



Office of Cerro Grande Fire Claims

Policy Guidelines

As of June 12, 2002

This document is produced by the Office of Cerro Grande Fire Claims (OCGFC) to inform interested parties of the policy guidelines by which claims filed under the Cerro Grande Fire Assistance Act, Public Law 106-246 (CGFAA) are being evaluated. However, a guideline by itself should not be construed as being the final determinative answer with respect to any particular aspect of a claim. Each claim must be resolved on a case-by-case basis, taking into consideration each claimant's particular circumstances.

The guidelines include information about the type of items that may be eligible for compensation. However, a determination of eligibility will be based on the ability of an Authorized Official to reasonably determine, based upon the information submitted by the claimant and the Claims Reviewer, that a claimant did, in fact, suffer the loss in question and the extent of the loss suffered.

This document is based on the Regulations and will be continually updated as additional policy guidelines are clarified or developed by the OCGFC. A Table of Updates is located at the end of these guidelines.

The policy guidelines are arranged in the same order as the subparts to the Regulations that implement the CGFAA, 44 C.F.R. pt. 295.

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SUBPART A – GENERAL

This subpart is intended to provide an overview of the claims process.

295.1 Purpose

Funding

Congress has appropriated \$455 million dollars for compensation associated with the Cerro Grande Fire, which is believed to be sufficient to cover all eligible losses. However, New Mexico Senators Domenici and Bingaman have asked FEMA, as the implementing agency of the CGFAA, to notify them if additional funds are needed.

295.3 Information and Assistance.

Regulations

As required by the CGFAA, interim regulations were published in the Federal Register on Monday, August 28, 2000. The public was given a 60-day period to provide comments on the interim regulations. FEMA reviewed and took into consideration all comments submitted by the October 27, 2000 deadline while preparing the Regulations. The Regulations became effective upon publication in the Federal Register on March 21, 2001. The Regulations are available at the Customer Service Centers and on the internet at www.cerrogrande.losalamos.com or at www.fema.gov/cerrogrande.

Role of New Mexico Law Under the CGFAA

Section 104(c)(2) of the CGFAA states that, "Except as otherwise provided in this title, the laws of the State of New Mexico shall apply to the calculation of damages..." In addition, § 295.21(a) (44 Code of Federal Regulations) of the regulations that implement the CGFAA provides that, "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." As a result, unless the law provides otherwise, compensation for damages resulting from the Cerro Grande Fire must be determined by examining the law of New Mexico. New Mexico tort law, however, is not generally contained in the same form that the CGFAA and the implementing regulations are, i.e., in a code or statute book. Researching and analyzing the court decisions that have addressed similar or related issues generally determine the law on these matters. When New Mexico law has a bearing on a policy question under the CGFAA, the OCGFC will refer the matter the OCGFC attorney. The OCGFC attorney will then research the issue and prepare a formal legal opinion, and the OCGFC will evaluate the response and integrate it into its policies. As these policy issues are addressed, the OCGFC will put them into a written format and will make them available to both staff and the public.

295.5 Overview of the Claims Process.

General information

It is not necessary for an individual to file a Notice of Loss prior to speaking with a Claims Reviewer about the CGFAA, the claims process, or how to fill out a Notice of Loss. Claimants can either call the Cerro Grande Fire Assistance Line at 1-888-748-1853 or visit the Customer Service Center located in the Mari-Mac Plaza, 771 Central Ave., Los Alamos, NM (Monday-Friday, 9 a.m. to 6 p.m.), to discuss questions.

Summary of the Claims Process

The following are the basic steps involved in the claims process:

1. A Notice of Loss must be filed with the OCGFC.
2. The claimant will receive an acknowledgement from the OCGFC with a claims number within five business days of OCGFC receiving the Notice of Loss.

3. A Claims Reviewer will then contact the claimant within five business days of OCGFC's acknowledgement letter to set an appointment to begin the claims review process. The Claims Reviewer will work with the claimant to develop a strategy on how the nature and extent of the claimant's damages can best be verified.
4. During the development of the claimant's case, the possibility exists that the Claims Reviewer will recommend or the claimant can request a partial payment. More than one partial payment can be made.
5. After the Claims Reviewer and claimant have completed reasonable efforts to develop appropriate documentation or other alternatives to document a case, a Proof of Loss will be completed by the Claims Reviewer to be signed by the claimant, no later than 150 days from receipt of the Notice of Loss.
6. The Proof of Loss reflects what the claimant is requesting, including the claimant's opinion of the nature and value of his/her damages.
7. The Claims Reviewer will then submit the signed Proof of Loss with an independent report to an Authorized Official.
8. The Authorized Official will review the case and determine what compensation is owed to the claimant within 30 days from receipt of the Proof of Loss. The claimant will be notified in writing of the Authorized Official's determination.
9. The claimant will then have 120 days after the date that appears on the Authorized Official's determination to either: (1) accept the determination by submitting a signed Certification and Release form, or (2) appeal the determination by filing an administrative appeal with the Director of the Office of Cerro Grande Fire Claims.
10. If the claimant is in agreement with the decision, final payment will be made after the claimant submits a completed Release and Certification form.
11. If the claimant is dissatisfied with the decision, a two-level appeal process is available to the claimant: First, an administrative appeal may be made to the Director of the OCGFC. Second, if the claimant is still dissatisfied, the claimant can appeal again by either electing binding arbitration or judicial review of the case by the U.S. District Court for the District of New Mexico.

➤ **VALIDITY OF CLAIM**

Determining Validity of a Claim

The Authorized Official determines the validity of a claim, not a Claims Reviewer. "Validity" speaks to whether the claim should be considered under the CGFAA. An example of this would be if a claimant submitted documents regarding a loss but there was a question as to whether the loss resulted from the Cerro Grande Fire. In such a case, the Claims Reviewer should, prior to moving forward with an extensive review of the case, raise the issue regarding validity of the claim to the attention of the Authorized Official. This might necessitate a request for documentation from the claimant to support or refute whether the damage or injury was in fact fire related.

➤ **USE OF AWARDS**

Spending of Award Money

With the exception of funding for certain mitigation measures and reimbursement of flood insurance premiums, claimants are not required to account for how they spend their awards. For example, the OCGFC will compensate a claimant for the cost of replacing a home whether or not the claimant chooses to rebuild. If it happens to cost less than the amount of the award to rebuild the home the claimant can keep the difference. However, claimants should consult with a qualified tax advisor to determine the tax consequences of their rebuilding decisions.

295.6 *Partial Payments.*

How Partial Payments Will Work

In order to get assistance to survivors as soon as possible, the CGFAA allows for claimants to receive partial payments before they start the rebuilding process. Partial payments may be based upon actual receipts or may be based upon estimates. A claimant may receive one or more partial payments on a claim even before the entire claim has been settled. Partial payments may be made either upon the initiation of the OCGFC or at the request of a claimant when there is a reasonable basis to estimate the damages. A determination regarding a partial payment may not be appealed. However, even if claimants accept a partial payment they will still be able to appeal the total amount ultimately received after receipt of the Determination of Authorized Official.

When Final Compensation is Less Than the Partial Payment

The OCGFC is authorized to make partial payments. While Claims Reviewers will work carefully with claimants in an attempt to ensure that partial payments are being recommended for damages that have been verified, if, after a partial payment is made, additional information shows that the final compensation amount is less than the partial payment, the claimant may be required to return the ineligible portion of the funding.

295.7 Authority to Settle or Compromise Claims.

Director's Authority to Settle A Claim

In order to process the claim as expeditiously as possible, the Director, or his duly authorized delegate, may elect to offer to settle a claim or any portion of a claim. The settlement offer, if accepted, will be binding on the claimant and on the United States.

Recovery of Funds

The United States may recover any funds improperly paid to claimant if: 1) it determines the payment was due to fraud or willful misrepresentation by claimant or claimant's representative, 2) a mistake made by OCGFC, 3) claimant fails to cooperate in an audit by the Office of Inspector General under § 295.35, or 4) claimant chooses to withdraw the Notice of Loss in accordance with **Withdrawing a Claim**, Section 295.12 of the Policy Guidelines.

SUBPART B – BRINGING A CLAIM UNDER THE CGFAA

The CGFAA requires that a prospective claimant make a binding election between pursuing his/her claim under the CGFAA and pursuing a claim under other provisions of law, such as the Federal Tort Claims Act (FTCA). This subpart explains the option of bringing a claim under the CGFAA and how that election is made.

295.10 Bringing a Claim Under the CGFAA.

➤ HOW TO SUBMIT A NOTICE OF LOSS

In order to file a claim the affected party must first obtain a **Notice of Loss** form. This form needs to be filled out and signed and then submitted to the OCGFC. A claim submitted on any form other than a Notice of Loss will not be accepted. (See **Appendix 1, Notice of Loss** form)

Obtaining a Notice of Loss

The Notice of Loss form is available on the internet at www.cerrogrande.losalamos.com or www.fema.gov/cerrogrande; at any Customer Service Center; by calling the Cerro Grande Fire Assistance Line at 1-888-748-1853; or by writing to: Office of Cerro Grande Fire Claims, P.O. Box 1480, Los Alamos, NM 87544-1480.

Filing a Notice of Loss By Mail, In Person Or By Phone

In order to submit a claim, the claimant may file the Notice of Loss by mail, in person or by phone. A claimant can call or visit the Customer Service Center for assistance filling out the

Notice of Loss form. Assistance can also be provided by phone through the Cerro Grande Fire Assistance Line at 1-888-748-1853.

A claimant may file the Notice of Loss by mail to: Office of Cerro Grande Fire Claims, P.O. Box 1480, Los Alamos, NM 87544-1480, or in person at the Customer Service Centers located in the Mari-Mac Plaza, 771 Central Avenue, Los Alamos, NM.

A claimant may also file a Notice of Loss by phone by calling the Cerro Grande Fire Assistance Line at 1-888-748-1853. Teleregistration operators will be available to accept Cerro Grande Notices of Loss from 9 a.m. to 5 p.m. Monday through Friday.

Database information particular to an individual's claim is available at all of the Customer Service Centers, regardless of where or how the Notice of Loss was submitted.

Customer Service Centers Hours of Operation

The Customer Service Center and the Cerro Grande Fire Assistance Line at 1-888-748-1853 are open Monday through Friday, 9 a.m. to 6 p.m.

Translators

There are translators available either in person or by telephone to provide information and to work with claimants throughout the claims process.

Privacy Act

FEMA is required to provide a copy of the Privacy Act Notice to claimants. While we encourage claimants to read and understand the Privacy Act Notice, there is no requirement that a claimant sign or initial a statement that states that the notice has been read and understood.

Acknowledgement

Within five business days of receipt of the Notice of Loss form by the OCGFC, the OCGFC will provide the claimant with a written acknowledgement that the claim has been filed. This acknowledgment will also note the claim number.

➤ WHO CAN SUBMIT A NOTICE OF LOSS

Anyone who believes that they have suffered injuries, damages or other losses associated with the Cerro Grande Fire can file a claim. This includes individuals or households, Indian tribes or Pueblos, governmental entities (non-Federal), corporations, businesses, insurance companies, private not-for-profits, or any other entity that suffered injury as a result of the Cerro Grande Fire.

Signing the Notice of Loss

Each Claimant must sign the Notice of Loss. In the case of an individual who lacks the legal capacity or in the case of an entity making a claim, the signature of a duly authorized legal representative is acceptable. 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. If there are multiple individuals making a claim for real or personal property on a Notice of Loss, each person who is making a claim must sign the Notice of Loss.

Citizenship

Any individual can file a claim regardless of citizenship or alien status. A prospective claimant does not need to be a U.S. citizen or a legal resident or have a "green" card. In collecting information to verify a claim, the OCGFC is not requesting that claimants demonstrate citizenship or legal residency in the United States. However, a claimant must have a taxpayer identification number in order to receive compensation under the CGFAA. A taxpayer identification number is normally a Social Security Number (SSN) or, in the case of a non-U.S. citizen who does not have and is not eligible for a SSN, it can be an Individual Taxpayer Identification Number (ITIN). An

undocumented non-U.S. Citizen is entitled to obtain an ITIN. Persons who require an ITIN should apply for one using IRS Form W-7, Local Residency.

Any individual who sustained damages from the fire will be eligible for compensation regardless of where that person lived at the time of the fire and where that person is living now. The Notice of Loss requests information regarding a prospective claimant's current address and current contact information. Throughout the entire claims process, the OCGFC will make every effort to work with all claimants, wherever they may be.

Authorized Legal Representative

The regulations provide that a Notice of Loss must be signed by each claimant or by the "duly authorized legal representative" of the claimant. If an individual is signing a Notice of Loss as the legal representative of a claimant, the signer must submit evidence of his/her authority. Although this person may act as a "duly authorized legal representative," the representative has no right to receive compensation for claims submitted on the claimant's behalf under the CGFAA. This is consistent with Section 295.14 (Assignments) of the applicable regulations that states that the assignment of claims and the right to receive compensation for claims under the CGFAA is prohibited and will not be recognized by the OCGFC.

Under the Age of 18

A minor may not file a Notice of Loss on his/her own behalf. Generally, because a minor does not own property separate and apart from his/her parents, the parents would make the claim for any damage to property. Under New Mexico law, a minor is any person under the age of 18. In the case of a child who has suffered a personal injury, or where the minor has an individual claim for lost wages, the child's damages would be separately compensable from those of the parents. In such a case, the parents must use the procedures applicable under New Mexico law to establish their authority to file the Notice of Loss and make the irrevocable election to proceed under the CGFAA. However, because parents have a duty to provide care and support for their children, a parent may seek reimbursement for eligible out-of-pocket fire-related expenses without a court order. For additional information regarding the requirements of New Mexico law, claimants can contact the Lawyers Care Referral Program of the State Bar of New Mexico at 1-800-876-6227, from 8:30 a.m. to 12:30 p.m., Monday through Friday. Callers should advise the Lawyers Care Referral Program that they have a Cerro Grande fire-related issue.

Individual Versus Business Losses

A separate Notice of Loss must be filed for individual losses and for business losses. If more than one business was impacted, a Notice of Loss must be filed for all businesses using the same tax I.D. number.

Unincorporated Businesses

An individual who has an unincorporated business (i.e. d/b/a) must include all losses relating to that business on a separate business Notice of Loss.

Multiple Business Owners

A separate Notice of Loss needs to be filed for each business. If a husband and wife each own their own business, for example, and in addition the husband and wife have joint property, three Notices of Loss would need to be filed: one would need to be filed for the wife's business, one for the husband's business, and a third for the property that was jointly owned.

Special Needs

A "special need" is identified as any condition or situation where the claimant requires extra assistance completing the claims process. Elderly people are not by themselves an identified group; however, it is anticipated that a large percentage of persons needing special assistance will be elderly, and particular attention will be paid to identify and contact them.

Financial Hardship

Financial hardship refers to the situation in which a person, due to the fire, finds himself/herself unable to meet his/her usual and normal living expenses. This situation may arise from having to pay rent on a temporary relocation while still having to make mortgage payments on a destroyed home. A financial hardship might also be caused by loss of income due to the fire. A situation due to the fire that causes financial hardship should be treated as a “red flag”, and a request made by the Claims Reviewer for expeditious review by an OCGFC Authorized Official of the case.

Notice of Loss for Multifamily Rental Properties

Generally, a claimant who owns a rental property consisting of several units; i.e. a duplex or a quadriplex, one of which he/she lives in, should file an individual Notice of Loss for the structure, including the unit the claimant lives in and a separate business Notice of Loss for the lost income from the rental units.

➤ SUBMITTING A NOTICE OF LOSS

How Much Information is Necessary to File a Notice of Loss

Claimants will be asked to describe their losses in general terms on the Notice of Loss. At the time of filing, they will not be asked to provide documentation that supports their claim. Information on losses and their related dollar values will be requested and collected once a Claims Reviewer has been assigned to the case.

Unsigned Notice of Loss

If the OCGFC receives an unsigned Notice of Loss, the Claims Reviewer will contact the claimant and set up an appointment to have the Notice of Loss signed. The processing of the Notice won't begin until a signature has been obtained.

Signing for Business, Not-for-Profit, Pueblo or Governmental Entity

An authorized official of the business or governmental entity must sign the Notice of Loss.

Effect of Signing the Notice of Loss

When a claimant signs the Notice of Loss, the claimant is stating that all the information included on the form about the claim, including any attachments, is true, complete and correct to the best of the claimant's knowledge. When signing the Notice of Loss, the claimant is also making the decision to have all claims against the Federal government related to the Cerro Grande Fire reviewed and paid under the CGFAA. However, if a claimant is dissatisfied with the initial decision, there is a two-step appeal available: First, an administrative appeal must be made to the Director of the OCGFC. If the claimant is still dissatisfied, the claimant can appeal again by either electing binding arbitration or judicial review of the case by the U.S. District Court for the District of New Mexico.

Effective Date of Submittal

A claim is considered submitted on the date that the Notice of Loss is received by the OCGFC. Within five days of submission of the claim, the OCGFC will send out an acknowledgement letter that notes the filing date of the Notice of Loss.

➤ CLAIMS REVIEWER

After Filing a Notice of Loss

Within 10 business days of filing the Notice of Loss, the claimant will be contacted by a Claims Reviewer to set up an appointment to discuss the case.

Method of Contact

On the Notice of Loss claimants will provide the OCGFC with information as to where they may be contacted. This may be a different place than the claimant resided before the fire. A Claims Reviewer will work with claimants in person, by phone, mail or e-mail.

Claims Reviewers

A Claims Reviewer is a person hired as an employee or contractor of the Federal government to review and evaluate claims. The Claims Reviewer will assist claimants in preparing a Proof of Loss statement, review and evaluate the claim, and prepare a recommendation on the payment or denial of all or a portion of the claim.

The Claims Reviewer will work with the claimant to learn as much as possible about each situation in order to identify all eligible items for compensation. This includes identifying documentation necessary to prove claimant's loss and how best to obtain the documentation.

The recommendation of the Claims Reviewer, along with the Proof of Loss signed by the claimant, will be submitted to an OCGFC Authorized Official. Only an Authorized Official has the authority to decide claims.

Responsibility of the Claims Reviewer

The burden of proving loss and damages rests with the claimant. The Claims Reviewer will help claimants prepare their claim to maximize the amount of compensation they may receive. It is the responsibility of the Claims Reviewer to ask questions, define appropriate documentation needed to substantiate a claim, develop an opinion regarding reasonableness of the claim and provide the Authorizing Official with a recommendation on the claim.

295.11 Deadline for Filing a Notice of Loss.

Deadline for Filing a Claim

The last day to file a claim is **August 28, 2002**. This is the date by which the OCGFC must receive the Notice of Loss. Additionally, if a request to supplement or reopen the Notice of Loss has not been received by OCGFC by August 28, 2002, the claim cannot be compensated under the CGFAA, with the exception of Mitigation provided under § 295.21(d)(3) and §295.21(h) of the Final Rule. Claimants requesting mitigation compensation have until August 28 2003 to reopen a Notice of Loss.

Extensions for Filing Deadline

There will be no extensions to the August 28, 2002 deadline to file a Notice of Loss for a new claim. However, the Director of the OCGFC may grant to a claimant an extension to sign a Proof of Loss and close his or her claim, in certain situations to prove the nature and extent of a claimant's losses. (See **Proof of Loss Options** under § 295.30 of the Policy Guidelines).

295.12 Election of Remedies.

Choosing Options

The CGFAA requires that all claimants, including individuals, businesses, governments, subrogees, who wish to make a claim for assistance against the United States for losses suffered as a result of the Cerro Grande Fire must make an election as to how they wish to proceed. They may either file a claim or a lawsuit against the United States or make a claim under the CGFAA. The intent is that by filing under the CGFAA, any and all rights one might have to make a claim against the government are waived – not only under the Federal Tort Claims Act but also “under any other provision of law,” whatever those rights might be. A claimant can consult with an attorney to determine whether he/she is in fact giving up the right to sue the Federal government “under any other provision of law.”

The OCGFC understands claimants' concerns about having to decide whether to proceed with a claim under the CGFAA or under another authority, such as the Federal Tort Claims Act. For help in making a decision about filing under the CGFAA, feel free to contact the Customer Service Center for assistance. To pursue a claim under the FTCA, an individual must first file an administrative claim with the Department of Interior. Only after that claims process has been concluded can a lawsuit in Federal Court be filed. For more information about the FTCA process, call the Department of Interior at 505-988-6200.

Waiving Right to Sue

The goal of Congress in passing the CGFAA was to provide claimants a fair, simple, fast and inexpensive method for receiving compensation for losses from the Cerro Grande Fire. This is in contrast to the FTCA, which can be a long and costly process. The CGFAA does provide options if the claimant is not satisfied with the proposed compensation. Claimants may appeal to the Director of the OCGFC, and if they are still not satisfied with the compensation they may elect to have their losses reviewed by binding arbitration or by the Federal Court.

Withdrawing the Notice of Loss

Claimants, at any time, can withdraw a Notice of Loss filed under the CGFAA. There is no official form to fill out. Claimants may simply provide the OCGFC with a signed letter indicating the desire to withdraw the Notice of Loss. Any partial payment received by claimants under the CGFAA, must be returned to the OCGFC. Claimants, who withdraw the Notice of Loss prior to signing the Proof of Loss, may refile the Notice of Loss on a one-time basis, until August 28, 2002.

Note -- upon the original filing of the Notice of Loss, the claimant elected the CGFAA as the sole remedy for damages arising from the Cerro Grande Fire and waived any rights to pursue any other remedies against the United States under the FTCA or any other provision of law. Even though a claimant has opted to withdraw a Notice of Loss his or her remedy is still limited to the CGFAA.

Withdrawal Under the Federal Tort Claims Act

An injured person who filed a claim under the FTCA or a civil action against the United States for injuries, losses or damages relating to the Cerro Grande Fire before August 28, 2000, may file a Notice of Loss under the CGFAA provided the claim under the FTCA was withdrawn or the injured person was dismissed as a party to the civil action with prejudice not later than October 27, 2000. An injured party who filed a claim under the FTCA or initiated a civil action against the United States on or after August 28, 2000, is not eligible to file a Notice of Loss under the CGFAA.

Time to File a Claim

The CGFAA provides that claimants have until August 28, 2002 to file their Notice of Loss. However, in order to process the claims and get approved payments to the claimants quickly, claimants should file their Notice of Loss as soon as possible. The OCGFC has implemented new procedures in order to stream line and simplify the claims process.

Legal Referrals

Before deciding to file a claim under the CGFAA, a person may consider discussing their options and rights under this law and under the FTCA. Individuals in need of legal advice or assistance may contact the Lawyers Care Referral Program of the State Bar of New Mexico at 1-800-876-6227, 8:30 a.m. to 12:30 p.m., Monday through Friday. Individuals who contact the State Bar should note that they have an issue related to the Cerro Grande Fire.

Estimates Before Filing a Claim

The CGFAA does not provide for evaluating a claim before a Notice of Loss has been filed. It was Congress' intent that claimants first decide which route to pursue. However, there is no rush

to file a claim. The deadline to file a Notice of Loss is not until August 28, 2002; so prospective claimants should take their time in learning about the CGFAA reimbursement process.

Signing the Notice of Loss

When a claimant signs the Notice of Loss the claimant is making the decision to have all claims against the Federal government related to the Cerro Grande Fire reviewed and paid for under the CGFAA. However, claimants do retain the right to the two levels of appeal.

295.13 Subrogation.

Settling with Insurance Companies

The CGFAA states that priority will be given to processing individual claims. At the same time, however, OCGFC will work with the insurance companies to process their subrogation claims in a timely fashion.

Submitting a Subrogation Claim

One Subrogation Notice and Proof of Loss should be filed with respect to payments already made by the claimant (the insurer or other third party) for each policyholder or payee. By filing a Subrogation Notice of Loss with the OCGFC for any one claim, the subrogation claimant has elected the CGFAA as its exclusive remedy for all claims arising out of the Cerro Grande Fire. Copies of the forms are available on the internet at www.fema.gov/cerrogrande and at the Customer Service Centers.

295.14 Assignments

Assignment of Claims

Federal law prohibits claimants from assigning their claim. This means that even if a duly authorized legal representative is making a claim on behalf of a claimant, all checks for compensation will be in the name of the claimant.

SUBPART C – COMPENSATION AVAILABLE UNDER THE CGFAA

This subpart explains the various types of claims that are allowable under the CGFAA.

295.20 Prerequisite to Compensation

Establishing That a Claim is Fire Related

How the OCGFC establishes whether damage is fire related will depend upon a number of factors, including the nature of the losses. Where there is damage to physical property it should be sufficient to do a visual inspection of the damaged items/area. Where a visual inspection is not possible, either because the damaged items have been disposed of or because the damage is intangible, a Claims Reviewer will need to establish the geographic location of the claimant or property during the relevant period of time in relation to the area where fire damage occurred.

295.21 Allowable Compensation

➤ 295.21(a) ALLOWABLE COMPENSATION

Categories of Coverage

The broad categories of eligibility are: real and personal property loss, business and financial loss, and personal injury.

Insurance Deductible

Insurance deductibles are eligible for reimbursement under the CGFAA.

Value of Self-Labor

The OCGFC will estimate what the replacement costs would have been if contractors performed the work, and then will compensate the claimant for that amount. If it costs a claimant less to rebuild than it would have if a contractor were hired, the claimant keeps the difference.

Landscaping

Claimants are eligible for compensation for the damage or destruction of landscaping on their residential property. This includes developed lots where roads and utilities have been installed but the residence has not yet been constructed. Compensation will be based upon the value of the damaged or destroyed landscaping – including trees, shrubbery, grass and other landscaping – and will be provided up to, and will be capped at, 25 percent of the pre-fire market value of the property, including both the land and the home.

Landscaping of Platted, Undeveloped Lots

Compensation for reforestation of platted, undeveloped lots that had no infrastructure (i.e., buildings, roads, easements, utilities) at the time of the fire, will be treated the same as residential property under the Landscaping Policy except that, when calculating the 25% of the pre-fire market value of the property, the percentage of the property used for the projected infrastructure (building footprint) will be deducted.

If claimant has an arborist report for the property, it will be considered when determining the compensation and will be subject to the same deduction for the building footprint.

Bark Beetles

The OCGFC may compensate individual and business claimants for loss or damage to trees caused by an infestation of bark beetles that has manifested itself by August 28, 2002 under the following conditions:

1. The claimant must successfully demonstrate that the infestation causing loss or damage is attributable to the Cerro Grande fire and not to other commonly recognized infestation factors such as conditions of drought, overcrowding, under watering or other improper management practices. Such claims can be supported by evidence that the tree(s) was actually fire-damaged or heat-stressed, i.e., that the tree(s) was partially burned, that the fire burned in close proximity, or that the crown was affected by the fire, making the tree(s) an easy target for bark beetle infestation and damage.
2. The affected property must be located in Los Alamos, Sandoval, Santa Fe, or Rio Arriba Counties or San Ildefonso or Santa Clara Pueblo.
3. Any such compensation will be consistent with the “Guide for Plant Appraisal” commonly relied upon by certified arborists and will be included in, and not in addition to, compensation provided under OCGFC’s landscaping policy (44 C.F.R. 295.21(a)) or landscaping of undeveloped lots policy, as applicable. Claimants should not expect maximum compensation for infestations that affect only a few trees on a property or where the vegetation on the property consists of other substantial shrubbery that is unaffected.
4. The claimant must demonstrate that he or she has exercised reasonable efforts to mitigate losses as required by 44 C.F.R. § 295.21(a) or explain why such efforts were not required.
5. OCGFC will compensate for reasonable charges from arborists certified by the International Society of Arboriculture for examinations to confirm bark beetle infestation and damage only if the appraisal is requested in writing by the claimant and approved in advance of the examination by the Office of Cerro Grande Fire Claims.

6. Claims for bark beetle infestation must be filed not later than August 28, 2002.

Governmental claimants, including Indian pueblos, should request compensation for bark beetle damage under the guidelines for reforestation/revegetation and not under this policy for bark beetles.

Over the Counter Medications

Reasonable expenses incurred for over the counter medications to address conditions caused or aggravated by the Fire will be eligible for compensation without substantiation by a doctor, as long as the expenses were incurred prior to July 1, 2000 (30 days after the period of containment of the Fire).

Pain and Suffering

Generally, damages under the CGFAA are determined under New Mexico law, and New Mexico law provides that a claimant may only be eligible for compensation for pain and suffering if he/she suffered a physical injury due to the fire. Therefore, the CGFAA will not provide compensation for pain and suffering unless a medical doctor can document that the pain and suffering was caused by the physical injury suffered as a result of the Cerro Grande fire. The doctor must verify that any treatment for the physical injury was required as a result of the fire.

Vacation Time

An employee is eligible for reimbursement from the OCGFC for unscheduled leave taken between May 4 and May 19, 2000 (which is the period during which the bulk of fire response-related activities occurred). To be eligible, the leave must have been unscheduled and the claimant's employer must have charged the claimant for the time used. The OCGFC will not reimburse claimants for time taken off outside of the May 4-19, 2000 timeframe, including time taken off for claims preparation.

Employee Benefits Contributions

Claimants who lost wages during the evacuation period as a result of the Cerro Grande Fire are eligible through the CGFAA to be compensated for those wages. In addition, the OCGFC recognizes that contributions made on behalf of the claimant by the employer for benefits (e.g. pension plans, health care) are also compensable losses associated with the lost wages.

The OCGFC will compensate a claimant directly for the lost contributions. The claims reviewer will require a description of the benefits package and how it works in order to calculate the recommended compensation. Because § 295.14 of the Regulations prohibits the assignment of claims, OCGFC is prevented from making a contribution to a claimant's benefits package, as the claimant's employer would have done.

Reduction in Employment

Employees whose hours have been reduced as a result of the fire can be compensated under the CGFAA for the lost wages. After a Notice of Loss has been filed and the number of lost hours noted, the Claims Reviewer will attempt to verify the claim by contacting the claimant's employer. In addition, the Department of Labor will need to be checked to ensure payment has not already been made.

Attorney's Fees for Quad Associations and Individual Quad Owners

Quad associations or individual quad owners can be reimbursed for reasonable attorney's fees that are directly related to a determination of ownership of the claimant's quad and were billed for legal services performed between October 26, 2000 and January 1, 2001, inclusive.

In order to be considered for an award of such damages, a quad owner must present the attorney's detailed billing statement showing that the services were performed during the applicable period; such services were related to a determination of quad ownership; and the

owner was billed for such services either within the applicable period or within a reasonable period of time after January 1, 2001. OCGFC will consider attorney's bills that have been submitted to the claimant by the attorney prior to January 31, 2001. Attorneys who gave pro bono legal advice or assistance on quad ownership during the applicable period cannot now go back and bill for such services

Replacement of Cars

Compensation will be based upon the fair market value of a car of similar model and age. "Blue Book" values, adjusted for local conditions or particular circumstances, will be used in determining fair market value.

Replacement of Computers

Compensation will be based on a specification sheet developed by the OCGFC, costing out the price of a new name-brand computer. All claimants who lost computers will be provided funding based on this specification sheet. Requests for additional funding to address unique circumstances will be evaluated on a case-by-case basis.

Multiple Clean-Up of a Dwelling

It may be reasonable to provide compensation to a claimant for multiple cleanings of a dwelling or to part of the dwelling. The need for additional clean-up costs should be evaluated on a case-by-case basis and may depend on the location of the structure in relation to the amount of debris on the claimant's or neighboring property. How long such additional funding should be available may also depend on questions relating to how much rain there has been or the amount of revegetation or reforestation in a particular area.

Increased Mortgage Interest Costs

Pursuant to the CGFAA, an increase in mortgage interest costs due to the Cerro Grande Fire is a compensable loss. In order to compensate claimants for increased mortgage interest costs on the difference between the interest rate of the mortgage on a home destroyed by the fire, and any higher interest rate on a mortgage claimant is now carrying on a rebuilt or replacement home, the OCGFC has determined it will pay the costs associated with procuring a new mortgage on the property at an interest rate comparable to that of the original mortgage under the same or comparable terms and conditions.

Claimants who have lost a residence as a result of the fire, can be compensated for increased mortgage interest costs if --

- The residence was being used as a primary or secondary residence and was secured by a mortgage(s) (the initial mortgage(s)); and
- Claimant has been compensated for the loss of the residence; and
- Claimant has paid off the initial mortgage(s) with the lender; and
- Claimant has purchased or rebuilt a residence and has secured a mortgage (interim mortgage) on the replacement residence at a higher interest rate -- **OR** -- will purchase or rebuild a residence prior to August 28, 2002, on which he or she will potentially secure a mortgage at a higher interest rate.

(See **Appendix 5, Policy for Increased Mortgage Costs** for a detailed explanation of the policy.)

Pets

Under New Mexico law, the amount of compensation for the death of a pet due to the fire will generally be based upon the fair market value of the pet.

Also under New Mexico law, generally, the loss of companionship of a pet is not compensable. However, a pet owner may, on a case-by-case basis, be eligible for the actual damages sustained by being deprived of the pet. For example, if an owner can prove the special value of

the pet to him/her by showing its qualities, characteristics and pedigree, the owner may be eligible for compensation if the pet was lost during the fire. The owner may also be able to claim compensation if the owner can show that the pet had value as a companion beyond that which would be defined as sentimental value. An important issue in determining whether the loss of companionship can be compensated would be whether the animal provided services or protection beyond that which is usual and replaceable. This might include a seeing-eye dog or a dog that went to obedience school and, as a result, had certain characteristics or provided certain services that went beyond that which is usual and replaceable.

If the claimant can substantiate in some way that: (a) the pet was "lost" as a result of the Cerro Grande Fire, and (b) the claimant had previously paid, prior to the fire, for obedience training for that pet (perhaps by receipt or verification by the trainer), it may be appropriate to compensate the claimant to have a replacement pet trained.

➤ **LOST INTEREST INCOME/INTEREST PAID**

Lost Interest Income on Funds Withdrawn from Personal Accounts

If a claimant, pending receipt of any payment under the CGFAA, lost interest income on funds withdrawn from personal interest bearing accounts (i.e., checking, savings, certificates of deposit, etc.) and used only for repair or replacement of real or personal property owned by the claimant and damaged or destroyed by the Cerro Grande Fire, the claimant is entitled to compensation for that lost interest income from the date of withdrawal of such funds until the date compensation under the CGFAA sufficient to cover such withdrawn funds was first deposited into the claimant's account, if the claimant elected compensation under an Electronic Funds Transfer, or the date of the first compensation check sufficient to cover the amount of funds withdrawn.

Interest Paid on Credit Card Charges or Personal Loans Obtained for Repairs

If an individual claimant, pending receipt of any payment under the CGFAA, obtained a personal loan or incurred charges on a credit card issued in the claimant's name, the claimant is entitled to claim compensation for interest paid on that portion of the personal loan or credit card charges that were used only to repair or replace real or personal property owned by the claimant and damaged or destroyed by the Cerro Grande Fire from the date such loan or charges were incurred until the date compensation under the CGFAA sufficient to cover such loan(s) or charges was first deposited into the claimant's account, if the claimant elected compensation under an Electronic Funds Transfer, or the date of the first compensation check sufficient to cover the amount of funds used to pay for such repairs and/or replacements.

Lost Interest on Income from Lost Opportunities or Speculation

The OCGFC will not reimburse a claimant for claims of lost interest from income that would have been gained in a speculative market or from a potential opportunity lost because of the Cerro Grande Fire. Pursuant to the Final Regulations, only damages that are real, substantial and just money damages for actual or real injury or loss are compensable. Therefore, claims due to lost opportunity or speculation, not based on an actual or real injury or loss are not compensable under the CGFAA.

➤ **LOST RENTAL INCOME**

Lost Rental Income

The OCGFC may compensate claimants on a case-by-case basis for up-to-12 months of lost rental income. In order to qualify for such compensation, claimants must—

1. Have owned rental property in Los Alamos County that was damaged or destroyed by the Cerro Grande Fire.

2. Have been receiving rental income from the destroyed property in May 2000 or have had a reasonable expectation that they would have started to receive rental income from such property by May 1, 2001.
3. Substantiate lost rental income by providing documentation of occupancy/vacancy for affected properties for a period of three years preceding the Cerro Grande fire, or for the period of ownership if less than three years (copies of New Mexico Gross Tax Receipts, Federal Income Tax Schedule E, etc.). If lost rental income is based on the reasonable expectation of future rental income, claimants must document and establish the reasonableness of those expectations.
4. Provide evidence of reasonable expectation of occupancy (copies of leases or rental agreements, statements from former tenants of intent to remain in residence, etc.) for the period after the fire.
5. Provide evidence of fixed costs associated with the production of rental income for the properties in question and evidence of the period for which such costs continued to be paid, if any.

Compensation provided under this policy is limited to lost rental income (as defined below) for the period commencing June 1, 2000 and ending May 31, 2001. If a claimant refunded all or part of rents for the month of May 2000, or if a claimant failed to receive rents due in May and took no action to later collect those rents, a claimant may receive compensation for lost rental income for the period from May 1 through May 31, 2000 upon presentation of adequate documentation of any such refunds or lost rents.

Extended Compensation Period

The OCGFC may compensate claimants on a case-by-case basis for an additional 6 months of lost rental income provided a claimant has demonstrated an intent to rebuild equivalent rental property in a timely fashion. In order to qualify for such compensation, claimants must—

1. Have been entitled to receive lost rental income compensation for the initial period described above, and
2. Have demonstrated an intent to rebuild an equivalent rental property in a timely fashion after the claimant had first acquired substantial funds in compensation for Cerro Grande fire-related losses.

Consistent with the responsibility of claimants to mitigate losses, OCGFC expects claimants to commence construction of equivalent rental property (“replacement rental property”) within six months following acceptance of a substantial partial or final payment in compensation of Cerro Grande losses. A “substantial payment” is one which, in the aggregate, is in excess of \$100,000 and which the claimant has received compensation from an insurance company, the OCGFC, or a combination of both, for Cerro Grande fire-related losses. Whenever a series of smaller payments amounts to \$100,000 or more, OCGFC will consider that a substantial payment has been made.

Evidence of an intent to rebuild may consist of applications for building permits, contracts with architects to design equivalent rental property, agreements with contractors or builders, site preparation work, and similar documents or actions evidencing claimant’s intent to timely rebuild equivalent rental property.

A claimant may also evidence the intent to rebuild by signing an agreement with OCGFC to rebuild equivalent replacement rental property within a specified time period, usually within 6 months of the signing of any such agreement.

Unexplained failure to commence construction within 6 months following acceptance of a substantial payment or within the time periods specified in any agreement with OCGFC, shall be considered evidence of a lack of intent to rebuild and may result in termination of compensation for lost rental income.

The OCGFC may, upon a claimant's written request, extend payments for loss of rental income beyond the extended 6-month period on a case-by-case basis for good cause. "Good cause" may be demonstrated by documenting reasonable efforts to commence timely construction of replacement rental property coupled with unavoidable delays (e.g., unavailability of a competent contractor, unusual weather delays, etc.). It is OCGFC policy to provide full, fair and adequate compensation for lost rental income to claimants who have demonstrated an intent to rebuild equivalent rental property in the Los Alamos community and who have acted in a reasonable and timely fashion to rebuild equivalent rental property but who have been unable to complete construction due to events beyond the claimant's control. However, in no event will such compensation extend beyond August 28, 2002.

Claimants who have closed their claims and whose construction of replacement rental property is delayed beyond the period for which they received lost rental compensation may, upon written request, have their claims automatically reopened to include any additional lost rental income that resulted from unexpected construction delays, such as flooding or similar types of delays caused by events over which claimant had no control, provided the written request is received on or before August 28, 2002.

Delays that were for the convenience of the claimant are not grounds for automatic reopening but will be evaluated under the "good cause" standard of 44 C.F.R. § 295.34(a)(4). Failure to timely secure building permits or other required permits is not considered a factor for which reopening is automatically permitted. If an event over which claimant has some control, such as issuance of a building permit, causes delay beyond a 12-month period, the claim may be reopened only upon claimant's showing that he or she timely submitted the request for a building permit (or other similar matter) and exercised all due care in attempting to secure the building permit and that the delay was caused by factors beyond claimant's control.

Calculation of Compensation

Compensation for lost rental income shall be based on the gross rental income that was lost but only for so long as claimant can document that all fixed cost continued to be paid and for net rental income that was lost for any other periods, consistent with OCGFC policies on calculation of business losses. Claimants must establish that rental income for which compensation is sought was lost as a result of the Cerro Grande Fire

➤ TEMPORARY LIVING/RELOCATION

Loss of Use for Homeowners

Homeowners, whose homes were destroyed by the Cerro Grande Fire, are initially eligible for up to 12 months for loss of use of their home. If during that time the homeowner can demonstrate that active measures were taken to move forward with the rebuilding of the structure (e.g., applies for a building permit, pays an architect to draw plans, does site preparation work), the OCGFC may extend loss of use rental payments for up to three years total, or until the homeowner occupies the new home, whichever comes first. (Payments will be made on a reimbursement basis.)

Homeowners, who were evacuated between May 4, 2000 and May 19, 2000, but returned to their residences, may be entitled to loss of use. Claims Reviewers will provide assistance in determining eligibility.

Loss of Use for Renters

Renters whose residences were destroyed are initially eligible for up to 12 months of loss of use of the residence, but only for the difference between their old and new rent, if the new rent is greater. The OCGFC can extend loss of use payments to renters for up to an additional six months for good cause on a case-by-case basis (e.g., inability to find suitable quarters, unusual circumstances, personal hardships caused by the Fire). (Payments will be made on a reimbursement basis.)

Renters who were evacuated between May 4, 2000 and May 19, 2000, but returned to their residences may be entitled to loss of use under certain circumstances. Claims Reviewers will provide assistance in determining eligibility.

Travel Expenses During Evacuation Period

Expenses incurred in traveling/commuting during the evacuation period (May 4 through 19, 2000) will be eligible for compensation as relocation expenses. This includes reasonable expenses incurred (transportation, lodging and food) while traveling to the Fire affected areas from out of town and relocating from the fire-affected areas. Lost wages will also be eligible. The value of one's time will not be compensated. Claimant will be eligible for one round trip after the evacuation period to view his or her real or personal property, for a period of up to three days/three nights at the federal per diem rate for Los Alamos County at the time of the visit. Compensation for additional trips will be evaluated on a case-by-case basis.

Food Expenses

Claimants are eligible for reimbursement for food costs associated with the evacuation. The OCGFC will base its determination on either estimates or actual costs provided by the claimant. Normal food costs will not be deducted from the total amount of compensation.

Items Purchased During Evacuation

Claimants that were evacuated on short notice may be entitled to reasonable compensation for either the rental or purchase of necessary items rented or purchased while away from home, since it may not have been possible for them to take their possessions with them.

➤ GOVERNMENTAL ENTITIES

Administrative Allowance for Governmental Entities

The OCGFC will award a 7% Administrative Allowance to local and tribal governments (governmental entities) for large construction, infrastructure, reforestation and fuels management projects that exceed \$48,500 and that began after the "emergency period" described under Section 295.21(a) – Governmental Entities – Compensation for Regular and Overtime Employee Wages Responding to the Fire of the Policy Guidelines. To be eligible for this administrative allowance, the OCGFC must have determined the projects are necessary as a result of the Fire. This Administrative Allowance may also be applied on a case-by-case basis to other projects for which the governmental entity has clearly demonstrated an administrative burden. However, the fee will generally not be applicable to claims that are strictly for loss of value, loss of business and business interruption.

This Administrative Allowance is intended to cover the governmental entity's indirect costs of administering eligible projects. The 7% Administrative Allowance will be calculated on the total project cost including Claimant's direct costs for project development, program delivery, materials and contracting, as well as New Mexico gross receipts tax charged to the governmental entity by the contractor.

Direct costs are any costs that are identified with a specific project, such as materials and cost of employees directly and primarily engaged in project construction, program delivery, field inspection or technical management.

Indirect costs are defined as those costs not specifically identified with a single project or where it would not be cost effective to assign the cost to a single project and can be applied to more than one project. Examples of indirect costs include: rent, utilities, support staff not specifically assigned to one project, etc.

For compensation projects, the 7% Administrative Allowance will be paid at the time of settlement. For mitigation projects, the governmental entity can request that any partial or advance payment include a reasonable portion of the Administrative Allowance to be determined by the Director, as part of the request for a partial or advance payment. In no event will the total Administrative Allowance included in partial or advance payments, exceed 7% of the total project cost. In the alternative, the 7% Administrative Allowance can be paid at project completion as certified by the governmental entity.

In order to avoid a duplication of benefits, if projects are funded under both the Stafford Act and the CGFAA, any administrative allowance awarded through Stafford Act programs will be deducted from the 7% Administrative Allowance awarded by the OCGFC.

Compensation for Regular and Overtime Employee Wages Responding to the Fire

The OCGFC recognizes the emergency response period for the Cerro Grande Fire as extending to December 1, 2000. Further, the OCGFC recognizes that some government entities responded and/or will respond to subsequent events (e.g. flooding) as a result of the Fire. The OCGFC will recognize and determine an emergency period appropriate to the subsequent event resulting from the Fire. Therefore, wages for government employees responding to the Fire and/or subsequent event are compensable as follows:

Regular-time wages of government employees during the emergency period for duties performed to respond directly to the Fire and/or subsequent events, which were outside of the employees' normal job scope.

Overtime wages, including those paid to salaried (non-hourly rate) employees, related to the response and recovery efforts, as long as the governmental entity actually paid or otherwise compensated employees for the extra hours worked.

The regular-time wages of most fire, police and emergency services personnel are excluded from compensation, since regular wages would have been paid to these employees regardless of the Fire. The OCGFC will consider unusual circumstances for regular-time wages for these types of employees, if the government entity can demonstrate that it incurred additional expenses as a result of the Fire (e.g. Government entity hired additional Fire Fighters specifically to respond to the Fire).

Lost wages for non-salaried employees paid by the government entity to employees who were unable to attend work due to evacuations or government office closures during the fire or in the immediate aftermath are compensable as set forth in Section 295.21(a) of the Policy Guidelines. Salaried employees are discussed under 295.21(b) of the Policy Guidelines.

Government employees wages and/or expenses that are indirectly related to the Cerro Grande Fire are covered by the 7% Administrative Allowance described in the Administrative Allowance for Governmental Entities policy under Section 295.21(a) of the Policy Guidelines.

➤ BUSINESS LOSSES

Calculation of Losses

Generally, business losses will be based upon historical patterns or trends. This may be based on earnings for the previous two or three years, or it may be based upon the same month(s) in previous years as the month(s) in which the loss took place. This will take into account seasonal variations attributable to the claimant's business. The method and the period of time to be used

in establishing a trend will be determined on a case-by-case basis and will depend upon the specifics and characteristics of the claimant's business.

Time Period for Calculation of Business Interruption Claims

Each claim will be evaluated on a case-by-case basis. The method which best applies to the situation will be used to determine what time period should be used in calculating business interruption claims. The method used will be based on what is most reasonable for the type of business, taking into account factors such as whether the business provides a service; is it retail or product based. If the business has seasonal variations, a comparable time frame would be used, (e.g., the same month for the past three years as opposed to every month during the previous three years).

Business Interruption Claims and Subsequent Increases in Revenue

If a claimant requests compensation for business interruption for actual damages for a set period of time (e.g. two weeks following the disaster), the loss may be calculated based solely upon the past history of the business and the specified period of time. Future increases in income attributable to the fire need not be taken into account. However, if the claimant is or will be requesting loss of projected business earnings, then the subsequent increase will be taken into account when considering the projected loss.

Start-up Businesses

Various items will be looked at when calculating business losses for a start-up business, including present and past income attributable to the business and contracts in place for purchase or distribution rights. Where the loss is entirely speculative because there is no revenue history and it cannot be demonstrated that there was a reasonable expectation of profits, the claimant will not be compensated for lost profits or the value of his or her lost time. A claimant can be compensated, however, for physical damage to the business assets or legitimate continuing business expenses such as rent and phone, if those expenses have not previously been compensated under the loss of use policy.

Discontinuing Expenses

When calculating both short and long term business losses, a deduction will be made for clearly identifiable discontinuing expenses, such as labor costs not paid and the cost of goods.

Compensating Future Business Losses

See 295.21(c) **Damages Arising in the Future** of the Policy Guidelines.

➤ 295.21(b) EXCLUSIONS

Attorney's Fees

Claimants may consult with an attorney, or other agents if they so choose, but it will be at their own expense, with the exception of limited attorney's fees for quad associations and individual quad owners detailed under 295.21(a) of the Policy Guidelines. The intent of the CGFAA is to make the claims process as simple and understandable as possible such that a claimant would not need the services of an agent, like an attorney.

Public Adjuster's Fees

Fees paid to public adjusters to assist claimants in making a claim under the CGFAA are not eligible for compensation. The intent of the CGFAA is to make the claims process as simple and understandable as possible such that a claimant would not need the services of an agent, like a public adjuster.

Limitation on Agent's Fees

The CGFAA provides that no attorney or agent such as a public adjuster may charge for their services in making a claim under the CGFAA in excess of 10 percent of the amount of any

payment on a claim under the act. No amount of this fee is eligible for reimbursement under the CGFAA.

Other Fees

Claimants may be compensated for certain types of fees, such as an appraisal, but only if they have been requested by the OCGFC.

Overtime for Salaried Employees

The OCGFC policy is that, with the limited exception described below, non-hourly wage-rate salaried employees who worked overtime are not eligible for reimbursement for any uncompensated time. As a general labor matter, such employees are required to perform whatever duties might be required of them at any given time, with compensation limited to the agreed-upon salary. The CGFAA is designed to reimburse employees for wages lost due to work that could not be performed as a result of the fire – not for work that has been performed but is not compensable through the claimant's employer. A limited exception will be made on a case-by-case basis to compensate employers that made payments on behalf of its non-hourly wage rate salaried employees (excluding payments in the form of a "retention" bonus), who worked uncompensated extra hours to mitigate Fire-related losses affecting the business or the community.

Loss of Non-Proprietary Uses

The OCGFC cannot compensate individuals for the loss of interests or conveniences that are not derived from the individual's ownership or leasehold rights in the damaged property (with the exception of subsistence claims under § 295.21(i), of the Regulations). Examples of such losses which are not compensable include claims for increased housing costs by renters whose monthly rate or term of tenancy was not guaranteed by an existing lease at the time of the fire, or claims for increased mileage to available timber by individuals with wood cutting permits issued after the fire by the US Forest Service.

Cost of Prosecuting Claims

Claimant's costs incurred in prosecuting claims under the CGFAA are not compensatory damages and are not recoverable, except as provided under Claims Preparation Expenses, § 295.31.

➤ 295.21(c) DAMAGES ARISING IN THE FUTURE

Compensating Future Business Losses

The OCGFC is processing claims for projected future business losses. Projected losses must be determined within 180 days of filing the Notice of Loss, unless a waiver is signed, and in any event prior to the August 28, 2002, deadline for filing claims. Three options are available to a claimant as to how future business losses can be evaluated:

1. An individual or entity can file a Notice of Loss now, and projected losses will be forecast using the best available data.
2. An individual or an entity may file a Notice of Loss and request partial payments for actual losses. If the projected losses extend beyond the 150 day deadline to sign a Proof of Loss, in accordance with the Proof of Loss Options under 295.30 of the Policy Guidelines, the individual or entity may either: a) submit a written request to the Director to extend the deadline for signing the Proof of Loss; b) withdraw the Notice of Loss, prior to signing the Proof of Loss, return any partial payments and refile the Notice of Loss on a one-time basis on or before August 28, 2002, once the entire loss has been determined; or c) sign the Proof of Loss within the designated 150 days and have the Authorized official render a Determination now . Once the Proof of Loss or the Release and Certification has been signed, Sections 295.33 and 295.34 of the Final Regulations set forth the conditions under which claimants can, on or before August 28, 2002, supplement or reopen their

claims. These options will enable more actual data to be accumulated over a longer period of time to more accurately calculate any projected loss.

3. The claimant can delay filing a Notice of Loss until closer to the period during which the projected losses are anticipated to occur. Again, this will enable more actual data to be accumulated over a longer period of time. In this instance, the claimant will not be able to receive a partial payment for any earlier actual losses.

➤ **295.21(d) DESTRUCTION OF HOME**

Replacement Cost

Claimants whose homes were destroyed by the fire will be compensated for the cost to build a replacement home in accord with current codes using modern, readily available building materials of like kind and quality. The amount of eligible compensation will be determined through one of two compensation options: Option I (Square Foot Replacement Rate) or Option II (Individual Review). Once claimants have selected one of the options, the decision will be final and the other option will no longer be available.

Claimants who choose Option I (the Square Foot Replacement Rate) will receive “Base Costs,” which is a lump sum payment based upon the square footage of the destroyed home. In addition, Option I claimants, whether rebuilding or not, will receive “Other Costs,” which will compensate for site work, inadequate compaction and backfill, appliances, design fees, communications, computer or cable systems, fireplaces, landscape irrigation systems, and landscaping.

Claimants who choose Option II (Individual Review) will be compensated in accordance with 44 CFR, Part 295, based upon the reasonable cost to replace the individual home according to applicable codes and consistent with the design prior to the fire. Under this option, compensation will be based upon individual elements of the destroyed home (as opposed to Option I, which is based upon a dollar-per-square-foot replacement rate).

Claimants who choose to rebuild under either Option I or II, may also be eligible Mitigation, Architect Fees, Engineering Fees, Performance Bonds, and Specific Site Work required by Los Alamos County and other Applicable Codes.

See **Appendix 3, Home Replacement Policy** for detailed explanations on Options I and II.

Change of Use From the Original Home

The OCGFC will not consider modifications made to the use of the original home prior to the fire in determining which square foot replacement rate applies. A home that was originally constructed as a duplex will be compensated as a duplex. If significant modifications were made to the home to alter the originally constructed use of the home, claimants should weigh Option I (Square Foot Replacement Rate) and Option II (Individual Review) to determine which will provide fair compensation to replace the destroyed home.

Soils Reports

Claimants whose homes were destroyed by the Fire will be eligible, on a reimbursement basis, for the reasonable cost to obtain one soils report under the Home Replacement Policy, either under Option I or Option II, and regardless if they chose to rebuild or not. This compensation is limited to one report, either on the lot where the destroyed home was located or on another lot that has been purchased, but not both. Persons who purchased lots after the Cerro Grande Fire are not entitled to compensation for a soils report on the lot unless the buyer is a claimant who meets the above requirements.

Partial Payments Based on Estimates

Under the CGFAA, claimants may be compensated based upon estimates even before they start the rebuilding process. The OCGFC will evaluate each claim and make a determination based upon all available documentation as to what it will cost to rebuild a home.

Architectural, Engineering and Arborist Fees

If they are necessary to the process of repairing or replacing a structure and/or landscaping, claimants may be reimbursed for architectural, engineering and arborist fees. A claimant may also be compensated for such fees if the OCGFC has required that the claimant obtain a report in order to assist the office in evaluating a claim.

Homes Under Construction

Compensation claims for homes that were destroyed by the Fire, which were under construction and had not received a Certificate of Occupancy may only proceed under Option II, Individual Review of the Home Replacement Policy.

➤ 295.21(d)(3) MITIGATION OF HOME

Compensatory damages for a home that has been damaged or destroyed may also include the additional **reasonable** cost of mitigation and prevention measures that will reduce the property's vulnerability to future risks, including fire, flood and other natural hazards. A claimant who is eligible for this funding may request compensation for mitigation measures applied to the damaged or destroyed home, or to another home that the claimant owns, is purchasing, or is rebuilding within the four core counties (Los Alamos, Rio Arriba, Sandoval, and Santa Fe).

Determining Total Eligible Mitigation Allowance

Under § 295.21(d)(3) of the Final Rule, Claimants whose homes were destroyed by the Cerro Grande Fire may request mitigation funding up to a maximum of 15% of the eligible amount compensated for Cerro Grande Fire-related losses to replace or repair the structure and restore the land.

This Section states that the OCGFC may compensate claimants for the "**reasonable** cost of mitigation measures that will reduce the **property's vulnerability** to future risk[s]..." In order to comply with this requirement, the OCGFC has determined that any compensation for Fire-related losses to real property of less than \$2,000 will not be eligible for mitigation under this Section. Fifteen percent of the \$2,000 minimum would not allow for mitigation measures that could reasonably reduce a property's vulnerability to future risks. If a claimant, who has received less than the \$2,000 minimum, can demonstrate sufficient mitigation of a specific hazard using the minimum award, his/her eligibility for mitigation compensation can be considered on a case-by-case basis.

The OCGFC maintains the position that a more reasonable cost of mitigation is a measure implemented community-wide by an eligible local or tribal government under Community Mitigation Plan. The larger scale measures would achieve a more significant reduction of the community's vulnerability to future hazards resulting from the Fire, and therefore, a safer environment for the individual property than a minimal mitigation award funded under § 295.21(d)(3) – Mitigation for Damaged Homes.

Eligible Mitigation Measures (Mitigation Menu)

Claimants who qualify for mitigation under this Section, may select mitigation options from a menu of twelve recommended measures (Mitigation Menu). The claimant and his or her claims reviewer must develop a mitigation proposal for each mitigation measure selected. The Mitigation Menu and proposal forms are included in the Request for Mitigation Assistance, which is available at the Customer Service Center, from a claimant's claims reviewer or from the OCGFC Mitigation Specialist at (505) 661-3121.

Destroyed Homes - Providing Funds Pursuant to Mitigation Requests

Pursuant to the Final Rule, "If requested by a Claimant, FEMA may compensate a Claimant for the **reasonable** cost of mitigation measures...." Under the Home Replacement Policy Options I and II, compensation is intended for a replacement structure to be built in compliance with current codes including fire safety standards. The mitigation allowance is intended to cover reasonable costs for additional prevention measures *above* the replacement compensation. The Final Rule assigns a cap of 15% on this allowance to ensure that only mitigation measures that are cost effective are compensated. In addition, OCGFC has evaluated a list of mitigation measures and determined their cost-effectiveness provided such measures do not exceed certain compensation levels. Therefore, to ensure "reasonable" allocation of the list of recommended mitigation measures for destroyed homes, OCGFC has assigned a pro-rata cap for each measure on the Mitigation Menu, according to the following schedule:

(1) Appendages and Projections	(2.0%)
(2) Attic Ventilation Openings	(0.25%)
(3) Detached Accessory Structures	(2.0%)
(4) Exterior Doors	(1.0%)
(5) Exterior Glazing	(1.5%)
(6) Exterior Walls	(4.0%)
(7) Interior Fire Sprinkler System	(2.5%)
(8) Protection of Eaves	(1.0%)
(9) Roof Covering	(3.5%)
(10) Vents	(0.25%)
(11) Gutters and Downspouts (in some instances)	(0.25%)
(12) Defensible Space	\$1,800

The defensible space measure, if selected, will be funded at a flat rate of \$1,800 per destroyed structure. Gutters and downspouts that existed on the destroyed home prior to the Fire are excluded as a viable mitigation measure from the Mitigation Menu, for Option I and II mitigation claims. Claimants already received funding to upgrade these items under the replacement compensation. If gutters and downspouts did not exist on the destroyed home prior to the Fire, claimants may select "Gutters and Downspouts" from the Mitigation Menu, and the OCGFC will fund this measure in accordance with the pro-rata cap of 0.25%.

Claimants may select one or all of the measures on the Mitigation Menu. The OCGFC will require a short description of the work for the selected measure that will be accomplished. An example of an acceptable "description of work" might be: "In order to mitigate the exterior walls, a fire-resistant exterior wall finish, stucco and brick veneer will be installed." Based on the schedule above and upon approval by the OCGFC, the claimant will be advanced the full reasonable cost for each approved measure, not to exceed the 15% mitigation allowance. While the 15% mitigation allowance is based on the total amount compensated for Fire-related losses to replace or repair the structure and restore the land, each pro-rata percentage is based on the replacement value of strictly the structure and does not include such costs as site work and landscaping.

Damaged Homes - Providing Funds Pursuant to a Mitigation Request

Claimants whose homes were damaged, but not destroyed by the Fire, may also request funding for mitigation measures selected from the Mitigation Menu. The OCGFC will require a short description of work and estimate for each selected measure that will be accomplished. Upon approval by the OCGFC, reasonable mitigation costs for the selected measures will be advanced to the claimant.

Reasonable mitigation costs will be based on the estimate prepared by the claimant, not to exceed the 15% mitigation allowance, and compensated based on the following criteria:

- (1) Items that were damaged by the Fire for which a claimant was compensated, approved mitigation funding will be the difference of the repair compensation and the cost of implementing the mitigation measure.
- (2) Items that were not damaged by the Cerro Grande Fire, the approved mitigation funding will be the full cost to implement the measure.
- (3) For defensible space, whether or not a claimant has received compensation under the Landscaping Policy, the approved mitigation funding will be up to \$1,800.

When to Apply for Mitigation Funding

Claimants who have filed a Notice of Loss prior to August 28, 2002, have until August 28, 2003 to request the OCGFC approve mitigation measures. Even if the claimant has signed a Release and Certification and closed his or her claim, by completing the Cerro Grande Mitigation Proposal (pending OMB form-3067), the Notice of Loss will be automatically amended and the claim reopened in accordance with § 295.34(a)(1) of the Final Regulations. If a claimant has filed a Proof of Loss and requests mitigation funding at any time before signing a Release and Certification, the claims file will be automatically supplemented to permit consideration of the mitigation request. The claimant need only file a mitigation project proposal form to supplement the claim at this point in the process.

Although August 28, 2003 is the deadline to request mitigation measures, claimants are urged to apply for all mitigation funds **prior** to the implementation of such measures. This will allow the OCGFC to approve the measure, and in most instances, advance mitigation funding to the claimant prior to implementing the measure. For claimants requesting a mitigation measure that is not one of the recommended twelve, it is especially important to **apply for approval well before implementation** of the measure to ensure timely consideration of the mitigation claim. This is because some measures may need further review to ensure they comply with environmental requirements.

Ensuring Mitigation Funds are Properly Spent

The Final Regulations provide that, "Claimants must construct the mitigation measures for which they have received compensation." Once the OCGFC approves, and the Claimant has received mitigation funding, the Claimant is required to complete the approved measure(s). If work on a measure is not started or contracted for by August 28, 2003, the Claimant must return the unspent port of any mitigation funding to the OCGFC.

In order to document that mitigation funds are properly spent, the OCGFC will arrange for a visual inspection, photographs of completed measures, and verification that the approved measures have been completed as specified in the approved description of work. Claimants, by accepting mitigation funding, consent to an OCGFC representative entering onto their premises, with advance reasonable notice to them, to conduct an inspection of the completed project.

Eligibility of Mitigation Measures on Undeveloped Land

Section 295.31(d)(3) Mitigation is designed for Claimants whose homes were destroyed or damaged by the Cerro Grande Fire. As a result, undeveloped land that did not contain a home prior to the Fire is not eligible for mitigation funding under this section.

Mitigation for Owners of Multiple Homes or Units

A Claimant who is eligible for mitigation funding as a result of ownership of more than one structure or unit (such as a unit within a duplex or quad) that was destroyed or damaged by the Cerro Grande Fire, is prohibited from combining mitigation funding from the multiple structures or units and using such combined funding on one structure or unit. This would defeat the intent of § 295.21(d)(3) of the Final Rule that sets forth the requirement that mitigation compensation must be "reasonable."

➤ 295.21(e) REDUCTION IN THE VALUE OF REAL PROPERTY (DIMINUTION)

Loss of Real Property Value

Pursuant to § 295.21(e) of the Final Regulations, compensatory damages may be awarded for reduction in the value of real property that was owned prior to the Cerro Grande Fire (Fire) if:

1. The claimant sells the real property in a good faith, arm's length, transaction that is closed no later than August 28, 2002 and realizes a loss relative to the value that would have been obtained in the absence of the Fire ("realized loss"); or
2. The claimant can establish that the value of the real property was permanently diminished as a result of the Fire despite the fact that the real property was not sold ("unrealized loss").

Residential Property Losses Within Los Alamos County

Based on the findings of an analysis of the impact of the Fire on the Los Alamos County Residential Real Estate Market, the OCGFC will handle diminution claims for residential properties caused by the Cerro Grande Fire in Los Alamos County for both realized and unrealized losses on a case-by-case basis as follows:

1. **Realized:** Compensatory damages will be awarded to a Claimant for diminution in the value of real property, if:
 - a) the decline in property value is due to the Cerro Grande Fire,
 - b) the Claimant owned the property prior to the Fire,
 - c) the property was sold in a good faith, arm's length transaction that was entered into after May 3, 2000 and is closed no later than August 28, 2002.

The OCGFC will determine the diminution value through a two-part equation that calculates first a "but-for-Fire" value and then subtracts the actual sales price to arrive at the diminution amount.

The OCGFC intends to request subsequent analyses of the Los Alamos County residential real estate market until the real estate market returns to price levels that would have prevailed in the absence of the Fire, or up through the second quarter of 2002, whichever is sooner. This will assure that future developments in the local real estate market are understood and properly incorporated in the OCGFC policy.

2. **Unrealized:** In order to determine if a claimant's residential real property suffered a permanent decline in property values, even though the claimant does not plan to sell his or her property in the near future, the OCGFC plans to conduct another follow-up analysis of the residential real estate market in Los Alamos County, which will be released in the second quarter of 2002. The OCGFC will entertain such claims at that time.

If the findings of this follow-up analysis indicate that properties continue to reflect a decline in the market value due to the Fire, the OCGFC will compensate those claimants for whom an ongoing, permanent but unrealized loss in residential real estates values can be substantiated at that time. Those claimants will be allowed to either file a first time Notice of Loss, or reopen a Notice of Loss as set forth in § 295.34(d) of the Final Rule to claim such damages. However, nothing in the policy should be construed as prejudging whether any specific claim for unrealized loss in real property value (diminution) will be paid. Claims are decided on a case-by-case basis by authorized officials who determine and fix compensation, if any.

3. **Claimants whose properties were physically damaged:** To safeguard against double recovery, claims reviewers will take into account compensation claimants may have received or will receive under the CGFAA and/or from insurance recoveries to repair/replace structures and restore land damaged by the Fire. Claims reviewers will review with claimants how these values will be factored into diminution claims for both realized and unrealized losses.

(See **Appendix 4, Policy on the Decline of Residential Real Property Values** for a detailed explanation of the diminution policy and the equation to be used for determining the value of realized diminution.)

Property Losses Outside of Los Alamos County

Because diminution claims have only been received from Los Alamos County, the OCGFC believes that only the Los Alamos County real estate market suffered a diminution in property values. However, any claimant who feels that he/she has a diminution claim as a result of the Cerro Grande Fire may file a Notice of Loss and substantiate the claim. The OCGFC will decide the claim and fix compensation, based upon supporting documentation provided by the Claimant and in accordance with the Final Regulations. Just like residential properties, claimants will need to substantiate a realized loss through a good faith arm's length transaction or for an unrealized loss, a permanent decline in property values. In addition, compensation that claimants received to repair their properties may need to be factored into the diminution calculation.

Property Losses for Undeveloped Lots

A Claimant who feels that he or she has a diminution claim for an undeveloped lot as a result of the Cerro Grande Fire may file a Notice of Loss and substantiate the claim. The OCGFC will decide the claim and fix compensation, if any, based upon supporting documentation provided by the Claimant and in accordance with Final Regulations. Just like residential properties, claimants will need to substantiate a realized loss through a good faith arm's length transaction or for an unrealized loss, a permanent decline in property values. In addition, compensation that claimants received to repair their properties may need to be factored into the diminution calculation.

➤ 295.21(f) DESTRUCTION OF UNIQUE ITEMS OF PERSONAL PROPERTY

Heirlooms and Collectibles

If the damaged heirlooms or collectibles can be replaced, the claimant will be compensated for the fair market value of their replacement. If the damaged heirlooms or collectibles cannot be replaced, the claimant will be compensated for the fair market value on the date the objects were destroyed. The OCGFC recognizes that it may be difficult to determine the value of these items, but its staff is committed to working with claimants throughout the process.

➤ 295.21(g) DISASTER RECOVERY LOANS

Small Business Administration (SBA) loan

If the CGFAA compensation being provided a claimant duplicates the purpose and amount of an SBA loan, the compensation will be used to repay the SBA disaster loan. Repayment of the eligible amount will be made directly to the SBA by the OCGFC. Only amounts already disbursed by SBA will be repaid. However, if a claimant chooses not to file a Notice of Loss, his/her SBA loan terms and conditions will remain as initially agreed to.

Principal on SBA Loans

If SBA has determined that claimant is eligible for a loan for fire-related losses, CGFAA will not automatically repay to SBA the total amount of funds disbursed to claimant under the loan. OCGFC will evaluate the claim and will make its own independent determination regarding claimant's fire related losses. To the extent SBA has disbursed funds for the same type and amount of losses they will be repaid. However, if OCGFC determines that the type of losses or the dollar value of the losses was less than the amount determined by SBA, the amount repaid may not exceed the type and amounts determined by OCGFC.

Interest on an SBA Loan

The CGFAA provides for payment of interest charges on an SBA disaster loan, for the period beginning on the date that the loan was taken out and ending on the date when the claimant

receives compensation for that part of the loan that the OCGFC determines to be the claimant's Fire-related losses.

Repayment of Loans

Claimants are allowed to spend funds received under the CGFAA in any way they choose, except for those funds which duplicate funds received from the SBA for disaster recovery loans or which are meant for mitigation items. As a result, the OCGFC cannot ensure repayment of any loan or debt, other than to the SBA. This is also consistent with the regulations that specifically exclude lenders holding mortgages or security interests from the definition of an "injured person" and that preclude the assignment of claims and the right to receive compensation for claims.

Principal on Non-SBA Loans

If a claimant received a loan from a source other than the Small Business Administration, the CGFAA will not pay off the Principal on the loan. We will evaluate the claim for fire related losses, independent of the terms of the loan received. However, the claimant is free to use any or all of any compensation received under the CGFAA (other than compensation required to be spent on specified items or work) or from other sources to pay off all or part of the loan.

Interest on Non-SBA Loans

If a claimant has taken out a loan for fire-related losses and can demonstrate that all or part of the loan was used for fire-related losses, OCGFC will reimburse the interest incurred on the amount of the loan attributable to the fire-related losses for the period beginning on the date that the loan was taken out and ending on the date when the claimant receives compensation through the CGFAA.

➤ 295.21(h) MITIGATION (Community Mitigation)

Community Mitigation

Mitigation is an action taken to reduce or eliminate losses to people and property. The Final Regulations provide that claimants will be compensated for mitigation measures taken to reduce the heightened risks of wildfire, flood or other natural disaster resulting from the Fire that are consistent with an OCGFC approved Mitigation Compensation Plan. Pursuant to the Final Regulations, total funding to be allocated for all mitigation compensation under this Section is \$68.25 million.

Eligible Communities

Any local or tribal government within the following New Mexico Counties: Bernalillo, Cibola, Los Alamos, McKinley, Mora, Rio Arriba, Sandoval, San Juan, San Miguel, Santa Fe, Taos, and Torrence, that can demonstrate a heightened risk resulting from the Cerro Grande Fire, may submit a Mitigation Compensation Plan to the OCGFC for approval. Once approved, the local or tribal government may apply for and administer mitigation funds under Section 295.21(h) in accordance with the approved Mitigation Plan.

OCGFC Assistance in the Development of a Mitigation Compensation Plan

The OCGFC will offer technical assistance in developing a Mitigation Plan as explained in the following paragraph to local and tribal governments that have been pre-qualified by the OCGFC as having a heightened risk within Los Alamos, Santa Fe, Rio Arriba and Sandoval Counties (Core Area). Technical assistance for developing a Plan for the other local and tribal governments within the identified twelve counties will be approved upon demonstration to the OCGFC that a heightened hazard risk resulting from the Fire is present in the community. Local and tribal governments seeking technical assistance must first submit a Notice of Loss.

OCGFC will provide assistance through the State of New Mexico, Department of Public Safety, Office of Emergency Management ("NM OEM") to eligible communities in development of a Mitigation Compensation Plan. The use of NM OEM to provide the plan is intended to ensure a

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certain level of uniformity of the plans produced and consistency with the State Hazard Mitigation Plan. OCGFC will offer eligible communities, with each community's consent, the opportunity to use NM OEM to develop the Mitigation Compensation Plan, either through NM OEM's own resources or NM OEM contractor-provided resources. The terms and conditions of these offers will be spelled out in a series of third-party agreements with OCGFC and the affected eligible communities and NM OEM.

Alternatively, eligible communities may choose to develop their own Mitigation Compensation Plan. Reasonable expenses incurred for the development of a Plan that complies with standards established by the OCGFC, may be reimbursed to the eligible community. A copy of the established standards is available upon request.

Applying for Mitigation Assistance

Once the Mitigation Compensation Plan is approved by the OCGFC, eligible communities seeking compensation for mitigation projects under this Section must file a Notice of Loss under Section 295.10 of the Final Rule or amend a Notice of Loss previously filed under Sections 295.33 or 295.34, if not already done so. The Notice of Loss or amendment must specify that compensation for mitigation is being sought under Section 295.21(h).

After filing a Notice of Loss, eligible claimants may then submit a separate application to implement a mitigation measure pursuant to a Mitigation Compensation Plan no later than August 28, 2003. The application form (Application for Mitigation Pursuant to a Mitigation Compensation Plan) used by the OCGFC is the same that is used by the State of New Mexico's Hazard Mitigation Grant Program. Applications can be picked up from the NMEM, Preparedness, Mitigation and Training Branch, 13 Bataan Blvd, Santa Fe, New Mexico 87504-1628 or one of the OCGFC's Customer Service Centers. If requested, the OCGFC will provide technical assistance to an eligible claimant in developing its application(s).

Criteria for Determining Project Eligibility

The OCGFC will review the Application(s) for the proposed mitigation projects and render a determination. If the project is found to be eligible, the claimant will be notified through an approval letter. An eligibility determination will be based on the following criteria:

- Project costs must be reasonable
- Projects taken in whole or in part, must be cost effective.
- Projects must be included in an OCGFC-approved Mitigation Compensation Plan.
- Projects must mitigate a heightened risk of wildfire, flood or other natural disaster resulting from the Cerro Grande Fire.
- Projects, when applicable, must be reviewed by the OCGFC for compliance with the National Environmental Policy Act, the National Historic Preservation Act and other applicable federal, state, and local environmental laws and regulations prior to final approval and commencement of site activities.

Partial Payment for Mitigation

A partial payment for a proposed mitigation project may be advanced to an eligible claimant on a case-by-case basis. Upon the claimant's request, the OCGFC will review and render a determination as to whether a claimant has demonstrated an immediate financial obligation to initiate or maintain an eligible mitigation project. If authorized, the OCGFC will determine the amount of the advance and outline the terms and conditions in an advance agreement. If a claimant receives a partial payment for an approved mitigation measure, but fails to comply with the terms of the advance agreement or fails to construct the project, the claimant will be responsible for repaying the remaining funds to the OCGFC.

Mitigation Administrative Allowance for Governmental Entities

In accordance with the policy for **Administrative Allowance for Governmental Entities**, the OCGFC will compensate local and tribal governments a 7% Administrative Allowance on large projects, those exceeding \$48,500, that are commenced after December 1, 2000, including approved mitigation projects under this Section.

The Administrative Allowance will be awarded at the time the Mitigation Project has been approved and the project complies with the approved scope of work as verified by the OCGFC Mitigation staff. (See, **Administrative Allowance for Governmental Entities**, under Section 295.21(a) of the Policy Guidelines).

Accounting for Mitigation Funds Under Mitigation Compensation Plan

A claimant who receives funds under a Mitigation Compensation Plan is required to complete the approved mitigation project. Claimants will be required to submit quarterly reports to the OCGFC that describe the progress and expenditures made on each project. The first quarterly report will be due three months after the initial funding of the project.

Once the project is completed it will be visually inspected by the OCGFC Mitigation staff to verify that the project complies with the approved scope of work. Claimants must submit a final financial report giving a complete accounting of all funds spent on the project. Upon approval of the final financial report and site inspection, the project file will be closed.

In the event that a Claimant has not obligated any portion of the approved mitigation funds by August 28, 2003, the Claimant must return the unobligated funds to the OCGFC by October 1, 2003.

Individual Claimants

Individual claimants may apply to their local or tribal government for mitigation under this Section, if their government is an eligible claimant that is participating in Section 295.21(h) mitigation, has an OCGFC approved Mitigation Compensation Plan, and the individual claimant's project meets the intent and eligibility set forth in the Mitigation Compensation Plan.

The local and Tribal government participating in Section 295.21(h) mitigation will need to ensure that there is no duplication of benefits to individual claimants for mitigation funding provided by the OCGFC under Section 295.21(d)(3).

Eligibility of Mitigation Measures Required or Recommended by Other Federal Agencies

The recommendation of another federal agency should be factored into the Mitigation Compensation Plan. The proposed project would still have to reduce the heightened risk as a result of the Cerro Grande Fire and would need to be reasonable and cost effective. The Director of the OCGFC, at his discretion, may determine the reasonableness of each mitigation claim.

➤ 295.21(i) SUBSISTENCE (Tribal)

Firewood

Tribes, tribal members, or a household including tribal members, whose traditional sources for firewood have been affected as a result of the fire are eligible for compensation under the CGFAA. Compensation will be made on the basis of partial payments that will cover the period from May 2000 to April 30, 2001. Claimants will be eligible for up to 7 cords of firewood at \$150.00 a cord. Additional requests beyond the 7 cords of firewood will be considered on a case-by-case basis.

Beginning May 1, 2001 through January 31, 2002, the OCGFC will compensate individuals for firewood permits through the U.S. Forest Service for up to seven cords of firewood.

Compensation will be based on the per cord permit cost of \$7.50 and 30 miles round trip at the current IRS mileage rate.

➤ **295.21(j) FLOOD INSURANCE**

Flood Insurance

The CGFAA will pay for any flood insurance premium that has the same terms, conditions, and limits of a National Flood Insurance Program policy and that is: 1) due and payable on or before May 12, 2002, and 2) for any property owner in the four core county area, concerned about being at risk as a result of the Cerro Grande Fire, and 3) whether or not the flood insurance policy has been required by a lender or other authority. Reimbursement of the annual premium will be made directly to the claimant upon submission of proof of flood insurance purchase, or alternatively, FEMA may provide flood insurance through a group or blanket policy. Claimants who had a flood insurance policy in effect at the time of the fire, or who were required to purchase flood insurance prior to the fire but had failed to do so, will not be eligible for reimbursement.

Flood Damage Losses

Any flood related losses that were not covered by the flood insurance policy (such as the deductible and losses above the policy limits) that a claimant suffered as a result from the change in terrain due to the Cerro Grande Fire, are compensable under the CGFAA.

➤ **295.21(k) OUT OF POCKET EXPENSES FOR TREATMENT OF MENTAL HEALTH CONDITIONS**

Psychological Care

Crisis counseling services are currently available on a referral basis by calling 505-661-1300. If, however, individuals are in need of care as a result of the fire that is beyond the services that crisis counseling is able to offer, the care may be eligible for compensation under the CGFAA. Compensation will be available for out-of-pocket expenses for treatment required as a result of the fire and rendered by a licensed mental health care provider within 18 months of the fire. Reimbursement will not be made for treatment rendered after December 31, 2001. The licensed mental health care provider must verify in writing that each specific instance of treatment for which compensation is sought was related to a mental health condition that resulted from or was aggravated by the Cerro Grande fire. Compensation will be limited to treatment, or those parts of treatment, medicines and expenses for travel within 150-mile radius that were or are necessitated solely as a result of the Cerro Grande fire. In the case of compensation sought for a pre-existing mental health problem that was aggravated by the Cerro Grande fire, the treating mental health care provider must provide sufficient written documentation to support the conclusion that the treatment was related to the Cerro Grande fire.

➤ **295.21(l) DONATIONS**

Donations

As a general rule, the OCGFC will not compensate for charitable contributions or donations.

The OCGFC may compensate, as a financial loss, individuals or businesses for non-cash contributions (such as free food from a grocery store) associated with providing assistance to fire victims. The loss must have occurred no later than June 19, 2000 (one month after the end of the evacuation period), and must have occurred in the counties of Santa Fe, Los Alamos, Rio Arriba, and Sandoval, and the pueblos of Santa Clara and San Ildefonso

The OCGFC may also compensate a business that assisted fire victims by providing goods or services at less than market value if, as a result, revenues for that business were lower than the pre-fire projections for that same period. The loss must have occurred no later than June 19, 2000 (one month after the end of the evacuation period) and must have occurred in the counties

of Santa Fe, Los Alamos, Rio Arriba, and Sandoval, and the pueblos of Santa Clara and San Ildefonso.

The OCGFC will consider on a case-by-case basis compensation for business or financial loss for businesses and individuals in other New Mexico counties that provided goods or services that were not otherwise available in the four affected counties.

➤ **295.21(m) DUPLICATION OF BENEFITS**

Compensation from Other Sources

The CGFAA covers real and personal property losses that were caused by the Cerro Grande Fire that have not been compensated by insurance, OCGFC, SBA or any other source. Anyone who was injured by the fire but was not fully compensated by other sources for their damages can file a Notice of Loss. An individual or entity is not required to have filed for assistance under FEMA's disaster programs before filing a Notice of Loss under the CGFAA except for costs eligible under FEMA's Public Assistance Program. Any amount already received for the same losses from other sources will be subtracted from the CGFAA award.

Insurance

A claimant may receive payments from the OCGFC even before the claimant has fully settled with the insurance company. The OCGFC, however, will only pay those amounts that are not paid or will not be paid by the insurance company. If the insurance claim is withdrawn before any compensation is received, the OCGFC will provide compensation for all eligible damages.

Other Federal Financial Assistance

A claimant cannot receive duplicate payments from the CGFAA and any other Federal agency. However, under the CGFAA, a claimant may be eligible for compensation for items for which assistance was not received from other FEMA disaster programs or other Federal agencies.

Benefits Provided by Non-Governmental Organizations and Individuals

Disaster relief payments made by a non-governmental organization, like the American Red Cross, or an individual, other than wages paid by a claimant's employer or insurance payments, should be disregarded in evaluating a claim and need not be disclosed by claimants to the Claims Reviewers. Such assistance is not a duplication of benefits and should not be applied to reduce the amount due.

Individual and Family Grant Award

If a claimant is requesting compensation for different items under the CGFAA than he/she received compensation for under the Individual and Family Grant (IFG) award, then none of the monies received from IFG will be deducted from the CGFAA award. However, to the extent that the claimant is asking for compensation for the same items that were covered under IFG, then the amount received from IFG will be deducted.

Insurance and Quadriplexes

If a claimant receives insurance monies for some but not all of the losses to individual and rental condominium/quadriplex units, the amount of insurance money allocated to the individual unit will be deducted from an individual case, and the insurance money allocated to the rental units will be deducted from a business case.

Mitigation as Part of Housing Replacement

The housing replacement cost is based on the 1997 Uniform Building Code. The mitigation measures provided for under the CGFAA are above and beyond those code requirements, and thus would not be duplicative.

SUBPART D – CLAIMS EVALUATION

This subpart explains the process by which a claim will be examined, evaluated and resolved.

295.30 Establishing Damages

➤ DOCUMENTING LOSS

Documentation

The OCGFC will be as flexible as possible with the type and amount of documentation required for the reimbursement process. A claimant will be required to submit information detailing the nature and the extent of the damages for which compensation is being requested. A claimant may be required to provide other documentation that is reasonably available to verify the nature, extent and value of the losses. In some circumstances the OCGFC may rely on sworn statements, as well. The Claims Reviewer will work with the claimant to determine what documentation is needed and how best to obtain it. Claimants may submit any documents that they believe are relevant to their claim.

Affidavit

Claimants must provide reasonably available documentation to corroborate the nature, extent and value of their losses. If documentary evidence substantiating the loss is not reasonably available, the OCGFC may request claimants to execute an affidavit. The OCGFC has developed an Affidavit (Self-Certification in Support of Payment) form as a tool in the consideration of claims. The Affidavit is designed for use in instances where there is no other means of verifying specific information contained within a claim, such as with some cases of personal property loss. Its use is consistent with the OCGFC goal of fair consideration of claims and helps ensure that assistance to Cerro Grande Fire victims is done in accordance with applicable laws and regulations.

Other Methods of Documentation

In addition to the Affidavit, another method to be used in the support of a claim will be conversations with family members or friends who may be able to verify particular aspects of a claim. For purposes of the Authorized Official's review of a case, this could in some cases serve as an alternative to the Affidavit. The Claims Reviewer has a Request for Names form for use by claimants.

➤ PROOF OF LOSS

Proof of Loss Form

A Proof of Loss is a statement signed by the claimant that describes and itemizes the nature and the extent of his/her injuries. Once a Notice of Loss form has been filed, the Claims Reviewer will contact the claimant to set up an appointment and discuss the claim. This will include trying to reach an understanding about the nature and extent of the damages. Subsequently, the Claims Reviewer will prepare a Proof of Loss for the claimant's signature. The Proof of Loss will reflect what the claimant is requesting. The Proof of Loss, along with the recommendation of the Claims Reviewer, will then be submitted to the Authorized Official for a determination of the claim. A claimant must sign the Proof of Loss before the Authorized Official can determine the total amount of compensation that is due to him or her under the CGFAA.

Deadline to Submit a Signed Proof of Loss

Claimants who filed a Notice of Loss before January 1, 2001 must submit the signed Proof of Loss no later than June 19, 2001. Claimants who filed a Notice of Loss after January 1, 2001 will have 150 days after filing their Notice of Loss to submit the signed Proof of Loss. The Director, at his discretion, may extend these deadlines for good cause.

Proof of Loss Options

For those claimants who are not able to sign the Proof of Loss by the June 19, 2001 or 150-day deadline (which ever is later), the following options are available: 1) request an extension to sign the Proof of Loss, 2) sign the Proof of Loss, close the claim and request the claim be reopened at a later date, or 3) withdraw the Notice of Loss and refile a subsequent Notice of Loss when the claimant is ready.

1. Extensions for Signing the Proof of Loss

The Director may, upon the Claimant's written request, extend the deadline to sign the Proof of Loss, on a case-by-case basis. Claimants seeking an extension must write a letter to the Director summarizing what efforts have been made to complete their claim, explaining what is prohibiting them from signing the Proof of Loss and providing a reasonable date by which they will be ready to sign the Proof of Loss. Requests for extensions will be considered no earlier than 60 days before a Proof of Loss is due but must be postmarked no later than 10 days before the Proof of Loss is due. Claimants will be notified in writing if the extension has been granted, and the new deadline for which the claimant must sign the Proof of Loss. Letters requesting an extension should be sent to: Director - OCGFC, ATTN: POL Extension, Post Office Box 1480, Los Alamos, New Mexico 87544.

2. Sign the Proof of Loss and Close the Claim

Claimants may decide to sign the Proof of Loss and close their claim. Funding approved by the Authorized Officials for total losses claimed at this point will be compensated to claimants upon receipt of the signed Release and Certification. At such time Claimants have realized their total losses, the Final Regulations provide claimants with the option to supplement or reopen their claims, as appropriate, in accordance with Sections 295.33 and 295.34.

3. Withdraw the Notice of Loss

A claimant who declines to sign the Proof of Loss may chose to withdraw the Notice of Loss and return any partial payments to OCGFC. A claimant who withdraws the Notice of Loss can refile on or before August 28, 2002 (see **Withdrawing the Notice of Loss** under § 295.12 of the Policy Guidelines). Withdrawal of the Notice of Loss does not entitle the claimant to pursue remedies under the Federal Tort Claims Act or other federal statutes.

Failure to Timely Submit a Proof of Loss

If a claimant fails to submit a signed Proof of Loss within the deadlines provided above, does not withdraw their Notice of Loss, or has not obtained an extension from the Director, the OCGFC may administratively close the claim and require the claimant to repay any partial payments made on the claim.

➤ RELEASE AND CERTIFICATION

Release and Certification Form

Claimants who receive compensation under the CGFAA are required to sign a Release and Certification Form. The Release and Certificate form must be signed by claimant or claimant's legal representative. The form must be received within 120 days of the date of the Authorized Official's determination.

Failure to Timely Return the Release and Certification Form

If claimant does not return the signed Release and Certification Form within the 120-day deadline, it will be presumed that claimant accepts the determination of the Authorized Official.

295.31 *Reimbursement of Claim Expenses*

Appraisals and Estimates

The OCGFC will determine whether a claimant should obtain an appraisal or other third party opinion. The reasonable cost of obtaining such a report will be reimbursable, but only if the OCGFC requested that it be obtained.

Claims Preparation Expenses

The OCGFC will provide individual and business claimants an allowance for claims preparation expenses. For each claim filed and approved by the Authorized Official, claimants will receive five percent of the amount compensated under the CGFAA, the Stafford Act and claimants' insurance company for Cerro Grande Fire related losses. The allowance will range from a minimum of \$100 to a maximum of \$15,000 per claim. The following individual and business claimants will not be eligible to receive the allowance: subrogation claimants, claimants who received no compensation either under their insurance policy or the CGFAA, and claimants whose only Cerro Grande Fire related loss is for flood insurance premiums.

295.32 *Determination of Compensation Due to Claimant*

Time to Determine a Claim

Section 104(d)(1)(A)(1) of the CGFAA states that the Director shall determine and fix the amount of all claims no later than 180 days after the date on which a claim is submitted. The 180 days begins to run from the date the OCGFC receives the Notice of Loss from the claimant.

Process Time for Checks

Once a claimant has accepted the Authorized Official's final determination regarding the claim and the amount of compensation for which the claimant is eligible, the claimant will be required to sign a Release and Certification form. Payment to the claimant will be processed after the OCGFC has received the signed release.

Insurance Company's Determination of Value

The OCGFC will not use an insurance company's determination of value, regardless of whether the determination is higher or lower than that of the OCGFC. The OCGFC will perform its own evaluation of losses to determine reasonable replacement costs and other eligible compensation.

Determining Amount of the Claim

The eligible amount of the claim will be determined based upon the information submitted by the claimant, including the Proof of Loss, and the report of the Claims Reviewer. The OCGFC Authorized Official will evaluate each element of the claim as stated in the Proof of Loss and determine the amount of compensation due. After a claim has been evaluated, the Authorized Official's determination will be issued. A claimant has up to 120 days from the date of this determination to either accept it by submitting an executed Release and Certification or reject it by appealing the determination in writing to the Director of the OCGFC.

Review of Claim by Authorized Official

The Cerro Grande Authorized Officials should review all claims recommended by the Claims Reviewers with the same level of detail. This is consistent with the regulations which require that, prior to issuance of the Determination of Authorized Official, all elements of a claim as stated in the Proof of Loss must be evaluated. Upon receipt of the signed Proof of Loss, the Authorized Official will issue a determination within 30 days.

Role of New Mexico Law Under the CGFAA

Section 104(c)(2) of the CGFAA states that, "Except as otherwise provided in this title, the laws of the State of New Mexico shall apply to the calculation of damages...." In addition, § 295.21(a) (44 Code of Federal Regulations) of the regulations that implement the CGFAA provides that, "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.” As a result, unless the law provides otherwise, compensation for damages resulting from the Cerro Grande Fire must be determined by examining the law of New Mexico. New Mexico tort law, however, is not generally contained in the same form that the CGFAA and the implementing regulations are, i.e., in a code or statute book. Researching and analyzing the court decisions that have addressed similar or related issues generally determine the law on these matters. When New Mexico law has a bearing on a policy question under the CGFAA, the OCGFC will refer the matter to the New Mexico law firm it has contracted with. The firm will then research the issue and prepare a formal legal opinion, and the OCGFC will evaluate the response and integrate it into its policies. As these policy issues are addressed, the OCGFC will put them into a written format and will make them available to both staff and the public.

295.33 Supplementing Claims

Adding to a Claim Prior to Signing the Proof of Loss

Prior to the claimant signing a Proof of Loss, the Claims Reviewer will work with the claimant to determine whether the claimant has additional losses that can be included on the Notice of Loss.

Additional Losses Not Included in a Proof of Loss

If after submitting a Proof of Loss but prior to signing the Release and Certification, the claimant has additional losses not included on the Proof of Loss, he or she can request the Director consider the additional losses. The request must be in writing and submitted prior to the end of the 120-day deadline or August 28, 2002, whichever is earlier. The request must detail why the additional losses were not included on the Proof of Loss. The Director will follow the procedures described in § 295.41 of the Final Rule in determining whether there is good cause to consider the additional losses and if compensation is due to claimant.

295.34 Reopening a Claim

Reopening Claims

The regulations allow four instances where the Director may reopen a claim upon written request from the claimant:

- Claimant is eligible for mitigation under § 295.21(d)(3) or (h) and the request to reopen is filed no later than August 28, 2003; or
- Claimant has closed on the sale of real property not later than August 28, 2002 and desires to file a diminution claim under § 295.21(e) and the request is filed no later than August 28, 2002; or
- Claimant’s actual replacement costs for the destroyed home are in excess of those awarded under Option I “OTHER COSTS” or Option II of the Home Replacement Policy; or
- The Director determines that claimant has demonstrated good cause.

The Director has determined that good cause exists in the following three additional instances, which have been added by policy:

- Claimant has begun rebuilding a replacement home and has incurred additional, unforeseen alternative living expenses (ALE) beyond those for which advance ALE was paid; or
- Claimant has discovered additional items of personal property that were not included in the original Proof of Loss; or
- Claimant has incurred or will incur costs associated with additional and/or specific site work under the Home Replacement Policy

Claimants who seek to reopen a claim for “good cause” must make their request in writing to the Director, OCGFC, and provide sufficiently detailed information to permit OCGFC to evaluate whether good cause exists to reopen the claim. Failure to submit written justification will result in denial of, or delay in processing the request to obtain the information. A claimant who seeks to reopen a claim for good cause should always emphasize any factors that apply to his or her claim that tend to indicate that equity and fairness require reopening of the claim to ensure adequate compensation. Since good cause is determined on a case-by-case basis, no set definition can be provided of what constitutes good cause.

Pursuant to § 295.11, all types of loss must be identified on a Notice of Loss or Amended Notice of Loss by August 28, 2002.

With the exception of Items 1 (Mitigation) shown above, the deadline for submitting a request to reopen for the identified types of loss (shown on the Notice of Loss or Amended Notice of Loss), is not later than August 28, 2002. This deadline will be published as a notice in the Federal Register and be distributed throughout the community. Eligible claimants desiring to reopen their claim should use the Request to Reopen Claim Form, attached as Appendix 6 to the Policy Guidelines.

To assist claimants in evaluating whether they possess sufficient reasons for reopening the claim, we have developed the following non-exclusive list of factors used in evaluating good cause:

Was the claimant aware (or should the claimant have been aware) of the loss when the claimant signed the Proof of Loss? Justification to reopen a claim is obviously easier to demonstrate when a new loss arises after the Proof of Loss has been signed.

If the loss asserted by the claimant was known when the Proof of Loss was signed, is it the kind of loss that a Claimant could reasonably have been expected to assert at that time? Although claimants may on occasion forget to list some items on the Notice of Loss or with the Claims Reviewer, it is reasonable to expect that claimants assert all known significant losses prior to signature of the Proof of Loss.

If the loss existed when the Proof of Loss was signed, does the claimant adequately explain why the loss was not asserted prior to signing the Proof of Loss?

Is there any indication in the claim file that in the past the claimant raised the subject matter for which reopening is sought, and if so, what was its disposition? Possible losses previously raised by a claimant, but not included in a Proof of Loss through no fault of the claimant, strengthen the position for reopening the claim. On the other hand, a claimant’s decision to forego a possible loss which had been raised previously and sign a Proof of Loss that either does not compensate for that loss or which compensates for it in a lesser amount weighs against reopening the claim to consider that same loss.

Does it appear likely that the loss asserted by the claimant is compensable under the Cerro Grand Fire Assistance Act? Although no claimed loss is ever prejudged, a claimant has the initial burden to demonstrate that the loss is compensable under the Act.

A request to reopen for good cause should discuss and explain as many of the above factors as are applicable to the claim in question as well as any other factors that the claimant feels help the case for reopening.

295.35 Access to Records

Office of Inspector General

As with its more traditional disaster operations, The OCGFC will work with its Office of Inspector General (OIG) to ensure that the provision of assistance to Cerro Grande Fire victims is done in accordance with applicable laws and regulations. Any criminal attempt to defraud the federal government in connection with disaster relief, including Cerro Grande Fire claims, will be vigorously pursued. Claiming false losses is subject to felony charges and carries a maximum prison term of 5-10 years and/or up to \$250,000 in fines. If anyone is aware of possibly fraudulent activity in connection with the Cerro Grande Fire compensation program, information can be anonymously reported to the OIG by calling the toll-free fraud hotline at 1-800-323-8603. The hotline is in operation 24 hours a day, 7 days a week.

Auditing a Claimant

All payments made under the CGFAA are subject to audit by the OCGFC Office of Inspector General and the U.S. Comptroller General to ensure the financial integrity of the claims process. The primary goal is to make sure there are internal financial controls to reduce the risk of erroneous payments.

➤ TAXATION

General Guidelines

There is no broad exemption from taxation under either the FTCA or the CGFAA, and normal tax rules regarding judgments and settlements apply to payments made under both. The CGFAA authorizes the OCGFC to pay compensatory damages. Generally, compensatory damages are taxable, but compensatory damages for physical injuries to a person's body are exempt from Federal taxation. The rules for all other categories of payments under the CGFAA are very complex. Claimants may wish to consult with a qualified tax advisor or with the IRS at (800) 829-1040 to determine what the tax consequences may be in their particular case. Because neither New Mexico law nor the CGFAA considers the costs of tax preparation or tax advisory services compensatory damages, these costs cannot be reimbursed under the CGFAA. The Internal Revenue Service provides tax preparation assistance free of charge.

Form 1099

Under Section 6041(a) of the Internal Revenue Code, federal agencies are required under certain circumstances to report the payment of \$600 or more to an individual or unincorporated business as miscellaneous income on a Form 1099. The OCGFC must comply with the requirements of Section 6041(a) of the Internal Revenue Code. The OCGFC will seek guidance from the IRS with respect to the types of compensatory damages that must be reported on Form 1099.

The OCGFC will not send Form 1099's for the following:

- Disaster assistance received from FEMA by victims of the Cerro Grande fire under the Stafford Act. Assistance received under the Stafford Act is not subject to taxation.
- CGFAA payments of less than \$600 in a calendar year. However, claimants may be obligated to report some or all of the payment on their Federal Income Tax Returns.
- Payments for property losses, including home replacement and personal property. However, claimant may wish to consult with a qualified tax advisor as to how these payments must be reported on the Federal Income Tax Return.
- Compensation for lost subsistence to members of Indian tribes.

Obligation to Pay

Even if the OCGFC does not send claimant a Form 1099, the claimant may still be required to pay taxes on all or part of the CGFAA payments, to the extent that the payments include taxable income. In some cases, all of what is paid under the CGFAA may constitute taxable income. In

other cases, some or none of what is paid will constitute taxable income. Claimants may wish to consult with a qualified tax advisor or with the IRS to determine their particular tax obligations.

IRS

The IRS has authority to examine OCGFC's records, and the OCGFC will cooperate in answering inquiries from the IRS.

295.36 Confidentiality of Information

Notification of Privacy Rights

The OCGFC is required to provide a copy of the Privacy Act Notice to claimants. There is, however, no requirement that claimants sign or initial a statement that affirms that they have read and understood the notice.

Privacy Protection

Generally, individual claimants have more privacy protection than corporations and other entities. In general, the information provided to the OCGFC by an individual is not releasable. However, the information will be used to verify a claimant's identity and eligibility, and to determine whether previous compensation or payments were made in connection with the Cerro Grande Fire. In addition, the information may be released when it is authorized by statute or regulation, or when it is needed to perform an authorized audit.

Release of Information

When an applicant signs a Notice of Loss, which incorporates the provisions of the Privacy Act Notice, the claimant has given permission to the OCGFC to release the information provided during the claims process to Federal, state and local government agencies or private organizations for the purpose of confirming their identity, their eligibility and any previous compensation or payments made in connection with the Cerro Grande Fire. Also, the information may also be disclosed for certain routine uses without consent when otherwise authorized by statute or regulation.

Request for File

FEMA published in the Federal Register of August 28, 2000, its notice of a new system of records that will be kept under the authority of the CGFAA. The system of records was effective August 28, 2000. A claimant has access to his/her records kept by the OCGFC and may have a copy by sending a written request to either: Systems Manager, Cerro Grande Fire Assistance Claims Office, 1549 Sixth Street, Suite H, Santa Fe, NM 87505-3479; or, FEMA, 500 C Street, NW, Room 840, Washington, DC 20472. A claimant should: (1) mark the envelope and letter of request "Privacy Act Request," and (2) provide in the letter: (a) full name, (b) some type of appropriate personal identification, such as a driver's license, passport, employing office's identification card, military identification card, student identification card or other identification data, (c) full current address, and (d) a description of the records that the claimant is seeking. FEMA Privacy Act regulations are located at 44 CFR Part 6.

SUBPART E – DISPUTE RESOLUTION

This subpart addresses the process by which a claimant may dispute the Authorized Official's determination of compensation.

295.40 Scope

295.41 Administrative Appeal

295.42 Arbitration

What is Arbitration

Arbitration is a process where the claimant submits a dispute to a neutral decision-maker – the arbitrator – and asks him/her to render a final and binding decision based on the Administrative Record. Arbitration is normally faster, less expensive, and less formal than filing a lawsuit. Moreover, arbitration has elements of confidentiality that are not available in the courtroom. Once a claimant chooses arbitration, he/she gives up the right to go to court. Similarly, if a claimant chooses to proceed in a court of law, he/she gives up the right to have the dispute settled by an arbitrator.

How to File for Arbitration

To initiate the arbitration process, a claimant must obtain a Claimant Request for Arbitration form (still in development) from the OCGFC and send it within 60 days from the date that appears on the Administrative Appeal decision to: Arbitration Administrator for Cerro Grande Claims, Alternative Dispute Resolution Office (ADRO), Federal Emergency Management Agency, 500 C Street, SW, Room 214, Washington, D.C. 20472.

Arbitrator

Each arbitrator will exercise independent and impartial decision-making. The arbitrator(s) will review all of the evidence presented in support of the claim and will determine the appropriate award. If the amount in dispute is \$300,000 or less, claimant will select one arbitrator to conduct the arbitration proceedings from a list of arbitrators provided by the ADRO. The list of qualified arbitrators will contain biographical information for each arbitrator to assist with the selection process. If the amount in dispute is more than \$300,000, a panel of three arbitrators will be randomly selected by the ADRO to conduct the arbitration proceedings. The OCGFC has the right to object to a claimant's selection only on the basis of conflict of interest. The ADRO will pay the arbitrator's fees and reimburse the arbitrator(s) for arbitration-related expenses unless the parties jointly agree otherwise.

Conduct of Arbitration Process

The ADRO will set up the first conference call between the claimant, the arbitrator(s), and the OCGFC representative. During that first call, the arbitrator(s) will discuss with the claimant the date, place, and time of the oral hearing, along with other procedural matters. The arbitrator(s), subject to applicable rules, may conduct the arbitration in such manner, as he/she deems appropriate. The arbitrator(s) will be responsible for organizing the communications, the oral hearing, and other arrangements. All arbitrations will involve a hearing, unless the claimant waives the hearing. If a claimant does elect to waive the oral hearing, the arbitrator(s) will base the decision on the written materials contained in the Administrative Record.

Arbitration Timeframes

Arbitration is designed to give a quick result. After the claimant has selected an arbitrator(s), the proceedings will be conducted in an expeditious manner. The arbitrator(s) will schedule the arbitration hearing date as soon as possible. Although each case is unique, the arbitration hearings usually last less than one day. The arbitration decision will be rendered within 60 days of the date the arbitrator(s) agrees to accept the case or within 10 days after the hearing, whichever comes first. An extension may be granted by the AACGC for good cause. If an arbitration award is made, the OCGFC will issue the claimant a check within ten days after the OCGFC receives a signed Release and Certification form.

Process for Hearing

Each party will have equal time to discuss its position and explain the issues raised in the Administrative Record. The arbitrator(s) will have read the Administrative Record before the date of the oral hearing and may ask for additional information necessary to gain a clearer understanding of the dispute. While the parties will not be required to conform to the legal rules

of evidence, the arbitration will be conducted consistent with guidelines established by the ADRO. The ADRO will provide a copy of the guidelines upon request. The arbitrator(s) will determine the admissibility, relevance, and materiality of the information offered and may exclude information that the arbitrator(s) decides is repetitive or irrelevant. There will be no discovery in preparation for the hearing. The evidence at the hearing will be restricted to the Administrative Record, which contains all of the evidence already presented in the prior process. The arbitrator(s) may permit witnesses at the oral hearing if it is determined that a witness may shed some additional light on the Administrative Record.

Role of Attorneys

Claimants may be represented or assisted by persons of their choice, including attorneys. Pursuant to the authorizing statute, the total of attorneys' fees combined with agents' fees that may be charged a claimant at all levels of the process cannot exceed ten percent of the claim award. Attorneys' fees cannot be awarded in addition to the claim award. Claimants should communicate in writing the name, address, and function of any such person representing or assisting them to the AACGC, the arbitrator(s), and the party representing the OCGFC. The OCGFC will not bear any costs associated with such representation.

Mediation in Lieu of Arbitration

Mediation differs from arbitration in that the mediator does not make any decisions for the parties but rather assists the parties in creating a mutually acceptable resolution. At any time prior to the rendering of a decision by an arbitrator, either party may request in writing to the AACGC a stay of further arbitration proceedings to facilitate settlement discussions. If both parties concur in the request, the AACGC will stay the arbitration and appoint a mediator (if requested) at FEMA's expense. The stay may be terminated and the arbitration resumed upon written request of either party to the AACGC. If the dispute is settled, the AACGC will issue an order terminating the arbitration and provide the claimant with a Release and Certification form to obtain payment of any compensation due.

Rendering a Decision

After reviewing the evidence, the arbitrator will render a written and signed decision to the ADRO. If the arbitration is held before a panel of three arbitrators, two of the three must sign the decision. The decision will establish the compensation due to the claimant, if any, and the supporting justification. The arbitrator(s) cannot award attorneys' fees, prejudgment interest, post-judgment interest, or punitive damages. Upon receipt of the arbitration decision, the AACGC will provide the claimant and the director of OCGFC with copies of the decision and will provide the claimant with a Release and Certification form to obtain payment of any compensation awarded by the arbitrator(s). The decision of the arbitrator(s) will be final and binding on all parties and will not be subject to any further administrative or judicial review.

295.43 *Judicial Review*

SUBPART F -- GLOSSARY

295.50 *Definitions*

APPENDICES

Appendix 1 Notice of Loss form

Appendix 2 Proof of Loss form

Appendix 3 Home Replacement Policy

Appendix 4 Policy on the Decline of Residential Real Property Values

Appendix 5 Increased Mortgage Interest Costs

Appendix 6 Request to Reopen Claim

(APPENDICES CAN BE FOUND IN A SEPARATE DOCUMENT TITLED “APPENDICES TO POLICY GUIDELINES)

TABLE OF UPDATES

Section	Title	Date of Change	Amendment
295.3	Regulations	July 2, 01	<i>Amendment</i> Section amended to show publication of the final Regulations in the Federal Register, after review of comments timely received from the public.
		Apr 23, 01	<i>Amendment.</i> Information on the publication and effective date (March 21, 2001) of the Final Rule was added. Note: All other references to the Interim Final Rule throughout the Policy Guidelines have been amended to Final Rule.
		Mar 1, 01	<i>Amendment:</i> "Public comment period" was removed from the policy as the comment period closed on Oct 27, 2000.
295.3	Role of New Mexico Law Under the CGFAA	Nov 19, 01	<i>Amendment</i> Substitutes OCGFC Attorney for outside law firm being contracted to perform research and issue legal opinion when NM law has bearing on a policy question under the Act.
295.5	General Information	Oct 29, 01	<i>Amendment</i> The number of Services Centers reduced to one; new address provided for Los Alamos Service Center.
		July 2, 01	<i>Amendment</i> The number of Service Centers reduced from five to three; San Ildefonso and Santa Clara Service Centers closed.
		Mar 1, 01	<i>Amendment:</i> The number of Service Centers was amended from six to five. The OCGFC Canyon School Service Center closed -- presently there are <u>five</u> Customer Service Centers.
295.5	Summary of the Claims Process	Apr 23, 01	<i>Amendment.</i> Proof of Loss deadline of 150 days from the receipt of the Notice of Loss was added to be consistent with §295.30 of the Final Rule. Further, "30 days" for the Authorized Official to render a determination upon receipt of the Proof of Loss was added in accordance with the Preamble of the Final Rule under "Proof of Loss."
295.7	Director's Authority to Settle A Claim	Apr 23, 01	<i>New Policy.</i>
295.7	Recovery of Funds	Apr 23, 01	<i>New Policy.</i>
295.10	By Mail, In Person or By Phone	June 12, 02	<i>Amendment</i> Revise hours teleregistration operators available.
		Oct 29, 01	<i>Amendment</i> The number of Service Centers reduced to one; new address provided by Los Alamos Service Center.
		July 2, 01	<i>Amendment</i> The number of Service Centers reduced from five to three; San Ildefonso and Santa Clara Service Centers closed. Claimants may now file a Notice of Loss by phone in addition to filing by mail or in person. Lists phone number and hours when teleregistration operators are available to accept NOL.
	By mail or in person	Mar 1, 01	<i>Amendment:</i> The number of Service Centers was amended from six to five. The OCGFC Canyon School Service Center closed -- presently there are <u>five</u> Customer Service Centers.
295.10	➤ Who Can Submit a Notice of Loss Signing the Notice of Loss	Mar 1, 01	<i>Clarification</i> on the signing of a NOL. 1) An NOL must be signed by each claimant; 2) duly authorized legal representative is acceptable for an individual who lacks legal capacity, or an entity; 3) legal representative must disclose the relationship to claimant.
295.10	➤ Who Can Submit a Notice of Loss Citizenship	Apr 23, 01	<i>Clarification.</i> Even though it is not necessary that a claimant be a US citizen to receive compensation, it is necessary to have a SSN or an ITIN so that payment can be made.
295.10	Individual Versus Business Losses	July 2, 01	<i>Clarification</i> Clarifies that if more than one business is impacted, a NOL must be filed for all businesses using the same tax ID number.

Section	Title	Date of Change	Amendment
295.10	<p>➤ Who Can Submit a Notice of Loss Notice of Loss for Multifamily Rental properties</p>	Mar 1, 01	<i>Amendment:</i> Original policy indicated “quadriplex,” policy amended to read “multifamily” (i.e. duplex or a quadriplex).
295.10	<p>➤ Claims Reviewer Claims Reviewers</p>	Mar 1, 01	Previous policies “Assistance from the Claims Reviewer” and “Role of the Claims Reviewers” have been incorporated under this heading. No change to content.
295.10	<p>➤ Claims Reviewer Responsibility of the Claims Reviewer</p>	Mar 1, 01	<i>New policy</i>
295.11	Deadline for Filing a Claim	Apr 23, 01	<i>Clarification:</i> Further information added that the deadline for requesting a claim be supplemented or reopened is August 28, 2002, except in the case of mitigation. Claimants can request files be supplemented or reopened for mitigation up to August 28, 2003.
295.11	Extensions for Filing Deadline	Apr 23, 01	<p><i>Clarification:</i> Extension for filing “date” has been changed to Extension for filing “deadline.”</p> <p>Policy indicates that no extensions will be granted to the deadline to file an NOL. However, new language added that an extension might be granted to a claimant for the Proof of Loss deadline.</p>
295.12	Choosing Options	Apr 23, 01	<i>Clarification:</i> clarification added that the election of remedies applies to “all” claimants, including individuals, businesses, governments, and subrogees.
295.12	Withdrawing the Notice of Loss	Apr 23, 01	<p><i>Amendment:</i> Language pertaining to the “Oct 2, 2000” was removed to be consistent with §295.12 of the Final Rule.</p> <p>(The Interim Final Rule allowed a claimant on or before Oct 1, 2000 to withdraw the NOL and still seek remedy from the Federal Tort Claims Act. Per the preamble of the Final Rule, the OCGFC consulted with the Dept of Justice and Dept of Interior to determine if such a condition could be made for a period following the publication of the Final Rule. It was concluded that such a condition was contrary to the CGFAA)</p>
295.12	Withdrawing the Notice of Loss	Mar 1, 01	<p><i>Amendment:</i> Present policy indicates that Claimants, who withdraw the NOL after Oct 2, 2000, and prior to signing the Proof of Loss, may refile the NOL on a one-time basis, until Aug 28, 2002.</p> <p>(Previous policy indicated that a claimant who withdrew the NOL after Oct 2, 2000 would not be permitted to refile a subsequent NOL.)</p>
295.12	Time to File a Claim	Apr 23, 01	<i>Clarification:</i> revised language to encourage claimants to file NOL in order to receive approved payments as quickly as possible. Process has been streamlined and simplified.
295.13	Submitting a Subrogation Claim	Apr 23, 01	<i>Clarification:</i> language added to clarify that “by filing a Subrogation NOL for any one claim, the claimant has elected the CGFAA as its exclusive remedy for all claims arising out of the Fire.”
295.21(a)	Landscaping	Mar 1, 01	<p><i>Amendment:</i> Present policy amended to include all Claimants. Further, “residential properties” include developed lots where roads and utilities have been installed, but the residence has not yet been constructed.</p> <p>(Previous policy was limited to individual claimants and did not define developed lots.)</p>
295.21(a)	Landscaping of Platted, Undeveloped Lots	July 2, 01	<i>New Policy</i>
295.21(a)	Bark Beetles	Oct 29, 01	<i>New Policy</i>
295.21(a)	Over the Counter Medication	July 2, 01	<i>New Policy</i>

Section	Title	Date of Change	Amendment
295.21(a)	Psychological Care	Mar 1, 01	<p><i>Clarification:</i> Present policy indicates that certified mental health care provider must verify in writing that each specific instance of treatment for which compensation is sought was related to a mental health condition that resulted from or was aggravated by the Fire. Compensation will be limited to treatment, or those parts of treatment, medicines and expenses for travel within 150-mile radius that were or are necessitated solely as a result of the Fire. Compensation sought for a pre-existing mental health problem that was aggravated by the Fire, the treating mental health care provider must provide sufficient written documentation to support the conclusion that treatment was related to the Fire.</p> <p>(Previous policy was more general)</p> <p>(April 23, 2001 – Psychological Care has been moved in the Policy Guidelines to Section 295.21(k), consistent with its location in the Final Rule).</p>
295.21(a)	Donations	Apr 23, 01	(April 23, 2001 – Donations has been moved in the Policy Guidelines to Section 295.21(l) , consistent with its location in the Final Rule.)
295.21(a)	Employee Benefits Contribution	Mar 1, 01	<i>New Policy</i>
295.21(a)	Claims Preparation Expenses	Mar 1, 01	<p><i>Amendment:</i> Present policy indicates that the following individual and business claimants are not eligible to receive the 1% Claims Preparation Allowance: 1) subrogation claimants, 2) claimants who received no compensation either under their insurance policy or the CGFAA; and 3) claimants whose only Cerro Grande Fire related loss is for flood insurance premiums.</p> <p>(April 23, 2001 – Claims Preparation Expenses has been moved in the Policy Guidelines to Section 295.31, consistent with its location in the Final Rule).</p>
295.21(a)	Attorney's Fees for quad associations and individual quad owners	Mar 1, 01	<i>New policy</i>
295.21(a)	Increased Mortgage Interest Costs	Apr 23, 01	<i>New policy</i>
295.21(a)	<p>➤ Lost Interest Income/Interest Paid Lost Interest Income on Funds Withdrawn from Personal Accounts</p>	July 2, 01	<i>New policy</i>
295.21(a)	<p>➤ Lost Interest Income/Interest Paid Interest Paid on Credit Card Charges or Personal Loans Obtained for Repairs</p>	July 2, 01	<i>New policy</i>
295.21(a)	<p>➤ Lost Interest Income/Interest Paid Lost Interest on Income from Lost Opportunities or Speculation</p>	July 2, 01	<i>New policy</i>
295.21(a)	<p>➤ Lost Rental Income Lost Rental Income</p>	June 12, 02	<i>New policy</i>
295.21(a)	<p>➤ Lost Rental Income Extended Compensation Period</p>	June 12, 02	<i>New Policy</i>
295.21(a)	<p>➤ Lost Rental Income Calculation of Compensation</p>	June 12, 02	<i>New Policy</i>
295.21(a)	<p>➤ Temporary Living/Relocation Loss of use for homeowners</p>	Mar 1, 01	<p><i>Amendment:</i> Paragraph added on "loss of use" for Homeowners who were evacuated but returned to their residences.</p> <p>(Previous policy discussed only Homeowners whose homes were destroyed.)</p>

Section	Title	Date of Change	Amendment
295.21(a)	➤ Temporary Living/Relocation Loss of use for renters	Mar 1, 01	<i>Amendment:</i> Paragraph added on “loss of use” for renters who were evacuated but returned to their residences. (Previous policy discussed only renters whose homes were destroyed.)
295.21(a)	➤ Temporary Living/Relocation Travel Expenses During Evacuation Period	July 2, 01	<i>New policy</i>
295.21(a)	➤ Governmental Entities Administrative Allowance for Governmental Entities (formerly Administrative Expenses)	June 12, 02 July 2, 01	<i>Amendment</i> Changes the name of administrative expense or management fee for governmental entities to Administrative Allowance for Governmental Entities, redefines eligibility criteria and how/when compensation will be paid; defines direct and indirect costs. <i>New policy</i>
295.21(a)	➤ Governmental Entities Compensation for Regular and Overtime Employee Wages	June 12, 02 July 2, 01	<i>Amendment</i> Redefines eligibility criteria. Allows for Administrative Allowance for indirect costs. <i>New policy</i>
295.21(a)	➤ Business Losses Calculation of Losses	Mar 1, 01	<i>New policy</i>
295.21(a)	➤ Business Losses Time Period for calculation of business interruption claims	Apr 23, 01	<i>Amendment:</i> Removed language relating to subsequent increase in revenue, as this matter is addressed under the Business Interruptions claims and subsequent increase in Revenue policy under Section 295.21 (a) of the Policy Guidelines.
295.21(a)	➤ Business Losses Time Period for calculation of business interruption claims	Mar 1, 01	<i>New Policy</i>
295.21(a)	➤ Business Losses Business Interruption claims and subsequent increase in revenue	Mar 1, 01	<i>New Policy</i>
295.21(a)	➤ Business Losses Start-up businesses	Mar 1, 01	<i>New Policy</i>
295.21(a)	➤ Business Losses Discontinuing Expenses	Mar 1, 01	<i>New Policy</i>
295.21(b)	Attorney’s Fees	Mar 1, 01	<i>Amendment:</i> Policy amended to note the limited exception for which attorney’s fees are compensable -- Attorney’s Fees for quad associations and individual quad owners under 295.21(a) of the Policy Guidelines.
295.21(b)	Overtime for salaried employees	Mar 1, 01	<i>Amendment:</i> Policy amended to note the limited exception for which an employer may receive compensation, on a case-by-case basis, for payments made on behalf of its salaried employees who worked uncompensated extra hours to mitigate Fire-related losses affecting the business or the community.
295.21(b)	Loss of Non-Proprietary Uses	Mar 1, 01	<i>New Policy</i>
295.21(b)	Cost of Prosecuting Claims	Apr 23, 01	<i>New Policy</i>
295.21(c)	Compensating future business losses	Apr 23, 01	<i>Amendment:</i> Policy amended to reflect additional options in calculating future business losses, based on an April 23, 2001 amendment to the Proof of Loss Options policy under Section 295.30 of the Policy Guidelines.
295.21(c)	Compensating future business losses	Mar 1, 01	<i>Amendment:</i> Policy amended to reflect additional options in calculating future business losses as provided for under Proof of Loss Options under 295.30 of the Policy Guidelines.
295.21(d)	Change of use from the original home	Mar 1, 01	<i>New Policy</i>
295.21(d)	Soils Reports	June 12, 02 Mar 1, 01	<i>Amendment</i> Changes the title from Soils Engineer Reports to Soils Reports; redefines eligibility for compensation. <i>New Policy</i>

Section	Title	Date of Change	Amendment
295.21(d)	Sale of Home	Mar 1, 01	<i>Policy Deleted:</i> Calculation for determining the amount of compensation a claimant is due through an arms length transaction has been removed until a policy on evaluating devaluation of property has been determined. (April 23, 2001 – Policy on the Reduction in the Value of Real Property – Realized Loss , has been approved and is located under Section 295.21(e) of the Policy Guidelines.
295.21(d)	Homes Under Construction	July 2, 01	<i>New Policy</i>
295.21(d)(3)	➤ Mitigation of Home	July 2, 01 Apr 23, 01	<i>Amendment</i> The entire Mitigation of Home Policy has been revised. (April 23, 2001 -- The Mitigation (Home) Policy is currently being revised in light of the final Regulations. While the 15% mitigation cap has not changed, other revisions are being made to streamline the process.)
295.21(d)(3)	➤ Mitigation of Home Determining Total Eligible Mitigation Allowance	July 2, 01	<i>Amendment</i> Keeps the “up to a maximum of 15%” mitigation cap, but adds that compensation of \$2,000 or less would not be eligible for mitigation. This follows the requirements of the final Regulation to compensate for the “reasonable” cost of mitigation measures to reduce a properties vulnerability to future risks, under the premise that for claims of \$2,000 or less, more significant mitigation measures could be implemented community-wide than through a minimum mitigation award.
295.21(d)(3)	➤ Mitigation of Home Eligible Mitigation Measures (Mitigation Menu)	July 2, 01	<i>Amendment</i> Qualified claimants may select mitigation options from a menu of twelve recommended mitigation measures and a proposal must be developed for each measure selected.
295.21(d)	➤ Mitigation of Home Determining total amount and type of eligible mitigation measure MITIGATION OF HOME POLICY HAS BEEN REVISED	July 2, 01 Mar 8, 01	<i>Deleted, see Providing Funds Pursuant to Mitigation Requests</i> <i>Amendment:</i> Changes the term “approved measures” to “acceptable measures” to avoid confusion that the word “approved” could denote approval of the mitigation request. (April 23, 2001 -- The Mitigation (Home) Policy is currently being revised in light of the Final Regulations. While the 15% mitigation cap has not changed, other revisions are being made to streamline the process.)
295.21(d)	➤ Mitigation of Home Determining total amount and type of eligible mitigation measure MITIGATION OF HOME POLICY HAS BEEN REVISED	July 2, 01 Mar 1, 01	<i>Deleted, see Providing Funds Pursuant to Mitigation Requests</i> <i>Clarification:</i> Clarification provided on what the 15% mitigation cap is based (total Cerro Grande Fire related compensation to repair/replace structure and restore the land); further, a mitigation proposal will need to be developed for each measure the claimant chooses to construct.
295.21(d)(3)	➤ Mitigation of Home Destroyed Homes – Providing Funds Pursuant to Mitigation Requests	July 2, 01	<i>Amendment</i> Clarifies that the mitigation allowance is intended to cover the reasonable costs for additional prevention measures above the home replacement compensation. Assigns a pro-rata cap (schedule) for each measure on the mitigation menu.
295.21(d)(3)	➤ Mitigation of Home Damaged Homes – Providing Funds Pursuant to a Mitigation Request	July 2, 01	<i>Amendment</i> Allows claimants whose homes were damaged but not destroyed by the Fire to request funding for measures from the mitigation menu with the compensated based on specific criteria.
295.21(d)(3)	➤ Mitigation of Home When to Apply to Mitigation Funding	July 2, 01	<i>Amendment</i> Clarifies that a claim can be automatically reopened if closed or supplemented if prior to submitting a Release and Certification to request mitigation funding. Stresses that claimants should apply for mitigation funds prior to implementation of any mitigation measures. If claimant is requesting funding for an item not on the mitigation menu, it is

Section	Title	Date of Change	Amendment
			especially important that claimant request approval well before the August 28, 2003 deadline to allow sufficient time to ensure the measure complies with all environmental requirements.
295.21(d)	<p>➤ Mitigation of Home Providing funds pursuant to a Mitigation request</p> <p>MITIGATION OF HOME POLICY HAS BEEN REVISED</p>	<p>July 2, 01</p> <p>Mar 1, 01</p>	<p><i>Deleted, see Ensuring Mitigation Funds are Properly Spent</i></p> <p><i>Amendment:</i> Presently policy indicates that the OCGFC will not be providing partial or advance payments on the mitigation funding. Funding is on a reimbursement basis only.</p>
295.21(d)(3)	<p>➤ Mitigation of Home Ensuring mitigation funds are properly spent</p> <p>MITIGATION OF HOME POLICY HAS BEEN REVISED</p>	Mar 1, 01	<i>Amendment:</i> Provides for a visual inspection by the Mitigation staff, to verify the measure was completed, along with additional information that may be required to show compliance with the mitigation approval letter.
295.21(d)(3)	<p>➤ Mitigation of Home Eligibility of Mitigation Measures on Undeveloped Land (formerly Mitigation Measures on Undeveloped and Platted Land)</p>	<p>July 2, 01</p> <p>Apr 23, 01</p>	<p><i>Amendment</i> Defines that mitigation was designed for homes destroyed or damaged by the Fire; undeveloped land that didn't contain a home prior to Fire is ineligible for mitigation funding under 295.21(d)(3)</p> <p><i>New Policy</i></p>
295.31(d)(3)	<p>➤ Mitigation of Home Mitigation for Owners of Multiple Homes or Units</p>	July 2, 01	<i>New Policy</i>
295.21(e)	<p>➤ Reduction in the Value of Real Property (Diminution) Loss of Real Property Value</p>	Apr 23, 01	<i>New Policy</i>
295.21(e)	<p>➤ Reduction in the Value of Real Property (Diminution) Residential Property Losses Within Los Alamos County</p>	Apr 23, 01	<i>New Policy</i>
295.21(e)	<p>➤ Reduction in the Value of Real Property (Diminution) Property Losses Outside of Los Alamos County</p>	Apr 23, 01	<i>New Policy</i>
295.21(e)	<p>➤ Reduction in the Value of Real Property (Diminution) Property Losses for Undeveloped Lots</p>	Apr 23, 01	<i>New Policy</i>
295.21(g)	Principal on SBA Loans	Mar 1, 01	<i>New Policy</i>
295.21(g)	Interest on SBA Loans	Apr 23, 01	<i>Amendment:</i> Consistent with §295.21(g) of the Final Rule, language added to the policy to define the period of time that the interest would be compensable under CGFAA.
295.21(g)	Principal on non-SBA Loans	Mar 1, 01	<i>New Policy</i>
295.21(g)	Interest on Non-SBA Loans	Apr 23, 01	<i>Amendment:</i> Consistent with §295.21(g) of the Final Rule, language added to the policy to define the period of time that the interest would be compensable under CGFAA.
295.21(g)	Interest on Non-SBA Loans	Mar 1, 01	<i>New Policy</i>
295.21(h)	➤ Mitigation (Community)	<p>July 2, 01</p> <p>Apr 23, 01</p>	<p><i>Amendment</i> The entire Mitigation (Community) Policy has been revised.</p> <p><i>(April 23, 2001 -- The Mitigation (Community) Policy is currently being revised in light of the Final Regulations.)</i></p>
295.21(h)	➤ Mitigation Flood Insurance	Apr 23, 01	<i>(April 23, 2001 – Flood Insurance has been moved in the Policy Guidelines to Section 295.21(j), consistent with its location in the final Regulation).</i>
295.21(h)	➤ Mitigation (Community) Eligible Communities	July 2, 01	<i>Amendment</i> Identifies the 12 counties from which the local or tribal governments can apply for community mitigation.
295.21(h)	➤ Mitigation (Community) OCGFC Assistance in the Development of a Mitigation Compensation Plan	<p>Nov 19, 01</p> <p>July 2, 01</p>	<p><i>Amendment</i> Reiterates need for local and tribal governments seeking assistance must first submit an NOL.</p> <p><i>Amendment</i> Clarifies that OCGFC will provide assistance through the New Mexico Office of Emergency Management (OEM) to those local or tribal governments in the four county</p>

Section	Title	Date of Change	Amendment
			area that are pre-qualified as having a heightened hazard risk as a result of the fire or those local or tribal governments from the list of 12 counties that can demonstrate that a heightened hazard risk as a result of the fire. Use of the OEM will ensure plans are consistent with the State Hazard Mitigation Plan. Eligible communities may choose to develop their own Mitigation Compensation Plan that complies with OCGFC's established standards and OCGFC may reimburse the reasonable expenses incurred in the development of the Plan.
295.21(h)	➤ Mitigation (Community) Applying for Mitigation Assistance	Nov 19, 01 July 2, 01	<i>Amendment</i> Reiterates need for eligible communities seeking mitigation compensation to file an NOL or Amended NOL. <i>Amendment</i> Communities seeking compensation under this Sec. 295.21(h) must file a Notice of Loss or amend a previously filed Notice of Loss, specifying that mitigation compensation is being sought. Claimants must also submit a New Mexico Hazard Mitigation Grant Program application. OCGFC can provide technical assistance preparing this application.
295.21(h)	➤ Mitigation (Community) Criteria for Determining Project Eligibility	July 2, 01	<i>Amendment</i> Sets our criteria for determining project eligibility.
295.21(h)	➤ Mitigation (Community) Partial Payment for Mitigation	July 2, 01	<i>Amendment</i> Partial payments may be advanced to eligible claimants on a case-by-case basis. An immediate financial obligation to initiate or maintain an eligible project must be demonstrated. Terms and conditions of the advance will be set out in an advance agreement. Claimant will be responsible for repaying funds advanced if it fails to comply with the advance agreement or fails to construct the project.
295.21(h)	➤ Mitigation (Community) Mitigation Administrative Allowance for Governmental Entities (formerly Management/Administrative/ Indirect Costs)	June 12, 02 July 2, 01	<i>Amendment</i> Changes title from Management/Administrative/ Indirect Costs to Mitigation Administrative Allowance for Governmental Entities and redefines project eligibility to follow revised policy for Administrative Allowance for Governmental Entities. <i>Amendment</i> Local and tribal governments will be will be compensated a 7% management fee on projects exceeding \$48,500 and that are commenced after December 1, 2000, in accordance with the Management/Administrative Costs Policy for government claimants.
295.21(h)	➤ Mitigation (Community) Accounting for Mitigation Funds Under Mitigation Compensation Plan	July 2, 01	<i>Amendment</i> Claimants receiving funds are required to complete the project. Claims will be required to submit quarterly reports describing the progress and expenditures made on each project; with the first report due three months after the initial funding of the project. Upon completion of the project, a final financial report will be required and OCGFC mitigation staff will visually inspect the project. In the event claimant has not obligated any portion of the mitigation funds by August 28, 2003, the unobligated funds must be returned to OCGFC by October 1, 2003.
295.21(h)	➤ Mitigation (Community) Individual Claimants	July 2, 01	<i>Amendment</i> Individual claimants may apply to their participating local or tribal government for mitigation funds under this section. The local or tribal government must ensure that there is no duplication of benefits to the individual claimants for mitigation funds under Sec. 295.21(d)(3).
295.21(h)	➤ Mitigation (Community) Eligibility of Mitigation Measures Required or Recommended by Other Federal Agencies	July 2, 01	<i>Amendment</i> Recommendations of other federal agencies should be factored into the mitigation compensation plan. Project will still have to mitigate any heightened risk as a result of the Fire. The OCGFC Director may determine the reasonableness of each mitigation claim.

Section	Title	Date of Change	Amendment
295.21(h)	<p>➤ Mitigation Defensible space</p> <p>THE COMMUNITY MITIGATION POLICY HAS BEEN REVISED</p>	Mar 1, 01	<i>Policy Deleted:</i> Policy deleted since the requirements for defensible space, or other mitigation measures, will be identified in the Community Mitigation Plan and have, if need be, a Memorandum of Agreement, executed by appropriate parties.
295.21(h)	<p>➤ Mitigation Accounting for mitigation funds under Community Mitigation Plan</p>	Mar 1, 01	<p><i>Clarification:</i> Clarification provided as to type of documentation required, in addition to a visual inspection by the mitigation staff of the completed measure. Further, all documentation must be submitted no later than October 28, 2003.</p> <p>(April 23, 2001 -- The Mitigation (Community) Policy is currently being revised in light of the Final Regulations.)</p>
295.21(h)	<p>➤ Mitigation Partial payment for mitigation</p>	Mar 1, 01	<p><i>New Policy</i></p> <p>(April 23, 2001 -- The Mitigation (Community) Policy is currently being revised in light of the Final Regulations.)</p>
295.21(h)	<p>➤ Mitigation Eligibility of mitigation measures on undeveloped land</p>	Mar 1, 01	<p><i>Amendment:</i> The OCGFC will evaluate each proposal on a case-by-case basis, taking into consideration whether there is an increased risk due to the Fire, <u>whether it is provided for under a Mitigation Compensation Plan</u>, and whether the proposed solution is reasonable and cost effective.</p> <p>(April 23, 2001 -- The Mitigation (Community) Policy is currently being revised in light of the Final Regulations.)</p>
295.21(h)	<p>➤ Mitigation Eligibility of cost share for DR-1329 HMGP projects</p>	Mar 1, 01	<p><i>Policy Deleted</i> – it has been interpreted that the Act did not intend for OCGFC to pick up the Cost-share for Stafford Act programs.</p> <p>(April 23, 2001 -- The Mitigation (Community) Policy is currently being revised in light of the Final Regulations.)</p>
295.21(i)	<p>➤ Subsistence Firewood</p>	Mar 1, 01	<i>Amendment:</i> Beginning May 1, 2001 through Jan 31, 2002, OCGFC will compensate for firewood permits through the US Forest Service.
295.21(j)	<p>➤ Duplication of Benefits</p>	Apr 23, 01	(April 23, 2001 – Duplication of Benefits has been moved in the Policy Guidelines to Section 295.21(m) , consistent with its location in the Final Rule).
295.21(j)	<p>➤ Flood Insurance Flood Insurance</p>	Apr 23, 01	<p><i>Amendment:</i> Language added that the OCGFC will pay for a flood insurance premium that has the same terms, conditions, and limits of a National Flood Insurance Program policy.</p> <p>(April 23, 2001 – Flood Insurance has been moved in the Policy Guidelines to Section 295.21(j), consistent with its location in the Final Rule).</p>
295.21(j)	<p>➤ Flood Insurance Flood Damage Losses</p>	Apr 23, 01	<i>New Policy</i>
295.21(k)	<p>➤ Out Of Pocket Expenses For Treatment Of Mental Health Conditions Psychological Care</p>	Apr 23, 01	<i>Amendment:</i> No change to content. Original policy on Psychological Care was located under Section 295.21(a) in the Policy Guidelines. Consistent with the Final Rule, Psychological Care is now located under Section 295.21(k) .
295.21(l)	<p>➤ Donations Donations</p>	Apr 23, 01	<i>Amendment:</i> No change to content. Original policy on Donations was located under Section 295.21(a) in the Policy Guidelines. Consistent with the Final Rule, Donations is now located under Section 295.21(l) .
295.21(m)	<p>➤ Duplication of Benefits</p>	Apr 23, 01	(April 23, 2001 – Duplication of Benefits has been moved in the Policy Guidelines to Section 295.21(m) , consistent with its location in the Final Rule).
295.30	<p>➤ Documenting Loss Affidavit</p>	Mar 1, 01	<i>Clarification:</i> Claimants must provide reasonably available documentation to corroborate the value of their losses. If documentary evidence substantiating the loss is not reasonably available, OCGFC may request claimant to execute an affidavit.

Section	Title	Date of Change	Amendment
295.30	➤ Proof of Loss Deadline to Submit a Signed Proof of Loss	Apr 23, 01	<i>New Policy</i>
295.30	➤ Proof of Loss Proof of Loss Options	Apr 23, 01	<p><i>Amendment:</i> Language regarding a one-time waiver that extends signing the Proof of Loss until 90 days after the Final Rule is effective has been deleted from this Policy. The Final Rule granted claimants who filed a NOL before Jan 1, 01 an automatic extension to sign the Proof of Loss until June 19, 01 (90 days after the effective date of the Final Rule).</p> <p>Paragraph regarding the failure of a claimant to submit a signed Proof of Loss has been omitted from this Policy. New Policy has been developed on Apr 23, 01, Failure to Timely Submit a Proof of Loss, Section 295.30 of the Policy Guidelines.</p> <p>Consistent with the Final Rule, the Director may extend the deadline for signing a Proof of Loss on a case-by-case basis. Paragraph has been added "Extension for Signing a Proof of Loss" which outlines the procedures for requesting such an extension.</p>
295.30	➤ Proof of Loss Proof of Loss Options	Mar 1, 01	<i>New Policy</i>
295.30	➤ Proof of Loss Failure to Timely Submit a Proof of Loss	Apr 23, 01	<i>New Policy</i>
295.30	➤ Release and Certification Release and Certification Form	Apr 23, 01	<i>New Policy</i>
295.30	➤ Release and Certification Failure to Timely Return the Release and Certification	Apr 23, 01	<i>New Policy</i>
295.31	Claims Preparation Expenses	Apr 23, 01	<p><i>Amendment:</i> Consistent with the Final Rule, Claim Preparation allowance will be based on 5% of the amount compensated, with a minimum of \$100 and a maximum of \$15,000. Further, as set forth in the Final Rule the 5% will be based on funds received under the CGFAA, and the claimant's insurance -- the policy states that funds received under the Robert T. Stafford Act will be part of the 5% calculation as well.</p> <p>(Previous policy only allowed for 1% of the amount compensated with a \$100 minimum and a \$3,000 maximum.)</p> <p>Original policy on Claims Preparation Expenses was located under Section 295.21(a) in the Policy Guidelines. Consistent with the Final Rule, Claims Preparation Expenses is now located under Section 295.31.</p>
295.32	Time to determine a claim	Mar 1, 01	<i>Amended:</i> The 180 day time frame for the OCGFC to settle a claim begins from the date the OCGFC receives the NOL from the claimant.
295.32	Determining amount of the claim	Mar 1, 01	<i>Clarification:</i> Upon receipt of a determination from an Authorized Official, the claimant has 120 days to accept the determination by submitting a signed Release and Certification or appealing to the Director of the OCGFC.
295.32	Review of Claim by Authorized Official	Apr 23, 01	<i>Amendment:</i> Consistent with the preamble of the Final Rule, language changed to reflect that the Authorized Official will render a determination within 30 days of receiving a signed Proof of Loss.
295.33	Adding to a Claim Prior to Signing the Proof of Loss	Apr 23, 01	<i>Amendment:</i> Language regarding when to submit additional Notice of Losses has been removed to be consistent with the Final Rule.
295.33	Additional Losses Not Included in a Proof of Loss	Apr 23, 01	<i>New Policy</i>

Section	Title	Date of Change	Amendment
295.34	Reopening Claims	June 12, 02	<i>Amendment</i> Adds additional or specific site work to instances where claim may be reopened.
		Nov 19, 01	<i>Amendment</i> Clarifies 1) that all types of loss must be identified on a NOL or Amended NOL by August 28, 2002; and 2) the deadline for submitting a request to reopen.
		Oct 29, 01	<i>Amendment</i> Clarifies that Item 5 applies to claimants who incurred unforeseen expenses beyond the ALE advanced to them; and Item 6 applies to claimants whose personal property was destroyed in the Fire.
		July 2, 01	<i>Amendment</i> Adds two additional instances where a claim may be reopened – claimant rebuilding and incurs additional alternative living expenses and discovery or additional items of personal property not included in the Proof of Loss. Clarifies that the deadline to reopen is not later than August 28, 2002 or 30 days after submittal of the signed Release and Certification, but in no event later than August 28, 2003. Claimants desiring to reopen should use the Request to Reopen Claim Form.
		Apr 23, 01	<i>New Policy</i>
295.35	➤ Taxation General Guidelines	Mar 1, 01	<i>Clarification:</i> Explains when compensatory damages are taxable. Clarifies that costs of tax preparation or advisory services are unreimbursable.
295.35	➤ Taxation Form 1099	Mar 1, 01	<i>Amendment:</i> Defines when claimants will or will not be sent a Form 1099, based on Internal Revenue Code requirements
295.42	Arbitration Arbitrator	Apr 23, 01	<i>Amendment:</i> Language added to set forth the number of arbitrators per the dollar amount in dispute.
295.42	Arbitration Process for Hearing	Apr 23, 01	<i>Clarification:</i> Language added indicating that the “arbitration will be conducted consistent with guidelines established by the ADRO. The ADRO will provide a copy of the guidelines upon request.”