

NOTICE OF CHANGE

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Department of Environmental Protection, Division of State Lands

RULE CHAPTER NO:

RULE CHAPTER TITLE:

18-21

Sovereignty Submerged Lands Management

RULE NO.:

RULE TITLE:

18-21.003

Definitions.

18-21.008

Applications for Lease.

18-21.011

Payments and Fees.

DOCKET NO.: 04-04R

Notice is hereby given that the following changes have been made to the proposed rule by action of the Board of Trustees of the Internal Improvement Trust Fund on May 17, 2005, in accordance with subparagraph 120.54(3)(d)1., F.S., published in the

Department's official notice Internet site at [www.dep.state.fl.us](http://www.dep.state.fl.us) on November 12, 2004:

THE TEXT OF THE PROPOSED RULE CHANGE IS:

18-21.003 Definitions.

When used in these rules, the following definitions shall apply unless the context clearly indicates otherwise:

(1) through (22) No Change.

(23) "First come, first served" means any water dependent facility operated on the sovereign lands of the state the services of which are open to the general public with no qualifying requirements such as club membership, stock ownership, or equity interest, with no

longer than one-year rental terms, and with no automatic renewal rights or conditions. This is intended to cover services offered to various types, classes or groups of public users and such services need not be comprehensive. The service offered may be a specialty service such as boat repair, seafood purchasing, marine slip rentals or shipping terminals as long as all services offered are open to the general types, classes, or groups ~~class~~ of public users without no any qualifying requirements such as club membership or stock ownership or equity interest.

(24) through (25) No change.

(26) "Income" means the gross revenue derived directly or indirectly from the use of sovereignty submerged lands; such as slip rental, lease or sublease fees; dock or pier admission fees; club memberships, stock ownership or equity interest in activities where an increased revenue is attributable to the use of the sovereignty submerged lands or "sales" of slips. However, gross revenue shall not include pass-through fees such as fees for utility services, sale of the facility or sales of products not occurring on sovereignty submerged lands. Gross revenue shall include all future payments made for the transfer of the interest in a slip originally obtained from the Board's lessee, including transfer of slip rights by slip sublessees, slip "sellers", slip interest transfers, new club memberships, and other similar transactions.

(26) through (50) renumbered (27) through (66) No change.

Specific Authority 253.03(7), 253.73 FS. Law Implemented 253.001, 253.03, 253.68, 253.77 FS. History—New 9-26-77, Formerly 16C-12.01, 16Q-17.01, Amended 3-27-82, 8-1-83, 2-25-85, Formerly 16Q-21.03, 16Q-21.003, Amended 12-25-86, 1-25-87, 3-15-90, 8-18-92, 3-20-94, 10-15-98, 8-1-01, 12-11-01, 10-29-03, 12-16-03, 3-8-04, \_\_\_\_\_.

18-21.008 Applications for Lease.

Applications for the following categories of leases are found in this section: standard, extended term, aquaculture, and oil and gas. Special event leases are addressed in Rule 18-21.0082, F.A.C.

(1) Standard Lease. The term for standard leases shall be 5 years. However, the term for leases for marinas where at least 90 percent of the slips are maintained for rent to the public on a first-come, first-served basis shall be 10 years.

(a) Applications for leases shall include the following:

1. through 10. No change.

(b) All leases shall be subject to the following provisions:

1. through 2. No change.

3. Leases are renewable, modifiable, and assignable, subject to: approval by the Board under this rule; compliance with the statutes and rules of the Board in effect at the time of lease renewal, modification or assignment that apply to or affect sovereignty submerged lands, including those that require modification of existing legally authorized structures; payment of a \$200.00 non-refundable processing fee for a private residential single-family dock or pier, or payment of a \$500 non-refundable processing fee for all other facilities; and payment of all fees assessed under Rule 18-21.011, F.A.C. The processing fee shall be revised annually on March 1 and increased or decreased based on the average change in the Consumer Price Index, calculated by averaging the Consumer Price Index over the previous five-year period, with a 10 percent cap on any annual increase. Non-compliance with any material term or condition of the lease to be renewed, modified or assigned or of any other current or prior lease between the applicant and

the Board; evidence of the applicant's previous trespass, damage, or depredation to sovereign submerged land or the products thereof caused by the facility or use; or failure to pay any fees or fines assessed under Rule 18-21.011 or Chapter 18-1, F.A.C., for such leases; shall result in termination of the lease, corrective action, or enforcement under Section 253.04, F.S., or Chapter 18-14, F.A.C. No application to renew, modify or assign the lease shall be approved unless all such non-compliance is corrected

4. through 5. No change.

(2) through (4) No change.

Specific Authority 253.03(7), 253.73 FS. Law Implemented 253.03, 253.04, 253.115, 253.12, 253.47, 253.512, 253.52-.54, 253.61, 253.67-.75 FS. History—New 12-20-78, Formerly 16C-12.14, 16Q-17.14, Amended 3-27-82, 8-1-83, 2-25-85, 3-19-85, Formerly 16Q-21.08, 16Q-21.008, Amended 1-25-87, 10-11-98, 12-11-01, 3-8-04, \_\_\_\_\_ .

18-21.011 Payments and Fees.

(1) Standard and Extended Term Leases.

(a) Fee Formula.

1. Except as otherwise provided, the annual lease fee for standard term leases shall be six percent of the annual income ~~from~~, the base fee, or the minimum annual fee, whichever is greater, and shall include discounts, surcharges, and other payments as provided in paragraph 18-21.011(1)(b), F.A.C. The annual lease fee for extended term leases shall be calculated using the following equation: annual lease fee for extended term leases = annual lease fee for standard term leases multiplied by  $(1 + .01X)$ , where: X = the term of the lease in years. For the purposes

of this section, income shall be the gross receipts derived from the rental, lease, sublease, license or other transaction involving tenancy of wet slips over sovereign submerged land whether the holder of the lease is primarily involved in every subsequent transaction or not. The base fee and minimum annual fee will be calculated according to paragraph (b) of this subsection. All leases shall require that the lessee include a clause in agreements for the use of a slip providing that 6% of gross income derived from any sub-agreement for the use of a slip shall be paid to the Board's lessee, who shall report and transmit such payments to the Board upon receipt, and a clause providing that no interest in a slip may be further transferred unless a substantially similar clause is placed any succeeding document effecting the transfer to each new slip holder.

2. The income used to determine the annual lease fee and any other information required from the previous year will be certified true and correct by the lessee and shall include any ancillary charges, such as club membership, stock ownership, or equity interest fees or dues or other miscellaneous fees required for and directly attributable to the rental of a wet slip over or use of sovereign submerged land. Ancillary charges shall not include pass-through fees such as fees for utility services. Facilities that do not rent wet slips or that rent slips significantly below prevailing market rate shall determine their income by a current market rent appraisal. Such facilities shall obtain a new market rent appraisal 6 months prior to the lease expiration, or ensure that a new market rent appraisal is received by the Department every five years, whichever is earlier. The Bureau of Appraisal shall obtain fee quotes and select qualified appraisers. The applicant will be notified of the fee and shall submit payment for the appraisal to the Department prior to the appraisal being initiated. The initial income, as appraised, shall be

revised annually on March 1 and increased or decreased based on the average change in the Consumer Price Index, calculated by averaging the Consumer Price Index over the previous five-year period, with a 10 percent cap on any annual increase, but shall be recalculated every five years in accordance with each new market rent appraisal, regardless of the CPI figure to be equivalent to an average of slip rental rates within the geographic area of the facility, for comparable facilities. Procedures for the annual review and adjustment of the rental rate shall be included as a condition of the lease.

3. through 4. No change.

(b) Base Fees, Discounts, Surcharges and Other Payments.

1. through 7. No change.

8. A waiver from payment of annual lease fees for a private residential multi-family dock or pier constructed in lieu of multiple private residential single-family docks or piers on existing individual, single-family riparian parcels shall be granted if the following conditions are met:

a. private residential single-family docks or piers could otherwise be authorized under Chapter 18-18 or 18-20, as applicable, and 18-21, F.A.C., on all the affected parcels;

b. each of the affected parcels contains or is zoned or approved for no more than one detached single-family residence;

c. a conservation easement in favor of the Board is placed on all the affected parcels to subordinate or waive any further riparian rights of ingress and egress for additional docks and piers; and

d. the Board determines that a waiver of payment of annual lease fees is

in the public interest.

8. through 11. renumbered 9. through 12. No change.

13 (12) Clean Marina Program Participation

a. There shall be a discount of 10 percent on the annual lease fee for facilities designated by the Department as a Clean Marina, Clean Boatyard or Clean Marine Retailer in the Clean Marina Program and actively maintaining their designation in the program participating in the Clean Marina/Boatyard Program or the Clean Boatyard Program, provided: that the facilities remain in good standing with all terms of their lease and with the Clean Marina/~~Boatyard~~ Program; and the facilities do not change their use during the term of the lease. If a facility is in arrears on its lease fees, it shall not be eligible for this discount for the next annual billing period. Failure to comply with the conditions of the Clean Marina/~~Boatyard~~ Program shall result in the loss of this discount for the next billing period.

b. The extended term lease surcharge shall be waived for facilities designated by the Department as a Clean Marina, Clean Boatyard or Clean Marine Retailer in the Clean Marina Program and actively maintaining their designation in the program participating in the Clean-Marina/Boatyard Program, provided: that the facilities are available for rent to the public on a first come, first served basis open to the public; that the facilities remain in good standing with all terms of their lease and with the Clean Marina/~~Boatyard~~ Program; and the facilities do not change their use during the term of the lease. Failure to comply with these conditions shall result in the ~~immediate~~ loss of the waiver of surcharge for the next billing period.

(c) through (d) No change.

(2) through (5) No change.

Specific Authority 253.03(7), 253.03(11), 253.73 FS. Law Implemented 253.03, 253.71 FS.

History—New 3-27-82, Amended 5-18-82, 8-1-83, 9-5-84, 10-20-85, Formerly 16Q-21.11, 16Q-21.011, Amended 1-25-87, 9-6-87, 3-15-90, 10-11-98, 10-15-98, 10-29-03, 3-8-04, \_\_\_\_\_.