

567—65.7 (459,459B) Construction permits—required approvals, permits, determinations and declaratory orders. A person required to obtain a construction permit pursuant to subrule 65.7(1) or a construction approval letter pursuant to subrule 65.7(7) shall not begin construction, expansion or modification of a confinement feeding operation structure until the department issues a construction permit or a construction approval letter, as defined in 567—65.1(459,459B), for a proposed or existing confinement feeding operation. In addition, the owner of a small animal feeding operation with formed manure storage structures who is not required to obtain a construction permit pursuant to subrule 65.7(1) or a construction approval letter pursuant to subrule 65.7(7) shall comply with the applicable construction approval requirements pursuant to subrule 65.7(8).

65.7(1) *Confinement feeding operations required to obtain a construction permit.*

a. Rescinded IAB 9/17/14, effective 10/22/14.

b. Except as provided in subrule 65.7(2), a confinement feeding operation shall obtain a construction permit prior to any of the following:

(1) Constructing or modifying any unformed manure storage structure, or constructing, installing or modifying a confinement building that uses an unformed manure storage structure.

(2) Constructing, installing or modifying a confinement building or a formed manure storage structure at a confinement feeding operation if, after construction, installation or expansion, the animal unit capacity of the operation is 1,000 animal units or more. This subparagraph also applies to confinement feeding operations that store manure exclusively in a dry form.

(3) Initiating a change that would result in an increase in the volume of manure or a modification in the manner in which manure is stored in any unformed manure storage structure, even if no construction or physical alteration is necessary. Increases in the volume of manure due to an increase in animal capacity, animal weight capacity or animal unit capacity up to the limits specified in a previously issued construction permit do not require a new construction permit.

(4) Initiating a change, even if no construction or physical alteration is necessary, that would result in an increase in the volume of manure or a modification in the manner in which manure is stored in a formed manure storage structure if, after the change, the animal unit capacity of the operation is 1,000 animal units or more. Increases in the volume of manure due to an increase in animal capacity, animal weight capacity or animal unit capacity up to the limits specified in a previously issued construction permit do not require a new construction permit.

(5) Constructing or modifying any egg washwater storage structure or a confinement building at a confinement feeding operation that includes an egg washwater storage structure.

(6) Initiating a change that would result in an increase in the volume of egg washwater or a modification in the manner in which egg washwater is stored, even if no construction or physical alteration is necessary. Increases in the volume of egg washwater due to an increase in animal capacity, animal weight capacity or animal unit capacity up to the limits specified in a previously issued construction permit do not require a new construction permit.

(7) Repopulating a confinement feeding operation if it was closed for 24 months or more and if any of the following apply:

1. The confinement feeding operation uses an unformed manure storage structure or egg washwater storage structure;

2. The confinement feeding operation includes only confinement buildings and formed manure storage structures and has an animal unit capacity of 1,000 animal units or more.

(8) Installing a permanent manure transfer piping system, unless the department determines that a construction permit is not required.

(9) Initiating a remedial change, upgrade, replacement or construction when directed by the department as a result of departmental evaluation pursuant to paragraph 65.5(2)“b” or as required by an administrative order or court order pursuant to Iowa Code section 455B.112 or 455B.175.

Repairs to a confinement building or additions such as fans, slats, gates, roofs, or covers do not require a construction permit. In some instances, the department may determine that a construction permit is not required to increase the volume of manure or egg washwater or a modification in the manner in which manure or egg washwater is stored if the increase or modification is deemed insignificant. Plans for repairs or modifications to a manure storage structure shall be submitted to the department to determine if a permit is required.

65.7(2) *Confinement feeding operations not required to obtain a construction permit.*

a. A construction permit shall not be required for a formed manure storage structure or for a confinement building that uses a formed manure storage structure in conjunction with a small animal feeding operation. However, this paragraph shall not apply to a small animal feeding operation that uses an unformed manure storage structure.

b. A construction permit shall not be required for a confinement feeding operation structure related to research activities and experiments performed under the authority and regulations of a research college.

c. A construction permit is not required to construct a formed manure storage structure at a confinement feeding operation having an animal unit capacity of more than 500 but less than 1,000 animal units; however, a construction approval letter is required from the department pursuant to subrule 65.7(8) and 567—65.9(459,459B).

d. A construction permit is not required for a confinement feeding operation that exclusively confines fish and elects to comply with the permitting requirements of Iowa Code section 455B.183.

65.7(3) *Operations that shall not be issued construction permits.*

a. The department shall not issue a construction permit to a person if an enforcement action by the department, relating to a violation of this chapter concerning a confinement feeding operation in which the person has an interest, is pending.

b. The department shall not issue a construction permit to a person for five years after the date of the last violation committed by a person or confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under Iowa Code sections 459.317 and 459.604.

c. The department shall not issue a construction permit to expand or modify a confinement feeding operation for 120 days after completion of the last construction or modification at the operation, if a permit was not required for the last construction or modification.

d. The department shall not issue a construction permit for a confinement feeding operation structure that is proposed to be located on the one hundred year floodplain. Placing fill material on floodplain land to elevate the land above the one hundred year flood level will not be considered as removing the land from the one hundred year floodplain for the purpose of this subrule.

65.7(4) *Construction permit application plan review criteria.* Review of plans and specifications submitted with a construction permit application shall be conducted to determine the potential of the proposed manure control system to achieve the level of manure control being required of the confinement feeding operation. In conducting this review, applicable criteria contained in federal law, state law, these rules, NRCS design standards and specifications unless inconsistent with federal or state law or these rules, and U.S. Department of Commerce precipitation data shall be used. If the proposed facility plans are not adequately covered by these criteria, applicable criteria contained in current technical literature shall be used.

65.7(5) *Expiration of construction permits.* A construction permit shall expire if construction, as defined in rule 567—65.8(459,459B), is not begun within one year and completed within four years of the date of issuance. The director may grant an extension of time to begin or complete construction if it is necessary or justified, upon showing of such necessity or justification to the director, unless a person who has an interest in the proposed operation is the subject of a pending enforcement action or a

person who has a controlling interest in the proposed operation has been classified as a habitual violator. If a permitted site has not completed all proposed permitted structures within the four-year limit, then the approved animal unit capacity in the construction permit shall be lowered to be equal to what was constructed and the department shall issue a construction permit amendment for what was constructed.

65.7(6) *Revocation of construction permits.* The department may revoke a construction permit or refuse to renew a permit expiring according to subrule 65.7(5) if it determines that the operation of the confinement feeding operation constitutes a clear, present and impending danger to public health or the environment.

65.7(7) *Confinement feeding operations required to obtain a construction approval letter.* A person planning to construct a confinement feeding operation, other than a small animal feeding operation as defined in rule 567—65.1(459,459B) or other than an operation required to obtain a construction permit pursuant to subrule 65.7(1), shall obtain from the department a construction approval letter as provided in subrule 65.9(3) prior to beginning construction of a formed manure storage structure or a confinement building. The construction approval letter shall expire if construction, as defined in subrule 65.8(1), is not begun within one year and completed within four years of the date of the construction approval letter.

65.7(8) *Small animal feeding operations.* The following requirements apply to small animal feeding operations, notwithstanding construction permit exemptions in subrule 65.7(2) and limited separation distance exemptions in rule 567—65.12(459,459B):

a. A person shall not construct a confinement feeding operation structure in the one hundred year floodplain. A person shall not begin construction of a confinement feeding operation structure located on alluvial soil until the department issues a declaratory order pursuant to subrule 65.7(9) that the proposed location is not in the one hundred year floodplain. The AFO Siting Atlas may be a tool used to assist in the one hundred year floodplain and alluvial soil determinations.

b. A person shall not construct a confinement feeding operation structure on a floodplain as provided in rule 567—71.13(455B) until the department issues a floodplain development permit pursuant to 567—Chapters 70 to 76.

c. Confinement feeding operation structures must comply with applicable separation distance requirements in rule 567—65.11(459,459B) and the applicable manure storage structure design requirements in rule 567—65.15(459,459B).

65.7(9) *Declaratory orders and floodplain determinations.* A person shall not construct a confinement feeding operation structure in the one hundred year floodplain. The AFO Siting Atlas may be a tool used to assist in the one hundred year floodplain and alluvial soil determinations. If the location of any proposed confinement feeding operation structure contains soils classified as alluvial determined pursuant to subrule 65.9(4), the owner shall petition the department for a declaratory order or a determination that the confinement feeding operation structure is not in the one hundred year floodplain. To be considered complete, the petition shall include all information necessary, pursuant to 567—Chapters 70 to 76, for the department to determine: (1) if the confinement feeding operation is proposed to be located on a one hundred year floodplain; (2) if a floodplain development permit for the operation is required; and (3) if a floodplain development permit may be issued if one is required. This information may include land surveys to determine elevations of the land within the footprint of the planned operation as well as floodplain and channel geometry. The petition for a declaratory order or determination shall be submitted to the department according to either of the following:

a. If the person is not required to apply for a construction permit pursuant to subrule 65.7(1), the person must petition the department for a declaratory order pursuant to Iowa Code section 17A.9 and 561—Chapter 6. The department shall issue a declaratory order in response to a complete petition, notwithstanding any other provision provided in Iowa Code section 17A.9 to the contrary, within 30 days from the date that the complete petition is filed with the department. The declaratory order shall state whether or not the proposed location is on the one hundred year floodplain. If the proposed location of the confinement feeding operation structure is on the one hundred year floodplain, the department shall prohibit the construction. Exception to this subrule is provided in Iowa Code section 459.310, subsection 4. Even if the proposed location of the confinement feeding operation structure is not on the one hundred

year floodplain, the department may require a floodplain development permit pursuant to 567—Chapters 70 to 76.

b. If the person is required to apply for a construction permit pursuant to subrule 65.7(1), the person must petition the department for a determination. The department shall determine if the confinement feeding operation structure is proposed to be located on the one hundred year floodplain. If the proposed location of the confinement feeding operation structure is on the one hundred year floodplain, the department shall disapprove the construction permit. Exception to this subrule is provided in Iowa Code section 459.310, subsection 4. Even if the department makes a determination that the proposed location of the confinement feeding operation structure is not on the one hundred year floodplain, the department may require a floodplain development permit pursuant to 567—Chapters 70 to 76.

65.7(10) *Compliance with permit conditions.* A person who constructs, modifies or expands a confinement feeding operation structure pursuant to a construction permit shall comply with all terms and conditions of the construction permit.

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