

**§ 136.231**

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:

(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 of 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.

#### § 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;
- (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