

**FEDERAL EMERGENCY  
MANAGEMENT AGENCY****44 CFR Chapter I and Part 295**

RIN 3067-AD12

**Disaster Assistance: Cerro Grande Fire  
Assistance**

**AGENCY:** Office of Cerro Grande Fire Claims, Federal Emergency Management Agency (FEMA).

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule sets out the procedures for applicants to obtain assistance for injuries and property damage resulting from the Cerro Grande fire.

**DATES:** *Effective date:* August 28, 2000.

*Comments date:* Please submit comments to FEMA on or before October 27, 2000.

**ADDRESSES:** Please send comments in writing to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, or (email) [rules@fema.gov](mailto:rules@fema.gov). Please type or print in ink, and cite, where possible, the sections and paragraphs in this interim final rule to which each comment refers.

**FOR FURTHER INFORMATION CONTACT:** For information on the rulemaking process, please contact Nathan Bergerbest, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (202) 646-2685, (telefax) (202) 646-4536, or (email) [nathan.bergerbest@fema.gov](mailto:nathan.bergerbest@fema.gov).

For claims forms and customer service information, please contact the Office of Cerro Grande Fire Claims, P.O. Box 1480, Los Alamos, NM 87544-1480, telephone 1-888-748-1853.

**SUPPLEMENTARY INFORMATION:****I. Background**

On July 13, 2000 President Clinton signed into law the Cerro Grande Fire Assistance Act (CGFAA), incorporated as Division C of Public Law 106-246, the Military Construction Appropriations Act for Fiscal Year 2001. The Congress passed the Act to compensate as fully as possible those parties who suffered injuries and damages from the Cerro Grande Fire.

The Cerro Grande fire resulted from a prescribed fire ignited on May 4, 2000, by National Park Service fire personnel at the Bandelier National Monument, New Mexico under an approved prescribed fire plan. This fire burned approximately 47,750 acres in four counties and two Indian Pueblos, and

destroyed over 200 residential structures.

The CGFAA requires FEMA to design and administer a program for fully compensating those who suffered personal injury, property losses, business losses and financial losses resulting from the Cerro Grande Fire.

In keeping with the letter and spirit of the legislation, FEMA intends to administer the CGFAA program with the utmost sensitivity for those who suffered from the fire. Our goal is to compensate Claimants for actual damages to the full extent permitted under the legislation.

**II. Regulatory Approach**

The CGFAA requires that FEMA publish implementing regulations within 45 days of the date upon which the law was enacted. As permitted by the Administrative Procedure Act this regulation is being published as an interim final rule. FEMA will accept comments on the Interim Final Rule for a period of 60 days. After the close of the comment period we will review the comments, make changes to the rule based on the comments and our experience administering the interim final rule, and will publish a final rule.

FEMA regrets that there was not enough time for a formal public notice and comment period prior to the publication of this rule. However, we want to assure prospective Claimants that this rule was not drafted in a vacuum. The drafting team reviewed the floor statements by members of the New Mexico congressional delegation and news accounts from the Los Alamos Monitor, the Santa Fe New Mexican, the Albuquerque Journal and the Albuquerque Tribune. The team also considered unsolicited letters submitted to the Rules Docket Clerk by fire survivors and others.<sup>1</sup> David L. de Courcy, the designated Director of the Office of Cerro Grande Fire Claims, met with representatives of the State of New Mexico, the Pueblo of San Ildefonso and the Pueblo of Santa Clara, the four counties most immediately affected and the Cerro Grande Fire Survivors Association, to obtain input. FEMA also consulted with a number of Federal agencies, including the Department of

<sup>1</sup> We will respond to these comments and suggestions in the preamble to the final rule. All letters submitted to the Rules Docket Clerk will be considered in preparing the final rule. Letters addressed to other FEMA personnel may not be entered into the Rules Docket. To be sure that your comments are considered in preparation of the final rule they should be mailed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW, room 840, Washington, DC 20472, or sent by e-mail to [rules@fema.gov](mailto:rules@fema.gov).

Energy, the Department of the Interior and the Small Business Administration.

**Sectional Analysis**

This is the portion of the preamble that discusses each subpart of the rule and explains the intent of selected sections. Terms that are capitalized in this part of the preamble are defined in Subpart F—§ 295.50 of the rule.

We invite comments on whether further explanation of any of the sections in the rule is needed, whether or not we discuss the section in the preamble.

**Subpart A—Overview of the Claims Process**

Subpart A provides an overview of the claims process established by the remainder of this rule.

**Subpart B—Bringing a Claim Under the CGFAA**

Subpart B explains procedural issues involved in filing a claim under the CGFAA. The act requires that Claimants make a binding, irrevocable choice to present all of their claims against the United States through one of three mechanisms. These mechanisms are (i) the CGFAA or (ii) the Federal Tort Claims Act or (iii) bringing a civil lawsuit against the United States (if authorized by another law). The only way to bring a claim under the CGFAA is to file a Notice of Loss with FEMA. FEMA can provide you with information on the CGFAA.

Before passage of the CGFAA, the National Park Service opened a claims information office in Los Alamos. Potential claimants were encouraged to submit a Claims Information Form describing the nature and extent of their fire-related losses. These forms clearly stated that a person who submits a form has not made a claim against the United States. Anyone who submitted a Claims Information Form to the National Park Service is eligible to make a claim under the CGFAA, but must file a Notice of Loss with FEMA in order to do so.

National Park Service claims personnel reported that some people desired to immediately file a Federal Tort Claims Act claim before they were aware of the option to bring a claim under the CGFAA. Section 295.12(d) of this rule provides anyone who filed a Federal Tort Claims Act claim prior to August 28, 2000 with the opportunity to withdraw it not later than October 2, 2000 and to proceed under the CGFAA. The same opportunity is extended to anyone who brought a civil action against the United States prior to August 28, 2000 and is dismissed as a party by October 27, 2000. However, anyone who

files a Federal Tort Claims Act claim or a civil action against the United States for fire-related claims on or after August 28, 2000 is barred from filing a Notice of Loss under the CGFAA and must seek compensation under one of the other mechanisms.

FEMA has also decided to allow anyone who submits a Notice of Loss on or before October 1, 2000 to withdraw it not later than October 1, 2000. This grace period was provided out of concern that some people may submit a Notice of Loss under the CGFAA before they have had an opportunity to read these regulations and learn more about the program. Anyone who withdraws a Notice of Loss on or before October 1, 2000 will be permitted to re-file under the CGFAA at a later date or pursue one of the other available remedies.

Section 295.13 describes the procedures to be used by insurers (or other third parties with the rights of a subrogee) for submitting subrogation claims. The procedures described in subsections (c) through (f) of § 295.10 apply with equal vigor to subrogation claims. No subrogation claim will be considered unless the submitting party elects the CGFAA as its exclusive mechanism for seeking compensation from the United States for all Cerro Grande Fire-related subrogation claims and any other Cerro Grande Fire-related losses.

Section 295.14 prohibits assignment of claims. It also prohibits assignment of the right to receive payment for claims. FEMA intends to make CGFAA compensation payments only to the injured Claimant.

#### *Subpart C—Allowable Compensation*

Subpart C describes the compensation available under the CGFAA. Section 104(c)(3) of the CGFAA limits payments under the act to “actual compensatory damages measured by injuries suffered.” Section 295.21(a) of the rule defines the term “compensatory damages.” We view the terms “compensation,” “damages” and “compensatory damages” under the CGFAA as synonyms and use them interchangeably in the rule. FEMA may only compensate Claimants for damages that resulted from the Cerro Grande Fire.

Section 295.21(b) provides that FEMA will not reimburse Claimants for attorney fees or agent fees. Our treatment of attorney and agent fees is consistent with § 104(j) of the CGFAA. Section 104(j) limits the fees that an attorney or agent may charge a client. It does not provide that FEMA will reimburse Claimants for attorney or agent fees. Section 291.21(b) also

provides that FEMA will not reimburse Claimants for taxes due as a consequence of receiving a payment under the CGFAA. Claimants are advised to consult with their tax advisors about whether any taxes will be due as a consequence of receiving a CGFAA payment. FEMA cannot provide tax information or advice.

Sections 295.21(d) through (i) explain how FEMA plans to approach the types of claims that we expect to encounter most frequently. We made a deliberate choice to address some, but not all, of the several categories of damages allowable under Section 104(d)(4) of the Act. The reader should not infer an intention to limit the right of Claimants from this decision. Claimants may recover all damages allowable under Section 104(d)(4) of the Act. We also chose not to speculate about damage theories that cannot be accommodated under the CGFAA. We invite your comments on this approach.

We encourage Claimants to include all of their fire-related losses in the claim. Each claim will be reviewed on its unique facts and merits. Generally speaking, we will determine compensatory damages in accordance with the laws of the State of New Mexico, unless the CGFAA is more generous. If we deny a claim, we will explain our reasons for doing so.

Section 295.21(d) explains our approach to calculating “replacement costs” for those who lost their homes. Replacement cost means whatever it reasonably costs a homeowner to restore his or her home and lot to pre-fire condition. We will calculate replacement costs using post-fire construction costs in northern New Mexico. We will compensate homeowners to rebuild their dwellings in accordance with whatever building codes and standards are applicable at the time that their claim is processed, regardless of whether the destroyed dwelling was in compliance with codes and standards before the fire.

FEMA plans to make a replacement cost award to each Claimant whose home was destroyed by the fire, whether or not the homeowner elects to rebuild. The homeowner is free to spend this money as he or she sees fit. In order to process claims within the six-month time frame anticipated by the CGFAA, FEMA may be required to estimate a homeowner's replacement costs well before construction is completed. Homeowners who decide to rebuild and later find that their actual replacement costs exceeded FEMA's estimate may supplement or reopen their claims under §§ 295.33 and 295.34 of this rule. We request comments on how long a

period should be allowed for homeowners to be able to reopen their claims for this purpose.

Compensation for mitigation under § 295.21(d) is only available for homeowners who elect to rebuild. FEMA may award compensation over and above replacement costs for the cost of mitigation measures that will reduce the property's vulnerability to future risks of wildfire, flood or other natural hazard related to the Cerro Grande Fire. Homeowners are encouraged to consider rebuilding to the standards contained in the International Building Code 2000 and the Uniform Fire Code 2000, regardless of whether these codes have been adopted in their communities. Homeowners who wish to avail themselves of the opportunity to receive a mitigation award must notify FEMA well in advance of beginning construction. Any applicable environmental or historic preservation review of the homeowner's proposed mitigation expenditure must be completed before construction starts.

Section 295.21(i) addresses compensation to Indian tribes, Tribal Members and households that include one or more Tribal Members for subsistence losses. Section 295.21(i) does not address the right of Indian tribes to seek compensation for tribal property that was damaged or destroyed by the fire. These losses may be more appropriately characterized as “property losses,” “business losses” or “financial losses,” (rather than subsistence losses) and may be compensated under other provisions of the CGFAA. However, FEMA would appreciate comments directed to this issue. The definition of Injured Person that appears in § 295.50 establishes that Indian tribes that suffered losses resulting from the Cerro Grande Fire may seek compensation under the CGFAA, notwithstanding that title to the property affected by the fire may be held in trust for the tribe by the United States.

During the fire and its immediate aftermath, many individuals, charitable organizations, businesses, and other entities made voluntary donations of cash, goods, and services to assist the fire fighting and fire recovery effort and to help those affected by the fire. We request comment on whether there are any circumstances in which these voluntary contributions should be treated as “losses” appropriate for compensation under the CGFAA.

Section 295.21(j) addresses various duplication of benefits issues. Claimants are not required to submit their claims to their insurance company nor are they required to pursue a settlement from their insurance company after filing a

CGFAA claim. We encourage Claimants to continue to pursue their insurance claims because this may expedite the process of reconstructing documentation that will be helpful to the CGFAA process. If a Claimant has received or expects to receive a payment from an insurance company, the actual or anticipated payment must be disclosed.

#### *Subpart D—Claims Evaluation*

Subpart D explains what will happen after the claim is filed. It explains how claims are to be documented, how we will evaluate the claim and how Claimants can obtain payment if they agree with our evaluation.

Section 295.30 explains our approach to documentation of losses. Early in the process we expect the Claimant and the Claims Reviewer to confer on a strategy for documenting the claim. Flexibility is key. We expect that Claimants will provide whatever documentation is reasonably available. FEMA recognizes that some of a Claimant's documentation may have been destroyed by the fire. Claims Reviewers will assist Claimants in locating documentation that may be available from third-party sources. Claimants may be asked to sign release forms authorizing our Claims Reviewers to obtain information and documentation from third-party sources.

Early in the process, Claimants should also discuss with the Claims Reviewer whether FEMA will require an appraisal or other third-party opinion of value to evaluate a claim. FEMA may order appraisals and third-party opinions directly or request the Claimant to obtain them. Section 295.31 provides that if FEMA requests the Claimant to provide an appraisal or other third party opinion then FEMA will reimburse the Claimant for the reasonable cost of obtaining it.

Section 295.32 explains how FEMA will evaluate claims. Claims Reviewers do not have the authority to determine whether a claim is eligible for compensation or how much compensation will be paid. Their role is to work with the Claimant to obtain relevant evidence, analyze the evidence and make a recommendation to an Authorized Official. Only the Authorized Official has the authority to decide claims.

When the Authorized Official has decided a claim he or she will send a written notification to the Claimant's address as it appears in the Office of Cerro Grande Fire Claims records. The date that appears on this notification starts a 120-day clock during which a Claimant must either accept the finding

or appeal it. The procedure for appealing an Authorized Official's Determination is explained in § 295.41. If the Claimant has not acted at the end of this period he or she may forfeit further rights to appeal. The Director of the Office of Cerro Grande Fire Claims may modify this deadline if good cause exists.

Section 104(d)(1)(A)(i) of the Act requires that FEMA determine and fix the amount to be paid for a claim within 180 days after the claim is submitted. To meet this deadline FEMA may ask Claimants to sign the Proof of Loss and require that our Authorized Officials render a definitive determination more expeditiously than some Claimants would prefer. We understand that some prospective Claimants would like to receive a partial payment on their claims but delay FEMA's definitive determination until they can completely inventory their losses or estimate their damages. Sections 295.33 and 295.34 are intended to address these concerns.

Section 295.33 provides the flexibility for a Claimant to make additional claims after submitting a Proof of Loss. Section 295.34 provides for reopening a claim after the Claimant has submitted a Release and Certification Form. We invite your comments about whether these provisions adequately address your concerns. Section 104(b) of the Act suggests that we cannot reimburse Claimants for losses that are brought to our attention after August 28, 2002, except for mitigation costs that may be incurred until August 28, 2003 under a more specific provision of the Act. We invite your comments on whether FEMA has reasonably interpreted the CGFAA as establishing August 28, 2002 as a firm deadline by which Claimants must notify FEMA of the amount of their total Cerro Grande Fire-related losses (except for mitigation costs).

Section 295.35 requires that Claimants grant FEMA's Office of the Inspector General and the General Accounting Office access to the subject property and to records and information in their control that is relevant to their claims for purposes of investigation and audit. The CGFAA requires that the General Accounting Office, a legislative branch agency, audit claims and payments made under the CGFAA. FEMA's Office of the Inspector General is responsible for investigating charges of fraud and abuse and auditing FEMA's programs.

Section 295.36 addresses confidentiality of information provided by Claimants. The Privacy Act protects the confidentiality of information provided by individual Claimants. This information may only be disclosed with

the consent of the Claimant or pursuant to a routine use, which has been disclosed to the public. FEMA has published a separate notice in today's **Federal Register** that addresses Privacy Act protection for records maintained by the Office of Cerro Grande Fire Claims. Confidential, proprietary and trade secret information provided by entities, such as businesses, tribes and government agencies, are not eligible for Privacy Act protection but may be exempt from disclosure under the Freedom of Information Act. Non-individual Claimants are encouraged to discuss the need to protect confidential information from disclosure with FEMA before the information is submitted. FEMA may not be able to prevent the disclosure of this information unless we are aware of its confidential nature.

#### *Subpart E—Dispute Resolution*

Subpart E discusses a Claimant's rights if he or she disagrees with our evaluation of the claim. Claimants are afforded a right to appeal our initial determination to the Director of the Office of Cerro Grande Fire Claims. This is referred to as an Administrative Appeal. If the Claimant is dissatisfied with the Administrative Appeal decision he or she may put the matter to binding arbitration or seek judicial review in federal court.

Section 295.41 describes the Administrative Appeal process. If a Claimant disagrees with the conclusions of FEMA's Authorized Official under § 295.32 he or she must pursue an Administrative Appeal before initiating arbitration or seeking judicial review. Only the Administrative Appeal decision constitutes the final decision of the Director for purposes of Section 104(d)(2)(B) and 104(i)(1) of the Act. The Office of Cerro Grande Fire Claims plans to establish a voluntary mediation option for Claimants that would prefer to seek a negotiated settlement of the claim.

Section 295.41(d) allows the Claimant to present any relevant factual evidence concerning the issues under appeal, even if it was not presented earlier. FEMA requests that Claimants provide the Claims Reviewer with all relevant evidence supporting the claim. Our goal is to render equitable compensation decisions the first time, not to encourage Administrative Appeals or further proceedings.

We note that while § 295.41(d) allows Claimants to submit factual evidence in support of their claim for the first time in the Administrative Appeal, Claimants who wish to raise new claims or damage theories after submitting a Proof of Loss should ask the Director of the Office of

Cerro Grande Fire Claims to supplement their claim under § 295.33 of these regulations.

Section 104(h)(3) of the CGFAA requires that FEMA establish procedures under which a dispute regarding a claim may be settled by arbitration. Section 295.42 establishes these procedures. Any issue decided in an Administrative Appeal may be referred to binding arbitration. Arbitration decisions are not subject to any further appeal or review and are binding on the Claimant and on FEMA. Section 295.42(d) provides that one arbitrator will hear disputes. FEMA considered the alternative of using panels of three arbitrators. After consulting with alternative dispute resolution experts in the public and private sectors our Office of Dispute Resolution determined that disputes involving \$5 million or less are rarely decided by more than one arbitrator. FEMA anticipates that most claims submitted under the CGFAA will fall well below this threshold. We invite your comments on whether the size and composition of arbitration panels should vary depending upon the amount in dispute or the complexity of the issues.

Section 295.43 discusses judicial review of the Administrative Appeal decision. Claimants should be aware that the § 104(i)(3) of the CGFAA requires that the court uphold the Administrative Appeal decision if it is supported by substantial evidence on the record considered as a whole.

#### **Administrative Procedure Act Determination**

Section 104(f)(1) of the CGFAA, requires that notwithstanding any other provision of law, not later than 45 days after the date of enactment of this Act the Director of FEMA is to publish interim final regulations for the processing and payment of claims under the Act. In order to comply with that mandate and in order to expedite the receipt and processing of Cerro Grande fire assistance applications, FEMA is publishing this interim final rule without opportunity for prior public comment under the Administrative Procedure Act (APA), 5 U.S.C. 553. In accordance with 5 U.S.C. 553(d)(3) I find that there is good cause for the interim final rule to take effect immediately upon publication in the **Federal Register** in order to meet the urgent needs of those injured as a result of the Cerro Grande fire and to comply with the mandates of the Cerro Grande Fire Assistance Act..

We invite comments of the public on this interim final rule. Please send

comments to FEMA in writing on or before Friday, October 27, 2000. After we have reviewed and evaluated the comments we will publish a final rule as required by the APA.

#### **National Environmental Policy Act**

This interim final rule involves claims and payment of claims to persons injured as a result of the Cerro Grande fire. Such claims will be paid with no substantive relation to the claimants' subsequent use of the money for prescribed activities and with no limitations on how claimants will use the money. Such activities under the rule are not subject to the National Environmental Policy Act (NEPA).

The interim final rule provides for compensation to mitigate future damages. We cannot identify what those expenditures will be and cannot perform a NEPA review at this stage. As claimants propose mitigation expenditures each will be subject to NEPA review. We have not prepared an environmental assessment of this interim final rule.

#### **Paperwork Reduction Act.**

This interim rule contains several information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Under the Paperwork Reduction Act, a person may not be penalized for failing to comply with an information that does not display an currently valid OMB control number.

FEMA submitted to OMB for emergency approval the Notice of Loss form (see below) to allow FEMA to begin accepting claims prior to publication of these regulations. On August 9, 2000, OMB assigned the Notice of Loss information collection OMB control number 3067-0280, expiring on November 30, 2000. FEMA will resubmit the Notice of Loss information collection for a three-year approval after the 60-day comment period, in accordance with the procedures described in 5 CFR 1320.12. FEMA will separately request approval for the other information collections in this interim rule, as required by 5 CFR 1320.12. FEMA will not implement these other information collection requirements until OMB approves them and assigns them an OMB control number. FEMA will publish a separate **Federal Register** notice when the information collections are submitted to OMB and again when OMB has approved them.

FEMA therefore requests comments on the information collections in this interim final rule.

*Supplementary Information.* This collection is in accordance with FEMA's responsibilities under 44 CFR 295 to provide assistance to claimants who were injured as a result of the Cerro Grande fire. The funds that we provide will help to alleviate the suffering and damage that resulted from the Cerro Grande fire.

#### *Collection of Information.*

*Title.* Cerro Grande Fire Assistance Claims.

*Type of Information Collection.* New. (1) *Information Collection.*

(i) Notice of Loss under the Cerro Grande Fire Assistance Act.

#### *Abstract.*

(1) *Notice of Loss.* The Notice of Loss under the Cerro Grande Fire Assistance Act is a form through which a claimant makes a binding, conclusive and irrevocable election to have all Injuries resulting from the Cerro Grande Fire reviewed by FEMA for possible compensation under the CGFAA.

(2) *Subrogation Notice of Loss.* The Subrogation Notice of Loss under the Cerro Grande Fire Assistance Act is a form through which an insurance company makes a binding, conclusive and irrevocable election to have all subrogation claims of the company resulting from the Cerro Grande Fire reviewed by FEMA for possible compensation under the CGFAA.

(3) *Release and Certification Form.* The Release and Certification form is a document prescribed by § 104(e) of the CGFAA that a Claimant must complete and return in order to receive payment of compensation awarded pursuant to the CGFAA. We invite comments on whether this form is a collection of information or an affidavit exempted from the Paperwork Reduction Act.

(4) *Interview.* Once a Claimant files a Notice of Loss, the Claimant and the Claims Reviewer will meet to discuss the nature of the loss sustained by the Claimant, the documentation that the Claimant has or can obtain, insurance claims made, to be made, or insurance payments that the Claimant has received, and additional documents, such as affidavits, that FEMA may need to substantiate the claims. FEMA estimates that this interview will take 1.5–2 hours, on average, and further estimates it will interview approximately 18,000 claimants, for a total hourly burden of 27,000 to 36,000 hours.

(5) *Documentation of Claims.* Following the interview the Claimant and the Claims Reviewer will work both independently and together to obtain the documentation needed to substantiate the claims. We are not able to estimate with reasonable accuracy the

burden that this places on the Claimant. In many, if not most cases involving private homes we expect that Claimants will have information on their insurance coverage for their home and any vehicles, but generally will not have inventories or appraisals of the contents of their homes. In many cases, records of the contents of the homes may have been destroyed in the fire. For purposes

of this Act, we are estimating that eligible claimants will average 20 hours in order to document their losses, for a total hourly burden of 360,000 hours.

(6) *Proof of Loss.* The Proof of Loss form is a statement, signed by a Claimant under penalty of perjury and subject to the provisions of 18 U.S.C. 1001 that the claim in true and correct, attesting to the nature and extent of the Claimant's injuries.

*Affected Public:* State, local and tribal governments, private sector businesses, not-for-profit organizations, and individuals and households. The forms are used to allow claimants to apply for compensation under the Cerro Grande Fire Assistance Act.

*Estimated Total Annual Burden Hours.*

Type of collection	Number of respondents	Avg. hours per response	Avg. annual burden hours
Notice of loss .....	18,000	.75	13,500
Subrogation notice of loss .....	12,000	1.5	18,000
Interview .....	18,000	1.5-2	27,000-36,000
Documentation of claims .....	18,000	20	360,000
Proof of loss .....	18,000	0.5	9,000

*Estimated Cost.* FEMA has not calculated the costs associated with this collection due to the emergency nature of the funding availability and claim approval process.

*Other Forms and Documentation.* FEMA will require other forms, such as Proof of Loss, Release and Certification, and other collections of information, including documentation for claims and mitigation expenditures, and interviews. We will process these collections of information when developed under OMB's clearance procedures in accordance with OMB regulations.

*Comments:* We ask for written comments to: (a) Evaluate whether the proposed data collection is necessary for the Agency's proper performance of the program, including whether the information will have practical utility; (b) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Please send comments on or before October 27, 2000.

**ADDRESSES:** Interested persons should submit written comments to the Desk Officer for the Federal Emergency Management Agency, Office of Management and Budget, Office of Information and Regulatory Affairs, 725—17th Street, NW., Washington, DC 20503 on or before Wednesday, September 27, 2000. We will continue

to accept comments through Friday, October 27, 2000. Please send written comments on the collection of information, including our burden estimates to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW., room 316, Washington, DC 20472, (telephone) (202) 646-2625, (telefax) (202) 646-3524, or (e-mail) [muriel.anderson@fema.gov](mailto:muriel.anderson@fema.gov).

**FOR FURTHER INFORMATION CONTACT:** Contact Ms. Anderson at (202) 646-2625 for copies of the proposed collection of information.

#### **Executive Order 12866, Regulatory Planning and Review**

Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have determined that this rule is a "significant regulatory action" under

the terms of Executive Order 12866. It will have an annual effect on the economy of more than \$100 million, but we do not expect it to affect adversely in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The rule and its underlying statute are designed to compensate individuals, businesses, not-for-profit organizations, State, local, and tribal governments or communities for injuries as a result of the Cerro Grande fire. Because of the emergency nature of this interim final rule we have not prepared a regulatory analysis of the rule.

The Office of Management and Budget (OMB) has reviewed the interim final rule under Executive Order 12866.

#### **Executive Order 12898, Environmental Justice**

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 FR 7629, February 16, 1994, we have undertaken to incorporate environmental justice into our policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in, denying persons the benefits of, or subjecting persons to discrimination because of their race, color, or national origin. No action that we can anticipate under the interim final rule will have a disproportionately high and adverse human health and environmental effect on any segment of

the population. In addition, the interim final rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of the Executive Order do not apply to this interim final rule.

#### **Executive Order 13084, Consultation and Coordination with Indian Tribal Governments**

Under Executive Order 13084, FEMA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or we consult with those governments. If FEMA complies by consulting, Executive Order 13084 requires us to provide to the Office of Management and Budget a description of the extent of our prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This interim final rule is required by statute and will significantly and uniquely affect two pueblos and individual members of communities of Indian tribal governments through its compensation for damages suffered by the Pueblos and their members, including compensation for lost subsistence from hunting, fishing, firewood gathering, timbering, grazing or agricultural activities conducted on land damaged by the Cerro Grande fire. The rule will not impose substantial direct compliance costs on those communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply.

Section 104(g) of the Act requires the Director to consult with tribal authorities to ensure the efficient administration of the claims process and to provide for local concerns. On July 27, 2000 representatives of three of the four directly affected counties and one of two affected pueblos, the Santa Clara Pueblo, the chief of staff of the Governor Johnson of New Mexico, and representatives of the New Mexico congressional staff met with FEMA, OMB, and Department of Energy staff to

discuss the draft rule and procedures. Representatives of the San Ildefonso Pueblo were invited but were unable to attend.

David L. de Courcy, the designated director of FEMA's Office of Cerro Grande Fire Claims, chaired the meeting. The meeting provided an overview of the claims process for those who suffered losses from the Cerro Grande Fire. Mr. de Courcy stressed his intention to work directly with the Pueblos to address their needs, particularly the impact of the fire on the Pueblos' cultures. Following the meeting Mr. de Courcy met with representatives of the San Ildefonso Pueblo. Mr. de Courcy has also met in New Mexico with the Governors of the Santa Clara Pueblo and the San Ildefonso Pueblo.

#### **Executive Order 13132, Federalism**

This Executive Order sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this interim final rule under E.O. 13132 and have determined that the rule does not have federalism implications as defined by the Executive Order. The rule establishes the procedures and criteria for claimants, including the State of New Mexico, to apply for Federal compensation for injuries as a result of the Cerro Grande fire. Inasmuch as the benefits will derive from a Federal program exclusively administered by the Federal Government for the benefit of State, local and tribal governments, individuals, and certain not-for-profit organizations, the rule neither limits nor preempts any policymaking discretion of the State that the State might otherwise have.

Nevertheless, under the mandate of the CGFAA we have consulted with State, local and tribal officials while preparing this rule, as outlined above in our discussion of our meeting on July 27, 2000. Mr. de Courcy has also met in New Mexico with representatives of the State of New Mexico, the Pueblo of San Ildefonso and the Pueblo of Santa Clara, the four counties most immediately

affected and the Cerro Grande Fire Survivors Association, to obtain input. FEMA also consulted with a number of Federal agencies, including the Department of Energy, the Department of the Interior and the Small Business Administration.

#### **Congressional Review of Agency Rulemaking**

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Public Law 104-121. The rule is a "major rule" within the meaning of that Act. It will result in an annual effect on the economy of \$100,000,000 or more. However, we do not expect that it will result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor do we expect that it will have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

In compliance with section 808(2) of the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 808(2), for good cause we find that notice and public procedure on this interim final rule are impracticable, unnecessary, or contrary to the public interest in light of the urgent requirement to meet the needs of persons injured as a result of the Cerro Grande fire and in order to comply with the mandates of the Cerro Grande Fire Assistance Act. Accordingly, this interim final rule is effective on Monday, August 28, 2000.

#### **List of Subjects in 44 CFR Part 295**

Administrative practice and procedure, Aliens, Claims, Disaster assistance, Federally affected areas, Indians, Indians-lands, Indians-tribal government, Organization and functions (Government agencies), Public lands, Reporting and recordkeeping requirements, State and local governments.

Accordingly, the Federal Emergency Management Agency amends 44 CFR Chapter I as follows:

1. By redesignating subchapter E (parts 300-399) as subchapter F.
2. By adding a new Subchapter E, Cerro Grande Fire Assistance.
3. By transferring reserved parts 295 through 299 to new subchapter E.
4. By adding part 295 to subchapter E to read as follows:

**SUBCHAPTER E—CERRO GRANDE FIRE ASSISTANCE****PART 295—CERRO GRANDE FIRE ASSISTANCE**

Sec.

**Subpart A—General**

- 295.1 Purpose.
- 295.2 Policy.
- 295.3 Information and assistance.
- 295.4 Organization of the rule.
- 295.5 Overview of the claims process.
- 295.6 Partial payments.

**Subpart B—Bringing a Claim under the CGFAA**

- 295.10 Bringing a claim under the CGFAA.
- 295.11 Deadline for filing notice of loss.
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- 295.13 Subrogation.
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**Subpart C—Compensation Available under the CGFAA**

- 295.20 Prerequisite to compensation.
- 295.21 Allowable compensation.

**Subpart D—Claims Evaluation**

- 295.30 Establishing damages.
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- 295.32 Determination of compensation due to claimant.
- 295.33 Supplementing claims.
- 295.34 Reopening a claim.
- 295.35 Access to records.
- 295.36 Confidentiality of information.

**Subpart E—Dispute Resolution**

- 295.40 Scope.
- 295.41 Administrative appeal.
- 295.42 Arbitration.
- 295.43 Judicial review.

**Subpart F—Glossary**

- 295.50 Definitions.

**Authority:** Pub. L. 106–246, 114 Stat. 511, 584; Reorganization Plan No. 3 of 1978, 43 FR 41493, 3 CFR, 1978 Comp., p. 329.

**Subpart A—General****§ 295.1 Purpose.**

This part implements the Cerro Grande Fire Assistance Act (“CGFAA”), Public Law 106–246, 114 Stat. 584, which requires that the Federal Emergency Management Agency (FEMA) establish a process to evaluate, process and pay claims injuries and property damage resulting from the Cerro Grande Fire.

**§ 295.2 Policy.**

It is FEMA’s policy to provide for the expeditious resolution of meritorious claims through a process that is administered with sensitivity to the burdens placed upon Claimants by the Cerro Grande Fire.

**§ 295.3 Information and assistance.**

Information and assistance concerning the CGFAA is available from

the Office of Cerro Grande Fire Claims (“OCGC”), Federal Emergency Management Agency, P.O. Box 1480, Los Alamos, New Mexico, 87544–1480, or telephone 1–888–748–1853. The Cerro Grande Fire Assistance site on the World Wide Web can be accessed at <http://www.fema.gov/cerrogrande>. In the interest of brevity, the provisions of the CGFAA are not restated in most instances. A copy of the CGFAA has been placed on the website and will be provided upon request.

**§ 295.4 Organization of the rule.**

This part contains six subparts. Subpart A provides an overview of the CGFAA process. Subpart B describes the procedures for bringing a claim. Subpart C explains what compensation is available. Subpart D discusses the claims evaluation process. Subpart E explains the dispute resolution process. Subpart F contains a glossary in which various terms used in the rule are defined.

**§ 295.5 Overview of the claims process.**

(a) The CGFAA is intended to provide persons who suffered losses from the Cerro Grande Fire with a simple, expedited process to seek redress from the United States. In order to obtain benefits under this legislation, a person must submit all Cerro Grande Fire related claims against the United States to FEMA. A person who elects to proceed under the CGFAA is barred from bringing a claim under the Federal Tort Claims Act or filing a civil action against the United States for damages resulting from the Cerro Grande Fire. Judicial review of FEMA’s decisions under the CGFAA is available.

(b) The first step in the process is to file a Notice of Loss with OCGC. OCGC will provide the Claimant with a written acknowledgement that the claim has been filed and the claim number.

(c) Shortly thereafter, a Claims Reviewer will contact the Claimant to review the claim and help the Claimant formulate a strategy for obtaining any necessary documentation. After the Claimant has had an opportunity to discuss the claim with the Claims Reviewer, a Proof of Loss will be presented to the Claimant for signature. After any necessary documentation has been obtained and the claim has been fully evaluated, the Claims Reviewer will submit a report to an Authorized Official.

(d) The Authorized Official will review the report and determine whether compensation is due to the Claimant. The Claimant will be notified in writing of the Authorized Official’s Determination. If the Claimant is

satisfied with the decision, payment will be made after the Claimant returns a completed Release and Certification Form. If the Claimant is dissatisfied with the Authorized Official’s Determination an Administrative Appeal may be filed with the Director of OCGC. If the Claimant remains dissatisfied after the appeal is decided, the dispute may be resolved through binding arbitration or heard in the United States District Court for the District of New Mexico.

**§ 295.6 Partial payments.**

OCGC, on its own initiative, or in response to a request by a Claimant, may make one or more partial payments on the claim. A partial payment can be made if OCGC has a reasonable basis to estimate the Claimant’s damages. Acceptance of a partial payment in no way affects a Claimant’s ability to pursue an Administrative Appeal of the Authorized Official’s Determination or to pursue other rights afforded by the CGFAA.

**Subpart B—Bringing a Claim Under the CGFAA****§ 295.10 Bringing a claim under the CGFAA.**

(a) Any Injured Person may bring a claim under the CGFAA by filing a Notice of Loss. A claim submitted on any form other than a Notice of Loss will not be accepted.

(b) A single Notice of Loss may be submitted on behalf of a Household containing Injured Persons provided that all Injured Persons on whose behalf the claim is presented are identified.

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

(f) A Notice of Loss is deemed to be filed on the date it is received by OCGC.

**§ 295.11 Deadline for filing Notice of Loss.**

The deadline for filing a Notice of Loss is August 28, 2002. 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 or by filing a civil action authorized by any other provision of law.

(b) A person who has filed a Notice of Loss on or before October 1, 2000 may make a one-time election to withdraw the Notice of Loss without prejudice to his or her right to submit a subsequent Notice of Loss or pursue other remedies against the United States for Cerro Grande Fire related losses. The withdrawal must be made by written request, signed by the Claimant, and received by OCGC not later than October 1, 2000.

(c) 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.

(d) 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 OCGC that is filed with OCGC not later than October 27, 2000. OCGC 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. 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 OCGC.

#### **§ 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 an Injury 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 Injuries 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 mitigate their damages, if possible.

(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, interest on claims, attorney's fees, taxes that may be owed by a Claimant as a consequence of receiving an award, and agent's fees under the CGFAA are not recoverable from FEMA.

(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 shall be discounted to present value.

(d) *Destruction of home.* 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 local area and current building codes and

standards. Compensatory damages may also include the cost of removing debris and burned trees, landscaping, stabilizing the land, replacing household contents, and compensation for any decrease in the value of land on which the structure sat pursuant to subparagraph (e) of this section. If requested by a Claimant, a compensatory damage award may also include 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 Grande Fire. The mitigation measures must be approved by the local government with land use regulatory jurisdiction over the property and must also be reviewed by FEMA under applicable environmental and historic preservation laws. A Claimant who receives funds for mitigation measures is required to construct the mitigation measures and will be required to repay to FEMA mitigation funds that are not properly spent.

(e) *Reduction in the value of land.* Compensatory damages may be awarded for reduction in the value of land that a Claimant owned prior to the fire if:

(1) The Claimant sells the land in a good faith arm's length transaction that is closed not later than August 28, 2002 and realizes a loss in the immediate pre-fire value; or

(2) The Claimant can establish that the value of the land was diminished as a result of the Cerro Grande Fire.

(f) *Destruction of unique items of personal property.* Compensatory damages may be awarded for unique items of personal property that were destroyed as a result of the Cerro Grande Fire. If the item can be replaced in the current market, the cost to replace the item will be awarded. If the item cannot be replaced in the current market, its fair market value on the date it was destroyed will be awarded.

(g) *Disaster recovery loans.* FEMA will reimburse Claimants awarded compensation under the CGFAA for interest paid on Small Business Administration disaster loans and similar loans obtained after May 4, 2000. Interest will be reimbursed for the period beginning on the date that the loan was taken out and ending on the date upon which the Claimant receives a compensation award (other than a partial payment). Claimants are required to use the proceeds of their compensation awards to repay Small Business Administration disaster loans. FEMA will cooperate with the Small Business Administration to formulate procedures for assuring that Claimants repay Small Business Administration disaster loans contemporaneously with



the receipt of CGFAA compensation awards.

(h) *Mitigation.* FEMA may compensate Claimants for the cost of reasonable and cost-effective efforts incurred on or before August 28, 2003 to mitigate the heightened risks of wildfire, flood or other natural hazards resulting from the Cerro Grande Fire that are consistent with a FEMA-approved Mitigation Compensation Plan. The Director of FEMA reserves the discretionary authority provided by the CGFAA to determine the reasonableness of each mitigation claim. Mitigation Compensation Plans and requests by Claimants for mitigation funds under this section are subject to review under the National Environmental Policy Act and other applicable environmental and historic preservation laws.

(i) *Subsistence.* (1) *Allowable damages.* FEMA may reimburse an Indian tribe, a Tribal Member or a Household Including Tribal Members for the reasonable cost of replacing Subsistence Resources customarily and traditionally used by the Claimant on or before May 4, 2000, but no longer available to the Claimant as a result of the Cerro Grande Fire. For each category of Subsistence Resources, the Claimant must elect to receive compensatory damages either for the increased cost of obtaining Subsistence Resources from lands not damaged by the Cerro Grande Fire or for the cost of procuring substitute resources in the cash economy. Damage awards will be made in the form of lump sum cash payments to eligible Claimants.

(2) *Proof of subsistence use.* FEMA may consider evidence submitted by Claimants, Indian Tribes and other knowledgeable sources in determining the nature and extent of a Claimant's subsistence uses.

(3) *Duration of damages.* Compensatory damages for subsistence losses will be paid for the period between May 4, 2000 and the date upon which Subsistence Resources can reasonably be expected to return to the level of availability that existed prior to the Cerro Grande Fire. FEMA may rely upon the advice of experts in making this determination.

(j) *Duplication of benefits.* The CGFAA allows FEMA to compensate Injured Parties only if their damages have not been paid or will not be paid by insurance or a third party.

(1) *Insurance.* Claimants who carry insurance will be required to disclose the name of the insurance carrier and the nature of the insurance and provide OCGC with such insurance documentation as OCGC reasonably requests.

(2) *Coordination with FEMA's Public Assistance program.* Injured Parties eligible for disaster assistance under FEMA's Public Assistance Program are expected to apply for all available assistance. Compensation will not be awarded under the CGFAA for:

(i) Emergency costs that are eligible for reimbursement under the Public Assistance Program or

(ii) Losses that are eligible for repair, restoration or replacement under the Public Assistance Program or

(iii) Costs or charges determined excessive under the Public Assistance Program.

(3) *Benefits provided by non-governmental organizations and individuals.* Unless otherwise provided by these regulations, disaster relief payments made to a Claimant by a non-governmental organization or an individual, other than wages paid by the Claimant's employer or insurance payments, will be disregarded in evaluating claims and need not be disclosed to OCGC by Claimants.

(4) *Benefits provided by FEMA's Individual Assistance program.* Compensation under the CGFAA will not be awarded for losses or costs that have been reimbursed under the Individual and Family Grant Program or any other FEMA Individual Assistance Program.

(5) *Worker's compensation claims.* Individuals who have suffered injuries that are compensable under State or Federal worker's compensation laws must apply for all benefits available under such laws.

## Subpart D—Claims Evaluation

### § 295.30 Establishing damages.

At a minimum, Claimants will be required to attest to the nature and extent of each Injury for which compensation is sought in the Proof of Loss. The Proof of Loss must be signed under penalty of perjury and subject to the provisions of 18 U.S.C. 1001, which establishes penalties for false statements. Claimants may be required to provide other documentation, which is reasonably available, to corroborate the nature, extent and value of their losses. Claimants may submit for the Administrative Record any documents that they believe are relevant to their claim.

### § 295.31 Reimbursement of claim expenses.

FEMA will reimburse Claimants for the reasonable costs they incur in copying documentation requested by OCGC. FEMA will also reimburse Claimants for the reasonable costs they

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

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

(a) *Authorized Official's report.* After OCGC 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 in order to receive payment on their claims (except for partial payments). The Claimant will receive payment of compensation awarded by the Authorized Official after FEMA receives 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 not 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 OCGC 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 prior to signing a Proof of Loss. A Claimant may submit an additional Notice of Loss to present claims that were not addressed in a Proof of Loss for good cause shown. Any additional claim must be submitted not later than August 28, 2002 except with respect to claims for mitigation costs under § 295.21(h) of these regulations. Supplemental claims for mitigation costs under § 295.21(h) of these regulations cannot be submitted after August 28, 2003.

### § 295.34 Reopening a claim.

The Director of OCGC may reopen a claim in response to a Claimant's request after the Claimant has submitted a Release and Certification Form for the limited purpose of determining whether additional compensation is due if:

(a) The Claimant has incurred mitigation expenses within three years of the date of these regulations for which reimbursement is sought under § 295.21(h); or

(b) The Claimant closed the sale of real property within two years of the date of these regulations and wishes to present a claim for reduction in the value of land under § 295.21(e); or

(c) The Claimant has incurred replacement costs under § 295.21(d) in excess of those previously awarded; or

(d) The Director of OCGC otherwise determines that Claimant has demonstrated good cause.

#### § 295.35 Access to records.

For purpose of audit and investigation, a Claimant shall 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 arbitration or seek judicial review following an Administrative Appeal.

#### § 295.41 Administrative appeal.

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

(g) *Hearings.* The Director of OCGC may exercise the discretion to convene a hearing to receive oral testimony from witnesses or experts. 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 OCGC shall close the Administrative Record and render a written decision on the Administrative Appeal. The Director of OCGC's decision on the Administrative Appeal shall 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. In order to receive payment of any compensation awarded by the Administrative Appeal decision the Claimant must submit a 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, Office of Dispute Resolution, Federal Emergency Management Agency, 500 C Street, Southwest, room 214, Washington, DC 20472 on a form provided by OCGC.

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 prior to the time a decision is rendered, either party may request in writing that the Office of Dispute Resolution 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 Office of Dispute Resolution will stay the arbitration and appoint a mediator at FEMA's expense. The stay may be terminated and the arbitration resumed upon written request of either party to the Office of Dispute Resolution. If the dispute is settled, the Office of Dispute Resolution shall issue an order terminating the arbitration and provide the Claimant with a Release and Certification Form to obtain payment of any compensation due.

(d) *Selection of arbitrator.* Arbitration shall be decided by one arbitrator selected by the Claimant from a list of qualified arbitrators who have agreed to serve provided by the Office of Dispute Resolution.

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

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

(g) *Decision.* After reviewing the evidence, the arbitrator shall render a decision in writing to the Claimant, the Director of OCGC and the Office of

Dispute Resolution. 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 Office of Dispute Resolution may extend the time for a decision. The decision shall establish the compensation due to the Claimant, if any, and the reasons therefore.

(h) *Action on arbitration decision.* Upon receipt of the arbitration decision, the Office of Dispute Resolution shall provide the Claimant with a Release and Certification Form to obtain payment of any compensation awarded by the arbitrator.

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

(j) *Administration of arbitration.* The Office of Dispute Resolution shall serve as arbitration administrator and shall conclusively resolve any procedural disputes arising in the course of the arbitration. The Office of Dispute Resolution 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 Administrative Record. The court will uphold FEMA's decision if it is supported by substantial evidence on the record considered as a whole. Claimants awarded compensation in a final judgment, not subject to further review, must submit a Release and Certification Form to OCGC in order to receive payment.

### **Subpart F—Glossary**

#### **§ 295.50 Definitions**

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

*Authorized Official* means an employee of the United States who is delegated with authority by the Director of OCGC 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 OCGC contractor or subcontractor who is authorized by the Director of OCGC to review and evaluate claims submitted under the CGFAA.

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

*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.

*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 Injury 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.

*Injury* 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).

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

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

*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.

*Release and Certification Form* means a document in the manner prescribed by § 104(e) of the CGFAA that a Claimant must complete and return in order to receive payment of compensation awarded pursuant to the CGFAA.

*Subsistence Resources* means food and other items obtained through hunting, fishing, firewood and other resource gathering, timbering, grazing or agricultural activities undertaken by the Claimant without financial remuneration.

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

Dated: August 23, 2000.

**James L. Witt,**

*Director.*

The Notice of Loss form follows in  
English and in Spanish:

**BILLING CODE 6718-01-U**

**FEMA**

Cerro Grande Fire Assistance Act

OMB No. 3067-0280

Expires 11/30/2000

**NOTICE OF LOSS**

Page 1 of 4

- By filing this Notice of Loss, you are choosing to seek compensation for losses from the Cerro Grande Fire from the United States through the Cerro Grande Fire Assistance Act (CGFAA), Public Law 106-246, and NOT under the Federal Tort Claims Act or any other means. Your choice to seek reimbursement through this process cannot be changed.
- In order for the Federal Emergency Management Agency (FEMA) to consider your claim under the CGFAA, you must sign the **Verification of Truth of Information and Choice of the Cerro Grande Fire Claims Process** statements on page 3 of this Notice of Loss.
- FEMA's regulations describing the claims process will be published in the Federal Register on August 28, 2000.
- You may file your Notice of Loss at any time up until August 28, 2002.
- During the claims process, you will be able to supplement information regarding your losses.
- Mail the completed Notice of Loss to the **FEMA Office of Cerro Grande Fire Claims, P.O. Box 1480, Los Alamos, NM, 87544-1480.**
- For more information, please call 1-888-748-1853.

**CLAIMANT INFORMATION**1. **Your Name** (First, Middle Initial, Last): \_\_\_\_\_2. **What is your current address and contact information?**

Street: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Day Phone: \_\_\_\_\_ Evening Phone: \_\_\_\_\_

Fax No.: \_\_\_\_\_

E-mail address: \_\_\_\_\_

What is the best time to reach you? \_\_\_\_\_

**TYPE OF CLAIM** — Please submit a separate **Notice of Loss** for each type of claim.3. **What type of claim are you filing?** (Check only one option)

- ☐ Individual or Household
- ☐ Business
- ☐ Government
- ☐ Pueblo
- ☐ Not-for-Profit
- ☐ Other \_\_\_\_\_

4. **Claims for individual or household**, please provide the following information. If you are filing on behalf of another person or persons, please include the following information for each person.

What are the claimant's names (including yourself, if you are a claimant)?	What is this person's relationship to you? (Example: self, spouse, child)	Is the claimant a member of a pueblo? (Yes / No)

If more space is required to identify additional claimants, please attach the information to this Notice of Loss.

5. **Claims for businesses, government agencies, pueblos, not-for-profits or others**, please provide the following information:

What is the claimant's name: \_\_\_\_\_

What is the claimant's address (if different from contact address provided on page 1)?

Street: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

## LOSSES

6. **Describe your losses in general terms.** You will be able to supplement this information during the claims process. Please do not submit documentation at this time. Detailed information on your losses and their dollar value will be requested and collected during the claims process.

**Real Estate** (examples: home, business facility)

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**Other Personal Property** (examples: automobiles, furniture, electronics, equipment)

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**Other Losses** (examples: personal injury, lost wages, business interruption, public facilities, tribal subsistence)

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Additional pages may be attached.





**PRIVACY ACT NOTICE**

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the Notice of Loss form to which this Notice is attached. The authority for the collection of this information is Cerro Grande Fire Assistance Act, Public Law 106-246. The information you provide will be used to verify your identity, to verify your eligibility, and to verify any previous compensation made in connection with the Cerro Grande Fire. Some or all of the information you provide may be released to federal, state, and local government agencies or private organizations for the purpose of confirming your identity, your eligibility and any previous compensation or payments made in connection with the Cerro Grande Fire. The information may also be released when otherwise authorized by statute or regulation. Disclosure of the information by you is required in order for you to make a claim under the Act. It will not be possible to process your claim without the information.

**Routine Uses:** The Privacy Act permits us to disclose information about individuals without their consent for a routine use, i.e., when the information will be used for a purpose that is compatible with the purpose for which we collected the information. The routine uses of this system are:

- a) Disclosure may be made to agency contractors who have been engaged to assist the agency in the performance of a contract service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 USC 552a.
- b) Disclosure may be made to a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.
- c) Disclosure may be made to other Federal agencies that FEMA has determined provided Cerro Grande fire-related assistance to claimant in order to ensure that benefits are not duplicated.
- d) Disclosure of information submitted by an individual Claimant may be made to an insurance company or other third party which has submitted a subrogation claim relating to such Claimant when it is necessary in FEMA's opinion to ensure that benefits are not duplicated and to efficiently coordinate the processing of claims brought by individuals and subrogees.
- e) Disclosure of property loss information may be made to local governments in Los Alamos, Rio Arriba, Sandoval and Santa Fe counties and the Pueblos of San Ildefonso and Santa Clara for the purpose of preparing community wide mitigation plans.
- f) When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.
- g) Disclosure may be made to the National Archives and Records Administration for the purpose of conducting records management studies under the authority of 44 U.S.C. 2904, and 2906.

**Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

**NOTICE OF PAPERWORK REPORTING BURDEN DISCLOSURE**

Public reporting burden for this form is estimated to average 45 minutes. Burden means the time, effort, and financial resources expended by persons to generate, maintain, retain, disclose, or to provide information to us. You may send comments regarding the burden estimate or any aspects of the form, including suggestions for reducing the burden to: Information Collection Management, Federal Emergency Management Agency 500 C Street SW, Washington, DC 20472. Please do not send your completed notice of loss to this address. You are not required to respond to this collection of information unless a valid OMB control number appears in the upper right corner of this form.

**FEMA**

Ley de Asistencia por el Fuego de Cerro Grande

OMB No. 3067-0280  
Vigente hasta 30/11/2000**NOTIFICACIÓN DE PÉRDIDA**

Página 1 de 4

- Al someter esta Notificación de Pérdida, elige solicitar compensación de los Estados Unidos por las pérdidas sufridas durante el Fuego de Cerro Grande por medio de la Ley de Asistencia por el Fuego de Cerro Grande (CGFAA —por sus siglas en inglés), Ley Pública 106-246, y NO por medio de la Ley Federal de Reclamaciones por Daños o algún otro medio. Una vez elige reclamar reembolso a través de este procedimiento no podrá cambiar dicha elección.
- Para que la Agencia Federal para el Manejo de Emergencias considere su reclamación bajo la CGFAA, debe firmar la declaración de **Verificación de Veracidad de Información y Elección del Proceso de Reclamaciones por el Fuego De Cerro Grande** en la página 3 de esta Notificación de Pérdida.
- FEMA publicará un reglamento que describirá el proceso de las reclamaciones el 28 de agosto del 2000 en el Federal Register (Registro Federal).
- Puede someter la Notificación de Pérdida en cualquier momento pero no más tarde del 28 de agosto del 2002.
- Durante el proceso de reclamación, podrá complementar la información relacionada con sus pérdidas.
- Envíe la Notificación de Pérdida a **FEMA Office of Cerro Grande Fire Claims, P.O. Box 1480, Los Alamos, NM, 87544-1480.**
- Para más información llame al 1-888-748-1853

**INFORMACIÓN DEL RECLAMANTE**1. **Su nombre** (Primer, Segundo o inicial, apellido): \_\_\_\_\_2. **Dirección actual e información de contacto:**

Calle: \_\_\_\_\_

Ciudad, Estado, Zona Postal: \_\_\_\_\_

Tel. día: \_\_\_\_\_ Tel. noche: \_\_\_\_\_

Núm. de Fax: \_\_\_\_\_

Correo electrónico: \_\_\_\_\_

¿Cuál es la mejor hora para comunicarse con usted? \_\_\_\_\_

**Tipo de reclamación** — Someta una Notificación de Pérdida por separado por cada tipo de reclamación.3. **¿Qué tipo de reclamación está sometiendo?** (Escoja una opción solamente)

- ☐ Individual o de Hogar
- ☐ Negocio
- ☐ Gubernamental
- ☐ Pueblo
- ☐ Sin fines pecuniarios
- ☐ Otros \_\_\_\_\_

**Notificación de Pérdida**

4. **Reclamaciones para individuos o el hogar**, provea la siguiente información. Si está llenando la solicitud a nombre de otra persona o personas, incluya la siguiente información por cada persona.

¿Cuáles son los nombres de los reclamantes? (incluya el suyo si es reclamante)	¿Cuál es la relación entre usted y esta persona? (Ejemplo: yo, cónyuge, hijo)	¿El reclamante es miembro de un pueblo? (Sí / No)

Si hace falta más espacio para identificar los reclamantes adicionales adjunte la información a esta Notificación de Pérdida.

5. **Reclamaciones para negocios, agencias gubernamentales, pueblos, organizaciones sin fines pecuniarios u otras reclamaciones**, provea la siguiente información:

Nombre del reclamante: \_\_\_\_\_

Dirección del reclamante (si es distinta a la dirección de contacto provista en la página 1):

Calle: \_\_\_\_\_

Ciudad, Estado, Zona Postal: \_\_\_\_\_

**PÉRDIDAS**

6. **Describa sus pérdidas en términos generales.** Podrá suplementar esta información durante el proceso de reclamación. **NO someta documentación en este momento.** Se le solicitará información detallada y valor monetario de sus pérdidas durante el proceso de reclamación.

**Bienes Raíces** (ejemplos: casa, local del negocio)


**Otra propiedad personal** (ejemplos: automóviles, muebles, equipo electrónico, otros equipos)


**Otras pérdidas** (ejemplos: lesión, pérdida de salario, interrupción de negocios, instalaciones públicas, asistencia de tribu)


Se puede añadir páginas adicionales.

7. ¿Ha sometido alguna reclamación de seguro por pérdidas relacionadas con el Fuego de Cerro Grande? (esté o no cerrado el caso)..... Si ☐

Si contestó que sí, escriba el nombre de la compañía aseguradora: \_\_\_\_\_

8. ¿Recibió algún subsidio de FEMA (por ejemplo: Vivienda temporal o Subvención Individual o de Familia, Asistencia Pública, Mitigación)?..... Si ☐ No ☐

9. ¿Recibió algún préstamo de Asistencia por Desastre de la Administración de Pequeños Negocios? ..... Sí ☐ No ☐

10. ¿Recibió alguna otra asistencia financiera del Gobierno Federal relacionada con el Fuego de Cerro Grande? ..... Sí ☐ No ☐

Si contestó que sí, describa el tipo de asistencia:

11. ¿Necesitará usted un intérprete u otros arreglos especiales durante el proceso de reclamación? ..... Sí ☐ No ☐

Si contestó que sí, describa los servicios que necesita: \_\_\_\_\_

*Al someter este formulario, todos los reclamantes cuyo nombre aparece en el mismo certifican lo siguiente:*

- 1) Las declaraciones hechas en este formulario y sus anejos son mías, ciertas, están completas y correctas a mi mejor capacidad y entendimiento y hechas de buena fe. Entiendo que cualquier declaración falsa hecha con conocimiento y voluntad es castigable con una multa de \$10,000 o hasta 5 años de encarcelación, o ambas (Sección 1001 del Título 18, del Código de los Estados Unidos).
- 2) Elijo que todas mis reclamaciones contra los Estados Unidos de América relacionadas con el Fuego de Cerro Grande sean revisadas, evaluadas y compensadas por la Agencia Federal para el Manejo de Emergencias (FEMA —por sus siglas en inglés) según la Ley de Asistencia por el Fuego de Cerro Grande (CGFAA), Ley Pública 106-246, y **NO** a través de ningún otro medio. Al presentar este formulario renuncio al derecho de hacer una reclamación bajo la Ley Federal de Reclamación de Daños o bajo cualquier otro estatuto, ley, o autoridad. Mi elección de solicitar reembolso a través de este proceso no podrá cambiarse. Entiendo que puedo apelar la decisión de compensación de FEMA a un arbitraje vinculante o a un tribunal de distrito de los Estados Unidos.

*Para una reclamación individual o de hogar, todos los reclamantes, con excepción de los menores de edad, tienen que firmar. Para una reclamación de un negocio, una organización sin fines pecuniarios, un pueblo, o una agencia gubernamental la firma debe ser de un funcionario autorizado.*

Nombre (letra de imprenta)	Firma	Relación o Título	Fecha

### Notificación sobre la Ley de Privacidad

Esta Notificación se provee conforme a la Ley de Privacidad, Título 5 del Código de los Estados Unidos § 552a(e)(3), y alude la información requerida en la Notificación de Pérdida que precede. La autoridad para la recopilación de esta información es la Ley de Asistencia por el Fuego de Cerro Grande, Ley Pública 106-246. La información que usted provea se utilizará para verificar su identidad, verificar su elegibilidad y verificar cualquier compensación previa hecha en conexión con el Fuego de Cerro Grande. Parte o toda la información que usted provea podrá ser divulgada a agencias gubernamentales federales, estatales o locales o a organizaciones privadas con el propósito de verificar su identidad, su elegibilidad y cualquier compensación o pagos hechos en relación con el Fuego de Cerro Grande. La información también podrá divulgarse cuando cualquier otro estatuto o reglamento lo autorice. Se requiere que usted divulgue la información para hacer la reclamación conforme a la Ley. No será posible procesar su reclamación sin la información.

**Usos Rutinarios:** La Ley de Privacidad nos permite divulgar la información sobre individuos sin su consentimiento para usos rutinarios, como por ejemplo: cuando la información será utilizada para un propósito compatible para el cual fue recopilada. Los usos rutinarios de este sistema son:

- a) Divulgación a contratistas de la agencia que han asistido a la misma, en la ejecución de un contrato de servicio relacionado con este sistema de expedientes y que necesitan tener acceso a los expedientes para ejercer su función. Se le requerirá a los recipientes cumplir con los requisitos de la Ley de Privacidad de 1974 según enmendada, Título 5 del Código de los Estados Unidos § 552a.
- b) Divulgación a un miembro del Congreso o a un miembro del personal del Congreso en respuesta a una investigación de la Oficina del Congreso solicitada por escrito por el constituyente sobre el cual se mantiene el expediente.
- c) Divulgación a otras agencias federales que FEMA determine que hayan provisto asistencia al reclamante relacionada con el Fuego de Cerro Grande, para asegurar que no se dupliquen.
- d) Divulgación a una compañía de seguros u otros terceros que hayan sometido una reclamación de subrogación con relación al Reclamante cuando sea necesario conforme al criterio de FEMA para asegurar que los beneficios no sean duplicados y para coordinar eficientemente el proceso de reclamaciones presentadas por individuos y subrogados.
- e) Divulgación de información de pérdida de propiedad a los gobiernos locales de los condados de Los Álamos, Río Arriba, Sandoval y Santa Fe y los Pueblos de San Ildefonso y Santa Clara para el propósito de preparar planes de mitigación para toda la comunidad.
- f) Cuando un expediente a simple vista, o en conjunción con otros expedientes, indique una violación o un potencial de violación de ley, sea esta de naturaleza civil, criminal o de reglamento o surgiera de un estatuto general o de un estatuto de un programa en particular, reglamento u orden emitida que así lo indique, se podrá divulgar la información a la agencia apropiada, sea esta federal, extranjera, estatal, local o tribal u otra autoridad pública responsable de hacer cumplir, investigar o procesar dicha violación o encargada de la implementación del estatuto, regla o reglamento u orden emitida según indique, si la información a revelarse es pertinente a la responsabilidad de cumplimiento, reglamentaria o procesal de la entidad receptora.
- g) Divulgación a la Administración Nacional de Archivos y Expedientes para el propósito de llevar a cabo estudios de manejo de expedientes bajo la autorización de el Título 44 del Código de los Estados Unidos §2904 y 2906.

**El efecto de negarse a proveer la información:** La divulgación es voluntaria. Sin embargo, negarse a proveer la información requerida podría convertir su reclamación en una "inválida".

### NOTIFICACIÓN DE DIVULGACIÓN DE LA CARGA DE INFORMAR POR ESCRITO

La carga pública de información para este formulario está estimada en un promedio de 45 minutos. Carga significa el tiempo, el esfuerzo y los recursos financieros utilizados para que las personas generen, mantengan, retengan, divulguen o nos provean información. Puede enviar comentarios sobre el estimado de la carga o cualquier punto relacionado con este formulario, incluyendo sugerencias para reducir dicha carga a: Information Collection Management, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472. Por favor, no envíe su notificación de pérdida completada a esta dirección. No es requisito contestar a esta recopilación de información a no ser que un número de control válido de la OMB aparezca en la esquina superior derecha de este formulario.