

# STATE OF ARKANSAS

Marketing and Redistribution

Laws and Rules



Department of Transformation and Shared Services

Marketing and Redistribution ([M&R](#))

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# MARKETING AND REDISTRIBUTION

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## Table of Contents

MARKETING AND REDISTRIBUTION	2
<b>A.C.A. § 19-11-242. Commodity management rules.</b>	<b>3</b>
Rule 1: 19-11-242. Agency commodity management procedures – Disposition of commodities other than computers and electronic equipment.	3
Rule 2: 19-11-242. Auction and on-site sales.	4
Rule 3: 19-11-242. Definitions of terms used in this section.	7
<b>A.C.A. § 19-11-243. Proceeds from surplus commodities.</b>	<b>7</b>
Rule 1: 19-11-243. Allocation of proceeds from sale or disposal of surplus commodities.	7
<b>A.C.A. § 22-1-101. Sale of surplus commodities to not-for-profit organizations before offer for sale to public — Definitions.</b>	<b>7</b>
<b>A.C.A. § 25-8-106. Marketing and redistribution of state personal property.</b>	<b>8</b>
<b>A.C.A. § 25-8-109. Loans to marketing and redistribution.</b>	<b>9</b>
<b>A.C.A. § 25-34-107. Surplus equipment not sold.</b>	<b>9</b>
Rule 1: 25-34-107. Marketing and Redistribution Surplus Computer Sales Procedures.	10
<b>A.C.A. § 25-34-108. Disbursement of revenues.</b>	<b>10</b>
Rule 1: 25-34-108. Surplus Computer Sale Reporting.	11
<b>NEW: ACT 839 OF 2021 TO CREATE AN ELECTRONIC WASTE RECYCLING PROGRAM AND A COLLECTION RECOVERY PLAN; AND TO PROVIDE SUSTAINABILITY THROUGH PUBLIC PARTICIPATION AND PUBLIC AND PRIVATE AGREEMENTS AND MANAGEMENT AND ACCOUNTABILITY.</b>	<b>11</b>

## **A.C.A. § 19-11-242. COMMODITY MANAGEMENT RULES.**

The State Procurement Director shall promulgate rules governing:

- (1) The sale, lease, or disposal of surplus commodities by public auction, competitive sealed bidding, or other appropriate method designated by rule, and no employee of the Department of Transformation and Shared Services or member of the employee's immediate family shall be entitled to purchase any such commodities;
- (2) The transfer of excess commodities within the state; and
- (3) The sale, lease, or disposal of surplus commodities to not-for-profit organizations under [§ 22-1-101](#).

### **Rule 1: 19-11-242. Agency commodity management procedures – Disposition of commodities other than computers and electronic equipment.**

(a) Resale. Marketing and Redistribution (“M&R”) will make available to agencies, tax-supported entities, or not-for-profit organizations as defined in Ark. Code Ann. [§ 22-1-101](#) commodities in serviceable condition and/or commodities of potential use by agencies, tax-supported entities, or not-for-profit organizations for a twenty-day period prior to making them available to the general public. During the twenty-day hold period, commodities may only be sold to agencies, tax-supported entities, or not-for-profit organizations by Marketing and Redistribution. At the sole discretion of the Director or the Director’s designee at Marketing and Redistribution, commodities which the Director or the Director’s designee at Marketing and Redistribution reasonably believe to be valued at one hundred dollars (\$100) or less per individual item, or commodities that historically have not sold to agencies, tax-supported entities, or not-for-profit organizations or items that are unserviceable may be offered for sale to the general public without the requirement of the twenty-day hold period. The Director or the Director’s designee at Marketing and Redistribution may waive the twenty-day requirement when he determines that such waiver is in the state’s best interest.

(b) Intrastate Agency Sale. Commodities that are no longer needed by an agency may be sold to another agency by completing and submitting an Intrastate Agency Sale Form, which can be found on the [M&R website](#) under forms, to Marketing & Redistribution. This form must be completed and forwarded electronically from the selling agency to the purchasing agency, then to M&R, where it is forwarded to DFA Office of Accounting for completion and transfer of funds.

(c) Disposal. When commodities have no scrap or resale value, a certificate of property disposal (“CPD”) form must be submitted to Marketing and Redistribution, which will then return to the requestor within ten (10) working days, a certificate of property disposal authorization, indicating the proper handling procedure for the commodities.

(d) Cannibalization. “Cannibalization” means the process whereby a nonexpendable surplus or excess commodity is dismantled for parts to be used as replacements or as components of other machines or devices.

- (1) The disassembly of an item for use of its component parts for repair or maintenance of a similar item will only be authorized if such action has greater potential value and benefit than disposal or trade-in of the item in its existing form. Authorization for cannibalization will be approved by Marketing and Redistribution prior to any disassembly or removal of components parts. If authorized, the item will be removed from the agency’s property listing by the requesting agency. Any residual material remaining after cannibalization must be processed through Marketing and Redistribution. Requests for authorization for cannibalization will be expedited. If

properly marked, authorization should be returned to agency with ten (10) working days. It is understood that there may be no residual material remaining after cannibalization, but if any, residual material must be processed through Marketing and Redistribution.

(2) Motor vehicles eligible to be registered for highway use (cars and trucks), whether registered or not, may be cannibalized after obtaining authorization from Marketing and Redistribution. These vehicles WILL NOT be removed from the property listing until the carcass of the vehicle has been disposed of by Marketing and Redistribution. In no event should more than ninety days (90) elapse between the authorization of cannibalization and processing of the carcass by Marketing and Redistribution. These procedures do not exempt an agency from compliance with any other requirements relating to the disposal or acquisition of motor vehicles.

(e) Handling of Surplus Equipment. Agencies with surplus items must contact Marketing and Redistribution to schedule a delivery or pick-up date. A Surplus Disposal Form ("SDF") must be transmitted by the agency showing the agency name, address, phone number, contact person and listing of all items with serial and property numbers (if available). The SDF will be processed by Marketing and Redistribution when the surplus items are delivered or picked up.

**Rule 2: 19-11-242. Auction and on-site sales.**

DISPOSITION OF COMMODITIES.

(1) General Requirements. Commodities that are not subject to or have completed the twenty-day hold period, pursuant to R1:19-11-242 (a), may be offered for sale. Furniture or equipment may be loaned or rented to a state agency with the approval of the owning agency. The rental fee(s) less applicable handling fee(s) will be remitted to the owning agency.

(2) Notice Required. Public notice of commodities sold by competitive sealed bid should be given at least five days prior to the date established for the sale. The notice will include publication in any electronic or printed medium.

(3) Public Auction.

(A) Public auction whether electronic or traditional may be used when deemed in the best interest of the State. Auction costs will be paid from proceeds. In a traditional auction, if proceeds do not cover the costs, the agency requesting the auction will be responsible for any expenses not covered from the proceeds. Any cost associated with an electronic auction will be covered by proceeds from the sale.

(B) Procedures. In a traditional auction a licensed auctioneer will be used. The solicitation to bidders must stipulate, at a minimum: all terms and conditions of any sale, that the purchaser must remove all items purchased within a stated time, and that the state retains the right to reject any and all bids. In an electronic auction the purchaser must pick up or otherwise cause the items purchased to be removed within a stated time.

(4) Competitive Sealed Bidding.

(A) Competitive sealed bidding will be used when:

(i) the value of the item cannot be determined based on market value or past history of same or similar items sold; or

(ii) it is determined by Marketing and Redistribution that it is in the best interest of the State.

(B) Procedures.

(i) When surplus commodities are to be sold by competitive sealed bidding, the procedures followed must be in accordance with Ark. Code Ann. [§ 19-11-204](#), [§ 19-11-228](#), [§ 19-11-229](#) and the regulations promulgated hereunder except:

(ii) the award will be made to the highest bidder with the state retaining the right to accept or reject any or all bids when in the best interest of the State.

(5) Onsite Sales.

(A) Definition. Onsite sales includes the process of (1) internet auctioning and (2) sale of commodities to the general public from the Marketing and Redistribution office, a satellite location and/or other agency locations when approved by Marketing and Redistribution.

(B) Onsite sales will be used for surplus items not purchased by other state agencies or tax supported entities.

(C) Procedure. Selling price will be established by Marketing and Redistribution based upon demand, condition of commodities, past experience gained from auction or competitive sealed bid sales; and prevailing retail prices for same or similar commodities in the local market.

(6) Negotiated Sale. Negotiated sale may be used if no acceptable bids were received during the bid process and an offer is made “after the fact” for the item. Offers will only be accepted from bidders that participated in the sealed bid offering the item.

(7) Trade-In. Surplus commodities may be traded in when the Marketing and Redistribution Manager or Assistant Marketing and Redistribution Manager determines that the trade-in value is expected to exceed the value estimated to be obtained through the sale of the commodity less administrative expenses incurred during a sale.

(8) Lease or Donation. Surplus commodities may be leased or donated to tax supported entities or non-profit organizations when requested in writing by the owning agency and approved by the Director of the [Office of State Procurement](#).

(A) Written requests must be submitted to the Marketing and Redistribution Manager identifying the equipment by name, serial number, property number, the benefit to the public in cases of proposed donations, and lease terms in cases of proposed property leasing. The Marketing and Redistribution Manager will estimate the property value and forward the request to the Director of the Office of State Procurement for his approval/disapproval.

(B) The Director of the Office of State Procurement will respond in written communication to the requesting agency on a case-by-case basis.

(C) The requesting agency must maintain a copy of the original written request and the written approval/disapproval from the Director of the Office of State Procurement for audit purposes.

(D) Copies of the request and approval/disapproval will also be maintained at Marketing and Redistribution.

(9) The Arkansas State Highway and Transportation Department may dispose of commodities without the assistance of the Office of State Procurement, but it must comply with the procedures

outlined herein for said disposition. Nothing herein is intended to prohibit the use of the Office of State Procurement for the disposition of those commodities, and the Department may request the Office of State Procurement make the disposition.

(10) Excess commodities in remote locations and/or property too heavy or expensive to transport to Marketing and Redistribution.

(A) Excess commodities that are in remote locations and/or commodities where the cost to transport to Marketing and Redistribution would be prohibitive should be reported by written communication to Marketing and Redistribution with a complete description and details of the condition of the equipment. Marketing and Redistribution will make one of the following recommendations:

(i) The commodity should be redistributed for state use and Marketing and Redistribution will notify agencies and/or tax-supported entities that could utilize the commodity. When the property is sold, the receiving agency will be responsible for the removal of the item(s), with the expense of moving being taken into consideration when price is determined.

(ii) Marketing and Redistribution will prepare an invitation for bids or authorize the agency to prepare an invitation for bids with inspection being held at the agency location.

(iii) A certificate of property disposal will be transmitted to the owning agency designated as follows:

(a) The property identified is authorized for cannibalization by the Marketing and Redistribution Manager who hereby authorizes the agency to perform the cannibalization.

(b) The property identified is authorized for destruction by the Marketing and Redistribution manager who hereby authorizes the agency to perform the destruction.

(c) Property that has a material content of lead, copper, brass, iron, etc. will be disposed of by sale to a local scrap dealer(s) at local prices. Payment(s) received are to be sent and made payable to: Marketing and Redistribution with a copy of the Certificate of Property Disposal authorizing the sale.

(d) Property with resale value that is not feasible for transport to Marketing and Redistribution may be disposed of by obtaining quote bids "as is, where is." Owning agencies should attempt to obtain (3) bids. A copy of the bid quotes, a copy of the Certificate of Property Disposal authorizing the sale and the proceeds are to be sent and made payable to Marketing and Redistribution.

(11) Specialized commodities may be offered for trade-in with the trade-in price offered being forwarded in a written transmission to Marketing and Redistribution for determination of price acceptability.

(12) If none of the above procedures are applicable, the Director of the Office of State Procurement will make an individual determination.

**Rule 3: 19-11-242. Definitions of terms used in this section.**

(1) “Not-for-profit organization” means a private corporation under [§ 4-28-201](#) et seq., that is an exempt organization as described in [section 501\(c\)\(3\)](#) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and that:

(A) Has a benevolent, philanthropic, patriotic, or charitable purpose; and

(B) Performs a function that would be performed at the public expense if it were not performed by the organization.

(2) “Lease” means a transfer of the right to possession and use of surplus commodities, for a specified term length not to exceed a seven-year period, for a monetary fee or other consideration, while retaining ownership and title in the surplus commodities. Monetary fees or other consideration may not be nominal.

(3) “Donation”, as used in R2:19-11-242 (8), means a transfer of ownership and title in surplus commodities for no monetary fees or consideration.

**A.C.A. § 19-11-243. PROCEEDS FROM SURPLUS COMMODITIES.**

The State Procurement Director shall promulgate rules for the allocation of proceeds from the sale, lease, or disposal of surplus commodities, to the extent practicable, to the using agency which had possession of the commodity.

**Rule 1: 19-11-243. Allocation of proceeds from sale or disposal of surplus commodities.**

(a) Using Agency. The allocation of proceeds from the sale, lease, or disposal of surplus commodities, and proceeds from an insurance policy for loss of property because of fire, storm or other causes, less appropriate fees, will be made and deposited to the using agency which had possession of the commodity. Such allocations and deposits will be made at the sooner of when the using agency’s account balance has reached at least fifty dollars (\$50.00) or the end of each fiscal year.

(b) Fee Schedule. The Office of State Procurement will develop a fee schedule to defray the costs of the commodity management program. The fee schedule will set forth various charges for services rendered.

**A.C.A. § 22-1-101. SALE OF SURPLUS COMMODITIES TO NOT-FOR-PROFIT ORGANIZATIONS BEFORE OFFER FOR SALE TO PUBLIC — DEFINITIONS.**

(a) As used in this section:

(1) “Commodities” means commodities under [§ 19-11-203](#); and

(2) “Not-for-profit organization” means a private corporation under [§ 4-28-201](#) et seq. that:

(A) Has a benevolent, philanthropic, patriotic, or charitable purpose; and

(B) Performs a function that would be performed at the public expense if it were not performed by the organization.

(b) Before a state, county, or municipal government entity offers surplus commodities for sale to the public, the state, county, or municipal government entity:

(1) Shall consider offers by not-for-profit organizations for the surplus commodities made by not-for-profit organizations; and

(2) May accept a reasonable bid or offer for the surplus commodities from a not-for-profit organization.

**A.C.A. § 25-8-106. MARKETING AND REDISTRIBUTION OF STATE PERSONAL PROPERTY.**

(a) (1) This section applies only with respect to personal property.

(2) This section does not apply to or affect the:

(A) Disposition of surplus real property of the state; or

(B) Sale of plants, animals, or commodities of plants or animals by a public institution of higher education if the proceeds from the sale are used solely for agricultural research, extension, or teaching programs, including without limitation 4-H programs and Future Farmers of America programs.

(b) (1) There is created within the Office of State Procurement a Marketing and Redistribution Section for the purpose of promoting and ensuring effective utilization of surplus state property.

(2) (A) All state agencies, boards, commissions, departments, and colleges and universities are required and county, municipal, or other tax-supported institutions are authorized to utilize the services of the Marketing and Redistribution Section, unless specifically exempted in writing by the State Procurement Director.

(B) (i) Nothing in this section shall be construed to make it mandatory that county, municipal, or other local government units utilize the services of the Marketing and Redistribution Section.

(ii) Nothing in this section shall be construed to make it mandatory that any agency, department, division, office, board, commission, or institution of this state, including state-supported institutions of higher education, utilize the services of the Marketing and Redistribution Section in the sale of surplus computer equipment and electronics to state agency employees for a price not less than ten percent (10%) above depreciated value.

(3) The [Department of Transformation and Shared Services](#) shall maintain adequate and accurate records of the costs for operating the Marketing and Redistribution Section and is authorized to establish fair and reasonable charges for the services of the section. The charges for services shall be deposited in the State Treasury as nonrevenue receipts, there to be credited to the Property Sales Holding Fund for the operation, maintenance, and improvement of the Marketing and Redistribution Section.

(c) The office may maintain an inventory of furniture, equipment, and other items which shall be made available to state agencies on rental agreements based upon fair and reasonable rental values.

(d) The department is authorized to establish a fair and reasonable fee schedule for redistributing property between state agencies upon their request.

(e) Proceeds from the sale, transfer, or rental of property by the director shall be accounted for as follows:

(1) The purchasers, transferees, and lessees of property available for such purposes as are authorized by this section shall transmit to the office the agreed sale price, service charge, or rental fee;

(2) The office shall deposit the full amount of proceeds received, as set out above, in the State Treasury in the manner as provided by law; and



(3) (A) Proceeds from the sale or transfer of property deposited in the State Treasury shall be classified as nonrevenue receipts and credited to the Property Sales Holding Fund herein created on the books of the Treasurer of State as a trust fund.

(B) Funds deposited in the Property Sales Holding Fund may be expended only by the selling or transferring agency under procedures established by the Chief Fiscal Officer of the State and appropriations provided by the General Assembly.

(C) However, funds deposited in the Property Sales Holding Fund from the sale of property purchased from agency cash funds may be refunded to the agency cash fund from which the original expenditure was made by the issuance of a warrant under procedures established by the Chief Fiscal Officer of the State and the Auditor of State to be payable from appropriations provided by the General Assembly for disposition of the proceeds.

(f) The Secretary of the Department of Transformation and Shared Services is authorized to promulgate reasonable rules, not inconsistent with law, for compliance with the provisions of this section, the Arkansas Procurement Law, [§ 19-11-201](#) et seq., the General Accounting and Budgetary Procedures Law, [§ 19-4-101](#) et seq., and the sale of surplus commodities to not-for-profit organizations under [§ 22-1-101](#).

#### **A.C.A. § 25-8-109. LOANS TO MARKETING AND REDISTRIBUTION.**

In the event the moneys available in the Property Sales Holding Fund are not adequate during any month of each year of the fiscal biennium to meet the payroll commitments of the Marketing and Redistribution Section for the regular salaries and personal services matching appropriation, the Chief Fiscal Officer of the State is hereby authorized to make loans, from time to time as needed, from the Budget Stabilization Trust Fund to the Property Sales Holding Fund to provide the moneys required to meet the payroll and personal services matching appropriation requirements for any such month. Provided that, if at the end of each fiscal year the Property Sales Holding Fund did not receive sufficient income to repay the entire amount of any such moneys borrowed from the Budget Stabilization Trust Fund for the purposes as authorized herein, the Chief Fiscal Officer of the State is hereby authorized to transfer from the State Central Services Fund such amount as is necessary to reimburse the Budget Stabilization Trust Fund in behalf of loans made to the Property Sales Holding Fund to reimburse the Budget Stabilization Trust Fund for the amount of any such loan remaining unpaid at the end of each fiscal year.

#### **A.C.A. § 25-34-107. SURPLUS EQUIPMENT NOT SOLD.**

(a) (1) Unsold surplus computer and electronic equipment may be donated by the owning agency to Arkansas public schools or local governments if the agency policy so provides.

(2) Arkansas public schools and local governments are not required but may choose to accept unsold surplus computer and electronic equipment donated by the owning agency.

(b) (1) Unsold surplus computer and electronic equipment may be donated by the owning agency to law enforcement agencies if the agency policy so provides.

(2) Law enforcement agencies are not required but may choose to accept unsold surplus computer and electronic equipment donated by the owning agency.

(c) (1) Unsold surplus computer equipment may be sent to the Marketing and Redistribution Section of the Office of State Procurement of the Department of Finance and Administration for sale, auction, recycling, donation, demanufacturing, or disposal.

(2) Alternatively, the agency may maintain possession of computers and electronics and allow the Marketing and Redistribution Section to sell or auction the computer or electronic equipment via an Internet website.

**Rule 1: 25-34-107. Marketing and Redistribution Surplus Computer Sales Procedures.**

(a) Sales Made Within the Agency. The agency will:

(1) Create a customer receipt for the sales price and calculate sales tax. Included on the receipt will be the type of equipment, model number, serial number, and property tag number, who the equipment was sold to and the amount.

(2) Record the receipt in the cash journal as a customer payment.

(3) Request a funds transfer through DFA-Office of Accounting from the receipting agency's fund to:

(A) Marketing and Redistribution's Cost Center 383333, Fund MPH0000 – 15% of the sales price.

(B) Arkansas Department of Environmental Quality's Cost Center 451346, Fund MER0100 – 25% of the sales price.

(4) The sales tax will be paid when DFA-Office of Accounting does their (owning agency's) monthly billing for Sales & Use tax.

(b) Sales Made through Marketing and Redistribution on Behalf of the Agency. Marketing and Redistribution will:

(1) Create a customer receipt to record the sales price and sales tax;

(2) Record the receipt as a customer payment in the cash journal; and

(3) Request funds transfer through DFA – Office of Accounting from Marketing and Redistribution fund MPH0000 to Agency fund and cost center – 50% of the sales price Arkansas Department of Environmental Quality Cost Center 451346, Fund MER0100 – 25% of the sales price.

(4) The sales tax due will be included in the DFA monthly report of Sales & Use tax.

**A.C.A. § 25-34-108. DISBURSEMENT OF REVENUES.**

Funds generated from the sale of agency surplus computer and electronic equipment to state employees, public schools, or by other sale shall be allocated as follows:

(1) If the sale of surplus computer or electronic equipment is made within the agency:

(A) Sixty percent (60%) of the proceeds shall be returned to the owning agency;

(B) Fifteen percent (15%) of the proceeds shall be deposited with the Marketing and Redistribution Section of the Office of State Procurement of the Department of Finance and Administration; and

(C) Twenty-five percent (25%) of the proceeds shall be deposited in the Computer and Electronic Recycling Fund established by this chapter;

(2) If the sale of surplus computer or electronic equipment is outside the agency and conducted by the Marketing and Redistribution Section:

- (A) Fifty percent (50%) of the proceeds shall be returned to the owning agency;
- (B) Twenty-five percent (25%) of the proceeds shall be deposited with the Marketing and Redistribution Section; and
- (C) Twenty-five percent (25%) of the proceeds shall be deposited in the Computer and Electronic Recycling Fund established by this chapter and § 19-5-1213.

**Rule 1: 25-34-108. Surplus Computer Sale Reporting.**

- (a) Each agency shall be responsible for providing to Marketing and Redistribution by the 10th of the month following the sale a list of all items sold. Include the type of equipment, model number, serial number, and property tag number, to whom the equipment was sold and the amount.
- (b) If the sale is conducted by Marketing and Redistribution outside the agency, the agency will receive 50% of the proceeds, 25% of the proceeds will be retained by Marketing and Redistribution, and 25% of the proceeds will go to the Computer and Electronic Recycle Fund at ADEQ.