

## § 295.11

that all Injured Persons on whose behalf the claim is presented are identified.

(c) The Notice of Loss must be signed by each Claimant, if the Claimant is an individual or by a duly authorized legal representative of each Claimant, if the Claimant is an entity or an individual who lacks the legal capacity to sign the Notice of Loss. 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 OCGFC by request. They may be obtained through the mail, in person at the OCGFC 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 OCGFC by mail to P.O. Box 1480, Los Alamos, NM 87544-1480. OCGFC is unable to accept Notices of Loss submitted by facsimile or e-mail.

(f) A Notice of Loss that is completely filled out and properly signed is deemed to be filed on the date it is received by OCGFC.

### § 295.11 Deadline for notifying FEMA of losses.

The deadline for filing a Notice of Loss is August 28, 2002. Except as provided in § 295.21(d) with respect to mitigation and in § 295.31(b) with respect to the lump sum payment described therein, a Loss that has not been described on a Notice of Loss, on a supplement to a Notice of Loss or a request to supplement a Notice of Loss under § 295.33, or a request to reopen a claim under § 295.34, received by OCGFC on or before August 28, 2002 cannot be compensated under the CGFAA. 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) 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.

(c) 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 OCGFC that is filed with OCGFC not later than October 27, 2000. OCGFC 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. A Subrogation Notice of Loss may not be filed until the insurer or other party with the rights of a subrogee has made all payments that it believes the Injured Person is entitled to receive for Cerro Grande Fire related losses under the terms of the insurance policy or other agreement between the insurer or other party with the rights of a subrogee and the Injured Person. By filing a Subrogation Notice of Loss for any subrogated claim, the insurer or third party elects the CGFAA as its exclusive 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 OCGFC. FEMA will evaluate subrogation claims on their merits. FEMA may reimburse insurers and other third parties with the rights of a subrogee for reasonable payments made to an Injured Party on or before October 25, 2000, which exceeded or were not required by the terms of the insurance policy or other agreement creating a right of subrogation. FEMA will not reimburse insurers and other third parties with the rights of a subrogee for payments made to an Injured Party after October 25, 2000 that exceeded or are not required by the terms of the insurance policy or other agreement creating a right of subrogation.

#### § 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 a Loss 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 Losses 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 take reasonable steps to mitigate

(reduce) their damages, if possible, as required by New Mexico tort law.

(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, statutory damages under § 30-32-4 of the New Mexico Statutes Annotated (1978), interest on claims, attorney’s fees and agents’ fees incurred in prosecuting a claim under the CGFAA or an insurance policy, adjusting costs incurred by an insurer or other third party with the rights of a subrogee, and taxes that may be owed by a Claimant as a consequence of receiving an award are not recoverable from FEMA. The cost to a Claimant of prosecuting a claim under the CGFAA does not constitute compensatory damages and is not recoverable from FEMA, except as provided in § 295.31(b).

(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 will be Discounted to Present Value.

(d) *Destruction of home—(1) Home and contents.* 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 community in which the home existed before the fire and current building codes and standards. Compensatory damages may also include the cost of removing debris and burned trees, stabilizing the land, replacing household contents, and compensation for any decrease in the value of land on which the structure sat pursuant to paragraph (e) of this section. (2) *Trees and landscaping.* Compensation for the Replacement Cost of destroyed trees and landscaping will be limited to 25% of the pre-fire value of the structure and lot.

(3) *Mitigation.* If requested by a Claimant, FEMA may compensate a Claimant for 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