and for the individuals covered under subsections 65A-2.033(3) and (4), the monthly base provider rate is $730~~16~~ and is inclusive of room, board and personal care.

(5) through (8) No change.

Specific Authority 409.212(7) FS Law Implemented 409.212 FS. History–New 1-1-77, Amended 9-27-79, 10-7-80, 9-29-81, 9-29-82, 10-31-83, 11-28-83, 9-30-84, 10-1-85, Formerly 10C-2.36, Amended 1-1-87, 2-9-88, 11-6-88, 2-16-89, 3-1-90, 1-27-91, 2-19-95, Formerly 10C-2.036, Amended 1-27-99, 12-16-01,________.

NAME OF PERSON ORIGINATING PROPOSED RULE: Rodney McInnis, Operations Review Specialist
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Audrey Mitchell, Program Administrator, Public Assistance Policy Bureau
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 9, 2002
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: November 23, 2001

# Section III
# Notices of Changes, Corrections and Withdrawals

**DEPARTMENT OF STATE**

**Division of Elections**

| RULE NO.: | RULE TITLE: |
| --- | --- |
| 1S-2.027 | Clear Indication of Voter's Choice on a Ballot |

NOTICE OF CHANGE

Notice is hereby given that proposed Rule 1S-2.027, published in the Florida Administrative Weekly, Pages 4617-4618, Vol. 27, No. 40, on October 5, 2001, has been changed to reflect comments received from the public as well as the Joint Administrative Procedures Committee. Changes were made to Rule 1S-2.027 so that it now reads:

1S-2.027 Clear Indication of Voter's Choice on a Ballot.

(1) The following are standards to determine, ~~voter intent~~ in a manual recount as provided specifically by Section 102.166, Florida Statutes, and on an optical scan voting system, whether there is a clear indication on the ballot that the voter has made a definite choice.

~~(2) The following are guidelines for determining on an optical scan voting system whether or not there is a clear indication on the ballot that the voter has made a definite choice:~~

~~(a) Ballots must be marked in pen or pencil.~~

(a)~~(b)~~ If a ballot is marked with a color or device that does not permit an accurate machine count, that vote shall count.

(b)~~(c)~~ If a voter circles the oval or arrow next to a candidate or issue, the vote for that candidate or issue shall count.

(c)~~(d)~~ If a voter circles or underlines the name of a candidate, the vote shall count for that candidate.

(d)~~(e)~~ If a voter circles or underlines the name of a party next to a candidate's name, the vote shall count for that candidate.

(e)~~(f)~~ If there is an "X," a check mark, a diagonal, horizontal or vertical mark, a plus sign, an asterisk, a star or any other mark that is substantially contained in the oval, touching the oval or arrow, or within the blank space between the head and tail of the arrow that clearly indicates the voter intended the oval or arrow to be marked, that vote shall count.

(f)~~(g)~~ If a voter marks more candidates than there are positions to be elected for that office, the votes for the candidates of that office shall not count.

(g)~~(h)~~ If a voter marks fewer ~~less~~ candidates than there are positions to be elected for those office~~s~~, the votes for all of those candidates shall count.

(h)~~(i)~~ If a voter does not mark a candidate or issue, the votes for other candidates or issues on the same ballot that are ~~validly~~ marked shall be counted.

(i)~~(j)~~ If a voter attempts to correct the ballot in a way that is clearly evident in the space where the voter could indicate a ballot choice by completing the target area, and the voter has marked the target area ~~clearly and properly voted~~ for another candidate or issue, the vote for the marked ~~clearly and properly voted~~ candidate or issue shall count.

(j)~~(k)~~ If a voter has indicated in a clear fashion that a mistake has been made and has attempted to correct it, by either an "X" or equivalent mark to cross out a choice, and the voter has marked the target area ~~clearly and properly voted~~ for another candidate or issue, the vote for the marked target area ~~clearly and properly voted~~ candidate or issue shall count.

(k)~~(l)~~ If the voter has made one or more stray marks that are clearly unrelated to the voter's intent to vote for a candidate or issue and the marks are visible in the read area of the ballot, the marks shall not invalidate the ballot.

(l)~~(m)~~ If the voter writes on the ballot in a way that interferes with the ability of the automatic tabulating equipment to correctly read the ballot, and the writing is clearly unrelated to the voter's intent to vote for a candidate or issue, the writings shall not invalidate the ballot.

(m)~~(o)~~ An otherwise valid vote cast for a write-in candidate should not be invalid if the voting position on the ballot marked "WRITE-IN CANDIDATE" for that office has not been marked by the marking device.

(n)~~(p)~~ A name written on the secrecy envelope or elsewhere on the ballot that is not the name of a qualified write-in candidate for that office or is otherwise invalid shall not be considered a write-in vote for the purposes of determining if an office has been overvoted.

(o)~~(q)~~ If a voter casts a vote on the ballot and also provides for a write-in candidate it shall be treated as follows:

1. If a voter casts a vote on a ballot and writes in a candidate who is not a qualified write-in candidate or the same candidate in the write-in area, that shall not be considered an overvote. T~~t~~he vote shall count for that candidate that the voter cast a vote for, not the write-in candidate.

2. If a voter casts a vote on a ballot and writes in a different, qualified candidate in the write-in area, it shall be counted as an overvote with neither candidate getting credit for a vote.

3. If a voter writes in the name of a person who is not a qualified write-in candidate, it shall be treated as if the write-in area was left blank for all purposes.

(p)~~(r)~~ Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate must be disregarded in determining the validity of the ballot if it can reasonably be determined that the write-in vote is for a write-in candidate who has qualified for that office.

(q)~~(s)~~ Where Florida law requires that a candidate, such as that of Governor, must run on a tandem ticket for an office, the write-in of the last name of the candidate for Governor or the write-in of the last name of the candidate for Lieutenant Governor shall be sufficient to cast a write-in vote for the tandem office. This includes candidates for President and Vice-President, who have filed the oath for write-in candidates and a list of electors equal to the number of Senators and Representatives that Florida has in Congress. The write-in of the last name of the candidate for President or the write-in of the last name of the candidate for Vice President shall be sufficient to cast a write-in ballot for this type of tandem office.

~~(t) If an absentee ballot is signed by the voter in a way that identifies the voter, the ballot shall count. However, the ballot must be duplicated to protect the integrity of the voter's ballot.~~

(2)~~(3)~~ The following are standards ~~guidelines~~ for determining, on a direct recording voting system, whether or not there is a clear indication on the ballot that the voter has made a definite choice:

(a) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate must be disregarded in determining the validity of the ballot if it can reasonably be determined that the write-in vote is for a write-in candidate who has qualified for that office.

(b) Where Florida law requires that a candidate, such as that of Governor, must run on a tandem ticket for an office, the write-in of the last name of the candidate for Governor or the write-in of the last name of the candidate for Lieutenant Governor shall be sufficient to cast a write-in vote for the tandem office. This includes candidates for President and Vice-President, who have filed the oath for write-in candidates and a list of electors equal to the number of Senators and Representatives that Florida has in Congress. The write-in of the last name of the candidate for President or the write-in of the last name of the candidate for Vice President shall be sufficient to cast a write-in ballot for this type of tandem office.

~~(c) If a voter fails to electronically cast their ballot after voting, that ballot shall be cancelled.~~

~~(4) This rule has an effective date of January 1, 2002.~~

Specific Authority 102.166(5)(b) FS. Law Implemented 102.166(5)(b) FS. History–New ________.

**DEPARTMENT OF STATE**

**Division of Elections**

| RULE NO.: | RULE TITLE: |
|---|---|
| 1S-2.031 | Recount Procedures |

NOTICE OF CHANGE

Notice is hereby given that proposed Rule 1S-2.031, published in the Florida Administrative Weekly, Pages 4619-4621, Vol. 27, No. 40, on October 5, 2001, has been changed to reflect comments received from the public as well as the Joint Administrative Procedures Committee. Changes were made to Rule 1S-2.031 so that it now reads:

1S-2.031 Recount Procedures.

~~(1) The following procedures apply to all offices and questions decided in all county, multicounty and statewide offices for machine recount procedures using optical scan voting systems:~~

~~(a) Ballots shall be locked and secured with limited access as designated by the Supervisor of Elections in the approved security procedures for each county.~~

~~(b) Prior to each election, the canvassing board shall meet and establish procedures for conducting the election and recount, including: security of ballots during the recount process; time and place of recount; public observance of recount; objections to ballot determinations; record of recount proceedings; and procedures for candidate and petitioner representatives.~~

~~(c) Each county canvassing board shall publicly notice the time and place of the machine recount as soon as is reasonably possible.~~

~~(d) Each county canvassing board shall notify the candidates or, in the case of a ballot question, the person designated to receive notice, as soon as is reasonably possible.~~

~~(e) Each county canvassing board shall notify the Secretary of State in writing detailing the candidate or question requiring a recount, the time and place of the recount, and the number of observers of the recount.~~

~~(f) Each candidate for the office in question or the person representing each side of a ballot question is entitled to witness the recount.~~

~~(g) Any machine recount is open to the general public. The public and the press must be admitted to an observation area that is outside the recount area to observe any proceedings. The Supervisor of Elections, with the approval of the canvassing board, shall designate this area.~~

~~(h) Although the recount is open to the general public, the public observers must not interfere or disturb the recount in any way. If the conduct or activities of the observers, media or public become unreasonable or impede the recount process, the recount shall stop until the situation is corrected.~~

~~(i) Each ballot shall be recounted by inserting each ballot through the optical scanner that has been programmed and tested according to statute.~~

~~(j) After the machine recount, a member of the canvassing board shall prepare the returns for each precinct in the same manner as the original returns are prepared.~~

~~(k) The board shall have the materials and equipment restored to their original secure condition and return the materials and equipment to the original custodian.~~

~~(l) After the recount is completed, the county canvassing board shall make and sign a statement as to the results of the recount.~~

~~(m) Transcripts of the machine recount shall be made available to the public within a reasonable time.~~

~~(n) All records of the recount shall detail, by precinct, the number of votes each candidate received, the number of rejected ballots and any other relevant information.~~

~~(2) The following procedures apply to all offices and questions decided in all county, multicounty and statewide offices for machine recount procedures using direct recording equipment systems:~~

~~(a) Prior to each election, the canvassing board shall meet and establish procedures for conducting the election and recount, including: time and place of recount; public observance of recount; record of recount proceedings; and procedures for candidate and petitioner representatives.~~

~~(b) Each county canvassing board shall publicly notice the time and place of the machine recount as soon as is reasonably possible.~~

~~(c) Each county canvassing board shall notify the candidates or, in the case of a ballot question, the person designated to receive notice, as soon as is reasonably possible.~~

~~(d) Each county canvassing board shall notify the Secretary of State in writing detailing the candidate or question requiring a recount, the time and place of the recount, and the number of observers of the recount.~~

~~(e) Each candidate for the office in question or the person representing each side of a ballot question is entitled to witness the recount.~~

~~(f) Any machine recount is open to the general public. The public and the press must be admitted to an observation area that is outside the recount area to observe any proceedings. The Supervisor of Elections, with the approval of the canvassing board, shall designate this area.~~

~~(g) Although the recount is open to the general public, the public observers must not interfere or disturb the recount in any way. If the conduct or activities of the observers, media or public become unreasonable or impede the recount process, the recount shall stop until the situation is corrected.~~

~~(h) The machine recount shall be conducted by regenerating the totals.~~

~~(i) After the machine recount, a member of the canvassing board shall prepare the returns for each precinct in the same manner as the original returns are prepared.~~

~~(j) The board shall have the materials and equipment restored to their original secure condition and return the materials and equipment to the original custodian.~~

~~(k) After the recount is completed, the county canvassing board shall make and sign a statement as to the results of the recount.~~

~~(l) Transcripts of the machine recount shall be made available to the public within a reasonable time.~~

(1)~~(3)~~ The following procedures apply to all offices and questions decided in all county, multicounty, federal and statewide offices for manual recount procedures using optical scan voting systems:

(a) Ballots shall be locked and secured with limited access as designated by the supervisor of elections in the approved security procedures for each county.

(b)~~(a)~~ Each county canvassing board shall publicly notice the time and place of the manual recount within 24 hours after determining the need for a manual recount pursuant to Section 102.166, F.S. ~~as soon as is reasonably possible.~~ The notice shall be in either a newspaper of general circulation in the county or by posting such notice in at least four conspicuous places in the county.

(c)~~(b)~~ Each county canvassing board shall notify the candidates or, in the case of a ballot question, the person designated to receive notice at the same time the public is noticed~~, as soon as is reasonably possible~~.

(d)~~(c)~~ Each county canvassing board shall notify the Secretary of State in writing detailing the candidate or question requiring a recount, the time and place of the recount, and the number of observers of the recount.

(e)~~(d)~~ Each candidate for the office in question or the person representing each side of a ballot question is entitled to witness the recount.

(f)~~(e)~~ Any manual recount is open to the general public. The public and the press must be admitted to an observation area that is outside the recount area to observe any proceedings. The Supervisor of Elections, with the approval of the canvassing board, shall designate this area.

(g)~~(f)~~ Although the recount is open to the general public, the public observers must not interfere or disturb the recount in any way. If the conduct or activities of the observers, media or public ~~become unreasonable or~~ impedes the recount process, the recount shall stop until the situation is corrected.

(h)~~(g)~~ Before the ballots are counted, the canvassing board shall review rules and statutes governing voter intent as specified in Rule 1S-2.~~2~~027, F.A.C.

(i)~~(h)~~ Any ballots that are objected to or challenged shall be set aside with a notation of the precinct number, the unique identifier number, how the ballot was counted, the reasoning behind the challenge, and the name of the person bringing the challenge.

(j)~~(i)~~ The board shall have the materials and equipment restored to their original secure condition and return the materials and equipment to the supervisor of elections ~~original custodian~~.

(k)~~(j)~~ After the recount is completed, the county canvassing board shall make and sign a statement as to the results of the recount.

(l)~~(k)~~ The manual recount must be recorded and copies of this record must be made available to the public within two weeks of the recount. In addition, minutes are to be kept of the manual recount that must be approved by all members of the canvassing board within two weeks of the manual recount. These minutes shall be made available to the public upon approval. ~~Transcripts of the manual recount shall be made available to the public within a reasonable time~~.

(m)~~(l)~~ All records of the recount shall detail the number of votes each candidate received, the number of rejected ballots and any other relevant information.

(2)~~(4)~~ The following procedures apply to all offices and questions decided in all county, multicounty, federal and statewide offices for manual recount procedures using direct recording equipment voting systems:

(a) Ballots shall be locked and secured with limited access as designated by the supervisor of elections in the approved security procedures for each county.

(b)~~(a)~~ Each county canvassing board shall publicly notice the time and place of the manual recount within 24 hours after determining the need for a manual recount pursuant to Section 102.166, F.S. ~~as soon as is reasonably possible.~~ The notice shall be in either a newspaper of general circulation in the county or by posting such notice in at least four conspicuous places in the county.

(c)~~(b)~~ Each county canvassing board shall notify the candidates or, in the case of a ballot question, the person designated to receive notice, as soon as is reasonably possible.

(d)~~(c)~~ Each county canvassing board shall notify the Secretary of State in writing detailing the candidate or question requiring a recount, the time and place of the recount, and the number of observers of the recount.

(e)~~(d)~~ Each candidate for the office in question or the person representing each side of a ballot question is entitled to witness the recount.

(f)~~(e)~~ Any manual recount is open to the general public. The public and the press must be admitted to an observation area that is outside the recount area to observe any proceedings. The s~~S~~upervisor of e~~E~~lections, with the approval of the canvassing board, shall designate this area.

(g)~~(m)~~ Although the recount is open to the general public, the public observers must not interfere or disturb the recount in any way. If the conduct or activities of the observers, media or public ~~become unreasonable or~~ impedes the recount process, the recount shall stop until the situation is corrected.

(h)~~(g)~~ Before the ballots are counted, the canvassing board shall review rules and statutes governing voter intent as specified in Rule 1S-2.~~2~~027, F.A.C.

(i)~~(h)~~ Any ballots that are objected to or challenged shall be set aside with a notation of the precinct number, the unique identifier number, how the ballot was counted, the reasoning behind the challenge, and the name of the person bringing the challenge.

(j)~~(i)~~ A manual recount shall be conducted by printing out or exporting the ballot image files and counting these files manually.

(k)~~(j)~~ The board shall have the materials and equipment restored to their original secure condition and return the materials and equipment to the supervisor of elections ~~original custodian~~.

(l)~~(k)~~ After the recount is completed, the county canvassing board shall make and sign a statement as to the results of the recount.

(m)~~(l)~~ The manual recount must be recorded and copies of this record must be made available to the public within two weeks of the recount. In addition, minutes are to be kept of the manual recount that must be approved by all members of the canvassing board within two weeks of the manual recount. These minutes shall be made available to the public upon approval ~~Transcripts of the manual recount shall be made available to the public within a reasonable time~~.

(n)~~(m)~~ All records of the recount shall detail the number of votes each candidate received, the number of rejected ballots and any other relevant information.

~~(5) This rule has an effective date of January 1, 2002.~~

Specific Authority 102.166 FS. Law Implemented 102.166 FS. History–New ________.

**DEPARTMENT OF REVENUE**

| RULE NOS.: | RULE TITLES: |
|---|---|
| 12-24.005 | Methods of Electronic Funds Transfer |
| 12-24.007 | Payment Transmission Errors |
| 12-24.008 | Procedures for Payment |
| 12-24.009 | Due Date; General Provisions |

| | |
|---|---|
| 12-24.022 | Definitions |
| 12-24.023 | Recordkeeping Requirements – General |
| 12-24.025 | Records Maintenance Requirements |
| 12-24.030 | Records Retention – Time Period |

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed amendments to Rules 12-24.005, 12-24.007, 12-24.008, 12-24.009, 12-24.022, 12-24.023, 12-24.025, and 12-24.030, F.A.C., in accordance with subparagraph 120.54(3)(d)1., F.S., as originally published in the Florida Administrative Weekly (Vol. 27, No. 47, pp. 5509-5519). Some of these changes are in response to written comments received from the Joint Administrative Procedures Committee of the Florida Legislature, and the remainder were recommended by the Department at the public hearing held on December 18, 2001.

A) In response to the comments received by the Department regarding the proposed amendments to Rule 12-24.005, F.A.C., paragraph (2)(a) has been changed, so that, when adopted, this subsection will read as follows:

(a) A taxpayer who requests permission to use the ACH credit method must submit a written request to the Department, by December 1, which demonstrates that the taxpayer is currently using the ACH credit method for other financial purposes on a regular basis. ~~the existence of a valid business operational reason for using the ACH credit method in lieu of the ACH debit method. A taxpayer who is already using the ACH credit method is deemed to have a valid business reason for using the ACH credit method to remit payments of Florida taxes.~~

B) Pursuant to comments recommended by the Department at the December 18, 2001 public hearing regarding the proposed amendments to Rule 12-24.007, F.A.C., subsection (2) has been changed, so that, when adopted, this subsection will read as follows:

(2)(a) In the event a taxpayer using the ACH debit method communicates payment information to the Data Collection Center after 3:45 p.m., Eastern Time, on the business day before the due date, the payment shall be posted to the taxpayer's account on the next business day following the due date and shall constitute late payment.

(b) To assist the taxpayer in complying with all statutory requirements for timely remittance by EFT of taxes due, the Department will annually develop and distribute form DR-659, which provides the final time and date for each month of the upcoming calendar year by which the taxpayer must initiate a timely EFT payment of any tax subject to EFT. This form is revised annually to incorporate any changes to dates listed on the previously-issued form that, if not changed for the upcoming calendar year, will occur on a state or federal holiday, or on a weekend.

C) In response to the comments received by the Department regarding the proposed amendments to Rule 12-24.008, F.A.C., subsection (3) has been changed, so that, when adopted, this subsection will read as follows:

(3) Wire transfer. Taxpayers who, due to circumstances beyond their reasonable control, are unable to initiate a timely payment of tax through the ACH debit method or the ACH credit method may request the Department's permission, on an exception basis, to transmit a payment ~~payments~~ of tax to the State Treasurer's account via wire transfer. The term "circumstances beyond their reasonable control" includes, but is not limited to, failure of equipment essential to the transmission of the payment, unavailability of the employee(s) who handles such transmission, or natural disaster.

D) In response to the comments received by the Department regarding the proposed amendments to Rule 12-24.009, F.A.C., subsection (4) has been changed, so that, when adopted, this subsection will read as follows:

(4) During the first 3-month ~~6-month~~ period a taxpayer is required to remit tax by EFT, the Department will extend a reasonable grace period of no more than 90 consecutive calendar days to the taxpayer ~~taxpayers~~ to resolve problems which arise when new administrative procedures, data systems changes and taxpayer operating procedures are implemented. To qualify for a grace period, the taxpayer must demonstrate in writing to the Department that a good faith effort to comply was made, or that circumstances beyond the taxpayer's reasonable control prevented compliance by the required date, or that a mistake or inadvertence prevented timely payment when the taxpayer attempted to correctly and timely initiate an EFT payment.

E) Pursuant to comments recommended by the Department at the December 18, 2001 public hearing regarding the proposed amendments to Rule Chapter 12-24, F.A.C., the title to Part II of the rule chapter has been changed, so that, when adopted, the title will read as follows:

PART II TAXPAYER RECORDKEEPING AND RETENTION REQUIREMENTS ~~FOR ELECTRONIC DATA INTERCHANGE~~

F) Pursuant to comments recommended by the Department at the December 18, 2001 public hearing regarding the proposed amendments to Rule 12-24.022, F.A.C., the "Law Implemented" portion of the rule has been changed, so that, when adopted, it will read as follows:

Law Implemented 212.02, 213.34, 213.35 FS.

G) In response to the comments received by the Department regarding the proposed amendments to Rule 12-24.023, F.A.C., and pursuant to comments recommended by the Department at the December 18, 2001 public hearing regarding the proposed amendments to this rule, subsection (1) has been changed, so that, when adopted, this subsection will read as follows:

(1) A taxpayer shall maintain all records that are necessary to make a determination of its ~~the~~ correct tax liability for any tax specified in s. 72.011, F.S. ~~under s. 213.35, F.S.~~ All required records must be made available on request by the Department as provided ~~for~~ in s. 213.34, F.S. Such records shall include, but not be ~~necessarily~~ limited to: books of account, invoices, bills of lading, gross receipts from sales, resale certificates, consumer exemption certificates, and other pertinent records ~~as may be otherwise required by statute or by rule of the Department~~.

H) Pursuant to comments recommended by the Department at the December 18, 2001 public hearing regarding the proposed amendments to Rule 12-24.025, F.A.C., subsection (1) has been changed, so that, when adopted, this subsection will read as follows:

(1) The Department recommends, but does not require, that taxpayers refer to the National Archives and Records Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, including ~~such as~~ the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 Code of Federal Regulations, Part 1234, July 1, 2001 ~~July 1, 1995~~ edition.

I) Pursuant to comments offered by the Department at the December 18, 2001 public hearing regarding the proposed amendments to Rule 12-24.030, F.A.C., the rule has been changed, so that, when adopted, this rule will read as follows:

12-24.030 Records Retention-Time Period.

All records required to be retained under this chapter ~~Part~~ shall be preserved pursuant to s. 213.35, F.S.~~, unless the Department has provided in writing that the records are no longer required.~~

J) Pursuant to comments received by the Department regarding the proposed amendments to Rules 12-24.001 through 12-24.010, Rule 12-24.021, and Rules 12-24.023 through 12-24.030, F.A.C., the Specific Authority statement has been changed to remove a reference to s. 202.30(1), F.S., from every statement in which it appears.

**DEPARTMENT OF REVENUE**

NOTICE OF CHANGE TO CABINET AGENDA ON JANUARY 29, 2002

This notice advises of a change to the Notice of Cabinet Agenda on January 29, 2002 published in the Florida Administrative Weekly of January 4, 2002, Vol. 28, No. 1, p. 11. The Governor and Cabinet, on January 29, 2002, sitting as head of the Department of Revenue, will consider approval of amendments to Rules 12E-1.008 and 12E-1.023, F.A.C., and new Rule 12E-1.027, F.A.C., for adoption. These rules and proposed new Rule 12E-1.028, F.A.C., were originally noticed in the Florida Administrative Weekly of November 21, 2001, Vol. 27, No. 47, pp. 5520-5530. A public hearing on the proposed rules was held on December 17, 2001. No members of the public appeared at the public hearing. As a result of written comments received from the Joint Administrative Procedures Committee, the department is considering changes to proposed Rule 12E-1.028, F.A.C., and the rule will not be considered for adoption on January 29, 2002.

**DEPARTMENT OF CORRECTIONS**

RULE NO.: RULE TITLE:
33-401.501 Communicable Disease Exposure and Testing

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 27, No. 48, November 30, 2001 issue of the Florida Administrative Weekly:

33-401.501 Communicable Disease Exposure and Testing.

(1) In the event of possible exposure to a communicable disease by a correctional officer, employee, ~~inmate,~~ or any unincarcerated person lawfully present in a correctional facility, the person exposed is authorized by s. 944.35, F.S., to request the testing of himself or herself and the inmate who caused the exposure.

(a) through (b) No change.

~~(c) If the request is made by an inmate, the inmate shall be referred to health services staff at the facility for testing in accordance with subsection (2) below.~~

(2) through (4) No change.

**DEPARTMENT OF CORRECTIONS**

RULE NO.: RULE TITLE:
33-602.112 Inmate Death Notification Process

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 27, No. 51, December 21, 2001 issue of the Florida Administrative Weekly:

33-602.112 Inmate Death Notification Process.

(1) Notice of Death. Upon the death of an inmate while in the custody of the department:

(a) The institution shall immediately notify:

1. through 4. No change.

5. The Office of Health Services; ~~and~~

6. Any authorized organ donor organization which has received prior approval from the deceased for removal and donation of organs; and

7. In the case of the death of a foreign national, the nearest consulate of that national's country.

(b) through (4) No change.

Specific Authority 944.09 FS. Law Implemented 245.06, 245.08, 382, 406, 936 FS., Article 37 of the Vienna Convention on Consulate Relations. History–New 10-8-76, Amended 9-24-81, Formerly 33-3.09, Amended 6-2-88, 2-18-90, 2-12-97, Formerly 33-3.009, Amended ________.

**DEPARTMENT OF MANAGEMENT SERVICES**

**Florida Retirement System**

RULE NO.: RULE TITLE:

60S-9.001 Approved Forms

NOTICE OF CHANGE

Notice is hereby given that the above rule, as noticed in Vol. 27, No. 47, November 21, 2001, Florida Administrative Weekly, has been changed as follows. Form FR-11 is being revised to eliminate wording that refers to "the reverse side of the form," which is obsolete as a result of the Division's RIM project. Form FC-1 is being revised to add a new paragraph to the instructions for completion, directing agencies to certify pre-DROP salary earnings and prorated deferred salary payments.

(1) No change.

(2) Bureau of Retirement Calculations.

FORM NO./REVISION DATE TITLE

(a) No change.

(b) FR-11 (Rev. 11/01 ~~7/99~~) Florida Retirement System Application for Service Retirement

(c) through (i) No change.

(j) FC-1 (Rev. 11/01 ~~7/99~~) Salary Certification

(k) through (u) No change.

(3) through (4) No change.

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Board of Barbers**

RULE NO.: RULE TITLE:

61G3-19.013 Change of Ownership of Barbershops

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 27, No. 49, December 7, 2001, Florida Administrative Weekly has been withdrawn.

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Building Code Administrators and Inspectors Board**

RULE NO.: RULE TITLE:

61G19-9.001 Continuing Education for Biennial Renewal

SECOND NOTICE OF CHANGE

Notice is hereby given that the following change has been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 27, No. 47, of the November 21, 2001, issue of the Florida Administrative Weekly. The change is in response to written comments submitted by the staff of the Joint Administrative Procedures Committee. The Board discussed the comments at its meeting held via telephone conference call on January 15, 2002. When changed, subsection (3) of the rule shall read as follows:

(3) "Interactive Distance Learning Hour" means sixty minutes of instruction presented in an alternative nonclassroom interactive distance learning setting, exclusive of any breaks, recesses, or other time not spent in instruction.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Anthony Spivey, Executive Director, Building Code Administrators and Inspectors Board, Northwood Centre 1940 North Monroe Street, Tallahassee, Florida 32399-0750

**DEPARTMENT OF HEALTH**

**Board of Podiatric Medicine**

RULE NOS.: RULE TITLES:

64B18-14.002 Penalties

64B18-14.010 Citations

NOTICE OF PUBLIC HEARING

The Board of Podiatric Medicine hereby gives notice of a public hearing on the above-referenced rule(s) to be held on Friday, February 1, 2002, at 9:00 a.m. until all board business is completed. The rules were originally published in Vol. 27, No. 45, of the November 9, 2001, Florida Administrative Weekly. This hearing is being held in response to comments received by the Joint Administrative Procedures Committee. The hearing will be held by telephone conference call and the meet me number is (850)921-2470 if anyone wishes to participate.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Joe Baker, Jr., Executive Director, Board of Podiatric Medicine/MQA, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257

Any person requiring a special accommodation at this hearing because of a disability or physical impairment should contact the Board's Executive Director at least five calendar days prior to the hearing. If you are hearing or speech impaired, please contact the Board office using the Florida Dual Party Relay System which can be reached at 1(800)955-8770 (Voice) and 1(800)955-8771 (TDD).

**DEPARTMENT OF HEALTH**

**Board of Psychology**

RULE NOS.: RULE TITLES:

64B19-11.004 Licensure by Examination; Course on Domestic Violence

64B19-11.010 Limited Licensure

64B19-11.011 Provisional License; Supervision of Provisional Licensees

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 27, No. 37, of the

September 14, 2001, issue of the Florida Administrative Weekly. The Board, at its meeting held on December 8, 2001, in Tallahassee, Florida voted to make changes to the rules to address written comments submitted by the staff of the Joint Administrative Procedures Committee. The changes shall be as follows:

1. Rule 64B19-11.004 shall be reworded to read: "Before licensure, each applicant shall comply with the requirements of Section 456.031, F.S., and shall demonstrate compliance by completing and submitting PY FORM 3.domviol(rev. 12/01), "Domestic Violence Affirmation Form," effective ________, which is incorporated herein by reference and which may be obtained from the Board office. Courses on domestic violence approved by any Board within the Division of Medical Quality Assurance of the Department of Health pursuant to Section 456.031, Florida Statutes, are approved by this Board."

2. Subsection (1)(c) of Rule 64B19-11.010 shall be reworded to read: "complete and submit to the Board form DOH/MQA/PY LL APP/rev. 08/01, "Application for Psychologist Limited Licensure," effective ________, which is hereby incorporated by reference, copies of which may be obtained from the Board office."

3. Subsection (1) of Rule 64B19-11.011 shall be reworded to read: "complete and submit to the Board form DOH/MQA/PY/PROVISIONAL-APP/rev-10/01, "Application for Provisional Psychology Licensure," which is hereby incorporated by reference, effective ________, copies of which may be obtained from the Board office;"

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kaye Howerton, Executive Director, Board of Psychology, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255

**DEPARTMENT OF HEALTH**

**Division of Environmental Health and Statewide Programs**

RULE CHAPTER NO.: RULE CHAPTER TITLE:
64E-23 Nursing Student Loan Forgiveness Program

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to proposed Rule 64E-23, F.A.C., in accordance with subparagraph 120.54(3)(d)1., F.S., published in the Florida Administrative Weekly, Vol. 27, No. 47 on November 21, 2001. The changes reflect comments received from the Joint Administrative Procedures Committee. The changes are as follows:

64E-23.001(2) – After the word "processed" add "and prioritized, as specified in Section 240.4075(7)(a), F.S.,".

64E-23.004(1) – Before the word "Florida" add "Match site facilities are". Replace the comma after the word "participants," with ". They"

64E-23.004(6) – Add to the end of the paragraph "Terminated program participants, who meet eligibility requirements in the future, may reapply for participation in the program".

Nursing Student Loan Forgiveness Program Application – page 2, second paragraph – Replace second sentence with: "Enrollment in the NSLFP is made based on the receipt date of a completed application, by the established deadlines, consistent with the priorities, as specified in Section 240.4075(7)(a), F.S."

Nursing Student Loan Forgiveness Program Application – page 4, Eligible Match Site Facilities – Add after the word "lender(s)." "If a match site facility, as defined in Section 240.4075(7)(a), F.S., fails to submit the required annual match payment, the program participant is ineligible to continue in the program. However, the program participant is eligible to reapply for enrollment into the NSLFP, upon becoming employed fulltime at another designated/eligible site/facility, including another match site facility.

Nursing Student Loan Forgiveness Program Application, DH Form 1932 – Last paragraph – Delete the words "Information contained in this application is confidential".

Nursing Student Loan Forgiveness Program Employment Application DH Form 1935 – Add paragraph at the bottom "Providing the SSN is optional. This form will be considered with or without the SSN. Without the SSN, correct identification of an applicant's record cannot be assured and may result in an error in the award amount or delay in disbursement of an award."

Nursing Student Loan Forgiveness Program Loan Certification – DH Form 1936 – "Providing the SSN is optional. This form will be considered with or without the SSN. Without the SSN, correct identification of an applicant's record cannot be assured and may result in an error in the award amount or delay in disbursement of an award."

P.O. G10454

**DEPARTMENT OF HEALTH**

**Division of Environmental Health and Statewide Programs**

RULE CHAPTER NO.: RULE CHAPTER TITLE:
64E-24 Nursing Scholarship Program

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to proposed Rule 64E-24, F.A.C., in accordance with subparagraph 120.54(3)(d)1., F.S., published in the Florida Administrative Weekly, Vol. 27, No. 47 on November 21, 2001. The changes reflect comments made by the Joint Administrative Procedures Committee. The changes are as follows:

64E-24.001(1)(b) Replace (b) with: A signed, notarized and dated Nursing Scholarship Program Agreement, DH 1930, 10/01, which is incorporated by reference and available from the department. The department must receive the Nursing Scholarship Program Agreement, no later than 60 days after enrollment in the first semester or quarter of nursing school attendance. The Nursing Scholarship Program Agreement will be mailed to approved scholarship recipients, by the department.

DH Form 1930 – Change title to: Nursing Scholarship Program Agreement.

DH Form 1930 – Borrower Certification and Authorizations 2.b., 3.a., 3.b., 3.e., Replace the word "note" with "agreement".

DH Form 1930 4. – First sentence, add the word "received" after the word "assistance".

DH Form 1930 5. – Reword as follows: The undersigned promises to begin employment no later than three (3) months after receiving Florida licensure or certification and no later than twelve (12) months after graduating from nursing school.

DH Form 1930 6. – Replace the word "note" with the word "agreement".

DH Form 1930 7. – Replace "5 and 6" with "4 or 5".

DH Form 1930 8. – Replace the word "note" with the word "Agreement".

DH Form 1930 Last paragraph – Replace the word "note" with the word "Agreement".

DH Form 1930 – Added at the bottom of the form: STATE OF FLORIDA, COUNTY OF ________; The foregoing instrument was acknowledged before me on this ______ day of ______, by _____________ Name of person acknowledging; _____________ Signature of Notary Public – State of Florida; ___________ Print, type or Stamp Commissioned Name of Notary Public; Personally Known ______ OR Produced Identification _______; Type of identification produced _____________________.

Nursing Scholarship Program Conditions, page 2 – Eligibility. Both subparagraphs – replace "Nursing Scholarship Program Promissory Note and Agreement" with "Nursing Scholarship Program Agreement". Page 3, Scholarship Disbursement – Replace "Nursing Scholarship Program Promissory Note and Agreement" with "Nursing Scholarship Program Agreement".

Nursing Scholarship Program Application, DH Form 1931 – Delete the words "Information contained in this application is confidential".

P.O. G10454

**DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

RULE NO.: 65-29.001

RULE TITLE: Financial Penalties for a Provider's Failure to Comply With a Requirement for Corrective Action

NOTICE OF CHANGE

Notice is hereby given that proposed Rule 65-29.001, F.A.C., has been changed in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 27, No. 21, May 25, 2001 issue of the Florida Administrative Weekly. When adopted the rule will read as follows:

65-29.001 Financial Penalties for a Provider's Failure to Comply With a Requirement for Corrective Action ~~Contract Penalties for Nonompliance~~.

(1) Purpose. The purpose of this rule is to implement the provisions of Section 402.73(7), F.S., and to provide procedures for the imposition of financial penalties upon providers that fail to comply with a department request for corrective action.

(2) Definitions. For the purpose of this rule, the following definitions shall apply:

(a) "Corrective Action" means acts of remediation the provider is required to make in response to department findings of unacceptable performance, nonperformance, or noncompliance to the terms and conditions of a contract.

(b) "Corrective Action Plan" means the mutually agreed upon plan prepared by the provider and approved by the department by which corrective action will be accomplished.

(c) "Department" means the Florida Department of Children and Families.

(d) "Extenuating Circumstances" means conditions beyond the control of either party that may form a basis for the reasonable forgiveness of certain contract requirements. By their nature such conditions are unique necessitating the determination of their existence on a case by case basis and precluding the application of such a determination to more than a single instance during the term of any contract.

(e) "Findings of Fact" means the conclusions reached by the department upon factual issues.

(f) "Notice of Intent to Impose a Financial Penalty" means a written notice issued by the department to the provider making the provider aware that a financial penalty is pending if the provider does not successfully complete the required corrective action plan within the time specified in the corrective action plan.

(g) "Provider" means an organization or individual providing services to or on behalf of the department or its clients.

(h) "Unacceptable Performance" means provider action(s), or lack thereof, that fails to satisfy the requirements of the contract.

(3) Penalty Provision. All contracts entered into by the department for services shall contain a notice that penalties may be imposed for failure to implement or to make acceptable progress on corrective action plans developed as a result of noncompliance, non-performance, or unacceptable performance with the terms and conditions of a contract. Such provisions shall also contain the following:

(a) A statement that corrective action plans may be required for noncompliance, nonperformance, or unacceptable performance and penalties may be imposed for failure to comply with a department approved corrective action plan.

(b) The increments of penalty imposition that shall apply, unless the department determines that extenuating circumstances exist, shall be based upon the severity of the noncompliance, nonperformance, or unacceptable performance that generated the need for corrective action plan. The penalty, if imposed shall not exceed ten percent (10%) of the total contract payments during the period in which the corrective action plan has not been implemented or in which acceptable progress toward implementation has not been made. Noncompliance that is determined to have a direct effect on client health and safety shall result in the imposition of a ten percent (10%) penalty of the total contract payments during the period in which the corrective action plan has not been implemented or in which acceptable progress toward implementation has not been made. Noncompliance involving the provision of service not having a direct effect on client health and safety shall result in the imposition of a five percent (5%) penalty. Noncompliance as a result of unacceptable performance of administrative tasks shall result in the imposition of a two percent (2%) penalty.

(c) The deadline for payment of a penalty.

(d) The potential deduction of a financial penalty from the department's payments to a provider.

(4) Process. If at any time(s) during the effective contract period, the department gives notice to the provider that its delivery of services is unacceptable or is not in compliance with the terms and conditions of the contract, the department shall request corrective action, in accordance with Section 120.695, F.S. The department's request for corrective action shall identify the incident(s) of noncompliance or unacceptable performance, and be submitted to the provider in writing. The provider, in turn, must timely submit a corrective action plan upon receipt of the department's request. The provider's failure to timely submit a corrective action plan that is determined acceptable to the department shall be grounds for termination of the contract.

(5) Source of Funds Available for Payment of Financial Penalty. A provider shall not pay a financial penalty with funds intended to be used, or which are budgeted, to provide services to clients. The provider shall not reduce the amount or quality of services being delivered to clients as a result of the imposition of a financial penalty pursuant to this rule.

(6) Notice of Intent to Impose a Penalty and Notice of Preliminary Findings of Fact. The department shall give the provider a written notice of its intent to impose a financial penalty, which shall include the following information:

(a) The factual basis upon which the department determined that a corrective action plan was needed; and

(b) A description of the corrective action which was agreed upon between the provider and the department and which was not implemented or satisfactorily accomplished; and

(c) The amount of the penalty sought to be imposed.

(7) Contesting a Penalty. Within twenty-one (21) calendar days of receipt of written notice described in paragraph 6, the provider may file written exceptions to the Preliminary Findings of Fact. If no exceptions are timely filed, the department shall adopt such Preliminary Findings of Fact in its Final Order Imposing a Financial Penalty.

(8) The District Administrator or Regional Director will, in consultation with the Office of the General Counsel, resolve any issues raised by exceptions, if filed, after which the Department may issue a Final Order. The Final Order, if issued, shall require that the penalty be imposed prospectively and be applied to the next invoice submitted. The final order shall require the application of the penalty on all subsequent invoices until the required corrective actions have been implemented. Said Final Order shall be reviewable pursuant to Chapter 120, F.S.

(9) Failure to Pay a Financial Penalty. The department may, at its discretion, deduct the amount of financial penalty from funds that would otherwise be due a provider. This deduction, however, may not exceed ten percent (10%) of the invoice amount that would otherwise be due such provider for the period in which the corrective action plan has not been implemented or in which acceptable progress toward implementation has not been made. A provider's failure to include such deductions in a request for payment may constitute grounds for the department to reject the provider's request for payment.

(10) The remedies identified in this rule do not limit or restrict the department's application of any other remedy available to it in the contract or under law. Furthermore, the remedies described in this rule may be cumulative and may be assessed upon each separate failure in order to enforce provider compliance.

Specific Authority 402.73(7) FS. Law Implemented 402.73(7) FS. History–New 7-23-01.

# Section IV
# Emergency Rules

**DEPARTMENT OF THE LOTTERY**

RULE TITLE: RULE NO.:
Instant Game Number 412, POT O' GOLD 53ER02-1

SUMMARY OF THE RULE: This emergency rule describes Instant Game Number 412, "POT O' GOLD," for which the Department of the Lottery will start selling tickets on a date to be determined by the Secretary of the Department. The rule sets forth the specifics of the game, determination of prizewinners and the number and size of prizes in the game.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Diane D. Schmidt, Legal Analyst, Department of the Lottery, 250 Marriott Drive, Tallahassee, Florida 32399-4011

THE FULL TEXT OF THE EMERGENCY RULE IS:

53ER02-1 Instant Game Number 412, POT O' GOLD.

(1) Name of Game. Instant Game Number 412, "POT O' GOLD."

(2) Price. POT O' GOLD lottery tickets sell for $1.00 per ticket.

(3) POT O' GOLD lottery tickets shall have a series of numbers in Machine Readable Code (or bar code) on the back of the ticket, along with a Void If Removed Number (VIRN) under the latex area on the ticket. To be a valid winning POT O' GOLD lottery ticket, a combination of essential elements sufficient to validate the ticket must be present as set forth in paragraph 53ER92-63(1)(a), Florida Administrative Code. In the event a dispute arises as to the validity of any POT O' GOLD lottery ticket, or as to the prize amount, the VIRN number under the latex shall prevail over the bar code.

(4) The play symbols and play symbol captions are as follows:

INSERT SYMBOLS

(5) Determination of Prize Winners.

(a) A ticket having three like amounts in the play area shall entitle the claimant to a prize of that amount. The prize amounts are: $1.00, $2.00, $3.00, $5.00, $10.00, $17.00, $40.00, $80.00, $250 and $500. A ticket having three "TICKET" symbols in the play area shall entitle the claimant to a prize of a $1.00 ticket, except as follows. A person who submits by mail a POT O' GOLD lottery ticket which entitles the claimant to a prize of a $1.00 ticket and whose mailing address is outside the state of Florida will receive a check for $1.00 in lieu of an actual ticket.

(b) A ticket having a "pot of gold" symbol exposed in the play area shall entitle the claimant to double the corresponding prize amount shown.

(6) The estimated odds of winning, value, and number of prizes in Instant Game Number 412 are as follows:

| GAME PLAY | WIN | ODDS OF 1 IN | NUMBER OF WINNERS IN 28 POOLS OF 180,000 TICKETS PER POOL |
|---|---|---|---|
| 3-TICKETs | $1 TICKET | 8.33 | 604,800 |
| 3-$1's | $1 | 15.79 | 319,200 |
| 2-$1's + Pot | $2 | 50.00 | 100,800 |
| 3-$2's | $2 | 75.00 | 67,200 |
| 3-$3's | $3 | 150.00 | 33,600 |
| 3-$5's | $5 | 150.00 | 33,600 |
| 2-$5's + Pot | $10 | 75.00 | 67,200 |
| 3-$10's | $10 | 150.00 | 33,600 |
| 3-$17's | $17 | 300.00 | 16,800 |
| 3-$40's | $40 | 4,500.00 | 1,120 |
| 2-$40's + Pot | $80 | 9,000.00 | 560 |
| 3-$80's | $80 | 36,000.00 | 140 |
| 3-$250's | $250 | 60,000.00 | 84 |
| 2-$250's + Pot | $500 | 60,000.00 | 84 |
| 3-$500's | $500 | 180,000.00 | 28 |

(7) The estimated overall odds of winning some prize in Instant Game Number 412 are 1 in 3.94.

(8) For reorders of Instant Game Number 412, the value, number of prizes, and odds of winning shall be proportionate to the number of tickets reordered.

(9) By purchasing a POT O' GOLD lottery ticket the player agrees to comply with and abide by all rules and regulations of the Florida Lottery.

(10) Payment of prizes for POT O' GOLD lottery tickets shall be made in accordance with the rules of the Florida Lottery governing procedures for awarding prizes. A copy of the current rule can be obtained from the Florida Lottery, Office of the General Counsel, 250 Marriott Drive, Tallahassee, Florida 32399-4011.

Specific Authority 24.105(9)(a),(b),(c), 24.109(1), 24.115(1) FS. Law Implemented 24.105(9)(a),(b),(c), 24.115(1) FS. History–New 1-11-02.

THIS EMERGENCY RULE TAKES EFFECT IMMEDIATELY UPON BEING FILED WITH THE DEPARTMENT OF STATE.

EFFECTIVE DATE: January 11, 2002

**DEPARTMENT OF THE LOTTERY**

RULE TITLE: RULE NO.:
Instant Game Number 413, "SUPER WILD 7'S BINGO." 53ER02-2