

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

**Proposing rulemaking related to scope of title, definitions, forms, and rules of practice
and providing an opportunity for public comment**

The Environmental Protection Commission (Commission) hereby proposes to rescind Chapter 70, “Scope of Title—Definitions—Forms—Rules of Practice,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 455B.263(8) and 455B.276(1).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 455B.105(11), 459.102, 459.301 and 481A.15, and chapter 455B, subchapter III, part 4.

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 Outdated provisions have been removed, and language has otherwise been streamlined and simplified.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 4, 2024. A public hearing was held on the following date(s):

- September 24, 2024

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 13.

Public Comment

Any interested person may submit comments concerning this proposed rulemaking, which must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on January 29, 2025. Comments should be directed to:

Jonathan Garton
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200

Des Moines, Iowa 50321
Email: jonathan.garton@dnr.iowa.gov

Free Language Access. If you speak a non-English language, we offer you language assistance services free of charge, contact the Department at jonathan.garton@dnr.iowa.gov.

Servicios gratuitos de asistencia lingüística. Si habla un idioma que no sea el inglés, los servicios de asistencia lingüística están disponibles de forma gratuita. Comuníquese con el Departamento al jonathan.garton@dnr.iowa.gov.

Public Hearing

Public hearings at which persons may present their views orally will be held by conference call as follows:

January 28, 2025 10 to 11 a.m.	Virtual meeting A meeting registration link will be provided prior to the hearing
January 29, 2025 1 to 2 p.m.	Virtual meeting A meeting registration link will be provided prior to the hearing

The public hearings will be held virtually via Zoom. See www.iowadnr.gov/Environmental-Protection/Land-Quality/Land-Quality-Rulemaking for meeting information.

Persons who wish to attend a conference call should contact Jonathan Garton at jonathan.garton@dnr.iowa.gov. A conference call number will be provided prior to the hearing.

Persons who wish to make oral comments at a conference call public hearing must submit a request to Mr. Garton prior to the hearing to facilitate an orderly hearing.

Free Language Assistance: if you need assistance in a language other than English, contact the Department at jonathan.garton@dnr.iowa.gov or civilrights@dnr.iowa.gov or by telephone at 515.201.1018 at least seven days before the event.

Servicios gratuitos de asistencia lingüística: si necesita ayuda en un idioma que no sea inglés, comuníquese con el Departamento al jonathan.garton@dnr.iowa.gov o civilrights@dnr.iowa.gov o por teléfono a 515.201.1018 al menos siete días antes del evento.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

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.

“*Bankfull stage*” is the elevation above which a rise in water surface elevation will cause the river or stream to overflow the lowest natural bank that is not an unusually low place or a break in the natural bank through which water inundates a small 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 drainage 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.

“*Floodplain*” means the land adjacent to a stream that has been or may be inundated by the 0.2 percent annual recurrence chance flood.

“*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 the waters of a 1 percent annual recurrence chance flood 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, that, if inundated by flooding, would result in high public damages as determined by the department or that contain high-value equipment or contents that are not easily removed; or
3. Public buildings or building complexes, that, if inundated by flooding, would result in high public damages as determined by the department.

“*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, that 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,*” etc., means a flood having a 0.2, 1, 2, 4, 7, 10, etc., percent chance of being equaled or exceeded in any one year as determined by the department.

“*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 that 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 needing approval.* Any development in a floodway or floodplain that exceeds the thresholds in 567—71.1(455B), that is not exempt pursuant to 567—71.4(455B), and that is not regulated by a locally adopted ordinance, requires approval by the department.

70.3(2) *Permit application submittal requirements.* Applications shall be submitted on either 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 shall include a project description and detailed drawings of proposed development. Certified engineering plans, specifications, hydrologic and hydraulic analysis, and other information as specified by the department that is needed for the department to conduct a technical review are also 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(3) *Application fee.* No fee is charged at this time.

567—70.4(455B) Establishment of a floodway. When available, floodways calculated and published by FEMA on community adopted flood insurance rate maps may be used by the department. When unavailable, or in discretion of the department based on best available information, the department will delineate the encroachment limits defining the outer limits of the floodway, conforming 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 must 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 is 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 developments that 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 that 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 that are not approvable, and those projects that 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 that the agency staff determines may be adversely affected by the project. For those landowners that the department determines may be adversely impacted 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) *Decision by the department.* The decision by the department on an application for a floodplain development permit shall be either approval or disapproval. The 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 decision. Copies of the decision shall be mailed 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. The decision may be sent by ordinary mail, first class, and shall be accompanied by a certification of the date of mailing. A 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 decision.

70.6(1) Any person aggrieved by a 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, subchapter III, part 4, and sections 455B.105(11), 459.102, 459.301 and 481A.15.