



POLICY ISSUE **(Notation Vote)**

November 14, 2023

SECY-23-0095

FOR: The Commissioners

FROM: Daniel H. Dorman
Executive Director for Operations

SUBJECT: RECOMMENDATION TO DISCONTINUE THE MISSISSIPPI
AGREEMENT STATE PROGRAM'S PROBATIONARY PERIOD

PURPOSE:

The purpose of this paper is to request the Commission's approval to discontinue the Mississippi Agreement State Program's (Mississippi's) Probationary period, in accordance with the guidance provided 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](#)), and place the Program on a period of Heightened Oversight.

SUMMARY:

On June 29, 2023, the Management Review Board (MRB) met to consider the findings of the 2023 Mississippi IMPEP review. Overall, the Mississippi Program was found adequate, but needs improvement, to protect public health and safety and compatible with the NRC's program. The MRB Chair found that Mississippi improved performance in 5 out of 6 performance indicators, successfully addressed the 2017 IMPEP review recommendation, and successfully addressed 9 out of 10 the 2022 IMPEP review recommendations. As a result of Mississippi's improved performance since the 2022 IMPEP review and the significant progress made on completing the corrective actions identified in Mississippi's Improvement Plan (PIP), the MRB Chair recommends that the Commission discontinue Mississippi's Probationary period and place the Program on a period of Heightened Oversight.

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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 enter into an agreement with the governor of a State to discontinue portions of its regulatory authority to license and regulate byproduct materials, source materials, and certain quantities of special nuclear materials. States may assume the authority to regulate those materials after the NRC determines the perspective State's radiation control program is adequate to protect public health and safety and 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 for adequacy to protect public health and safety, and compatibility with the NRC's regulatory program.

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 uses 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.

The NRC typically reviews radiation control programs 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, in a public meeting, the MRB Chair makes the final determination regarding a radiation control program's overall performance. 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 recommend to the Commission that a radiation control program be placed on a period of 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.

DISCUSSION:

Results of the 2022 IMPEP Review

During the 2022 IMPEP review, the team identified a significant decline in Mississippi's performance since the 2017 IMPEP review. The team found Mississippi's performance satisfactory but needs improvement for the performance indicators Technical Staffing and Training; and Legislation, Regulations, and Other Program Elements. The team also found Mississippi's performance 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.

On June 23, 2022, the MRB met to discuss the 2022 IMPEP review. The team recommended and the MRB Chair agreed to keep the 2017 IMPEP review recommendation open and open 10 new recommendations.

Based on the 2022 IMPEP review findings, the team recommended to the MRB that the Mississippi Program be found not adequate to protect public health and safety. The team noted that they did not identify immediate health and safety concerns, and Mississippi indicated that they had initiated corrective actions. Based on the input from the team and information presented by Mississippi during the MRB Meetings, and in accordance with the criteria in MD 5.6, the MRB Chair found Mississippi's Program adequate to protect public health and safety but needs improvement and not compatible with the NRC's program. The MRB Chair directed staff to conduct an IMPEP review approximately 1 year from the 2022 IMPEP review (February 2023). At the conclusion of the June 2022, MRB meeting, the MRB Chair notified Mississippi that the Program had been placed on a period of Heightened Oversight and that the MRB Chair would recommend that the Commission place Mississippi on a period of Probation, in accordance with the criteria in MD 5.6.

On July 21, 2022, the staff issued the final IMPEP report documenting the bases for these findings ([ML22178A114](#)). In response to the final IMPEP report, Mississippi submitted a Program Improvement Plan on August 15, 2022 ([ML22237A185](#)). The PIP identified corrective actions to address the performance issues and recommendations identified in the 2022 IMPEP report.

On August 30, 2022, staff issued [SECY-22-0081](#), recommending Mississippi be placed on Probation. On September 22, 2022, the Commission approved placing Mississippi on Probation ([SRM-SECY-22-0081](#)). On September 26, 2022, the Chair notified the Governor of this action ([ML22277A801](#)). On October 4, 2022, the staff issued a *Federal Register* Notice notifying the public of the Commission's decision ([87 FR 60212](#)).

The 2023 IMPEP Review

During the 2023 IMPEP review, the team found that the changes made by Mississippi in response to the 2022 IMPEP review resulted in significant performance improvements across the Program and improved its performance findings relative to five indicators. The team found Mississippi's performance to be satisfactory for the following four performance indicators: Status of Materials Inspection Program; Technical Quality of Inspections; Technical Quality of Incident and Allegation Activities; and Legislation, Regulations, and Other Program Elements. The team found Mississippi's performance to be satisfactory but needs improvement for the following two performance indicators: Technical Staffing and Training and Technical Quality of Licensing Actions. The performance finding for the indicator Technical Staffing and Training remained the same as satisfactory but needs improvement.

On June 29, 2023, the MRB met to discuss the results of the 2023 IMPEP review. The team recommended and the MRB Chair agreed to close the 2017 IMPEP review recommendation. The team also recommended and the MRB Chair agreed that 9 of the 10 recommendations made during the 2022 IMPEP review could be closed. The one remaining recommendation, which falls under the performance indicator Technical Quality of Licensing Actions, is related to Mississippi performing an extent of condition review of licensing actions involving the addition of authorized users, radiation safety officers, authorized medical physicists, and authorized nuclear pharmacists. The team found that while Mississippi had made progress in addressing this recommendation, they needed more time to complete the review. Therefore, the team proposed that this recommendation remain open. The team also proposed and the MRB Chair agreed to open one new recommendation for improved program performance related to staff receiving training on recently revised programmatic operating procedures.

Based on the 2023 IMPEP review findings, the team recommended and the MRB Chair agreed that Mississippi's performance be found adequate to protect public health and safety but needs improvement and compatible with the NRC's program. The team recommended and the MRB Chair agreed that a periodic meeting take place in approximately 1 year with the next IMPEP review taking place approximately 2 years from the IMPEP review.

As a result of the improved performance seen during the 2023 IMPEP review and the significant progress made on completing the actions in the Program Improvement Plan, the team recommended and the MRB Chair agreed to request that the Commission remove Mississippi from Probation and place the Program on a period of Heightened Oversight. If approved, Mississippi would then enter a period of Heightened Oversight. Heightened Oversight is a formal process that includes periodic Agreement State progress reports, periodic conference calls between the NRC and the Agreement State, and another IMPEP in 2 years as noted above.

On July 27, 2023, the staff issued the final IMPEP report documenting the bases for these findings (Enclosure 1) ([ML23188A186](#)). In response to the final IMPEP report, Mississippi submitted an updated PIP on August 14, 2023 (Enclosure 2) ([ML23230A052](#)). The updated PIP identified corrective actions to address the performance issues and recommendations identified

in the 2022 and 2023 IMPEP reviews. The updated PIP also demonstrates Mississippi's commitment to addressing all the corrective actions. To date, all Mississippi's corrective actions are either completed or in progress.

RECOMMENDATION:

The staff recommends that the Commission approve discontinuing Mississippi's Probationary period and placing the Program on a period of Heightened Oversight.

If the Commission approves the staff's recommendation, the following actions will take place:

- a) The Chair will notify the Governor of the State of Mississippi of this action, including the initiation of a period of Heightened Oversight (Enclosure 3).
- b) The Office of Congressional Affairs will inform Mississippi's Congressional delegation and the NRC's Congressional oversight committees of this action.
- c) The Office of Public Affairs will issue a press release on this action.
- d) The staff will publish the decision to discontinue Mississippi's Probationary period in the *Federal Register*.

RESOURCES:

The Office of the Chief Financial Officer has no objection to discontinuing Mississippi's Probationary period and placing the Program on a period of Heightened Oversight, as there are no resource implications.

COORDINATION:

The Office of the General Counsel has no legal objection to discontinuing Mississippi's Probationary and placing the Program on a period of Heightened Oversight.

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Enclosures:

- 1. 2023 Final Mississippi IMPEP Report
- 2. 2023 Mississippi PIP
- 3. Proposed Letter to the Governor

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DATE NOVEMBER 14, 2023

ADAMS Accession Nos.: ML23285A020 (pkg) and ML23285A204 (letter)

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