FIXED PAYMENT FOR MOVING EXPENSES: FARM OPERATIONS

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A farm operation is eligible for the fixed payment in lieu of all moving and related expenses including reestablishment expenses. You may encounter a wide variety of farm operations that include growing crops, raising livestock, or harvesting timber. The Uniform Act regulations define a farm operation at 49 CFR 24.2(a)(12): *"any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support."*

Eligibility Requirements and Payment Amount

The fixed payment eligibility criteria for farms is different from that used for businesses. There are only two basic requirements that a farm operation should meet. In looking at the definition of a farm operation above, we see that the activity/operation must produce enough of its product so that sales of the product contribute materially to the owner's income. The term "contribute materially" generally means that in the two taxable years prior to the year of displacement the farm operation had gross revenue of at least $5,000; or net income of at least $1,000; or it contributed at least 33 and 1/3% to the owner's annual gross income from all sources. [See §24.2(a)(7)] This requirement would generally eliminate home gardens or hobby farms from being eligible for a fixed payment.

Although the regulations do not list a specific requirement that a farm have personal property at the displacement site, this requirement is implied since the payment is "in lieu of" actual moving expenses. The most accepted interpretation is that farms, like businesses, must have personal property to move in connection with the displacement to be eligible for the payment. Since this requirement is not explicitly stated in the regulations, and there is no guidance in the Uniform Act Frequently Asked Questions published by the Federal Highway Administration, an agency may use its discretion to determine that a farm operation is eligible for the fixed payment in situations when it does not have personal property to move. Keep in mind that the farm products raised by the operator may be personal property.

Unlike businesses, farms are not subject to the loss of existing patronage requirement, nor are they limited by the multiple location criteria. Since renting a dwelling or a commercial site are not related to the definition of a farm operation, these restrictions do not apply.

The fixed payment amount for a farm operation, and its actual calculation, are the same as for a business. The maximum payment is $40,000 and the minimum payment is $1,000. The payment is calculated based on the average annual net earnings of the farm operation for the two taxable years preceding displacement. [Refer to 24.305(e)]

Eligibility for Fixed Payment as Result of Partial Acquisition
A farm operation may be eligible to claim a fixed payment in two partial acquisition situations. First, an agency may determine the partial acquisition causes the entire farm to be displaced. The second situation arises when the acquisition causes a substantial change in the nature of the farm operation. In other words, the agency must determine the partial acquisition has a substantial impact on the operation in the after situation.

This determination can be a subjective measure, and should be carefully evaluated on a case-by-case basis. Let's look at some factors or reasons a partial acquisition could impact a farm operation to the point that it triggers a change in the nature of the operation. These are items an agency should consider when making this decision.

Loss of Access
A partial acquisition may cause a farm operation to lose access to the remainder portion of the operation. For example, if the partial acquisition splits a farm and leaves the owner with land on both sides of a new limited access highway, the resulting loss of access could be considered a substantial change in the owner's operation in terms of access, efficiency, and future costs.

Loss of Land that Supports the Farm Operation
The agency's acquisition includes a substantial portion of land that supports the ongoing farm operation, such as land the farm owner uses to grow corn to feed his cattle. After the acquisition, the farm owner may no longer have the land needed to grow feed corn which is an essential function of the farm operation.

Resulting Noncompliance with Local Codes or Industry Standards
The partial acquisition may result in the farm operation now being in noncompliance with local codes or industry standards. For example, the partial acquisition may impact a water source or the soil quality of an organic farm to such an extent that the farm operator can no longer meet the industry standards or the code requirements of an organic farm.

Inability to Replace Improvements Necessary for the Farm Operation
The farm owner may be unable to replace acquired features or improvements on the remainder property due to cost or physical limitation. For example, the farm owner may not have the area necessary on the remainder property to replace a grain silo purchased as real property or a retention pond that is necessary for the operation.

Note: These are suggested factors for an agency to consider when evaluating if a partial acquisition caused a substantial change in the nature of the farm operation. These factors are explained and illustrated in IRWA Course 521, Nonresidential Fixed Payments. This course was developed by O. R. Colan Associates through our licensing agreement and is available at IRWA University. The IRWA Relocation Community of Practice also developed Q & A's for Farm Operations, which is available on the IRWA Member Network. Lisa Barnes and Bob Merryman are members of the Relocation CoP, and contributed to this publication. ■ ■ ■