

Hermit's Peak/Calf Canyon Fire Assistance Regulation SUMMARY

On September 30, 2022, President Biden signed into law the Hermit's Peak/Calf Canyon Fire Assistance Act. The legislation provided \$2.5 billion to compensate New Mexicans for injury and loss of property resulting from the Hermit's Peak/Calf Canyon Fire.

FEMA published an Interim Final Rule in the Federal Register on November 14, 2022, including a 60-day public comment period for the Hermit's Peak/Calf Canyon Fire Assistance regulation.

The regulation explains how participants can choose whether to pursue a Hermit's Peak/Calf Canyon Fire claim or alternative remedy, outlines how to navigate the claims process, identifies required documentation, describes claim evaluation criteria and the amount of compensation that may be available, and provides additional guidance on pursuing an appeal or arbitration of a claim determination. This regulation also provides flexibility for the claims process to meet the unique and specific needs of New Mexico residents.

Public Comments

Interested persons may submit public comments about the regulations in two ways: online or in-person. FEMA will evaluate comments and will use them to revise and/or improve the claims process.

For those submitting comments online, visit, <http://www.regulations.gov> and search for Docket ID FEMA-2022-0037 in the search option. Follow the instructions to submit a comment. When submitting a comment indicate the specific section of the regulation each comment applies and give the reason for each comment.

For those submitting comments in-person, FEMA will hold four public meetings to solicit public feedback about this Interim Final Rule. For each meeting, doors will open at 5:00 p.m. MT with the meetings running from 5:30-7:00 p.m.

- November 17, 2022, from 5:00 PM - 7:00 PM MT at Old Memorial Middle School, 947 Legion Drive, Las Vegas, NM 87701.
- December 1, 2022, from 5:00 PM – 7:00 PM MT at the Mora High School, 10 Ranger Road, Mora, NM 87732.
- December 15, 2022, from 5:00 PM - 7:00 PM MT at Old Memorial Middle School, 947 Legion Drive, Las Vegas, NM 87701.



FEMA

- January 5, 2023, from 5:00 PM - 7:00 PM MT at the Mora High School, 10 Ranger Road, Mora, NM 87732.

Overview of the claims process

The first step in the claims process is to submit a **Notice of Loss** form to the Hermit's Peak/Calf Canyon Claims Office (Claims Office).

After receipt and acknowledgement by the Claims Office, a Claims Reviewer will contact the person submitting the claim (Claimant) to review the claim and help the Claimant formulate a strategy for obtaining any necessary supporting documentation to complete the **Proof of Loss** form. The Proof of Loss is a statement attesting to the nature and extent of the Claimant's injuries.

The Claimant will then sign the Proof of Loss and submit it to the Claims Office. Note: A Claimant may amend the Notice of Loss to include additional claims at any time before signing a Proof of Loss.

The Claims Reviewer will submit a report for review to determine whether compensation is due to the Claimant.

The Claims Office will provide a written decision to the Claimant. If satisfied with the decision, the Claimant will receive payment after returning a completed Release and Certification Form. When the Claimant accepts payment through the Act (except partial payment), the election is final, and the Claimant may no longer seek other legal avenues.

If the Claimant is not satisfied with the decision, the Claimant may file an Administrative Appeal with the Director of the Claims Office. If the Claimant is not satisfied after appeal, the dispute may be resolved through binding arbitration or heard in the United States District Court for the District of New Mexico.

Submitting a Notice of Loss Form

Any New Mexico resident, including individuals, businesses, tribes, non-profit organizations, and non-federal governments, that suffered injuries and/or losses due to the Hermit's Peak/Calf Canyon Fire may bring a claim by filing a Notice of Loss form. A brief description of each loss or injury should be included on the Notice of Loss.

Forms can be downloaded from the Internet at <http://www.fema.gov/hermits-peak>. *A claim submitted on any form other than the Notice of Loss form will not be accepted.*

New Mexicans will have two years after publication of the Interim Final Regulation to file a Notice of Loss claim. The deadline is November 14, 2024.

Allowable Damages

The Claims Office will review each claim based on its unique facts and merits. Claimants should not assume that an injury resulting from the Fire is not allowable simply because the regulation fails to address it specifically.

Damages may include:

- *Loss of property.* Compensation may be awarded for an uninsured or underinsured property loss, a decrease in the value of real property, damage to physical infrastructure, lost subsistence, cost of reforestation or revegetation not covered by any other Federal program, and any other loss determined to be appropriate for inclusion as a loss of property.
- *Business loss.* Compensation may be awarded for damages to tangible assets or inventory, including timber, crops, and other natural resources; business interruption losses; overhead costs; employee wages for work not performed; loss of business net income; and any other loss determined to be appropriate for inclusion as a business loss.
- *Financial loss.* Compensation may be awarded for increased mortgage interest costs, insurance deductibles, temporary living or relocation expenses, lost wages or personal income, emergency staffing expenses, debris removal and other cleanup costs, costs of reasonable heightened risk reduction, premiums for flood insurance, and any other loss determined to be appropriate for inclusion as financial loss.
- *Insurance and other benefits.* This legislation allows FEMA to compensate Injured persons only for damages not paid, or will not be paid, by insurance or other third-party payments or settlements.

Completing the Proof of Loss

The next step in the process is to submit a Proof of Loss. The Proof of Loss form includes a statement attesting to the nature and extent of the Claimant's injuries.

- *Burden of proof.* The burden of proving injuries and damages rests with the person filing the claim. FEMA expects that Claimants will provide whatever documentation is reasonably available to support their claim, including photographs and video, to corroborate the nature, extent, and value of their injuries and/or to execute affidavits in a form established by the Claims Office. If documentation or substantiating evidence of an injury or damage is not reasonably available (e.g., it burned in the fire), the Claims Office may determine that the Claimant's statement alone will be sufficient to substantiate the injury or damage based on the unique circumstances presented by each case, taking into consideration potential alternative sources of substantiation and documentation. Although the Claimant is responsible for the Proof of Loss, the Claims Office will assist in preparation of the claim.

- *Proof of Loss.* All Claimants are required to attest to the nature and extent of each injury for which compensation is sought in the Proof of Loss. The Proof of Loss form must be signed by the Claimant or the Claimant's legal representative if the Claimant is not an individual or is an individual who lacks the legal capacity to execute the Proof of Loss.
 - Claimants should submit a signed Proof of Loss to the Claims Office not later than 150 days after the date when the Notice of Loss was submitted. This deadline may be extended at the discretion of the Director of the Claims Office for good cause.

Note: Release and Certification Form. All Claimants who receive compensation under the Hermit's Peak/Calf Canyon Fire Assistance Act are required to sign a Release and Certification Form, including payment for partial payments. A Release and Certification Form must be received by the Claims Office before the Claims Office provides a claim payment and will document a final election to seek compensation from the Claims Office.

Reimbursement of Claim Expenses

- FEMA will reimburse Claimants for the reasonable costs they incur in providing documentation requested by the Claims Office. FEMA will also reimburse Claimants for the reasonable costs they incur in providing appraisals, or other third-party opinions, if requested by the Claims Office. FEMA will not reimburse Claimants for the cost of appraisals or other third-party opinions not requested by the Claims Office.
- FEMA will not reimburse Claimants for any legal fees incurred in prosecuting a claim under the Act or an insurance policy.
- FEMA will provide a lump sum payment for incidental expenses incurred in claims preparation to Claimants that are awarded compensatory damages under the Act after a properly executed Release and Certification Form has been returned to the Claims Office. The amount of the lump sum payment will be at least \$150 and up to \$25,000 depending on the amount of the damages and insurance proceeds a Claimant receives. Subrogation Claimants and Claimants whose only Hermit's Peak/Calf Canyon Fire related loss is for flood insurance premiums will not be eligible.

Compensation

- *Authorized Official's report.* After the Claims Office has evaluated all elements of a claim as stated in the Proof of Loss, the Authorized Official will issue and provide the Claimant with a copy of the Authorized Official's determination.
- *Claimant's options upon issuance of the Authorized Official's determination.* Not later than 120 days after the date that appears on the Authorized Official's determination, the Claimant must either accept the determination by submitting a Release and Certification Form to FEMA and/or initiate an Administrative Appeal, or (after appeal if one is taken) elect to seek alternative legal

remedies and forever relinquish the claim under the Hermit's Peak/Calf's Canyon Fire Assistance Act.

- The Claims Office, at the request of a Claimant, may make one or more partial payments on any aspect of a claim. Acceptance of a partial payment in no way affects a Claimant's ability to pursue an Administrative Appeal of the Authorized Official's determination or to pursue other rights afforded by the Act with respect to any portion of a claim for which a Release and Certification Form has not been executed. The Claims Office decision on whether to provide a partial payment cannot be appealed.

Confidentiality of Information

- Confidential information submitted by individual Claimants is protected from disclosure to the extent permitted by the Privacy Act. These protections are described in the Privacy Act Notice provided with the Notice of Loss.

Administrative Appeal

- *Notice of appeal.* A Claimant may request a review of the determination by written request to the Appeals Docket, Office of Hermit's Peak/Calf Canyon Claims, postmarked or delivered within 120 days after the date that appears on determination letter. Information regarding where to file can be found at <http://www.fema.gov/hermits-peak>.

Arbitration

- A Claimant who is dissatisfied with the outcome of the Administrative Appeal may submit the dispute to binding arbitration. A Claimant may initiate arbitration by submitting a written request to the Arbitration Administrator for Hermit's Peak/Calf Canyon Claims. The written request for arbitration must be electronically stamped or postmarked no later than 60 days after the date that appears on the Administrative Appeal decision.

Judicial Review

- As an alternative to arbitration, a Claimant dissatisfied with the outcome of an Administrative Appeal may seek judicial review of the decision by bringing a civil lawsuit against FEMA in the United States District Court for the District of New Mexico. This lawsuit must be brought within 60 days of the date that appears on the Administrative Appeal decision.