

**§ 136.211**

**33 CFR Ch. I (7-1-05 Edition)**

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 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

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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 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.