

Chapter 332-14 WAC

COAL LEASING RULES AND REGULATIONS

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WAC 332-14-010 Definitions. The following terms are applicable when used in the chapter and shall be defined as follows unless the context clearly requires otherwise:

(1) "Abandon" means the removal of all drilling and production equipment from the site and the restoration of the surface of the site to standards set forth by the Office of Surface Mining in 30 CFR, Part 947, "Surface Mining and Reclamation Operation Under a Federal Program for the State of Washington" or a federally approved state program.

(2) "Auction" means competitive lease bidding by oral or sealed bids or a combination thereof.

(3) "Blending" means combining two or more grades of coal to achieve desired chemical or combustive properties.

(4) "Coal" means a black or brownish-black solid combustible substance which has been subjected to the natural process of coalification and which falls within the classification of coal by rank for lignite, subbituminous, bituminous or anthracite as defined in the American Society of Testing Material Standards.

(5) "Coal mining lease" means a lease not to exceed twenty years entitling the operator to develop, mine and market a known coal resource on state lands.

(6) "Coal option contract" means a one-year agreement entitling its holder to explore for coal on one section or 640 acres, whichever is larger and to remove up to 250 tons of coal for testing purposes.

(7) "Commingling" means the mixing of coal from the leased premises with coal from land other than the leased premises.

(8) "Department" means the department of natural resources.

(9) "Development" means any work which occurs after exploration and which furthers coal production.

(10) "Exploration" means investigation to determine presence, quantity and quality of coal resources by geologic, geophysical, geochemical or other means.

(11) "Exploration drill hole" means an exploratory drill hole constructed for the purpose of determining depth, thickness, quality and quantity of coal for the identification of underlying rock formations in which the coals occur and the determination of hydrological conditions.

(12) "Gross receipts from mining" means the fair market price per ton according to rank as prepared for market at the first point of sale or commercial use.

(13) "Grout" means a cementing agent which is used for plugging and sealing exploration drill holes.

(14) "Improvements, structures, and development work" means anything considered a fixture in law or the removal of overburden or the diversion of drainage or other work preparatory to removal of coal, placed upon or attached to state lands that has added value to the state's interest therein.

(15) "Logical mining unit" means contiguous lands or lands in reasonable proximity in which the recoverable coal reserves can be developed in an efficient, economical, and orderly manner as a unit with due regard to recoverable coal reserves. A logical mining unit may consist of one or more state leases under the control of a single lessee and may include intervening or adjacent lands in private or public ownership.

(16) "Mine" means any excavation made for production of coal for commercial sale or use.

(17) "Office of surface mining" means United States Department of the Interior, Office of Surface Mining Reclamation and Enforcement or its successor.

(18) "Plug and abandon" means the placing of permanent plugs in a coal exploration drill-hole in such a way and at such intervals as are necessary to prevent future leakage of either fluid or gases from the drill hole to the surface or from one aquifer to another.

(19) "Production" means the work of extracting and preparing coal in commercial quantities for market or for consumption.

(20) "Reclamation" means rehabilitation of surface-mined areas to those required standards set forth by the Office of Surface Mining in 30 CFR, Part 947, "Surface Mining and Reclamation Operation Under a Federal Program for the State of Washington" or by a federally approved state program.

(21) "SEPA" means the State Environmental Policy Act, chapter 43.21C RCW.

(22) "State land" means land where all or part of the subsurface coal rights are owned by the state and are managed by the department.

(23) "Surface rights" means the rights to the use of the surface of the property not including subsurface rights.

(24) "Ton" means ton as defined by RCW 79.01.668.

(25) "Treatment" means improving the physical or chemical properties of coal.

(26) "Washing" means the separation of coal from undesired contaminants through use of a fluid medium.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-010, filed 4/29/85.]

WAC 332-14-020 Jurisdiction. These rules shall be applicable to all state lands which the department is authorized to lease for the purpose of prospecting, developing and extracting coal resources. These rules are promulgated pursuant to RCW 79.01.652 through 79.01.696.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-020, filed 4/29/85.]

WAC 332-14-030 Lands available for exploration and leasing—Authority to withhold. State lands subject to the management of the department shall be available for coal exploration in accordance with these regulations. The department is not required to offer any tract of land for coal exploration or coal mining unless it determines that the interests of the state would be served.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-030, filed 4/29/85.]

WAC 332-14-040 Applications. Applications for coal option contracts or coal mining leases shall be filed with the department in Olympia, Washington on forms provided by the department. An applicant may file more than one application and acquire more than one option contract or mining lease. Each application for a coal option contract or a coal mining lease shall be accompanied by a fee of one dollar per acre for the lands applied for but in no case less than fifty dollars. Fees shall be based upon acreages as determined by the department.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-040, filed 4/29/85.]

WAC 332-14-050 Refund of application fees. If an application for a coal option contract or a coal mining lease is rejected by the department, application fees may be refunded after deducting expenses incurred in investigating the character of the land.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-050, filed 4/29/85.]

WAC 332-14-060 Coal option contract and coal mining lease—Area—Term. One government surveyed section of land or up to 640 acres, whichever is the larger area, may be the subject of a coal option contract or a coal mining lease. The term of a coal option contract may not exceed one year. The term of a coal mining lease may not exceed twenty years.

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The acreage in a single application does not need to be contiguous. The total area of a coal option contract or a coal mining lease shall be limited to a logical mining unit as determined by the department.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-060, filed 4/29/85.]

WAC 332-14-070 Coal option contract. The department may issue a coal option contract after investigation of the character of the state lands if the department deems it to be in the best interests of the state. An option contract may be conditioned or denied based upon the department's analysis of potential environmental impacts arising from applicant's proposed exploration activities upon the premises. Applications will be considered received by the department upon the date of its arrival at the department's Olympia office. Applications for an option contract will not be considered during the term of an existing option contract. If more than one application for a coal option contract is received on the same day for the same premises, the successful applicant will be chosen by drawing lots. The coal option contract will be prepared by the department and mailed to the applicant for execution. Applicant shall have thirty days from the date of the mailing to sign and return the option contract to the department. Failure to return the signed contract within the specified period may result in the rejection of the application.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-070, filed 4/29/85.]

WAC 332-14-080 Converting coal option contract—Lease. To convert a coal option contract to a coal mining lease, the holder must submit an application for conversion on a form provided by the department. Applicant shall provide a detailed report of the results of its investigation and exploration together with its proposed plan of development for the extraction and production of coal and a proposed reclamation plan. The plan will be used as a basis for SEPA analysis and evaluation of environmental impacts.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-080, filed 4/29/85.]

WAC 332-14-090 Coal mining leases—Environmental analysis. The department may condition or deny a coal mining lease based upon analysis of potential adverse environmental impacts. If a coal mining lease is awarded at public auction and is subsequently denied based upon potential adverse environmental impacts, all bid deposits will be refunded.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-090, filed 4/29/85.]

WAC 332-14-100 Procedure for award of coal mining lease at public auction. The department may offer coal mining leases for lands known to contain workable coal at public auction and award the lease to the highest bidder. Public bidding shall be by sealed bid followed by oral auction. Oral bidding will be confined to persons previously submitting sealed bids. Notice of the public auction shall be given at least thirty days prior to the auction in two newspapers of general circulation, one of which shall be in the county in

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which the premises are located. The notice shall specify the following:

- (1) Place, date, and hour of the auction;
- (2) Legal description of the premises;
- (3) Royalty rates per RCW 79.01.668;
- (4) The minimum acceptable bonus bid.

Sealed bids shall be submitted in accordance with the notice of auction and shall be accompanied by a certified check for one-fifth of the total bid, together with the entire first year's minimum annual per acre royalty as established in the proposed lease. Unsuccessful sealed bidders will have their deposits refunded. A successful oral bidder shall submit payment within ten days of an additional payment to equal one-fifth of its total bid.

The coal lease will be awarded to the highest bidder, provided that it is duly executed and returned to the department with the balance of the bid. If an executed coal lease and the required payments are not received by the department within thirty days of the date of the auction, the proposed lease may be awarded to the next highest bidder and any moneys deposited by the defaulting bidder shall be forfeited to the department.

Award of a coal mining lease does not authorize any surface disturbing activities thereunder until SEPA requirements have been satisfied by the lessee.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-100, filed 4/29/85.]

WAC 332-14-110 Consolidation of leases. The holder of two or more coal mining leases may apply to the department for consolidation of leases in order to facilitate operations. If the department finds, after investigation and examination, that the proposed consolidation will be in the best interests of the state, approval will be issued.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-110, filed 4/29/85.]

WAC 332-14-120 Re-lease of coal leases. An existing lessee may make application to re-lease the premises for a like term from the department. If the department receives no other application and, after inspection and investigation regarding the development and improvement of the premises during original lease term, determines that it is in the best interests of the state to re-lease the premises, it shall fix the royalties for the ensuing term and issue a renewal lease for a term up to twenty years. If application is received from a new applicant, the state shall lease the premises at public auction.

If a person other than the original lessee shall be awarded the lease, they shall assume reclamation obligations and reimburse the original lessee for the value of the structures, improvements or development work which adds value to the premises as determined by the department. When bids are evaluated, the department shall extend a preference to the existing lessee to meet the terms of a higher competing offer.

An application for re-lease shall be filed with the department at least sixty days, but not more than one year prior to expiration of the lease. Unless a timely application for re-lease is made, the department will not recognize any added premises values nor will reimbursement be required of a new lessee.

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[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-120, filed 4/29/85.]

WAC 332-14-130 Lease-minimum annual royalty. The lessee shall pay the first year's minimum annual per acre royalty prior to execution of the lease. Each subsequent minimum per acre royalty payment shall be paid in advance each year. Minimum per acre royalty payment shall be credited against production royalties due for the same lease year.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-130, filed 4/29/85.]

WAC 332-14-140 Late royalty payments—Interest rate. Past due royalty payments shall bear interest at the highest rate permitted by RCW 19.52.020 per month. Costs of collection, including attorney's fees, shall be recoverable in addition to interest.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-140, filed 4/29/85.]

WAC 332-14-150 Procedure where surface rights encumbered. The holder of a coal option contract or a coal lessee shall have a right of action in the superior court of the county in which the premises are located to ascertain and determine the amount of damages, if any, which will accrue to the holder of surface rights by reason of the exercise of any of the exploratory, prospecting or mining rights conveyed by the department if agreement cannot be reached regarding damages. The term of any coal option contract or coal mining lease shall begin thirty days after the entry of the final judgment in such action, if the action has been pursued with due diligence.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-150, filed 4/29/85.]

WAC 332-14-160 Surety arrangements. The lessee shall file a corporate surety bond, cash bond, savings account assignment or other surety arrangement satisfactory to the department, in an amount determined by the department, in order to guarantee performance of the terms and conditions of an option contract or mining lease. Such surety arrangement shall be submitted for approval prior to commencing operations and shall be not less than one thousand dollars for an option contract and not less than ten thousand dollars for a mining lease. The department may, during the term of contract or lease, increase the amount of the surety arrangement for operational changes requiring increased levels of performance. The department may authorize a single surety arrangement for more than one state lease held by a person.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-160, filed 4/29/85.]

WAC 332-14-170 Plan of activities—Coal option contract. The applicant for a coal option contract shall submit a plan of activities which shall include but is not limited to the following:

- (1) The type, location, and schedule of exploratory drilling and trenching activities;
- (2) Location of other significant activities, including type and depth of drilling, trenching, and adit construction;
- (3) Proposed roads;

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(4) Reclamation, including method of plugging and sealing drill holes and adits;

(5) Proposed erosion control plans for roads, landings, drilling platforms, and trenches; and

(6) Proximity to surface water including proposed stream crossings.

If the holder of a coal option contract desires changes to the approved plan of activities, department approval is required.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-170, filed 4/29/85.]

WAC 332-14-180 Plan of development/operation/reclamation—Coal mining lease. The successful bidder for a coal mining lease pursuant to RCW 79.01.672 shall submit a plan for mining to include a fully detailed plan for orderly development and extraction of coal and reclamation of the premises. The plan will be used as a basis for SEPA analysis and evaluation of environmental impacts.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-180, filed 4/29/85.]

WAC 332-14-190 Reclamation—Federal permit required. All surface mining and reclamation activities shall be in accordance with the terms of a surface mine reclamation permit obtained from the U.S. Department of the Interior, Office of Surface Mining and Enforcement or a federally approved state permit.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-190, filed 4/29/85.]

WAC 332-14-200 Diligence and forfeiture. The holder of any coal mining lease shall expend at least fifty thousand dollars per year in exploration, mine development, mine operation, or reclamation activities on the premises, or on the logical mining unit of which the lands are a part unless a written waiver is issued by the department. Proof of such expenditure shall be submitted to the department on the anniversary date of the lease. By mutual agreement the diligence requirement may be met by an in lieu payment of said amount to the state. Failure to expend this amount of money may result in forfeiture of the coal lease. Applicants for coal leases shall identify the logical mining unit in which the lands applied for lie. In the event the department, after investigation and examination, finds that the proposed logical mining unit will be in the best interest of the state, such designation of a logical mining unit will be approved. In the event the department finds that the proposed logical mining unit will not be in the best interest of the state, the diligence requirements shall apply only to the lands included within the lease. The boundaries of a designated logical mining unit may be adjusted if a coal lease is renewed.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-200, filed 4/29/85.]

WAC 332-14-210 Assignments. Coal mining leases are assignable in accordance with RCW 79.01.292. Coal option contracts are not assignable.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-210, filed 4/29/85.]

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WAC 332-14-220 Timber. No timber owned by the state shall be cut, removed or destroyed by a holder of a coal option contract or coal mining lease prior to approval by the department. Holder shall mark all timber proposed to be cut, removed or destroyed and the department shall appraise the timber. The department shall have the option of selling the timber or allowing the holder to cut, remove or destroy it upon payment of the appraised value.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-220, filed 4/29/85.]

WAC 332-14-230 Use of premises. On premises consumption and blending, commingling, washing or storage of coal may be authorized as a part of an approved plan of development and mining without payment of additional compensation to the department.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-230, filed 4/29/85.]

WAC 332-14-240 Right to audit business records. The department may, during normal business hours, examine the premises, improvements, operations or production facilities and may inspect books, records or federal income tax returns of the lessee in order to ascertain the production of coal and to determine compliance with the terms and conditions of the coal lease, approved development, mining or reclamation plans or these regulations.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-240, filed 4/29/85.]

WAC 332-14-250 Plugging and abandonment procedures for exploration drill holes. All exploration drill holes shall be properly plugged and abandoned by the holder of any coal option contract or coal mining lessee according to the following requirements:

(1) No drill holes shall be plugged and abandoned until the method and manner of plugging has been approved by the department. Drill holes not necessary for hydrological monitoring measurements shall be plugged and abandoned as soon as practical following drilling and probing. Hydrological monitoring holes shall be cased and capped while in use.

(2) All drill holes in which gas is present, or which exhibit artesian ground water flow, or which encounter ground water zones, shall be plugged with grout, cement or approved gel. These plugs shall extend a minimum of 100 feet above and below all ground water zones or to the top and bottom of the hole.

(3) Plugs below the water level of the drill hole must be made by a method which precludes dilution of the plugging material.

(4) All exploration drill holes must have surface plugs sufficient to effect a permanent seal. The top of the plug must be installed deeper than three feet below the original surface with a permanent identification monument in the soil above the plug.

(5) Unused drilling supplies and debris extraneous to drilling operations must be removed from the premises and the excavation must be backfilled to its approximate original land surface. Each drill site shall be graded to its approximate original contour and shall be left in a stable condition. Within thirty days after completion of all exploration activities, the

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lessee shall file a sworn statement on a form provided by the department setting forth in detail the methods used in sealing all drill holes and restoring the premises to a stable condition.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-250, filed 4/29/85.]

WAC 332-14-260 Access road construction and maintenance standards. Access roads authorized to be constructed and/or maintained on state lands or under right of way easement agreements shall conform to standards approved by the department.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-260, filed 4/29/85.]

WAC 332-14-270 Exploration reports—Confidentiality. A coal option contract holder or a coal mining lessee shall submit a semi-annual report to the department of all geophysical, geologic and qualitative coal data, analyses and maps which are gathered or prepared during exploration activities on the premises. This report shall include sampling information, geologic, geophysical and driller's logs and all analytical results. Sampling or drilling points shall be referenced by bearing and distances from identifiable land marks or by legal description. Such data, analyses or maps shall be confidential and not available for public inspection or copying for five years from the date of filing the report.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-270, filed 4/29/85.]

WAC 332-14-280 Compliance with other laws. All development or production activities authorized by the lease shall be conducted in accordance with applicable federal and state laws, rules and regulations. Compliance shall be the sole responsibility of the holder of any coal option contract or coal mining lessee and not the responsibility of the department.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-280, filed 4/29/85.]