

**PROPOSED RULE**

**69-05.2-12-04. Performance bond - Collateral bond.** The guarantor of a collateral bond may be the permit applicant or a qualified third party.

1. Collateral bonds are subject to the following conditions:
  - a. All collateral must be kept in the commission's custody until authorized for release or replacement.
  - b. Collateral must be valued at market value.
  - c. Certificates of deposit must be assigned to the state, in writing, and upon the books of the issuer.
  - d. Except for certificates issued by the Bank of North Dakota, the commission will not accept an individual certificate in excess of one hundred thousand dollars, or the maximum amount insured by the federal deposit insurance corporation and the federal savings and loan insurance corporation, whichever is greater.
  - e. An issuer shall waive all rights of setoff or lien against the certificate.
  - f. The commission will accept only automatically renewable certificates of deposit.
  - g. The permit applicant shall deposit sufficient collateral to assure the commission will be able to liquidate the certificates prior to maturity, upon forfeiture, for the amount of the bond.
2. A collateral bond pledging a letter of credit may be approved by the commission subject to the following conditions:
  - a. The permit applicant has obtained prior commission approval for the bank issuing the letter of credit.
  - b. The commission may accept a letter of credit which is irrevocable for a term of at least one year if:

- (1) The letter of credit is automatically renewable for additional terms unless the bank gives at least ninety days prior written notice to the commission and the permittee of its intent to terminate the letter of credit at the end of the current term.
  - (2) The commission has the right to draw upon the letter of credit before the end of its term and convert it into a cash collateral bond if the permittee fails to replace the letter of credit with other acceptable bond within thirty days of the bank's notice to terminate the credit.
- c. The letter of credit must be payable to the commission in part or in full upon demand and receipt from the commission of a notice of forfeiture issued in accordance with sections 69-05.2-12-16 and 69-05.2-12-18 or demand for payment under paragraph 2 of subdivision b.
  - d. The commission will not accept letters of credit from a bank for a permittee, on permits held by that permittee, in excess of ten percent of the bank's total equity (stock, surplus capital, and retained earnings) as shown on a balance sheet certified by a certified public accountant or a certified copy of the bank's most recent reports of condition and income that are required by the federal financial institutions examination council. A copy of the bank's most recent balance sheet or reports of condition and income must be provided with the letter of credit and updated balance sheets or reports of condition and income must be submitted annually to the commission within ninety days after the close of the bank's fiscal year.
  - e. A letter of credit is governed by:
    - (1) The laws of the state of North Dakota.
    - (2) The current version of the uniform customs and practices for documentary credits, published by the international chamber of commerce.
  - f. Letters of credit shall provide that the bank, to the extent allowed by state and federal banking regulations, will give prompt notice to the permittee and the commission of notices received or actions filed alleging the insolvency or bankruptcy of the bank or alleging violations of regulatory

requirements that could result in suspension or revocation of the bank's charter or license to do business. In the event of actions which could result in suspension or revocation of the bank's charter or license, the commission has the right to draw upon the letter of credit before the end of its term and convert it into a cash collateral bond if the permittee fails to replace the letter of credit with a substitute bond within thirty days after receipt of such a notice from the commission. If a substitute bond is not filed and the commission is unable to draw on the letter of credit, the commission will suspend the permit and the operator shall cease surface coal mining activities and comply with section 69-05.2-13-11.

3. For a collateral bond the guarantor shall execute an indemnity agreement according to subsections 9 and 10 of section 69-05.2-12-01.
4. Persons with an interest in collateral posted as a bond, who desire notice of actions relating to the bond, shall request the notice in writing to the commission when collateral is offered.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1990; March 1, 2004; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-16