

TITLE II
LICENSES, PERMITS AND CONCESSION CONTRACTS

CHAPTER 14
CONCESSIONS

571—14.1(461A) Definitions.

“*Concessionaire*” means person or firm granted a contract to operate a concession in a state park or recreation area. The concessionaire is an independent contractor and not an employee or agent of the department.

“*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, sale of fishing bait and tackle, firewood sales, etc.

“*Department*” means department of natural resources.

“*Director*” means the director of the department of natural resources.

“*Friends group or organization*” means an organization incorporated under Iowa Code chapter 504A 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.

“*Gross receipts*” means the total amount received, excluding sales tax, realized by or accruing to the concessionaire from all sales, for cash or credit, of services, accommodations, materials, or other merchandise pursuant to rights granted in the contract including gross receipts of subconcessionaires. All moneys paid into coin-operated devices, except telephones, shall be included in gross receipts.

“*New concession*” means the right to concession operation in an area that does not currently have a concessionaire or an area where the department wishes to invite bids for a mobile type concession operation.

“*Newspaper*” is as defined in Iowa Code section 618.3.

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

14.2(1) *New concession.*

a. Advertising. When the department desires to obtain new concession services in an area, the department shall advertise for concession operation bids in one newspaper of statewide circulation and one newspaper of general circulation in the county in which the state park or recreation area is located.

b. The newspaper ad shall state the following:

- (1) The names and location of area(s) in which concession contracts are available.
- (2) The general types of service which the department would expect a concessionaire to furnish.
- (3) Information regarding how to obtain a bid information package.
- (4) A general description of what the information package will contain.
- (5) The deadline for submission of proposals to the department.

c. The department shall allow a minimum of 35 days between publication of bid advertisements and the deadline for submission of proposals.

d. The information package sent to potential bidders shall contain:

- (1) A brochure which depicts the particular park in which the concession operation is proposed.
- (2) An invitation to bid which will contain detailed information regarding the types of services expected to be offered by the concessionaire; bid terms acceptable to the department; history of gross receipts reported the previous five operating years by the prior concessionaire (if applicable); names, addresses and telephone numbers of persons to be contacted for further information; and the date and time by which proposals must be received by the department.

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

- (4) The application/qualifications statement to be submitted to the department as a bid for concession operation.

(5) Samples of report forms which the concessionaire must submit to the department while in operation.

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

a. The department may, at its option, mutually agree with the concessionaire to renewal of 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. 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 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 which has been negotiated in accordance with paragraph “a” of this subrule. The notice shall be published in the same manner as provided in 571—14.2(1) “a” and shall solicit 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. The existing concessionaire may request a contested case proceeding prior to the department solicitation of bids.

571—14.3(461A) Bidding process.

14.3(1) Persons interested in operating a concession in a state park or recreation area shall submit a bid on forms furnished by the department. 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. Concession facilities shall be bid on an “as is” basis unless the department agrees in writing to undertake certain improvements.

The department reserves the right to reject any or all bids.

If no bids are received for 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 and firewood sales.

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. Such machines may be placed in state parks and recreation areas only by the publisher or distributor of the newspaper and the distributor of the soft drink which will be sold in those machines or by private vending machine companies.

c. Companies placing machines in these areas must first obtain a letter/permit from the director of the department stating where and under what conditions the machines may be placed.

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.

f. Persons selling only firewood may do so with a letter/permit from the director provided the park or recreation area has no other concessionaire or provided the concessionaire has declined the opportunity to sell firewood.

14.3(3) Friends groups may offer souvenirs, books, photos and other memorabilia for sale in a state park by requesting that a letter/permit be issued by the director. These groups shall not be subject to the bidding procedures of this chapter. All proceeds from the sale of merchandise by the friends group must be spent on repair, replacement or enhancement of facilities within the park.

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

1. Services proposed in the concession operation.
2. Managerial competence and experience.
3. Apparent financial capability to carry out the concession operation proposed.
4. Annual lease payment bid.
5. Length of contract proposed (five-year maximum).
6. A check of all business and personal references given in the application/qualification statement.
7. A check of driver's license records and any other information which would assist in assessing the person's suitability for concession operation.

571—14.5(461A) Concession contract—general. The term of the concession contract shall be for no more than a five-year period without being subject to the renewal process as outlined in this chapter. The contract may be amended during its term, in writing, and effective only if the amendments are approved by all parties.

14.5(1) Construction. The contract may allow the construction of department-approved buildings or other facilities by the concessionaire in lieu of annual concession fee payments on an equal value basis. The value of the buildings or facilities shall be based on actual, documented cost of construction. Any structures built under this contract condition shall become state property and cannot be removed by the concessionaire unless removal is required by the contract.

14.5(2) Insurance. Insurance coverage required to be carried by the concessionaire shall be "occurrence" type rather than "claims made."

14.5(3) Exclusive rights. The contract gives the concessionaire exclusive rights to conduct concession operation on a particular state 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.

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. 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.

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 resolving the dispute will be an informal meeting and discussion between the park ranger 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 personnel 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. The provisions of this paragraph shall not be a bar to or prerequisite of the provisions of rule 571—14.7(461A).

571—14.7(461A) Suspension or termination for cause.

14.7(1) Emergency suspension. If the department determines that continued operation of the concession presents an immediate hazard to the public health, safety or welfare or is in violation of any state law or policy, the department may immediately suspend the contract by notice procedures described in the contract. The notice shall contain specific reasons for the emergency suspension.

The department may enforce the suspension by physically closing the concession premises. The department may assign employees to operate any part of a concession which the department determines should be opened during a suspension in order to provide continued services for park users.

If possible, the concessionaire may take action to correct the hazardous situation and request reinstatement of the contract if the department agrees that a hazardous situation no longer exists.

14.7(2) *Termination of contract.* The department may terminate the contract for one or more of the following reasons:

- a.* Failure to correct a hazardous condition within a reasonable time specified in the notice of emergency termination.
- b.* Nonconformance with the stipulations of the contract including payment of fees.
- c.* Unsatisfactory performance of the concessionaire.

Upon notice of termination of the contract, the concessionaire may request a hearing under the provisions of natural resource commission rules 571—Chapter 7.

571—14.8(461A) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

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

[Filed 3/4/88, Notice 12/30/87—published 3/23/88, effective 4/27/88]

[Filed 1/6/89, Notice 11/30/88—published 1/25/89, effective 3/1/89]

[Filed 6/14/96, Notice 2/28/96—published 7/3/96, effective 8/7/96]