

## Section I Notices of Development of Proposed Rules and Negotiated Rulemaking

**DEPARTMENT OF INSURANCE**

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Actuarial Opinion and Memorandum	4-138
RULE TITLES:	RULE NOS.:
Purpose	4-138.040
Scope	4-138.041
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**PURPOSE AND EFFECT:** To adopt the same changes made by the NAIC: the elimination of non-asset adequacy opinions, greater reliance on revised actuarial standards of practice and guidelines to permit an alternative to a state of filing opinion.

**SUBJECT AREA TO BE ADDRESSED:** Life and health actuarial opinion and memorandum.

**SPECIFIC AUTHORITY:** 624.308(1), 625.121(3), 625.121(3)(a) FS.

**LAW IMPLEMENTED:** 624.307(1), 624.316(1)(c), 624.424(1), 625.121, 625.121(3), 632.627 FS.

**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:**

**TIME AND DATE:** 9:00 a.m., June 5, 2002  
**PLACE:** Larson Building, 200 East Gaines Street, Tallahassee, Florida

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS:** Kerry Krantz, L & H Insurer Solvency, Department of Insurance, 200 East Gaines Street, Tallahassee, Florida 32399-0327, (850)413-5038

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 Yvonne White at (850)413-4214.

**THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:**

4-138.040 Purpose.  
The purpose of this part is to prescribe.

(1) Requirements ~~Guidelines and standards~~ for statements of actuarial opinion ~~that which~~ are to be submitted in accordance with subsection (3) of the Standard Valuation Law, and for supporting memoranda;

~~(2) Guidelines and standards for statements of actuarial opinion which are to be submitted when a company is exempt from subsection (3)(b) of the Standard Valuation Law; and~~

~~(2)(3) Rules applicable to the appointment of an appointed actuary; and~~

(3) Guidance as to the meaning of "adequacy of reserves."

Specific Authority 624.308(1), 625.121(3)(a) FS. Law Implemented 624.307(1), 625.121(3), 632.627 FS. History—New 5-18-93, Amended \_\_\_\_\_.

4-138.041 Scope.

(1) This part shall apply to all life and health insurance companies and fraternal benefit societies doing business in this state, and to all life insurance companies and fraternal benefit societies that are authorized to reinsure life insurance, annuities, or accident and health insurance business in this state. This part shall be applied in a manner that allows the appointed actuary to utilize his or her professional judgment in performing the asset analysis and developing the actuarial opinion and supporting memoranda, consistent with relevant actuarial standards of practice. However, the Department shall have the authority to specify specific methods of actuarial analysis and actuarial assumptions when these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items shall be applicable to all annual statements filed with the Department beginning with the annual statement for calendar year 1993, due on March 1, 1994.

~~(2) This rule shall be applicable to all annual statements filed with the Department after the effective date of this rule. Except with respect to companies which are exempted pursuant to Rule 4-138.044, F.A.C., of this part, a statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with Rule 4-138.046, F.A.C., of this part, and a memorandum in support thereof in accordance with Rule 4-138.047, F.A.C., of this part, shall be required each year. Any company so exempted must file a statement of actuarial opinion pursuant to Rule 4-138.045 of this part.~~

(3) Notwithstanding the foregoing, the Department shall require any company otherwise exempt pursuant to this part to submit a statement of actuarial opinion and to prepare a memorandum in support thereof in accordance with Rules 4-138.046 and 4-138.047, F.A.C., of this part if the Department makes a specific finding that such opinion and memorandum are necessary in order for the Department to determine that the life and health insurer or the fraternal benefit society is in compliance with Chapters 624, 625, 626, 627, or

~~632 of the Insurance Code; or the Department has reason to believe that the financial statement upon which the calculations are based is incomplete, inaccurate, or otherwise not in compliance with Rule 4-137.001, Florida Administrative Code; or the company is using such methods and practices in the conduct of its business as to render its further transaction of insurance in this state hazardous or injurious to the policyholders or to the public.~~

Specific Authority 624.308(1), 625.121(3)(a) FS. Law Implemented 624.307(1), 624.316(1)(c), 624.424(1), 625.121(3) FS. History—New 5-18-93, Amended 2-16-94, \_\_\_\_\_.

4-138.042 Definitions.

(1) “Actuarial Opinion” means the opinion of an appointed actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with Rule 4-138.046, F.A.C., and with applicable actuarial standards of practice.

(2)(1) “Actuarial Standards Board” means is the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

(3)(2) “Annual Statement” means that statement required by Section 624.424, Florida Statutes, to be filed by the company with the Department annually.

(4)(3) An “Appointed Actuary” is a qualified actuary who is appointed or retained, either directly by or by the authority of the board of directors through an executive officer of the company other than an officer who is the qualified actuary, to prepare the statement of actuarial opinion as required by subsection (3) of the Standard Valuation Law.

(5)(4) “Asset Adequacy Analysis” means an analysis that meets the standards and other requirements referred to in subsection 4-138.043(3), F.A.C.

(6) “Department” means the State of Florida, Department of Insurance.

(7)(5) “Company” means a life insurance company, fraternal benefit society, or reinsurer subject to the provisions of this part.

(7) “Medium to Lower Quality Obligations” are those designated as classes 3, 4, 5 or 6 by the NAIC Securities Valuation Office.

(8) “NAIC” means the National Association of Insurance Commissioners.

(9) “NAIC Actuarial Opinion and Memorandum Regulation” means this part.

(10) “Qualified Actuary” means any individual who meets the criteria specified in paragraph Rule 4-138.043(2)(b), F.A.C.

(11) “Standard Valuation Law” means that defined in Section 625.121, Florida Statutes.

Specific Authority 625.121(3)(a) FS. Law Implemented 625.121(3) FS. History—New 5-18-93, Amended \_\_\_\_\_.

4-138.043 General Requirements.

(1) Submission of Statement of Actuarial Opinion.

(a)1. Included on or attached to Page 1 of the annual statement for each year, beginning with the year in which this part becomes effective, shall be the statement of an appointed actuary, entitled “Statement of Actuarial Opinion,” setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with Rule 4-138.046, F.A.C. ~~of this part.~~

~~2. Any company exempted pursuant to Rule 4-138.044, F.A.C., of this part from submitting a statement of actuarial opinion in accordance with Rule 4-138.046, F.A.C., of this part shall include on or attach to Page 1 of the annual statement a statement of actuarial opinion rendered by an appointed actuary in accordance with Rule 4-138.045, F.A.C., of this part.~~

~~(b) If in the previous year a company provided a statement of actuarial opinion in accordance with Rule 4-138.045 of this part, and in the current year fails the exemption criteria as stated in paragraphs 4-138.044(3)(a), (3)(b), or (3)(e) to again provide an actuarial opinion in accordance with Rule 4-138.045, F.A.C., the statement of actuarial opinion in accordance with rule 4-138.046 shall not be required until August 1 following the date of the annual statement. In this instance, the company shall provide a statement of actuarial opinion in accordance with Rule 4-138.045, F.A.C., with appropriate qualification noting the intent to subsequently provide a statement of actuarial opinion in accordance with Rule 4-138.046, F.A.C.~~

~~(c) In the case of a statement of actuarial opinion required to be submitted by a foreign or alien company, the Department may accept the statement of actuarial opinion filed by the company with the insurance supervisory official of another state if the Department determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.~~

~~(b)(4) Upon written request by the company, the Department has the authority to may grant an extension of the date for submission of the statement of actuarial opinion.~~

(2) Qualified Appointed Actuary.

(a) The company shall give the Department, prior to or concurrent with the filing of the first annual statement to which this rule applies, written notice of the name, title, (and, in the case of a consulting actuary, the name of the firm) and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in such notice that the person meets the requirements set forth in this paragraph (b) below.

(b) Any appointed actuary will be considered to be a “Qualified Actuary” if he is an individual who:

1. Is a member in good standing of the American Academy of Actuaries; ~~and~~

2. Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements; ~~and~~

3. Is familiar with the valuation requirements applicable to life and health insurance companies; ~~and~~

4. Has not been found by the Department (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice and hearing, to have:

a. Violated any provision of, or any obligation imposed by, the Insurance Code or other state or federal law relating to insurance in the course of his or her dealings as a qualified actuary; ~~or~~

b. Been found guilty of or pleaded guilty or nolo contendere to fraudulent or dishonest practices without regard to whether a judgment of conviction has been entered by the court having jurisdiction in such case; ~~or~~

c. Demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary; ~~or~~

d. Submitted to the Department during the past five (5) years, pursuant to this part, an actuarial opinion or memorandum that the Department rejected because it did not meet the provisions of this part including standards set by the Actuarial Standards Board; or

e. Resigned or been removed as an appointed actuary within the past five (5) years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and

5. Has not failed to notify the Department of any action taken by any insurance supervisory official of any other state similar to that under subparagraph 4-138.043(2)(b)4., F.A.C., above.

(c) Once notice is furnished, no further notice is required with respect to this person provided the company shall give the Department written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements set forth in paragraph subsection 4-138.043(2)(b), F.A.C. Notice must be prior to or concurrent with the termination of the actuary's appointment or retention, or upon discovery that the actuary no longer meets the requirements set forth in paragraph subsection 4-138.043(2)(b), F.A.C.

(d) If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.

(3) No change.

(4) Liabilities to Be Covered.

(a) through (b) No change.

~~(e) For years ending prior to December 31, 1995, the company may, in lieu of establishing the full amount of the additional reserve in the annual statement for that year, set up an additional reserve in an amount not less than the following:~~

~~1. For the year ending on December 31, 1993, the additional reserve divided by three.~~

~~2. For the year ending on December 31, 1994, two times the additional reserve divided by three.~~

~~(c)(4)~~ Additional reserves established under paragraphs (b) ~~or (c)~~ above and deemed not necessary in subsequent years may be released. Any amounts released ~~shall~~ must be disclosed in the actuarial opinion for the applicable year. The release of such reserves will not be deemed an adoption of a lower standard of valuation.

Specific Authority 624.308(1), 625.121(3)(a) FS. Law Implemented 624.307(1), 624.316(1)(c), 624.424(1), 625.121(3) FS. History—New 5-18-93, Amended 2-16-94, \_\_\_\_\_.

#### 4-138.044 Required Opinions.

Specific Authority 624.308(1), 625.121(3)(a) FS. Law Implemented 624.307(1), 624.316(1)(c), 624.424(1), 625.121(3) FS. History—New 5-18-93, Amended 2-16-94, 4-9-97, 4-4-99, 11-30-99, Repealed.

#### 4-138.045 Statement of Actuarial Opinion Not Including an Asset Adequacy Analysis.

Specific Authority 624.308(1), 625.121(3)(a) FS. Law Implemented 624.307(1), 624.316(1)(c), 624.424(1), 625.121(3) FS. History—New 5-18-93, Amended 2-16-94, Repealed.

#### 4-138.046 Statement of Actuarial Opinion Based on an Asset Adequacy Analysis.

(1) General Description. The statement of actuarial opinion submitted in accordance with this section shall consist of:

(a) through (d) No change.

(e) One or more additional paragraphs will be needed in individual company cases as follows:

1. If the appointed actuary considers it necessary to state a qualification of his or her opinion;

~~2. If the appointed actuary must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis;~~

~~3. If the appointed actuary must disclose reliance upon any portion of the assets supporting the Asset Valuation Reserve (AVR), Interest Maintenance Reserve (IMR), or other mandatory or voluntary statement reserves for asset adequacy analysis;~~

4. through 6. renumbered 2. through 4. No change.

(2) Recommended Language. The following paragraphs are to be included in the statement of actuarial opinion. Language is that which in typical circumstances shall be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular

case, but the appointed actuary shall use language that which clearly expresses his or her professional judgment, and retains all pertinent aspects of the language provided in this section.

(a) The opening paragraph shall indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion.

1. For a company actuary, the opening paragraph of the actuarial opinion shall include a statement such ~~read~~ as follows:

"I, (name), am (title) of (insurance company name) and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the Department of Insurance dated (insert date). I meet the Academy qualification standards for rendering the opinion, and am familiar with the valuation requirements applicable to life and health insurance companies."

2. For a consulting actuary, the opening paragraph shall contain a sentence such as :

"I, (name), a member of the American Academy of Actuaries, am associated with the firm of (name of consulting firm). I have been appointed by, or by the authority of, the Board of Directors of (name of company) to render this opinion as stated in the letter to the Department of Insurance dated (insert date). I meet the Academy qualification standards for rendering the opinion, and am familiar with the valuation requirements applicable to life and health insurance companies."

(b) The scope paragraph shall include a statement such as the following:

"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 2019. Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis.

**Reserves and Liabilities**

**Asset Adequacy Tested Amounts**

Additional				
Formula	Actuarial	Analysis	Other	Total
Reserves	Reserves	Method	Amount	Amount
(a)	(b)	(1) + (2) + (3)		
Statement Item	(1)-(2)	(3)	(4)	

**Exhibit 8**

A	Life Insurance
B	Annuities
C	Supplementary
Contracts	Involving Life
	Contingencies

D	Accidental Death
Benefit	
E	Disability—Active
F	Disability—Disabled
G	Miscellaneous

**Total (Exhibit 8  
Item 1, Page 3)  
Exhibit 9**

A	Active Life Reserve
B	Claim Reserve

**Total (Exhibit 9  
Item 2, Page 3)  
Exhibit 10**

1	Premiums and Other Deposit Funds
1.1	Policyholder Premiums (Page 3, Line 10.1)
1.2	Guaranteed Interest Contracts (Page 3, Line 10.2)
1.3	Other Contract Deposit Funds (Page 3, Line 10.3)
2	Supplementary Contracts Not Involving Life Contingencies (Page 3, Line 3)
3	Dividend and Coupon Accumulations (Page 3, Line 5)

**Total Exhibit 10  
Exhibit 11 Part 1**

1	Life (Page 3, Line 4.1)
2	Health (Page 3, Line 4.2)

**Total Exhibit 11, Part 1**

**Separate Accounts**  
(Page 3, Line 27)

TOTAL RESERVES	
IMR	(Page ____ Line ____)
AVR	(Page ____ Line ____)

<u>Asset Adequacy Tested</u> <u>Amounts – Reserves and</u> <u>Liabilities</u>					
<u>Statement Item</u>	<u>Formula</u> <u>Reserves</u> <u>(1)</u>	<u>Additional Actuarial</u> <u>Reserves (2) Note (i)</u> <u>below</u>	<u>Analysis</u> <u>Method Note</u> <u>(ii) below</u>	<u>Other Amount</u> <u>(3)</u>	<u>Total Amount</u> <u>(1)+(2)+(3) (4)</u>
<u>Exhibit 8 A Life</u> <u>Insurance</u>					
<u>B Annuities</u>					
<u>C Supplementary</u> <u>Contracts Involving Life</u> <u>Contingencies</u>					
<u>D Accidental Death</u> <u>Benefit</u>					
<u>E Disability – Active</u>					
<u>F Disability – Disabled</u>					
<u>G Miscellaneous</u>					
<u>Total (Exhibit 8 Item 1,</u> <u>Page 3)</u>					
<u>Exhibit 9 A Active Life</u> <u>Reserve</u>					
<u>B Claim Reserve</u>					
<u>Total (Exhibit 9 Item 2,</u> <u>Page 3)</u>					
<u>Exhibit 10 Premium and</u> <u>Other Deposit Funds</u> <u>(Column 5, Line 14)</u>					
<u>Guaranteed Interest</u> <u>Contracts (Column 2,</u> <u>Line 14)</u>					
<u>Other (Column 6, Line 14)</u>					
<u>Supplemental Contracts</u> <u>and Annuities Certain</u> <u>(Column 3, Line 14)</u>					
<u>Dividend Accumulations</u> <u>or Refunds (Column 4,</u> <u>Line 14)</u>					
<u>Total Exhibit 10 (Column</u> <u>1, Line 14)</u>					
<u>Exhibit 11 Part 1</u>					
<u>1 Life (Page 3, Line 4.1)</u>					
<u>2 Health (Page 3, Line 4.2)</u>					
<u>Total Exhibit 11, Part 1</u>					
<u>Separate Accounts (Page 3</u> <u>of the Annual Statement of</u> <u>the Separate Accounts,</u> <u>Lines 1, 2, 3.1, 3.2, 3.3)</u>					
<u>TOTAL RESERVES</u>					

IMR (General Account, Page ___ Line ___) (Separate Accounts, Page ___ Line ___)	
AVR (Page ___ Line ___)	Note (iii) below
Net Deferred and Uncollected Premium	

Note (i): The additional actuarial reserves are the reserves established under paragraphs (b) and (c) of subsection 4-138.043(4), F.A.C.

Note (ii): The appointed actuary shall indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in subsection 4-138.043(3), F.A.C. of this part, by means of symbols which shall be defined in footnotes to the table.

Note (iii): Allocated amount of Asset Valuation Reserve (AVR).

(c)1.a. If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph shall include a statement such as the following:

~~“I have relied on [name], [title] for [e.g., “anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios” or “certain critical aspects of the analysis performed in conjunction with forming my opinion”], as certified in the attached statement. I have reviewed the information relied upon for reasonableness.” “I have relied on (name), (title) for (e.g., anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios) and, as certified in the attached statement, . . .” or~~

~~“I have relied on personnel as cited in the supporting memorandum for certain critical aspects of the analysis in reference to the accompanying statement.”~~

b. Such a statement of reliance on other experts shall be accompanied by a statement by each of such experts of the form prescribed by subsection 4-138.046(5), F.A.C.

2. If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph shall also include a statement such as the following:

“My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary.”

3.a. If the appointed actuary has not examined the underlying records, but has relied upon data: (e.g., listings and summaries of policies in force and/or asset records) prepared by the company or a third party, the reliance paragraph shall include a statement sentence such as:

“In forming my opinion on [specify types of reserves] I relied upon data prepared by [name and title of company officer certifying in force records or other data] as certified in the attached statements. I evaluated that data for reasonableness and consistency. I also reconciled that data to [exhibits and schedules to be listed as applicable] of the company’s current annual statement. In other respects, my examination included review of the actuarial assumptions and actuarial methods used and tests of the calculations I considered necessary.”

~~“I have relied upon listings and summaries (of policies and contracts, of asset records) prepared by (name and title of company officer certifying in force records) as certified in the attached statement. In other respects my examination included such review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary.” or~~

~~“I have relied upon (name of accounting firm) for the substantial accuracy of the in force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and tests of the actuarial calculations as I considered necessary.”~~

b. Such a section shall must be accompanied by a statement by each person relied upon of the form prescribed by subsection 4-138.046(5), F.A.C.

(d) The opinion paragraph shall include a statement such as the following:

“In my opinion the reserves and related actuarial values concerning the statement items identified above:

1. Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

2. Are based on actuarial assumptions that which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

3. Meet the requirements of the Insurance Law and regulation of the state of (state of domicile) and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

4. Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below); and

5. Include provision for all actuarial reserves and related statement items which ought to be established.

“The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on the such assets, and the considerations anticipated to be received and retained under the such policies and contracts, make adequate provision, according to presently

accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company.

“The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the actuarial Standards Board which form the basis of this statement of opinion.

“To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which shall be considered in reviewing this opinion.” or

“The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion shall be considered in reviewing this opinion: (describe the change or changes.)

NOTE: Choose one of the above two paragraphs, whichever is applicable.

The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion shall be viewed recognizing that the company’s future experience may not follow all the assumptions used in the analysis.

\_\_\_\_\_  
Signature of Appointed Actuary

\_\_\_\_\_  
Address of Appointed Actuary

\_\_\_\_\_  
Telephone Number of Appointed Actuary

\_\_\_\_\_  
Date

(3) Assumptions for New Issues. The adoption for new issues or new claims or other new liabilities of an actuarial assumption ~~that which~~ differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this Rule 4-138.046, F.A.C.

(4) Adverse Opinions. If the appointed actuary is unable to form an opinion, he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary’s opinion is adverse or qualified, he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for such opinion. This statement shall follow the scope paragraph and precede the opinion paragraph.

(5) Reliance on Information ~~Data~~ Furnished by Other Persons.

(a) If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion should indicate the persons the actuary is relying upon and a precise identification of the items subject to reliance.

(b) The persons on whom the appointed actuary relies shall provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness, or reasonableness, as applicable, of the items. The certification shall include the signature, title, company, address, and telephone number of the person rendering the certification, as well as the date on which it is signed.

~~If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force and/or asset oriented information, there shall be attached to the opinion the statement of a company officer or accounting firm who prepared such underlying data similar to the following:~~

~~“I (name of officer), (title), of (name of company or accounting firm), hereby affirm that the listings and summaries of policies and contracts in force as of December 31, 19( ), and other liabilities prepared for and submitted to (name of appointed actuary) were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.~~

\_\_\_\_\_  
Signature of the Officer of the Company or Accounting Firm

\_\_\_\_\_  
Address of the Officer of the Company or Accounting Firm

\_\_\_\_\_  
Telephone Number of the Officer of the Company or Accounting Firm” and/or

~~“I, (name of officer), (title) of (name of company, accounting firm, or security analyst), hereby affirm that the listings, summaries and analyses relating to data prepared for and submitted to (name of appointed actuary) in support of the asset oriented aspects of the opinion were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.~~

\_\_\_\_\_  
Signature of the Officer of the Company, Accounting Firm or Security Analyst

\_\_\_\_\_  
Address of the Officer of the Company, Accounting Firm, or Security Analyst

\_\_\_\_\_  
Telephone Number of the Officer of the Company, Accounting Firm, or Security Analyst”

(6) Alternate Option.

(a) The Standard Valuation Law gives the Department broad authority to accept the valuation of a foreign insurer when that valuation meets the requirements applicable to a company domiciled in this state in the aggregate. As an alternative to the requirements of subparagraph

4-138.046(2)(d)3., F.A.C., the Department shall make one or more of the following additional approaches available to the opining actuary:

1. A statement that the reserves “meet the requirements of the insurance laws and regulations of the State of [state of domicile] and the formal written standards and conditions of this state for filing an opinion based on the law of the state of domicile.”

a. Under this alternative, a formal written list of standards and conditions shall be made available.

b. If a company chooses to use this alternative, the standards and conditions in effect on July 1 of a calendar year shall apply to statements for that calendar year, and they shall remain in effect until they are revised or revoked. If no list is available, this alternative is not available.

2. A statement that the reserves “meet the requirements of the insurance laws and regulations of the State of [state of domicile] and I have verified that the company’s request to file an opinion based on the law of the state of domicile has been approved and that any conditions required by the Department for approval of that request have been met.”

a. Under this alternative, a formal written statement of such allowance shall be issued no later than March 31 of the year it is first effective. It shall remain valid until rescinded or modified by the Department. Such rescission or modifications shall be issued no later than March 31 of the year they are first effective.

b. Subsequent to that statement being issued, if a company chooses to use this alternative, the company shall file a request to do so, along with justification for its use, no later than April 30 of the year of the opinion to be filed.

c. The request shall be deemed approved on October 1 of that year if the Department has not denied the request by that date.

3. A statement that the reserves “meet the requirements of the insurance laws and regulations of the State of [state of domicile] and I have submitted the required comparison as specified by this state.”

a.(I) Under this alternative, a formal written list of products (to be added to the table in Item b below) for which the required comparison shall be provided will be published.

(II) If a company chooses to use this alternative, the list in effect on July 1 of a calendar year shall apply to statements for that calendar year, and it shall remain in effect until it is revised or revoked. If no list is available, this alternative is not available.

b. If a company desires to use this alternative, the appointed actuary shall provide a comparison of the gross nationwide reserves held to the gross nationwide reserves that would be held under NAIC codification standards. Gross nationwide reserves are the total reserves calculated for the total company in force business directly sold and assumed,

indifferent to the state in which the risk resides, without reduction for reinsurance ceded. The information provided shall be at least:

(1) Product Type	(2) Death Benefit or Account Value	(3) Reserves Held	(4) Codification Reserves	(5) Codification Standard

c. The information listed shall include all products identified by either the state of filing or any other states subscribing to this alternative.

d. If there is no codification standard for the type of product or risk in force or if the codification standard does not directly address the type of product or risk in force, the appointed actuary shall provide detailed disclosure of the specific method and assumptions used in determining the reserves held.

e. The comparison provided by the company is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

4. Notwithstanding the above, if the state of domicile opinion and the additional information provided to the Department is not sufficient to demonstrate that the opinion complies with the laws and regulations of this state, the Department shall reject this alternative and require an opinion based on the laws and regulations of this state. If a company is unable to provide the opinion within 60 days of the request or such other period of time determined by the Department after consultation with the company, the Department may contract an independent actuary at the company’s expense to prepare and file the opinion.

Specific Authority 625.121(3)(a) FS. Law Implemented 625.121(3) FS. History—New 5-18-93, Amended \_\_\_\_\_.

4-138.047 Description of Actuarial Memorandum Including an Asset Adequacy Analysis and Regulatory Asset Adequacy Issues Summary.

(1) General.

(a)1. In accordance with subsection (3) of the Standard Valuation Law, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves under a rule 4-138.046 opinion.

2. The memorandum shall be made available for examination by the Department upon its request. Any memorandum in support of the opinion, and any other material provided by the company to the Department in connection therewith, is confidential and exempt from the provisions of Section s. 119.07(1), Florida Statutes, as provided in Section s. 625.121(3)(a)10., Florida Statutes F.S.



(b) In preparing the memorandum, the appointed actuary may ~~rely on, and~~ include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of subsection 4-138.043(2), F.A.C., ~~of this part~~ with respect to the areas covered in the memoranda, and shall so state in their memoranda.

(c) If the Department requests a memorandum and no such memorandum exists, or if the Department finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this part, the Department may designate a qualified actuary to review the opinion and prepare for review the required supporting memorandum. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the Department.

(d)1. The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company.

2. The work papers and documentation of the reviewing actuary shall be retained by the Department.

3. Any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the Department and kept confidential to the same extent prescribed by law with respect to other material provided by the company to the Department pursuant to the statute governing this part.

4. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this part for the current year or any one of the preceding three (3) years.

(e) In accordance with Section 625.121(3), Florida Statutes, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in subsection 4-138.047(3), F.A.C.

1. The regulatory asset adequacy issues summary shall be submitted no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required.

2. The regulatory asset adequacy issues summary is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

(2) Details of the Memorandum Section Documenting Asset Adequacy Analysis (~~Rule 4-138.046~~). When an actuarial opinion ~~under rule 4-138.046~~ is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in subsection 4-138.043(3), F.A.C., ~~of this part~~ and any additional standards under this part. It shall specify:

(a) For reserves:

1. Product descriptions, including market description, underwriting, and other aspects of a risk profile, and the specific risks the appointed actuary deems significant;

2. Source of liability in force;

3. Reserve method and basis;

4. Investment reserves;

5. Reinsurance arrangements.

6. Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis.

7.a. Documentation of assumptions to test reserves for the following:

(I) Lapse rates (both base and excess);

(II) Interest crediting rate strategy;

(III) Mortality;

(IV) Policyholder dividend strategy;

(V) Competitor or market interest rate;

(VI) Annuitization rates;

(VII) Commissions and expenses; and

(VIII) Morbidity.

b. The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum can form a conclusion as to the reasonableness of the assumptions.

(b) For assets:

1. Portfolio descriptions, including a risk profile disclosing the quality, distribution, and types of assets;

2. Investment and disinvestment assumptions;

3. Source of asset data;

4. Asset valuation bases; and

5.a. Documentation of assumptions made for:

(I) Default costs;

(II) Bond call function;

(III) Mortgage prepayment function;

(IV) Determining market value for assets sold due to disinvestment strategy; and;

(V) Determining yield on assets acquired through the investment strategy.

b. The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum can form a conclusion as to the reasonableness of the assumptions.

(c) For the ~~a~~Analysis basis:

1. Methodology;

2. Rationale for inclusion/exclusion of different blocks of business, and how pertinent risks were analyzed;

3. Rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of "materiality" that was used in determining how rigorously to analyze different blocks of business);

4. Criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under “moderately adverse conditions” or other conditions as specified in relevant actuarial standards of practice); and

5. Whether the impact of federal income taxes was considered and the method of treating reinsurance in the asset adequacy analysis ~~Effect of federal income taxes, reinsurance, and other relevant factors.~~

(d) Summary of material changes in methods, procedures, or assumptions from prior year’s asset adequacy analysis;

~~(e)~~(d) Summary of Results.

~~(f)~~(e) Conclusion(s).

(3) Details of the Regulatory Asset Adequacy Issues Summary.

(a) The regulatory asset adequacy issues summary shall include:

1. Descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios.

a. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values.

b. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force.

2. The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis;

3. The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;

4. Comments on any interim results that may be of significant concern to the appointed actuary;

5. The methods used by the actuary to recognize the impact of reinsurance on the company’s cash flows, including both assets and liabilities, under each of the scenarios tested; and

6. Whether the actuary has been satisfied that all options whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

(b) The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.

~~(4)~~(3) Conformity to Standards of Practice. The memorandum shall include a statement:

“Actuarial methods, considerations, and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board which form the basis for this memorandum.”

(5) Use of Assets Supporting the Interest Maintenance Reserve and the Asset Valuation Reserve.

(a) An appropriate allocation of assets in the amount of the Interest Maintenance Reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis.

1. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the Asset Valuation Reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy.

2. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support.

(b)1. The amount of the assets used for the AVR shall be disclosed in the Table of Reserves and Liabilities of the opinion and in the memorandum.

2. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.

(6) Documentation. The appointed actuary shall retain on file for at least seven (7) years sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.

Specific Authority 625.121(3)(a) FS. Law Implemented 625.121(3) FS. History—New 5-18-93, Amended.

4-138.048 Additional Considerations for Analysis.

Specific Authority 625.121(3)(a) FS. Law Implemented 625.121(3) FS. History—New 5-18-93, Repealed.

**DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**Division of Agricultural Environmental Services**

RULE CHAPTER TITLE: Entomology – Pest Control REGULATIONS

RULE CHAPTER NO.: 5E-14

Entomology – Pest Control REGULATIONS

RULE NOS.: 5E-14.105

Regulations

RULE TITLES:

RULE NOS.:

Contractual Agreements in Public’s Interest –

Control and Preventative Treatment for Wood

Destroying Organisms

5E-14.105

Use of Pesticides – Labels, Limitations,  
 Precautions 5E-14.106

Responsibilities and Duties – Records, Reports,  
 Advertising, Applications 5E-14.142

PURPOSE AND EFFECT: The purpose and effect of the rule development is to amend Chapter 5E-14, F.A.C., to address changes to Statute and to develop modifications for the state required Wood-Destroying Organisms Inspection Report, Form 13645.

SUBJECT AREA TO BE ADDRESSED: The subject area to be addressed is modification of Wood-Destroying Organisms reporting requirements.

SPECIFIC AUTHORITY: 482.051 FS.

LAW IMPLEMENTED: 482.021(15), 482.051(1),(5), 482.241 FS.

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:

TIME AND DATE: 10:00 a.m., June 4, 2002

PLACE: Conference Room S-113B, Hurston South Tower, 400 West Robinson Street, Orlando, FL 32801

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Steven Rutz, Director, Department of Agriculture and Consumer Services, Room 130, 3125 Conner Blvd., Tallahassee, FL 32399-1650

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

5E-14.105 Contractual Agreement in Public’s Interest – Control and Preventative Treatment for Wood-Destroying Organisms.

(1) No change.

(2) No change.

(3) In contracts covering ~~pre-construction soil~~ treatments for the prevention of subterranean termites for new construction, it shall clearly set forth that should subterranean termite infestation occur ~~to in, on, or under~~ the structure treated during the warranty period, additional treatment shall be performed in a manner appropriate to control the ~~applied to the soil in the area of~~ infestation. The warranty shall show the date of treatment and shall be for a period no less than one year from date of treatment. The property owner at the time of each renewal, if a previous renewal was purchased, shall have the option of extending the warranty annually after the first year for no less than 4 additional years. The contract shall conform with Section 482.227, F.S., and paragraphs 5E-14.105(2)(a), (b), (c), (g), (i), (j), and (k), F.A.C. This section applies only to ~~pre-construction soil~~ treatment for the prevention of subterranean termites for new construction of areas which ~~do~~ not physically attach to or adjoin existing structures.

(4) through (7) No change.

Specific Authority 482.051 FS. Law Implemented 482.021(15), 482.051(1), (3), 482.161, 482.191, 482.241 FS. History–New 1-1-77, Amended 6-27-79, 10-25-90, Formerly 10D-55.105, Amended 8-11-93,\_\_\_\_\_.

5E-14.106 Use of Pesticides – Labels, Limitations, Precautions.

(1) through (5) No change.

(6) Pesticides used for treatment for the prevention of subterranean termites for new construction ~~pre-construction soil treatments for prevention of subterranean termites~~ shall be applied in the specific amounts, concentration, and treatment areas designated by the label. The pesticide, in its original formulation, shall be mixed at the ~~pre-construction~~ treatment site immediately prior to application. A copy of the label of the registered pesticide being used shall be carried in the vehicle from which the application is performed. The licensee shall maintain records for 3 years of each treatment for the prevention of subterranean termites for new construction ~~pre-construction soil treatment~~ indicating the date of treatment, address of property treated, total square footage of structure treated, pesticide used, percent concentration of mixture applied and total volume applied as well as maintaining records of all pesticide purchased, obtained, or available for its use; the total amount of the area treated using soil applied termiticides; and the total number of sites treated using this and any other method of treatment for the prevention of subterranean termites.

Specific Authority 482.051 FS. Law Implemented 482.051(1) FS., P.L. 92-516, Section 1, Chapter 92-203, Laws of Florida. History–New 1-1-77, Amended 6-27-79, 6-22-83, 10-25-90, Formerly 10D-55.106, Amended 7-5-95,\_\_\_\_\_.

5E-14.142 Responsibilities and Duties – Records, Reports, Advertising, Applications.

(1) No change.

(2)(c) Termite or other wood-destroying organism inspection report:

Pursuant to Section 482.226(1), (2), (4) and (5), F.S., each licensee having a certified operator certified in the category of termite or other wood-destroying organism control and who makes and reports the findings of a wood-destroying organism inspection in writing shall provide the party requesting the inspection with the inspection findings on the Wood-Destroying Organisms Inspection Report prescribed by the Department and furnished by the licensee, DACS 13645, Rev. \_\_\_\_\_ 3/02, which is incorporated by reference. The licensee shall not place any disclaimers or additional language on the Wood-Destroying Organisms Inspection Report. The licensee shall inspect for all wood-destroying organisms as defined in Section 482.021(28), F.S., in accordance with the following inspection standards:

1. through 2. No change.

(3) through (8) No change.

Specific Authority 482.051 FS. Law Implemented 482.061, 482.071, 482.091, 482.111(5),(9), 482.161(1)(g),(h), 482.226(1),(6) FS. History--New 1-1-77, Amended 6-27-79, 6-22-83, 1-20-87, 10-25-90, Formerly 10D-55.142, Amended 8-11-93, 5-28-98, 5-1-02,\_\_\_\_\_.

**DEPARTMENT OF LAW ENFORCEMENT**

RULE CHAPTER TITLE: False Reports of Bombing, Etc.,  
REWARD FOR INFORMATION  
RELATING THERETO

RULE CHAPTER NO.: 11-2

RULE TITLE: Judicial Review

RULE NO.: 11-2.004

PURPOSE AND EFFECT: To clarify the procedures for reward for false bomb threat claims.

SUBJECT AREA TO BE ADDRESSED: Judicial review by the courts to determine Reward for False Bomb Threat Claims.

SPECIFIC AUTHORITY: 790.164 FS.

LAW IMPLEMENTED: 790.164 FS.

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:

TIME AND DATE: 10:00 a.m., Tuesday, June 4, 2002

PLACE: Florida Department of Law Enforcement, 2331 Phillips Road, Conference Room, 3rd Floor, Quad C, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Persons needing an accommodation to participate in any proceeding should call (850)410-7900, (voice) or (850)656-9597, (TDD), at least five working days before such proceeding.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Fern Rosenwasser, Office of General Counsel, Florida Department of Law Enforcement, 2331 Phillips Road, Tallahassee, Florida 32308

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

11-2.004 Judicial Review.

After the prosecuting officer has completed his endorsement, the claim with endorsements shall be returned to the claimant. Thereafter, the claimant must file a petition civil action in the circuit court within whose jurisdiction the arrest or conviction occurred. The Claim of Reward, Law Enforcement Endorsement, and Prosecutor's Endorsement prescribed in Rule 11-2.002, F.A.C., or documents containing substantially the same information, shall be made exhibits and incorporated into the pleadings. The state attorney for that circuit will be served and shall, respond to the suit on behalf of the State of Florida. Competing claims should be consolidated. The courts' judgment or decree of eligibility for the reward, if any, shall be

forwarded to the Florida Department of Law Enforcement, Office of General Counsel, P. O. Box 1489, Tallahassee, Florida 32302-1489.

Specific Authority 943.03(4) FS. Law Implemented 790.164 FS. History--New 3-2-77, Formerly 11-2.04, Amended 7-29-01,\_\_\_\_\_.

**DEPARTMENT OF LAW ENFORCEMENT**

**Criminal Justice Standards and Training Commission**

RULE CHAPTER TITLE: Salary Incentive Program

RULE CHAPTER NO.: 11B-14

RULE TITLES: Definitions

RULE NOS.: 11B-14.001

General Program Provisions 11B-14.002

Authorized Salary Incentive Payments 11B-14.003

Annual Salary Incentive Compensation Report 11B-14.005

PURPOSE AND EFFECT: To revise existing definitions, add new definitions, add a new rule section regarding the statutorily mandated Annual Salary Incentive Compensation Report that lists the inactive advanced training courses eligible for salary incentive payment; and add rule references to forms in Rule Chapter 11B-14, F.A.C., to indicate where the form is incorporated in rule.

SUBJECT AREA TO BE ADDRESSED: Annual Salary Incentive Compensation Report; general salary incentive provisions; inactive advanced training courses eligible for salary incentive payment; audit of agency records; and required agency signatures for report verification.

SPECIFIC AUTHORITY: 943.03(4), 943.12(1), 943.22(2)(h), 943.22(i) FS.

LAW IMPLEMENTED: 943.22 FS.

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:

TIME AND DATE: 10:00 a.m., June 4, 2002

PLACE: 2331 Phillips Road, Elevator Conference Room, Quad C, 3rd Floor, Tallahassee, Florida 32308-1489

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Donna Hunt, Florida Department of Law Enforcement, Criminal Justice Professionalism Program, 2331 Phillips Road, Tallahassee, Florida 32308-1489

UPON REQUEST AND WHEN AVAILABLE RULE TEXT WILL BE PROVIDED AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Pursuant with 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 days prior to the workshop by contacting Donna Hunt at: (850)410-7900, (voice) or (850)656-9597, (TDD), at least five working days before such proceeding.

**DEPARTMENT OF LAW ENFORCEMENT**

**Criminal Justice Standards and Training Commission**

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Criminal Justice Standards and Training Trust Fund	11B-18
RULE TITLES:	RULE NOS.:
Operational Definitions	11B-18.003
Regional Training Areas	11B-18.004
Establishment of Regional Training Councils	11B-18.005
Regional Training Council Meetings	11B-18.0051
Development of Budgets	11B-18.0052
Officer Training Monies Budget and Expenditure Categories	11B-18.0053
Expenditure of Funds	11B-18.007
Development of Officer Training Monies Budgets and Required Reports	11B-18.0071
Areas of Responsibility	11B-18.008
Applicability, Contractual Obligations	11B-18.009
Criminal Justice Standards and Training Commission Fiscal Program Audits and Instruction and Facility Evaluations	11B-18.010

**PURPOSE AND EFFECT:** To clarify existing rule language; repeal Rule 11B-18.007, F.A.C., Expenditure of Funds, and replace with Rule 11B-18.0053, F.A.C., Officer Training Monies Budget and Expenditure Categories and Rule 11B-18.0071, F.A.C., Development of Officer Training Monies Budgets and Required Reports; add Rule 11B-18.010, F.A.C., Criminal Justice Standards and Training Commission Fiscal and Program Audits and Instruction and Facility Evaluations; update the state law enforcement agency list in Rule 11B-18.005, F.A.C.; revise operational definitions; and add rule references to the incorporated forms in Rule Chapter 11B-18, F.A.C., to indicate where the form is incorporated in rule.

**SUBJECT AREA TO BE ADDRESSED:** Operational definitions; State Regional Law Enforcement Officer Training Council XV agency representatives; Development of trust fund budgets; Officer Training Monies budget and expenditure categories; Development of Officer Training Monies budgets and required reports; and Criminal Justice Standards and Training Commission Fiscal and Program Audits.

**SPECIFIC AUTHORITY:** 943.03(4), 943.12(1),(2), 943.25(2), (4), (5), (5)(b) FS.

**LAW IMPLEMENTED:** 943.12(5), 943.25, 943.25(4), (5) FS.

**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:**

**TIME AND DATE:** 10:00 a.m., June 4, 2002

**PLACE:** 2331 Phillips Road, Elevator Conference Room, Quad C, 3rd Floor, Tallahassee, Florida 32308-1489

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Donna Hunt, Florida Department of Law Enforcement, Criminal Justice Professionalism Program, 2331 Phillips Road, Tallahassee, Florida 32308-1489

UPON REQUEST AND WHEN AVAILABLE RULE TEXT WILL BE PROVIDED AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

**NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT:** Pursuant with 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 days prior to the workshop by contacting Donna Hunt at: (850)410-7900, (voice) or (850)656-9597, (TDD), at least five working days before such proceeding.

**DEPARTMENT OF LAW ENFORCEMENT**

**Criminal Justice Standards and Training Commission**

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Certification of Criminal Justice Training Instructors	11B-20
RULE TITLES:	RULE NOS.:
Definitions and Minimum Requirements for General Certification of Instructors	11B-20.001
Denial and Revocation of Instructor Certification	11B-20.0012
Commission Instructor Certification Categories	11B-20.0013
Minimum Requirements for High-Liability and Specialized Topics Instructor Certification	11B-20.0014
Minimum Requirements to Instruct the CMS Application-Based Basic Recruit Training Programs	11B-20.0015
Inspection of Instructor Certification Applications	11B-20.0016
Maintenance and Duration of Instructor Certifications	11B-20.0017
Commission Instructor Certification Application	11B-20.0018

**PURPOSE AND EFFECT:** To repeal Rule 11B-20.0015, F.A.C., Minimum Requirements to Instruct the CMS Application-Based Basic Recruit Training Programs and incorporate the existing rule language into Rules 11B-20.001 and 11B-20.0014, F.A.C.; update existing rule language to reflect the Commission's new Curriculum Maintenance System (CMS) and Breath Test Instructor requirements; change the requirements for instructor certifications by implementing new requirements where instructor certifications are maintained and do not expire; repeal Rule 11B-20.0018, F.A.C., Commission Instructor Certification Application and incorporated its rule language into Rules 11B-20.0016 and

Rule 11B-20.0017, F.A.C., and add rule references to the incorporated forms in Rule Chapter 11B-20, F.A.C., to indicate where the form is incorporated in rule.

**SUBJECT AREA TO BE ADDRESSED:** Rule definitions; instructor applicant compliance with Commission rules for certification, denial of certification, expansion of instructor certification categories to incorporate the Commission’s Curriculum Maintenance System (CMS), minimum requirements for high-liability and specialized topics instructor certification for CMS, and new requirements for maintenance of instructor certification.

**SPECIFIC AUTHORITY:** 120.60(1), 943.03(4), 943.12(1), 943.14(3) FS.

**LAW IMPLEMENTED:** 120.60(1), 943.12(3),(9), 943.14(3) FS.

**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:**

**TIME AND DATE:** 10:00 a.m., June 4, 2002

**PLACE:** 2331 Phillips Road, Elevator Conference Room, Quad C, 3rd Floor, Tallahassee, Florida 32308-1489

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS:** Donna Hunt, Florida Department of Law Enforcement, Criminal Justice Professionalism Program, 2331 Phillips Road, Tallahassee, Florida 32308-1489

**UPON REQUEST AND WHEN AVAILABLE RULE TEXT WILL BE PROVIDED AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.**

**NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT:** Pursuant with 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 days prior to the workshop by contacting Donna Hunt at: (850)410-7900, (voice) or (850)656-9597, (TDD), at least five working days before such proceeding.

**DEPARTMENT OF LAW ENFORCEMENT**

**Criminal Justice Standards and Training Commission**

<b>RULE CHAPTER TITLE:</b>	<b>RULE CHAPTER NO.:</b>
Certification of Criminal Justice Training Schools	11B-21
<b>RULE TITLES:</b>	<b>RULE NOS.:</b>
Local Advisement and Definitions	11B-21.001
Criminal Justice Training Schools’ Request for Certification, Expansion of Certification, and Re-certification	11B-21.002
Certification Codes	11B-21.004
Criminal Justice Training School Requirements for Certification and Re-certification	11B-21.005

Criminal Justice Training School Satellite Facilities and Equipment Requirements	11B-21.0051
Denial of Certification or Renewal of Certification	11B-21.017

Criminal Justice Training School Disciplinary Guidelines and Revocation of Certification	11B-21.018
Criminal Justice Training School Inspections	11B-21.019

**PURPOSE AND EFFECT:** To add definitions to Rule 11B-21.001, F.A.C.; repeal Rule 11B-21.004, F.A.C., regarding “certification codes,” and incorporate its language into Rule 11B-21.001, F.A.C., Local Advisements and Definitions, and group related subjects into a better format; streamline Rule 11B-21.005, F.A.C., by incorporating the facility requirements into existing Commission forms that are currently incorporated in this rule section; repeal Rule 11B-21.0017, F.A.C., and incorporated its language into Rule 11B-21.002, F.A.C., Criminal Justice Training Schools’ Request for Certification, Expansion of Certification, and Re-certification, add the expansion and recertification compliance requirements to Rule 11B-21.002, F.A.C.; remove rule language from Rule 11B-21.005(5), F.A.C., and transfer its rule language to Rule 11B-21.0051, F.A.C., Criminal Justice Training School Satellite Facilities and Equipment Requirements; add additional requirements regarding satellite training faculties and equipment requirements to Rule 11B-21.0051, F.A.C., and add rule references to the incorporated forms in Rule Chapter 11B-21, F.A.C., to indicate where the form is incorporated in rule.

**SUBJECT AREA TO BE ADDRESSED:** Rule definitions; Criminal Justice Training School: certification codes, customer surveys, initial certification, expansion for certification, certification of canine teams, classroom facility requirements, satellite facilities and equipment requirements, disciplinary guidelines, facility inspections, and basic abilities testing requirements.

**SPECIFIC AUTHORITY:** 943.03(4), 943.12(1), (2) FS.

**LAW IMPLEMENTED:** 943.12(3),(5),(7), 943.14, 943.17(1)(g), 943.25(5), (9) FS.

**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:**

**TIME AND DATE:** 10:00 a.m., June 4, 2002

**PLACE:** 2331 Phillips Road, Elevator Conference Room, Quad C, 3rd Floor, Tallahassee, Florida 32308-1489

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS:** Donna Hunt, Florida Department of Law Enforcement, Criminal Justice Professionalism Program, 2331 Phillips Road, Tallahassee, Florida 32308-1489

UPON REQUEST AND WHEN AVAILABLE RULE TEXT WILL BE PROVIDED AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Pursuant with 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 days prior to the workshop by contacting Donna Hunt at: (850)410-7900, (voice) or (850)656-9597, (TDD), at least five working days before such proceeding.

**DEPARTMENT OF LAW ENFORCEMENT**

**Criminal Justice Standards and Training Commission**

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Certification and Employment or Appointment	11B-27
RULE TITLES:	RULE NOS.:
Moral Character	11B-27.0011
Certification, Employment or Appointment, Reactivation, and Terminating Employment or Appointment of Officers	11B-27.002
Maintenance of Officer Certification	11B-27.00201
Temporary Employment Authorization	11B-27.00202
High School Graduation or Equivalent	11B-27.0021
Fingerprint Processing and Criminal Record Results	11B-27.00211
Background Investigations	11B-27.0022
Issuance and Maintenance of Certification	11B-27.0023
Controlled Substance Testing Procedures	11B-27.00225
Reactivation of Certificate	11B-27.0026
Duty to Report, Investigations, Procedures	11B-27.003
Probable Cause Determination	11B-27.004
Revocation or Disciplinary Actions; Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances	11B-27.005
Canine Team Certification	11B-27.013

PURPOSE AND EFFECT: To streamline existing rules by repealing Rule 11B-27.0023, F.A.C., Issuance and Maintenance of Certification and incorporating its rule language into Rule 11B-27.00201, F.A.C., i.e., relocated Rule 11B-27.002(7)1.-4., F.A.C., into Rule 11B-27.00202, F.A.C., relocated Rule 11B-27.002(c)1.-3., F.A.C., into Rule 11B-27.00211, F.A.C.; expand violations that constitute failure to maintain good moral character; clarify rule language concerning maintenance of officer certification, fingerprint process and criminal history record results, penalty guidelines for new offenses, and canine team certification by defining canine team evaluators; incorporate the Authority for Release of Information form CJSTC-58 into rule, which was statutorily mandated and effective August 9, 2001; and add rule references to the incorporated forms in Rule Chapter 11B-27, F.A.C., to indicate where the form is incorporated in rule.

SUBJECT AREA TO BE ADDRESSED: Officer separation from employment or appointment; maintenance of officer certifications; temporary employment authorizations; fingerprint process and criminal history results; background investigations, authority for release of background information; and canine team certification.

SPECIFIC AUTHORITY: 943.03(4), 943.12(1), 943.133(3), 943.1395 FS.

LAW IMPLEMENTED: 943.12, 943.12(3),(17), 943.13, 943.13(3),(7),(11), 943.131, 943.133, 943.135, 943.139, 943.1395, 943.1395(3),(5),(7),(8), 943.17, 943.17(1)(a), 943.1701, 943.1715, 943.1716, 943.253 FS.

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TIME AND DATE: 10:00 a.m., June 4, 2002

PLACE: 2331 Phillips Road, Elevator Conference Room, Quad C, 3rd Floor, Tallahassee, Florida 32308-1489

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Donna Hunt, Florida Department of Law Enforcement, Criminal Justice Professionalism Program, 2331 Phillips Road, Tallahassee, Florida 32308-1489

UPON REQUEST AND WHEN AVAILABLE RULE TEXT WILL BE PROVIDED AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Pursuant with 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 days prior to the workshop by contacting Donna Hunt at: (850)410-7900, (voice) or (850)656-9597, (TDD), at least five working days before such proceeding.

**DEPARTMENT OF LAW ENFORCEMENT**

**Criminal Justice Standards and Training Commission**

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
State Officer Certification Examination	11B-30
RULE TITLES:	RULE NOS.:
State Officer Certification Examination General Eligibility Requirements	11B-30.006
State Officer Certification Examination and Retake Eligibility Requirements for Individuals Completing the Traditional Basic Recruit Training Program Prior to September 1, 2001	11B-30.0061
State Officer Certification Examination and Retake Eligibility Requirements for Individuals Completing a Basic Recruit Training Program	11B-30.0062

Examination Accommodations for Applicants with Disabilities 11B-30.0071  
 State Officer Certification Examination Site Administration 11B-30.008  
 Applicant Conduct at Test Site and Notice of Protection of Program Privileges 11B-30.009  
 Applicants Charged with Violations; Right of Hearing 11B-30.010  
 Examination Scoring and Grade Notification 11B-30.011  
 Post Review of Examination Questions, Answers, Papers, Grades, and Grading Key 11B-30.012

PURPOSE AND EFFECT: To revise forms and remove the required 5-section examination in Rule 11B-30.0061 and Rule 11B-30.011, F.A.C., for the Traditional Basic Recruit Training Program and Examination Scoring and Grade Notification, require individuals who graduate from a Basic Recruit Training Program to pass the State Officer Certification Examination with an overall scale score of 80% or higher; and add rule references to the incorporated forms in Rule Chapter 11B-30, F.A.C., to indicate where the form is incorporated in rule.

SUBJECT AREA TO BE ADDRESSED: Revised forms and examination scoring.

SPECIFIC AUTHORITY: 943.03(4), 943.12(1),(18), 943.1397, 943.173(3) FS.

LAW IMPLEMENTED: 120, 943.10, 943.12(18), 943.13(7), (10), 943.1397, 943.1397(1),(3),(5), 943.173 FS.

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:

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UPON REQUEST AND WHEN AVAILABLE RULE TEXT WILL BE PROVIDED AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Pursuant with 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 days prior to the workshop by contacting Donna Hunt at: (850)410-7900, (voice) or (850)656-9597, (TDD), at least five working days before such proceeding.

**DEPARTMENT OF LAW ENFORCEMENT**

**Criminal Justice Standards and Training Commission**

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Training Programs	11B-35
RULE TITLES:	RULE NOS.:
General Training Programs; Requirements and Specifications	11B-35.001
Basic Abilities Requirements for Applicant Admission into a Law Enforcement, Correctional, and Correctional Probation Basic Recruit Training Program	11B-35.0011
Basic Recruit Training Programs for Law Enforcement, Correctional, and Correctional Probation	11B-35.002
High-Liability Proficiency Training	11B-35.0021
Basic Recruit Training Programs for Student Performance in Comprehensive End-of-Course Examinations	11B-35.0022
Student Transfers within Basic Recruit Training Programs	11B-35.0023
Student Performance in Commission-approved High-Liability Basic Recruit Training Courses and High-Liability Instructor Training Courses	11B-35.0024
Basic Recruit Training Programs for Law Enforcement and Correctional Auxiliary Training	11B-35.003
Traditional Basic Recruit Training Programs; Cross-Over Training for Law Enforcement, Correctional, and Correctional Probation Officers	11B-35.004
Career Development Training Program	11B-35.005
Advanced Training Program	11B-35.006
Specialized Training Program	11B-35.007
State Officer Certification Examination Qualification Course Requirements	11B-35.008
Criminal Justice Training School Requirements for Administration and Security of Examinations for Training Courses	11B-35.0085
Exemption from Basic Recruit Training	11B-35.009
Exemption from Basic Recruit Training for Out-of-State or Federal Officers; Policy and Exemption Application Procedures	11B-35.010

PURPOSE AND EFFECT: To repeal Rule 11B-35.0022, F.A.C., and incorporated its rule language into Rule 11B-35.001(7), F.A.C.; repeal Rule 11B-35.010, F.A.C., and incorporated its rule language into Rule 11B-35.009, F.A.C., clarify the requirements for exemption from a basic recruit training program; further define CMS Application-Based Basic Recruit Training Program requirements; revise rule language to require training center directors to pre-register students for basic recruit training programs and to update student files upon course completion; clarify rule language regarding the Commission's re-examination policy that allows a student one



re-examination throughout the course in a basic recruit training program; student to instructor ratios for high-liability training, basic recruit training, instructor courses, and specialized training program courses; and add rule references to the incorporated forms in Rule Chapter 11B-18, F.A.C., to indicate where the form is incorporated in rule.

**SUBJECT AREA TO BE ADDRESSED:** General training programs, requirements, and specifications regarding end-of-course examinations for the Traditional Basic Recruit Training Programs and CMS Application-Based Basic Recruit Training Programs; training center director or designee's responsibility for development, maintenance, and administration of comprehensive end-of-course examinations; field-test of the CMS Application-Based Basic Recruit Training Program; requirements for training schools' maintenance of training records, student attendance policy, and competency-based instruction of high-liability basic recruit training courses; student re-examination policy for basic recruit training courses, advanced training courses and specialized training program courses; the addition of CMS-Basic Basic Recruit Training Program High-Liability Training Courses and course numbers; high-liability proficiency training for Traditional and CMS Basic Recruit Training programs; student to instructor ratios for high-liability proficiency training for Traditional and CMS Basic Recruit Training programs; student transfers for basic recruit training programs; student performance in high-liability basic recruit training courses and instructor training courses regarding examination and re-examination opportunities, high-liability training courses, and proficiency skills for Traditional and CMS Basic Recruit Training programs; night and ambient light training, informed consent, remediation and proficiency failure forms for the CMS high-liability training courses; specialized training programs regarding Commission-established categories for goals and objectives for development of courses by training schools and for the development of instructor training courses, a list of instructor training courses, specialized training courses for credit toward mandatory retraining requirements, and State Officer Certification Examination Qualification Course requirements; administration and security of examinations for Commission-approved training programs; exemption from basic recruit training.

**SPECIFIC AUTHORITY:** 943.03(4), 943.12(1),(2), 943.14(3), 943.17 FS.

**LAW IMPLEMENTED:** 943.12, 943.12(5), 943.131(2), 943.1395(3), 943.17, 943.17(1), 943.17(1)(a), 943.1715, 943.173, 943.175, 943.25, 943.25(5) FS.

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**PLACE:** 2331 Phillips Road, Elevator Conference Room, Quad C, 3rd Floor, Tallahassee, Florida 32308-1489

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS:** Donna Hunt, Florida Department of Law Enforcement, Criminal Justice Professionalism Program, 2331 Phillips Road, Tallahassee, Florida 32308-1489

**UPON REQUEST AND WHEN AVAILABLE RULE TEXT WILL BE PROVIDED AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.**

**NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT:** Pursuant with 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 days prior to the workshop by contacting Donna Hunt at: (850)410-7900, (voice) or (850)656-9597, (TDD), at least five working days before such proceeding.

## **DEPARTMENT OF LAW ENFORCEMENT**

### **Division of Criminal Justice Information Systems**

**RULE CHAPTER TITLE:** Criminal History Records

**RULE CHAPTER NO.:** 11C-6

Dissemination Policy

11C-6

**RULE TITLES:** Sale and Delivery of Firearms

**RULE NO.:** 11C-6.009

**PURPOSE AND EFFECT:** To promulgate the revised United States Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms form, ATF F 4473(5300.9) Firearms Transaction Record Part I – Over-The-Counter; and to inform potential firearm purchasers of the right to appeal the denial of a purchase directly to the FBI, as authorized by federal regulations. This form is used by firearm dealers to record the sale of firearms as required by state and federal statutes.

**SUBJECT AREA TO BE ADDRESSED:** The sale of firearms by licensed dealers.

**SPECIFIC AUTHORITY:** 790.065, 943.03(4) FS.

**LAW IMPLEMENTED:** 790.065 FS., Title 18, U.S.C., Chapter 44, and Title 27, C.F.R., Part 178

**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:**

**TIME AND DATE:** 10:00 a.m., June 4, 2002

**PLACE:** Florida Department of Law Enforcement, 2331 Phillips Road, Conference Room, 3rd Floor, Quad C, Tallahassee, Florida

**NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT:** Persons needing an accommodation to participate in any proceeding should call (850)410-7900, (voice) or (850)656-9597, (TDD), at least five working days before such proceeding.

**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:**

**TIME AND DATE:** 10:00 a.m., June 4, 2002

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Martha Wright, Bureau Chief, User Services Bureau, Criminal Justice Information Services, Florida Department of Law Enforcement, 2331 Phillips Road, Tallahassee, Florida 32308

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

11C-6.009 Sale and Delivery of Firearms.

(1) For a federally licensed firearm dealer (including licensed firearm importers, licensed firearm manufacturers and licensed firearm dealers pursuant to Title 27, C.F.R., Part 178) to complete a firearm transaction to another person, other than a licensed importer, licensed manufacturer, licensed dealer or licensed collector, a United States Treasury Department, Bureau of Alcohol, Tobacco and Firearms (ATF) form ATF F-4473 [5300.9] Part 1 (10/01) ~~(4/97)~~ (Firearms Transaction Record) incorporated here by reference, must be completed. These forms are available from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153. The completion of the ATF F-4473 [5300.9] Part 1 (10/01) ~~(4/97)~~ form must comply with Title 27, C.F.R. Part 178, Section 178.124, and with Section 790.065, F.S.

(2) Section A of the ATF F-4473 [5300.9] Part 1 (10/01) ~~(4/97)~~ form must be completed by the potential buyer or transferee ~~and items 9, and 10 of the ATF F-4473. The dealer must ensure that items 9-13 are~~ completed by the buyer ~~dealer~~ prior to the dealer contacting the Florida Department of Law Enforcement (FDLE). In addition to the above requirements, the social security number of the potential buyer ~~or transferee~~ may be recorded in block number 7 ~~40~~ of ATF F-4473 [5300.9] Part 1 (10/01) ~~(4/97)~~ form along with the additional types and dates of identification for any person who is not a United States citizen (i.e., utility bills or lease agreements). The dealer is required to advise the potential buyer that the disclosure of his or her social security number is voluntary, of the authority for the disclosure, and of the use to be made of the number.

(3) through (4) No change.

(5) Using the provided toll-free telephone number, the dealer must contact FDLE immediately prior to each transaction involving the transfer of one or more firearms to obtain an approval number to complete the firearm transaction. The dealer will provide the deal's identification number and all identification data of the potential buyer/transferee as contained on ATF form F-4473 [5300.9] Part 1 (10/01) ~~(4/97)~~ to FDLE.

(6) FDLE will provide an approval, non-approval, conditional approval, or conditional non-approval number, or pending non-approval to the dealer based on the criminal history record of the potential buyer or transferee. Based on the status of the criminal history record, FDLE will provide an

approval or non-approval number to the dealer during the call when possible or by return call or within the specified time frame as contained in Section 790.065, F.S. Unless compliance with the requirements of this section is excused as provided in subsection 790.065(10), F.S., if the dealer has not received an approval or non-approval number, conditional or otherwise, from FDLE within the time frame specified, the dealer must contact FDLE to inquire about the status of the request for approval, prior to completing the transaction. If a conditional non-approval number is issued, FDLE will attempt to determine the status of the criminal history record so as to respond to the dealer within the time frame contained in Section 790.065, F.S., with an approval or non-approval number. At the termination of the time period specified in Section 790.065(2)(c)5., F.S., if such a determination is not possible, the conditional non-approval number will become a conditional approval number. The approval number is valid for a single transaction and for a period not to exceed thirty ~~(30)~~ calendar days after receipt of the number. Multiple firearms may be transferred in this transaction.

(7) The dealer will record the approval, non-approval or conditional approval or conditional non-approval number, or pending non-approval in box 19b and in the box in the top right corner labeled, Transferor's Transaction Serial Number ~~the top right corner~~ of ATF form F-4473 (5300.9) Part 1 (10/01) ~~(4/97)~~. When the transaction is approved, the dealer should complete Section B of items 11 through 20 ~~on~~ the ATF form F-4473.

(8) To any potential buyer or transferee intending to formally appeal his non-approval, the dealer will provide a Firearm Purchase Non-Approval Appeal Form (form number FDLE 40-020, January 2002 ~~February 1, 1991~~), incorporated herein by reference, and on file with Secretary of State, that must be completed by the dealer and the potential buyer or transferee. The potential buyer or transferee must take the form to a law enforcement agency, be fingerprinted there, and return the Non-approval Appeal form and fingerprints to FDLE within 21 calendar days. Using the procedures as described in Chapter 11C-8, F.A.C., FDLE will process the formal appeal request. A supply of the appeal forms will be provided by FDLE to dealers upon request. Such requests should be directed to:

Florida Department of Law Enforcement  
Firearm Purchase Program  
Post Office Box 1489  
Tallahassee, Florida 32302-1489  
Telephone Number: (850)410-8139

As an alternative to this procedure, the potential buyer or transferee may at any time appeal his non-approval directly to the FBI, as authorized by Title 28, C.F.R., Section 25.10.

(9) through (12) No change.

(13) All records where the transfer was approved must be maintained by dealers for 20 years as required by Title 27, C.F.R., Part 178. All records where the transfer was non-approved must be kept by dealers in a secure area and kept confidential for five (5) years. This would include the dealer's copy of the Dealer ATF Form F-4473 [5300.9] Part 1 (10/01) (10/98) where the transfer of a firearm was non-approved. Records must be made available to federal, state, county and municipal law enforcement agencies in connection with their official duties upon request during business hours or other reasonable times if the dealer has no regular business hours.

(14) through (17) No change.

(18) Dealers are required to notify FDLE of any changes in their address, telephone number, or federal license status. Failure to do so will result in the dealer's identification number being suspended ~~suspended~~. When the correct address and telephone number can be verified, and all outstanding invoices satisfied, service can be reinstated.

(19) through (20) No change.

Specific Authority 790.065, 943.03(4) FS. Law Implemented 790.065 FS., Title 18, U.S.C., Chapter 44, and Title 27, C.F.R., Part 178. History--New 6-2-91, Amended 7-7-99, 8-22-00, 12-18-00, \_\_\_\_\_.

**DEPARTMENT OF LAW ENFORCEMENT**

**Division of Criminal Justice Information Systems**

RULE CHAPTER TITLE: Criminal History Records  
 RULE CHAPTER NO.: 11C-7

Dissemination Policy  
 RULE TITLE: 11C-7  
 RULE NO.: 11C-7.009

PURPOSE AND EFFECT: To set out procedures for applying to expunge, as the term is therein defined, a juvenile criminal history record, pursuant to newly-enacted Section 943.0582, F.S., where the juvenile subject has successfully completed a qualified pre- or post-arrest juvenile diversion program

SUBJECT AREA TO BE ADDRESSED: Procedures to expunge a juvenile criminal history record where the juvenile subject has successfully completed a qualified pre- or post-arrest juvenile diversion program

SPECIFIC AUTHORITY: 943.0582 FS.

LAW IMPLEMENTED: 943.0582 FS.

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:

TIME AND DATE: 10:00 a.m., June 4, 2002

PLACE: Florida Department of Law Enforcement, 2331 Phillips Road, Conference Room, 3rd Floor, Quad C, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT Persons needing an accommodation to participate in any proceeding should call (850)410-7900, (voice) or (850)656-9597, (TDD), at least five working days before such proceeding.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Jeffrey W. Long, Bureau Chief, Florida Crime Information Center Bureau, Criminal Justice Information Services, Florida Department of Law Enforcement, 2331 Phillips Road, Tallahassee, Florida 32308

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

11C-7.009 Procedures on Juvenile Diversion Expunctions.

(1) A minor who has successfully completed a prearrest or postarrest diversion program as authorized by s. 985.3065, F.S., which program satisfies the requirements found at s. 943.0582, F.S., may apply directly to the Department for expunction of the minor's juvenile nonjudicial arrest record. The application for the Juvenile Diversion Expunction must include:

(a) A money order, cashier's check, or certified check for \$75.00 made payable to the Florida Department of Law Enforcement. This processing fee is non-refundable, regardless of whether the application for expunction is granted. A fee waiver may be granted by the Executive Director of the Department, upon submission of a written request, and in determination that the waiver is in the best interests of criminal justice.

(b) A completed Application for Juvenile Diversion Expunction. The subject must complete section A of the application. The Application for Juvenile Diversion Expunction, form number FDLE 40-022, (10/01), incorporated here by reference, may be obtained from:

1. The Clerk of the Court, or
2. Florida Department of Law Enforcement Expunge Section  
Post Office Box 1489  
Tallahassee, Florida 32302-1489  
Telephone Number: (850)410-7870

(c) A written, certified statement from the appropriate state attorney which meets the requirements set forth in s. 943.0582(4)(c), F.S. The appropriate state attorney should complete section B of the Application for Juvenile Diversion Expunction and have it certified.

(d) A legible set of fingerprints recorded on an FBI Applicant Fingerprint Card (FD-258). The fingerprinting must be done by a law enforcement agency. The law enforcement agency fingerprinting the subject should place the following statement in the "Reason Fingerprinted" section on the card: "Application For Juvenile Diversion Expunction." The subject

must pay any fees required by the law enforcement agency for providing this service. If a copy of the Applicant Fingerprint Card is needed, it may be obtained from:

1. The Clerk of the Court, or
2. Florida Department of Law Enforcement  
Expunge Section  
Post Office Box 1489  
Tallahassee, Florida 32302-1489  
Telephone Number: (850)410-7870

(2) The complete application packet should be mailed or delivered, within the time limits prescribed by s. 943.0582, F.S., to Accounting and Budgeting, Florida Department of Law Enforcement, Post Office Box 1489, Tallahassee, Florida 32302-1489. The following notation should be placed on the envelope: "ATTENTION EXPUNGE SECTION."

(3) If the application packet is incomplete the Department will not process it. The incomplete packet, along with the processing fee, will be returned to the subject with an indication as to the reason for non-acceptance. It will be the subject's responsibility to obtain the missing information and return the complete packet to the Department.

(4) If the application packet is complete, the Department will review the submitted information and the minor subject's criminal history record to determine if the application and the specified record meet the requirements for Juvenile Diversion Expunction, which are listed in s. 943.0582, F.S. Questions regarding the status of the review should be directed to the Expunge Section at (850)410-7870.

(5) The Department will expunge the minor subject's juvenile diversion arrest record if the application and the specified criminal history record meet the requirements for Juvenile Diversion Expunction, and will notify the minor subject or his or her parent or legal guardian and the arresting agency of this action. Such expunction shall be as defined at s. 943.0582(2), F.S. If the application and the specified criminal history record do not meet the requirements for Juvenile Diversion Expunction, the Department will send the subject a letter stating the reason for ineligibility with an explanation of appeal rights.

(6) Upon receipt of notification from the Department that the minor subject's record has been expunged pursuant to s. 943.0582, F.S., the arresting agency shall make a positive association between the individual and the arrest covered by the Department's notification letter and seal the arrest record as specified at s. 943.0582(2)(b), F.S.; if the arrest record can be identified within the agency's records.

Specific Authority 943.0582 FS. Law Implemented 943.0582 FS. History--  
New \_\_\_\_\_.

**DEPARTMENT OF LAW ENFORCEMENT**

**Local Law Enforcement Assistance**

RULE CHAPTER TITLE: DNA Database Collection  
RULE CHAPTER NO.: 11D-6

RULE TITLES: Definitions  
PROCEDURES  
RULE NOS.: 11D-6.001  
11D-6.003

PURPOSE AND EFFECT: Effective July 1, 2001, Section 943.325, F.S., was amended to authorize the collection of other approved biological specimens (in addition to blood specimens), as approved by FDLE, for inclusion in the FDLE DNA Database. The rule is being amended to incorporate a definition of "other approved biological specimen" and to set out the approved collection procedures. In addition, the FDLE form utilized by state and local agencies to document each submission of other approved biological specimens to FDLE's DNA Database is being incorporated by reference into the rule.

SUBJECT AREA TO BE ADDRESSED: The Department's DNA database collection procedures.

SPECIFIC AUTHORITY: 943.03(4), 943.325(9)(d) FS.

LAW IMPLEMENTED: 943.325 FS.

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:

TIME AND DATE: 10:00 a.m., June 4, 2002

PLACE: Florida Department of Law Enforcement, 2331 Phillips Road, Conference Room, 3rd Floor, Quad C, Tallahassee, Florida

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THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Joe White, Assistant General Counsel, Criminal Justice and Investigations and Forensic Science Program, Florida Department of Law Enforcement, 2331 Phillips Road, Tallahassee, Florida 32308

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

11D-6.001 Definitions.

As used in Rule 11D-6.003, F.A.C., the following definitions apply:

(1) "Blood sample" shall mean a specimen of whole blood, at least 7 cc in volume.

(2) "Other approved biological specimen" shall mean epithelial cells collected from the cheek in the oral cavity utilizing an FDLE-approved swab collection kit.

~~(3)~~~~(2)~~ “Offender” shall mean a person meeting any of the criteria specified in ss. 943.325(1), 943.325(10)(c), 943.325(11), 947.1405(7), 948.03(5)(a)8., or 948.03(10), F.S.

Specific Authority 943.03(4), 943.325(9)(d) FS. Law Implemented 943.325 FS. History—New 7-4-90, Amended 7-6-99, 8-22-00, \_\_\_\_\_.

11D-6.003 Procedures.

(1) Blood sample collection.

~~(a)~~~~(1)~~ The subject offender providing a blood sample must be positively identified in the manner specified by the FDLE Request for DNA Database Entry Form (FDLE/FOR-003, rev. September, 2000 and incorporated by reference) prior to taking the blood samples from such offender.

~~(b)~~~~(2)~~ When positive identification of the offender is accomplished, two (2) blood samples shall be taken from the offender in the manner described in Section 943.325(2), F.S.

~~(c)~~~~(3)~~ Such samples shall be taken using only the blood sample collection kit approved and provided by the Department of Law Enforcement. Agencies may obtain additional kits from FDLE, DNA Database, P. O. Box 1489, Tallahassee, Florida 32302-1489.

~~(d)~~~~(4)~~ Prior to or immediately after the taking of the samples, the FDLE Request for DNA Database Entry Form (FDLE/FOR-003) must be completed, providing all information requested on the form. The imprinting of the offender’s left and right thumbs, by means of an inked impression, in the spaces indicated on the form shall be completed as well. Inked fingerprint impressions must be sufficiently legible for fingerprint classification and comparison purposes. Blood samples accompanied by one or more illegible inked fingerprint impressions are unacceptable for entry into the DNA Database and will be rejected by FDLE. The collecting agency must then submit a new blood sample and completed form. The person taking, or witnessing the taking, of the blood samples shall certify, under oath and before a notary or a law enforcement or correctional officer, as indicated on the form, that two blood samples were in fact taken from the offender thus positively identified. Additional supplies of these forms can be obtained from FDLE, DNA Database, P. O. Box 1489, Tallahassee, Florida 32302-1489.

~~(e)~~~~(5)~~ Collection, labeling, storage, handling, and transmittal of the blood samples so collected shall be as prescribed in the printed instructions included with each blood sample collection kit. In order to avoid sample degradation, all samples shall be transmitted to the Department of Law Enforcement in the manner prescribed in the instructions. The collecting agency should forward ~~unrefrigerated~~ blood samples so as to assure receipt by the Department within 72 hours of shipping. Additional copies of these instructions can be obtained from FDLE, DNA Database, P. O. Box 1489, Tallahassee, Florida 32302.

(2) Other approved biological specimen collection.

(a) A subject offender providing an other approved biological specimen must be positively identified in the manner specified by the Oral Swab Collection Kit Instructions (FDLE/FOR-005, May 2001, and incorporated by reference) prior to taking the other approved biological specimens from such offender.

(b) When positive identification of the offender is accomplished, approved biological specimens (oral swabs) shall be taken from the offender in the manner described in s. 943.325(2), F.S.

(c) Such samples shall be taken using only the oral swab collection kit approved and provided by the Department of Law Enforcement. Agencies may obtain additional kits from FDLE, DNA Database, P. O. Box 1489, Tallahassee, Florida 32302-1489.

(d) Prior to or immediately after the taking of the samples, the FDLE Oral Swab Collection Kit (FDLE/FOR-005) must be completed, providing all information requested on the form. The imprinting of the offender’s left and right thumbs, by means of an inked impression, in the spaces indicated on the form shall be completed as well. Inked fingerprint impressions must be sufficiently legible for fingerprint classification and comparison purposes. Approved biological specimens accompanied by one or more illegible inked fingerprint impressions are unacceptable for entry into the DNA Database and will be rejected by FDLE. The collecting agency must then submit a new approved biological specimen and completed form. Additional supplies of these forms can be obtained from FDLE, DNA Database, P. O. Box 1489, Tallahassee, Florida 32302-1489.

(e) Collection, labeling, storage, handling, and transmittal of other approved biological specimens shall be as prescribed in the printed instructions included with each oral swab sample collection kit. The collecting agency should forward oral swab samples to the Department within 7 working days of collection.

Specific Authority 943.03(4), 943.325(9)(d) FS. Law Implemented 943.325 FS. History—New 7-4-90, Amended 7-6-99, 8-22-00, 7-29-01, \_\_\_\_\_.

**DEPARTMENT OF LAW ENFORCEMENT**

**Division of Local Law Enforcement Assistance**

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Implied Consent and Alcohol Testing Program	11D-8
RULE TITLES:	RULE NOS.:
Definitions	11D-8.002
Approval of Breath Test Methods and Instruments	11D-8.003
Approval of Dry Gas Standards Source	11D-8.0036
Department Inspection and Registration of Breath Test Instruments	11D-8.004
Agency Inspection of Breath Test Instruments	11D-8.006

Approved Breath Test Instruments – Access, Facility Requirements, Observation Period, and Operational Procedures	11D-8.007
Agency Retention of Records	11D-8.0075
Breath Test Operator and Agency Inspector Qualifications for Instructors	11D-8.008
Blood Alcohol Permit – Analyst	11D-8.010
Blood Alcohol Permit – Analyst: Renewal	11D-8.013
Denial, Revocation, and Suspension of Permits Forms	11D-8.014
	11D-8.015
	11D-8.017

PURPOSE AND EFFECT: Proposed revisions to the above rules are necessary to accommodate approval of a new breath test instrument for use in the State of Florida, implement certification of breath test instructors and approval of breath test courses by the Criminal Justice Standards and Training Commission, and ensure the qualifications of blood alcohol analysts.

SUBJECT AREA TO BE ADDRESSED: The Department’s rules chapter concerning regulation and implementation of Florida’s implied consent and alcohol testing program. The program rules govern definitions of terminology based on academic, scientific and common usage; issuance and regulation of alcohol test permits; approval and evaluation of breath and blood alcohol test methods; approval, use and inspection of breath test instruments and records; collection and preservation of blood samples for alcohol testing; training requirements and qualifications for alcohol test permit holders.

SPECIFIC AUTHORITY: 316.1932(1)(a)2., 316.1932(1)(f)1., 322.63(3)(a), 327.352(1)(b)3., 327.352(1)(e), 327.353(2)(b), 327.354(3) FS.

LAW IMPLEMENTED: 316.1932(1), 316.1933(2), 316.1934(3), 316.1934(5), 322.63(3), 327.352(1), 327.353(2), 327.354(3), 327.354(5) FS.

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:

TIME AND DATE: 10:00 a.m., June 4, 2002

PLACE: Florida Department of Law Enforcement, 2331 Phillips Road, Conference Room, 3rd Floor, Quad A, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Persons needing an accommodation to participate in any proceeding should call (850)410-7900, (voice) or (850)656-9597, (TDD), at least five working days before such proceeding.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Rafael E. Madrigal, Assistant General Counsel, Alcohol Testing Program, Florida Department of Law Enforcement, 2331 Phillips Road, Tallahassee, Florida 32308

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

11D-8.002 Definitions.

(1) Acceptable Range—means the results of agency or department inspections and dry gas standard analyses which fall within the following ranges at each alcohol vapor concentration: 0.05 g/210L range is 0.045 to 0.055 g/210L; 0.08 g/210L range is 0.075 to 0.085 g/210L; 0.20 g/210L range is 0.190 to 0.210 g/210L; or the Alcohol Reference Solution gas chromatographic results which fall within the following ranges: 0.0605 g/100mL range is 0.0586 to 0.0623 g/100mL; 0.0968 g/100mL range is 0.0938 to 0.0997 g/100mL; 0.2420 g/100mL range is 0.2347 to 0.2492 g/100mL.

(2) through (4) No change.

(5) Agency Inspection – the periodic testing of the calibration and operation of a breath test instrument, including all required preventive maintenance, in accordance with Rule 11D-8.006, F.A.C. Agency Inspection Procedures FDLE/ATP Form 16 — Rev. March 2001, and performed by a person authorized by the Department.

(6) through (8) No change.

(9) Alcohol Reference Solution – a standard used to verify the calibration of a breath test instrument consisting of a mixture of alcohol and distilled or deionized water that will produce have a known alcohol vapor concentration at a specific temperature.

~~(10) Alcohol Stock Solution—a mixture of alcohol and distilled or deionized water at a known concentration used to prepare an alcohol reference solution.~~

~~(10)(11) Analyst – a person who has been issued a Blood Analyst permit by the Department to conduct chemical analyses of blood under the provisions of chapters 316, 322, and 327 of the Florida Statutes.~~

~~(11)(12) Approved Blood Alcohol Test – the analyses of two separate portions of the same blood sample using a Department-approved blood alcohol test method and a Department-approved procedure, with results within 0.010 grams of alcohol per 100 milliliters of blood (g/100mL), and reported as the blood alcohol level.~~

~~(12)(13) Approved Breath Alcohol Test – a minimum of two samples of breath collected within fifteen minutes of each other, analyzed using an approved breath test instrument, producing two results within 0.020 g/210L, and reported as the breath alcohol level. If the results of the first and second samples are more than 0.020 g/210L apart, a third sample shall be analyzed. Refusal or failure to provide the required number of valid breath samples constitutes a refusal to submit to the breath test. Notwithstanding the foregoing sentence, the result(s) obtained, if proved to be reliable, shall be acceptable as a valid breath alcohol level.~~

~~(13)~~(14) Authorized Repair Facility – an entity authorized by the breath test instrument manufacturer to repair such breath test instrument.

~~(14)~~(15) Blood – whole blood.

~~(15)~~(16) Blood Alcohol Level – the alcohol concentration by weight in a person's blood based upon grams of alcohol per 100 milliliters of blood (g/100mL).

~~(16)~~(17) Breath Alcohol Level – the alcohol concentration by weight in a person's breath based upon grams of alcohol per 210 liters of breath (g/210L).

~~(17)~~(18) Breath Test Instructor – a person who has been issued a Breath Test Instructor certification permit by the Criminal Justice Standards and Training Commission Department.

~~(18)~~(19) Breath Test Operator – a person who has been issued a Breath Test Operator permit by the Department.

~~(19)~~(20) Department – the Florida Department of Law Enforcement.

~~(20)~~ Dry Gas Standard – a mixture of alcohol and gas which produces a known alcohol vapor concentration used to verify the calibration of a breath test instrument.

(21) through (22) No change.

~~(23)~~ Mouth Alcohol Solution – a mixture of alcohol and distilled or deionized water provided by the Department.

~~(24)~~(23) Permit – when issued by the Department, certifies that the holder has met all necessary qualifications, remains in full compliance with these rules and is authorized to perform all related duties. A permit is issued only to a qualified applicant and remains valid and in full effect until it expires or is determined otherwise invalid by the Department. An inactive permit remains valid, but the permit holder is not authorized to perform duties related to the permit until satisfaction of the applicable requirements.

~~(24)~~ Precision – the nearness of measurements to each other.

(25) No change.

(26) Target Concentration – a gas chromatographic result equivalent to the following known alcohol vapor concentrations of alcohol reference solution: for 0.05 g/210L the target concentration is 0.0605 g/100mL; for 0.08 g/210L the target concentration is 0.0968 g/100mL; for 0.20 g/210L the target concentration is 0.2420 g/100mL.

Specific Authority 316.1932(1)(a)2.,(f)1., 316.1933(2)(b), 316.1934(3), 322.63(3)(a), (b), 327.352(1)(b)3., ~~327.352(1)(d)~~ FS. Law Implemented 316.1932(1)(b)2., 316.1933(2)(b), 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.353(2), 327.354(3) FS. History–New 10-31-93, Amended 1-1-97, 7-6-99, 7-29-01, \_\_\_\_\_.

11D-8.003 Approval of Breath Test Methods and Instruments.

(1) No change.

(2) The Department has approved the following breath test instrument(s) for evidentiary use: CMI, Inc. Intoxilyzer 5000 Series – including any or all instruments using one of the

following programs: 5000 Basic Software Program; Florida Software Program; R-Software Program; and CMI, Inc. Intoxilyzer 8000 using software approved by the Department in accordance with Instrument Evaluation Procedures FDLE/ATP Form 34 – Rev. March 2002.

(3) through (4)(e) No change.

(f) A schematic design and a mechanical drawing of the instrument;

(g) through (j) No change.

(5) through (6) No change.

(7) The availability or approval of new instruments, software, options or modifications does not affect the approval status or reliability of previously approved instruments, software, options or modifications.

Specific Authority 316.1932(1)(a)2.,(f)1., 322.63(3)(a), (b), 327.352(1)(b)3., ~~327.352(1)(d)~~ FS. Law Implemented 316.1932(1)(b)2., 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.354(3) FS. History–New 10-31-93, Amended 1-1-97, 7-29-01, \_\_\_\_\_.

11D-8.0036 Approval of Dry Gas Standards Source.

(1) The Department shall approve a source of dry gas standards for use by agencies in the State of Florida. The source approved by the Department shall be an entity that manufactures dry gas standards and meets the following requirements:

(a) The source must produce dry gas standards which comply with specifications of the National Institute of Standards and Technology.

(b) Each dry gas standard cylinder produced by the source must be certified by the source as to its contents and vapor alcohol concentration.

(c) The source must be capable of producing a minimum of 800 cylinders of dry gas standard during a thirty day period at a vapor alcohol concentration of 0.08 g/210L.

(d) The source must have performed and documented tests that demonstrate that the source's dry gas standards are reliable for at least two years from the date of manufacture.

(e) The Department shall verify using infrared spectroscopy or another scientifically accepted method the vapor alcohol concentration in a minimum of ten sample cylinders of dry gas standard produced by the source. Ten (10) analyses will be performed on each sample cylinder of dry gas standard using an approved breath test instrument. All analytical results must fall within the dry gas standard acceptable range. The calibration of the breath test instrument shall be verified prior to analysis of the dry gas standards by obtaining two results of alcohol reference solution concentrations of 0.05 g/210L, 0.08 g/210L, and 0.20 g/210L.

(2) Dry gas standard cylinders produced by the approved source must be used in agency or Department inspections within two years of the date of manufacture.

Specific Authority 316.1932(1)(a)2.,(f)1., 322.63(3)(a), (b), 327.352(1)(b)3., FS. Law Implemented 316.1932(1)(b)2., 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.354(3) FS. History–New \_\_\_\_\_.

11D-8.004 Department Inspection and Registration of Breath Test Instruments.

(1) The Department shall register and inspect a breath test instrument prior to such instrument being initially placed into evidentiary use by an agency. The registration denotes an instrument approved pursuant to these rules and shall reflect the registration date, the owner of the instrument, the instrument serial number, the manufacturer, and the model designation. A new registration is required to reflect a change of ownership of an evidentiary instrument.

(2) No change.

(3) Department inspections shall be conducted in accordance with Department Inspection Procedures FDLE/ATP Form 35 – Rev. March 2001 2002 for the Intoxilyzer 5000 Series, or Department Inspection Procedures – Intoxilyzer 8000 FDLE/ATP Form 36 – March 2002 for the Intoxilyzer 8000.

(4) Department Inspectors shall be employed by the Department to register evidentiary breath test instruments, to conduct inspections and maintenance of breath test instruments and related equipment and facilities, to conduct and monitor training classes, and to otherwise ensure compliance with Chapter 11D-8, Florida Administrative Code.

Specific Authority 316.1932(1)(a)2.,(f)1., 322.63(3)(a), 327.352(1)(b)3., ~~327.352(1)(d)~~ FS. Law Implemented 316.1932(1)(b)2., 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.354(3) FS. History–New 10-31-93, Amended 1-1-97, 7-29-01,\_\_\_\_\_.

11D-8.006 Agency Inspection of Breath Test Instruments.

(1) Evidentiary breath test instruments shall be inspected by an agency inspector at least once each calendar month. The agency inspection shall be conducted in accordance with Agency Inspection Procedures FDLE/ATP Form 16 – Rev. March 2002 for the Intoxilyzer 5000 Series, or Agency Inspection Procedures – Intoxilyzer 8000 FDLE/ATP Form 39 – March 2002 for the Intoxilyzer 8000 ~~2001~~.

(2) ~~Agency inspectors must use either alcohol reference solution provided by the Department or by a source approved by the Department, or alcohol stock solution provided by the Department.~~

(3) ~~Records of agency inspections shall be maintained for at least three years. Such records shall be provided to the Department upon request.~~

~~(2)(4) Evidentiary breath test instruments shall be inspected at the agency facility where evidentiary breath tests are conducted. Whenever an agency relocates an Intoxilyzer 5000 evidentiary breath test instrument for use at another facility, an agency inspection shall be conducted prior to the instrument’s removal, and another inspection shall be conducted prior to the instrument’s use for evidentiary breath testing at the new facility. A mobile testing unit is considered an agency facility.~~

~~(3)(5) Whenever an instrument is taken out of evidentiary use or is sent to an authorized repair facility, the agency shall notify the Department in writing within five business days. The the agency shall provide the same notice to the Department and conduct an agency inspection when an instrument is again placed in evidentiary use or is returned from an authorized repair facility. The agency shall also conduct an agency inspection prior to returning an instrument to evidentiary use.~~

Specific Authority 316.1932(1)(a)2.,(f)1., 322.63(3)(a), 327.352(1)(b)3., ~~327.352(1)(d)~~ FS. Law Implemented 316.1932(1)(b)2., 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.354(3) FS. History–New 10-31-93, Amended 1-1-97, 7-29-01,\_\_\_\_\_.

11D-8.007 Approved Breath Test Instruments – Access, Facility Requirements, Observation Period, and Operational Procedures.

(1) No change.

(2) The instrument will be located in a secured environment which limits access to authorized persons described in section (1), and will be kept clean and dry. All breath test facilities, equipment and supplies are subject to inspection by the Department.

(3) No change.

(4) When operating an Intoxilyzer 5000 Series instrument, a A breath test operator shall conduct a breath test in accordance with the Operational Procedures Checklist FDLE/ATP Form 23 – Rev. March 2002 Effective January, 1997, and shall record the results on the Breath Test Results Affidavit FDLE/ATP Form 14 – Rev. March 2002 Effective May, 2000. When operating an Intoxilyzer 8000 instrument, a breath test operator shall conduct a breath test in accordance with Intoxilyzer Operational Procedures – Intoxilyzer 8000 FDLE/ATP Form 37 – March 2002, and the results of the test shall be recorded on the Breath Alcohol Test Affidavit – Intoxilyzer 8000 FDLE/ATP Form 38 – March 2002.

(5) Each agency shall record all breath tests conducted on a particular Intoxilyzer 5000 Series evidentiary breath test instrument on the Breath Test Log FDLE/ATP Form 13 – Effective January 1997. The breath test log shall be reviewed each calendar month by an agency inspector to ensure that the information is properly recorded and that all necessary corrections are made. The agency inspector’s signature on the breath test log shall signify compliance with this section.

Specific Authority 316.1932(1)(a)2.,(f)1., 322.63(3)(a), 327.352(1)(b)3., ~~327.352(1)(d)~~ FS. Law Implemented 316.1932(1)(b)2., 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.354(3) FS. History–New 10-31-93, Amended 1-1-97, 7-29-01,\_\_\_\_\_.

11D-8.0075 Agency Retention of Records.

(1) Each agency shall maintain the following records for at least three years from the last entry date: ~~breath test instrument registrations,~~ agency inspection reports and agency inspection print cards, breath test logs, and breath test instrument repair



records. The breath test instrument registration shall be retained by an agency for at least three years after the instrument is removed from evidentiary use.

(2) through (3) No change.

Specific Authority 316.1932(1)(a)2.,(f)1., 322.63(3)(a), 327.352(1)(b)3., ~~327.352(1)(d)~~ FS. Law Implemented 322.63(3), 327.354(3) FS. History—New 7-29-01, Amended \_\_\_\_\_.

11D-8.008 Breath Test Operator and Agency Inspector.

(1) through (c) No change.

(d) Successful completion of the basic Breath Test Operator Course ~~breath test operator qualification course~~ approved by the Criminal Justice Standards and Training Commission ~~Department~~ and conducted through state community colleges, vocational technical schools, or training centers certified by the Department. Successful completion shall require obtaining a passing score of at least 80% on a written examination, and demonstrating proficiency by:

1. Properly operating an approved breath test instrument in accordance with the applicable procedures for such instrument Operational Procedures Checklist FDLE/ATP Form 23 — Effective January 1997;

2. Properly completing the required forms ~~operational procedures checklist form, the breath test log, the breath test results affidavit, and the print card.~~

(e) Submit to the Department a complete written or electronic application ~~on the Breath Test Permit Application FDLE/ATP Form 8 — Rev. March 2001,~~ and copies of the certificate of completion, examination results, proficiency testing documentation and proof of age upon successful completion of the breath test operator ~~qualification~~ course, but no later than thirty days after completion. The applicant shall also provide the above documentation to the applicant's employing agency.

(2) No change.

(a) No change.

(b) Successfully completes the basic Agency Inspector Course ~~agency inspector qualification course~~ approved by the Criminal Justice Standards and Training Commission ~~Department~~ conducted through state community colleges, vocational technical schools, or training centers certified by the Department. Successful completion shall require a passing score of at least 80% on a written examination and a demonstration of proficiency by:

1. Proper inspection of an approved breath test instrument in accordance with the procedures for such instrument Agency Inspection Procedures FDLE/ATP Form 16 — Rev. March 2001;

2. Proper completion of all required forms, the Agency Inspection Report FDLE/ATP Form 24 — Rev. March 2001;

3. ~~Review of the breath test log to ensure that all necessary information has been correctly recorded and signing the form on the space provided.~~

(c) Submits to the Department a complete written or electronic application ~~on the Breath Test Permit Application FDLE/ATP Form 8 — Rev. March 2001,~~ and copies of the certificate of completion, examination results and proficiency testing documentation upon successful completion of the agency inspector ~~qualification~~ course, but no later than thirty days after completion. The applicant shall also provide the above documentation to the applicant's employing agency.

(3) Breath Test Operators and Agency Inspectors must satisfy continuing education requirements in order to maintain valid permits, and must provide proof of compliance to their employing agencies. Continuing education requires successful completion of the Commission-approved Renewal Course by June 30 following the four (4) year permit anniversary date, and during each subsequent four-year cycle. Successful completion of the Commission-approved Agency Inspector Renewal Course also satisfies an Agency Inspector's breath test operator continuing education requirements ~~A breath test operator permit or an agency inspector permit shall be valid for two years from its effective date.~~

(4) Any Breath Test Operator or Agency Inspector who fails to satisfy the continuing education requirements shall not perform any duties authorized by the permit, and such permit shall become inactive until successful completion of the applicable basic course in subsection (1)(d) or (2)(b) above. Any permit that remains inactive under this section for more than three (3) months shall be revoked. A person qualifies for renewal of a breath test operator permit or agency inspector permit where such person possesses a valid permit and:

(a) ~~Continues to meet the qualifications for such permit;~~

(b) ~~Successfully completes the applicable renewal training course approved by the Department and conducted through state community colleges, vocational technical schools, or training centers certified by the Department. Successful completion shall require a passing score of at least 80% on a written examination and a demonstration of proficiency as described in subsection (1)(d) or subsection (2)(b) of this rule, whichever is applicable.~~

(c) ~~Submits to the Department a complete written application on the Breath Test Permit Application FDLE/ATP Form 8 — Rev. March 2001, upon successful completion of the renewal training course, but no later than thirty days after completion.~~

(5) ~~A renewed permit shall be valid for two years from its effective date. Renewal of an agency inspector permit automatically renews that person's breath test operator permit.~~

(6) ~~A person whose expired permit is not renewed within sixty (60) days after expiration must meet the qualification requirements specified in subsection (1) or (2), whichever is applicable, in order to obtain a valid permit.~~

(5)(7) ~~A breath test operator or agency inspector must notify the Department in writing of any change of employment within thirty days of such change.~~

~~(6)(8)~~ Permits to conduct breath tests and inspect breath test instruments issued pursuant to former 11D-8.008, F.A.C., shall remain valid until such permits expire or otherwise become invalid in accordance with those rules.

~~(7)(9)~~ Agency Inspectors are responsible for compliance with Chapter 11D-8 rules governing agency custody, care, and inspection of breath test instruments and related records.

~~(8)(10)~~ Any breath test operator or agency inspector who fails to successfully complete the Commission-approved renewal training course shall not perform any duties authorized by the applicable permit until successful completion of the applicable Commission-approved renewal training course if within the continuing education cycle, or Commission-approved basic qualification course if beyond the continuing education cycle.

Specific Authority 316.1932(1)(a)2.,(f)1., 322.63(3)(a), 327.352(1)(b)3., ~~327.352(1)(d)~~ FS. Law Implemented 316.1934(3), 322.63(3)(b), 327.354(3) FS. History—New 10-31-93, Amended 1-1-97, 7-29-01, \_\_\_\_\_.

11D-8.010 Qualifications for Instructors.

(1) Persons who conduct ~~Department approved~~ breath test training courses must have a valid Breath Test Instructor certification ~~breath test instructor permit~~ issued by the Criminal Justice Standards and Training Commission, and such persons shall be deemed permitted by the Department to conduct breath test training courses. ~~This does not preclude instruction by guest instructors under the supervision of permitted instructors.~~

(2) Applicants for breath test instructor permits must meet the following qualifications:

- ~~(a) High school diploma or its equivalent;~~
- ~~(b) Two years as a breath test operator and two years as an agency inspector and have valid breath test operator and agency inspector permits;~~
- ~~(c) Possess a valid instructor certification issued by the Criminal Justice Standards and Training Commission;~~

~~(d) Successfully complete the breath test instructor qualification course approved by the Department. Successful completion requires a passing score of at least 80% on each written examination, a demonstration of proficiency required for basic breath test operator and agency inspector permits in Rule 11D-8.008, and a demonstration of proficiency to instruct all Department approved breath testing courses;~~

~~(e) Submit to the Department a complete written application on the Breath Test Permit Application FDLE/ATP Form 8—Rev. March 2001, upon successful completion of the breath test instructor qualification course, but no later than thirty days after completion.~~

~~(f) Applicants must meet qualifications (a), (b) and (c) prior to attending the breath test instructor qualification course.~~

~~(g) The above qualifications do not apply to persons who were issued breath test instructor permits prior to January 1, 1998.~~

~~(2)(3) Effective January 1, 2002, during each calendar year Unless exempted by the Commission, at least once every four years each breath test instructor must successfully complete the Commission-approved breath test instructor update certification renewal course approved by the Department in order to remain qualified for a breath test instructor permit certification. Successful completion of the breath test instructor update certification renewal course satisfies automatically renews that person's agency inspector and breath test operator continuing education requirements permits.~~

~~(3)(4) Breath test instructors must adhere to and comply with the approved curricula and related forms when teaching Commission or Department approved courses and processing related documentation.~~

Specific Authority 316.1932(1)(a)2.,(f)1., 322.63(3)(a), 327.352(1)(b)3., ~~327.352(1)(d)~~ FS. Law Implemented 316.1934(3), 322.63(3)(b), 327.354(3) FS. History—New 10-31-93, Amended 1-1-97, 7-29-01, \_\_\_\_\_.

11D-8.013 Blood Alcohol Permit – Analyst.

(1) The application for a permit to determine the alcohol level of a blood sample shall be made on a form provided by the Department and shall include the following information:

- (a) through (d) No change.
- (e) A complete description of proposed analytical procedure(s) to be used in determining blood alcohol level. Such description must include the following:

1. ~~A statement of the basic principle of the method utilized in the analytical procedure;~~

2. ~~Identification of the equipment, reagents, calibrators and controls utilized in the analytical procedure, and assurance of the following:~~

a. ~~The documentation pertaining to ethyl alcohol calibration standards and controls used, whether purchased commercially or prepared by the analyst, includes the source of such materials and either the lot number and expiration date, if purchased, or the date and method of preparation and the verification by the analyst of the final product, if prepared. Such documentation must be maintained by the analyst or the laboratory; and,~~

b. ~~That the concentration range over which the analytical procedure is calibrated must include a calibrator less than 0.04 g/100ml of alcohol and a calibrator greater than 0.20 g/100ml of alcohol. Documentation of the calibrated concentration range must be available and maintained by the analyst or the laboratory; and,~~

c. ~~That prior to each sample or group of samples being analyzed a new instrument calibration curve is prepared or the current instrument calibration curve is validated. Such validation must include a minimum of two (2) alcohol standards or controls, one at 0.05 g/100ml of alcohol or lower, and one at 0.20 g/100ml of alcohol or higher. Documentation of calibration or validation must be available and maintained by the analyst or the laboratory; and,~~

3. A detailed description of the techniques employed for the analysis, including assurance of the following:

a. For gas chromatography procedures,

i. That the procedure will discriminate between methanol, ethanol, acetone and isopropanol. Documentation of such discrimination (retention time data or a test chromatogram) must be available and maintained by the analyst or the laboratory; and,

ii. That the procedure employs an internal standard technique.

b. For enzymatic procedures, based on alcohol dehydrogenase,

i. That the procedure recommended by the instrument manufacturer/test kit vendor for whole blood alcohol analysis is utilized. Documentation of the procedure utilized must be available and maintained by the analyst or the laboratory; and,

ii. That the enzyme used in the procedure has sufficient selectivity to provide negligible cross-reactivity towards methanol, acetone and isopropanol. Documentation of such cross-reactivity must be available and maintained by the analyst or the laboratory.

(2) Qualifications for blood analyst permit – To qualify, the applicant must determine blood alcohol level to the satisfaction of the Department using his/her proposed analytical procedure(s) in proficiency samples provided by the Department and meet all of the following requirements:

(a) Department approval of analytical procedure(s).

(b) Satisfactory determination of blood alcohol level in five proficiency samples provided by the Department using the proposed analytical procedure. Satisfactory determination shall be made by reporting results for blood alcohol proficiency samples within the acceptable range for the samples. For blood alcohol testing, acceptable ranges shall mean the calculated proficiency sample mean + or - 3 standard deviations iterated twice. The mean and standard deviations will be calculated using the results reported by the analysts and reference laboratories;

(c) through (d) No change.

(3) The department shall approve gas chromatographic analytical procedures and enzymatic analytical procedures based on alcohol dehydrogenase which meet the following requirements:

(a) Includes the approved method used and a description of the method, and the equipment, reagents, standards, and controls used;

(b) Uses commercially-prepared standards and controls certified by the manufacturer, or laboratory-prepared standards and controls verified using gas chromatography against certified standards. For commercially-prepared standards and controls, the manufacturer, lot number and expiration date must be documented for each sample or group of samples

being analyzed. For laboratory-prepared standards and controls, date, person preparing the solution, method of preparation and verification must be documented;

(c) Employs a concentration range over which the procedure is calibrated with documentation supporting that the calibration is linear over the stated range. The calibration must employ a standard less than 0.04 g/100mL and a standard greater than 0.20 g/100mL;

(d) Uses a new or existing calibration curve. The new calibration curve must be generated using at least three (3) standards: one at 0.05 g/100mL or less, one between 0.05 and 0.20 g/100mL (inclusive) and one at 0.20 g/100mL or higher, and must be verified using a minimum of two (2) controls, one at 0.05 g/100mL or less and one at 0.20g/100mL or higher. The existing calibration curve must be verified using a minimum of two (2) controls, one at 0.05 g/100mL or less and one at 0.20g/100mL or higher;

(e) Includes the analysis of a blank, alcohol-free control, and the analysis of a whole blood or serum control;

(f) A gas chromatographic analytical procedure must discriminate between methanol, ethanol, acetone and isopropanol and employ an internal standard technique;

(g) An enzymatic analytical procedure based on alcohol dehydrogenase must use the procedure recommended by the instrument manufacturer/test kit vendor for whole blood alcohol analysis, and the enzyme used must have sufficient selectivity to provide negligible cross-reactivity towards methanol, acetone and isopropanol.

(4)(3) The permit shall be issued by the Department for a specific method and procedure. Any substantial change to the method, analytical procedure, or laboratory facility must receive prior approval by the Department before being used to determine the blood alcohol level of a sample submitted by an agency. The Department shall determine what constitutes a substantial change.

(5) An analyst shall only use a Department-approved procedure to determine the blood alcohol level of samples submitted by an agency. Approval of blood alcohol analysis methods and procedures shall be based on rule requirements in effect at the time they were submitted for approval.

Specific Authority 316.1932(1)(a)2.,(f)1., 316.1933(2)(b), 316.1934(3), 322.63(3)(b)(4), 327.352(1)(b)3.,(4) FS. Law Implemented 316.1932(1)(b), 316.1933(2)(b), 316.1934(3), 322.63(3)(b), 327.352(1)(b), (e), 327.353(2), 327.354(3) FS. History—New 10-31-93, Amended 4-1-94, 2-1-95, 1-1-97, \_\_\_\_\_.

11D-8.014 Blood Alcohol Permit – Analyst: Renewal.

(1) Permits to conduct blood alcohol analyses shall be issued to persons meeting the qualifications described in 11D-8.013, F.A.C., provided that the analyst has satisfactorily determined blood alcohol level when analyzing blood proficiency samples submitted by the Department. Such blood alcohol permit shall remain valid until otherwise suspended or revoked by the Department. In order to remain qualified for

such permit, an analyst must satisfactorily determine the blood alcohol level of at least two (2) proficiency samples provided by the Department each annual quarter. Satisfactory determination shall be made by reporting results for blood alcohol proficiency samples within the acceptable range for the samples. For blood alcohol testing acceptable ranges shall mean the calculated proficiency sample mean + or - 3 standard deviations iterated twice. The mean and standard deviations will be calculated using the results reported by the analysts and reference laboratories.

(2) No change.

~~(3) Renewal of the permit requires regular participation and demonstration of proficiency on blood alcohol proficiency samples distributed by the Department.~~

~~(3)(4) Upon notification by the Department that an analyst has failed to satisfactorily determine the blood alcohol level on any set of proficiency samples, the analyst shall be required to satisfactorily determine the blood alcohol level of a second set of five proficiency samples provided by the Department submit, upon request by the Department, a report verifying his/her adherence to the approved procedures, the laboratory quality assurance procedures, and/or if applicable, a remedial plan.~~

(4) Upon notification by the Department that an analyst has failed to satisfactorily determine the blood alcohol level on a second set of proficiency samples ~~within one year from notification of the initial failure, the analyst shall not perform any duties authorized by the analyst's permit will be suspended until the analyst satisfactorily determines the blood alcohol level of a subsequent set of proficiency samples provided by the Department for a minimum of six months. Any analyst whose permit has been suspended in accordance with this section must meet the requirements in 11D-8.013 in order to be eligible for a blood alcohol permit.~~ This section shall not preclude the Department from taking further action in accordance with 11D-8.015.

(5) Failure to satisfactorily determine the blood alcohol level of any six (6) sets of proficiency samples provided by the Department within a twelve (12) month period shall result in revocation of the blood analyst permit.

Specific Authority 316.1932(1)(a)2.,(f)1., 322.63(3)(a), 327.352(1)(b)3.,(4) FS. Law Implemented ~~316.1932(1)(b),~~ 316.1933(2)(b), 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.353(2), 327.354(3) FS. History–New 10-31-93, Amended 1-1-97,\_\_\_\_\_.

11D-8.015 Denial, Revocation, and Suspension of Permits.

(1) Notwithstanding an applicant's qualifications ~~under section 11D-8.008,~~ the Department shall deny an application for an original permit ~~or renewal of a permit~~ where the applicant:

(a) No change.

(b) Has been convicted of any of the following offenses in any federal or state court:

1. through 4. No change.

5. Leaving the scene of ~~an accident~~ a crash involving death or serious bodily injury.

(c) through (d) No change.

(2) No change.

(3) The Department is authorized to ~~permanently~~ revoke any permit for any of the following reasons:

(a) through (c)3. No change.

4. Leaving the scene of ~~an accident~~ a crash involving death or serious bodily injury;

5. No change.

(d) through (e) No change.

(4) The Department is authorized to require a breath test operator, agency inspector, breath test instructor, or analyst permit holder who violates any of these rules to attend additional training or education related to their certification or such permit.

(5) through (6) No change.

Specific Authority 316.1932(1)(a)2.,(f)1., 316.1933(2)(b), 316.1934(3), 322.63(3)(a),(b), 327.352(1)(b)3., ~~327.352(1)(d)~~ FS. Law Implemented 316.1933(2)(b), 316.1934(3), 322.63(3)(b), 327.353(2), 327.354(3) FS. History–New 10-31-93, Amended 1-1-97, 7-29-01,\_\_\_\_\_.

11D-8.017 Forms.

The following forms referenced in these rules are hereby incorporated by reference:

~~FDLE/ATP Form 8 – Breath Test Permit Application – Revised March 2001.~~

FDLE/ATP Form 13 – Breath Test Log – Effective January 1997.

FDLE/ATP Form 14 – Breath Test Result Affidavit – Revised March 2002 ~~Effective May 2000.~~

FDLE/ATP Form 16 – Agency Inspection Procedures – Revised March 2002 ~~2001.~~

FDLE/ATP Form 23 – Operational Procedures Checklist – Revised March 2002 ~~Effective January 1997.~~

FDLE/ATP Form 24 – Agency Inspection Report – Revised March 2001.

FDLE/ATP Form 32 – Certificate of Assurance – Revised March 2001.

FDLE/ATP Form 34 – Instrument Evaluation Procedures – Revised March 2002 ~~2001.~~

FDLE/ATP Form 35 – Department Inspection Procedures – Revised March 2002 ~~2001.~~

FDLE/ATP Form 36 – Department Inspection Procedures – Intoxilyzer 8000 – March 2002.

FDLE/ATP Form 37 – Intoxilyzer Operational Procedures – Intoxilyzer 8000 – March 2002.

FDLE/ATP Form 38 – Breath Alcohol Test Affidavit – Intoxilyzer 8000 – March 2002.

FDLE/ATP Form 39 – Agency Inspection Procedures – Intoxilyzer 8000 – March 2002.

These forms may be obtained by contacting the Florida Department of Law Enforcement, Alcohol Testing Program, P. O. Box 1489, Tallahassee, Florida 32302. Agencies will be provided blank forms upon request and without cost for their alcohol testing program use.

Specific Authority 316.1932(1)(a)2.,(f)1., 316.1933(2)(b), 316.1934(3), 322.63(3)(a),(b), 327.352(1)(b)3., ~~327.352(1)(d)~~ FS. Law Implemented 316.1932(1)(b), 316.1933(2)(b), 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.353(2)(b), 327.354(3) FS. History--New 10-31-93, Amended 2-1-95, 1-1-97, 9-29-01, \_\_\_\_\_.

**DEPARTMENT OF LAW ENFORCEMENT**

**Division of Local Law Enforcement Assistance**

RULE CHAPTER TITLE:                      RULE CHAPTER NO.:

Edward Byrne Memorial State and  
Local Law Enforcement Assistance

Formula Grant Program                      11D-9

RULE TITLES:                                      RULE NOS.:

Definitions                                      11D-9.001

Funds Availability                              11D-9.002

Limitations on Funds Use                      11D-9.003

Eligible Purposes and Programs              11D-9.004

Application and Award Procedures           11D-9.005

Forms and Instructions                        11D-9.006

PURPOSE AND EFFECT: The Byrne Grant Program was legislatively transferred from the Department of Community Affairs to the Department of Law Enforcement. The revisions are necessary to update the transferred rule language and incorporate changes to conform federal enabling legislation and related program policy as implemented in Florida. These changes include the deletion and addition of definitions and clarification of administrative actions including the establishment of the Federal Funding Work Group and the operation of the matrix for allocation of federal funds.

SUBJECT AREA TO BE ADDRESSED: The Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program.

SPECIFIC AUTHORITY: 943.03(4) FS.

LAW IMPLEMENTED: 943.25(1) FS.

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:

TIME AND DATE: 10:00 a.m., Tuesday, June 4, 2002

PLACE: Florida Department of Law Enforcement, 2331 Phillips Road, Conference Room, 3rd Floor, Quad C, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Persons needing an accommodation to participate in any proceeding should call (850)410-7900, (voice) or (850)656-9597, (TDD), at least five working days before such proceeding.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Beth Hamilton, Planning Manager, Criminal Justice Grants Program, Florida Department of Law Enforcement, 2331 Phillips Road, Tallahassee, Florida 32308

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

**DEPARTMENT OF LAW ENFORCEMENT**

**Employee Relations**

RULE CHAPTER TITLE:                      RULE CHAPTER NO.:

Disciplinary Procedures and Standards  
for Disciplinary Actions                      11I-1

RULE TITLES:                                      RULE NOS.:

Disciplinary Actions: Definitions              11I-1.002

Authority for Disciplinary Actions              11I-1.003

Types of Discipline – Procedure              11I-1.004

Disciplinary Investigations                      11I-1.005

Procedure for Suspension or Dismissal       11I-1.006

Appeals to the Public Employees Relations  
Commission                                      11I-1.010

PURPOSE AND EFFECT: The amendments to Chapter 11I-1, F.A.C., delete provisions based upon Chapter 60K-9, F.A.C., which has been repealed. The additional changes clarify authority within the Department of Law Enforcement to impose disciplinary action, and define violations of law or agency rules, in accordance with ss. 110.227(1) and 943.03(4), F.S.

SUBJECT AREA TO BE ADDRESSED: The Department’s rule chapter concerning disciplinary procedure and standards for disciplinary action.

SPECIFIC AUTHORITY: 943.03(4) FS.

LAW IMPLEMENTED: 110.201(2), 110.205(3), 110.227, 112.532(1), (2), (4), 112.533, 447.207(8), 943.03(4) FS.

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:

TIME AND DATE: 10:00 a.m., June 4, 2002

PLACE: Florida Department of Law Enforcement, 2331 Phillips Road, Conference Room, 3rd Floor, Quad C Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Persons needing an accommodation to participate in any proceeding should call (850)410-7900, (voice) or (850)656-9597, (TDD), at least five working days before such proceeding.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: David Sessions, Assistant

General Counsel, Office of General Counsel, Florida Department of Law Enforcement, 2331 Phillips Road, Tallahassee, Florida 32308

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

11I-1.002 Disciplinary Actions: Definitions.

(1) Disciplinary actions by the department are penalties against employees for various types of work deficiencies and conduct offenses. Realizing that disciplinary actions are necessary, the purpose of this section is to comply with ~~Department of Administration Rule 60K-9.003, F.A.C., s. 943.03(4), Florida Statutes by establishing standards and procedures which will insure timely and equitable disposition of actions defining acts of misconduct and setting standards of disciplinary action~~ determined to be necessary in dealing effectively with employee deficiencies and breaches of good conduct.

(2) through (3) No change.

(4) The provisions of this Chapter ~~specifying notice, hearing rights and necessity for written explanations prior to taking action~~ apply solely to permanent Career Service employees of the Department, whether sworn or non-sworn.

Specific Authority 110.201(2), 943.03(4) FS. Law Implemented 110.205(3), 110.227, 943.03(4)(~~3~~) FS. History—New 7-8-82, Formerly 11I-1.02, Amended 7-1-90,\_\_\_\_\_.

11I-1.003 Authority for Disciplinary Actions.

(1) Specific disciplinary action may be taken by a supervisor having appropriate delegated authority from the Executive Director of the Department of Law Enforcement. This delegation of authority varies with the severity of the particular disciplinary action and is identified in the following table:

DISCIPLINARY ACTION	AUTHORITY
Oral Reprimand	Immediate Supervisor or any higher level supervisor
Written Reprimand	Immediate Supervisor or any higher level supervisor
Reduction in Pay	<del>Executive Division</del> Director level or above
Demotion	<del>Executive Division</del> Director level or above
Suspension	<del>Executive Division</del> Director
Dismissal	<del>Executive</del> Director

(2) Any employee who either observes, is aware of, or receives a complaint from any source alleging employee behavior violating a rule of conduct shall promptly submit a report on the employee behavior to his or her immediate supervisor on an Internal Inquiry Form to be provided by the Department. Any supervisor who observes, is aware of, or receives a complaint from any source relating to employee behavior, which could result in disciplinary action ~~greater than a reprimand~~, shall promptly report the behavior through the Chain of Command on a Department Internal Inquiry Form.

Specific Authority 943.03(4) FS. Law Implemented 110.227 FS. History—New 7-8-82, Formerly 11I-1.03, Amended 7-1-90,\_\_\_\_\_.

11I-1.004 Types of Discipline – Procedure.

(1) No change.

(2) Disciplinary Actions. The types of discipline and the procedures to be followed for each are:

(a) through (b) No change.

(c) Reduction in Pay – Reduction in pay means reducing the base rate of pay of an employee. If the ~~Executive Division~~ Director determines to reduce the pay of any employee, the employee shall be notified in writing by the Department by certified mail with return receipt requested before the effective date of the action as required under Section 110.227(5)(a)(4), F.S.

The ~~Executive Division~~ Director shall consult with the Department’s ~~Administrator, Human Resources Chief, Bureau of Personnel Management, and~~ the Office of General Counsel, ~~and the Executive Director, the Assistant Commissioner or Deputy Commissioner~~ prior to reducing the pay of an employee.

(d) Demotion – Demotion means moving an employee from a position in one class to a different position in another class having a lesser degree of responsibility and a lower salary range maximum. If the ~~Executive Division~~ Director determines to demote an employee, the employee shall be notified in writing by the Department by certified mail with return receipt requested before the effective date of the action as required under Section 110.227(5)(a)(4), F.S.

The ~~Executive Division~~ Director shall consult with the Department’s ~~Administrator, Human Resources Chief, Bureau of Personnel Management, and~~ the Office of the General Counsel, ~~and the Executive Director, Assistant Commissioner or Deputy Commissioner~~ prior to reducing the pay of an employee.

(e) Suspension – A suspension is the action taken to temporarily relieve an employee of duties and place him or her on leave without pay. Like dismissal, suspension requires proof of just cause and should be used in the case of the commission of a major offense in relation to the employee’s job duties and position or as a more severe discipline following an accumulation of reprimands.

The ~~Executive Division~~ Director shall consult with the ~~Department’s Chief, Bureau of Personnel Management, and~~ the Office of the General Counsel prior to implementing a suspension notice.

The procedure to be followed for suspension is provided in ~~Section 110.227(5)(a), Florida Statutes Rule 11I-1.006, F.A.C.~~

(f) Dismissal – Dismissal is the action taken by an agency against an employee to separate him/her from the Career Service. Dismissal shall be administered only for just cause.

The Executive Director shall consult with the Office of the General Counsel prior to implementing a dismissal notice.

The procedure to be followed for dismissal is provided in Section 110.227(5)(a), Florida Statutes ~~Rule 11I-1.006, F.A.C.~~

Specific Authority 943.03(4) FS. Law Implemented 110.227(1), ~~(4), (5)(a), 112.532(4) FS. History—New 7-8-82, Formerly 11I-1.04, Amended 7-1-90, \_\_\_\_\_.~~

#### 11I-1.005 Disciplinary Investigations.

The methods and agents of investigation utilized prior to notice of personnel action shall vary with the nature of the offense and the needs of the employer to obtain complete information. In the event that law enforcement personnel are under investigation, the rights provided under Part VI, Chapter 112, Florida Statutes, as to notice and methods of interrogation shall be applied. If an employee is included in a bargaining unit which is subject to a collective bargaining agreement, that an employee may request that a Union representative be present during any disciplinary investigation or investigatory meeting in which the employee is being questioned about relative to alleged misconduct of the employee.

Specific Authority 943.03(4)~~(3)~~ FS. Law Implemented 112.532(1), 112.532(4), 112.533 FS. History—New 7-8-82, Formerly 11I-1.05, Amended \_\_\_\_\_.

#### 11I-1.006 Procedure for Suspension or Dismissal.

~~Prior to the suspension or dismissal of any permanent career service employee, the esignated disciplinary authority shall give the employee written notice and an opportunity for a predetermination conference as provided for in Section 110.227(5), Florida Statutes, and as implemented in Rules 60K-9.0041 through 60K-9.0046, F.A.C.~~

##### (1) Predetermination Procedures: Notice, Form, Delivery.

~~(a) Except in the extraordinary situations described in Rule 11I-1.008, F.A.C. the employee shall be given notice of the proposed action in time for the notice to be received by the employee at least ten (10) calendar days prior to the date the action is to be taken.~~

~~(b) The notice shall be in writing and shall be mailed to the employee by certified mail, return receipt requested. In addition, the department may deliver a copy of the notice to the hand of the employee. A mailed notice shall constitute full and complete notice even if the mail is refused or ignored by the employee.~~

~~(c) The notice shall be signed by the person authorized to make the final decision or his/her designated representative and shall include the following:~~

- ~~1. The date the department proposes to take final action.~~
- ~~2. The specific charges or reasons for the action. Identification of any documents on which the charges are based shall be included.~~
- ~~3. A statement advising the employee that he may, within five (5) workdays of receipt of the notice, submit a request in writing for a conference in order to make an oral or a written statement or both to the department to refute or explain the charges made against the employee. The notice shall give the~~

~~name, address and telephone number of the person to whom the request for a conference shall be directed. The notice shall advise the employee that the conference will be held prior to the proposed effective date of the action, at a time and place determined by the department, normally during regular business hours.~~

~~4. A statement that the department is sincere in its desire to reduce the risk of error in taking the disciplinary action against the employee and to avoid a wrongful damaging of the employee's reputation by untrue or erroneous charges, and therefore, the employing agency is sincerely interested in receiving and considering the employee's response.~~

~~5. A copy of Rules 11I-1.006-11I-1.007, F.A.C. which effectively summarize Rules 60K-9.0041-60K-9.0045, F.A.C., shall be enclosed with the notice.~~

~~6. A statement that if the employee chooses to make no response, the department will proceed on the basis of the best information it can obtain without such response.~~

##### ~~(2) Conference.~~

~~(a) The conference must be conducted by the person authorized to make the final decision or his/her designated representative(s).~~

~~(b) The person, or persons, conducting the conference shall convene the conference at the time and place set by the department, normally in Tallahassee, Florida, and shall identify himself or herself, the employee and all other participants and explain that the purpose of the conference is to hear the employee's side of the charges so as to protect the employee from erroneous or arbitrary adverse action, and that the department's further purpose is to afford the department an opportunity to reevaluate its position after reviewing the information presented by the employee and to affirm or alter its action as may be warranted.~~

~~(c) The conference shall be informal and shall not be in the nature of an evidentiary hearing. The employee may bring an attorney or qualified representative to assist or advise him, but discovery, cross-examination, and similar legal procedures are not permissible.~~

~~(d) The employee shall be permitted to submit relevant information orally or in writing, or both, with the privilege being reserved to the department to give such information such weight as it deems proper.~~

~~(e) At the conclusion of the conference, the presiding person shall inform the employee when the department will decide whether or not to take the disciplinary action and that the employee will be promptly notified.~~

Specific Authority 943.03(3) FS. Law Implemented 110.227(5)(a), 112.532(4) FS. History—New 7-8-82, Formerly 11I-1.06, Amended 7-14-87, Repealed \_\_\_\_\_.

11I-1.010 Appeals to the Public Employees Relations Commission.

An employee who has earned permanent status in the Career Service in accordance with the provisions of Rule ~~60K-4.004~~ 60L-33.003(1)(d) shall have the right to appeal to the Public Employees Relations Commission any reduction in pay, demotion, suspension or dismissal by the Department ~~pursuant to the provisions of Rule 38D-24.001(1), F.A.C.~~

Specific Authority 943.03, 110.201(2) 447.207(8) FS. Law Implemented 110.227(4), (5) FS. History—New 7-8-82, Formerly 11I-1.10, Amended 7-14-87, 7-1-90, \_\_\_\_\_.

Appendix A

Standards of Disciplinary Action:

As stated in these Standards of Disciplinary Action, whenever a standard includes Suspension or Dismissal, said penalty includes all lesser penalties including demotions and reduction in pay.

Offense	First Time	Second Time	Third Time
(1) through (7) No change.			
(8) Falsification of Records	<del>Written Reprimand</del> or up to 30 days <del>Suspension</del> or Dismissal	Up to 30 days <del>Suspension</del> or Dismissal	Dismissal
(9) through (23) No change.			

**DEPARTMENT OF LAW ENFORCEMENT**

**Office of Inspector General**

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Violent Crime Emergency Account	11N-1
RULE TITLES:	RULE NOS.:
Criteria	11N-1.002
Violent Crime Investigative Reimbursement and Emergency Funding	11N-1.0021
Matching Drug Control Investigative Funding	11N-1.0022

PURPOSE AND EFFECT: To clarify language in Chapter 11N-1, F.A.C., pertaining to funding for illicit money laundering investigative efforts or task force efforts to contribute to achieving the state's goal of reducing drug-related crime.

SUBJECT AREA TO BE ADDRESSED: The Violent Crime Council's funding for multiagency or statewide drug control or illicit money laundering investigative efforts or task force efforts.

SPECIFIC AUTHORITY: 943.03(4), 943.042 FS.

LAW IMPLEMENTED: 943.031, 943.042 FS.

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:

TIME AND DATE: 10:00 a.m., Tuesday, June 4, 2002

PLACE: Florida Department of Law Enforcement, 2331 Phillips Road, Conference Room, 3rd Floor, Quad C, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Persons needing an accommodation to participate in any proceeding should call (850)410-7900, (voice) or (850)656-9597, (TDD), at least five working days before such proceeding.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Joyce Gainous-Harris, Florida Department of Law Enforcement, 2331 Phillips Road, Tallahassee, Florida 32308

THE PRELIMINARY TEXT OF THE PROPOSED RULE UPON REQUEST AND WHEN AVAILABLE RULE TEXT WILL BE PROVIDED.

**STATE BOARD OF ADMINISTRATION**

**Florida Prepaid College Board**

RULE TITLES: Contract Types  
RULE NO.: 19B-5.001

PURPOSE AND EFFECT: To revise the rules governing the Florida Prepaid College Program to permit purchase of dormitory contracts for beneficiaries who were adopted from the Department of Children and Families after May 5, 1997, without purchase of a tuition contract.

SUBJECT AREA TO BE ADDRESSED: Purchase of dormitory contracts in the Florida Prepaid College Program for beneficiaries who were adopted from the Department of Children and Families after May 5, 1997.

SPECIFIC AUTHORITY: 240.551(5)(a) FS.

LAW IMPLEMENTED: 240.551 FS.

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:

TIME AND DATE: 2:00 p.m., June 4, 2002

PLACE: Suite 210, Hermitage Building, 1801 Hermitage Boulevard, Tallahassee, Florida

THE PERSON TO CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Thomas J. Wallace, Executive Director, 1801 Hermitage Boulevard, Suite 210, Tallahassee, Florida 32308, telephone (850)488-8514

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

19B-5.001 Contract Types.

The program offers purchasers three different types of tuition and local fee plan contracts, respectively, with an addendum dormitory plan to the university plan or community college plus university plan. However, a purchaser may purchase a



dormitory plan contract for a beneficiary who was adopted from the Department of Children and Family Services after May 5, 1997, without purchasing a tuition plan contract for that beneficiary. All types of tuition plans cover the matriculation fee, the building fee, the capital improvement fee and the financial aid fee. Local fee contracts cover the activity and service, health, and athletics fees imposed by the state universities and the student activity fee imposed by the community colleges. Local fee contracts purchased after July 1, 1999 also cover the technology fee imposed by the community colleges.

(1) Tuition plans consist of three separate plans:

(a) University Plan – The university plan specifies that 120 credit hours at a state university are purchased for the benefit of the qualified beneficiary.

(b) Community College Plan – The community college plan specifies that 60 credit hours at a state community college are purchased for the benefit of the qualified beneficiary. For community college plans purchased prior to the 1996-97 application period, the number of credit hours purchased through the community college plan shall be the number specified in the advance payment contract.

(c) Community College Plus University Plan – The community college plus university plan specifies that 60 credit hours at a state community college and 60 upper division level credit hours at a state university are purchased for the benefit of the qualified beneficiary. For community college plus university plans purchased prior to the 1996-97 application period, the number of credit hours purchased through the community college plus university plan shall be the number specified in the advance payment contract.

Tuition plans do not cover institutionally-imposed fees such as health, athletic, activity and service, technology or student activity fees.

(2) Local fee plans consist of three separate plans:

(a) University Local Fee Plan – The university local fee plan specifies that local fees for 120 credit hours at a state university are purchased for the benefit of the qualified beneficiary.

(b) Community College Local Fee Plan – The community college plan specifies that local fees for 60 credit hours at a state community college are purchased for the benefit of the qualified beneficiary.

(c) Community College Plus University Local Fee Plan – The community college plus university plan specifies that local fees for 60 credit hours at a state community college and 60 upper division level credit hours at a state university are purchased for the benefit of the qualified beneficiary.

Local fee plans may be purchased only for those contract beneficiaries four (4) or more years away from their anticipated matriculation date at the time that the application is filed.

(3) Dormitory Plan.

(a) The dormitory plan may be purchased only for those contract beneficiaries four (4) or more years away from their anticipated matriculation date at the time that the contract application is filed. Effective for enrollment periods beginning after July 1, 1997, the dormitory plan is not available unless the sale of dormitory contracts is specifically authorized by the Board prior to the enrollment period for that year and the sale of dormitory plan contracts will not adversely affect the status of the program as a "qualified state tuition program" under s. 529 of the Internal Revenue Code.

(b) A dormitory plan purchased in conjunction with or as an addendum to the community college plus university plan is intended for use after the beneficiary is admitted to a state university. A dormitory plan may only be transferred for use at a community college pursuant to Rule 19B-9.004, F.A.C.

(4) The contracts do not cover fees and costs related to books, meals, transportation, graduate school, and institutionally-imposed fees such as laboratory fees.

Specific Authority 240.551(5) FS. Law Implemented 240.551 FS. History—New 3-29-89, Amended 5-17-92, 8-23-92, Formerly 4G-5.001, Amended 5-31-95, 6-20-96, 10-20-96, 8-18-97, 2-18-99, 2-8-00, \_\_\_\_\_.

**STATE BOARD OF ADMINISTRATION**

**Florida Prepaid College Board**

RULE TITLES:

Contract Requirements

RULE NO.:

19B-5.003

PURPOSE AND EFFECT: To permit a second contract in the Florida Prepaid College Program to be purchased for a beneficiary as a scholarship by the direct support organization or an organization operating a scholarship program pursuant to Rule 19B-5.007, F.A.C., and to provide that if a second contract is purchased for a beneficiary as a scholarship that the Board will provide a refund for the first contract pursuant to Rule 19B-11.001, F.A.C.

SUBJECT AREA TO BE ADDRESSED: Purchase of a second Prepaid Program contract a beneficiaries by the direct support organization or an organization operating a scholarship program pursuant to Rule 19B-5.007, F.A.C.

SPECIFIC AUTHORITY: 240.551(5) FS.

LAW IMPLEMENTED: 240.551 FS.

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:

TIME AND DATE: 2:00 p.m., June 4, 2002

PLACE: Suite 210, Hermitage Building, 1801 Hermitage Boulevard, Tallahassee, Florida

THE PERSON TO CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Thomas J. Wallace, Executive Director, 1801 Hermitage Boulevard, Suite 210, Tallahassee, Florida 32308, telephone (850)488-8514

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

19B-5.003 Contract Requirements.

(1) Purchasers must name the qualified beneficiary in the application, provided however, that the board's direct support organization and organizations operating scholarship programs pursuant to Rule 19B-5.007, F.A.C., shall be permitted to leave the qualified beneficiary's name blank until April 1 of the anticipated enrollment year.

(2) Only one qualified beneficiary is allowed per contract, and a specific beneficiary can be named in only one contract; provided however, a second prepaid contract may be purchased for a beneficiary by the direct support organization or an organization operating a scholarship program pursuant to Rule 19B-5.007, F.A.C. If a second prepaid contract is purchased for a beneficiary by the direct support organization or an organization operating a scholarship program pursuant to Rule 19B-5.007, F.A.C., the purchaser of the original prepaid contract may receive a refund pursuant to Rule 19B-11.001(1). In the event duplicate contracts for the same beneficiary are processed and the second prepaid contract was not purchased by the direct support organization or an organization operating a scholarship program pursuant to Rule 19B-5.007, F.A.C., the contract processed first shall be deemed valid and the remaining contract shall be deemed terminated.

(3) The purchaser does not have to designate the postsecondary institution that the beneficiary will attend.

(4) The contract may be used within three years in advance of the selected matriculation date indicated in the application with no penalty or additional cost. However, to utilize a contract prior to the selected matriculation date, the purchaser must pay the contract in full before changing such matriculation date.

(5)(a) The benefits of a contract may be received for up to a ten-year period after the matriculation date. This ten-year limitation will be extended upon application to the Board. Any time spent by the qualified beneficiary in the military service tolls the time for receiving contract benefits under all contract plans. The matriculation date is the projected college enrollment year of the qualified beneficiary, based on the information about the qualified beneficiary's age or grade contained in the purchaser's application form, or similar information received subsequently by the Board from the purchaser. The right to use the benefits from a contract shall expire on December 31, ten years after the matriculation date, or any extension thereof.

(b) When the benefits from a contract have not been used on December 31, nine years after the matriculation date or one year prior to the expiration of any extension of the expiration date for the use of contract benefits, the Board shall mail a written notice to the purchaser which indicates:

1. The purchaser must request in writing that the Board extend the time period for the use of contract benefits or to obtain a refund for the contract;

2. That the right to use the contract benefits will expire on December 31, ten years after the matriculation date or any extension thereof; and

3. That such benefits and refund will escheat to the Florida Prepaid College Trust Fund on that date.

Such notice shall be mailed not later than 180 days prior to the expiration of the contract benefits. An alphabetical list of the names of purchasers of such accounts shall be posted on the Board's website on the Internet.

(c) The benefits from and any refund associated with a contract for which the benefits have not been used by December 31, ten years after the matriculation date, or any extension thereof, shall escheat to the Florida Prepaid College Trust Fund.

(6) Accounts that are composed of tuition and local fee contracts will only be paid if both the tuition account and local fee account are in good standing. Local fee payments shall not be remitted to pay tuition for any beneficiary.

Specific Authority 240.551(5) FS. Law Implemented 240.551 FS. History--New 3-29-89, Amended 2-6-90, 3-19-92, Formerly 4G-5.003, Amended 5-31-95, 6-20-96, 2-18-99, 6-6-99, 11-6-01, \_\_\_\_\_.

**WATER MANAGEMENT DISTRICTS**

**St. Johns River Water Management District**

RULE TITLE: Agreements  
 RULE NO.: 40C-3.035

PURPOSE AND EFFECT: The purpose of the proposed rule amendments is to incorporate by reference the water well permitting delegation agreements between St. Johns River Water Management District and the Florida Department of Health, Brevard County Health Department and the Florida Department of Health, Okeechobee County Health Department.

SUBJECT AREAS TO BE ADDRESSED: The subject area to be addressed is the permitting of the construction of water wells less than six inches in diameter by the Florida Department of Health, Brevard County Health Department and the Florida Department of Health, Okeechobee County Health Department.

SPECIFIC AUTHORITY: 373.044, 373.113, 373.171 FS.

LAW IMPLEMENTED: 373.046, 373.083, 373.309 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Norma Messer, Rules Coordinator, Office of General Counsel, St. Johns River

Water Management District, P. O. Box 1429, Palatka, Florida 32178-1429, (386)329-4459, Suncom 860-4459 or email address nmesser@sjrwm.com

**THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:**

40C-3.035 Agreements.

The Governing Board hereby incorporates by reference the following documents:

(1) through (11) No change.

(12) An agreement between Florida Department of Health, Brevard County Health Department and St. Johns River Water Management District regarding water well permitting dated (effective date).

(13) An agreement between Florida Department of Health, Okeechobee County Health Department and St. Johns River Water Management District regarding water well permitting dated (effective date).

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.046, 373.083, 373.309 FS. History–New 10-14-84, Amended 12-5-85, Formerly 40C-3.035, 40C-3.0035, Amended 1-8-96, 4-21-96, 7-21-96, 12-22-96, 3-10-97, 1-3-00, 9-6-01, \_\_\_\_\_.

**AGENCY FOR HEALTH CARE ADMINISTRATION**

**Medicaid**

RULE TITLE: Independent Laboratory Services

RULE NO.: 59G-4.190

PURPOSE AND EFFECT: The purpose of this rule amendment is to incorporate by reference the Florida Medicaid Independent Laboratory Services Coverage and Limitations Handbook, January 2002. The handbook changes include the January 2002 Independent Laboratory Services Fee Schedule, revisions to the Procedure Code Frequency Limitations (Appendix C), revisions to procedure codes in the Family Planning Waiver Laboratory Services (Appendix D), elimination of the – 22 modifier, and replaces the Health Care Financing Administration (HCFA) with the new name Centers for Medicare and Medicaid Services (CMS). The effect will be to incorporate by reference in the rule the current Florida Medicaid Independent Laboratory Services Coverage and Limitations Handbook.

SUBJECT AREA TO BE ADDRESSED: Independent Laboratory Services.

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.905, 409.908, 409.9081 FS.

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

TIME AND DATE: 9:30 a. m., June 10, 2002

PLACE: Agency for Health Care Administration, 2728 Ft. Knox Boulevard, Building 3, Conference Room D, Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Susan Rinaldi, Medicaid Health Systems Development Office, P. O. Box 12600, Tallahassee, Florida 32317-2600, (850)922-7308

**THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:**

59G-4.190 Independent Laboratory Services.

(1) No change.

(2) All independent laboratory providers enrolled in the Medicaid program must comply with the provisions of the Florida Medicaid Independent Laboratory Coverage and Limitations Handbook, January 2002 April 2004, incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, HCFA-1500 and Child Health Check-Up 221, which is incorporated by reference in Rule 59G-5.020, F.A.C. Both handbooks are available from the Medicaid fiscal agent.

Specific Authority 409.919 FS. Law Implemented 409.905, 409.908, 409.9081 FS. History–New 1-1-77, Amended 10-11-81, Formerly 10C-7.41, Amended 6-30-92, Formerly 10C-7.041, Amended 9-28-94, 1-9-96, 10-20-96, 9-14-97, 3-22-00, 5-16-01, 2-14-02, \_\_\_\_\_.

**AGENCY FOR HEALTH CARE ADMINISTRATION**

**Medicaid**

RULE TITLE: Portable X-ray Services

RULE NO.: 59G-4.240

PURPOSE AND EFFECT: The purpose of this rule amendment is to incorporate by reference the Florida Medicaid Portable X-ray Services Coverage and Limitations Handbook, January 2002. The handbook changes include the January 2002 Portable X-ray Services Fee Schedule and replaces the Health Care Financing Administration (HCFA) with the new name Centers for Medicare and Medicaid Services (CMS). The effect will be to incorporate by reference in the rule the current Florida Medicaid Portable X-ray Services Coverage and Limitations Handbook.

SUBJECT AREA TO BE ADDRESSED: Portable X-ray Services.

SPECIFIC AUTHORITY: 409.919 FS.

LAW IMPLEMENTED: 409.905, 409.908, 409.9081 FS.

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

TIME AND DATE: 9:30 a. m., June 10, 2002

PLACE: Agency for Health Care Administration, 2728 Ft. Knox Boulevard, Building 3, Conference Room D, Tallahassee, Florida 32308

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Susan Rinaldi, Medicaid Health Systems Development, P. O. Box 12600, Tallahassee, Florida 32317-2600, (850)922-7308

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

59G-4.240 Portable X-ray Services.

(1) No change.

(2) All portable x-ray providers enrolled in the Medicaid program must comply with the provisions of the Florida Medicaid Portable X-ray Services Coverage and Limitations Handbook, January 2002 ~~April 2001~~, incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, HCFA-1500 and Child Health Check-Up, which is incorporated by reference in Chapter 59G-4.240, F.A.C. Both handbooks are available from the Medicaid fiscal agent.

Specific Authority 409.919 FS. Law Implemented 409.905(10), 409.908, 409.9081, 409.913 FS. History—New 10-11-81, Formerly 10C-7.411, Amended 7-1-92, Formerly 10C-7.0411, Amended 5-16-94, 1-9-96, 10-20-96, 8-27-97, 3-22-00, 2-14-02, \_\_\_\_\_.

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Board of Cosmetology**

RULE TITLE: Manner of Application  
PURPOSE AND EFFECT: The Board proposed to amend this rule to clarify that photographs are no longer required.  
SUBJECT AREA TO BE ADDRESSED: Manner of application.

RULE NO.: 61G5-18.002

SPECIFIC AUTHORITY: 477.016, 120.53 FS.  
LAW IMPLEMENTED: 477.019 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT IS: Julie Baker, Executive Director, Board of Cosmetology, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-0750

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

61G5-18.002 Manner of Application.

Every person desiring to be examined for licensure as a cosmetologist shall apply to the department in writing upon forms prepared and furnished by the Department and pay an examination fee as required by Chapter 61G5-24, F.A.C.

(1) The applicant must present an ~~with the~~ application ~~two~~ ~~(2) 2" x 2" photographs taken within the past twelve (12) months~~ and evidence of completion of cosmetologist training defined in Rule 61G5-18.001, F.A.C., above. Applications will be scheduled on an as available basis.

(2) No change.

Specific Authority 477.016, 120.53 FS. Law Implemented 477.019 FS. History—New 11-3-80, Amended 1-17-83, Formerly 21F-18.02, Amended 6-22-87, Formerly 21F-18.002, Amended \_\_\_\_\_.

**DEPARTMENT OF HEALTH**

**Board of Respiratory Care**

RULE TITLE: Registration by Endorsement  
PURPOSE AND EFFECT: The Board proposes to update existing rule text.  
SUBJECT AREA TO BE ADDRESSED: Registration by Endorsement.

RULE NO.: 64B32-2.001

SPECIFIC AUTHORITY: 468.353(1), 468.358(3) FS.

LAW IMPLEMENTED: 468.358(2), (3), 468.365 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WILL BE HELD AT THE TIME, DATE AND PLACE TO BE PUBLISHED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

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

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

64B32-2.001 Registration by Endorsement.

Every applicant for registration as a registered respiratory therapist by endorsement shall demonstrate the following:

(1)(a) That the applicant ~~he~~ holds the "Registered Respiratory Therapist" credential issued by the National Board for Respiratory Care, or an equivalent credential acceptable to the Board; or

(b) That the applicant ~~he~~ holds registration, or the equivalent, to deliver respiratory care in another state and such registration was granted pursuant to requirements determined to be equivalent to, or more stringent than, the requirements in Florida.

(2) That the applicant ~~he~~ is not otherwise disqualified by reason of a violation of Chapter 455, Part II, or Chapter 468, Part V, Florida Statutes, or the rules promulgated thereunder.

(3) That the applicant has completed a Board approved two hour course in medical error prevention meeting the criteria set forth in rule 64B32-6.006.

Specific Authority 468.353(1), 468.358(3) FS. Law Implemented 468.358(2), (3), 468.365 FS. History—New 4-29-85, Formerly 21M-34.02, 21M-34.002, 61F6-34.002, 59R-71.002, 64B8-71.002, Amended.

**DEPARTMENT OF HEALTH**

**Board of Respiratory Care**

RULE TITLE: Certification by Examination

RULE NO.: 64B32-3.002

PURPOSE AND EFFECT: The Board proposes to update existing rule text.

SUBJECT AREA TO BE ADDRESSED: Certification by Examination.

SPECIFIC AUTHORITY: 456.017(1), 468.353(1) FS.

LAW IMPLEMENTED: 468.355, 468.357, 468.365 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WILL BE HELD AT THE TIME, DATE AND PLACE TO BE PUBLISHED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

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

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

64B32-3.002 Certification by Examination.

(1) Every applicant for certification as a certified respiratory therapist or a respiratory care practitioner by examination shall demonstrate to the Board the following qualifications set forth below.

(2) That the applicant ~~he~~ is at least 18 years old.

(3) That the applicant ~~he~~ possesses a high school diploma or the graduate equivalency diploma.

(4) That the applicant ~~he~~ has successfully completed a training program for certified respiratory therapy technicians or respiratory therapists approved by the Committee on Allied Health Education and Accreditation of the American Medical Association, or the equivalent thereof, as accepted by the Board.

(5) That he is not otherwise disqualified by reason of a violation of Chapter 456 or 468, Part V, Florida Statutes, or the rules promulgated thereunder.

(6) That he has passed the examination required by Section 468.357(1)(c), Florida Statutes. The examination to be used for same as that given by the National Board of Respiratory Care for entry-level certification of certified respiratory therapists ~~therapy technicians~~ as provided in Section ~~468.357~~ 468-57, Florida Statutes. Passing score for certification by the Board Council shall be the same as the passing score identified by the National Board of Respiratory Care, a 75 stated score based on use of the Nedelski technique.

(7) That the applicant has completed a Board approved two hour course in medical error prevention meeting the criteria set forth in Rule 6432-6.006, F.A.C.

Specific Authority 456.017(1), 468.353(1) FS. Law Implemented 468.355, 468.357, 468.365 FS. History—New 4-29-85, Amended 1-5-86, Formerly 21M-35.02, Amended 9-29-86, 5-12-88, Formerly 21M-35.002, 61F6-35.002, 59R-72.002, Amended 6-9-99, Formerly 64B8-72.002, Amended.

**DEPARTMENT OF HEALTH**

**Board of Respiratory Care**

RULE TITLE: Certification by Endorsement

RULE NO.: 64B32-3.003

PURPOSE AND EFFECT: The Board proposes to update existing rule text.

SUBJECT AREA TO BE ADDRESSED: Certification by Endorsement.

SPECIFIC AUTHORITY: 468.353(1), 468.358(2) FS.

LAW IMPLEMENTED: 468.358(3), 468.365 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WILL BE HELD AT THE TIME, DATE AND PLACE TO BE PUBLISHED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

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

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

64B32-3.003 Certification by Endorsement.

Every applicant for certification as a certified respiratory therapist ~~therapy technician~~ by endorsement shall demonstrate the following:

(1)(a) That the applicant ~~he~~ holds the “Certified Respiratory Therapists ~~Therapy Technician~~” credential issued by the National Board for Respiratory Care, or an equivalent credential acceptable to the Board; or

(b) That the applicant ~~he~~ holds certification, or the equivalent, to deliver respiratory care in another state and such certification was granted pursuant to requirements determined to be equivalent to, or more stringent than, the requirements in Florida.

(2) That the applicant ~~he~~ is not otherwise disqualified by reason of a violation of Chapter 455, Part II, or Chapter 468, Part V, Florida Statutes, or the rules promulgated thereunder.

(3) That the applicant has completed a Board approved two hour course in medical error prevention meeting the criteria set forth in Rule 64B32-6.006, F.A.C.

Specific Authority 468.353(1), 468.358(2) FS. Law Implemented 468.358(3), 468.365 FS. History—New 4-29-85, Formerly 21M-35.03, 21M-35.003, 61F6-35.003, 59R-72.004, 64B8-72.004, Amended.

**DEPARTMENT OF HEALTH**

**Board of Respiratory Care**

RULE TITLE: Aids Education and Medical Error  
Prevention Education

RULE NO.: 64B32-6.006

PURPOSE AND EFFECT: The Board proposes to update existing rule text.

SUBJECT AREA TO BE ADDRESSED: Aids Education.

SPECIFIC AUTHORITY: 456.033 FS.

LAW IMPLEMENTED: 456.033 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WILL BE HELD AT THE TIME, DATE AND PLACE TO BE PUBLISHED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE WEEKLY.

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

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

64B32-6.006 AIDS Education and Medical Error Prevention Education.

Pursuant to Section 456.033, Florida Statutes, any Category I, American Medical Association (AMA) continuing medical education course, any Category I or Category III, American Association for Respiratory Care (AARC) continuing education course offered by an AMA approved respiratory therapy program and any courses approved by any board within the Division of Medical Quality Assurance of the Department of Health pursuant to Section 456.033, Florida Statutes, which includes topics on the transmission, infection control procedures, clinical management and prevention of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome, shall satisfy the requirements of Section 456.033, Florida Statutes, as part of biennial relicensure or recertification. Such course shall include information on current Florida law on acquired immune deficiency syndrome and its impact on testing, confidentiality of test results, treatment of patients, and any protocols and procedures applicable to human immunodeficiency virus counseling and testing, reporting, the offering of HIV testing to pregnant women, and partner notification issues pursuant to Sections 381.004 and 384.25, Florida Statutes.

(1) through (3) No change.

(4) Each applicant and all licensees shall attend and certify attending a Board approved two hour continuing education course relating to the prevention of medical errors. The two-hour course shall count toward the total number of continuing education hours required for each license renewal.

The course shall include medication errors, including missed treatments, documentation errors, equipment errors, patient errors and communication errors.

Specific Authority 456.033 FS. Law Implemented 456.033, 456.013(7) FS. History—New 6-20-89, Amended 7-28-92, Formerly 21M-38.006, Amended 1-2-94, Formerly 61F6-38.006, 59R-75.006, 64B8-75.006, Amended 4-27-00,\_\_\_\_\_.

**DEPARTMENT OF HEALTH**

**Division of Environmental Health**

RULE CHAPTER TITLE: Drinking Water Systems

RULE CHAPTER NO.: 64E-8

RULE TITLES: New Limited Use Public Water

System Construction 64E-8.002

New Private and Multi-family Water

System Construction 64E-8.003

Limited Use System Operating Permits 64E-8.004

Operation and Maintenance 64E-8.005

Public Notification 64E-8.008

PURPOSE AND EFFECT: These rules are being amended to remove the water system construction requirements from 64E-8 and reference Florida’s Department of Environmental Protections chapter 62-532 construction requirements for limited use water systems. Some minor glitches are also being corrected.

SUBJECT AREA TO BE ADDRESSED: Section 64E-8.002(2), 64E-8.002(3), and 64E-8.003(1), referencing chapter 62-532 construction requirements and removing construction requirements for 64E-8. Glitches in sections 64E-8.002(4), 64E-8.002(5), 64E-8.003, 64E-8.004(6)(e), 64E-8.005(1)(d)3., and 64E-8.008(2), are being corrected.

SPECIFIC AUTHORITY: 381.0011, 381.006, 381.0062, 403.862 FS.  
LAW IMPLEMENTED: 381.006, 381.0062, 403.862 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Pepe Menendez, Bureau of Water Programs, HSEW, 4052 Bald Cypress Way, Bin #C-22, Tallahassee, FL 32399-1742. Phone number (850)245-4240

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

64E-8.002 New Limited Use Public Water System Construction.

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

(b)1. Twenty-five feet from a building foundation when the soil has been chemically treated for pests. Wells that are installed through an impervious strata of clay, hardpan, or rock

and that are constructed in accordance with chapter 62-532.500(2)(f)3. and 4., F.A.C., paragraph (2)(e) below may be placed no less than 15 feet from a chemically treated building foundation.

2. No change.

3. Other setback distances are as established by rule chapter 62-532, F.A.C., Water Well Permitting and Construction Requirements, chapters 62-524, Delineated Areas; 62-532; Water Well Permitting and Construction Requirements; 62-600, Domestic Waste; 62-610, Reclaimed Water; 62-640, Waste Residual; 62-660, Industrial Waste; 62-670, Feedlots; 62-701, Solid Waste; 62-730, Hazardous Waste; and 62-761, F.A.C., Underground Storage Tanks.

~~(c) Down hole equipment may be installed prior to department approval.~~

~~(c)(d) Abandonment of wells is shall be required per rules 62-532.440 and .500(4), F.A.C., and rule chapters 40A through E-3, F.A.C.~~

~~(e) In addition to meeting the general construction requirements for wells with driven casing in Chapters 40A through E-3 and 62-532, F.A.C., the bottom of a driven well casing shall be constructed by undercutting or under reaming the last five feet of the hole before seating the casing. One foot of such enlarged hole must be into the consolidated formation. The entire five foot portion shall be filled with cement, and the casing driven into through the cement grout to refusal. The upper twenty feet of casing shall be sealed with not less than a two inch thickness of cement.~~

~~(3) The upper terminus of the well casing shall project at least 12 inches above the concrete apron surface and at least 18 inches above the final ground surface. Water systems Wells shall be equipped with:~~

~~(a) A conveniently accessible, non-threaded, downward-opening, tap, located at least 12 inches above grade, between the source and any storage or treatment equipment; and~~

~~(b) A minimum six foot square concrete apron four inches thick centered around the well; and~~

~~(c) A waterproof seal at the upper terminus of the well casing. Vents shall be directed downward and protected with 20 mesh screen; and~~

~~(b)(4) A working pressure gauge.~~

~~(4) Systems shall be sized according to this subsection and paragraph (5), below; however, the department shall give due consideration to a Florida licensed professional engineer's design.~~

~~(5) Piping. Systems with more than 600 feet of distribution pipe or more than 60 GPM calculated peak demand shall be designed by a professional engineer licensed in Florida.~~

(a) through (11) No change.

Specific Authority 381.0011(4),(13), 381.006, 381.0062(1),(3)(a),(6), 403.862(1)(f) FS. Law Implemented 381.0012, 381.0061, 381.0067, 381.006(1),(2), 381.0062(1),(2),(3), 403.862(1)(f) FS. History-New 1-1-93, Amended 8-20-96, Formerly 10D-4.025, Amended 1-26-98, 1-24-00, 11-13-00, 1-26-98,\_\_\_\_\_.

64E-8.003 New Private and Multi-family Water System Construction.

(1) All potable wells serving private water systems and multi-family water systems, shall be separated from major contaminant sources per subsection 64E-8.001(4) and subparagraphs 64E-8.002(2)(a), (b)1. and 3., and shall be constructed at least 75 feet from any OSTDS. paragraphs 64E-8.002(2)(c) ~~and (d)~~ shall also apply to wells serving private and multi-family systems.

(2) through (6) No change.

Specific Authority 403.862(1)(f), 381.0011(4),(13), 381.006, 381.0062(1),(3)(a) FS. Law Implemented 381.0012, 381.0061, 381.0067, 381.006(1),(2), 381.0062(1),(3), 403.862(1)(f) FS. History-New 1-1-93, Amended 8-20-96, Formerly 10D-4.026, Amended 1-26-98, 1-24-00, 11-13-00,\_\_\_\_\_.

64E-8.004 Limited Use System Operating Permits.

(1) through (6)(d) No change.

~~(e) Provide satisfactory analyses reports as required in this section within 60 days of notification by the department. If continuous treatment is required to correct an MCL violation or to comply with the terms of a variance, the supplier of the limited use commercial system shall no longer be eligible for an exemption and the registration shall be revoked.~~

(f) through (h) No change.

Specific Authority 403.862(1)(f), 381.0011(4),(13), 381.006, 381.0062(1),(3)(a),(6) FS. Law Implemented 381.0012, 381.0061, 381.0067, 381.006(1-2), 381.0062, 403.862(1)(f) FS. History-New 1-1-93, Amended 8-20-96, Formerly 10D-4.027, Amended 1-26-98, 1-24-00, 11-13-00,\_\_\_\_\_.

64E-8.005 Operation and Maintenance.

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

~~3. Any county health department that required all Limited Use Systems to provide continuous disinfection prior to 1993 may continue that requirement.~~

(2) No change.

Specific Authority 403.862(1)(f), 381.0011(4),(13), 381.006, 381.0062(1),(3)(a) FS. Law Implemented 381.0012, 381.0061, 381.0067, 381.006(1)-(2), 381.0062, 403.862(1)(f) FS. History-New 1-1-93, Amended 8-20-96, Formerly 10D-4.028, Amended 1-26-98,\_\_\_\_\_.

64E-8.008 Public Notification.

(1) No change.

~~(2) Notices shall be neatly printed in large type in English and other languages considering the nationality of all consumers, and the supplier shall provide a copy to the county health department.~~

(3) through (6) No change.

Specific Authority 403.862(1)(f), 381.0011(4),(13), 381.006, 381.0062(1), (3)(a) FS. Law Implemented 381.0011(8), 381.0012, 381.0061, 381.0067, 381.006(1)-(2), 381.0062, 403.862(1)(f) FS. History—New 1-1-93. Amended 8-20-96, Formerly 10D-4.031, Amended 1-26-98,\_\_\_\_\_.

Section II
Proposed Rules

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Standards

RULE TITLES:

RULE NOS.:

Standards

5F-2.001

Adoption of the General Code and the Codes of Liquid-Measuring Devices, Liquefied Petroleum Gas and Anhydrous Ammonia Liquid-Measuring Devices, Hydrocarbon Gas Vapor-Measuring Devices, Vehicle-Tank Meters, and Vehicle Tanks Used as Measures of National Institute of Standards and Technology Handbook 44

5F-2.014

PURPOSE AND EFFECT: The purpose of Rule 5F-2.001, F.A.C., is to adopt the 2002 edition of the chemical and physical standards set forth in the American Society for Testing and Materials. These standards will be used for quality testing of regulated petroleum products. The effect will be that the Department will use the most recent nationally recognized standards for petroleum products developed by a consensus organization. The purpose of Rule 5F-2.014, F.A.C., is to adopt the 2002 edition of NIST Handbook 44 which contains specifications and testing criteria for liquid and vapor measuring devices. The effect will be the incorporation of the most recent specifications and testing criteria of measuring devices developed by a consensus organization.

SUMMARY: Proposed Rules 5F-2.001 and 5F-2.014, F.A.C., will specify that the 2002 Annual Book of ASTM Standards and 2002 edition of NIST Handbook 44, respectively, are the accepted standards for implementation of Chapter 525, F.S.

SUMMARY OF STATEMENT 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: 525.14, 525.037, 531.40, 531.41(3) FS.

LAW IMPLEMENTED: 525.01, 525.037, 525.07, 525.14, 531.40 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: 10:00 a.m., June 10, 2002

PLACE: Division of Standards' Conference Room, Suite E, Room 135, Doyle Conner Administration Building, 3125 Conner Boulevard, Tallahassee, Florida 32399-1650

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Eric Hamilton, Bureau Chief, Bureau of Petroleum Inspection Address: 3125 Conner Blvd., Bldg. #1, Tallahassee, FL 32399-1650, Phone: (850)488-9740

THE FULL TEXT OF THE PROPOSED RULES IS:

5F-2.001 Standards.

(1) Gasoline. The following specifications apply to gasoline sold or offered for sale in Florida. Specific variations or exemptions may be made by the Department of Agriculture and Consumer Services for gasoline designed for special equipment or service.

(a) Standards. All gasoline shall conform to the chemical and physical standards for gasoline as set forth in the American Society for Testing and Materials designation D 4814-01a D-4814-00a, "Standard Specification for Automotive Spark-Ignition Engine Fuel."

(b) Analysis. For purposes of inspection and testing, laboratory analyses shall be conducted using the methods recognized by the American Society for Testing and Materials designation D 4814-01a D-4814-00a, "Standard Specification for Automotive Spark-Ignition Engine Fuel."

(2) Kerosene (Kerosine). The following specifications apply to kerosene No. 1-K and No. 2-K sold or offered for sale in Florida.

(a) Standards. All kerosine No. 1-K and No. 2-K shall conform to the chemical and physical standards for kerosene No. 1-K and No. 2-K as set forth in the American Society for Testing and Materials designation D 3699-01 D-3699-98, "Standard Specification for Kerosine."

(b) Analysis. For purposes of inspection and testing, laboratory analyses shall be conducted using the methods recognized by the American Society for Testing and Materials designation D 3699-01 D-3699-98, "Standard Specification for Kerosine."

(3) Diesel Fuel Oils No. 1-D and No. 2-D. The following specifications apply to diesel fuel oils No. 1-D and No. 2-D sold or offered for sale in Florida.

(a) Standards. All diesel fuel oils No. 1-D and No. 2-D shall conform to the chemical and physical standards for diesel fuel oils No. 1-D and No. 2-D as set forth in the American Society for Testing and Materials designation D975-01a D-975-00 "Standard Specification for Diesel Fuel Oils."

Analysis. For purposes of inspection and testing, laboratory analyses shall be conducted using the methods recognized by the American Society for Testing and Materials designation D 975-01a D-975-00, "Standard Specification for Diesel Fuel Oils."