Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 48
"Inspection of Permanently Moored Vessels"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 99F.7 and 462A.20
State or federal law(s) implemented by the rulemaking: Iowa Code sections 99F.7 and 462A.20

Public Hearing

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Craig Cutts via email. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Craig Cutts prior to the hearing to facilitate an orderly hearing.

September 24, 2024 9 a.m.	Via video/conference call

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Craig Cutts
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515.971.8136
Email: craig.cutts@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 48 establishes procedures to inspect excursion boats used for gambling that have been removed from navigation and designated as permanently moored vessels by the United States Coast Guard. This inspection oversight ensures a high level of safety for the public on these vessels, which are moored on the dynamic and ever-changing waters of the Mississippi and Missouri rivers. This chapter has been reviewed and edited consistent with Executive Order 10.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Owners of regulated excursion boats used for gambling will bear the costs.

- Classes of persons that will benefit from the proposed rulemaking:

Members of the public who utilize excursion boats for gambling will benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Owners of regulated excursion boats used for gambling incur a cost for the third-party contractor for inspection. However, this cost is significantly less than previous costs of inspection and certification.

- Qualitative description of impact:

In the 19 years of this program, these excursion boats have never had a significant casualty involving personal injury or damage related to any system or procedure regulated by these rules.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There is no cost to the State for this program.

- Anticipated effect on state revenues:

There is no expected impact from repromulgating these rules.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The benefits to the safety of the public outweigh the costs to the regulated industry, particularly when the previous costs of inspection and certification were higher than the current costs.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are no less costly methods or less intrusive methods to implement these rules. These rules are tailored to the statutory authority.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

None.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Not applicable.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There is no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 571—Chapter 48 and adopt the following **new** chapter in lieu thereof:

CHAPTER 48
INSPECTION OF PERMANENTLY MOORED VESSELS

571—48.1(462A) Purpose. This chapter is intended to establish the procedures for compliance with the inspection requirements of Iowa Code sections 99F.7(14) and 462A.20.

571—48.2(462A) Definitions.

"Commission" means the Iowa racing and gaming commission.

"Critical systems" on a PMV means fire safety systems, systems that protect against flooding and progressive flooding, emergency power systems, emergency lighting systems, emergency ventilation shutdown systems, and fuel and sewage discharge prevention systems.

"Permanently moored vessel" or *"PMV"* means an excursion boat used for gambling that is removed from navigation and defined as a vessel under 46 CFR, Subchapter K or H (June 1, 2024), that would have previously required a United States Coast Guard Certificate of Inspection.

571—48.3(462A) Inspection requirements. All PMVs shall be inspected by a qualified inspector to determine compliance with the "State of Iowa Permanently Moored Vessel Inspection Requirements," 2005, as adopted by reference herein.

571—48.4(462A) Inspectors. Inspections of PMVs shall be conducted by a person or persons meeting the criteria set forth in this rule.

48.4(1) *Qualifications.* An inspector shall:

a. Have prior experience as a U.S. Coast Guard marine inspector or as a classification society (recognized by the U.S. Coast Guard) surveyor; or

b. Be a classification surveyor acting on behalf of a classification society; or

c. Be a professional engineer licensed by one of the 50 states; or

d. Be a professional naval architect or marine engineer.

48.4(2) *Minimum documented work experience.* An inspector shall:

a. Have obtained three years' experience in the examination of steel or aluminum vessels of similar design; and

b. Be familiar with the regulations and standards under which the PMV was built; and

c. Be familiar with permanent mooring arrangements and ship structures supporting the same; and

d. Have experience in marine emergency response operations and planning that is sufficient for the individual to competently review emergency action plans required by these rules; and

e. Have experience in the investigation of reportable occurrences as described in the "State of Iowa Permanently Moored Vessel Inspection Requirements," 2005.

571—48.5(462A) Statewide inspection contract. If the department determines that the administration of this chapter could best be effectuated through a contract with one or more third parties, the state may award such a contract or contracts pursuant to the provisions of 561—Chapter 8, as adopted by reference in 571—8.1(17A).

48.5(1) A statewide inspection contract shall authorize an inspection program coordinator to conduct the inspections required by this chapter, prepare and submit the required reports, and engage in such other activities as may be necessary for the administration of the PMV inspection program.

48.5(2) A contract entered into pursuant to this rule shall establish fees to be paid by PMV operators to the inspection program coordinator for the inspection of PMVs. There shall be a fixed fee established by contract for inspections and administration of the program by the inspection program coordinator. The contract may establish additional fees to be charged by the inspection program coordinator for work related to addressing deficiencies or other noncompliance by a PMV operator. Said fees shall be the sole source of payment to the inspection program coordinator.

48.5(3) In the event that a statewide inspection contract is executed by the department, all submissions required by these rules shall be sent to the inspection program coordinator established by the contract.

571—48.6(462A) Submission. Any person making application to the commission for the licensing of a PMV shall submit proof to the department that the PMV has been inspected by a qualified inspector and that the PMV satisfies all of the requirements of the "State of Iowa Permanently Moored Vessel Inspection Requirements," 2005. All PMVs licensed pursuant to Iowa Code chapter 99F shall submit to the department quarterly and annual reports in compliance with all of the requirements of the "State of Iowa Permanently Moored Vessel Inspection Requirements," 2005.

571—48.7(462A) Notification to the commission. If a PMV operator fails to cure an inadequacy in an inspection report or to comply with a correction report for a critical system or maritime security deficiency within the applicable time period, a determination of inadequacy shall be forwarded to the commission and shall be subject to the appeal and contested case procedures of the department as established by 561—Chapter 7 and adopted by reference at 571—7.1(17A).

48.7(1) *Inspection reports.* The department shall, within 60 days of receipt of an initial inspection, quarterly or annual report, determine the adequacy of the report and shall notify the submitting party of such determination. The submitting party shall be given a minimum of 60 days to cure any inadequacy not involving critical systems or maritime security.

48.7(2) *Correction reports.* To minimize safety and maritime security risks to the public, the environment and the PMV itself, deficiencies found in critical systems or security systems shall be immediately reported to the department. After consulting with the PMV operator, the department may issue a correction report if the deficiency was not immediately corrected. The correction report will direct the PMV operator to take corrective action within a specific period of time that is based on the nature and severity of the deficiency.

These rules are intended to implement Iowa Code sections 99F.7(14) and 462A.20.