

LEVERAGING URA TOOLS TO IMPROVE PARCEL DELIVERY

Creative solutions for non-residential relocations



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Part 1 of a 2-part series

Relocation of personal property of a business can bring unique challenges requiring creative solutions. How can URA help?

The U.S. federal regulations that govern assistance for persons displaced by federally funded programs and projects (49 CFR 24/Uniform Relocation Act/URA) recognize the adverse impact of displacements. It's worth noting that one of the URA's objectives is "to encourage and expedite acquisition by agreements..." and "minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs." As such, the URA not only places on displacing agencies the duty of relocation assistance, but also equips us with excellent tools for solving some of the most challenging issues when dealing with the disposition of personal property in non-residential relocations. These rules, known to relocation specialists as "Actual Direct Loss of Tangible Personal Property" and "Substitute Personal Property" are excellent tools that are at your disposal in federally-assisted projects.

This is the first in a series of two articles with a narrow focus on two URA rules that can be great problem-solving tools. They are: "Actual Direct Loss of Tangible Personal Property" [§24.301(g)(14)] and "Substitute Personal Property" [§24.301(g)(16)].

Although this series will focus on the *implementation* of these tools, it is a good idea to keep them in mind at the *planning* stages of projects involving displacement of business, farms and non-profit organizations ("business"). Raising the business owner's awareness of the benefits afforded by these two rules as part of the Relocation Assistance Program rule in the early stages of working with the displacee can be very helpful in earning their trust and confidence in the program and expediting a complex business relocation. Leveraging these rules effectively and correctly can go a long way toward resolving significant logistical and financial challenges that arise in business relocations due to considerations pertaining to the disposition of personal property, such as furniture, fixtures equipment and machinery.

URA Rule: Actual Direct Loss of Tangible Personal Property

Once a suitable replacement site has been identified, the next round of challenges arises. When planning the move, the business is faced with decisions whether certain items are worth moving to the new location. This can apply to any item of

personal property. These decisions are based on a multitude of considerations, including internal and external factors such as usefulness of an item, possibility and/or feasibility of removing an item at the displacement site, adaptation of the item to the replacement site or new location factors. Typically, there is no sense in moving equipment or machinery that is in poor condition or obsolete, with little or no remaining economic life or potential value at the replacement site. A business may decide to realign its strategy and operations, downsize or discontinue its operation in part or in whole.

Recognizing and effectively navigating the displacee's considerations and knowing which relocation benefits and solutions are available will help the right of way agent establish and maintain a good working relationship with the displacee and achieve optimal results for both the displacee and the agency, as well as meet the project schedule.

For example, due to anticipated changes in the factors of production at the new location or marketing considerations, a business may decide on a strategic change and elect to discontinue or replace a certain lines of products or services, thus having no need or interest in moving the equipment currently in operation at the displacement site. The inventory of personal property should list all the movable items and include the disposition of each item (e.g. "move" or "don't move" or "replace").

The URA rule known to specialists as "Actual Direct Loss of Tangible Personal Property" [§24.301(g)(14)] is a relocation tool that addresses the "don't move" scenarios. It allows a relocation payment for personal property that is not moved. The URA provides:

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 in place of the item, as is for continued use, less the proceeds from its sale, or*
- (ii) The estimated cost of moving the item as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site.*

When planning the move, the business must decide whether certain items of personal property are worth moving to the new location.

Note that there are caveats. The displacee would need to make a reasonable effort to sell the items in question unless the agency allows otherwise. The URA states:

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. [24.301(g)(14)(i)]

This rule may be applied to any items of personal property, including goods held for sale. However, the value of such goods is established strictly based on their cost to the business. The URA states:

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 prices. [24.301(g)(14)(i)]

To apply this rule correctly to scenarios involving business equipment intended to be abandoned, the displacing agency will typically hire an appraiser specializing in valuation of machinery and equipment to determine the fair market value in place. In certain situations, such value can be determined by a qualified agent. Generally, the value in place reflects the purchase price plus delivery and installation costs, less depreciation. It is best to use the services of a qualified appraiser for determining the value, which also provides other advantages. The agency must carefully determine the cost of moving the item “as-is.” This is a critical requirement.

The rule is explained in the *Appendix* of the URA as follows:

If the piece of equipment is operational at the acquired site, the estimated cost to reconnect the equipment shall be based on the cost to install the equipment as it currently exists, and shall not include the cost of code-required betterments or upgrades that may apply at the replacement site. As prescribed in the regulation, the allowable in-place value estimate (§24.301(g)(14)(i)) and moving cost estimate (§24.301(g)(14)(ii)) must reflect only the “as is” condition and installation of the item at the displacement site. The in-place value estimate may not include costs that reflect code or other requirements that were not in effect at the displacement site; or include installation costs for machinery or equipment that is not operable or not installed at the displacement site. [Appendix to 24.301 (g)(14)(i) and (ii)]

In determining the estimated moving cost, the displacing agency should include all applicable costs: disconnecting, removing, packing, loading, transportation (based on the maximum of 50 miles, unless a closer site has already been purchased or leased), unloading, reinstalling, reconnecting, reassembly, including modifications to the personality. However, note the “as is” clause, which means the allowable moving cost estimate **may only include such reconnect costs that would be necessary to install the item as it is installed at the displacement site.** The conditions at the replacement site are irrelevant for the purposes of this calculation. Also, moving costs may not include any reconnect costs for equipment that is not operable (or items not connected or installed) at the displacement site. There is no allowance for storage costs.

One effective way to estimate the moving cost required by this rule is to request a commercial mover to provide two bids or estimates, one for all the personal property listed on the business's inventory and one for all the personal property excluding the items that will not be moved. The difference between the two serves as reasonable basis for item (ii) mentioned earlier—the estimated cost of moving the item.

Implementing these rules requires appropriate coordination, especially if outside consultants and contractors are involved. To ensure compliance with your federal funding source, your file should be thoroughly documented with supporting documentation and file notes, showing all the factors relevant to the benefit calculation. This includes the supporting documentation of the effort to sell and the outcome of the effort, and advertisements, offers to sell, bill of sale and other backup. The documentation should clearly identify the items offered for sale and/or sold, the price and terms of the sale and delivery. In the case of equipment or machinery, the supporting documentation should also include such specifics as year, make/model, serial number, condition, terms of sale and a photo of the item.

Key Calculation: The *proceeds* from the sale of the item, if any, are deducted from its fair market value in place, resulting in net value of the item for comparison with the *estimated cost of moving* the item, in order to determine the *lower of the two*.

The URA also provides for reimbursing the displacee for a “reasonable cost incurred in attempting to sell the item that is not to be relocated.” [24.301(g)(15)]

If the bona fide effort to sell was fruitless, the business is typically not required to remove the items from the displacement site. Most agencies will allow the items to be abandoned at the site.

It is important to note that this benefit applies only to items of *movable personal property* that don’t fall under the legal definition of realty or real property.

This rule can be effectively applied to a variety of non-residential relocation scenarios and will result not only in increased satisfaction of the displacee, but also in a timely and orderly relocation, as well as net savings to the displacing agency.

Relocation benefits available under “*Actual Direct Loss of Tangible Personal Property*” are effective problem-solving tools when a business elects to discontinue a part or even all of its operations. It is also important that business owners considering the Fixed Payment in Lieu are well aware of this benefit, as in certain cases their benefit may be greater than the \$40,000 cap allowed for the Fixed Payment.

URA Rule: Substitute Personal Property

Another challenge often encountered in business relocation is whether to *move* an item or replace it with a *substitute*. What some may see merely as “movable personal property,” the business owner typically sees as income producing assets that should avoid or minimize any downtime. Although relocating a business may entail a considerable amount of down time and disruption, the URA does not provide for compensation for loss of productivity or profits (URA section 24.301 (h)(4) specifically lists “loss of profits” as an ineligible expense). However, the URA provides an excellent tool known as “*Substitute Personal Property*” (SPP) §24.301(g) (16). If applied well, it can be very helpful in minimizing potential downtime and disruption.

The *Substitute Personal Property* rule allows a relocation payment for purchase of replacement personal property. The URA provides:

Purchase of substitute 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 of 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.* [24.301(g)(16)(i)]

This benefit is extremely helpful where businesses need to deploy critical equipment at the replacement site before turning off such equipment at the displacement site. The review of this rule will continue in the next article.

Conclusion

Although most agencies’ *General Information* brochures and *Notices of Relocation Eligibility* include brief descriptions of these and other relocation benefits, an agent should be prepared to thoroughly discuss these benefits with business owners, regardless of the size or nature of their business operations. Experience shows, the more the displacee learns about these benefits in the early stages of the project *from the agent*, the better the agent’s rapport and working relationship with the displacee. This usually leads to more productive case management and more efficient parcel delivery.

As always in Relocation, keep in mind that every relocation case has unique facts while agencies’ policies vary. This article is published for educational purposes only and does not constitute technical or legal advice. If you have specific concerns or technical questions, contact the appropriate funding agency, technical advisor or your legal counsel. ☺



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