

§ 133.21

(c) Upon request of the OSC or the NPFC, the State official shall make the original records available for inspection.

(d) If, after inspecting the records, the Director, NPFC, determines that expenditures by a State official from funds obligated under this part were not eligible for funding under this part and the expenditures were not made with the good faith understanding that they were eligible under this part, the Director, NPFC, may seek reimbursement to the Fund from the State.

§ 133.21 Records retention.

(a) The State official shall maintain all records for ten years following completion of the removal actions.

(b) If any litigation, claim, negotiation, audit, cost recovery, or other action involving the records has been started before the expiration of the ten-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular ten-year period, whichever is later.

§ 133.23 Investigation to determine the source and responsible party.

(a) The State official shall promptly make a thorough investigation to determine the source of the incident and the responsible party.

(b) Upon completion of the investigation, the State official shall forward the results of the investigation and copies of the supporting evidence identifying the source and the responsible party to both the cognizant OSC and the NPFC official specified in § 133.25(c).

§ 133.25 Notification of Governor's designee.

(a) If the Governor of a State anticipates the need to access the Fund under this part, he or she must advise the NPFC in writing of the specific individual who is designated to make requests under this part.

(b) This designation must include the individual's name, address, telephone number, and title or capacity in which employed.

(c) The information required by paragraph (b) of this section must be forwarded to the Director National Pollu-

33 CFR Ch. I (7-1-25 Edition)

tion Funds Center, U.S. Coast Guard Stop 7605, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593-7605.

[CGD 92-014, 57 FR 53969, Nov. 13, 1992, as amended by USCG-2009-0416, 74 FR 27440, June 10, 2009; USCG-2016-0498, 82 FR 35081, July 28, 2017]

PART 136—OIL SPILL LIABILITY TRUST FUND; CLAIMS PROCEDURES; DESIGNATION OF SOURCE; AND ADVERTISEMENT

Subpart A—General

Sec.

- 136.1 Purpose and applicability.
- 136.3 Information.
- 136.5 Definitions.
- 136.7 Foreign claimants.
- 136.9 Falsification of claims.

Subpart B—General Procedure

- 136.101 Time limitations on claims.
- 136.103 Order of presentment.
- 136.105 General requirements for a claim.
- 136.107 Subrogated claims.
- 136.109 Removal costs and multiple items of damages.
- 136.111 Insurance.
- 136.113 Other compensation.
- 136.115 Settlement and notice to claimant.

Subpart C—Procedures for Particular Claims

REMOVAL COSTS

- 136.201 Authorized claimants.
- 136.203 Proof.
- 136.205 Compensation allowable.

NATURAL RESOURCES

- 136.207 Authorized claimants.
- 136.209 Proof.
- 136.211 Compensation allowable.

REAL OR PERSONAL PROPERTY

- 136.213 Authorized claimants.
- 136.215 Proof.
- 136.217 Compensation allowable.

SUBSISTENCE USE

- 136.219 Authorized claimants.
- 136.221 Proof.
- 136.223 Compensation allowable.

GOVERNMENT REVENUES

- 136.225 Authorized claimants.
- 136.227 Proof.
- 136.229 Compensation allowable.

Coast Guard, DHS**§ 136.5****PROFITS AND EARNING CAPACITY**

- 136.231 Authorized claimants.
- 136.233 Proof.
- 136.235 Compensation allowable.

GOVERNMENT PUBLIC SERVICES

- 136.237 Authorized claimants.
- 136.239 Proof.
- 136.241 Compensation allowable.

Subpart D—Designation of Source and Advertisement**GENERAL**

- 136.301 Purpose.
- 136.303 Definitions.

DESIGNATION OF SOURCE

- 136.305 Notice of designation.
- 136.307 Denial of designation.

ADVERTISEMENT

- 136.309 Advertisement determinations.
- 136.311 Types of advertisement.
- 136.313 Content of advertisement.

AUTHORITY: 33 U.S.C. 2713(e) and 2714; Sec. 1512 of the Homeland Security Act of 2002, Pub. L. 107-296, Title XV, Nov. 25, 2002, 116 Stat. 2310 (6 U.S.C. 552(d)); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13286, 68 FR 10619, 3 CFR, 2004 Comp., p.166; Department of Homeland Security Delegation No. 0170.1, para. 2(80).

SOURCE: CGD 91-035, 57 FR 36316, Aug. 12, 1992, unless otherwise noted.

Subpart A—General**§ 136.1 Purpose and applicability.**

- (a) This part prescribes regulations for—
 - (1) Presentation, filing, processing, settlement, and adjudication of claims authorized to be presented to the Oil Spill Liability Trust Fund (the Fund) under section 1013 of the Oil Pollution Act of 1990 (the Act) (33 U.S.C. 2713) for certain uncompensated removal costs or uncompensated damages resulting from the discharge, or substantial threat of discharge, of oil from a vessel or facility into or upon the navigable waters, adjoining shorelines, or the exclusive economic zone;
 - (2) Designation of the source of the incident, notification to the responsible party of the designation, and advertisement of the designation and claims procedures; and
 - (3) Other related matters.

(b) This part applies to claims resulting from incidents occurring after August 18, 1990.

(c) Nothing in this part—

(1) Preempts the authority of any State or political subdivision thereof from imposing any additional liability or requirements with respect to—

(i) The discharge of oil or other pollution by oil within such State; or

(ii) Any removal activities in connection with such a discharge; or

(2) Affects or modifies in any way the obligations or liabilities of any person under the Solid Waste Disposal Act (42 U.S.C. 6901 *et seq.*) or State law, including common law; or

(3) Affects the authority of any State—

(i) To establish, or to continue in effect, a fund any purpose of which is to pay for costs or damages arising out of, or directly resulting from, oil pollution or the substantial threat of oil pollution; or

(ii) To require any person to contribute to such a fund; or

(4) Affects the authority of the United States or any State or political subdivision thereof to impose additional liability or additional requirements relating to a discharge, or substantial threat of a discharge, of oil.

§ 136.3 Information.

Anyone desiring to file a claim against the Fund may obtain general information on the procedure for filing a claim from the Director, National Pollution Funds Center, U.S. Coast Guard Stop 7605, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593-7605, (800) 280-7118.

[CGD 91-035, 57 FR 36316, Aug. 12, 1992, as amended by USCG-2009-0416, 74 FR 27441, June 10, 2009; USCG-2012-0306, 77 FR 37315, June 21, 2012; USCG-2016-0498, 82 FR 35081, July 28, 2017]

§ 136.5 Definitions.

- (a) As used in this part, the following terms have the same meaning as set forth in sections 1001 and 1007(c) of the Act (33 U.S.C. 2701 and 2707(c)): *Claim, claimant, damages, discharge, exclusive economic zone, facility, foreign claimant, foreign offshore unit, Fund, guarantor, incident, National Contingency Plan, natural resources, navigable waters, offshore*

§ 136.7

facility, oil, onshore facility, owner or operator, person, removal costs, responsible party, State, United States, and vessel.

(b) As used in this part—

Act means title I of the Oil Pollution Act of 1990 (Pub. L. 101-380; 33 U.S.C. 2701 through 2719).

Director, NPFC, means the person in charge of the U.S. Coast Guard National Pollution Funds Center or that person's authorized representative.

FOSC means the Federal On-Scene Coordinator designated under the National Contingency Plan or that person's authorized representative.

NPFC means the Director, National Pollution Funds Center, U.S. Coast Guard Stop 7605, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593-7605.

[CGD 91-035, 57 FR 36316, Aug. 12, 1992, as amended by USCG-2009-0416, 74 FR 27441, June 10, 2009; USCG-2012-0306, 77 FR 37315, June 21, 2012; USCG-2016-0498, 82 FR 35081, July 28, 2017]

§ 136.7 Foreign claimants.

In addition to other applicable limitations on presenting claims to the Fund, claims by foreign claimants to recover removal costs or damages may be presented only when the requirements of section 1007 of the Act (33 U.S.C. 2707) are met.

§ 136.9 Falsification of claims.

Persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim. If any payment is made on the claim, the claimant may also be subject to an assessment of up to twice the amount claimed. These civil sanctions may be imposed under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801-3812, as implemented in 6 CFR part 13.

[CGD 91-035, 57 FR 36316, Aug. 12, 1992, as amended by CGD 96-052, 62 FR 16703, Apr. 8, 1997; USCG-2013-0397, 78 FR 39175, July 1, 2013]

33 CFR Ch. I (7-1-25 Edition)

Subpart B—General Procedure

§ 136.101 Time limitations on claims.

(a) Except as provided under section 1012(h)(3) of the Act (33 U.S.C. 2712(h)(3)) (minors and incompetents), the Fund will consider a claim only if presented in writing to the Director, NPFC, within the following time limits:

(1) For damages, within three years after—

(i) The date on which the injury and its connection with the incident in question were reasonably discoverable with the exercise of due care.

(ii) In the case of natural resources damages under section 1002(b)(2)(A) of the Act (33 U.S.C. 2702(b)(2)(A)), the date under paragraph (a)(1)(i) of this section, or within three years from the date of completion of the natural resources damage assessment under section 1006(e) of the Act (33 U.S.C. 2706(e)), whichever is later.

(2) For removal costs, within six years after the date of completion of all removal actions for the incident. As used in this paragraph, “date of completion of all removal actions” is defined as the actual date of completion of all removal actions for the incident or the date the FOSC determines that the removal actions which form the basis for the costs being claimed are completed, whichever is earlier.

(b) Unless the Director, NPFC, directs in writing that the claim be submitted elsewhere, a claim is deemed presented on the date the claim is actually received at the Director, National Pollution Funds Center, U.S. Coast Guard Stop 7605, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593-7605. If the Director, NPFC, directs that the claim be presented elsewhere, the claim is deemed presented on the date the claim is actually received at the address in the directive.

[CGD 91-035, 57 FR 36316, Aug. 12, 1992; 57 FR 41104, Sept. 9, 1992, as amended by USCG-2009-0416, 74 FR 27441, June 10, 2009; USCG-2012-0306, 77 FR 37315, June 21, 2012; USCG-2016-0498, 82 FR 35081, July 28, 2017]

§ 136.103 Order of presentment.

(a) Except as provided in paragraph (b) of this section, all claims for removal costs or damages must be presented first to the responsible party or guarantor of the source designated under § 136.305.

(b) Claims for removal costs or damages may be presented first to the Fund only—

(1) By any claimant, if the Director, NPFC, has advertised, or otherwise notified claimants in writing, in accordance with § 136.309(e);

(2) By a responsible party who may assert a claim under section 1008 of the Act (33 U.S.C. 2708);

(3) By the Governor of a State for removal costs incurred by that State; or

(4) By a United States claimant in a case where a foreign offshore unit has discharged oil causing damage for which the Fund is liable under section 1012(a) of the Act (33 U.S.C. 2712(a)).

(c) If a claim is presented in accordance with paragraph (a) of this section and—

(1) Each person to whom the claim is presented denies all liability for the claim; or

(2) The claim is not settled by any person by payment within 90 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to § 136.309(d), whichever is later, the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund.

(d) No claim of a person against the Fund will be approved or certified for payment during the pendency of an action by the person in court to recover costs which are the subject of the claim.

[CGD 91-035, 57 FR 36316, Aug. 12, 1992; 57 FR 41104, Sept. 9, 1992]

§ 136.105 General requirements for a claim.

(a) The claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

(b) Each claim must be in writing for a sum certain for compensation for each category of uncompensated damages or removal costs (as described in

Subpart C of this part) resulting from an incident. If at any time during the pendency of a claim against the Fund the claimant receives any compensation for the claimed amounts, the claimant shall immediately amend the claim.

(c) Each claim must be signed in ink by the claimant certifying to the best of the claimant's knowledge and belief that the claim accurately reflects all material facts.

(d) In addition to the other requirements of this section, any claim presented by a legal representative of the claimant must also be signed by the legal representative and—

(1) Be presented in the name of the claimant;

(2) Show the title or legal capacity of the representative; and

(3) Provide proof of authority to act for the claimant.

(e) Each claim must include at least the following, as applicable:

(1) The full name, street and mailing addresses of residence and business, and telephone numbers of the claimant.

(2) The date, time, and place of the incident giving rise to the claim.

(3) The identity of the vessel, facility, or other entity causing or suspected to have caused the removal costs or damages claimed and the basis for such identity or belief.

(4) A general description of the nature and extent of the impact of the incident, the costs associated with removal actions, and damages claimed, by category as delineated in Subpart C of this part, including, for any property, equipment, or similar item damaged, the full name, street and mailing address, and telephone number of the actual owner, if other than the claimant.

(5) An explanation of how and when the removal costs or damages were caused by, or resulted from, an incident.

(6) Evidence to support the claim.

(7) A description of the actions taken by the claimant, or other person on the claimant's behalf, to avoid or minimize removal costs or damages claimed.

(8) The reasonable costs incurred by the claimant in assessing the damages claimed. This includes the reasonable

§ 136.107

costs of estimating the damages claimed, but not attorney's fees or other administrative costs associated with preparation of the claim.

(9) To the extent known or reasonably identifiable by the claimant, the full name, street and mailing address, and telephone number of each witness to the incident, to the discharge, or to the removal costs or damages claimed, along with a brief description of that person's knowledge.

(10) A copy of written communications and the substance of verbal communications, if any, between the claimant and the responsible party or guarantor of the source designated under §136.305 and a statement indicating that the claim was presented to the responsible party or guarantor, the date it was presented, that it was denied or remains not settled and, if known, the reason why it was denied or remains not settled.

(11) If the claimant has insurance which may cover the removal costs or damages claimed, the information required under §136.111.

(12) A statement by the claimant that no action has been commenced in court against the responsible party or guarantor of the source designated under §136.305 or, if an action has been commenced, a statement identifying the claimant's attorney and the attorney's address and phone number, the civil action number, and the court in which the action is pending.

(13) In the discretion of the Director, NPFC, any other information deemed relevant and necessary to properly process the claim for payment.

§ 136.107 Subrogated claims.

(a) The claims of subrogor (e.g., insured) and subrogee (e.g., insurer) for removal costs and damages arising out of the same incident should be presented together and must be signed by all claimants.

(b) A fully subrogated claim is payable only to the subrogee.

(c) A subrogee must support a claim in the same manner as any other claimant.

33 CFR Ch. I (7-1-25 Edition)**§ 136.109 Removal costs and multiple items of damages.**

(a) A claimant must specify all of the claimant's known removal costs or damages arising out of a single incident when submitting a claim.

(b) Removal costs and each separate category of damages (as described in subpart C of this part) must be separately listed with a sum certain attributed to each type and category listed.

(c) At the sole discretion of the Director, NPFC, removal costs and each separate category of damages may be treated separately for settlement purposes.

§ 136.111 Insurance.

(a) A claimant shall provide the following information concerning any insurance which may cover the removal costs or damages for which compensation is claimed:

- (1) The name and address of each insurer.
- (2) The kind and amount of coverage.
- (3) The policy number.

(4) Whether a claim has been or will be presented to an insurer and, if so, the amount of the claim and the name of the insurer.

(5) Whether any insurer has paid the claim in full or in part or has indicated whether or not payment will be made.

(b) If requested by the Director, NPFC, the claimant shall provide a copy of the following material:

(1) All insurance policies or indemnification agreements.

(2) All written communications, and a summary of all oral communications, with any insurer or indemnifier.

(c) A claimant shall advise the Director, NPFC, of any changes in the information provided under this section.

§ 136.113 Other compensation.

A claimant must include an accounting, including the source and value, of all other compensation received, applied for, or potentially available as a consequence of the incident out of which the claim arises including, but not limited to, monetary payments, goods or services, or other benefits.

§ 136.115 Settlement and notice to claimant.

(a) Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the compensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person.

(b) Claimant's failure to accept an offer of settlement within 60 days after the date the offer was mailed to the claimant automatically voids the offer. The Director, NPFC, reserves the right to revoke an offer at any time.

(c) A claimant will be notified in writing sent by certified or registered mail whenever a claim against the Fund is denied. The failure of the Director, NPFC, to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim.

(d) The Director, NPFC, upon written request of the claimant or of a person duly authorized to act on the claimant's behalf, reconsiders any claim denied. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request must be received by the Director, NPFC, within 60 days after the date the denial was

mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier. Reconsideration may only be requested once for each claim denied. The Director, NPFC will provide the claimant seeking reconsideration with written notification of the decision within 90 days after receipt of the request for reconsideration. This written decision is final. The failure of the Director, NPFC, to make final disposition of a reconsideration within 90 days after it is received shall, at the option of the claimant any time thereafter, be deemed a final denial of the reconsideration.

Subpart C—Procedures for Particular Claims**REMOVAL COSTS****§ 136.201 Authorized claimants.**

A claim for removal costs may be presented by any claimant.

§ 136.203 Proof.

In addition to the requirements of Subparts A and B of this part, a claimant must establish—

(a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;

(b) That the removal costs were incurred as a result of these actions;

(c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.

§ 136.205 Compensation allowable.

The amount of compensation allowable is the total of uncompensated reasonable removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal activities for which costs are being claimed must have been coordinated with the FOSC.

NATURAL RESOURCES**§ 136.207 Authorized claimants.**

(a) Claims for uncompensated natural resource damages may be presented by

§ 136.209

an appropriate natural resources trustee. However, in order to facilitate the processing of these claims with respect to a single incident where multiple trustees are involved and to prevent double recovery, the affected trustees should select a lead administrative trustee who will present consolidated claims on behalf of the trustees.

(b) A trustee may present a claim for the reasonable cost of assessing natural resources damages separately from a claim for the cost of developing and implementing plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources damaged.

§ 136.209 Proof.

In addition to the requirements of subparts A and B of this part, a trustee must do the following:

(a) Submit the assessment and restoration plans which form the basis of the claim.

(b) Provide documented costs and cost estimates for the claim. Final cost estimates for conducting damage assessments or implementing a restoration plan may form the basis for a claim against the Fund for an uncompensated natural resources damage claim.

(c) Identify all trustees who may be potential claimants for the same natural resources damaged.

(d) Certify the accuracy and integrity of any claim submitted to the Fund, and certify that any actions taken or proposed were or will be conducted in accordance with the Act and consistent with all applicable laws and regulations.

(e) Certify whether the assessment was conducted in accordance with applicable provisions of the natural resources damage assessment regulations promulgated under section 1006(e)(1) of the Act (33 U.S.C. 2706(e)(1)). Identify any other or additional damage assessment regulations or methodology utilized.

(f) Certify that, to the best of the trustee's knowledge and belief, no other trustee has the right to present a claim for the same natural resources damages and that payment of any subpart of the claim presented would not

33 CFR Ch. I (7-1-25 Edition)

constitute a double recovery for the same natural resources damages.

§ 136.211 Compensation allowable.

(a) The amount of compensation allowable is the reasonable cost of assessing damages, and the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the damaged natural resources.

(b) In addition to any other provision of law respecting the use of sums recovered for natural resources damages, trustees shall reimburse the Fund for any amounts received from the Fund in excess of that amount required to accomplish the activities for which the claim was paid.

REAL OR PERSONAL PROPERTY**§ 136.213 Authorized claimants.**

(a) A claim for injury to, or economic losses resulting from the destruction of, real or personal property may be presented only by a claimant either owning or leasing the property.

(b) Any claim for loss of profits or impairment of earning capacity due to injury to, destruction of, or loss of real or personal property must be included as subpart of the claim under this section and must include the proof required under § 136.233.

§ 136.215 Proof.

(a) In addition to the requirements of subparts A and B of this part, a claimant must establish—

(1) An ownership or leasehold interest in the property;

(2) That the property was injured or destroyed;

(3) The cost of repair or replacement; and

(4) The value of the property both before and after injury occurred.

(b) In addition, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish—

(1) That the property was not available for use and, if it had been, the value of that use;

(2) Whether or not substitute property was available and, if used, the costs thereof; and

(3) That the economic loss claimed was incurred as the result of the injury to or destruction of the property.

§ 136.217 Compensation allowable.

(a) The amount of compensation allowable for damaged property is the lesser of—

(1) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;

(2) The difference between value of the property before and after the damage; or

(3) The replacement value.

(b) Compensation for economic loss resulting from the destruction of real or personal property may be allowed in an amount equal to the reasonable costs actually incurred for use of substitute commercial property or, if substitute commercial property was not reasonably available, in an amount equal to the net economic loss which resulted from not having use of the property. When substitute commercial property was reasonably available, but not used, allowable compensation for loss of use is limited to the cost of the substitute commercial property, or the property lost, whichever is less. Compensation for loss of use of noncommercial property is not allowable.

(c) Compensation for a claim for loss of profits or impairment of earning capacity under § 136.213(b) is limited to that allowable under § 136.235.

SUBSISTENCE USE

§ 136.219 Authorized claimants.

(a) A claim for loss of subsistence use of natural resources may be presented only by a claimant who actually uses, for subsistence, the natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources.

(b) A claim for loss of profits or impairment of earning capacity due to loss of subsistence use of natural resources must be included as part of the claim under this section and must include the proof required under § 136.233.

§ 136.221 Proof.

In addition to the requirements of subparts A and B of this part, a claimant must provide—

(a) The identification of each specific natural resource for which compensation for loss of subsistence use is claimed;

(b) A description of the actual subsistence use made of each specific natural resource by the claimant;

(c) A description of how and to what extent the claimant's subsistence use was affected by the injury to or loss of each specific natural resource;

(d) A description of each effort made by the claimant to mitigate the claimant's loss of subsistence use; and

(e) A description of each alternative source or means of subsistence available to the claimant during the period of time for which loss of subsistence is claimed, and any compensation available to the claimant for loss of subsistence.

§ 136.223 Compensation allowable.

(a) The amount of compensation allowable is the reasonable replacement cost of the subsistence loss suffered by the claimant if, during the period of time for which the loss of subsistence is claimed, there was no alternative source or means of subsistence available.

(b) The amount of compensation allowable under paragraph (a) of this section must be reduced by—

(1) All compensation made available to the claimant to compensate for subsistence loss;

(2) All income which was derived by utilizing the time which otherwise would have been used to obtain natural resources for subsistence use; and

(3) Overheads or other normal expenses of subsistence use not incurred as a result of the incident.

(c) Compensation for a claim for loss of profits or impairment of earning capacity under § 136.219(b) is limited to that allowable under § 136.235.

GOVERNMENT REVENUES

§ 136.225 Authorized claimants.

A claim for net loss of revenue due to the injury, destruction, or loss of real property, personal property, or natural

§ 136.227

resources may be presented only by an appropriate claimant sustaining the loss. As used in this section and § 136.277, "revenue" means taxes, royalties, rents, fees, and net profit shares.

§ 136.227 Proof.

In addition to the requirements of Subparts A and B, a claimant must establish—

(a) The identification and description of the economic loss for which compensation is claimed, including the applicable authority, property affected, method of assessment, rate, and method and dates of collection;

(b) That the loss of revenue was due to the injury to, destruction of, or loss of real or personal property or natural resources;

(c) The total assessment or revenue collected for comparable revenue periods; and

(d) The net loss of revenue.

§ 136.229 Compensation allowable.

The amount of compensation allowable is the total net revenue actually lost.

PROFITS AND EARNING CAPACITY**§ 136.231 Authorized claimants.**

(a) A claim for loss of profits or impairment of earning capacity due to the injury to, destruction of, or loss of real or personal property or natural resources may be presented by a claimant sustaining the loss or impairment. The claimant need not be the owner of the damaged property or resources to recover for lost profits or income.

(b) A claim for loss of profits or impairment of earning capacity that also involves a claim for injury to, or economic losses resulting from destruction of, real or personal property must be claimed under § 136.213.

(c) A claim for loss of profits or impairment of earning capacity that also involves a claim for loss of subsistence use of natural resources must be claimed under § 136.219.

§ 136.233 Proof.

In addition to the requirements of subparts A and B of this part, a claimant must establish the following:

33 CFR Ch. I (7-1-25 Edition)

(a) That real or personal property or natural resources have been injured, destroyed, or lost.

(b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of the property or natural resources, and the amount of that reduction.

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

§ 136.235 Compensation allowable.

The amount of compensation allowable is limited to the actual net reduction or loss of earnings or profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for—

(a) All income resulting from the incident;

(b) All income from alternative employment or business undertaken;

(c) Potential income from alternative employment or business not undertaken, but reasonably available;

(d) Any saved overhead or normal expenses not incurred as a result of the incident; and

(e) State, local, and Federal taxes.

GOVERNMENT PUBLIC SERVICES**§ 136.237 Authorized claimants.**

A claim for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil may be presented only by a State or a political subdivision of a State incurring the costs.

§ 136.239 Proof.

In addition to the requirements of subparts A and B of this part, a claimant must establish—

- (a) The nature of the specific public services provided and the need for those services;
- (b) That the services occurred during or after removal activities;
- (c) That the services were provided as a result of a discharge of oil and would not otherwise have been provided; and
- (d) The net cost for the services and the methods used to compute those costs.

§ 136.241 Compensation allowable.

The amount of compensation allowable is the net cost of the increased or additional service provided by the State or political subdivision.

Subpart D—Designation of Source and Advertisement**GENERAL****§ 136.301 Purpose.**

This subpart prescribes the requirements concerning designation of the source or sources of the discharge or threat of discharge and advertisement of these designations, including the procedures by which claims may be presented to the responsible party or guarantor.

§ 136.303 Definitions.

As used in this subpart—

Advertisement means the dissemination of information, including but not limited to paid advertisements, that are reasonably calculated to advise the public how to present a claim.

Designated source means a source designated under § 136.305.

DESIGNATION OF SOURCE**§ 136.305 Notice of designation.**

(a) When information of an incident is received, the source or sources of the discharge or threat are designated, where possible and appropriate. If the designated source is a vessel or facility, the responsible party and the guarantor, if known, are notified by telephone, telefax, or other rapid means of

that designation. The designation will be confirmed by a written Notice of Designation.

(b) A Notice of Designation normally contains, to the extent known—

- (1) The name of the vessel or facility designated as the source;
- (2) The location, date, and time of the incident;

- (3) The type and quantity of oil involved;
- (4) The date of the designation;

- (5) The procedures for accepting or denying the designation; and
- (6) The name, address, telephone number, and, if available, telefax number of the responsible Federal official to whom further communication regarding the incident, advertisement of the incident, or denial of designation should be directed.

[USCG-91-035, 57 FR 36316, Aug. 12, 1992, as amended by USCG-2012-0306, 77 FR 37315, June 21, 2012]

§ 136.307 Denial of designation.

(a) Within five days after receiving a Notice of Designation under § 136.305, the responsible party or guarantor may deny the designation.

(b) A denial of designation must—

- (1) Be in writing;
- (2) Identify the Notice of Designation;

- (3) Give the reasons for the denial and provide a copy of all supporting documents; and

- (4) Be submitted to the official named in the Notice of Designation.

(c) A denial is deemed received on the date the denial is actually received by the official named in the Notice of Designation.

ADVERTISEMENT**§ 136.309 Advertisement determinations.**

(a) The Director, NPFC, determines for each incident the type, geographic scope, frequency, and duration of advertisement required.

(b) In making the determination specified in paragraph (a) of this section, the Director, NPFC, may consider—

- (1) The nature and extent of economic losses that have occurred or are likely to occur;

§ 136.311

33 CFR Ch. I (7-1-25 Edition)

- (2) The potential claimants who are likely to incur economic losses;
- (3) The geographical area that is or will likely be affected;
- (4) The most effective method of reasonably notifying potential claimants of the designation and procedures of submitting claims; and
- (5) Relevant information or recommendations, if any, submitted by, or on behalf of, the responsible party or guarantor of the designated source.
- (c) The Director, NPFC, provides the specific requirements for advertisement for each incident to the responsible party or guarantor of the designated source.
- (d) If a responsible party or guarantor has not denied designation in accordance with § 136.307, the party or guarantor shall advertise, in accordance with the requirements of this subpart, the designation and the procedures by which claims may be presented. The advertisement must begin not later than 15 days after the date of the designation made under § 136.305.
- (e) If there is no designation under § 136.305, if the source of the discharge or threat is a public vessel, or if the responsible party and guarantor of the source designated have denied the designation or failed to meet the requirements for advertisement in this section, the Director, NPFC, may advertise procedures for presenting claims.

§ 136.311 Types of advertisement.

Advertisement required by the Director, NPFC, will normally include one or more of the following:

- (a) Paid advertisements in a newspaper or newspapers having general circulation in the area designated by the Director, NPFC.
- (b) Notice posted in marinas, marine supply stores, bait and tackle shops, and other appropriate business establishments or public facilities in the area designated by the Director, NPFC.
- (c) News releases to newspapers, radio stations, television stations, and cable services having general circulation in the area designated by the Director, NPFC.
- (d) Other means approved by the Director, NPFC, under the circumstances of each case.

§ 136.313 Content of advertisement.

Each advertisement required by this subpart may be required to contain the following information or to indicate where this information may be contained:

- (a) Location, date, and time of the incident.
- (b) Geographical area affected, as determined by the FOSC or Director, NPFC.
- (c) Type and quantity of oil involved.
- (d) Name or other description of the source designated by the FOSC or Director, NPFC.
- (e) Name of the responsible party and guarantor of the designated source.
- (f) Name, address, telephone number, office hours, and work days of the person or persons to whom claims are to be presented and from whom claim information can be obtained.
- (g) The procedures by which a claim may be presented.
- (h) Other information required by the Director, NPFC, under the circumstances of each case.

PART 137—OIL SPILL LIABILITY: STANDARDS FOR CONDUCTING ALL APPROPRIATE INQUIRIES UNDER THE INNOCENT LAND-OWNER DEFENSE

Subpart A—Introduction

Sec.

- 137.1 Purpose and applicability.
- 137.5 Disclosure obligations.
- 137.10 How are terms used in this part defined?
- 137.15 References: Where can I get a copy of the publication mentioned in this part?

Subpart B—Standards and Practices

- 137.18 Duties of persons specified in § 137.1(a).
- 137.20 May industry standards be used to comply with this regulation?
- 137.25 Qualifications of the environmental professional.
- 137.30 Objectives and performance factors.
- 137.33 General all appropriate inquiries requirements.
- 137.35 Inquiries by an environmental professional.
- 137.40 Additional inquiries.
- 137.45 Interviews with past and present owners, operators, and occupants.
- 137.50 Reviews of historical sources of information.