

SUBCHAPTER E—CERRO GRANDE FIRE ASSISTANCE

PART 295—CERRO GRANDE FIRE ASSISTANCE

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Subpart A—General

§ 295.1 Purpose.

This part implements the Cerro Grande Fire Assistance Act

(“CGFAA”), Public Law 106-246, 114 Stat. 584, which requires that the Federal Emergency Management Agency (FEMA) establish a process to evaluate, process and pay claims injuries and property damage resulting from the Cerro Grande Fire.

§ 295.2 Policy.

It is FEMA’s policy to provide for the expeditious resolution of meritorious claims through a process that is administered with sensitivity to the burdens placed upon Claimants by the Cerro Grande Fire.

§ 295.3 Information and assistance.

Information and assistance concerning the CGFAA is available from the Office of Cerro Grande Fire Claims (“OCGC”), Federal Emergency Management Agency, P.O. Box 1480, Los Alamos, New Mexico, 87544-1480, or telephone 1-888-748-1853. The Cerro Grande Fire Assistance site on the World Wide Web can be accessed at <http://www.fema.gov/cerrogrande>. In the interest of brevity, the provisions of the CGFAA are not restated in most instances. A copy of the CGFAA has been placed on the website and will be provided upon request.

§ 295.4 Organization of the rule.

This part contains six subparts. Subpart A provides an overview of the CGFAA process. Subpart B describes the procedures for bringing a claim. Subpart C explains what compensation is available. Subpart D discusses the claims evaluation process. Subpart E explains the dispute resolution process. Subpart F contains a glossary in which various terms used in the rule are defined.

§ 295.5 Overview of the claims process.

(a) The CGFAA is intended to provide persons who suffered losses from the Cerro Grande Fire with a simple, expedited process to seek redress from the United States. In order to obtain benefits under this legislation, a person must submit all Cerro Grande Fire related claims against the United States

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to FEMA. A person who elects to proceed under the CGFAA is barred from bringing a claim under the Federal Tort Claims Act or filing a civil action against the United States for damages resulting from the Cerro Grande Fire. Judicial review of FEMA's decisions under the CGFAA is available.

(b) The first step in the process is to file a Notice of Loss with OCGC. OCGC will provide the Claimant with a written acknowledgement that the claim has been filed and the claim number.

(c) Shortly thereafter, a Claims Reviewer will contact the Claimant to review the claim and help the Claimant formulate a strategy for obtaining any necessary documentation. After the Claimant has had an opportunity to discuss the claim with the Claims Reviewer, a Proof of Loss will be presented to the Claimant for signature. After any necessary documentation has been obtained and the claim has been fully evaluated, the Claims Reviewer will submit a report to an Authorized Official.

(d) The Authorized Official will review the report and determine whether compensation is due to the Claimant. The Claimant will be notified in writing of the Authorized Official's Determination. If the Claimant is satisfied with the decision, payment will be made after the Claimant returns a completed Release and Certification Form. If the Claimant is dissatisfied with the Authorized Official's Determination an Administrative Appeal may be filed with the Director of OCGC. If the Claimant remains dissatisfied after the appeal is decided, the dispute may be resolved through binding arbitration or heard in the United States District Court for the District of New Mexico.

§ 295.6 Partial payments.

OCGC, on its own initiative, or in response to a request by a Claimant, may make one or more partial payments on the claim. A partial payment can be made if OCGC has a reasonable basis to estimate the Claimant's damages. Acceptance of a partial payment in no way affects a Claimant's ability to pursue an Administrative Appeal of the Authorized Official's Determination or

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to pursue other rights afforded by the CGFAA.

Subpart B—Bringing a Claim Under the CGFAA

§ 295.10 Bringing a claim under the CGFAA.

(a) Any Injured Person may bring a claim under the CGFAA by filing a Notice of Loss. A claim submitted on any form other than a Notice of Loss will not be accepted.

(b) A single Notice of Loss may be submitted on behalf of a Household containing Injured Persons provided that all Injured Persons on whose behalf the claim is presented are identified.

(c) The Notice of Loss must be signed by each Claimant or by a duly authorized legal representative of each Claimant. If one is signing a Notice of Loss as the legal representative of a Claimant, the signer must disclose his or her relationship to the Claimant. FEMA may require a legal representative to submit evidence of authority.

(d) Notice of Loss forms are available from OCGC by request. They may be obtained through the mail, in person at the OCGC office or by telephone request. The Notice of Loss form can also be downloaded from the Internet at <http://www.fema.gov/cerrogrande>.

(e) Notices of Loss may be filed with OCGC by mail to P.O. Box 1480, Los Alamos, NM 87544-1480. OCGC is unable to accept Notices of Loss submitted by facsimile or e-mail.

(f) A Notice of Loss is deemed to be filed on the date it is received by OCGC.

§ 295.11 Deadline for filing Notice of Loss.

The deadline for filing a Notice of Loss is August 28, 2002. The CGFAA establishes this deadline and does not provide any extensions of the filing deadline.

§ 295.12 Election of remedies.

(a) By filing a Notice of Loss, an Injured Person waives the right to seek redress for Cerro Grande Fire related claims against the United States through the Federal Tort Claims Act

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or by filing a civil action authorized by any other provision of law.

(b) A person who has filed a Notice of Loss on or before October 1, 2000 may make a one-time election to withdraw the Notice of Loss without prejudice to his or her right to submit a subsequent Notice of Loss or pursue other remedies against the United States for Cerro Grande Fire related losses. The withdrawal must be made by written request, signed by the Claimant, and received by OCGC not later than October 1, 2000.

(c) An Injured Person who files a Federal Tort Claims Act claim or who initiates a civil action against the United States or any officer, employee or agent of the United States relating to the Cerro Grande Fire on or after August 28, 2000 is not eligible under the CGFAA to file a Notice of Loss.

(d) An Injured Person who filed before August 28, 2000 a Federal Tort Claims Act claim or a civil action against the United States for injuries, losses or damages relating to the Cerro Grande Fire may file a Notice of Loss provided that the Federal Tort Claims Act claim is withdrawn or the Injured Person is dismissed as a party to the civil action with prejudice not later than October 27, 2000. The withdrawal of a Federal Tort Claims Act claim must be in the form of a signed, written statement on a form provided by OCGC that is filed with OCGC not later than October 27, 2000. OCGC will promptly forward the original notice of withdrawal to the applicable federal agency and retain a copy in the Claimant's file.

§ 295.13 Subrogation.

An insurer or other third party with the rights of a subrogee, who has compensated an Injured Person for Cerro Grande Fire related losses, may file a Subrogation Notice of Loss under the CGFAA for the subrogated claim. An insurer or other third party with the rights of a subrogee may file a Subrogation Notice of Loss without regard to whether the Injured Party who received payment from the insurer or third party filed a Notice of Loss. By filing a Subrogation Notice of Loss for any subrogated claim, the insurer or third party elects the CGFAA as its ex-

clusive remedy against the United States for all subrogated claims arising out of the Cerro Grande Fire. Subrogation claims must be made on a Subrogation Notice of Loss form furnished by OCGC.

§ 295.14 Assignments.

Assignment of claims and the right to receive compensation for claims under the CGFAA is prohibited and will not be recognized by FEMA.

Subpart C—Compensation Available Under the CGFAA

§ 295.20 Prerequisite to compensation.

In order to receive compensation under the CGFAA a Claimant must be an Injured Person who suffered an Injury as a result of the Cerro Grande Fire and sustained damages.

§ 295.21 Allowable compensation.

(a) *Allowable compensation.* The CGFAA provides for the payment of compensatory damages. Compensatory damages are "real, substantial and just money damages established by the Claimant in compensation for actual or real injury or loss." In general, an Injured Person will be compensated for Injuries to the same extent that the plaintiff in a successful tort action brought against a private party under the laws of the State of New Mexico would be compensated. In addition the CGFAA permits FEMA to compensate Injured Parties for certain categories of "loss of property," "business loss," and "financial loss," which are enumerated in the CGFAA. Damages must be reasonable in amount. Claimants must mitigate their damages, if possible.

(b) *Exclusions.* Except as otherwise provided in the CGFAA, a Claimant will not receive compensation for any injury or damage that is not compensable under the Federal Tort Claims Act and New Mexico law. Punitive damages, interest on claims, attorney's fees, taxes that may be owed by a Claimant as a consequence of receiving an award, and agent's fees under the CGFAA are not recoverable from FEMA.

(c) *Damages arising in the future.* In the event that a lump sum payment is

awarded to a Claimant for future damages the amount of the payment shall be discounted to present value.

(d) *Destruction of home.* Compensatory damages for the destruction of a home may include the reasonable cost of reconstructing a home comparable in design, construction materials, size and improvements to the home that was lost taking into account post-fire construction costs in the local area and current building codes and standards. Compensatory damages may also include the cost of removing debris and burned trees, landscaping, stabilizing the land, replacing household contents, and compensation for any decrease in the value of land on which the structure sat pursuant to subparagraph (e) of this section. If requested by a Claimant, a compensatory damage award may also include the reasonable cost of mitigation measures that will reduce the property's vulnerability to the future risk of wildfire, flood or other natural hazards related to the Cerro Grande Fire. The mitigation measures must be approved by the local government with land use regulatory jurisdiction over the property and must also be reviewed by FEMA under applicable environmental and historic preservation laws. A Claimant who receives funds for mitigation measures is required to construct the mitigation measures and will be required to repay to FEMA mitigation funds that are not properly spent.

(e) *Reduction in the value of land.* Compensatory damages may be awarded for reduction in the value of land that a Claimant owned prior to the fire if:

(1) The Claimant sells the land in a good faith arm's length transaction that is closed not later than August 28, 2002 and realizes a loss in the immediate pre-fire value; or

(2) The Claimant can establish that the value of the land was diminished as a result of the Cerro Grande Fire.

(f) *Destruction of unique items of personal property.* Compensatory damages may be awarded for unique items of personal property that were destroyed as a result of the Cerro Grande Fire. If the item can be replaced in the current market, the cost to replace the item will be awarded. If the item cannot be

replaced in the current market, its fair market value on the date it was destroyed will be awarded.

(g) *Disaster recovery loans.* FEMA will reimburse Claimants awarded compensation under the CGFAA for interest paid on Small Business Administration disaster loans and similar loans obtained after May 4, 2000. Interest will be reimbursed for the period beginning on the date that the loan was taken out and ending on the date upon which the Claimant receives a compensation award (other than a partial payment). Claimants are required to use the proceeds of their compensation awards to repay Small Business Administration disaster loans. FEMA will cooperate with the Small Business Administration to formulate procedures for assuring that Claimants repay Small Business Administration disaster loans contemporaneously with the receipt of CGFAA compensation awards.

(h) *Mitigation.* FEMA may compensate Claimants for the cost of reasonable and cost-effective efforts incurred on or before August 28, 2003 to mitigate the heightened risks of wildfire, flood or other natural hazards resulting from the Cerro Grande Fire that are consistent with a FEMA-approved Mitigation Compensation Plan. The Director of FEMA reserves the discretionary authority provided by the CGFAA to determine the reasonableness of each mitigation claim. Mitigation Compensation Plans and requests by Claimants for mitigation funds under this section are subject to review under the National Environmental Policy Act and other applicable environmental and historic preservation laws.

(i) *Subsistence.* (1) *Allowable damages.* FEMA may reimburse an Indian tribe, a Tribal Member or a Household Including Tribal Members for the reasonable cost of replacing Subsistence Resources customarily and traditionally used by the Claimant on or before May 4, 2000, but no longer available to the Claimant as a result of the Cerro Grande Fire. For each category of Subsistence Resources, the Claimant must elect to receive compensatory damages either for the increased cost of obtaining Subsistence Resources from lands not damaged by the Cerro Grande Fire or for the cost of procuring substitute

resources in the cash economy. Damage awards will be made in the form of lump sum cash payments to eligible Claimants.

(2) *Proof of subsistence use.* FEMA may consider evidence submitted by Claimants, Indian Tribes and other knowledgeable sources in determining the nature and extent of a Claimant's subsistence uses.

(3) *Duration of damages.* Compensatory damages for subsistence losses will be paid for the period between May 4, 2000 and the date upon which Subsistence Resources can reasonably be expected to return to the level of availability that existed prior to the Cerro Grande Fire. FEMA may rely upon the advice of experts in making this determination.

(j) *Duplication of benefits.* The CGFAA allows FEMA to compensate Injured Parties only if their damages have not been paid or will not be paid by insurance or a third party.

(l) *Insurance.* Claimants who carry insurance will be required to disclose the name of the insurance carrier and the nature of the insurance and provide OCGC with such insurance documentation as OCGC reasonably requests.

(2) *Coordination with FEMA's Public Assistance program.* Injured Parties eligible for disaster assistance under FEMA's Public Assistance Program are expected to apply for all available assistance. Compensation will not be awarded under the CGFAA for:

(i) Emergency costs that are eligible for reimbursement under the Public Assistance Program or

(ii) Losses that are eligible for repair, restoration or replacement under the Public Assistance Program or

(iii) Costs or charges determined excessive under the Public Assistance Program.

(3) *Benefits provided by non-governmental organizations and individuals.* Unless otherwise provided by these regulations, disaster relief payments made to a Claimant by a non-governmental organization or an individual, other than wages paid by the Claimant's employer or insurance payments, will be disregarded in evaluating claims and need not be disclosed to OCGC by Claimants.

(4) *Benefits provided by FEMA's Individual Assistance program.* Compensation under the CGFAA will not be awarded for losses or costs that have been reimbursed under the Individual and Family Grant Program or any other FEMA Individual Assistance Program.

(5) *Worker's compensation claims.* Individuals who have suffered injuries that are compensable under State or Federal worker's compensation laws must apply for all benefits available under such laws.

Subpart D—Claims Evaluation

§ 295.30 Establishing damages.

At a minimum, Claimants will be required to attest to the nature and extent of each Injury for which compensation is sought in the Proof of Loss. The Proof of Loss must be signed under penalty of perjury and subject to the provisions of 18 U.S.C. 1001, which establishes penalties for false statements. Claimants may be required to provide other documentation, which is reasonably available, to corroborate the nature, extent and value of their losses. Claimants may submit for the Administrative Record any documents that they believe are relevant to their claim.

§ 295.31 Reimbursement of claim expenses.

FEMA will reimburse Claimants for the reasonable costs they incur in copying documentation requested by OCGC. FEMA will also reimburse Claimants for the reasonable costs they incur in providing appraisals, or other third-party opinions, requested by OCGC. FEMA will not reimburse Claimant for the cost of appraisals, or other third party opinions, not requested by OCGC.

§ 295.32 Determination of compensation due to claimant.

(a) *Authorized Official's report.* After OCGC has evaluated all elements of a claim as stated in the Proof of Loss, the Authorized Official will issue, and provide the Claimant with a copy of, the Authorized Official's Determination.

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(b) *Claimant's options upon issuance of the Authorized Official's determination.* Not later than 120 Days after the date that appears on the Authorized Official's Determination, the Claimant must either accept the findings by submitting a Release and Certification Form to FEMA or initiate an Administrative Appeal in accordance with § 295.41. The CGFAA requires that Claimants sign the Release and Certification Form in order to receive payment on their claims (except for partial payments). The Claimant will receive payment of compensation awarded by the Authorized Official after FEMA receives the completed Release and Certification Form. If the Claimant does not either submit a Release and Certification Form to FEMA or initiate an Administrative Appeal not later than 120 Days after the date that appears on the Authorized Official's Determination, he or she will be conclusively presumed to have accepted the Authorized Official's Determination. The Director of OCGC may modify the deadlines set forth in this subsection at the request of a Claimant for good cause shown.

§ 295.33 Supplementing claims.

A Claimant may amend the Notice of Loss to include additional claims at any time prior to signing a Proof of Loss. A Claimant may submit an additional Notice of Loss to present claims that were not addressed in a Proof of Loss for good cause shown. Any additional claim must be submitted not later than August 28, 2002 except with respect to claims for mitigation costs under § 295.21(h) of these regulations. Supplemental claims for mitigation costs under § 295.21(h) of these regulations cannot be submitted after August 28, 2003.

§ 295.34 Reopening a claim.

The Director of OCGC may reopen a claim in response to a Claimant's request after the Claimant has submitted a Release and Certification Form for the limited purpose of determining whether additional compensation is due if:

(a) The Claimant has incurred mitigation expenses within three years of the date of these regulations for which

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reimbursement is sought under § 295.21(h); or

(b) The Claimant closed the sale of real property within two years of the date of these regulations and wishes to present a claim for reduction in the value of land under § 295.21(e); or

(c) The Claimant has incurred replacement costs under § 295.21(d) in excess of those previously awarded; or

(d) The Director of OCGC otherwise determines that Claimant has demonstrated good cause.

§ 295.35 Access to records.

For purpose of audit and investigation, a Claimant shall grant the FEMA Office of the Inspector General and the Comptroller General of the United States access to any property that is the subject of a claim and to any and all books, documents, papers, and records maintained by a Claimant or under the Claimant's control pertaining or relevant to the claim.

§ 295.36 Confidentiality of information.

Confidential information submitted by individual Claimants is protected from disclosure to the extent permitted by the Privacy Act. These protections are described in the Privacy Act Notice provided with the Notice of Loss. Other Claimants should consult with FEMA concerning the availability of confidentiality protection under exemptions to the Freedom of Information Act and other applicable laws before submitting confidential, proprietary or trade secret information.

Subpart E—Dispute Resolution

§ 295.40 Scope.

This subpart describes a Claimant's right to bring an Administrative Appeal in response to the Authorized Official's Determination. It also describes the Claimant's right to pursue arbitration or seek judicial review following an Administrative Appeal.

§ 295.41 Administrative appeal.

(a) *Notice of appeal.* A Claimant may request that the Director of OCGC review the Authorized Official's Determination by written request to the Appeals Docket, Office of Cerro Grande Claims, P.O. Box 1480, Los Alamos, NM

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87544-1480 postmarked or delivered within 120 Days after the date that appears on the Authorized Official's Determination. The Claimant will submit along with the notice of appeal a statement explaining why the Authorized Official's Determination was incorrect.

(b) *Acknowledgement of appeal.* OCGC shall acknowledge the receipt of appeals that are timely filed. Following the receipt of a timely filed appeal, the Director of OCGC will obtain the Administrative Record from the Authorized Official and transmit a copy to the Claimant.

(c) *Supplemental filings.* The Claimant may supplement the statement of reasons and provide any additional documentary evidence supporting the appeal within 60 Days after the date upon which the appeal is filed. The Director of OCGC may extend these timeframes or authorize additional filings either on his or her own initiative or in response to a request by the Claimant for good cause shown.

(d) *Admissible evidence.* The Claimant may rely upon any relevant evidence to support the appeal, regardless of whether the evidence was previously submitted to the Claims Reviewer for consideration by the Authorized Official.

(e) *Obtaining evidence.* The Director of OCGC may request from the Claimant or from the Authorized Official any additional information that is relevant to the issues posed by the appeal in his or her discretion.

(f) *Conferences.* The Director of OCGC may schedule a conference to gain a better understanding of the issues or to explore settlement possibilities.

(g) *Hearings.* The Director of OCGC may exercise the discretion to convene a hearing to receive oral testimony from witnesses or experts. Hearings will be transcribed and the transcript will be entered in the Administrative Record.

(h) *Decision on appeal.* After the allotted time for submission of evidence has passed, the Director of OCGC shall close the Administrative Record and render a written decision on the Administrative Appeal. The Director of OCGC's decision on the Administrative Appeal shall constitute the final decision of the Director of FEMA under

§§ 104(d)(2)(B) and 104(i)(1) of the CGFAA.

(i) *Claimant's options following appeal.* The Claimant's concurrence with the decision in the Administrative Appeal will be conclusively presumed unless the Claimant initiates arbitration in accordance with § 295.42 or seeks judicial review in accordance with § 295.43. In order to receive payment of any compensation awarded by the Administrative Appeal decision the Claimant must submit a Release and Certification Form.

§ 295.42 Arbitration.

(a) *Initiating arbitration.* A Claimant who is dissatisfied with the outcome of the Administrative Appeal may initiate binding arbitration by submitting a written request for arbitration to the Arbitration Administrator for Cerro Grande Claims, Office of Dispute Resolution, Federal Emergency Management Agency, 500 C Street, Southwest, room 214, Washington, DC 20472 on a form provided by OCGC. The written request for arbitration must be received not later than 60 Days after the date that appears on the Administrative Appeal decision.

(b) *Permissible claims.* A Claimant may not arbitrate an issue unless it was raised and decided in the Administrative Appeal. Arbitration will be conducted on the evidence in the Administrative Record. Evidence not previously entered into the Administrative Record will not be considered.

(c) *Settlement and mediation alternatives.* At any time after a request for arbitration is filed and prior to the time a decision is rendered, either party may request in writing that the Office of Dispute Resolution stay further proceedings in the arbitration to facilitate settlement discussions. A mediator may be appointed (if requested by the parties) to facilitate settlement discussions. If both parties concur in the request, the Office of Dispute Resolution will stay the arbitration and appoint a mediator at FEMA's expense. The stay may be terminated and the arbitration resumed upon written request of either party to the Office of Dispute Resolution. If the dispute is settled, the Office of Dispute Resolution shall issue an order terminating

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the arbitration and provide the Claimant with a Release and Certification Form to obtain payment of any compensation due.

(d) *Selection of arbitrator.* Arbitration shall be decided by one arbitrator selected by the Claimant from a list of qualified arbitrators who have agreed to serve provided by the Office of Dispute Resolution.

(e) *Conduct of arbitration.* The arbitration will be conducted in a manner determined by the arbitrator consistent with guidelines established by the Office of Dispute Resolution. The Office of Dispute Resolution will provide these guidelines upon request.

(f) *Hearings.* The arbitrator may convene a hearing at a location designated by the Office of Dispute Resolution. Whenever possible hearings shall be held in Los Alamos, New Mexico unless the parties jointly agree to a different location.

(g) *Decision.* After reviewing the evidence, the arbitrator shall render a decision in writing to the Claimant, the Director of OCGC and the Office of Dispute Resolution. The decision will be rendered no later than 10 Days after a hearing is concluded or 60 Days after the arbitration is initiated, whichever is earlier. The Office of Dispute Resolution may extend the time for a decision. The decision shall establish the compensation due to the Claimant, if any, and the reasons therefore.

(h) *Action on arbitration decision.* Upon receipt of the arbitration decision, the Office of Dispute Resolution shall provide the Claimant with a Release and Certification Form to obtain payment of any compensation awarded by the arbitrator.

(i) *Final decision.* The decision of the arbitrator shall be final and binding on all parties and shall not be subject to any administrative or judicial review. The arbitrator may correct clerical, typographical or computational errors as requested by the Office of Dispute Resolution.

(j) *Administration of arbitration.* The Office of Dispute Resolution shall serve as arbitration administrator and shall conclusively resolve any procedural disputes arising in the course of the arbitration. The Office of Dispute Resolution will pay the fees of the arbitrator

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and reimburse the arbitrator for arbitration related expenses unless the parties jointly agree otherwise.

§ 295.43 Judicial review.

As an alternative to arbitration, a Claimant dissatisfied with the outcome of an Administrative Appeal may seek judicial review of the decision by bringing a civil lawsuit against FEMA in the United States District Court for the District of New Mexico. This lawsuit must be brought within 60 Days of the date that appears on the Administrative Appeal decision. The court may only consider evidence in the Administrative Record. The court will uphold FEMA's decision if it is supported by substantial evidence on the record considered as a whole. Claimants awarded compensation in a final judgment, not subject to further review, must submit a Release and Certification Form to OCGC in order to receive payment.

Subpart F—Glossary

§ 295.50 Definitions

Administrative appeal means an appeal of the Authorized Official's Determination to the Director of OCGC in accordance with the provisions of Subpart E of these regulations.

Administrative record means all information submitted by the Claimant and all information collected by FEMA concerning the claim, which is used to evaluate the claim and to formulate the Authorized Official's Determination. It also means all information that is submitted by the Claimant or FEMA in an Administrative Appeal and the decision of the Administrative Appeal. It excludes the opinions, memoranda and work papers of FEMA's attorneys and drafts of documents prepared by OCGC personnel and contractors.

Authorized Official means an employee of the United States who is delegated with authority by the Director of OCGC to render binding determinations on claims and to determine compensation due to Claimants under the CGFAA.

Authorized Official's Determination means a report signed by an Authorized Official and mailed to the Claimant evaluating each element of the claim as stated in the Proof of Loss

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and determining the compensation, if any, due to the Claimant.

Claimant means a person who has filed a Notice of Loss under the CGFAA.

Claims Reviewer means an employee of the United States or an OCGC contractor or subcontractor who is authorized by the Director of OCGC to review and evaluate claims submitted under the CGFAA.

Days means calendar days, including weekends and holidays.

Household means a group of people, related or unrelated, who live together on a continuous basis and does not include members of an extended family.

Household Including Tribal Members means a Household that existed on May 4, 2000, which included one or more Tribal Members as continuous residents.

Indian tribe means an entity listed on the most recent list of federally recognized tribes published in the FEDERAL REGISTER by the Secretary of the Interior pursuant to the Federally Recognized Indian Tribe List Act, 25 U.S.C. 479a, or successor legislation.

Injured Person means an individual, regardless of citizenship or alien status, an Indian tribe, corporation, tribal corporation, partnership, company, association, cooperative, joint venture, limited liability company, estate, trust, county, city, State, school district, special district or other non-Federal entity that suffered Injury resulting from the Cerro Grande Fire and any entity that provided insurance to an Injured Person. The term Injured Person includes an Indian tribe with respect to any claim relating to property or natural resources held in trust for the Indian tribe by the United States. Lenders holding mortgages or security interests on property affected by the Cerro Grande fire and lien holders are not "Injured Persons" for purposes of the CGFAA.

Injury means "injury or loss of property, or personal injury or death," as that phrase appears in the Federal Tort Claims Act, 28 U.S.C. 1346(b)(1).

Mitigation Compensation Plan means a written mitigation plan submitted by a local government with land use regulatory authority or by an Indian tribe that recommends specific mitigation

measures to reduce the heightened risks of wildfire, flood or other natural hazards resulting from the Cerro Grande Fire or seeks compensation for the cost of such measures expended before August 28, 2000, or both. The Mitigation Compensation Plan may address property specific mitigation measures and community level mitigation measures.

Notice of Loss means a form supplied by OCGC through which an Injured Person makes a binding, conclusive and irrevocable election to have all Injuries resulting from the Cerro Grande Fire reviewed by FEMA for possible compensation under the CGFAA.

Office of Dispute Resolution means the Office established by FEMA to promote use of Alternative Dispute Resolution as a means of resolving disputes. The address of the Office of Dispute Resolution is Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Proof of Loss means a statement, signed by a Claimant under penalty of perjury and subject to the provisions of 18 U.S.C. 1001 that the claim is true and correct, attesting to the nature and extent of the Claimant's injuries.

Public Assistance Program means the FEMA program established under Subchapter IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5121, *et seq.*, which provides grants to States, local governments, Indian tribes and private nonprofit organizations for emergency measures and repair, restoration and replacement of damaged facilities.

Release and Certification Form means a document in the manner prescribed by §104(e) of the CGFAA that a Claimant must complete and return in order to receive payment of compensation awarded pursuant to the CGFAA.

Subsistence Resources means food and other items obtained through hunting, fishing, firewood and other resource gathering, timbering, grazing or agricultural activities undertaken by the Claimant without financial remuneration.

Tribal Member means an enrolled member of an Indian Tribe.

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