ENVIRONMENTAL PROTECTION COMMISSION[567]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 567—Chapters 71, 75, and 76 "Floodplain or Floodway Development—When Approval is Required; Management of Flood Plain Areas; Federal Water Resource Projects"

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 Iowa Code sections 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
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: jonathan.garton@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 71 regulates floodplains and floodways in the state. The 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 71 makes clear when approval is required for floodplain development and outlines the process of local governments issuing floodplain permits on behalf of the state. This chapter has been reviewed and edited consistent with Executive Order 10. Redundant and outdated language has been removed, and language has otherwise been simplified.

Likewise, Chapters 75 and 76 were reviewed consistent with Executive Order 10. Accordingly, both are proposed to be rescinded for being redundant, unnecessary, or outdated. However, two parts of Chapter 75 are still relevant and will be moved into proposed Chapters 70 and 71.

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 a 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 to both 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 71 and adopt the following **new** chapter in lieu thereof:

CHAPTER 71
FLOODPLAIN OR FLOODWAY DEVELOPMENT—WHEN APPROVAL IS REQUIRED

567—71.1(455B) Delegated state floodplain permitting by local communities. A floodplain permit issued by a local government may fulfill the state floodplain permitting requirements of the department when all of the following apply:

71.1(1) *Delegated authority.* The community has an ordinance containing floodplain regulations approved by the department. The department will review the community's floodplain permitting procedures to determine whether they are consistent with the requirements for communities to participate in the Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) and are compatible with these rules.

71.1(2) *Project types.* The project is located in the community's adopted floodway fringe zoning and consists of buildings, fill placement, minor grading activities, trails or another development that does not require an engineering evaluation such as is required for bridges, culverts and levees. Where it is unclear whether the project is adequately covered by the local regulations, the department shall make the determination.

71.1(3) *Eligibility.* Communities shall demonstrate capacity to properly review applications and issue floodplain permits. Communities shall provide evidence of this capacity at least every five years.

71.1(4) *Waivers.* If a waiver is requested for the project, the review and permitting should be handled by the department pursuant to 561—Chapter 10. Waivers for local community floodplain permits under the NFIP should be reviewed by the NFIP state coordinator.

567—71.2(455B) State floodplain permits. Approval by the department for any development including construction, maintenance and use of a structure, dam, obstruction, deposit, excavation or flood control work on a regulated floodplain or floodway shall be required in the following instances if a project is not approved by a delegated community's local floodplain permit under 567—71.1(455B) in any of the following instances:

71.2(1) *Rural areas.* Projects in or on the floodplain of any stream draining ten or more square miles at the downstream end of the project site.

71.2(2) *Urban areas.* Projects in or on the flood plain of any river or stream draining two or more square miles at the downstream end of the project site.

71.2(3) *Protected streams.* Channel changes at any location on any river or stream designated as a protected stream pursuant to division III of 567—Chapter 72.

71.2(4) *Buildings and other structures adjacent to or downstream from impoundments.* Approval is required for new construction, additions, lowering, or reconstruction of buildings and other structures such as water and waste water treatment, sanitary landfills, and animal feeding operations, and associated fill without regard to the drainage area if the proximity of the building to a dam regulated by the department is as follows:

a. Adjacent to impoundment. Approval is required for a building or other structure and associated fill adjacent to an impoundment if the lowest floor level, including any basement, is lower than the top of the dam.

b. Downstream from dam. Approval is required for a building or other structure and associated fill downstream from a dam at any location where flooding can be reasonably anticipated from

principal or emergency spillway discharges. If the dam does not substantially comply with high-hazard criteria in these rules, approval is required for a building and associated fill at any location where flooding can be reasonably anticipated from overtopping and failure of the dam.

71.2(5) *Dams.* Approval by the department for construction, repair, or modification of any dam shall be required when the dam exceeds the thresholds under 567—73.3(455B).

567—71.3(455B) Exempted activities. The following activities will not require approval by the department:

71.3(1) *Bridges, culverts, road embankments and associated work.* Approval is not required for any crossing in a rural area floodplain with a drainage area less than 100 square miles Approval is not required for channel changes associated with road projects whereby (1) less than a 500-foot length of the existing channel is being altered and (2) the length of existing channel being altered is not reduced by more than 25 percent. Approval is not required for federally regulated railroad crossings having a drainage area of any size due to federal regulatory preemption.

71.3(2) *Buildings.* Approval is not required under the following conditions:

a. Building additions that increase the original floor area of a building by less than 25 percent. All additions constructed after July 4, 1965, shall be added to any proposed addition in determining whether the total increase in original floor space would exceed 25 percent.

b. Reconstruction of any portion of a building if the cost of reconstruction (as would be determined by a qualified contractor) does not exceed 50 percent of the market value of the existing building or if reconstruction will not increase the market value by more than 50 percent. Equivalent professional labor and material costs must be included for any proposed or actual volunteer labor and donated materials

71.3(3) *Pipeline and underground linear utility crossings.* Approval by the department for the construction, operation and maintenance of buried pipeline, conduit and linear utility crossings is not required if the natural contours of the channel and floodplain are maintained and no bank stabilization is included.

71.3(4) *Excavations.* Approval by the department shall not be required if one of the following applies:

a. The channel cross section is increased by 10 percent or less. The cross-sectional area of the channel shall be determined based on current survey, or original engineering plans, if being performed by a drainage district. If an original plan is not available, the current channel surveyed area will be used to determine the original cross-sectional area of the channel.

b. The excavation is for the repair and maintenance of a drainage district ditch with less than 100 square mile drainage area as defined in 567—70.2(455B).

c. The excavation is outside the channel on any floodplain of any river or stream draining more than 10 square miles where spoil is removed from the floodplain and surface waters are not diverted into a sinkhole or quarry excavated in carbonate rock.

71.3(5) *Boat docks.* All floating boat docks on lakes, and those recreational nonfloating-type boat docks located on the Mississippi and Missouri rivers, located on reservoirs within state parks, and the conservation pools of the Coralville, Rathbun, Red Rock, and Saylorville reservoirs shall not require department approval, other than a permit obtained from the parks, recreation and preserves division of the department.

71.3(6) *Small projects.* Approval by the department shall not be required in rural areas for any low-damage-potential project where such works obstruct less than 3 percent of the cross-sectional area of the stream channel at bankfull stage or where such works obstruct less than 15 percent of the cross-sectional area of that side of the stream's floodplain at any stage. This includes signs, navigational markers, and utility poles including H-frame structures. Fences that could catch debris and block flow during a flood may be considered a full obstruction to flow for purposes of determining the 3 percent or 15 percent obstruction.

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

ITEM 2. Rescind and reserve **567—Chapter 75**.

ITEM 3. Rescind and reserve **567—Chapter 76**.