

### **R33. Government Operations, Purchasing and General Services.**

#### **R33-26. State Surplus Property.**

##### **R33-26-101. State-Owned Surplus Property -- General.**

(1) This rule sets forth policies and procedures which govern the acquisition and disposition of State-owned and federal surplus property items, and vehicles. It applies to all State and local public agencies and eligible non-profit educational and health institutions when dealing with federal surplus property. It also applies to all state agencies unless specifically exempted by law and to the general public when dealing with the State Surplus Property agency.

##### **R33-26-102. Requirements.**

(1) Under the provisions of Section 63A-2-103, the Division of Purchasing and General Services shall manage and administer the State's surplus property program, including:

(a) The federal surplus property program as the Utah State Agency for Surplus Property and in compliance with 41 CFR 102-37 and Public Law 94-519 through a State Plan of Operation. The standards and procedures governing the contract between the state and the federal government are contained in the Plan of Operation.

(b) The disposition of state-owned surplus property items, including vehicles and non-vehicle surplus property and information technology equipment.

##### **R33-26-103. Definitions.**

(1) All definitions in Section 63A-2-101.5 shall apply to Rule R33-26. In addition the following definitions shall apply to Rule R33-26:

(a) "All-terrain type I vehicle" means any motor vehicle 52 inches or less in width, having an unladen dry weight of 1,500 pounds or less, traveling on three or more low pressure tires, having a seat designed to be straddled by the operator, and designed for or capable of travel over unimproved terrain;

(b) "All-terrain type II vehicle" means any other motor vehicle, not defined in Section 103 designed for or capable of travel over unimproved terrain and includes a class A side-by-side vehicle. "All-terrain type II vehicle" does not include golf carts, any vehicle designed to carry a person with a disability, any vehicle not specifically designed for recreational use, or farm tractors as defined under Section 41-1a-102.

(c) "Aircraft" means any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.

(d) "Bundled sale" means the act of packaging or grouping multiple State-owned surplus property items together for the purpose of offering those items for sale in a single transaction in which the buyer receives all surplus property items bundled together and sold in the transaction.

(e) "Camper" means any structure designed, used, and maintained primarily to be mounted on or affixed to a motor vehicle that contains a floor and is designed to provide a mobile dwelling, sleeping place, commercial space, or facilities for human habitation or for camping.

(f) "Disposition" means the act of selling, disposing, or transferring state-owned vehicle and non-vehicle property, declared to be surplus property, to the care, custody, or possession of another person.

(g) "Division" means the Division of Purchasing and General Services within the Department of Government Operations created under Section 63A-2-101.

(h) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(i) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion.

(j) "Motorcycle" means a motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

(k) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways.

(l) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.

(m) As used in this section "Personal handheld electronic device":

(i) means an electronic device that is designed for personal handheld use and permits the user to store or access information, the primary value of which is specific to the user of the device; and,

(ii) includes a mobile phone, pocket personal computer, personal digital assistant, wireless, or similar device.

(n) "Personal Watercraft" means a motorboat that is:

(i) less than 16 feet in length;

(ii) propelled by a water jet pump; and

(iii) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

(o)(i) "Pickup truck" means a two-axle motor vehicle with motive power manufactured, remanufactured, or materially altered to provide an open cargo area.

(ii) "Pickup truck" includes motor vehicles with the open cargo area covered with a camper, camper shell, tarp, removable tarp, or similar structure.

(p) "Reconstructed vehicle" means every vehicle type required to be registered in this state that is materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

(q)(i) "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is either self-propelled or pulled by another vehicle.

(ii) "Recreational vehicle" includes:

- (A) a travel trailer;
- (B) a camping trailer;
- (C) a motor home;
- (D) a fifth wheel trailer; and
- (E) a van.

(r) "Road tractor" means every motor vehicle designed and used for drawing other vehicles and constructed so it does not carry and load either independently or any part of the weight of a vehicle or load this is drawn.

(s) "Sailboat" means any vessel having one or more sails and propelled by wind.

(t) "Semitrailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests or is carried by another vehicle.

(v)(i) "Special mobile equipment" means every vehicle:

- (A) not designed or used primarily for the transportation of persons or property;
- (B) not designed to operate in traffic; and
- (C) only incidentally operated or moved over the highways.

(ii) "special mobile equipment" includes:

- (A) farm tractors;
- (B) on or off-road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, and trenchers;
- (C) ditch-digging apparatus; and
- (D) forklifts, warehouse equipment, golf carts, electric carts, etc.

(v) "State agency" means any executive branch department, division, or other agency of the state.

(w) "Trailer" means a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(x) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable vehicle without motive power, designed as a temporary dwelling for travel, recreational, or vacation use that does not require a special highway movement permit when drawn by a self-propelled motor vehicle.

(y) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.

(z) "Vehicle" means:

- (i) all-terrain vehicle type I and II,
- (ii) aircraft,
- (iii) camper,
- (iv) farm tractor,
- (v) motor boat,
- (vi) motorcycle,
- (vii) motor vehicle,
- (viii) off highway vehicle,
- (ix) personal watercraft,
- (x) pickup truck,
- (xi) reconstructed vehicle,
- (xii) recreational vehicle,
- (xiii) road tractor,
- (xiv) sailboat,
- (xv) semitrailer,
- (xvi) special mobile equipment,
- (xvii) trailer,
- (xviii) travel trailer,
- (xix) truck tractor,
- (xx) vessel; and

(aa) "Vessel" means every type of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

### **R33-26-200. Disposition of State-Owned Surplus Property Items.**

(1) The State surplus property program shall determine the appropriate method for disposing of state surplus property.

(2) When a state agency determines to dispose of state surplus property that is a non-vehicle item it shall, in order to comply with Subsection 63A-2-401(2), complete Form SP-1 and electronically transmit it to the State Surplus Property agency.

(3) Each state agency with state surplus property will be responsible for:

- (a) Storing state surplus property on site until:
  - (i) picked up by the person to whom the item has been sold;

- (ii) disposed of or donated by the state agency; or
- (iii) picked up by State Surplus property program;
- (b) Assigning an employee of the agency to assist the public and State Surplus with the sale of the State-owned property; and
- (c) Developing internal policies regarding employees:
- (i) assisting the public with lifting and transporting State-owned surplus property items; and
- (ii) transporting State-owned surplus property items with a minimal value to charities for donation.
- (4) State Surplus property with a minimal value as described in 63A-2-411 may be disposed of by:
  - (a) destroying the surplus property;
  - (b) disposing of the surplus property as waste; or
  - (c) donating the surplus property to:
    - (i) a public entity;
    - (ii) a charitable organization; or
    - (iii) another person or entity approved by the director of state surplus.
- (5) The State Surplus Property program is not authorized to accept or dispose of hazardous waste or any item containing hazardous waste. State agencies must dispose of hazardous waste and items containing hazardous waste in accordance with applicable laws.

**R33-26-201. Non-vehicle Disposition Procedures.**

- (1) State-owned, non-vehicle personal property shall not be destroyed, sold, transferred, traded-in, traded, discarded, donated or otherwise disposed of unless the procedures set forth in this Rule are followed.
- (2) This rule applies to and includes any residue that may be remaining from agency cannibalization of property.
- (3) When a state agency determines that state-owned non-vehicle personal property is in excess of current needs, it will:
  - (a) transfer the state-owned, non-vehicle surplus property items directly to another state agency without involvement of the division; or
  - (b) notify the State Surplus Property agency that the agency has a State-owned surplus property item.

**R33-26-202. Disposal of State-Owned Surplus Electronic Data Devices.**

- (1) For the purpose of this rule, Electronic Data Device means any informational technology device identified by the Department of Technology Services.
- (2) Each State agency shall ensure that all surplus property that is considered an electronic data device is disposed of in accordance with the following procedures identified in this Rule.
- (3) Prior to selling or transferring of an electronic data device, the following requirements shall be completed:
  - (a) remove, or cause to be removed, from the electronic data device any:
    - (i) software owned or licensed by the agency as required by the software license agreement;
    - (ii) information that is classified as protected, private, or controlled under the Title 63G, Chapter 2, Government Records Access and Management Act; and
    - (iii) any other state-owned records and data.
  - (b) receive written confirmation from the Department of Technology Services that subsection (A) has been completed;
  - (c) submit an SP-1 to State Surplus Property agency with a description of the items to be included in the sale of the electronic data device including the make, model, serial number, specifications (if available), list of accessories, software; and
  - (d) Ensure in writing that the service contract is null and void to the agency or transferable to the purchaser.
- (4) In coordination with the Department of Technology Services, the State Surplus program may decide on limitations on the selling or transferring of electronic data devices.
- (5) Electronic Data devices that not are sold or transferred must be disposed of in accordance with the Department of Technology Services.

**R33-26-204. Federal Surplus Property.**

- (1) Federal surplus property items are not available for sale to the general public. Donation of federal surplus property shall be administered in accordance with the procedures identified in the State Plan of Operation for the Federal Property Assistance Program.
- (2) Public auctions of federal surplus property are authorized under certain circumstances and conditions. The division shall coordinate such auctions when deemed necessary or appropriate. Federal surplus property auctions are primarily conducted online, but are regulated and accomplished by the U.S. General Services Administration.

**R33-26-205. Related Party Transactions.**

- (1) The division has a duty to the public to ensure that State-owned surplus property is disposed of in accordance with Title 63A, Chapter 2. A conflict of interest may exist or appear to exist when a related party attempts to purchase a State-owned surplus property item.
- (2) A related party is defined as someone who may fit into any of the following categories pertaining to the State-owned surplus property item in question:
  - (a) has purchasing authority;
  - (b) has maintenance authority;
  - (c) has disposition or signature authority;

- (d) has authority regarding the disposal price;
- (e) has access to restricted information; and
- (f) may be perceived to be a related party using other criteria which may prohibit independence.

**R33-26-206. Priorities.**

- (1) Public agencies are given priority for the purchase of State-owned surplus property items.
- (2) Property that is determined by the Division to be unique, in short supply or in high demand by public agencies may be held for a period of up to 30 days before being offered for sale to the general public by Surplus Property.
- (3) For this rule, the entities listed below, in priority order, are considered to be public agencies:
  - (a) state agencies;
  - (b) state universities, colleges, and community colleges;
  - (c) other tax supported educational agencies or political subdivisions in the State of Utah including cities, towns, counties and local law enforcement agencies;
  - (d) other tax-supported educational entities; then
  - (e) non-profit health and educational institutions.
- (4) State-owned surplus property items that are not purchased by or transferred to public agencies may be offered for public sale.
- (5) The division shall make the determination as to whether property is subject to hold period. The decision shall consider the following:
  - (a) the cost to the State;
  - (b) the potential liability to the State;
  - (c) the overall best interest of the State.

**R33-26-301. Accounting and Reimbursement Procedures.**

- (1) The division will record and maintain records of all transactions related to the acquisition and sale of all State and federal surplus property items.
- (2) The division may maintain a federal working capital reserve not to exceed one year's operating expenses. In the event the division accumulates funds in excess of the allowable working capital reserve, they will reduce the Retained Earnings balance accordingly. The only exception is where the division is accumulating excess funds in anticipation of the purchase of new facilities or capital items. Prior to the accumulation of excess funds, the division must obtain the written approval of the Executive Director of the Department of Government Operations.

**R33-26-302. Reimbursement.**

- (1) Reimbursement to state agencies from the sale of their surplus property items will be made through the Division of Finance via interagency transfers or warrant requests.
- (2) The State Surplus Property program is authorized to charge a rate for the services provided to an agency.

**R33-26-401. Public Sale of State-Owned Vehicles.**

- (1) State-owned excess vehicles may be purchased at any time by the general public, subject to any holding period that may be assigned by the division and subject to the division's operating days and hours.
- (2) Federal surplus property auctions to the general public may be accomplished on occasions and subject to the limitations as indicated previously.
- (3) The frequency of public auctions, for either State-owned vehicles or federal surplus property will be regulated by current law as applicable, the volume of items held in inventory by the division, and the profitability of conducting auctions versus other approaches to disposing of surplus property.
- (4) State-owned vehicles available for sale may not have any ancillary or component parts or equipment removed, destroyed, or detached, from the vehicle prior to sale without the approval of the division.
- (5) State agencies are prohibited from removing ancillary or component parts or equipment from vehicles intended for surplus unless:
  - (a) the state agency intends on using the ancillary or component parts or equipment on other agency vehicles;
  - (b) the state agency in possession of the vehicle intends to transfer the ancillary or component parts or equipment to another state agency; or
  - (c) the state agency has obtained prior approval from the division to remove ancillary or component parts or equipment from the vehicle intended for surplus.

**R33-26-601. Utah State Agency for Surplus Property Adjudicative Proceedings.**

- (1) As required by the Utah Administrative Procedures Act, this Rule provides the procedures for adjudicating disputes brought before the division under the authority granted by Section 63A-2-401 and Title 63G, Chapter 4, et seq.

**R33-26-602. Proceedings to Be Informal.**

(1) All matters over which the division has jurisdiction including bid validity determination and sales issues, which are subject to Title 63G, Chapter 4, will be informal in nature for purposes of adjudication. The Director of the Division of Purchasing and General Services or his designee will be the presiding officer.

**R33-26-603. Procedures Governing Informal Adjudicatory Proceedings.**

- (1) No response needs to be filed to the notice of agency action or request for agency action.
- (2) The division may hold a hearing at the discretion of the director of the Division of Purchasing and General Services or his designee unless a hearing is required by statute. A request for hearing must be made within ten days after receipt of the notice of agency action or request for agency action.
- (3) Only the parties named in the notice of agency action or request for agency action will be permitted to testify, present evidence and comment on the issues.
- (4) A hearing will be held only after timely notice of the hearing has been given.
- (5) No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information and materials not restricted by law.
- (6) No person may intervene in an agency action unless federal statute or rule requires the agency to permit intervention.
- (7) Any hearing held under this rule is open to all parties.
- (8) Within thirty days after the close of any hearing, the director of the Division of Purchasing and General Services or his designee shall issue a written decision stating the decision, the reasons for the decision, time limits for filing an appeal with the director of the superior agency, notice of right of judicial review, and the time limits for filing an appeal to the appropriate district court.
- (9) The decision rendered by the Director of the Division of Purchasing and General Services or his designee shall be based on the facts in the division file and if a hearing is held, the facts based on evidence presented at the hearing.
- (10) The agency shall notify the parties of the agency order by promptly mailing a copy thereof to each at the address indicated in the file.
- (11) Whether a hearing is held or not, an order issued under the provisions of this rule shall be the final order and then may be appealed to the appropriate district court.

**R33-26-900. Charges and Fees Assessed for State Surplus Property Agency Services.**

- (1) In accordance with Section 63A-2-405, the State Surplus Property agency will charge rates and fees, as approved by the Rate Setting Committee as set forth in Sections 63J-1-410 and 504, for services associated with the disposition of surplus property items.
- (2) The current approved rate and fee schedule is available at: [surplus.utah.gov](http://surplus.utah.gov).

**KEY: government purchasing, procurement rules, state surplus property, general procurement provisions**

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