



# Public Service Commission

## State of North Dakota

COMMISSIONERS

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*hand delivered*

18 November 2021

Jill Grossman  
Administrative Rules Code Reviser  
North Dakota Legislative Council  
State Capitol  
600 East Boulevard, 2<sup>nd</sup> Floor  
Bismarck, ND 58505-0360

Re: Notice of Intent to Amend Administrative Rules  
PSC Case Numbers RC-21-329

Dear Ms. Grossman:

The Public Service Commission recently passed a motion to propose changes to its administrative rules and issue notices. The rules are a result of legislative change that occurred in the passage of Senate Bill 2317 of the Sixty-seventh Legislative Session. Consequently, enclosed please find copies of:

- Commission Motion to Propose Revisions to the North Dakota Administrative Code and Issue Notices;
- Proposed rule changes that were the subject of the Motion; and
- Notice of Intent to Amend Administrative Rules and Notice of Public Hearing.

If you have any questions, please do not hesitate to contact me.

Best Regards,

John Schuh  
General Counsel

attachments

*Used  
11/18/21  
[Signature]*

**APPROVED**

DATE: 11/17/2021  
PJT

**STATE OF NORTH DAKOTA**

**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Surface Coal Mining and Reclamation Operations  
Rulemaking**

**Case No. RC-21-329**

**MOTION**

**November 17, 2021**

I move the Commission propose to adopt and amend the North Dakota Administrative Code as attached, issue a Notice of Intent to Amend Administrative Rules and Notice of Public Hearing, and issue an abbreviated Notice of Intent to Amend Administrative Rules and Notice of Public Hearing for publication in each official county newspaper throughout the state as required by law, in Public Service Commission, Surface Coal Mining and Reclamation Operations, Rulemaking, PSC Case No. RC-21-329.

Section 69-05.2-01-02      Definitions

Section 69-05.2-12-04      Performance bond - Collateral bond

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission**  
**Surface Coal Mining and Reclamation Operations**  
**Rulemaking**

**RC-21-329**

**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



- (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;
    - (2) The fair market value of the property, as determined by an independent appraisal conducted by a certified appraiser; and
    - (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

when collateral is offered.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1990; March 1, 2004; October 1, 2014, \_\_\_\_\_.

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

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

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 67<sup>th</sup> 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, 12<sup>th</sup> 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 12<sup>th</sup> 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

ndpsc@nd.gov, or calling 701-328-2400, toll free 1-877-245-6685, Relay North Dakota TTY 1-800-366-6888. This information is also available on the Commission's web site at [www.psc.nd.gov](http://www.psc.nd.gov) under "Formal Actions/Case Search".

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**

  
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**Randy Christmann**  
Commissioner

  
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**Julie Fedorchak**  
Chairman

  
\_\_\_\_\_  
**Brian Kroshus**  
Commissioner