



STATE FIRE MARSHAL  
Flame Retardant Advisory Committee  
May 18, 2021, 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  
Cori Leffler for Kathleen Newman, Firetect  
Futong Cui, Fire Retardant and Chemical Technologies  
Mike Ohirko, Impact Images  
Ellen Atkins, Delta Pacific Technologies, Inc.  
Robert Brown, SGS Laboratory

**MEMBERS ABSENT**

Steve Straight, California Conference of Arson Investigators  
Byron Doss, Jet Propulsion Laboratories  
Brian Dement, Diversified Testing Laboratories  
Mark Dannon, Universal Studios  
Christopher Lovato, Flamecheck

**OSFM STAFF**

Patricia Setter, Committee Chair, OSFM  
Al Adams, OSFM  
Vickie Sakamoto, OSFM  
Yevonne Costa, OSFM  
Kevin Chan, OSFM  
Ben Ho, OSFM

## **PUBLIC GUESTS**

None

### **1. CALL TO ORDER**

#### **A. Welcome**

The meeting was called to order by Chairperson Patricia Setter at 09:05 A.M. PDT on May 18, 2021.

#### **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 09:08 A.M. PDT.

#### **C. Introductions**

All attendees introduced themselves.

#### **D. Approval of Minutes**

Chairperson Patricia Setter asked for approval of the Minutes of the October 21, 2020, meeting.

**Motion to approve October 21, 2020, minutes was initiated by Member Cori Leffler to approve the minutes: Motion seconded by Member Robert Brown Brown. Motion was unanimously approved at 09:10 A.M. PDT**

#### **E. Announcements**

Chairperson Patricia Setter welcomed Bobby Brown of SGS Laboratory to the Flame Retardant Committee.

Chairperson Patricia Setter spoke regarding the term of committee membership. stating all of members appointed to the committee who wish to remain, we will need your letters of interest submitted by the end of October 2021. Chairperson Patricia setter requested the membership letters be addressed to the State Fire Marshal, Mike Richwine, on company letterhead with a wet signature. The letters need to be sent to 2251 Harvard Street, Suite 400, Sacramento, CA 95815. Please be sure to address the envelope to the attention of Deputy Patricia Setter.

Chairperson Patricia Setter turned announcements over to Chief Al Adams. Chief Adams welcomed the group and told the group he valued their participation on the committee and expressed his appreciation of the work done so far. Chief Adams also stated there was still a need of several updates to come regarding the Flame Retardant Program within the state of California.

Kevin Chan stated individual votes were needed for acceptance of the October 21, 2020 meeting minutes. Yevonne Costa completed another roll call to capture approval from individuals. The outcome was as follows:

- Shannon Sanders, In favor
- Robert Brown, In favor
- Cori Leffler, In favor
- Futong Cui, In favor
- Mike Ohirko, In favor

Individual roll call vote to accept meeting minutes from October 21, 2020, were accepted at 9:20 am on May 18, 2021.

Chief Sakamoto shared with the committee that GOVMOTUS Flame Retardant enhancements went live in March 2021, making online payment available. Chief Sakamoto also stated there is now a public search engine that was added to GOVMOTUS. Member Mike Ohirko asked if the GOVMOTUS public search engine would be able to provide a search of all registered companies, or is the search proprietary specific for just the registered owner?

Chief Sakamoto confirmed the search can be used for any license in question, however, the search engine will only generate conformation of a license status and not any formulation, trade secrets or confidential information pertaining to any of the companies.

Member Mike Ohirko feels this search engine has the potential to allow competitive companies to use this component against one another.

Chief Sakamoto stated the publishing of the license information has been a common practice used by the State Fire Marshal's Office and the purpose is to assist businesses and Local Fire Jurisdictions to gain compliance and confirmation of license and registration status.

Chairperson Patricia Setter stated that the public search verification is to support enforcement in the field, since many jurisdictions are forced to wait for confirmation from our office for confirmation of compliance.

Member Mike Ohirko stated he understands the concept, but different manufacturers have different quality of fabrics. For example, Member Ohirko stated his company holds 8 to 9 fabric licenses. How will an inspector out in the field know which fabric is being confirmed?

Chairperson Patricia Setter stated the search will have the registration numbers and The products associated with the registration.

Chairperson Patricia Setter announced that GOVMOTUS will produce new certificates which will look different than what the committee is used to seeing. Going forward the renewal of registrations will be issued electronically from IBTS the

GOVMOTUS program and no longer sent through the United State Postal Service, as we are going paperless.

## 2. OLD BUSINESS

### **A. Update on State Fire Marshal Authority Beyond State Licensing**

Chairperson Patricia Setter stated the office has launched an investigation to consider this matter. We are unable to provide further comment until the investigation is concluded.

### **B. Update on Information Bulletin to Address the Use of Dining Tents**

Chairperson Patricia Setter stated the Information Bulletin to address the use of dining tents have been posted on The State Fire Marshal website in the OSFM COVID 19 section. You will also find a section called “Use of heaters in temporary tents and awnings”, this is Information Bulletin #20-007. The bulletin outlines the requirements for these tents and membrane structures that are manufactured, sold, or rented for temporary assembly occupancy. This will be a helpful tool for the user to assist your local fire jurisdictions regarding compliance. Please note that we do advise working closely with your local fire jurisdictions as they will have the final authority regarding the compliance requirements.

## 3. NEW BUSINESS

### **A. Chapter 8 Proposed Revision Update**

Chairperson Patricia Setter stated the office is currently working on the Title 19 Chapter 8 revisions. It was stated the last work group was held on April 21<sup>st</sup>.

Chairperson Patricia Setter stated committee members were given a copy of the proposed changes discussed on April 21<sup>st</sup> regarding sections 1171 through 1180.25. A short briefing was given stating the last work group had added several definitions and expanded the definition sections to include A through Z allowing future room for growth. Minor revisions to few sections were made to include expanded detail and clarity to the reader.

The office additionally revised the Purpose Section 1172, this section is to establish the minimum standards for the prevention of fire, the protection of life and property against fire and panic using flame-retardant chemicals, fabrics, and materials. We have added the enforcement procedures for carrying out this provision.

This work group will continue to have regularly scheduled meetings to move forward revising Title 19 Chapter 8 sections.

Committee Member Ellen Atkins commented that she would prefer to change the use of the verbiage “Flame Retardant Chemical” to “Flame Retardant Products”. The

word chemical is a misrepresentation of the products that are non-toxic. The word “chemical” is viewed as being negative to the public.

Chairperson Patricia Setter stated the suggestion was noted for revision discussion.

## **B. Laboratory Questionnaire Results**

Chairperson Patricia Setter stated that at the last meeting Kathy Newman was assigned laboratory follow up regarding the Proposed Small-Scale Testing that was introduced in 1993 as well as the Large-Scale Testing.

This assignment was reassigned to a laboratory questionnaire that was issued directly to the laboratories from the Flame Retardant Program. A laboratory questionnaire was sent out to our 9 State Fire Marshal Approved Laboratories. We asked for a response by April 3<sup>rd</sup>. The questionnaire consisted of 11 questions regarding the Proposed Small-Scale Testing that was introduced to the laboratories in 1993 and the Large Scale Test. The questions were designed to gain information regarding the Proposed Small-Scale Test as well as the Large Scale Test. Four of the Nine laboratories participated. The information provided reflected less than 50% of the laboratories and did not produce any scientific data to support the Proposed Small-Scale however, we will be analyzing this further and conducting further research regarding this issue prior to a final decision being made.

## **C. 1237 Large Scale Testing Criteria**

Chairperson Patricia Setter stated this topic had been submitted by Committee Member Bobby Brown of SGS Laboratory regarding the Title 19 Large-Scale Testing. Chairperson Patricia Setter turned the topic over to Committee Member Bobby Brown. Committee Member Bobby Brown stated our laboratory has received several inquiries over the last several years to request where SGS stands regarding the Large-Scale Testing. Through my own discovery I understand there may or may not be some laboratories that are no longer equipped to perform that testing. Is this why it has been put on the back burner?

Member Bobby Brown requested to know if there is a possibility that this regulation could be revived? And if so, would this be aligned more like the NFPA 701, Test 2 as a comparison? I would like to know the committees' views on this topic.

Chairperson Patricia Setter answered the question as to if it could be revived, which she replied yes. Have we made a final determination? No, we have not. Everything the committee is suggesting must first go to Chief Adams and the Executive Staff. We need to look at every possibility including other test methods before we proceed.

Chief Sakamoto asked Committee Member Bobby Brown if he would like to hear from the rest of the committee on their opinion?

Committee Member Bobby Brown stated yes, for many years now I have seen the Large-Scale test request fall of the radar, I have had a few inquiries. I want to know if this was a California driven decision or is there just no request coming from your office for the Large-Scale Test?

#### **D. Proposed Fee Schedule for the Flame Retardant Program**

Chairperson Patricia Setter stated she would be turning this part of the discussion over to Chief Adams and asked the committee to hold all questions until the presentation was completed.

Chief Adams stated that the fees for the Flame-Retardant Program had not been raised in thirty years. Chief Adams went on to say that over the past few years our office had undergone a mission-based budget exercise with the department of finance. An analysis was conducted to evaluate each of our programs to make sure that each program could stand alone when it comes to paying for itself. This includes whatever the program cost is to pay for personnel, rent, vehicles, and supplies.

The analysis of the program concluded that the program revenue was not sustaining the cost of operation. A lot of People may ask how we could sustain the program all these years? Within the division I have 10 programs that require licensing. In the past we had programs that were not assigned full time staff. We could keep the entire division sufficient utilizing the revenue from other programs. With this new exercise, we were required to go through, we are now required to show that each individual program can sustain its own cost of operation.

I realize that this is probably the worst time to raise the fees. We know we are coming to the end of a pandemic and many businesses have suffered. I can tell you these are proposed fees that must go through our regulatory adoption process. These fees will probably not take effect until next year. By that time, we are hoping that the pandemic will be long gone, and business recovery will have taken place.

I will now turn the meeting over to Chief Sakamoto to discuss the fees and to talk about how the fee schedule will be implemented.

Chief Sakamoto shared with the committee the fee increase table, she stated in this chart, we show the license type, number of licenses, current fee, and proposed fee. We have conducted many drills to evaluate how we can get the program out of the red and into the black. We are not padding our budget, as we are not allowed to do that as a State Agency.

The proposed fees are shown in the orange column. The proposed fees will go to public comment and through the whole process for adoption, at that time if you have concerns or issues, you can address them at that time. We wanted to share this with you as a committee, as this is what is moving forward.

We have conducted several exercises to determine how to increase the fees with our only option to get the program out of operating in the red. Chief Sakamoto asked the committee if there were any questions.

Committee Member Robert Brown commented, he found the flow chart confusing.

Chairperson Patricia Setter gave this example; let say you own a chemical company and have 6 different registered chemicals. For each individual chemical you will have a registration that cost you \$575.00. If that same company is licensed to apply the chemical for a fee, they are required to be licensed as a General Applicator, the annual fee for that company is \$450.00 regardless of many applicators work for you. The application fee for a new chemical requires the same amount work from the State Fire Marshal's Staff as a renewal and therefore are the same price.

The State Fire Marshal's Office must pay the staff at the cashier's office, the staff at the accounting office, the flame-retardant staff, and the cost of the final review completed by a Deputy State Fire Marshal, that consists of evaluating the laboratory reports, evaluating the chemicals used, checking for compliance with the banned chemicals and proposition 65 compliance for percentage of listed chemical. For renewals, it requires the payroll for the same offices, and final review that consists of pulling the original records verify none of the chemical composition or fabric details have been modified.

Yevonne Costa stated the way the registration period works July 1 through June 30 annually. Renewals are due by May 1 for processing. Any renewals received after May 1 accrue a late fee, this is the fee schedule for Fabrics, Chemicals and General Applicators. Limited Applicators are on a different fee schedule which are valid November 1 through October 31.

Committee Member Robert Brown asked, Does the State find that monitoring or having these different timelines work out, ok? Rather than placing everyone on the same timeline?

Chairperson Patricia Setter stated, Unfortunately the renewal periods are written in statute, we have no control over the renewal periods without changing the law. Chairperson Patricia Setter asked if there were any more questions.

Committee Member Mike Ohirko stated, regarding financially breaking even for the department. As you proposed these fee increases is this based on a breakeven point based on the current number of licenses? Or expanded licensing amount to catch all the people that do not have licenses that are not complying now? That is the key component, because if you are tripling or quadrupling the amount on the people that are paying the licensing fee, I would not suspect that the breakeven would be over on your right-hand column. It would probably be less after that. I will just rattle off my questions, your late fee average penalty that applies to people that are trying to do good. People that are registering with you. What about the people

that are not registering? How do you penalize more people that are trying to comply that maybe a little late? I do not know what your leniency is on that, but it makes no sense for some people to be completely off the radar, but you are going to hammer the people that are trying to comply. The other thing is, does this apply to the chemical treatment or the chemical used or the fabrics or the individual products that people are applying for? Because I'm sure I can get the chemicals sprayed on every one of my products, but they are all different grades of fabrics. So, I'm not sure how those fit into your scope. Then again, my question on responsibility, who are you going after for these fees? With all due respect Chief, it is not just COVID that is hurting this economy, it is the global economic situation, the duties, and taxes for importing products, the devaluation of the United States currency, which is also happening, the commodity prices that are increasing.

My product has taken a 35% increase in cost over the past 6 months. It is not just COVID that is hurting what we are doing, it is all the fees in total. I am saying very passionately the domestic companies should not be held accountable for the proposed fee increase, it must be the manufacturers of the products coming in. There must be a better way than just pounding on the end user. The guys like Amazon do not care, they are trying to wash their hands of this whole thing and I would like to see how you are going to collect fees from them.

Chief Sakamoto stated, to answer your comment on how we came up with the number of licenses to calculate the fee increase and to calculate our overall budget. This was on a 5-year average, it was not just using current licenses. As for the other questions regarding noncompliance among the big box stores selling products that do not meet our regulations, we are conducting investigations to administer cease and desist to correct these issues.

Committee member Ellen Atkins shared that our businesses rely on the enforcement efforts put forth by these local authorities. She posed the question; do we know how many agencies are conducting these inspections for compliance on flame-retardant requirements?

Chairperson Patricia Setter added this all depends on the jurisdictions and the inspection protocols. She went on to say some departments may not be aware of the laws and regulations and this are how some of these issues are being overlooked.

Committee member Ellen Atkins asked; has anyone ever thought of designing an inspection sheet with the state requirements included, to be used during inspections.

Chairperson Patricia Setter went on to say that an inspection sheet with the state requirements could be incorporated into a training curriculum. Chairperson Patricia Setter then asked committee member Shannon Sanders if she could share with the committee how Huntington Fire department documents their inspections?



Committee Member Shannon Sanders stated, I think every city is different based on the inspection programs they have purchased. Huntington Fire utilizes a tablet with a search feature for the requirements for the specific inspection. For example, tents will illicit all the inspection requirements for that specific category,

Chief Sakamoto asked committee member Mike Ohirko if he had any additional questions or comments?

Mike Ohirko stated yes, I want to add I think it is going to take an army of inspectors to make things equitable across the board to enforce this and there is lots of room for people not to be honest. I think safety would be a priority in this rather than revenue generation. This program is a big undertaking. It is not simple. I do not know how you are going to control things with Amazon or Costco. Also, I do not know how you can manage people in their backyards that put up a canopy or party tent or shading that does not have the flame resistance registration. The carports being sold at Costco, which are a polyethylene cover, I do not know if they are being certified. This is a big ball of wax that must be equitable for everyone.

Chief Sakamoto asked for any additional comments.

Committee Member Shannon Sanders went on to say; I know local jurisdictions work very close with the State Fire Marshal's Office in terms of training. We do have groups, there is a Northern California Fire Prevention Group as well as a Southern California Fire Prevention Group, and they are also broken down by counties. They all meet monthly, and the State Fire Marshal's Office is always welcome to attend and provide training. There is a State Representative present each month as a liaison for us. The State Fire Marshal's Office conducted a big rollout 2 or 4 years ago with Fire Sprinklers providing education and they hit the local jurisdictions hard with training. I know that the State Fire Marshal's Office and their team would welcome you with open arms. It has worked well in the past and I am certain it will work in the future.

#### 4. OPEN FORUM

Committee member Ellen Atkins stated that, we get asked a lot in the field, what is the expiration for flame retardants. I find it is different in different jurisdictions, there seems to be confusion regarding this subject. With so many variables it seems to be difficult to pinpoint the answer. My question is what we use or what does the customer use as a guideline to determine when their item is no longer safe to be used. As I understand, nothing has been established to acknowledge that, is there any recommendation for a guideline?

Committee Chairperson Patricia Setter replied, we can address those usually it is rated by laundering or dry cleaning or how that product is manufactured for example or if it is inherently flame resistant. Bobby, can you explain to the committee how the laundering and dry cleaning are tested?

Committee Member Robert Brown replied, I will use New York City as an example, a lot of the field testing is conducted by the local fire jurisdictions to NFPA 705 which is an onsite field test match known as the match burn test. This test indicates if the material still has flame resistant properties. Failure in the field test can generate larger pieces to be sent to this parties' laboratory for further testing. I have a question for Patty, are there expirations to the applications?

Committee Chairperson Patricia Setter replied, no, it depends on the licensed General Applicator to determine how many launderings or washings the fabric can receive, and that information is included on the certification provided to the client and the State. Every substrate subjected to elements, extreme lighting, or buildup of dust for example, renders the fabric subjectable to the loss of the flame-resistant properties requiring retreatment. When I receive calls from local jurisdictions. Inspectors are advised to check with their supervisors and if permitted to subject the material to field testing. Field testing is permitted by a local fire jurisdiction or a licensed General Applicator.

Committee Member Ellen Atkins replied, to require treatment every 6 months as described from New York, would be very harmful to the substrates. When our certificates are open ended adding a clause that if the material passes field testing per NFPA 705 the certificate is still valid. I think it would be difficult to standardize the time criteria because so many variables are in play.

Committee Member Robert brown replied, it even becomes more challenging establishing criteria because field testing requires the owner or establishment to cut a piece of the fabric, after a few tests the tent would not be a tent any longer. There should be an established guideline. For the laboratory testing, there is a weathering and water leaching testing and for indoor materials there is the laundering or drycleaning test.

Committee Member Ellen Atkins replied, we have asked clients for extra material before treating so that it can be tested later.

Committee Member Robert Brown replied, that would be ideal, if a client would agree to it and the material was subjected to the same elements.

Committee Chairperson Patricia Setter replied, I have been informed of a program that was required by a local fire jurisdiction. The requirement was a florescent feature added to the flame-retardant chemical that was only visible with the use of a black light. This was used with water soluble chemicals, so when the material is laundered the florescent feature is not visible. I do not know the cost associated with this florescent feature nor if it can change the consistency of the flame retardant. I have also considered a florescent feature for the State Fire Marshal seal of registration tags as a possibility. Additional research needs to be conducted to see if this option is feasible and what would the compatibility be with the different flame-

retardant products. Lastly, the concern that this florescent feature could possibly damage the substrate.

Committee Member Futong Cui replied, I think it is a good idea however florescent dye may not have the same leaching properties as the flame retardant. This will depend on the type of fire retardant. This indicator may not help.

Committee Member Mike Ohirko replied, If I go to the local farmer's market and there are 300 white pop-up tents without flame resistant registration, is it possible to have a service that could provide the flame retardant on location. And how would you make sure that the remote applicator was doing it correctly? What options does the vendor have?

Committee Chairperson Patricia Setter replied, you do have the option to have these tents chemically treated by a licensed General Applicator, however many of these tents, canopies, and awnings are made of PVC vinyl that cannot be treated. There are General Applicators that will come and treat the tent and charge you, but the treatment is going to run off not the ground. If it is a fabric tent it could be treated on location and the licensed General Applicator will field test the fabric prior to issuing the certificate of flame-resistance.

#### 4. PUBLIC COMMENT

Committee Chairperson Patricia Setter stated, we have no public participants for public comment. She asked Chief Adams if he had anything he would like to add? Chief Adams replied, he would like to thank everyone for their attendance today. If anyone would like to contact me, please feel free to do so, my email is [al.adams@fire.ca.gov](mailto:al.adams@fire.ca.gov).

I want to ensure that all your questions are answered. I am very concerned about the enforcement and want to make sure our counter parts and local fire jurisdictions have the training and education to enforce at the local level. I do have concern about big box stores getting away with selling illegally here in California. I do have plans to speak with our legal team and the State Attorney General's Office. Please communicate with us, we are open to do this the right way, therefore we are taking our time. We do not want to repeat what has happened with one set of regulations that are written and one set of regulations that are proposed and in use.

#### 6. ADJOURNMENT

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

**It was moved by Member Robert Brown to adjourn the meeting, motion seconded by Member Cori Leffler. Chairperson Patricia Setter adjourned the Meeting at 10:42 A.M. PDT.**

DRAFT