**Section 3708.80 Changes to the Regulatory Floodway**

a) The 100-year frequency flood profile and regulatory floodway shall not be changed by the Department unless one of the following has occurred:

1) The original regulatory floodway delineation is shown by the applicant's engineer to be in error based upon a review of physical data or the mathematical model;

2) There are changed conditions such as changes in land use or modifications to the ground elevations which require modification of the original regulatory floodway computations;

3) A public flood control project has been constructed and is operable; or

4) The unit of local government exercising zoning control over an area within its corporate limits proposes or concurs in the proposal that the floodway storage or conveyance be relocated to facilitate development and a unit of local government will either:

A) Assume responsibility to operate and maintain any modifications or improvements made to relocate the floodway; or

B) Have the right and will agree, upon default of the party primarily responsible for such operation and maintenance, to undertake such operation and maintenance.

b) Any person contesting the correctness of the delineation shall be given an opportunity to submit his or her own technical evidence of error or changed conditions. The Department will review the technical evidence to determine the correctness of the delineation.

c) Effective regulatory floodway conveyance or storage can be relocated by moving the regulatory floodway delineation onto the existing flood fringe property if the following criteria are met:

1) It must be shown through engineering calculations that the new regulatory floodway storage or conveyance gained effectively compensates for lost regulatory floodway storage or conveyance;

2) If the affected property is other than the applicant's or is subdivided or proposed to be subdivided, convenants shall be obtained and recorded on the affected properties to assure that they are maintained with the existing and future owner's agreement as regulatory floodway storage or conveyance areas;

3) The regulatory floodway map is revised to include the new area as regulatory floodway; and

4) A notice of such regulatory floodway map change is recorded with the affected parcel in the county recorder's office.

d) After receipt of conditional approval of the regulatory floodway change and issuance of a permit, construction as necessary to change the regulatory floodway designation may proceed but no buildings or structures or other construction that is not an appropriate use may be placed in that area until the regulatory floodway map is changed. The regulatory floodway map will be revised upon acceptance by the Department and FEMA of the "as-built" plans.

e) The Department may require deed restrictions, performance bonds or sureties, as-built certification or maintenance guarantees to assure projects are built according to permitted plans.

f) All field surveys as required by this Part shall be conducted under the supervision of a registered professional engineer or registered land surveyor, and shall be so sealed. All required engineering analyses shall be conducted under the supervision of a registered professional engineer or in the case of a federal project, by the federal agency and shall be so sealed or stated.

(Source: Amended at 13 Ill. Reg. 8667, effective May 23, 1989)