



EXPEDITED RULE MAKING

CR-105 (June 2024) (Implements RCW 34.05.353)

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STATE OF WASHINGTON
FILED

DATE: December 18, 2024

TIME: 11:55 AM

WSR 25-01-167

Agency: Department of Natural Resources

Title of rule and other identifying information: (describe subject) 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: DNR's 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: WAC 332-22-060 Lease procedure—Rental adjustments. 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: WAC 332-22-060 Lease procedure—Rental adjustments. 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:

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)

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

Name of proponent: (person or organization) Department of Natural Resources – Commercial Real Estate program

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Kari Fagerness	1111 Washington Street SE Olympia, Wa	360-915-4664
Implementation:	Kari Fagerness	1111 Washington Street SE Olympia, Wa	360-915-4664
Enforcement:	Kari Fagerness	1111 Washington Street SE Olympia, Wa	360-915-4664

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
- 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;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4):

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

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BEGINNING (date/time) January 2, 2025 8:00AM **AND RECEIVED BY** (date/time) February 18, 2025, 5:00PM

Date: 12/17/2024

Name: Michael Kearney

Title: Product Sales & Leasing Division Manager

Signature:

A handwritten signature in black ink, appearing to read "Michael Kearney", written over a horizontal line.

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.