

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Larry McPherson, Executive Director, Department of Health, 4052 Bald Cypress Way, Bin C03, Tallahassee, Florida 32399  
 THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

**DEPARTMENT OF HEALTH**

**Board of Dentistry**

RULE TITLE: Fees for Continuing Education Providers  
 RULE NO.: 64B5-15.022  
 PURPOSE AND EFFECT: The Board proposes the rule amendments to update fees for continuing education providers.  
 SUBJECT AREA TO BE ADDRESSED: The proposed rule amendments increase the initial and the biennial renewal fees for continuing education providers from \$125.00 to \$200.00.  
 SPECIFIC AUTHORITY: 456.025(2) FS.  
 LAW IMPLEMENTED: 456.025(2), 466.014 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE SCHEDULED AT THE BOARD'S NEXT MEETING TO BE HELD ON SEPTEMBER 26, 2003 IN GAINESVILLE, FLORIDA.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Sue Foster, Executive Director, Board of Dentistry/MQA, 4052 Bald Cypress Way, Bin #C08, Tallahassee, Florida 32399-3258

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

64B5-15.022 Fees for Continuing Education Providers.

- (1) The initial fee for approval as a continuing education provider shall be ~~\$200.00~~ ~~\$125.00~~.
- (2) The biennial renewal fee for an approved continuing education provider shall be ~~\$200.00~~ ~~\$125.00~~.

Specific Authority 456.025(2) FS. Law Implemented 456.025(2), 466.014 FS. History—New 5-2-91, Formerly 21G-15.022, 61F5-15.022, 59Q-15.022, Amended \_\_\_\_\_.

**DEPARTMENT OF HEALTH**

**Board of Occupational Therapy**

RULE TITLE: HIV/AIDS and Medical Error Prevention  
 RULE NO.: 64B11-2.007  
 Education for Initial Licensure  
 PURPOSE AND EFFECT: The Board proposes to review the existing language in this rule to determine if amendments are necessary.  
 SUBJECT AREA TO BE ADDRESSED: HIV/AIDS and medical error prevention education for initial licensure.  
 SPECIFIC AUTHORITY: 456.013(7), 456.033, 468.204 FS.  
 LAW IMPLEMENTED: 456.013(7), 456.033 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Kaye Howerton, Executive Director, Board of Occupational Therapy, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

**DEPARTMENT OF HEALTH**

**Board of Occupational Therapy**

RULE TITLE: HIV/AIDS and Medical Error Prevention  
 RULE NO.: 64B11-3.005  
 Education for Initial Licensure  
 PURPOSE AND EFFECT: The Board proposes to review the existing language in this rule to determine if amendments are necessary.  
 SUBJECT AREA TO BE ADDRESSED: HIV/AIDS and medical error prevention education for initial licensure.  
 SPECIFIC AUTHORITY: 456.013(7), 456.033, 468.204 FS.  
 LAW IMPLEMENTED: 455.033, 456.013(7) FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Kaye Howerton, Executive Director, Board of Occupational Therapy, 4052 Bald Cypress Way, BIN C05, Tallahassee, Florida 32399-3255

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS NOT AVAILABLE.

**Section II  
 Proposed Rules**

**DEPARTMENT OF REVENUE**

RULE TITLES: Form of Consent Agreements 12-16.003  
 Delegation of Authority 12-16.004  
 Requirements for Consent Agreements 12-16.005  
 SUMMARY: The proposed amendments to Rule 12-16.003, F.A.C. (Form of Consent Agreements) revise the taxpayer-related information that must be included on a consent agreement (form DR-872). The proposed changes to

Rule 12-16.004 (Delegation of Authority) adjust the references to the positions within the Department that are authorized to negotiate and sign consent agreements on behalf of the Department, and add a provision enabling the Executive Director to delegate temporary authority to negotiate and sign such agreements to other employees not specified in this rule. The proposed revisions to Rule 12-16.005 (Requirements for Consent Agreements) update the procedures the Department uses to establish and execute consent agreements.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory cost was prepared.

Any person who wishes to provide information regarding regulatory costs or to provide a proposal for a lower-cost regulatory alternative must do so in writing within 21 days after this notice.

SPECIFIC AUTHORITY: 213.06(1) FS.

LAW IMPLEMENTED: 213.23 FS.

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 10:30 a.m., September 23, 2003

PLACE: Room 435, Conference Room, Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in this hearing is asked to advise the Department at least 48 hours before the hearing by contacting Nancy Purvis at (850)488-0712. A person who is hearing-impaired or speech-impaired should contact the Department by using the Florida Relay Service, which can be reached at 1(800)955-8770 (Voice) and 1(800)955-8771 (TDD).

The Department's proposed rules are available on the Department's web site: [www.myflorida.com/dor/rules](http://www.myflorida.com/dor/rules)

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Larry Green, Tax Law Specialist, Rules and Policy Administrative Process, Department of Revenue, Room 435, Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida 32314-6668, (850)922-4830, e-mail: [greenl@dor.state.fl.us](mailto:greenl@dor.state.fl.us).

THE FULL TEXT OF THE PROPOSED RULES IS:

12-16.003 Form of Consent Agreements.

(1) Consent agreements executed under this chapter shall specify the:

(a) Taxpayer's ~~taxpayer's~~ name, federal employer identification or social security account identification number, mailing address, and case number and business partner number, if applicable and address of the taxpayer;

(b) Type type of tax or taxes, and the taxable period(s) covered; and

(c) Date date of expiration of the consent agreement; and

(d) Consent agreement number.

(2) The Department prescribes Form DR-872, Consent to Extend the Time to Issue an Assessment or to File a Claim for Refund, ~~dated December, 1998,~~ as the form to be used for the purposes of this chapter. The Department will provide this form to the taxpayer with the information specified in subsection (1) of this rule already entered on the form, and incorporates this form by reference. A copy of this form may be obtained, without cost, by: 1) writing the Florida Department of Revenue, Forms Distribution Center, 168 Blountstown Highway, Tallahassee, Florida 32304; or, 2) faxing the Forms Distribution Center at (850)922-2208; or, 3) using a fax machine telephone handset to call the Department's automated Fax On Demand system at (850)922-3676; or, 4) visiting any local Department of Revenue Service Center to personally obtain a copy; or, 5) calling the Forms Request Line during regular office hours at (800)352-3671 (in Florida only) or (850)488-6800; or, 6) downloading selected forms from the Department's Internet site at the address shown inside the parentheses — (<http://sun6.dms.state.fl.us/dor/revenue.html>). Persons with hearing or speech impairments may call the Department's TDD at 1(800)367-8331.

Specific Authority 213.06(1) FS. Law Implemented 213.23 FS. History—New 12-28-88, Amended 3-16-93, \_\_\_\_\_.

12-16.004 Delegation of Authority.

(1) In addition to the statutory authority granted by Section s: 213.23, Florida Statutes F.S., the Executive Director of the Department has authority to enter into consent agreements or extensions of consent agreements with taxpayers under authority granted by the Governor and Cabinet acting as the head of the Department. Cross Reference: Rule 12-3.007, F.A.C.

(2) The Executive Director of the Department hereby delegates authority to enter into consent agreements and extensions of consent agreements with taxpayers under Section s: 213.23, Florida Statutes F.S., to the Assistant Executive Director, the General Counsel, and the Deputy General Counsel of the Department and to the following designated positions in the Department:

(a) The Deputy Executive Director, the General Counsel, the Deputy General Counsel, and attorneys designated by the General Counsel. Within the Division of Taxpayer Assistance:

1. The Director and Assistant Director of the Division of Taxpayer Assistance;

2. The Chief of the Bureau of Hearings and Appeals; and,

3. The Chief of the Bureau of Technical Assistance and Training.

(b) Within the Office of Technical Assistance and Dispute Resolution: Within the Division of Audits:

1. The Director of Technical Assistance and Dispute Resolution, and; and Assistant Director of the Division of Audits;

2. All Revenue Program Administrators, Senior Attorneys, Attorneys, Tax Law Specialists, and Senior Tax Specialists in the Office of Technical Assistance and Dispute Resolution; The Chief and the Assistant Chief of the Bureau of Central Audit and Selection;

3. The Chiefs and the Assistant Chiefs of the Bureaus of In State Audit and Multi State Audit;

4. The Chief and Assistant Chief of the Bureau of Audit Standards; and;

5. All Field Audit Supervisors, Senior Audit Supervisors, Audit Group Supervisors and Tax Auditors within the Bureaus of In State Audit, Multi State Audit, and Central Audit and Selection.

(c) Within the General Tax Administration (GTA) Program; Division of Collection and Enforcement:

1. The GTA Program Director and the Deputy Program Director, Director and the Assistant Director of the Division of Collection and Enforcement;

2. The Process Manager of the Compliance Enforcement Process, and all Revenue Program Administrators, Regional Managers, Service Center Managers, Senior Revenue Consultants, Revenue Administrators II, Senior Tax Specialists, Tax Law Specialists, Tax Audit Supervisors, Tax Auditors, Tax Specialists, and Revenue Specialists II and III, Chief and the Deputy Bureau Chiefs of the Bureau of Collections;

3. The Process Manager and all Revenue Program Administrators, Tax Specialist Administrators, Tax Law Specialists, Government Analysts II, and Senior Tax Specialists in the Compliance Support Process, Chief and the Deputy Bureau Chiefs of the Bureau of Enforcement;

4. The Process Manager of the Taxpayer Services Process and all Revenue Program Administrators, Revenue Administrators, Revenue Specialist Supervisors and Tax Specialist Administrators in the Taxpayer Services Process Chief and the Assistant Chief of the Bureau of Field Services.

5. The Process Manager of the Refunds and Distribution Process and all Revenue Program Administrators, and all Senior Tax Audit Administrators, Senior Tax Specialists, Tax Audit Supervisors, and Tax Auditors in the Refunds and Distribution Process.

6. The Executive Director has discretionary authority to delegate authority to enter into consent agreements to specific employees or positions which are not enumerated in these rules. However, a delegation of authority to an employee or position beyond those described herein shall be in writing, signed by the Executive Director, and shall be for a specified time period. Such delegations may be renewed in writing. Copies of any such written delegations of authority shall be maintained on file with the agency clerk in the Office of General Counsel.

12-16.005 Requirements for Consent Agreements.

(1) The Department ~~will~~ ~~may~~ enter into a consent agreement with a taxpayer when additional time is deemed necessary to conduct or complete an audit, examination, or review of the taxpayer's account to determine whether a liability or overpayment exists or whether there has been compliance with a revenue law of this state, unless the provisions of paragraph (3)(b) of this rule apply.

(2) A consent agreement must be executed before the expiration of the statutory period for issuance of an assessment or the period for filing a refund claim with respect to a revenue law of this state covered by the agreement.

(3)(a) The consent agreement ~~will~~ ~~may~~ extend the time for issuance of an assessment or for filing of a refund claim for a stated any reasonable period which is mutually agreed upon by the Department and the taxpayer. The time for making an assessment or filing of a refund claim may be extended for additional periods, provided the Department and the taxpayer, prior to the expiration of the period previously agreed upon, execute another consent agreement reflecting the new expiration date.

(b) The Department will enter into a consent agreement or an extension of a consent agreement as authorized in paragraph (a) of this subsection, unless the Department determines, based on the taxpayer's actions or the best information available, that: the taxpayer does not intend to provide the required documentation, books, or records; or, the taxpayer intends to delay the issuance of an assessment; or, there is significant endangerment to the revenues involved.

(4) A consent agreement or an extension of a consent agreement shall first be signed and dated on behalf of the Department by a person with delegated authority to enter into a consent agreement or an extension of a consent agreement under Rule 12-16.004, F.A.C.

(5) A consent agreement or an extension of a consent agreement shall be signed and dated by the taxpayer or the taxpayer's duly authorized representative with authority to enter into the agreement or extension of the agreement on behalf of the taxpayer.

(a) In the case of a corporate taxpayer, an officer of the corporation shall print and sign his or her name and title and print or type the name of the corporation on the consent agreement or the extension of the consent agreement ~~and the corporate seal, if any, shall be affixed and attested by the secretary of the corporation~~ unless paragraph (c) of this subsection is applicable.

(b) An officer's ~~or fiduciary's~~ signature on a consent agreement or an extension of a consent agreement made by or for a taxpayer shall be prima facie evidence that such individual was authorized to sign the agreement or the extension of the agreement on behalf of the taxpayer.

(c) A consent agreement or an extension of a consent agreement will be accepted by the Department if it is ~~may be~~ signed by a representative of the taxpayer who files with the Department a power of attorney which grants the representative authority to execute the agreement or the extension of the agreement on behalf of the taxpayer.

(6)(a) A consent agreement or an extension of a consent agreement is ~~will become~~ effective when it has been signed and dated by the taxpayer or authorized representative and received by the Department, unless the agreement as originally signed by the Department has been subsequently altered by the taxpayer.

(b) The Department will use the date the agreement or extension is signed and dated by the taxpayer to determine whether the agreement is timely.

(c) A consent agreement or an extension of a consent agreement will remain in effect until both parties mutually agree to nullify or extend it, or until the consent agreement period has expired ~~executed by both parties.~~

(7) A consent agreement or an extension of a consent agreement, signed and dated by the taxpayer or authorized representative, is binding and sufficient when transmitted by electronic means or facsimile. Cross Reference: Section 475.5018, Florida Statutes.

Specific Authority 213.06(1) FS. Law Implemented 213.23 FS. History—New 12-28-88, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Larry Green, Tax Law Specialist, Rules and Policy Administrative Process, Department of Revenue, Room 435, Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida 32314-6668, (850)922-4830, e-mail: greenl@dor.state.fl.us

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Jeff Kielbasa, Deputy Executive Director, Department of Revenue, Tallahassee, Florida 32314, (850)488-2321

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 4, 2003.

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 30, 2003, Vol. 29, No. 22, pp. 2169-2171. A workshop was held on June 17, 2003. No one appeared at the workshop and no written comments have been received by the Department.

**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Board of Trustees of the Internal Improvement Trust Fund are published on the Internet at the Department of Environmental Protection’s home page at <http://www.dep.state.fl.us/> under the link or button titled “Official Notices.”

**DEPARTMENT OF MANAGEMENT SERVICES**

**Commission on Human Relations**

RULE TITLE: Conducting Proceedings by Communications Media Technology

RULE NO.: 60Y-1.002

PURPOSE AND EFFECT: The rule chapter provides for the commission meetings and operations. A new section is added to provide for conducting commission proceedings by Communications Media Technology.

SUMMARY: Commission meetings and operations, particularly conducting proceedings by Communications Media Technology.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 760.06 (12) FS.

LAW IMPLEMENTED: 120.525, 120.54(5) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m. (EDT), Wednesday, September 24, 2003

PLACE: The Commission’s Main Conference Room, 2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Florida Commission on Human Relations, Attn: Jim Tait, Staff Attorney, 2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301 or call (850)488-7082, Ext. 1071

THE FULL TEXT OF THE PROPOSED RULE IS:

60Y-1.002 Conducting Proceedings by Communications Media Technology.

The Commission shall follow and conform to Chapter 28-108, F.A.C., with respect to conducting proceedings by communications media technology.

Specific Authority 760(12) FS. Law Implemented 120.54(5) FS. History—New

NAME OF PERSON ORIGINATING PROPOSED RULE: William James Tait, Jr.

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Cecil Howard

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 18, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 1, 2003

**DEPARTMENT OF MANAGEMENT SERVICES**

**Florida Commission on Human Relations**

<b>RULE TITLES:</b>	<b>RULE NOS.:</b>
General	60Y-2.001
General Description of the Commission	60Y-2.003
General Description of Organization and Functions of Commission Staff	60Y-2.004
General Information	60Y-2.005
Statutory Chapter and Rules	60Y-2.006
Public Information and Inspection and Copying of Documents	60Y-2.007
List of Forms and Instructions	60Y-2.009
Petitions for Variances or Waivers from Rules	60Y-2.011
Commission Orders; Numbering, Indexing; and Maintenance	60Y-2.012

**PURPOSE AND EFFECT:** The rule chapter provides for the commission organization and general information.

**SUMMARY:** Amendments have updated commission information, new address and personnel, current organizational patterns and forms, provision for electronic filing and new sections relating to variances or waivers from rules and commission orders, numbering, indexing and maintenance in accordance with the Uniform Rules of Procedure and statutory guidance.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST:** None.

Any person who wishes to provide information regarding the statement of estimated regulatory cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

**SPECIFIC AUTHORITY:** 120.52, 120.53, 120.54, 760.06(12), 760.11(14), 760.32(5) FS.

**LAW IMPLEMENTED:** 120.52, 120.53, 120.533, 120.54, 120.542, 509.092, 23.167, 119, 760.01, 760.03, 760.05, 760.06, 760.10, 760.11, 760.30 FS.

**IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:**

**TIME AND DATE:** 9:00 a.m. (EDT), Wednesday, September 24, 2003

**PLACE:** The Commission's Main Conference Room, 2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS:** Florida Commission on Human Relations, Attn: Jim Tait, Staff Attorney, 2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301, (850)488-7082, Ext. 1071

THE FULL TEXT OF THE PROPOSED RULES IS:

60Y-2.001 General.

The Florida Commission on Human Relations is established pursuant to the Human Rights Act of 1977, as amended by the Florida Civil Rights Act of 1992, Chapter 760, F.S., to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, ~~disability handicap~~, or marital status and thereby to protect their interests in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights and privileges of individuals within the state.

Specific Authority 760.06(12) FS. Law Implemented 760.01(2), 760.03, 760.05 FS. History--New 11-2-78, Amended 8-12-85, Formerly 22T-6.01, 22T-6.001, Amended \_\_\_\_\_.

60Y-2.003 General Description of the Commission.

(1) The Commission is comprised of 12 members appointed by the Governor, subject to confirmation by the Senate.

(2) Commissioners are appointed to staggered terms of 4 years, except for ~~certain, original appointments and for~~ appointments described in subsection (3).

(3) A Commissioner appointed to fill a vacancy other than by expiration of a term is appointed for the unexpired term of the member whom such appointee is to succeed.

(4) A Commissioner is eligible for reappointment.

(5) In every odd-numbered year, the Commission shall hold an organizational meeting to elect from its membership a Chairperson and a Vice-chairperson. The biennial organizational meeting shall be held as soon as practical after the new Commissioners for that year have been appointed.

(6) The Chairperson of the Commission serves for a term of 2 years and has the following duties:

(a) Call Commission meetings and set the agenda for same;

(b) Preside at Commission meetings;

(c) Appoint one or more Panels of not less than 3 Commissioners to exercise, as provided in Chapters 60Y-4 and 60Y-5, F.A.C., Commission powers under subsection 760.06, F.S.;

(d) Appoint and define the role of such committees as are necessary or expedient to advise the Commission or its Executive Director;

(e) Perform such other functions as the Commission may assign by rule or order.

(7) The Vice-chairperson serves for a term of 2 years, the term to run concurrently with that of the Chairperson. The Vice-chairperson performs the duties of the Chairperson in the Chairperson's absence and performs such other duties as the Chairperson may assign.

(8) If a vacancy occurs in the Office of Chairperson, the Vice-chairperson shall become the Chairperson for the unexpired term of the Chairperson. If a vacancy occurs in the Office of Vice-chairperson, the Commission will select another member to fill the unexpired term of the Vice-chairperson.

(9) A special meeting of the Commission shall be called by the Chairperson, ~~or by~~ ~~the~~ Executive Director, upon the written request of not fewer than 5 Commissioners.

(10) Seven members shall constitute a quorum for the conduct of Commission business.

(11) A majority of the members of a Panel shall constitute a quorum for the conduct of business assigned to a Panel.

(12) In the presence of a quorum, Commission or Panel business shall be conducted by majority vote.

Specific Authority 760.06(12) FS. Law Implemented 760.03 FS. History--New 11-2-78, Formerly 22T-6.03, 22T-6.003, Amended \_\_\_\_\_.

60Y-2.004 General Description of Organization and Functions of Commission Staff.

(1) The staff units of the Commission consist of:

- (a) Office of Executive Director;
- (b) Office of General Counsel;
- (c) Office of Employment Investigations;
- (d) Office of Community Relations ~~and Housing Investigations;~~
- (e) Office of Housing Investigations ~~the Clerk;~~
- (f) Office of Customer Service ~~Intake;~~
- (g) Office of Management and Information Processing; ~~and~~
- (h) Office of Mediation.

(2) The Executive Director is the chief administrative officer of the Commission and is responsible for implementing policy of the Commission. The Executive Director is appointed by the Commission and may be removed by the Commission for cause. The Executive Director has the following duties:

- (a) Employ staff;
- (b) Prepare, defend and manage agency budget;
- (c) Negotiate and execute contracts and agreements on behalf of the Commission, except as limited by Rule 60Y-5.002, F.A.C.;
- (d) Issue subpoenas necessary for investigations pursuant to subsection 760.06(6), F.S.;
- (e) Make determinations as provided by Rule 60Y-5.004, F.A.C.;
- (f) Dismiss complaints, as provided by Rule 60Y-5.006, F.A.C.;
- (g) Promote favorable public and community relations;
- (h) Administer the day-to-day business of the Commission;
- (i) Perform such other functions as the Commission may assign by rule or order.

(3) The Office of General Counsel represents the agency in all legal proceedings before state and federal courts and agencies. The Office of General Counsel has the following additional duties:

- (a) Advise the Commission and Executive Director on legal matters;
- (b) Make such legal reports and recommendations, written and oral, as are requested by the Commission, a Commissioner or the Executive Director;
- (c) Make recommendations concerning determinations, as provided by Rules 60Y-5.004, F.A.C.;
- (d) Prosecute Commission complaints;
- (e) Within the Office of General Counsel shall be the Clerk to the Commission who shall:

1. Maintain all complaints, petitions, pleadings and other legal documents filed with the Commission;

2. Maintain all forms and instructions used by the Commission;

3. Maintain all petitions for variances and waivers of agency rules pursuant to Chapter 28-104, F.A.C.;

4. Assemble, certify and transmit records on appeal to appellate courts for review;

5. Respond to requests for information or copies of documents relevant to Commission cases;

6. Bill and collect monies for records on appeal and reproduced documents;

7. Certify and issue orders by the Commission or a Panel of Commissioners; and

8. Prepare and maintain a topical index of Commission or Panel decisions;

~~(f)~~(e) Perform such other functions as the Commission or Executive Director may direct.

(4) The Office of Employment Investigations investigates and seeks to conciliate complaints of discriminatory practices in employment, public accommodations and whistleblower retaliation. The Office of Employment Investigations has the following additional duties:

- (a) Seek to encourage settlement between parties;
- (b) Make reports and recommendations as provided by Rule 60Y-5.004, F.A.C.;
- (c) Provide fact-finding at the direction of the Executive Director; and

~~(d)~~(e) Perform such other functions as the Executive Director may direct.

(5) The Office of Community Relations ~~and Housing Investigations~~ provides technical assistance to local commissions on human relations, local governments and to other persons to facilitate progress in human relations and the amelioration of intergroup tensions.

~~(6) The~~ This Office of Housing Investigations investigates and seeks to conciliate complaints of discriminatory practices in housing.

(6) The Office of the Clerk has the following duties:

(a) Maintain all complaints, petitions, pleadings and other legal documents filed with the Commission;

(b) Assemble, certify and transmit records on appeal to appellate courts for review;

(c) Respond to requests for information or copies of documents relative to Commission cases;

(d) Bill and collect monies for records on appeal and reproduced documents;

(e) Certify and issue orders by the Commission or Panel;

(f) Prepare and maintain a topical index of Commission or Panel decisions;

(g) Perform such other functions as the Commission or the Executive Director may direct.

(7) The Office of Customer Service Intake receives and docket complaints, provides counseling for potential complainants, frames and perfects complaint allegations, provides Commission record-keeping and responds to requests for information.

(8) The Office of Management and Information Processing provides electronic word and data processing services to the Commission, including strategic planning, budget reports, complaint tracking, performance analysis, statistical reports and complaint investigation correspondence.

(9) The Office of Mediation provides voluntary mediation services.

Specific Authority 760.06(12), 760.11(14), 760.31(5) FS. Law Implemented 120.54, 760.03(7), 760.05, 760.06, 760.11, 760.30 FS. History—New 11-2-78, Amended 6-16-83, 8-12-85, Formerly 22T-6.04, Amended 4-20-87, Formerly 22T-6.004, Amended 4-20-00, \_\_\_\_\_.

#### 60Y-2.005 General Information.

(1) The location of the principal office of the Commission is: 2009 Apalachee Parkway, Suite 100, 325 John Knox Road, Suite 240, Building F, Tallahassee, Florida 32301-4857 32303 4149.

(2) The office is open from 8:00 a.m. to 5:00 p.m. (Eastern Time) of each working day.

(3) All requests for specific forms and information may be submitted to the Executive Director at the above address.

(4) Applications for employment may be obtained from the office of the Commission or from the Department of Management Services.

(5) All complaints, petitions and appeals from Commission action may be filed electronically by facsimile with the Commission. The original physically signed document shall be sent the same day by US Mail or other official delivery agent. The party who elects to file a document by electronic transmission shall be responsible for any delay, disruption, or interruption of the electronic signals and must accept full risk that the document may not be properly filed with the Commission as a result. The filing date for an electronically transmitted document shall be the date the Commission receives the complete document. All complaints

may be sent by facsimile to the Manager of Customer Service at (850)488-5291. All petitions and appeals from Commission action may be sent by facsimile to the Clerk at (850)487-9363.

(6) The Clerk to the Commission is Violet Crawford, Clerk to the Commission, 2009 Apalachee Parkway, Suite 100, Tallahassee, Florida 32301-4857, phone number (850)488-7082.

Specific Authority 760.06(12) FS. Law Implemented 120.54, 760.06 FS. History—New 11-2-78, Formerly 22T-6.05, 22T-6.005, Amended \_\_\_\_\_.

#### 60Y-2.006 Statutory Chapter and Rules.

The mission and duties of the Commission are carried out pursuant to statutory authority delineated in Chapter 760, F.S. The following additional statutory chapters and rule chapters directly affect and govern the operations of the Commission:

(1) Chapter 120, F.S.

(2) Sections 112.3187-112.31985, inclusive, F.S.

(3) Section 509.092, F.S.

(4)(2) Chapters 60Y-1 through 60Y-10 and 60Y-25, F.A.C.

(5)(3) Chapters 28-101 through 28-106, 28-108, 28-109, F.A.C.

Specific Authority 760.06(12), 760.11(14), 760.31(5) FS. Law Implemented 120, 509.092, 760 FS. History—New 11-2-78, Amended 8-12-85, Formerly 22T-6.06, 22T-6.006, Amended 7-26-00, \_\_\_\_\_.

60Y-2.007 Public Information and Inspection and Copying of Documents.

(1) All public records within the meaning of Chapter 119, F.S., and not otherwise restricted by law, may be inspected upon approval of a written request. Any written request must specifically identify the requested material. Requests for information may be directed to the Office of Customer Service.

(2) All complaints filed pursuant to Rule 60Y-5.001, F.A.C., and all related records and documents in the custody of the Commission which relate to and identify a person shall be confidential, unless the record or document is made part of the record of any hearing or court proceeding. Access to confidential records and documents, by the parties to a complaint or proceeding, is provided in subsections 60Y-5.001(9), 60Y-5.003(9) and 60Y-5.004(7), F.A.C.

(3) Copies of public records maintained by the Commission are available on the following basis:

(a) Two dollars (\$2.00) per instrument for preparation and transmittal of original records on appeal with no charge for postage or certification;

(b) One dollar (\$1.00) for the first page copied from a Commission file; fifteen cents (\$0.15) per page for any additional page from the same file;

(c) Actual postage costs are charged for mailing copies other than original records on appeal; provided that no charge will be made for mailing one ounce by first class mail;

(d) Transcripts of Commission proceedings may be obtained by independent contract of a court reporter at the ordering party's expense;

(e) Payment must be made in advance by cash, check or money order made payable to the Florida Commission on Human Relations;

(f) Commission orders and subject matter indices thereto are published by Florida Administrative Law Reports and by The Florida Bar, Labor and Employment Law Section.

Specific Authority 760.06(13) FS. Law Implemented 760.06, 760.10(14), 119, 120.54 FS. History--New 11-2-78, Amended 2-10-80, 8-12-85, Formerly 22T-6.07, Amended 4-20-87, Formerly 22T-6.007, Amended \_\_\_\_\_.

60Y-2.009 List of Forms and Instructions.

The following listed forms and instructions are hereby incorporated by reference, are used by the Commission and are furnished without charge. Copies may be obtained from the Commission's website, <http://fchr.state.fl.us> or by writing or calling the Clerk to the Commission or the Office of Customer Service at the address listed in Rule 60Y-2.005, F.A.C., making reference to the desired form by form number or title.

FORM NUMBER	TITLE OR DESCRIPTION
FCHR Form 1	<u>Technical Assistance Questionnaire for discrimination complaints</u>
<u>FCHR Form 2</u>	Complaint of <u>Employment</u> Discrimination
<u>FCHR Form 3</u>	<u>Complaint of Public Accommodation Discrimination</u>
<u>FCHR Form 4</u>	<u>Complaint of Housing Discrimination</u>
<u>FCHR Form 5</u>	<u>Complaint of Whistle-blower's Act Retaliation Discrimination</u>
FCHR Form <del>6</del> 2	Petition for Relief from an Unlawful Employment Practice, a <u>Housing Discriminatory Practice</u> or a <u>Public Accommodations Discriminatory Practice</u>
<u>FCHR Form 7A</u>	<u>Election of Rights for Employment and Public Accommodations Discrimination Complaints</u>
<u>FCHR Form 7B</u>	<u>Election of Rights for Housing Discrimination Complaints</u>
<u>FCHR Form 8</u>	<u>Registration of Housing for Older Persons</u>

Use of the FCHR forms described in this section is not obligatory, and any complaint or Petition for Relief from an Unlawful Employment Practice, a Housing Discriminatory Practice, a Public Accommodations Discriminatory Practice or a Whistle-blower's Act Retaliatory Discriminatory Practice which meets the requirements of the rules of the Commission will be accepted. The requirements for a complaint are set forth in Rule subsections 60Y-3.001(4), 60Y-6.001(17), Rule 60Y-10.003 and Rule 60Y-5.001, F.A.C. The requirements for a Petition for Relief from an Unlawful Employment Practice are set forth in Rule 28-106.201, Rule 28-106.301, Rule 60Y-5.008, subsection 60Y-6.001(48) and Rules 60Y-8.001 ~~60Y-4.009~~, F.A.C.

Specific Authority 120.52, 760.06(13) FS. Law Implemented 120.52, 120.54, 760.06, 23.167 FS. History--New 11-2-78, Formerly 22T-6.09, 22T-6.009, Amended \_\_\_\_\_.

60Y-2.011 Petitions for Variances or Waivers from Rules.  
The Commission shall follow and conform to Chapter 28-104, F.A.C., with respect to variances and waivers from its Rules. Petitions conforming to Rule 28-104.102, F.A.C., shall be filed with the Clerk to the Commission.

Specific Authority 120.54, 760.06(13) FS. Law Implemented 120.542 FS. History--New \_\_\_\_\_.

60Y-2.012 Commission Orders; Numbering, Indexing; and Maintenance.

(1) All orders issued by the Commission shall be numbered and indexed

(2) The orders shall be sequentially numbered and rendered using a two-part number separated by a dash with the first part before the dash indicating the year and the second part indicating the numerical sequence of the order issued for that year beginning with the number 001 each new calendar year. The assigned agency designation prefix, FCHR, shall precede the two-part number.

(3) The agency clerk shall index orders which shall be cumulative, updated and made accessible to the public at least each calendar year.

(4) Orders that comprise official agency action and that must be indexed pursuant to this Rule shall be permanently maintained by the agency pursuant to the retention schedule approved by the Department of State.

(5) These rules regarding the indexing, management and availability of orders are issued pursuant to Section 120.533, F.S. and Chapter 1S-6, F.A.C., and have been approved by the Department of State pursuant to Section 120.53(3)(c), F.S. The purpose of this Rule is to provide public access to, and availability of, Commission Orders. The agency clerk shall assist the public in obtaining information pertaining to Commission Orders. The agency maintains and stores such orders and subject matter index in the main offices of the agency located in Tallahassee, Florida at the address set forth in Rule 60Y-2.005, F.A.C.

Specific Authority 120.53, 760.06(12) FS. Law Implemented 120.53, 120.533, 760.06, 760.10(14) FS. History--New \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
 William James Tait, Jr.

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Cecil Howard

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 18, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 1, 2003



**DEPARTMENT OF MANAGEMENT SERVICES****Commission on Human Relations**

RULE TITLE: RULE NO.:

Definitions 60Y-3.001

PURPOSE AND EFFECT: The rule section provides for definitions.

SUMMARY: Amendments have updated several definitions to recognize recent court and commission decisions and rule changes.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 120.54, 760.06(12), 760.11(14), 760.32(5) FS.

LAW IMPLEMENTED: 120.54, 760.03, 760.05, 120.53, 120.533 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m. (EDT), Wednesday, September 24, 2003

PLACE: The Commission's Main Conference Room, 2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Florida Commission on Human Relations, Attn.: Jim Tait, Staff Attorney, 2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301 or call (850)488-7082, Ext. 1071

THE FULL TEXT OF THE PROPOSED RULE IS:

60Y-3.001 Definitions.

As used in the rules of the Commission:

(1) "Act" means the Florida Civil Rights Act of 1992, as amended; Chapter 760, F.S.

(2) "Chairperson" or "Chair" means the Chairperson of the Commission or Chairperson of a Panel, as the context may indicate.

(3) "Clerk" means the person designated by the Executive Director as heading the Office of the Clerk.

(4) "Complaint" means a written statement which alleges the occurrence of an unlawful employment practice, and includes an amended complaint.

(5) "Complainant" means a person filing a complaint.

(6) "Commission" means Florida Commission on Human Relations.

(7) "Commissioner" or "member" means a member of the Commission.

(8) "Division of Administrative Hearings" means the Division of Administrative Hearings of the Department of Management Services.

(9) "Document" means data compilations from which information can be obtained and includes, for example: writings, e-mail, drawings, charts, photographs, and phone records.

(10) "Employer" means any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

(11) "Employment Agency" means any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunity to work for an employer, and includes an agent of such a person.

(12) "Executive Director" means the Executive Director of the Commission.

(13) "~~Disability~~" "~~Handicap~~" means a condition that is an impairment that substantially limits one or more of the major life activities ~~prevents normal functioning in some way; a person with a handicap does not enjoy the full and normal use of his or her sensory, mental or physical faculties.~~

(14) "General Counsel" means the General Counsel of the Commission.

(15) "Hearing Officer" or "Administrative Law Judge" means the person assigned to conduct a hearing upon a petition filed with the Commission.

(16) "Intervenor" means any person permitted by the Commission, a Panel, or a hearing officer to intervene in a proceeding upon a petition.

(17) "Marital Status" does not include the identity of the spouse and the relationship to the aggrieved person, but rather ~~not merely~~ the fact that the aggrieved person is married, single, divorced, separated, widowed, etc.

(18) "Labor Organization" means any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or other mutual aid or protection in connection with employment.

(19) "Panel" means a panel of three or more Commissioners appointed pursuant to subsection 760.03(5), F.S., and paragraph 60Y-2.003(6)(c), F.A.C.

(20) "Party" means any person designated as a party to a proceeding before the Commission, pursuant to rule of the Commission.

(21) "Person" includes an individual, association, corporation, joint apprenticeship committee, joint stock company, labor organization, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, unincorporated organization, any other legal or commercial entity, the state or any governmental entity or agency.

(22) "Petition" means a writing, other than a written motion, filed with the Commission pursuant to rule of the Commission asking that specified action be taken by the Commission or a Panel.

(23) "Petitioner" means the person filing a petition with the Commission pursuant to rule of the Commission.

(24) "Respondent" means (a) in the case of a complaint, the employer, employment agency, labor organization, joint labor-management committee, or person designated in the complaint as responsible for the alleged unlawful employment practice. or (b) in the case of a petition, the person against whom relief is requested.

(25) "Registered Mail" includes certified mail with return receipt requested.

(26) "Unlawful Employment Practice" means any practice so designated by Section 760.10, F.S.

(27) "Verified" means under oath or affirmation or by the signing of the written declaration prescribed by Section 92.525(2), F.S.

(28) "Date of determination" means the date the Determination was signed by the Executive Director or his delegatee.

(29) "Date of filing" means a completed complaint is received by the Commission prior to 5:00 p.m. (Eastern time) as provided by Rule 28-106.104, F.A.C.

(30) "Electronic filing" pursuant to subsection 60Y-2.005(5), F.A.C., means filing by facsimile.

(31) "Familial status" means whether or not children under the age of 18 are living with the complainant and/or whether the Complainant is pregnant, has a pending adoption, or not.

Specific Authority 760.06(12) FS. Law Implemented 92.525, 760.02, 760.03, 760.04, 760.05, 760.06, 760.10, 760.11 FS. History—New 11-2-78, Amended 8-12-85, Formerly 22T-7.01, 22T-7.001, Amended 9-1-93, 4-17-01,

NAME OF PERSON ORIGINATING PROPOSED RULE:  
William James Tait, Jr.

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Cecil Howard

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 18, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 1, 2003

**DEPARTMENT OF MANAGEMENT SERVICES**

**Commission on Human Relations**

RULE TITLES:	RULE NOS.:
Form of Documents	60Y-4.003
Filing and Copies	60Y-4.004
Proof of Simultaneous Service upon Other Parties	60Y-4.005
Service by Commission	60Y-4.006
Computation of Time Periods	60Y-4.007
Representation	60Y-4.008

Petitions	60Y-4.009
Miscellaneous Petitions	60Y-4.010
Answers	60Y-4.011
Parties	60Y-4.012
Intervention	60Y-4.013
Joinder of Parties	60Y-4.014
Assignment of Hearings	60Y-4.016
Motions	60Y-4.017
Consolidation	60Y-4.018
Discovery	60Y-4.019
Pre-hearing Conference	60Y-4.020
Notice of Hearing	60Y-4.021
Subpoenas	60Y-4.022
Witness Fees	60Y-4.023
Introduction of Evidence; Rights of Parties at Hearing	60Y-4.024
Transcript of Hearing	60Y-4.025
Recommended Orders	60Y-4.026
Exceptions and Briefs	60Y-4.027

PURPOSE AND EFFECT: The rule chapter provides for general procedures of the commission.

SUMMARY: Many sections have been repealed in recognition of the Uniform Rules of Procedure. Two sections have been amended to recognize current statutory law and procedures.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 120.52, 120.53, 120.54, 760.06(12), 760.11(14), 760.32(5) FS.

LAW IMPLEMENTED: 120.52, 120.53, 120.533, 120.54, 120.542, 509.092, 23.167, 119, 760.01, 760.03, 760.05, 760.06, 760.10, 760.11, 760.30 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m. (EDT), Wednesday, September 24, 2003

PLACE: The Commission's Main Conference Room, 2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Florida Commission on Human Relations, Attn.: Jim Tait, Staff Attorney, 2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301 or call (850)488-7082, Ext. 1071

THE FULL TEXT OF THE PROPOSED RULES IS:

60Y-4.003 Form of Documents.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 760.06 FS. History—New 11-2-78, Formerly 22T-8.03, 22T-8.003, Repealed

## 60Y-4.004 Filing and Copies.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 120.57, 760.06 FS. History–New 11-2-78, Formerly 22T-8.04, 22T-8.004, Repealed

## 60Y-4.005 Proof of Simultaneous Service upon Other Parties.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 760.06 FS. History–New 11-2-78, Formerly 22T-8.05, 22T-8.005, Repealed

## 60Y-4.006 Service by Commission.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 760.06 FS. History–New 11-2-78, Formerly 22T-8.06, 22T-8.006, Repealed

## 60Y-4.007 Computation of Time Periods.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 760.06 FS. History–New 11-2-78, Formerly 22T-8.07, 22T-8.007, Repealed

## 60Y-4.008 Representation.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 760.06 FS. History–New 11-2-78, Formerly 22T-8.08, 22T-8.008, Repealed

## 60Y-4.009 Petitions.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 120.54, 120.565, 760.06, 760.10 FS. History–New 11-2-78, Formerly Rule 9D-8.09, Amended 6-16-83, Formerly 22T-8.09, 22T-8.009, Repealed

## 60Y-4.010 Miscellaneous Petitions.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 760.06 FS. History–New 11-2-78, Formerly 22T-8.10, 22T-8.010, Repealed

## 60Y-4.011 Answers.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 760.06 FS. History–New 11-2-78, Formerly 22T-8.11, 22T-8.011, Repealed

## 60Y-4.012 Parties.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 760.06 FS. History–New 11-2-78, Formerly 22T-8.12, 22T-8.012, Repealed

## 60Y-4.013 Intervention.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 760.06 FS. History–New 11-2-78, Formerly 22T-8.13, 22T-8.013, Repealed

## 60Y-4.014 Joinder of Parties.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 760.06 FS. History–New 11-2-78, Formerly 22T-8.14, 22T-8.014, Repealed

## 60Y-4.016 Assignment of Hearings.

(1) A hearing upon a Petition for Relief from an Unlawful Employment Practice, a Housing Discriminatory Practice or a Public Accommodation Discriminatory Practice pursuant to Rules 60Y-54.008, 60Y-8.001 and 60Y-10.005, F.A.C., respectively shall be conducted by an Administrative Law

Judge a hearing officer designated by the Division of Administrative Hearings unless, prior to service of the Notice of Hearing pursuant to Rule 60Y-4.021, F.A.C., the Chairperson or Chair of the Panel designates a Commissioner as the hearing officer or directs that the hearing be conducted by the Commission or Panel.

(2) A hearing upon a petition not described in subsection (1) shall be conducted by a hearing officer designated by the Chairperson or Chair of the Panel unless the Chairperson or Chair of the Panel directs that the hearing be conducted by the Commission or Panel.

(3) A hearing upon a petition not described in subsection (1) or (2) shall be conducted by a hearing officer designated by the Chairperson or Chair of the Panel unless the Chairperson or Chair of the Panel directs that the hearing be conducted by the Commission or Panel.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 760.06, 760.03(5) FS. History–New 11-2-78, Formerly 9D-8.16, Amended 2-4-82, 6-16-83, Formerly 22T-8.16, 22T-8.016, Amended

## 60Y-4.017 Motions.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 760.06 FS. History–New 11-2-78, Formerly 9D-8.17, Amended 2-4-82, 6-30-83, Formerly 22T-8.17, 22T-8.017, Repealed

## 60Y-4.018 Consolidation.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 760.06 FS. History–New 11-2-78, Formerly 22T-8.18, 22T-8.018, Repealed

## 60Y-4.019 Discovery.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 760.06 FS. History–New 11-2-78, Formerly 22T-8.19, 22T-8.019, Repealed

## 60Y-4.020 Pre-hearing Conference.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 760.06 FS. History–New 11-2-78, Formerly 9D-8.20, Amended 2-4-82, Formerly 22T-8.20, 22T-8.020, Repealed

## 60Y-4.021 Notice of Hearing.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 120.57, 760.06 FS. History–New 11-2-78, Formerly 22T-8.21, 22T-8.021, Repealed

## 60Y-4.022 Subpoenas.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 760.06 FS. History–New 11-2-78, Formerly 22T-8.22, 22T-8.022, Repealed

## 60Y-4.023 Witness Fees.

(1) Witness fees necessary and incident to a hearing shall be paid by the party at whose instance the witness is summoned. If the Commission or the Executive Director directs that a witness be summoned as a Commission witness, that witness' fees shall be paid by the Commission. Witness fees shall be tendered, or a voucher submitted at the time of attendance. The fees allowed shall be the same as those allowed by the circuit courts of this state.

(2) Witness fees for Commission employees shall be paid in accordance with subsection 92.142(2), F.S.

Specific Authority 760.06, 120.53 FS. Law Implemented 760.06, 760.10, 92.142, 120.53, 120.57 FS. History–New 11-2-78, Amended 2-10-80, Formerly 22T-8.23, 22T-8.02, Amended.

60Y-4.024 Introduction of Evidence; Rights of Parties at Hearing.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 120.57, 760.06 FS. History–New 11-2-78, Formerly 9D-8.24, Amended 2-4-82, Formerly 22T-8.24, 22T-8.024, Repealed.

60Y-4.025 Transcript of Hearing.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 120.57, 760.06 FS. History–New 11-2-78, Amended 11-8-83, Formerly 22T-8.25, 22T-8.025, Repealed.

60Y-4.026 Recommended Orders.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 120.57, 760.06 FS. History–New 11-2-78, Formerly 22T-8.26, 22T-8.026, Repealed.

60Y-4.027 Exceptions and Briefs.

Specific Authority 120.53, 760.06(13) FS. Law Implemented 120.53, 120.57, 760.06 FS. History–New 11-2-78, Amended 2-4-82, 11-8-83, Formerly 22T-8.27, 22T-8.027, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
William James Tait, Jr.  
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Cecil Howard  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 18, 2003  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 1, 2003

**DEPARTMENT OF MANAGEMENT SERVICES  
Commission on Human Relations**

RULE TITLES:	RULE NOS.:
Complaints	60Y-5.001
Answer	60Y-5.0011
Investigation of Complaints	60Y-5.003
Executive Director’s Investigatory	
Determination; Notice	60Y-5.004
Conciliation	60Y-5.005
Administrative Dismissal of a Complaint	60Y-5.006
Petition for Relief from an Unlawful	
Employment Practice	60Y-5.008

PURPOSE AND EFFECT: The rule chapter provides for Commission proceedings to receive, investigate and act upon complaints of unlawful employment practice.

SUMMARY: Amendments have updated rule sections to conform to current procedures and statutory requirements, including the adoption of the Uniform Rules of Procedure, and clarifying when a complaint is filed, and under what conditions, amendments, withdrawals and dismissals of complaints may be made.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 120.54, 760.06(12), 760.11(14) FS.  
LAW IMPLEMENTED: 760.01-.11 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m. (EDT), Wednesday, September 24, 2003

PLACE: The Commission’s Main Conference Room, 2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Florida Commission on Human Relations, Attn: Jim Tait, Staff Attorney, 2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301 or call (850)488-7082, x 1071

THE FULL TEXT OF THE PROPOSED RULES IS:

60Y-5.001 Complaints.

(1) Who May File. A complaint may be filed by any person aggrieved by an unlawful employment practice. A complaint may also be filed by the Attorney General, a Commissioner, or the Commission. When a complaint is filed by a Commissioner, that Commissioner is the complainant, and shall not participate as a Commissioner in any subsequent proceeding upon that complaint.

(2) Time for Filing. A complaint may be filed at any time within 365 days of the occurrence of the alleged unlawful employment practice. If the alleged unlawful employment practice is of a continuing nature, the date of the occurrence may be any date subsequent to the commencement of the unlawful employment practice up to and including the date on which it shall have ceased.

(3) Place and Date of Filing. A complaint may be filed at the office of the Commission. The date of filing shall be the date of actual receipt of the complaint by the Clerk or other agent of the Commission. Any document received by the Clerk or other agent of the Commission after 5:00 p.m. (Eastern Time) shall be filed as of 8:00 a.m. on the next regular business day.

(4) Relation Back of Certain Complaints. A complaint which would not otherwise be timely may be filed if it: (a) states that another complaint naming the same respondent is properly before the Commission and identifies that other complaint, and (b) alleges the same or additional facts which describe an unlawful employment practice related to or growing out of the subject matter of the other, identified complaint, and (c) would have been timely if filed at the time

of, or other time subsequent to, the filing of the other, identified complaint. A complaint under this subsection may be filed by a new complainant and shall relate back to the date the other, identified complaint was first received.

(5) Form. The complaint must be in writing and shall be signed by the complainant. The complaint shall be verified.

(6) Contents.

(a) The complaint should contain the following information:

1. The name, address and telephone number of the person filing the complaint;

2. The name, address and telephone number of the respondent;

3. A clear and concise statement of the facts, including pertinent dates, constituting the unlawful employment practice;

4. If known, the approximate number of employees of a respondent employer;

5. If known, a statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a Federal, State or local agency charged with the enforcement of fair employment practice laws and, if so, the date of such commencement and the name of the agency.

(b) Notwithstanding the provision of paragraph (a) of this subsection, a complaint is sufficient if it is in writing, signed by the Complainant, verified, and is sufficiently precise to identify the parties and to describe generally the action or practice complained of.

(7) Amendments.

(a) A complaint may be reasonably and fairly amended within 60 days after filing and, thereafter, for good cause with the consent of the Executive Director.

~~(b)(a)~~ A complaint may be amended to cure technical defects, or omissions, including verification, or to clarify and amplify allegations made therein. Such amendments and amendments which describe an additional unlawful employment practice related to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first received.

~~(c)(b)~~ An amendment adding or changing a respondent will relate back to the date the complaint was first received if, within the period provided by subsection (2), the new respondent (i) has received such notice of the filing of the complaint as is sufficient to avoid prejudice in a defense on the merits, and (ii) knew or should have known that, but for a mistake concerning identity of the proper respondent, the complaint would have been filed against the new respondent.

~~(e) An amendment may be filed at any time before service of a Notice of Determination. After a Notice of Determination has been served, an amendment may be filed only with the permission of the Executive Director, for good cause shown.~~

(8) Withdrawal. A complaint may be withdrawn by a complainant at any time; however, following the issuance of a Notice of Determination, withdrawal may be made only with the consent of the Executive Director.

(9) Notice to Respondent. When it is determined that a complaint is complete and has been timely filed. The Executive Director shall cause notice of the filing and a copy of the complaint to be served upon the respondent. Notice shall be served within 5 days of the date of filing. An amendment likewise shall be served upon the respondent. Commission, within 5 days of the complaint being filed, shall send by registered mail notice of the filing and a copy of the complaint to the respondent. An amendment likewise shall be sent by registered mail to the respondent.

(10) Maintenance of ~~Employment~~ Records. Once a complaint has been served on a respondent, the respondent shall preserve all ~~personnel records, production~~ records and other evidence which may pertain to the complaint until the matter has been finally determined.

Specific Authority 760.06(12), 760.11(14) FS. Law Implemented 760.06, 760.10, 760.11(1) FS. History—New 11-2-78, Amended 10-4-82, Formerly 22T-9.01, 22T-9.001, Amended 1-28-99, 2-23-00, \_\_\_\_\_.

#### 60Y-5.0011 Answer.

(1) Responded may file an answer to the complaint within 25 days of the date of notice of the filing. The answer shall be verified.

(2) The Answer may be reasonably and fairly amended at any time prior to the issuance of a determination pursuant to Rule 60Y-5.004, F.A.C.

Specific Authority 120.53, 760.06(12) FS. Law Implemented 120.53, 760.11(1) FS. History—New \_\_\_\_\_.

#### 60Y-5.003 Investigation of Complaints.

(1) By Whom. The investigation of the complaint shall be made by the Office of Employment Investigations or by any other person designated by the Executive Director. The Executive Director may utilize services of other public agencies, state, local or federal, which are charged with the administration of fair employment practice laws, and may utilize the information gathered by such.

(2) Statement of Complainant. During the course of an investigation, the complainant may be required to provide a statement which includes:

(a) A statement of each particular harm which the aggrieved person has suffered and the date on which each harm occurred;

(b) For each harm, a statement specifying the act, policy or practice which is alleged to be unlawful;

(c) For each act, policy, or practice alleged to have harmed the aggrieved person, a statement of the facts which lead the complainant to believe that the act, policy or practice is discriminatory.

(3) Requests for Information. During the course of an investigation, the Office of Employment Investigations may request of any person information concerning the facts and circumstances of the complaint. Requests for information may be made in the following manner:

- (a) Oral interviews;
- (b) Written interrogatories;
- (c) Requests for production of documents;
- (d) Requests for entry upon land for inspection and other purposes;
- (e) Requests for a written statement or affidavit.

(4) Failure to Provide Information – Respondent. In the event a respondent fails to provide information within that person’s control, which is requested pursuant to subsection (3), and reasonable notice and opportunity to cure have been given, an inference may be drawn, in a determination of reasonable cause pursuant to Rule 60Y-5.004, F.A.C., that such information is adverse to the respondent’s interest.

(5) Failure to Cooperate – Complainant.

(a) Where the complainant fails to provide a necessary statement, fails or refuses to appear or be available for interview or meetings, fails or refuses to provide necessary information requested by the Office of Employment Investigations pursuant to this section or otherwise refuses to cooperate to the extent that the Office of Employment Investigations is unable to resolve the complaint, and after notice the complainant has failed to duly respond to the Office of Employment Investigations within 30 days, the Executive Director may dismiss the complaint, which shall constitute final Agency action.

(b) In the event a complainant fails to appear at or fails or refuses to participate in a fact-finding conference scheduled in the complainant’s area of residence or at the place most convenient to all parties as determined by the Office of Employment Investigations, and after being provided at least fourteen days notice of such conference, which notice shall advise complainant of the provisions of this rule, the Executive Director may dismiss the complaint; provided, however, that no complaint may be dismissed pursuant to this rule where within fourteen days of the scheduled conference the complainant has filed with the Commission information establishing good cause for complainant’s nonappearance or nonparticipation. Such information should include sworn statements of those individuals having direct knowledge of pertinent events causing the nonappearance or nonparticipation, as well as any other relevant evidence.

(6) Subpoena. In the event any person fails to provide requested information, the Executive Director may issue and sign a subpoena on behalf of the Commission. The subpoena shall state the name and address of the issuer, identify the person subpoenaed, the person to whom and the place, date, and time at which it is returnable. A subpoena may be returnable to a representative of the Commission.

(7) Enforcement of Subpoena. In the event the person to whom the subpoena is directed fails to obey the subpoena, the Executive Director may direct the General Counsel to apply to a circuit court for an order of compliance.

(8) Suspension of Investigation. Upon the request of the complainant or respondent, the Executive Director or his designee ~~Administrator of Employment Investigations~~ may suspend an investigation during the pendency of a grievance proceeding, on the same subject, to which the complainant and respondent are parties. This suspension shall normally be granted for not more than 45 days and only if there is reason to believe that the pending proceeding will fully resolve the matters raised by the complaint.

(9) Access to Files During Investigation. Information obtained during the investigation of a complaint shall be disclosed only to the complainant, respondent or their authorized representative, or to a witness, only when disclosure is deemed necessary for the investigation or for securing appropriate disposition of the complaint.

(10) Negotiated Settlement. During the mediation and/or investigation processes, the Commission Office ~~of Employment Investigations~~ shall endeavor to encourage the complainant and the respondent to settle the complaint on mutually agreeable terms. If the settlement is achieved by a Negotiated Settlement Agreement, its terms shall be reduced to writing and signed and dated by the complainant and respondent. If a settlement is achieved as a Withdrawal with Settlement, only the complainant need sign and date. A copy of the agreement shall be filed with the Clerk. A complaint which has been settled may be dismissed by the Executive Director upon such terms and at such time as may be provided in the written agreement subject to compliance.

Specific Authority 760.06(13), 760.11(14) FS. Law Implemented 760.03(7), 760.06, 760.10, 760.11(2), (12) FS. History—New 11-2-78, Amended 8-12-85, Formerly 22T-9.03, Amended 8-11-86, Formerly 22T-4.003, Amended

60Y-5.004 Executive Director’s Investigatory Determination; Notice.

(1) Upon completion of an investigation, if a complaint has not been settled or withdrawn, the Office of Employment Investigations shall report the investigation, with recommendation, to the Office of General Counsel. The Office of General Counsel shall review the report and shall make a recommendation to the Executive Director as to whether there is reasonable cause to believe that an unlawful employment practice has occurred.

(2) If the recommendation is based upon lack of jurisdiction over the respondent or subject matter of the complaint or upon untimely filing of the complaint, the Executive Director may dismiss the complaint pursuant to subsection 60Y-5.006(3) or (11), F.A.C., provided that the investigation does not reveal any disputed issues of material

fact. The Executive Director shall issue a determination on the foregoing bases of lack of jurisdiction or untimeliness where disputed issues of material fact appear to exist.

(3) After a determination has been made by the Executive Director, the Clerk shall serve a Notice of Determination, with copies of the determination, upon the complainant and the respondent.

(4) A Notice of Determination of Reasonable Cause shall include an invitation to participate in conciliation and shall advise the complainant of the elective right to file either a Petition for Relief, pursuant to Rule 60Y-5.008, F.A.C., within 35 days of the date of determination or a civil action within one year of the date of determination. A Petition for Relief form, in blank, shall be provided to the complainant at the time of service of the notice.

(5) A Notice of Determination of No Reasonable Cause, No Jurisdiction or Untimeliness shall advise the complainant of the right to file a Petition for Relief, pursuant to Rule 60Y-5.008, F.A.C., within 35 ~~30~~ days of the date of determination ~~service of the notice~~. A form, Petition for Relief form, hereby incorporated by reference, in blank, shall be provided to the complainant at the time of service of the notice.

~~(6) A Notice of Determination shall further advise the parties of the right to request redetermination, pursuant to Rule 60Y-5.007, F.A.C., within 20 days of service of the notice. If the complainant requests redetermination, the 30 day period for filing a Petition for Relief shall be tolled until service of a Notice of Redetermination.~~

~~(6)(7) After service of a Notice of Determination, the parties named in the determination may inspect the records and documents, in the custody of the Commission, which pertain to the determination. The Executive Director may direct that a particular record, document or portion thereof be withheld from inspection by a party only when necessary for the protection of a witness or third party, or for the preservation of a trade secret.~~

Specific Authority 760.06(13) FS. Law Implemented 760.03(7), 760.06, 760.10, 760.11(2), (3), (4), (7) FS. History—New 11-2-78, Amended 6-16-83, 8-12-85, Formerly 22T-9.04, 22T-9.004, Amended \_\_\_\_\_.

#### 60Y-5.005 Conciliation.

(1) After service of a Notice of Determination of Reasonable Cause pursuant to Rule 60Y-5.004, F.A.C., the Commission Office of Employment Investigations shall endeavor to eliminate any unlawful employment practice by informal methods of conference, conciliation and persuasion.

(2) The Commission Office of Employment Investigations shall attempt to achieve a just resolution of all violations found, and to obtain agreement that the respondent will eliminate the unlawful practice and provide appropriate affirmative relief. Where such conciliation attempts are successful, the terms of the conciliation agreement shall be reduced to writing and signed by the complainant, the respondent and the Executive Director or the person designated

by the Executive Director. The original of the signed agreement shall be filed with the Clerk, and copies shall be served upon the respondent and the complainant.

~~(3)(2) A duly executed conciliation agreement shall operate as a dismissal of the complaint; however, prior to the filing of the conciliation agreement, the parties may stipulate therein to bringing the agreement before a Panel of Commissioners. The Panel in its sole discretion may adopt the conciliation agreement as a consent order.~~

(4) Conciliation has not been signed and the complaint has not been withdrawn or dismissed within the time period established for filing a Petition for Relief, the Executive Director shall dismiss the complaint.

~~(3) If, 30 days after service of a Notice of Determination of Reasonable Cause, a conciliation agreement has not been signed and the complaint has not been withdrawn or dismissed, the Executive Director shall cause a Notice of Failure of Conciliation to be served upon the complainant and the respondent. The 30 day period may be extended only by written stipulation of the complainant and the respondent or by the Office of Employment Investigations. The Executive Director or Administrator of Employment Investigations may shorten the 30 day period if it appears that conciliation will not be achieved. The Notice of Failure of Conciliation shall state that the complainant may file a Petition for Relief, pursuant to Rule 60Y-5.008, F.A.C., within 30 days of service of the notice. A form, Petition for Relief, in blank, shall be provided to the complainant at the time of service of the Notice of Failure of Conciliation.~~

~~(4) Where a Request for Redetermination is filed, pursuant to Rule 60Y-5.007, F.A.C., during the conciliation period, conciliation will be stayed until the Executive Director has acted upon the request.~~

Specific Authority 760.06(13) FS. Law Implemented 760.06, 760.10 FS. History—New 11-2-78, Amended 6-16-83, 8-29-84, 8-12-85, Formerly 22T-9.05, 22T-9.005, Amended \_\_\_\_\_.

#### 60Y-5.006 Administrative Dismissal of a Complaint.

The Executive Director, on behalf of the Commission, may dismiss a complaint upon one or more of the following grounds:

(1) The complainant has failed or refused to cooperate or has failed to appear at or fails or refuses to participate in a duly noticed fact-finding conference and after notice pursuant to subsection 60Y-5.003(5), F.A.C., has failed to duly respond or show good cause for such nonappearance or nonparticipation;

(2) The complaint has been resolved by negotiated settlement pursuant to subsection 60Y-5.003(10), F.A.C.;

(3) The complaint has not been timely filed with the Commission;

(4) After service of Notice of Determination of Reasonable Cause, No Reasonable Cause, or No Jurisdiction ~~or Untimeliness~~, the complainant has failed to file a Request for

~~Redetermination pursuant to Rule 60Y-5.007, F.A.C., or has failed to file a Petition for Relief pursuant to Rule 60Y-5.008, F.A.C.;~~

~~(5) Anytime after the expiration of 180 days from the date of filing the complaint when a Determination of Reasonable Cause or No Reasonable Cause has not been issued by the Commission and after the Complainant files notice of a planned, or files a, civil action in a court of competent jurisdiction, after service of a Notice of Redetermination of No Reasonable Cause, No Jurisdiction or Untimeliness, the complainant has failed to file a Petition for Relief pursuant to Rule 60Y-5.008, F.A.C.;~~

~~(6) after service of a Notice of Failure of Conciliation, the complainant has failed to file a Petition for Relief pursuant to 60Y-5.008, F.A.C.;~~

~~(6)(7) The the complainant cannot be located after reasonable efforts to locate have been made and there is no response from the complainant within 30 days after notice was sent by certified mail to the complainant's last known address;~~

~~(7)(8) An an agreement to submit to arbitration has been filed pursuant to Rule 60Y-5.009, F.A.C.;~~

~~(8)(9) The the complainant has voluntarily dismissed the petition for relief pursuant to subsection 60Y-5.008(7)(9), F.A.C.;~~

~~(9)(10) The the complainant has voluntarily withdrawn the complaint, including during the period from the issuance of the investigative determination through the final date in which a petition for relief from an unlawful employment practice may be filed; or~~

~~(10)(11) There there is no jurisdiction over the respondent or subject matter of the complaint.~~

Specific Authority 760.06(13) FS. Law Implemented 20.05, 760.06, 760.10 FS. History--New 11-2-78, Amended 6-16-83, 8-29-84, 8-12-85, Formerly 22T-9.06, Amended 8-11-86, Formerly 22T-9.006, Amended \_\_\_\_\_.

60Y-5.008 Petition for Relief from an Unlawful Employment Practice.

(1) Petition. A complainant may file a Petition for Relief from an Unlawful Employment Practice within 35 ~~30~~ days of ~~the Date service of a Notice of Failure of Conciliation, a Notice of Determination of Reasonable Cause, No Reasonable Cause, a Notice of Determination of No Jurisdiction or a Notice of Determination of Untimeliness; or where redetermination has been requested, a Notice of Redetermination of No Reasonable Cause, a Notice of Redetermination of No Jurisdiction or a Notice of Redetermination of Untimeliness. Notwithstanding the provisions of subsection 60Y-4.004(2) and Rule 60Y-4.005, F.A.C., a~~ A complainant who is not represented by an attorney may file a Petition for Relief without copies or proof of service, and the Clerk shall prepare copies and serve them upon all other parties.

(2) For good cause shown, the Chairperson may grant an extension of time to file the Petition for Relief from an Unlawful Employment Practice, provided the motion for extension of time is filed within the 35 ~~30~~-day period prescribed by subsection 60Y-5.008(1), F.A.C.

(3) Procedures. Petitions for Relief, and proceedings thereupon, are governed by the provisions of Chapters 28-106 and ~~28-106 and~~ 60Y-4, Florida Administrative Code, except as otherwise provided by this section.

(4) Class Allegations.

(a) The petition may include an allegation that the respondent has acted or refused to act on grounds generally applicable to a class, in which case the petition shall also include a description of the class of persons allegedly affected.

~~(5) Answer.~~

~~(a) Each respondent shall file an answer with the Commission within 20 days of service of the petition.~~

~~(b) The answer shall include a specific admission, denial, or explanation of each allegation of the petition; or if the respondent is without knowledge thereof, it shall so state, in which case such statement shall operate as a denial. Admissions or denials may be made to all or part of a particular allegation.~~

~~(c) The answer shall include a specific, detailed statement of any affirmative defense. Failure to plead an affirmative defense shall constitute a waiver of that defense.~~

~~(d) If a respondent fails to file a timely answer, such failure shall be deemed to constitute an admission of the material facts alleged in the petition. Any allegation within the petition which is not denied in the answer shall be deemed admitted.~~

~~(e) The filing of a motion to dismiss shall not toll the time for filing an answer.~~

~~(6) Notice to Commissioners or Members of a Panel. The Clerk shall serve notice of the petition upon all Commissioners unless a Panel has been designated by the Chairperson. If a Panel has been designated, the Clerk shall serve notice upon the members of that Panel.~~

~~(b)(7) Certification of Class.~~ If the petition contains class allegations, the administrative law judge hearing officer, on motion of a party, may include in the recommended order a proposed certification of the class if (a) the class is so numerous that joinder of all members is impractical, (b) there are questions of law or fact common to the class, (c) the claims of the petitioner are typical of the claims of the class, and (d) the petitioner will fairly and adequately protect the interests of the class. If the hearing officer proposes that a class be certified, the hearing officer may also include in the recommended order proposed findings and conclusions concerning the respondent's liability to the class. However, the hearing officer shall not initially consider other class issues unless it is determined that such consideration will not cause undue delay to the completion of the hearing.



(5)(8) Final Orders; Relief; Remand. Upon consideration of a recommended order, the Commission or Panel may order that the petition and complaint be dismissed or may determine that an unlawful employment practice has occurred. In the event the Commission or Panel determines that an unlawful employment practice has occurred, it shall issue an order prohibiting the practice and providing relief from the effects of the practice. If the Commission or Panel finds that the proceeding is properly maintained as a class proceeding, the order of the Commission or Panel may direct a remand to the hearing officer of any class issue which the Commission or Panel has not determined. The order of the Commission or Panel shall constitute final agency action as to all matters except those which are remanded to the hearing officer.

(6)(9) Proceedings After Remand. An order of remand, pursuant to subsection (5)(7), or a subsequent order of the hearing officer, may direct that notice of pendency of the proceeding be served upon members of the class. Such an order shall specify the manner of service of the notice and the person responsible for service. Any member of the class who does not, within 15 days of service of the notice of pendency or within such other time as the order may provide, file with the Commission an election of non- participation in the class shall be bound by an order of the Commission or Panel made subsequent to the giving of such notice.

(7)(10) Voluntary Dismissal. A Petition for Relief may be dismissed by the Petitioner without order of the hearing officer, Panel of Commissioners or Commission (i) by serving, or during hearing, by stating on the record, a notice of dismissal at any time before the issuance of a recommended order ~~Commission takes final action~~ or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. The dismissal operates with prejudice with respect to Petitioner’s Chapter 760, F.S., administrative remedies and constitutes final agency action.

Specific Authority 760.06(13) FS. Law Implemented 760.06, 760.10 FS. History—New 11-2-78, Amended 2-4-82, 6-16-83, 8-29-84, 8-12-85, Formerly 22T-9.08, 22T-9.008, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: William James Tait, Jr.

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Cecil Howard

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 18, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 1, 2003

**DEPARTMENT OF MANAGEMENT SERVICES**

**Commission on Human Relations**

RULE TITLES:	RULE NOS.:
Complaints	60Y-7.001
Answer	60Y-7.002
Investigation of Complaints	60Y-7.004
Conciliation	60Y-7.005

PURPOSE AND EFFECT: The rule chapter provides for Commission proceedings to receive, investigate and act upon complaints of discriminatory housing practices.

SUMMARY: Amendments have updated rule sections to conform to current procedures and statutory requirements, including the adoption of the Uniform Rules of Procedure, and clarifying when a complaint is filed, and under what conditions, amendments, withdrawals and dismissals of complaints may be made.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 120.53, 760.06(12), 760.31(5) FS.

LAW IMPLEMENTED: 120.53, 760.20-760.37 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m. (EDT), Wednesday, September 24, 2003

PLACE: The Commission’s Main Conference Room, 2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Florida Commission on Human Relations, Attn: Jim Tait, Staff Attorney, 2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301 or (850)488-7082, Ext. 1071

THE FULL TEXT OF THE PROPOSED RULES IS:

60Y-7.001 Complaints.

(1) Who may file. A complaint may be filed by any person who claims to have been injured by a discriminatory housing practice or any person who believes that he will be injured by a discriminatory housing practice that is about to occur.

(2) Time for Filing. A complaint may be filed at any time within one year of the occurrence of the alleged discriminatory housing practice. If the alleged discriminatory housing practice is of a continuing nature, the date of the occurrence may be any date subsequent to the commencement of the discriminatory housing practice up to and including the date on which it shall have ceased.

(3) Place and Date of Filing. A complaint shall be filed at the office of the Commission. The date of filing shall be the date of actual receipt of the complaint by the Clerk or other agent of the Commission. Any document received by the Clerk or other agent of the Commission after 5:00 p.m. (Eastern Time) shall be filed as of 8:00 a.m. on the next regular business day.

(4) Form. The complaint must be in writing and shall be signed by the complainant. The complaint shall be verified.

## (5) Contents.

(a) The complaint should contain the following information:

1. The name, address and telephone number of the person filing the complaint;

2. The name, address and telephone number of the respondent;

3. A clear and concise statement of the facts, including pertinent dates, constituting the discriminatory housing practice;

4. If known, a statement disclosing whether proceedings involving the alleged discriminatory housing practice have been commenced before a Federal, State or local agency charged with enforcement of fair housing practice laws and, if so, the date of such commencement and the name of the agency.

(b) Notwithstanding the provision of paragraph (a) of this subsection, a complaint is sufficient if it is in writing under oath or affirmation and is sufficiently precise to identify the parties and to describe generally the action or practice complained of.

## (6) Amendments.

(a) A complaint may be reasonably and fairly amended within 60 days after filing and, thereafter, for good cause with the consent of the Executive Director at any time.

(b) A complaint may be amended to cure technical defects, or omissions, including verification, or to clarify and amplify allegations made therein. Such amendments and amendments which describe an additional discriminatory housing practice relating to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first received.

(c) An amendment adding or changing a respondent will relate back to the date the complaint was first received if, within the period provided by subsection (2) of this section, the new respondent (i) has received such notice of the filing of the complaint as is sufficient to avoid prejudice in a defense on the merits, and (ii) knew or should have known that, but for a mistake concerning identity of the proper respondent, the complaint would have been filed against the new respondent.

(7) Withdrawal. A complaint may be withdrawn by a complainant at any time; however, following the issuance of a Notice of Determination, withdrawal may be made only with the consent of the Executive Director.

(8)(a)1. Notice to Respondent. When it is determined that a complaint is complete and has been timely filed, the Executive Director shall cause notice of the filing and a copy of the complaint to be served upon the respondent. Notice should be served within 10 days of the date of filing. An amendment likewise shall be served upon the respondent.

2. The notice shall advise the respondent of relevant procedural rights and obligations by referencing, for example, Sections 760.20-760.37, F.S., and Chapters 60Y-6, 60Y-7, 60Y-8, and 60Y-9, F.A.C..

3. The notice shall advise the respondent of the complainant's right to commence a civil action under Section 760.35, F.S., in court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. If filed in federal court under federal law, the notice will state that the computation of this two-year period excludes any time during which the matter is pending for administrative relief with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state, however, that the time period includes the time during which an action arising from a breach of a conciliation agreement under Section 760.36, F.S., is pending.

4. The notice shall advise the respondent that retaliation against any person because he or she made a complaint or testified, assisted or participated in an investigation or conciliation under Florida's Fair Housing Act is a discriminatory housing practice that is prohibited.

## (b) Notice to Complainant.

1. The Commission shall serve notice upon the complainant acknowledging the filing of the complaint, advising the complainant of the time limits set forth in Rule 60Y-7.004, F.A.C.

2. The Commission shall serve notice upon the complainant advising the complainant of the statutory remedies and choice of forums by referencing Sections 760.34, 760.35 and 760.37, F.S., and by informing the complainant that Section 760.34, F.S., is neither an obstacle nor a prerequisite to commencement of a separate civil action on his own under Section 760.35, F.S.

3. The notice shall advise the complainant of his right to commence a civil action under Section 760.35, F.S., in a court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that, if filing in federal court under federal law, the computation of this two-year period excludes any time during which the matter is pending for administrative relief with respect to a complaint or charge, based on the alleged discriminatory housing practice. The notice will also state, however, that the time period includes the time during which an action arising from a breach of a conciliation agreement under Section 760.36, F.S., is pending.

4. The notice shall advise the complainant that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation or conciliation under Florida's Fair Housing Act is a discriminatory housing practice that is prohibited.

5. Upon an investigatory determination of reasonable cause, the Commission shall serve notice upon the complainant advising the complainant that at the election of the complainant, the Attorney General shall bring an action in the name of the state on behalf of the complainant to enforce the provisions of Sections 760.20-760.37, F.S.

6. The complainant must make his election within 20 days after receipt of the notice. If an election is made for a civil action by the Attorney General, then a civil action shall be commenced and maintained within a reasonable time from the date of the election.

7. In addition, complainant shall be advised that, as an alternative to the Attorney General bringing an action, the Commission will petition for an administrative hearing and seek relief for complainant under Section 120.57, F.S., and prosecute the matter to a final agency order, which may include defending against an appeal by the respondent.

8. At all times, however, Complainant retains the right to seek administrative or judicial relief without governmental assistance.

(9) Maintenance of Records. Once a complaint has been served on the respondent, the respondent shall preserve all records and other evidence which may pertain to the complaint until the matter has been finally determined.

Specific Authority 760.31(5) FS. Law Implemented 760.34 FS. History--New 1-25-90, Amended 11-20-91, Formerly 22T-21.001, Amended 9-17-98.

60Y-7.002 Answer.

(1) Respondent ~~may shall~~ file an answer to the complaint within 20 days of the date of notice of the filing. The answer shall be verified sworn to or affirmed before a notary public, or other person duly authorized by law to administer oaths and take acknowledgements.

(2) The answer may be reasonably and fairly amended at any time prior to the issuance of a Notice of Determination.

Specific Authority 120.53, 760.31(5) FS. Law Implemented 120.53, 760.34 FS. History--New 1-25-90, Formerly 22T-21.002. Amended \_\_\_\_\_.

60Y-7.004 Investigation of Complaints.

(1)(a) By whom. The investigation of the complaints shall be made by the Office of ~~Community Relations and Housing Investigations~~ or by any other person Commission employee designated by the Executive Director. The Executive Director may utilize services of other public agencies, state, local or federal, which are charged with the administration of fair housing practice laws, and may utilize the information gathered by such.

(b) Investigatory proceedings shall commence before the end of the 30th day after receipt of the complaint.

(2) Statement of Complainant. During the course of an investigation, the complainant may be required to provide a statement which includes:

(a) A statement of each particular harm which the aggrieved person has suffered and the date on which each harm occurred.

(b) For each harm, a statement specifying the act, policy or practice which is alleged to be unlawful.

(c) For each act, policy or practice alleged to have harmed the aggrieved person, a statement of the facts which lead the complainant to believe that the act, policy or practice is discriminatory.

(3) Requests for Information. During the course of an investigation, the Office of ~~Community Relations and Housing Investigations~~ may request of any person information concerning the facts and circumstances of the complaint. Requests for information may be made in the following manner:

(a) Oral interviews;

(b) Written interrogatories;

(c) Requests for production of documents;

(d) Requests for entry upon land for inspection and other purposes;

(e) Requests for a written statement or affidavit.

(4) Failure to Cooperate – Complainant. Where the complainant fails to provide a necessary statement, fails or refuses to appear or be available for interviews or meetings, fails or refuses to provide necessary information requested by the Office of ~~Community Relations and Housing Investigations~~ pursuant to this section or otherwise refuses to cooperate to the extent that the Office of Community Relations and Housing Investigations is unable to resolve the complaint, and where after notice the complainant has failed to duly respond to the Office of ~~Community Relations and Housing Investigations~~, the Executive Director may dismiss the complaint based upon complainant’s failure to cooperate.

(5) Subpoena. The Commission and the respondent may compel access to or the production of documents or the appearance of persons under the following conditions:

(a) The Executive Director may issue subpoenas to compel access to or the production of documents or the appearance of such persons as are reasonably necessary for the investigation.

(b) The respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Commission to the same extent and subject to the same limitations as subpoenas issued by the Commission on its own initiative.

(c) Each subpoena shall state the name and address of the issuer, identify the person subpoenaed, and identify the person to whom and the place, date and time at which it is returnable.

(d) Within 5 days after service of a subpoena upon any person, such person may petition the Executive Director to revoke or modify the subpoena. The Executive Director shall grant the petition if he finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any

matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, or that compliance would be unduly onerous or for other good reason.

(e) In case of refusal to obey a subpoena, the Executive Director or the person at whose request the subpoena was issued may petition for its enforcement in the circuit court for the county in which the person to whom the subpoena was addressed resides, was served or transacts business.

~~(f) Witnesses summoned by subpoena of the Commission shall be entitled to the same witness and mileage fees as are witnesses in proceedings in court. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by the respondent.~~

(6) Access to Files During Investigation. Information obtained during the investigation of a complaint shall be disclosed only to the complainant, respondent or their authorized representative, or to a witness, only when disclosure is deemed necessary for the investigation or for securing appropriate disposition of the complaint.

(7) Negotiated Settlement. During the mediation and/or investigation processes, the ~~Commission Office of Community Relations and Housing Investigations~~ shall endeavor to encourage the complainant and the respondent to settle the complaint on mutually agreeable terms. If the settlement is achieved by a Negotiated Settlement Agreement, its terms shall be reduced to writing and signed and dated by the complainant and the respondent. If a settlement is achieved as a Withdrawal with Settlement, only the complainant need sign and date. A copy of the agreement shall be filed with the Clerk. A complaint which has been settled may be dismissed by the Executive Director upon such terms and at such time as may be provided in the written agreement subject to compliance.

(8)(a) Within 100 days after receiving a complaint or within 100 days after the expiration of any period of reference under Rule 60Y-7.003, F.A.C., the Commission shall investigate the complaint and give notice in writing to the person aggrieved whether the investigatory determination is "No Cause" or "Cause." ~~If the investigatory determination is "Cause," the Commission shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion.~~

(b) If the Commission is unable to complete its investigation within 100 days, it shall notify the complainant and respondent in writing of the reasons for not doing so.

(9) If the investigatory determination is "No Cause," the Executive Director shall issue a "Notice of Determination (No Cause)" and serve it upon the complainant and the respondent. The "Notice of Determination (No Cause)" shall state that the complainant may request an administrative hearing ~~be conducted on the claim~~, by filing a Petition for Relief from a Discriminatory Housing Practice within 30 days of service of

the notice. A form, Petition for Relief, in blank, shall be provided to the complainant at the time of service of the "Notice of Determination (No Cause)".

(10) If the investigatory determination is "Cause," the Executive Director shall issue a "Notice of Determination (Cause)" and serve it upon the complainant and the respondent. The notice shall inform the complainant of the options and mandated times for action outlined in paragraph 60Y-7.001(8)(b). Concurrently, the Commission may also attempt to conciliate the case pursuant to Rule 60Y-7.005, F.A.C.

~~(11)~~(10) The Commission will make final administrative disposition of a complaint within 100 days ~~one year~~ of the date of receipt of the complaint, unless it is impracticable to do so. If the Commission is unable to do so, it shall notify the complainant and respondent in writing of the reasons for not doing so.

Specific Authority 120.53, 760.31(5) FS. Law Implemented 120.53, 760.34 FS. History—New 1-25-90, Amended 11-20-91, Formerly 22T-21.004, Amended 11-18-92, \_\_\_\_\_.

60Y-7.005 Conciliation.

(1) If the Commission decides to resolve the complaint, it shall endeavor to eliminate any discriminatory housing practice by informal methods of conference, conciliation and persuasion. Insofar as possible, conciliation meetings shall be held in the city or other locality where the discriminatory housing practice allegedly occurred.

(2) The Commission shall attempt to achieve a just resolution of all violations found, and to obtain agreement that the respondent will eliminate the discriminatory housing practice and provide appropriate affirmative relief. Where such conciliation attempts are successful, the terms of the conciliation agreement shall be reduced to writing and signed by the complainant, the respondent and the Executive Director or person designated by the Executive Director. The original of the signed agreement shall be filed with the Clerk, and copies shall be served upon the respondent and the complainant.

(3) A duly executed conciliation agreement shall operate as a dismissal of the complaint; however, prior to the filing of the conciliation agreement, the parties may stipulate therein to bringing the agreement before a Panel of Commissioners. The Panel in its discretion may adopt the conciliation agreement as a consent order.

(4) If a conciliation agreement has not been signed and the complaint has not been withdrawn or dismissed within the time period established for filing a Petition for Relief, the Executive Director shall dismiss the complaint, 30 days after service of a "Notice of Determination (Cause)" a conciliation agreement has not been signed and the complaint has not been withdrawn or dismissed, the Executive Director shall cause a Notice of Failure of Conciliation to be served upon the complainant and the respondent. The 30 day period may be extended only by written stipulation of the complainant and the respondent or by

~~the Executive Director. The Executive Director may shorten the 30-day period if it appears that conciliation will not be achieved.~~

~~(5) The Notice of Failure of Conciliation shall state that by filing a Petition for Relief from a Discriminatory Housing Practice within 30 days of service of the notice, the complainant may request that an administrative hearing be conducted on the claim. A form, Petition for Relief, in blank, shall be provided to the complainant at the time of service of the Notice of Failure of Conciliation. The Notice of Failure of Conciliation shall further advise that, at the request of the complainant, the Attorney General shall bring a civil action in the name of the State on behalf of the complainant to enforce the provisions of the Fair Housing Act.~~

Specific Authority 120.53, 760.31(5) FS. Law Implemented 120.53, 760.34 FS. History—New 1-25-90, Formerly 22T-21.005, Amended 11-18-92,

NAME OF PERSON ORIGINATING PROPOSED RULE:  
William James Tait, Jr.  
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Cecil Howard  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 18, 2003  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 1, 2003

**DEPARTMENT OF MANAGEMENT SERVICES**

**Commission on Human Relations**

RULE TITLE: Petition for Relief from a Discriminatory Housing Practice

RULE NO.:

60Y-8.001

PURPOSE AND EFFECT: The rule section provides for Petitions for Relief from a discriminatory housing practice.

SUMMARY: Amendments have updated the section to reflect the adoption of the Uniform Rules of Procedure and to current commission practices.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 120.53, 760.06 (12), 760.31(5) FS.

LAW IMPLEMENTED: 120.53, 760.34, 760.35 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m. (EDT), Wednesday, September 24, 2003

PLACE: The Commission’s Main Conference Room, 2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Florida Commission on Human Relations, Attn.: Jim Tait, Staff Attorney, 2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301, (850)488-7082, Ext. 1071

THE FULL TEXT OF THE PROPOSED RULE IS:

60Y-8.001 Petition for Relief from a Discriminatory Housing Practice.

(1) Petition. A complainant may file a Petition for Relief from a Discriminatory Housing Practice within 30 days of service of a Notice of Determination (No Cause) or Notice of Determination (Cause) Failure of Conciliation. The Executive Director on behalf of the Commission may institute an action by filing ~~file~~ a Petition for Relief from a Discriminatory Housing Practice upon determining there is reasonable cause to believe that a discriminatory practice has occurred and has been unable to obtain voluntary compliance with Sections 760.20-760.37, F.S. within 30 days of Services of a Notice of Failure of Conciliation. The Clerk shall prepare copies of the petition and serve them upon all other parties named in the petition by certified mail.

(2) For good cause shown, the Chairperson may grant an extension of time to the complainant to file the Petition for Relief, provided the motion for extension of time is filed within the 30-day period.

(3) Procedures. Petitions for Relief, and proceedings thereupon, are governed by the provisions of Chapters 28-106 and 60Y-4, F.A.C., except as otherwise provided by this section.

~~(4) Answer.~~

~~(a) Each respondent shall file an answer with the Commission within 20 days of service of the petition.~~

~~(b) The answer shall include a specific admission, denial, or explanation of each allegation of the petition; or if the respondent is without knowledge thereof, it shall so state, in which case such statement shall operate as a denial. Admissions or denials may be made to all or part of a particular allegation.~~

~~(c) The answer shall include a specific, detailed statement of any affirmative defense. Failure to plead an affirmative defense shall constitute a waiver of that defense.~~

~~(d) If a respondent fails to file a timely answer, such failure shall be deemed to constitute an admission of the material facts alleged in the petition. Any allegation within the petition which is not denied in the answer shall be deemed admitted.~~

~~(e) The filing of a motion to dismiss shall not toll the time for filing an answer.~~

~~(5) Notice to Commissioners or Members of a Panel. The Clerk shall serve notice of the petition upon all Commissioners unless a panel has been designated by the Chairperson. If a Panel has been designated, the Clerk shall serve notice upon the members of that Panel.~~

~~(4)(6) Final Orders; Relief; Remand. Upon consideration of a recommended order, the Commission or Panel may order that the petition and complaint be dismissed or may determine that a discriminatory housing practice has occurred. In the event the Commission or Panel determines that a discriminatory housing practice has occurred, it shall issue an order prohibiting the practice and providing relief from the effects of the practice, including quantifiable damages and reasonable attorney's fees and costs. The order of the Commission or Panel shall be final as to all matters except those which are remanded to the Administrative Law Judge Hearing Officer.~~

~~(5)(7) Voluntary Dismissal. A Petition for Relief filed by a complainant may be dismissed by the complainant without order of the Administrative Law Judge hearing office, Panel of Commissioners or Commission (i) by serving, or during hearing, by stating on the record, a notice of dismissal at any time before the issuance of a recommended order the Commission takes final action or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. The dismissal operates with prejudice with respect to Petitioner's Chapter 760, F.S. complainant's administrative remedies and constitutes final agency action.~~

Specific Authority 120.53, 760.31(5) FS. Law Implemented 120.53, 760.34, 760.35 FS. History--New 1-25-90, Formerly 22T-22.001, Amended 11-18-92, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
William James Tait, Jr.  
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Cecil Howard  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 18, 2003  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 1, 2003

**DEPARTMENT OF MANAGEMENT SERVICES**

**Commission on Human Relations**

RULE TITLES: RULE NOS.:  
Purpose 60Y-9.001  
Housing Exemption for Persons 55 Years of Age or Older 60Y-9.005  
Housing for Older Persons Registration and Documentation 60Y-9.007  
PURPOSE AND EFFECT: The rule chapter provides for Commission's implementation of the provisions of Section 760.29(4), F.S., relating to housing for older persons.

SUMMARY: Amendments are proposed to correct a statutory reference, adopt a federal rule, and correct the address of the Commission and its powers to impose an administrative fine.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 760.06(12), 760.31(5) FS.

LAW IMPLEMENTED: 760.29 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m. (EDT), Wednesday, September 24, 2003

PLACE: The Commission's Main Conference Room, 2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Florida Commission on Human Relations, Attn.: Jim Tait, Staff Attorney, 2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301 or call (850)488-7082, Ext. 1071

THE FULL TEXT OF THE PROPOSED RULES IS:

60Y-9.001 Purpose.

The purpose of the housing for older persons exemption to the general prohibition against discrimination because of familial status is to protect families with children from discrimination in housing without unfairly limited housing choices for older persons. This Chapter, 60Y-9, F.A.C., clarifies requirements related to housing for older persons pursuant to Section 760.29(4) 760.31(5), F.S.

Specific Authority 760.31(5) FS. Law Implemented 760.29(4), 760.31(5) FS. History--New 8-15-90. Formerly 22T-23.001, Amended \_\_\_\_\_.

60Y-9.005 Housing Exemption for Persons 55 Years of Age or Older.

(1) The provisions in Sections 760.20-760.37, F.S., relating to familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the housing complies with 42 C.F.R. Part 100 as published in the Federal Register on Friday, April 2, 1999. ~~satisfies the requirements of this section:~~

~~(a) The housing facility has significant facilities and services specifically designed to meet the physical or social needs of older persons. "Significant facilities and services specifically designed to meet the physical or social needs of older persons" include, but are not limited to, social and recreational programs, continuing education, information and counseling, recreational, homemaker, outside maintenance and referral services, and accessible physical environment, emergency and preventive health care programs, congregate~~

dining facilities, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them. The housing facility need not have all of these features to qualify for the exemption under this subsection.

~~(b) It is not practicable to provide significant facilities and services designed to meet the physical or social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons. In order to satisfy this section, the owner or manager of the housing facility must demonstrate through credible and objective evidence that the provision of significant facilities and services designed to meet the physical or social needs of older persons would result in depriving older persons in the relevant geographic area of needed and desired housing.~~

~~(2) The following factors, among others, are relevant in meeting the requirements of this section:~~

~~(a) Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or by some other entity. Demonstrating that such services and facilities are expensive to provide is not alone sufficient to demonstrate that the provision of such services is not practicable.~~

~~(b) The amount of rent charged, if the dwellings are rented, or the price of the dwellings, if they are offered for sale.~~

~~(c) The income range of the residents of the housing facility.~~

~~(d) The demand for housing for older persons in the relevant geographic area.~~

~~(e) The range of housing choices for older persons within the relevant geographic area.~~

~~(f) The availability of other similarly priced housing for older persons in the relevant geographic area. If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area, then the housing facility does not meet the requirements of this section.~~

~~(g) The vacancy rate of the housing facility.~~

~~(2)(3) Housing intended and operated for occupancy by at least one person 55 years of age or older per unit means:~~

~~(a) Housing for which at least 80% of the units in the housing facility are occupied by at least one person 55 years of age or older per unit except that a newly constructed housing facility for first occupancy after October 1, 1989, need not comply with this subsection until 25% of the units in the facility are occupied; and~~

~~(b) The owner or manager of the housing facility publishes and adheres to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. The following factors, among others,~~

are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of this subsection:

1. The manner in which the housing facility is described to prospective residents.

2. The nature of any advertising designed to attract prospective residents.

3. Age verification procedures.

4. Lease provisions.

5. Written rules and regulations.

6. Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

~~(3)(4) Housing satisfies the requirements of this section even though:~~

~~(a) Under 80% of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that are occupied by new occupants on or after October 1, 1989, are occupied by at least one person 55 years of age or older.~~

~~(b) There are unoccupied units, provided that at least 80% of such units are reserved for occupancy by at least one person 55 years of age or over.~~

~~(4)(5) Housing satisfies the requirements of this section even though a unit is occupied by employees of the housing provider (and family members residing in the same unit) who are under 55 years of age, provided they perform substantial duties directly related to the management or maintenance of the housing.~~

Specific Authority 760.31(5) FS. Law Implemented 760.29(4), 760.31(5) FS. History—New 8-15-90, Formerly 22T-23.005, Amended.

60Y-9.007 Housing for Older Persons Registration and Documentation.

(1) Facilities or communities claiming an exemption under Section 760.29(4), F.S., shall register with the commission and submit the statutorily required documentation to the commission in the manner prescribed by the commission.

(2) The registration and documentation letter shall contain in bold letters on the face of the envelope the words "Registration for Housing for Older Persons," and provide the date of mailing.

(3) The registration and documentation shall be submitted biennially on the first day of the month, or up to seven days thereafter, of the anniversary of the initial registration.

(4) The information in the commission's registry is a public record. The information shall also be included in the commission's main website at "<http://fchr.info.state.fl.us>."

(5) Failure to comply with the requirements of Section 760.29(2)(e), F.S., shall not disqualify a facility or community that otherwise qualified for the exemption provided in Section 760.29, F.S.

(6) The registration fee must be included within the completed registration letter in order to constitute a valid registration. The biennial registration fee is \$20.00. It shall be sent to: Florida Commission on Human Relations at its address provided in Rule 60Y-2.005, F.A.C., Post Office Box 3388, Tallahassee, Florida 32315-3388.

(7) ~~The Commission A community or facility~~ may impose an administrative fine not to exceed \$500 on a facility or community that knowingly submits false information in the documentation required by this paragraph. Such fine shall be deposited in the commission’s trust fund.”

Specific Authority 760.29(5) FS. Law Implemented 760.29(4)(e) FS. History–New 2-11-02, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
William James Tait, Jr.  
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Cecil Howard  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 18, 2003  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 1, 2003

**DEPARTMENT OF MANAGEMENT SERVICES**

**Commission on Human Relations**

RULE CHAPTER TITLE: Prohibition Against Retaliating  
Against Employees who Disclose Information to an Appropriate Agency Under the “Whistle-Blower’s Act”  
RULE CHAPTER NO.: 60Y-11  
RULE TITLES: RULE NOS.:  
Purpose 60Y-11.001  
Covered Entities and Employees 60Y-11.002  
Who May File a Complaint; Confidentiality 60Y-11.003  
Investigatory Process 60Y-11.004  
Relationship of Other Rules 60Y-11.005

PURPOSE AND EFFECT: The proposed rule chapter provides for Commission’s implementation of the provisions of Sections 112.3187-112.31895, F.S., making it unlawful for any agency or independent contractor of an agency to take retaliatory action against an employee who reports violations of law to an appropriate agency under Sections 112.3187-112.31895, F.S.; the “Whistle-blower’s Act.”

SUMMARY: The proposed rule chapter provides the Commission’s procedures for handling complaints alleging retaliatory action against an employee who reports violations of law to an appropriate agency under Sections 112.3187-112.31895, F.S.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 760.06(12) FS.

LAW IMPLEMENTED: 112.3187-.31895 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m. (EDT), Wednesday, September 24, 2003

PLACE: The Commission’s Main Conference Room, 2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Florida Commission on Human Relations, Attn: Jim Tait, Staff Attorney, 2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301 or call (850)488-7082, Ext. 1071

THE FULL TEXT OF THE PROPOSED RULES IS:

60Y-11.001 Purpose.

These rules implement the statutory provisions which make it unlawful for any agency or independent contractor to take retaliatory action against an employee who reports to an appropriate agency violations of law on the part of a public employer or independent contractor under Sections 112.3187-112.31895, inclusive, F.S.; also known as the “Whistle-blower’s Act.” The Florida Whistle-blower’s Act authorizes the Commission on Human Relations to investigate complaints of retaliation against state employees who disclosed information pursuant to the “Whistle-blower’s Act” and provides for relief by administrative proceeding or civil action in court.

Specific Authority 120.54, 760.06(12) FS. Law Implemented 112.3187-.31895 FS. History–New \_\_\_\_\_.

60Y-11.002 Covered Entities and Employees.

State agencies, as defined in Section 216.011, F.S., or an independent contractor under contract to a state agency, and their employees.

Specific Authority 120.54, 760.06(12) FS. Law Implemented 112.3187-.31895 FS. History–New \_\_\_\_\_.

60Y-11.003 Who May File a Complaint; Confidentiality.

(1) Any person aggrieved by a violation of Section 112.3187, F.S., may file a complaint with the Commission within 60 days of the alleged violation. The complaint.

(2) All complaints filed with the Commission and all records and documents in the custody of the Commission which relate to and identify a particular person, including but not limited to, a complainant, state agency or covered independent contractor shall be confidential and shall not be disclosed by the Commission, except to the parties or in the



course of a hearing or proceeding under Section 112.3187, F.S. Disclosure is authorized to any other agency of the state or any other unit of government of the state that has jurisdiction of the subject matter of the complaint or that has legal authority to investigate the complaint.

Specific Authority 120.54, 760.06(12) FS. Law Implemented 112.3187-.31895 FS. History–New \_\_\_\_\_

60Y-11.004 Investigatory Process.

(1) Within three (3) working days of a complaint being filed, the Commission shall acknowledge receipt of the complaint and send a copy of the complaint and any other preliminary information available concerning the disclosure of information under Section 112.3187, F.S., to the other parties named in Section 112.31895(1)(a), F.S. The other party shall also acknowledge receipt of such copies to the complainant within 15 days.

(2) Within 15 days of the date the complaint was received, the Commission shall review the information and determine whether temporary reinstatement is appropriate under Section 112.3187(9)(f), F.S. If it so determines, the Commission shall apply for an expedited order from the appropriate agency or circuit court for reinstatement pending issuance of the final order on the complaint.

(3) If the Commission determines that reasonable grounds exist to believe that a prohibited action has occurred, is occurring, or is to be taken, it may request the agency or circuit court to order a stay of any personnel action for 45 days which, upon request, may be extended for appropriate periods of time. The Commission shall further report its determination together with any findings or recommendations, including corrective action to be taken, to the agency head and may report such to the Governor and Comptroller. If, after 20 days, the agency does not implement the recommended corrective action, the Commission shall terminate the investigation. If the Commission finds, in consultation with the complainant, that the agency has implemented the corrective action, the Commission shall file such finding with the agency head, together with any written comments that the complainant provides, and terminate the investigation.

(4) Within 90 days of the date the complaint was received, the Commission shall provide the agency head and the Complainant with a fact-finding report that may include recommendations to the parties or proposed resolution of the complaint. The Commission shall then proceed to attempt to conciliate the complaint.

(5) If the Commission is unable to conciliate a complaint within 60 days of the issuance of the fact-finding report and its receipt by the parties, or if the Commission finds there are no reasonable grounds to believe that a prohibited personnel action has occurred, is occurring or is to be taken, the Commission shall terminate the investigation.

Specific Authority 120.54, 760.06(12) FS. Law Implemented 112.3187-.31895 FS. History–New \_\_\_\_\_

60Y-11.005 Relationship of Other Rules.

Other rules adopted by the Commission, namely Chapters 60Y-3, 60Y-4 and 60Y-5, F.A.C., shall be the rules governing a proceeding under this chapter to the extent that such other rules do not contradict a specific provision herein.

Specific Authority 120.54, 760.06(12) FS. Law Implemented 112.3187-.31895 FS. History–New \_\_\_\_\_

NAME OF PERSON ORIGINATING PROPOSED RULE:  
William James Tait, Jr.

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Cecil Howard

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 18, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 1, 2003

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Division of Pari-Mutuel Wagering**

RULE TITLE: Daily Three Pool  
RULE NO.: 61D-7.010

PURPOSE AND EFFECT: The purpose and effect of the proposed rule will be to implement and interpret Florida Statutes which relate to the sale of tickets or other evidences showing an interest in or contribution to a pari-mutuel pool pursuant to Section 550.155(1), Florida Statutes.

SUMMARY: This proposed rule implements Florida Statutes necessary for the appropriate calculation of the Daily Three Pool under Rule 61D-7.010, Florida Administrative Code.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 550.0251(3),(7), 550.155(1) FS.

LAW IMPLEMENTED: 550.0251, 550.155(1) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 10:00 a.m. – 4:00 p.m., October 1, 2003

PLACE: Florida Department of Business and Professional Regulation, Northwood Centre, Board Room, 1940 N. Monroe Street, Tallahassee, Florida 32399

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this hearing is asked to advise the Department at least 5 calendar days before the hearing by contacting: Mary Polombo, (850)413-0750. If you are hearing or speech

impaired, please contact the agency using the Florida Dual Party Relay System by calling 1(800)955-8770 (Voice) or 1(800)955-8771 (TDD).

Written comments or suggestions on the proposed rule may be submitted to Mary Polombo, Clerk, Division of Pari-Mutuel Wagering, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-1035, within 21 days of this notice for inclusion in the record of this proceeding.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mary Polombo, Clerk, Division of Pari-Mutuel Wagering, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-1035

THE FULL TEXT OF THE PROPOSED RULE IS:

61D-7.010 Daily Three Pool.

(1) The Daily Three requires the selection of the first place finishers in each of three consecutive contests. Wagers for the Daily Three must be placed prior to the first of the three consecutive contests and shall be printed on a single ticket.

(2) The net Daily Three pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish of each of the three contests comprising the Daily Three:

(a) As a single price pool to those whose selection finished first in each of the three contests, if there are no such wagers,

(b) As a single price pool to those who selected the first place finisher in any two of the three contests, if there are no such wagers,

(c) As a single price pool to those who selected the first place finisher in any one of the three contests, if there are no such wagers,

(d) The entire Daily Three pool shall be refunded,

(e) If the pool is distributed under the precedents of paragraphs (2)(b) or (2)(c), an announcement shall be made to the public as to the possible winning daily three combinations and to hold all possible winning tickets.

(3) If there is a dead heat for first in any of the three contests involving:

(a) Contestants representing the same betting interest, the Daily Three pool shall be distributed as if no dead heat occurred.

(b) Contestants representing two or more betting interests, the Daily Three pool shall be distributed as follows:

1. As a profit split to those whose selection finished first in each of the three contests, if there are no such wagers,

2. As a single price pool to those who selected the first place finisher in any two of the three contests, if there are no such wagers,

3. As a single price pool to those who selected the first place finisher in any one of the three contests, if there are no such wagers,

4. The entire Daily Three pool shall be refunded.

(c) If the pool is distributed under the precedents of paragraphs (3)(b)2. or (3)(b)3., an announcement shall be made to the public as to the possible winning daily three combinations and to hold all possible winning tickets.

(4) Prior to the close of the betting period for the first of the Daily Three races, a Daily Three wager may be canceled after leaving the window if the wagering combination includes a scratched runner even if the scratch is a part of a coupled entry.

(5)(a) In the event that any betting interest is withdrawn or declared non-starter prior to the start of the first contest of the Daily Three, all money bet on any wagering combination that includes such betting interest shall be refunded. This shall not apply to coupled entries and fields if at least one component of the coupled entry or field remains in the contest. In the event a betting interest in the second and third of the Daily Three contests is scratched, the betting favorite in the Win pool at the close of wagering in the affected race(s) shall be substituted for the scratched betting interest in the pool calculations. If the bettor did not exercise the cancel option as described in paragraph (4), this same provision shall apply to the first of the three Daily Three races. In the event that the Win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest actual post position. The totalisator generated price calculation report shall show each of the wagering combinations with the substituted betting interests which became winners as a result of the substitution.

(b) In the event that any betting interest in the second or third contest is withdrawn or declared a non-starter after the Daily Three race has started, the following wagers will be eligible for a consolation payoff: the winner in the first contest with a scratch in the second and third contest; or the winner of the first contest with a scratch in the second or third contests and a winner in the remaining contest.

1. The sum of the amounts bet on all combinations identified in paragraph (5)(b) shall be deducted from the net pool and awarded to the eligible consolation winners using the single price calculation method. The remaining net pool shall be available for distribution to the regular winners as specified in paragraph (2).

2. The permitholder shall advise the public via the public address system that a scratch or scratches have occurred, and the wagers with the scratches shall remain in the pool and compete for a consolation price.

(6) If all three Daily Three contests are canceled or declared "no contest," the entire Daily Three pool shall be refunded.

(7) If one or two of the Daily Three contests are canceled or declared "no contest," the Daily Three pool will remain valid and shall be distributed in accordance with subsection (2) of this rule.

Specific Authority 550.0251(3),(7), 550.155(1) FS. Law Implemented 550.0251, 550.155(1) FS. History--New 10-20-96, Amended 12-15-97,

NAME OF PERSON ORIGINATING PROPOSED RULE: David J. Roberts, Director, Division of Pari-Mutuel Wagering  
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Diane Carr, Secretary, Department of Business and Professional Regulation  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 8, 2003  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 3, 2003

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Board of Architecture and Interior Design**

RULE CHAPTER TITLE: Certificate of Authorization for  
Architecture or Interior  
Design Businesses

RULE CHAPTER NO.: 61G1-26

RULE TITLES: Individual Licensee Responsibilities  
Business Responsibilities

RULE NOS.: 61G1-26.001  
61G1-26.002

PURPOSE AND EFFECT: The Board proposes new rules to set requirements for individual and business responsible supervisory control in architecture or interior design offices and to establish disciplinary grounds for failure to follow the responsible supervisory control requirements.

SUMMARY: The Board's proposed rules set forth individual and business requirements and disciplinary grounds for responsible supervisory control in the architecture or interior design office.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding the statement of estimated costs, or to provide a proposal for a lower regulatory cost alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 481.2055, 481.219 FS.

LAW IMPLEMENTED: 481.219 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Juanita Chastain, Executive Director, Board of Architecture and Interior Design, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULES IS:

61G1-26.001 Individual Licensee Responsibilities.

(1) Any application for certificate of authorization must contain the name of the architect or interior designer who will be in responsible supervisory control at each office as well as the name of the qualifier for the business.

(2) The architect or interior designer providing responsible supervisory control must be a full time employee of that business.

(3) An architect or interior designer may be a qualifier of several business entities but can only provide responsible supervisory control over one business location.

(4) Any changes to the person in responsible supervisory control or the qualifier must be reported in writing within thirty (30) days. The qualifier of record is responsible for such notification.

(5) The qualifier has the responsibility to assure each business location/office has a person in responsible supervisory control.

Specific Authority 481.2055, 481.219 FS. Law Implemented 481.219 FS. History--New

61G1-26.002 Business Responsibilities.

The failure of a qualifier to notify the Board of changes in responsible supervisory control or of his or her termination as a qualifier does not relieve the partnership or corporation of its duty under Section 481.219(10), F.S. The business entity's failure to notify the Board in a timely fashion in writing of such changes will constitute grounds for disciplinary action against the certificate of authorization.

Specific Authority 481.2055, 481.219 FS. Law Implemented 481.219 FS. History--New

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Architecture and Interior Design

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Architecture and Interior Design

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 30, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 11, 2003

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Board of Professional Engineers**

RULE TITLE: Demonstrating Compliance

RULE NO.: 61G15-22.006

PURPOSE AND EFFECT: The Board proposes to amend this rule to clarify that licensees may execute a signed statement of compliance and submit said statement to the Board office at any time during the biennium or by accompanying their renewal form with said statement and return it to the Board

office with their renewal at the end of the biennium. After amendment, the rule will allow a licensee to either demonstrate compliance with continuing education requirements at any time during the biennium or wait until renewal and submit a statement of compliance at time of renewal.

SUMMARY: This rule sets out the requirements to demonstrate compliance and tells how and when it is required.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding the statement of estimated costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 455.213(6), 455.2178, 455.2179, 471.017(3), 471.019 FS.

LAW IMPLEMENTED: 455.213(6), 455.2177, 455.2178, 455.2179, 471.008, 471.017(3), 471.019 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A NOTICE OF HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW (IF NOT REQUESTED IN WRITING, A HEARING WILL NOT BE HELD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Natalie Lowe, Executive Director, Florida Board of Professional Engineers, 2507 Callaway Road, Suite 200, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G15-22.006 Demonstrating Compliance.

In order to demonstrate compliance, licensees must execute a signed statement at any time during the biennium and submit said statement to the Board office at that time or by accompanying their renewal form with said statement and return it to the Board office with their renewal. For each qualifying activity listed, the following information must be included on the statement:

(1) through (4) No change.

In addition, the Board may use attendance information submitted by the provide to determine whether licensees can demonstrate compliance.

Specific Authority 455.213(6), 455.2178, 455.2179, 471.017(3), 471.019 FS. Law Implemented 455.213(6), 455.2177, 455.2178, 455.2179, 471.008, 471.017(3), 471.019 FS. History—New 9-16-01, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Professional Engineers

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Professional Engineers

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 8, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 25, 2003

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Professional Engineers

RULE TITLE: Board Approval of Continuing Education Providers

RULE NO.: 61G15-22.011

PURPOSE AND EFFECT: The Board proposes to amend the rule to remove Core Curriculum Providers concerning the Florida Building Code from automatic approval as continuing education providers to Board licensees.

SUMMARY: This rule sets forth what is required to become an educational provider, the requirements for obtaining Board approval as an educational provider, sets out the Board’s right to audit or monitor providers, and lists the approved providers.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding the statement of estimated costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 455.213(6), 455.2178, 455.2179, 471.008, 471.017(3), 471.019 FS.

LAW IMPLEMENTED: 455.213(6), 455.2177, 455.2178, 455.2179, 471.008, 471.017(3), 471.019 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A NOTICE OF HEARING DATE WILL BE PUBLISHED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY. (IF NOT REQUESTED IN WRITING, A HEARING WILL NOT BE HELD)

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Natalie Lowe, Executive Director, Florida Board of Professional Engineers, 2507 Callaway Road, Suite 200, Tallahassee, Florida 32399-0750

THE FULL TEXT OF THE PROPOSED RULE IS:

61G15-22.011 Board Approval of Continuing Education Providers.

(1) through (9)(a) No change.

(b) Federal Governmental Agencies that establish rules, regulations, guidelines, or otherwise have an impact on the practice of engineering; and

(c) State and National Engineering Professional Associations approved by the Board; ~~and~~

~~(d) Core Curriculum Providers accepted by the Florida Building Commission under Section 553.841, F.S.~~

Specific Authority 455.213(6), 455.2178, 455.2179, 471.008, 471.017(3), 471.019 FS. Law Implemented 455.213(6), 455.2177, 455.2178, 455.2179, 471.008, 471.017(3), 471.019 FS. History—New 9-16-01, Amended 9-4-02, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Board of Professional Engineers  
NAME OF SUPERVISOR OR PERSON WHO APPROVED  
THE PROPOSED RULE: Board of Professional Engineers  
DATE PROPOSED RULE APPROVED BY AGENCY  
HEAD: August 8, 2003  
DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: July 25, 2003

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Department of Environmental Protection are published on the Internet at the Department of Environmental Protection’s home page at <http://www.dep.state.fl.us/> under the link or button titled “Official Notices.”

**DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

**Mental Health Program Office**

RULE TITLES:	RULE NOS.:
Applicability	65E-14.001
Audits of Contractors Participating in the Substance Abuse and Mental Health Programs	65E-14.003
Matching	65E-14.005
Methods of Paying for Services	65E-14.019
Cost Reimbursement Method of Payment	65E-14.020
Unit Cost Method of Payment	65E-14.021
Data Requirements	65E-14.022

PURPOSE AND EFFECT: Chapter 65E-14, F.A.C., is being amended to provide clarifications and make needed improvements and corrections identified during statewide training of providers and department staff on the comprehensive revisions recently made to the substance abuse and mental health contracting system and financial rule.

SUMMARY: Chapter 65E-14, F.A.C., is being amended to clarify, simplify, and conform audit requirements to current law; clarify several local match provisions; specify whether particular units of service are paid for on the basis of service utilization or service availability; refine the description of residential level IV services; modify invoicing flexibility pertaining to Temporary Assistance to Needy Families funds; substitute district program supervisors for district administrators to reflect a recent reorganization; and update the publication dates on forms incorporated into the rule by reference that need to be revised correspondingly.

SPECIFIC AUTHORITY: 394.74, 394.76, 394.77, 394.78(1),(3),(6), 397.321(5) FS.

LAW IMPLEMENTED: 394.457(3), 394.66(9),(12), 394.74, 394.76, 394.77, 394.78(1),(3),(6), 397.321(10), 397.481, 402.73(7) FS.

SUMMARY OF THE STATEMENT OF ESTIMATED REGULATORY COST: An estimate of the regulatory cost was not prepared for this rule.

Any person who wishes to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 9:00 a.m., Monday, September 22, 2003

PLACE: 1317 Winewood Blvd., Building 6, 2nd Floor, Mental Health Conference Room A, Tallahassee, Florida 32301

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Larry Ochalek, Senior Management Analyst, Substance Abuse Program Office, 1317 Winewood Blvd., Building 6, Room 307, Tallahassee, Florida 32399-0700, (850)414-1500, e-mail: [larry\\_ochalek@dcf.state.fl.us](mailto:larry_ochalek@dcf.state.fl.us)

THE FULL TEXT OF THE PROPOSED RULES IS:

65E-14.001 Applicability.

(1) No change.

(2) Definitions as used in this part, unless the context clearly requires otherwise.

(a) through (b) No change.

(c) “Audit” means a single or program-specific audit in accordance with OMB Circular A-133 and with Section 215.97, F.S. ~~direct examination of the books, records and accounts supporting amounts reported in the year-end report to determine correctness and propriety.~~

(d) through (ff) No change.

Specific Authority 394.74, 394.77, 394.78(1), 397.321(5) FS. Law Implemented 394.74, 394.77, 397.481 FS. History—New 2-23-83, Amended 2-25-85, Formerly 10E-14.01, Amended 7-29-96, Formerly 10E-14.001, Amended 7-1-03,\_\_\_\_\_.

65E-14.003 Audits of Contractors Participating in the Substance Abuse and Mental Health Programs.

(1) The independent auditor selected by the contractor shall perform a single or program-specific audit in accordance with OMB Circular A-133 and with Section 215.97, F.S. ~~conduct a review of the contractor’s record keeping and billing procedures and practices to ensure that the documentation of services billed to the department is complete and accurate.~~

(2) ~~The independent audit shall disclose to the department any unallowable costs specified in Rule 65E-14.017, F.A.C., or the contract.~~

~~(2)(3)~~ Special requirements for client non-specific unit cost performance contracts:

(a) When a financial audit is required to be performed by an independent auditor pursuant to OMB Circular A-133, the independent audit package for all client non-specific unit

~~cost performance contracts shall contain the following schedules, which shall be in accordance with Generally Accepted Accounting Principles and state and federal requirements:~~

~~1. Schedule of State Earnings. This schedule identifies eligible local match to determine if requirements are met and computes ensures that local match requirements are met and identifies and calculates any amounts due to the department.~~

~~2. Schedule of Related Party Transaction Adjustments. This schedule indicates, by cost center, required those related party transaction adjustments that were above cost.~~

~~3. Schedule of Financial Assistance. This schedule discloses the contractor's federal and state grants and assistance, sub-contracting, and funding from the beginning of the fiscal year through the balance sheet date. This schedule shall comply with chapter 10.650, Rules of the Auditor General, entitled State Single Audits Nonprofit and For Profit Organizations, and with the rules of the Department of Banking and Finance, chapter 3A-5, F.A.C., Schedule of Expenditures of State Financial Assistance, regarding format.~~

~~3.4. Program/Cost Center Actual Expenses & Revenues Schedule. This schedule shall be in accordance with Generally Accepted Accounting Principles and state and federal requirements. It displays expenditures by line-item category and revenues by source for each program and cost center funded through the state substance abuse and mental health program contract. The schedule also identifies displays expenditures by line-item category and revenues by source for all other state-designated substance abuse and mental health cost centers as a group, for all other programs as a group, and for administrative and support functions, and displays totals for the agency as a whole.~~

~~4.5. Schedule of Bed-Day Availability Payments. This schedule ensures that bed-days paid for by the department on the basis of availability were not also paid for by a third-party contract or funds from a local government or another state agency for services that include bed-day availability or utilization.~~

~~(b) The schedules in subparagraphs (a)1.-4. 65E-14.003(3)(a)1., 2., 4. and 5., F.A.C., shall be based on revenues and expenditures recorded during the state's fiscal year. The schedule in subparagraph (3)(a)3., F.A.C., shall be based on the contractor's fiscal year.~~

~~(c) When OMB Circular A-133 does not require an audit by an independent auditor, the contractor's chief financial officer, or if none the executive director, shall prepare the schedules required in subparagraphs (a)1.-4., and these schedules shall be submitted to the department within 45 days of the end of the contract period. For unit cost performance contracts, the auditor shall conduct a review of the contractor's written plan for allocating direct and indirect costs to cost centers to ensure that it complies with Generally Accepted Accounting Principles and state and federal requirements, and~~

~~the audit report shall contain a statement of assurance that the number of units of service paid for by the department was not materially misstated by the contractor or a statement that no such assurance can be made.~~

~~(3)(4) The department will notify the contractor by certified mail, return receipt requested, of the amounts due the department resulting from an audit amount of the audit liabilities and the due date. Payment is due within 30 days of the date of receipt.~~

~~(4)(5) Nothing in this section shall preclude the department from performing its duties, including contract monitoring, to ensure that payments for services are made in accordance with the contract for services, the rules of the department, and applicable law.~~

~~(5)(6) The following special audit schedules, and any instructions, are hereby incorporated by reference, copies of which and may be obtained from the Substance Abuse Program Office, ATTN: PDSA, 1317 Winewood Blvd., Building 6, Tallahassee, Florida 32399-0700:~~

- ~~(a) CF-MH 1034, Jul 2003 Schedule of State Earnings~~
- ~~(b) CF-MH 1035, Jul 2003 Schedule of Related Party Transaction Adjustments~~
- ~~(c) CF-MH 1036, Jul 2003 Schedule of Bed-Day Availability Payments~~
- ~~(d) CF-MH 1037, Aug Jul 2003 Program/Cost Center Actual Expenses & Revenues Schedule~~

~~Specific Authority 394.74, 394.77, 394.78(1),(3), 397.321(5) FS. Law Implemented 394.74, 394.66(9), 394.76(5), 394.77, 394.78(3), 397.481 FS. History—New 2-23-83, Amended 2-25-85, Formerly 10E-14.03, Amended 7-29-96, Formerly 10E-14.003, Amended 7-1-03, \_\_\_\_\_.~~

~~65E-14.005 Matching.~~

~~This chapter contains rules for satisfying State requirements for matching.~~

~~(1) through (2) No change.~~

~~(3) Not Requiring Matching. The following contracted services and funds do not require local match:~~

~~(a) Deinstitutionalization projects, which are defined as adult mental health programs in the following cost centers:~~

- ~~1. Residential-Levels I-IV;~~
- ~~2. Short-term Residential Treatment, except those acute care continuum programs supported with Baker Act funds and operated by a public receiving facility;~~
- ~~3. Supportive Housing/Living;~~
- ~~4. Case Management;~~
- ~~5. Intensive Case Management; and~~
- ~~6. Florida Assertive Community Treatment (FACT) Teams.~~

(b) Children’s Mental Health (100435) and Purchased Residential Treatment Services (102780) appropriation categories that were transferred to Alcohol, Drug and Mental Health from the Family Safety and Preservation Program.

(c) Addition in the General Appropriations Act of alcohol, drug abuse, and mental health block grant funds for local community mental health centers. The original amount of Mental Health Block Grant budget that did not require local match is given in the 1985 Approved Operating Budget. The Mental Health Block Grant, however, has significantly decreased since 1985, and the amount that continues to not require match is equal to the proportionate decrease.

(d) Drug abuse service funding, as determined by the following calculations:

1. For the most recent 12-month period available, calculate the number of clients served by the contractor that present with primary, secondary, or ~~and~~ tertiary alcohol or ~~and~~ drug problems as specified in diagnosis for the contractor from the substance abuse enrollment and admission data in the department’s Mental Health and Substance Abuse Data System.

2. From the data, count the total number of persons presenting with alcohol as a primary, secondary, or tertiary problem.

3. Divide the result in subparagraph 2. by the result in subparagraph 1. to arrive at the percentage of alcohol clients served.

4. Subtract the result of subparagraph 3. from 1.00 to arrive at the percentage of drug abuse clients served.

5. Multiply the result in subparagraph 4. by the total amount of substance abuse funds in the contract to arrive at the amount that does not require match. Substance abuse funds in the contract are those appropriated to either the Community Substance Abuse Services or Children and Adolescent Substance Abuse Services appropriations, special categories 100618 and 100420, respectively.

(4) through (8) No change.

Specific Authority 394.76, 397.321(5) FS. Law Implemented 394.457(3), 394.76 FS. History–New 2-23-83, Amended 2-25-85, Formerly 10E-14.05, 10E-14.005, Amended 7-1-03, Amended.

65E-14.019 Methods of Paying for Services.

(1) through (3) No change.

(4) The Reference Guide for State Expenditures (Updated March 2003) is hereby incorporated by reference, copies of which ~~and~~ may be obtained from the Substance Abuse Program Office, ATTN: PDSA, 1317 Winewood Blvd., Building 6, Tallahassee, Florida 32399-0700.

Specific Authority 394.74(2), 394.76(4), 394.78(1),(6), 397.321(5) FS. Law Implemented 394.66(9),(12), 394.74(2), 394.76(4), 394.78(1),(6) FS. History–New 7-1-03, Amended.

65E-14.020 Cost Reimbursement Method of Payment.

(1) through (3) No change.

(4) The following forms, and any instructions, are hereby incorporated by reference, copies of which ~~and~~ may be obtained from the Substance Abuse Program Office, ATTN: PDSA, 1317 Winewood Blvd., Building 6, Tallahassee, Florida 32399-0700:

- (a) CF-MH 1038, Jul 2003      Line Item Operating Budget
- (b) CF-MH 1039, Jul 2003      Budget Narrative
- (c) CF-MH 1040, Jul 2003      Cost Reimbursement Report of Expenditures & Request for Payment or Advance

Specific Authority 394.78(1),(6), 397.321(5) FS. Law Implemented 394.66(9), 394.74(2)(c),(3)(d),(4), 394.78(1),(6), 397.321(10) FS. History–New 7-1-03, Amended.

65E-14.021 Unit Cost Method of Payment.

This section provides guidelines and requirements for implementing a unit cost method of payment for substance abuse and mental health services.

(1) through (4) No change.

(5) Unit Measurements:

(a) Types of Units. The following units of measure apply to state-designated substance abuse and mental health cost centers funded through a state substance abuse and mental health program contract:

1. Staff Hour. This unit measure represents the actual time a staff person is available at the work site to perform assigned tasks. Staff hour units shall be paid on the basis of availability.

2. Contact Hour. This unit measure represents the actual time spent in face-to-face or direct telephone contact with a client or a collateral where the contact is charted. For children’s services, it may also include telephone contact with parents or teachers and actual time spent in a courtroom or juvenile detention facility on behalf of a child. Contact hour units shall be paid on the basis of utilization.

3. Direct Staff Hour. This unit measure represents the actual time spent on activities directly associated with a single client, including case staffings. Time may include travel if the travel is integral to a service event otherwise billable to the department. Direct staff hour units shall be paid on the basis of utilization, except in the mental health clubhouse services cost center, which shall be paid on the basis of availability.

4. Non-Direct Staff Hour. This measure represents the actual time spent on activities that cannot be directly associated with a single client, but are integral to the program and described in the program description. Non-Direct staff hour units shall be paid on the basis of utilization.

5. Bed-Day. This unit measure represents an actual bed, or if licensure is required, the lesser of the actual or licensed bed, available each day in the contract period. Bed-day units shall be paid on the basis of availability.

6. Facility Day. This unit measure represents a day in which a facility is open for use a minimum of 4 hours a day. Facility day units shall be paid on the basis of availability.

7. 24-Hour Day. This unit measure represents a day in which a client is physically present at the midnight census. The day of admission shall be counted and the day of discharge shall not. 24-hour day units shall be paid on the basis of utilization.

8. 4-Hour Day. This unit measure represents a day in which a client is physically present for at least four hours. 4-hour day units shall be paid on the basis of utilization, except in the outpatient detoxification cost center, which shall be paid on the basis of availability.

9. Dosage. This unit measure represents the receipt of a methadone dosage by a client and includes the provision of all other services related to Methadone Maintenance and described in a program description. Such program description shall indicate which of the related services, if any, may also be delivered in another cost center and why. Dosage units shall be paid on the basis of utilization.

(b) Units paid on the basis of utilization require the service to be provided to or on behalf of a client, or by the commitment of actual direct or non-direct staff hours for such services as prevention or outreach, before payment may be made. Units paid on the basis of availability only require the service to be available for use, regardless of whether the service is actually used by a client.

(c)(b) Definition of Hour. An hour is a measurement of time rounded to the nearest 10-minute interval. When used to document intermittent services to or on behalf of a specific client during a single day, the actual cumulative time spent providing the service during that day shall be rounded to the nearest 10-minute interval. The cumulative, rounded number of minutes shall be divided by 60 to derive the number of units. For case management, if the time interval required by Medicaid is different than described above, the Medicaid interval may be used instead.

(d)(e) Except for prevention, units of service measured in terms of hours and days shall not include the time direct service delivery staff are absent from the work place or spend in training, supervision, clinical supervision, administrative activities, or charting. This exclusion of time spent in training does not apply to training and orientation specifically required in the department's contract for Florida Assertive Community Treatment. These units shall include time direct service delivery staff spend administering client functional assessments and client satisfaction surveys.

(6) No change.

(7) The descriptions, applicable programs, units of measure, and documentation requirements for state-designated cost centers are as follows:

(a) through (b) No change.

(c) Case Management.

1. through 4. No change.

5.e. Maximum Unit Cost Rate: \$63.21.

(d) through (p) No change.

(q) Mental Health Clubhouse Services.

1. through 2. No change.

3. Unit of Measure – Direct Staff Contact Hour.

4. Data Elements:

a. Service Documentation – Time Sheet Service Ticket:

(I) Recipient name and identification number;

(II) Staff name and identification number;

(III) Service date;

(IV) Duration;

(V) Cost center;

(VI) Service (specify); and

(VII) Program.

b. Audit Documentation – Recipient Service Chart:

~~(I) Cost Center;~~

~~(I)(II) Recipient name and identification number; and~~

(II) Staff name and identification number;

(III) Service date;

(IV) Duration; and

(V) Service (specify).

5. No change.

(r) through (u) No change.

(v) Prevention.

1. Description – Prevention services are those involving strategies that preclude, forestall, or impede the development of substance abuse and mental health problems, and include increasing public awareness through information, education, and alternative-focused activities. These services may be directed either at a Level II ~~an indicated and selective~~ prevention target where the client has been identified or at a Level I universal ~~universal~~ prevention target where the client is not identifiable.

2. through 3. No change.

4. Data Elements:

a. Level I Universal ~~Universal~~ Prevention Target Service Documentation – Time Sheet:

(I) Staff name and identification number;

(II) Description of activity, including time to plan and prepare;

(III) Duration;

(IV) Activity date;

(V) Program; and

(VI) Cost center.



b. ~~Level I Universal~~ Prevention Target Audit Documentation:

- (I) Attendance records with date;
- (II) Program material;
- (III) Agenda with date;
- (IV) Duration of activity;
- (V) Advertisements; and
- (VI) Supervisor instructions.

c. ~~Level II Indicated and Selective~~ Prevention Target Service Documentation – Activity Log:

- (I) Cost center;
- (II) Staff name and identification number;
- (III) Recipient name and identification number;
- (IV) Service date;
- (V) Duration;
- (VI) Service (specify); and
- (VII) Program.

d. ~~Level II Indicated and Selective~~ Prevention Target Audit Documentation – Recipient Service Chart:

- (I) Recipient name and identification number;
- (II) Staff name and identification number;
- (III) Service date;
- (IV) Duration; and
- (V) Service (specify).

- 5. No change.
- (w) through (z) No change.
- (aa) Residential Level IV.

1. Description – This type of facility may have less than twenty-four (24) hours per day, seven (7) days per week on-premise supervision. Residential Level IV services are the least intensive level of residential care. It is primarily a support service and, as such, treatment services are not included in this cost center, although such treatment services may be provided as needed through other cost centers. ~~For adult mental health, this Level IV includes satellite apartments, satellite group homes, and therapeutic foster homes. For substance abuse, Level IV services provide a range of assessment, rehabilitation, treatment, and ancillary services in a transitional living environment with an emphasis on habilitation and rehabilitation.~~ For children with serious emotional disturbances, Level IV services are the least intensive and restrictive level of residential care provided in group or foster home settings, therapeutic foster homes, and group care ~~with treatment.~~ NOTE: Regular therapeutic foster care can be provided either through Residential Level IV “Day of Care: TFH” or by billing in-home/non-provider setting for a child in a foster home.

- 2. through 5. No change.
- (8) Budgeting and Accounting for Revenues and Expenditures.
- (a) No changes.

(b) The contractor shall develop a written plan for allocating direct and indirect costs to the cost centers, which complies with ~~Generally Accepted Accounting Principles and Rule 65E-14.017, F.A.C., Cost Principles.~~ The contractor’s chief financial officer, or if none the executive director, shall assert that the cost plan is reasonable and complies with these cost principles.

- (c) through (d) No changes.
- (9) No change.
- (10) Payment for Service.
- (a) Eligibility for Payment.

1. No change.

2. Unallowable Units. Any costs or service units paid for under any other contract or from any other source are not eligible for payment. The department shall not pay for units of service, or those parts of units, that have been paid for by any other source of funds.

3. No change.

(b) Request for Payment.

1. through 2. No change.

3. Funding Flexibility for Individual Cost Centers.

a. Except for cost centers designated pursuant to sub-subparagraph 3.c. below, a contractor may invoice and be paid up to 15 percent more than the non-Temporary Assistance to Needy Families (TANF) funding amount specified in the contract for an individual cost center within a program; however, a contractor may not invoice and be paid more than the aggregate non-TANF funding amount provided in the contract for all cost centers within the program, but not across programs. The department may combine cost centers into groups within a program, and the aggregate amount of payment that may not be exceeded is the total contract amount associated with the cost centers within each group, but not across groups.

b. The substance abuse and mental health program supervisors in the district or region ~~district or regional administrator~~ may increase from 15 percent to up to 30 percent the amount contractors may exceed the total non-TANF funding specified in the contract for an individual cost center within a program.

c. The state Directors of the Substance Abuse and Mental Health Programs may identify specific cost centers where the non-TANF funding flexibility specified in sub-sub paragraphs a. and b. above shall not exist. In each such cost center, payment for units of service shall not exceed the contracted amount, and the contracted funds are restricted to payment for units of service in only that cost center. The substance abuse and mental health program supervisors in a district or region ~~District or Regional Administrator~~, upon a finding in the District or Regional Substance Abuse and Mental Health Plan that an extraordinary need exists to provide a precise number of service units in a particular cost center, may add that cost center to those identified by the state Program Directors.

d. When entering into a contract with a particular contractor, the substance abuse and mental health program supervisors in a district or region a District or Regional Administrator may deny non-TANF flexibility for all cost centers if the contractor is currently under a corrective action plan or has failed to implement a corrective action plan pursuant to Rule 65-29.001, F.A.C., or if the substance abuse and mental health program supervisors in a district or region present District or Regional Administrator a justification to and obtains the approval of the state Directors of the Substance Abuse and Mental Health Programs.

e. With TANF funds, the contractor may invoice and be paid an amount for any individual cost center specified for TANF funding in the contract not to exceed the total amount of TANF funds provided in the contract for all such cost centers within a program or group of cost centers within a program; however, the aggregate amount invoiced and paid for all such cost centers shall also not exceed the total amount of TANF funds provided in the contract for the program or for the group of cost centers. The contract shall specify the unit cost rate for each cost center contracted for TANF funding, which shall be the same rate as for non-TANF funding, but the contract shall not specify the number of TANF units or the amount of TANF funding for individual cost centers.

4. No change.

5. Deducting Units Paid for by Other Sources of Funds. When preparing a request for payment for services provided, the contractor shall:

a. Indicate the total number of units of service billed to or paid for by the department, Medicaid, or local matching funds.

b. Then deduct the units of service billable to billed to or paid for by Medicaid; and

c. Deduct the units of service paid for with local matching funds.

6. Submission of Request for Payment.

a. To be paid by the department, the contractor shall submit a properly completed request for payment and any associated worksheets.

b. For cost centers paid for on the basis of utilization, the ~~The~~ year-to-date number of units of service reported on a request for payment or any associated worksheet shall not exceed the total number of units reported and accepted in the department's data system pursuant to Rule 65E-14.022, F.A.C. For those same cost centers, the ~~The~~ year-to-date number of units of service reported on the request for payment or any associated worksheet as billable to billed to or paid for by Medicaid shall be no fewer than the number reported and accepted in the department's data system, and the year-to-date number of units reported on the request for payment as provided to Temporary Assistance to Needy Families (TANF) clients and billed to the department shall not exceed the number reported and accepted in the department's data system. If the department, through no fault of the contractor, is unable

to validate compliance with this requirement within 10 days of receipt of the request for payment, the processing of the contractor's request for payment shall not be delayed further.

c. For cost centers paid for on the basis of availability, the year-to-date number of units reported on a request for payment or any associated worksheet shall not exceed the prorated share of contracted units.

(c) through (d) No change.

(11) The following forms, and any instructions, are hereby incorporated by reference, copies of which ~~and~~ may be obtained from the Substance Abuse Program Office, ATTN: PDSA, 1317 Winewood Blvd., Building 6, Tallahassee, Florida 32399-0700:

- (a) CF-MH 1041, ~~Aug Jul~~ 2003 Personnel Detail Record
- (b) CF-MH 1042, ~~Aug Jul~~ 2003 Projected Cost Center Operating and Capital Budget
- (c) CF-MH 1043, Jul 2003 Agency Capacity Report
- (d) CF-MH 1044, ~~Aug Jul~~ 2003 Alternative Projected Operating and Capital Budget
- (e) CF-MH 1045, Jul 2003 Program Description
- (f) CF-MH 1047, ~~Aug Jul~~ 2003 Monthly Request for Non-TANF Payment/~~or~~ Advance
- (g) CF-MH 1058, Aug 2003 Monthly Request for TANF Payment/~~Advance~~
- (h) CF-MH 1046, ~~Aug Jul~~ 2003 Worksheet for Request for Payment ~~Worksheet~~
- (i) ~~(h)~~ CF-MH 1048, Jul 2003 Integrated Rate/  
Purchase of Service Invoice
- (j) ~~(i)~~ CF-MH 1049, Jul 2003 Integrated Rate/  
Purchase of Services Invoice Attachment

Specific Authority 394.78(1),(6), 397.321(5) FS. Law Implemented 216.181(16), 394.66(9),(12), 394.74(2)(b),(3)(d),(e),(4), 394.77, 394.78(1),(6), 397.321(10), 402.73(7) FS. History--New 7-1-03, Amended.

65E-14.022 Data Requirements.

The following document is hereby incorporated by reference, copies of which ~~and~~ may be obtained from the Substance Abuse Program Office, ATTN: PDSA, 1317 Winewood Blvd., Building 6, Tallahassee, Florida 32399-0700:

- (1) CFP 155-2, ~~July Apr~~ 2003 Mental Health and Substance Abuse Measurement and Data

Specific Authority 394.78(1), 397.321(5) FS. Law Implemented 394.66(9), 394.74(3)(e), 394.77, 397.321(3)(c),(10) FS. History--New 7-1-03, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
 Larry Ochalek, Senior Management Analyst, Substance Abuse  
 Program Office  
 NAME OF SUPERVISOR OR PERSON WHO APPROVED  
 THE PROPOSED RULE: Ken DeCerchio, Program Director  
 of Substance Abuse, and Harry Smith, Acting Program  
 Director of Mental Health  
 DATE PROPOSED RULE APPROVED BY AGENCY  
 HEAD: August 19, 2003  
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
 PUBLISHED IN FAW: July 3, 2003, Vol. 29, No. 27  
 Purchase Order No.: JE1155

**FLORIDA HOUSING FINANCE CORPORATION**

RULE TITLE: Terms and Conditions of Loans  
 RULE NO.: 67-43.008  
 PURPOSE, EFFECT AND SUMMARY: This Rule establishes  
 the procedures by which the Florida Housing Finance  
 Corporation shall administer the State Apartment Incentive  
 Loan Hurricane Andrew Recovery and Rehabilitation Program  
 which provides funds to public entities, private not-for-profit,  
 or for-profit or developer proposing to build or substantially  
 rehabilitate affordable housing. Revisions to the Rule are  
 required to implement technical and clarifying changes. The  
 adoption of these revisions will increase the efficiency and  
 effectiveness of local program service delivery and will  
 provide greater clarification of the program.  
 SUMMARY OF ESTIMATED REGULATORY OF  
 ESTIMATED REGULATORY COST: None.  
 Any person who wishes to provide information regarding the  
 statement of estimated regulatory costs, or to provide a  
 proposal for a lower cost regulatory alternative must do so in  
 writing within 21 days of this notice.  
 SPECIFIC AUTHORITY: 420.507 FS.  
 LAW IMPLEMENTED: 420.5087 FS.; Chapter 93-186, Laws  
 of Florida  
 IF REQUESTED WITHIN 21 DAYS OF THE DATE OF  
 THIS NOTICE, A HEARING WILL BE HELD AT THE  
 TIME, DATE AND PLACE SHOWN BELOW (IF NOT  
 REQUESTED, THIS HEARING WILL NOT BE HELD):  
 TIME AND DATE: 10:00 a.m., September 22, 2003  
 PLACE: Florida Housing Finance Corporation, Seltzer  
 Meeting Room, 227 North Bronough Street., Suite 5000,  
 Tallahassee, Florida 32301-1329  
 THE PERSON TO BE CONTACTED REGARDING THE  
 PROPOSED RULE IS: Gayle White, Housing Development  
 Manager, Florida Housing Finance Corporation, 227 North  
 Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329

THE FULL TEXT OF THE PROPOSED RULE IS:

- 67-43.008 Terms and Conditions of Loans.
- (1) through (3) No change.
- (4) All loans shall be repaid from all Project income and  
 each year, project cash flow shall be applied to pay the  
 following items in order of priority:
- (a) through (d) No change.
- (e) Twelve ~~nine~~ percent Return on Equity to Sponsor.

Specific Authority 420.507 FS. Law Implemented 420.5087 FS., Chapter  
 93-186, Laws of Florida. History--New 1-25-94, Formerly 91-43.008,  
 Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
 Kerey Carpenter, Deputy Development Officer  
 NAME OF SUPERVISOR OR PERSON WHO APPROVED  
 THE PROPOSED RULE: Orlando Cabrera, Executive  
 Director  
 DATE PROPOSED RULE APPROVED BY AGENCY  
 HEAD: August 1, 2003  
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
 PUBLISHED IN FAW: August 15, 2003

**Section III**  
**Notices of Changes, Corrections and**  
**Withdrawals**

**DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**Division of Consumer Services**

RULE NOS:	RULE TITLES:
5J-9.002	Registration, Document Submission
5J-9.006	Security Requirement

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been  
 made to the proposed amended rule in accordance with  
 subparagraph 120.54(3)(d)1., F.S., published in the Vol. 28,  
 No. 41, which is the October 11, 2002, issue of the Florida  
 Administrative Weekly. The changes are in response to  
 comments received from staff at the Joint Administrative  
 Procedures Committee.

The changes are as follows:

- 1) In Rule 5J-9.002(1), the first sentence is amended to  
 read:  
 “Any person who intends to operate as a seller of travel shall  
 submit form DACS 10200, Seller of Travel ~~the~~ registration,  
effective 11/20/02, hereby incorporated by reference, and fee  
 to the Department at the time of registration.”