

ALASKA ADMINISTRATIVE CODE

TITLE 17 CHAPTER 45 RURAL AIRPORTS



**JULY 2017
STATE OF ALASKA**

This document is intended as an informational guide only. The regulations contained in this document were excerpted from the official code on file with the Lt. Governor. There may be errors or omissions that have not been identified and changes that occurred since this document was updated. To be certain of the current laws, please refer to the official code.

CHAPTER 45 – RURAL AIRPORTS

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ARTICLE I

Rural Airports Generally

Section

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- 135. Airport planning and programs for FAA compliance.
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17 AAC 45.005. Applicability of chapter; general location information.

This chapter applies to rural airports. The location and address of an airport, the name and address of the airport manager for an airport, and the address of the department employees or other persons designated to carry out the responsibilities of the department for an airport under 17 AAC 45.010(a) are available through the commissioner's office. Normal office hours of the commissioner's office are 8:00 a.m. to 5:00 p.m. Monday through Friday.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.200

Editor's note: The address of the office of the Commissioner of Transportation and Public Facilities is Commissioner of Transportation and Public Facilities, Department of Transportation and Public Facilities, 3132 Channel Drive, Juneau, Alaska 99801-7898.

17 AAC 45.010. Operation of airports; enforcement of chapter.

- (a) An airport subject to this chapter is operated by the department. From time-to-time and as the commissioner or the regional director for the administrative region of the department in which the airport is located determines appropriate, the commissioner or the regional director may designate for an airport one or more department employees or other persons to carry out functions and responsibilities relating to leasing and property management at an airport and one or more department employees or other persons to carry out functions and responsibilities relating to maintenance and operation of an airport. One or more functions and responsibilities of the department may also be delegated to the airport manager.
- (b) The department employee or other person designated by the commissioner or a regional director under (a) of this section to act for the department, including an airport manager, shall make a decision under this chapter in good faith and on a reasonable basis.
- (c) When an action or decision of either the department or an airport manager under this chapter requires or otherwise calls for the department or the manager, as applicable, to exercise discretion, the department will or the manager shall evaluate such action or decision considering the best interest of the state.
- (d) Except as otherwise provided by this chapter or in the designation made under (a) of this section, and subject to (c) of this section, a department employee or other person designated by the commissioner or a regional director under (a) of this section to act for the department or as a manager for an airport is authorized to enforce
 - (1) the provisions of this chapter;
 - (2) applicable laws and programs relating to aviation or air transportation that are consistent with AS 02.15.010 - AS 02.15.270 and this chapter; and
 - (3) the provisions of AS 28 and 13 AAC as they apply to vehicles or to persons operating vehicles on the airport.
- (e) The Airport Sponsors Grant Assurances of the FAA, dated March 2014 and incorporating amendments published in 79 Fed. Reg. 18755 – 18757 (April 3, 2014) is adopted by reference in this chapter.
- (f) If the department or an airport manager, as applicable, does not make a decision within 60 days of receipt of an application or request, the department will or the manager shall, as applicable, mail or deliver to the applicant or requestor written notice of the status of the application or request. If the department or manager denies an application or request under this chapter, the department will or the manager shall provide the applicant or requestor with the specific grounds for the denial in writing.

- (g) Subject to (h) of this section, the department will and the airport manager shall deny an application or request under this chapter if the department or manager, as applicable, determines that the applicant or requestor
 - (1) has violated a provision of AS 02, 17 AAC 40 in effect before March 28, 2002, 17 AAC 42, or this chapter, which violation the applicant or requestor has not resolved to the satisfaction of the department or manager;
 - (2) has violated a material term of a contract with the department, which violation the applicant or requestor has not resolved to the satisfaction of the department or manager;
 - (3) is in arrears on a rental payment or other material financial obligation due the department; or
 - (4) is in default of a material obligation under any lease, permit, or concession that the department has issued to the applicant or requestor for any property or activity at any airport that the department owns, operates, or otherwise controls.
- (h) If an applicant or requestor has filed a protest or appeal in connection with a matter described in (g) of this section that is pending under 17 AAC 40.382 in effect before March 28, 2002, 17 AAC 42.910, 17 AAC 42.920, 17 AAC 45.910, or 17 AAC 45.920 and the department or airport manager, as applicable, determines that the matter under protest or appeal has a direct bearing on the application or request under consideration, the department or manager may defer action on the application or request until that protest or appeal is decided.
- (i) If a provision of this chapter that requires the airport manager, commissioner, or department to issue a written notice to a person does not specify the method of delivery, the notice may be delivered by mail, by hand, or by electronic transmission, with confirmation of receipt by the addressee requested. However, unless this chapter requires another form of supplemental notice, an attempted delivery to the address the intended recipient last provided to the department in writing constitutes effective notice with or without confirmation of receipt.
- (j) When an application for a lease, permit, or concession under this chapter is approved and the department sends the applicant a lease, permit, or concession for signature, the applicant shall return the signed lease, permit, or concession to the department or airport manager, as applicable, within 60 days after the date the lease, permit, or concession was mailed to the applicant, unless a letter or notice mailed with the lease, permit, or concession requires the applicant to return the signed lease, permit, or concession within a different time. If a letter or notice establishes a different time for return of the signed lease, permit, or concession, the time for returning the signed documents may not be less than
 - (1) 60 days for a lease, permit, or concession that is not awarded competitively under 17 AAC 45.300 - 17 AAC 45.399; or

- (2) the time stated in the bid documents or proposal documents for a lease or concession that is awarded competitively under 17 AAC 45.300 - 17 AAC 45.399.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 3/20/2016, Register 217

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.200 AS 02.15.220 AS 02.15.230

Editor's note: The Airport Sponsors Grant Assurances document, adopted by reference in 17 AAC 45.010, is available at the commissioner's office at the address set out in 17 AAC 45.005, and is also available at [http://www.faa.gov/airports/aip/grant assurances/](http://www.faa.gov/airports/aip/grant%20assurances/). A list identifying each department-operated airport located within each administrative region of the department and the address of the office of the regional director for each administrative region are also available at the commissioner's office at the address set out in 17 AAC 45.005. The address for persons designated to carry out the functions and responsibilities of the department for the airports in each administrative region, and the name and address of the airport manager designated for a specific airport are available at the office of the regional director for the administrative region of the department in which the airport is located, or through the commissioner's office at the address set out in 17 AAC 45.005.

17 AAC 45.015. Approval of department or airport manager.

- (a) When a provision of this chapter requires approval or authorization of either the department or the airport manager, but the provision does not set out a specific procedure for requesting that approval or authorization, the person seeking the approval or authorization shall
 - (1) contact the department or the airport manager, as applicable, and describe the action or matter for which approval or authorization is sought;
 - (2) provide such additional information as the department or the airport manager considers necessary to evaluate and act on the request;
 - (3) pay any fee established under 17 AAC 45.127 for the type of matter or action; and
 - (4) if the department or the manager requests, provide the information required under (1) and (2) of this subsection in writing.
- (b) The department will or the airport manager shall, as applicable, decide a request for approval or authorization of a matter or action under this section as soon as reasonably practicable under the circumstances. The department will or the manager shall issue the decision in writing if the applicable provision of this chapter calls for the department's or manager's approval or authorization in writing.
- (c) A person whose request is denied under (b) of this section may protest the department's or airport manager's decision in accordance with 17 AAC 45.910.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.200 AS 02.15.220 AS 02.15.230

Editor's note: A list identifying the administrative region of the department responsible for each department-operated airport, the address for the leasing and property management office of each administrative region of the department, and the name and address of the airport manager designated for each airport operated by the department are available through the commissioner's office at Commissioner of Transportation and Public Facilities, Department of Transportation and Public Facilities, 3132 Channel Drive, Juneau, Alaska 99801-7898.

17 AAC 45.020. General rules of conduct; violations.

- (a) A person using an airport shall
 - (1) comply with
 - (A) this chapter and other applicable law;
 - (B) orders that the department or the airport manager issues under AS 02.15.020(a) or under any other state or federal law; and
 - (C) instructions, requirements, and restrictions that the department or the airport manager has posted or indicated by sign, signal, or other control device, unless otherwise directed by an authorized person directing aircraft, vehicle, or pedestrian traffic;
 - (2) avoid hindering or obstructing another person, a vehicle, or an aircraft from lawful use of airport property; and
 - (3) limit use or occupancy of airport land or facilities as follows:
 - (A) use a public road, public walk, or other public area only as the department designates for the activity, class of traffic, or mode of travel in which the person is engaged;
 - (B) use a restricted area only as authorized under this chapter;
 - (C) use or occupy land or facilities only as authorized under a lease, permit, concession, or other written permission from the department authorizing that use or occupancy; or
 - (D) use or occupy a lease, permit, or concession premises only with the express or implied consent of the lessee, permittee, or concessionaire and in compliance with the applicable lease, permit, or concession.
- (b) Repealed 3/22/2008.
- (c) The department may, subject to the terms of a pre-existing lease, permit, or concession, authorize, restrict, or prohibit air carrier operations, concessions, or other uses in designated areas of airport land, buildings, or facilities, including a department-operated

terminal building. Except as otherwise authorized in a lease, permit, concession, or other written authorization from the department under this chapter, a person shall abide by the department's designation of or restriction on the use of airport land, buildings, or facilities.

- (d) A person may not place, spill, or dump garbage, trash, sewage, refuse, or other waste material on an airport except in a waste receptacle the department has approved for that purpose or in a waste receptacle designed and provided for that purpose by a lessee, permittee, or concessionaire on its premises.
- (e) A person may not dump snow on an airport except in a location the airport manager has designated for that purpose or as authorized by the department under a lease, permit or concession.
- (f) A person may not operate an incinerator or burn trash, brush, or other material on an airport without the written approval of the airport manager.
- (g) A person may not conduct an aircraft show on an airport without the written approval of the department.
- (h) Except in an emergency or after receipt of approval from the airport manager to do so, a person may not moor, load, unload, launch, operate, or test a boat or boat motor in a body of water that is part of an airport float plane facility.
- (i) Unless the department approves in writing, a person may not display, distribute, post, or place a commercial sign, advertisement, circular, or other material on an airport
 - (1) in a public area of a department-operated terminal building;
 - (2) on land or a premises, except inside a building occupied by a lessee, sublessee, permittee, or concessionaire of the land or premises and in compliance with all applicable provisions of the lease, permit, or concession;
 - (3) on an aircraft or vehicle, unless the sign, advertisement, circular, or other material is placed on the aircraft or vehicle by the owner or lessee of the aircraft or vehicle; or
 - (4) in violation of or in conflict with an exclusive advertising concession or other right granted by the department.
- (j) If a person acts in violation of this chapter or fails to act as required by this chapter, the department or the airport manager may take one or more of the following actions:
 - (1) order the person to, either immediately or within a specified time,
 - (A) stop the violation;
 - (B) begin the required act; or

- (C) leave the airport;
 - (2) provide written notice to the person that describes how the person may correct the violation or omission and the time within which the violation or omission must be corrected;
 - (3) correct the violation or omission; or
 - (4) in an emergency or when the department or the airport manager finds such assistance necessary for safety, maintenance, or operation of the airport, request enforcement assistance by a public safety agency with jurisdiction over the airport.
- (k) If the department or the airport manager acts under (j)(3) of this section to correct a violation or omission by a person, the department or manager, as applicable, may seek reimbursement from the person of all costs, plus interest at the rate provided in AS 45.45.010, that the department incurs in acting to correct the violation or omission, including site assessment costs, clean up costs, collection costs, legal and administrative costs, applicable fines, and costs resulting from interference with or delay of airport projects or operations.
 - (l) If the FAA, TSA, or any other federal, state, or local governmental agency fines or otherwise imposes a monetary penalty on the department for a violation of a statute, ordinance, or regulation, and if the violation is caused by or based on, all or in part, an act or omission on an airport by a person, other than an employee of the department acting in the employee's official capacity, the department may seek reimbursement from the person for the portion of the fine or penalty, and associated costs, equal to the person's contribution to the basis of the violation.
 - (m) The department may seek to require a person responsible under this chapter for the placement, dumping, or spilling of anything on the airport in violation of this chapter to clean up and properly dispose of the material consistent with the requirements of applicable law.
 - (n) A person may not, without approval of the department or the airport manager, place, maintain, or display on an airport a sign, signal, marking, light, or other device that purports to be or resembles a control device or that attempts to direct the movement of aircraft, pedestrian, or vehicle traffic, conceals or interferes with the effectiveness of a control device, or dazzles, blinds, or otherwise interferes with the vision of a pilot, pedestrian, or driver.
 - (o) A person may not park a vehicle within 10 feet of a fence that separates an area that is restricted under 17 AAC 45.060(a) from an area that is not restricted.
 - (p) A person may not use or occupy airport land or facilities for any purpose unless

- (1) the portion of the land or facility being used or occupied is designated by the department for a public purpose and the person's use or occupancy conforms to the public purpose;
- (2) the person first obtains a lease, permit, concession, or other written permission from the department authorizing the use or occupancy; or
- (3) the person is on leased premises with the express or implied consent of the lessee, permittee, or concessionaire and is not engaged in conduct prohibited under the applicable lease, permit, concession, this chapter, or a statute, ordinance, or other regulation.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 3/20/2016, Register 217

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.220 AS 02.15.230 AS 02.15.240

Editor's note: Each airport's layout plan is available from the airport manager responsible for the airport or from the department. A list of all department-operated airports and the administrative region of the department responsible for each airport, the address for persons designated to carry out the functions and responsibilities of the department for the airports in each administrative region of the department, and the name and address of the airport manager designated for each airport operated by the department are available through the commissioner's office at the address set out in the editor's note following 17 AAC 45.005.

17 AAC 45.030. Aircraft rules.

- (a) A person may not, on or from an airport, navigate, land, fly, service, maintain, or repair an aircraft or conduct any aircraft operation, except in conformity with applicable FAA regulations, this chapter, and other applicable law.
- (b) Except in an emergency, when safety dictates, or upon prior approval of the airport manager, aircraft operation on or from an airport is confined to designated runways, water lanes, helipads, taxiways, taxi lanes, aprons, and aircraft parking areas. When the airport manager determines that it is necessary for safe and secure operation of the airport, the airport manager may by control device or order regulate, control, and direct the availability of a runway, water lane, helipad, taxiway, taxi lane, apron, and aircraft parking area on an airport. The airport manager shall limit the use, time, type, weight, dimensions, and number of aircraft allowed to use an aircraft parking area when the manager determines that the limitation is justified by the design, safety, maintenance, or operation of the parking area or the airport. The airport manager may segregate aircraft operations on an airport according to aircraft use, size, type, or weight. The manager shall give notice of the manager's orders, limitations, and aircraft operation segregation decisions under this subsection by
 - (1) posting in the affected areas of the airport; or
 - (2) issuing a Notice to Airmen under FAA Order 7930.2K as described in FAA Advisory Circular No. 150/5200-28B.

- (c) A person who operates an aircraft at an airport shall conduct aircraft operations in conformity with applicable state and federal law, including applicable provisions relating to aircraft noise, and, to the extent possible consistent with safety considerations, in conformity with orders that the department or the airport manager issues under AS 02.15.020(a) or under any other state or federal law, including orders regarding noise compatibility or preferential runway use.
- (d) A person who brings an aircraft onto or keeps an aircraft on an airport does so at the person's own risk with respect to security, maintenance, and operation of the aircraft. The department is responsible for the security, maintenance, or operation of an aircraft on an airport only if the department owns or leases the aircraft.
- (e) The operator of an aircraft shall operate the aircraft so as to minimize engine, propeller, or rotor wash on an aircraft, person, or property.
- (f) A person may not taxi an aircraft onto an airport from property, including water, outside the airport boundary, except as specifically provided for under an airport boundary crossing permit issued under 17 AAC 45.285.
- (g) A person may park an aircraft on an airport only in an area that the airport manager has designated for aircraft parking or in an area authorized for that purpose under a lease, permit, or concession.
- (h) A person may not land or otherwise operate an aircraft equipped with more than 30 passenger seats on an airport operated by the department under 14 C.F.R. Part 139 unless the person
 - (1) first applies for and receives written authorization from the airport manager to land or operate the aircraft at the airport; or
 - (2) is using the airport in compliance with applicable federal law as an alternate landing site or for an emergency landing.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.220

Editor's note: Copies of FAA Order 7930.2K and FAA Advisory Circular No. 150/5200-28B, referenced in 17 AAC 45.030, may be obtained from the FAA Office of Airport Safety and Standards, Airport Safety and Compliance Division, AAS-300, 800 Independence Avenue SW, Washington, DC 20591 and, as of August 30, 2007, on the internet at http://www.faa.gov/airports_airtraffic/air_traffic/publications/at_orders/media/NTM.pdf and [http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/80e853669005dcc286256c690074e9cb/\\$FILE/150-5200-28c.pdf](http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/80e853669005dcc286256c690074e9cb/$FILE/150-5200-28c.pdf), respectively. Notices to Airmen are available from the FAA at the above address or, as of August 30, 2007, on the internet at <http://www.faa.gov/NTAP>. A list of airports operated by the department under 14 C.F.R. Part 139 is available through the commissioner's office at the address provided in 17 AAC 45.005.

17 AAC 45.045. Environmental requirements.

- (a) A person using an airport shall comply with all applicable environmental laws.
- (b) A lessee, permittee, or concessionaire who is required under any environmental law to submit a report or other document about a violation or potential violation of an environmental law to a regulatory agency shall provide a copy of the document to the department. Any person who receives a permit from an environmental regulatory agency in connection with the person's use of an airport shall, within ten days of receipt of the permit, provide a copy of the permit to the department.
- (c) A lessee, permittee, or concessionaire shall provide to the department a copy of any notice of violation or other notice, claim, or citation alleging a violation of an environmental law affecting airport property that a regulatory agency issues to or files against that lessee, permittee, or concessionaire and of any complaint filed in a court that alleges violation by the lessee, permittee, or concessionaire of an environmental law affecting airport property.
- (d) A person responsible for the contamination of airport property shall remediate and return contaminated airport property to an environmentally acceptable condition to the satisfaction of any regulatory agency having jurisdiction. All plans for cleanup and disposal activities shall be submitted in advance to the department for review and approval and are subject to restrictions imposed by the department.
- (e) If the department has cause to believe a premises or other property on the airport may have been contaminated, the department may perform an environmental assessment on the premises or property to establish the presence and source of any contamination and to describe the environmental condition of the premises or property. While performing the assessment, the department will not unreasonably interfere with a lessee's use of, or access to, the lessee's premises unless the lessee first expressly consents. The department will assume the cost of the assessment of a premises or property if contamination is not found on the premises or property. If contamination is found on the premises or property, the department may seek reimbursement for the costs of assessment and cleanup of the contamination from each person who is responsible under this chapter for the contamination.
- (f) For purposes of this section, interference with a lessee's use of, or access to, the lessee's premises is unreasonable if the interference
 - (1) poses a safety hazard or a substantial disruption of the lessee's use of, or access to, the lessee's premises; or
 - (2) can be avoided without materially increasing the cost or materially decreasing the effectiveness of the effort to achieve remediation satisfactory to all agencies having jurisdiction, or a reasonable environmental assessment, as applicable.

History: Eff. 3/28/2002, Register 161; am 11/23/2003, Register 168; am 5/25/2017, Register 222

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.220 AS 02.15.230

17 AAC 45.050. Hazardous substance release.

- (a) A person who releases a hazardous substance on an airport shall immediately contain and clean up the release, using methods that ensure that contamination does not enter or spread on or in airport land or water or in an airport storm water drainage system. A person responsible under this chapter for a release shall immediately report the release to the airport manager and to each regulatory agency that requires such a report. Submission of a report to the manager under this subsection does not satisfy any other applicable requirement for reporting a release of a hazardous substance to any regulatory agency that has jurisdiction.
- (b) If a person responsible under this chapter for a release does not take immediate action to report, contain, and clean up the release, the department may report, contain, or clean up the release as the department determines appropriate under the circumstances. The department may seek reimbursement for the department's costs of assessment, reporting, containment, and cleanup, as applicable, from any person responsible for the release.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.220 AS 02.15.230

17 AAC 45.055. Fueling operations and fuel storage.

- (a) A person who handles, stores, transports, or dispenses fuel on an airport, for either commercial or noncommercial purposes, shall do so consistent with 13 AAC 50 and other applicable law. Except with respect to noncommercial fueling of a personal motor vehicle, a person described in this subsection shall maintain spill prevention and response capability readily accessible to the site where the fuel is handled, stored, transported, or dispensed.
- (b) Before operating a commercial fueling service that performs any function on an airport, a person must obtain a lease, permit, or concession that authorizes commercial fueling services. In addition to the rent or other fee charged under the lease, permit, or concession that authorizes a commercial fueling service at the airport, the lessee, permittee, or concessionaire must pay to the department the fuel flowage fee established under 17 AAC 45.127(o) on each gallon of fuel sold, delivered, or dispensed to which that fee applies.
- (c) Before performing any function on an airport, an operator of a commercial fueling service shall, in addition to the requirements of (a) and (b) of this section, maintain and submit to the department a copy of the operator's Spill Prevention, Control, and Countermeasures Plan prepared under 40 C.F.R. 112, as amended as of January 1, 2007, or, if none is federally required, maintain and submit to the department a written fuel spill prevention and response plan that includes
 - (1) the measures the operator will take to prevent a release of fuel;
 - (2) the steps the operator will take, in the event of a release of fuel, to

- (A) stop the release; and
- (B) contain and prevent spreading or migration of any fuel released; and
- (3) the operator's plan in accordance with 17 AAC 45.050(a) for immediate notification describing any release of fuel to the airport manager and to each regulatory agency that requires such a report.
- (d) A commercial fueling service operator and an air carrier that engages in self-fueling shall each ensure that all personnel who engage in fueling or fuel storage operations on an airport for or on behalf of the operator or air carrier are trained in safe fuel handling practices, fire safety, and spill response.
- (e) A person may not fuel an aircraft while a main engine on the aircraft is running unless
 - (1) running the engine is necessary due to extreme cold;
 - (2) a main aircraft engine must remain running to restart another engine on the aircraft; or
 - (3) running the engine is allowed for hot fueling under N.F.P.A. 407, "Standard for Aircraft Fuel Servicing," 2001 edition, which is adopted by reference.
- (f) A person may not smoke, light a match, or have any flame within 50 feet of fuel storage tanks, equipment, or any fueling operation.
- (g) The owner of a fuel storage container or mobile fuel container located on an airport shall immediately
 - (1) contain any fuel that spills or leaks from the container;
 - (2) report any spill or leakage of fuel from the container to each regulatory agency that requires a report of that spill or leak and to the department;
 - (3) repair any fuel leak and any equipment failure or defect that caused or contributed to the spill or leak; and
 - (4) clean up the affected area.
- (h) A person may not keep or use a mobile fuel tank on an airport unless the person uses the tank in a safe, nonleaking manner and the tank is readily movable at all times. If the department determines that a person is keeping or using a mobile fuel tank that does not comply with the applicable requirements of this section, the department will require the person to cure the noncompliance or remove the tank from the airport.
- (i) Except as otherwise provided in this chapter or as the department otherwise authorizes, a person must store fuel on an airport in a permanent fuel storage tank. A permanent fuel storage tank may be installed only on a premises.

- (j) A person may not store fuel in a temporary fuel storage container on an airport without the department's prior written authorization. The following requirements are conditions of any authorization to store fuel in a temporary fuel storage container:
 - (1) a barrel and any other temporary fuel storage container must be secured by banding or other means when the barrel or other container is insufficiently full to prevent the barrel or other container from being blown off the storage site by any wind, propeller wash, or jet blast to which the barrel or other container might be exposed;
 - (2) the fuel must be stored in the location designated by the department and in a manner that provides for spill containment and that is approved by the department;
 - (3) before the expiration of any period for which the department authorizes temporary fuel storage, the person authorized to store the fuel shall, at no cost to the department, remove all barrels, tanks, containers, containment, and fueling equipment from the fuel storage site and return the site to an environmentally acceptable condition to the satisfaction of the department and each agency with regulatory jurisdiction;
 - (4) if the requirements of (3) of this subsection are not satisfied, the department may perform the removal and restoration; and
 - (5) by accepting the department's authorization for temporary fuel storage, the person authorized to store the fuel agrees to reimburse the department for
 - (A) all costs incurred by the department in performing any removal and restoration work under (4) of this subsection, including site assessment costs, clean up costs, travel costs, and legal costs;
 - (B) damage to property;
 - (C) any costs resulting from interference with airport operations; and
 - (D) interest on the costs described in (A) through (C) of this paragraph at the rate provided in AS 45.45.010.
- (k) Except as allowed under 17 AAC 45.510, a land lessee or a permittee may conduct self-fueling operations only on the lease or permit premises after securing from the department authority in the lease or permit to do so, or on a premises authorized for commercial fueling. A tiedown permittee acting in compliance with 17 AAC 45.510, however, may self-fuel on the permit premises without express authority in the permit.
- (l) Neither the submission of a plan by an operator under (c) of this section, nor the receipt of the plan by the department may be construed as approval or endorsement of the plan by the department.

History: Eff. 3/28/2002, Register 161; am 11/23/2003, Register 168; am 3/22/2008, Register 185; am 4/23/2009, Register 190

Authority: AS 02.15.020 AS 02.15.090 AS 02.15.230 AS 02.15.060 AS 02.15.220

Editor's note: Copies of N.F.P.A. 407, adopted by reference in 17 AAC 45.055, may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101 or, as of August 30, 2007, ordered online at <http://www.nfpa.org/catalog/product.asp?category%5Fname=&pid=40701>. A copy of N.F.P.A. 407 is also on file in the office of the lieutenant governor.

17 AAC 45.060. Restricted areas and access to restricted areas.

- (a) An airport apron, runway, or taxiway available for use by aircraft is a restricted area unless posted otherwise by the airport manager. At an airport to which 49 C.F.R. Part 1542 applies, or at another airport if the department or the airport manager determines that it is necessary to ensure the safety and security of persons or property on or in the vicinity of that airport or to comply with federal or state law, the airport manager or department may do one or more of the following:
 - (1) designate and post other areas on the airport as restricted;
 - (2) designate some or all of a restricted area as a Security Identification Display Area (SIDA);
 - (3) establish a security program for all or a portion of the airport.
- (b) A person is prohibited from entering or remaining in a restricted area except as provided in this section, unless the person either
 - (1) is an authorized FAA safety inspector or TSA security inspector on official government business and carrying current identification as required under applicable FAA or TSA regulations; or
 - (2) is a uniformed and credential-carrying law enforcement officer within the officer's jurisdiction or other law enforcement officer who satisfies the requirements of 49 C.F.R. 1542.217, as amended as of January 1, 2007.
- (c) A person may not enter or remain in a restricted area at an airport to which 9 C.F.R. Part 1542 applies unless
 - (1) the person is
 - (A) a ticketed passenger of a commercial aircraft, an operator-authorized passenger of a non-commercial aircraft, or a member of the flight crew of an aircraft; and
 - (B) aboard the aircraft, in a designated passenger waiting area, or moving directly between the aircraft and the nearest access point between the restricted area and non-restricted areas; or

- (2) the person is
 - (A) wearing an airport identification badge issued under this section to authorize the person's entry to that area or is otherwise authorized by the airport manager to enter that area and is in compliance with the terms and conditions established under (e) of this section that are applicable to the use of that badge; or
 - (B) under actual escort and control of a person described in (A) of this paragraph;
- (d) A person may not enter or remain in a Security Identification Display Area (SIDA) at an airport unless
 - (1) the person is wearing an airport identification badge issued under this section to authorize the person's entry to that area, and is in compliance with the terms and conditions established under (e) of this section, including proper display, that are applicable to the use of the badge;
 - (2) the person
 - (A) is a member of the flight crew of, or is a ticketed or operator-authorized passenger of, an air carrier-operated aircraft; and
 - (B) is either aboard the aircraft or moving directly to or from that aircraft under actual escort and control of a member of the flight crew or a person described in (1) of this subsection; or
 - (3) the person is under actual escort and control of a person described in (1) of this subsection.
- (e) The department may establish, and revise as appropriate, qualifications, terms, and conditions for each of the following:
 - (1) sponsorship of an employee, agent, or contractor to receive an airport identification badge; qualifications must include a demonstrated need consistent with the purpose and function of the airport for a sponsored individual to have access to the applicable restricted area and the ability and written undertaking of the sponsor to assume responsibility for the conduct of a sponsored individual;
 - (2) receipt of an airport identification badge, including being qualified as a sponsor of an individual to receive a badge or as a sponsored individual;
 - (3) authorized entry into a restricted area; and
 - (4) use of an identification badge issued under this subsection.

- (f) The airport manager may issue an airport identification badge or authorize entry, as applicable, to a person qualified under this section. A badge issued under this subsection remains the property of the department and must be returned to the airport manager upon request.
- (g) With each application for an airport identification badge that authorizes unescorted access to a Security Identification Display Area (SIDA), the applicant or the applicant's sponsor must include a nonrefundable payment in a form acceptable to the department of expenses incurred in processing each application for any fingerprint or background clearance required by federal law or by an applicable TSA-approved airport security program or required under the qualifications established by the department under (e) of this section.
- (h) For an airport to which 49 C.F.R. Part 1542 applies, after an airport manager determines that a person is eligible for an airport identification badge that authorizes unescorted access to a restricted area, is eligible to sponsor an employee, contractor, or agent for issuance of an airport identification badge or authorization to enter a restricted area, or is eligible for any other authorization to enter a restricted area, but before the manager issues the badge, accepts the sponsorship, or authorizes the person's unescorted entry into a restricted area, the airport manager shall require the person to review a copy of the terms and conditions established under (e) of this section. The airport manager shall require the person to sign an acknowledgement of the person's review and acceptance of those terms and conditions.
- (i) Acceptance of an airport identification badge, authorization to enter a restricted area, and sponsorship of an employee, contractor, or agent for issuance of an airport identification badge for entry into a restricted area under this section each constitutes agreement by the recipient of the badge or authorization or by the sponsor, as applicable,
 - (1) to comply with the applicable terms and conditions established under (e) of this section; and
 - (2) to be responsible for any penalty imposed on the department by the FAA or TSA as a result of any failure by the recipient, or, in the case of a sponsor, by the sponsor's employee, contractor, or agent, to comply.
- (j) In addition to constituting agreement with the requirements stated in (i) of this section, acceptance of an airport identification badge also constitutes acknowledgment and agreement that
 - (1) the badge remains the property of the department and must be returned to the airport manager upon request;
 - (2) the manager may revise the terms and conditions for use of the badge after the badge is issued; and
 - (3) use of the badge after notice of revised terms and conditions for use of the badge constitutes acceptance of those revised terms and conditions.

- (k) A person who accepts an airport identification badge, or the person's sponsor, shall pay
 - (1) a \$50 fee for each badge issued, reissued, or renewed;
 - (2) a \$200 fee for each replacement of a lost badge;
 - (3) a \$200 fee for each failure to surrender a badge to the airport manager when required to do so by the department; and
 - (4) a \$50 fee for replacement of a damaged badge that is returned to the airport manager by the person or the person's sponsor.
- (l) Unless any airport security program that the department develops for the airport provides otherwise, at an airport to which 49 C.F.R. Part 1542 does not apply, only the following may enter a restricted area:
 - (1) an aircraft crew member;
 - (2) a passenger authorized orally or in writing by an aircraft crew member or by the entity operating a commercial flight;
 - (3) a department employee, an airport maintenance contractor, or an airport maintenance contractor's employee;
 - (4) an air carrier ground servicing employee or agent; and
 - (5) any other person authorized by law or by the airport manager to enter the restricted area.
- (m) The department may enter onto a premises to erect or to maintain a barrier if the department determines that a barrier is necessary for safety or security at the airport. Except in the case of an emergency or threat to public safety, the department will give advance notice to a lessee, permittee, or concessionaire before erecting a barrier on the lessee's, permittee's, or concessionaire's premises. To the extent practical, the department will erect the barrier in a location where the barrier will not disrupt the operations of the lessee, permittee, or concessionaire. The lessee, permittee, or concessionaire shall thereafter repair, reconstruct, or replace the barrier on the premises to the satisfaction of the airport manager at the lessee's, permittee's, or concessionaire's sole expense if the barrier is damaged or rendered ineffective for its intended purpose as a result of activities of the lessee, permittee, or concessionaire or an agent, contractor, or invitee of the lessee.
- (n) If the premises of a lessee, permittee, or concessionaire is within or adjacent to a restricted area, the lessee, permittee, or concessionaire shall ensure that only authorized persons enter or remain in the restricted area.
- (o) A person may not

- (1) copy or duplicate an airport identification badge; or
 - (2) photograph or film, without the consent of the TSA, any portion of an area established for use by the TSA for passenger security screening, whether or not screening is in progress.
- (p) In this section, "security program" means a written plan, confidential under state or federal law, that the department uses to maintain the security of an airport.

History: Eff. 3/28/2002, Register 161; am 11/23/2003, Register 168; am 3/22/2008, Register 185; am 3/20/2016, Register 217

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.220 AS 02.15.230

Editor's note: A list of department-operated airports to which 49 C.F.R. Part 1542 applies, and of those airports to which 49 C.F.R. Part 1542 does not apply, is available through the commissioner's office at Commissioner of Transportation and Public Facilities, 3132 Channel Drive, Juneau, AK 99801-7898.

17 AAC 45.065. Firearms.

- (a) Unless authorized by the department for airport wildlife hazard control, a person may not discharge a firearm across any portion of a runway, taxiway, or aircraft parking area.
- (b) Before boarding an air carrier aircraft at an airport operated by the department under 49 C.F.R. Part 1542, a passenger transporting a firearm shall check the firearm, unloaded and encased in a closed container designed for transporting firearms, as or within luggage and notify the air carrier that the luggage contains a firearm.
- (c) In this section, "firearm" has the meaning given in AS 11.81.900.

History: Eff. 3/28/2002, Register 161; am 11/23/2003, Register 168

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.220 AS 02.15.230 AS 02.15.240 AS 18.65.750
AS 18.65.755

Editor's note: A list of airports operated by the department under 49 C.F.R. Part 1542 is available at the commissioner's office at the address provided in 17 AAC 45.005.

17 AAC 45.070. Explosives on airports.

- (a) A person who brings or possesses an explosive on an airport shall comply with the hazardous materials provisions of 49 C.F.R. Part 175, as amended as of January 1, 2007.
- (b) A person shall give the airport manager at least 24 hours advance written notice before bringing explosives onto an airport or creating or receiving explosives on an airport. However, an airport manager may waive this notice requirement with respect to those types

and quantities of fireworks that the manager specifies in a written notice posted by the manager at the airport.

- (c) The airport manager may, based upon reasonable public safety and airport operations concerns,
 - (1) condition, direct, supervise, or prohibit an explosive or an operation involving an explosive on the airport; and
 - (2) require that an aircraft with an explosive aboard
 - (A) be fueled, serviced, and parked in a remote or other designated area of the airport; and
 - (B) depart the airport as soon as air traffic and safety considerations allow.
- (d) In this section, "explosive" has the meaning given in AS 11.81.900; "explosive" also includes fireworks as defined in AS 18.72.100.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.220 AS 02.15.230

17 AAC 45.075. Animals on airports.

- (a) Unless the airport manager has first given approval,
 - (1) a person may not allow an animal in the person's custody or care or cause any other animal to enter uncontrolled upon or remain uncontrolled on airport property; and
 - (2) a person may bring only the following animals into a department-operated terminal building or restricted area of an airport:
 - (A) an animal that
 - (i) is trained or being trained to aid a person with a disability; and
 - (ii) accompanies a person with a disability or a trainer;
 - (B) an animal arriving or departing by air transportation and confined in a manner designed for that purpose;
 - (C) an animal being used by a law enforcement official.

- (b) The airport manager shall, if the manager determines that doing so is necessary to ensure the safe operation of the airport, either remove or, unless prohibited by state or federal law, kill an animal on the airport.
- (c) The department may seek reimbursement from the owner of an animal that causes damage to airport property, injury to a person on the airport, or interference with airport operations or from a person responsible for the presence or injurious conduct of an animal on the airport for all damages from and costs of such conduct, including the department's costs of destroying or removing the animal from the airport.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.220 AS 02.15.230

17 AAC 45.080. General vehicle rules.

- (a) A person may operate a vehicle on an airport only in accordance with 17 AAC 45.020, 17 AAC 45.085, this section, and other applicable law.
- (b) A person may not access an airport by vehicle from property outside the airport boundary other than on a public road, trail, or way provided for that purpose and not posted by the department as closed to airport access, except as specifically provided under an airport boundary crossing permit issued under 17 AAC 45.285.
- (c) Subject to 17 AAC 45.030, an aircraft operated on an airport has the right-of-way over a vehicle on the airport. The operator of a vehicle on an airport may not interfere with or cause a hazard to the movement of aircraft on the airport.
- (d) A person may not operate a vehicle on an airport in excess of a speed limit posted by the airport manager for that airport roadway or area. On an airport roadway or area for which the airport manager has not posted a speed limit, a person may not operate a vehicle in excess of 25 miles per hour. This subsection does not apply to a person operating an emergency vehicle responding to an emergency.
- (e) A person may not park a vehicle inside a department-operated terminal building, except while loading or unloading baggage or freight at a location designated for that purpose, unless the airport manager has otherwise approved in writing.
- (f) A person who brings a vehicle onto or keeps a vehicle on an airport does so at the person's own risk with respect to security, maintenance, and operation of the vehicle. The department is responsible for the security, maintenance, or operation of a vehicle on an airport only if the department owns or leases the vehicle.
- (g) A person operating a vehicle on an airport operated by the department under 14 C.F.R. Part 139 must be in possession of an operator's license, current and issued to the person, required by law for the type of vehicle being operated.

History: Eff. 3/28/2002, Register 161; am 11/23/2003, Register 168

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.220 AS 02.15.230

Editor's note: A list of airports operated by the department under 14 C.F.R. Part 139 is available at the commissioner's office at the address provided in 17 AAC 45.005.

17 AAC 45.085. Vehicles in restricted areas.

- (a) A person may not operate a vehicle in a restricted area of an airport that is operated by the department under 14 C.F.R. Part 139 or subject to 49 C.F.R. Part 1542, except in accordance with 17 AAC 45.080 and this section.
- (b) At an airport not subject to 49 C.F.R. Part 1542, a restricted area is closed to all vehicles except the following:
 - (1) a vehicle operated by a department employee or contractor for maintenance purposes;
 - (2) a vehicle required for the loading, unloading, and transporting of passengers or the servicing of an aircraft on the aircraft parking apron at the airport;
 - (3) a public safety or emergency vehicle when engaged in the performance of public safety or emergency duties at the airport; and
 - (4) any other vehicle authorized to be in the restricted area by law or in writing by the airport manager.
- (c) A person may not operate a vehicle in a restricted area of an airport unless the person is authorized under 17 AAC 45.060 to enter the restricted area and the airport manager has first authorized the person to operate a vehicle in the restricted area. The manager shall establish terms and conditions for operating a vehicle in a restricted area on the airport and provide notice of the terms and conditions to a person who requests authorization to do so.
- (d) To show that the airport manager has authorized a person to operate a vehicle in a restricted area of an airport that is subject to 49 C.F.R. Part 1542, the person's identification badge issued under 17 AAC 45.060(f) must bear an appropriate endorsement by the airport manager. A person who accepts the airport manager's authorization to operate a vehicle in a restricted area of the airport agrees to comply with all terms and conditions established by the manager for operating a vehicle in a restricted area under (c) of this section. The manager shall require each person who accepts the manager's authorization to sign an acknowledgement of receipt of a copy of those terms and conditions.
- (e) To ensure safety and compliance with applicable FAA regulations, the airport manager may establish equipment requirements for vehicles operated in restricted areas on an airport. A person may operate a vehicle in a restricted area only if the vehicle is in a safe and functioning condition with all equipment required by the airport manager under this

subsection. At an airport operated under 14 C.F.R. Part 139, the vehicle must also be the subject of and display a ramp permit sticker or temporary ramp permit card issued by the airport manager.

- (f) The airport manager may designate areas within a restricted area where a person may, and outside of which a person may not, operate, maintain, fuel, or park a vehicle except by permission from the manager.
- (g) The airport manager shall order a vehicle operator to remove the vehicle from a restricted area if the manager determines that the vehicle is not operated or equipped in compliance with this section. The manager shall refuse access to a restricted area for a vehicle that the manager determines is not operated in compliance with this section.
- (h) A person who accepts an airport ramp permit sticker or ramp permit temporary card, or the person's sponsor, shall pay a fee of
 - (1) \$25 for each permit issued;
 - (2) \$50 for each replacement of a lost permit sticker or card; and
 - (3) \$50 for each failure to surrender a permit sticker or card to the airport manager when required to do so by the department.
- (i) A person may not copy or duplicate an airport ramp permit sticker or temporary card.

History: Eff. 3/28/2002, Register 161; am 11/23/2003, Register 168; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.220 AS 02.15.230

Editor's note: A list of airports operated by the department under 14 C.F.R. Part 139 or subject to 49 C.F.R. Part 1542 is available through the commissioner's office at the address provided in 17 AAC 45.005.

17 AAC 45.090. Vehicle parking.

- (a) This section applies to parking of vehicles on an airport in an area other than a restricted area or on a premises.
- (b) If the airport manager determines it is necessary for the safe operation of an airport, the manager shall designate vehicle parking areas, no parking zones, parking time limits, vehicle size limits, parking restrictions by vehicle type, and vehicle loading and unloading zones as appropriate for the operation of the airport.
- (c) A person parking a vehicle in a metered parking space shall pay the parking fee required by the meter.

- (d) A person may not abandon a vehicle on an airport, park a vehicle in a designated no-parking area, park a vehicle in violation of posted vehicle size limits, or park a vehicle for a period in excess of a posted time limit.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.230 AS 02.20.050

17 AAC 45.095. Commercial passenger vehicle permit.

- (a) This section applies only to airports operated by the department under 14 C.F.R. Part 139.
- (b) The commissioner will designate an airport for commercial passenger vehicle permitting if the commissioner determines in writing that permitting is in the best interest of the state. In determining the best interest of the state, the commissioner will consider, in addition to the factors listed under 17 AAC 45.900,
 - (1) the volume of commercial passenger vehicle traffic and other vehicle traffic at the airport;
 - (2) the potential impact of the fees that would be imposed on commercial passenger vehicle operators and their customers if a permit were required under this section; and
 - (3) the estimated cost of implementing the requirements of this section at the airport as compared to the potential revenue that the department would receive.
- (c) Before requiring permitting for the operation of a commercial passenger vehicle at an airport, the commissioner will give the public at least 60 days notice of the permit requirement in accordance with 17 AAC 45.400.
- (d) To operate a commercial passenger vehicle business on an airport designated for permitting by the commissioner under (b) of this section, a person must hold a current commercial passenger vehicle permit issued under this section.
- (e) A person must submit an application for a commercial passenger vehicle permit in writing to the department and include
 - (1) a list of vehicles that the applicant proposes to operate on the airport under the commercial passenger vehicle permit; the list must include the year, make, model, license plate number and issuing state, vehicle identification number, and seating capacity, including each driver, for each vehicle;
 - (2) a description of the services that the applicant proposes to offer under the permit; and
 - (3) a non-refundable \$200 application fee.

- (f) The department will approve an application for a commercial passenger vehicle permit unless the department determines that
 - (1) the application must be denied under 17 AAC 45.010(g);
 - (2) the proposed activity would interfere with or is otherwise incompatible with the security, safety, maintenance, or operation of the airport;
 - (3) the proposed activity is not allowed under or would result in a violation of applicable law, an exclusive right the department has granted to another person, a covenant running with the airport land, or an applicable FAA grant assurance adopted by reference under 17 AAC 45.010(e); or
 - (4) the proposed activity is inconsistent with sound airport planning.
- (g) A decision by the department to deny an application for a commercial passenger vehicle permit must be in writing.
- (h) A commercial passenger vehicle permit is not transferable and may not exceed a term of five years.
- (i) If the department determines under 17 AAC 45.425(b), that a commercial passenger vehicle permittee must carry insurance, the permittee shall provide evidence of insurance coverage that fully satisfies the insurance requirement established by the department under 17 AAC 45.425(c) for the permittee's operations on the airport.
- (j) A commercial passenger vehicle permittee may not use or operate a vehicle on the airport in connection with a commercial passenger vehicle business unless the vehicle is listed on the permit and displays the identification described in this subsection. For each calendar year and for each vehicle listed on the permit, a permittee shall, upon payment of any applicable fee established under (k) of this section, obtain from the department a sticker or other form of identification designated by the department. The department will mail or deliver identification for a vehicle only to a person who has a permit at the airport, has paid the fee under (k) or (l) of this section, as applicable, and has submitted the vehicle information required under (e)(1) of this section for that calendar year. A permittee shall conspicuously affix and maintain on each vehicle the current year's identification that the department has issued for that vehicle.
- (k) The department will charge a non-refundable fee for each commercial passenger vehicle permit and issue a sticker or other form of vehicle identification for each calendar year or any portion of a calendar year. The amount of the fee, which is not pro-rated to a lesser amount for any portion of a calendar year, is as follows:
 - (1) \$102 for each vehicle with seating for up to six people, including the driver;
 - (2) \$205 for each vehicle with seating for seven to 12 people, including the driver;

- (3) \$307 for each vehicle with seating for 13 to 24 people, including the driver;
- (4) \$409 for each vehicle with seating for 25 to 36 people, including the driver;
- (5) \$512 for each vehicle with seating for 37 or more people, including the driver.
- (l) The department will charge a \$25 fee to a permittee for a replacement vehicle permit sticker or other form of identification if
 - (1) a sticker or other identification is lost or damaged before it expires; or
 - (2) the vehicle is replaced by the permittee with another vehicle of the same seating capacity before the sticker or other identification expires.
- (m) A commercial passenger vehicle permittee that operates a vehicle on airport property shall keep the vehicle in safe operating condition. The department shall order a permittee to remove from service any vehicle of the permittee that the airport manager determines to be unsafe or otherwise in violation of this section.
- (n) A commercial passenger vehicle permittee may park, wait, and drop off or pick up a passenger only at a premises or in an area designated for that purpose by the department.
- (o) A commercial passenger vehicle permittee may cancel a permit and cease operations at the airport at any time on written notice to the department.
- (p) Upon 10 days' written notice to the permittee, or a shorter period of written notice if allowed by the permit:
 - (1) the department will cancel a commercial passenger vehicle permit and invalidate all vehicle identification issued to a permittee if the department determines that the permittee
 - (A) is not in compliance with the permit and has not corrected the noncompliance within 10 days after receipt of the notice, or within a shorter period if allowed by the permit and stated in the notice; or
 - (B) has ceased commercial passenger vehicle operations on the airport; and
 - (2) the department may, unless the permit provides otherwise, cancel a commercial passenger vehicle permit and invalidate all vehicle identification issued to a permittee for any reason not in violation of applicable law.
- (q) Cancellation of a commercial passenger vehicle permit by the department will be in writing and state the reasons for the cancellation.

- (r) A commercial passenger vehicle permittee may not, on the basis of the distance to be transported, refuse to transport a person who agrees to pay the appropriate fare.
- (s) An applicant or commercial passenger vehicle permittee may protest the department's decision to deny an application or cancel a commercial passenger vehicle permit in accordance with 17 AAC 45.910.
- (t) Neither a commercial passenger vehicle permittee nor an employee of a permittee may offer transportation services by in-person solicitation on an airport or by driving slowly past an airport building, but may offer transportation services only in compliance with the terms of the permit.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 7/1/2017, Register 222

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.220 AS 02.15.230

17 AAC 45.105. Business activity permit.

- (a) Except as expressly authorized on a premises under a lease or department-approved sublease, or as expressly authorized under a concession, commercial passenger vehicle permit, or other permit, a person must, before engaging in any of the following on an airport, hold a current business activity permit issued under this section expressly authorizing the conduct of that business on that airport:
 - (1) an aircraft maintenance or repair business;
 - (2) a business that performs aircraft ground handling services;
 - (3) a commercial fueling service;
 - (4) selling, offering for sale, or providing goods or services commercially to the general public in a department-operated terminal building, including use of terminal space for distribution of pre-ordered merchandise;
 - (5) a vehicle rental business;
 - (6) an aircraft or aircraft parts sales business;
 - (7) a valet parking service or airport parking service;
 - (8) a food service business.
- (b) A business activity permit under this section authorizes the permittee to conduct the specified type of business on only the specific airport stated on the permit.

- (c) To obtain authorization to conduct a business for which this section requires a business activity permit, a person must submit a business activity permit application in writing to the department and must include
 - (1) a non-refundable \$200 application fee; and
 - (2) a statement of the name of the airport at which the person seeks authorization to conduct the business, together with a description of the services and operations the applicant proposes to conduct under the permit.
- (d) For purposes of this section, an activity is conducted on an airport if the activity, including any transportation offered or arranged by the operator of the activity,
 - (1) is conducted all or in part within the airport boundary; or
 - (2) derives business from an airport and offers or arranges for transportation between an off-airport location and a location on the airport.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 7/1/2017, Register 222

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.220 AS 02.15.230

17 AAC 45.108. Business activity permit; commercial aviation business. Repealed.

History: Eff. 3/28/2002, Register 161; repealed 11/23/2003, Register 168

17 AAC 45.110. Consideration of application for business activity permit; permit requirements.

- (a) The department will approve an application for a business activity permit under 17 AAC 45.105 if the department does not determine that
 - (1) approval must be denied under 17 AAC 45.010(g);
 - (2) the proposed activity would interfere with or is otherwise incompatible with the security, safety, maintenance, or operation of the airport;
 - (3) the proposed activity would violate applicable law, the state's obligations under revenue bonds issued under AS 37.15.410 - 37.15.550, an exclusive right the department has granted to another person, a covenant running with the airport land, or an applicable FAA grant assurance adopted by reference under 17 AAC 45.010(e); or
 - (4) the proposed activity would be inconsistent with sound airport planning.
- (b) A decision by the department to deny an application for a business activity permit will be in writing.

- (c) A business activity permit is not transferable and may not exceed a term of five years.
- (d) A business activity permittee shall pay any annual business activity permit fee required under 17 AAC 45.127(p) and any other applicable fee established under this chapter.
- (e) If the department determines under 17 AAC 45.425(b), that a business activity permittee must carry insurance, the permittee shall provide evidence of insurance coverage that fully satisfies the insurance requirement established by the department under 17 AAC 45.425(c) for the permittee's operations on the airport to which the permit applies.
- (f) A business activity permittee operating a vehicle on airport property shall keep the vehicle in safe operating condition. The department will order a permittee to remove from service any permittee vehicle that the department determines to be unsafe or otherwise in violation of this section.
- (g) A business activity permittee may park and operate a vehicle on an airport in connection with a business activity allowed under the permit only in an area the department has designated for that purpose.
- (h) A business activity permittee may cancel a business activity permit and cease operations at an airport at any time by written notice to the department.
- (i) Upon 10 days' written notice to the business activity permittee, the department
 - (1) will cancel the permit if the department determines that the permittee
 - (A) is not in compliance with the permit and has not corrected the noncompliance within 10 days after receipt of the notice; or
 - (B) has ceased operations on that airport; or
 - (2) may, unless the permit provides otherwise, cancel a permit issued after March 22, 2008 for any reason not in violation of applicable law.
- (j) The department's cancellation of a business activity permit will be in writing and state the reasons for the cancellation.
- (k) An applicant or business activity permittee may protest the department's decision to deny an application or cancel a business activity permit, in whole or in part, in accordance with 17 AAC 45.910.

History: Eff. 3/28/2002, Register 161; am 11/23/2003, Register 168; am 3/22/2008, Register 185; am 4/23/2009, Register 190

Authority: AS 02.15.020 AS 02.15.090 AS 02.15.230 AS 02.15.060 AS 02.15.220

17 AAC 45.111. Special event permit.

- (a) Before engaging in a special event on an airport, a person must hold a current special event permit issued under this section expressly authorizing the conduct of that event.
- (b) To obtain authorization to conduct a special event, a person must submit a special event permit application form in writing to the department and include a non-refundable \$200 application fee and any other fee as applicable under 17 AAC 45.127.
- (c) A special event permit authorizes the permittee to conduct the specified type of event only on the specific airport identified on the permit application form.

History: Eff.3/20/16, Register 217; am 7/1/2017, Register 222

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.220 AS 02.15.230

17 AAC 45.112. Consideration of application for special event permit; permit requirements.

- (a) The department may approve an application for a special event permit under 17 AAC 45.111 unless
 - (1) approval must be denied under 17 AAC 45.010(g);
 - (2) the proposed event would interfere with or is otherwise incompatible with the security, safety, maintenance, or operation of the airport;
 - (3) the proposed event would violate applicable law, the state's obligations under revenue bonds issued under AS 37.15.410 - 37.15.550, an exclusive right the department has granted to another person, a covenant running with the airport land, or an applicable FAA grant assurance adopted by reference under 17 AAC 45.010(e); or
 - (4) the proposed event is not compatible with the state's best interests.
- (b) The department will issue in writing a decision to deny an application for a special event permit.
- (c) A special event permit is not transferable.
- (d) If the department determines under 17 AAC 45.425(b) that a special event permittee must carry insurance, the permittee shall provide evidence of insurance coverage that fully satisfies the permit's insurance requirements and the requirements established by the department under 17 AAC 45.425(c).
- (e) A special event permittee operating a vehicle on airport property may park and operate a vehicle on an airport in connection with an event allowed under the permit only in an area the department has designated for that purpose.

- (f) A special event permittee may cancel a special event permit and cease operations at an airport at any time by written notice to the department.
- (g) A special event permit is a special privilege, not a right, is a low-priority use, and is subject to competing airport priorities. The department may cancel a special event permit at any time without liability to the special event applicant or special event participants if
 - (1) the department determines that the permittee is not in compliance with the permit;
 - (2) the event on that airport has ceased; or
 - (3) the department determines that the event interferes with the security, safety, maintenance, or operation of the airport.

History: Eff. 3/20/2016, Register 217

Authority: AS 02.15.020 AS 02.15.060 AS 02.15 .090 AS 02.15.220 AS 02.15.230

17 AAC 45.115. Unauthorized parking and impound.

- (a) Except as provided in (b) of this section, the following impound procedure applies to aircraft and vehicles parked in violation of this chapter, aircraft and vehicles that are derelict as described in (h) of this section, and other personal property abandoned on an airport:
 - (1) the manager shall attempt to identify and locate the owner of the property and to have the owner remove it;
 - (2) the manager shall attach a warning tag or other written notice to the property that directs the owner to pay any fees due, to remove the property by the time and date that the manager states on the tag or notice, or to do both, and that states that failure to do so will result in impound of the property under this section; the time and date stated on the tag or notice may not be less than 48 hours nor more than 14 days after the time and date the tag or notice is attached to the property;
 - (3) if the owner has not timely paid the applicable fees or removed the property as directed on the tag or notice, the manager shall attach a tag or other written notice to the property stating that the property is impounded under this section and setting out the procedures for the owner to obtain the property from impound.
- (b) If an airport manager determines that an emergency or threat to public safety exists and would be materially reduced by impound of property on an airport, the manager shall immediately impound the property and attempt to identify and notify the owner after the property has been impounded. In addition, where a sign, signal, or other traffic control device indicates that parking is prohibited and subject to towing and impound, the manager

shall immediately impound a vehicle left unattended and attempt to identify and notify the owner after the property has been impounded.

- (c) After impounding property under (a) or (b) of this section, the manager shall, unless it is impractical to do so,
 - (1) attach a lock or other device to the property to prevent its use or relocation during impound; or
 - (2) tow or otherwise move or have moved the impounded property for storage until redemption or disposal.
- (d) A person who leaves property subject to impound on an airport does so at the person's own risk.
- (e) The department will charge the following storage fees:
 - (1) for an aircraft, the greater of \$350 or three times the transient aircraft parking fee that would be due under 17 AAC 45.600 for transient aircraft parking from the date the aircraft first became parked in violation of this chapter through the date the aircraft is released from impound, regardless of whether transient aircraft parking fees otherwise apply at the airport or parking location; and
 - (2) for a vehicle and other personal property, the greater of \$35 per day of impound or \$150.
- (f) The owner of, operator of, or agent for property that is impounded may redeem the property from the department only after paying the applicable fee assessed under (e) of this section, plus any costs that the department has incurred in connection with the impound, including towing, legal, and administrative costs.
- (g) Property not redeemed within 90 days after impoundment is considered permanently abandoned. Unless applicable law provides otherwise, the department may sell under 17 AAC 45.710, dispose of, destroy, donate, or retain for the department any property that is permanently abandoned, and retain any proceeds from the sale of such property. The department may seek reimbursement for any costs that the department incurs in connection with an impoundment, including towing, legal, and administrative costs, from a person who owns property as of the date that the property is considered permanently abandoned on an airport under this section.
- (h) For purposes of this section, an aircraft or vehicle is derelict if its presence and location at the airport is not expressly authorized by the airport manager and it is, or reasonably gives the appearance of being, forsaken, abandoned, deserted, or cast away; an aircraft is presumed to be derelict if the aircraft has been non-airworthy on an airport for a period of 30 consecutive days or more and a vehicle is presumed to be derelict if the vehicle has been inoperable on an airport for the same minimum period.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 3/20/2016, Register 217; am 7/1/2017, Register 222

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.220 AS 02.15.230

17 AAC 45.120. Accidents.

- (a) The owner or operator of an aircraft or vehicle involved in an accident or incident that occurs on an airport shall report the accident or incident to the airport manager within the time limits in this section measured from the time the owner or operator becomes aware of the accident or incident; if for good reason the owner or operator cannot report within the time limits in this section, the owner or operator shall report as soon as possible under the circumstances:
 - (1) if the aircraft or vehicle or a condition of the airport poses an imminent safety hazard, immediately after the accident or incident;
 - (2) if the accident or incident involves bodily injury or death or damage to a person's property in excess of \$500, within one hour after the accident or incident; or
 - (3) in all other cases, within twenty-four hours after the accident or incident.
- (b) Repealed 3/22/2008.
- (c) When a person or that person's property is injured or damaged by the state, a state employee, or state property on an airport, the person shall report the accident to the airport manager within the time limits in this subsection measured from the time that person becomes aware of the injury or damage; if for good reason the person cannot report within the time limits in this section, the person shall report as soon as possible under the circumstances:
 - (1) if the injury or damage involves bodily injury or death or damage to property in excess of \$500, within one hour;
 - (2) in all other cases, within twenty-four hours after the person becomes aware of the injury or damage.
- (d) The department may seek reimbursement from a person who damages airport property or who is otherwise responsible for that damage for the department's costs to repair or replace the damaged property and for any related costs incurred by the department, including legal and administrative costs.
- (e) In this section,
 - (1) "aircraft accident" has the meaning given in 49 C.F.R. 830.2;

- (2) "incident" has the meaning given in 49 C.F.R. 830.2.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 3/20/2016, Register 217

Authority: AS 02.15.020 AS 02.15.050 AS 02.15.060 AS 02.15.220 AS 02.15.230

17 AAC 45.125. Lease rates, interest, late notice fee, and security for payment.

- (a) If the department grants a lease or privilege at an airport by competitive award under 17 AAC 45.300 - 17 AAC 45.399 and the award is based on the rent or fee offered by the successful bidder or proposer, the rent or fee for that lease or privilege is the amount set by the award.
- (b) Interest at the rate provided in AS 45.45.010 accrues on and attaches to any unpaid rent, fee, or charge under this chapter from the date payment is due through the date paid.
- (c) In addition to interest assessed under (b) of this section, a lessee, permittee, or concessionaire must pay to the department a late notice fee of \$50 for the first notice, \$100 for the second notice, and \$200 for the third and any subsequent notice when the department issues a late notice to the lessee, permittee, or concessionaire for
- (1) non-payment of a rent or fee by the date required by the lease, permit, or concession; or
 - (2) failure to submit to the department a certified activity report by the date required by the lease, permit, or concession.
- (d) The department may require a person using an airport to make a deposit, post a bond, or provide a letter of credit, personal guarantee, or other form of security if the department determines the requirement is necessary to guarantee payment of any charge, rent, or fee payable for use of an airport or of any other obligation in connection with that use. The deposit, bond, letter of credit, personal guarantee, or other security must be in a form and in an amount the department finds acceptable considering the person's financial obligations to the airport, the person's financial responsibility, and the proposed activities on the airport.

History: Eff. 3/28/2002, Register 161; am 7/1/2017, Register 222

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.127. Rental and fee rates.

- (a) Except as otherwise specified in this section, 17 AAC 45.205, or another applicable provision of this chapter, the department will charge and an airport user shall pay, the following annual rental rates in United States dollars, for the stated use of airport land:

- (1) beginning July 1, 2017 and ending December 31, 2018, the annual rental rates are as follows:

<u>Airport Type</u>	<u>Rate Per Square Foot</u>	
Airports where the longest runway is under 5,000 feet long between thresholds and is	Aeronautical Land Uses	Non-aeronautical Land Uses
unpaved and unlighted	\$0.066	\$0.079
unpaved and lighted	0.085	0.103
paved and unlighted	0.085	0.103
paved and lighted	0.098	0.119
Airports where the longest runway is 5,000 feet or longer between thresholds and is		
unpaved and unlighted	\$0.098	\$0.119
unpaved and lighted	0.128	0.155
paved and unlighted	0.128	0.155
paved and lighted	0.148	0.178

- (2) beginning January 1, 2019 and ending December 31, 2019, the annual rental rates are as follows:

<u>Airport Type</u>	<u>Rate Per Square Foot</u>	
Airports where the longest runway is under 5,000 feet long between thresholds and is	Aeronautical Land Uses	Non-aeronautical Land Uses
unpaved and unlighted	\$0.073	\$0.087
unpaved and lighted	0.094	0.113
paved and unlighted	0.094	0.113
paved and lighted	0.108	0.131
Airports where the longest runway is 5,000 feet or longer between thresholds and is		
unpaved and unlighted	\$0.108	\$0.131
unpaved and lighted	0.141	0.171
paved and unlighted	0.141	0.171
paved and lighted	0.163	0.196

- (3) beginning January 1, 2020 and ending December 31, 2020, the annual rental rates are as follows:

<u>Airport Type</u>	<u>Rate Per Square Foot</u>	
Airports where the longest runway is under 5,000 feet long between thresholds and is	Aeronautical Land Uses	Non-aeronautical Land Uses
unpaved and unlighted	\$0.080	\$0.096
unpaved and lighted	0.103	0.124
paved and unlighted	0.103	0.124
paved and lighted	0.119	0.144
Airports where the longest runway is 5,000 feet or longer between thresholds and is		
unpaved and unlighted	\$0.119	\$0.144
unpaved and lighted	0.155	0.188
paved and unlighted	0.155	0.188
paved and lighted	0.179	0.216

- (4) beginning January 1, 2021 and ending December 31, 2021, the annual rental rates are as follows:

<u>Airport Type</u>	<u>Rate Per Square Foot</u>	
Airports where the longest runway is under 5,000 feet long between thresholds and is	Aeronautical Land Uses	Non-aeronautical Land Uses
unpaved and unlighted	\$0.088	\$0.106
unpaved and lighted	0.113	0.136
paved and unlighted	0.113	0.136
paved and lighted	0.131	0.158
Airports where the longest runway is 5,000 feet or longer between thresholds and is		
unpaved and unlighted	\$0.131	\$0.158
unpaved and lighted	0.171	0.207
paved and unlighted	0.171	0.207
paved and lighted	0.197	0.238

(5) beginning January 1, 2022, the annual rental rates are as follows:

<u>Airport Type</u>	<u>Rate Per Square Foot</u>	
Airports where the longest runway is under 5,000 feet long between thresholds and is	Aeronautical Land Uses	Non-aeronautical Land Uses
unpaved and unlighted	\$0.097	\$0.113
unpaved and lighted	0.124	0.147
paved and unlighted	0.124	0.147
paved and lighted	0.144	0.169
Airports where the longest runway is 5,000 feet or longer between thresholds and is		
unpaved and unlighted	\$0.144	\$0.169
unpaved and lighted	0.188	0.220
paved and unlighted	0.188	0.220
paved and lighted	0.217	0.253

(b) Except as otherwise specified under (c) - (t) of this section, 17 AAC 45.205, or another applicable provision of this chapter, the department will charge and an airport user shall pay, the following annual rental rates in United States dollars for the use of land at the listed airports:

(1) beginning July 1, 2017 and ending December 31, 2018, the annual rental rates are as follows:

<u>Airport Location</u>	<u>Rate Per Square Foot</u>	
	Aeronautical Land Uses	Non-Aeronautical Land Uses
Aniak	\$0.140	\$0.110
Bethel	0.148	0.256
Bettles, including Bettles VOR Lake	0.052	0.048
Big Lake	0.078	0.050
Birchwood	0.098	0.119
Cold Bay	0.096	0.058
Cordova (Merle K. "Mudhole" Smith)	0.148	0.131

<u>Airport Location</u>	<u>Rate Per Square Foot</u>	
	<u>Aeronautical Land Uses</u>	<u>Non-Aeronautical Land Uses</u>
Cordova Municipal	0.066	None
Dillingham	0.148	0.125
Fort Yukon	0.090	0.060
Galena (Edward G. Pitka Sr.)	0.096	0.062
Gulkana	0.089	0.037
Gustavus	0.148	0.120
Haines	0.104	0.119
Homer, including Beluga Lake	0.148	0.156
Iliamna	0.085	0.080
King Salmon, excluding Naknek River frontage land	0.148	0.120
King Salmon, Naknek River frontage land	0.148	0.174
Klawock	0.148	0.178
Kodiak	0.148	0.256
Kotzebue (Ralph Wien Memorial)	0.148	0.256
Nome, excluding Nome City Field	0.148	0.168
Nome City Field	0.066	None
Northway	0.120	0.120
Petersburg (James A. Johnson), filled land	0.148	0.250
Petersburg (James A. Johnson), unfilled land	None	0.130
St. Mary's	0.114	0.068
Sitka (Rocky Gutierrez)	0.148	0.256
Talkeetna	0.098	0.119
Tok Junction	0.082	0.030
Unalaska, including revetment lots	0.098	0.170
Utqiagvik (Barrow) (Wiley Post/Will Rogers Memorial)	0.148	0.256
Valdez	0.148	0.040
Willow	0.078	0.050
Wrangell, filled land	0.148	None
Wrangell, unfilled land	None	0.120
Yakutat	0.148	0.178

- (2) beginning January 1, 2019 and ending December 31, 2019, the annual rental rates are as follows:

<u>Airport Location</u>	<u>Rate Per Square Foot</u>	
	Aeronautical Land Uses	Non-Aeronautical Land Uses
Aniak	\$0.140	\$0.110
Bethel	0.163	0.282
Bettles, including Bettles VOR Lake	0.057	0.053
Big Lake	0.086	0.055
Birchwood	0.108	0.131
Cold Bay	0.106	0.060
Cordova (Merle K. "Mudhole" Smith)	0.163	0.144
Cordova Municipal	0.073	None
Dillingham	0.163	0.138
Fort Yukon	0.090	0.060
Galena (Edward G. Pitka Sr.)	0.106	0.068
Gulkana	0.098	0.041
Gustavus	0.163	0.132
Haines	0.114	0.131
Homer, including Beluga Lake	0.163	0.172
Iliamna	0.094	0.080
King Salmon, excluding Naknek River frontage land	0.163	0.120
King Salmon, Naknek River frontage land	0.163	0.191
Klawock	0.163	0.196
Kodiak	0.163	0.282
Kotzebue (Ralph Wien Memorial)	0.163	0.282
Nome, excluding Nome City Field	0.163	0.185
Nome City Field	0.073	None
Northway	0.132	0.132
Petersburg (James A. Johnson), filled land	0.163	0.275
Petersburg (James A. Johnson), unfilled land	None	0.130
St. Mary's	0.125	0.075
Sitka (Rocky Gutierrez)	0.163	0.282
Talkeetna	0.108	0.131
Tok Junction	0.090	0.030
Unalaska, including revetment lots	0.108	0.187
Utqiagvik (Barrow) (Wiley Post/Will Rogers Memorial)	0.163	0.282

<u>Airport Location</u>	<u>Rate Per Square Foot</u>	
	Aeronautical Land Uses	Non-Aeronautical Land Uses
Valdez	0.160	0.040
Willow	0.086	0.055
Wrangell, filled land	0.163	None
Wrangell, unfilled land	None	0.120
Yakutat	0.163	0.180

- (3) beginning January 1, 2020 and ending December 31, 2020, the annual rental rates are as follows:

<u>Airport Location</u>	<u>Rate Per Square Foot</u>	
	Aeronautical Land Uses	Non-Aeronautical Land Uses
Aniak	\$0.140	\$0.110
Bethel	0.179	0.310
Bettles, including Bettles VOR Lake	0.063	0.058
Big Lake	0.095	0.061
Birchwood	0.119	0.144
Cold Bay	0.117	0.060
Cordova (Merle K. "Mudhole" Smith)	0.179	0.158
Cordova Municipal	0.080	None
Dillingham	0.179	0.152
Fort Yukon	0.090	0.060
Galena (Edward G. Pitka Sr.)	0.117	0.075
Gulkana	0.108	0.045
Gustavus	0.179	0.145
Haines	0.125	0.140
Homer, including Beluga Lake	0.179	0.189
Iliamna	0.103	0.080
King Salmon, excluding Naknek River frontage land	0.179	0.120
King Salmon, Naknek River frontage land	0.179	0.210
Klawock	0.179	0.200
Kodiak	0.179	0.310
Kotzebue (Ralph Wien Memorial)	0.179	0.310
Nome, excluding Nome City Field	0.179	0.204
Nome City Field	0.080	None

<u>Airport Location</u>	<u>Rate Per Square Foot</u>	
	Aeronautical Land Uses	Non-Aeronautical Land Uses
Northway	0.145	0.145
Petersburg (James A. Johnson), filled land	0.179	0.303
Petersburg (James A. Johnson), unfilled land	None	0.130
St. Mary's	0.138	0.083
Sitka (Rocky Gutierrez)	0.179	0.310
Talkeetna	0.119	0.144
Tok Junction	0.090	0.030
Unalaska (including revetment lots)	0.119	0.206
Utqiagvik (Barrow) (Wiley Post/Will Rogers Memorial)	0.179	0.310
Valdez	0.160	0.040
Willow	0.095	0.061
Wrangell, filled land	0.179	None
Wrangell, unfilled land	None	0.120
Yakutat	0.179	0.180

- (4) beginning January 1, 2021 and ending December 31, 2021, the annual rental rates are as follows:

<u>Airport Location</u>	<u>Rate Per Square Foot</u>	
	Aeronautical Land Uses	Non-Aeronautical Land Uses
Aniak	\$0.140	\$0.110
Bethel	0.197	0.341
Bettles, including Bettles VOR Lake	0.069	0.064
Big Lake	0.105	0.067
Birchwood	0.131	0.158
Cold Bay	0.120	0.060
Cordova (Merle K. "Mudhole" Smith)	0.197	0.174
Cordova Municipal	0.088	None
Dillingham	0.197	0.167
Fort Yukon	0.090	0.060
Galena (Edward G. Pitka Sr.)	0.129	0.083
Gulkana	0.119	0.050
Gustavus	0.197	0.160
Haines	0.138	0.140

<u>Airport Location</u>	<u>Rate Per Square Foot</u>	
	Aeronautical Land Uses	Non-Aeronautical Land Uses
Homer, including Beluga Lake	0.197	0.208
Iliamna	0.113	0.080
King Salmon, excluding Naknek River frontage land	0.197	0.120
King Salmon, Naknek River frontage land	0.197	0.231
Klawock	0.197	0.200
Kodiak	0.197	0.341
Kotzebue (Ralph Wien Memorial)	0.197	0.341
Nome, excluding Nome City Field	0.197	0.224
Nome City Field	0.088	None
Northway	0.160	0.160
Petersburg (James A. Johnson), filled land	0.197	0.333
Petersburg (James A. Johnson), unfilled land	None	0.130
St. Mary's	0.152	0.091
Sitka (Rocky Gutierrez)	0.197	0.341
Talkeetna	0.131	0.158
Tok Junction	0.090	0.030
Unalaska, including revetment lots	0.131	0.227
Utqiagvik (Barrow) (Wiley Post/Will Rogers Memorial)	0.197	0.341
Valdez	0.160	0.040
Willow	0.105	0.067
Wrangell, filled land	0.197	None
Wrangell, unfilled land	None	0.120
Yakutat	0.197	0.180

(5) beginning January 1, 2022, the annual rental rates are as follows:

<u>Airport Location</u>	<u>Rate Per Square Foot</u>	
	Aeronautical Land Uses	Non-Aeronautical Land Uses
Aniak	\$0.140	\$0.110
Bethel	0.217	0.375
Bettles, including Bettles VOR Lake	0.076	0.070
Big Lake	0.116	0.074

<u>Airport Location</u>	<u>Rate Per Square Foot</u>	
	<u>Aeronautical Land Uses</u>	<u>Non-Aeronautical Land Uses</u>
Birchwood	0.144	0.174
Cold Bay	0.120	0.060
Cordova (Merle K. "Mudhole" Smith)	0.217	0.180
Cordova Municipal	0.097	None
Dillingham	0.217	0.184
Fort Yukon	0.090	0.060
Galena (Edward G. Pitka Sr.)	0.142	0.091
Gulkana	0.131	0.055
Gustavus	0.217	0.176
Haines	0.152	0.140
Homer, including Beluga Lake	0.217	0.229
Iliamna	0.124	0.080
King Salmon, excluding Naknek River frontage land	0.217	0.120
King Salmon, Naknek River frontage land	0.217	0.254
Klawock	0.217	0.200
Kodiak	0.217	0.375
Kotzebue (Ralph Wien Memorial)	0.217	0.375
Nome, excluding Nome City Field	0.217	0.246
Nome City Field	0.097	None
Northway	0.176	0.176
Petersburg (James A. Johnson), filled land	0.217	0.340
Petersburg (James A. Johnson), unfilled land	None	0.130
St. Mary's	0.167	0.100
Sitka (Rocky Gutierrez)	0.217	0.375
Talkeetna	0.144	0.174
Tok Junction	0.090	0.030
Unalaska, including revetment lots	0.144	0.250
Utqiagvik (Barrow) (Wiley Post/Will Rogers Memorial)	0.217	0.375
Valdez	0.160	0.040
Willow	0.116	0.074
Wrangell, filled land	0.217	None
Wrangell, unfilled land	None	0.120
Yakutat	0.217	0.180

(c) The following annual rental rates apply to land at the Deadhorse Airport:

- (1) beginning July 1, 2017 and ending December 31, 2018, the annual rental rates are as follows:
 - (A) \$0.148 per square foot for an aeronautical use on undeveloped land;
 - (B) \$0.322 per square foot for an aeronautical use on land with a state-owned gravel pad;
 - (C) \$0.214 per square foot for a non-aeronautical use on undeveloped land; and
 - (D) \$0.422 per square foot for a non-aeronautical use on land with a state-owned gravel pad;
- (2) beginning January 1, 2019 and ending December 31, 2019, the annual rental rates are as follows:
 - (A) \$0.163 per square foot for an aeronautical use on undeveloped land;
 - (B) \$0.354 per square foot for an aeronautical use on land with a state-owned gravel pad;
 - (C) \$0.235 per square foot for a non-aeronautical use on undeveloped land; and
 - (D) \$0.464 per square foot for a non-aeronautical use on land with a state-owned gravel pad;
- (3) beginning January 1, 2020 and ending December 31, 2020, the annual rental rates are as follows:
 - (A) \$0.179 per square foot for an aeronautical use on undeveloped land;
 - (B) \$0.389 per square foot for an aeronautical use on land with a state-owned gravel pad;
 - (C) \$0.259 per square foot for a non-aeronautical use on undeveloped land; and
 - (D) \$0.510 per square foot for a non-aeronautical use on land with a state-owned gravel pad;
- (4) beginning January 1, 2021 and ending December 31, 2021, the annual rental rates are as follows:
 - (A) \$0.197 per square foot for an aeronautical use on undeveloped land;
 - (B) \$0.428 per square foot for an aeronautical use on land with a state-owned gravel pad;
 - (C) \$0.285 per square foot for a non-aeronautical use on undeveloped land; and

- (D) \$0.561 per square foot for a non-aeronautical use on land with a state-owned gravel pad;
- (5) beginning January 1, 2022, the annual rental rates are as follows:
 - (A) \$0.217 per square foot for an aeronautical use on undeveloped land;
 - (B) \$0.471 per square foot for an aeronautical use on land with a state-owned gravel pad;
 - (C) \$0.314 per square foot for a non-aeronautical use on undeveloped land; and
 - (D) \$0.617 per square foot for a non-aeronautical use on land with a state-owned gravel pad.
- (d) If the department determines in writing that any of the conditions described in this subsection apply to a premises under a lease, permit, or concession, the department will reduce the rental rate established for the premises under (a), (b), or (c) of this section by the amount indicated for each of the conditions that applies. The conditions that will justify a rental rate reduction under this subsection, and the rental rate reductions allowed for each condition are as follows:
 - (1) 10 percent, if
 - (A) at any location, except Deadhorse, unfilled land at Petersburg, and unfilled land at Wrangell, substantial fill or excavation by the lessee, permittee, or concessionaire is necessary so that the premises may be used in the manner authorized by the department; and
 - (B) the department did not make fill material on the airport available at no charge to the lessee, permittee, or concessionaire;
 - (2) 10 percent, if no part of the premises is within 200 feet of the nearest reasonable point of connection to a public utility sewer system or to a public utility water system and that connection to a public utility sewer or water system is available within 200 feet of other premises on the airport;
 - (3) 10 percent, if no part of the premises is within 200 feet of the nearest reasonable point of connection to a public utility electric power distribution source and that connection to a public utility electric power distribution source is available within 200 feet of other premises on the airport;
 - (4) 10 percent, if no part of the premises is within 200 feet of an existing public access road;
 - (5) 10 percent, if the premises are aeronautical premises otherwise suitable for use by fixed wing aircraft, and no part of the premises is within 200 feet of a public-use runway, taxiway, or apron.

- (e) A rent reduction applied to a lease, permit, or concession under (d)(1) of this section does not apply to a successive lease, permit, or concession having substantially the same premises.
- (f) If within the previous three years the department has accepted an appraisal of a premises under 17 AAC 45.205(d) or 17 AAC 45.297, in place of the rental rate determined under (a) – (c) of this section, the department will charge fair market rent, as determined by the appraisal, for use of the appraised premises, unless improvements to the airport made after the appraisal have upgraded the airport to a higher type under (a) of this section. If the department enters into a successive lease or a new lease for substantially the same uses on a premises for which the fair market rental rate is established by appraisal under this subsection, the appraisal-based rate remains in effect for three years from the date that rental rate took effect, unless the department determines by a more recent appraisal that the appraisal is no longer the best estimate of fair market rent.
- (g) At department-owned seaplane floats and turnaround facilities, excluding assigned space designated by the department for float-equipped aircraft under 17 AAC 45.500 - 17 AAC 45.590, the department will charge fair market rent for the use of land, tideland, dock frontage, and float space.
- (h) In addition to the rent payable under this section for any land leased with the building, the department may establish the rent charged for use of, or use of space in, a department-owned building on an airport by
 - (1) performing a market survey of the rent charged by the owners of reasonably comparable property; as part of the market survey the department will collect orally or in writing, from at least three market participants at a particular airport or at one or more comparable airports or off-airport properties, information regarding current fees and rentals being paid for comparable space or privileges as of the effective date of the survey; if the market survey indicates a fair market rent
 - (A) of \$2,000 or less per month, the department will charge the rent determined by the market survey;
 - (B) in excess of \$2,000 per month, the department will establish the rent by appraisal; or
 - (2) prorating the department's actual or estimated costs of operating the building, plus a rate of return of not less than five percent or more than 15 percent as the department determines is reasonable for economic circumstances at the airport, to the rentable square footage in the building; for purposes of this paragraph, the department's costs include administration, maintenance, repair, security, insurance or risk management, utilities, and capital amortization.
- (i) In addition to the rental rate of any premises used, the department may charge a concession fee for the value of the department's authorization to conduct a non-aeronautical business

opportunity on airport premises. Except as limited by any existing contract right, the department will require any lease or permit authorizing the sale on a department-operated airport of food and non-alcoholic beverages, alcoholic beverages, goods, or lodging to include an obligation to pay a concession fee calculated as a percentage of the gross sales of the authorized business in addition to land rent, building rent, or a business activity permit fee under this section. The concession fee on all sales of alcoholic beverages under the lease or permit is 12 percent of gross sales. The concession fees on gross combined sales of food and non-alcoholic beverages, goods, and lodging in excess of \$50,000 in a calendar year, or in excess of a proportional amount for any partial calendar year at the beginning or end of the concession, are the following percentages:

- (1) food and non-alcoholic beverages, six percent;
 - (2) goods, eight percent;
 - (3) lodging, five percent.
- (j) The department will charge the following annual rent for the agricultural use of airport land if the department allows the use after considering airport planning, operation, and management issues, including any potentially associated bird or wildlife hazard and other safety and security matters:
- (1) for land used only for crop cultivation purposes, \$100 per acre; and
 - (2) for land used only for livestock grazing or harvesting uncultivated vegetation, excluding timber, \$50 per acre.
- (k) Except where a different fee is specified in this chapter, such as for an airport boundary crossing permit fee under (l) of this section, a commercial passenger vehicle permit fee under 17 AAC 45.095(k), and a business activity permit fee under (p) of this section, the minimum charge for all rents and fees assessed under this section, including any concession fee, is
- (1) \$250 for a permit with a term of 120 days or less;
 - (2) \$625 for a lease, permit, or concession with a term of 121 days to one year; and
 - (3) \$625 per year for a lease, permit, or concession with a term of more than one year.
- (l) Subject to (m) and (n) of this section, the department will charge and a permittee must pay each year the greater of \$150 or the applicable land rental rate for the square footage area of any right-of-way used for access across airport land between the airport boundary and a public road or aircraft operation area on the airport, plus an annual fee, in United States dollars, for an airport boundary crossing permit issued under 17 AAC 45.285 based on the following schedules:

- (1) beginning July 1, 2017 and ending December 31, 2018, the annual boundary crossing fees for all airports, except the Tok Junction Airport, are as follows:

<u>Type of Airport</u>	<u>Personal Use Permit Fee</u>	<u>Commercial Use Permit Fee</u>
Airport where the longest runway is under 5,000 feet long between thresholds and is		
unpaved and unlighted	\$330	\$660
unpaved and lighted	432	858
paved and unlighted	432	858
paved and lighted	498	990
Airport where the longest runway is 5,000 feet or longer between thresholds and is		
unpaved and unlighted	\$498	\$ 990
unpaved and lighted	648	1,290
paved and unlighted	648	1,290
paved and lighted	750	1,488

- (2) beginning January 1, 2019 and ending December 31, 2019, the annual boundary crossing fees for all airports, except the Tok Junction Airport, are as follows:

<u>Type of Airport</u>	<u>Personal Use Permit Fee</u>	<u>Commercial Use Permit Fee</u>
Airport where the longest runway is under 5,000 feet long between thresholds and is		
unpaved and unlighted	\$363	\$ 726
unpaved and lighted	475	944
paved and unlighted	475	944
paved and lighted	548	1,089
Airport where the longest runway is 5,000 feet or longer between thresholds and is		
unpaved and unlighted	\$548	\$1,089
unpaved and lighted	713	1,419
paved and unlighted	713	1,419
paved and lighted	825	1,637

- (3) beginning January 1, 2020 and ending December 31, 2020, the annual boundary crossing fees for all airports, except the Tok Junction Airport, are as follows:

<u>Type of Airport</u>	<u>Personal Use Permit Fee</u>	<u>Commercial Use Permit Fee</u>
Airport where the longest runway is under 5,000 feet long between thresholds and is		
unpaved and unlighted	\$399	\$ 799
unpaved and lighted	522	1,038
paved and unlighted	522	1,038
paved and lighted	602	1,198
Airport where the longest runway is 5,000 feet or longer between thresholds and is		
unpaved and unlighted	\$602	\$1,198
unpaved and lighted	783	1,561
paved and unlighted	783	1,561
paved and lighted	906	1,801

- (4) beginning January 1, 2021 and ending December 31, 2021, the annual boundary crossing fees for all airports, except the Tok Junction Airport, are as follows:

<u>Type of Airport</u>	<u>Personal Use Permit Fee</u>	<u>Commercial Use Permit Fee</u>
Airport where the longest runway is under 5,000 feet long between thresholds and is		
unpaved and unlighted	\$399	\$ 879
unpaved and lighted	522	1,142
paved and unlighted	522	1,142
paved and lighted	602	1,318
Airport where the longest runway is 5,000 feet or longer between thresholds and is		
unpaved and unlighted	\$602	\$1,318
unpaved and lighted	783	1,717
paved and unlighted	783	1,717
paved and lighted	906	1,981

- (5) beginning January 1, 2022, the annual boundary crossing fees for all airports, except the Tok Junction Airport, are as follows:

<u>Type of Airport</u>	<u>Personal Use Permit Fee</u>	<u>Commercial Use Permit Fee</u>
Airport where the longest runway is under 5,000 feet long between thresholds and is		
unpaved and unlighted	\$399	\$ 897
unpaved and lighted	522	1,165
paved and unlighted	522	1,165
paved and lighted	602	1,345
Airport where the longest runway is 5,000 feet or longer between thresholds and is		
unpaved and unlighted	\$602	\$1,345
unpaved and lighted	783	1,752
paved and unlighted	783	1,752
paved and lighted	906	2,021

- (6) For the Tok Junction Airport, the annual boundary crossing fees are as follows:

<u>Effective Period</u>	<u>Personal Use Permit Fee</u>	<u>Commercial Use Permit Fee</u>
Beginning July 1, 2017 and ending December 31, 2018	\$498	\$ 990
Beginning January 1, 2019 and ending December 31, 2019	548	1,089
Beginning January 1, 2020 and ending December 31, 2020	603	1,198
Beginning January 1, 2021 and ending December 31, 2021	663	1,318
Beginning January 1, 2022	675	1,450

- (m) A personal-use airport boundary crossing permit fee will be assessed under (l) of this section if the use of the boundary crossing is solely for a personal or a non-governmental not-for-profit purpose. A commercial use airport boundary crossing permit fee will be

assessed if the use of the boundary crossing is for or in connection with a for-profit business activity or a government agency function.

- (n) The department may perform an appraisal to determine the fee to be charged for an airport boundary crossing permit. If the fee based on an appraisal is higher than the fee charged under (l) of this section, the department will charge the annual fee for an airport boundary crossing permit based on the appraisal.
- (o) A person who holds a lease, permit, or concession that authorizes operation of a commercial fueling service at an airport must pay to the department a fuel flowage fee in addition to the rent or other fee charged in the person's lease, permit, or concession. The fuel flowage fee is 5.0 cents per gallon of fuel sold, dispensed, or delivered by or on behalf of the person or otherwise under the person's authorization at the airport. The fuel flowage fee applies only once on a gallon of fuel at an airport. Unless the lease, permit, or concession provides otherwise, the following are exempt from the fuel flowage fee:
 - (1) fuel to be used exclusively for building heating;
 - (2) fuel delivered to an aircraft for carriage off the airport as manifested cargo in a container not connected to the aircraft's engine;
 - (3) fuel carried to an airport aboard an aircraft if off-loaded to or in a storage or transport container for use only off the airport.
- (p) A person required to hold a business activity permit under 17 AAC 45.105 on an airport shall pay a non-refundable annual permit fee of \$625.
- (q) An appraisal for purposes of this section must be performed by a person who is certified under AS 08.87 as a general real estate appraiser. The department may establish written instructions for the appraiser that are reasonable and consistent with generally accepted real estate appraisal practices.
- (r) Unless otherwise provided in this chapter, all fees, including an application fee for a lease, permit, or concession under this chapter, are non-refundable.
- (s) The department may charge an applicant, bidder, or proposer under this chapter a reasonable amount calculated to cover the cost of reproduction, printing, mailing, and distribution of relevant contract and solicitation documents.
- (t) The rental rate for any portion of an area specifically designated under 17 AAC 45.020(c), 17 AAC 45.135, 17 AAC 45.140, or 17 AAC 45.145 for aeronautical or non-aeronautical land use may not be lower than the rate applicable to the class of use for which the land is designated. The provisions of this subsection apply regardless of authorized or actual use under the lease, unless, when aeronautical use land is not available, the department approves aeronautical use for land designated for non-aeronautical use. In these circumstances, the department may charge the rental rate for aeronautical use even if lower than the rental rate for the designated use.

- (u) For purposes of this section, “public utility” means an entity that provides sewer, water, or electrical services that are available to all persons located within the area in which those services are provided.

History: Eff. 3/28/2002, Register 161; am 11/23/2003, Register 168; am 3/22/2008, Register 185; am 6/16/2008 – 10/13/2008, Register 187; am 4/23/2009, Register 190; 4/4/2013, Register 206; am 3/20/2016, Register 217; am 7/1/2017, Register 222

Authority: AS 02.15.020 AS 02.15.070 AS 44.42.020 AS 02.15.060 AS 02.15.090

17 AAC 45.130. Waiver of rents or fees.

Except when awarding a lease, permit, or concession under 17 AAC 45.300 - 17 AAC 45.399, if the commissioner determines that it is in the best interest of the state to do so, the commissioner will waive or reduce the charge, rent, or fee for

- (1) an easement, permit, or right-of-way for a public road or a public access way that serves an airport;
- (2) a lease, license, easement, right-of-way, or permit granted to a government agency for an activity directly related to and in support of the operation of an airport;
- (3) a lease or permit for land or building space granted to the Alaska Wing, Civil Air Patrol, except for an activity that is typically offered to the public, other than Civil Air Patrol members, for a fee;
- (4) a land lease or permit to a local government for a local government-owned passenger terminal or passenger shelter building on an airport that provides the primary transportation access for a community with a population of at least 25 but less than 1,500, subject to the following conditions:
 - (A) the land and building may be used for only airport terminal purposes and not for any other private or community purpose;
 - (B) the land and building must be available for public use free-of-charge, except as provided in (D) of this paragraph, and on a non-discriminatory basis;
 - (C) the land and building may not be used for revenue-generating purposes, except as provided in (D) of this paragraph; and
 - (D) if and to the extent authorized in the lease and approved by the department, the local government may charge fees no greater than required to recover building operation and maintenance costs;
- (5) a lease or permit for use of land by a local government for community purposes if

- (A) contribution of the airport property enhances public acceptance of the airport in a community in the immediate area of the airport;
 - (B) community use of the land does not adversely affect the capacity, security, safety, or operations of the airport;
 - (C) the land would not reasonably be expected to produce fair market revenue to the airport at the time that the community use is contemplated and is not reasonably expected to be needed for an aeronautical use or airport operations in the foreseeable future; and
 - (D) community use would not preclude future use of the property for airport purposes if the commissioner concludes such future use would provide greater benefits to the airport than continuation of the community use;
- (6) a public service sign, public weather shelter, or public restroom facility owned and maintained by the lessee or permittee for the benefit of airport users, subject to the following conditions:
- (A) the land and any building may not be used for any use other than a public service sign, public weather shelter, or public restroom facility;
 - (B) the land and any building must be available for public use free-of-charge and on a non-discriminatory basis;
 - (C) the land and any building may not be used to generate revenue.
- (7) an aviation museum.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 3/20/2016, Register 217

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.135. Airport planning and programs for FAA compliance.

If the department determines that it is the best interest of the state to do so, the department will prepare and, as appropriate, revise in conformity with applicable guidance published by the FAA, any manual, plan, or program required by the FAA for eligibility of the airport for federal funds or for participation in a federal aviation program. A manual, plan, or program prepared under this section is an information resource that the department and the airport manager may consult in making decisions under this chapter, but is not mandatory guidance or a regulation of the department.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

Editor's note: A copy of any document prepared under this section for an airport is available through the commissioner's office at Commissioner of Transportation and Public Facilities, Department of Transportation and Public Facilities, 3132 Channel Drive, Juneau, Alaska 99801-7898.

17 AAC 45.140. Airport noise compatibility program.

- (a) If the department determines that it is in the best interest of the state and of members of the public living or working in areas near the airport that are or may be affected by noise from aircraft using the airport, the department will develop a program to improve compatibility between the operation of those aircraft and the surrounding community.
- (b) The department will follow the procedures of AS 44.62.180 - 44.62.290 in developing a noise compatibility program under this section. A noise compatibility program developed by the department must be approved by the FAA under 14 C.F.R. 150.23, as amended as of January 1, 2007, before it is forwarded to the commissioner.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.145. Airport zoning.

- (a) The commissioner may determine in writing that the adoption of zoning for and surrounding an airport for the purpose of establishing appropriate land use is in the best interest of the state. If the commissioner makes that determination, the department will develop a plan of formally designated and zoned areas of and surrounding the airport that complies with the requirements of AS 02.25.010 - 02.25.110.
- (b) An airport zoning plan developed by the department under (a) of this section must provide for the safe, effective, and efficient operation and use of the airport area and optimize development on the airport. The department will follow the procedures of AS 44.62.180 - 44.62.290 in developing the plan and will forward the plan to the commissioner for possible adoption by reference in this chapter.
- (c) The department, in developing airport zoning under this section, will consider sound airport planning and will ensure compliance with applicable federal law and the achievement or maintenance of eligibility to receive federal money and to participate in federal aviation programs.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.25.020 AS 02.25.030

17 AAC 45.150. Opportunity to comment.

- (a) The department will notify the public in accordance with 17 AAC 45.400 and provide an opportunity to comment before adopting or substantially revising any noise compatibility program under 17 AAC 45.140 or zoning plan under 17 AAC 45.145.
- (b) In addition to the requirements of (a) of this section, before developing a zoning plan under 17 AAC 45.145, the department will also conduct a hearing on the plan in accordance with AS 02.25.030.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.200 AS 02.25.030

ARTICLE 2

Authorization for use of Rural Airport Property

Section

- 200. Lease, permit, concession, or other interest for use of airport property.
- 205. Application for or material amendment to a lease, permit, concession, or other interest.
- 210. Consideration of application for a lease, permit, concession, material amendment, or other interest subject to competition.
- 215. Consideration of application for a land lease or a term extension of a land lease without competition.
- 220. Lease, permit, concession, or other interest term limitations.
- 225. Land lease term or term extension.
- 230. Documentation of costs, purchase price, opinion of remaining useful life, or fair market value of permanent improvements.
- 235. Permit, concession, building lease, or government agency land lease term or term extension.
- 240. Agreement to complete construction or remediation.
- 242. Damage to lessee-owned permanent improvements.
- 245. Disposition of permanent improvements and site development materials on a land lease.
- 250. Disposition of removable improvements on a building lease or concession.
- 252. Holdover.
- 255. Condemnation of leasehold or improvements.
- 260. Assignment.
- 265. Assignment for security purposes.
- 270. Sublease.
- 275. Approval or denial of an assignment, assignment for security purposes, or sublease.
- 280. Airport building permit.
- 285. Airport boundary crossing permit.
- 290. Property survey.
- 295. Rental or fee rate adjustment.
- 297. Rental rate adjustment protest.
- 299. Lease of complete airport.

17 AAC 45.200. Lease, permit, concession, or other interest for use of airport property.

- (a) Except as otherwise provided in (b) of this section, 17 AAC 45.200 - 17 AAC 45.299 apply to a lease, permit, concession, or other interest for use of airport property.
- (b) The provisions of 17 AAC 45.200 - 17 AAC 45.299 do not apply to
 - (1) a commercial passenger vehicle permit under 17 AAC 45.095;
 - (2) a business activity permit under 17 AAC 45.105;
 - (3) an assigned aircraft parking permit under 17 AAC 45.500 - 17 AAC 45.590;
 - (4) a transient aircraft parking permit under 17 AAC 45.600; or
 - (5) a first amendment activity permit under 17 AAC 45.800 - 17 AAC 45.810.

- (c) A permit issued under this chapter does not convey the right to make permanent improvements to an affected premises and does not convey a preferential right to a new permit or a term extension under AS 02.15.090(c).

History: Eff. 3/28/2002, Register 161; am 11/23/2003, Register 168

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.25.090

17 AAC 45.205. Application for or material amendment to a lease, permit, concession, or other interest.

- (a) A person seeking a lease, permit, concession, or other interest for use of airport property or seeking a material amendment to an interest the person already holds may submit an application under this section. The person must submit the application in writing to the department and must include
 - (1) a description of the property or interest requested;
 - (2) a description of the proposed activity or business and, if the applicant proposes a business use, a description of the activities proposed to be conducted on the airport and a copy of the applicant's business license;
 - (3) a description, site plan, cost estimate, and method of financing for the proposed improvements;
 - (4) a list of any aircraft that the applicant intends to base on the airport;
 - (5) a non-refundable application fee of
 - (A) \$500, if the application is for a new lease, concession, or other interest;
 - (B) \$250, if the application is for a successive lease, a new permit, or a term extension for, or a material amendment to, an existing lease, permit, concession, or other interest; or
 - (C) no charge, if the applicant is a federal agency that is exempt from the fee under federal law or the terms of a grant to the department; and
 - (6) the length of term or extension requested;
 - (7) repealed 3/22/2008.
- (b) If an applicant applies for either a land lease or a land lease term extension based on investment, purchase price, fair market value, or remaining useful life of the permanent improvements, the applicant shall submit with the application, and in accordance with 17 AAC 45.230, the following:

- (1) a statement of the dollar amount, excluding financing costs, of any proposed investment in the premises and the applicant's written agreement to make that investment for, as applicable,
 - (A) construction of permanent improvements on the premises, including the cost of design, labor, materials, shipping, permits, equipment, soil testing, and environmental assessments directly related to the construction;
 - (B) premises boundary and as-built surveys;
 - (C) site development work;
 - (D) site development materials;
 - (E) remediation of environmental contamination, except that, if the applicant caused or materially contributed to the contamination, the applicant may not include the costs of remediation to justify all or part of the term of a land lease or land lease term extension under this section or 17 AAC 45.225; and
 - (F) costs related to utility infrastructure development or connection;
 - (2) documentation of the purchase price, excluding financing costs, of permanent improvements that the applicant acquired from a previous lessee and that are located on the premises;
 - (3) documentation of any investment, excluding financing costs, that the applicant has made on the premises for work or materials
 - (A) described in (1)(A) - (F) of this subsection;
 - (B) approved by the department in an airport building permit or other written approval under 17 AAC 45.280 or under 17 AAC 40 in effect before March 28, 2002; and
 - (C) not previously considered by the department in setting any initial lease term or term extension;
 - (4) a written appraisal, prepared in accordance with 17 AAC 45.230(a)(3), of the fair market value of any permanent improvements that the applicant owns or has contracted to acquire that are located on the premises; or
 - (5) a written opinion, prepared in accordance with 17 AAC 45.230(a)(4), of the remaining useful life of the existing permanent improvements that the applicant owns or has contracted to acquire that are located on the premises.
- (c) An application for a successive lease of land may not be submitted earlier than one year before the expiration of the remaining lease term.

- (d) An applicant that believes the rental rate established under 17 AAC 45.127 for the lease the applicant seeks would exceed fair market rent may, at the applicant's expense, use the protest procedures in 17 AAC 45.297(c) - (i) to establish the fair market rental rate for the lease by appraisal. This subsection does not apply if the applicant is seeking to modify an existing lease.
- (e) To make a determination whether an application is eligible under 17 AAC 45.215(a), the department may require the applicant to submit additional information relevant to the applicant's eligibility for consideration without competition.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 7/1/2017, Register 222

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.210 AS 37.15.470 AS 37.15.540

17 AAC 45.210. Consideration of application for a lease, permit, concession, material amendment, or other interest subject to competition.

- (a) This section applies to an application for a lease, permit, concession, material amendment, or other interest submitted under 17 AAC 45.205, except an application for a land lease that the department has determined under 17 AAC 45.215(b) is eligible for consideration without competition under AS 02.15.090(c). The department may determine under 17 AAC 45.300(a) or under (g) of this section that a lease, permit, concession, or other interest for which an applicant has applied under this section will be awarded by competitive means under 17 AAC 45.300 - 17 AAC 45.399.
- (b) The department will review the application and will determine whether it is approvable, subject to public notice and comment under 17 AAC 45.400. An application is approvable under this subsection unless
 - (1) the proposed use is prohibited by or inconsistent with
 - (A) the state's obligations under a covenant running with the airport land;
 - (B) an exclusive right, consistent with FAA requirements, granted by the department to another person;
 - (C) sound airport planning or considerations of security, safety, maintenance, or operation of the airport;
 - (D) the applicable provisions of this chapter and of any other statute or regulation, including any relating to noise or airport land use; or
 - (E) any applicable FAA grant assurance incorporated by reference under 17 AAC 45.010(e) or any written plan or program required for compliance with applicable state or federal law;

- (2) the proposed use would be inconsistent with the best interest of the state;
 - (3) the department has already issued final approval of an application submitted under 17 AAC 45.215 for the same land, and the time under (i) of this section or 17 AAC 45.215(j), as applicable, for execution of a lease, permit, or concession has not expired;
 - (4) the department has received an approvable application that has a proposed use of higher priority as determined under (e) of this section;
 - (5) the applicant fails to establish financial responsibility acceptable to the department; or
 - (6) approval must be denied under 17 AAC 45.010(g).
- (c) If the department determines that an application is approvable, subject to public notice and comment under 17 AAC 45.400, and the department has not received another approvable application to put the same land, space, or interest to a use of the same or higher priority as provided in (e) of this section, the department will provide public notice of the application in accordance with 17 AAC 45.400 and this section. The department will include in a notice under this section a request for competing applications, except with respect to an application for a term extension or change in authorized use of a lease, permit, or concession with a year or more of term remaining. If the department requires newspaper publication of the notice under 17 AAC 45.400, the applicant shall pay the cost of publication, unless the applicant is exempt from the payment under federal law or the terms of a grant to the department.
- (d) After the public comment period set in the notice given under (c) of this section, including any extension of that period, has closed, the department will consider any public comment or objection, or application for the same property or interest, that the department received in writing before the close of the public comment period and all facts known to the department, but not any public comment or objection received after the close of the public comment period. The department will review any other application for the same property or interest that the department received before the close of the public comment period to determine whether any other application is approvable under (b) of this section or under 17 AAC 45.215(b). The department will determine whether the noticed application remains approvable under (b) of this section in light of all facts known to the department. The department will either:
- (1) send notice of the department's intent to execute a lease, permit, concession, material amendment, or other interest to the applicant and to any person from whom the department received within the public comment period, written comment or objection, or other application for the same property or interest, and who provided a return address;

- (2) if the department received no written comment or objection, or other application during the comment period, enter into a lease, permit, concession, material amendment, or other interest with the applicant, or
- (3) send notice of the department's intent not to execute the lease, permit, concession, material amendment, or other interest to the applicant, and to any person from whom the department received written comment or objection, or other application for the property or interest, within the comment period and who provided a return address, along with a written decision showing that
 - (A) the department received, within the public comment period, at least one other approvable competing application of the same or higher priority class of use determined under (e) of this section;
 - (B) the department will award the property or interest by competitive means, either under (g) of this section or for a reason set out in 17 AAC 45.300(a); or
 - (C) the application should be denied for any other reason required or allowed under this chapter.
- (e) If the department timely receives two or more approvable applications submitted under 17 AAC 45.205 for different classes of use of the same or overlapping property or interest, the conflict is not mutually resolved by the applicants, and no application qualifies for consideration without competition under 17 AAC 45.215, the department will determine which application to present for public notice under (c) of this section according to the following priority order among classes of use, to the extent not inconsistent with sound airport planning at the airport in question:
 - (1) an aeronautical use;
 - (2) a non-aeronautical use.
- (f) The department will execute a lease, permit, concession, or other interest for a combination of two or more classes of use if the department determines that the combination of uses is in the best interest of the state.
- (g) If, either before providing public notice under (c) of this section regarding an application for a property or interest or by the date set in that notice, the department has received more than one application to put the same property or interest to a use of the same priority as provided in (e) of this section and which is also subject to and approvable under (b) of this section, the department will send to each applicant and to each person who submitted a written comment or objection during any comment period and who provided a return address, notice of the department's intent to award the property or interest by competitive means under 17 AAC 45.300 - 17 AAC 45.399.

- (h) The department may mail or deliver to the applicant a proposed lease, permit, concession, material amendment, or other document form for the interest determined to be approvable under (b) of this section. After final approval under (d) of this section, the department will mail or deliver to the applicant a final lease, permit, concession, or other document form for the interest approved unless the final document form is unchanged from a proposed form the department previously mailed or delivered to the applicant. If the applicant does not sign and mail or deliver the final form lease, permit, concession, or other document form back to the department within 30 days after the later of the date that the department mails or delivers the form to the applicant or the date of the close of the public comment period, the department will not enter into the lease, permit, concession, or other interest and will so notify the applicant in writing. The department may extend the response time provided under this subsection for good cause shown. To request an extension, the applicant must submit to the department a written request for extension stating the reasons for the request.
- (i) The department may execute a lease, permit, concession, or other interest
 - (1) no earlier than
 - (A) the day after the date set for submission of public comment, objection, or competing application if the department receives none; or
 - (B) if the department receives timely written comment, objection, or competing application in response to the notice under (c) of this section, eight days after the mailing of the notice of intent to execute the lease, permit, concession, or other interest under this section, and
 - (2) no later than 270 days after the date set in the notice given under (c) of this section for submission of public comment, objection, or competing application; the department may extend the period for execution by a total of no more than 90 additional days upon a showing by the applicant that either the applicant had fulfilled all requirements for the department's execution before the one year period expired or any failure of the applicant to do so was caused by factors beyond the applicant's control.
- (j) The department will state in writing any decision to deny an application or request for an extension under this section, including the reasons for the denial. An applicant may protest the denial of an application or the denial of a request for an extension in accordance with 17 AAC 45.910.
- (k) If the department determines that a competing application received during a comment period in response to a public notice under this section is not approvable, the department will consider the denied application as an objection to execution of the advertised interest.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 3/20/2016, Register 217

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.210 AS 37.15.470 AS 37.15.540

17 AAC 45.215. Consideration of application for a land lease or a term extension of a land lease without competition.

- (a) This section applies only to an application for a land lease, or a term extension of a land lease, that is eligible for consideration without competition under AS 02.15.090(c) because the applicant
 - (1) is a lessee under and the application relates to a land lease that either has not expired or is in holdover; and
 - (2) is applying for the same land and substantially the same use as stated in the existing lease.
- (b) The department will review an application to which this section applies to determine whether the application is eligible under the standards stated in (a) of this section for consideration under AS 02.15.090(c) and whether the application is approvable, subject to public notice and comment under 17 AAC 45.400. The application is approvable, subject to public notice and comment under 17 AAC 45.400, if
 - (1) denial of the application is not required under 17 AAC 45.010(g);
 - (2) the continued use by the applicant is not inconsistent with written airport operation policies, including
 - (A) an exclusive right, consistent with FAA requirements, granted by the department in writing to another person;
 - (B) documents relating to sound airport planning or considerations of security, safety, maintenance, or operation of the airport;
 - (C) the applicable provisions of this chapter and of any other statute or regulation, including any relating to noise or airport land use;
 - (D) any applicable FAA grant assurance incorporated by reference under 17 AAC 45.010(e);
 - (E) any written plan or program required for compliance with applicable state or federal law;
 - (F) the state's obligations under a covenant running with airport land; and
 - (G) operational orders the department issues under 17 AAC 45.010(a) or under any other state or federal law; and
 - (3) the continued use is in the best interest of the state.

- (c) If the department determines that an application is approvable, subject to public notice and comment under 17 AAC 45.400, the department will provide public notice of the application in accordance with 17 AAC 45.400 and this section. In addition to the information required under 17 AAC 45.400(e), the department will include in the notice a statement that the application appears to be eligible under (a) of this section for consideration without competition under AS 02.15.090(c). If the department requires newspaper publication of the notice under 17 AAC 45.400, the applicant shall pay the cost of publication, unless the applicant is exempt from the payment under federal law or the terms of a grant to the department.
- (d) After the public comment period set in the notice given under (c) of this section, including any extension of that period, has closed, the department will consider any public comment or objection, including another application for the same land considered as an objection under (n) of this section, that the department received in writing before the close of the public comment period and all facts known to the department, but not any public comment or objection received after the close of the public comment period.
- (e) The department will consider the existence of a competing application or the potential for gaining increased revenue for the department in determining the best interest of the state regarding an application under this section. If increased revenue for the department is a factor upon which the department determines that it is in the best interest of the state to offer the lease competitively, the department will use the procedures under 17 AAC 45.303 to offer the lease competitively. After opening all bids under 17 AAC 45.315, the department will approve the application of the existing lessee if the existing lessee agrees to meet the highest revenue amount bid by any other person, but not less than the applicable rental rate under 17 AAC 45.127.
- (f) Based on consideration of public comment or objection under (d) of this section, the department will either
 - (1) confirm in writing that the applicant satisfies the standards described in (a) of this section and that the application satisfies each consideration described in (b) of this section; or
 - (2) state in writing each standard described in (a) of this section and each consideration described in (b) of this section that the applicant or application does not satisfy and send to the applicant, and to each person who submitted a written comment or objection during any comment period and who provided a return address, written notice of the department's intent to deny the application, to consider the application under 17 AAC 45.210, or to make the lease lot available for lease by competitive means under 17 AAC 45.300 - 17 AAC 45.399.
- (g) If under (f)(1) of this section the department confirms in writing that the applicant satisfies the standards and considerations described in (a) and (b) of this section, and if the department has received written comment or objection, or another application during the comment period, then the department will send to the applicant and to each person who

submitted a timely written comment or objection or other application and who provided a return address, notice of the department's intent to execute a new land lease with the applicant or a term extension to the applicant's existing land lease.

- (h) If under (f)(1) of this section the department confirms in writing that the applicant satisfies the standards described in (a) of this section and that the application satisfies each consideration described in (b) of this section, and if the department has received no written comment or objection, or other application during the comment period, then the department will enter into a new land lease with the applicant or a term extension to the applicant's existing land lease.
- (i) The department may mail or deliver a proposed lease or a lease supplement or material amendment to the applicant when an application is determined to be approvable under (b) of this section. After final approval under (f)(1) of this section, the department will mail or deliver to the applicant a final lease, permit, concession, or other document form for the interest approved unless the final document form is unchanged from a proposed form the department previously mailed or delivered to the applicant. The applicant shall sign and mail or deliver the final form lease, lease supplement, or amendment back to the department within 30 days after the later of
 - (1) the date that the department mails or delivers the final form to the applicant;
 - (2) the date that the department notifies the applicant that approval of the application is final after consideration of written comment or objection or other application; or
 - (3) the close of the public comment period.
- (j) The department may extend the response time provided under (i) of this section for good cause shown. To request an extension, the applicant must submit to the department, before expiration of the response time, a written request for extension stating the reasons for the request.
- (k) The department may execute a lease, lease supplement, or amendment under this section only
 - (1) no later than 270 days after the date set for submission of public comment or objection in the notice given under (c) of this section; the department may extend the period for execution by a total of no more than 90 additional days upon a showing by the applicant that either the applicant had fulfilled all requirements for the department's execution before the one year expired or any failure of the applicant to do so was caused by factors beyond the applicant's control; and
 - (2) no earlier than
 - (A) the day after the date set for submission of public comment or objection if the department receives none; or

- (B) if the department receives a timely comment or objection in response to the notice under (c) of this section, eight days after the mailing of a notice of intent to execute under this section.
- (l) The department will state in writing any decision to deny an application or request for an extension under this section, including the reasons for the denial. An applicant may protest the denial of an application or the denial of a request for an extension in accordance with 17 AAC 45.910.
- (m) This section does not apply to a permit, concession, or building lease.
- (n) The department will consider any competing application for use of all or a portion of the same land that the department receives during a comment period in response to a public notice under (c) of this section as an objection to execution of the advertised interest. However, if the application being presented for public comment is for a successive lease or a term extension of a lease with less than one year of term remaining, and the department does not determine that it is in the best interest of the state to execute the successive lease or term extension without offering the interest to other persons, the department will process a competing application under 17 AAC 45.210.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.210 AS 37.15.470 AS 37.15.540

17 AAC 45.220. Lease, permit, concession, or other interest term limitations.

- (a) The maximum period for the term of a lease, permit, concession, or other interest, including extensions and periods of holdover, relating to an airport is 55 years.
- (b) Before the department approves or extends the term of a lease, permit, concession, or other interest for a non-aeronautical use of a premises that the department has determined in writing will be needed for an aeronautical use in the future, the department will first estimate when the premises will likely be needed for aeronautical use. A term or a term extension for a non-aeronautical use of those premises may not run beyond the time that the department estimates the premises will become needed for an aeronautical use and is subject to further extension only to the extent that need does not arise or is otherwise satisfied or deferred by the department.
- (c) Before the department approves or extends the term of a lease, permit, concession, or other interest for any use of a premises that the department has determined in writing will be needed for airport development in the future, the department will first estimate when the premises will likely be needed for airport development. A term or a term extension for use of those premises may not run beyond the time that the department estimates the premises will become needed for airport development and is subject to further extension only to the extent that need does not arise or is otherwise satisfied or deferred by the department.

History: Eff. 3/28/2002, Register 161; am 3/20/2016, Register 217

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.210

17 AAC 45.225. Land lease term or term extension.

- (a) This section describes methods for setting the term of a land lease and extending an existing land lease, including a lease in holdover, except for a land lease term or term extension subject to 17 AAC 45.235. A term or term extension under this section is subject to the limitations of 17 AAC 45.215 and 17 AAC 45.220 and the considerations in (b) of this section.
- (b) In setting or extending the term for a land lease, the department will consider
 - (1) the applicant's actual or proposed development and use of the premises;
 - (2) sound airport planning and anticipated needs for security, safety, maintenance, and operation of the airport;
 - (3) future development needs of the airport;
 - (4) applicable covenants running with the land and restrictions in the state's title to airport property;
 - (5) the amount of investment, purchase price, fair market value, or remaining useful life of permanent improvements documented in the application, as applicable;
 - (6) the applicant's plan for remediation of any environmental contamination if the applicant did not cause or materially contribute to the contamination;
 - (7) the proposed method and terms of financing the applicant's investment; and
 - (8) the best interest of the state.
- (c) For a new lease that is not a successive lease, the department will grant an initial term that does not exceed the number of years shown in the table in (j) of this section that corresponds to the greater of
 - (1) the total of the applicant's
 - (A) purchase price, excluding financing costs, of pre-existing permanent improvements owned by the applicant on the premises, in compliance with (h)(2) of this section and not previously used by the applicant to set lease term;
 - (B) existing investment in permanent improvements owned by the applicant not previously used to set lease term, in compliance with (h)(1) of this section; and

- (C) proposed new investment excluding financing costs, in an amount equal to the reasonable cost of one or more of the following, in compliance with (h)(1) of this section:
 - (i) premises, boundary, and as-built surveys;
 - (ii) permanent improvements and any associated site development work and site development materials on the premises;
 - (iii) remediation of contamination for which the applicant is not responsible under this chapter either on the premises or migrating from the premises; and
 - (iv) extension of a road, taxiway, or utility that originates on or off the airport to the premises; or
- (2) the dollar amount of a loan in compliance with (h)(3) of this section.
- (d) For a successive lease, the department will grant an initial term that does not exceed the greatest of
 - (1) the number of years shown in the table in (j) of this section that corresponds to the total of the factors described in (c)(1) of this section;
 - (2) the number of years shown in the table in (j) of this section that corresponds to the total of
 - (A) the fair market value, as determined by an appraisal performed within the previous year, of existing permanent improvements owned by the applicant on the premises; and
 - (B) the applicant's proposed new investment to perform activities described in (c)(1)(C) of this section in compliance with (h)(1) of this section;
 - (3) the number of years of remaining useful life of the principal applicant-owned permanent improvement on the premises, up to the total cumulative years of term previously granted for the previous lease on the basis stated in (c)(1) of this section; or
 - (4) five years.
- (e) For extension of an existing lease with less than one year of remaining term or in holdover, after giving public notice of the proposed extension under 17 AAC 45.215(c) and considering the factors in (b) of this section, the department will grant a term extension that does not exceed five years less than the longest term the application would support as the initial term of a successive lease under (d) of this section.

- (f) For extension of an existing lease with one year or more of remaining term, after giving public notice of the proposed extension under 17 AAC 45.215(c) and considering the factors in (b) of this section, the department will grant a term extension that does not exceed five years less than the period determined under (c) of this section.
- (g) If more than one of the methods provided in (c) - (f) of this section can be applied to determine the maximum term of the new lease, successive lease or term extension, the lessee has the option to choose which method the department must use.
- (h) An application for a term or term extension under (c) - (f) of this section must include all documentation required under 17 AAC 45.230, and must satisfy each of the following conditions:
 - (1) a proposed or existing investment in the premises, not previously used to set lease term, to perform activities described in (c)(1)(C) of this section must be
 - (A) approved by the department in an airport building permit issued under 17 AAC 45.280 or in an airport building permit or other written approval under 17 AAC 40 in effect before March 28, 2002; and
 - (B) documented by the applicant's submission under 17 AAC 45.230(a)(1) no later than the later of December 31, 2008, or 60 days after the expiration of the applicable airport building permit; the department will extend this deadline for submission of documentation if the applicant shows good cause for an extension;
 - (2) the purchase price of existing permanent improvements on the premises must be
 - (A) for a purchase in a fair market transaction not entered into primarily to gain lease term;
 - (B) not previously used by the applicant as the basis for determination of lease term;
 - (C) for privately-owned permanent improvements; site development work and site development materials, including a driveway, parking area, gravel, and pavement, are ineligible for inclusion in a purchase price to support term because they become property of the state upon placement; and
 - (D) documented by the applicant's submission under 17 AAC 45.230(a)(2) no later than the later of December 31, 2008, or two years after the date of the purchase;
 - (3) the dollar amount of a loan other than for purchase of improvements on the premises may be used only to the extent
 - (A) the loan is a new loan from a bank or other commercial lending institution for operating or capital expenses of the applicant's operations at the airport;

- (B) the bank or other commercial lending institution providing the loan conditions the loan on the term or term extension;
 - (C) the applicant applies for the extension and submits supporting documentation from the lender; and
 - (D) the dollar amount of the loan applied to support term does not exceed the fair market value of lessee-owned permanent improvements on the premises, plus any proposed investment by the applicant in new permanent improvements.
- (i) The term of any extension that the department grants under (e) - (f) of this section
 - (1) for term based on investment in new improvements must be added to the end of the lease; or
 - (2) for term based on purchase price must be added to the end of the lease, less any lease term or term extension remaining as of the earlier of the date of the department's consent to the lease assignment or closing of the purchase of permanent improvements.
 - (j) The department will use the following table, to determine the maximum lease term or lease term extension the department may grant under (c) or (d) of this section:

Fair Market Value, Purchase Price, or Investment of at Least the Following	
<u>Dollar Amount</u>	<u>Term of Years</u>
7,500	6
15,000	7
22,500	8
30,000	9
37,500	10
45,000	11
52,500	12
60,000	13
67,500	14
75,000	15
82,500	16
90,000	17
97,500	18
105,000	19
112,500	20
120,000	21
127,500	22
135,000	23
142,500	24

17 AAC 45.230. Documentation of costs, purchase price, opinion of remaining useful life, or fair market value of permanent improvements.

Fair Market Value, Purchase
Price, or Investment of at
Least the Following

<u>Dollar Amount</u>	<u>Term of Years</u>
150,000	25
157,500	26
165,000	27
172,500	28
180,000	29
187,500	30
195,000	31
202,500	32
210,000	33
217,500	34
225,000	35
232,500	36
240,000	37
247,500	38
255,000	39
262,500	40
270,000	41
277,500	42
285,000	43
292,000	44
300,000	45
307,500	46
315,000	47
322,500	48
330,000	49
337,500	50
345,000	51
352,500	52
360,000	53
367,500	54
375,000	55

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 5/25/2017, Register 222

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.210

17 AAC 45.230. Documentation of costs, purchase price, opinion of remaining useful life, or fair market value of permanent improvements.

- (a) If an applicant or lessee requests a lease term for a new lease or an extension of an existing lease based on

- (1) reasonable local market rate costs the applicant or lessee incurred for items described in 17 AAC 45.225(c)(1)(C), the applicant or lessee must document those costs, excluding financing costs, by providing
 - (A) a statement of project costs signed by the contractor who performed the work;
 - (B) a statement of project costs signed by a certified public accountant;
 - (C) a copy of a contractor payment schedule specific to the project;
 - (D) a notarized affidavit signed by the applicant or lessee attesting to the project costs, with an itemized listing of site costs and copies of invoices reflecting payment of those costs; or
 - (E) if the information described at (A) - (D) of this paragraph is not available as evidence of the cost, an estimate of project costs prepared and signed by a contractor or an architect or engineer registered under AS 08.48 or a general real estate appraiser certified under AS 08.87; this estimate must reflect costs as of the date of construction completion and must include cost data to support the estimate;
- (2) purchase price of permanent improvements owned by the applicant or lessee, the applicant or lessee must document the purchase price by providing
 - (A) a copy of an executed bill of sale or sales contract that reflects the amount, excluding financing costs, the applicant or lessee paid for permanent improvements on the premises; the value of any leasehold transferred or purchased will not be considered toward the setting of a lease term; or
 - (B) a notarized affidavit signed by both the applicant or lessee, as purchaser, and the former lessee, as seller, stating the purchase price, excluding financing costs, of permanent improvements on the premises, but only if the applicant or lessee is unable to submit a bill of sale or sales contract;
- (3) fair market value of permanent improvements that the applicant or lessee owns and are located on the premises, the applicant or lessee must document the fair market value in a written appraisal by a general real estate appraiser certified under AS 08.87; the appraisal must be based on generally accepted professional standards; or
- (4) remaining useful life of existing permanent improvements the applicant or lessee owns that are located on the premises, the applicant or lessee must document the remaining useful life in a written opinion; the opinion must
 - (A) be prepared by an architect or engineer registered under AS 08.48 or a general real estate appraiser certified under AS 08.87;

- (B) be based on generally accepted professional standards; and
 - (C) analyze all relevant factors including physical, functional, and economic obsolescence.
- (b) The department will accept an appraisal of fair market value or an opinion of remaining useful life prepared under (a) of this section if the appraisal or opinion meets generally accepted professional standards and is prepared in accordance with any instructions established by the department consistent with those standards.
 - (c) The applicant or lessee must obtain and submit any appraisal of fair market value or opinion of remaining useful life under (a) of this section at the applicant's or lessee's sole expense.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.235. Permit, concession, building lease, or government agency land lease term or term extension.

The department will set the term or term extension for a permit, concession, building lease, or government agency land lease based on the following considerations:

- (1) the applicant's actual or proposed development and use of the premises;
- (2) sound airport planning and anticipated needs for security, safety, maintenance, and operations of the airport;
- (3) future development needs of the airport;
- (4) applicable covenants and restrictions in the state's title to airport property;
- (5) the applicant's actual or proposed investment in permanent improvements and site development;
- (6) the needs of a government agency applicant;
- (7) the best interest of the state.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.210

17 AAC 45.240. Agreement to complete construction or remediation.

- (a) If the department grants a lessee, permittee, or concessionaire a term or term extension for a land lease based on proposed construction or remediation on the premises, the lessee, permittee, or concessionaire must agree to complete the construction or remediation within the following periods:
 - (1) in the case of construction, the time that the department sets in the lease, permit, or concession; the time set will not exceed two years unless the lessee shows to the department's satisfaction that a longer period of time is required considering the cost, type, and phasing of construction and any required remediation under 17 AAC 45.225(b)(6) and that granting a longer period of time to complete the construction or remediation is not inconsistent with the best interest of the state; or
 - (2) in the case of remediation, the time set in a remediation plan that the lessee, permittee, or concessionaire submits under 17 AAC 45.225(b)(6) and that the department approves.
- (b) The department will require a performance bond, deposit, personal guarantee, or other security if the department determines security is necessary or prudent to ensure completion of the construction or remediation within the time period set under (a) of this section. The department will determine the form and amount of the security considering the nature and scope of the construction or remediation and the financial responsibility of the lessee, permittee, or concessionaire.
- (c) The lessee, permittee, or concessionaire shall, within 90 days after completion of construction or remediation, submit to the department written documentation that the construction or remediation has been completed as required, including documentation under 17 AAC 45.230 of cost to show investment required under the lease, permit, or concession or to support term under 17 AAC 45.225.
- (d) If the lessee shows good cause to the department and if it is not inconsistent with the best interest of the state, the department will grant an extension that is sufficient to allow for the completion of the construction or remediation or for submission of documentation that the construction or remediation has been completed under this section.
- (e) If within the time required under (a) and (c) of this section or as the department has extended under (d) of this section, a lessee, permittee, or concessionaire fails to complete the construction or remediation or to submit documentation that the construction or remediation has been completed, the department will execute the forfeiture of the performance bond, deposit, personal guarantee, or other security posted by the lessee, permittee, or concessionaire to the extent necessary to reimburse the department for all costs and damages, including administrative and legal costs, arising from the failure to complete the construction or remediation and, as applicable,

- (1) if one-third or less of the construction or remediation has been completed, initiate cancellation of the lease, permit, or concession;
 - (2) if at least two-thirds of the construction or remediation has been completed, reduce the term of the lease, permit, or concession to a period that is consistent with the portion of the construction timely completed;
 - (3) if more than one-third but less than two-thirds of the construction or remediation has been completed, apply the best interests of the state to take the action described in either (1) or (2) of this subsection.
- (f) An action that the department takes under (e) of this section must be in writing and must state the reasons for the action taken.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 3/20/2016, Register 217

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.242. Damage to lessee-owned permanent improvements.

- (a) If, within five years before the expiration of the lease, the lessee-owned permanent improvements on the premises are damaged to the extent that at least 50 percent of the improvements are rendered unusable, the lessee may terminate the lease by 30 days' written notice to the department after removing the damaged improvements and restoring the premises to a clean and neat physical condition acceptable to the department.
- (b) Except as provided in (a) of this section, if lessee-owned permanent improvements on the premises are damaged or destroyed, the lessee shall repair, rebuild or replace the improvements to function normally within two years after the date on which the improvements were damaged or destroyed. If the lessee materially fails to complete the repair, reconstruction, or replacement of the damaged or destroyed improvements within the allowed time, the department will
 - (1) unilaterally reduce the term of the lease so that the total term from the beginning of the lease is consistent with the cost or value of the undamaged improvements remaining on the premises, using the table in 17 AAC 45.225(j); or
 - (2) grant an extension of time for the lessee to complete the repair, reconstruction, or replacement of damaged or destroyed improvements on the premises for good cause shown by the lessee and upon a finding that the action would be consistent with the best interest of the state.
- (c) Repair, rebuilding, or replacement of damaged or destroyed lessee-owned permanent improvements under this section constitutes new investment for purposes of term extension.

History: Eff. 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.210

17 AAC 45.245. Disposition of permanent improvements and site development materials on a land lease.

- (a) Unless otherwise provided in the applicable land lease or in another written agreement between the department and the lessee, permanent improvements that a lessee, other than a government agency, has constructed or purchased on the premises, but not site development materials, are the lessee's property as long as the lease remains in effect, including any period of extension or holdover with consent of the department.
- (b) Unless otherwise provided in a land lease or the department otherwise directs under (f) of this section, at the expiration, cancellation, or termination of a lease that is neither extended nor followed by a successive lease, the departing lessee may do one or more of the following:
 - (1) remove lessee-owned permanent improvements from the premises, remediate any contamination for which the lessee is responsible under this chapter, and restore the premises to a clean and neat physical condition acceptable to the department within 60 days after the expiration, cancellation, or termination date of the lease;
 - (2) sell lessee-owned permanent improvements to the succeeding lessee, remove all personal property, remediate any contamination for which the lessee is responsible under this chapter, and leave the premises in a clean and neat physical condition acceptable to the department within 60 days after notice from the department that the department has approved an application for a lease of the premises by another person or such longer period specified in the notice, but in no event more than 180 days after the expiration, termination, or cancellation date of the lease;
 - (3) elect to have the department sell lessee-owned permanent improvements at public auction under (c) and (d) of this section, remediate any contamination for which the lessee is responsible under this chapter, and restore the premises to a clean and neat physical condition acceptable to the department; if the department sells permanent improvements under this paragraph for removal from the premises, the departing lessee's obligation under this paragraph continues until the premises are remediated and restored to a clean and neat physical condition acceptable to the department after the improvements have been removed.
- (c) If a departing lessee elects under (b)(3) of this section to have the department sell lessee-owned permanent improvements at public auction, the lessee shall, within 30 days after the expiration, cancellation, or termination of the lease
 - (1) submit to the department a written request and authorization to sell the permanent improvements by public auction;

- (2) provide to the department an executed conveyance document transferring clear title to the permanent improvements to the successful bidder at the public auction, along with authorization to the department, as agent for the departing lessee for purposes of the sale only, to endorse the name of the successful bidder on the conveyance document upon receipt of payment of the successful bid price; and
 - (3) before the date of the public auction, remove all personal property, remediate any contamination for which the lessee is responsible under this chapter, and leave the premises in a neat and clean physical condition acceptable to the department.
- (d) When selling lessee-owned permanent improvements at public auction for a departing lessee, the department will establish the terms and conditions of the sale as provided under 17 AAC 45.333. The department will pay the lessee any proceeds of the sale of the permanent improvements, less the administrative costs of the public auction and any financial obligation the lessee owes to the department under the lease. Payment will be made within a reasonable time after the department completes the sale transaction and receives the proceeds, but not to exceed 60 days. If all or a portion of the permanent improvements do not sell at public auction, the lessee shall remove those permanent improvements, remediate any contamination for which the lessee is responsible under this chapter, and restore the premises to a clean and neat physical condition acceptable to the department within 60 days after the auction.
- (e) If the lessee shows good cause to the department and if it is not inconsistent with the best interest of the state, the department will grant an extension of time that is sufficient to allow the lessee to
- (1) remove or sell lessee-owned permanent improvements;
 - (2) remediate any contamination for which the lessee is responsible under this chapter; and
 - (3) restore the premises to a clean and neat physical condition acceptable to the department.
- (f) The department will, by written notice, direct a departing lessee to remove lessee-owned permanent improvements from the premises, to remediate, consistent with applicable law, any contamination for which the departing lessee is responsible under this chapter, and to restore the premises to a clean and neat physical condition acceptable to the department if the department determines in writing
- (1) that the continued presence of the permanent improvements on the premises is not consistent with either
 - (A) the applicable provisions of this chapter and of any other statute or regulation, including any relating to noise or airport land use; or

- (B) any written airport program or plan required for compliance with applicable federal or state law;
 - (2) that the continued presence of the permanent improvements on the premises is not in the best interest of the state; or
 - (3) that the permanent improvements present a hazard to public health or safety.
- (g) A departing lessee to whom the department has issued a direction under (f) of this section shall comply with the department's direction within 60 days after issuance of the direction and at no cost to the department. If the departing lessee shows good cause to the department and if it is not inconsistent with the best interest of the state, the department will allow in writing a longer period that is sufficient to allow the lessee to comply with the department's direction. A departing lessee who fails to comply with a direction issued by the department under (f) of this section shall, within 30 days of being billed by the department, reimburse the department for any costs reasonably incurred by the department, including legal and administrative costs, to enforce the department's direction or to remove and dispose of unremoved lessee-owned permanent improvements, remediate any contamination for which the lessee is responsible under this chapter, and restore the premises.
- (h) If a departing lessee does not timely remove or sell the lessee-owned permanent improvements on a premises in accordance with the requirements of this section, any remaining permanent improvements and any remaining personal property of the departing lessee will be considered permanently abandoned. The department may sell, lease, demolish, dispose of, remove, or retain the abandoned property for airport use as the department determines is in the best interest of the state. The departing lessee shall, within 30 days after being billed by the department, reimburse the department for any costs reasonably incurred by the department, including legal and administrative costs, to demolish, remove, dispose, clear title to, or sell the abandoned property and to remediate and restore the premises.
- (i) A departing lessee will not be considered to have relinquished possession and completely vacated the premises until
- (1) the lessee has
 - (A) remediated, consistent with applicable law, any contamination for which the lessee is responsible under this chapter; and
 - (B) restored the premises to a clean and neat physical condition acceptable to the department; and
 - (2) either

- (A) removed all of the lessee's permanent improvements and personal property from the premises or sold the permanent improvements and personal property to a succeeding lessee under the provisions of this section; or
 - (B) transferred title to the lessee's permanent improvements and personal property that remain on the premises to the department.
- (j) Site development work and site development materials that a land lessee completes or places on a premises become part of the state-owned realty and property of the state upon completion or placement. The lessee
 - (1) must maintain the site development work and site development materials throughout the term of the lease, including any extensions and periods of holdover; and
 - (2) may not remove the site development work or site development materials unless the department approves in writing.
- (k) In this section, "departing lessee" means a lessee whose land lease has expired, been terminated, or been canceled and to whom a new lease or a lease term extension for that land has not been granted.
- (l) After the expiration, termination, or cancellation of a lease, including any holdover under 17 AAC 45.252, the departing lessee loses all right to occupy or use the premises without the express or implied consent of the department. Except as the department notifies the departing lessee otherwise in writing, the department consents to the departing lessee's continued use and occupancy of the premises to diligently accomplish the requirements of this section. Until the departing lessee relinquishes possession of and completely vacates the premises under (i) of this section and notifies the department in writing that it has relinquished and vacated the premises, the departing lessee shall perform the following as if the lease were still in effect,
 - (1) pay rent to the department;
 - (2) maintain the premises;
 - (3) provide the department with evidence of each insurance coverage, if any, required under the lease; and
 - (4) cease using the premises other than to diligently accomplish the requirements of this section, and to comply with the other requirements of the lease.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.250. Disposition of removable improvements on a building lease or concession.

- (a) This section applies to building leases on the airport and on-airport concessions.
- (b) Unless the applicable building lease or concession or other written agreement between the department and the building lessee or concessionaire provides otherwise, improvements that the building lessee or concessionaire constructs or purchases on the premises and that the department determines can be removed without material damage to a state-owned building or land remain the lessee's or concessionaire's property while the building lease or concession remains in effect, including any period of extension or holdover.
- (c) Unless the applicable building lease or concession provides otherwise, at the expiration, termination, or cancellation of the building lease or concession, the department will take one or more of the following actions with respect to the departing building lessee's or concessionaire's improvements that can be removed without material damage to the building or land:
 - (1) allow the departing building lessee or concessionaire to sell those improvements to a succeeding lessee or concessionaire of the premises, remove all personal property, remediate any contamination for which the departing lessee or concessionaire is responsible under this chapter, and leave the premises in a clean and neat physical condition acceptable to the department within 30 days after notice from the department that the department has approved an application for a lease of the premises to another person or by such earlier date stated in the notice, but in no event more than 90 days after the expiration, termination, or cancellation date of the lease or concession;
 - (2) allow or direct the departing building lessee or concessionaire to remove those improvements, remediate, consistent with applicable law, any contamination for which the departing lessee or concessionaire is responsible under this chapter, and restore the premises to a clean and neat physical condition acceptable to the department; or
 - (3) allow the departing building lessee or concessionaire to transfer title to those improvements to the department, with or without payment of consideration, remove all personal property, remediate any contamination for which the departing lessee or concessionaire is responsible under this chapter, and leave the premises in a clean and neat physical condition acceptable to the department.
- (d) A departing building lessee or concessionaire to which the department has issued a direction under (c)(2) of this section shall comply with the department's direction within 60 days after the direction is issued and at no cost to the department. If the lessee or concessionaire shows good cause and if it is not inconsistent with the best interest of the state, the department will allow in writing a longer period that is sufficient to permit the lessee or concessionaire to comply with the department's direction. A lessee or concessionaire who fails to comply with a direction issued by the department under (c)(2) of this section shall, within 30 days of being billed by the department, reimburse the

department for any costs, including legal and administrative costs, reasonably incurred by the department to do any of the following:

- (1) enforce the department's direction;
 - (2) remove and dispose of that person's unremoved improvements;
 - (3) remediate any contamination for which the departing lessee or concessionaire is responsible under this chapter;
 - (4) restore the premises to a clean and neat condition acceptable to the department.
- (e) If a departing building lessee or concessionaire does not timely remove or sell the improvements on a premises in accordance with the terms of this section, the improvements will be considered permanently abandoned. The department may sell, lease, demolish, dispose of, remove, or retain the abandoned property for airport use as the department determines is in the best interest of the state. A departing lessee or concessionaire shall, within 30 days of being billed by the department, reimburse the department for any costs, including legal and administrative costs, reasonably incurred by the department to do any of the following:
- (1) remove and dispose of the abandoned property;
 - (2) remediate any contamination for which the departing lessee or concessionaire is responsible under this chapter;
 - (3) restore the premises to a neat and clean condition acceptable to the department.
- (f) A departing building lessee or concessionaire will not be considered to have relinquished possession and completely vacated the premises until
- (1) the lessee or concessionaire has
 - (A) remediated, consistent with applicable law, any contamination for which the lessee or concessionaire is responsible under this chapter; and
 - (B) restored the premises to a clean and neat condition acceptable to the department; and
 - (2) either
 - (A) all of the lessee's or concessionaire's improvements and personal property on the premises have been removed, subject to (g) of this section, or sold to the succeeding lessee or concessionaire; or
 - (B) title to any of the lessee's or concessionaire's improvements and personal property that remain on the premises has vested in the department.

- (g) Unless otherwise provided in the building lease or concession, site development work and site development materials and any improvements that the department determines cannot be removed from a building lease or concession premises without material damage to a state-owned building or land become part of the state-owned realty and property of the state upon completion or placement by a building lessee or concessionaire. The building lessee or concessionaire
 - (1) must maintain the site development work and site development materials throughout the term of the lease, including any extensions and periods of holdover; and
 - (2) may not remove the site development work and site development materials unless the department approves in writing.
- (h) In this section, "departing building lessee or concessionaire" means a building lessee or concessionaire who occupies airport property and whose building lease or concession has expired, been terminated, or been canceled and to whom a new building lease or concession or a building lease or concession term extension has not been granted.
- (i) After the expiration, termination, or cancellation of a building lease or concession, including any holdover under 17 AAC 45.252, the departing building lessee or concessionaire loses all right to occupy or use the premises without the express or implied consent of the department. Except as the department notifies the departing building lessee or concessionaire otherwise in writing, the department consents to continued use and occupancy of the premises by the departing building lessee or concessionaire to diligently accomplish the requirements of this section. Until the departing building lessee or concessionaire relinquishes possession of and completely vacates the premises under (f) of this section, and notifies the department in writing that it has relinquished and vacated the premises, the departing building lessee or concessionaire shall perform the following as if the building lease or concession were still in effect:
 - (1) pay rent to the department;
 - (2) maintain the premises;
 - (3) provide the department with evidence of each insurance coverage, if any, required under the lease; and
 - (4) cease using the premises other than to diligently accomplish the requirements of this section, and to comply with the other requirements of the building lease or concession.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.252. Holdover.

- (a) Unless the lease, permit, or concession provides otherwise, if the department has not directed the lessee, permittee, or concessionaire to vacate the premises upon expiration of the lease, permit, or concession, then if the lessee, permittee, or concessionaire continues to occupy the premises in holdover after the expiration of a lease, permit, or concession, the holdover ends on the earliest of the following:
 - (1) the date on which the department and the lessee, permittee, or concessionaire execute
 - (A) a term extension for the lease, permit, or concession; or
 - (B) a lease, permit, or concession for the premises;
 - (2) the date on which the department or the lessee, permittee, or concessionaire terminates the holdover upon not less than 30 days' notice;
 - (3) the 180th day after the expiration of the lease, permit, or concession.
- (b) The department may extend a holdover under this section for not more than an additional 180 days upon a written finding of good cause.

History: Eff. 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.210

17 AAC 45.255. Condemnation of leasehold or improvements.

- (a) This section applies to the taking by negotiation, court action, or otherwise of all or a part of a premises by any entity or person vested with the power of eminent domain, including the department.
- (b) If all of a premises is taken,
 - (1) the lease, permit, or concession and all rights of the lessee, permittee, or concessionaire in the premises terminate as of the date of taking and the rent payable will be adjusted so that rent is due only until the date that the lessee, permittee, or concessionaire is required to surrender possession of the entire premises; and
 - (2) the department is entitled to all payment made for the taking, except for any amount paid as the fair market value of the permanent improvements owned by the lessee, permittee, or concessionaire.
- (c) If a part of a premises is taken and the taking reduces the ground area of the premises by 30 percent or more or materially affects the authorized use of the premises by the lessee, permittee, or concessionaire of the premises, the lessee, permittee, or concessionaire has

the right to terminate the lease, permit, or concession by giving written notice to the department no later than 90 days after the date of taking.

- (d) If the lessee, permittee, or concessionaire elects to terminate the lease, permit, or concession under (c) of this section, the portion of the premises taken is governed by (b) of this section and disposal of the remainder of any permanent improvements owned by the lessee, permittee, or concessionaire is governed by 17 AAC 45.245 or 17 AAC 45.250, as applicable, and the terms of the lease, permit, or concession.
- (e) If the lessee, permittee, or concessionaire elects not to terminate the lease, permit, or concession under (c) of this section, the lease, permit, or concession continues in effect for the portion of the premises not taken, and the department is entitled to the full payment made for the portion taken, less any portion of the proceeds paid as the fair market value of the permanent improvements owned by the lessee, permittee, or concessionaire on the taken portion of the premises. The department will adjust the rent for the remainder of the term to reflect the taking as of the date of taking.
- (f) If a part of a premises is taken and the taking reduces the ground area of the premises by less than 30 percent and the department determines that the taking does not materially affect the authorized use of the premises by the lessee, permittee, or concessionaire, the lease, permit, or concession continues in effect for the portion of the premises not taken. The department is entitled to the full payment made for the portion taken, less any portion of the proceeds paid as the fair market value of the permanent improvements owned by the lessee, permittee, or concessionaire on the taken portion of the premises. The department will adjust the rent for the remainder of the term to reflect the taking as of the date of taking.
- (g) Nothing in this section impairs the rights, if any, of a lessee, permittee, or concessionaire to relocation benefits under AS 34.60.
- (h) The department's enforcement of a lease, permit, concession, or law against a lessee, permittee, or concessionaire is not a taking under this section.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.260. Assignment.

- (a) This section applies to an assignment, other than an assignment for security purposes, of an interest in a lease, sublease, an airport boundary crossing permit issued under 17 AAC 45.285, or a concession. A permit issued under this chapter, other than an airport crossing boundary permit issued under 17 AAC 45.285, may not be assigned. For purposes of this section, any single or cumulative transfer of more than 50 percent interest in a joint venture, partnership, limited liability company, corporation, or other dual or multi-party

entity that holds a lease, sublease, airport boundary crossing permit, or concession is an assignment of an interest subject to approval under this section.

- (b) Unless the lease, sublease, airport boundary crossing permit, or concession expressly provides otherwise, a lessee, sublessee, airport boundary crossing permittee, or concessionaire may not assign all or a portion of a lease, sublease, airport boundary crossing permit, or concession, including improvements, without the prior written consent of the department under 17 AAC 45.275. A sublessee may not assign a sublease without also obtaining the written consent of the sublessor. An assignment made contrary to the requirements of this section and 17 AAC 45.275 is void.
- (c) A request for consent to an assignment must be submitted to the department in writing and must include
 - (1) the name, address, and telephone contact number for the proposed assignee;
 - (2) a description of the premises to be assigned;
 - (3) a description of the proposed assignee's intended use of the premises;
 - (4) financial and other information about the proposed assignee establishing the proposed assignee's ability to carry out the financial and other obligations under the lease or concession;
 - (5) three originals of the executed assignment documents with notarized signatures of the assignor and proposed assignee; and
 - (6) a non-refundable \$200 assignment processing fee.
- (d) An assignment must include a provision stating that the assignee accepts responsibility for all of the assignor's obligations under the lease, sublease, airport boundary crossing permit, or concession, including environmental liability and responsibility.
- (e) An assignee may not occupy the premises before the department consents to the assignment in writing.
- (f) A lessee, sublessee, airport boundary crossing permittee, or concessionaire may request that the department informally review a proposed assignment before the assignment documents are executed. However, an assignment of a lease, sublease, airport boundary crossing permit, or concession is effective only if the department consents to the assignment in writing under 17 AAC 45.275 after receiving a written request submitted under (c) of this section.
- (g) If there is a conflict between the lease, sublease, airport boundary crossing permit, or concession and the assignment or its underlying documents, the lease, sublease, airport

boundary crossing permit, or concession governs. A provision stating this priority must be included in each assignment, but is implied in all assignments whether stated or not.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 4/23/2009, Register 190; am 7/1/2017, Register 222

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.265. Assignment for security purposes.

- (a) This section applies to an assignment of an interest in a lease or concession for security purposes. A permit issued under this chapter may not be assigned for security purposes.
- (b) Unless the lease or concession expressly provides otherwise, a lessee or concessionaire may not assign for security purposes all or a portion of or any interest in a lease or concession, including improvements, without the prior written consent of the department under 17 AAC 45.275. An assignment for security purposes made contrary to the requirements of this section and 17 AAC 45.275 is void.
- (c) A request for consent to an assignment for security purposes must be submitted to the department in writing and must include
 - (1) the name, address, and telephone contact number for the proposed assignee;
 - (2) three originals of the executed assignment documents with notarized signatures of the assignor and proposed assignee;
 - (3) unless the department requests additional copies, one copy of any deed of trust, promissory note, or other document that is a part of the security assignment transaction; and
 - (4) a non-refundable \$500 security assignment processing fee.
- (d) A security assignment document must include provisions stating that
 - (1) if the security assignee takes possession or control of the lease or concession that is subject to the security assignment, either directly or through a sub-tenant, by foreclosure or otherwise, under the security assignment,
 - (A) the security assignee accepts responsibility for all of the assignor's obligations under the lease or concession, including environmental liability and responsibility, commencing as of the date the security assignee succeeds to the assignor's interest under the lease or concession; and

- (B) except as provided in (3) of this subsection, those obligations terminate as to the security assignee upon further transfer of the lease or concession by the security assignee;
- (2) the security assignee has an affirmative duty to notify the state in writing upon the reconveyance or release of the security interest; and
- (3) unless the security assignee participates in management of the airport tenant, the security assignee does not have environmental liability or responsibility for the period pre-dating the time when it took possession or control of the lease or concession; in this paragraph “participates in management” has the meaning given in 42 U.S.C. 9601(20)(F); the security assignee does not have environmental liability or responsibility following a subsequent transfer of its entire interest in the lease or concession unless, by its direct actions, negligence, or failure to use due care, the security assignee
 - (A) caused or contributed to a violation of any of the lease or concession terms relating to environmental law or hazardous substances;
 - (B) violated 17 AAC 45.045 or 17 AAC 45.050; or
 - (C) caused or contributed to actual financial damages to the airport due to a security assignee’s breach of any environmental law.
- (e) Exercise by a security assignee of a power of sale or further assignment under a security assignment is subject to the consent of the department under 17 AAC 45.275 with respect to any purchaser or assignee and shall be conditioned upon the purchaser or assignee accepting responsibility for all of the lessee’s or concessionaire’s obligations under the lease or concession, including environmental liability and responsibility.
- (f) If a lease or concession conflicts with an assignment for security purposes of an interest in the lease or concession, the terms of the lease or concession govern. A provision stating this priority must be included in each assignment for security purposes, but is implied in all assignments for security purposes whether stated or not.
- (g) A lessee or concessionaire may request that the department informally review a proposed assignment for security purposes before the assignment documents are executed. However, an assignment of a lease or concession for security purposes is effective only if the department consents to the assignment in writing under 17 AAC 45.275 after receiving a written request submitted under (c) of this section.
- (h) The department's written consent to an assignment for security purposes may provide that the department will give notice to the security assignee that the lessee or concessionaire is in default. However, any such provision is subject to the following terms and conditions:
 - (1) the department will give notice to a security assignee that the lessee or concessionaire is in default only if the department has within the preceding 12 months received from

the security assignee written confirmation that the security assignee continues to have an interest in the lease or concession, and continues to desire such notice;

- (2) if the department fails to provide to a security assignee notice of a lessee's or concessionaire's default despite having received annual confirmation from the security assignee as described in (1) of this subsection, the sole recourse of the security assignee is judicial action within one year to seek to vacate any change by the department in the security assignee's rights or interest;
 - (3) the department undertakes no duty for which the department may be liable for damages, whether direct or consequential, for failure to provide any notice to a security assignee as described in this subsection.
- (i) An assignment for security purposes under this section may be reassigned to another holder only upon consent of the department under 17 AAC 45.275.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 3/20/2016, Register 217; am 5/25/2017, Register 222; am 7/1/2017, Register 222

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.270. Sublease.

- (a) Unless the lease, airport boundary crossing permit issued under 17 AAC 45.285, or concession expressly provides otherwise, a lessee, airport boundary crossing permittee, or concessionaire may not sublease all or a portion of a lease, airport boundary crossing permit, or concession premises without the prior written consent of the department under 17 AAC 45.275. A permit issued under this chapter, other than an airport crossing permit issued under 17 AAC 45.285, may not be subleased. A sublease made contrary to the requirements of this section and 17 AAC 45.275 is void.
- (b) A request for consent to a sublease must be submitted in writing and must include
- (1) the name, address, and telephone contact number of the proposed sublessee;
 - (2) a description of property to be subleased;
 - (3) a description of the proposed sublessee's intended use of the premises;
 - (4) the expiration date of the sublease;
 - (5) a statement of the proposed sublease rent to be paid per month of occupancy;
 - (6) three originals of the executed sublease documents, or in the case of a sub-sublease, four executed originals of the sub-sublease, with notarized signatures of the sublessee and the sublessor;

- (7) a binder for insurance covering the operations and activities of the sublessee to the same extent that the sublessee would be required under 17 AAC 45.425 to maintain insurance if the sublessee were a direct lessee, airport boundary crossing permittee, or concessionaire under the lease, airport boundary crossing permit, or concession;
- (8) a guarantee of indemnification by the sublessee under which the sublessee provides to the state the same level of indemnity that the sublessee would provide to the state if the sublessee were a direct lessee, airport boundary crossing permittee, or concessionaire under the lease or concession; and
- (9) a non-refundable sublease processing fee of
 - (A) \$500, if the sublease is a cooperative sublease that functions as a proprietary lease; in this subparagraph, “proprietary lease” has the meaning given in AS 34.08.990; or
 - (B) \$75 for any other type of sublease.
- (c) Unless the department’s written consent provides otherwise, a sublease is subject to all of the terms and conditions of the lease, airport boundary crossing permit, or concession governing the property being subleased and must include language to that effect. The activities of a sublessee on an airport are also subject to all applicable fees and charges established under 17 AAC 45.127, and the sublessee and the direct lessee remain jointly obligated for payment of all applicable [SUCH] fees and charges to the department.
- (d) A sublessee of a lease, airport boundary crossing permit, or concession may not occupy the premises before the department consents to the sublease in writing.
- (e) A sublessee must maintain the same insurance and provide the indemnity that the sublessee would be required to maintain and provide if the sublessee were a direct lessee, airport boundary crossing permittee, or concessionaire under the lease, airport boundary crossing permit, or concession, as applicable. The department may waive the requirement that the sublessee maintain insurance, including the binder required under (b)(7) of this section, if the department determines that the sublessee’s activities on the airport are covered under the lessee’s insurance to the full extent stated in this subsection or are not likely to pose more than negligible risks to the state.
- (f) A sublease does not relieve a lessee, airport boundary crossing permittee, or concessionaire of the responsibility for providing the department with evidence of insurance that meets the requirements of the lease, airport boundary crossing permit, or concession with respect to operations on the premises, including those of the sublessee. However, if a lessee, airport boundary crossing permittee, or concessionaire subleases the entire premises under a sublease to which the department has given consent under 17 AAC 45.275 and the lessee, airport boundary crossing permittee, or concessionaire requires the sublessee to provide insurance coverage that meets the requirements of the lease, airport boundary crossing permit, or concession, the department will accept evidence of that insurance from the sublessee if the insurance meets the requirements of the lease, airport boundary crossing

permit, or concession and lists the lessee, airport boundary crossing permittee, or concessionaire as an additional insured. The department will notify the lessee, airport boundary crossing permittee, or concessionaire if the evidence of insurance provided by a sublessee is insufficient, incorrect, or not timely received.

- (g) The consent of the department under 17 AAC 45.275 is required for each sublease of all or any portion of a lease, airport boundary crossing permit, or concession, including a further sublease of a sublease for which the department's consent has already been given.
- (h) Consent to a sublease by the department under 17 AAC 45.275 does not relieve or otherwise alter the obligations of the lessee, airport boundary crossing permittee, or concessionaire under the lease, airport boundary crossing permit, or concession. Any sublease provision that purports to relieve a lessee, airport boundary crossing permittee, or concessionaire of a responsibility to the department under a lease, airport boundary crossing permit, or concession, as applicable, is of no effect as to the department.
- (i) A lessee, airport boundary crossing permittee, or concessionaire may request that the department informally review a proposed sublease before the sublease documents are executed. However, a sublease of a lease, airport boundary crossing permit, or concession is effective only if the department consents to the sublease in writing under 17 AAC 45.275 after receiving a written request submitted under (b) of this section.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 4/23/2009, Register 190; am 7/1/2017, Register 222

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.275. Approval or denial of an assignment, assignment for security purposes, or sublease.

- (a) This section applies to approval or denial of a request for consent to an assignment under 17 AAC 45.260, an assignment for security purposes under 17 AAC 45.265, or a sublease under 17 AAC 45.270.
- (b) The department will consent to a request to assign or sublease all or a portion of a lease or concession if the department determines that
 - (1) the assignment or sublease is authorized under the lease or concession and this chapter;
 - (2) the proposed assignee or sublessee has demonstrated acceptable financial responsibility;
 - (3) the proposed assignee or sublessee has demonstrated its ability to perform under the lease or concession;

- (4) denial of the request is not required under 17 AAC 45.010(g) with respect to either party to the assignment or sublease;
- (5) the assignment or sublease would provide the proposed assignee or sublessee with no greater rights, privileges, or authorities than those granted in the lease or concession being assigned or subleased;
- (6) the proposed assignee's or sublessee's proposed use of the premises is authorized by the lease or concession being assigned or subleased;
- (7) the terms and conditions of the proposed assignment or sublease adequately recognize and protect the department's interests under the lease or concession;
- (8) the assignment or sublease is in the best interest of the state; and
- (9) the premises subject to the assignment or sublease, when combined with the premises subject to other leases or concessions on the airport held by the assignee or sublessee, will not
 - (A) exceed the proposed assignee's or sublessee's needs, including reasonable future expansion; or
 - (B) result in the monopolization of an aeronautical use held by the proposed assignee or sublessee on the airport.
- (c) The department will approve or deny a request under this section in writing. If the department denies the request, the department will state the reasons for the denial in writing. The department will make a determination on a request for consent to assignment, assignment for security purposes, or sublease within 60 days after the assignor or sublessor has submitted a complete request.
- (d) A lessee, permittee, or concessionaire may protest a denial of an assignment, assignment for security purposes, or sublease in accordance with 17 AAC 45.910.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 3/20/2016, Register 217

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.280. Airport building permit.

- (a) A lessee, permittee, or concessionaire may not clear, excavate, core, or fill land or construct, install, remodel, remove, or demolish temporary or permanent improvements on a premises without first obtaining an airport building permit.
- (b) To obtain an airport building permit, an applicant must submit to the department

- (1) an application for an airport building permit on an airport form;
- (2) one set of plans and specifications for the proposed project in sufficient detail for the department to understand and evaluate the project and its scope;
- (3) a boundary survey of the premises, incorporating any boundary changes previously approved by the department, if
 - (A) the premises is the subject of a land lease or of a permit or building lease that grants use and occupancy of an area of airport land; and
 - (B) the required survey is not already on file with the department at the date the lessee, permittee, or concessionaire files the building permit application; and
- (4) a non-refundable building permit application fee of
 - (A) \$200, if the application is for the construction of a new building; or
 - (B) \$75, if the application is for any other kind of construction or installation, or for the demolition or removal of improvements.
- (c) When the department requests, the applicant for an airport building permit shall also submit documentation showing that
 - (1) the applicant has the financial capability to complete the proposed project; and
 - (2) the plans and specifications have received any approval required by other government agencies having jurisdiction over the proposed project.
- (d) The department will approve an application for an airport building permit unless
 - (1) the application must be denied under 17 AAC 45.010(g);
 - (2) the applicant does not demonstrate adequate financial resources to complete the proposed project;
 - (3) the project plans, specifications, and agency approvals submitted by the applicant are not complete or are otherwise inadequate to evaluate the project;
 - (4) the proposed project or proposed use would violate or result in a violation of an applicable statute or regulation, an exclusive right that the department has granted to another person, a covenant running with the airport land, or an applicable FAA grant assurance adopted by reference under 17 AAC 45.010(e);
 - (5) the proposed project or proposed use would interfere with or is otherwise incompatible with the safety, security, maintenance, or operation of the airport;

- (6) the proposed project or proposed use is inconsistent with sound airport planning;
 - (7) the proposed project or proposed use is not consistent with the applicant's lease, permit, or concession;
 - (8) the project plans do not make sufficient provision for drainage, for aircraft, vehicle, and equipment parking, or for snow storage; or
 - (9) the proposed project or proposed use is not compatible with the building, building systems, or operation of a department-operated terminal building.
- (e) The department will approve or deny an application for an airport building permit in writing. If the department denies the application, the department will state the reason for the denial in writing.
- (f) If a lessee, permittee, or concessionaire does not obtain an airport building permit before beginning an activity described in (a) of this section, the department will
- (1) unless the department determines that it is not in the interest of safe, effective, or efficient operation of the airport to do so, require the lessee, permittee, or concessionaire to cease or suspend the activity pending receipt of a permit; and
 - (2) require the lessee, permittee, or concessionaire promptly to submit the application required under this section.
- (g) After review of an application submitted pursuant to (f) of this section, the department will approve or deny the application as provided under (e) of this section. The lessee, permittee, or concessionaire shall,
- (1) if the department grants a permit, comply with any requirement that the department includes in the approval as necessary to bring the activity into accord with the approval standards set out under (d) of this section; and
 - (2) if the department denies a permit, remove all unauthorized improvements and restore the premises to the satisfaction of the department.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 7/1/2017, Register 222

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.285. Airport boundary crossing permit.

- (a) A person may not taxi an aircraft across an airport boundary at a location or drive a vehicle across an airport boundary other than on a public road or a department-approved trail

provided for that purpose and not posted by the department as closed to such access, unless the person is authorized to do so

- (1) under an airport boundary crossing permit issued by the department under this section;
 - (2) under (o) of this section; or
 - (3) by written consent of the department.
- (b) An application for an airport boundary crossing permit or for a term extension for or material amendment to an existing airport boundary crossing permit must be submitted to the department in writing and include
- (1) for a new airport boundary crossing permit, a detailed description of
 - (A) the proposed location of the airport boundary crossing point;
 - (B) the proposed alignment, length, and width of the vehicle access way or aircraft taxiway to be used to provide access from the boundary to a public way or public aircraft taxiway on the airport;
 - (C) the type and maximum size of vehicle or aircraft that the applicant will operate across the boundary; and
 - (D) the activity or business the applicant intends to conduct on off-airport property in connection with the permit;
 - (2) for a term extension for or material amendment to an existing airport boundary crossing permit, a detailed description of, and justification for, the term extension or material amendment being sought;
 - (3) a non-refundable application processing fee of
 - (A) \$500, if the application is for a new airport boundary crossing permit; or
 - (B) \$250, if the application is for a term extension for or material amendment to an existing airport boundary crossing permit;
 - (4) documentation of the applicant's ownership of, lease of, right-of-way across, or written permission to cross the land adjoining the airport at the proposed boundary crossing; and
 - (5) a description, site plan, and cost estimate for a taxiway, driveway, fencing, gate, or other improvement that the applicant proposes to construct in connection with the proposed boundary crossing, term extension, or material amendment.

- (c) Subject to (d) of this section, an application for an airport boundary crossing permit is approvable if the department determines that granting the permit is in the best interest of the state. If an application for a boundary crossing permit is approvable, the department will
 - (1) provide public notice of the application in accordance with 17 AAC 45.400;
 - (2) require the applicant to pay the cost of any newspaper publication the department has required under 17 AAC 45.400, unless the applicant is exempt from the payment under federal law or the terms of a grant to the department; and
 - (3) after the public comment period set in the notice given under this subsection has closed, confirm that the applicant has paid for newspaper publication of the public notice, if required under this subsection.
- (d) The department may deny an application for an airport boundary crossing permit if the department determines that
 - (1) approval must be denied under 17 AAC 45.010(g);
 - (2) the activity or business the applicant intends to conduct on off-airport property in connection with the permit can be accommodated on property available for lease on the airport; or
 - (3) granting the permit
 - (A) is inconsistent with sound airport planning or this chapter;
 - (B) will interfere with or is otherwise incompatible with the safety, security, maintenance, or effective and efficient operation of the airport;
 - (C) will conflict with FAA standards applicable to the airport;
 - (D) will reduce the airport's potential net revenue;
 - (E) will increase the airport's net maintenance or operating costs; or
 - (F) is not in the best interest of the state.
- (e) A decision by the department to deny an application for an airport boundary crossing permit must be in writing and state the reasons for denial.
- (f) After the public comment period stated in the public notice under (c) of this section, including any extension of that period, has closed, the department will consider any public comment or objection that the department received in writing before the close of the public

comment period, and all facts known to the department, but not any public comment or objection received after the close of the public comment period, and, as applicable,

- (1) if the department has received no written comment or objection during the comment period and has not otherwise altered its evaluation of the facts, issue the permit;
 - (2) if the department has received written comment or objection during the comment period, but the department's determination that granting the permit is in the best interest of the state remains unchanged, send to the applicant and to each person that submitted a written comment or objection during the comment period and that provided a return address, notice of the department's intent to execute the permit; or
 - (3) if the department determines in writing that the application should be denied under (d) of this section, send to the applicant and to each person that submitted a written comment or objection during the comment period and that provided a return address, notice of the department's intent to deny the permit.
- (g) An airport boundary crossing permit must be in writing, be signed by the permittee and the department, and include
- (1) the authorized uses of the crossing, including any restrictions as to use or users;
 - (2) a description of the location and dimensions of the crossing;
 - (3) identification of any airport land not otherwise under lease or permit to the permittee that the permittee may use for vehicle access between the boundary crossing location and a public road on the airport or for aircraft access between the boundary crossing location and a runway, apron, taxi lane, or taxiway on the airport; and
 - (4) a provision allowing periodic adjustment of the annual permit fee and, if applicable, adjustment of the land rental rate under 17 AAC 45.295.
- (h) The department will not execute a boundary crossing permit later than 270 days after the close of the public comment period under the notice required by (c) of this section. The department will not execute a boundary permit earlier than
- (1) the day after the close of the public comment period if the department receives no comments or objections within the public comment period; or
 - (2) eight days after the department mails a notice of intent to execute the permit if the department receives any comment or objection within the public comment period.
- (i) If the department issues an airport boundary crossing permit in connection with an airport land lease, the department will set the permit term to coincide with the term of the lease, unless the department determines that it is in the best interest of the state to set a shorter permit term. If the department issues an airport boundary crossing permit that is not

connected with an airport land lease, the department will set the term for the permit that is in the best interest of the state, but not to exceed 20 years.

- (j) An airport boundary crossing permit is a revocable grant of permission and does not create a property interest. An airport boundary crossing permit is not a land lease that qualifies the permittee for preferential consideration for a new permit or lease or lease term extension under AS 02.15.090(c). The department's revocable permission allowing the permittee to cross the airport boundary is not a compensable right under this section if the permit is later revoked or condemned.
- (k) A permittee may not assign or transfer an airport boundary crossing permit unless the department has given prior written consent under 17 AAC 45.275.
- (l) The permittee shall pay to the department the annual fee for an airport boundary crossing permit established under 17 AAC 45.127(l). In addition to paying the annual permit fee, the permittee shall pay
 - (1) rent at the greater of the applicable land rental rate or \$150, for any airport land not otherwise under lease or permit to the permittee but identified in the boundary crossing permit as subject to use by the permittee for vehicle access between the boundary crossing location and a public road on the airport or for aircraft access between the boundary crossing location and a runway, apron, taxi lane, or taxiway on the airport; and
 - (2) the fuel flowage fee established under 17 AAC 45.127 for each gallon of fuel brought onto the airport across the boundary having been dispensed into an aircraft or vehicle outside the airport and brought onto the airport across the boundary.
- (m) When it is in the best interest of the state to do so, the department will, upon 30 days' written notice to the permittee stating the reasons for the action, cancel a boundary crossing permit and any associated land lease or permit. The department
 - (1) will cancel the permit if the boundary crossing permittee is not in compliance with the boundary crossing permit and does not correct the noncompliance within the time specified in the permit or in the notice; and
 - (2) may, unless the permit provides otherwise in the best interest of the state, cancel the permit for any reason not in violation of applicable law.
- (n) An applicant or permittee may protest the department's decision to deny an application or to cancel a permit in accordance with 17 AAC 45.910.
- (o) To the extent an airport boundary crossing permit authorizes a customer or guest of the permittee to taxi an aircraft or drive a vehicle across the airport boundary to access the permittee's off-airport property, the customer or guest may do so without obtaining a separate boundary crossing permit under this section.

- (p) As used in this section, "airport boundary" and "boundary" mean any border between land or water managed by the department as part of an airport and any other land or water.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 4/23/2009, Register 190; am 7/1/2017, Register 222

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.290. Property survey.

- (a) A lessee, permittee, or concessionaire shall, unless otherwise stated in the lease, permit, or concession,
 - (1) provide to the department a boundary survey plat of each airport lot or other land area described in the lease, permit, or concession as part of the premises, incorporating any boundary changes approved by the department, if
 - (A) a boundary survey is required in connection with the filing of a building permit under 17 AAC 45.280; or
 - (B) the department approves a lessee's, permittee's, or concessionaire's requested change in the premises boundary; and
 - (2) provide to the department within 90 days after construction or installation of permanent improvements on the premises an as-built drawing depicting the actual location and dimensions of all improvements constructed or installed on the premises.
- (b) The department will specify in writing any special instructions for a survey required under (a) of this section.
- (c) A premises boundary survey plat and an as-built drawing required under (a) of this section must be prepared consistent with generally accepted professional standards and any special instructions the department specifies under (b) of this section.
- (d) The lessee, permittee, or concessionaire shall pay the cost of a survey or drawing required under this section.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.295. Rental or fee rate adjustment.

- (a) Unless otherwise specified in a lease, permit, or concession and subject to (b) of this section, 17 AAC 45.297(f), and 17 AAC 45.300(e), the department will adjust the rent for a

lease, permit, or concession if applying the applicable rental rate in the fee schedule established under 17 AAC 45.127 results in an increase or decrease in the rent for that lease, permit, or concession.

- (b) The department will not adjust the rent for a lease, permit, or concession under (a) of this section more often than once in a twelve-month period and, except for a successive lease, will not adjust the rent for a lease, permit, or concession with a term of more than 10 years during the first five years of that term.
- (c) Unless otherwise specified in a lease, permit, or concession and subject to (d) and (e) of this section, in making a rent adjustment for a premises, the department will
 - (1) determine the new rate applicable to the lease, permit, or concession under the fee schedule established under 17 AAC 45.127;
 - (2) establish the effective date of the rent adjustment; the effective date may not be earlier than 30 days after the date of the department's notice of rent adjustment under (3) of this subsection; and
 - (3) send to the lessee, permittee, or concessionaire a written rent adjustment notice that identifies the lease, permit, or concession that is the subject of the rent adjustment, the amount of the adjusted rent, the effective date of the adjustment, and the procedure for protesting the adjustment.
- (d) Unless otherwise provided in the lease, permit, or concession, a rent adjustment under this section will not increase the rent applicable to a lease, permit, or concession by more than 10 percent per year, compounded for each year since the date the rent for that lease, permit, or concession was last set or adjusted, and will not result in rent greater than fair market rent.
- (e) A rent adjustment under this section may not be applied to a competitively awarded lease, permit, or concession for a non-aeronautical use if the adjustment would result in a reduction of the fee or rent to below the rate established by competitive bid or proposal when the lease, permit, or concession was awarded.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 4/23/2009, Register 190; am 3/20/2016, Register 217

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.297. Rental rate adjustment protest.

- (a) If a lessee, permittee, or concessionaire believes an initial rental rate the department has established under 17 AAC 45.127, or a rental rate adjustment the department has implemented as to the lessee, permittee, or concessionaire under 17 AAC 45.295, is not allowed under this chapter or any other law, the lessee, permittee, or concessionaire may

protest the rental rate adjustment under this section. Unless the person protesting the rental rate adjustment is an agency of the federal government, the person must begin to pay the adjusted rental rate as of the effective date stated in the department's rental rate adjustment notice and continue to pay the adjusted rental rate throughout the protest process. Failure to pay the adjusted rent on time while the protest is pending constitutes abandonment of the protest.

- (b) A rental rate adjustment protest must be in writing and received by the department within 120 days after the date the department mails or delivers the notice of rental rate adjustment to the lessee, permittee, or concessionaire under 17 AAC 45.295.
- (c) The protester must
 - (1) show that the adjusted rental rate exceeds fair market rent by submitting
 - (A) a written appraisal of fair market rent by an appraiser certified under AS 08.87 as a general real estate appraiser; and
 - (B) the name, address, telephone number, and qualifications of the appraiser who prepared the appraisal; or
 - (2) submit a written statement describing the basis for any claim that the rental rate adjustment is not allowed by the lease, permit, or concession, or by any provision of this chapter or any other law.
- (d) The protester's appraisal must be prepared in compliance with the department's instructions and with generally accepted appraisal industry practices. If the rental rate under protest includes a rental rate reduction by the department under 17 AAC 45.127(d), the appraiser must consider in the appraisal all of the conditions listed in 17 AAC 45.127(d) that are applicable to the premises. The appraiser or the protester must submit the appraiser's completed written appraisal to the department within 90 days after the date that the department mails or delivers the department's appraisal instructions to the protester, unless the department grants an extension of time for good cause shown by the protester.
- (e) The department will review the appraisal for compliance with the appraisal instructions and either approve or disapprove the appraisal. The department will also review and consider any claim stated in the protest that the rental rate adjustment is not allowed by any other provision of 17 AAC 45.295 or other law. The department will prepare and mail or deliver a copy of the department's written decision to the protester.
- (f) If the department approves the appraisal, the fair market rental rate stated in the appraisal becomes the rental rate for the protester's lease, permit, or concession, effective on the date of the rental rate adjustment. If the fair market rental rate stated in the appraisal is less than the rental rate paid by the protester after receiving the department's rental rate adjustment under 17 AAC 45.295 or other law, the department will refund the amount of the

overpayment or, at the option of the lessee, permittee, or concessionaire, apply the overpayment as a credit toward future rent.

- (g) If for any reason the department concludes that the adjusted rental rate does not conform to 17 AAC 45.295, the department will readjust the rental rate as necessary to bring it into conformity with the requirements of that section and refund to the protester the amount of any overpayment or, at the option of the lessee, permittee, or concessionaire, apply the overpayment as a credit toward future rent.
- (h) If the department does not approve the appraisal or other aspects of the protest, the department's written decision constitutes a denial of the protest. The decision will state the reason the department did not approve the appraisal or other claims.
- (i) A protester may appeal the department's decision denying the protest in accordance with 17 AAC 45.920. The protester's obligation under (a) of this section to pay the adjusted rental rate continues throughout the appeal process.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 4/23/2009, Register 190; am 3/20/2016, Register 217

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090 AS 02.15.200

17 AAC 45.299. Lease of complete airport.

- (a) The department may lease a complete airport to a municipality or person that the department determines has, directly or under contract, the staffing, equipment, and financial resources necessary to operate and maintain that airport in a manner consistent with applicable FAA standards and the public interest.
- (b) A lease for a complete airport will require that during the term of the lease the lessee must
 - (1) operate the airport as a public facility;
 - (2) maintain the airport in accordance with criteria established in the lease; and
 - (3) comply with applicable FAA requirements or any covenants running with the land or facilities.
- (c) Subject to (d) of this section, the provisions of this chapter apply to the operation of an airport leased under this section. If the lessee is a municipality, the commissioner may delegate to the lessee the authority to enforce this chapter at the airport, except that such delegation does not impair or reduce the authority of the commissioner to enforce this section or the lease of the airport under this section.
- (d) The commissioner will waive the application and enforcement of portions of this chapter at a complete airport leased by the department to a municipality if

- (1) the municipality has adopted ordinances that the commissioner determines will adequately provide for the care, operation, protection, and safety of the airport and its use by the public;
 - (2) the department gives notice to the public in accordance with 17 AAC 45.400 of the commissioner's intent to waive the enforcement of a portion of this chapter at an airport and identifies in the notice
 - (A) the portion of this chapter the commissioner intends to waive;
 - (B) the municipal ordinances the commissioner considered in making the determination under (1) of this subsection; and
 - (C) the address and date for interested parties to submit written comments on the proposed waiver;
 - (3) the commissioner considers the public comments received in response to the public notice; and
 - (4) the commissioner issues a written waiver to the municipality.
- (e) The commissioner will revoke in whole or in part a waiver granted under (d) of this section after written notice to the municipality if the commissioner determines that
- (1) the municipality has changed an ordinance on which the waiver was based in a way that no longer adequately provides for the care, operation, protection, or safety of the airport and its use by the public;
 - (2) changes in state or federal statutes or regulations require the revocation; or
 - (3) the revocation is otherwise in the best interest of the state.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.080 AS 02.15.090

ARTICLE 3

Competitive Award

Section

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17 AAC 45.300. Competitive award.

- (a) The department will award a lease, permit, or concession by competitive means
 - (1) when this chapter or other applicable law requires;
 - (2) if the lease, permit, or concession is for an exclusive right; or
 - (3) when the department determines in writing that an award by competitive means is in the best interest of the state.
- (b) An award by competitive means will be made by sealed bid under 17 AAC 45.303 - 17 AAC 45.330 unless the department determines in writing that it is in the best interest of the

state to make the award by public auction under 17 AAC 45.333 - 17 AAC 45.351, or competitive proposal under 17 AAC 45.354 - 17 AAC 45.381.

- (c) A competitive solicitation will include a requirement that a bidder or proposer certify, under penalty of perjury, that the bidder or proposer independently arrived at and prepared the bid or proposal without collusion.
- (d) If the department determines in writing that a prospective bidder or proposer assisted in the drafting of the competitive solicitation or otherwise gained substantial information regarding the competitive solicitation that was not available to the public, the department will
 - (1) exclude the prospective bidder or proposer from submitting a bid or proposal in response to the competitive solicitation; or
 - (2) if the prospective bidder or proposer has submitted a bid or proposal in response to the competitive solicitation, reject the bid or proposal.
- (e) If the department awards a lease, permit, or concession for a non-aeronautical use on the basis of the highest rent to be paid by the permittee or lessee, the department will charge and the lessee, permittee, or concessionaire shall pay the bid or proposed rent during the entire term of the lease, permit, or concession, as applicable. If the department awards a lease for land for an aeronautical use on the basis of the highest rent to be paid by the lessee, during the first 10 years of the lease term the department will charge and the lessee shall pay the bid amount or proposed rent. Beginning with the eleventh year of the lease term, the department will charge and the lessee shall pay the rate then applicable under 17 AAC 45.127 to similar property with an aeronautical use at the airport, subject to adjustment under 17 AAC 45.295 thereafter.
- (f) Except as otherwise expressly provided in the competitive solicitation, a bidder or proposer is responsible for all costs associated with the preparation and submission of a bid or proposal.
- (g) Repealed 3/22/2008.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 4/23/2009, Register 190; am 3/20/2016, Register 217

Authority: AS 02.15.020 AS 02.15.090 AS 02.15.210 AS 02.15.060

17 AAC 45.303. Sealed bid.

- (a) If the department makes a lease, permit, or concession available by sealed bid, the department will provide public notice of the invitation to bid in accordance with 17 AAC 45.400 and provide a copy of the bid documents to each person who has paid an application fee under 17 AAC 45.205(a) for an application relating to the property or rights being made

available, and to each person who requests a copy and pays the amount charged for the copy under 17 AAC 45.127(s). The bid documents will state the requirements and instructions for submitting a bid.

- (b) The department will set a bid opening date that is no earlier than 30 days after the date that the notice is first published or posted. In addition to applicable information required under 17 AAC 45.400(e), the notice will include
 - (1) a summary of the lease, permit, or concession being made available, including the length or range of term and a description of the premises;
 - (2) the date, time, and place for any pre-bid conference;
 - (3) the last date and time and the place for bid submission;
 - (4) the date, time, and place of public bid opening;
 - (5) any bidder qualifications;
 - (6) instructions for obtaining a copy of the bid documents; and
 - (7) a statement that the department may amend information stated in the notice by giving further notice only to all persons of record to whom the department provided a copy of the bid documents and without additional publication.
- (c) The department will make the bid documents, including a sample copy of the lease, permit, or concession to be awarded, available to the public at least 30 days before the last date set for submitting bids. The department may charge an amount set under 17 AAC 45.127(s) for a copy of the bid documents.
- (d) The department will set the minimum acceptable bid at a reasonable amount. The department may do one or more of the following:
 - (1) conduct a pre-bid conference, which the department may designate in the bid documents as either optional or mandatory;
 - (2) require a bid to be submitted in terms of a bonus bid or in terms of an offer of fees or rent; and
 - (3) set minimum qualifications to be a bidder.
- (e) A bid must include all information required by the bid documents, conform to the requirements contained in the bid documents, and be submitted in writing in a sealed package delivered to the designated place and by the last date and time specified in the bid documents.

- (f) A bid must include a statement signed by the bidder that the bidder
 - (1) has not violated a provision of AS 02, 17 AAC 40 in effect before March 28, 2002, 17 AAC 42, or this chapter, which violation the applicant or requestor has not resolved to the satisfaction of the department or manager;
 - (2) has not violated a material term of a contract with the department, which violation the applicant or requestor has not resolved to the satisfaction of the department or manager;
 - (3) is not in arrears on a rental payment or other material financial obligation to the department; or
 - (4) is not in default of a material obligation under any lease, permit, or concession that the department has issued for any property or activity at any airport that the department owns, operates, or otherwise controls.
- (g) A bid becomes the property of the department upon receipt. The name of the bidder and the contents of the bid are confidential until the bid is opened at the public bid opening, at which time the information in the bid becomes public, except for information that is not subject to disclosure under applicable law or to the extent the bid documents allow a bidder to designate certain information as proprietary and for such information to be held confidential by the department.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 4/23/2009, Register 190

Authority: AS 02.15.020 AS 02.15.070 AS 02.15.090 AS 02.15.060

17 AAC 45.306. Bid deposit.

- (a) The department may require that each bidder submit with the bidder's sealed bid a deposit in an amount and form the department determines appropriate to ensure that the successful bidder will execute the lease, permit, or concession. The department will specify in the bid documents, the minimum deposit amount, the required form of deposit, and how the deposit will be applied. A required deposit amount may not exceed the greater of
 - (1) the department's estimate of one year's rents and fees; or
 - (2) the total rents and fees, as calculated by the bidder, that would be payable by the bidder for the first year of the lease, permit, or concession in the event the lease, permit, or concession were awarded to that bidder, plus twenty-five percent of any bonus bid by the bidder.
- (b) If the successful bidder does not within the required time sign the lease, permit, concession, or any other required document or perform any other requirement contained in the bid documents, the bidder forfeits the bid deposit as liquidated damages for the lost benefit to

and related additional costs incurred by the department. However, the bidder does not forfeit the deposit if the department finds that the bidder's failure is excused by extraordinary circumstances beyond the bidder's control.

- (c) Subject to (d) of this section, the department will return the deposit of each unsuccessful bidder only after the department has awarded and executed the lease, permit, or concession. The department will return all bid deposits if the department rejects all bids or cancels the invitation to bid.
- (d) After bid opening and before award and execution of the lease, permit, or concession, the department will return the bid deposit of a bidder who is not the apparent high bidder if the bidder submits to the department a written withdrawal of the bidder's bid from further consideration and the department determines that withdrawal of the bid and return of the deposit prior to award and execution of the lease, permit, or concession is in the best interest of the state.
- (e) Unless the department determines otherwise in writing, withdrawal of a bid and return of a deposit under (d) of this section is presumed in the best interest of the state if those actions are requested to enable the bidder to bid or propose on a different lease, permit, or concession while the department is holding the deposit that the bidder has requested be returned. In that case, the withdrawal becomes effective upon the department's receipt of the bidder's new bid or proposal, and the department will apply the deposit that the person submitted in support of the withdrawn bid toward the deposit requirement for the new bid or proposal.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.309. Bid withdrawal: sealed bids.

- (a) Except as provided in 17 AAC 45.306(d), a bidder may withdraw the bidder's sealed bid only by written request delivered to the department at the designated place for submitting bids and before the last time and date set for bid submission. A request to withdraw a bid received by the department after the last date and time set for bid submission is late and will not be accepted unless the delay was due to an error of the department.
- (b) A bidder may submit a new bid after withdrawal of a bid if the new bid is received at the designated place and by the last date and time specified in the bid documents.
- (c) The department will not open any bid before the last date and time set for public bid opening under the bid documents.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.312. Cancellation or postponement of bid opening.

The department will cancel or postpone a bid opening if the department determines in writing that cancellation or postponement is in the best interest of the state. The department will give reasonable notice of the cancellation or postponement to all persons of record to whom the department provided a copy of the bid documents.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.315. Bid opening; notice of intent to award.

- (a) The opening of sealed bids is open to the public. At the opening of sealed bids, the department will open each bid, announce the name of the bidder and the amount of the bid, and identify the bid that appears to be the highest among the bids received.
- (b) Before issuing a notice of intent to award, the department will
 - (1) review each bid to determine its conformity with the bid requirements and instructions;
 - (2) determine the high bidder among the qualified bidders who submitted responsive bids, and offer any qualifying existing lessee the opportunity under 17 AAC 45.215(e) to meet the highest bid; and
 - (3) determine under 17 AAC 45.390 whether the high bidder identified under (2) of this subsection is responsible and, if not, determine which qualified and responsible bidder submitted the highest responsive bid.
- (c) Within five days after receiving the department's written request, a bidder shall provide any additional information that the department requests for evaluation of the bidder's responsibility.
- (d) Subject to (b)(2) and (c) of this section and to the provisions of 17 AAC 45.215(e) and 17 AAC 45.327, the department will issue a notice of intent to award the lease, permit, or concession to the highest bidder who is qualified, responsive, and responsible. At least seven days before awarding the lease, permit, or concession, the department will mail or deliver the notice to all bidders. The notice of intent to award will include the results of the bid opening, the identity of the bidder to whom the department intends to award the lease, permit, or concession, and instructions for filing a protest.
- (e) If the department receives only one responsive bid from a qualified and responsible bidder, the department will either award the lease, permit, or concession to that bidder or, if the department determines that the bid is not in the best interest of the state, reject the bid under the provisions of 17 AAC 45.327.

- (f) When making an award, the department will mail or deliver to the successful bidder for signature any lease, permit, concession, or other required document that was not required to be signed before the bid was submitted. The successful bidder must sign and return each required document and perform any other requirement of the bid documents within the time set by the bid documents, or if the bid documents state no such deadline, within the time set in the department's transmittal of the document for signature.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.318. Nonresponsive bids.

The department will reject as nonresponsive each of multiple bids submitted under the same name or under different names, if the bidding entities are owned or controlled by the same person, or if the bid

- (1) is submitted late or to the wrong place, unless the department determines that the bid was received before the last date and time set for bid opening and that the delay or incorrect place of bid submission was due to an error of the department;
- (2) does not include the required bid deposit;
- (3) is not validly signed;
- (4) is illegible;
- (5) is not submitted in a sealed package;
- (6) fails to acknowledge all material addenda the department has issued;
- (7) offers an alternative compensation formula that the bid documents do not allow;
- (8) does not conform in all material respects to the bid documents; or
- (9) is conditional.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.321. Nonresponsible bidders: sealed bids.

After opening sealed bids, the department will reject a bid if the department determines in writing that the bidder is not responsible under 17 AAC 45.390.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.324. Bid errors.

After the opening of sealed bids but before award, a bidder may correct minor informalities, but may not correct any other errors discovered in a bid.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.327. Rejection of all bids: sealed bids.

At any time before or after issuing a notice of intent to award, the department will reject all sealed bids if the department determines in writing that rejection is in the best interest of the state. If the department rejects all bids, the department will give to all bidders written notice stating the reasons for the rejection.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.330. Cancellation of award: sealed bids.

If the successful bidder does not, within the time set under 17 AAC 45.315(f) or as extended by the department for good cause, sign and return the lease, permit, concession, or other required document or perform any other requirement of the bid documents, the department will cancel the award. The cancellation will be in writing and state the reasons for the cancellation. If the department cancels an award, the department will mail or deliver to all bidders a notice of intent to award to the next highest bidder who is qualified, responsible, and responsive or the department will reject all bids under 17 AAC 45.327.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.333. Public auction.

- (a) If the department makes a lease, permit, or concession available by public auction, the department will give public notice of the auction in accordance with 17 AAC 45.400 and provide a copy of the auction documents to each person who has paid an application fee under 17 AAC 45.205(a) for an application relating to the property or rights being made available, and to each person who requests a copy and pays any amount charged for the copy under 17 AAC 45.127(s). The auction documents will state the requirements and instructions for participating in the auction.

- (b) The department will set the auction date no earlier than 30 days after the date that the notice is first published or posted. In addition to applicable information required under 17 AAC 45.400(e), the notice must include
 - (1) a summary of the lease, permit, or concession being made available, including the length or range of term and a description of the premises;
 - (2) the date, time, and place for any pre-auction conference;
 - (3) the date, time, and place for bidder registration;
 - (4) the date, time, and place for the auction;
 - (5) any bidder qualifications;
 - (6) instructions for obtaining a copy of the auction documents; and
 - (7) a statement that the department may amend information stated in the notice by giving further notice only to all persons of record to whom the department provided a copy of the auction documents and without additional publication.
- (c) The department will make the auction documents, including a sample copy of the lease, permit, or concession to be awarded, available to the public at least 30 days before the time set for the auction. The department may charge a fee set under 17 AAC 45.127(s) for a copy of the auction documents.
- (d) The department will set the minimum acceptable bid at a reasonable amount and may do one or more of the following:
 - (1) conduct a pre-auction conference, which the department may designate in the auction documents as either optional or mandatory;
 - (2) require a bid to be submitted in terms of a bonus bid or in terms of an offer of fees or rent;
 - (3) set minimum qualifications to be a bidder.
- (e) The auction will be conducted in a reasonable manner that the department determines to be in the best interest of the state. If the department has set minimum qualifications to be a bidder, a person who is not qualified may not bid.
- (f) A bidder must register at the auction and must submit a statement signed by the bidder that the bidder

- (1) has not violated a provision of AS 02, 17 AAC 40 in effect before March 28, 2002, 17 AAC 42, or this chapter, which violation the applicant or requestor has not resolved to the satisfaction of the department or manager;
 - (2) has not violated a material term of a contract with the department, which violation the applicant or requestor has not resolved to the satisfaction of the department or manager;
 - (3) is not in arrears on a rental payment or other material financial obligation to the department; or
 - (4) is not in default of a material obligation under any lease, permit, or concession that the department has issued for any property or activity at any airport that the department owns, operates, or otherwise controls.
- (g) The department will prohibit a person from bidding at the auction if, at the time of the auction, the person does not present the information required by the auction documents. The department will require written proof that a representative of a prospective bidder is authorized to bid and execute all required documents on behalf of, and as a result to bind, any corporation, partnership, joint venture, or person other than the representative. The department may prohibit a bidding agent from representing more than one person, including the agent.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 4/23/2009, Register 190

Authority: AS 02.15.020 AS 02.15.070 AS 02.15.090 AS 02.15.060

17 AAC 45.336. Registration deposit.

- (a) The department may require that a person registering to bid at an auction submit a registration deposit at the time of registering. The registration deposit must be in an amount and form the department determines appropriate to ensure that the successful bidder executes the lease, permit, or concession. The department will specify in the auction documents the deposit amount, the required form of deposit and how the deposit will be applied. A required deposit amount may not exceed the department's estimate of rents and fees payable in the first year under the lease, permit, or concession to be awarded, plus twenty-five percent of any minimum bonus bid required in the auction documents.
- (b) If the successful bidder does not sign the lease, permit, concession, or any other required document or perform any other requirement of the auction documents within the time required under the auction documents, the bidder forfeits the deposit as liquidated damages for the lost benefit to and related additional costs incurred by the department. However, the bidder does not forfeit the deposit if the department finds that the bidder's failure is excused by extraordinary circumstances beyond the bidder's control.

- (c) Subject to (d) of this section, the department will return the deposit of any unsuccessful bidder only after the lease, permit, or concession has been awarded and executed by the department. The department will return all deposits if the department rejects all bids or cancels the auction.
- (d) After auction and prior to award and execution of the lease, permit, or concession, the department will return the registration deposit of a bidder who is not the apparent high bidder if the bidder submits to the department a written withdrawal of the bidder's bid from further consideration and the department determines that withdrawal of the bid and return of the deposit before award and execution of the lease, permit, or concession is in the best interest of the state.
- (e) Unless the department determines otherwise in writing, withdrawal of a bid and return of a deposit under (d) of this section is presumed in the best interest of the state if those actions are requested to enable the bidder to bid or propose on a different lease, permit, or concession while the department is holding the deposit that the bidder has requested be returned. In that case, the withdrawal becomes effective upon the department's receipt of the bidder's new bid or proposal, and the department will apply the deposit that the person submitted in support of the withdrawn bid toward the deposit requirement for the new bid or proposal.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.339. Cancellation or postponement of auction.

The department will cancel or postpone an auction if the department determines in writing that cancellation or postponement is in the best interest of the state. The department will give reasonable notice of the cancellation or postponement to all persons of record to whom the department provided a copy of the auction documents.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.342. Notice of intent to award: auctions.

- (a) The department will identify and announce the highest bid and bidder at the auction. Subject to (c) of this section and to the provisions of 17 AAC 45.345, the identification of the highest bidder constitutes the department's notice of intent to award the lease, permit, or concession to that bidder. The department's oral announcement constitutes notice of decision to all persons for purposes of the protest provisions of 17 AAC 45.910(b)(2). The highest bidder must sign the lease, permit, or concession at the auction.

- (b) Before the department signs the lease, permit, concession, or other related document, the department will determine whether the highest bidder has fulfilled all the auction requirements and whether the bidder is responsible under 17 AAC 45.390. The department will not sign the lease, permit, or concession earlier than seven days after the date of the auction.
- (c) If at an auction the department receives only one bid from a qualified and responsible bidder, the department will either award the lease, permit, or concession to that bidder or, if the department determines that the bid is not in the best interest of the state, reject the bid under 17 AAC 45.345.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.345. Rejection of all bids: auctions.

At any time before or after announcing the highest bid and bidder at an auction, the department will reject all auction bids if the department determines that rejection is in the best interest of the state. Within ten days after rejecting all bids under this section, the department will state the reasons for that decision in writing and mail or deliver a copy of that writing to all bidders.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.348. Cancellation of award: auctions.

If the highest bidder at an auction does not sign the lease, permit, concession, or any other required document at the auction or perform any other auction requirement, the department will cancel the award. The cancellation will be in writing and state the reasons for the cancellation. If the department cancels an award, the department will mail or deliver to all bidders a notice of intent to award the bid to the next highest bidder who is qualified, responsible, and responsive or the department will reject all bids under 17 AAC 45.345.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.351. Nonresponsible bidder: auctions.

The department will reject a bid made at an auction if the department determines in writing that the bidder is not responsible under 17 AAC 45.390.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.354. Competitive proposal.

- (a) If the department makes a lease, permit, or concession available by competitive proposal, the department will give public notice of the request for proposals in accordance with 17 AAC 45.400 and provide a copy of the proposal documents to each person who has paid an application fee under 17 AAC 45.205(a) for an application relating to the property or rights being made available, and to each person who requests a copy and pays any amount charged for the proposal documents under 17 AAC 45.127(s). The proposal documents will state the requirements and instructions for submitting a proposal.
- (b) The department will set the last time and date for submission of proposals no earlier than 30 days after the date the notice is first published or posted. In addition to applicable information required under 17 AAC 45.400(e), the notice must include
 - (1) a summary of the lease, permit, or concession being made available, including the length or range of term and a description of the premises;
 - (2) the date, time, and place for any pre-proposal conference;
 - (3) the last date and time and the place for submission of proposals;
 - (4) any proposer qualifications;
 - (5) instructions for obtaining a copy of the proposal documents; and
 - (6) a statement that the department may amend information stated in the notice by giving further notice only to all persons who have requested a copy of the proposal documents and without additional publication.
- (c) The department will make the proposal documents, including a sample copy of the lease, permit, or concession to be awarded, available to the public at least 30 days before the last date and time set for submission of proposals. The proposal documents will include the weighting value or numerical system to be applied to each evaluation factor. The department may charge an amount set under 17 AAC 45.127(s) for a copy of the proposal documents.
- (d) In the proposal documents, the department may
 - (1) provide for a pre-proposal conference, which the department may designate in the proposal documents as either optional or mandatory;
 - (2) set minimum qualifications to be a successful proposer; and
 - (3) require that each qualified proposer reasonably susceptible of award make an oral presentation to or participate in an interview with the proposal evaluation committee.

- (e) A proposal must include all information required by the proposal documents, conform to the requirements contained in the proposal documents, and be submitted in writing in a sealed package to the designated place by the last date and time specified in the proposal documents.
- (f) A proposal must include a statement signed by the proposer that the proposer
 - (1) has not violated a provision of AS 02, 17 AAC 40 in effect before March 28, 2002, 17 AAC 42, or this chapter, which violation the applicant or requestor has not resolved to the satisfaction of the department or manager;
 - (2) has not violated a material term of a contract with the department, which violation the applicant or requestor has not resolved to the satisfaction of the department or manager;
 - (3) is not in arrears on a rental payment or other material financial obligation to the department; or
 - (4) is not in default of a material obligation under any lease, permit, or concession that the department has issued for any property or activity at any airport that the department owns, operates, or otherwise controls.
- (g) A proposal becomes the property of the department upon receipt. A proposal, the name of each proposer, and the number of proposals received are confidential until review of all proposals is complete and the notice of intent to award is issued. When a notice of intent to award is issued, the information in each proposal becomes public, except for information that is not subject to disclosure under applicable law or to the extent the proposal documents allow a proposer to designate certain information as proprietary and for such information to be held confidential by the department.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 4/23/2009, Register 190

Authority: AS 02.15.020 AS 02.15.070 AS 02.15.090 AS 02.15.060

17 AAC 45.357. Proposal deposit.

- (a) The department may require that each proposer submit with the proposal a deposit in an amount and form the department determines appropriate to ensure that the successful proposer executes the lease, permit, or concession. The department will specify in the proposal documents the minimum deposit amount, the required form of deposit, and how the deposit will be applied. The required deposit amount will not exceed the greater of
 - (1) the department's estimate of one year's rents and fees; or
 - (2) the total rents and fees, as calculated by the proposer, that would be payable by the proposer for the first year of the lease, permit, or concession, in the event the lease,

permit, or concession were awarded to that proposer, plus twenty-five percent of any bonus proposed by the proposer.

- (b) If the successful proposer does not within the required time sign the lease, permit, concession, or any other required document or perform any other requirement of the proposal documents, the proposer forfeits the proposer's deposit as liquidated damages for the lost benefit to and related additional costs incurred by the department. However, the proposer does not forfeit the deposit if the department finds that the proposer's failure is excused by extraordinary circumstances beyond the proposer's control.
- (c) Subject to (d) of this section, the department will return the deposit of each unsuccessful proposer only after the department has awarded and executed the lease, permit, concession, and any other required document. The department will return all proposal deposits if the department rejects all proposals or cancels the request for proposals.
- (d) After the opening of proposals and prior to award and execution of the lease, permit, or concession, the department will return the proposal deposit of a proposer who is not the apparent successful proposer if the proposer submits to the department a written withdrawal of the proposer's proposal from further consideration and the department determines that withdrawal of the proposal and return of the deposit prior to award and execution of the lease, permit, or concession is in the best interest of the state.
- (e) Unless the department determines otherwise in writing, withdrawal of a proposal and return of a proposal deposit under (d) of this section is presumed in the best interest of the state if those actions are requested to enable the proposer to bid or propose on a different lease, permit, or concession while the department is holding the deposit that the proposer has requested be returned. In that case, the withdrawal becomes effective upon the department's receipt of the proposer's new bid or proposal, and the department will apply the deposit that the person submitted in support of the withdrawn proposal toward the deposit requirement for the new bid or proposal.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.360. Proposal withdrawals.

- (a) Except as provided in 17 AAC 45.357(d), a proposer may withdraw the proposal only by a written request delivered to the department at the address for submitting proposals and before the last date and time set for submitting proposals. A request to withdraw a proposal received after the last date and time set for proposal submission is late and will not be accepted unless the delay was due to an error of the department.
- (b) A proposer may submit a new proposal after withdrawal of a proposal if the new proposal is received at the designated place by the last date and time specified in the proposal documents.

- (c) The department will not open any proposal before the last date and time for proposal submission set in the proposal documents.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.363. Cancellation or postponement of request for proposals.

The department will cancel or postpone a request for proposals if the department determines in writing that cancellation or postponement is in the best interest of the state. The department will give reasonable notice of the cancellation or postponement to all persons of record to whom the department provided a copy of the proposal documents.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.366. Evaluation of proposals.

- (a) The department will appoint a proposal evaluation committee to review proposals received in response to a request for proposals. The evaluation must be based on only the evaluation factors set out in the proposal documents. Evaluation factors not specified in the proposal documents may not be considered.
- (b) Each committee member shall independently review and evaluate each proposal and document any comments and preliminary scores in writing. A committee member may not consult with any other committee member until all preliminary evaluations by the committee members are complete. Subject to (c) and (e) of this section, the committee shall then meet to discuss the evaluations and to rank the proposals. A committee member may adjust that member's evaluation of a proposal as a result of further information received under (c) of this section or discussions at the committee meeting.
- (c) The committee shall hear any presentations required by the proposal documents and conduct any required oral interviews. The committee may request or offer an opportunity for presentations, oral interviews, clarification of proposals, submission of additional responsibility information, or refined or revised proposals. Any opportunity to provide additional information under this subsection must be offered to all proposers who are reasonably susceptible of award. The committee may limit discussions with or any information requests to proposers under this subsection to specific portions of the proposal documents.
- (d) Within five days after receiving the committee's written request, a proposer shall provide additional information for evaluation of the proposer's responsibility.
- (e) If the committee conducts oral interviews or requests clarification of proposals, additional financial responsibility information, or refined or revised proposals, the committee shall

conduct final evaluations as described under (b) of this section after the date and time set for interviews or submission of additional information or refined proposals.

- (f) If the committee finds that a need for substantial clarification or material change in the proposal documents exists, the committee may recommend to the department that the request be amended to incorporate the clarification or change. If the department determines the clarification or change would not be materially inconsistent with the notice information provided under 17 AAC 45.354(b)(1) or (4) and is likely to result in proposals that are more advantageous to the state, the department will amend the proposal documents. The department will set a last date and time for response to the amended proposal documents and provide notice of the amendment and the date and time for response to all persons of record to whom the department provided a copy of the proposal documents. A response to amended proposal documents shall be evaluated in accordance with the applicable provisions of this section.
- (g) The committee shall provide the department with a written summary of the committee's findings, ranking all proposals identified as within a range acceptable for award, together with a recommendation for award based upon the top ranked proposal from a qualified, responsible proposer. If the committee considers no proposal to be within a range acceptable for award or if the proposal upon which the committee bases its recommendation for award is the only proposal received that the committee found to be responsive within that range and from a qualified proposer, the committee shall so state in the committee's report to the department.
- (h) Upon review of the committee's findings, the department will
 - (1) issue a notice of intent to award under 17 AAC 45.375 as the committee recommends;
 - (2) enter into negotiations with the recommended proposer to determine contract terms consistent with the proposal documents and favorable to the state, if permitted under the proposal documents; or
 - (3) reject all proposals under 17 AAC 45.378.
- (i) If the department enters into negotiations under (h)(2) of this section, any changes in the recommended proposer's proposal must be reasonable and must not have the effect of changing the ranking of the proposal under consideration. If the negotiations with the recommended proposer are successful, the department will issue a notice of intent to award to the recommended proposer under 17 AAC 45.375. If, however, the department determines in writing that the recommended proposer has failed to negotiate in good faith, the department may terminate the negotiations and begin negotiations with the next-ranked proposer that the evaluation committee found to be within a range acceptable for award.
- (j) If the department begins negotiations with the next-ranked proposer under (i) of this section, the department will negotiate with that proposer and, if the proposer fails to negotiate in good faith, with successively lower ranked proposers within the acceptable range determined by the evaluation committee. The department will conclude negotiations when the department comes to agreement on contract terms consistent with the proposal

documents and favorable to the state with the highest ranked proposer possible. Subject to a responsibility determination by the department under 17 AAC 45.372(b) and 17 AAC 45.390, the department will issue under 17 AAC 45.375 a notice of intent to award the contract as negotiated.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.369. Nonresponsive proposals.

- (a) Unless the proposal documents state that alternate proposals are acceptable, the evaluation committee appointed under 17 AAC 45.366 shall consider a proposal as not responsive if the proposer submits more than one proposal under the same or different names.
- (b) The evaluation committee need not evaluate a proposal that the committee finds to be nonresponsive because the proposal
 - (1) is submitted late or to the wrong place, unless the committee determines that the delay or incorrect place of proposal submission was due to an error of the department;
 - (2) does not include the required proposal deposit;
 - (3) is not validly signed;
 - (4) is illegible;
 - (5) is not submitted in a sealed package;
 - (6) fails to acknowledge all material addenda that the department has issued;
 - (7) offers an alternative compensation formula that the proposal documents do not allow;
 - (8) does not conform in all material respects to the proposal documents; or
 - (9) is conditional.
- (c) In the interest of competition, increased revenues to the state, or high quality service to the public or as otherwise in the interest of the state, the committee may, before ranking the proposals evaluated under 17 AAC 45.366, give all proposers an equal opportunity to cure otherwise nonresponsive proposals.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.372. Nonresponsible proposers.

- (a) The evaluation committee appointed under 17 AAC 45.366 may not recommend award to a proposer if the committee determines in writing that the proposer is not responsible under 17 AAC 45.390 or because the proposer fails timely to make a required presentation, attend an interview, or submit a refined or revised proposal or other information requested by the proposal evaluation committee.
- (b) The department will consider the responsibility of any proposer not recommended by the evaluation committee but considered for award under 17 AAC 45.366(i) and (j) or 17 AAC 45.381. The department will not award to such a proposer if the department determines in writing that the proposer is not responsible under 17 AAC 45.390.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.375. Notice of intent to award: proposals.

- (a) Subject to 17 AAC 45.378, the department will issue a written notice of intent to award the lease, permit, or concession to the successful proposer. At least seven days before awarding the lease, permit, or concession, the department will mail or deliver the notice to all proposers. The notice will include the identity of the successful proposer, the rankings of all proposals received, and instructions for filing a protest.
- (b) The department will mail or deliver the lease, permit, concession, or other document required under the proposal documents to the successful proposer. The successful proposer must sign and return the lease, permit, or concession and perform any other requirement of the proposal documents within the time set by the proposal documents, or if the proposal documents state no deadline, within the time set in the department's transmittal of the lease, permit, or concession for signature.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.378. Rejection of all proposals.

At any time before or after issuing a notice of intent to award, the department will reject all proposals if the department determines in writing that rejection is in the best interest of the state. If the department rejects all proposals, the department will give to all proposers written notice stating the reasons for the rejection.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.381. Cancellation of award: proposals.

If the successful proposer does not sign the lease, permit, concession, or any other required document or perform any other requirement of the proposal documents within the time set under 17 AAC 45.375(b) or as extended by the department for good cause, the department will cancel the award. The cancellation will be in writing and state the reasons for the cancellation. If the department cancels an award, the department will, following any negotiations process under 17 AAC 45.366(i) and (j) and subject to a nonresponsibility determination under 17 AAC 45.372(b) and 17 AAC 45.390, mail or deliver to all proposers a notice of intent to award the agreement to the proposer of the next best proposal, as ranked by the proposal evaluation committee, or reject all proposals under 17 AAC 45.378.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.390. Standards of responsibility.

- (a) In determining whether a bidder or proposer under 17 AAC 45.300 - 17 AAC 45.399 is responsible, the department will or the evaluation committee shall, as applicable, consider such relevant factors as the bidder's or proposer's
 - (1) record of operational and contractual performance;
 - (2) legal qualification to contract with the state;
 - (3) financial capacity and access to financing relative to the obligations of the lease, permit, or concession; and
 - (4) possession of, plan to obtain, or documented commitment from a third person to provide, as applicable, equipment, expertise, personnel, franchise rights, or other items necessary to fulfill the obligations of the lease, permit, or concession.
- (b) The department will or an evaluation committee appointed under 17 AAC 45.366 shall, as applicable, determine that a bidder or proposer under this chapter is not responsible if the department or proposal evaluation committee, as applicable, determines that the bidder or proposer
 - (1) has violated a provision of AS 02, 17 AAC 40 in effect before March 28, 2002, 17 AAC 42, or this chapter, which violation the applicant or requestor has not resolved to the satisfaction of the department or manager;
 - (2) has violated a material term of a contract with the department, which violation the applicant or requestor has not resolved to the satisfaction of the department or manager;

- (3) is in arrears on a rental payment or other material financial obligation to the department;
 - (4) is in default of a material obligation under any lease, permit, or concession that the department has issued for any property or activity at any airport that the department owns, operates, or otherwise controls;
 - (5) fails timely to meet or to demonstrate that the bidder or proposer meets the qualification requirements established in the bid documents issued under 17 AAC 45.303, auction documents issued under 17 AAC 45.333, or proposal documents issued under 17 AAC 45.354, as applicable;
 - (6) fails timely to establish financial responsibility acceptable to the department; or
 - (7) fails timely to provide sufficient information to determine its responsibility after request by the department.
- (c) A finding of responsibility under this section or under another provision of 17 AAC 45.300 - 17 AAC 45.399, as applicable, does not relieve a bidder or proposer from any requirement for performance under the lease, permit, or concession.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090

17 AAC 45.393. Bid, auction, or proposal protest.

A bidder or proposer under 17 AAC 45.300 - 17 AAC 45.399, as applicable, may protest the department's intent to award a lease, permit, or concession made available for bid or proposal or the department's rejection of a bid or proposal in accordance with 17 AAC 45.910.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090 AS 02.15.200

17 AAC 45.399. Definitions. Repealed.

History: Eff. 3/28/2002, Register 161; repealed 3/22/2008, Register 185

ARTICLE 4
**Public Notice; Lease, Permit, and Concession Terms; Insurance;
and Cancellation**

Section

- 400. Public notice.
- 410. General terms of a lease, permit, or concession.
- 420. Terms for a lease, permit, or concession for operations that require certified activity reports.
- 425. Insurance for leases, permits, and concessions.
- 430. Cancellation of a lease, permit, or concession.

17 AAC 45.400. Public notice.

- (a) Except as otherwise provided in (b) or (d) of this section, when this chapter requires public notice, the department will give the public not less than
 - (1) 30 days' notice by posting the required notice on the Alaska Online Public Notice System;
 - (2) 21 days' notice by posting the notice in a public place on the affected airport or in the nearest community, with the notice prominently marked "Please leave posted and fully visible until _____;" the department will insert in the blank a date that is no earlier than the last day for receipt of comments and not less than 21 days after the date of first posting; and
 - (3) if the department finds additional notice is in the best interest of the state, the department will publish notice at least once each week for three consecutive weeks in at least one newspaper of general circulation in the vicinity of the affected airport or in any other publication the department finds appropriate.
- (b) Except as provided in (d) of this section, the department will give not less than seven days' notice before issuing
 - (1) a permit with a term of 270 days or less;
 - (2) a lease or permit for a navigational, landing, or weather aid or for a flight service station or air traffic control tower in direct support of airport operations; or
 - (3) a road right-of-way grant or permit.

The department will give the notice required in this subsection by posting for not less than seven days on the Alaska Online Public Notice System and in a public place on the affected airport or in the nearest community. A notice posted in a public place under this section must be prominently marked "Please leave posted and fully visible until _____;" the department will insert in the blank a date that is no earlier than the last day for receipt of comments and not less than seven days after the date of first posting.

- (c) The applicable notice period required under this section begins on the first day that the notice is either published or posted, whichever occurs earlier.
- (d) Public notice under this section is not required if the application for the lease, permit, concession, material amendment, or other interest is
 - (1) for a business activity permit under 17 AAC 45.105, a commercial passenger vehicle permit under 17 AAC 45.095, an assigned-space permit under 17 AAC 45.500 - 17 AAC 45.590, or a transient aircraft fee parking permit under 17 AAC 45.600;
 - (2) for a right-of-way for a utility, including an FAA utility, that will serve the airport or airport tenants; or
 - (3) for a permit for use of airport property for 120 days or less.
- (e) Public notice under this section will include, as applicable,
 - (1) the name of any applicant or the general basis for identification or selection of any person to receive a right or interest;
 - (2) the general terms of any proposed lease, permit, concession, material amendment, or other interest including the proposed
 - (A) rent and any other fees;
 - (B) term;
 - (C) property description or location; and
 - (D) the class or classes and general description of authorized uses;
 - (3) the department's mailing address for submitting comment, objection, or, if applicable, a competing application;
 - (4) the date by which all public comment, objection, and, if applicable, any competing application must be received in writing by department; and
 - (5) a statement that only a person who submits written comment or objection, or, if applicable, competing application, to the department at the address and by the date and time specified in the notice and includes a return address, is entitled to have notice of the department's decision sent to that address.
- (f) An applicant for a lease, permit, concession, or material amendment to a lease, permit, or concession shall not remove, obscure, or cause to be removed or obscured, a notice of the application posted in a public place under (a) of this section, before the "please leave posted and fully visible until" removal date stated in the notice. A person who removes,

obscures or causes to be removed or obscured a notice posted in a public place under (a) of this section before the removal date stated in the notice is subject to disqualification from receiving any lease, permit, or concession relating to the subject matter of the notice.

History: Eff. 3/28/2002, Register 161; am 11/23/2003, Register 168; am 3/22/2008, Register 185; am 3/20/2016, Register 217

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.200

17 AAC 45.410. General terms of a lease, permit, or concession.

- (a) The department will include provisions in a lease, permit, or concession that
 - (1) identify the obligations and privileges of the parties;
 - (2) produce fair and reasonable revenue for the state;
 - (3) foster the safe, effective, and efficient operation of the airport;
 - (4) require compliance with applicable law; and
 - (5) are in the best interest of the state.
- (b) In addition to the other applicable requirements of this chapter, the department will include, as applicable, in a lease, in a permit, except for a first amendment activity permit issued under 17 AAC 45.800 - 17 AAC 45.810, or in a concession, provisions that
 - (1) require the lessee to assume full control and sole responsibility as between the lessee and the lessor for the activities of the lessee, the lessee's personnel, employees, and persons acting on behalf of or under the authority of the lessee, anywhere on the airport and for the activities of the lessee's sublessees, contractors, and guests, including customers and vendors, on the premises;
 - (2) require the lessee to coordinate the lessee's activities on the airport with the department and to abide by the department's decisions and directives regarding snow removal, maintenance, and general use of the airport by the lessee, the lessee's personnel, employees, and any person acting on behalf of or under the authority of the lessee, and by the lessee's sublessees, contractors, and guests, including customers and vendors;
 - (3) require the lessee to perform all operations authorized by the lease in a manner that ensures the safety of people and the airport, the protection of public health and the environment, and the safety and integrity of the premises;
 - (4) require the lessee to immediately notify the department of any condition, problem, malfunction, or other occurrence that threatens the safety of the airport, the safety of

persons using the airport, the public health or the environment, or the safety or integrity of the premises;

- (5) reserve to the lessor the right of ingress to and egress from the premises, including buildings, and the right to enter any part of the premises for the purpose of inspection at any reasonable time, subject only to the lessor's best efforts, except in the case of an emergency, to coordinate its inspection with the lessee to minimize interference with the lessee's activities on the premises;
- (6) reserve to the lessor the right to grant to others any right or privilege on the airport that the lessor has not specifically and exclusively granted to the lessee;
- (7) reserve to the lessor the right to grant to third parties or reserve to the lessor easements or rights of way through, on, above, or under the premises, so long as the easement or right-of-way does not unreasonably interfere with the lessee's use of the premises;
- (8) prohibit, unless the department determines otherwise in the best interest of the state, the following activities:
 - (A) establishment or maintenance of any kind of living quarters on the premises, except for, as approved by the lessor, accommodations for the customers and employees of a hotel or motel authorized under the lease and temporary overnight accommodations for a member of an air carrier crew or an on-call member of an air ambulance or air rescue crew;
 - (B) if not visually screened from adjacent properties, the outside storage on the premises of salvage aircraft or vehicle parts, nonoperational support equipment, or unused or damaged equipment or material;
 - (C) the outside storage on the premises of junk, trash, solid waste, or debris;
 - (D) stripping, wasting, or removing from the premises any soil, gravel, trees, or other state-owned material, unless the lessor approves in writing;
- (9) prohibit, except as the department otherwise approves in writing, the construction or placement of a building or other permanent above-ground structure
 - (A) within 30 feet of a boundary line of a premises; and
 - (B) on the apron side, taxiway side, or runway side of a line beyond which buildings are generally prohibited, as shown on an airport layout plan available from the department;
- (10) require the lessee to keep the premises and all improvements on the premises neat and presentable at the lessee's sole expense;

- (11) require the lessee to provide for all utilities, maintenance, and services on the premises necessary for the lessee's use of the premises;
- (12) require the lessee to keep the premises free of all liens other than by assignment for security purposes as approved in writing by lessor and to pay any cost for labor and materials arising out of any construction or improvements by the lessee on the premises;
- (13) require the lessee to provide vehicle, equipment, and aircraft parking space, snow storage, and drainage on the premises adequate for the lessee's activities on the premises;
- (14) require that the lessee must
 - (A) continue to satisfy relevant qualifications initially set under 17 AAC 45.303(d)(3), 17 AAC 45.333(d)(3), or 17 AAC 45.354 (d)(2), as applicable, for the lease, permit, or concession; and
 - (B) provide to the lessor such documentation as the lessor may reasonably require to establish that lessee is in compliance with this paragraph;
- (15) repealed 3/22/2008;
- (16) require the lessee to peaceably and quietly vacate the premises and return possession to the lessor at the expiration, cancellation, or termination of the lease;
- (17) require the lessee to discontinue the use of any machine or device that interferes with any government operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated;
- (18) provide that the lessor will not unreasonably withhold any approval required by the lease or by this chapter;
- (19) repealed 3/22/2008;
- (20) repealed 3/22/2008;
- (21) repealed 3/22/2008;
- (22) provide that title to property abandoned by the lessee on the premises automatically vests in the state unless the property is contaminated with any hazardous substance or rejected by the department by a written notice to the lessee or the property's automatic vesting would violate a statute or regulation;

- (23) provide that the lease is subject to all applicable requirements of the state statutes and regulations in effect during the term of the lease, including those relating to the leasing of lands and facilities and the granting of privileges, at state airports;
- (24) require the lessee to comply with all applicable
 - (A) requirements imposed on the airport or the department by federal law to ensure that the airport's or department's eligibility for federal money or for participation in a federal aviation program is not jeopardized; and
 - (B) orders issued by the department;
- (25) require the lessee to pay, within 30 days of the billing date, any cost or damage that the department incurs to enforce or protect the department's rights under the lease or due to any failure of the lessee to comply with a provision of the lease, including a cost to correct a violation under 17 AAC 45.430(d); in this paragraph "cost" includes legal fees and administrative costs;
- (26) assure the lessee quiet enjoyment of the lessee's leased premises;
- (27) prohibit installation of a drinking water well on the premises where local water utility service is available; and
- (28) require the lessee to indemnify the lessor and its agents and employees against a loss or obligation that arises directly or indirectly from the lessee's use or occupancy of the premises, exercise of the privileges granted in the lease, or operations and activity on the airport and that was not legally caused solely by one or more acts or omissions of the lessor, in the following manner:
 - (A) the lessee shall indemnify, hold harmless, and defend the lessor and its agents and employees to the full extent of the loss or obligation;
 - (B) notwithstanding (A) of this paragraph, as to any amount paid by the lessor or the lessee to others for personal injury or property damage with respect to which an act or omission of the lessor is a legal cause, the lessee and the lessor shall reimburse each other, as applicable, according to the principles of comparative fault; in addition, the lease provision will state that this provision for reimbursement according to comparative fault is not intended to be construed to affect the rights of any person who is not a party to the lease.
- (c) All leases, permits, and concessions are granted without specific warranties, express or implied, concerning the title or condition of the property, including survey, soils, wetlands, access, or suitability for any use, including those uses authorized by the lease, permit, or concession.
- (d) In this section, unless the context otherwise requires

- (1) "lease" includes "permit" and "concession";
- (2) "lessee" includes "permittee" and "concessionaire" and each sublessee of the lessee, permittee, or concessionaire with respect to that sublessee's operations;
- (3) "lessor" means the department as the grantor in permits and concessions, as well as leases;
- (4) "loss or obligation" includes any loss, fine, penalty, claim, liability, or damages sustained by, asserted against, or imposed on the lessor, including any claim, demand, action, judgment, or liability asserted against or imposed upon the lessor for injury or damages sustained by a person or property.

History: Eff. 3/28/2002, Register 161; am 11/23/2003, Register 168; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.070 AS 02.15.090 AS 02.15.200

17 AAC 45.420. Terms for a lease, permit, or concession for operations that require certified activity reports.

- (a) In addition to the other applicable requirements of this chapter, and when not prohibited by applicable law, the department will include, as applicable, in a lease, permit, or concession a means for collection of data necessary for receipt of certain federal money, for participation in a federal aviation program, for determination of fees payable under the lease or under this chapter, or for airport planning and operational management. The lease will require the lessee to submit periodically a certified activity report that contains all information required in the lease.
- (b) In a lease, permit, or concession that requires the lessee to submit a certified activity report the department will include provisions that
 - (1) require the lessee to submit periodically to the lessor on an airport form or in another form acceptable to the lessor certified activity reports that contain all information required under the lease;
 - (2) require the lessee to accurately and contemporaneously document in the lessee's records all information required under the lease;
 - (3) require the lessee to establish and maintain books and records in accordance with generally accepted accounting principles;
 - (4) reserve to the lessor the right to audit, during regular business hours, the lessee's books, records, including electronic data and text files, and supporting data and documents regarding the lessee's activities that are subject to certified activity reporting under the lease, permit, or concession;

- (5) require the lessee to either transport the necessary books and records to a location on the airport for inspection and copying or allow the audit to be performed at the location where the lessee maintains the books and records; the department may also include provisions in the lease that provide that the lessor may, upon reasonable notice, require the lessee to give an auditor designated by the lessor access to relevant books and records where and as the lessee maintains the documents;
- (6) require that a lessee who elects to, but not a lessee who is required to, have an audit performed at the location where the lessee maintains the records pay the lessor, within 30 days of the billing date, the audit costs the lessor incurs; in this paragraph, "audit costs" include round trip air and ground transportation from the auditor's duty station to the location where the lessee maintains the books and records and per diem at the State of Alaska rate for each day of travel and on-site audit work; in this paragraph, "audit costs" do not include salary and benefit costs of an auditor;
- (7) require the lessee to pay, within 30 days of the billing date, any underpayment disclosed by an audit plus
 - (A) interest at the rate provided in AS 45.45.010 from the date payment was required to be made for the relevant activity had it been accurately and timely reported;
 - (B) any actual costs and attorney fees that the lessor incurs to collect the underpayment; and
 - (C) if the underpayment is more than \$5,000 in any fiscal year, all audit costs that the lessor incurs, including salary and benefit costs of the auditor;
- (8) require the lessor to credit a lessee's account if an audit discloses that the lessee has overpaid for the audit period;
- (9) require the lessee annually to furnish the lessor with a special purpose financial statement, certified as true and correct and signed by an independent certified accountant or the lessee's chief financial officer; the financial statement must
 - (A) reflect the lessee's gross sales, fuel deliveries, passenger volumes, or other information required under the lease, as applicable, during the year and for which certified activity reports are required under the lease; and
 - (B) certify whether the lessee is maintaining accounting records in accordance with the lease;
- (10) require the lessee to preserve and keep accessible all books and records, however recorded or stored, for the period of time described in the lease; the period of time to preserve all books and records in a lease will be a minimum of three years after the last entry of information into the respective book or record; notwithstanding the minimum period of time set out in this paragraph, if the lessor objects to any report or statement submitted by the lessee, the lessee shall preserve all books and records until the

objection is resolved or for the period of time described in the lease, whichever is longer; and

- (11) require the lessee to furnish other financial or statistical reports as the lessor may reasonably require regarding any business of the lessee for which the lease requires certified activity reports.

(c) In this section, unless the context otherwise requires,

- (1) "lease" includes "permit" and "concession";
- (2) "lessee" includes "permittee" and "concessionaire" and each sublessee of the lessee, permittee, or concessionaire with respect to that sublessee's operations;
- (3) "lessor" means the department as the grantor in permits and concessions, as well as leases.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.220

Editor's note: As of Register 165 (April 2003), the regulations attorney made a technical revision under AS 44.62.125 (b)(6), to 17 AAC 45.420(b)(7)(B).

17 AAC 45.425. Insurance for leases, permits, and concessions.

- (a) Except as provided under (b) of this section, the department will not require a lessee, permittee, or concessionaire to provide insurance coverage as a condition of that person's lease, permit, or concession.
- (b) The department will require a lessee, permittee, or concessionaire to provide insurance coverage as a condition of that person's lease, permit, or concession only upon a written determination by the commissioner, or the commissioner's designee, after consultation with the Department of Administration, division of risk management, that
 - (1) the activity, construction, or operation of the lessee, permittee, or concessionaire under the lease, permit, or concession will expose the state to a liability risk greater than the risk typically posed by the activity, construction, or operation of lessees, permittees, or concessionaires that are not required to obtain insurance under this section; and
 - (2) it is in the best interest of the state to require the lessee, permittee, or concessionaire to provide insurance coverage.
- (c) If the department requires a lessee, permittee, or concessionaire to provide insurance coverage under (b) of this section, the department will include provisions in the lease, permit, or concession that require the lessee, permittee, or concessionaire to obtain, and keep in force insurance coverage protecting both the state and the lessee, permittee, or concessionaire, including

- (1) a requirement that the insurer name the state as an additional insured or, if an additional insured provision is inapplicable, include a waiver of subrogation endorsement in favor of the state;
- (2) a requirement that the insurer notify the department at least 30 days before any termination, cancellation, or material change in the insurance coverage;
- (3) a provision requiring the lessee, permittee, or concessionaire to submit to the department a copy of each required insurance policy, or a certification that each required coverage is in effect, together with evidence that the premiums for each coverage have been paid; and
- (4) a statement identifying any insurance coverage and the lowest acceptable coverage limits the department requires for the activity allowed in the lease, permit or concession based on the table set out in this paragraph; if the lease, permit or concession allows more than one activity that requires the same kind of coverage, the coverage limit must be the highest coverage limit applicable to an activity allowed by that lease, permit, or concession:

Activity	Coverage	Lowest Acceptable Coverage Limits
Cargo and passenger air service	Aircraft and Aviation Liability	Lowest acceptable coverage limit based on the design seat capacity of the largest aircraft used:
	30,000lbs CMGTW or less;	As required by AS 02.40.010(a);
	greater than 30,000 lbs. CMGTW and up to 99 seats;	\$750,000 per seat combined single limit per occurrence and aggregate per year;
	100 or more seats	\$1,000,000 per seat combined single limit per occurrence and aggregate per year.
Use of airport premises (not including use for ground-handling)	Airport Liability	\$500,000 bodily injury and property damage combined single limit per occurrence and aggregate per year;
		\$100,000 per person bodily injury sublimits.

Activity	Coverage	Lowest Acceptable Coverage Limits
Ground-handling	Airport Liability	<p>\$500,000 bodily injury and property damage combined single limit per occurrence and aggregate per year;</p> <p>\$100,000 per person bodily injury sublimits.</p>
Operation of owned or leased vehicle(s) on airport	Automobile Liability	<p>\$500,000 combined single limit per occurrence and aggregate per year;</p> <p>\$100,000 per person bodily injury sublimits.</p>
Commercial fueling on and off premises	<p>Airport Liability (together with pollution coverage or a waiver of any pollution exclusion)</p> <p>Products and Completed Operations Liability</p>	<p>\$1,000,000 bodily injury and property damage combined single limit per occurrence and aggregate per year;</p> <p>\$100,000 per person bodily injury sublimits.</p> <p>\$100,000 bodily injury combined single limit per occurrence;</p> <p>\$300,000 bodily injury aggregate;</p> <p>\$100,000 property damage combined single limit per occurrence.</p>
Manufacture or sale of aviation products on airport or premises (other than fuel).	Products and Completed Operations Liability	<p>\$100,000 bodily injury combined single limit per occurrence;</p> <p>\$300,000 bodily injury aggregate;</p> <p>\$100,000 property damage combined single limit per occurrence.</p>

Distribution, sale, or serving of alcohol on airport	Liquor Legal Liability	\$500,000 combined single limit per occurrence and aggregate per year.
Employment of employees doing work on the premises or on the airport.	Employer's Workers Compensation Insurance	Requirements under AS 23.30.

- (d) Notwithstanding the standards set out in (c) of this section, the department may, after consultation with the Department of Administration, division of risk management, require the lessee, permittee, or concessionaire to provide insurance coverage and limits different from those listed in (c) of this section; the department may establish different limits only upon a written finding that
- (1) higher limits or coverage are necessary because
 - (A) the activity, construction, or operation of the lessee, permittee, or concessionaire under the lease, permit, or concession will expose the state to a liability risk greater than the risk typically posed by the activity, construction, or operation of other lessees, permittees, or concessionaires required to provide insurance under this section; and
 - (B) it is in the best interest of the state to require the lessee, permittee, or concessionaire to provide greater insurance coverage or higher coverage limits; or
 - (2) lower limits or coverage are justified because
 - (A) the activity, construction, or operation of the lessee, permittee, or concessionaire under the lease, permit, or concession will expose the state to a liability risk materially lower than the average risk posed by the activity, construction, or operation of other lessees, permittees, or concessionaires to which (c) of this section applies; and
 - (B) it is in the best interest of the state to allow the lessee, permittee, or concessionaire to provide insurance with reduced coverage or limits.
- (e) If a lessee, permittee, or concessionaire obtains insurance with higher limits or greater coverage than any required by the department under this section, nothing in this section or in the lease, permit, or concession may be interpreted to limit the benefit and protection of the state as additional insured to less than the full higher limits and greater coverages.
- (f) Neither the existence nor the absence of a requirement for insurance coverage under this section, nor compliance or noncompliance with such a requirement, relieves the lessee, permittee, or concessionaire of any obligation under the lease, permit, or concession, including the obligation of the lessee, permittee, or concessionaire to indemnify the state.

- (g) In this section, unless the context otherwise requires,
- (1) "aircraft and aviation liability" means insurance that protects the insured from loss due to claims arising from ownership, maintenance, or use of aircraft;
 - (2) "airport liability" means insurance that protects the insured from loss due to claims arising from activity on land or a building of an airport, including activities on the leased premises of an airport tenant, including operation of mobile equipment;
 - (3) "liquor legal liability" means insurance that protects the insured from loss due to claims arising from risks relating to the distribution, sale, or service of alcohol by or on behalf of the insured;
 - (4) "products and completed operations liability" means insurance that protects the insured from loss due to claims arising from the sale of goods or products sold, manufactured, handled, or distributed by the insured, or service operations that have been completed by the insured.

History: Eff. 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.200

17 AAC 45.430. Cancellation of a lease, permit, or concession.

- (a) The department will deliver by mail, hand, electronic transmission, or posting on the premises a written notice to a lessee, permittee, or concessionaire that violates a term of a lease, permit with a term greater than 270 days, or concession when the department considers the violation to be a material deviation from the requirements of the lease, permit, or concession. Notice under this section is considered effective the earlier of the date the lessee, permittee, or concessionaire is in actual receipt of the written notice, or three days after mailing to the address the lessee, permittee, or concessionaire most recently provided to the department in writing. The department will allow the lessee, permittee, or concessionaire the time specified in this chapter for the specific type of lease, permit, or concession, the time specified in the lease, permit, or concession, or 30 days if no time is specified in this chapter or in the lease, permit, or concession, to correct the violation. However, if the department determines, under (d) of this section, that the violation constitutes an imminent threat to public health or safety, the department may require immediate correction. Provision of notice as described in this subsection to a permittee does not diminish the right of the department under (h) of this section to cancel a permit.
- (b) If a lessee, permittee, or concessionaire does not correct the violation by the time allowed in the notice, the department will
- (1) grant an extension of time to correct the violation for good cause shown by the lessee, permittee, or concessionaire;
 - (2) take enforcement action as provided under the lease or as available by law; or

- (3) cancel the lease, permit, or concession.
- (c) Cancellation of a lease, permit, or concession by the department will be in writing and will state the reasons for the cancellation.
- (d) If the department determines that a violation creates an imminent threat to public health or safety, the department will
 - (1) direct the lessee, permittee, or concessionaire to stop the activity immediately;
 - (2) provide the lessee, permittee, or concessionaire less time than otherwise specified in the lease, permit, or concession to correct the violation; or
 - (3) correct the violation.
- (e) If the department acts to correct a violation that constitutes an imminent threat to public health or safety as provided under (d) of this section, the lessee, permittee, or concessionaire shall reimburse the department for any cost, including legal fees and administrative costs, reasonably incurred by the department in acting to correct the violation.
- (f) A lessee, permittee, or concessionaire may protest the department's decision to enforce or cancel the lease, permit, or concession in accordance with 17 AAC 45.910.
- (g) This section applies to all leases, permits, and concessions granted by the department under this chapter, except (a) and (b) of this section do not apply to
 - (1) an assigned-space aircraft parking permit issued under 17 AAC 45.500 - 17 AAC 45.590;
 - (2) a transient aircraft fee parking permit issued under 17 AAC 45.600;
 - (3) a first amendment activity permit issued under 17 AAC 45.800 - 17 AAC 45.810;
 - (4) a commercial passenger vehicle permit issued under 17 AAC 45.095; or
 - (5) a business activity permit issued under 17 AAC 45.110.
- (h) Except as otherwise provided in this chapter or in the permit, a permit issued after March 22, 2008 may be cancelled by the permittee, or by the department in the best interest of the state, for any reason not in violation of applicable law with 10 days' written notice to the other party.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.200 AS 02.15.220 AS 02.15.230

ARTICLE 5

Assigned-Space Aircraft Parking

Section

- 500. Assigned-space aircraft parking designation.
- 510. Assigned-space use and fees.
- 520. Assigned-space permit application.
- 530. Assigned-space permit.
- 540. Cancellation of an assigned-space permit.
- 550. Assigned-space permit lottery.
- 560. Assigned-space switch list.
- 570. Assigned-space wait list.
- 580. Birchwood airport transitional compliance requirements.
- 590. Definitions.

17 AAC 45.500. Assigned-space aircraft parking designation.

- (a) The commissioner will designate an airport for assigned-space aircraft parking if the commissioner determines in writing that the designation is in the best interest of the state. In making this determination, the commissioner will consider the applicable factors set out at 17 AAC 45.900 and the following:
 - (1) the number of aircraft based at the airport, other than those based on leased premises, the demand for transient aircraft fee parking, and the amount of space available for assigned-space aircraft parking at the airport;
 - (2) the potential impact of assigned-space aircraft parking fees on airport users; and
 - (3) the department's estimate of the cost to implement the requirements of 17 AAC 45.500 - 17 AAC 45.590 at the airport compared to the potential revenue the department would receive for assigned-space aircraft parking at the airport.
- (b) The department will inform the public that the commissioner has designated an airport for assigned-space aircraft parking by giving notice in accordance with 17 AAC 45.400. The notice will include
 - (1) the name of the airport;
 - (2) any limitations established under (e) of this section on the number of permits for a category of assigned space that may be held by any one person;
 - (3) the deadline for submitting a permit application to the department in order to be considered for the initial award of permits; this date will be at least 30 days after the first date the notice is published or posted;
 - (4) the address for obtaining a permit application form;
 - (5) the address for submitting a permit application; and

- (6) if permits are to be awarded by lottery under 17 AAC 45.550, the time and place for an assigned-space permit lottery.
- (c) When the commissioner designates an airport for assigned-space aircraft parking, the department will establish the first date on which the requirements of 17 AAC 45.500 - 17 AAC 45.590 will apply to the airport.
- (d) The categories for permits under 17 AAC 45.500 - 17 AAC 45.590 are float, wheel, and ski/tundra tire, as the department determines to be applicable for each airport the commissioner designates for assigned-space aircraft parking. If the department determines that assigned spaces of one permit category may be used for parking aircraft with landing gear of a different category without posing unreasonable safety, operational, or management conflicts, the department will permit that use.
- (e) When the department determines that the demand for assigned spaces in a category at an airport exceeds the number of spaces available, the department will limit the number of permits for a category of assigned spaces that a person may hold at that airport. During any period that a limit under this subsection on the number of permits a person may hold is in effect at an airport, the department will deny an application for a new permit or a permit renewal for a category of assigned space at that airport if the applicant already holds at that airport a number of permits for that category that is equal to or in excess of the limit established for that category under this subsection.
- (f) If the department determines in writing that the demand for assigned spaces in a category at an airport exceeds the number of spaces available by 50 percent or more, the department may, after determining the maximum number of spaces in that category allowed per permit holder under (e) of this section, cancel permits in excess of that number held at that airport for that category by the same permit holder. If the department cancels permits under this subsection, it will do so in a manner that assures that no person holds more than the maximum number of spaces established for that category at that airport under (e) of this section.
- (g) When the department determines in writing that it would be cost-effective and in the best interest of the state to do so, the department will use an agent or contractor to manage assigned spaces at an airport. The department will authorize that person to do one or more of the following, as appropriate:
 - (1) issue assigned-space permits;
 - (2) collect rents and fees;
 - (3) maintain the assigned space.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.510. Assigned-space use and fees.

- (a) The department will limit the type, weight, use, or dimensions of aircraft authorized to use an assigned space at an airport when doing so is justified by the design, safety, maintenance, or operation of the space, the parking area, or the airport.
- (b) A person may park only one aircraft at a time in an assigned space on an airport and only an aircraft listed on the assigned-space permit issued for that space under 17 AAC 45.520. A person is eligible to receive an assigned-space permit from the department only if
 - (1) the person owns or leases at least a one-third interest in each aircraft listed on the permit;
 - (2) each aircraft listed on the permit is airworthy;
 - (3) the person has submitted to the department a completed application that satisfies all requirements for approvals under 17 AAC 45.520; and
 - (4) the person timely pays
 - (A) for a long-term permit, the first six months' space rent, and any electrical access surcharge required under (p) of this section; or
 - (B) for a short-term permit, the first three months' space rent and any electrical access surcharge required under (p) of this section.
- (c) If a permittee sells or transfers the permittee's interest in an aircraft identified in the permit or if the aircraft ceases to be airworthy, the permittee shall give the department notice of the sale, transfer, or unairworthy condition of the aircraft within 30 days after the date of the sale or transfer or the first date the aircraft is no longer airworthy.
- (d) If the airport manager determines that an aircraft is not airworthy, the department will issue a written notice directing the permittee to restore the aircraft to an airworthy condition, obtain a replacement aircraft, or relinquish the permit.
- (e) A holder of a long-term permit has 270 days, subject to extension under 17 AAC 45.530(g), from the earliest of the date of the sale or transfer of an aircraft identified in the permit, the first date the aircraft is no longer airworthy, or the date of the department's written notice under (d) of this section to
 - (1) obtain a replacement aircraft that is airworthy;
 - (2) restore the aircraft to an airworthy condition; or
 - (3) remove the aircraft from the space and, if no other aircraft is listed on the permit, relinquish the permit.

- (f) If a permittee replaces an aircraft identified in the permit, the permittee shall, within 30 days after the replacement,
 - (1) notify the department that the replaced aircraft is withdrawn from the permit;
 - (2) provide to the department a copy of the current registration and a statement of the dimensions of the replacement aircraft; and
 - (3) provide evidence to the department that the permittee is the owner or lessee of at least a one-third interest in that aircraft.
- (g) Except as provided in (h) of this section, a person may not use an assigned space for fuel storage, vehicle parking, equipment storage, parking more than one aircraft at a time, or any other purpose not specifically authorized by the department in the permit for that assigned space. A person may not use an assigned space in operation of a commercial or business activity unless the assigned-space permit for that space expressly authorizes that use.
- (h) The holder of an assigned-space permit may, subject to 17 AAC 45.055, 17 AAC 45.080, and 17 AAC 45.085, as applicable
 - (1) park one permittee-owned vehicle and one guest- or customer-owned vehicle in the assigned space while the aircraft assigned to the space is on a flight, unless the airport manager determines that the vehicle parking will interfere with the maintenance, operation, or safety of the airport;
 - (2) park one permittee-owned vehicle in the assigned space while the permittee is fueling, maintaining, repairing, or readying for a flight an aircraft identified in the permit for the space;
 - (3) allow an aircraft service vendor to park a vehicle in the assigned space only while the service vendor is fueling, maintaining, repairing, or otherwise servicing an aircraft identified in the permit for the space;
 - (4) use a motor vehicle equipped with an aviation fuel tank or fuel dispensing apparatus to fuel an aircraft identified in the permit for the space; and
 - (5) if the department has approved doing so in writing, place and use a permittee-owned aviation fuel storage tank, equipment shelter, or both, as applicable, on an assigned space that is designated by the department for use by
 - (A) wheel- or ski-equipped aircraft, if the space is located on a portion of the airport where the department has determined in writing that it is appropriate to allow a permittee to have either a fuel tank or an equipment shelter or both on the assigned space; or

(B) float-equipped aircraft.

- (i) An aircraft, vehicle, or other personal property parked or placed in violation of 17 AAC 45.500 - 17 AAC 45.590 is subject to impoundment by the department under 17 AAC 45.115.
- (j) The department is not obligated to provide an aircraft tiedown anchoring device in an assigned space. The use of any anchoring device provided on the premises is at the sole risk of the user. If the department does not provide tiedown anchoring devices in an assigned space, or if the permittee chooses not to use a provided anchoring device, the permittee may install and use at the permittee's own risk, only a screw-in or duck bill anchoring device or another device that the department specifically approves in writing for that purpose. Any anchoring device installed in an assigned space must, unless otherwise authorized or directed by the department, be left installed and becomes the property of the department upon cancellation of the permit or upon expiration of the permit not followed by a new permit for the same space to the same permittee.
- (k) For payment of rent and any electrical access fee under (p) of this section for an assigned space, the department will establish a six-month billing cycle for a long-term permit, and a three-month billing cycle for a short-term permit. Except as provided in (b)(4) or this section, the applicable rent and electrical access fee is due on or before the first day of the billing cycle.
- (l) If a long-term assigned-space permit or a short-term assigned-space permit is cancelled, the department will deduct any obligation of the permittee to the department under the permit or any other lease, permit, or concession under this chapter from the amount of the advance rent and any electric access fee paid, and will refund any remaining space rent and any electrical access fee that has been paid for any month after the month in which the permit is cancelled. However, an initial payment under (b)(4) of this section is not refundable.
- (m) The monthly rent for an assigned space designated by the department for use by wheel- or by ski-equipped light aircraft is as follows:

<u>Space Type</u>	<u>Space Surfaces</u>	<u>Monthly Rent In Dollars</u>
Tail-in	Unpaved	\$41
Tail-in	Paved	48
Taxi-through	Unpaved	55
Taxi-through	Paved	61

- (n) The monthly rent for an assigned space designated by the department for use by float-equipped light aircraft is \$41.
- (o) The monthly rent for an assigned space for a heavy aircraft is \$41 for the first 6,000 pounds CMGTW, plus \$14 per 1,000 pounds of the aircraft's CMGTW over 6,000 pounds, rounded to the nearest 1,000 pounds.

- (p) In addition to the rent for an assigned space required under (m) - (o) of this section, the permittee shall pay to the department an electrical access fee of \$14 per month for an assigned space with access to electrical power, whether or not the permittee actually uses the electrical access. This fee applies to and covers only the access to electrical power. A permittee who has electrical power access to the permittee's assigned space must separately meter the power and pay all associated costs.

History: Eff. 3/28/2002, Register 161; am 11/23/2003, Register 168; am 3/22/2008, Register 185; am 7/1/2017, Register 222

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.520. Assigned-space permit application.

- (a) To obtain a permit for an assigned space, a person must submit an application to the department. A person may not submit an application for an assigned space for an aircraft that is already listed on an assigned-space permit or on an application for a different permit unless the application identifies the other permit or application and states the applicant's intent to relinquish the other permit or withdraw the other application upon issuance of the new permit. The application must be on a form provided by the department and include
 - (1) the applicant's name, mailing address, and if available, telephone and facsimile numbers and electronic-mail address;
 - (2) a copy of the current aircraft registration and a statement of the dimensions of each aircraft that the applicant intends to park in the assigned space;
 - (3) a statement of the interest that the applicant owns or leases in each aircraft identified under (2) of this subsection, together with the name of and interest held by all other persons who own or lease an interest in that aircraft;
 - (4) a copy of the lease if the applicant leases the aircraft;
 - (5) a statement that each aircraft identified in (2) of this subsection is airworthy;
 - (6) a list of each alternate assigned space for which the applicant requests consideration, in order of the applicant's preference;
 - (7) a statement as to whether the space is to be used in whole or in part in a commercial aviation business or strictly for noncommercial purposes;
 - (8) if the space will be used in whole or in part in a commercial aviation business, a description of the applicant's business and a copy of the applicant's Alaska business license;
 - (9) a non-refundable \$35 application fee; and

- (10) a statement as to whether the application is for a short-term permit or long-term permit.
- (b) The department may require an applicant to submit documentation or additional information to verify the statements made in an application for an assigned-space permit.
- (c) Subject to the availability of a space throughout the period requested and (d) and (e) of this section, the department will approve an application for assigned space unless
 - (1) the applicant fails to submit the information required under (a) or (b) of this section;
 - (2) the applicant is not in compliance with the requirements of 17 AAC 45.500 - 17 AAC 45.590;
 - (3) the aircraft the applicant intends to park on the assigned space does not conform to applicable dimension, weight, use, or type limits established by the department under 17 AAC 45.030 or 17 AAC 45.510(a) for any requested space;
 - (4) the applicant is not the owner or lessee of at least a one-third interest in the aircraft to be parked on the assigned space;
 - (5) the aircraft to be parked on the assigned space is not airworthy;
 - (6) the application must be denied under 17 AAC 45.010(g);
 - (7) the applicant is requesting an additional assigned space for a category of assigned space for which the applicant already holds the maximum number of spaces that the department allows per person under 17 AAC 45.500(e) or (f); or
 - (8) the applicant does not agree to accept an available space that the department proposes to assign to the permit under (e) of this section.
- (d) Notwithstanding (c) of this section, the department may deny an application for an assigned space if the applicant is a current lessee or permittee under a lease or a permit at the airport for use of land that is suitable for aircraft parking and is accessible to the runway by aircraft.
- (e) Except as provided under 17 AAC 45.550, if the department approves an application, the department will assign the applicant's first choice space to the permit if the space is available. If the applicant's first choice space is not available because it is the subject of another permit or because the department has determined that the space requested by the applicant is needed by the department for airport development or other state purpose, the department will assign the applicant's second choice space to the permit. With the applicant's agreement, if the applicant's first and second choice spaces are not available, the department may assign another available space to the applicant.

- (f) The department will mail or hand deliver to the applicant a permit form for a space assigned under (e) of this section. The applicant has 20 days after the date the department mails or hand delivers the permit form to sign and return the form to the department, together with payment of the rent due under 17 AAC 45.510(l). If the applicant does not timely return the signed permit form to the department and pay the rent due, the opportunity to receive the permit lapses.
- (g) Except when awarding permits in a lottery under 17 AAC 45.550, the department will issue permits for assigned space at an airport in the same order as the department receives completed applications.
- (h) An applicant for an assigned-space may protest the department's denial of the applicant's application under (c) or (d) or the lapse of an opportunity to receive a permit under (f) of this section in accordance with 17 AAC 45.910.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 7/1/2017, Register 222

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.530. Assigned-space permit.

- (a) The term of a long-term assigned-space permit at an airport is five years unless the department determines that the space may be needed for airport development within that period or that a shorter term is otherwise in the best interest of the state. The term of a short-term assigned-space permit is one year or less.
- (b) In addition to the requirements and conditions stated in 17 AAC 45.510, the following requirements and conditions apply to assigned-space permits:
 - (1) the permittee may park on the assigned space only an aircraft identified in the permit;
 - (2) within 90 days after the effective date of a long-term permit, or 45 days after the effective date of a short-term permit, the permittee must begin parking an aircraft identified in the permit on the assigned space;
 - (3) if the department requires access to a permittee's assigned space for construction, repair, or other purposes, the department may temporarily assign an alternate space to the permittee for the duration of the department's need for the space, subject to the following:
 - (A) except in the case of an emergency, the department will give the permittee at least 10 days written notice of the temporary assignment;
 - (B) during the temporary assignment period, the permittee shall pay rent for the temporary space only, at the rate applicable to either the temporary space or the permittee's assigned space, whichever is less;

- (4) a permittee who has a permit that authorizes use of an assigned space to park an aircraft used in a commercial aviation business may also use the space for noncommercial purposes;
 - (5) the department is not obligated to perform snow removal or other maintenance or repair in an assigned space;
 - (6) a permittee may not transfer, assign, sublet, or loan an assigned space to another person;
 - (7) as between the department and the permittee, the permittee assumes sole responsibility for the care and protection of the permittee's aircraft parked on the assigned space;
 - (8) upon written request by the department at any time during the term of the permit, the permittee shall submit to the department additional information requested by the department to support the permittee's compliance with the applicable requirements of 17 AAC 45.500 - 17 AAC 45.590;
 - (9) a permittee must notify the department of any change in mailing address, telephone or facsimile number, or electronic-mail address.
- (c) During a period for which the department determines that the demand for transient aircraft fee parking space at an airport exceeds, or will exceed, the transient aircraft fee parking space available, the department will, at least 10 days after mailing or delivering written notice to each assigned-space permittee at the most recent address provided by the permittee, make each assigned space available for transient aircraft fee parking when the space is not occupied. The notice will include a statement of the beginning and ending dates of the period during which the department anticipates that assigned space will be needed to accommodate transient aircraft parking needs. If an assigned-space permittee notifies the department in advance in writing that, during the period stated in the notice, the permittee's aircraft will be absent from the assigned space for more than 21 consecutive days, specifying the beginning and ending dates of the anticipated absence, then during the period of absence stated in the permittee's notice to the department,
- (1) the department may authorize others to use the assigned space for transient aircraft fee parking under 17 AAC 45.600 at their sole risk;
 - (2) the department will credit to the permittee's space rent obligation one half of any transient aircraft fee parking revenue that the department collects from transient use of the permittee's space; and
 - (3) the permittee may not park an aircraft or vehicle in the assigned space.
- (d) For up to 180 days after the death of a long-term assigned-space permittee, or 60 days after the death of a short-term assigned-space permittee, the personal representative of the permittee's estate may, after written notice to the department, keep the permit in order to

sell or remove the permittee's aircraft. The personal representative shall pay any unpaid rent for the space through the date the space is relinquished to the department under (h) of this section and shall comply with and be subject to all the terms of the permit through that date.

- (e) A permittee who desires to renew an expiring assigned-space permit must, at least 30 days before the expiration date of the permit, submit to the department an application for a renewal permit for the space. The application must be on a form provided by the department and must include
 - (1) a non-refundable \$35 application fee; and
 - (2) a statement signed by the permittee stating
 - (A) that the permittee is in compliance with the expiring permit and this chapter;
 - (B) the interest that the applicant owns or leases in each aircraft identified on the expiring permit, together with the name of and interest held by all other persons who own or lease an interest in that aircraft; and
 - (C) whether each aircraft listed on the expiring permit is airworthy.
- (f) Subject to any limit on the number of permits a person may hold for a category of permit under 17 AAC 45.500(e), the department will approve an assigned-space permittee's application for a renewal permit unless the department determines that
 - (1) the assigned space is needed for airport development or other state purpose;
 - (2) the permittee is not in compliance with the expiring permit or the applicable provisions of 17 AAC 45.500 - 17 AAC 45.590;
 - (3) the permittee is not the owner or lessee of at least a one-third interest in each aircraft listed on the expiring permit and that the permittee proposes to list on the renewal permit;
 - (4) no aircraft listed on the expiring permit and that the permittee proposes to list on the renewal permit is airworthy and the permittee does not provide reasonable assurance that at least one aircraft will be made airworthy or replaced within the period provided under 17 AAC 45.510(e); or
 - (5) the application must be denied under 17 AAC 45.010(g).
- (g) The department may, for good cause shown, approve a request by an assigned-space permittee or permittee's personal representative, as applicable, to extend the period of time to perform an act required under 17 AAC 45.510(e) or under (d) of this section. The request must be in writing and must include justification for the request and a date by

which the required act will be completed. Any extension or combination of extensions granted under this subsection will not exceed 90 days.

- (h) After the expiration or cancellation of an assigned-space permit, the departing permittee remains responsible to pay rent to the department and to abide by all other permit obligations, including maintenance of the space, through the date on which the permittee relinquishes possession of and completely vacates the space. A departing permittee will not be considered to have relinquished possession and completely vacated the space until the permittee has
 - (1) remediated, consistent with applicable law, any contamination for which the permittee is responsible under this chapter;
 - (2) restored the space to a clean and neat physical condition acceptable to the department; and
 - (3) removed all of the permittee's personal property from the space, except for any aircraft tiedown anchoring device that the department has not authorized to be removed.
- (i) An assigned-space permittee may protest the department's denial of the permittee's application to renew an expiring permit under (f) of this section or the department's denial of a request to extend the period to perform an act under (g) of this section in accordance with 17 AAC 45.910.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 7/1/2017, Register 222

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.540. Cancellation of an assigned-space permit.

- (a) A long-term assigned-space permit holder may cancel the permit for any reason upon 30 days' written notice to the department. A short-term assigned-space permit holder may cancel the permit for any reason upon 10 days' written notice to the department.
- (b) The department will cancel an assigned-space permit if, 30 days after the department mails or delivers written notice of noncompliance to the long-term permittee, or 10 days after the department mails or delivers written notice of noncompliance to the short-term permittee, the permittee has failed to pay the required rent for the space and any applicable electrical access fee when the rent is due as provided in 17 AAC 45.510 or has otherwise failed to comply with an applicable requirement of 17 AAC 45.500 - 17 AAC 45.590 or the terms of the permit.
- (c) The department may cancel an assigned-space permit for any reason not in violation of the law

- (1) 45 days after the department mails or delivers written notice of the department's intent to cancel to a short-term permittee;
 - (2) 90 days after the department mails or delivers written notice of the department's intent to cancel to the long-term permittee; or
 - (3) after as much notice as may be practical under the circumstances if the department determines that the space is needed on an emergency basis.
- (d) After cancellation of an assigned-space permit, the department will determine the rent payable for the space to the date the permittee relinquishes and vacates the space under 17 AAC 45.530(h). The department will refund any excess rent paid by the permittee after deducting
- (1) any amount owed to the department by the permittee under a contract with the department; and
 - (2) the amount applicable to any remainder of the first three months of a short-term permit or the first six months of a long-term permit.
- (e) An assigned-space permittee may protest the department's cancellation of a permit under this section in accordance with 17 AAC 45.910.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.550. Assigned-space permit lottery.

- (a) The department will award by lottery initial permits for a category of assigned space at an airport if
- (1) when designating an airport for assigned-space aircraft parking under 17 AAC 45.500, the commissioner determines that the demand for assigned space in that category at the airport exceeds the space available for that category; or
 - (2) the number of applications received by the department for assigned space in that category in response to the public notice given under 17 AAC 45.500 exceeds the number of spaces available for that category.
- (b) Before conducting an assigned-space permit lottery, the department will give notice of the lottery to the public in accordance with 17 AAC 45.400. The notice will include
- (1) the name of the airport;
 - (2) the number of assigned-space permits in the category being made available;

- (3) a description of the permits being made available, including term, conditions, and limitations;
 - (4) the address and last date and time by which an application must be received by the department to be included in the lottery; the date will be at least 30 days after the date the notice is first published or posted under 17 AAC 45.400; and
 - (5) the date, time, place, and manner of conducting the lottery, which may include either random assignment of spaces or space assignment based upon preferences stated in randomly drawn applications.
- (c) The department will include in a lottery under this section each applicant who has submitted an assigned-space permit application in accordance with 17 AAC 45.520(a) and (b), as applicable, and whose application has been approved by the department under 17 AAC 45.520(c).
- (d) The department will conduct an assigned-space permit lottery at the time and place stated in the public notice substantially as follows:
- (1) attendance at the lottery is open to the public;
 - (2) a separate lottery is conducted for each category of assigned space identified in the public notice;
 - (3) the department draws applications one at a time until all applications have been drawn;
 - (4) as each application is drawn, the applicant's name and either the randomly-assigned space number or the order of the applicant's space preferences, as applicable, are announced and recorded;
 - (5) if spaces are to be assigned based upon applicant preference,
 - (A) the applicant whose application is drawn first is awarded a permit for the highest choice of assigned space listed in the application; and
 - (B) for each subsequent application drawn, the department awards to the applicant
 - (i) a permit for the highest choice of assigned space that is listed in the application and has not yet been awarded; or
 - (ii) if each space listed in the application is already awarded, a permit for an available space as determined by the department; if the applicant has stated in the application that the applicant only desires award of an assigned space specifically listed in the application, then no space is awarded to the applicant;

- (6) if the department has assigned all available spaces before all applications have been drawn, the department will establish a wait list under 17 AAC 45.570 starting with the remaining applicants in the order that remaining applications are drawn.
- (e) An applicant for a permit under this section may protest a decision by the department regarding that person's application in accordance with 17 AAC 45.910.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.560. Assigned-space switch list.

- (a) For each airport designated for assigned-space aircraft parking, the department will establish and maintain a switch list by which a permittee may have an opportunity to receive reassignment to a different assigned space in the same category. Each switch list will be maintained in chronological order according to the date the department receives each written switch request under (b) of this section for that category of assigned space. Each switch list is a public record and will include
 - (1) each requesting permittee's
 - (A) name;
 - (B) mailing address;
 - (C) if available, telephone and facsimile numbers and electronic-mail address; and
 - (D) currently assigned space and the category of space and list or description of spaces to which the permittee would accept reassignment; and
 - (2) the date the department received each switch request.
- (b) An existing permittee in good standing may request to be placed on a switch list by submitting a written request on a form provided by the department. Placement on a switch list does not create a right to reassignment to a different space.
- (c) When an assigned space becomes available, the department will, by telephone, facsimile, electronic-mail, or other means reasonably calculated to make immediate contact, make not less than one attempt on each of at least two days to offer the space to the first permittee on the applicable switch list who has requested to be reassigned to that space.
- (d) If the permittee does not accept an offer under (c) of this section within five days after the department offers the space, or if the department is unable to contact the permittee by the attempts described in (c) of this section, the department will offer the available space to the next permittee on the applicable switch list who has requested reassignment to that space. If

no switch-list permittee who requested reassignment to the space accepts the offer of that available space, the department will make the space available to the first wait-list applicant in accordance with 17 AAC 45.570.

- (e) A permittee who accepts an offer to switch to a new assigned space under this section shall, within 14 days after accepting the offer, execute a permit amendment or new permit for the new space for the balance of the permittee's term at the previous assigned space and relocate the permittee's aircraft to the new space. In addition, the permittee shall, at no expense to the department,
 - (1) relocate the permittee's personal property to the new space;
 - (2) transfer the permittee's personal property to the succeeding permittee of the vacated space; or
 - (3) remove the permittee's personal property from the airport.
- (f) If a permittee on a switch list fails to accept an offered space within five days of receipt of the offer under (d) of this section or the department is unsuccessful in its attempts to contact the permittee as provided in (c) of this section, the department will move the permittee's name to the end of the switch list.
- (g) A permittee on a switch list must notify the department of any change in mailing address, telephone or facsimile number, or electronic-mail address.
- (h) A permittee who applies to be placed on a switch list or a permittee on a switch list may protest a decision of the department under this section in accordance with 17 AAC 45.910.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.570. Assigned-space wait list.

- (a) When permits have been issued for all assigned spaces in a category on an airport, the department will establish and maintain in chronological order according to the date the department receives written assigned-space or wait-list applications, a wait list of applicants for space in that category. A wait list is a public record.
- (b) The department will add to a wait list for an airport a person who has submitted to the department either a completed application for an assigned space or a wait-list application on a form provided by the department.
- (c) A wait list will include each applicant's name, mailing address and, if available, telephone and facsimile numbers and electronic-mail address, and the date the application was received by the department.

- (d) Except as provided for a wait list established in connection with an assigned-space permit lottery under 17 AAC 45.550(d), the department will add names to a wait list for a category of space at an airport in the order that the department receives applications for that category of space or wait list at that airport.
- (e) An applicant on a wait list shall promptly notify the department in writing of any change in the applicant's name, mailing address, telephone or facsimile number, or electronic-mail address.
- (f) In order to remain on a wait list, an applicant must submit to the department between September 1 and October 31 of each calendar year a written request to do so. The department will remove from a wait list the name of a person who fails timely to submit a written request under this subsection.
- (g) When an assigned space becomes available and is not assigned to another permittee on a switch list under 17 AAC 45.560, the department will identify the applicant who is first on any applicable wait list and whose application lists an aircraft that satisfies any limitation established for the space under 17 AAC 45.510(a). If, within the preceding 12 months, the applicant has submitted an assigned-space permit application that is approvable under 17 AAC 45.520(c), the department will mail or hand deliver to the applicant a permit form for the space. If the applicant has not submitted an assigned space application that is approvable under 17 AAC 45.520(c) within the preceding 12 months, the department will mail or hand deliver to the applicant a new permit application to be submitted in accordance with 17 AAC 45.520.
- (h) When the department mails or delivers a new permit application to an applicant under (g) of this section, the applicant must complete and submit the application and, if the applicant has not already done so for a pending application, pay the application fee required under 17 AAC 45.520(a) to the department within 20 days after the date that the department mails or hand delivers the application. If the applicant does not timely submit the application and application fee, if applicable, the applicant's opportunity to apply for the available space lapses, and the department will remove the applicant's name from the wait list, mail or deliver written notice to the applicant that the department has done so, and make the space available to the next person on the wait list in accordance with (g) of this section.
- (i) The department will approve an assigned space application submitted under (h) of this section if the application is approvable under 17 AAC 45.520(c), except that the applicant has 90 days from the date the application is submitted to acquire at least a one-third ownership or leasehold interest in an airworthy aircraft that the applicant seeks to list on the permit. If the department approves an application under this paragraph, the department will mail or hand deliver a permit for the space to the applicant.
- (j) An applicant to whom the department mails or hand delivers a permit form under (g) or (i) of this section must, within 20 days after the date of that mailing or delivery, sign the permit and return it to the department together with payment of the rent due under 17 AAC 45.510(l) - (p), as applicable. If the applicant timely signs and returns the permit and pays

the required rent, the department will award the permit for the assigned space to the applicant and remove the applicant's name from the wait list. If the applicant does not timely sign and return the permit with the rent payment, the applicant's opportunity to accept the permit lapses, and the department will remove the applicant's name from the wait list, mail or deliver written notice to the applicant that the department has done so, and make the permit available to the next person on the list in accordance with (g) of this section.

- (k) A permit applicant who applies to be placed on a wait list or an applicant on a wait list may protest a decision of the department under this section in accordance with 17 AAC 45.910.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.580. Birchwood airport transitional compliance requirements.

The Birchwood Airport is designated for assigned-space aircraft parking. The provisions of 17 AAC 45.500(a) - (c) do not apply to the Birchwood Airport.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.590. Definitions.

In 17 AAC 45.500 - 17 AAC 45.590, unless the context otherwise requires,

- (1) "long-term" means a term more than one year;
- (2) "noncommercial purpose" means the use of an assigned space to park an aircraft that is flown only for purposes other than commercial aviation business;
- (3) "short-term" means a term of one year or less;
- (4) "tail-in" means a type of assigned space into which the aircraft must be backed, tail first;
- (5) "taxi-through" means a type of assigned space configured to allow an aircraft to be moved into and out of the parking position under its own power.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 3/20/2016, Register 217

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

ARTICLE 6

Transient and Open Aircraft Parking

Section

600. Transient aircraft fee parking.

610. Open aircraft parking.

17 AAC 45.600. Transient aircraft fee parking.

- (a) The commissioner will designate a portion of an airport for transient aircraft fee parking on a temporary, seasonal, or year-round basis if the commissioner determines in writing that it is in the best interest of the state to do so considering the applicable factors set out in 17 AAC 45.900 and
 - (1) the volume of transient aircraft traffic at the airport and the amount of space available for the parking of transient aircraft;
 - (2) the potential impact of transient aircraft parking fees on airport users;
 - (3) the estimated cost of implementing the requirements of this section at the airport as compared to the potential revenue the department would receive; and
 - (4) the parking services for transient aircraft that are, or could be, provided by lessees at the airport and the potential impact implementation of transient aircraft fee parking by the department would have on those lessees.
- (b) The department will inform the public that the commissioner has designated a portion of an airport for transient aircraft fee parking by
 - (1) giving notice of the designation in accordance with 17 AAC 45.400, including the name of the airport, the temporary, seasonal, or year-round term of the designation, and the effective date of the designation; this date will be at least 30 days after the date the notice is first published or posted; and
 - (2) posting in or near the transient aircraft fee parking area a sign that identifies the area as transient aircraft fee parking area, states the temporary, seasonal, or year-round term of the designation and any limitations on the amount of time an aircraft may be parked in the transient aircraft fee parking area, and includes instructions for using transient aircraft fee parking area and the payment of fees.
- (c) The procedure set out in (b) of this section does not apply to the department's temporary use of a space designated as assigned space under 17 AAC 45.500 - 17 AAC 45.590 for transient aircraft fee parking under 17 AAC 45.530(c).
- (d) The following restrictions and conditions apply to the use of a transient aircraft fee parking area:

- (1) the department will limit the type, weight, use, or dimensions of an aircraft allowed to use a transient aircraft fee parking area if the department determines that the limitation is justified by the design, safety, maintenance, or operation of the transient aircraft fee parking area or the airport;
- (2) a pilot who parks an aircraft in a transient aircraft fee parking area shall comply with all requirements established under 17 AAC 45.030 and posted by the department on a sign in or near the transient aircraft fee parking area, including, as posted, a requirement to provide the mailing address, telephone number and local contact information, if any, for the pilot and for the aircraft owner if different, and to pay the fee established in (f) of this section by
 - (A) reporting to the airport manager or to the department's designated agent at the airport immediately after landing to obtain parking approval and to pay the fee;
 - (B) filling out and signing a transient aircraft fee parking permit envelope furnished by the department and, after enclosing the fee, depositing the envelope in a drop-box furnished by the department;
 - (C) reporting transient aircraft fee parking use and paying the fee by mail according to instructions posted at the parking area or otherwise provided by the department; or
 - (D) complying with any combination of the requirements of (A) through (C) of this paragraph, as determined by the department;
- (3) if the airport manager determines that an aircraft in a transient aircraft fee parking area is not airworthy and that the area is needed for use by other aircraft, the department will or the airport manager shall mail or deliver to the pilot or post on the aircraft a written notice that the department may impound the aircraft under 17 AAC 45.115 if the aircraft is not removed from the transient aircraft fee parking area or restored to an airworthy condition within a period ending not less than 14 days after the date of the notice;
- (4) a person may use a transient aircraft fee parking area only to park, load, and unload aircraft, unless the airport manager authorizes the person also to fuel, maintain, or repair an aircraft or temporarily to park a vehicle or equipment on the area in connection with use or servicing of the aircraft listed on the permit;
- (5) the manager may limit the amount of time an aircraft may be parked in a transient aircraft fee parking area; the manager shall post any time limit established under this paragraph on a sign in or near the transient aircraft fee parking area;
- (6) an aircraft, vehicle, or other personal property parked, placed, or left in violation of this section is subject to impoundment by the department under 17 AAC 45.115.

- (e) A transient aircraft fee parking area may not be used as a base of operations for a commercial aviation business or for an activity for which a business activity permit under 17 AAC 45.105 is required at that airport.
- (f) Subject to (g) of this section, the transient aircraft parking fee is as follows:
 - (1) there is no charge for parking in a transient aircraft fee parking area for 24 hours or less;
 - (2) for each period of up to 24 hours after the first 24 hours, the transient aircraft parking fee for parking a light aircraft is \$5;
 - (3) for each period of up to 24 hours after the first 24 hours, the transient aircraft parking fee for parking a heavy aircraft is the greater of \$10 or \$1 per 1,000 pounds, rounded to the nearest 1,000 pounds, CMGTW of the aircraft.
- (g) Upon a written finding by the commissioner that the designation of an area for transient aircraft fee parking at an airport is no longer in the best interest of the state or that the temporary or seasonal term of the designation should be modified, the commissioner will either terminate or modify a transient aircraft fee parking designation at the airport, as applicable. When the commissioner terminates or modifies a transient aircraft fee parking designation at an airport, the department will
 - (1) mail or deliver written notice of the commissioner's decision to each pilot and owner address reported under (d)(2) of this section for aircraft that then occupy the transient aircraft fee parking area on the airport; and
 - (2) remove, cover, or modify, as appropriate, any sign identifying the area as a transient aircraft fee parking area.
- (h) When the department determines it would be in the best interest of the state to do so, the department will use an agent or contractor to manage the transient aircraft fee parking area at an airport. The department will authorize that person to issue transient aircraft fee parking permits, to collect rents and fees, and to maintain the transient aircraft fee parking area, as appropriate.
- (i) This section does not apply to aircraft parking on a premises at an airport.

History: Eff. 3/28/2002, Register 161; am 11/23/2003, Register 168; am 7/1/2017, Register 222

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 45.610. Open aircraft parking.

- (a) This section applies to use of an area that the department has designated for aircraft parking on an airport at which the department has not designated an area for assigned-space aircraft

parking under 17 AAC 45.500 - 17 AAC 45.590 or transient aircraft fee parking under 17 AAC 45.600.

- (b) The department will limit the type, weight, use, or dimensions of aircraft that may be parked in an open parking area if the department determines the limitation is appropriate for the design, safety, maintenance, or operation of the open parking area or the airport.
- (c) Space in an open parking area is available for aircraft parking when the space is not occupied by another aircraft.
- (d) An open parking area may not be used for parking an aircraft that is not airworthy unless the pilot, owner, or other person responsible for the aircraft is making reasonable efforts to restore the aircraft to an airworthy condition or to remove it.
- (e) If the airport manager determines that an aircraft that is not airworthy is parked in an open parking area in violation of (d) of this section or that there is insufficient open parking area at the airport for parking of other aircraft and that an alternative private or public area is available at the airport for an aircraft under repair, the department will or the airport manager shall mail or hand deliver to the pilot, owner, or other person responsible for the aircraft, or post on the aircraft, a written notice of the violation or order to move the aircraft. The notice or order shall state that, if the aircraft is not removed from the open parking area or restored to an airworthy condition in a period ending not less than 14 days after the date of the notice, the department may impound the aircraft under 17 AAC 45.115.
- (f) A person may use an open parking area only to park, fuel, maintain, load, and unload aircraft, unless the airport manager authorizes the person also to fuel, maintain, or repair an aircraft or temporarily to park a vehicle or equipment on the area in connection with use or servicing of an aircraft. An open parking area may not be used to store fuel, equipment, or cargo or to park an unattended vehicle.
- (g) An aircraft, vehicle, or other personal property parked, placed, or left in an open parking area in violation of this section is subject to impoundment by the department under 17 AAC 45.115.
- (h) The airport manager may restrict pedestrian and vehicular access to an open parking area if the department determines that the restriction is necessary for the safety or security of the airport.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

ARTICLE 7

Airport Closure; Disposal of State-Owned Airport Property

Section

700. Airport abandonment or closure.

710. Disposal of state-owned buildings or abandoned personal property on an airport.

17 AAC 45.700. Airport abandonment or closure.

- (a) The commissioner will order the abandonment or the temporary or permanent closure of an airport to aircraft operations if the commissioner finds that it is in the best interest of the state to do so, considering
 - (1) safety to aircraft and the traveling public;
 - (2) construction or other development activities at or near the airport;
 - (3) the nature and extent of use of the airport;
 - (4) the cost to maintain the airport;
 - (5) the need for and cost of repairs or other improvements at the airport;
 - (6) any applicable Airport Sponsor Assurances, as identified in 17 AAC 45.010(e); and
 - (7) any other factor that the commissioner determines may be relevant under the circumstances.
- (b) The department will order the temporary closure of all or a portion of an airport to some or all aircraft operations
 - (1) for an undetermined period if the department finds that an emergency situation warrants closure of the airport; and
 - (2) for a period stated in the closure order if the department finds under (a) of this section that circumstances warrant the temporary closure of the airport.
- (c) If the department finds that temporary closure of an airport under (b) of this section is necessary, the department will give notice of the closure by issuing a Notice to Airmen under FAA Order 7930.2K as described in FAA Advisory Circular No. 150/5200-28B or by other means of notice required by the FAA.
- (d) If the department orders the closure of all or a portion of an airport to some or all aircraft operations

- (1) for 60 days or less, a lease, permit, or concession in effect on the airport will continue in effect until the end of the lease, permit, or concession term without adjustment, except as otherwise stated in the lease, permit, or concession;
 - (2) for more than 60 days, but not permanently, the lessee or land-use permittee whose authorized use of an airport is materially impaired by the closure may, in writing mailed or delivered to the notice address stated for the lessor in the lease or permit, elect either to terminate the lease or permit or to retain the lease or permit and receive a 50 percent rent reduction or credit for that portion of the closure that exceeds 60 days; or
 - (3) permanently, the lessee or land-use permittee on a lease or permit on the airport may, by written notice mailed or delivered to the department at the address stated in the lease or permit, elect either to terminate the lease or permit or to retain the lease or permit; however any election by a lessee or permittee to retain a lease or land-use permit under this paragraph is subject to
 - (A) any obligation of the department to return management of the affected land to the division of lands under AS 38.05.025;
 - (B) any obligation of the state to return the affected land to the federal government under a deed restriction, federal grant assurance, or other binding requirement; or
 - (C) any decision of the department to sell or exchange the land or to put the land to other use.
- (e) Nothing in this section entitles a lessee, permittee, or concessionaire on an airport to relocation benefits or compensation from the department in the event of abandonment or temporary or permanent closure of an airport to aircraft operations, except as otherwise may be provided in the lease, permit, or concession or as otherwise required by law in the event the department terminates the lease, permit, or concession. However, when the department abandons or permanently closes an airport to aircraft operations in connection with the opening or improvement of a replacement airport that has comparable lease, permit, or concession space available, the department will, unless the department finds that it would be contrary to the best interest of the state to do so, make the comparable space at the replacement airport available for exchange as a substitute for a lease, permit, or concession, as applicable, at the closed airport before accepting applications from others for lease, permit, or concession space, as applicable, at the replacement airport.
- (f) Except as provided in (h) of this section, if the department intends to declare an airport temporarily closed to aircraft operations for more than 60 days, permanently closed to aircraft operations, or abandoned, the department will first hold a public hearing on the proposed action after giving notice of the hearing and proposed action in accordance with 17 AAC 45.400. The department will hold the hearing either at a location convenient to the residents of the area served by the airport or by teleconference through a communication system conveniently accessible to those residents. The first notice will be

published or posted at least 30 days before the hearing date. Unless a later date is specified in the public notice, public comment on the proposed action must be submitted to the department by no later than the date set for the public hearing. To assure of an opportunity to present oral testimony at the public hearing, a person must notify the department by a written request received by the department as provided in the notice at least five days before the date set for the hearing. If the department has received no timely notice of a person's intent to present oral testimony at the hearing, the department may cancel the hearing.

- (g) The department will consider any public hearing testimony and timely written comments the department receives under (f) of this section before deciding under (a) of this section to abandon an airport or to close an airport for longer than 60 days. The department will give notice to the public in accordance with 17 AAC 45.400 of any decision to abandon an airport or to close an airport for longer than 60 days.
- (h) The department may order an airport abandoned or permanently closed without following the procedures set out in (f) and (g) of this section if the airport to be abandoned or closed is replaced by another airport serving the same area. In that case, the department will give notice to the public in accordance with 17 AAC 45.400 regarding the abandonment or permanent closure of the airport.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.220 AS 02.15.230

Editor's note: Copies of FAA Order 7930.2K and FAA Advisory Circular No. 150/5200-28B may be obtained from the FAA Office of Airport Safety and Standards, Airport Safety and Compliance Division, AAS-300, 800 Independence Avenue SW, Washington, DC 20591, and, as of August 30, 2007, on the internet at <http://www.faa.gov/atpubs/NTM/index.htm> and <http://www.faa.gov/arp/pdf/5200-28c.pdf>, respectively. Notices to Airmen are available from the FAA at the above address or, as of August 30, 2007, on the internet at <http://www.faa.gov/NTAP>.

17 AAC 45.710. Disposal of state-owned buildings or abandoned personal property on an airport.

- (a) The department will dispose of a state-owned building on an airport or an item of personal property abandoned under 17 AAC 45.115 or abandoned on a premises on an airport after the lease, permit, or concession expires or terminates if the commissioner determines in writing that
 - (1) the department does not need the building or personal property for any airport-related purpose;
 - (2) the department is legally entitled to dispose of the building or personal property; and
 - (3) disposal of the building or personal property is in the best interest of the state.

- (b) The department may dispose of a state-owned building on an airport or item of personal property subject to 17 AAC 45.115(e) by any of the following methods that the department determines to be in the best interest of the state
 - (1) publicly advertised sales contract under (e) of this section;
 - (2) sale or other disposal by competitive award under (g) of this section;
 - (3) sale or other disposal by other lawful means approved by the Department of Law if the department estimates the value of the property as less than \$5,000;
 - (4) demolition or removal by the department or a contractor.
- (c) Before disposing of a building or item of personal property under this section, the department will estimate the market value of the building or item of personal property to be disposed of by
 - (1) conducting a market survey in which the department
 - (A) interviews at least three purchasers or sellers of property similar to the property to be disposed of and obtains information about the sale price and comparability of the property purchased or sold; or
 - (B) researches published real estate or personal property value data relevant to the property to be disposed of; or
 - (2) performing or obtaining an appraisal of the property to be disposed of if a market survey under this section indicates the value of the property to be disposed of exceeds \$50,000 or if the department determines that performing or obtaining an appraisal is in the best interest of the state.
- (d) Before proceeding with disposal under this section, the department will estimate the salvage value or demolition cost of the building or item of personal property to be disposed of if the department determines
 - (1) that it is in the best interest of the state that the building or item of personal property be removed from the airport or relocated to another location on the airport; or
 - (2) by market survey under (c)(1) of this section or by other reasonable method that the building or item of personal property is worth not more than \$250.
- (e) If the department makes a preliminary determination that it is in the best interest of the state to sell a building or item of personal property under this section by publicly advertised contract, the department will, after considering the value or salvage value of the building or personal property as determined under (c) or (d) of this section, give notice of the proposed sale or salvage contract under 17 AAC 45.400(a) and (c), and will include in the notice

- (1) a description of the building or personal property being offered for sale or salvage;
 - (2) the name of the proposed buyer;
 - (3) the general terms of the disposal contract, including the price to be paid by the buyer;
 - (4) a request for any party interested in competing to buy the building or personal property to submit a written statement of that interest to the department;
 - (5) the department's address for receiving any written comment, objection, or statement of interest; and
 - (6) the date by which any written comment, objection, or statement of interest must be received by the department.
- (f) After close of the period for submission of written comment, objection, or statement of interest under a notice of a proposed sale or salvage contract under this section, the department will review any written comment, objection, or statement of interest, received by the department within the period. If the department
- (1) did not receive any written comment, objection, or statement of interest before the comment period closed, the department will enter into the contract with the proposed buyer;
 - (2) did receive timely written comment, objection, or statement of interest, but confirms the department's preliminary determination that the contract as proposed or as modified is in the best interest of the state, the department will send notice of the department's intent to execute the proposed or modified contract to the applicant and to each person that submitted written comment, objection, or statement of interest during the comment period and provided a return address; or
 - (3) concludes that the proposed contract is not in the best interest of the state, the department will
 - (A) send notice of the department's intent to reject all applications to the proposed buyer named in the public notice and to each person who submitted written comment, objection, or statement of interest during the comment period and provided a return address; and
 - (B) retain ownership of the building or other real property, award the sale or salvage contract by competitive award under (g) of this section, or take other action the department determines in writing is in the best interest of the state.
- (g) If the department determines it is in the best interest of the state to use competitive award as the method for awarding a contract for the sale or other disposal of a building or personal property under this section, the department will follow the procedures applicable

to competitive award of a lease, permit or concession under 17 AAC 45.300 - 17 AAC 45.399.

- (h) The department may include in a contract for the sale or other disposal of a building or personal property under this section
 - (1) a right and obligation to enter into a lease, permit, or concession
 - (A) for occupancy of the premises on the airport on which the building or personal property exists and is allowed to remain; or
 - (B) for other premises on the airport to which the building or personal property is required to be relocated, subject to receipt of an airport building permit under any applicable provisions of 17 AAC 45.280;
 - (2) permission to relocate the building or personal property to another airport premises under an existing lease, permit, or concession, subject to receipt of an airport building permit under any applicable provisions of 17 AAC 45.280; or
 - (3) a requirement that the building or personal property be removed from the airport.
- (i) An employee, contractor, or grantee of the department may not directly or indirectly purchase or agree with another person to purchase a building or personal property disposed of under this section if the employee, contractor, or grantee is, or has been, directly or indirectly involved in the disposal, maintenance, or preparation for sale of the building or personal property. After review of the facts relating to disposal of a particular building or personal property, the commissioner may waive this subsection for a specific sale, if the commissioner finds the waiver is in the best interest of the state.
- (j) A lease or permit that the department issues as part of the disposal of a building or other structure on an airport is subject to the procedures of this section and the standards of 17 AAC 45.200 - 17 AAC 45.299.

History: Eff. 3/22/2008, Register 185; am 3/20/2016, Register 217

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.210

ARTICLE 8

First Amendment Activity at Rural Airports

Section

800. Purpose.

810. Conduct of first amendment activity on an airport.

17 AAC 45.800. Purpose.

- (a) The purpose of 17 AAC 45.800 - 17 AAC 45.810 is to regulate the conduct of first amendment activity at an airport, but to avoid any inference of intended or inadvertent designation of any part of an airport as a public forum.
- (b) A first amendment activity on an airport must not interfere with the primary transportation function of an airport facility or with the ability of the department to carry out the following objectives:
 - (1) ensure that passengers, airport employees, lessees, permittees, concessionaires, and the public can use an airport facility safely, conveniently, and efficiently;
 - (2) prevent interference with the rights of passengers to have unobstructed access to public areas of an airport facility and to avoid undue delay in passage within and between facilities;
 - (3) reduce opportunities for a traveler, and particularly a traveler unfamiliar with the currency or customs of the United States, to be deceived or improperly restrained by any individual or group at an airport facility;
 - (4) prevent interference with emergency, anti-hijack, and other security procedures at an airport;
 - (5) avoid impairment of the financial self-sustainability of the airport.
- (c) The provisions of 17 AAC 45.800 - 17 AAC 45.810 apply to a first amendment activity conducted anywhere on an airport except in an area that is restricted or otherwise closed to the public.

History: Eff. 3/28/2002, Register 161

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.220 AS 02.15.230

17 AAC 45.810. Conduct of first amendment activity on an airport.

- (a) A person who conducts a first amendment activity on an airport must abide by the provisions of this section.

- (b) To ensure that a first amendment activity on an airport is conducted in a manner consistent with the considerations set out at 17 AAC 45.800(b), the department may
 - (1) place reasonable restrictions on time, place, number of participants, and manner of exercise of a first amendment activity; and
 - (2) as is necessary for the proper functioning of the airport, require a person conducting a first amendment activity to relocate the activity from one area on the airport to another upon reasonable notice to the person.
- (c) The department may direct a person to cease or to modify the conduct of a first amendment activity to resolve any extent to which
 - (1) the activity is subject to the provisions of 17 AAC 45.095, 17 AAC 45.105, or 17 AAC 45.200 - 17 AAC 45.299;
 - (2) the activity is prohibited or otherwise precluded under applicable law;
 - (3) conduct of the activity is inconsistent with the provisions of 17 AAC 45.800(b); or
 - (4) the activity is conducted in violation of one or more of the requirements of this section.
- (d) A person participating in a first amendment activity on an airport shall not interfere with the freedom of movement of a person, vehicle, or aircraft at an airport or otherwise interfere with the peaceful, orderly, safe, effective, and efficient use of airport property for airport purposes.
- (e) A first amendment activity may not be conducted on an airport
 - (1) in an area that is restricted or otherwise closed to the general public;
 - (2) in or within 10 feet of any of the following:
 - (A) in a department-operated terminal building,
 - (i) a ticket counter;
 - (ii) a baggage claim area;
 - (iii) a departure gate check-in counter;
 - (iv) a departure gate waiting room or area;
 - (v) a federally regulated security screening point;
 - (vi) a premises;
 - (vii) a public, courtesy, or emergency telephone;
 - (viii) a rest room;

- (ix) a stair, escalator, or elevator;
 - (x) a doorway, entry way, or open front of a store or food service area;
 - (xi) a public service information counter; or
 - (xii) an individual waiting in line for access to or service at any of the areas listed at (i) through (xi) of this subparagraph;
- (B) a roadway for embarking or disembarking passengers;
- (C) an area sufficiently congested to limit freely flowing foot or vehicle traffic, as applicable;
- (D) a restricted area;
- (E) a driveway providing access to a premises.
- (f) A person conducting a first amendment activity may not
 - (1) sell any merchandise or solicit or receive money, except that a not-for-profit organization may, in the physical presence of a representative, place one stationary receptacle of a style and at a location approved by the department for passive receipt of donations;
 - (2) use sound or voice amplifying equipment;
 - (3) place anything on an airport without permission of the department;
 - (4) store placards, boxes, or supplies on an airport unless in an area authorized by the department;
 - (5) leave personal property unattended in any area on an airport;
 - (6) touch another person or an article in that person's possession without the express permission of the other person; or
 - (7) mislead the public by misrepresenting the affiliation or purposes of the first amendment activity or organization.
- (g) A person who conducts a first amendment activity on an airport must recover and properly dispose or otherwise take care of any items that the person has distributed and the general public has discarded improperly in public portions of a department-operated terminal and adjacent roadways and parking facilities or otherwise at the location on the airport where the activity is being conducted. Unless the department agrees to less frequent cleanup, a person distributing any item in connection with a first amendment activity shall clean up any improperly discarded items that the person distributed at least once each hour after distribution. If that person fails to recover and properly take care of distributed items, the

department will perform the cleanup and may seek reimbursement of all costs from the person.

- (h) If the department determines that a person's first amendment activities on an airport are likely to generate or are generating litter on the airport, the department may require the person to submit a clean-up deposit of not more than \$100 for each day of activity. The department will refund the deposit if the person performs the cleanup required under (g) of this section. If the person fails to perform the cleanup required under (g) of this section, the person shall forfeit the deposit to the department to cover the department's costs of performing the cleanup for the person. The person shall also pay to the department the costs of cleanup not covered by any forfeited deposit. Failure of the person more than once to clean up improperly discarded items is grounds for denial of access to an airport for the conduct of a first amendment activity.
- (i) If the department determines that an emergency situation exists that affects or may affect public health, safety, or security or that unusually congested conditions exist because of weather, air carrier schedule interruptions, heavy traffic movements, or other causes, the department may order the cessation of any first amendment activity that affects or may be affected by the emergency situation or congested conditions until the emergency situation or congested conditions no longer exist.

History: Eff. 3/28/2002, Register 161; am 11/23/2003, Register 168

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.220 AS 02.15.230

ARTICLE 9

Miscellaneous Provisions

Section

- 900. Evaluation of best interest of the state.
- 910. Protest.
- 920. Appeal.
- 990. Definitions.

17 AAC 45.900. Evaluation of best interest of the state.

- (a) This section provides guidance to the airport manager and other decision makers acting for the department when a provision of this chapter calls for consideration of the best interest of the state.
- (b) The best interest of the state contemplates an action or practice that best promotes and maintains, consistent with state and federal law, a strong airport and aviation environment for the benefit of the traveling and shipping public. This interest is served through decisions that allow and encourage air service providers, corporate aircraft operators, private pilots, and others in the aviation industry to serve public and private needs without unreasonable expense or interference.
- (c) The department will seek to operate the Alaska International Airports System and the rural airports system to accomplish the goals described in (b) of this section by considering, as applicable to a particular decision, such factors as
 - (1) the safe, effective, and efficient operation of each affected airport;
 - (2) the safety of
 - (A) the traveling public and other persons;
 - (B) each affected airport; and
 - (C) aircraft and other property;
 - (3) the encouragement of economic development both statewide and in the community in which an affected airport is located, including the growth of
 - (A) a strong aviation industry;
 - (B) air passenger and air cargo services; and
 - (C) tourism and other commerce;

- (4) the continued development of
 - (A) the international and rural airports systems;
 - (B) aviation services that are open to all users; and
 - (C) business and non-commercial enterprises on airport property;
- (5) the protection of
 - (A) state resources;
 - (B) public health and the environment; and
 - (C) a person's lease, permit, or concession rights;
- (6) compliance with
 - (A) applicable provisions of this chapter and of any other statutes or regulations, including any relating to noise or airport land use;
 - (B) applicable airport bond covenants, including the state's obligations under revenue bonds issued under AS 37.15.410 - 37.15.550;
 - (C) goals of financial self-sufficiency for the rural airport system of this state;
 - (D) provisions of any other program or plan required for compliance with applicable federal or state law; and
 - (E) the state's obligations under leases and other contracts and agreements to which the state is a party, including applicable FAA grant assurances adopted by reference under 17 AAC 45.010(e);
- (7) minimizing
 - (A) the impact of the airport on surrounding communities, including noise; and
 - (B) interference with aviation activities at the airport;
- (8) sound airport planning and considerations of security, maintenance, and operation of each affected airport; and
- (9) whether a requested lease, permit, or concession or a material amendment of a lease, permit, or concession, either alone or combined with any other interest the applicant holds at the airport, would

- (A) exceed the applicant's needs, including reasonable future expansion, and limit the availability of land or building space for uses of equal or higher priority established in 17 AAC 45.210(e); or
- (B) result in the monopolization of an aeronautical use on the airport.

History: Eff. 3/28/2002, Register 161; am 3/20/2016, Register 217

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.200 AS 02.15.220 AS 02.15.230
AS 37.15.470 AS 37.15.540

17 AAC 45.910. Protest.

- (a) Except as expressly excluded in this subsection, a person with a legally recognized right or interest that is adversely affected by a decision of an airport manager or the department under this chapter may seek review of that decision only by filing a protest with the department under this section. This section does not apply to a rent adjustment under 17 AAC 45.295 or to a decision to reject a rent adjustment protest under 17 AAC 45.297. With respect to a notice of an intent to award under 17 AAC 45.300 - 17 AAC 45.399, a person who has not submitted a timely bid, proposal, or competing application relating to the subject of the notice does not have a legally recognized right or interest for purposes of this section. With respect to any other decision on an action proposed in a public notice under 17 AAC 45.400, a person who has not submitted timely written comment, objection, or application relating to the action proposed in the notice does not have a legally recognized right or interest for purposes of this section.
- (b) Except as provided under (c) of this section, a person protesting a decision of the department must deliver a protest in compliance with (d) of this section so the department receives it within 30 calendar days after
 - (1) the earliest date that the airport manager or the department mailed or delivered the decision being protested to the protester; or
 - (2) if the decision is not in writing, the earliest date that the airport manager or the department orally communicated the decision to the protester or announced the decision publicly under 17 AAC 45.342(a).
- (c) A person protesting a notice of intent to execute under 17 AAC 45.210 or 17 AAC 45.285, a decision under 17 AAC 45.300 - 17 AAC 45.399, or a decision under 17 AAC 45.710 must deliver a protest in compliance with (d) of this section so the department receives it within seven calendar days after the date described in (b)(1) of this section if the decision is in writing, or (b)(2) of this section if the decision is not in writing. The department will reject a protest if the department determines in writing that
 - (1) the protest was not timely submitted under (b) or (c) of this section;

- (2) the department did not cause the delay; and
- (3) there is no other equitable reason to extend the time to protest.
- (d) A protest is not effective unless it is submitted in writing, is signed by the protester or the protester's representative, and includes
 - (1) a reference to any case, agreement, or application number under which the decision was made;
 - (2) a copy of the decision being protested, if written, or, if either the decision was not written or a copy of the decision is not available to the protester, a summary description of the decision;
 - (3) a detailed statement of the factual and legal basis of the protest, including a statement of the adverse effect on a legally recognized right or interest of the protester, the facts alleged to be in dispute and a copy of any relevant documents, and a statement of the remedy requested;
 - (4) the address of the protester or the protester's representative to whom any notice or decision concerning the protest is to be mailed or delivered; and
 - (5) a reference, by case, agreement, or application number, if applicable, to any other affected agreement, contract, lease, permit, concession, or application.
- (e) A protester protesting a decision under 17 AAC 45.300 - 17 AAC 45.399 must mail or deliver a copy of the protest documents filed with the department to any other bidder or proposer, as applicable, at the same time the protester mails or delivers the protest to the department.
- (f) The complete and timely filing of a protest in compliance with this section stays the decision being protested until the department decides the protest, or until the department determines in writing that it is contrary to the best interest of the state to stay the decision beyond the date of that determination or another stated date.
- (g) The department will mail or deliver a written decision on the protest to the protester or the protester's representative and any other bidder or proposer or their representatives within 15 days after the protest is filed unless the protester agrees, in writing, to a longer period. If the department does not mail or deliver a decision to the protester or the protester's representative by the date it is due, the protester may proceed as if the department had issued a decision adverse to the protester.
- (h) The protester may appeal an adverse decision on the protest in accordance with 17 AAC 45.920.
- (i) A decision subject to this section but not timely protested in accordance with this section is not subject to appeal under 17 AAC 45.920.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.200 AS 02.15.220

17 AAC 45.920. Appeal.

- (a) This section applies to an appeal of a decision made by the department on a protest under 17 AAC 45.297 or 17 AAC 45.910. A decision subject to appeal under this section is subject to review only as provided under this section.
- (b) Except as provided under (c) of this section, the commissioner must receive an appeal within 30 calendar days after
 - (1) the earliest date that the department mailed or delivered the decision being appealed to the appellant or the appellant's representative;
 - (2) the date that the department orally conveyed the decision to the appellant or the appellant's representative, if the department did not put the decision in writing; or
 - (3) the date the department's decision on the protest was due, if the department has not mailed, delivered, or orally conveyed a decision on the protest to the appellant or the appellant's representative by that date.
- (c) The commissioner must receive an appeal of a decision on a protest of a matter under 17 AAC 45.210, [17 AAC 45.215,] 17 AAC 45.285, 17 AAC 45.300 – 17 AAC 45.399, or 17 AAC 45.710 within seven calendar days after the date described in (b) of this section, as applicable. The commissioner will dismiss an appeal if the commissioner determines in writing that
 - (1) the appeal was not timely submitted under (b) of this section;
 - (2) the department did not cause the delay; and
 - (3) there is no other equitable reason to extend the time to appeal.
- (d) An appeal must be in writing, must be signed by the appellant or the appellant's representative, and must include
 - (1) a reference to any case, agreement, or application number under which the decision was made;
 - (2) a copy of the decision being appealed, if written, or a summary description of the decision, if
 - (A) a copy of the decision is not available to the appellant;

- (B) the decision was not written; or
 - (C) the department did not mail or deliver a decision to the appellant and the appellant is proceeding on the assumption of an adverse decision under 17 AAC 45.910(g);
 - (3) a detailed statement of the factual and legal basis of the appeal, including a statement of the facts alleged to be in dispute and a copy of the relevant documents, and a statement of the remedy requested;
 - (4) the address of the appellant or the appellant's representative to whom any notice or decision concerning the appeal is to be mailed or delivered;
 - (5) a reference, by case, agreement, or application number, if applicable, to any other affected agreement, contract, lease, permit, concession, or application; and
 - (6) if a material fact is disputed and a hearing is desired, a request for a hearing.
- (e) An appellant appealing a decision on a protest of a matter under 17 AAC 45.300 - 17 AAC 45.399 must mail or deliver a copy of the appeal documents filed with the commissioner to any other bidder or proposer, as applicable, at the same time the appellant mails or delivers the appeal to the commissioner.
 - (f) The proper and timely filing of an appeal under this section shall stay the decision being appealed until the appeal is decided unless and until the commissioner determines in writing that it is contrary to the best interest of the state to stay the decision beyond the date of that determination or another stated date.
 - (g) The commissioner shall appoint a department employee or other qualified person who did not have any direct involvement in the decision being appealed to serve as the review officer for the appeal.
 - (h) The review officer shall hold a hearing if a hearing is requested and the review officer finds that material facts are in dispute. The review officer may consider an appeal without a hearing if the review officer finds that no material facts are in dispute.
 - (i) In a hearing under this section, the review officer shall, at least 21 calendar days before the hearing or such lesser time as agreed to by the review officer and all known parties, provide to the appellant and other interested parties written notice of the time and place for the hearing, and shall conduct the hearing according to the procedures established in AS 36.30.670(b).
 - (j) The appellant has the burden to prove by a preponderance of the evidence that the appellant is entitled to the remedy requested.
 - (k) The review officer shall provide a written recommendation to the commissioner. The commissioner shall

- (1) accept the review officer's recommendation;
 - (2) reject the review officer's recommendation and remand the recommendation back to the review officer with instructions; or
 - (3) issue a written decision based on the appeal record.
- (l) The commissioner will mail or deliver to the appellant or the appellant's representative and to any other bidder or proposer or their representatives a copy of any decision or order the commissioner issues on the appeal.
- (m) The commissioner's decision on the appeal is a final administrative decision of the department that may be appealed to the superior court under the Alaska Rules of Appellate Procedure.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 4/23/2009, Register 190

Authority: AS 02.15.020 AS 02.15.090 AS 02.15.220 AS 02.15.060 AS 02.15.200

Editor's note: As of Register 186 (July 2008), the regulations attorney made a technical revision under AS 44.62.125(b)(6), to 17 AAC 45.920(c) to reflect a manifest error.

17 AAC 45.990. Definitions.

In this chapter, unless the context requires otherwise,

“aeronautical” – see definition paragraph (108)

- (1) "air carrier" means a person engaged in the transportation of passengers or cargo in air commerce for compensation;
- (2) "air freight forwarding" means
 - (A) accepting or consolidating goods or property for delivery to an air carrier for transport as cargo; and
 - (B) receiving cargo from an air carrier for surface delivery to or pick-up by the cargo consignee;
- (3) "aircraft" has the meaning given in AS 02.15.260;
- (4) "aircraft maintenance and repair" means those activities described under 14 C.F.R. Part 43, as amended as of January 1, 2007;
- (5) "aircraft operation"
 - (A) means the fuel powered or electrically powered rotation of an aircraft engine installed in or on an aircraft, as well as the movement of an aircraft under its own power;

- (B) includes testing, run-up, taxiing, take-off, landing, and all other activity of an aircraft from the start of the first propeller, rotor, turbine, or engine until all propeller, rotor, turbine, or engine rotation ceases;
- (6) "airport"
 - (A) has the meaning given in AS 02.15.260, but excludes airports that are not owned, operated, or otherwise controlled by the department;
 - (B) does not include the Ted Stevens Anchorage International Airport and the Fairbanks International Airport;
- (7) "airport form" means a written form that the department has prepared for use under this chapter;
- (8) "airport manager" means
 - (A) for a specific airport, a person designated under 17 AAC 45.010(a) to carry out functions and responsibilities under this chapter relating to maintenance and operation of the airport and that person's substitute or designated representative;
 - (B) the department, if no person is designated to supervise maintenance and operation at the airport;
- (9) "airport parking service"
 - (A) means the activity of providing vehicle parking for airport users or visitors;
 - (B) does not include the incidental provision of vehicle parking by a business or activity for users of or visitors to that business or activity only;
- (10) "airworthy" means the condition of an aircraft that is legally authorized and mechanically capable of flight through the air;
- (11) "appraisal" means an unbiased estimate, prepared using methods generally accepted in the professional appraisal industry, of, the nature, quality, dollar value, or utility of an interest in, or aspect of, identified real estate and related personal property, or of a legal right or privilege;
- (12) "apron" means that portion of an airport designed, constructed, or designated by the department for the parking, loading, and unloading of aircraft;
- (13) "assigned space"
 - (A) means a specific location at an airport that the department designates for use by a person who applies for, pays the applicable fee for, and receives a department-issued permit under 17 AAC 45.500 - 17 AAC 45.590 for the parking of that person's aircraft;

- (B) does not include an aircraft parking space on a premises or at a department-owned or operated seaplane float facility, in a transient aircraft fee parking area, or in an open parking area;
- (14) "assigned-space aircraft parking" means either
 - (A) a program under which aircraft that are based at an airport but not parked on a premises are allowed to be parked on the airport only on an aircraft parking space the department has expressly assigned for that aircraft under 17 AAC 45.500 - 17 AAC 45.590; or
 - (B) the parking of an aircraft in an assigned space;
- (15) "assignee" means a person who receives an interest under an assignment of a lease or concession;
- (16) "assignment"
 - (A) means the transfer to another person of all or part of the interest of a lessee or concessionaire in a lease or concession;
 - (B) includes a transfer of a controlling interest in a lessee or concessionaire, including transfer of controlling interest through a merger, consolidation, or increase of any ownership interest to a majority interest;
- (17) "assignment for security purposes" means an assignment that grants an interest in a lease or concession, including improvements, as collateral to a creditor to ensure payment or performance of a debt, loan, or other obligation of the lessee or concessionaire;
- (18) "assignor" means a lessee or concessionaire that is the grantor in an assignment;
- (19) "auction documents" means the instructions to bidders, bidder qualifications, auction procedures, and other documents issued to interested parties under 17 AAC 45.333, including any addenda or other amendments issued after earlier auction documents are made available;
- (20) repealed 3/20/2016
- (21) "aviation fuel" means any petroleum distillate or other product manufactured, distributed, or sold for use as a propellant for aircraft engines, including aviation gasoline, turbine fuel, and automotive gasoline when used in an aircraft;
- (22) repealed 3/20/2016;
- (23) "base of operations" means each of the following:
 - (A) the location

- (i) at which an aircraft spends the greatest time not in flight on an annual basis; and
 - (ii) for a float-equipped aircraft, at which the aircraft spends the greatest time not in flight either on an annual basis or during the period the airport float facility is unfrozen and open for use;
- (B) each airport that is the primary location at which a commercial aviation business does one or more of the following:
 - (i) maintains and repairs aircraft during its aircraft operation season;
 - (ii) maintains and repairs aircraft on an annual basis;
 - (iii) conducts its greatest number of operations;
 - (iv) conducts its greatest dollar volume of transactions with customers of the business;
- (24) "bid documents" means the invitation to bid, instructions to bidders, bid forms, and other documents issued to interested parties under 17 AAC 45.303, including any addenda or other amendments issued after earlier bid documents are made available;
- (25) "bonus bid" means an offer of a one-time payment, in addition to rent or other fees, offered by a bidder or proposer in response to a competitive solicitation under this chapter;
- (26) "building lease"
 - (A) means a lease of all or a portion of a structure owned by the state, including space in a department-operated terminal building;
 - (B) includes a lease that grants a right to use or occupy land along with all or part of a structure;
- (27) "calendar year" means the period from January 1 through December 31 of each year;
- (28) "certified activity report" means a report of gross sales, fuel deliveries, passenger and cargo volumes, number of landings, CMGTW, or other information that a lessee, permittee, concessionaire, aircraft operator, or other airport user must submit to the department and certify as true and correct;
- (29) "CMGTW" means the certificated maximum gross takeoff weight of an aircraft as established by the FAA;
- (30) "commercial aviation business"
 - (A) means a person or enterprise that holds itself out to carry passengers or cargo by aircraft, to perform other aerial services, or to provide aircraft for hire, rent, or lease, either for compensation or in connection with other compensated services;

(B) includes

- (i) a scheduled passenger or cargo air carrier;
- (ii) an air taxi or other contract or charter air transportation provider, including a service that operates an aircraft in flight-seeing or photographic tours, fishing or hunting guiding, fish spotting or counting, or aerial photography or mapping service;
- (iii) an operator of aircraft to provide transportation to or from a hotel, motel, lodge, commercial or work camp, work site, or other place of employment or public accommodation under an arrangement or understanding with the operator of that facility or activity;
- (iv) an aircraft leasing and rental business;

(31) "commercial fueling service"

- (A) means the selling or offering for sale of fuel, fuel storage services, fuel delivery services, or fuel dispensing services;
- (B) does not include self-fueling;

(32) "commercial passenger vehicle"

- (A) means a taxicab, limousine, van, bus, motor coach, shuttle, or other motor vehicle used to transport passengers for compensation;
- (B) includes a vehicle used
 - (i) to transport passengers as part of a pre-ticketed tour or excursion; or
 - (ii) as a "courtesy car" that is owned or operated by a hotel, motel, lodge, other place of public accommodation, or other business and used to transport guests or customers of that business to or from an airport;
- (C) does not include a vehicle operated by
 - (i) a commercial air carrier only to transport the air carrier's employees;
 - (ii) a vehicle rental business;
 - (iii) a valet parking service or airport parking service;

(33) "commissioner" means the commissioner of the Department of Transportation and Public Facilities or the commissioner's designated representative for a specified function;

- (34) "competitive solicitation" means the process of making a lease, permit, concession, parcel of real property, fixture, or item of personal property available by issuing bid documents, auction documents, or proposal documents;
- (35) "concession" means a written agreement with the department, whether in the form of a permit, land lease, building lease, or other agreement, that authorizes the holder of the agreement to operate a non-aeronautical use business on an airport or to derive business from the airport and that requires the holder to pay the department on a basis other than land or building rent only;
- (36) "concessionaire" means the operator of a concession and the operator of a subconcession;
- (37) "contamination" means the unpermitted presence of any released hazardous substance;
- (38) "control device" means a sign, signal, marking, barrier, or other device designed to regulate conduct or activity on an airport and erected or placed by authority of the department;
- (39) "courtesy car" has the meaning given in AS 02.15.095;
- (40) "deliver" or "delivered" means to provide to or provided to, by hand-delivery, by electronic mail, or by facsimile transmission;
- (41) "department" means the Department of Transportation and Public Facilities; unless the context requires otherwise, where an action is to be taken by or an authorization is to be requested from the department; "department"
 - (A) means any person, whether an employee of the Department of Transportation and Public Facilities or other person, who is designated under 17 AAC 45.010(a) to carry out functions and responsibilities under this chapter relating to leasing and property management or any other applicable function or responsibility relating to an airport; and
 - (B) may include an airport manager when a person described in (A) of this paragraph delegates one or more of that person's functions or responsibilities to the airport manager;
- (42) "engine run-up" means operation of an aircraft engine, except in direct connection with a flight arrival or departure, for the purposes of maintenance, repair, and testing;
- (43) "environmental assessment" means an assessment of property, prepared in a manner consistent with generally accepted professional practices, that is supported by reports and tests that determine the environmental condition of property and the presence, type, concentration, and extent of any hazardous substance in, on, or under the surface of the property;

(44) "environmental law"

(A) means any federal, state, or local statute, regulation, ordinance, code, permit, order, decision, or judgment from a governmental entity relating to environmental matters, including littering and dumping;

(B) includes 42 U.S.C. 7401-7671q (Clean Air Act); 33 U.S.C. 1251-1387 (Federal Water Pollution Control Act); 42 U.S.C. 6901-6992k (Resource Conservation and Recovery Act); 42 U.S.C. 9601-9657 (Comprehensive Environmental Response, Compensation, and Liability Act); 49 U.S.C. 5101-5127 (Hazardous Materials Transportation Act); 15 U.S.C. 2601-2692 (Toxic Substances Control Act); AS 46 (Alaska Water, Air, Energy, and Environmental Conservation Acts); and the provisions of 18 AAC (Environmental Conservation), implementing AS 46;

(45) "exclusive right" means the department's grant of a lease, permit, or concession that authorizes a person to exercise a specific right, use, or privilege on an airport to the exclusion of all other persons;

(46) "FAA" means the Federal Aviation Administration;

(47) "fair market rent" means the periodic rental payment, in dollars, that a property, right, or privilege would most probably bring in a competitive and open market under all conditions necessary for an equitable rental transaction, the property owner and tenant each acting willingly, prudently, knowledgeably, and at arm's length;

(48) "first amendment activity" means

(A) the dissemination of information and the expression of ideas to the general public by speech, written materials, photographs, demonstrations, or other means; and

(B) the collection of information or donations from the general public;

(49) "fuel" means any motor fuel or liquid heating fuel including gasoline, aviation gasoline, jet fuel, diesel fuel, kerosene, propane, and liquid natural gas;

(50) "fueling" means delivering or dispensing fuel, de-fueling, and refueling or any other transfer of fuel on airport property;

(51) "government agency" includes the United States, the state, and political subdivisions of the state;

(52) "ground handling" means services, other than aircraft mechanic services, provided to an aircraft operator at an airport, including such services as aircraft servicing to return the aircraft to flight, loading and unloading of passengers, mail, or freight and other ramp services;

- (53) "ground handling agreement" means an agreement between a leaseholder or permittee and an aircraft operator for the leaseholder or permittee to provide ground handling services to an aircraft operator;
- (54) "hazardous substance" means a substance that is defined under an environmental law as hazardous waste, hazardous substance, hazardous material, toxic, pollutant, contaminant, petroleum, petroleum product, or oil;
- (55) "heavy aircraft" means an aircraft that has a CMGTW of 6,000 pounds or more;
- (56) "holdover" means the state or action of continued occupancy of a premises by the lessee, permittee, or concessionaire after the date of expiration of the lease, permit, or concession when the department has not directed the lessee, permittee, or concessionaire to vacate the premises upon expiration of the lease, permit, or concession, and continued occupancy is in accordance with the terms of the lease, permit, or concession;
- (57) "investment"
 - (A) means an expenditure of funds to improve or remediate a premises;
 - (B) does not include funds provided or reimbursed by an independent third-party that the lessee, permittee, or concessionaire is not obligated to repay;
- (58) "land lease"
 - (A) means a lease of state land managed as part of an airport and under which the lessee owns and retains, or covenants to construct certain privately-owned permanent improvements on the land according to specification and to maintain the improvements during the term of the lease;
 - (B) does not include a grant of a right to use or occupy a state-owned building;
- (59) "lease" means a written agreement that creates a relationship between the department, as landlord, and a person, as tenant, and that grants to the tenant the possession of airport land or building space for a determined period of time;
- (60) "lessee"
 - (A) means a person legally competent to enter into contracts and who enters into a lease with the department; in regard to regulation of conduct and compliance with this chapter;
 - (B) includes each sublessee;
- (61) "lessor" means the department acting in the department's capacity as grantor of a lease on airport property;

- (62) "light aircraft" means an aircraft that has a CMGTW of less than 6,000 pounds;
- (63) "local government" means a municipality in this state and an entity recognized by the United States Bureau of Indian Affairs as a tribal government located in this state;
- (64) "mail" means to send by first class or higher priority service using the United States Postal Service, or a comparable level of delivery service using a nationally recognized private carrier of correspondence and other communications;
- (65) "mailing" means when the post office or private carrier takes possession of the item mailed;
- (66) "manager" means airport manager;
- (67) "material amendment"
 - (A) means a written change to a lease, easement, right-of-way, concession, or permit that alters its terms to an important extent, as determined by the department in light of the circumstances, including an increase in the size of or a reconfiguration of the premises, an extension of the term, or a change in the authorized use of the premises;
 - (B) does not include an adjustment to rental or fee rates or charges under 17 AAC 45.295 or 45.297 or a change in the configuration or size of a premises that results from a minor boundary survey adjustment;
- (68) "materially contribute to" means to play a substantial role in causing or increasing the release or migration of a hazardous substance in a reportable quantity as defined under an applicable environmental law;
- (69) "minor informalities" means matters of form rather than substance, errors when the intended meaning is evident from the bid or proposal document, or insignificant matters that have a negligible effect on price, quantity, quality, delivery, or contractual conditions and that can be waived or corrected without unfair prejudice to other bidders or proposers;
- (70) "mobile fuel tank" means a truck or trailer with a mounted container designed or used for holding, transporting, or dispensing fuel;
- (71) repealed 3/20/2016;
"non-aeronautical use" – see definition paragraph (109)
- (72) "nonresponsive" means a bid or proposal that does not conform in all material respects to the requirements of the bid documents, auction documents, or proposal documents;
- (73) "open parking"
 - (A) means the parking of aircraft in an area on an airport that the department has designated for aircraft parking and that the department has not designated for

assigned-space aircraft parking under 17 AAC 45.500 - 17 AAC 45.590 or for transient aircraft fee parking under 17 AAC 45.600;

(B) does not include aircraft parking on a premises;

(74) "operator," with respect to an aircraft,

(A) means any person or enterprise for which the aircraft is operated, as well as any person in actual control of the aircraft during aircraft operation;

(B) does not include a person or enterprise who only receives charter or common carrier services of an aircraft;

(75) "permanent fuel storage tank" means a container designed and constructed for storing fuel and either installed underground or installed above ground and fixed to a concrete or piling foundation anchored in the ground;

(76) "permanent improvement"

(A) means a fixed addition or change to land that is not temporary or portable;

(B) includes a building, building addition, a well associated with a building, and a fuel tank of not less than 1,000 gallons capacity and affixed to a permanent foundation;

(C) does not include

(i) site development work;

(ii) site development materials; and

(iii) items of ordinary maintenance, such as glass replacement, painting, roof repairs, door repairs, plumbing repairs, floor covering replacement, or pavement patching;

(77) "permit" means a written, revocable authorization or license that the department issues to allow a person to perform an act or conduct an activity on an airport;

(78) "permit cycle" means the period during which an assigned-space permit issued under 17 AAC 45.500 - 17 AAC 45.590 is effective;

(79) "permittee" means a person who enters into a permit agreement with the department;

(80) "person" has the meaning given in AS 01.10.060;

(81) "premises" means land area, space in a state-owned building, and other state-owned or managed space, facilities, and improvements that are the subject of a lease, permit, or concession;

- (82) "proposal documents" means the request for proposals, instructions to proposers, proposal forms, and other documents issued to interested parties under 17 AAC 45.354, including any addenda or other amendments issued after earlier proposal documents are made available;
- (83) "regional director" means the chief department officer for each administrative region of the department or a department employee to whom the chief officer for the region has delegated applicable authority;
- (84) "release" has the meaning given in AS 46.03.826;
- (85) "remaining useful life" means the period during which an existing building or structure, considering its age and condition, with normal wear and tear and prudent, cost effective maintenance and without major repairs or replacements can reasonably be expected to continue to perform fully the function for which it was designed or intended;
- (86) "responsible," when used in regard to contamination, means having materially contributed to the contamination, having assumed liability under an assignment, or being otherwise liable for the contamination by law or contract;
- (87) "responsive bidder" or "responsive proposer" mean a bidder or proposer who has submitted a bid or proposal that conforms in all material respects to the requirements of the bid documents, auction documents, or proposal documents;
- (88) "restricted area" means those areas of an airport, building, or facility to which access is limited or controlled access under 17 AAC 45.060;
- (89) "runway" means that portion of an airport constructed or designated for the take-off and landing of aircraft;
- (90) "rural airport" means an airport owned or operated by the department other than the Ted Stevens Anchorage International Airport and the Fairbanks International Airport;
- (91) "Security Identification Display Area (SIDA)" means a portion of a restricted area on an airport within which the airport manager designates under 17 AAC 45.060(a) that the provisions of 17 AAC 45.060(d) apply;
- (92) "self-fueling" means the dispensing of fuel to an aircraft or vehicle for use by the aircraft or vehicle using fueling apparatus owned or leased by the owner or operator of the aircraft or vehicle;
- (93) "site development" and "site development work"
 - (A) mean activities to prepare land for construction of a building or other structure or to provide a firm surface on which to operate a vehicle or aircraft;

- (B) include efforts to clear, muck, grub, and fill part or all of a site; installation of a septic system or other waste storage or disposal facilities; and demolition and removal of previous improvements to prepare a site for redevelopment;
- (94) "site development materials" means materials used for site development, including geotextile, fill, gravel, paving, and pavement reinforcement materials;

"special event" – see definition paragraph (110)
- (95) "sublease"
 - (A) means a transaction or agreement under which a lessee or concessionaire leases, rents, or otherwise grants occupancy rights to all or a portion of a premises or improvements on a premises;
 - (B) includes a sub-sublease;
 - (C) does not include the assignment of a lease or concession;
- (96) "sublessee"
 - (A) means a person who leases, rents, or otherwise receives occupancy rights from a sublessor under a sublease;
 - (B) includes a sub-sublessor;
- (97) "sublessor"
 - (A) means a person who leases, rents, or otherwise provides occupancy rights to a sublessee under a sublease;
 - (B) includes a sub-sublessor;
- (98) "successive lease" means a new land lease that begins immediately upon the expiration of a previous lease or holdover with the same lessee and that covers substantially the same premises as the previous lease;
- (99) "taxiway" means a portion of an airport constructed or designated on an airport by the department for operation of aircraft moving on the ground between and among premises, aprons, and runways;
- (100) "temporary fuel storage" means the storage of fuel in a barrel, bladder, or other portable container, but not in a mobile fuel tank;

- (101) "threshold" means a line established by the department on the airport layout plan to identify the beginning of the runway area that is available and suitable for the landing of aircraft;
- (102) "transient aircraft" means an aircraft that is located at an airport other than the airport at which the aircraft spends the greatest amount of time on the ground on an annual basis;
- (103) "transient aircraft fee parking" means the parking of transient aircraft in an area designated by the department for that purpose under 17 AAC 45.600 or in an assigned space made available under 17 AAC 45.530(c);
- (104) "TSA" means the United States Transportation Security Administration and any other federal agency or successor federal agency responsible for airport or aviation security;
- (105) "valet parking service" means the activity of providing or offering to provide vehicle parking for airport users or visitors and in which the parking service
 - (A) parks or otherwise drives or offers to drive a customer's vehicle; or
 - (B) offers or arranges for transportation of an airport user or visitor between the parking location and a location on the airport;
- (106) "vehicle" means a motorized device, other than an aircraft, upon or by which a person or property may be transported or drawn;
- (107) "vehicle rental business" means the activity of renting or leasing or offering to rent or lease vehicles for use by others and that
 - (A) operates on an airport; or
 - (B) derives business from an airport and picks up, offers to pick-up, or arranges for pick-up of customers at the airport.
- (108) "aeronautical use"
 - (A) means any airport land use activity that involves or is directly related to the operation of aircraft;
 - (B) includes
 - (i) any activity that makes the operation of aircraft possible and safe;
 - (ii) any service that is located on the airport and that is directly and substantially related to the movement of passengers, baggage, mail, and cargo by aircraft on the airport;

(109) "non-aeronautical use" means any airport land use, business, service, or function that is not an aeronautical use;

(110) "special event"

(A) means a short-term private, public, or non-profit activity

- (i) not already permitted under the terms of a lease, permit, or concession; and
- (ii) that requires use of the airport for aeronautical or non-aeronautical activity;

(B) includes

- (i) aeronautical or non-aeronautical activity for civic, charitable, educational, religious, not-for-profit, or similar purposes; or
- (ii) activity of any sort that creates safety concerns or has the potential to disrupt normal or customary airport operations or activities.

History: Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 3/20/2016, Register 217

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090 AS 02.15.200

Editor's note: A list of all department-operated airports and the administrative region of the department responsible for each airport, the address for persons designated to carry out the functions and responsibilities of the department for the airports in each administrative region of the department, and the name and address of the airport manager designated for each airport operated by the department are available through the commissioner's office at the address set out in the editor's note following 17 AAC 45.005. Each airport's layout plan is available from the airport manager responsible for the airport or from the department.

This document is intended as an informational guide only. The regulations contained in this document were excerpted from the official code on file with the Lt. Governor. There may be errors or omissions that have not been identified and changes that occurred since this document was updated. To be certain of the current laws, please refer to the official code.