

DEPARTMENT OF FINANCIAL SERVICES

DIVISION OF STATE FIRE MARSHAL

NOTICE OF PROPOSED RULE DEVELOPMENT

RULE:

RULE TITLE:

69A-63.001, F.A.C.

Bureau of Forensic Fire and Explosives Analysis Requirements and Procedures
for Submission of Evidence.

PURPOSE AND EFFECT: These rule amendments provide that the substantive procedures and requirements for the collection, packaging, and submission of samples sent to the Arson Laboratory for analysis of evidence found at fire scenes will be contained in the incorporated and adopted Form DFS-K1-2127, Guide to the Collection, Packaging, Submission and Analysis of Evidence. Further, the rule includes updates to the Evidence Submission Form (Form DFS-K5-1096).

SUBJECT AREA TO BE ADDRESSED: Evidence recovered during fire and arson investigations.

RULEMAKING AUTHORITY: 633.104(1), F.S.

LAW IMPLEMENTED: 633.112, F.S.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW:

DATE AND TIME: Friday, November 22, 2013 @ 9:00 AM

PLACE: Forensic Arson Laboratory, 38 Academy Drive, Havana, FL 32333.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Carl Chasteen, Chief of Forensic Services, Bureau of Forensic Fire and Explosives Analysis, Department of Financial Services, 38 Academy Drive, Havana, Florida 32333, 850-539-2705 or Carl.Chasteen@myfloridacfo.com

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this program, please advise the Department at least 5 calendar days before the program by contacting the person listed above.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

69A-63.001 Bureau of Forensic Fire and Explosives Analysis Requirements and Procedures for Submission of Evidence.

(1) Evidence will be accepted from public law enforcement agencies and fire service agencies in matters related

to criminal investigations. Other evidence is permitted to be accepted from other public agencies in special circumstances, but must be approved by the Bureau Chief~~laboratory supervisor~~. The criteria that will be considered for approval are the urgency of the evidence submitted, the use to which the evidence will be put after analysis, the importance of the evidence, and any other relevant factor bearing on the need for the laboratory to analyze the evidence. The Bureau publishes a Guide to the Collection, Packaging, Submission and Analysis of Evidence, Form DFS-K1-2127, Eff. 09/30/2013, which is hereby adopted and incorporated by reference, that provides the minimum requirements for submitting evidence. The guide may be obtained by writing to the Bureau of Forensic Fire and Explosives Analysis~~Arson Laboratory~~ at 38 Academy Drive, Havana, Florida 32333 or by accessing the Bureau's website under the Chemical Analysis page at
<http://www.myfloridacfo.com/Division/SFM/BFFEA/ChemicalAnalysis/default.htm>.

~~(2) The following are requirements for packaging samples:~~

~~(a) Containers—general considerations. The essential properties of the containers are that they must be unused, airtight, clean, with no hydrocarbon or other chemical residue, and inert so that they will not break down when heated or in contact with solvents.~~

~~(b) A properly packaged container satisfies the following criteria:~~

- ~~1. It seals the sample so that any trace volatile ignitable liquids are contained.~~
- ~~2. It avoids contamination from one sample to another.~~
- ~~3. It protects the chain of custody for the collected material.~~

~~(c) The seals must meet the following requirements:~~

- ~~1. A clean seal is essential. For cans, clean the "V" channel of the can rim before placing the lid on the can.~~
- ~~2. Containers must be completely sealed to prevent any passage of vapors or contaminants into or out of the container. Can lids must be tight all the way around.~~
- ~~3. For approved plastic bags, they must be heat sealed completely with no flaws in the seam.~~
- ~~4. Tamper evident tape, also referred to as tamper proof tape, must be placed across the container lid/seam in such a manner that the item cannot be partially or completely opened without tearing the tape.~~
- ~~5. Seals and Tape must be initialed or signed by the investigator of record. The date of the seal must also be included.~~

~~(d) The following requirements apply to the container types as indicated.~~

~~1. Metal cans:~~

~~a. Only clean, non-rusted, containers shall be used. Use unused metal cans with tight fitting lids. Cans with lids that do not fit or holes rusted through shall be returned.~~

~~b. To combat rusting, it is permissible to use epoxy lined cans. Can linings other than epoxy must not be used until after the laboratory has tested a sample for the presence of interferences.~~

~~c. Submit an unused comparison can when lined cans are used.~~

~~d. Do not refer to cans as "paint cans" on official forms, since they did not hold paint. They shall be referred to as "metal cans."~~

~~2. Plastic Bags:~~

~~a. The only plastic bags acceptable for evidence submitted to the Fire and Arson Laboratory are:~~

~~I. KAPAC® polyester bags.~~

~~II. SOPLARIL® polyamide (nylon 11) bags.~~

~~III. Grand Rivers Products (nylon 6) bags.~~

~~All other plastic bags submitted shall be returned.~~

~~b. Such plastic bags are permitted to be used after consultation with the laboratory and only with samples of a size or shape that will not fit into a metal can.~~

~~c. Avoid puncture. Punctured bags shall be returned.~~

~~d. Due to a reformulation by the manufacturer, KAPAC® bags manufactured in 1987 or before shall not be used.~~

~~e. Plastic bags shall not be left in a hot area (such as a car's trunk) for any extended period of time, and in no case longer than one month. Doing so increases the potential that certain chemicals will bleed off the plastic and allow it to crack.~~

~~3. Glass jars:~~

~~a. Teflon® lined caps shall be used. Non-Teflon® seals that are in contact with solvent may dissolve and contaminate samples.~~

~~b. Each jar must be precleaned and, if possible, certified free from hydrocarbon residue.~~

~~c. Care must be used in the storage and transport of glass jars because they are breakable.~~

~~(e) The following containers are unsuitable and shall not be used:~~

- ~~1. Paper bags.~~
- ~~2. Plastic containers, including cans with plastic lids, gaskets, or plastic bags.~~
- ~~3. Previously used containers, such as pickle jars, which could contain traces of a contaminating substance.~~
- ~~4. Containers that may be contaminated by manufacturing process residues.~~
- ~~5. Nylon bags other than SOPLARIL® or Grand River Products unless the lab has tested the item.~~

~~To test other products for contamination, contact the Arson Laboratory at (850) 539-8446.~~

~~(3)(a) Following are the general submission and shipping requirements.~~

~~1. Place only one case in each box. Placing several samples in plastic bags or small vials in one large container can lead to cross-contamination. Items packaged together in this manner will be treated as a single submission.~~

~~2. Use plain boxes.~~

~~a. Labels shall not state or imply that the box contains specific ignitable liquids unless they are standards for comparison.~~

~~b. Do not write anything that is not specific to the case.~~

~~c. Boxes returned by the laboratory shall not be used.~~

~~3. Do not delay in shipping the evidence to the laboratory. The time between the fire, sealing of the evidence in the container, and shipping to the laboratory can affect the laboratory's ability to recover any ignitable liquid residues. Collect and send the samples as soon as possible.~~

~~4. With debris samples, do not fill the container to more than 75% of capacity. Each can shall not contain more than 75% of the can's capacity. The method used in the laboratory for recovering ignitable liquid residues requires an adequate headspace above the debris for the volatilization of trace ignitable liquids. If the can is too full, the quality of the analysis will suffer.~~

~~5. Liquid samples must be placed in clean glass vials with screw on lids. Do not use rubber stoppered serum vials. Do not fill the container more than 50% full. Do not send more than one half a fluid ounce (15 milliliters) of a suspected petroleum product to the laboratory. Add sufficient absorbent material such as paper towels or gauze pads to the liquid sample in the vial to take up the free liquid.~~

~~6. Seal the vial lid. Do not use paraffin to secure the lid. Tamper evident tape shall be used whenever possible. Then package the vial with additional absorbent material on the outside of the vial and sealed inside a pint or quart can.~~

~~7. Submit comparison samples of any absorbent material used to absorb free liquids.~~

~~8.a. Cans and containers found on the scene shall have any liquid removed. If the liquid is suspected of being an ignitable liquid, follow the instructions in subparagraph 5. above. Seal the holes on the container with a cork stopper and tape over, then place the evidence into an approved container of appropriate size.~~

~~b. CAUTION: If the can is suspected to have fingerprints, do not use a plastic bag. Package it in the following manner (which is Instruction Number 3 of the Federal Bureau of Investigations Handbook of Forensic Services, Evidence Submission, Packaging and Shipping Evidence, located at <http://www.fbi.gov/hq/lab/handbook/submissn.htm>).~~

~~(I) Place nonporous evidence in individual protective coverings such as thick transparent envelopes or suspend in a container so that there is minimal surface contact.~~

~~(II) Place porous evidence in individual protective coverings such as paper envelopes. Stabilize the evidence to avoid movement or friction during shipment.~~

~~c. The packaging in b.(I) and b.(II) above will not be appropriate for ignitable liquid analysis.~~

~~d. It is the investigator's responsibility to choose the forensic method that would provide the best evidence.~~

~~9. Tissue and body parts should be preserved only by freezing the sample. Caution the coroner or medical examiner that you do not want any preservatives placed on the tissue. Contact the laboratory BEFORE shipping. The tissue should first be frozen and packed in a sealed ice chest. Water Ice and Dry Ice are not recommended as there are distinct shipping issues with either. Freezing followed by overnight hand or courier delivery allows the frozen items to slowly thaw. They will then be ready for analysis when they arrive at the laboratory.~~

~~10. Body parts or other items contaminated by bodily fluids such as a victim's or suspect's clothing shall be prominently labeled as containing a BIOHAZARD before shipping to the laboratory.~~

~~11. Once the sample has been selected and placed in a container, seal the container tightly so as to remove the possibility of the evaporation of any ignitable liquid residues or the contamination of the evidence sample.~~

~~12. Mark the outside of the container with the investigator's initials, the incident location, the investigator's agency case number, the contents, and the location where found. This information may be placed either on an evidence label or written directly on the container's surface using a permanent waterproof marker. Other valuable information that may be included are the incident date, the date and time the sample was collected, and the exhibit number. Be certain to leave some room on the container for the laboratory to place its own markings.~~

~~(b) The following procedures are applicable to shipping flammable liquids.~~

~~1. Packaging for flammable liquids.~~

~~a. The laboratory recommends that you ship all known flammable liquids under the FedEx Excepted Quantities guidelines or a similar service.~~

~~b. Do not ship more than 30 ml (1 oz.) per vial or no more than 500 ml (16.6 oz.) per box.~~

~~c. Each vial must be packed in a metal can with surrounding packing material.~~

~~d. Each can in the box must also have surrounding packing material.~~

~~e. The airbill must be marked for overnight express and for dangerous goods, shipper's declaration not required.~~

~~f. The outside of the box must be labeled with an excepted quantities label.~~

~~g. The label must be marked with the appropriate class. Nearly everything sent to the lab will be a class 3.~~

~~h. The label must also have the appropriate UN or ID number as well:~~

~~I. Petroleum Distillates UN 1268.~~

~~II. Gasoline UN 1203.~~

~~III. Kerosene UN 1223.~~

~~IV. For all other UN numbers, call the laboratory for assistance.~~

~~(4) The following are requirements for transportation of evidence to the laboratory:~~

~~(a) Regardless of the method of delivery used, insure that the requirements for a proper chain of custody are fulfilled.~~

~~(b) Hand Delivery. The laboratory is open between 8:00 am to 5:00 pm, Monday through Friday, and any person hand delivering samples must plan to arrive within those time periods. If, due to unusual circumstances, evidence cannot be delivered within those time periods, call the laboratory at (850) 539-8446 to make alternative arrangements. When evidence is brought in, one of the Laboratory's evidence submission forms must be completed.~~

~~(c) Courier. A completed evidence submission form must accompany the evidence. Only carrier services which provide for positive tracking or a return receipt should be used (example: United Parcel Services, Federal Express, Purolator, United States Postal Service, Airborne). Evidence must be traceable through the carrier such as having a certified or registered mail receipt number or a similar means of positively tracking the parcel.~~

~~(2)(d)1. The Evidence Submission Form. By completely and properly filling out the submission form, Form DFS-K1K5-1096, Revised 04/27/201206/03, which is hereby adopted and incorporated by reference, the~~

investigator is documenting all the information necessary for the laboratory to track and process the case. Form DFS-K1K5-1096 also provides a chain of custody for the evidence's receipt and return. This laboratory uses a computerized laboratory information management system. Because of this, there are certain items of information that are required to properly log the case. The following information required on the Evidence Submission Form (is provided with respect to the evidence form. Please refer to Form DFS-K1K5-1096) is described within the Guide to the Collection, Packaging, Submission and Analysis of Evidence, rev. 09/30/2013. The form itself may be obtained by writing to the Bureau or by downloading it from the Bureau's website under the Chemical Analysis page.
<http://www.myfloridacfo.com/Division/SFM/BFFEA/ChemicalAnalysis/default.htm>.

~~2. Form DFS-K5-1096 may be obtained by writing to the Arson Laboratory at 38 Academy Drive, Havana, Florida 32333.~~

~~3. Mark the appropriate box to indicate whether this is a new case or additional evidence to an older one. If this is an additional submission to an older case, include the case number of the older case.~~

~~4. Lab Number. Leave this space blank unless an addition to a previous submission is being sent and the old laboratory case number is known. Otherwise, a laboratory case number will be assigned by the laboratory.~~

~~5. Agency Number. Provide the investigator's agency number for the case, if any. This is a necessary identifier for the laboratory's database.~~

~~6. Submitting Agent. Provide the first and last name of the individual to whom all communications regarding the case is to be directed. Also indicate alternate submitters in this area, otherwise information will only be released to the listed agent.~~

~~7. Agency. Provide the name of the agency by whom the submitting agent is employed.~~

~~8. Telephone Number. Provide the submitting agent's full telephone number, including the area code and/or extensions. SUNCOM numbers may be included but are not required.~~

~~9. Agency Address. Provide the complete address including the street, city, and zip code of the agency location where reports and evidence may be shipped.~~

~~10. Property Owner/Occupant. Provide the full name of the owner or occupant of the item or property involved in the incident. If this information is undetermined, write "UNKNOWN" in the space. If the owner or occupant becomes known at a later date, contact the laboratory so that the laboratory can update its records.~~

~~11. Incident Address. Provide the full address of where the incident occurred or where the evidence was taken.~~

Include street address, city or village, and zip code. If it is a fire involving a movable object such as a car, boat, or motorcycle, give a description of where the property was found.

~~12. Nature of Incident. Provide the nature of the incident, such as “suspicious fire of a dwelling,” “business fire,” “automobile fire,” “criminal damaging.”~~

~~13. Date. Provide the date the incident occurred.~~

~~14. List of laboratory tests. This is the list of the tests to be performed by the Fire and Arson Laboratory. Use the letter code beside them to designate the test or tests requested on the “List of Evidence Submitted.”~~

~~(A) “Determine presence and/or identity of ignitable liquid residues.” The code A in the “list of evidence submitted” indicates that you want the analyst to determine if an ignitable liquid is present in that particular sample.~~

~~(c) “Comparison Sample.” Should be unburned material from the fire scene of the same matrix as the suspect sample and which the investigator is relatively certain contains no ignitable liquid. It may also be a known liquid or other material, obtained by the investigator, to be compared with the unknown.~~

~~(HO) “Hold Only—No Test Requested.” Items the investigator does not need to have tested, but which he/she wishes to maintain with the other evidence to preserve the chain of custody.~~

~~(O) “Other Requests.” Other tests on the evidence that may be required. This must be explained in the remarks section or cleared by an analyst before being used. These requests may require the laboratory to send the evidence to a different laboratory. Please call the laboratory prior to using this designation.~~

~~(F) “Flash Point Determination.” In certain cases with liquids that cannot be identified by the laboratory’s normal methods, a characterization of the Flash Point of the material may be useful. Be advised that 50 ml of free liquid is required to do a flash point determination. This presents issues as to the proper shipping of any material with this request.~~

~~(CRB) “Chemical Reaction Bomb.” A battery of tests will be conducted to ascertain if the item and materials submitted contain components or residues of chemical reaction/pop bottle bombs.~~

~~(E/I) “Explosives/Incendiaries.” A battery of tests to determine the presence and identity of un-reacted materials or the presence of residues consistent with explosives or incendiaries.~~

~~(P) “Prints.” Using chemical methods, examine items for the presence of latent fingerprints. Lift and hold for submission to FDLE for comparison with known prints.~~

~~15. List of Evidence Submitted. Provide a complete description of each item of evidence including container,~~

contents, and location obtained. Use only one line for each piece of evidence. Do not refer to suspect liquids by name such as gasoline or kerosene unless the investigator personally purchased the liquid. The laboratory recommends that it simply be called a liquid.

16. Tests. Indicate the test letter code pursuant to subparagraph 14. to be performed on each item submitted. Typically, only one test per item will be indicated.

17. Chain of Custody. This area will show the chain of custody of the evidence from the time it is collected, through submission to the laboratory, to the time it is either returned or stored by the laboratory.

18. Agent. Provide the name of the individual initiating an action.

19. Transfer. Provide the action taken, for example, "sent to lab," "received by lab."

20. Date/time. Provide the date and time of the action.

21. Remarks — This space is for explanations or additional comments by the submitting agent about the case. These can often help the analyst in examining the investigator's case. For example, if a canine team was used to assist in the sample selection, this would be an appropriate place to note that fact. This is where the submitter would request the case to be a RUSH case. A reason must be given and the investigator must be available for results. The criteria that the laboratory will consider in making a case a RUSH consists of the following:

- a. Fatality. If a fatality occurred in the fire it should have rush priority.
- b. Injured victims or firefighters. Victims or firefighters injured in any phase of the fire including suppression, investigation, or clean-up.
- c. Major fires with significant dollar losses.
- d. The suspect is in custody.

22. Received Via and Disposition Status. This area will be used by the laboratory to note the method of receipt, courier ID, or disposition of the evidence.

(5) Sample Disposition.

(a) The room available in the Laboratory's evidence storage area is limited. All case samples submitted by agencies outside of the Division of State Fire Marshal will be returned to the submitter. Case samples submitted by Division of State Fire Marshal's Bureaus will be placed in the Laboratory's long term storage area. Evidence held in the Laboratory's long term evidence storage area will be reviewed periodically. The laboratory requires the investigator's permission to dispose of evidence. A form letter will be sent to the investigator either electronically or

by mail. If after six months the laboratory has not received notification from the investigator, the laboratory will contact the investigator as to the disposition of the evidence.

(b) While evidence from homicides should be held indefinitely, evidence that is negative or which will not be part of a criminal prosecution should be either destroyed or returned to the owner. Evidence that will not be used in a criminal prosecution, but may have value in a civil action should not be held by the laboratory, but should be shipped to the owner of record such as the homeowner or the insurance company. Only through the active assistance of the investigators of the Bureau of Fire and Arson Investigations can we ensure that adequate storage space is maintained at the laboratory.

(c) Most metal cans decompose and rust through after a short period. The evidence placed in them would thus have no appreciable value. Evidence of no appreciable value may be destroyed sixty days after the conclusion of court proceedings under Section 705.105, F.S.

(d) The laboratory's preparation process extracts any ignitable liquid from the debris. This extract is held on a carbon membrane. After analysis this membrane is stored and the extract may be re-constituted. The strip then becomes the "evidence" with value. The laboratory will hold the carbon strips associated with each case sample for a minimum of five years.

(6) Public Records. Notwithstanding any other provision of this rule, any evidence referred to in this rule which constitutes a public record as defined in Section 119.011(1), F.S., shall be maintained in accordance with the retention schedule of the Department of Financial Services, which has been submitted to the Department of State for review and approval, and which has been reviewed and approved by the Department of State, all pursuant to Section 257.36(6), F.S., and Rules 1B-24.001 and 1B-24.003, F.A.C.

(3) Sample Return – All items of evidence shall be returned to the submitting agency or their representative. Agencies are requested to provide their third party ~~courier~~courier account number to cover the costs for ~~return~~return of evidence. Submitters must additionally be aware that following testing and identification, there may be some samples which cannot be commercially shipped. The submitter has the responsibility to pick up their evidence from the Bureau within 60 days of the Bureau's request or their submission ~~privileges~~privileges shall be revoked.

Rulemaking Specific Authority 633.10404(1) FS. Law Implemented 633.112633.011, 633.03 FS. History–New 7-13-03, Formerly 4A-63.001.