ENVIRONMENTAL PROTECTION COMMISSION[567]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapter 70
"Scope of Title—Definitions—Forms—Rules of Practice"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455B.263(8) and 455B.276(1)

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 455B, division III, part 4, and sections 455B.105(11), 459.102, 459.301 and 481A.15.

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 Jon Garton 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 Jon Garton prior to the hearing to facilitate an orderly hearing.

September 24, 2024 1 p.m.	Via video/conference call

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written 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:

Jon Garton, Supervisor
Floodplain and Dam Safety Section
Iowa Department of Natural Resources
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Des Moines, Iowa 50321
Email: jonathan.garton@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 70 regulates floodplains and floodways in the state. These proposed rules will help protect life and property from floods and promote the orderly development and wise use of the floodplains of the state. Proposed Chapter 70 contains applicable definitions, application requirements, and procedures for reviewing and awarding applications. This chapter has been reviewed and edited consistent with Executive Order 10. Outdated provisions have been removed, and language has otherwise been streamlined and simplified.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Private landowners, businesses and government agencies are all impacted by floodplain regulation.

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

Private landowners and businesses benefit from construction regulation by a reduction in potential flood-related damages. Surrounding landowners benefit from the reduction in potential increases in flood depths that would be caused by unregulated fill in the floodplain. The general public benefits from the reduction in public damages related to emergency response and recovery.

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:

Costs vary depending on the projects.

- Qualitative description of impact:

Applicants are required to reduce impacts to others from reduction in conveyance along rivers and streams due to obstruction and are required to flood protect proposed construction in the floodplain.

3. Costs to the State:

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

Staff time is dedicated to the review of proposed construction and the determination of potential flood depths at locations requested by applicants.

- Anticipated effect on state revenues:

No anticipated effect on state revenue is expected.

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

Floodplain regulation is required by the Iowa Code and seeks to reduce the damages both to individuals and the public due to flood-related risk.

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

Floodplain regulation is required by the Iowa Code.

6. Alternative methods considered by the agency:

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

Floodplain regulation is required by the Iowa Code. The agency seeks to streamline the application and review process to ease the process.

- 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?

This rulemaking is composed in a way that tries to ease requirements for not only small businesses, but also individual landowners that need to apply and receive permits. Often, permitting requires engineering design that frequently utilizes small, local engineering firms around the state.

Text of Proposed Rulemaking

ITEM 1. Rescind 567—Chapter 70 and adopt the following **new** chapter in lieu thereof:

FLOODPLAIN DEVELOPMENT

TITLE V

CHAPTER 70
SCOPE OF TITLE—DEFINITIONS—FORMS—RULES OF PRACTICE

567—70.1(455B,481A) Scope of title.

70.1(1) The department has jurisdiction over all floodplains and floodways in the state for the purpose of establishing and implementing a program to promote the protection of life and property from floods and to promote the orderly development and wise use of the floodplains of the state. Any person who desires to construct or maintain a structure, dam, obstruction, deposit or excavation, or allow the same in any floodplain or floodway has a responsibility to contact the department to determine whether approval is required from the department or a local government authorized to act for the department.

70.1(2) Minimum statewide criteria for most types of floodplain development are listed in 567—Chapter 72. Special requirements for dams are listed in 567—Chapter 73.

567—70.2(455B,481A) Definitions. Definitions used in this title are listed in alphabetical order as follows:

"Agricultural levees or dikes" means levees or dikes constructed to provide limited flood protection to land used primarily for agricultural purposes.

"Animal feeding operation" means the same as defined in 567—65.1(459,459B).

"Animal feeding operation structure" means the same as defined in 567—65.1(459,459B).

"Backwater" means the increase in water surface level immediately upstream from any structure, dam, obstruction or deposit, erected, used, or maintained in the floodway or on the floodplains caused by the resulting reduction in conveyance area.

"Base flood elevation" means the elevation that floodwaters would reach at a particular site during the occurrence of a flood having a 1 percent chance of being equaled or exceeded in any given year (also commonly referred to as the "100-year flood").

"Building" means all residential housing including mobile homes as defined herein, cabins, factories, warehouses, storage sheds, and other walled, roofed structures constructed for occupation by people or animals or for storage of materials.

"Channel" means a natural or artificial flow path of a stream with definite bed and banks to collect and conduct the normal flow of water.

"Channel change" means either (a) the alteration of the location of a channel of a stream or (b) a substantial modification of the size, slope, or flow characteristics of a channel of a stream. (NOTE: Diversions of water subject to the permit requirements of Iowa Code sections 455B.268 and 455B.269 usually are not channel changes.) Increasing the cross-sectional area of a channel by less than 10 percent is not considered a substantial modification of the size, slope, or flow characteristics of a channel of a stream.

"Confinement feeding operation" means the same as defined in 567—65.1(459,459B).

"Confinement feeding operation building" or *"confinement building"* means the same as defined in 567—65.1(459,459B).

"Confinement feeding operation structure" means the same as defined in 567—65.1(459,459B).

"Dam" means the same as defined in rule 567—73.2(455B).

"Development" means a structure, dam, obstruction, deposit, excavation or flood control work in a floodway or floodplain.

"Drainage district ditch" means a channel located within the boundaries of a drainage district and excavated to establish a design channel-bottom profile for efficient conveyance of water discharged from agricultural tile systems and open drains.

"Elevating" means raising buildings by fill or other means to or above a minimum level of flood protection.

"Emergency action plan" means the plan to adequately protect persons or materials in a floodplain during a flood event. An emergency action plan shall include action triggers such as stream levels or flood warnings, responsible parties, and a detailed plan of action.

"Flood control works" means physical works such as dams, levees, floodwalls, and channel improvements or relocations undertaken to provide moderate to high degree of flood protection to existing or proposed structures or land uses.

"Flood proofing" means a combination of structural provisions, changes, or adjustments in construction to buildings, structures, or properties subject to flooding primarily for the reduction or elimination of flood damages.

"Floodway" means the channel of a river or stream and the adjacent land areas that must be reserved in order to discharge by a flood with a 1 percent annual chance of recurrence without cumulatively increasing the water surface elevation more than one foot. Floodway establishment procedures can be found in 567—70.4(455B).

"Floodway fringe" means those portions of the floodplains located outside of the floodway.

"High damage potential" means the flood damage potential associated with the following:

1. Habitable residential buildings and building complexes which include seasonal residential buildings; or

2. Industrial, commercial, agricultural, recreational and other similar buildings or building complexes, which, if inundated by flooding, would result in high public damages as determined by the department or which contain high-value equipment or contents that are not easily removed; or

3. Public buildings or building complexes, which, if inundated by flooding, would result in high public damages as determined by the department.

"Hydraulic shadow" means the areas immediately upstream and downstream of an existing building or other obstruction. It can typically be determined by drawing lines at a 1:1 ratio upstream and downstream of the obstruction.

"Low damage potential" means all buildings, building complexes or floodplain uses not defined as maximum or high damage potential where such structures are designed in a manner that inundation by flood waters results in minimal damage to the structure and its contents. Such structures include but are not limited to the following: detached residential garages, sheds, park shelters, buildings used for storage of equipment or crops that can be easily removed before a flood event, and buildings used as temporary shelter for livestock.

"Major water source" means the same as defined in 567—65.1(459,459B).

"Manure storage structure" means the same as defined in 567—65.1(459,459B).

"Maximum damage potential" means the flood damage potential associated with hospitals and like institutions; buildings or building complexes containing documents, data, or instruments of great public value; buildings or building complexes containing materials dangerous to the public or fuel storage facilities; emergency response facilities; power installations needed in emergency or buildings; or building complexes similar in nature or use to those listed above.

"Minimum level of flood protection" means the elevation corresponding to the water surface profile of the regulatory flood associated with a damage potential classification listed in these rules plus any freeboard specified in these rules.

"Mobile home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers.

"Nominated stream" means the stream or water source named in the petition described in 567—Chapter 72 that seeks designation of a stream as a protected stream.

"Protected stream" means a stream designated by the department as a "protected stream" in 567—Chapter 72.

"Public damages" means costs resulting from damage to roads and streets, sewers, water mains, other public utilities and public buildings; expenditures for emergency flood protection, evacuation and relief, rehabilitation and cleanup; losses due to interruption of utilities and transportation routes, and interruption of commerce and employment.

"Q500," "Q100," "Q50," "Q25," "Q15," "Q10," et cetera, means a flood having a 0.2, 1, 2, 4, 7, 10, et cetera, percent chance of being equaled or exceeded in any one year as determined by the department.

"Regulated floodplain" means the land adjacent to a stream that has been or may be inundated by a flood with a 0.2 percent annual chance of recurrence.

"Repair and maintenance of a drainage district ditch" means the restoration of the original grade line, cross-sectional area, or other design specifications of a drainage district ditch lawfully established as part of a drainage district formed and operating under the provisions of Iowa Code chapter 468.

"Road projects" means the construction and maintenance of any bridges, culverts, road embankments, and temporary stream crossings.

"Rural areas" means any area not defined or designated as an urban area.

"Seasonal homes" means residential buildings or building complexes which are not used for permanent or year-round human habitation.

"Stream" means a water source that either drains an area of at least two square miles or has been designated as a protected stream in 567—Chapter 72.

"Urban areas" means those lands enclosed by the incorporated limits of municipalities.

"Water source" means the same as defined in 567—65.1(459,459B).

567—70.3(17A,455B,481A) Review and approval of floodplain development.

70.3(1) *Development in Federal Emergency Management Agency (FEMA)-designated floodways.* Proposed development in floodways designated on FEMA's effective flood insurance rate maps should be submitted for review by the department. These submissions should include:

a. A description of the work involved, the need to place the proposed development in the floodway, and an explanation of how the proposed work will not obstruct flow or result in any changes to the mapped floodway, or

b. Where flow may be obstructed by the project, detailed plans and hydraulic modeling are required for projects that include any obstruction to flow unless the project lies in a hydraulic shadow of an existing obstruction. The following information should be provided for review:

(1) Detailed engineering construction plans showing all fill and proposed development.

(2) A hydraulic model following the process for "no-rise" certification as outlined in 44 CFR Part 65.

In cases where the applicant cannot prevent a rise in the base flood elevation or is changing the boundaries of the floodway due to grading, a conditional letter of map revision (CLOMR) should be submitted to the department, local community, and FEMA for review and approval.

70.3(2) *Development needing approval.* Any development in a floodway or floodplain that exceeds the thresholds in 567—Chapter 71 requires approval.

70.3(3) *Permit application submittal requirements.* Applications should be submitted on forms or an application system provided by the department with required supporting materials as determined by the department describing the work and impacts of the proposed development. Applications should include a project description and detailed drawings of the proposed development. Certified engineering plans, specifications, and hydrologic and hydraulic analysis are required for complex projects such as bridges, culverts, levees, channel changes and other public infrastructure where the department determines that such materials are necessary to determine impacts of the project and the design's ability to meet criteria for approval. The engineering plans and other engineering information shall be certified by a licensed professional engineer or, if applicable, a licensed land surveyor, as required by Iowa Code chapter 542B.

70.3(4) *Application fee.* No fee is charged at this time.

70.3(5) *Modification of application or plans.* Applicants and prospective applicants are encouraged to communicate with the department's staff before submitting plans to identify the data required for review of a project and to discuss project modifications reasonably required to make the project conform to applicable criteria. When staff review of submitted plans discloses need for plan modification to conform to one or more criteria, the applicant is encouraged to submit revised plans.

567—70.4(455B) Establishment of a floodway. Review and approval of floodplain projects will often depend on the location of the project relative to the floodway. When available, floodways calculated and published by FEMA on community-adopted flood insurance rate maps may be used by the department. Delineation of the encroachment limits defining the outer limits of the floodway must conform to the following criteria insofar as possible:

70.4(1) *Increase in water surface elevation.* The increase in the water surface elevation of Q100 (100-year discharge) that would result from confining flood flows to the floodway shall not exceed one foot.

70.4(2) *Equal and opposite conveyance.* Floodway boundaries shall be located such that the floodway areas on each side of a stream convey a share of the flood flows proportionate to the total conveyance available on each respective side of the stream.

70.4(3) *Protection of existing development.* To the extent feasible, floodway boundaries shall be located as follows:

a. To avoid the need to seek removal of a lawful existing structure in order to safely convey Q100;

b. To minimize any increase in the level of Q100 in an area where such increase would adversely affect an existing lawful structure; and

c. To avoid the need to place an existing lawful structure in a delineated floodway if the placement would result in additional restrictions on improvements or reconstruction or replacement of the structure.

70.4(4) *When acquisition of property interest is required.* Where protection of an existing structure necessitates prohibition of development in an area that could otherwise be developed under the criteria in 70.4(1) and 70.4(2), the department or local governmental designee may require that the owners of land benefited by the application of criteria in this subrule acquire property interests as needed to provide an adequate alternative floodway.

567—70.5(17A,455B,481A) Procedures for review of applications.

70.5(1) *Initial screening of applications.* Each application upon receipt shall be promptly evaluated by the department to determine whether adequate information is available to review the project. The department shall advise the applicant of any additional information required to review the project. If the requested information is not submitted within 60 days of the date the request is made, the department may consider the application withdrawn.

70.5(2) *Order of processing.* In general, complete applications including sufficient plans and specifications shall be reviewed in the order that complete information is received. However, when there are a large number of pending applications, which preclude the department from promptly processing all applications, the department may expedite review of a particular application out of order if the completed application and supporting documents were submitted at the earliest practicable time and any of the following conditions exist:

a. Relatively little staff review time (generally less than four hours) is required and delay will cause the applicant hardship;

b. The applicant can demonstrate that a delay in the permit will result in a substantial cost increase of a large project;

c. Prompt review of the permit would result in earlier completion of a project that conveys a significant public benefit;

d. The need for a permit is the result of an unforeseen emergency or catastrophic event; or

e. A permit is needed to complete a project that will abate or prevent an imminent threat to the public health and welfare.

70.5(3) *Project investigation.* The department shall make an investigation of a project for which an application is submitted. The following are standard procedures for an investigation of an application:

a. Inspection. Agency personnel may make one or more field inspections of the project site when necessary to obtain information about the project. Submission of the application is deemed to constitute consent by the applicant for the agency staff and its agents to enter upon the land on which the proposed activity or project will be located for the sole purpose of collecting the data necessary to process the application, unless the applicant indicates to the contrary on the application.

b. Technical review. The department staff shall conduct a technical review using appropriate analytical techniques such as application of hydrologic and hydraulic models to determine the effects and impacts of a proposed project.

c. Solicitation of expert comments on environmental effects. For channel changes or other development which may cause significant adverse effects on the wise use and protection of water resources, water quality, fish, wildlife and recreational facilities or uses, the department shall request comments from the fish and wildlife division of the department or other knowledgeable sources.

d. Summary report of project review. The department staff may, if indicated, prepare a project summary report which summarizes the results of the review with respect to relevant criteria, the analytical methods used in the review and other project information. Typical indications of when project summary reports will be prepared are for those projects for which negative comments have been received from potentially affected landowners, those projects which are not approvable, and those projects which are complex in nature. Project summary reports will not normally be prepared for routine, noncontroversial projects.

e. Notice to landowners who might be affected. The department shall require the applicant to provide the names of the owners and occupants of land located immediately upstream, downstream, and across from the project site, and owners of any other land which the agency staff determines may be adversely affected by the project. The department shall then notify the landowners that the project is under consideration and provide a reasonable opportunity for submission of comments.

f. Notice to the applicant that project does not conform to criteria. If the project review discloses that the project violates one or more criteria and that the project should be disapproved, or approved only subject to special conditions to which the applicant has not agreed, the department shall notify the applicant and, when practical, suggest appropriate project modifications. The department shall offer the applicant an opportunity to submit comments before an initial decision is made.

70.5(4) *Initial decision by the department.* The initial decision by the department on an application for a floodplain development permit shall be either approval or disapproval. The initial decision shall include a determination whether the project satisfied all relevant criteria and may incorporate by reference and attachment the summary report described in 70.5(3)"d."

a. Approval. Issuance of a floodplain development permit shall constitute approval of a project. The permit shall include applicable general conditions listed in 567—Chapter 72 and may include one or more special conditions when reasonably necessary to implement relevant criteria.

b. Disapproval. A letter to the applicant denying the application shall constitute disapproval of a project.

c. Notice of initial decision. Copies of the initial decision shall be mailed or emailed to the applicant, any person who commented pursuant to 70.5(3)"e," and any other person who has requested a copy of the decision. An initial decision becomes the final decision of the department unless a timely notice of appeal is filed in accordance with 567—70.6(17A,455B,481A). The final decision may be filed with the appropriate county recorder to give constructive notice to future landowners of any conditions or requirements imposed by the final decision.

567—70.6(17A,455B,481A) Appeal of initial decision.

70.6(1) Any person aggrieved by an initial decision issued under 567—70.5(17A,455B,481A) of these rules may file a notice of appeal with the director. The notice of appeal must be filed within 30 days following the certified date of mailing of the decision unless the appellant shows good cause for failure to receive actual notice and file within the allowed time. The form of the notice of appeal and appeal procedures are governed by 567—Chapter 7.

70.6(2) The department shall mail a copy of the notice of appeal to each person who was sent a copy of the initial decision. The department shall attach an explanation of the opportunity to seek intervention in the contested case.

These rules are intended to implement Iowa Code chapter 455B, division III, part 4, and sections 455B.105(11), 459.102, 459.301 and 481A.15.