

WSR 25-01-167
EXPEDITED RULES
DEPARTMENT OF
NATURAL RESOURCES

[Filed December 18, 2024, 11:55 a.m.]

Title of Rule and Other Identifying Information: Amendment to lease procedure—Rental adjustments, in WAC 332-22-060.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of natural resources' (DNR) commercial real estate program is proposing to update/amend WAC 332-22-060 to be consistent with RCW 79.13.060 (1)(b), which was modified in the 2022 legislative session. WAC 332-22-060 language is currently inconsistent with the statute requiring all leases, regardless of type and term, to have periodic rental reevaluation and adjustment. In addition, DNR is proposing to add language to the WAC clarifying the definition for "periodic rental reevaluation and adjustment." This proposal will create consistency for DNR between state statutory requirements and its administrative rules. The following language changes are proposed:

Existing language: All leases shall provide for periodic rental reevaluation and adjustment, except leases with rentals based upon a percentage of crop or income. The lessee may request rental adjustments as provided in RCW 79.01.096.

Proposed language: All leases shall provide for periodic rental reevaluation and adjustment, except

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

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

(i) 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.

Excerpt from updated RCW 79.13.060 Lease terms.

(b) The lands may be leased for commercial, industrial, business, or recreational purposes not to exceed fifty-five years, except:

(i) Leases for commercial, industrial, or business purposes may extend to 99 years;

(ii) All leases for commercial, industrial, or business purposes that extend beyond 55 years must provide for periodic rental reevaluation and adjustment, except leases with rentals based on a percentage of income;

Reasons Supporting Proposal: This proposal will create consistency between state statute and DNR's administrative rules. The 2022 statutory change gave DNR the flexibility needed to negotiate fair market rent up to the 55-year term consistent with commercial real estate practices. In addition, it allowed DNR the option to increase the term length, which is particularly important for commercial leasing given that most projects require financing and/or significant monetary investments. The legislature recognized this when it modified the statute in 2022.

Statutory Authority for Adoption: RCW 79.13.060 (1)(b).

Statute Being Implemented: RCW 79.13.060 (1)(b).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DNR, commercial real estate program, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kari Fagerness, 1111 Washington Street S.E., Olympia, WA, 360-915-4664.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Content is explicitly and specifically dictated by statute.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Rochelle M. Goss, DNR, 1111 Washington Street S.E., P.O. Box 47015, Olympia, WA 98504-7015, phone 360-902-2117, fax 360-902-1789, email Rochelle.goss@dnr.wa.gov, BEGINNING January 2, 2025, 8:00 a.m., AND RECEIVED BY February 18, 2025, 5:00 p.m.

December 17, 2024
Michael Kearney, Manager
Product Sales and Leasing Division

OTS-6065.1

AMENDATORY SECTION (Amending WSR 84-19-007, filed 9/10/84)

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 ((79.01.096)) 79.13.060.