

## § 295.32

they incur in providing appraisals, or other third-party opinions, requested by OCGFC. FEMA will not reimburse Claimant for the cost of appraisals, or other third party opinions, not requested by OCGFC.

(b) FEMA will provide a lump sum payment for incidental expenses incurred in claims preparation to individual and business Claimants that are awarded compensatory damages under the CGFAA after a properly executed Release and Certification Form has been returned to OCGFC. The amount of the lump sum payment will be the greater of \$100 or 5% of CGFAA compensatory damages and insurance proceeds recovered by the Claimant for Cerro Grande Fire related losses (not including the lump sum payment or monies reimbursed under the CGFAA for the purchase of flood insurance), but will not exceed \$15,000. No more than one lump sum payment will be made to all Claimants in a Household, regardless of whether the Household filed separate or combined Notices of Loss. The following Claimants will not be eligible to receive the lump sum payment: subrogation Claimants and Claimants whose only Cerro Grande Fire related loss is for flood insurance premiums.

### § 295.32 Determination of compensation due to claimant.

(a) *Authorized Official's report.* After OCGFC 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.

(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 to receive payment on their claims (except for partial payments). The Claimant will receive payment of compensation awarded by the Authorized Official after FEMA re-

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ceives 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 no 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 OCGFC 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 before signing a Proof of Loss. After the Claimant has submitted a Proof of Loss and before submission of the Release and Certification Form, a Claimant may request that the Director of OCGFC consider one or more Losses not addressed in the Proof of Loss. The request must be submitted in writing to the Director of OCGFC and received not later than the deadline for filing an Administrative Appeal under § 295.32 or August 28, 2002, whichever is earlier. It must be supported by the Claimant's explanation of why the Loss was not previously reported. If good cause is found to consider the additional loss, the Director will determine whether compensation is due to the Claimant for the Loss under the Administrative Appeal procedures described in § 295.41.

### § 295.34 Reopening a claim.

(a) The Director of OCGFC may reopen a claim if requested to do so by the Claimant, notwithstanding the submission of the Release and Certification Form, for the limited purpose of considering issues raised by the request to reopen if:

(1) The Claimant desires mitigation compensation and the request to reopen is filed not later than August 28, 2003 in accordance with § 295.21(d) or (h); or

(2) The Claimant closed the sale of real property not later than August 28, 2002 and wishes to present a claim for reduction in the value of the real property under § 295.21(e) and the request to

reopen is filed not later than August 28, 2002; or

(3) The Claimant has incurred Replacement Costs under § 295.21(d) in excess of those previously awarded and is not prohibited by the terms of an agreement pertaining to home replacement with OCGFC from requesting that the case be reopened; or

(4) The Director of OCGFC otherwise determines that Claimant has demonstrated good cause.

(b) The Director of OCGFC may establish a deadline by which requests to reopen under paragraphs (a)(3) or (4) of this section must be submitted. The deadline will be published as a notice in the FEDERAL REGISTER and broadly disseminated throughout the communities, pueblos and Indian reservations in Los Alamos, Rio Arriba, Sandoval, and Santa Fe Counties.

#### § 295.35 Access to records.

For purpose of audit and investigation, a Claimant will 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 arbitra-

tion or seek judicial review following an Administrative Appeal.

#### § 295.41 Administrative appeal.

(a) *Notice of appeal.* A Claimant may request that the Director of OCGFC 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 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.* OCGFC will acknowledge the receipt of appeals that are timely filed. Following the receipt of a timely filed appeal, the Director of OCGFC 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 when the appeal is filed. The Director of OCGFC 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 OCGFC 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 OCGFC may schedule a conference to gain a better understanding of the issues or to explore settlement possibilities.

(g) *Hearings.* The Director of OCGFC may exercise the discretion to convene an informal hearing to receive oral testimony from witnesses or experts. The