

## **Proposed Amendments to Subpart J of the National Contingency Plan Frequent Questions**

### **What is the Agency Proposing?**

EPA is proposing amendments to 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.

### **Why is EPA proposing these amendments?**

In April 2010, the Deepwater Horizon subsurface oil well blowout released significant quantities of oil into the Gulf of Mexico. Dispersants were deployed over several miles of the Gulf and applied on surface slicks and directly injected into the oil released from the well riser. During Deepwater Horizon, EPA considered dispersant efficacy, toxicity, environmental impacts and monitoring practices. These proposed revisions to Subpart J are, in part, a result of those considerations and lessons learned from the Deepwater Horizon response. The revisions are a major component of EPA's effort to inform the public, responders, and manufacturers on the use of dispersants and other chemical or biological agents, and to apply lessons learned from the federal government's experiences in the Gulf to respond to future oil releases.

### **What are the intended results of the proposed amendments?**

These proposed changes would help to ensure that chemical and biological agents have met efficacy and toxicity requirements, and that product manufacturers provide important use and safety information. This would equip the planning and response community with the proper information to authorize and use products judiciously to effectively mitigate health and environmental effects from oil discharges.

### **What process did EPA follow to develop these proposed revisions?**

The Agency conducted a detailed evaluation and integrated recent research results into the revised Subpart J Product Schedule listing requirements. This included establishing new efficacy testing methodologies for dispersants and bioremediation agents; developmental and sub-chronic aquatic toxicity testing requirements for dispersants; and acute aquatic toxicity test criteria for all agents. The Agency also examined policy and procedural requirements governing the appropriate use of dispersants and other agents on oil spills, and monitoring and reporting requirements by product manufacturers and responsible parties.

### **How does the proposal address the key lessons learned from the Deepwater Horizon oil spill?**

The proposed amendments incorporate the federal government's lessons learned from the Deepwater Horizon oil spill and address recommendations specific to agent testing and use in response to oil discharges from the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling Report to the President. The proposed amendments would help to ensure that only products that perform effectively in additional laboratory testing would be listed on the NCP Product Schedule (Schedule) for use in mitigating the effects of oil discharges in the environment. 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. Prohibitions on using products in certain areas under certain conditions determined by On-Scene Coordinators (OSCs), Regional Response Teams (RRTs), and EPA would help ensure that first responders are better able to mitigate environmental effects when spills occur. The required submission of additional product toxicity information would aid OSCs and RRTs when evaluating specific product information and when deciding whether and which products to use to mitigate hazards to the environment and human health caused by discharges or threatened discharges of oil. The proposed amendments reflect the recommendations of the Commission report to address lessons from the Deepwater Horizon spill in that they are aimed at ensuring that chemical and biological agents have met efficacy and toxicity requirements, that product manufacturers provide important use and safety information, and that the planning and response community is equipped with the proper information to authorize and use the products in a judicious and effective manner.

### **What do the proposed changes to Subpart J include?**

This proposal addresses the efficacy, toxicity, environmental monitoring of dispersants, other chemical and biological agents, and other spill mitigating substances, as well as public, state, local, and federal officials concerns on their authorization and use. The proposed rule would amend Subpart J requirements for the use of dispersants and other chemical and biological agents to respond to oil spills and considers concerns that arose during the Deepwater Horizon response regarding toxicity, efficacy, long-term environmental impacts, endangered species protection, and human health. Additionally, revisions are proposed for area planning requirements for dispersant use authorization, for toxicity and efficacy testing methodologies and listing thresholds, and for advanced monitoring techniques.

### **What key specific amendments and/or new requirements are proposed?**

***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 NCP contains procedures for pre-authorizing use of an agent under certain conditions and for authorizing use at the time of an oil spill. The proposal revises the authorization of use requirements to:

- Clarify planning and preauthorization responsibilities
- Establish limitations and prohibitions on the use of certain agents
- Establish requirements for storage and use of agents
- Clarify authorities for requiring supplemental testing and information on agents
- Establish requirements for agent recovery from the environment, and
- Provide notification of agent use.

***Monitoring Requirements for Agent Use.*** The proposal establishes monitoring requirements for any subsurface use of dispersants, any surface use of dispersants in response to discharges of more than 100,000 gallons occurring within 24 hours, and any surface use of dispersants for more than 96 hours.

***Dispersant Testing and Listing Requirements.*** For dispersants, the proposal establishes a new efficacy testing methodology using a baffled-flask test and new developmental and sub-chronic toxicity testing requirements. It also proposes to revise acute toxicity testing methodologies and listing criteria, and to establish use limitations to saltwater environments.

***Submissions of Confidential Business Information.*** The proposal revises the allowable confidential business information claims and reporting procedures.

### **How does the proposal foster the use of safer ‘green chemistry’ for oil spill agents?**

The combination of improved efficacy tests and criteria, toxicity tests and criteria, and product use and safety information provide a basis for the future development of better performing, less toxic oil spill remediation agents. 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.

### **How long is the comment period?**

Comments must be received on or before 90 days after publication of the proposed rule in the Federal Register.

### **How can comments be submitted on the proposal?**

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.