

Hamre, John G.

From: Hamre, John G.
Sent: Thursday, November 18, 2021 8:55 AM
To: 'jessicabell@nd.gov'
Cc: Schuh, John M.; Brinkman, Zanna A.
Subject: ND PSC Notice with proposed Admin. Rules
Attachments: Proposed Rules.pdf; Proposed Rules - Notice.pdf

Senator Bell,

Attached are proposed Administrative Rules and the Notice relating to SB-2317.

Best regards,
John

John G Hamre
Administrative Assistant
North Dakota Public Service Commission
600 E Blvd Ave
Dept 408
Bismarck, ND 58505-0480
701-328-2400

6 RC-21-329 Filed 11/18/2021 Pages: 21
Emails enclosing proposed Rules and Notice to legislative bill sponsors and industry
Public Service Commission

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Surface Coal Mining and Reclamation Operations
Rulemaking

Case No. RC-21-329

**NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES AND
NOTICE OF PUBLIC HEARING**

November 17, 2021

PLEASE TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed 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 amendment is expected to have an impact on the regulated community in excess of \$50,000.

The Proposed rulemaking implements Senate Bill 2317 enacted from the 67th Legislative Session, concerning the establishment of a coal mine reclamation trust for reclamation of coal mines at the direction of the Public Service Commission by utilizing private assets pledged as collateral which may be used to fulfill performance bond obligations.

A public hearing will be held on the proposed rules at **1:30 p.m. Central Time on January 4, 2022, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.** Written comments may be submitted to the Public Service Commission until the close of business on **January 17, 2022.**

The proposed adoption and revisions to the North Dakota Administrative Code are as follows:

Proposed Amendment to Section 69-05.2-01-02 Definitions The purpose of this amendment is to add a perfected lien or security interest in real property to the definition of collateral bond.

Proposed Amendment to Section 69-05.2-12-04 Performance bond - Collateral bond The purpose of this amendment is to provide to provide conditions for acceptance of real property pledged as a collateral bond.

The proposed rules and amendments may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, 600 East Boulevard Ave, Dept. 408, Bismarck, North Dakota. A copy of the proposed rules or amendments and/or a regulatory analysis may be requested by writing the above address, emailing

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Interested persons may attend and submit comments at the hearing. Oral or written comments on the proposed rules may be submitted to the above address, email and phone numbers. Oral and written comments received by the close of business on **January 17, 2022** will be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please notify the Public Service Commission at the above telephone number or address at least 24 hours prior to the public hearing.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Julie Fedorchak
Chairman



Brian Kroshus
Commissioner

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Proposed Rules

69-05.2-01-02. Definitions.

The definitions in North Dakota Century Code section 38-14.1-02 apply to this article and the following terms have the specified meaning except where otherwise indicated:

13. "Collateral bond" means an indemnity agreement in a sum certain payable to the state of North Dakota executed by the permittee and which is supported by the deposit with the commission of cash, negotiable bonds of the United States or of North Dakota, or negotiable certificates of deposit of any bank authorized to do business in North Dakota, or an irrevocable standby letter of credit issued by a federally insured or equivalently protected bank authorized to do business in the United States, payable only to the commission upon presentation, or a perfected lien or security interest in real property.

History: Effective August 1, 1980; amended effective June 1, 1983; April 1, 1985; June 1, 1986; January 1, 1987; May 1, 1990; May 1, 1992; June 1, 1997; May 1, 1999; March 1, 2004, _____.

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

Law Implemented: NDCC 38-14.1-02, 38-14.1-03, 38-14.1-21, 38-14.1-38

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. Alternatively, the bank may provide an excerpt from its most recent report of condition and income as prescribed by the federal financial institutions examination council that is filed with its primary federal regulator. At a minimum, the excerpt must include copies of the attestation page and the balance sheet schedule from the report and a written certification by a bank officer that the copies are true and correct and identify the federal bank regulatory agency and date that the report was filed. A copy of the bank's most recent balance sheet or the excerpt from the report of condition and income must be provided with the letter of credit. In addition, updated balance sheets that are certified by a bank officer as being true and correct 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 laws and 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. Real property pledged as collateral bond must meet the following conditions:
- a. The applicant shall grant the commission a first mortgage, first deed of trust or perfected first-lien security interest in real property with the right to sell or otherwise dispose of the property in the event of forfeiture under section 69-05.2-12-16.
 - b. For the commission to evaluate the adequacy of the real property offered to satisfy the collateral requirements, the applicant shall submit a schedule of the real property to be mortgaged or pledged to secure the obligations under the indemnity agreement. The list must include:
 - (1) A description of the property;
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 - (3) Proof of possession and title to the real property.
 - c. The real property pledged as collateral may include land which is part of a permit area; however, land pledged as collateral for a bond under this section may not be disturbed under any permit while the land is serving as security under this section.
- ~~34.~~ For a collateral bond the guarantor shall execute an indemnity agreement according to subsections 9 and 10 of section 69-05.2-12-01.
- ~~45.~~ 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

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General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

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General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

Hamre, John G.

From: Hamre, John G.
Sent: Thursday, November 18, 2021 8:54 AM
To: Christopher Friez (christopher.friez@nacoal.com); david.straley@nacoal.com; Bohrer, Jason; Sarah Flath (sarah.flath@nacoal.com); Jeremy Eckroth (Jeremy.Eckroth@nacoal.com); Steve Burke (steve.burke@nacoal.com); Jesse Noel (jnoel@westmoreland.com); Jay Volk (jvolk@bnicoal.com); Karene Hall (khall@bnicoal.com); Patrick Ringstad (Patrick.Ringstad@kniferiver.com); Cherie Harms (cherie@leonarditeproducts.com); Melody Smith (melody.smith@mineralstech.com); DtlRequest@nd.gov; -Info-DTL Surface
Cc: Brinkman, Zanna A.; Schuh, John M.
Subject: proposed Administrative Rules from the Public Service Commission
Attachments: Proposed Rules - Notice.pdf; Proposed Rules.pdf

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