**74:02:08:02.  Scope.** This chapter applies to all new dams and all existing Category 1 dams and Category 2 dams. Category 2 dams constructed before October 27, 1986, that have highways across the crest or that have highways, railroads, or bridges below the dams are exempt from spillway requirements unless a dam fails and is to be rebuilt and provided that an emergency plan is established by the owner to monitor the dam and procedures are established to close the crest highways or downstream highways, railroads, and bridges during flood conditions. Other category 2 dams constructed before October 27, 1986, are exempt from spillway requirements, except for dams that serve as the sole source of water for a water distribution system or whose failure may cause extensive downstream damage, unless a dam fails and is to be rebuilt and provided that the spillway capacities comply with spillway requirements for category 3 dams. Category 3 dams constructed before October 27, 1986, are exempt from spillway requirements unless a dam fails and is to be rebuilt. Reconstruction of category 2 and 3 dams that fail must comply with the requirements of § 74:02:08:07. New dams are dams constructed after October 26, 1986.

 If the classification of a category 3 dam changes to a category 2 or 1 dam or if a category 2 dam changes to a category 1 dam, the spillway capacity must comply with the spillway requirements for the new category classification.

 **Source:** 13 SDR 49, effective October 27, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 13 SDR 197, effective July 2, 1987; 14 SDR 67, effective November 8, 1987.

 **General Authority:** SDCL 46-2-5, 46-7-3.

 **Law Implemented:** SDCL 46-5-8, 46-5-30, 46-7-3, 46-7-5.

 **Note:** The owner of a dam may be responsible for resultant damage if a dam fails. Although § 74:02:08:02 exempts category 3 and certain category 2 dams constructed before October 27, 1986, from the spillway requirements of § 74:02:08:07, the owner should make an assessment of the risks and potential for damage in the event of dam failure.