

Colorado Water Conservation Board

Rules and Regulations for Regulatory Floodplains in Colorado (Rules)

2 CCR 408-1

Statement of Basis and Purpose

This Statement of Basis and Purpose has been prepared to elaborate upon and clarify the 2021 revisions to these Rules, which incorporate by reference updated external documents in order to remain consistent with current Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) mapping standards and technical references and guidance. In addition, based on years of interaction and stakeholder input, some Rule provisions have been modified to provide desired clarification. Removal of outdated terminology and terms not used in the Rules, as well as small clerical changes are included in the revisions

These Rules are promulgated pursuant to the authority granted the Colorado Water Conservation Board (Board or CWCB) in sections, 24-65.1-101(1)(c), 24-65.1-202(2)(a), 24-65.1-302(2)(a), 24-65.1-403(3), 37-60-106(1), 37-60-106(1)(c)–(g), (j), (k), and 37-60-108, C.R.S..

The Rules provide technical standards for floodplain designation and approval by the State and also provide required State higher standards above minimum requirements in the NFIP for floodplain regulation.

In general, the purpose of these Rules is to provide uniform standards for regulatory floodplains in Colorado, to provide standards for activities that may impact regulatory floodplains in Colorado, and to define the process by which floodplains will be designated and approved by the Board. These Rules will also assist the CWCB and Colorado communities in developing sound floodplain management practices and in assisting with the implementation of the NFIP. Further, the Rules set forth the process and procedures for the CWCB to designate and approve regulatory floodplains. The 100-Year-Floodplain is generally the Regulatory Floodplain in Colorado and shall continue to be the basis for designation and approval by the Board, although communities may continue to choose to regulate to the 500-Year Floodplain for some conditions. If a community chooses to regulate to the 500-Year-Floodplain, the 500-Year-Floodplain information will also be designated and approved by the Board. These Rules apply throughout the State of Colorado, without regard to whether a community participates in the NFIP.

In this 2021 permanent rulemaking, there are no substantive changes to the following existing Rules, but rather these Rules have been updated to use defined terms and refer to references incorporated into the Rules, appropriately:

<u>RULE 1</u>	TITLE
<u>RULE 2</u>	AUTHORITY
<u>RULE 3</u>	PURPOSE AND SCOPE
<u>RULE 6</u>	CRITICAL FACILITIES
<u>RULE 13</u>	PROCESS FOR DESIGNATION AND APPROVAL OF REGULATORY FLOODPLAINS
<u>RULE 15</u>	VARIANCES
<u>RULE 16</u>	ENFORCEMENT OF FLOODPLAIN RULES AND REGULATIONS

RULE 18 SEVERABILITY
RULE 19 RECOMMENDED ACTIVITIES FOR REGULATORY FLOODPLAINS

The following Rules have been revised in accordance with FEMA NFIP requirements, policies, and standards, in addition to established CWCB practices and procedures:

Rule 4. Definitions

Terms have been added to provide clarity to the Rules, some existing definitions have been refined, and outdated terminology or terms not used in the Rules have been removed.

Rule 5. State Regulatory Floodplain

This clarifies that the Regulatory Floodplain in Colorado is the 100-Year-Floodplain, and provides for a community to choose to regulate to the 500-Year-Floodplain. It clarifies that CWCB automatically designates available 500-Year-Floodplain information.

Rule 7. Standards for Delineation of Regulatory Floodplain Information

Revisions include external reference updates, removal of Floodplain report requirements (redundant, since covered in external references), stipulates digital format for reports submitted to CWCB, and minor clerical and grammatical revisions for additional clarification. Specifically, Rule 7.J. has been revised to remove subparagraph (1) through (4) because these items are redundant requirements that appear in controlling FEMA Regulations and guidance which are already incorporated by reference in Rule 17. Removing this passage, which does not add any additional clarity to the rule set, will simplify the Rules. This removal does not affect the Rules because it already exists in documents incorporated by reference.

Rule 8. Standards for Regulatory Floodways

Revisions include external reference updates, clarification that Floodway regulations still apply to Model-Backed Approximate Flood Elevations (Zone A), but not to Zone A without supporting documentation, and minor clerical and grammatical revisions for additional clarification.

Rule 9. Criteria for Determining the Effects of Flood Control Structures on Regulatory Floodplains

Revisions to Rule 9.B. are the result of a question raised during the rulemaking process and aim to clarify that ultimate responsibility lies with the regulatory Community for maintenance of flood control structures that a Community wants credit for when establishing or revising Regulatory Floodplains. This is consistent with FEMA requirements.

Rule 10. Criteria for Determining Effects of Levees on Regulatory Floodplains

Revisions include external reference updates, removes redundant levee requirements that are stipulated in the external references, and minor clerical and grammatical revisions for additional clarification. Revisions to Rule 10.C. (formerly 10.B.) aim to clarify that ultimate responsibility lies with the affected Community for maintenance of levees that a Community wants credit for when establishing or revising Regulatory Floodplains. This is consistent with FEMA requirements. Further, Rule 10.D. through 10.F. have been revised regarding levee requirements, which requirements are consolidated and described in greater detail in updated FEMA guidance, incorporated by reference in Rule 17. Removing this passage, which does not add any additional clarity to the rule set, will simplify the Rules. This removal does not affect the Rules because it already exists in documents incorporated by reference.

Rule 11. Floodplain Management Regulations

Revisions include external reference updates, clarification for regulations associated with non-residential structure to be in conformance with FEMA, and minor clerical and grammatical revisions for additional clarification.

Rule 12. Effects of Flood Mitigation Measures and Stream Alteration Activities on Regulatory Floodplains

Revisions to 12.D clarifies maintenance requirements for dams and levees that are detailed in the external references. Those under 12.H. (formerly Rule 12.J.) further explain the State's position of when it will actively enforce the requirement for a Community to provide a Letter of Map Revision (LOMR). While stream alteration activities may or may not impact the base flood elevation, a 0.30-foot increase or decrease is considered to be a measurable and significant change to warrant revising Community flood hazard information for Floodplain regulation. The update also stipulates that the State's position does not circumvent other (i.e., FEMA or local) requirements for maintenance of flood hazard mapping or additional regulation. Following extensive stakeholder conversations with community regulators and FEMA, the CWCB determined to further revise Rule 12.H. to align with current FEMA guidance and requirements when evidence of an increase or decrease, as further defined in the rule, is available (i.e., modeling results), which differs from the previous position shared with the CWCB, which required modeling for changes to all areas within regulatory floodplains. Previously, CWCB required a LOMR when a Community was aware of or suspected a BFE change, whether modeled or documented by another method. Current FEMA interpretation does not require modeling outside of the Floodway of reaches for which a regulatory Floodway exists, but requires a LOMR when available information shows that changes are known to exist. Revisions also include minor clerical and grammatical revisions for additional clarification.

Rule 14. Designation and Approval of Changes to Regulatory Floodplains

Clarification of conditions when undesignated information to a previously designated stream reach may be used, and minor clerical and grammatical revisions for additional clarification.

Rule 17. Incorporation by Reference

Revisions include placement of all external documents to be incorporated by reference throughout the Rules document be listed in Rule 17 for easy reference (previously these external documents were listed throughout the Rules document). Minor clerical and grammatical revisions have been included for additional clarification.

Rule 20. Effective Date

Includes the effective date for these rule revisions, which will follow the completion of the rulemaking process in January 2022, and minor clerical and grammatical revisions have been included for additional clarification. The reference to community ordinance updates (required for the 2010 update) has been removed, since the 2021 update will not require local ordinance updates.