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DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

Commercial Activities on Interstate Rest Areas

[Docket No. FHWA-2016-0021]

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice; Request for comments.

SUMMARY: The FHWA is interested in gathering public comments on how certain provisions of the current law surrounding commercial activities in rest areas should be interpreted and applied in consideration of advancements in technology and the interests of the States.

DATES: Comments must be received on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

- Instructions: You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For questions about this notice contact Virgil Pridemore, Office of Real Estate Services, telephone at 202-366-2058, or via e-mail at Virgil.pridemore@dot.gov. For legal questions, please contact Robert Black, FHWA Office of the Chief Counsel, telephone at 202-366-1359, or via e-mail at Robert.black@dot.gov. Business hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may retrieve a copy of the notice through the Federal eRulemaking portal at <http://www.regulations.gov>. The Web site is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded from Office of the Federal Register's Web site at http://www.archives.gov/federal_register and the Government Publishing Office's Web page at <http://www.gpoaccess.gov>.

Background

The FHWA provides financial aid (Federal-aid) to States for the construction, maintenance and operation of highway transportation facilities that are primarily on the

National Highway System (NHS). The NHS consists of highways important to the Nation's economy, defense, and mobility, including the Interstate System.

States that receive Federal-aid for their NHS highway facilities or who wish to maintain eligibility to receive it must adhere to applicable Federal statutes and regulations. Section 111, of Title 23, United States Code, and 23 CFR 752.5 prohibit over the counter sales of merchandise in rest areas located on the Interstate. Allowable commercial activity in rest areas on the Interstate System includes:

- installation of commercial advertising and media displays, if such advertising and displays are exhibited solely within any facility constructed in the rest area and are not legible from the main traveled way;
- sale of items designed to promote tourism in the State, limited to books, DVDs, and other media;
- sale of tickets for events or attractions in the State of a historical or tourism-related nature;
- distribution of travel-related information, including maps, travel booklets, and hotel coupon booklets;
- installation and operation of lottery machines; and
- installation and operation of vending machines which may only dispense such food, drink, and other articles as the State transportation department determines are appropriate and desirable and which are operated in accordance with the Randolph-Sheppard Act of 1936 found at 20 U.S.C. 107.

Recently, several State departments of transportation have raised questions about what constitutes a vending machine and consequently what can or should be allowed in Interstate rest areas. There is currently no definition of vending machine either in the statute at 23 U.S.C. 111 or the regulation at 23 CFR 752.5. The current regulation and law have remained substantially the same and have not defined the term “vending machine” for more than 30 years. At the time of publication of both the statute and final rule, vending machines were generally similar in that they accepted coins or paper currency, were operated by either a push button or a pull lever, and dispensed similar limited products. In the last several years, however, technology has evolved well beyond the types of machines that were available when the law was enacted and the final regulation was published. Vending machines can now accept electronic means of payment and can vend a continually evolving and broad range of products. Additionally, there is now technology that is similar to vending machines, but not in existence at the time the statute was enacted. For example, self-serve kiosks at which the customer scans the goods for sale and then pays by cash or electronic method and which requires no assistance from either the kiosk owner or employee have become readily available.

The FHWA is interested in gathering public comments on how certain provisions of the current law should be interpreted and applied in consideration of advancements in technology and the interests of the States. Specifically, FHWA is interested in comments concerning the definition of vending machines. The FHWA is also interested in public input concerning the provision of law that allows the sale of items designed to promote tourism in the State, currently limited to books, DVDs, and other media.

Specific questions to guide the input are as follows:

- Considering advances in technology, what defines a vending machine in today's world?
- What types of "media" should be considered as promoting tourism in the State?
- Should local agricultural products be considered media that promotes tourism?
- Are there other commercial activities that should be allowed consistent with Federal law?
- Is there a need for additional Federal guidance on commercial activities in Interstate rest areas, and if so, what should the guidance address?

Authority: 23 U.S.C. 111, 315, and 502(b); 23 CFR 752.5.

Issued on: September 19, 2016

Gregory G. Nadeau
Administrator
Federal Highway Administration

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