

## Subpart J of the National Contingency Plan Product Listing and Authorization of Use Amendments Final Rule

The U.S. Environmental Protection Agency finalized amendments to Subpart J of the National Contingency Plan. Subpart J governs the listing and use of dispersants and other chemical and biological agents when responding to oil discharges into waters of the United States and adjoining shorelines as provided under the Clean Water Act. The final rule amends the Subpart J provisions for listing agent products on the NCP Product Schedule, including updating the product testing protocols, and revises the authorization of use provisions of these agent products.

### History

In 1994, EPA revised the NCP in response to the passage of the Oil Pollution Act of 1990, addressing requirements under Subpart J for listing and authorizing the use of chemical and biological agent products when responding to oil discharges.

In April 2010, the Deepwater Horizon underwater oil well blowout discharged significant quantities of oil into the Gulf of Mexico. The blowout discharged oil from one mile below the sea surface. Approximately one million gallons of dispersants were deployed on surface slicks over a three-month period on thousands of square miles of the Gulf of Mexico. Additionally, approximately three quarters of a million gallons of dispersants were, for the first time, injected directly into the oil at the well riser. The Deepwater Horizon incident raised questions about the challenges of making dispersant use decisions in response operations, particularly for certain atypical dispersant use situations. The final amendments build on the lessons learned from the Deepwater Horizon experience.

### **Summary of Proposed Rule**

On January 22, 2015, EPA proposed to amend Subpart J of the NCP in an effort to better inform the use of dispersants and other chemical or biological agents when responding to oil spills. The proposed amendments were intended to ensure that On-Scene Coordinators, Regional Response Teams, and Area Committees have relevant information to support response decision-making regarding chemical or biological agent use.

Key areas addressed in the 2015 proposed Subpart J amendments included:

- *Authorization of use requirements for chemical and biological agents.*
- *Toxicity and efficacy testing protocols, information requirements, and procedures for listing products on the NCP Product Schedule.*
- New monitoring requirements for atypical application of dispersants, including subsurface, major oil discharges, and prolonged surface use.

The Agency received public comment submissions from industry, academia, state and local governments, environmental groups, and individuals on the 2015 proposal.

This final action amends product listing and authorization of use provisions under Subpart J of the NCP. On July 27, 2021, EPA finalized a rule to establish provisions for monitoring atypical dispersant use. That rule became effective on January 24, 2022.

### **Final Product Listing and Authorization of Use Requirements**

The final rule provisions seek to ensure that chemical and biological agents have met updated or new, applicable efficacy and toxicity requirements and that product submitters provide important use and safety information. The final provisions also seek to ensure that the planning and response community is equipped with the proper procedures and information to authorize and use the products in a judicious and effective manner if it is determined that such authorization or use would be appropriate to the specific incident. These requirements are also anticipated to better target the use of these products if utilized during a response.

### ***Data and Information Requirements for Listing Products on the NCP Product Schedule or Sorbent Product List***

The amendments help ensure only products that perform effectively in laboratory testing will be listed on the NCP Product Schedule. Manufacturers are required to provide:

- Toxicity and efficacy testing information specified by agent product categories, including for dispersants, surface washing agents, bioremediation agents, solidifiers, herding agents, and sorbents.
- Summary testing data based on updated product testing protocols, including new dispersant baffled flask effectiveness and toxicity tests; new standard acute toxicity tests for bioremediation agents, surface washing agents, herding agents, and solidifiers; and revised bioremediation agent effectiveness test.
- More detailed product application data and information, including component identities, ecological toxicity data, and shelf-life information based on recommended storage conditions.
- Human health and safety information through Safety Data Sheets and more detailed instructions for product application in the field.

The amendments provide OSCs, RRTs, and ACs with important information when considering agent product preauthorization or authorization of use decisions. EPA anticipates that the requirements will encourage the development of safer technologies and identify products that have been certified relative to the product's performance capabilities or environmental benefits. EPA is also requiring additional product performance, toxicity, appropriate use, and handling information to further inform OSC decisions on whether and which products to use to best mitigate hazards associated with discharges of oil.

In addition, the amendments establish a list of known, non-proprietary sorbents to be made publicly available that is separate from the NCP Product Schedule. The provisions include data and information requirements for sorbent products with components other than those specifically identified in the rule as non-proprietary sorbents to inform use decisions that minimize potential adverse consequences under different environmental conditions.

## ***Contingency Planning and Authorization of Use***

Under the NCP, no dispersant or chemical or biological agent may be used on an oil spill unless it is authorized for use by an OSC. Where and in what quantities a dispersant or other chemical or biological agents may be safely used are to be determined in each case.

The amendments to the authorization of use provisions strengthen the existing planning and authorization framework and:

- Clarifies planning and authorization of use responsibilities.
- Establishes limitations and prohibitions on the use of certain agents.
- Establishes requirements for storage and agent use.
- Clarifies authorities for requiring supplemental agent testing, monitoring, and information.
- Establishes requirements for agent recovery from the environment.
- Establishes reporting requirements for agent use.

These elements will assist OSCs, RRTs, and ACs in their advanced planning activities and better target the use, if any, of these products in a response, thereby minimizing the potential adverse environmental effects that may be associated with an oil spill.

## ***Proprietary Business Information and Public Notification of Agent Use***

When chemical and biological agents are used on oil discharges, it is critically important for the public and all other stakeholders to have information regarding the chemicals being added to the environment, along with information about their toxicity and fate. The amendments add further limitations to what information submitters may assert as PBI in an effort to balance public access to information with proprietary business interest.

The final rule also requires the OSC to notify the public with certain information on the use of chemical and biological agents, including product name, product category, quantity and concentrations used, duration of use, and location(s) of use, and to provide updates during a response as appropriate.

### **For More Information**

**Read the Final Subpart J Rule Amendments:**

<https://www.epa.gov/emergency-response/national-contingency-plan-subpart-j>

**Visit the EPA Emergency Response Website:**

<https://www.epa.gov/emergency-response>

**Call the National Contingency Plan Product Schedule Information Line**

(202) 260-2342 (phone)

### **To Report an Oil or Chemical Spill**

**Call the National Response Center:**

(800) 424-8802 or (202) 267-2675

TDD (202) 267-4477