

National Oil and Hazardous Substances Pollution Contingency Plan (NCP)

Amendments to Subpart J *Product Schedule Listing and Authorization of Use*

RRT 5 MEETING – OCTOBER 18, 2023

Disclaimer: This presentation provides information on relevant statutes and regulations, and is not itself a regulation. In the event of any conflict between this presentation and applicable statutes or regulations, the applicable statutes or regulations control.



Statutory Authority - CWA 311(d)(2)(G) as amended by the Oil Pollution Act

- CWA 311(d)(2)(G): Prepare a “schedule” identifying:
 - dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the NCP,
 - the waters in which they may be used, and
 - the quantities which can be used safely in such waters
- EO 12777 delegates 311(d)(2)(G) to the EPA Administrator and implemented under Subpart J of the NCP
- NCP Subpart J governs the use of dispersants, and any other chemical agent to respond to oil discharges, irrespective of OSC jurisdiction.



Rulemaking Background

- EPA proposed revisions in the Federal Register (FR) on January 22, 2015 (80 FR 3383), including testing and listing, authorization, and monitoring requirements
 - Received over 81,000 total comments.
- Dispersant monitoring requirements were published in the FR on July 27, 2021 (86 FR 40234).
 - Effective: January 24, 2022
- Testing, listing, and authorization requirements were published in the FR on June 12, 2023 (88 FR 38280).
 - Effective: December 11, 2023
- Final actions address recommendations relevant to Subpart J from the DWH Oil Spill Commission and EPA Inspector General Reports



Listing/Authorization of Use Final Rule

Amends the regulatory requirements for chemical and biological agent testing/listing and authorization of use provisions for the NCP Subpart J.

- Encourage development of safer and more effective spill mitigating products through expanded data and testing requirements, including listing thresholds.
- Better target the use of these products to reduce the risks of oil spills and response technologies to human health and the environment.
- Along with the monitoring rule, ensure that On-Scene Coordinators (OSCs), Regional Response Teams (RRTs), and Area Committees (ACs) have sufficient information to better inform an assessment of the overall ecological risks that can support chemical and biological agent authorization of use decisions.



Definitions and Subpart J General Authorities

(§§ 300.5 & 300.900)



Definitions and General Authorities

- **Subpart J-related Definitions** (§ 300.5) - Updates provisions to reflect new and amended regulatory definitions.
 - *Amends* definitions for Bioremediation agents, Burning agents, Chemical agents, Dispersants, Sinking agents, Sorbents, and Surface washing agents.
 - *New* definitions for Bioaccumulation, Bioconcentration, Biodegradation, Biological agents, Bioremediation, Herding agents, Products, and Solidifiers.
 - *Removes* definitions for Miscellaneous Oil Spill Control Agents (MOSCA) and Surface collecting agents.
- **General Authorities.** (§ 300.900)
 - Updates provisions addressing Subpart J regulatory scope.



***Listing Products on the NCP Product Schedule
or Sorbent Product List
(§§ 300.915 - 300.970)***



Listing Products on the NCP Product Schedule or Sorbent Product List (§§ 300.915)

Specifies how the products will be listed on the NCP Product Schedule (NCPPS) or Sorbent Product List:

- Revises general product and technical information to support decision-making, including environmental impacts.
- Amends and clarifies Product Categories.
- Revises efficacy and toxicity testing protocols (Appendix C) and Listing Criteria, as applicable.
- Establishes product use limitations based on product testing for salt and/or freshwater environments.
- Establishes a non-proprietary Sorbent Product List.



Submission of Proprietary Business Information (PBI)

§ 300.950

- Establishes PBI reporting procedures and limitations.
 - Manufacturers may only assert PBI claims covering the: concentration, maximum, minimum, and average weight percent, and units of each component in the product as identified in § 300.915(a)(13) and (14).
 - All other submitted information will be available for public disclosure upon submission without further notice to the submitter.

Addition of a Product to the NCP Product Schedule or Sorbent Product List

§ 300.955

- Establishes the requirements for submitters to request a product to be listed on the NCP Product Schedule or the Sorbent Product List
 - Requirements to submit information on changes to a listed product
 - Establishes two-year transition period (December 12, 2025)



Mandatory Product Disclaimer

§ 300.965

- Revises the disclaimer language to include the sentence “Only a Federal On-Scene Coordinator (OSC) may authorize use of this product in accordance with Subpart J of the NCP in response to an oil discharge.”

Removal of a Product from the NCP Product Schedule or Sorbent Product List

§ 300.970

- Revises the removal process, and specifies, but does not limit, causes for removal from the NCP Product Schedule or Sorbent Product List.
- Revises the appeals process - Appeals process similar to the one set forth for listing determinations.



NCP Product Schedule and Technical Notebook

- NCP Product Schedule
 - Lists chemical and biological agent products that may be considered by a Federal On-Scene Coordinator (OSC) to authorize for use when responding to oil discharges in accordance with the NCP.
- NCP Product Schedule Technical Notebook
 - Presents manufacturer's summary information on the conditions under which each of the products is recommended to be used, including handling and worker precautions, storage information, recommended application procedures, physical properties, and toxicity, effectiveness, or other analyses.

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



Authorization for Agent Use (§ 300.910)



Authorization for Agent Use

§ 300.910

- **Specifies how the products are authorized for use under the NCP.**
The final rule:
 - Reorganizes regulatory text and clarifies established EPA policy on planning and preauthorization responsibilities,
 - Prohibits the use of sinking agents,
 - Includes requirements for storage and use of agents,
 - Clarifies authorities for requiring supplemental testing, monitoring and information on agents,
 - Includes requirements for agent recovery from the environment, and
 - Provides OSC reporting requirements to the RRT and public.



Preauthorization of agents identified on the NCP Product Schedule or burning agents § 300.910(a)

- Preauthorization plan development, approval, and reviews
 - Developed by the Area Committees (ACs) or the RRT in consultation with the AC(s)
 - At a minimum, must specify quantities, duration of use, water depth, distance to shoreline, and proximity to populated areas.
 - Maintains current plan approval structure.
 - EPA and applicable State(s) representatives to the RRT
 - Department of Commerce & Department of Interior natural resource trustees
- Requires RRTs to address withdrawal of plan approval(s) and notify the NRT of the plan status within 30 days.
- Establishes plan review requirements.
 - On a regular timeframe, established by the RRT, and documented in the plan.
 - At a minimum, after a major discharge or Spill of National Significance (SONS), revisions of the NCP Product Schedule, new listings of relevant threatened and/or endangered species, that are relevant to the specific preauthorization plan.



Agent Use Not Addressed by a Preauthorization Plan § 300.910(b).

- Maintains current authorization structure
 - Concurrences from EPA and applicable State(s) representatives to the Regional Response Teams (RRTs)
 - Consultations with Department of Commerce & Department of Interior natural resource trustees.

Burning Agents § 300.910(c)

- Amends the regulatory text in § 300.910(a) and (b) to include burning agents.

Temporary Exception § 300.910(d)

- Only to prevent or substantially reduce an imminent threat to human life that cannot be immediately addressed otherwise;
- Use of agents no later than 24 hours after initial application must be in accordance with § 300.910(a) or (b).



Prohibited Agents or Substances

§ 300.910(e)

- Maintains the current prohibition for the authorization of use of sinking agents and has clarified that the prohibition applies to any chemical agent, biological agent, or any substance that is used to directly sink the oil to the bottom of a water body.

Storage and Use of Agents Listed on the NCP Product Schedule

§ 300.910(f)

- New requirements for authorization of products that are documented and certified by the responsible party or its representative to have been stored under specified conditions.

Supplemental Testing, Monitoring, and Information

§ 300.910(g)

- Added flexibility for RRT to require supplementary toxicity and efficacy testing, or to request information that addresses site-, area-, or ecosystem-specific concerns relative to the use of product for both planning and authorization of use.



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

- Requires the RP to recover solidifiers, sorbents, and surface washing agents from the environment following their use.
- The RP shall ensure that removal actions adequately *contain, collect, store, and dispose*, unless otherwise directed by the OSC.

Reporting of Agent Use § 300.910(i)

- Requires 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.
- Requires the OSC to notify the public, and provide updates during a response, as appropriate



NCP - Appendix E & 40 CFR Part 110.4

(Appendix E & § 110.4)



Appendix E and 40 CFR Part 110

- Appendix E to Part 300 – Guidance on Oil Spill Response. Removes this appendix from the NCP.
- Discharge of Oil – 40 CFR 110.4. Revises the text to be consistent with the final Subpart J amendments.



Final Action Key Dates

- EPA Administrator Signature - May 31, 2023
- Published in the Federal Register - June 12, 2023 (88 FR 38280)
- Effective Date - December 11, 2023
 - For existing plans, RRTs should establish and document the timeframe for plan review and any necessary updates by December 11, 2023.
- NCP Product Schedule Transition Period Ends - December 12, 2025
 - Two years from the Effective Date

