



MINISTRY of TRANSPORT  
TE MANATŪ WAKA

WELLINGTON NEW ZEALAND

PURSUANT to Section 386 of the Maritime Transport Act 1994

I, MAURICE DONALD WILLIAMSON, Minister of Transport,

HEREBY MAKE the following marine protection rules.

SIGNED AT Wellington

This 29 day of June 1998

by MAURICE DONALD WILLIAMSON



Minister of Transport

Marine Protection Rules  
Part 132  
Dispersants and Demulsifiers

**Maritime Transport Act 1994**

**Marine Protection Rules**

**PART 132**

**DISPERSANTS AND DEMULSIFIERS**

# Marine Protection Rules

## PART 132—DISPERSANTS AND DEMULSIFIERS

### PART OBJECTIVE, EXTENT OF CONSULTATION AND COMMENCEMENT

#### Objective

Regulation 11(c) of Annex I, and regulation 6(c) of Annex II, of MARPOL envisage administrations approving substances containing oil or noxious liquid substances for discharge into the sea to combat specific pollution incidents.

Part 132 sets out the application procedure and the technical specifications for approval by the Director of Maritime Safety of dispersants and demulsifiers (“substances”) to be used for this purpose of combating marine oil spills. The Part also provides that dispersants already approved by notice in the *Gazette* under regulation 4 of the Marine Pollution (Dispersants and Exceptions) Regulations 1975 are approved substances for the purposes of Part 132.

Once a dispersant or a demulsifier is categorised as an approved substance under Part 132, it can be discharged into the internal waters of New Zealand or New Zealand continental waters to contain or clean up an oil spill subject to—

- the statutory limitations on ship, site, regional and national responses to oil spills set out under Part XXIII of the Maritime Transport Act 1994; and
- compliance with any use restrictions, time limitations, and any other conditions the Director has placed on the approval of the substance; and
- compliance with the manufacturer’s instructions for the use of the substance; and
- the substance continuing to meet the technical specifications and chemical formulation provided at the time approval was granted; and
- the provisions of the Resource Management Act 1991; and
- any regional coastal plan restrictions; and
- the provisions of the Hazardous Substances and New Organisms Act 1996 and its regulations.

New Zealand ships may also discharge an approved substance into the sea beyond New Zealand’s continental waters subject to the approval of any government in whose jurisdiction the discharge will occur.

Part 132 replaces the Marine Pollution (Dispersants and Exceptions) Regulations 1975 made under the Marine Pollution Act 1974.

The basis for Part 132 is found in sections 225, 226, 388(d), 388(h) and 390(1)(f) of the Maritime Transport Act 1994.

## **Extent of Consultation**

On Wednesday 23 October 1996 the Maritime Safety Authority published in each of the daily newspapers in the four main centres of New Zealand a notice inviting comments on the proposed Part 132. A notice was also published in the *New Zealand Gazette* on 24 October 1996. The Authority then made its Invitation to Comment paper, draft Part 132 and draft Advisory Circular available to the public with 179 copies being sent automatically to interested parties. Comments on the Part were requested to be made by 29 November 1996.

Six submissions were received on Part 132. All submissions and any verbal comments were considered, and where appropriate, the proposed rules were amended to take account of the comments made.

## **Commencement**

Part 132 as amended was referred to and signed by the Minister of Transport.

Part 132 comes into force 28 days after the date of its notification in the *New Zealand Gazette*.

# Marine Protection Rules

## PART 132

### DISPERSANTS AND DEMULSIFIERS

#### General

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- 132.12 Dispersants approved under the Marine Pollution (Dispersants and Exceptions) Regulations 1975

#### Appendix Dispersants Approved Under the Marine Pollution (Dispersants and Exceptions) Regulations 1975

## General

### 132.1 Entry into Force

Part 132 shall come into force on the 28th day after the date of its notification in the *Gazette*.

### 132.2 Definitions

In Part 132—

“**Act**” means the Maritime Transport Act 1994:

“**Approved substance**” means—

- (a) any substance—
  - (i) approved under Part 132 as suitable for discharging into the sea to contain or clean up an oil spill; and
  - (ii) gazetted under rule 132.4(c); and
  - (iii) not gazetted under rule 132.7(2)(a); and
- (b) any dispersant named in the Appendix:

“**Demulsifier**” means any substance used or intended to be used for the demulsification of an oil spill in the sea. A demulsifier is a marine protection product for the purposes of section 225 of the Maritime Transport Act 1994:

“**Director**” means the person who is for the time being the Director of Maritime Safety under section 439 of the Act:

“**Dispersant**” means any substance used or intended to be used for the dispersal or emulsification of an oil spill in the sea:

“**Environmental Risk Management Authority**” means the Environmental Risk Management Authority established under section 14 of the Hazardous Substances and New Organisms Act 1996:

“**Internal waters of New Zealand**” means the internal waters of New Zealand as defined by section 4 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977:

“**New Zealand continental waters**” means—

- (a) New Zealand marine waters; and
- (b) the waters beyond the outer limits of the exclusive economic zone of New Zealand but over the continental shelf of New Zealand:

**"New Zealand marine waters"** means—

- (a) the territorial sea of New Zealand; and
- (b) the waters of the exclusive economic zone of New Zealand:

**"Oil spill"** means any actual or probable release, discharge, or escape of oil:

**"Part"** means a group of rules made under the Maritime Transport Act 1994:

**"Rules"** includes maritime rules and marine protection rules:

**"Substance"** means a dispersant or a demulsifier.

## Approval of Substances

### 132.3 Application for Approval of a Substance

- (1) Every application for approval of a substance must be made to the Director in accordance with the requirements of Part 132.
- (2) Every application for approval of a substance must be accompanied by—
  - (a) copies of any approvals granted by the Environmental Risk Management Authority in respect of that substance; and
  - (b) test results, supporting data, and certification, as required by rules 132.9 and 132.10; and
  - (c) details of the formulation used in the preparation of the substance, including:
    - (i) percentage by weight of each component of the total formulation; and
    - (ii) percentage of aromatics; and
    - (iii) chemical name (if any) of each component; and
    - (iv) function of each component; and
    - (v) a material safety data sheet; and
  - (d) details of the recommended application procedures, concentrations, and conditions for use; and
  - (e) details of recommended handling and storage procedures and any precautions to be taken by personnel working with the substance; and
  - (f) the name and contact details of the manufacturer of the substance; and
  - (g) a warranty from the manufacturer of the substance that each subsequent batch of the product will comply with the dispersant specifications set out in rule 132.9, or the demulsifier specifications set out in rule 132.10, as applicable.

- (3) The Director may, subsequent to the receipt of an application for approval of a substance, require the applicant to—
  - (a) elaborate on specified information set out in the initial application; and
  - (b) supply additional specified information; and
  - (c) supply a sample of the substance for testing, at the applicant's expense, against the specification set out in rule 132.9 or rule 132.10, as applicable.

#### **132.4 Assessment and Decision on Application for Approval of Substance**

The Director must—

- (a) assess and decide an application for approval of a substance according to the assessment requirements set out in rule 132.8; and
- (b) notify the applicant of the Director's decision to approve or refuse approval for that substance within 21 working days of making that decision; and
- (c) when he or she has decided to approve a substance, publish a notice in the *Gazette* as soon as possible—
  - (i) stating the product name of the substance; and
  - (ii) stating the name of the manufacturer of the substance; and
  - (iii) setting out any conditions which the Director has imposed under rule 132.5(1), including any expiry date for the approval; and
  - (iv) setting out any other information relating to the substance and its approval as the Director sees fit.

#### **132.5 Scope and Duration of Approval, and Packaging Requirements for, an Approved Substance**

- (1) In approving a substance the Director may specify conditions—
  - (a) as to the particular purposes for which, and circumstances in which, the approved substance may be used; and
  - (b) as to the period for which the approval is current; and
  - (c) requiring that each batch of the approved substance complies, in the case of a dispersant, with the dispersant specifications set out in rule 132.9 or, in the case of a demulsifier, with the demulsifier specifications set out in rule 132.10; and
  - (d) as to how the approved substance is to be used.
- (2) An approved substance must be supplied with—
  - (a) a material safety data sheet; and
  - (b) instructions from the manufacturer on its use.

- (3) A person who supplies an approved substance must supply the substance in one or more containers or bulk carriers that are-
- (a) sound, clean, and dry; and
  - (b) suitable for the substance; and
  - (c) marked with:
    - (i) the name of the manufacturer; and
    - (ii) the name of the substance; and
    - (iii) the substance type; and
    - (iv) the dispatch date from the supplier; and
    - (v) the expiry date of the substance; and
    - (vi) any relevant safety warnings in compliance with the labeling requirements of New Zealand Standard 5433:1988 or its successor standard; and
    - (vii) details of any controls or requirements imposed under rule 132.5(1).

### **132.6 Subsequent Testing of an Approved Substance**

The Director may at any time require the manufacturer of an approved substance to submit a particular consignment of that substance to any of the tests set out in rules 132.9 or 132.10, as applicable, to ensure that the substance continues to comply with the appropriate specifications.

### **132.7 Withdrawal of Approval of a Substance**

- (1) The Director may withdraw his or her approval for an approved substance where he or she is satisfied that—
- (a) one or more samples of the approved substance do not conform to the specifications warranted by the manufacturer or to the substance's chemical formulation given in the application for approval; or
  - (b) any controls imposed on that substance under Parts V or VI of the Hazardous Substances and New Organisms Act 1996 are not being complied with; or
  - (c) any conditions imposed under rule 132.5(1) relating to the approval of the substance are not being adhered to; or
  - (d) the substance is not being supplied as required under rules 132.5(2) and 132.5(3); or
  - (e) the approved substance is not submitted for testing as required under rule 132.6; or
  - (f) evidence shows that the substance is toxic to the marine environment.

- (2) The Director must as soon as possible after deciding to withdraw approval for a substance—
  - (a) publish a notice of the withdrawal of approval in the *Gazette*; and
  - (b) notify the applicant who sought approval for the substance under rule 132.3 of the withdrawal of approval.

## Assessment of Substance for Approval

### 132.8 Assessment Requirements

- (1) The Director must not approve a substance unless that substance—
  - (a) has undergone any assessment required under Part V of the Hazardous Substances and New Organisms Act 1996, complies with any applicable controls on its importation, manufacture, and use under that Act and its regulations, and has any applicable approvals required under that Act and its regulations; and
  - (b) complies, in the case of a dispersant, with the dispersant specifications set out in rule 132.9 or, in the case of a demulsifier, with the demulsifier specifications set out in rule 132.10 by virtue of:
    - (i) a certificate or approval issued for the dispersant or demulsifier in New Zealand evidencing that the dispersant meets or exceeds the dispersant specifications or that the demulsifier meets or exceeds the demulsifier specifications; or
    - (ii) a certificate issued for the dispersant or demulsifier in a foreign country evidencing that the dispersant meets or exceeds the dispersant specifications or that the demulsifier meets or exceeds the demulsifier specifications; or
    - (iii) a new assessment against the applicable specifications.

### 132.9 Dispersant Specification

- (1) Every dispersant approved as an approved substance must—
  - (a) be categorised as conforming to one of the following types:

*Type 1:* Conventional hydrocarbon base. For use undiluted from appropriate spray equipment, using breaker boards or other suitable means of application and agitation; or

*Type 2:* Water dilutable concentrate. For use after dilution with sea water and sprayed from appropriate spray equipment, using breaker boards or other suitable means of application and agitation; or

*Type 3:* Concentrate. For use undiluted from aircraft or ships, using appropriate spray equipment; and

- (b) comply with each of the tests set out in Table 1 for Type 1, Type 2, or Type 3 dispersants, as appropriate; and

Test No.	Test	Type 1	Type 2	Type 3	Method
1	Appearance	Clear and homogeneous			Visual examination
2	Dynamic viscosity at 0 °C, mPa, maximum	50	250	250	ASTM D445 IP 71 BS 4708 IP 34 BS 2839
3	Flash point, °C minimum	60	60	60	ASTM D93
4	Cloud point, °C (as received) maximum	-10	-10	-10	ASTM D2500 IP219
5	Efficiency index, % 2000 minimum mPa fuel oil 5000 minimum mPa fuel oil	30 —	30 —	60 45	The dispersant supplied must consist of suitable ionic or non-ionic surfactants, or a blend of such surfactants, dissolved in a suitable solvent to be efficient at the specified index for the specified fuel
6	Storage test (-10 °C to 50 °C for 7 days)	Pass	Pass	—	The surfactants must be wholly soluble in the solvent, and must remain distributed uniformly at all temperatures from -10 °C to 50 °C when stored for periods up to 7 days
7	Miscibility with water (Type 2 only)	—	Pass	—	Type 2 dispersants must be miscible with sea water at 1:10 concentration, the resulting solution or emulsion having a viscosity not greater than that of the original dispersant alone

Abbreviations: "ASTM" American Society for Testing and Materials

"BS" British Standard

"IP" Institute of Petroleum

- (c) comply with an internationally recognised marine ecological toxicity test using organisms relevant to the New Zealand environment, undertaken by a laboratory with previous toxicity testing experience; and
- (d) have documentation issued that complies with rule 132.9(2); and

- (e) retain, when suitably stored in its original sealed containers in temperate climates ( $-20^{\circ}\text{C}$  to  $30^{\circ}\text{C}$ ), the properties described in rule 132.9(1)(b) for a period of not less than two years commencing at the date of dispatch from the supplier; and
  - (f) not contain benzene, chlorinated hydrocarbons, phenols, caustic alkali, free mineral acid, or compounds which could expose the user to an unacceptable toxicological hazard during normal spraying or handling operations.
- (2) Documentation of the tests set out in rules 132.9(1)(b) and 132.9(1)(c) must comprise—
- (a) a copy of the test results and supporting data; and
  - (b) in the case of the marine ecological toxicity test:
    - (i) the test used; and
    - (ii) details of the testing laboratory's previous experience in toxicity testing; and
  - (c) certification signed by the relevant officers of—
    - (i) the manufacturer stating that a representative product sample was supplied for testing; and
    - (ii) the testing laboratory stating that the testing was done using generally accepted laboratory practices and that they believe the results are accurate.

### **132.10 Demulsifier Specification**

- (1) Every demulsifier approved as an approved substance must—
- (a) comply with each of the tests set out in Table 2; and

Test No.	Test	Standard	Method
1	Appearance	Clear and homogeneous	Visual examination
2	Dynamic viscosity at 0 °C, mPa, maximum	250	ASTM D445 IP 71 BS 4708 IP 34 BS 2839
3	Flash point, °C minimum	60	ASTM D93
4	Cloud point, °C (as received) maximum	-10	ASTM D2500 IP 219
5	Storage test (-10 °C and 50 °C for 7 days)	Pass	Phase separation must not occur at any temperatures from -10 °C to 50 °C when stored for periods up to 7 days

Abbreviations: "ASTM" American Society for Testing and Materials

"BS" British Standard

"IP" Institute of Petroleum

- (b) comply with an internationally recognised marine ecological toxicity test using organisms relevant to the New Zealand environment, undertaken by a laboratory with previous toxicity testing experience; and
  - (c) have documentation issued that complies with rule 132.10(2); and
  - (d) retain, when suitably stored in its original sealed containers in temperate climates (-20 °C to 30 °C), the properties described in rule 132.10(1)(a) for a period of not less than two years commencing at the date of dispatch from the supplier; and
  - (e) not contain benzene, chlorinated hydrocarbons, phenols, caustic alkali, free mineral acid, or compounds which could expose the user to an unacceptable toxicological hazard during normal spraying or handling operations.
- (2) Documentation of the tests set out in rules 132.10(1)(a) and 132.10(1)(b) must comprise—
- (a) a copy of the test results and supporting data; and
  - (b) in the case of the marine ecological toxicity test:
    - (i) the test used; and
    - (ii) details of the testing laboratory's previous experience in toxicity testing; and
  - (c) certification signed by the relevant officers of—
    - (i) the manufacturer stating that a representative product sample was supplied for testing; and

- (ii) the testing laboratory stating that the testing was done using generally accepted laboratory practices and that they believe the results are accurate.

## Use of an Approved Substance

### 132.11 Use of an Approved Substance

- (1) Any approved substance may be discharged into the internal waters of New Zealand or New Zealand continental waters to contain or clean up an oil spill.
- (2) The discharge of an approved substance authorised by rule 132.11(1) is subject to—
  - (a) Part XXIII of the Act; and
  - (b) its use being consistent with any particular purposes and circumstances specified under rule 132.5(1)(a); and
  - (c) its use being in compliance with the manufacturer's instructions; and
  - (d) rule 132.7; and
  - (e) the provisions of the Resource Management Act 1991; and
  - (f) the discharge occurring outside any area identified in a regional coastal plan as requiring protection from the adverse effects of the discharge of a substance of that type; and
  - (g) the provisions of the Hazardous Substances and New Organisms Act 1996 and regulations made under that Act.
- (3) Subject to rules 132.5 and 132.7, any approved substance may be discharged from a New Zealand ship into the sea beyond New Zealand continental waters to contain or clean up an oil spill subject to the approval of any government in whose jurisdiction it is contemplated the discharge will occur.

## Dispersants Approved under the Marine Pollution (Dispersants and Exceptions) Regulations 1975

### 132.12 Dispersants Approved Under the Marine Pollution (Dispersants and Exceptions) Regulations 1975

- (1) The approved substances listed in the Appendix are marine protection products for the purposes of section 225 of the Act.
- (2) Except for the purposes of rule 132.6, rules 132.3 to 132.5 inclusive and 132.8 to 132.10 inclusive do not apply to an approved substance listed in the Appendix.

**Appendix Dispersants Approved under the Marine Pollution (Dispersants and Exceptions) Regulations 1975**

**APPROVED SUBSTANCES**

<b>TYPE</b>	<b>BRAND</b>
1	1100X
1	A-B
2	1100WD
3	Enersperse 1037
2/3	Atpet 787
1	SD LT[X]
1	Shell Dispersant ND
2	Shell Dispersant Concentrate
2	Shell Dispersant VDC
3	Shell Dispersant HEC
1	Tergo Oil Spill Remover low toxic
2	Tergo Oil Spill Remover WSA
3	Tergo R40
1	Atlas OSD
2	Solvex OSD 9 Concentrate

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<b>TYPE</b>	<b>BRAND</b>
1	OSR LT
2	Gamlen Oil Dispersant LT
2/3	Corexit 9527
2	Corexit 9600
2/3	Simple Green
2	Surflo-OW1
1	Drew Ameroid Oil Spill Dispersant/ LT
2	Quell Oil C1
1	Rochem Oil Spill Remover WSA
2	Rochem Oil Spill Remover low toxic
3	Rochem R40

# Marine Protection Rules

## PART 132

### Consultation Details

*(This text does not form part of the rules contained in Part 132. It provides details of the consultation undertaken in making the rules.)*

#### Summary of Consultation

The Ministry for the Environment, the New Zealand Fire Service, the New Zealand Shipping Federation, Union Shipping New Zealand Limited, Betts & Lalor (environmental consultants) made written submissions, and Fiordland Travel Limited provided oral comment on the draft marine protection rules in Part 132—Dispersants and Demulsifiers.

#### General Comment

Union Shipping New Zealand Limited report that having read the draft rules it has no observation or comment.

The New Zealand Shipping Federation confirms its understanding that users of dispersants and demulsifiers will not be required to obtain any additional approval from ERMA prior to their use on any particular occasion.

The Ministry for the Environment broadly approves the draft rules and advisory circular but suggests some changes to the fine tuning of areas concerned with HSNO jurisdiction and procedures.

#### Rule 132.3

Betts & Lalor submits that rule 132.3(2)(b) should clearly state that applications for the use of dispersants should be made as soon as possible and prior to the occurrence of a spill.

*We do not consider the proposed amendment is required, as Part 132 is concerned with the routine, rather than urgent, approval of dispersants and demulsifiers. The timetable on which importers and manufacturers put their products forward for approval is a matter for them to determine. Should any fast track approval be required to deal with a spill that has already occurred, the exempting powers of the Director of Maritime Safety and the*

*unforeseeable emergency provisions of the Hazardous Substances and New Organisms Act 1996 would be invoked.*

### **Rule 132.5**

The New Zealand Fire Service submits that the requirement in rule 132.5(2) to mark containers or bulk carriers with relevant safety warnings should be made more direct and specific by reference to the relevant New Zealand standard (currently NZS 5433:1988).

*We agree. Rule 132.5(2)(c)(vi) has been amended accordingly. We have also added a requirement for material safety data sheets and for manufacturer instructions to be supplied with dispersants and demulsifiers.*

### **Rule 132.8**

Betts & Lalor asks whether rule 132.8(a) requires an assessment of the toxicity of dispersants to flora and fauna and suggests that there may be merit in expanding on the requirements of Part V of the Hazardous Substances and New Organisms Act 1996.

*Ecotoxicity is one of the elements of the HSNO Act control framework. It would not be appropriate for the marine protection rules to summarise what is in Part V of the HSNO Act. Manufacturers and importers should familiarise themselves with the requirements of that Act and its regulations directly, using any explanatory material provided by ERMA. The policy of Part 132 is to provide a set of controls integrated with the wider, life-cycle controls of the HSNO Act. The rules aim to minimise costs by allowing the Director to recognise approvals given by ERMA.*

### **Rule 132.11**

Betts & Lalor submits that approval for the discharge of approved dispersants into the sea in response to a marine oil spill is too broad brush and fails to take account of particular circumstances, which may indicate that the use of a dispersant could result in worse ecological or environmental damage than that of the oil on its own.

Fiordland Travel Limited submits that rule 132.11 confers an inappropriately broad authority to discharge dispersants into the sea, failing to recognise, for example, that the use of a salt water dispersant may be environmentally harmful if used to disperse oil on the surface of the fresh water layer in the reaches of Milford and Doubtful Sounds.

*We agree with the comments about the inappropriate use of dispersants. But while it may appear that rule 132.11 is too broad, controls will apply at a number of levels to prevent indiscriminate use. These include the provisions of contingency plans, the labeling of products, the directions of on-scene commanders (in the event of regional or national responses) and Resource Management Act controls, including regional coastal plans.*

*We have amended rule 132.11 and the advisory circular to give greater prominence to these controls and to emphasise that the approval for use under rule 132.11 does not mean that a dispersant or demulsifier can be discharged indiscriminately into the sea.*

## Advisory Circular—Appendix 1

Betts & Lalor suggests that the application form for dispersant approval should in section 7 note that only dispersants with an acceptably low toxicity rating will be approved.

*We agree that the requirement that dispersants must comply with an internationally recognised marine ecological toxicity test should be highlighted in the application form. A note to this effect has been added to both the dispersant and demulsifier application forms.*

## Additional changes made by the Maritime Safety Authority

### Rule 132.2

New definitions for "approved substance" and "substance" have been added. Consequently, the words "dispersant" and "demulsifier" and the phrases "approval of a dispersant or demulsifier for use" and "any dispersant and demulsifier approved for use", do not have to be repeated throughout the Part.

The new definition of "approved substance" has also incorporated those dispersants approved under the Marine Pollution (Dispersants and Exceptions) Regulations 1975 which now come under Part 132.

### Rule 132.3(4)

The requirement that the Director treat as confidential information supplied by an applicant relating to a dispersant or demulsifier formulation has been removed. The Director will be governed by the Official Information Act 1982 in regard to information that he or she obtains as part of an application for approval of a substance.

### Rule 132.6

The word "consignment" has been added to this rule so that the Director can require a manufacturer to submit a particular consignment of an approved substance for testing.

### Rule 132.7(b)

A reference to Part VI of the Hazardous Substances and New Organisms Act 1996 has been added. This part of the Act, or regulations made under it, may impose controls on a substance in addition to those in Part V of the Hazardous Substances and New Organisms Act.

### Rule 132.9(2)(c) and 132.10(2)(c)

These rules have been split into (i) and (ii) for ease of understanding and application.

*Rule 132.12 and the Appendix*

The dispersants formerly approved under the Marine Pollution (Dispersants and Exceptions) Regulations 1975 have been brought under the Maritime Transport Act 1994 by rule 132.12 and the Appendix.