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TITLE 16. DEPARTMENT OF TRANSPORTATION
CHAPTER 5. COMPENSATION OF CONDEMNEDS FOR INCOME LOSS RESULTING FROM
HARVESTING OF STANDING CROPS

Authority: N.J.S.A. 20:3-29, 20:3-29.1, 27:1A-5, 27:1A-6, 27:7-22 and 27:7-44.6

Expires on September 23, 2017

SUBCHAPTER 1. GENERAL PROVISIONS

16:5-1.1 Purpose

The rules in this chapter govern compensation to owners for any loss of income resulting from the harvesting of standing crops.

16:5-1.2 Definitions

The following words and terms, as used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

"Condemnation" means the taking of private property for a public purpose under the power of eminent domain as prescribed by the Eminent Domain Act of 1971, N.J.S.A. 20:3-1, and the obtaining of title in fee or a lesser interest through a contract of sale or by the filing of a complaint under eminent domain.

"Department" means the New Jersey Department of Transportation.

"Owner" means the person or entity who holds title of record to the property or easement being condemned.

"Parcel" means the fee or lesser interest for which the Department has made an offer as reflected on a general property parcel map or an entire tract map as prepared by the Department.

"Property" or "real estate" means any interest in real estate including, but not limited to, the underlying fee interest, land, buildings, fixtures, leasehold, riparian rights and easements.

SUBCHAPTER 2. AGRICULTURAL OR HORTICULTURAL LAND

16:5-2.1 Authority

All provisions of this subchapter were adopted by the Commissioner of Transportation, pursuant to authority delegated at N.J.S.A. 20:3-29.1, which became effective July 17, 1986.

16:5-2.2 General provisions

The Department, in acquiring agricultural or horticultural land which is eligible for valuation, assessment and taxation under the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq., shall compensate the owner for any loss of income resulting from the interference of the acquisition with the harvesting of any standing crops or other agricultural commodities, in an amount determined according to their appropriate time of harvest and for the remainder of their average productive life, separate and apart from compensation for the fair market value of the land.

16:5-2.3 Eligibility requirements

To be considered eligible for compensation, a property must be eligible for valuation, assessment and taxation under the Farmland Assessment Act of 1964. Additionally, the property must be currently planted in crops and the condemnation proceedings must interfere with the harvesting of the crop. The Department, however, within its sole discretion, will allow the harvesting of a current annual crop or the current crop of a biannual or perennial crop, so long as such harvesting does not unreasonably interfere with or delay the construction of a project.

16:5-2.4 Valuation of standing crop income

The anticipated annual average income from the standing crop over its remaining average productive life will be developed for the Department by a qualified agricultural expert, as determined by the Department. The specialist will estimate the average remaining productive life of the crop, the average anticipated gross income from the impacted crop and the anticipated expenses related to harvest and sale of the produce. The net anticipated income from the crop over the average remaining productive life of the crop, if not an annual crop, will then be capitalized by the Department into a present value.

16:5-2.5 Procedure

(a) No compensation will be made where an annual crop has been harvested by the owner or anyone acting under contract with the owner, notwithstanding, that a declaration of taking has been filed and recorded.

(b) As to any claim for compensation under N.J.S.A. 20:3-29.1 for loss of crop income, the owner should file an application with the Division representative assigned to handle the negotiations for the parcel. The owner, at the time of application, shall provide all pertinent information regarding the claim, including photographs where available and a description of the crop.

(c) An inventory shall be taken before the Department takes possession of a parcel with standing crops or having agricultural commodities. The owner shall be afforded an opportunity to review the inventory prior to a value determination.

(d) Where the effect of the acquisition, if any, on the ability to harvest is known or can readily be ascertained, a crop valuation will be provided within 90 days of a completed application. However, where a determination as to crop loss cannot be reasonably made prior to execution of an agreement or the commencement of a condemnation proceeding, the owner's rights to such compensation, if any, shall be preserved until a determination can be made.

16:5-2.6 Condemnation

Offers of compensation tendered under this subchapter will not be considered a part of the valuation of the real property for the purpose of acquisition of the real property.

16:5-2.7 Appeals

The owner may appeal the Department's determination as to amount of, or eligibility for, payments under this subchapter, in accordance with N.J.A.C. 16:6-3.3.

SUBCHAPTER 3. ORGANIZATION AND PROCEDURES

16:5-3.1 Delegation of powers

The Division of Right of Way will be responsible for administering these rules and the attendant State law, on behalf of the Commissioner of Transportation.