

National Oil and Hazardous Substances Pollution Contingency Plan

Product Schedule Listing and Authorization of Use Requirements

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Background for Subpart J Final Rule

- ▶ April 2010 Deepwater Horizon underwater well blowout
 - ▶ Raised questions about the challenges of making chemical agent use decision in response operations.
- ▶ In 2015 EPA proposed to amend Subpart J to revise the existing product listing criteria, testing protocols, and authorization of use procedures, as well as provisions for dispersant monitoring.
- ▶ Final Rule also addressed recommendations from the *National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling Report*, and the EPA Inspector General Report titled *Revisions Plan Based on Deepwater Horizon Oil Spill*
- ▶ Revisions were conducted in 2 phases
 - ▶ Subpart J Final Rule for Monitoring Requirements for A-typical Dispersant Use July 2021
 - ▶ Subpart J final Rule for Product Schedule Listing and Authorization of Use Requirements June 2023

This Action

- ▶ Amends two distinct sets of requirements under Subpart J
 - ▶ Those related to chemical and biological agent testing and listing
 - ▶ Those related to authorization of use
- ▶ In this action the agency adds, amends, or removes certain regulatory definitions associated with subpart J (300.5)
- ▶ Updates requirements for:
 - ▶ authorization of agent use, to include preauthorization plans development, approval, and review
 - ▶ Case-by-case authorization of prohibited agents
 - ▶ Storage, agent use, recovery, and reporting of use
 - ▶ Testing of products (efficacy and toxicity testing protocols) and listing on the product schedule

Subpart A: Definitions 300.5

- ▶ This rule finalizes revisions to definitions found in 300.5
 - ▶ Amends definitions for bioremediation agents, burning agents, chemical agents, dispersants, sinking agents, sorbents, and surface washing agents
 - ▶ Finalizes new definitions for bioaccumulation, bioconcentration, biodegradation, biological agent, bioremediation, herding agents, products, and solidifiers
 - ▶ Removes the definitions for miscellaneous oil spill control agents (MOSCA) and surface collecting agents.

Authorization for Agent Use

- ▶ Provisions for product use from the NCP product schedule in response to oil discharges are set forth in section 300.910
 - ▶ EPA is adding an introductory paragraph to 300.910 that confirms, consistent with the intent of the NCP, that use of chemical or biological agents in response to oil discharges must be authorized by an OSC in accordance with Subpart J
 - ▶ In the final rule EPA did not include the phrase “*to waters of the US or adjoining shorelines*” under the opening clause to 300.910 since the scope of Subpart J is already addressed under 300.900
- ▶ EPA revised 300.910(a) to address the preauthorization use of chemical and biological agents identified on the NCP product schedule.
 - ▶ Reorganized to provide greater clarity about RRT and Area Committee responsibilities

Authorization for Agent Use

- ▶ EPA added procedures and review requirements in 300.910(a)(3) intended to ensure preauthorization plans are maintained so they are up to date
- ▶ Final revision do not change the NCP's fundamental policies regarding roles of Federal, State, and Local representatives involved in planning for and responding to an oil discharge
 - ▶ Clarifies the regulatory requirements and further explains the responsibilities for each party
- ▶ Revised preauthorization provisions provide greater clarity on the factors the RRT must address and those factors they should consider in developing a preauthorization plan.
- ▶ DOI and DOC Natural Resources Trustees retain their concurrence role when approving preauthorization plans

Authorization for Agent Use

- ▶ Revisions to the authorization of use in the final rule is intended to ensure regional level and area level contingency planning efforts of the RRT's and AC's are closely coordinated.
 - ▶ RRT's and AC's should work together to develop mutually acceptable preauthorization plans.
 - ▶ RRT's can facilitate consistency among Area Committees
- ▶ Clarifies that RRT's and AC's must determine if preauthorization plans are appropriate but does not mandate preauthorization plans to be developed or preauthorization of any chemical or biological agent.
- ▶ Final provisions amended to clarify the OSC does not need to obtain the natural resources trustees' consultation when authorizing the use of agents under 300.910(a)

Preauthorization Plans 300.910(a)

- ▶ Preauthorization Plan approval is found in 300.910(a)(2)
 - ▶ Lists requirements related to the roles and responsibilities involved in reviewing and approving preauthorization plans, and procedure if preauthorization plan approval is withdrawn.
 - ▶ RRT's and AC's should begin their reviews as expeditiously as possible but are afforded the flexibility in implementing the final revisions to ensure preauthorization plans are up-to-date.
 - ▶ Amended rule offers specific procedures to follow should an Authorizing agency decide to withdraw concurrence from the preauthorization plan.
 - ▶ RRT's and AC's must address the withdrawal of concurrence from the preauthorization plan within 30 days and the RRT must inform the NRT of the final status within 30 days

Preauthorization Plans 300.910(a)

- ▶ Preauthorization Plan review is found under 300.910(a)(3)
 - ▶ Intended to ensure preauthorization plans are actively maintained and updated to reflect revisions to the NCP product schedule, revisions to the ACP's, facility, and vessel response plans.
 - ▶ Specifically requires reviews to be conducted at a minimum:
 - ▶ After a major discharge of more than 10,000 gallons of oil to the inland waters or more than 100,000 gallons of oil to the coastal waters
 - ▶ After a Spill of National Significance (SONS)
 - ▶ Relevant to the preauthorization plan area
 - ▶ Review is to be done by the EPA RRT representative, DOI and DOC Natural Resources Trustees, and the RRT representative from the States with jurisdiction over the waters of the area to which a preauthorization plan applies.
 - ▶ Amends the review timeframe from 5 years to a regular timeframe established by the RRT and documented in the plan.

No Applicable Preauthorization Plan (Case-by-Case) 300.910(b)

- ▶ Authorization process for chemical and biological agent use when there is no applicable Preauthorization Plan.
 - ▶ Revisions maintain current Agency policies, provide greater environmental protection and are consistent with revisions to Section 300.910(a).
 - ▶ OSC must obtain the appropriate RRT concurrences and consultations to authorize RP use of listed agents.
 - ▶ Concurrence of EPA representative to the RRT and, as appropriate, concurrence of the RRT representatives from jurisdictional states is required.
 - ▶ Requires consultation with the DOC and DOI natural resource trustees (Removes “when practicable” qualifier).
 - ▶ Clarifies other factors may be considered in determining scope of authorization.

Temporary Exception 300.910(d)

- ▶ 300.910(d) establishes Provision for OSC to authorize the use of any agent, including those not listed on the NCP Product Schedule, when determined necessary to prevent/substantially reduce a threat to human life.
 - ▶ Establishes a 24-hour timeframe for the OSCs to operate under the **temporary** exception
 - ▶ After 24 hours OSC operates under preauthorization plans or case-by-case
 - ▶ Ensures potential environmental concerns are not overlooked
- ▶ Clarifies the temporary scope of the provision
 - ▶ To address unforeseen imminent threats to human life
 - ▶ Prevents potential misuse of exception
- ▶ Clarifies the threat to human life cannot be immediately addressed by other procedures or provisions of the NCP
 - ▶ Including through compliance with § 300.150 Worker Health and Safety

Prohibited Agents 300.910(e)(1)

- ▶ Maintains current sinking agents prohibition but does not finalize the prohibition for products with nonylphenol (NP) and nonylphenol ethoxylates (NPE) (endocrine disruptors) as components.
 - ▶ Clarifies prohibition applies to any other chemical agent, biological agent, or any substance that is used as a sinking agent.
 - ▶ Clarifies sinking agents directly sink oil to the bottom of a water body.
 - ▶ While the proposal considered the 2010 EPA NP and NPE Action Plan, the associated 2014 Significant New Use Rule (SNUR) proposal is still pending final action.
 - ▶ Deferring action to allow for consistency among EPA actions.
- ▶ Maintains awareness through Proprietary Business Information (PBI) provisions finalized in this action; product information on any NP and NPE components would be publicly available

Storage and Use of Agents Listed on the NCP Product Schedule 300.910(f)

- ▶ the provision at 300.910(f)(1) requires the OSC to only authorize for use those products listed on the NCP Product Schedule that are documented and certified by the responsible party or its representative to have been stored under the conditions specified by the submitter of the product for listing. Including:
 - ▶ maximum, minimum and optimum temperatures.
 - ▶ humidity and any other relevant conditions
 - ▶ and whose date of use does not exceed the expiration date listed on the container's label, unless otherwise specified for expired products as provided in 300.910(f)(2), at the time of the incident.
- ▶ 300.910(f)(2), the OSC may authorize for use products listed on the NCP Product Schedule that exceed their expiration date after the responsible party or its representative documents and certifies that the expired product has been stored under the conditions provided by the submitter under 300.915(a)(6) and still meets the applicable efficacy and toxicity-listing provisions under 300.915 based on testing of representative samples within the previous 12 months.

Supplemental Testing, Monitoring, and Information 300.910(g)

- ▶ Amended requirements broaden existing RRT authorities.
 - ▶ Adds flexibility for RRTs to require supplementary testing and information even when preauthorization plans are not being developed.
 - ▶ May require, for both planning and response, supplementary toxicity and efficacy testing and/or submission of available data and information to address site, area, or ecosystem concerns relative to the use of any chemical or biological agent.
 - ▶ Requires the product manufacturer or responsible party to provide, upon RRT or OSC request, additional monitoring or testing data and information specific to a response.
 - ▶ Provides for additional information to address site-/area-specific concerns.

Recovery of Chemical Agents and Other Substances From the Environment 300.910(h)

- ▶ The Agency is adding a new provision to require the responsible party to recover solidifiers, sorbents, and surface washing agents from the environment following their use.
 - ▶ provision requires that the responsible party shall ensure that removal actions adequately contain, collect, store, and dispose of solidifiers, surface washing agents, and sorbents, unless otherwise directed by the OSC.
- ▶ The final provision provides that the OSC should, at a minimum, consider factors such as the safety of response personnel and harm to the environment in making recovery-related determinations.

Reporting of Agent Use 300.910(i)

- ▶ The Agency is adding a new provision at 300.910(i)(1), to require the OSC to provide to the RRT certain information for the use of a chemical or biological agent within 30 days of completion of agent use.
 - ▶ Information required for any chemical or biological agent used in response to an oil discharge includes
 - ▶ Product name, product category, the quantity used, duration of use, location, available data collected, and any available analysis of efficacy and environmental effects.
 - ▶ Submitted in IAW OSC reporting provisions under 300.165
- ▶ 300.910(i)(2) requires the authorizing OSC to provide notification to the public, to be updated during a response as appropriate, information on products used including: product name, product category, quantity and concentrations used, and location(s) of use.

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Thank You

William Martin

EPA Region 3 Co-Chair Spill Response
Countermeasures Work Group