

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby rescinds Chapter 71, “Floodplain or Floodway Development—When Approval is Required,” and adopts a new chapter with the same title; and rescinds and reserves Chapter 75, “Management of Specific Flood Plain Areas,” and Chapter 76, “Federal Water Resource Projects,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted 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 chapter 455B, subchapter III, part 4, and sections 459.102, 459.301 and 481A.15.

Purpose and Summary

New Chapter 71 regulates floodplains and floodways in the state. The rules will help protect life and property from floods and promote the orderly development and wise use of the floodplains of the state. 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 Redundant and outdated language has been removed, and language has otherwise been simplified.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 Accordingly, both are rescinded for being redundant, unnecessary, or outdated. However, two parts of Chapter 75 are still relevant and have been moved into new Chapters 70 and 71.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 8, 2025, as **ARC 8633C**.

A public hearing was held via virtual online meetings on January 28, 2025 from 10-11 am and on January 29, 2025 from 1-2pm.

One interested party attended the meeting and provided written comments. The comment focused on variances to local ordinances, exempted activities such as soil and water conservation infrastructure, and small projects such as fences. The final rule has been updated in response to these comments to ensure clarity and ensure proper implementation of the Iowa Code.

The comments and resulting minor updates provide additional clarity and ensure that the final rules are not more restrictive than the previous ones.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 15, 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.

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).

Effective Date

This rulemaking will become effective on June 18, 2025.

The following rulemaking action is adopted:

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) State floodplain permits. In the following instances, approval is required 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 unless the project is otherwise approved by a delegated community's local floodplain ordinances adopted pursuant to 567—71.2(455B) or is exempt under 567—71.4(455B).

71.1(1) Rural areas. In 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.

71.1(2) Urban areas. In urban areas, projects in or on the floodplain of any river or stream draining two or more square miles at the downstream end of the project site.

71.1(3) Protected streams. On 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.

71.1(4) Buildings and other structures adjacent to or downstream from impoundments. For new construction, additions, lowering, or reconstruction of buildings, water and waste water treatment facilities, sanitary landfills, animal feeding operation structures, or other miscellaneous structures and associated fill, without regard to the size of the drainage area, if:

a. The project is adjacent to an impoundment and the lowest floor level, including any basement, is lower than the top of the adjacent dam; or

b. There is an upstream dam and flooding can be reasonably anticipated from principal or emergency spillway discharges; or

c. There is an upstream dam that does not substantially comply with high hazard criteria in these rules and where flooding can be reasonably anticipated from overtopping and failure of the dam.

71.1(5) Dams. For construction, repair, or modification of any dam that exceeds the thresholds under 567—73.3(455B).

567—71.2(455B) Delegated state floodplain permitting by local communities. Upon submission to the department for review and approval, a local unit of government may establish encroachment limits, floodplain regulations, and zoning ordinances, subject to the following:

71.2(1) Written approval from the department must be obtained before effective adoption or amendment of a local regulation that would control development in a floodplain or floodway for purposes related to flood protection. A local government may appeal the refusal of the department to approve a proposed regulation by notifying the department and requesting that the proposed local regulation be considered at the next meeting of the commission.

71.2(2) Prior to receiving approval, a community shall demonstrate capacity to properly review applications and issue floodplain permits.

71.2(3) Approved communities shall provide evidence to the department of this capacity at least every five years. Additionally, the department may, from time to time, take action to ascertain the effectiveness of department-approved, locally adopted floodplain management regulations. Upon a finding that the local government has been negligent in administering the approved regulations, the department may revoke approval of same. Floodplain works found to be in violation of department-approved, locally adopted floodplain management regulations may be handled under the provisions of the department's rules for investigation of unauthorized projects.

71.2(4) Where it is unclear whether the works are adequately covered by such local regulations, the department shall make the determination.

567—71.3(455B) Review and approval of variances from local regulations. A variance from an approved local floodplain regulation shall not be effective until it has been reviewed and approved by the department in accordance with the following procedures.

71.3(1) *Duty of local government to notify department of each variance request.* After receipt of each request for variance from a local floodplain regulation approved by the department, the local government shall notify the department of the variance request on a form obtained from the department. The notice must be received by the department at least 15 days before any hearing that the local government schedules on the variance request.

71.3(2) *Written comment from the department.* After receipt of notice of a variance request, the department shall mail or deliver a written comment on the variance request. The comment shall be issued within 15 days after receipt of the notice or in time for consideration at any hearing held after expiration of the 15-day period. The comment shall be either a statement of objection or “no objection” as follows:

a. Objection to variance request. The department may issue an objection to the variance request if the requested variance would violate applicable statewide criteria. The objection may be based on a statement that the applicant for the variance has provided insufficient information for the department to determine whether the requested variance would violate applicable minimum statewide criteria. An objection based on a statement of insufficiency of information shall identify the information needed to determine whether the request would violate applicable criteria.

b. No objection to variance requests. The comment issued by the department may state that the department has no objection to the variance request. The comment shall briefly explain why

granting of the requested variance would not violate the purposes of minimum statewide criteria. A statement of “no objection” shall constitute approval to grant the requested variance.

71.3(3) *Basis for variance.* A variance from an applicable local permitting requirement should only be granted if the applicant can show that denial of the variance would cause unnecessary hardship and that granting of the variance would not be contrary to the public interest or the underlying purposes of the requirement in question.

71.3(4) *Review or appeal of local ruling on variance request.* The appropriate forum and procedures for review or appeal of the decision of a local government on a request for variance from a regulation approved by the department depend on the relationship between the local decision and the comment submitted by the department as follows.

a. When local government grants variance after objection by department. If the local government grants a variance request after issuance of an objection by the department, the local government shall give written notice of the local action and the supporting reasons to the department. The variance shall not be effective until approved by the commission. The applicant for the variance shall have the right to a contested case proceeding before the commission or its designee if required to resolve a material issue of fact or law.

b. When local government denies variance after objection by department. If the local government denies a variance request on the basis of an objection by the department, the applicant may file a notice of appeal with the department within 20 days following the local action. The applicant for the variance shall have the right to a contested case proceeding before the commission or its designee if required to resolve a material issue of fact or law.

c. When local government grants or denies a variance request after a “no objection” comment by the department. When a local government grants or denies a variance request after receiving a “no objection” comment from the department, any appeal normally should be taken in the

manner provided for appeal of other local actions. An appeal should be filed with the department only if the purpose of the appeal is to challenge the basis of the “no objection” comment.

d. Duty of local government to notify department of appeal. The local government shall promptly notify the department of the filing of any petition for judicial review of local action on a variance request so the department may determine whether participation in the judicial review would be in the interest of the state.

567—71.4(455B) Exempted activities. Notwithstanding 567—70.3(17A,455B,481A) and 567—71.1(455B), the following activities do not require approval pursuant to this title by the department to construct in a floodplain:

71.4(1) *Rural bridges/culverts/road embankments and associated work.* Construction, maintenance, or use of bridges, culverts, temporary stream crossings, or road embankments in a rural area floodplain with a drainage area less than 100 square miles including associated channel changes not on protected streams with up to 500 feet in length and maximum of 25 percent reduction in length, and associated excavations within 500 feet of the project.

71.4(2) *Federally regulated railroad crossing.* Construction, maintenance, or use of federally regulated railroad crossings having a drainage area of any size.

71.4(3) *Buildings.*

a. Building additions that, when considered in aggregate with all additions constructed after July 4, 1965, increase the original floor area of a building by less than 25 percent.

b. Reconstruction of any portion of a building if the cost of reconstruction, including equivalent professional labor and material costs for proposed or actual volunteer labor and donated materials, and 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.

71.4(4) *Pipeline and underground linear utility crossings.* The construction, operation and maintenance of buried pipeline, conduit and linear utility crossings if the natural contours of the channel and floodplain are maintained and no bank stabilization is required.

71.4(5) *Excavations.*

a. Excavations where the channel cross section is increased by 10 percent or less, as determined based on current survey, original engineering plans if being performed by a drainage district, if available.

b. Excavations for the repair and maintenance of a drainage district ditch with less than 100 square mile drainage area.

c. Excavations outside the channel and not impacting streambanks on any floodplain of any river or stream draining more than ten square miles where excess spoil is removed from the floodplain, the project does not reduce capacity of the floodplain, and surface waters are not diverted into a sinkhole or quarry excavated in carbonate rock.

71.4(6) *Boat docks.* Construction, maintenance, or use of floating boat docks on lakes, and those recreational nonfloating style 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.

71.4(7) *Small projects.* For developments 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.

These rules are intended to implement Iowa Code chapter 455B, subchapter 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**.