

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Surface Coal Mining and Reclamation Operations
Rulemaking

Case No. RC-21-329

**Statements on Regulatory Analysis, Small Entity Analysis,
and Takings Assessment**

November 5, 2021

The Commission is proposing changes to North Dakota Administrative Code to amend Section 69-05.2-01-02 and to amend Section 69-05.2-12-04.

The proposed rules are not the result of new legislation and are not pursuant to emergency rulemaking.

Regulatory Analysis

N.D.C.C. § 28-32-08 requires an agency to prepare a regulatory analysis if the rule is expected to have an impact on the regulated community in excess of fifty thousand dollars, or if one is requested as provided in the law. The current amendment is anticipated to have an impact in excess of fifty thousand dollars.

The regulatory analysis must contain:

- a. A description of the classes of persons who probably will 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 classes of persons who will probably be affected by the proposed rule are applicants and operators of coal mining required to provide financial assurances for reclamation of coal mines.

- b. A description of the probable impact, including economic impact, of the proposed rule;

A mining operation is required to carry a financial assurance to ensure complete reclamation of the mining site.

The probable impact of the rulemaking will permit a portion of real property owned by a coal mining company to be pledged as a collateral to replace or partially replace a financial instrument such as a bond, cash escrow or letter of credit.

Depending on the mining operation, financial assurances currently range from three hundred thousand dollars to one-hundred eighty-six million within the state of North Dakota. A reasonable expected value for carrying a financial instrument may be ten percent of the total bond.

In the event that the real property collateral bond replaces over five hundred thousand dollars of a financial instrument, it is likely that it will have an impact of fifty thousand dollars annually while the real property collateral bond is in place.

- c. The probable costs to the agency or commission of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and

There are no known additional costs for implementation and enforcement to the public service commission or other state agencies involved in the trust establishment or trust management.

- d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency or commission and the reasons why the methods were rejected in favor of the proposed rule.

There were no other alternative methods for achieving the purpose of the proposed rule.

Takings Assessment

N.D.C.C. § 28-32-09 requires an entity to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property.

The proposed amendments are not anticipated to limit the use of private property.

Small Entity Regulatory Analysis

N.D.C.C. § 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

2. The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:

- a. Establishment of less stringent compliance or reporting requirements for small entities;

- b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
- c. Consolidation or simplification of compliance or reporting requirements for small entities;
- d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
- e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

The Commission considered the listed methods of reducing impacts of the proposed rule on small entities. There are no less stringent schedules, deadlines, reporting requirements, consolidations or simplifications, establishment of performance or operational standards, or exemptions for reducing impacts to small entities. Approval from the Federal Office of Surface and Mining is required for implementation of the proposed rules. Departure from practices acceptable to the federal program may prevent implementation and publication.

Small Entity Economic Impact Statement

No adverse economic impact is expected for small entities, consumers or private persons, or state revenues.

Statement of No Fiscal Impact

The rules have no fiscal effect.