

ISSUE: New construction at the replacement site.

The cost of constructing a new business building on the vacant replacement property is a capital expenditure and is generally ineligible for reimbursement as a reestablishment expense. In those rare instances when a business cannot relocate without construction of a replacement structure, a displacing agency may request a waiver of Part 24.304(b)(1) under the provisions of 49 CFR 24.7. An example of such an instance would be in a rural area where there are no suitable buildings available and the construction of a replacement structure will enable the business to remain a viable commercial operation. If a waiver is granted, the cost of constructing the new building will be considered an eligible reestablishment expense subject to the \$25,000 statutory limit on such payment.

ISSUE: Displacee occupies a shell structure.

All of the costs listed under 49 CFR 24.304(a) are eligible if considered actual, reasonable and necessary for the operation of the business. In markets where existing and new buildings are available for rental (and sometimes for purchase), the buildings or the various units available within the buildings often have only the basic amenities such as heat, light, and water, and sewer available. These buildings or units are shells. The cost of a building (shell) is not an eligible expense because the shell is considered a capital real estate improvement (a capital asset). However, this determination does not preclude the consideration by an acquiring agency of certain modifications to an existing replacement business building. Eligible improvements or modifications up to the amount of \$25,000 may include the addition of necessary facilities such as bathrooms, room partitions, built-in display cases and similar items, if required by Federal, State or local codes, ordinances, or simply considered reasonable and necessary for the operation of the business.

ISSUE: Costs incurred in complying with OSHA and other code requirements at the replacement location (where the business was not subject to the requirement at the displacement property because of a "grandfather" provision).

Modifications to personal property mandated by Federal, State or local law, code, or ordinance which are necessary to reassemble or reinstall the personal property or adapt it to the replacement structure, the replacement site, or the utilities at the replacement site are eligible for reimbursement under subsection 24.303(a)(3). The modifications authorized by this subsection must be clearly and directly associated with the reinstallation of the personal property and cannot be for general repairs or upgrading of equipment because of the personal choice of the business owner. Finally, the expenditures for authorized modifications must be reasonable and necessary. Costs for repairs, modifications, or improvements to the replacement real property due to the requirements of laws, codes, or ordinances can only be paid under 49 CFR 24.304(a)(1) and are limited to the \$25,000 maximum payment under this subsection. Any costs in excess of \$25,000 are ineligible.

ISSUE: The nature, character, or type of business established after displacement is different from the business displaced by acquisition.

A change in a displaced business does not affect eligibility for actual, reasonable, and necessary reestablishment expenses incurred in reestablishing a business. In some instances, it is not economically feasible to relocate a particular business operation and a change in the nature, character, or type of business may be the most practical solution for the business operator. Expenditures of funds for reestablishing the business must be reviewed for acceptability. Costs of new or used equipment purchased to serve the changed business operation are not eligible for reimbursement as reestablishment expenses. Similarly, general repairs or improvements to the replacement property made to the structure because of the personal choice of the business operator are ineligible. The costs of utility upgrades and necessary and reasonable modifications to the real property to accommodate the changed business may be eligible when properly supported. All reestablishment payments are limited by the \$25,000 statutory maximum.
