



POLICY ISSUE **(Notation Vote)**

August 30, 2022

SECY-22-0081

FOR: The Commissioners

FROM: Daniel H. Dorman
Executive Director for Operations

SUBJECT: MANAGEMENT REVIEW BOARD RECOMMENDATION OF
PROBATION FOR THE MISSISSIPPI AGREEMENT STATE
PROGRAM

PURPOSE:

The purpose of this paper is to request Commission approval to place the Mississippi Agreement State Program (the Mississippi Program) on Probation, as described in the U.S. Nuclear Regulatory Commission (NRC) Management Directive (MD) 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)," dated July 24, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession No. [ML19213A024](#)).

SUMMARY:

On May 26 and June 23, 2022, the Management Review Board (MRB) met to consider the findings of the 2022 Mississippi IMPEP review. Overall, the Mississippi Program was found adequate, but needs improvement, to protect public health and safety and not compatible with the NRC's program. Due to the overall decline in performance and the significant deficiencies identified during the 2022 IMPEP review, the MRB Chair is seeking Commission approval to place the Mississippi Program on Probation.

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BACKGROUND:

Section 274b of the Atomic Energy Act of 1954, as amended, provides the statutory basis by which the NRC may discontinue portions of its regulatory authority to license and regulate byproduct materials, source materials, and certain quantities of special nuclear and the State assumes the authority to regulate materials when the NRC determines that the perspective Agreement State has an adequate program to protect public health and safety and is compatible with the NRC's regulatory program. Through the Agreement State program, 39 States have signed agreements with the NRC. The NRC retains an oversight role.

Section 274j of the Atomic Energy Act of 1954, as amended, requires that the NRC, in its oversight role, periodically review each Agreement State program to ensure Agreement State programs are adequate to protect public health and safety and compatible with the NRC's regulatory program. It is the policy of the NRC to evaluate the performance of radiation control programs in an integrated manner, using performance indicators, to ensure that public health and safety is being adequately protected. The periodic review process that evaluates the performance of an Agreement State and the NRC radiation control program is the IMPEP. This oversight program established performance indicators to obtain comparable information on the performance of each program. Since its implementation, IMPEP has evolved in response to experience and today is used to review all radiation control programs in the National Materials Program.

Radiation control programs are typically reviewed under the IMPEP every 4 years, but the frequency may vary based on performance. Depending on program performance, at least one periodic meeting is conducted between IMPEP reviews. Periodic meetings include exchange of status information. Periodic meetings are not formal reviews but are open interactive discussions of program status and activities in preparation for the next IMPEP review.

All IMPEP reviews use common performance indicators in the assessment, and place primary emphasis on performance. The common performance indicators, which are program activities common to all radiation control programs, include: (1) Technical Staffing and Training, (2) Status of Materials Inspection Program, (3) Technical Quality of Inspections, (4) Technical Quality of Licensing Actions, and (5) Technical Quality of Incident and Allegation Activities.

Additional program areas, identified as non-common performance indicators, are also assessed depending on the scope of a radiation control program's responsibilities. They include: (1) Legislation, Regulations, and Other Program Elements (previously known as Compatibility Requirements), (2) Sealed Source and Device Evaluation Program, (3) Low-Level Radioactive Waste Disposal Program, and (4) Uranium Recovery Program.

Following an IMPEP review, the MRB Chair makes the final determination regarding a radiation control program's overall performance. The MRB Chair makes this determination in a public meeting. Information considered by the MRB Chair includes the proposed final IMPEP report which presents suggested performance indicator ratings and recommendations prepared by the IMPEP team, input from the MRB members, and information provided by the radiation control program at the MRB meeting. The MRB is composed of senior NRC managers and an Agreement State representative.

For most IMPEP reviews, no action other than issuance of the final IMPEP report is needed. For those infrequent reviews where additional action is needed, the MRB Chair may consider placing a program on Monitoring or Heightened Oversight or making a recommendation for Probation, Suspension, or Termination. The most significant actions – Probation, Suspension, or Termination – require Commission approval.

The MRB Chair may direct that a radiation control program be placed on a period of Monitoring if weaknesses in the program result in two performance indicators being found satisfactory but needs improvement, or less than fully satisfactory performance for two or more performance indicators. A period of Monitoring allows the NRC to maintain an increased level of communication with an Agreement State.

The MRB Chair may direct that a radiation control program be placed on Heightened Oversight if weaknesses in the program result in one or more of the performance indicators being found unsatisfactory, or three or more performance indicators being found satisfactory but needs improvement. Heightened Oversight requires the State to develop a Program Improvement Plan, provide periodic progress reports, and participate in periodic calls with the NRC. In addition, the MRB Chair may direct that subsequent IMPEP reviews be conducted in less than 4 years, where appropriate.

The MRB Chair may recommend to the Commission that a radiation control program be placed on Probation, if weaknesses are of such safety significance that assurance of the program's ability to protect public health may be degraded and the program is found adequate to protect public health and safety, but needs improvement, or not compatible with the NRC's regulatory program. Probation includes all aspects of Heightened Oversight and requires notifications to the Governor, State Congressional delegations, and NRC's Congressional oversight committees, the issuance of an NRC press release, and the publication of a *Federal Register* notice.

Suspension and Termination are considered by the MRB when a program is inadequate to protect public health and safety, and immediate action is required to protect public health and safety. Suspension, rather than Termination, is preferred when the MRB Chair concludes that the State has provided evidence that the program's deficiencies are temporary, and the State is committed to implementing program improvements.

Additional information on the IMPEP program can be found in MD 5.6.

DISCUSSION:

During the 2022 IMPEP review, the IMPEP team identified an overall decline in performance for the Mississippi Program with four of the six performance indicators being found unsatisfactory. The 2022 IMPEP review team identified significant deficiencies across the Mississippi Program that, if left uncorrected, could have the potential to adversely impact public health and safety. Consequently, the MRB Chair determined that the identified weaknesses were of such significance that assurance of the Mississippi Program's ability to protect public health and safety was degraded and increased oversight by the NRC was warranted to ensure timely and effective program improvements. The MRB Chair is seeking Commission approval to place the Mississippi Program on Probation, consistent with the criteria in MD 5.6. The Mississippi Program is currently on Heightened Oversight, with increased staff engagement and an approved Program Improvement Plan.

Recent History of the Mississippi Program's Performance

In 2017, the MRB found the Mississippi Program adequate to protect public health and safety, but needs improvement, and compatible with the NRC's program (Agencywide Documents Access and Management System Accession Number [ML17214A458](#)). A period of Monitoring was initiated because three out of six performance indicators were found to be satisfactory but needs improvement. The MRB also determined that the next IMPEP review take place in approximately 4 years and a periodic meeting take place in approximately 1 year. Based on the results of the April 25, 2018, periodic meeting and discussion during the associated August 28, 2018, MRB meeting, the MRB removed the Mississippi Program from the period of Monitoring ([ML18241A125](#)).

Results of the 2022 IMPEP Review

The 2022 IMPEP review team identified an overall decline in the Mississippi Program's performance since the 2017 IMPEP review. The team found the Mississippi Program's performance to be satisfactory but needs improvement for two performance indicators: Technical Staffing and Training; and Legislation, Regulations, and Other Program Elements. The team found the Mississippi Program's performance to be unsatisfactory for four performance indicators: Status of Materials Inspection Program; Technical Quality of Inspections; Technical Quality of Licensing Actions; and Technical Quality of Incident and Allegation Activities.

Based on the results of the 2022 IMPEP review, the team also recommended that the Mississippi Program be found not adequate to protect public health and safety. However, during the MRB meetings the team noted that they did not identify any immediate health and safety concerns and Mississippi indicated that they had initiated corrective actions. Based on input from the IMPEP team and information presented by the Mississippi Program during the MRB meetings, and in accordance with the criteria in MD 5.6, the MRB Chair found the Mississippi Program to be adequate to protect public health and safety but needs improvement and not compatible with the NRC's program.

In cases where program weaknesses exist regarding the adequacy or compatibility of an Agreement State program, yet the weaknesses do not require immediate action to protect public health and safety, one of the options available to ensure continued protection of public health and safety is to place the Agreement State on Probation. Based on the results of the 2022 IMPEP review, the significant performance deficiencies identified by the IMPEP team, information presented by the Mississippi Program during the MRB meetings, and in accordance with the criteria in MD 5.6, the IMPEP team recommended and the MRB Chair agreed to recommend to the Commission that the Mississippi Program be placed on Probation. Pending the Commission's decision on Probation, the MRB Chair immediately placed the Mississippi Program on a period of Heightened Oversight, which requires the preparation a Program Improvement Plan, the submittal of status reports, and the completion of monthly conference calls with NRC staff.

At the MRB meeting on June 23, 2022, the MRB Chair informed the Mississippi Program that it had been placed on a period of Heightened Oversight and that the MRB Chair would recommend that the Commission place the Mississippi Program on Probation. On July 21, 2022, the NRC issued the final IMPEP report documenting the basis for the recommendation. The final IMPEP report is included as Enclosure 1 ([ML22178A114](#)).

The Mississippi Program Response

In an April 22, 2022, email ([ML22117A065](#)), the Mississippi Program provided feedback on the NRC's March 28, 2022, draft IMPEP report. The IMPEP team's resolution of the State's feedback ([ML22126A159](#)) was incorporated into the proposed final IMPEP report ([ML22131A162](#)) that served as the basis for subsequent MRB meetings. In its written response to the draft IMPEP report, and further reiterated during meetings with the MRB, the Mississippi Program agreed with all the IMPEP review team's recommendations and expressed a strong commitment to improving the program's performance.

On August 15, 2022, the Mississippi Program submitted a Program Improvement Plan detailing its ongoing and planned actions to address weaknesses identified during the 2022 IMPEP review. Mississippi's Program Improvement Plan is included as Enclosure 2 ([ML22237A185](#)). On August 16, 2022, the NRC issued a letter approving the Program Improvement Plan. The approval letter is included as Enclosure 3 ([ML22201A519](#)). Approval of the Program Improvement Plan was based, in part, on the Mississippi Program's identification of training needs that will be supported by qualified, experienced NRC inspectors. In addition, several Agreement States and the Organization of Agreement States have offered to assist the Mississippi Program's performance enhancement activities. In addition to implementing a Program Improvement Plan, the Mississippi Program will be required to submit written progress updates and participate in monthly conference calls with the NRC staff.

If the Commission approves placing the Mississippi Program on Probation, the NRC will notify Mississippi's Governor and Congressional delegation, and the NRC's Congressional oversight committees of the decision. After those notifications have been made, the NRC will publish a *Federal Register* notice and issue a press release regarding the decision to place the Mississippi Program on Probation. A proposed letter to the Governor of Mississippi is included as Enclosure 4 ([ML22188A003](#)).

The Mississippi Program's progress in addressing the program weaknesses identified during the 2022 IMPEP review will be evaluated during an IMPEP review that is scheduled to be conducted in February 2023. Depending on the progress of the Agreement State in meeting the commitments in the Program Improvement Plan and demonstration of significant improvements in program performance, the MRB Chair may make a recommendation to the Commission to discontinue the probationary status. If the Commission determines that the probationary status should be discontinued, the NRC will notify Mississippi's Governor and Congressional delegation, and the NRC's Congressional oversight committees of the decision to discontinue the Probationary status. The NRC will also publish a *Federal Register* notice and a press release announcing the discontinuance of the Mississippi Program's Probation.

COMMITMENTS:

The NRC staff commits to:

- 1) Hold monthly conference calls with the Mississippi Program to discuss its Program Improvement Plan, including the progress made in addressing recommendations from the 2022 IMPEP report;

- 2) Conduct a full IMPEP review in February 2023, one year after the previous IMPEP review; and
- 3) Conduct an MRB meeting to discuss the 2023 IMPEP review team's findings, typically 90-105 days after the IMPEP review Exit Meeting.

RECOMMENDATION:

The NRC staff recommends that the Commission:

Approve:

Placing the Mississippi Program on Probation. If Probation is not approved, the Mississippi Program will remain on Heightened Oversight.

Note if the Commission approves Probation:

- a) The Chairman will inform the Governor of Mississippi of this action by letter.
- b) The Office of Congressional Affairs will inform Mississippi's Congressional delegation, and the NRC's Congressional oversight committees.
- c) NRC staff will publish a Notice of Probation in the *Federal Register*.
- d) The Office of Public Affairs will issue a press release.

RESOURCES:

Resources budgeted for Agreement State activities in the fiscal year (FY) 2022 Current Estimate and FY 2023 Congressional Budget Justification are sufficient to cover this action. No contract dollars are needed for this action and any travel expense will be funded by the NRC staff travel budgets. The resources for any future needs would be addressed through the Planning, Budgeting, and Performance Management process.

COORDINATION:

The Office of the General Counsel has no legal objection to the approval of Probation for the Mississippi Program.



Signed by Dorman, Dan
on 08/30/22

Daniel H. Dorman
Executive Director
for Operations

Enclosures:

1. Mississippi Final IMPEP Report
2. Mississippi Program Improvement Plan
3. NRC Letter Approving Mississippi's
Program Improvement Plan
4. Proposed Letter to the Governor

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 PROBATION FOR THE MISSISSIPPI AGREEMENT STATE PROGRAM DATE
August 30, 2022

ADAMS Accession Nos: ML22194A061 (Package), ML22196A116 (Letter)

OFFICE	NMSS/MSST	NMSS/MSST	NMSS/MSST	NMSS/MSST	OGC
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