

## Takings Assessment

1. Assess the likelihood that the proposed rule may result in a taking or regulatory taking. **It is unlikely that the proposed rule changes will result in a taking or regulatory taking by the State. It is possible that changes made to the definitions in N.D.A.C. § 89-08-01-01 for dam hazard classification may implicate local zoning laws, which theoretically could result in a takings claim against a county or township if its zoning laws prohibit downstream development based on dam classification. The State has no way of assessing this risk without input from local zoning authorities. Consistent with its Hazard Classification and Legacy Dam Policy, the Department will not require compliance activities for dams where the hazard classification increases as a result of the definition changes until a permissible action comes before the Department.**
2. Clearly and specifically identify the purpose of the proposed rule. **The majority of the proposed rule changes are to update language to reflect the new structure of the department, with the director as the agency head rather than the state engineer, as enacted during the 2021 legislative session through House Bill 1353. In addition, proposed changes in N.D.A.C. ch. 89-08-01 reflect changes to the definitions used for dam hazard classification in order for North Dakota to join the majority of states in advancing the national state of the dam safety practice.**

3. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners. **The proposed rule changes are necessary due to the department's restructuring and to use appropriate naming references throughout administrative code. Additionally, the proposed changes to the definitions of dam hazard classification are necessary to establish appropriate dam design, management, and oversight policies that reflect nationally recognized dam and public safety practices. These policies will not reduce private property owners' best use of their properties, but instead lay the foundation for clear department policy on how to do so without endangering the public.**
4. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking. **Unless a municipality's zoning ordinance is directly tied to dam hazard classification, there should not be a potential cost because there should not be a potential taking.**
5. Identify the source of payment within the agency's budget for any compensation that may be ordered. **Local municipality with zoning authority.**
6. Certify that the benefits of the proposed rule exceed the estimated compensation costs. **The benefits of the proposed rule exceed the estimated compensation costs.**