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## Proposed Changes to Subpart J of the National Contingency Plan

The U.S. Environmental Protection Agency (EPA) is proposing to amend Subpart J of the National Contingency Plan (NCP) requirements for the use of dispersants, and other chemical and biological agents to respond to oil spills in waters of the U.S. The public has the opportunity to comment on this proposed rule during a 90-day period following its publication in the *Federal Register*.

### History

On April 22, 2010, the mobile offshore drilling unit Deepwater Horizon sank after an explosion and a severe fire. The US Coast Guard (USCG), as the Federal On-Scene Coordinator for the Deepwater Horizon oil spill response, implemented its responsibility to lead the federal environmental response actions in the coastal zone and oversaw all response operations. EPA provided additional response support.

The USCG, in consultation with EPA, other federal agencies and affected states, authorized the use of dispersants on the water surface in an attempt to mitigate the shoreline impacts on fisheries, nurseries, wetlands and other sensitive environments. In addition, in consultation with response teams and EPA, the USCG authorized subsurface dispersant application. As part of the authorization for subsurface dispersant use, EPA and USCG, in consultation with other federal agencies and affected states, put in place additional requirements including controls regarding the application of dispersants specific to volume limitations and monitoring.

EPA now expands on the lessons learned through these proposed revisions to Subpart J for dispersants and other tools for addressing oil spills.

### Proposed Rule Amendments

Over the past several years, EPA has conducted research on improved laboratory protocols for dispersant and bioremediation efficacy. As a result of this research and the lessons learned during the Deepwater Horizon event, EPA is proposing several amendments to Subpart J. The proposed Subpart J amendments seek to ensure that:

- chemical and biological agents have met efficacy and toxicity requirements,
- product manufacturers provide important use and safety information, and
- the planning and response community is equipped with the proper information to authorize and use the products in a judicious and effective manner.

The proposed revisions take into consideration not only efficacy, but also toxicity, contingency planning, monitoring, confidential business information, and environmental impacts for better protection of human health and the environment.

### Toxicity and Efficacy

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

- more detailed product application materials,
- ecological toxicity data, and
- human health and safety information, including more detailed instructions for product application in the field.

The proposed amendments are intended to ensure that On-Scene Coordinators (OSCs), Regional Response Teams (RRTs), and Area Committees (AC) have sufficient information to support agent preauthorization or authorization of use decisions.

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

Under the NCP, no agent may be used on an oil spill unless it is authorized for use by an OSC. The RRTs and ACs generally develop “preauthorization plans” which address the specific context in which products can be used under OSC direction. The proposed amendments to the authorization of use provisions are designed to strengthen the existing planning and preauthorization framework and to clarify responsibilities. These elements will assist OSCs, RRTs, and ACs in their advanced planning activities. The goal is to ensure that preauthorization or expedited decision making plans are developed and maintained to effectively result in the greatest environmental protection.

### **Monitoring**

Comprehensive monitoring in certain situations is necessary to determine the overall effectiveness of dispersants. Monitoring dispersant use in the field provides product information for decision-making during subsurface or prolonged surface dispersant applications. The proposed amendments establish monitoring requirements for:

- subsurface application of dispersants,
- dispersants used for an extended period of time, and
- for major oil discharges.

### **Confidential Business Information**

When chemical 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 proposed amendments provide limitations to what submitters are allowed to claim as CBI, in an effort to balance public access to information with proprietary business needs.

### **Environmental Impacts**

The proposed amendments are designed to provide the OSCs, RRTs, and EPA sufficient information regarding product performance, toxicity, and appropriate uses to ensure that planners and first responders have the best information on which to decide how best to mitigate the environmental effects of oil spills. The required submission of additional product performance, toxicity, use, and handling information also helps when deciding whether and which products to use to mitigate hazards to the environment and human health associated with discharges of oil.

In addition, to encourage the development and use of safer technologies, EPA is proposing a requirement for the submitter to identify products that have met and can be labeled Design for the Environment certified.

## Comments

Comments must be received on or before 90 days after publication of the proposed rule in the Federal Register. Comments must be identified by Docket ID No. EPA-HQ-OPA-2006-0090, and submitted by one of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Mail: The mailing address of the docket for this rulemaking is EPA Docket Center (EPA/DC), Docket ID No. EPA-HQ-OPA-2006-0090, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery: Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202-566-1744.

### For More Information

**Read the Proposed Subpart J Rule Amendment:**

<http://www2.epa.gov/emergency-response/national-contingency-plan-subpart-j>

**Visit the EPA Emergency Response Website:**

<http://www2.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