

State of Alaska
Department of Transportation & Public Facilities

Rural Airports
Rental Rate Adjustment Protest Procedures for Airport Tenants
17 AAC 45.297

The Department of Transportation and Public Facilities (DOT&PF) anticipates that the new rental rate will not exceed Fair Market Rent (FMR). An airport lessee, permittee or concessionaire (Tenant) who believes that the new rental rate does exceed the FMR for the property may retain an appraiser and protest to DOT&PF for reconsideration of the rental rate adjustment in accordance with 17 AAC 45.297.

If a Tenant desires to protest a rental rate adjustment based on a belief that the adjustment is not allowed by any other provision of 17 AAC 45.295 or other law, the protest must state the basis of that claim.

The procedures for protest is as follows:

- I. The Tenant must begin paying the adjusted rental rate on the effective date stated in DOT&PF'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. 17 AAC 45.297(a).
- II. The rental rate adjustment protest must be in writing and received by DOT&PF within **120 days** after the date the DOT&PF mails or delivers the notice of rental rate adjustment to the lessee, permittee, or concessionaire under 17 AAC 45.295.
- III. If the Tenant intends to assert that the new rental rate exceeds FMR, the Tenant must:
 - (1) show that the adjusted rental rate exceeds fair market rent by submitting to DOT&PF:
 - (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.
- IV. DOT&PF will review the appraiser's qualifications and accept or reject the appraiser's qualifications in writing to the Tenant.
- V. If DOT&PF accepts the appraiser, DOT&PF will furnish the Tenant with appraisal instructions and authorize the Tenant to have the premises appraised.
- VI. 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 included 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.*

- VII. The department will review the appraisal for compliance with the appraisal instructions and either accept or reject 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.
- VIII. 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.
- IX. 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.
- X. If the department does not accept 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.
- XI. A protester may appeal the department's decision denying the protest in accordance with 17 AAC 45.920. The protester's obligation to pay the adjusted rental rate continues throughout the appeal process.

**NOTE: Non-aeronautical use leases, permits or concessions granted by competitive award on the basis of the highest rent to be paid, shall pay the bid or proposed rent during the entire term of the agreement, as applicable. 17 AAC 45.300(e).*