

571—17.10(461A) Barge fleeting regulations. The purpose of this rule is to regulate the practice of barge fleeting in order to protect public and private rights and interest in public waters of the state of Iowa under the jurisdiction of the commission.

17.10(1) Applicability. This rule is applicable to all public waters under the jurisdiction of the commission except that portion of the Mississippi River conveyed to certain cities by 1945 Iowa Acts, chapter 249; 1961 Iowa Acts, chapter 299; or special charters enacted by the Legislature in 1856 and 1857. This rule regulates the use of those waters for barge fleeting, including the installation of structures, physical site modification such as dredging, and operation of fleeting equipment and maneuvering of barges within the fleet.

17.10(2) Barge fleeting leases. A person shall not assert any exclusive privilege to conduct barge fleeting and mooring service for hire, or not for hire, and shall not prevent or obstruct any lawful use of navigable waters under the jurisdiction of the commission except within a fleeting area leased by the executive council of Iowa or at a loading or off-loading facility necessary to carry on commerce, provided the facility is constructed in compliance with Iowa department of transportation, U.S. Army Corps of Engineers, and all other applicable permits and regulations.

17.10(3) Restricted areas. Leases shall not be issued for a fleeting area in the following locations unless the department, subject to the approval of the commission, determines that fleeting in such areas is not contrary to the purpose of these rules as stated in rule 571—17.1(461A):

a. A site subject to unusual hazards including but not limited to high wind, strong current, violent ice movement, and hydraulic surges during the time fleeting operations are proposed to be carried out.

b. A site receiving high use for recreation, sport fishing, or commercial fishing, unless the fleeting area can be placed or structured to be compatible with such uses.

c. A site immediately adjacent to industries or other facilities, which, together with fleeting operations, present a substantial risk of fire, explosion, water pollution, or other serious safety hazards.

d. A site where fleeting area activities would restrict or interfere with or have a substantial adverse effect on the use and enjoyment of an area owned by federal, state, or local government, including but not limited to public parks, game refuges, forests, or recreation areas used for access to docks, slips, harbors, marinas, boat launching ramps or unique biological or physical features of the river valley itself.

e. A site immediately adjacent to or over a dam, sill, lock, breakwater, revetment, navigation aid, or wing dam.

f. A site within established navigation channels for commercial or recreational vessels.

g. A site within the approach area for a lock portion of a dam structure.

h. A site adjacent to bridges or vessel approach areas to bridges.

17.10(4) Prohibited areas. Leases shall not be issued for a fleeting area in the following locations:

a. A site that will have a substantial adverse effect on fish or wildlife (mussels, fish spawning, waterfowl, or furbearer) habitat due to dredging, propeller wash or other activity related to fleeting.

b. A site that would have an adverse impact on documented threatened and endangered species.

c. A site adjacent to national monuments or registered landmarks.

17.10(5) Riparian rights. A fleeting area shall not be leased in any location that would interfere with the rights and privileges of the riparian property owner except with written permission of the riparian property owner.

17.10(6) Standards. The following standards shall apply to operation of fleeting areas:

a. A fleeting lease shall be construed to do no more than give the operator the right to designate and improve an area to be utilized for fleeting. The lease creates no interest, personal or real, in the real estate below the ordinary high-water mark except as provided in the lease.

b. Improvements in fleeting areas shall be limited to items such as construction of dolphins, mooring cells, deadmen, mooring barge anchors, and other similar methods of ensuring retention of barges if approved by the department. Improvements shall be constructed in a manner consistent with engineering standards of the U.S. Army Corps of Engineers. Structures associated with barge fleeting leases will be covered by the fees of the barge fleeting lease.

c. Fleeting activities within leased fleeting areas shall be limited to barge mooring service, ancillary harbor towing and minor barge repair or servicing. No washing or cleaning of barges is permitted, unless

conducted in compliance with the requirements of Iowa Code chapter 455B, the washing activities will not have a substantial adverse effect on fish or wildlife (mussels, fish spawning, waterfowl, or furbearer) habitat, and the department specifically approves the cleaning activity.

d. Barges shall not be moored to trees or other natural features of an area except with the approval of the riparian property owner or during an emergency.

e. Barge fleeting shall be conducted in a manner that minimizes bank erosion attributable to the fleeting operation.

f. Leased fleeting areas may be used for navigation and recreational pursuits such as boating and fishing only to the extent that such use does not interfere with fleeting activities. Other waterway users shall not obstruct barge fleeting activities within leased fleeting areas.

g. The right of entry of barges into a fleeting area may be refused by:

(1) The operator.

(2) The department, after conferring with the operator, when there is an imminent hazard to the public interest or to public health, safety or welfare.

h. The operator shall, at all times, be responsible for the safety and security of the barges in the fleeting area and shall take reasonable precautions to eliminate hazards to boaters or other persons in the fleeting area.

i. Lights or other warning devices as required by state and federal navigation regulations shall mark moored or fledged barges.

j. The operator shall notify the department of the current name, address, and day and evening telephone numbers of the individual directly responsible for supervising the fleeting area who is to be notified in case of emergency.

k. A lease issued under this chapter may not be exercised until all other necessary permits or approvals have been issued by local, state or federal agencies having jurisdiction over the lease area.

17.10(7) *Application review and approval.* The following process applies to barge fleeting lease applications:

a. Upon receipt of a barge fleeting lease application that complies with the requirements of rule 571—17.3(461A), the department will review the application to determine whether the application complies with applicable criteria in these rules. In order to determine such compliance, the applicant may be required, at the applicant's expense, to provide the department with anchor design criteria, underwater surveys, and dives necessary to determine compliance.

b. Upon determination that an application complies with applicable criteria in these rules, the department staff shall give notice of receipt of the application through publication of one public notice that will be published in a newspaper as defined in Iowa Code section 618.3 where the proposed fleeting area is located or other approved outlets. The notice shall briefly describe the location and nature of the proposed fleeting area, identify the department rules that are pertinent to the application, state whether the application is a new lease or renewal, and provide that a hearing will be scheduled if the director determines that there is a material issue concerning whether the application complies with applicable criteria in these rules. The notice shall allow interested persons 30 days from the date of publication to submit comments or a request for hearing, and shall state that a request for hearing must be supported by documentation of potential adverse effects of the proposed fleeting facility on an affected or aggrieved person. Notice will also be sent by first-class ordinary mail or an equivalent method of service to the directors of the Iowa department of transportation and the Iowa department of economic development, the Iowa secretary of agriculture, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the U.S. Coast Guard.

17.10(8) *Barge fleeting lease fees.* The following fees shall be paid to the department by applicants and lessees:

a. An annual lease fee based on the dimensions of the area leased as a fleeting area. Beginning January 1, 2024, the rate for the annual lease fee shall be \$4.38 per 100 square feet.

b. A fee of \$1,000 for the cost of review, issuance, and administration of a lease is required at the time of application for a new or renewal lease.

17.10(9) *Nonuse.* Failure by an operator to substantially exercise the rights granted in a lease issued under this chapter within a period of two years from the issuance of the lease shall render the lease null and void unless extended by the department. Failure by an operator to substantially exercise the rights granted in a lease issued under this chapter for any period of two consecutive years shall create a rebuttable presumption that the operator intends to abandon and forfeit the lease and shall be cause for a review of the lease by the department. The operator may request a contested case proceeding in accordance with Iowa Code chapter 17A and 571—Chapter 7.

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