

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455A.5(6), 461A.3, and 461A.4, the Natural Resource Commission hereby amends Chapter 14, "Concessions," Iowa Administrative Code.

The amendments:

1. Update the definition of "concession operation" by removing the reference to firewood sales. Also, the definition of "friends group or organization" is updated to include those groups whose purpose may be to promote and enhance the Iowa state park system.
2. Rescind the rule regarding advertising and adopt a new rule that establishes the new process to advertise for new concession operations and the process to renew concession contracts.
3. Rescind the rule regarding the bid process and adopt a new rule that establishes the new process for bidding new concession operations, placement of vending machines, selling of firewood only, and concession operations run by friends groups.
4. Rescind the rule regarding selection of the concessionaire and adopt a new rule that establishes the criteria to be used to evaluate concession proposals.
5. Establish a new provision that allows the Department to have other vendors provide certain concession services if the services are not under contract with the current concessionaire and the current concessionaire declines to provide the service.
6. Clarify when a temporary letter of authorization is necessary if Commission approval is required by statute.
7. Update language to replace "park ranger" with "park staff" since there are other classifications of permanent park staff that may be involved with concession operations.

Notice of Intended Action was published in the February 9, 2011, Iowa Administrative Bulletin as **ARC 9363B**. No public comments were received.

Since publication of the Notice of Intended Action, paragraph 14.2(1)"a" requiring the Department to advertise in newspapers designated by the county to be used for official publications has been revised. The language has been changed to require the Department to advertise in at least one newspaper designated by the county to be used for official publications. The change is in response to comments made by one of the Natural Resource Commissioners regarding the cost of advertising in multiple newspapers designated by a county for official publications. The change does not prohibit the Department from advertising in additional newspapers in that county if the Department determines it would be a benefit to the Department and potential bidders. In addition, an obsolete Iowa Code reference has been corrected in Item 2, a phrase has been expanded for clarity in subparagraph 14.2(1)"d"(4), and the word "Such" has been changed to "Vending" in paragraph 14.3(2)"b."

These amendments are intended to implement Iowa Code sections 461A.3 and 461A.4.

These amendments will become effective July 6, 2011.

The following amendments are adopted.

ITEM 1. Amend rule **571—14.1(461A)**, definition of "Concession operation," as follows:

*"Concession operation"* means operating a business within a concession area in a state park or recreation area including, but not limited to, boat rental, snack food sales, beach operation, and sale of fishing bait and tackle, ~~firewood sales, etc.~~

ITEM 2. Amend rule **571—14.1(461A)**, definition of "Friends group or organization," as follows:

*"Friends group or organization"* means an organization incorporated under Iowa Code chapter ~~504A~~ 504 as a not-for-profit group which has been formed solely for the purpose of promoting and enhancing a particular state park, ~~or~~ recreation area, or the Iowa state park system, or any combination of the three.

ITEM 3. Rescind rule 571—14.2(461A) and adopt the following **new** rule in lieu thereof:

**571—14.2(461A) Advertising or notice procedure.**

**14.2(1) *New concession.***

*a.* Advertising. When the department desires to obtain a new concession operation to offer multiple concession services in an area, the department shall advertise the request for proposals on the targeted small business Web site at <http://www.iowalifechanging.com/business/tsb/tsbsearchlogin.asp> and the department's requests for proposals Web site at <http://www.iowadnr.gov/rfp.html>. The department shall advertise a notice for the request for proposals in one newspaper of statewide circulation and in at least one newspaper designated by the county to be used for official publications in the county in which the state park or recreation area is located.

*b.* The notice shall state the following:

- (1) The names and location of the area(s) in which concession operations are available.
- (2) The general types of services the department would expect a concessionaire to furnish.
- (3) Information regarding how to obtain the request for proposals information.
- (4) The deadline for submission of proposals to the department.

*c.* The department shall allow a minimum of 15 days between the date of publication of advertisements and the deadline for submission of proposals.

*d.* The request for proposals shall include the following information:

(1) A scope of work that contains detailed information regarding the types of services expected to be offered by the concessionaire and the history of the gross receipts reported for the previous five operating years by the prior concessionaire (if applicable); bid terms acceptable to the department; the name, address, and telephone number of the person to contact regarding the request for proposals; and the date and time by which the proposals must be received by the department.

(2) A map of the park in which the concession operation is proposed.

(3) A sample of the contract the successful bidder will be expected to sign.

(4) Samples of report forms that the concessionaire must submit to the department while the concession is in operation.

**14.2(2) *Renewal of existing concession operation.***

*a.* The department may, at its option, mutually agree with the concessionaire to renew a contract during or at the end of its term. A concessionaire may request renewal during the term of a contract after a minimum three years of concession operation and a minimum of six months prior to expiration of the existing contract. The provisions of the renewal contract shall be negotiated between the department and the concessionaire. Should either party choose not to renew the contract, appropriate notice shall be sent to the other party four months prior to the expiration date of the existing contract, and the department may advertise for bids in accordance with this chapter.

*b.* The department shall publish a notice of intent to renew a concession contract that has been negotiated in accordance with paragraph 14.2(2)"*a.*" The notice shall be published in the same manner as provided in paragraph 14.2(1)"*a.*" and shall solicit public comments regarding the renewal.

*c.* The department director shall, upon review of comments received, determine whether to solicit bids or proceed with the renewal of the existing contract and shall notify the concessionaire of the decision in writing. If the director denies the renewal request, the existing concessionaire may request a contested case proceeding pursuant to Iowa Code chapter 17A.

ITEM 4. Rescind rule 571—14.3(461A) and adopt the following **new** rule in lieu thereof:

**571—14.3(461A) Bidding process.**

**14.3(1) *Proposals.*** Persons interested in operating a concession in a state park or recreation area shall submit a proposal in the format requested in the request for proposals. It is the bidder's responsibility to inspect the area proposed for concession operation and be fully aware of the condition and physical layout of the area. The proposal shall also include an explanation of any proposed operation not mentioned in the request for proposals. Concession facilities shall be bid on an "as is" basis unless the department agrees in writing to undertake certain improvements.

- a. The department reserves the right to reject any or all bids.
- b. If no bids are received for a concession operation, the department may:
  - (1) Readvertise for bids; or
  - (2) Contact interested persons and attempt to negotiate a contract; or
  - (3) Determine that there will be no concession operation in that particular area that year.

**14.3(2) Vending machines.**

- a. Placement of vending machines in state parks and recreation areas shall not be subject to the advertising and bidding process established by this chapter.
- b. Vending machines may be placed in state parks and recreation areas only by the publisher or distributor of the newspaper to be sold, the distributor of the soft drink to be sold in the machines, or by private vending machine companies.
- c. Companies placing vending machines in state parks and recreation areas must submit a proposal to the department that states the location, number, and type of vending machines to be placed; the price(s) that will be charged to the public; and the proposed fee or commission to be paid to the state.
- d. Any fees or commissions to be paid by the vendor to the state shall be paid directly to the department's central office in Des Moines, Iowa.
- e. The department will not install new electrical lines, concrete pads, or any other items needed to enable installation of vending machines.

**14.3(3) Firewood sales.**

- a. Firewood sales contracts shall not be subject to the advertising and bidding process established by this chapter.
- b. Persons interested in selling firewood in a state park or recreation area that has no other concessionaire, or if the concessionaire has declined the opportunity to sell firewood, shall submit a request to the department that identifies the area(s) where the firewood would be sold, the price to be charged to the public, and the proposed fee or commission to be paid to the state.
- c. All firewood sold or distributed in state parks and recreation areas shall be accompanied with a firewood label that meets labeling requirements identified in 21—46.16(177A).
- d. All firewood that originates from a quarantined area and that is sold or distributed in state parks and recreation areas must be certified by the United States Department of Agriculture to show that the firewood has been processed or treated according to applicable federal regulations.

**14.3(4) Friends group or organization.**

- a. Concession contracts with a friends group or organization, as defined in 571—14.1(461A), in state parks and recreation areas shall not be subject to the advertising and bidding process established by this chapter.
- b. A friends group or organization shall submit a proposal to operate a concession operation at a particular state park or recreation area. The proposal shall state the services to be provided, the proposed hours of operation, and proposed staffing.
- c. All net proceeds from the sale of merchandise and other concession services shall be spent on state park or recreation area improvement projects.

ITEM 5. Rescind rule 571—14.4(461A) and adopt the following **new** rule in lieu thereof:

**571—14.4(461A) Selection of a concessionaire.** The department shall select the concessionaire it determines to be best suited for a concession operation in a state park or recreation area upon evaluation of the following information:

- 1. The services proposed in the concession operation, including whether foods and drinks recommended by the most current version of the Iowa department of public health's "Comprehensive Nutrition and Physical Activity Plan" are being offered.
- 2. The concessionaire's managerial experience and other concession-related experience.
- 3. The concessionaire's financial stability, based upon a review of the concessionaire's existing profitability, equity, available cash, and other applicable financial data.
- 4. The annual lease payment bid.
- 5. The length of contract proposed (five-year maximum).

6. A check of all business and personal references given in the proposal.
7. The use of environmentally friendly practices and materials including, but not limited to, participation in recycling programs, use of items that contain recycled-content materials, use of energy-efficient appliances and equipment, and light pollution reduction.
8. The results of a criminal background check, driver's license record check, and child abuse registry check.

ITEM 6. Amend subrule 14.5(3) as follows:

**14.5(3) *Exclusive rights.*** The contract gives the concessionaire exclusive rights to conduct the concession operation ~~on~~ in a particular state park or recreation area. The concessionaire must have department approval prior to allowing other vendors to do business in the area under the terms of the contract. ~~This provision does not prohibit the department from allowing noncompetitive type vendors in an area during a department-sponsored special event such as the forest craft festival. This provision does not prohibit the department from allowing other vendors in an area if the department identifies a service that is not under contract with the concessionaire and the concessionaire declines to provide that service.~~

ITEM 7. Amend subrule 14.5(4) as follows:

**14.5(4) *Temporary authorization.*** If necessary, the department director shall have authority to issue a temporary letter of authorization to enable the successful bidder to operate a concession pending approval of the contract by the commission if commission approval is required by statute. The letter of authorization will incorporate all stipulations and conditions of the contract. The term of the letter of authorization shall not exceed 90 calendar days from the date of issuance.

ITEM 8. Amend rule 571—14.6(461A) as follows:

**571—14.6(461A) *Dispute resolution.*** Should a dispute arise between the concessionaire and the department as to the interpretation of contract stipulations or whether the concessionaire is performing satisfactorily, the initial step ~~of~~ for resolving the dispute will be an informal meeting and discussion between the park ~~ranger~~ staff and the district parks supervisor or other department personnel in charge of the area and the concessionaire. If the matter cannot be resolved, the concessionaire or ~~area~~ department personnel in charge of the area may request a meeting with parks bureau staff in the central office of the department. The bureau chief shall, if possible, resolve the dispute to the satisfaction of all parties. If the dispute cannot be resolved, the contract shall be terminated and the department may advertise for bids in accordance with this chapter. The requirements of Iowa Code section 17A.18(3) shall apply to any contract termination under the provisions of this ~~paragraph~~ rule. The provisions of this ~~paragraph~~ rule shall not be a bar to or prerequisite of the provisions of rule 571—14.7(461A).

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