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Title 33 —Navigation and Navigable Waters

Chapter I —Coast Guard, Department of Homeland Security

Subchapter M —Marine Pollution Financial Responsibility and Compensation

Part 133 Oil Spill Liability Trust Fund; State Access

- § 133.1** Purpose.
- § 133.3** Definitions.
- § 133.5** Requests: General.
- § 133.7** Requests: Amount.
- § 133.9** Requests: Where made.
- § 133.11** Request: Contents.
- § 133.13** Removal actions eligible for funding.
- § 133.15** Determination of eligibility for funding.
- § 133.17** Conduct of removal actions.
- § 133.19** Recordkeeping.
- § 133.21** Records retention.
- § 133.23** Investigation to determine the source and responsible party.
- § 133.25** Notification of Governor's designee.

PART 133—OIL SPILL LIABILITY TRUST FUND; STATE ACCESS

Authority: 33 U.S.C. 2712(a)(1)(B), 2712(d) and 2712(e); 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 92-014, 57 FR 53969, Nov. 13, 1992, unless otherwise noted.

§ 133.1 Purpose.

This part prescribes procedures for the Governor of a State to request payments from the Oil Spill Liability trust Fund (the Fund) for oil pollution removal costs under section 1012(d)(1) of the Oil Pollution Act of 1990 (the Act) (33 U.S.C. 2712(d)(1)).

§ 133.3 Definitions.

- (a) As used in this part, the following terms have the same meaning as set forth in section 1001 of the Act (33 U.S.C. 2701): “discharge”, “exclusive economic zone”, “Fund”, “incident”, “National Contingency Plan”, “navigable waters”, “oil”, “remove”, “removal”, “removal costs”, “responsible party”, “State”, and “United States”.
- (b) As used in this part—
 - Act** means Title I of the Oil Pollution Act of 1990 (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.
 - 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.
 - On-Scene Coordinator or OSC** means the Federal official predesignated by the Environmental Protection Agency or the U.S. Coast Guard to direct and coordinate all efforts for removal of a discharge, or the mitigation or the prevention of a substantial threat of a discharge, of oil.
 - Removal action** means an incident-specific activity taken under this part to contain or remove a discharge, or to mitigate or prevent a substantial threat of a discharge, of oil.

[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]

§ 133.5 Requests: General.

- (a) Upon a request submitted in accordance with this part by the Governor of a State or his or her designated State official, the OSC may obtain a Federal Project Number (FPN) and a ceiling not to exceed \$250,000 per incident for removal costs. The removal costs must be for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge, of oil.
- (b) Before a request under this part is made, the State official will ensure that the procedures in the National Contingency Plan (40 CFR part 300) for notifying Federal authorities of the discharge or threat of discharge have been met.
- (c) The Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301-6308), 2 CFR part 3000, 6 CFR part 9, and 49 CFR parts 18 and 90, apply to Fund monies obligated for payment under this part.

[CGD 92-014, 57 FR 53969, Nov. 13, 1992, as amended by USCG-2013-0397, 78 FR 39175, July 1, 2013]

§ 133.7 Requests: Amount.

- (a) The amount of funds that may be requested under this part—
 - (1) Is limited to the amount anticipated for immediate removal action for a single oil pollution incident, but, in any event, may not exceed \$250,000 per incident;
 - (2) Must be for removal costs consistent with the National Contingency Plan; and
 - (3) Must be reasonable for the removal actions proposed, considering such factors as quantity and composition of the oil, weather conditions and customary costs of similar services in the locale.

- (b) The funds requested are obligated only to the extent they are determined to be for immediate removal actions which are reasonable and otherwise eligible for payment under this part.

§ 133.9 Requests: Where made.

Requests for access to the Fund under § 133.5 must be made by telephone or other rapid means to the OSC.

§ 133.11 Request: Contents.

In making a request for access to the Fund, the person making the request shall—

- (a) Indicate that the request is a State access request under 33 CFR part 133;
- (b) Give his or her name, title, department, and State;
- (c) Describe the incident in sufficient detail to allow a determination of jurisdiction, including at a minimum the date of the occurrence, type of product discharged, estimated quantity of the discharge, body of water involved, and proposed removal actions for which funds are being requested under this part; and
- (d) Indicate the amount of funds being requested.

§ 133.13 Removal actions eligible for funding.

To be eligible for funding under this part, each removal action must meet the following:

- (a) Must be for an incident, occurring after August 18, 1990, which resulted in a discharge, or the substantial threat of a discharge, of oil into or upon the navigable waters or adjoining shorelines.
- (b) Must comply with the National Contingency Plan.
- (c) Must be an immediate removal action.

§ 133.15 Determination of eligibility for funding.

Upon receipt of the information under § 133.11 and, if necessary, from other sources determined to be appropriate at his or her discretion, the OSC will determine whether the proposed removal actions meet the requirements of § 133.13. If necessary, the OSC may seek further clarification of the proposed actions from the State official. The OSC shall expeditiously notify the State official and the Director, NPFC, of his or her decision.

§ 133.17 Conduct of removal actions.

Removal actions funded under this part must be coordinated with the OSC and conducted in accordance with the National Contingency Plan.

§ 133.19 Recordkeeping.

- (a) The State official shall maintain detailed records of expenditures made from the funds provided under this part, including records of—
 - (1) Daily expenditures for each individual worker, giving the individual's name, title or position, activity performed, time on task, salary or hourly rate, travel costs, per diem, out-of-pocket or extraordinary expenses, and whether the individual is normally available for oil spill removal;
 - (2) Equipment purchased or rented each day, with the daily or hourly rate;

- (3) Miscellaneous materials and expendables purchased each day; and
- (4) Daily contractor or consultant fees, including costs for their personnel and contractor-owned or rented equipment, as well as that of any subcontractor.
- (b) The State official shall submit a copy of these records and a summary document stating the total of all expenditures made to the NPFC official specified in § 133.25(c) within thirty days after completion of the removal actions. A copy of these documents shall also be submitted to the cognizant OSC.
- (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 Pollution 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]