Chapter 332-22 WAC
STATE LAND LEASING PROGRAM RULES

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WAC

332-22-010 Promulgation.
332-22-020 Definitions.
332-22-025 Bonus bid.
332-22-030 Applications to lease.
332-22-040 Lease auction procedure.
332-22-050 Lease procedure—Amendment.
332-22-060 Lease procedure—Rental adjustments.
332-22-070 Lease procedure—Notice.
332-22-080 Rights to re-lease denied.
332-22-090 Notice to lessee of public auction.
332-22-100 Existing lease negotiation.
332-22-105 Initial lease for commercial, industrial, or residential uses by negotiation.
332-22-110 Mandatory lease terms.
332-22-120 Assignment.
332-22-130 Residential leases.
332-22-140 Expired leases—Occupancy.
332-22-150 Temporary use permits.
332-22-160 Performance security.
332-22-170 Geothermal resources lease—Area.
332-22-180 Geothermal resources lease—Plan of development.
332-22-190 Geothermal resources lease—Term.
332-22-200 Geothermal resources lease—Annual rental and obtaining required permits.
332-22-210 Geothermal resources lease—Production royalty.
332-22-220 Geothermal resources lease—Minimum annual royalty.
332-22-230 Geothermal resources lease—Unit plans.
332-22-240 Geothermal resources lease—Records.

WAC 332-22-010 Promulgation. This chapter is promulgated by the board of natural resources pursuant to the authority granted by RCW 79.01.242 to establish procedures for the department's state land leasing program. The board of natural resources recognizes that in order to obtain a fair market return to the trust, certain of its lands should be retained and managed through leasing. These rules are designed to establish practical leasing procedures and achieve the best possible return to the designated trust beneficiary consistent with any other obligations imposed by law on such lands.

[Statutory Authority: RCW 79.01.242. WSR 84-19-007 (Resolution No. 464), § 332-22-010, filed 9/10/84; WSR 81-03-059 (Order 350, Resolution No. 321), § 332-22-010, filed 1/20/81.]

WAC 332-22-020 Definitions. Insofar as these rules apply, these definitions will be utilized.

(1) "Commissioner" means the commissioner of public lands.

(2) "Department" means the department of natural resources as defined in RCW 43.30.030.

(3) "Board" means the board of natural resources as defined in RCW 43.30.040.

(4) "Fair market rental value" means the total rental that a property would command on the open market as determined by either comparable rental rates being paid for comparable uses or by the current fair market value of the property times the applicable capitalization rate.

(5) "Fair market value for improvements" is as defined in RCW 79.01.136.

(6) "Highest and best use" means the legal use that will produce the highest return to the trust over an extended period of time, including interim use.

(7) "Interim use" means any use of the land for which a rent can be charged before the planned use is attained.

(8) "State lands" means lands owned by the state or managed by the department excluding marine and aquatic lands.

(9) "Person" means a person at least 18 years of age, a partnership, a corporation or a government agency.

(10) "Bonus bid" means the dollar amount offered, to be paid one time only, over and above the periodic rent or the share of the crop.

(11) "Geothermal resources" means only that natural heat energy of the earth from which it is technologically practical to produce electricity commercially and the medium by which such heat energy is extracted from the earth, including liquids or gases, as well as any minerals contained in any natural or injected fluids, brines and associated gas, but excluding oil, hydrocarbon gas and other hydrocarbon substances, as defined in RCW 79.76.030.

(12) "Commercially feasible geothermal resources" means that amount of geothermal steam, hot water, steam condensate, by-products thereof, minerals and chemicals which are used for:

(a) The generation of electricity, and

(b) Which are derived, generated or manufactured from the premises or from a unit plan which includes the lease premises, sufficient for commercial sales, or

(c) Which would warrant construction of facilities for processing or sale of such product or by-products.

(13) "By-products" means

(a) Any mineral or minerals (exclusive of oil and hydrocarbon gas) which are found in solution or in association with geothermal steam or hot brine and which have a value of less than seventy-five percent of the value of the geothermal steam or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves, or

(b) Commercially demineralized water

[Statutory Authority: Chapter 79.12 RCW, as amended by ESB [EHB] 1277 and RCW 79.01.242. WSR 92-06-003, § 332-22-020, filed 2/20/92, effective 3/22/92. Statutory Authority: RCW 79.01.242. WSR 84-19-007 (Resolution No. 464), § 332-22-020, filed 9/10/84; WSR 81-03-059 (Order 350, Resolution No. 321), § 332-22-020, filed 1/20/81.]

WAC 332-22-025 Bonus bid. On a new lease or an existing lease advertised for negotiation there may be a bonus bid.

[Statutory Authority: RCW 79.01.242. WSR 84-19-007 (Resolution No. 464), § 332-22-025, filed 9/10/84.]

WAC 332-22-030 Applications to lease. (1) Application to lease will be considered only for state lands as may be shown to be available for lease in department records or when an existing lease will expire within one hundred twenty days or leases which can be considered for conversion to a higher and better use.

(2) Application to lease will be considered for lands owned by other governmental entities, which are being managed by the department, only after the owner has made a written request to the depart-

ment or entered into an agreement with the department to make the same available for leasing pursuant to these rules.

(3) An application to lease shall be made upon forms prescribed by the department which shall be accompanied by fees prescribed by the board. The fee shall not be refunded unless the state lands applied for are not available for leasing. Applications not accompanied by the proper fees shall be rejected.

(4) The commissioner may withhold from leasing any state land either before or after an application to lease is made. The commissioner may reject any and all applications to lease.

(5) Any person authorized to do business in the state of Washington may apply for a lease of state lands.

[Statutory Authority: RCW 79.01.242. WSR 84-19-007 (Resolution No. 464), § 332-22-030, filed 9/10/84; WSR 81-03-059 (Order 350, Resolution No. 321), § 332-22-030, filed 1/20/81.]

WAC 332-22-040 Lease auction procedure. (1) The department will determine which parcels of state land will be offered for public auction from:

(a) Applications received;

(b) Evaluation of land not presently leased; and

(c) Land with a lease expiring, and on which it is in the best interest of the state to offer at auction for the same or different uses. The department shall give thirty days written notice to the existing lessee of such action.

(2) The department will establish the minimum qualifications required for a person to bid at public auction.

(3) Sealed bids will be accepted up to the time set and at the location specified in the notice of leasing (RCW 79.01.252). The successful bidder will be the person with the most acceptable proposal which complies with the criteria set forth in the notice of public auction.

(4) Oral auctions will be conducted by the auctioneer at the time and place designated in the notice of leasing and the lease shall be awarded to the highest bidder.

(5) The commissioner may reject any or all bids, if it is deemed in the best interest of the state.

(6) Any moneys held on deposit from an applicant will be credited to the lease if they are the successful bidder or will be refunded.

[Statutory Authority: RCW 79.01.242. WSR 84-19-007 (Resolution No. 464), § 332-22-040, filed 9/10/84; WSR 81-03-059 (Order 350, Resolution No. 321), § 332-22-040, filed 1/20/81.]

WAC 332-22-050 Lease procedure—Amendment. Existing leases may be amended through negotiation between the lessee and the department but the term of any such amendment shall not exceed the specified maximum lease period as set forth in RCW 79.01.096 or 79.12.570. Such amendments shall be in writing and signed by both parties.

[Statutory Authority: RCW 79.01.242. WSR 84-19-007 (Resolution No. 464), § 332-22-050, filed 9/10/84; WSR 81-03-059 (Order 350, Resolution No. 321), § 332-22-050, filed 1/20/81.]

WAC 332-22-060 Lease procedure—Rental adjustments. All leases shall provide for periodic rental reevaluation and adjustment, except:

(1) Leases with rentals based upon a percentage of crop or income;

(2) Leases for commercial, industrial, or business purposes must only provide for periodic rental reevaluation and adjustment if the lease extends beyond 55 years.

Periodic rental reevaluation and adjustment is defined as a reappraisal or corresponding readjustment of rent based on the current market rental rate of the leased space or ground.

The lessee may request rental adjustments as provided in RCW 79.13.060.

[Statutory Authority: RCW 79.13.060 (1)(b). WSR 25-06-028, s 332-22-060, filed 2/25/25, effective 3/28/25. Statutory Authority: RCW 79.01.242. WSR 84-19-007 (Resolution No. 464), § 332-22-060, filed 9/10/84; WSR 81-03-059 (Order 350, Resolution No. 321), § 332-22-060, filed 1/20/81.]

WAC 332-22-070 Lease procedure—Notice. Notice of all existing leases which will be negotiated by the department shall be published in two newspapers of general circulation in the locality of the state land, one of which shall be in the county where the land is located.

[Statutory Authority: RCW 79.01.242. WSR 84-19-007 (Resolution No. 464), § 332-22-070, filed 9/10/84; WSR 81-03-059 (Order 350, Resolution No. 321), § 332-22-070, filed 1/20/81.]

WAC 332-22-080 Rights to re-lease denied. Claimed rights to release or to renew a lease will not be authorized or recognized by the department.

[Statutory Authority: RCW 79.01.242. WSR 81-03-059 (Order 350, Resolution No. 321), § 332-22-080, filed 1/20/81.]

WAC 332-22-090 Notice to lessee of public auction. The current lessee will be notified if the state intends to offer the leased land at public auction.

[Statutory Authority: RCW 79.01.242. WSR 81-03-059 (Order 350, Resolution No. 321), § 332-22-090, filed 1/20/81.]

WAC 332-22-100 Existing lease negotiation. (1) Leases which will be used for the same or similar purposes may be offered for negotiation.

(2) A notice of intention to negotiate a lease must be published once in two newspapers of general circulation in the locality of the land, one of which shall be in the county where the land is located, within ninety days of the date of commencement of negotiations. Such notice shall give the legal description, the date of expiration, the intended land use, the office to which application can be made, the

final date to file a written request to lease, and such other information as deemed necessary.

(3) The existing lessee will be mailed the criteria for leasing on the same date as mailing to the newspaper the notice of intention to negotiate.

(4) A written request to lease from a new applicant must be received in the designated office on the specified date to be considered. It must describe the proposed terms and conditions and the contemplated use of the land and contain a certified check or money order payable to the department of natural resources for the amount of any bonus bid plus a $100.00 deposit. The envelope must be marked "Sealed bid for lease . . . .; expiration date . . . ., and give the applicant's name."

(5) The department shall review all written requests to lease before negotiation with the existing lessee is commenced. If negotiation is satisfactorily completed, award of the lease will be made to the existing lessee. If negotiation with the existing lessee is not successful, the highest qualified offer will be treated as a minimum bid at public auction and all lower offers will be returned. The lease will then be offered at public auction. If there are no bidders at the auction, the lease will be awarded to the applicant who has made the highest qualified offer.

(6) Negotiated leases may not exceed the maximum term authorized by RCW 79.01.096 or 79.12.570 and must have a term commencing within one hundred twenty days of date of starting negotiations.

[Statutory Authority: RCW 79.01.242. WSR 84-19-007 (Resolution No. 464), § 332-22-100, filed 9/10/84; WSR 81-03-059 (Order 350, Resolution No. 321), § 332-22-100, filed 1/20/81.]

WAC 332-22-105 Initial lease for commercial, industrial, or residential uses by negotiation. (1) The department may negotiate initial leases to authorize commercial, industrial, or residential uses on specific parcels of land zoned for such uses provided:

(a) Not more than one application is received by the department to lease the property.

(b) The department determines that a rent of at least fair market rental can be obtained through negotiation.

(c) The department publishes a notice of intent to lease which contains the legal description and zoning of the property, the office to which application to lease can be made, and the final date to submit a written request to lease. The notice shall be published not more than thirty days nor less than twenty days immediately preceding commencement of negotiation in two newspapers of general circulation in the locality of the state land, one of which shall be in the county where the land is located.

(d) The department shall report to the board of natural resources on each initial lease entered into by negotiation. The report shall include the fair market value of the property, rental and lease terms.

(2) The department may negotiate initial leases at fair market rental to authorize placement and maintenance of communication equipment in or on electronic site buildings and on electronic site towers.

[Statutory Authority: RCW 79.01.242. WSR 85-11-012 (Order 442, Resolution No. 482), § 332-22-105, filed 5/8/85; WSR 84-19-007 (Resolution No. 464), § 332-22-105, filed 9/10/84.]

WAC 332-22-110 Mandatory lease terms. Each lease negotiated or placed at public auction shall contain the following terms:

(1) The use or uses to which the land is to be employed. Provision must be made by insurance or otherwise, to protect the department against third-party claims arising from the uses made of the property by the lessee.

(2) Improvements which exist on the land at the time lease negotiation is completed or public auction is held shall be specifically described and, unless otherwise designated shall be considered as a part of the value of the land. Improvements may be required to be constructed as a condition of a lease. All existing improvements or those authorized or required under the conditions of the lease must be maintained at the sole cost of the lessee unless otherwise provided. All improvements must be protected against casualty loss in a manner satisfactory to the department unless otherwise provided. Improvements placed upon the land by the lessee shall become the property of the state at the end of lease term unless otherwise provided.

(3) Any lease with a term of more than ten years shall require a plan of development which includes scheduled completion dates for all required activities, improvements, or other actions.

[Statutory Authority: RCW 79.01.242. WSR 84-19-007 (Resolution No. 464), § 332-22-110, filed 9/10/84; WSR 81-03-059 (Order 350, Resolution No. 321), § 332-22-110, filed 1/20/81.]

WAC 332-22-120 Assignment. All assignments of leasehold rights, whether total, partial or for security purposes, must be approved in writing by the department. Department approval of assignments may be conditioned upon a number of factors including rental adjustment; insurance coverage adjustment; renegotiation of improvement ownership; or changes in authorized land use. The department may require assurance of the performance capability of the proposed assignee by any feasible means, including the filing of an acceptable surety arrangement.

An assignment will not be considered to be a termination of the lease within the meaning of RCW 79.01.092.

[Statutory Authority: RCW 79.01.242. WSR 84-19-007 (Resolution No. 464), § 332-22-120, filed 9/10/84; WSR 81-03-059 (Order 350, Resolution No. 321), § 332-22-120, filed 1/20/81.]

WAC 332-22-130 Residential leases. A lessee desiring a waiver or modification of residential lease conditions, as authorized by RCW 79.01.242(5), may make a written request to the board and to the department setting forth the proposed change and its reasons. The department shall make recommendations to the board regarding any such proposal.

[Statutory Authority: RCW 79.01.242. WSR 84-19-007 (Resolution No. 464), § 332-22-130, filed 9/10/84; WSR 81-03-059 (Order 350, Resolution No. 321), § 332-22-130, filed 1/20/81.]

WAC 332-22-140 Expired leases—Occupancy. (1) Extension of any lease may be authorized by the department for a maximum of one year from date of expiration if it is deemed to be in the best interest of the state. Such extension shall be issued upon such terms and conditions as the department may prescribe which may include an adjustment in rent.

(2) If a proposed use for the premises has not been determined, the department may issue a permit for an interim use to the last lessee for up to a maximum period of five years from date of expiration of the lease.

The permit may be issued in the same general form as a lease for a similar use of the premises under such terms and conditions as the department may prescribe. Upon expiration or termination of the permit, the premises can only be leased at public auction.

[Statutory Authority: RCW 79.01.242. WSR 84-19-007 (Resolution No. 464), § 332-22-140, filed 9/10/84; WSR 81-03-059 (Order 350, Resolution No. 321), § 332-22-140, filed 1/20/81.]

WAC 332-22-150 Temporary use permits. The board authorizes the department to issue temporary use permits of state land not to exceed one year which may not be renewed. This permit will only be issued upon receipt of fair market value for the period of occupancy.

[Statutory Authority: RCW 79.01.242. WSR 81-03-059 (Order 350, Resolution No. 321), § 332-22-150, filed 1/20/81.]

WAC 332-22-160 Performance security. The department may, at its option, require the lessee to file a cash bond, savings account assignment, approved corporate surety bond or other form of security satisfactory to the department in an amount sufficient to guarantee performance of the terms and conditions of the lease or contract. Such security, if required, shall be submitted prior to issuance of the lease. The department may reduce or increase the amount of the security as a result of operational changes requiring different levels of performance. The department may allow a lessee to file a single security device acceptable to the state, in an amount set by the department covering all of the lessee's state leases.

[Statutory Authority: Chapter 79.12 RCW, as amended by ESB [EHB] 1277 and RCW 79.01.242. WSR 92-06-003, § 332-22-160, filed 2/20/92, effective 3/22/92.]

WAC 332-22-170 Geothermal resources lease—Area. Leases to explore for and develop geothermal resources shall not exceed 640 acres or one entire government-surveyed section. Leases will be issued at the sole discretion of the department and only on land where the state controls the surface rights and the agency managing that land authorizes this use.

[Statutory Authority: Chapter 79.12 RCW, as amended by ESB [EHB] 1277 and RCW 79.01.242. WSR 92-06-003, § 332-22-170, filed 2/20/92, effective 3/22/92.]

WAC 332-22-180 Geothermal resources lease—Plan of development. An applicant for a geothermal resources lease shall submit a plan of development to the department for approval with the lease application and every five years thereafter. The plan of development shall describe all activities, improvements, or other actions that will contribute to the exploration, development, or production of the property for the next five years, including scheduled dates for completion.

One hundred and twenty days before each five-year anniversary date, the lessee shall deliver to the department, for its approval, a detailed plan of development which incorporates the results of operations from the previous five years.

[Statutory Authority: Chapter 79.12 RCW, as amended by ESB [EHB] 1277 and RCW 79.01.242. WSR 92-06-003, § 332-22-180, filed 2/20/92, effective 3/22/92.]

WAC 332-22-190 Geothermal resources lease—Term. Geothermal resources leases shall be for a term of up to 55 years, subject every five years to approval by the department of the current plan of development. If the lessee fails to substantially comply with the plan of development, as determined by the department, the department may elect to terminate the lease.

[Statutory Authority: Chapter 79.12 RCW, as amended by ESB [EHB] 1277 and RCW 79.01.242. WSR 92-06-003, § 332-22-190, filed 2/20/92, effective 3/22/92.]

WAC 332-22-200 Geothermal resources lease—Annual rental and obtaining required permits. The annual rental shall be set by the board of natural resources, but for years one through five the annual rental shall be not less than $1.00 per acre or $250 whichever is greater, and for years six through 10, shall be not less than $2.00 per acre or $500 whichever is greater. Production facilities, except for transmission infrastructure, shall be a separate lease, subject to commercial lease procedures. Lessee shall obtain all necessary permits for exploration or development purposes.

[Statutory Authority: RCW 79.13.590 and 2003 c 334 s 465 through 2024 c 350 s 2. WSR 25-05-093, s 332-22-200, filed 2/19/25, effective 3/22/25. Statutory Authority: Chapter 79.12 RCW, as amended by ESB [EHB] 1277 and RCW 79.01.242. WSR 92-06-003, § 332-22-200, filed 2/20/92, effective 3/22/92.]

WAC 332-22-210 Geothermal resources lease—Production royalty. (1) Production royalty payments on geothermal resources leases shall be payable to the department for geothermal resources produced from the lease premises. The schedule of production royalty payments and method of calculating fair market value at either the well or point of shipment shall be detailed in the lease and plan of development: Provided, that production royalty rates shall be based on negotiation to ensure trust beneficiaries receive fair market value and shall be the cumulative amount of:

(a) No less than two percent and no more than 20 percent of the gross proceeds received from the sale of such geothermal resources which are derived, generated or manufactured from the premises sufficient for commercial sales, including electricity; and

(b) No less than two percent and no more than 20 percent of the fair market value thereof of products utilized but not sold; and

(c) Five percent of the gross proceeds for all by-products derived from the leasehold estate.

(2) The department reserves the right to assign different production royalty rates for different geothermal resources produced from the lease premises, such as electricity, heat, steam, and other products as defined by state law as geothermal resources. The department reserves the right to reassess the production royalty rate at year 20 of the lease and every 10 years thereafter, and adjust the rate to the then fair market value, however in no case shall the adjusted production royalty be less than the lowest rate specified in this section.

(3) Lessee shall have the right to commingle, for the purpose of utilizing, selling or processing the products produced from the leasehold estate with products produced from other land, provided that the lessee shall efficiently meter or gauge the production from the leasehold estate in a manner approved by the state, in order to compute royalty payable on the products or by-products produced from the leasehold estate. The lessee shall furnish a sworn statement showing production for accounting periods required by the department and pay any royalties due.

[Statutory Authority: RCW 79.13.590 and 2003 c 334 s 465 through 2024 c 350 s 2. WSR 25-05-093, s 332-22-210, filed 2/19/25, effective 3/22/25. Statutory Authority: Chapter 79.12 RCW, as amended by ESB [EHB] 1277 and RCW 79.01.242. WSR 92-06-003, § 332-22-210, filed 2/20/92, effective 3/22/92.]

WAC 332-22-220 Geothermal resources lease—Minimum annual royalty. At the beginning of lease year 11, or at the beginning of the year in which production starts, whichever occurs first, a minimum annual royalty of not less than two dollars per acre per year, or $2,000, whichever is greater, shall be paid to the department, and shall replace the annual rental. Minimum annual royalty calculation shall be based off total leased acreage. Minimum annual royalty payments shall be credited against production royalties for that year. Minimum royalties paid during the term of the lease are nonrefundable and nontransferable.

The department reserves the right to reassess the minimum annual royalty rate at year 20 of the lease and every 10 years thereafter, and adjust the rate to the then fair market value, however in no case shall the adjusted minimum annual royalty be less than the two dollars per acre, or $2,000 specified in this section.

[Statutory Authority: RCW 79.13.590 and 2003 c 334 s 465 through 2024 c 350 s 2. WSR 25-05-093, s 332-22-220, filed 2/19/25, effective 3/22/25. Statutory Authority: Chapter 79.12 RCW, as amended by ESB [EHB] 1277 and RCW 79.01.242. WSR 92-06-003, § 332-22-220, filed 2/20/92, effective 3/22/92.]

WAC 332-22-230 Geothermal resources lease—Unit plans. (1) The holder(s) of any geothermal resources lease may apply to the department to consolidate their leaseholding for geothermal resources with other entities, including lands not owned by the state, to collectively adopt and operate as a unit under a unit plan. Such consolidation will not serve to extend the term of the lease and all participants must agree to continue payment of royalties provided in the lease through the life of the unit and any extensions of the plan.

(2) When separate geothermal resource rights under lease cannot be developed and operated independently in accordance with an approved well-spacing or well-development program, the commissioner or the commissioner's delegate may require lessees to enter into a unit plan or drilling agreement with other entities when it is in the best interest of the state.

(3) As a condition for authorization to be part of a unit plan, the commissioner or the commissioner's delegate may alter the terms and conditions of the lease(s) so involved when it is in the best interest of the state to do so, and such authorization may be further conditioned upon, but not limited to the following:

(a) Department access to reports and documents it deems necessary, at the sole discretion of the department, to determine if consolidation of the proposed unit plan is in the best interest of the state.

(b) Leaseholds which are only partially included in the unit shall be segregated into separate leases as to the lands committed and not committed as of the effective date of the unitization. The annual rental or minimum annual royalty shall be paid on the leased acreage in the unit independently from other segregated lease areas.

(c) Any apportionment of production or royalties among the separate tracts of land comprising the unit shall include an accounting system, and the department shall have the right to audit such system to protect the interests of the state.

(d) None of the rights of the state as landholder shall be limited or subordinated.

(4) If an application for consolidation includes plans for adding production facilities to state lands, except for transmission infrastructure, that acreage shall require a commercial lease and shall be removed from the original lease for geothermal resources.

[Statutory Authority: RCW 79.13.590 and 2003 c 334 s 465 through 2024 c 350 s 2. WSR 25-05-093, s 332-22-230, filed 2/19/25, effective 3/22/25. Statutory Authority: Chapter 79.12 RCW, as amended by ESB [EHB] 1277 and RCW 79.01.242. WSR 92-06-003, § 332-22-230, filed 2/20/92, effective 3/22/92.]

WAC 332-22-240 Geothermal resources lease—Records. A geothermal resources lessee shall furnish to the lessor copies of all reports required by the Geothermal Resources Act (chapter 79.76 RCW).

[Statutory Authority: Chapter 79.12 RCW, as amended by ESB [EHB] 1277 and RCW 79.01.242. WSR 92-06-003, § 332-22-240, filed 2/20/92, effective 3/22/92.]