



STATE FIRE MARSHAL Flame Retardant Advisory Committee October 21, 2020, Meeting Minutes

VIRTUAL MEETING VIA ZOOM

Office of the State Fire Marshal

2251 Harvard Street, Suite 400, Sacramento, California 95815

MEMBERS PRESENT

Shannon Sanders, Huntington Beach Fire Department
Bobby Puett, Diversified Testing Laboratories
Brian Dement, Diversified Testing Laboratories
Byron Doss, Jet Propulsion Laboratory's
Kathleen Newman, Firetect
Mike Ohirko, Impact Images
Mark Dannon, Universal Studios
Christopher Lovato, Flamecheck
Steve Straight, California Conference of Arson Investigators

MEMBERS ABSENT

Futong Cui, Fire Retardant and Chemical Technologies
Ellen Atkins, Delta Pacific Technologies, Inc.

OSFM STAFF

Patricia Setter, Committee Chair, OSFM
Al Adams, OSFM
Vickie Sakamoto, OSFM
Yevonne Costa, OSFM
Vikkie Raby, OSFM
Ben Ho, OSFM

PUBLIC GUESTS

None

1. CALL TO ORDER

A. Welcome

The meeting was called to order by Chairperson Patricia Setter at 09:08 A.M. PDT on October 21, 2020.

B. Roll Call/Determine Quorum

Roll call was conducted by Yevonne Costa and Chairperson Patricia Setter determined that a quorum of members was established at 09:10 A.M. PDT.

C. Introductions

All attendees introduced themselves.

D. Approval of Minutes

Chairperson Patricia Setter asked for approval of the Minutes of the December 12th, 2019, meeting.

It was moved by Member Kathleen Newman to approve the minutes; motion seconded by Member Shannon Sanders. Motion was unanimously approved at 09:15 A.M. PDT.

E. Announcements

Chief Al Adams thanked the Committee for their participation. He gave an update regarding the Flame Retardant Proposed Regulations. He announced that Chairperson Patricia Setter has been promoted to a Deputy State Fire Marshal III (Specialist) and is serving as the Flame Retardant (FR) Program Coordinator. He also introduced Vickie Sakamoto and welcoming her to the Division as the new Supervising Deputy State Fire Marshal. Vickie Sakamoto is overseeing the several programs including the FR Program.

Chief Al Adams spoke about the changes in the way the Office of the State Fire Marshal (OSFM) is doing business due to COVID-19 pandemic. There are Information Bulletins posted on the OSFM web site. He also spoke to the Committee about transitioning to the new online program system GOVMOTUS which streamlines the application process that includes online payment.

Vickie Sakamoto gave a brief overview of her background and then went on to share the GOVMOTUS Program details and future implementation. Member Steve Straights asked if the local authorities having jurisdiction (AHJ) have access to verify compliance. Vickie Sakamoto responded that the AHJ can if they sign up for an account with GOVMOTUS. Member Mike Ohirko asked if the public will be able to do the same. Vickie Sakamoto confirmed that they can.

Chief Al Adams mentioned that GOVMOTUS is undergoing beta testing to identify problems/issues and it will go live in early 2021. The OSFM will providing online tutorial/training for users.

2. OLD BUSINESS

A. Update on State Fire Marshal Authority Beyond State Licensing

Chairperson Patricia Setter stated that this issue is very complex and the OSFM is still looking into this issue. The COVID-19 pandemic and California fires throughout the State had diverted the resources that caused the delay for this matter. The OSFM is preparing to have a conclusion to this discussion at our next formal meeting.

Member Steve Straight asked for clarification, is this regarding materials that require flame resistance that are shipped internationally? Chairperson Patricia Setter confirmed that it is. Member Christopher Lovato stated they are receiving many questions in the industry regarding the use of non-compliance tents due to the COVID-19 pandemic. He asked what is the solution to handle this issue? Chairperson Patricia Setter responded that the issue will be handled by the respective AHJ both at State and local level.

Chief Adams mentioned that Internet sales have gone highly undetected in the industry, and they need to be reported when discovered. When a company is determined not to be in compliance with State laws and regulations, a cease and desist will be issued. The OSFM has broadened the Fire Engineering & Investigations Division to include the Investigations Unit to assist the licensing enforcement efforts. Fraudulent internet sales have been discussed and implementation plans are in place to curb the infractions.

Member Mike Ohirko added that a perspective to this situation, in California since the COVID-19 pandemic, restaurants have been purchasing tents for outdoor dining from unregistered companies. These distributors including Costco, Sam's Club, Amazon and other big box retailers that got the products from overseas. Most these companies are out of State and overseas do not adhere to the State of California FR regulations. The fines and penalties need to be substantial to be a deterrent. He asked how the OSFM requires a small family-owned company with state requirements when the large entities like Amazon are not held accountable? Chief Adams responded that local AHJs are finding these and had contacted and received guidance from the OSFM. An Information Bulletin is in the final approval process to address these issues and additionally provide options for the businesses.

Member Steve Straight commented that local fire departments are local agents of the OSFM. Each of these unapproved structures need to go through a permitting process through them. Additionally, insurance agencies for these establishments require approved products to be purchased or risk not being covered by their policies.

Member Kathleen Newman commented that the temporary structures being purchased and erected cannot be treated by a Concern Applicator due to being designed to be weather resistant. The tent would have to come with flame retardant registrations.

Member Mike Ohirko commented that a flame-retardant treatment spray should be available to treat tents after purchase. Do all chemicals and fabrics require to be independently registered? Chairperson Patricia Setter responded that it is a requirement in the code that that all variations of chemicals and fabrics be independently tested and registered.

Member Christopher Lovato stated that most canopies will not absorb chemicals and cannot be treated because of weather resistance and agreed with Kathleen Newman in her earlier statement.

B. Update on Regulation - Review of Sections 1174 through 1224, Chapter 8, Title 19, California Code of Regulations (CCR)

Chairperson Patricia Setter gave an update on the regulation review. She stated that initially we had broken down into four workgroups and due to time sensitivity of the regulation adoption, the work groups had merged into one workgroup. Then onset of COVID-19 pandemic and the recent fires in California has stretched the OSFM staff so thin and the OSFM has been running behind on our scheduled progress. The OSFM have completed the review of Chapter 8, Sections 1174 through 1224.

The OSFM elaborated on the discussion of Section 1219, Title 19, CCR regarding field testing for local AHJ's and Concern Applicators to assure testing procedures closely resemble the testing of the laboratories. The OSFM pays close attention to the BTU range utilized in the field and the common household match burns at approximately 800 BTU's while the laboratory testing is conducted at 800 to 1200 BTU's. The field testing has been incorporated into the OSFM's Information Bulletin which it needs to be defined and codified in the regulations.

3. NEW BUSINESS

A. Program Fee Increase

Chief Adams stated the flame-retardant fee schedule has not been increased for several years. The fees will need to be increased to ensure the program runs efficiently. We are usually required to increase the fees every 3 to 5 years when the fees are inadequate. We recently conducted a mission-based budgeting exercise with the Department of Finance (DoF) and identified several areas that have insufficient funding and revenue. The DoF requires the OSFM to review its current fee schedules of all programs and take appropriate actions to ensure adequate funding for each program.

The FR Program was identified as one of the programs that need to be updated. This is to basically pay for the program's expenditures and revenue. The results of this exercise shown an increase of a minimum of 136%, the OSFM will have a final fee schedule at the next Committee meeting. With the fees increase, the OSFM services will increase by means of better service, faster turn arounds, easier application process with GOVMOTUS and an increase of enforcement activities.

Member Mike Ohirko asked that when calculating the 136% increase, what is that based on the flame-retardant registration you currently have? Chief Adams responded that the proposed increase is based on the current registrations and with the intent to bring the program a level to cover expenditures of running the program.

Member Kathleen Newman stated that to register each product now is \$200.00 and it will go up to \$475.00 so for companies that have several registrations will equate to a

substantial increase. Chief Adams agreed that it could be, however, the OSFM does not have exact numbers yet. The OSFM wants the impact to be as least as possible with the intent of getting the program to be able to pay for itself but not making any profit.

B. Testing Criteria Section 1237 Workgroup Reports

Chairperson Patricia Setter stated she would like to reopen the discussion where the workgroup left off. She started with a brief historical recap of the 1993 Proposed Small-Scale Testing Procedure. This proposal was distributed to the laboratories back then, however, it was adopted into Title 19, CCR. This 1993 Proposed Small-Scale Testing Procedure proposed the following:

1. Eliminated the use of the large-scale testing and combined the small- and large-scale testing into one.
2. Changed the after-flame time from 2 seconds to 4 seconds.
3. Changed the testing cabinet to the same one as described in the Code of Federal Regulations, Title 16, Part 1615.
4. Increased the test samples relative humidity of the conditioning oven. The adopted regulation is 25%-50% and the Proposed Small-Scale Testing Procedure changed the relative humidity to 65% plus or minus 5%.
5. Changed the test specimen size from 2 ½" x 12 ½" in the adopted regulations to 3 ½" x 10".

While working to revise the regulation, the OSFM did not find any substantial scientific data to support these changes. It had been determined after a thorough historical archive review that the reasoning behind the 1993 Proposed Small-Scale Testing Procedure is not justifiable.

C. Proposed Regulation Discussion

Chairperson Patricia Setter stated that in regard to the 1993 Proposed Small-Scale Testing Procedure, to date the OSFM cannot find any scientific data to support it. We would like to suggest giving the Committee 30 days to provide scientific reasoning to support the 1993 Proposed Small-Scale Testing Procedure. As we will need to provide justification to the Office of Administrative Law with the proposed rulemaking package to revise Title 19, CCR. Member Kathleen Newman has been selected as the Lead for the Testing Criteria Workgroup. Members Christopher Lovato and Shannon Sanders offered to assist.

Member Shannon Sanders asked what is the OSFM position on this issue? Chairperson Patricia Setter responded that without scientific data to support it, the position of the OSFM is to maintain the current adopted regulations.

4. OPEN FORUM

No comments or questions.

5. PUBLIC COMMENT

No public comments or questions.

6. SCHEDULE FOR FUTURE MEETINGS

No future Committee meeting was scheduled.

7. ADJOURNMENT

Chairperson Patricia Setter asked for a motion to adjourn the meeting.

It was moved by Member Kathleen Newman to adjourn the meeting; motion seconded by Member Christopher Lovato. Chairperson Patricia Setter adjourned the meeting at 10:15 A.M. PDT.