

**NORTH DAKOTA**  
**STATE**  
**PROGRAM**  
**AMENDMENT XLII**

**SUBMITTED BY:**  
**PUBLIC SERVICE COMMISSION**  
**STATE CAPITOL**  
**BISMARCK, NORTH DAKOTA**

**December 9, 2022**

## Table of Contents

### North Dakota State Program Amendment XLII (42)

- A. Letter of Transmittal December 9, 2022
- B. Letter of Transmittal signed November 30, 2022
- C. Narrative
- D. Revised Proposed Rule Changes
- E. Reclamation Law Changes made by Senate Bill 2317
- F. Revised CFR-NDAC side by side comparison
- G. Copy of the Attorney General's Opinion



# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

Julie Fedorchak  
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December 9, 2022

Mr. David Berry  
Western Regional Coordinating Center  
Office of Surface Mining  
PO Box 25065  
One Denver Federal Center  
Lakewood, CO 80225  
[dberry@osmre.gov](mailto:dberry@osmre.gov)

Dear Mr. Berry:

The Public Service Commission submitted State Program Amendment XLII (42) on behalf of the State of North Dakota on November 30, 2022. The amendment package included the originally proposed rule changes and did not include our Attorney General's suggested change to the definition of collateral bond. Please disregard the electronic submittal of State Program Amendment XLII dated November 30<sup>th</sup> and replace it with this electronic version. Please note that the transmittal letter included in the [paper](#) submittal dated November 30, 2022 contained the Commissioners original signatures and the letter should be retained if OSM requires the signed original signatures.

As stated in my email, our Attorney General suggested we add "in favor of the commission" to the end of the collateral bond definition. I have included the revised rule changes and updated the side-by-side comparison of the North Dakota and SMCRA rules.

I apologize for the inconvenience. Please let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Zanna A. Brinkman".

Zanna A. Brinkman  
Director Reclamation Division

cc: Jeff Fleischmann  
John Sieving



# Public Service Commission

## State of North Dakota

### COMMISSIONERS

Julie Fedorchak  
Randy Christmann  
Sheri Haugen-Hoffart

November 30, 2022

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Mr. David Berry  
Western Regional Coordinating Center  
Office of Surface Mining  
PO Box 25065  
One Denver Federal Center  
Lakewood, CO 80225  
[dberry@osmre.gov](mailto:dberry@osmre.gov)

Dear Mr. Berry:

The Public Service Commission is submitting State Program Amendment XLII (42) on behalf of the State of North Dakota in order to modify our approved coal regulatory program. This program amendment is submitted under the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87) and 30 CFR Chapter VII.

The Amendment consists of changes made to North Dakota Century Code (NDCC) Chapter 15-72 (Coal Mine Reclamation Trust) by the 67<sup>th</sup> Legislative Assembly in response to Senate Bill No. 2317 introduced by the Department of Trust Lands, and the resulting rule changes to the North Dakota Administrative Code (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 69-05.2-01-02 and adds the conditions that must be met for real property pledged as a collateral bond to NDAC 69-05.2-12-04.

The amendment contains a narrative, the proposed changes to North Dakota Administrative Code Article 69-05.2, Senate Bill 2317, a side-by-side comparison of the state rules to the counterpart federal rules, and a copy of the Attorney General's opinion on the legality of the rule changes.

Please direct any questions you or your staff may have to the Commission's Reclamation Division.

Sincerely,

  
Randy Christmann  
Commissioner

  
Julie Fedorchak  
Chair

  
Sheri Haugen-Hoffart  
Commissioner

## **Narrative for North Dakota State Program Amendment XLII**

State Program Amendment XLII contains the reclamation law changes that were made by Senate Bill No. 2317 during the 67th Legislative Assembly and rule changes to North Dakota Administrative Code (NDAC) Article 69-5.2 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 69-05.2-01-02 and adds the conditions that must be met for real property pledged as a collateral bond to NDAC 69-05.2-12-04.

Surface mining and reclamation rule changes were proposed by the Public Service Commission in Case No. RC-21-329. The Commission issued the notice of intent to amend administrative rules and the public hearing notice on November 17, 2021. The public hearing for the rule changes was held on January 4, 2022. No one opposed the proposed rule changes and they were later sent to North Dakota's Attorney General for a legal review.

On April 19, 2022, the Commission received the Attorney General's opinion approving the rule changes proposed in Case No. RC-21-329. North Dakota State Program Amendment No. XLII includes the rule changes proposed in Case No. RC-21-329, the law changes made by Senate Bill No. 2317, a side-by-side comparison of the state rules to the counterpart federal rules, and a copy of the Attorney General's opinion on the legality of the rule changes.

**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 perfected, first-lien security interest in real property in favor of the commission.

**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;
    - (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

**Sixty-seventh Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 5, 2021**

SENATE BILL NO. 2317  
(Senator Bell)  
(Representative Porter)

AN ACT to create and enact chapter 15-72 of the North Dakota Century Code, relating to the establishment of a coal mine reclamation trust utilizing private assets; to provide a continuing appropriation; and to provide for a transfer.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** Chapter 15-72 of the North Dakota Century Code is created and enacted as follows:

**15-72-01. Trust establishment.**

The coal mine reclamation trust is established to reclaim coal mines at the direction of the public service commission by utilizing private assets pledged as collateral which may be used to fulfill the performance bond obligations under section 38-14.1-16 and North Dakota Administrative Code chapter 69-05.2-12. The coal mine reclamation trust may be used to fulfill the requirement of a qualified third party and the requirements of a collateral bond.

**15-72-02. Powers and duties of the board - Transfer.**

The board of university and school lands shall set up a coal mine reclamation trust. The coal mine reclamation trust may receive and accept assets as directed by the public service commission which are held in the public service commission's custody under North Dakota Administrative Code section 69-05.2-12-04 as collateral in a security agreement with any person as defined in section 38-14.1-02. The commissioner of university and school lands shall consult with the public service commission in carrying out the powers and duties of administering the coal mine reclamation trust. Any expenses incurred by the board of university and school lands or the public service commission under this section must be reimbursed by the permit applicant or qualified third party.

**15-72-03. Assets and custody.**

1. Any person proposing to pledge assets to the public service commission's custody under North Dakota Administrative Code chapter 69-05.2-12 shall certify to the public service commission:
  - a. The trust will have first priority security interest in the pledged assets in accordance with North Dakota Administrative Code chapter 69-05.2-12.
  - b. The person has authority to place the assets in custody under all applicable federal and state law.
  - c. All other requirements of North Dakota Administrative Code chapter 69-05.2-12 have been satisfied.
2. Real property posted as a collateral bond by the person must:
  - a. Grant the regulatory authority a first mortgage, first deed of trust, or perfected first-lien security interest in the real property with a right to sell or dispose of the real property in the event of forfeiture; and
  - b. Include a schedule, submitted by the applicant, of the real property mortgaged or pledged to secure the obligations under the indemnity agreement. The schedule of the

real property must allow the regulatory authority to evaluate the adequacy of the real property offered to satisfy collateral requirements. The schedule 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.

**15-72-04. Trust management.**

The board of university and school lands must be reimbursed from trust proceeds for all reasonable costs and expenses incurred in the management of trust assets and the investment of trust proceeds. Reimbursements to the board must be deposited in the trust fund account from which the expenses were incurred. The net income derived from the assets held in trust must be used for trust purposes. Any assets placed in the trust may be sold, leased, invested, managed, or otherwise disposed of by the board to fulfill the reclamation activities and obligations related to the performance bond. If any of the trust assets include real property, net income from the trust assets must be used in part to pay to the county where the real property is located the same amount that would have been assessed against the real property for real property taxes if the real property was privately owned. The board may maintain separate accounts in the trust if necessary. The board shall manage all assets in the trust in the same manner that the board manages the board's other trust assets or as otherwise may be required to satisfy the purposes of this chapter.

**15-72-05. Continuing appropriation for trust management.**

There is appropriated annually the amounts necessary to pay expenses for assets held in trust under this chapter and managed by the board of university and school lands, including expenses for survey costs, surface lease refunds, weed and insect control, cleanup costs, capital improvement rent credits, in lieu of tax payments, or other expenses necessary to manage, preserve, and enhance the value of trust assets, as determined by the board. Payments under this section must be made from the trust fund account for which the asset is held. Upon completion of all reclamation activities and obligations, all remaining assets held by the coal mine reclamation trust must be transferred to the common schools trust fund.

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House

  
\_\_\_\_\_  
Secretary of the Senate

  
\_\_\_\_\_  
Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2317.

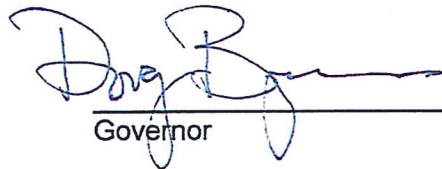
Senate Vote:    Yeas 43                Nays 4                Absent 0

House Vote:    Yeas 90                Nays 2                Absent 2

  
\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at 9:03 AM. on April 9, 2021.

Approved at 6:32 PM. on April 12, 2021.

  
\_\_\_\_\_  
Governor

Filed in this office this 13<sup>th</sup> day of April, 2021,  
at 9:42 o'clock A. M.

  
\_\_\_\_\_  
Secretary of State

NDAC 69-05.2-01-02. Definitions.	CFR § 800.5 Definitions.
<p>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:</p> <p>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 in favor of the commission.</p> <p>*blue highlight is language Attorney General suggested.</p>	<p>(a) <b>Surety bond</b> means an indemnity agreement in a sum certain payable to the regulatory authority, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in the State where the operation is located.</p> <p>(b) <b>Collateral bond</b> means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by the deposit with the regulatory authority of one or more of the following:</p> <ol style="list-style-type: none"> <li>(1) A cash account, which shall be the deposit of cash in one or more federally-insured or equivalently protected accounts, payable only to the regulatory authority upon demand, or the deposit of cash directly with the regulatory authority;</li> <li>(2) Negotiable bonds of the United States, a State, or a municipality, endorsed to the order of, and placed in the possession of, the regulatory authority;</li> <li>(3) Negotiable certificates of deposit, made payable or assigned to the regulatory authority and placed in its possession or held by a federally-insured bank;</li> <li>(4) An irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only to the regulatory authority upon presentation;</li> <li>(5) A perfected, first-lien security interest in real property in favor of the regulatory authority; or</li> <li>(6) Other investment-grade rated securities having a rating of AAA, AA, or A or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of, and placed in the possession of, the regulatory authority.</li> </ol>

	<p>(c) <i>Self-bond</i> means an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor and made payable to the regulatory authority, with or without separate surety.</p>
<p><b>NDAC 69-05.5-12-04 Performance bond - Collateral bond.</b> The guarantor of a collateral bond may be the permit applicant or a qualified third party.</p>	<p><b>CFR 800.21 Collateral Bonds</b></p>
<p>1. Collateral bonds are subject to the following conditions:</p> <ul style="list-style-type: none"> <li>a. All collateral must be kept in the commission's custody until authorized for release or replacement.</li> <li>b. Collateral must be valued at market value.</li> <li>c. Certificates of deposit must be assigned to the state, in writing, and upon the books of the issuer.</li> <li>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.</li> <li>e. An issuer shall waive all rights of setoff or lien against the certificate.</li> <li>f. The commission will accept only automatically renewable certificates of deposit.</li> <li>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.</li> </ul>	<p>(a) Collateral bonds, except for letters of credit, cash accounts, and real property, shall be subject to the following conditions:</p> <ul style="list-style-type: none"> <li>(1) The regulatory authority shall keep custody of collateral deposited by the applicant until authorized for release or replacement as provided in this subchapter.</li> <li>(2) The regulatory authority shall value collateral at its current market value, not at face value.</li> <li>(3) The regulatory authority shall require that certificates of deposit be made payable to or assigned to the regulatory authority, both in writing and upon the records of the bank issuing the certificates. If assigned, the regulatory authority shall require the banks issuing these certificates to waive all rights of setoff or liens against those certificates.</li> <li>(4) The regulatory authority shall not accept an individual certificate of deposit in an amount in excess of \$100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.</li> </ul> <p>(b) Letters of credit shall be subject to the following conditions:</p> <ul style="list-style-type: none"> <li>(1) The letter may be issued only by a bank organized or authorized to do business in the United States;</li> </ul>

<p>2. A collateral bond pledging a letter of credit may be approved by the commission subject to the following conditions:</p> <ul style="list-style-type: none"><li>a. The permit applicant has obtained prior commission approval for the bank issuing the letter of credit.</li><li>b. The commission may accept a letter of credit which is irrevocable for a term of at least one year if:<ul style="list-style-type: none"><li>(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.</li><li>(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.</li></ul></li><li>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.</li><li>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</li></ul>	<ul style="list-style-type: none"><li>(2) Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the regulatory authority if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date.</li><li>(3) The letter of credit shall be payable to the regulatory authority upon demand, in part or in full, upon receipt from the regulatory authority of a notice of forfeiture issued in accordance with <u>§ 800.50</u>.</li></ul>
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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:

(c) Real property posted as a collateral bond shall meet the following conditions:

(1) The applicant shall grant the regulatory authority a first mortgage, first deed of trust, or perfected first-lien security interest in real property with a right to sell or otherwise dispose of the property in the event of forfeiture under § 800.50.

(2) In order for the regulatory authority to evaluate the adequacy of the real property offered to satisfy collateral requirements, the applicant shall submit a schedule of the real property which shall

<p>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.</p> <p>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:</p> <ul style="list-style-type: none"><li>(1) A description of the property;</li><li>(2) The fair market value of the property, as determined by an independent appraisal conducted by a certified appraiser; and</li><li>(3) Proof of possession and title to the real property.</li></ul> <p>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.</p> <p>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.</p> <p>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.</p>	<p>be mortgaged or pledged to secure the obligations under the indemnity agreement. The list shall include -</p> <ul style="list-style-type: none"><li>(i) A description of the property;</li><li>(ii) The fair market value as determined by an independent appraisal conducted by a certified appraiser; and appraiser; and</li><li>(iii) Proof of possession and title to the real property.</li></ul> <p>(3) The property may include land which is part of the permit area; however, land pledged as collateral for a bond under this section shall not be disturbed under any permit while it is serving as security under this section.</p> <p>(d) Cash accounts shall be subject to the following conditions:</p> <ul style="list-style-type: none"><li>(1) The regulatory authority may authorize the operator to supplement the bond through the establishment of a cash account in one or more federally-insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the regulatory authority. The total bond including the cash account shall not be less than the amount required under terms of performance bonds including any adjustments, less amounts released in accordance with § 800.40.</li><li>(2) Any interest paid on a cash account shall be retained in the account and applied to the bond value of the account unless the regulatory authority has approved the payment of interest to the operator.</li><li>(3) Certificates of deposit may be substituted for a cash account with the approval of the regulatory authority.</li><li>(4) The regulatory authority shall not accept an individual cash account in an amount in excess of \$100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance</li></ul>
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	<p>Corporation or the Federal Savings and Loan Insurance Corporation.</p> <p>(e)</p> <p>(1) The estimated bond value of all collateral posted as assurance under this section shall be subject to a margin which is the ratio of bond value to market value, as determined by the regulatory authority. The margin shall reflect legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the regulatory authority to complete reclamation.</p> <p>(2) The bond value of collateral may be evaluated at any time but it shall be evaluated as part of permit renewal and, if necessary, the performance bond amount increased or decreased. In no case shall the bond value of collateral exceed the market value.</p> <p>(f) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the regulatory authority at the time collateral is offered.</p>
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Drew H. Wrigley  
 ATTORNEY GENERAL

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OPINION

NORTH DAKOTA  
 PUBLIC SERVICE COMMISSION

April 19, 2022

Mr. John Schuh, General Counsel  
 Public Service Commission  
 600 E. Boulevard Ave Dept 408  
 Bismarck, ND 58505

Dear Mr. Schuh,

The Office of Attorney General has examined the proposed amendments to N.D.A.C. §§ 69-05.2-01-02 and 69-05.2-12-04 concerning the definition of "collateral bond" and real property as collateral bond, respectively, along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was issued, 3) a takings assessment was not prepared, 4) a small entity regulatory analysis and an economic impact statement were prepared, and 5) the proposed rules are within the agency's statutory authority.

These administrative rules are in substantial compliance with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

Drew H. Wrigley  
 Attorney General

amj  
 copy Jill Grossman, Legislative Council