

rules under which hearings will be conducted will be established by the Director of OCGFC. Formal rules of evidence applicable to court proceedings will not be used in hearings under this subsection. 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 OCGFC will close the Administrative Record and render a written decision on the Administrative Appeal. The Director of OCGFC's decision on the Administrative Appeal will 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. If the Claimant concurs with the Director's determination, payment of any additional damages awarded by the Director will be made to the Claimant upon receipt of a properly executed 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, Alternate Dispute Resolution Office, Federal Emergency Management Agency, 500 C Street, SW., room 214, Washington, DC 20472 on a form provided by OCGFC. 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 before the time a decision is rendered, either party may request in writing that the Alternate Dispute Resolution Office 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 Alternate Dispute Resolution Office will stay the arbitration and appoint a mediator at our expense. The stay may be terminated and the arbitration resumed upon written request of either party to the Alternate Dispute Resolution Office. If the dispute is settled, the Alternate Dispute Resolution Office will issue an order terminating the arbitration and provide the Claimant with a Release and Certification Form.

(d) *Selection of arbitrator.* Arbitrators will be selected from a list of qualified arbitrators who have agreed to serve provided by the Alternate Dispute Resolution Office. If the amount in dispute is \$300,000 or less, the arbitration will be decided by one arbitrator selected by the Claimant from the list. If the amount in dispute exceeds \$300,000, a panel of three arbitrators selected at random by the Alternate Dispute Resolution Office will decide the arbitration.

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

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

(g) *Decision.* After reviewing the evidence, the arbitrator(s) will render a decision in writing to the Alternate Dispute Resolution Office. The Alternate Dispute Resolution Office will transmit the decision to the Claimant and the Director of OCGFC. If a panel

## § 295.43

of three arbitrators conducts the arbitration, at least two of the three arbitrators must sign the decision. 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 Alternate Dispute Resolution Office may extend the time for a decision. The decision will establish the compensation due to the Claimant, if any, and the reasons therefore.

(h) *Action on arbitration decision.* The Alternate Dispute Resolution Office will forward the arbitration decision and a Release and Certification Form to the Claimant. A Claimant who has received or who has been awarded any compensation under the CGFAA must sign and return the Release and Certification Form, regardless of whether any additional compensation is awarded by the arbitration. Additional compensation awarded in the arbitration will be paid to the Claimant after the signed Release and Certification Form is received.

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

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

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trative Record. The court will uphold our decision if it is supported by substantial evidence on the record considered as a whole. If the judge has awarded damages over and above those previously paid, FEMA will cause the damages to be paid to the Claimant upon receipt of the Release and Certification Form or as otherwise specified by order of the court. Claimants who have received any compensation under the CGFAA must return a Release and Certification Form as provided in § 295.30(c), regardless of whether the court awards additional compensation.

## Subpart F—Glossary

### § 295.50 Definitions

*Administrative Appeal* means an appeal of the Authorized Official's Determination to the Director of OCGFC 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 our attorneys and drafts of documents prepared by OCGFC personnel and contractors.

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

*Authorized Official* means an employee of the United States who is delegated with authority by the Director of OCGFC 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