



## United States Department of the Interior

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NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

November 3, 2022

Zanna Brinkman  
Director Reclamation & AML Divisions  
ND Public Service Commission  
600 E Blvd. Ave Dept. 408  
Bismarck, ND 58505-0408

RE: OSMRE Informal Review and Findings of North Dakota's Proposed Changes to the North Dakota Century Code (NDCC) Chapter 15-72 in response to Senate Bill No. 2317, and the resulting rule changes to the North Dakota Administrative Code (NDAC) Article 69-05.2 (ND-056-PRE).

Dear Ms. Brinkman:

The Denver Field Division has completed its review of your September 13, 2022, request for informal review of proposed changes to the NDCC Chapter 15-72 in response to Senate Bill No. 2317, and the resulting rule changes to NDAC Article 69-05.2. Your request for informal review has been assigned and will be processed under the State Program Amendment Tracking System (SPATS) # ND-056-PRE. Upon formal submittal of the changes relating to Senate Bill 2317, OSMRE's formal review would then be assigned and processed under ND-056-FOR.

As part of OSMRE's commitment to providing technical assistance to North Dakota pertaining to your request for informal review, we remain available for discussions regarding our findings in a conference call at your convenience.

If you have any questions regarding this letter, our findings, or would like to set up a meeting to discuss, please contact John Sieving at 307-261-6541 or at [jsieving@osmre.gov](mailto:jsieving@osmre.gov).

Sincerely,

JEFFREY  
FLEISCHMAN

Digitally signed by JEFFREY  
FLEISCHMAN  
Date: 2022.11.03 09:27:26 -06'00'

Jeff Fleischman, Chief  
Denver Field Division

## **OSMRE Informal Review Findings – State Program Amendment XLII – ND-056-PRE**

**Please note that North Dakota’s State Program Amendment XLII has not yet been submitted for formal OSMRE review and approval.** In response to State Senate Bill No. 2317, introduced by the Department of Trust Lands, the 67<sup>th</sup> Legislative Assembly initiated changes to NDCC Chapter 15-72 (Coal Mine Reclamation Trust), resulting in changes to NDAC Article 69-05.2 for surface coal mining and reclamation operations. Senate Bill No. 2317 created and enacted Chapter 15.72 of the North Dakota Century Code that establishes a coal mine reclamation trust utilizing private assets pledged as collateral to fulfill the performance bond obligations under NDCC 38-14.1-16 and NDAC 69-05.2-12. This amendment adds a perfected lien or security interest in real property to the definition of collateral bond in NDAC 60-05.2-01-02 and adds the conditions that must be met for real property pledged as collateral bond to NDAC 69-05.2-12-04. This informal review finding document compares proposed State changes to requirements of the current federal program. OSMRE is obligated to review proposed State program amendments against the current federal program.

### **Proposed Changes to the NDAC 69-05.2-01-02**

#### Definitions.

North Dakota proposed language that updates the definition of “collateral bond” to include a perfected lien or security interest in real property. The proposed change to the definition of collateral bond is found under NDAC 69-05.2-01-02. The federal program includes similar language under 30 CFR § 800.5(b)(5), which permits a perfected first-lien security interest in real property in favor of the regulatory authority to be used as a supporting factor for an indemnity agreement executed by the permittee as principal.

#### Conclusions Regarding Proposed Changes to NDAC 69-05.2-01-02

The State’s current definition of collateral bond does not specify “a perfected lien or security interest in real property”, whereas the current federal definition of collateral bond does. This indicates that current State rules may be less effective than the Federal Program. The proposed change updates State rules to better match federal counterpart rules. The proposed changes appear to be consistent with and no less effective than the Federal Program.

### **Proposed Changes to the NDAC 69-05.2-12-04**

#### Performance bond – Collateral bond.

North Dakota proposed language that adds the conditions that must be met for real property to be pledged as collateral bond. The conditions required for real property pledged as collateral bond are added to NDAC 69-05.2-12-04 (3) (a-c). Those conditions include: (a) The applicant shall grant the commission 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 foreclosure. (b) the applicant shall submit a schedule of the real property to be mortgaged or pledged to secure the obligations under the indemnity agreement, with a list to include: a description of the property, the fair market value of the property, as determined by an independent appraisal conducted by a certified appraiser, and proof of possession and title to the real property. (c) The real property to be 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. The conditions added to NDAC 69-05.2-12-04 (3) (a-c) mirror closely the conditions required for real property to be posted as collateral bond described in Federal regulations at 30 CFR § 800.21(c).

#### Conclusions Regarding Proposed Changes to NDAC 69-05.2-12-04 (3) (a-c)

Current State rules do not include the conditions that must be met for real property to be pledged as collateral bond, whereas the current federal rules do. This indicates that current State rules may be less effective than the Federal Program. The proposed change updates State rules to better match federal counterpart rules. The proposed changes appear to be consistent with and no less effective than the Federal Program.