date of enactment of this Act.

Sec. 204. Limitation on planning, development, or construction of defense waste repository.

This section prohibits the Secretary from taking any action relating to planning, development, or construction of a defense waste repository until the Commission issues a final decision on an application for a construction authorization for a repository under section 114(d)(1) of the NWPA. The section also defines the term “defense waste repository.”

Sec. 205. Sense of Congress regarding transportation routes.

This section expresses the Sense of Congress that the Secretary should consider transportation routes to the repository site to avoid Las Vegas, Nevada.

Title III – DOE CONTRACT PERFORMANCE

Sec. 301. Title to material.

This section amends section 123 of the NWPA to allow the Secretary to accept title to HLW or SNF for a repository or an MRS. The section also provides the Secretary the authority to enter into new contracts or negotiate modifications to existing contracts for acceptance of title, subsequent transportation, and storage of HLW or SNF. The contract modification may include the expedited titling, transportation, and storage of fuel to an MRS from nuclear facilities that have ceased commercial operation.

Title IV – BENEFITS TO HOST COMMUNITY

Sec. 401. Consent.

This section amends section 170 of the NWPA by clarifying the number of benefits agreements that may be available and by adding a new subsection (g) expressing that if the State of Nevada enters into a benefits agreement under this section, such agreement shall not be considered an expression of consent to siting the repository.

Sec. 402. Content of agreements.

This section amends the table in section 171 of the NWPA titled “Benefits Schedule.”

Section 402(b) amends section 171(a) of the NWPA to prohibit payments from a benefits agreement to be used to influence legislative action or any matter pending before Congress or a state legislature, for litigation purposes, or to support multistate efforts or other activities inconsistent with the siting, construction, or operation of the MRS or repository concerned.

Section 402(c) amends section 171(b) of the NWPA to remove the State of Nevada’s agreement to waive its rights to disapprove of the recommendation of the Yucca Mountain site as a condition to enter into a benefits agreement.

Section 402(d) amends section 171(c) of the NWPA to provide that payments under a benefits agreement to the State of Nevada shall be made from the Waste Fund, but only to the extent that the amounts are appropriated in advance.

Sec. 403. Covered units of local government.

This section inserts section 172A in the NWPA to allow covered units of local government, not earlier than one year after the date of enactment, to enter into a benefits agreement with the Secretary. Such benefits agreements are to mitigate impacts of locating a repository at the Yucca Mountain site, as described in section 175(b). Payments to covered units of local governments under a benefits agreement are provided by the Waste Fund and cannot be used to influence legislative action or any matter pending before Congress or a state legislature, for litigation purposes, or to support multistate efforts or other activities inconsistent with the siting, construction, or operation of the repository. Entering into a benefits agreement under this section by a covered unit of local government shall not be considered to be an expression of consent to the siting of a repository in the State of Nevada. This section also defines covered unit of local government to mean any affected unit of local government with respect to a repository or any unit of general local government in the State of Nevada.

Section 403(b) makes conforming amendments to section 170(a)(4) relating to benefits agreements. It also requires that benefits for covered units of local government are only available as appropriated in advance.

Sec. 404. Termination.

This section amends section 173 of the NWPA to terminate a benefits agreement if the Commission disapproves of a license to authorize construction for a repository under section 114(d).

Sec. 405. Priority funding for certain institutions of higher education.

This section amends section 174 of the NWPA to require the Secretary to prioritize funding for higher education from the Waste Fund to institutions located in the State of Nevada.

Sec. 406. Disposal of spent nuclear fuel.

This section amends section 122 of the NWPA to require economic benefits derived from the retrieval of SNF to be shared with any state, affected units of local government, and affected Indian tribes, where the repository is located.

Sec. 407. Updated report.

This section amends section 175(a) of the NWPA to require the Secretary to update a report identifying potential actions to mitigate impacts associated with the activities with the repository program.

Title V – FUNDING

Sec. 501. Assessment and collection of fees.

This section amends section 302(a)(4) of the NWPA to direct the Secretary to establish procedures for the assessment of fees to provide sufficient revenues to offset the costs required by the Waste Fund.

The section also directs the Secretary to establish procedures to collect fees. The Secretary may not collect a fee until the Commission issues a final decision on the construction authorization for a repository under section 114(d) and the fees collected cannot exceed 90 percent of the amounts appropriated from the Waste Fund. Assessed fees that are not collected pursuant to the requirements of this section shall be collected when the Secretary determines necessary for the purposes of the Waste Fund, subject to appropriations.

Section 501(b) provides the Secretary the authority to seek modification of a contract under section 302(a) of the NWPA to ensure the contract complies with this section.

Section 502(c) makes technical and conforming amendments to section 302(a) of the NWPA.

Sec. 502. Use of Waste Fund.

This section amends section 302(d) of the NWPA to define allowable uses of the Waste Fund.

Section 502(b) makes conforming amendments in section 117(d) and 141(f) with respect to allowable uses of the Waste Fund.

Sec. 503. Annual multiyear budget proposal.

This section amends section 302(e) of the NWPA to require DOE to submit a multi-year budget proposal annually.

Sec. 504. Availability of certain amounts.

This section adds a new subsection (f) to section 302 of the NWPA. The subsection requires payments for benefits agreement prior to appropriating funding for transportation of SNF to the repository or operating the repository.

This section also adds a new subsection (g) to section 302 of the NWPA to credit collected fees to offset appropriations from the Waste Fund. The section requires fees to be classified as discretionary appropriations. It also waves points of order on appropriations acts for discretionary appropriations from the Waste Fund that will be offset by fees collected during the fiscal year.

Title VI – MISCELLANEOUS

Sec. 601. Certain standards and criteria.

This section requires the Environmental Protection Agency to determine if standards promulgated under section 121(a) of the NWPA should be updated and to submit to Congress a report on such determination. If the Administrator determines that the standards promulgated under section 121(a) of the NWPA should be updated, the Administrator shall promulgate updated standards within two years of making such determination. This section also requires the NRC to promulgate updated technical requirements under section 121(b) of the NWPA to be consistent with updated generally applicable standards

Section 601(b) states that nothing in this section shall affect the standards, technical requirements, and criteria for the Yucca Mountain site under section 801 of the Energy Policy Act of 1992.

Sec. 602. Application.

This section makes a conforming amendment by striking section 135(h) of the NWPA, which prohibits DOE from using a private facility for management of spent nuclear fuel.

Sec. 603. Transportation safety assistance.

This section amends section 180(c) of the NWPA to direct the Secretary to make in-kind, financial, technical, and other appropriate assistance for safety activities related to the transportation to state and regional entities currently receiving technical assistance for training.

Sec. 604. Office of Civilian Radioactive Waste Management.

This section amends section 304(b) of the NWPA to provide for not more than two five-year terms for the Director of the Office of Civilian Radioactive Waste Management and requires the Director to be appointed from persons who have extensive expertise and experience in organizational and project management. The section also allows the Director to serve up to one year following the expiration of the term or until a new Director is confirmed.

Section 604(b) amends section 203(a) of the Department of Energy Organization Act by striking paragraph (8) and transferring all functions described in that paragraph to the Office of Civilian Radioactive Waste Management.

Section 604(c) makes a conforming amendment to section 2(17) of the NWPA.

Sec. 605. Subseabed or ocean water disposal.

This section amends section 5 of the NWPA to prohibit the subseabed or ocean water disposal of SNF or HLW. It prohibits funding any activity relating to such disposal.

Sec. 606. Sense of Congress regarding storage of nuclear waste near the Great Lakes.

This section is a sense of Congress that the Governments of the United States and Canada should not allow permanent or long-term storage of SNF or other radioactive waste near the Great Lakes.

Sec. 607. Budgetary effects.

This section removes the budgetary effects of this bill from the PAYGO scorecard under the Statutory Pay-As-You-Go Act of 2010. It also removes the effects from the PAYGO scorecard maintained for the purposes of Senate.

Sec. 608 Requirement for financial statements summary.

This section requires the Department to include a financial statements summary in each audit of the Waste Fund.

Sec. 609 Stranded nuclear waste.

This section requires the Secretary to establish a Stranded Nuclear Waste Task Force. The Task Force must submit to Congress report on existing public and private resources for communities with a decommissioned or decommissioning nuclear power plant. The report must also help develop immediate and long-term economic adjustment plans for the needs of each affected community.