

Regulatory Analysis

1. Who are the classes of persons who will probably be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule? **The majority of the proposed rule is tied to department naming conventions to be commensurate with the structural department changes brought forward through House Bill 1353 of the 67th legislative assembly.**

For the sections of the proposed rules modifying the definitions of dam hazard classifications, those seeking to modify an existing dam or construct a new dam may experience a cost impact from the proposed rule. The costs may be higher or lower, depending on individual circumstances. The classes of persons who will most benefit from the proposed rule will be the general public.

The proposed change to N.D.A.C. § 89-03-01-13.1 will only impact water permit holders who do not timely report annual water use data as required by the permit terms.

2. What is the probable impact, including economic impact, of the proposed rule? **There is not anticipated to be an economic impact associated with the proposed rule. Aside from House Bill 1353 renaming changes, the proposed changes to dam hazard classifications, on their own, will have negligible**

economic impacts, as the changes are merely definition-based and not associated with any mandated infrastructure investment. The most predominate impact will be dam resource management implications at a local level when local dam owners consider permissible dam modification actions. The proposed change to N.D.A.C. § 89-03-01-13.1 will only impact water permit holders who do not timely report annual water use data as required by the permit terms.

3. What is the probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues? **There are no anticipated costs to the department due to the implementation and enforcement of the proposed rule. The department, through North Dakota legislative appropriations, currently supports a dam safety program that collaborates and engages with the dam-owner community. While the proposed definitions for dam hazard classification are proposed to be modified, the department cost to collaborate and engage will remain the same. The proposed change to N.D.A.C. § 89-03-01-13.1 may minimally increase state revenues, as there will only be one level of late fee for water permit holders who do not timely report annual water use data as required by the permit terms.**
4. What were the alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency/board and why was each method rejected in favor of the proposed rule? **For the majority of the proposed rules seeking to adhere to the legislative intent and direction of House Bill 1353, no alternatives existed to address the leadership and naming convention**

changes instituted in North Dakota Century Code. For the proposed dam hazard classification definitions, due to the explicit nature of the wording of the current definitions for dam hazard classification, no alternative methods existed to course-correct the state to a path commensurate with the national state of the dam safety practice on how loss of human life is considered in the classification of dams. Adopting the proposed dam hazard classification definitions would enable North Dakota to join the majority of states in this consideration.

5. Please explain the information and data assessment as well as how the amounts of impact were determined, to the extent practicable. **For the majority of the proposed rule that addresses the leadership and reorganization of the agencies formerly known as the Office of the State Engineer and State Water Commission as articulated in House Bill 1353 of the 67th legislative assembly, comprehensive data-gathering and assessment were unnecessary to determine that a state agency naming and leadership change would lead to negligible regulatory impacts. The understanding that the proposed definition changes of dam hazard classifications will result in negligible regulatory impacts is based on how the state dam safety program is administered. Preliminary data assessment indicated that the proposed definition changes may cause some existing dams to move to a higher classification, while other existing dams may move to a lower classification. Impacts of final classification changes will not be realized until a permissible action comes before the Department. Data assessment was unnecessary to identify and articulate potential Regulatory impacts for the proposed rule**

definitions for dam hazard classification. Dam hazard classifications merely organize dams within the state into separate categories (also called classifications) based on how the failure of the dams could cause loss of human life, disrupt or otherwise damage critical infrastructure, or have other locally-focused impacts. The dam safety program then uses these organized categories to prioritize resources and guidance to enhance the management of water resources for the benefit of public safety.

Regarding the proposed change to N.D.A.C. § 89-03-01-13.1, the Department looked at data regarding the number of late and non-reporting water use data forms over the past several years.