



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Natural Resources

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Division of Water Resources – 2022 Package, Dam Safety Program rules

Rule Number(s): 1501:21-1-01, 1501:21-1-02, 1501:21-1-03, 1501:21-1-04, 1501:21-3-01, 1501:21-3-02, 1501:21-5-01, 1501:21-5-02, 1501:21-5-03, 1501:21-5-04, 1501:21-5-05, 1501:21-5-06, 1501:21-5-07, 1501:21-7-01, 1501:21-7-02, 1501:21-7-03, 1501:21-9-01, 1501:21-11-01, 1501:21-11-02, 1501:21-11-03, 1501:21-11-05, 1501:21-13-01, 1501:21-13-02, 1501:21-13-03, 1501:21-13-04, 1501:21-13-05, 1501:21-13-06, 1501:21-13-07, 1501:21-13-08, 1501:21-13-09, 1501:21-13-10, 1501:21-13-11, 1501:21-13-12, 1501:21-13-13, 1501:21-13-14, 1501:21-15-01, 1501:21-15-02, 1501:21-15-04, 1501:21-15-05, 1501:21-15-06, 1501:21-15-07, 1501:21-17-01, 1501:21-17-02, 1501:21-17-03, 1501:21-17-04, 1501:21-19-01, 1501:21-19-02, 1501:21-21-01, 1501:21-21-02, 1501:21-21-03, 1501:21-21-04, 1501:21-21-05, 1501:21-22-01, 1501:21-22-02, 1501:21-22-03, 1501:21-23-01, 1501:21-24-01, 1501:21-24-02.

Date of Submission for CSI Review: December 15, 2022

Public Comment Period End Date: January 5, 2023

Rule Type/Number of Rules:

New/___ rules

No Change/_40_ rules (FYR? Yes)

Amended/_18_ rules (FYR? Yes)

Rescinded/___ rules (FYR? ___)

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The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☒ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

The Division of Water Resources (DWR) is submitting fifty-eight rules that regulate dam safety to the Common Sense Initiative pursuant to Ohio Revised Code (ORC) section 107.52. DWR proposes to continue forty of these rules with no changes and amend eighteen rules as follows:

- Seventeen rules are revised to comply with the ORC 121.951 to reduce regulatory restrictions. One of these rules is also revised to correct a spelling mistake.
- One rule is revised to increase the annual fee for the first time since 2018.

All fifty-eight rules have been reviewed by DWR pursuant to section 106.03; thus, the JCARR filing will indicate that they have undergone their five-year-review. The following is a list of the rules, their key provisions, and the significant changes proposed for them. (Note: the attachment to this BIA contains all the rules as they will be submitted to JCARR. Each of the eighteen rules

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with proposed amendments is accompanied by a summary containing a complete list of every change proposed for the rule. The rules that will be continued with no changes are included at the end of the attachment.)

- **1501:21-1-01 Notice of public hearing to adopt, amend, or rescind rules.** This rule contains the requirements for public notice of hearings to adopt, amend, or rescind rules related to dam safety. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-5-02 Preliminary design report.** This rule outlines what items must be submitted in the preliminary design report as the first step in obtaining a construction permit to build a new dam or levee. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-5-03 The final design submittal.** This rule outlines what items must be submitted in the final design submittal to obtain a construction permit to build a new dam or levee. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions and to correcting the spelling of the word “chief”.
- **1501:21-5-06 The specifications.** This rule outlines what must be included in the specifications that are submitted with the final design submittal. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-7-02 Release of the surety bond.** This rule outlines when the surety bond for construction permits to build a new dam or levee will be released. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-7-03 Forfeiture of the surety bond.** This rule outlines the circumstances when the surety bond for construction permits to build a new dam or levee maybe forfeited. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-13-01 Classification of dams.** This rule contains the requirements for determining the classification of dams. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-13-09 Classification of levees.** This rule contains the requirements for determining the classification of levees. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-17-03 Approval of construction by the chief.** This rule outlines the process for the Chief to approve construction for a new dam or levee. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.

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- **1501:21-17-04 Final inspection and approval by the chief.** This rule outlines the process for the Chief to perform a final inspection and approval for a new dam or levee. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-19-02 Inspection exemptions for dams.** This rule specifies the inspection exemption requirements of a dam and procedures that a dam owner must perform to be considered for an inspection exemption under Section 1521.064 of the Revised Code. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-21-01 Periodic inspection of existing dams and levees.** This rule specifies the requirements for conducting periodic inspections for existing dams and levees. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-21-02 Periodic inspection procedures.** This rule specifies the procedures for performing periodic inspections for existing dams and levees including the items that must be evaluated and what must be included in the final report. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-21-03 Owner's responsibilities in correcting deficient dams and levees.** This rule discusses the owner's responsibilities to perform repairs, maintenance, investigations or other remedial measures to their dam or levee, so it does not constitute a hazard to life, health, or property. The proposed change simplifies the EAP update requirements. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-21-05 Removal or correction of unsafe dams, and levees.** This rule specifies the procedures for the Division of Water Resources to remove an unsafe dam or levee if the owner fails to perform repairs within the required time period. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-22-03 Approval of construction by the chief.** This rule outlines the process for the Chief to approve construction for repairs to an existing dam or levee. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-23-01 Orders of the chief.** This rule outlines the process for the Chief to issue Orders. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-24-01 The annual fee.** This rule provides the schedule for the annual fee for Class I, II, and III dams. The proposed changes increase the annual fee. The annual fee has not been increased since 2018.

Rules in Division 1501:21 proposed to be continued with no changes:

- 1501:21-1-02 Authority for rules.
- 1501:21-1-03 Applicability of the construction permit requirements for dams and levees.
- 1501:21-1-04 Severability.
- 1501:21-3-01 Definitions.
- 1501:21-3-02 Registered professional engineer requirement.
- 1501:21-5-01 Application procedures, general.
- 1501:21-5-04 The final design report.
- 1501:21-5-05 The plans.
- 1501:21-5-07 The filing fee.
- 1501:21-7-01 The surety bond.
- 1501:21-9-01 The construction permit.
- 1501:21-11-01 Investigations, general requirements.
- 1501:21-11-02 Foundation investigation.
- 1501:21-11-03 On-site construction materials.
- 1501:21-11-05 Hydrologic and hydraulic investigations.
- 1501:21-13-02 Design flood for dams and determination of critical flood.
- 1501:21-13-03 Spillway design, general requirements.
- 1501:21-13-04 Pipe conduit spillways, general requirements.
- 1501:21-13-05 Pipe conduit spillways, special requirements.
- 1501:21-13-06 Requirements for drains and other pipe conduits.
- 1501:21-13-07 Freeboard requirements for dams.
- 1501:21-13-08 Additional design requirements for dams.
- 1501:21-13-10 Levees, general requirements.
- 1501:21-13-11 Levees, special requirements.
- 1501:21-13-12 Design flood for levees.
- 1501:21-13-13 Freeboard requirements for levees.
- 1501:21-13-14 Additional design requirements for levees.
- 1501:21-15-01 Construction Requirements.
- 1501:21-15-02 Approval of changes in design, plans, or specifications.
- 1501:21-15-04 As-built plans.
- 1501:21-15-05 Engineer's certification.
- 1501:21-15-06 Operation, maintenance, and inspection manual.
- 1501:21-15-07 Emergency action plan.
- 1501:21-17-01 Inspection procedure.
- 1501:21-17-02 Notice, order, and revocation for noncompliance.
- 1501:21-19-01 Permit exemptions.
- 1501:21-21-04 Owner's responsibilities in the operation, maintenance, and inspection of dams and levees.
- 1501:21-22-01 Inspection procedure.
- 1501:21-22-02 Notice, order, and revocation for noncompliance.
- 1501:21-24-02 Compliant Dam Discount.

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These rules establish the process on how to obtain a dam or levee construction permit and how dams and levees will be classified and regulated to be safe from dam or levee failure.

- 3. Please list the Ohio statute(s) that authorize the agency, board, or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

ORC 1521.06, 1521.061, 1521.062, 1521.063, 1521.064, 1521.07, 1521.40 and 1521.99

- 4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

If yes, please briefly explain the source and substance of the federal requirement.

No

- 5. If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not applicable

- 6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The public purpose of OAC Division 1501:21 is to ensure that human life, health, and property are protected from dam failures. Conducting periodic safety inspections, issuing construction permits, and working with dam owners to maintain and improve the overall condition of Ohio dams are vital aspects of achieving this purpose.

- 7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

DWR will measure the success of the Dam Safety Program rules by improved safety of dams by maintaining the current level of periodic inspection, reviewing plans and specifications for repair of existing dams and levees and construction of new dams and levees, observing the construction process, proceeding with enforcement action against dam owners that refuse to comply with the dam safety laws, and providing emergency response.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No

Development of the Regulation

- 9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

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If applicable, please include the date and medium by which the stakeholders were initially contacted.

The following stakeholders comprise a list of dam owners, emergency responders, and other organizations that have an interest in Ohio dam safety. A letter was sent to each stakeholder giving them access to the proposed rules changes through our website or upon request and asking that they submit comments to the Division.

- Conservancy Districts:
 - Miami CD
 - Muskingum Watershed CD
 - Chippewa CD
 - Hunters Run CD
 - Rush Creek CD
 - Hocking CD
- Municipalities that own:
 - Waste water treatment lagoons
 - Upground water supply reservoirs
 - Flood control dams
- Private water companies that own reservoirs such as:
 - Del-Co Water Company
 - Aqua Ohio
- Power Generators with waste storage ponds, etc. such as:
 - AEP
 - Dayton Power and Light
 - Duke Energy
 - Dynegy
 - GenOn Power Midwest
- Homeowner associations
- Private dam owners
- ODNR Dam-Ownning Divisions (Parks, Wildlife, Forestry)
- Ohio Lake Communities Association
- County and local park districts
- Civil and Environmental Engineering consultants
- Ohio Dam Safety Organization
- Association of State Dam Safety Officials
- American Society of Civil Engineers – Columbus Chapter
- Ohio Society of Professional Engineers
- 88 County Emergency Management Agencies
- Ohio Farm Bureau

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10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

We have not received input from any stakeholders.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

The rules in this package are administrative in nature; however, they do follow accepted national dam safety standards used by the Corps of Engineers, FEMA, and other state dam safety programs.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?
Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.

The dam safety regulations do provide flexibility for the dam owner in determining alternative methods, designs, and options to bring regulated dams and levees into compliance. Dams and levees can be modified to remove or eliminate some or all of the design and regulatory requirements. However, specific design requirements for dams and levees are critical to preventing dam and levee failures and, therefore, the protection of the asset and human life, health and property located downstream.

13. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

Under Chapter 1521 of the Revised Code, the Chief of the Division of Water Resources is charged with administering dam safety laws in Ohio. A review of existing ODNR rules was completed, and no duplication was found.

14. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The Dam Safety Program's construction permitting and inspection processes ensure that any new requirements are applied consistently across Ohio. The dam safety program staff perform periodic safety inspections of all regulated dams once every five years and provides a report that includes the required remedial measures the dam owner must perform to improve the safety of their dam. Senior dam safety staff and managers assist in the review of each regulated dam and levee project to ensure regulations and requirements are applied consistently and predictably. Many design requirements are specifically listed in Administrative Code.

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Every year the annual fee is sent out in the month of May which provides ample opportunity for dam owners to submit payment by June 30th.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

Businesses that own regulated dams will be impacted, but of the 1376 dams that are currently regulated by the DWR, only about 7% are owned by the business community.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a representative business. Please include the source for your information/estimated impact.

The adverse impact of the proposed rule changes will include increasing the annual fee for currently regulated dams. The annual fee is calculated using a formula of the Class specific base rate, height of dam, length of dam and total storage volume impounded by the dam. The proposed increase in the annual fee includes increasing the base rate for Class I dams from three hundred dollars to three hundred and thirty dollars and for Class II and III dams from ninety dollars to one hundred and ten dollars. This fee increase constitutes an increase of 5%.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

No

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The proposed fee increase is 1% annual increase over the past 5 years (the time since the last fee increase), which is below the Consumer Price Index for the same period. In addition, staffing costs continue to increase for adequate regulation of dams to protect downstream human life, health, and property.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

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There is a Compliant Dam Discount that provides dam owners a 25% discount on the annual fee if the dam is properly maintained and there is an approved and up-to-date emergency action plan.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

These proposed rules do not contain administrative fines or civil penalties for paperwork violations.

20. What resources are available to assist small businesses with compliance of the regulation?

Division of Water Resources staff work with dam and levee owners and their engineers to bring dams and levees into compliance through repairs, modifications, or removal. Once construction plans are approved by the Chief of the DWR, the owner can apply with the Ohio Water Development Authority's Dam Safety Linked Deposit Program to receive a low-interest loan for dam repairs, modifications, or removal.