

## Commercial Activity at Interstate Rest Areas

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### Issue

What restrictions does federal law place on commercial activity at interstate rest areas? Can the state sell these areas to a private entity for continued use as a rest area or similar establishment (e.g., gas station)?

The Office of Legislative Research is not authorized to provide legal opinions and this report should not be considered one.

### Summary

Federal law generally prohibits states from commercializing interstate rights-of-way. According to the [Federal Highway Administration \(FHWA\)](#), this prohibition, which has existed since the Interstate Highway Program was launched in 1956, is intended to avoid state-approved or -supported monopolies on services for travelers, such as food or gasoline.

However, the law provides an exception to this prohibition that allows states to establish and operate rest areas along interstates and permits limited commercial activities, such as vending machines, within these areas. States may contract with private vendors to run the commercial activities provided they adhere to the federal limits.

Federal law does not explicitly prohibit the sale of an interstate rest area for continued use as a rest area or similar establishment. However, because the law grants states sole authority to acquire, construct, operate, and maintain rest areas, it appears to implicitly prohibit their sale for these uses.

If a state determines that it no longer needs a rest area, it can request FHWA approval to “abandon” the property and sell it in accordance with the process for disposing of excess interstate right-of-way property ([23 C.F.R. § 710.409](#)). As noted above, it appears that once sold, the property could no longer be used as rest area or a similar establishment (i.e., any commercial establishment serving motorists located on the interstate right-of-way).

## **Commercial Activity in Interstate Rights-of-Way**

Under federal law, all interstate construction project agreements between a state Department of Transportation (DOT) and the U.S. DOT must provide that the state will not permit automotive service stations or other commercial establishments that serve motorists to be constructed or located on interstate rights-of-way. The law grandfathered in state-owned establishments that existed before 1960 and that are operated through concessionaries or otherwise, as long as entrances and exits from the establishments conform to applicable federal standards ([23 U.S.C.A. § 111 \(a\)](#)). Such commercial restrictions also do not apply to highways that were exclusively state-funded (usually through tolls) and later incorporated into the Interstate System (the FHWA provides a list of such highways [here](#)).

### ***Rest Area Exception***

Despite the general prohibition on commercial activity, federal law permits states to acquire, construct, operate, and maintain rest areas along interstates and allows limited commercial activity within these areas ([23 U.S.C.A. § 111 \(b\)](#)). Any revenue a state receives from the commercial activities must be used to cover the costs of rest areas in the state. Under federal regulations, “safety rest areas” (also known as “rest and recreation areas”) are roadside facilities safely removed from the traveled way with parking and such facilities for the motorist deemed necessary for his rest, relaxation, comfort, and information needs ([23 C.F.R. § 752.3 \(a\)](#)).

Federal law allows the following commercial activities at rest areas, as long as they are available only to customers using the rest area:

1. commercial advertising and media displays, as long as they are contained within the rest area and not legible from the main traveled way;
2. books, DVDs, and other media promoting state tourism;
3. tickets for in-state historical or tourism-related attractions or events;

4. travel-related information, such as maps and hotel coupon or travel booklets;
5. lottery machines; and
6. vending machines.

States may allow a private party to operate the commercial activities. No charge may be made for goods and services provided at rest areas, except for telephones and vending machine products ([23 C.F.R. § 752.5](#)).

*Vending Machines.* Vending machines may be operated only by the state and may dispense only food, drink, or other articles that the state DOT determines to be appropriate. (Vending machines may not dispense petroleum products or vehicle parts.) States may operate the machines directly or through a vendor and must give priority to state-licensed vendors who are blind. FHWA policy specifies that any vending machine contract must be in writing and must ensure that the state retains full responsibility for and control over all activities within the rest area ([NS 23 C.F.R. § 752](#)).

### ***Information Centers and Systems***

Federal regulations also allow states to establish or permit information centers or information systems in the rights-of-way of federally-funded highways ([23 C.F.R. § 752.7](#)). Information centers and information systems both provide information of interest to the traveling public, but information centers are located in rest areas and information systems are separate facilities located within the highway right-of-way. States may construct and operate the facilities, construct and lease the operation of the facilities, or lease the construction and operation of the facilities.

*Privately-Operated Information Centers and Systems.* States may allow privately-operated information centers and systems, subject to FHWA approval. An agreement between a state DOT and a private operator must, among other things, ensure that (1) the state has the title to the center or system upon construction completion or termination of the lease; (2) advertising is limited to matters of interest to the traveling public; (3) equal access is provided at reasonable rates to all qualified advertisers; and (4) at least 40% of all display areas and audible communications are dedicated, free of charge, for information for the traveling public and public service announcements ([23 C.F.R. § 752.8](#)).

## **Sale of Interstate Rest Areas**

Federal law appears to implicitly prohibit the sale of a rest area to a private entity for continued use as a rest area or as another commercial establishment serving motorists and located in the interstate right-of-way. As described above, federal law generally prohibits commercial activities in interstate rights-of-way and grants the authority to operate and maintain rest areas only to states. Although states do not need to directly operate the commercial activities in rest areas and may do so through a contract with a private entity, federal policy explicitly requires that state DOTs retain full responsibility for and control of all activities at a rest area. In an email, the FHWA confirmed that rest areas cannot be sold as an operating entity or ongoing business concern.

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