

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