

CHAPTER 6

RELOCATION ASSISTANCE

Authority

N.J.S.A. 27:1A-5, 27:1A-6, 27:7-27, 27:7-72 through 27:7-88 and the Uniform Transportation Replacement Housing and Relocation Act (P.L. 1972, c.47, as amended by P.L. 1989, c.50, effective March 14, 1989).

Source and Effective Date

R.1994 d.400, effective July 8, 1994.
See: 26 N.J.R. 1958(a), 26 N.J.R. 3183(b).

Executive Order No. 66(1978) Expiration Date

Chapter 6, Relocation Assistance, expires on July 8, 1999.

Chapter Historical Note

Chapter 6, Relocation Assistance, was filed and became effective prior to September 1, 1969. Revisions to the original rules became effective September 11, 1973 as R.1973 d.256. See: 5 N.J.R. 201(a), 5 N.J.R. 358(a). Subsequent amendments are as follows:

- 16:6-1.1 R.1979 d.222, effective June 6, 1989.
See: 11 N.J.R. 261(a), 11 N.J.R. 357(b).
- 16:6-2.7 R.1979 d. 222, effective June 6, 1989.
See: 11 N.J.R. 261(a), 11 N.J.R. 357(b).
- 16:6-2.9 R.1979 d. 222, effective June 6, 1989.
See: 11 N.J.R. 261(a), 11 N.J.R. 357(b).

Pursuant to Executive Order No. 66(1978), Chapter 6 expired on June 6, 1984. Chapter 6 became effective as a new rule on September 3, 1985 as R.1985 d.435. See: 17 N.J.R. 565(a), 17 N.J.R. 243(a). Chapter 6 was repealed and replaced with new rules by R.1989 d.421, effective August 7, 1989. See: 21 N.J.R. 1273(a), 21 N.J.R. 2290(b). Chapter 6 was readopted by R.1994 d.400, effective July 8, 1994. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

16:6-1.1 Purpose

The intent of the rules contained in this chapter is to comply with the provisions of the Uniform Transportation Replacement Housing and Relocation Act, N.J.S.A. 27:7-72 et seq., as amended, including P.L. 1989, c.50.

16:6-1.2 Relocation notices

(a) As soon as is practicable, a person scheduled to be displaced shall be furnished with a general written description of the displacing agency's relocation program. The term "agency" means the entity, public or private, including the State of New Jersey, Department of Transportation, counties, municipalities, and other public entities, utilizing State or Federal funds under an aid program administered by the State of New Jersey, Department of Transportation. The written description shall accomplish at least the following:

1. Inform the person that he or she may be displaced for the project and generally describe the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s);
2. Inform the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims and other necessary assistance to help the person successfully relocate;
3. Inform the person that he or she will not be required to move without at least 90 days advance written notice, and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available to them; and

4. Describe the person's right to appeal the agency's determination as to a person's application for assistance for which a person may be eligible.

(b) Eligibility for relocation assistance shall begin on the date of initiation of negotiations for the occupied property. Initiation of negotiations means the delivery of the initial written offer of just compensation by the agency to the owner or the owner's representative, to purchase the real property. When this occurs, all occupants shall promptly be notified, in writing, of their eligibility for applicable relocation assistance.

(c) Ninety-day notice requirements are as follows:

1. No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

2. The agency shall issue the notice 90 days before it expects the person to be displaced or earlier.

3. The 90 day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating at least 30 days in advance, the specific date by which he or she must move. If the 90 day notice is issued before a comparable replacement dwelling is made available, the notice shall state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available per these regulations.

4. In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the agency determines that a 90 day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety.

16:6-1.3 Availability of comparable replacement dwelling before displacement

(a) No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (described in (b) below) has been made available to the person pursuant to this chapter. Where possible, three or more comparable replacement dwellings shall be made available. Only in those situations when the local housing market does not contain three comparable dwellings, may the agency make fewer than three referrals.

(b) The term "comparable replacement dwelling" means a dwelling which the Agency determines to be:

1. Decent, safe and sanitary;

2. Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present;

3. Adequate in size to accommodate the occupants;

4. In an area not subject to unreasonable adverse environmental conditions;

5. In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

6. On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses;

7. Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance; and

8. Within the financial means of the displaced person.

i. A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180 day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential, all increased mortgage interest costs, and all incidental expenses, plus any additional amount required to be paid under replacement housing of last resort.

ii. A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling.

iii. For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length of occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if the agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such person's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Such rental assistance must be paid under replacement housing of last resort.

(c) A comparable replacement dwelling will be considered to have been made available to a person if:

1. The person is informed of its location;
2. The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and
3. Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(d) The agency may grant a waiver of the policy in (a) above in any case where it is demonstrated that a person must move because of a major disaster, presidentially declared national emergency, or other emergency requiring immediate vacation of the real property which constitutes substantial danger to the health or safety of the occupants or the public.

(e) In lieu of the aforementioned provisions regarding comparable replacement dwellings, whenever a person is required to relocate for a temporary period because of an emergency, the agency shall:

1. Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling;
2. Pay the actual reasonable out of pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and
3. Make available to the displaced person, as soon as practicable, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling.)

16:6-1.4 Relocation planning, advisory services, and coordination

(a) During the early stages of development, programs or projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by the agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study which may include the following:

1. An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be

acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families and the handicapped when applicable.

2. An estimate of the number of comparable replacement dwellings in the area, including price ranges and rental rates, that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of housing of last resort actions should be instituted.

3. An estimate of the number, type and size of the businesses, farms and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

4. Consideration of any special relocation advisory services that may be necessary from the displacing agency and other cooperating agencies.

(b) Relocation assistance advisory services requirements are as follows:

1. The agency shall carry out a relocation assistance advisory program which satisfies applicable State requirements and offers the services described in 2 below. If the agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

2. The advisory program shall include such measures, facilities and services as may be necessary or appropriate in order to:

i. Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

ii. Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in N.J.A.C. 16:6-1.3(c).

(1) As soon as practicable, the agency shall inform the person, in writing, of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(2) Where practicable, housing shall be inspected prior to being made available to assure that it meets applicable standards. If such an inspection is not made, the person to be displaced shall be notified

that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe and sanitary.

(3) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require the agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(4) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

iii. Provide current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations, and assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

iv. Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

v. Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

3. Any person who occupies property acquired by the agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the agency.

(c) Relocation activities shall be coordinated with project work and other displacement causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized.

16:6-1.5 Eviction for cause

(a) Eviction for cause shall conform to applicable State law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the agency determines that:

1. The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice, is later evicted; or

2. The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

3. In either case, the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance as set forth in this part.

(b) For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project.

(c) A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the agency to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under State law. A displacing agency may, at its discretion, consider such a squatter to be in lawful occupancy.

16:6-1.6 General requirements—claims for relocation payments

(a) Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person shall be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) The agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as practicable following receipt of sufficient documentation to support the claim.

(c) If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) All claims for a relocation payment shall be filed with the agency within 18 months after, for tenants, the date of displacement; for owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

1. This time period shall be waived by the agency, for good cause as determined by the agency.

(e) If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(f) The agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, the agency may deduct from relocation payments any rent that the displaced person owes the agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling. The agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) If the agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant, in writing, of its determination, the basis for its determination, and the procedures for appealing that determination.

SUBCHAPTER 2. PAYMENTS FOR MOVING AND RELATED EXPENSES

16:6-2.1 Payments for actual reasonable moving and related expenses; residential moves

(a) Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person is entitled to payment of his or her actual moving and related expenses, as the agency determines to be reasonable and necessary, including expenses for:

1. Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the agency determines that relocation beyond 50 miles is justified;
2. Packing, crating, unpacking, and uncrating of the personal property;
3. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property;
4. Storage of the personal property for a period not to exceed 12 months, unless the agency determines that a longer period is necessary;
5. Insurance for the replacement value of the property in connection with the move and necessary storage;

6. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available; and

7. Other moving related expenses that are not listed as ineligible under N.J.A.C. 16:6-2.5, as the agency determines to be reasonable and necessary.

16:6-2.2 Fixed payment for moving expenses—residential moves

Any person displaced from a dwelling or seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses under N.J.A.C. 16:6-2.1. This allowance shall be determined according to the applicable schedule maintained by the Bureau of Property and Relocation. In those instances involving a Federal project, the schedule shall be approved by the Federal Highway Administration.

16:6-2.3 Payment for actual reasonable moving and related expenses; nonresidential moves

(a) Any business or farm operation which qualifies as a displaced person pursuant to N.J.S.A. 27:7 et seq., as amended, is entitled to payment for such actual moving and related expenses, as the agency determines to be reasonable and necessary, including expenses for:

1. Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified;
2. Packing, crating, unpacking, and uncrating of the personal property;
3. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property. This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right of way to the building or improvement are excluded.);
4. Storage of the personal property for a period not to exceed 12 months, unless the agency determines that a longer period is necessary;
5. Insurance for the replacement value of the personal property in connection with the move and necessary storage;
6. Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit or certification;

7. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available;

8. Professional services necessary for:

- i. Planning the move of the personal property;
- ii. Moving the personal property; and
- iii. Installing the relocated personal property at the replacement location;

9. Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move;

10. Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

- i. The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price); or

- ii. The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles);

11. The reasonable cost incurred in attempting to sell an item that is not to be relocated;

12. Purchase of substituted personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

- i. The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade in of the replaced item; or

- ii. The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate;

13. Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$1,000 as the agency determines to be reasonable, which are incurred in searching for a replacement location, including:

- i. Transportation;
- ii. Meals and lodging away from home;
- iii. Time spent searching, based on reasonable salary or earnings; and
- iv. Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site; and

14. Other moving-related expenses that are not listed as ineligible under N.J.A.C. 16:6-2.5, as the agency determines to be reasonable and necessary.

(b) The following notification and inspection requirements apply to payments under this section:

1. The agency shall inform the displaced business or farm, in writing, of the requirements of (b)2 and 3 above as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person.

2. The displaced business or farm operator shall provide the agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the agency may waive this notice requirement after documenting its file accordingly.

3. The displaced business or farm operator shall permit the agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(c) If the displaced business or farm elects to take full responsibility for its move, the agency may make a payment for the moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the agency or prepared by qualified staff. At the agency's discretion, a payment for a low cost (generally less than \$1,000) or uncomplicated move may be based on a single bid or estimate.

(d) Upon request and in accordance with applicable law, the business or farm operation shall transfer to the agency ownership of any personal property that has not been moved, sold, or traded in.

(e) The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

1. The depreciated reproduction cost of the sign, as determined by the agency, less the proceeds from its sale; or

2. The estimated cost of moving the sign, but with no allowance for storage.

Cross References

Reestablishment expenses; nonresidential moves, see N.J.A.C. 16:6-2.6.

16:6-2.4 Fixed payment for moving expenses; nonresidential moves

(a) A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with (e) below, but not less than \$1,000 nor more than \$20,000. The displaced business is eligible for the payment if the agency determines that:

1. The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move, and the business vacates or relocates from its displacement site;
2. The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the agency determines that it will not suffer a substantial loss of its existing patronage;
3. The business is not part of a commercial enterprise having more than three other properties/locations which are not being acquired by the agency, and which are under the same ownership and engaged in the same or similar business activities;
4. The business is not operated at the displacement building solely for the purpose of renting such as a dwelling to others;
5. The business is not operated at the displacement site solely for the purpose of renting the site to others;
6. The business contributed materially to the income of the owner or operator of the business during the two taxable years prior to displacement. The term "contribute materially" means that during the two taxable years prior to the taxable year in which displacement occurs, or during such other period as the agency determines to be more equitable, a business or farm operation:
 - i. Had average annual gross receipts of at least \$5,000; or
 - ii. Had average annual net earnings of at least \$1,000; or
 - iii. Contributed at least 33 $\frac{1}{3}$ percent of the owner's or operator's average annual gross income from all sources;
 - iv. If the application of the above criteria creates an inequity or hardship in any given case, the agency may approve the use of other criteria as determined appropriate.

(b) In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

1. The same premises and equipment are shared;
2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
3. The entities are held out to the public, and to those customarily dealing with them, as one business; and
4. The same person or closely related persons own, control, or manage the affairs of the entities.

(c) A displaced farm operation may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with (e) below, but not less than \$1,000 nor more than \$20,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the agency determines that:

1. The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
2. The partial acquisition caused a substantial change in the nature of the farm operation.

(d) The term "nonprofit organization" means an organization that is incorporated as a nonprofit organization under the laws of New Jersey or other State jurisdiction, and is exempt from payment of Federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. § 501). A displaced nonprofit organization may choose a fixed payment of \$1,000 to \$20,000 in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the agency demonstrates otherwise. Any payment in excess of \$1,000 must be supported with financial statements for the two 12 month periods prior to the acquisition. The amount to be used for the payment is the average of two years annual gross revenues less administrative expenses.

(e) The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State and local income taxes during the two taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate. Average annual

net earnings may be based upon a different period of time when the agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the agency determines is satisfactory.

16:6-2.5 Ineligible moving and related expenses

(a) A displaced person is not entitled to payment for:

1. The cost of moving any structure or other real property improvement in which the displaced person reserved ownership;
2. Interest on a loan to cover moving expenses;
3. Loss of goodwill;
4. Loss of profits;
5. Loss of trained employees;
6. Any additional operating expenses of a business or farm operation incurred because of operating in a new location, except as provided in N.J.A.C. 16:6-2.6(b)10;
7. Personal injury;
8. Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the agency;
9. Expenses for searching for a replacement dwelling;
10. Physical changes to the real property at the replacement location of a business or farm operation, except as provided in N.J.A.C. 16:6-2.3(a)3 and 16:6-2.6(b); or
11. Costs for storage of personal property on real property already owned or leased by the displaced person.

16:6-2.6 Reestablishment expenses—nonresidential moves

(a) In addition to the payments available under N.J.A.C. 16:6-2.3, a small business (a business having at least one but not more than 500 employees working at the site being acquired), farm or nonprofit organization may be eligible to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(b) Reestablishment expenses must be reasonable and necessary, as determined by the agency. They may include, but are not limited to, the following:

1. Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance;

2. Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business;

3. Construction and installation costs, not to exceed \$1,500 for exterior signing to advertise the business;

4. Provision of utilities from right of way to improvements on the replacement site;

5. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling or carpeting;

6. Licenses, fees and permits when not paid as part of moving expenses;

7. Feasibility surveys, soil testing and marketing studies;

8. Advertisement of replacement location, not to exceed \$1,500;

9. Professional services in connection with the purchase or lease of a replacement site;

10. Estimated increased costs of operation during the first two years at the replacement site, not to exceed \$5,000 for such items as:

- i. Lease or rental charges;
- ii. Personal or real property taxes;
- iii. Insurance premiums; and
- iv. Utility charges, excluding impact fees;

11. Impact fees or one time assessments for anticipated heavy utility usage; and

12. Other items that the agency considers essential to the reestablishment of the business.

13. Expenses in excess of the regulatory maximums set forth in (b)3, 8 and 10 above, may be considered eligible if large and legitimate disparities exist between costs of operation at the displacement site and costs of operation at an otherwise similar replacement site. In such cases, the regulatory limitation for reimbursement of such costs may be waived by the agency, but, in no event, shall total costs payable under this section exceed the \$10,000 statutory maximum.

(c) The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary or otherwise eligible:

1. Purchase of capital assets, such as, office furniture, filing cabinets, machinery or trade fixtures;
2. Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation;

3. Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in (b)5 above;
4. Interest on money borrowed to make the move or purchase the replacement property; and
5. Payment to a part time business in the home which does not contribute materially to the household income.

16:6-2.7 Replacement housing payment for 180 day homeowner occupants

(a) A displaced person is eligible for the replacement housing payment for a 180 day homeowner occupant if the person:

1. Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and
2. Purchases and occupies a decent, safe, and sanitary replacement dwelling as defined at N.J.A.C. 16:6-2.9(f) within one year after the later of the following dates (except that the agency may extend such one year period for good cause as determined by the agency):
 - i. The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court; or
 - ii. The date the agency's obligation under N.J.A.C. 16:6-1.3 is met.

(b) The replacement housing payment for an eligible 180 day homeowner-occupant may not exceed \$22,500 (see also, N.J.A.C. 16:6-2.10). The payment under this section is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

1. The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with (c) below; and
2. The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with (h) below; and
3. The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with (i) below.

(c) The price differential to be paid under (b)1 above is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

- i. The reasonable cost of a comparable replacement dwelling as determined in accordance with (d) below; or
- ii. The purchase price of the decent, safe and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(d) The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling, defined at N.J.A.C. 16:6-1.3(b).

1. If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data. An obviously overpriced dwelling may be ignored.

i. If a displaced person purchases the comparable dwelling upon which the supplement was predicated, but cannot acquire the property for the adjusted price, it is appropriate to increase the replacement housing payment to the actual purchase amount.

2. If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

3. If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the agency will offer to purchase the entire property. If the owner refuses to sell the remainder to the agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

4. To the extent practicable, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(e) If the displacement dwelling unit was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling unit shall be considered its acquisition cost when computing the price differential.

(f) To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be added to the acquisition cost of the displacement dwelling when computing the price differential.

(g) If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling, shall be the sum of:

1. The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and
2. The cost of making the unit a decent, safe, and sanitary replacement dwelling, as defined at N.J.A.C. 16:6-2.9(f); and
3. The current fair market value for residential use of the replacement site, unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and
4. The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(h) The displacing agency shall determine the factors to be used in computing the amount to be paid to a displaced person under (b)2 above. The payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (h)1 through 5 below shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

1. The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination, the payment will be prorated and reduced accordingly. In the case of a home equity loan, the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

2. The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

3. The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

4. Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

- i. They are not paid as incidental expenses;

- ii. They do not exceed rates normal to similar real estate transactions in the area;

- iii. The agency determines them to be necessary; and

- iv. The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

5. The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

(i) The incidental expenses to be paid under (b)3 above are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

1. Legal, closing and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees;

2. Lender, FHA, or VA application and appraisal fees;

3. Loan origination or assumption fees that do not represent prepaid interest;

4. Certification of structural soundness and termite inspection when required;

5. Credit report;

6. Owner's and mortgagee's evidence of title, for example, title insurance, not to exceed such costs for a comparable replacement dwelling;

7. Escrow agent's fee;

8. State revenue or documentary stamps, sales or transfer taxes (not to exceed such costs for a comparable replacement dwelling); and

9. Such other costs as the agency determines to be incidental to the purchase.

(j) A 180 day homeowner occupant, who could be eligible for a replacement housing payment under (a) above, but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed \$5,250, computed and disbursed in accordance with N.J.A.C. 16:6-2.8.

16:6-2.8 Replacement housing payment for 90 day occupants

(a) A tenant (a person who has the temporary use and occupancy of real property owned by another) or owner occupant displaced from a dwelling is entitled to a payment not to exceed \$5,250 for rental assistance, as computed in accordance with (b) below, or downpayment assistance, as computed in accordance with (c) below, if such displaced person:

(d) If the owner is reimbursed for the cost of moving the mobile home under this section, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(e) The acquisition by the agency of a portion of a mobile home park property may leave the remaining part of the property that is not adequate to continue the operation of the park. If the agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under this chapter.

SUBCHAPTER 3. ORGANIZATION AND PROCEDURES

16:6-3.1 Exercise of powers

The Department of Transportation may exercise, on behalf of any county, municipality, or other entity, as the case may be, the powers granted to these agencies under P.L. 1989, c.50 (N.J.S.A. 27:7-72 et seq., as amended), and under this chapter.

16:6-3.2 Delegation of powers

Ordinarily, the Bureau of Property and Relocation, within the Division of Right of Way, will be responsible for administering this chapter and the attendant Federal and State law, on behalf of the Commissioner of Transportation.

16:6-3.3 Appeal of agency determination

(a) Any aggrieved person may file a written appeal, regardless of form, with the agency in any case in which the person believes that the agency has failed to properly consider the person's application for assistance under this chap-

ter. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a relocation payment.

(b) The appeal must be initiated within 90 days after the person receives written notification of the agency's determination on the person's claim. The written appeal should be addressed to the Right of Way District Supervisor. If the matter is not resolved to the person's satisfaction, the person may request an in-person review by writing to the New Jersey Department of Transportation, 1035 Parkway Avenue, (CN600), Trenton, New Jersey 08625, Attention: Director of Right of Way, who is the Commissioner's authorized designee to hear appeals.

(c) A person has the right to be represented by legal counsel or other representative in connection with the appeal, but solely at the person's own expense. The person shall be permitted to inspect and copy all materials pertinent to the appeal, except materials which are classified as confidential by the agency. The agency may impose reasonable conditions on the person's right to inspect, consistent with applicable laws. In deciding an appeal, the agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(d) Promptly after receipt of all information submitted by a person in support of an appeal, the agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the agency shall advise the person of his or her opportunity to request a contested case before the Office of Administrative Law, conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

16:6-3.4 Federal law

The administration of relocation assistance shall be provided consistent with applicable Federal law and regulations.