

(2) The business is not part of a commercial enterprise having another establishment, which is not being acquired by the Commission, and which is under the same ownership and engaged in the same or similar business activities. For purposes of this rule, no remaining business facility which had average annual gross receipts of less than \$1,000 and average annual net earnings of less than \$500, during the two taxable years prior to displacement, shall be considered "another establishment"; and

(3) The business had (i) average annual gross receipts of at least \$1,000 during the two taxable years prior to displacement, or (ii) average annual net earnings of at least \$500 as determined in accordance with §700.173. However, the Commission may waive this test in any case in which it determines that its use would cause a substantial hardship.

(c) *Determining number of businesses acquired.* In determining whether two or more legal entities, all of which have been acquired, 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 inter-related 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.

(d) *Farm operation.* A farm operation qualifies for a payment under this section if the Commission determines that it meets the criteria set forth in §700.171(b)(3). In the case of a partial acquisition, the fixed payment shall be made only if the Commission determines that—

(1) The part acquired was a farm operation before the acquisition; or

(2) The partial acquisition caused the operator to be displaced from the farm operation; or

(3) The partial acquisition caused a substantial change in the nature of the farm operation.

(e) *Nonprofit organization.* A nonprofit organization qualifies for a \$2,500 payment under this section, if the Commission determines that it—

(1) Cannot be relocated without a substantial loss of existing patronage (membership and clientele). A nonprofit organization is assumed to meet this test, unless the Commission demonstrates otherwise; and

(2) Is not part of an enterprise having at least one other establishment engaged in the same or similar activity which is not being acquired by the Commission.

**§ 700.173 Average net earnings of business or farm.**

(a) *Computing net earnings.* For purposes of this subpart, the average annual net earnings of a business or farm operation is 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. However, if the business or farm was not in operation for the full two taxable years prior to displacement, net earnings shall be computed on the basis of the actual period of operation on the acquired site, projected to an annual rate. Also, average annual net earnings may be based upon a different period of time when the Commission determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, his spouse, or dependents.

(b) *Documentation.* A displaced person who elects to receive a fixed payment in lieu of actual expenses incurred in moving his business or farm shall furnish the Commission proof of his net earnings through income tax returns, certified financial statements or other reasonable evidence.

**§ 700.175 Temporary emergency moves.**

(a) *General.* An eligible household may be granted temporary relocation resources, at the Commission's discretion, provided:

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(1) That the move is for a limited time period not to exceed 12 months unless extended by the Commission.

(2) That permanent relocation resources are not available at the time of displacement.

(3) Prior approval of the Commission is obtained.

(4) That a Relocation Contract providing for permanent relocation has been executed.

(5) The head of household actually remained domiciled on lands partitioned to the tribe of which he is not a member as of December 22, 1974, and continuously thereafter.

(6) The head of household shall vacate all improvements owned by him on lands partitioned to the tribe of which he is not a member and shall transfer title to said improvements to the Commission.

Temporary relocation shall in no way diminish the responsibility of the Commission to offer relocation assistance and services designed to achieve permanent and suitable facilities.

(b) *Conditions under which move to temporary housing accommodations may be approved.* The move of a family or individual into temporary housing accommodations may be approved by the Commission only if the following conditions are met.

(1) The move will be undertaken because:

(i) It is necessary because of an emergency as determined by the Commission; or

(ii) The individual or family is subject to conditions hazardous to his or his family's health or safety.

(2) The temporary housing is decent, safe, and sanitary.

(3) The Commission shall have determined that within twelve (12) months of the date of the temporary move, replacement housing meeting Commission-approved standards will be available for occupancy by the persons temporarily rehoused.

(4) Prior to the move, the Commission shall provide in writing assurance to each head of household that:

(i) Replacement housing will be available at the earliest possible time but in any event no later than twelve (12) months from the date of the move to temporary housing.

(ii) Replacement housing will be made available on a priority basis, to the individual or family who has been temporarily rehoused.

(iii) The move to temporary rehousing will not, in any way, affect a claimant's eligibility for a replacement housing payment nor deprive him of the same choice or replacement housing units that would have been made available had the temporary move not been made.

(iv) The Commission will pay all costs in connection with the move to temporary housing, including any increased housing costs.

(c) *Agency documentation.* To request Commission approval for a temporary move of a family, the following information shall be submitted to the Commission (additional information may be required on a case-by-case basis):

(1) An explanation of the necessity for the temporary move, based upon the criteria set forth by the Commission.

(2) The estimated duration of the temporary occupancy.

(3) In the case of the family or individual, (i) a copy of the written assurance which will be provided to the person explaining his rights and the continuing obligation of the agency to provide relocation assistance, and (ii) evidence that the family or individual agrees to make the temporary move.

(d) *Costs in connection with temporary move—(1) Costs included.* Costs included in a temporary move may cover the following:

(i) Actual reasonable moving costs and related expenses for the move to temporary accommodations.

(ii) For the family or individual moved from a rental unit the difference, if any, between the rental cost of the dwelling vacated and the rental cost of the temporary unit.

(iii) For a homeowner who retains ownership of his dwelling the reasonable cost of renting the temporary dwelling.

(iv) For a homeowner whose dwelling has been acquired the difference, if any, between his housing costs for the acquired dwelling and the rental cost of the temporary unit.

(2) *Costs not a replacement home benefit.* Costs in connection with a move to

temporary accommodations are not to be considered as relocation payments under the Act. (See paragraph (e) of this section.)

(e) *Distinguishing between cost of temporary move and relocation payment.* The costs of a temporary move, as described in the foregoing subparagraphs, are not to be considered as all or a part of the relocation payment to which a displaced person is entitled under the Act. Thus, when a family is moved to temporary accommodations, a relocation payment is *not* made and the election or choice of type of payments that would ordinarily be made upon displacement must be delayed until the final move is made. When the move out of temporary accommodations is made, the displaced person shall receive the full relocation payments to which he/she is entitled pursuant to Commission regulations.

### Subpart E—Replacement Housing Payments

#### § 700.181 Eligibility.

(a) *Basic eligibility requirements.* A certified eligible head of household who established his/her residency requirements in the area partitioned to the tribe of which he/she is not a member, is eligible for the replacement housing payment specified at § 700.183(a).

(b) *Other rules and requirements.* A payment under this subpart E is subject to the other applicable rules and requirements of these regulations.

#### § 700.183 Determination of replacement housing benefit.

(a) *Amount of benefit.* The replacement housing benefit for a certified eligible head-of-household is an amount not to exceed fifty-five thousand dollars (\$55,000) for a household of three or less and not to exceed sixty-six thousand dollars (\$66,000) for a household of four or more. Subject to such other requirements of these regulations as may apply, the replacement housing benefit shall be calculated as follows:

(1) The amount of the fair market value of the habitation and improvements purchased from an eligible head-of-household pursuant to subpart B of this part shall be applied first toward the cost of a replacement dwelling.

(2) An additional amount shall be added to the value of the habitation and improvements to equal the cost of a decent, safe, and sanitary replacement dwelling.

(3) The total value of the replacement dwelling shall not exceed the amount of the replacement housing benefit specified in paragraph (a) of this section.

(4) In the event the cost of providing a decent, safe, and sanitary replacement dwelling is less than the fair market value of the habitation and improvements purchased from an eligible head-of-household pursuant to subpart B of this part, the difference shall be paid to that head-of-household.

(b) The Commission shall, on or before the first Friday in April of each fiscal year, after consultation with the Secretary of the Department of Housing and Urban Development, annually increase, decrease or leave unadjusted the above limitations on replacement housing benefits to reflect changes in housing or development and construction costs, other than costs of land, during the preceding year. In determining whether to increase or decrease the replacement housing benefit limitations set forth above, the Commission shall consider the following:

(1) The most recent percentage rate of increase or decrease in single family housing construction costs reported by HUD. (General Prototype Housing Costs For One to Four Family Dwelling Units).

(2) The most recent Boecht Building Cost Modifier.

(3) The experience of relocatee families in obtaining replacement housing within the current benefits.

(4) The cost of available replacement housing which meets Commission standards as set forth in these regulations.

(5) Such other available information which the Commission deems appropriate and which is relevant to a determination of whether replacement housing benefits should be increased or decreased to reflect change in housing or development and construction costs during the preceding year.