

## § 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

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 OCGFC contractor or subcontractor who is authorized by the Director of OCGFC to review and evaluate claims submitted under the CGFAA.

*Days* means calendar days, including weekends and holidays.

*Destruction of a Home* means destruction or physical damage to a residence or the land upon which it sat, resulting from the Cerro Grande Fire.

*Discount to Net Present Value* means a reduction of an award for damages arising in the future by making allowance for the fact that such award, if properly invested would earn interest.

*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 who do not regularly and continuously cohabit.

*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 Loss 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.

*Loss* 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), and the several categories of "property loss," "business loss" or "financial loss" set out in the §104(d) of the CGFAA.

*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 OCGFC through which an Injured Person makes a binding, conclusive and irrevocable election to have all Losses resulting from the Cerro Grande Fire reviewed by FEMA for possible compensation under the CGFAA.

*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.

*Replacement Cost* means the cost of replacing an item that is damaged or destroyed with an item that is comparable in quality and utility.

*Release and Certification Form* means a document in the manner prescribed by §104(e) of the CGFAA that all Claimants who have received or are awarded compensatory damages under the CGFAA must execute and return to OCGFC as required by §295.30(c).

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*Subsistence Resources* means food and other items obtained through hunting, fishing, firewood and other resource gathering, timbering, grazing or agricultural activities undertaken by the

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Claimant without financial remuneration.

*Tribal Member* means an enrolled member of an Indian Tribe.

**PARTS 296-299 [RESERVED]**