

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the transfer of ARM)	NOTICE OF PROPOSED TRANSFER
2.5.701 and 2.5.801 and the transfer)	AND AMENDMENT
and amendment of ARM 2.5.702)	
pertaining to the State Surplus Property)	NO PUBLIC HEARING
Program)	CONTEMPLATED

TO: All Concerned Persons

1. On April 11, 2016, the Department of Administration proposes to transfer and amend the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on March 25, 2016, to advise us of the nature of the accommodation that you need. Please contact Angie Gifford, Department of Administration, 1310 East Lockey Avenue, P.O. Box 200110, Helena, MT 59620-1101; telephone (406) 444-0115; fax (406) 444-3039; or e-mail agifford@mt.gov.

3. The department proposes to transfer the following rules:

<u>OLD</u>	<u>NEW</u>	
ARM 2.5.701	ARM 2.11.201	AUTHORITY TO DISPOSE OF SUPPLIES

AUTH: 18-4-226, MCA
IMP: 18-4-226, MCA

ARM 2.5.801	ARM 2.11.203	ADOPTION OF STATE PLAN OF OPERATION—FEDERAL SURPLUS PROPERTY
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AUTH: 18-5-202, MCA
IMP: 18-5-202, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to transfer the surplus property program rules in ARM Title 2, chapter 5, subchapters 7 and 8 under the State Procurement Bureau (SPB) to ARM Title 2, chapter 11, subchapter 2 under the General Services Division (GSD). This proposal is being made because SPB has been moved from GSD to the State Financial Services Division, and the surplus property program is managed under GSD.

4. The rule proposed to be transferred and amended provides as follows, new matter underlined, deleted matter interlined:

2.5.702 (2.11.202) DISPOSITION OF SURPLUS SUPPLIES (1) remains the same.

(2) ~~The division may offer surplus supplies may be offered to the public by the division through competitive sealed bids, online and live public auctions, established markets, or posted prices. It is recognized, h~~However, that some types and classes of items ~~can~~ may be sold or disposed of more readily and advantageously by other means, including barter. In such cases, and also where the nature of the supply or unusual circumstances call for its sale to be restricted or controlled, the division may employ such other means, including appraisal, if the division makes a written determination that such procedure is advantageous to the state.

(a) ~~On sales greater than \$300, only~~ The department accepts cash, personal checks, United States postal money orders, certified checks, cashier's checks, or and business checks may be accepted.

(3) ~~If a sale is to be made by competitive sealed bidding, notice of the sale must be given at least ten days before the date set for opening bids by posting the bid on the state's bids and proposals web site at~~
~~<http://svc.mt.gov/gsd/onestop/SolicitationDefault.aspx>.~~

(a) ~~Notice of the sale may also be given to prospective bidders by mail or by newspaper advertisement.~~

(b) ~~The bid must list the supplies offered for sale, designate their location and how they may be inspected, and state the terms and conditions for bid opening. Bids shall be opened publicly.~~

(c) ~~Award must be made in accordance with the provisions of the bid to the highest responsive and responsible bidder, if the price offered by such bidder is acceptable to the division. If the price is not acceptable, the division may:~~

(i) ~~reject the bids in whole or in part and negotiate the sale, but the negotiated sale price must be higher than the highest responsive and responsible bidder's price; or~~

(ii) ~~resolicit bids.~~

(4) through (8) remain the same, but are renumbered (3) through (7).

AUTH: 18-4-226, MCA

IMP: 18-4-226, MCA

STATEMENT OF REASONABLE NECESSITY: The department has discontinued offering surplus property through competitive sealed bid because with technology advancements, including online auctions, sealed bids became a less efficient sale method, thereby reducing monetary return to the agencies. The department therefore proposes the amendment of (2) and removal of (3) to address this situation. The department began using online auctions several years ago and is adding wording to clarify online auctions as an option for surplus property sale. In addition, through its experience, the department has found that accepting cash and personal checks—and not limiting acceptance of the various payment methods to sales greater than \$300—makes sales easier for the buying public, which in turn may increase returns on agency surplus property. The department therefore proposes the rule be amended to reflect this practice. This rule is also proposed for transfer

for the above-stated reason. The remaining proposed changes are to improve readability.

5. Concerned persons may present their data, views, or arguments concerning the proposed action to Angie Gifford, Department of Administration, 1310 East Lockey Avenue, P.O. Box 200110, Helena, MT 59620-1101; telephone (406) 444-0115; fax (406) 444-3039; or e-mail agifford@mt.gov; and must be received no later than 5:00 p.m., April 1, 2016.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 5 above no later than 5:00 p.m., April 1, 2016.

7. If the General Services Division receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 81 based on the approximate 810 registered public surplus donees.

8. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The General Services Division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to the person listed in 5 or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. The department has determined that under 2-4-111, MCA, the proposed rule transfer and amendment will not significantly and directly affect small businesses.

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State February 22, 2016.