



# 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: Brian Becker at 614-265-6861

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

Division of Water Resources – 2024 Package, Dam Safety Program Rules

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

Date of Submission for CSI Review: March 1, 2024

Public Comment Period End Date: February 26, 2024

Rule Type/Number of Rules:

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_)

Amended/ 45 rules (FYR? NO)

Rescinded/\_\_\_ rules (FYR? \_\_)

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

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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 forty-five rules that regulate dam safety to the Common Sense Initiative pursuant to Ohio Revised Code (ORC) section 107.52. DWR proposes to amend the rules as follows:

- Forty-five rules are revised to comply with the ORC 121.951 to reduce regulatory restrictions.
- One rule is also revised to remove duplicative regulation with the Ohio Department of Agriculture in response to a Cut Red Tape Ohio Inquiry.
- Three rules are also revised to correct a rule reference or including a needed rule reference.
- One rule is also revised to correct previous revisions to eliminated low-risk Class IV levees and low-risk Class III levees from regulation.

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 forty-five rules with proposed amendments is accompanied by a summary containing a complete list of every change proposed for the rule.)

- **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.
- **1501:21-1-03 Applicability of the construction permit requirements for dams and levees.** This rule explains the requirement for a construction permit to construct a new dam or levee unless the proposed structure is specifically exempted by ORC 1521.06 or OAC 1501:21-19-01. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-1-04 Severability.** This rule explains that invalidation of a rule adopted or amended pursuant to ORC 1521.06 or ORC 1521.064 does not affect the validity of any other rule or portion thereof adopted or amended by the chief. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-3-01 Definitions.** This rule defines terms used throughout OAC 1501:21. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-3-02 Registered professional engineer and surveyor requirement.** This rule defines the term “engineer” and outlines the responsibilities of engineers and surveyors who work on dams and levees in Ohio. The rule also requires that testing services for dam construction be performed by an independent company that is not affiliated or hired by the construction contractor. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-5-01 Application procedures, general.** This rule explains that the application for a construction permit consists of both a preliminary design report and a final design submittal as described in OAC 1501:21-5-02 and OAC 1501:5-06. 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 and corrects a rule reference.
- **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.

- **1501:21-5-04 The final design report.** This rule outlines the elements required to be included in the final design report. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-5-05 The plans.** This rule outlines the minimum requirements for development of construction plans for dam construction. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **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.
- **1501:21-5-07 The filing fee.** This rule provides the schedule for the filing fee associated with obtaining a construction permit for building a new dam or levee. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-7-01 The surety bond.** This rule explains the format for the surety bond and references the basis for calculation of the bond amount. 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.
- **1501:21-9-01 The construction permit.** This rule explains that the construction permit will be used for two years upon approval of the final design submittal. The rule also explains that an extension may be granted at the discretion of the chief and if the permit expires before construction begins that a new final design submittal will be required including a new surety bond and filing fee. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-11-01 Investigations, general requirements.** This rule requires the applicant to complete all investigations prior to submission of the final design report and references the appropriate Administrative Code sections for a description of the elements required in the investigations. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.

- **1501:21-11-02 Foundation investigation.** This rule specifies what testing and analysis must be performed on the dam and levee foundation materials. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-11-03 Construction materials.** This rule specifies what testing and analysis must be performed on the dam or levee construction materials. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-11-05 Hydrologic and hydraulic investigations.** This rule specifies which methodologies for performing hydrologic and hydraulic analyses are acceptable. 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, to correct previous changes to levees, and to remove duplicative regulation with the Ohio Department of Agriculture in response to a Cut Red Tape Ohio Inquiry.
- **1501:21-13-02 Design flood for dams and determination of critical flood.** This rule specifies the minimum design flood for each class of dam and how the selection of the critical flood is determined. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-13-04 Pipe conduit spillways, general requirements.** This rule describes minimum requirements for design of pipe conduit spillways and the requirement for an emergency overflow spillway except when exempted by the chief. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-13-05 Pipe conduit spillways, special requirements.** This rule specifies the material requirements that a pipe must have to safely function as a spillway for a dam. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-13-06 Requirements for drains and other pipe conduits.** This rule specifies the requirements for lake drain pipes and other conduits through dams. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-13-07 Freeboard requirements for dams.** This rule outlines freeboard requirements for upground reservoirs. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.

- **1501:21-13-08 Additional design requirements for dams.** This rule outlines additional miscellaneous design requirements for 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.
- **1501:21-13-13 Freeboard requirements for levees.** This rule specifies the required freeboard or the elevation from the top of levee to the maximum elevation of the water during passage of the design flood. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-13-14 Additional design requirements for levees.** This rule provides additional design requirements for levees such as factors of safety, design references, and the use of inspection devices. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-15-02 Approval of changes in design, plans, or specifications.** This rule requires that any proposed changes in the approved design, plans or specifications be approved by the chief and recorded on the as-built plans. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-15-06 Operation, maintenance, and inspection manual.** This rule specifies the required items that must be included in an operation, maintenance and inspection manual for dams and levees. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-15-07 Emergency action plan.** This rule specifies the required items that must be included in an emergency action plan for dams and levees. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-17-02 Notice, order, and revocation for noncompliance.** This rule explains that if the chief finds that the work is not being performed in accordance with the approved plans, specifications, and changes, that notice may be served to the owner or owner's representative. The rule continues that the chief may order immediate compliance or may order that the permit be revoked due to noncompliance. 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.

- **1501:21-19-01 Permit exemptions for dams and levees.** This rule specifies which classes of dams and levees are exempt from the construction permit requirements of Sections 1521.06 and 1521.061 of the Revised Code. 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 and including a needed rule reference.
- **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 including a needed rule reference.
- **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 changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-21-04 Owner's responsibilities in the operation, maintenance, and inspection of dams and levees.** This rule discusses the owner's responsibilities to operate and use the dam and levee so it does not constitute a hazard to life, health, or property which includes having a written operation, maintenance and inspection manual (OMI) and emergency action plan (EAP). The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.
- **1501:21-22-02 Notice, order, and revocation for noncompliance.** This rule explains that if the chief finds that the work is not being performed in accordance with the approved plans, specifications, and changes, that notice may be served to the owner or owner's representative. The rule continues that the chief may order immediate compliance or may order that the permit be revoked due to noncompliance. 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.
- **1501:21-24-02 Compliant dam discount.** This rule outlines the process for dam owners to receive a discount on the annual fee for properly maintaining their dam and having an approved emergency action plan. The proposed changes relate to complying with the ORC 121.951 to reduce regulatory restrictions.

These rules establish the process on how to obtain a dam or levee construction permit and how dam 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.**

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

The following stakeholders comprise a list of dam owners 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 that own dams
- Private dam owners
- ODNR Dam-Ownning Divisions (Parks, Wildlife, Forestry)
- County and local park districts that own dams
- Ohio Department of Agriculture

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

We received approximately 20 phone calls from stakeholders who received the letter that was sent to inform them of the proposed rule changes. The purpose for the calls was primarily to request hard copies of the proposed rule changes and to ask for a summary of the changes. We have not received any input from any stakeholders regarding the proposed rule changes.

**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 a duplication was found on a very small subset of dams with no downstream hazard that receive dual regulation with the Ohio Department of Agriculture. The proposed rule changes will remove these structures from the jurisdiction of the Division of Water Resources except in cases where failure of the structures could have an adverse impact on public safety.

**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.

### **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 proposed rule changes will not increase fees and will exempt a very small subset of dams with no downstream hazard that receive dual regulation with the Ohio Department of Agriculture.

**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*).**

A sum total of 126 regulatory restrictions have been removed from the rules in order to comply with the ORC 121.951 to reduce regulatory restrictions.

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

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.

### **Regulatory Flexibility**

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

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.