

**Bureau of Household Goods and Services (Bureau or BHGS)
Advisory Council Meeting Minutes**

WebEx

4244 South Market Court, Suite D

Sacramento, CA 95834

March 25, 2021

9:30 am -11:30 am

Attendees:

Advisory Council Members: Pascal Benyamini, Industry
Burt Grimes, Industry
Donald Lucas, Public
Dan Rhodes, Industry
Heidi Sanborn, Public
Toby Taylor, Industry
Steve Weitekamp, Industry

Bureau Staff: Yeaphana La Marr, Acting Chief
Alda Aguirre, Supervising Special Investigator
Jacqueline Castro, Licensing Manager
Diana Godines, Policy Manager
Rosemarie Pecota, Laboratory Manager
Kelli Williams, Compliance Unit Manager
Winson Luong, Compliance Unit Analyst
Sue Xu, Flammability Research Test Engineer
Avra Wallace-Schoell, Licensing Analyst

Other Individuals Present: Carrie Holmes, DCA Deputy Director,
Board and Bureau Relations
Megan Allred, DCA Assistant Deputy Director,
Legislative Affairs
Karen Munoz, DCA Budget Manager
Heather Robinson, DCA Budget Analyst

1. Welcome, Introductions, and Roll Call

Acting Chief Yeaphana LaMarr started the meeting at 9:30 am with roll call of Advisory Council Members. All members were in attendance except for James Garelli, Chris Higdon, and Stephen McDaniel.

2. Public Comment on Items Not on the Agenda

Please note that the Advisory Council may not discuss any matter raised during this public comment section that is not included on this agenda. (Government Code sections 11125, 11125.7(a).)

The WebEx moderator opened the floor for public attendees to make comments or ask questions. There were no comments.

3. Update from Carrie Holmes, Deputy Director of Board and Bureau Relations, Department of Consumer Affairs (Department or DCA)

Deputy Director Holmes provided an update from the Department. Ms. Holmes was appointed by Governor Newsom in June of 2020. Governor Newsom also appointed Monica Vargas as Deputy Director of Communications in January 2021 and Sarah Murillo in February 2021 as Deputy Director of Administrative Services for the Department.

Ms. Holmes shared that Director Kirchmeyer is placing a priority on improving the regulation approval process timeline and transparency. The Director also places a priority on effective and efficient investigations.

For Board and Bureau Relations, the goal is to support the executive team and all board, committee, and council members. Board and Bureau Relations is the point of contact between the board, Director, Business, Consumer Services, Housing Agency, and the Governor's Office. Board and Bureau Relations also provides training and support, attends council meetings, and assists with appointments. Ms. Holmes reminded the Council that 2021 is a mandatory sexual harassment training year for all employees and council members. She also shared that COVID 19 still is impacting DCA work. To find out the latest information about COVID 19, individuals can go to the Department's COVID 19 website.

4. Operations Update

a. Bureau Operations Response to COVID Restrictions

There was request by an Advisory Council Member to talk about how COVID 19 has impacted the field. Acting Chief La Marr explained that impact to the field will be covered later in the meeting and discussed the Bureau-wide impact. BHGS operated with limited staff to reduce potential exposure and to comply with Governor Newsom's mandates. BHGS has about 75% of employees teleworking so a limited number of

employees are in the office. BHGS has followed CDC guidelines, for example wearing masks, observing social distancing, implementing a routine cleaning schedule (several times a day), and limits the number of in-person meetings.

To allow in-office work, staff are rotated between teleworking and working in the office. Management has also assigned equipment to staff to facilitate the increased telework. Because staff need to answer phones and there is confidential work that cannot be taken home, some employees must be in the office. Acting Chief La Marr shared that these steps help to ensure all operational needs are being met.

b. Budget Update

Heather Robinson, DCA Budget Analyst, reviewed BHGS fund conditions. A fund condition is a document that provides an overview of the status of a board or bureau's special fund, including the revenues and expenditures on an annual basis. Ms. Robinson discussed the fund reserves – the EAR fund is currently at 16.1 months of reserve, the HFTI fund is currently at 12.5 months in reserve (there was a correction in accounting leaving this fund at 11.1 in reserve), and the HHM fund is at 24.8 months in reserve. All three funds are healthy there are no issues currently.

Advisory Council Member Don Lucas asked if the pandemic has caused any issues for revenue or expenses. Ms. Robinson shared that the state implemented a 2020 personal leave program that would reduce each employee's salary by approximately 9.23 % in exchange for two PLP days a month. The savings from this were reduced from each program's current budget to transfer amounts from each special fund to the general fund as a loan in an amount equal to the budget reduction. These loans would be repaid at any point in which the originating fund required the money.

Advisory Council Member Steve Weitekamp asked at what point, with a healthy reserve of 24 months in the HHM Fund, the reserve would be determined to be unreasonably large. Karen Munoz, DCA Budget Manager, responded that if the reserve goes above 24 months, the DCA budget office will look at it and would then consider reducing fees to stay within 24 months or less. The amount of reserve is continually monitored. Acting Chief La Marr mentioned the requirement by the Household Movers Act to perform a fee evaluation to make sure fees are appropriate. Council Member Wietekamp clarified that he was not asking regarding a fee reduction and that he was happy with the performance of Bureau staff.

Advisory Council Member Heidi Sanborn mentioned her father was a hold hostage victim in the past and that if there was more that BHGS could do to address these situations and there was extra money to do it, that would be good. Council Member Weitekamp concurred and said that doing more would help consumers and legitimate movers.

c. Personnel Update

Jacqueline Castro, BHGS Licensing Manager, provided an update on personnel, including new staff recently hired. The Bureau is recruiting for four positions, including one Environmental Scientist for the Laboratory Unit, a Special Investigator for Southern California, one Associate Governmental Program Analyst (AGPA) for the Administrative Unit, and one AGPA for the Compliance Unit. There is currently a 23% vacancy rate within the Bureau.

Advisory Council Member Burt Grimes asked about cross-training of the investigators across the multiple practice acts. Acting Chief La Marr confirmed this has occurred.

Acting Chief La Marr announced Supervising Special Investigator II, Rick Villucci, was attending the Council meeting. Acting Chief La Marr shared that Mr. Villucci has an impressive resume and will enhance Bureau enforcement activities. Advisory Council Members were encouraged to reach out and set up a meeting with him so that he can talk to them about how to better serve their industries.

5. Legislative Update

Megan Allred, DCA's Assistant Deputy Director for Legislative Affairs, presented updates on pending legislative bills.

a. **AB 224 (Daly)** – Department of Consumer Affairs: Bureau of Household Goods and Services: household movers

Ms. Allred shared that this is a repeat of last year's bill, AB 2460, that died. The main concern with this bill is weakening of oversight of industry. She also shared that the author was amending the bill to add an urgency clause, which would enact the bill immediately if it passes, and she was not sure why that change was being made.

Council Member Weitekamp commented that the California Moving Association opposes the bill. This bill creates opportunity for bad actors to take advantage of the exemption. He also added that the LSE (limited service exclusion) is disingenuous.

Council Member Sanborn asked if DCA was taking a position on the bill and whether the Advisory Council advises on positions to understand the Advisory Council role in this. Acting Chief La Marr shared her understanding that the Bureau may provide information to DCA but does not take a position. She provided a brief overview of the legislative analysis process at DCA. Ms. Sanborn asked if the Council should get together and vote for positions on bills. Acting Chief La Marr informed her that there is no voting as they serve in an advisory capacity, but they can share their opinion on bills with the Bureau and DCA. Council Member Weitekamp shared that he would welcome Heidi Sanborn's opposition to the bill.

b. AB 652 (Friedman) – Product safety: juvenile products: chemicals: perfluoroalkyl and polyfluoroalkyl substances

Ms. Allred explained this bill would prohibit the sale and distribution of new juvenile products and sleeping products that contain perfluoroalkyl and polyfluoroalkyl substances (“PFAS Chemicals”) at levels above an unspecified amount.

Council Member Sanborn said she strongly supports this bill; chemicals should not be in children’s toys.

Acting Chief La Marr clarified that said she asked Ms. Allred to present this bill because although it would not be enforced by the Bureau, the bill would apply to the same juvenile products are subject to AB 2998, which the Bureau does enforce. Because it would impact Bureau stakeholders, Acting Chief La Marr wanted to bring this to industry’s attention. In addition, the bill would apply to bedding products that are within the Bureau’s jurisdiction.

Council Member Lucas asked who would enforce this bill. Acting Chief La Marr clarified the Department of Toxic Substances Control would be the enforcement entity.

c. AB 646 (Low) – Department of Consumer Affairs: boards: expunged convictions

Ms. Allred explained this bill would require any program within DCA that posts to its website when a license was revoked because the person was convicted of a crime to also post a notification of expungement on its website (if the person is still licensed) or remove the revocation posting if the person is no longer licensed. This bill would authorize the Bureau to charge a fee of \$50 to post the record of expungement.

d. AB 885 (Quirk) – Bagley-Keene Open Meeting Act: teleconferencing

Ms. Allred explained this bill would require any meeting that is required to be open to the public to be both audibly and visually observable.

Acting Chief La Marr informed the Council that this bill would impact the Council when the Governor’s emergency order is lifted. In-person meetings will once again be in place and this bill would require members to be on camera if they are not able to attend in person, rather than calling in as had been the previous practice.

e. AB 1026 (Smith) – Business licenses: veterans

Ms. Allred explained this bill would require DCA programs to reduce initial license fees by 50 percent to an applicant who can show evidence of honorable discharge from the United States Armed Forces or the California National Guard. The bill does not indicate which fees are eligible for discount, such as live scan, application, and examination fees

so clarification is needed. There is also a question about whether boards and bureaus can survive the reduction in funds if there are many new applicants from that population.

f. AB 1221 (Flora) – Consumer warranties: service contracts: cancellation: disclosures

Ms. Allred explained this bill would allow service contractors to offer continuous until canceled (or other periodic basis) so long as the continuous nature of the contract and information about how to cancel the contract is disclosed in a clear and conspicuous manner.

g. AB 1386 (Cunningham) – License fees: military partners and spouses

Ms. Allred explained this bill would require any program within DCA to waive initial license fees to an applicant who provides evidence of being married to, or in a domestic partnership with, an active duty member of the military stationed in California and who holds a current license in another state. Ms. Allred states that there needs to be more clarification on what the initial licensing fee is and if this includes other fees like fingerprinting, etc.

h. SB 586 (Bradford) – Criminal fees

Ms. Allred explained this bill would require Ignition Interlock Device (IID) providers to report to the Bureau of Automotive Repair (BAR) the provider's fee schedule, total number of people where verification was conducted, number of people who had a reduction of installation charges was made, total dollar amount of reductions based on income, total dollar amount collected for charges related to the charges of installed devices, and total dollar amount of unpaid charges.

Acting Chief La Marr added this bill would allow an individual who is ordered to have an IID installed to seek civil damages for an ignition interlock device installer who fails to comply with the income-based pricing as prescribed by Vehicle Code § 23575.3(k). This bill would also entitle the individual to recover attorney's fees and costs.

Council Member Toby Taylor introduced himself as the Vice President of Regulatory Compliance for Smart Start Ignition Interlock and shared that there is a single trade association that serves as a coalition of ignition interlock manufacturers. Mr. Taylor was grateful to the Bureau for tracking and advising the coalition on legislation that affects the industry.

i. SB 772 (Ochoa Bogh) – Professions and vocations: citations: minor violations

Ms. Allred explained this bill would require all boards and bureaus within DCA to adopt a program to allow licensees to correct minor violations before being subject to monetary penalties. This bill would define "minor" violations as those: 1) that do not

pose a serious health or safety threat, 2) are not “willful”, 3) are not committed by a licensee on probationary status, 4) are committed by a licensee who has a history of committing the violation, and 5) the licensee becomes compliant within 30 days. Ms. Allred stated that boards and bureaus have said the ability to cite provides a key deterrent and incentivizes compliance and there is a concern that if this bill passes there will be less compliance. Some programs have abatement that would be eliminated and replaced with this bill. There is additional concern that the bill is overly broad.

Council Member Grimes asked how this bill would affect the Bureau and how the Bureau determines a minor violation. Acting Chief La Marr responded there are criteria in the Bureau’s regulations that inform citations. There are nine criteria that include harm to the consumer, whether they are cooperative with the Bureau, if they become compliant, if they make the consumer whole, and any history of violations. She said the criteria contained in this bill would make those determinations versus what we have in our regulations. This bill would require a history or pattern of behavior and it would require a licensee to be on probationary status, which is a lengthy process that involves the Attorney General’s Office, in order to issue a citation for violations that are considered minor. She shared it would be a substantial change to Bureau enforcement.

Council Member Grimes asked if this would weaken the Bureau’s enforcement and Acting Chief La Marr responded it appears that it would.

Ms. Allred stated the other problem is the bill is not clear about what constitutes a minor violation. The problem is the Bureau would not be able to define what the minor violation is and it would be broadly interpreted and subject to litigation. Ms. Allred said there is a lot of work to be done and assistance technically that DCA will try to provide.

Council Member Weitekamp asked if it would only apply to licensees and Ms. Allred responds yes that is how she interpreted it. This bill would be applicable to current licensees committing minor violations.

Acting Chief La Marr asked if there were any further questions for Ms. Allred and there were not.

6. Statistical Overview

- a. **Laboratory Testing** – Sue Xu, BHGS Flammability Research Engineer, presented statistical information included in the Advisory Council meeting materials.

Council Member Lucas mentioned that failure rates on labeling continues to be a problem with pass rates of 12% and 15%. Council Member Lucas asked whether we should wait until agenda item seven to ask about implications of agenda item seven on compliance. Acting Chief La Marr confirmed that Diana Godines, Policy Manager, would address labeling requirements later in the agenda.

Council Member Pascal Benyamini asked whether the Bureau could include a breakdown of the location from where products were received in its TB 117-2013 pass/fail statistics, specifically California, other states, or overseas. Ms. Xu said she could. Council Member Benyamini said it would be helpful in the future, as would the same information for label pass/fail statistics.

Council Member Grimes asked what most of our moderate violations are and if they can be explained more on the BHGS website. Ms. Xu explained that the Bureau sends a courtesy letter to manufacturers to tell them where their violation was and how to change it. Council Member Grimes asked if it could be made obvious on the website that manufacturers can send a sample to be approved to the Bureau. Ms. Xu said there are examples on the website that can be downloaded from the website.

There was a public comment by Tom Dykstra who asked if the manufacturer is notified by the Bureau on major and minor violations. Ms. Xu said yes, they are informed.

- b. Licensing** – Avra Wallace-Schoell presented licensing statistics included in the Advisory Council meeting materials. Ms. Wallace-Schoell noted a reporting error on the quarterly revenue table, which should reflect 1,063 permits in the quarter April through June 2020 and the net administration fee should read as \$665,502.56.

As of September 21, 2020, the Bureau began using a vendor, PSI, to utilize 100% computer-based testing. Advantages include applicants have access to all of PSI's testing facilities, including 20 locations in California and 21 out of state locations. Applicants receive pass/fail results immediately after completing the exam and the HHM team has immediate access to multiple PSI reports, which include applicant exam scores, scheduled exams, no shows, and exam statistics. Having access so quickly allows the Bureau to manage the status of each applicant's exam in a timely manner.

Council Member Weitekamp asked whether corrected tables could be sent and thanked the Bureau on the improved testing process. Acting Chief La Marr confirmed a revised table would be sent to all Advisory Council members after the meeting.

- c. Consumer Complaints** Kelli Williams, BHGS Compliance Manager, presented compliance statistics included in the Advisory Council meeting materials.

Ms. Williams shared there has been an increase in complaints about online purchases and furniture and major appliance purchases that have not been fulfilled due to supply chain issues during to the pandemic.

Ms. Williams explained that in January 2020, jurisdiction over service contracts expanded to include virtually anything covered by a service contract (nearly all consumer goods). This fiscal year, service contract complaints are over 30% of the jurisdictional complaints. Ms. Williams explained the Bureau's name changing from the

Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation to the Bureau of Household Goods and Services has led some consumers to believe that the Bureau's jurisdiction includes all consumer goods and services. There is an active push to update the BHGS website to better describe the Bureau's jurisdiction.

- d. **Enforcement and Investigations** – Winson Luong, BHGS Compliance Analyst, presented enforcement statistics included in the Advisory Council meeting materials. There were no questions.

Ms. Williams also presented household mover applicant and subsequent arrest investigation statistics included in the Advisory Council meeting materials.

Council Member Weitekamp asked for clarity regarding subsequent arrest records. Ms. Williams explained that subsequent arrest records occur when a permitholder is arrested after becoming permitted.

Alda Aguirre, Supervising Special Investigator for Southern California, reported on field investigation activity. Ms. Aguirre first spoke about how COVID 19 has impacted operations. Field operations were suspended on March 16, 2020, to protect staff and the public. In May 2020, the Bureau proposed a plan that would allow essential enforcement functions to resume in safe manner and in June 2020, the plan was implemented with staff going back into the field with personal protection equipment. Staff were to contact unlicensed businesses, issue citations, conduct storefront visits to investigate complaints, conduct surveillance, and perform sample pickups. Additionally, a COVID 19 task force brought together county and state agencies and BHGS was one of four state agencies to take part. In addition to normal responsibilities, the enforcement operation was required to determine compliance with state safety requirements, including documenting whether face coverings were used by employees and the public, social distancing guidance was being observed, barriers were used to distance people (e.g. plexiglass), and visual guides were used to outline restrictions.

Ms. Aguirre reviewed field investigation statistics that are included in the Advisory Council meeting materials.

Council Member Weitekamp thanked staff for their work on hold hostage cases. He also asked why citations issued to unlicensed household movers are so dramatically below the averages of other BHGS units (EAR/HFTI). Ms. Aguirre responded that a difference between Household Movers and the other programs is that the other programs have regulations in place. Acting Chief La Marr confirmed that the rulemaking proposal is still under review until the proposal is adopted, staff must utilize the enforcement tools they currently have. Council Member Weitekamp commented that his reading of the code is that the violation is presenting oneself as a household mover not even providing the service, so he was unclear why the regulations are needed. Ms. Aguirre responded that in the process of gathering evidence in an investigation, it assists staff to have a

consumer or victim when handing it over to local law enforcement and or a district attorney regardless if BHGS can write a citation. Mr. Weitekamp thanked Ms. Aguirre.

The moderator opened the meeting to the public to ask questions regarding all previously presented agenda items. There were no questions.

7. Technical Bulletin 117-2013 Adopted as the New National Flammability Standard For Upholstered Furniture under H.R. 133 – “COVID–19 Regulatory Relief and Work from Home Safety Act”

Diana Godines, BHGS Policy Manager, shared that the COVID–19 Regulatory Relief and Work From Home Safety Act (Act) was signed into law on December 27, 2020 and will become effective within 100 days from enactment. The Act adopts the Bureau’s flammability standard, Technical Bulletin (TB) 117-2013, as a national flammability standard to be administered by the US Consumer Product Safety Commission (CPSC). The Act establishes a new labeling requirement for which all products sold or offered for sale in California, and subject to TB 117-2013, must have the label required by California Code of Regulations section 1374.3 and the federal label attached. Ms. Godines stated the Bureau will accept placement of the federal statement beneath the Bureau’s flammability label, however, industry will need to confirm whether CPSC agrees or whether a standalone label will be required.

Ms. Godines shared that the Bureau will consider accepting the federal label in place of the Bureau’s label after the federal regulatory language has been adopted. Existing regulations would need to be amended should the Bureau move forward with this implementation; however, the rulemaking process could take two years. Ms. Godines shared in response to an earlier question that she is reviewing all label violations and will add clarifying language and examples in the proposed regulations. Most failures are addressed in the FAQ’s, which are on the Bureau’s website. The Bureau will bring more attention to the FAQ and provide more education in these areas.

The moderator opened the floor for public comment. A public comment was received from Seth Hernandez who questioned when CPSC will publish guidance on the technical bulletin. Acting Chief La Marr responded that the CPSC issued a notice of proposed language, however, staff are unable to answer questions about the content of the guidance.

8. Division of Household Movers Memorandum of Agreement with the Federal Motor Carrier Safety Administration

Acting Chief La Marr shared that the Bureau executed a memorandum of agreement (MOA) with the Federal Motor Carrier Safety Administration (FMCSA) in October of 2020. The MOA allows the Bureau access to the FMCSA databases and this access will help investigators research any case, whether intrastate or interstate. The MOA also authorizes the Bureau to enforce federal law regarding household movers performing interstate moves

coming to or leaving California and allows the Bureau to retain any fines collected resulting from that enforcement. To implement the MOA, the FMCSA has worked with the Bureau to train investigators on the laws they will be enforcing, set up access to the databases, and further train investigators and managers on how to use the databases. Half of the Bureau's investigators have already completed the training and the other half will complete training in April or May.

Acting Chief La Marr shared that Rick Villucci and she will meet with counterparts in Texas and the FMCSA California Division, Texas Division, and headquarters in Washington, DC to discuss how all parties can work together to create overall stronger enforcement programs for household movers. Partnering with the FMCSA and access to their databases and enforcement of federal laws gives BHGS more tools for its enforcement program, which already includes enforcing state law and pursuing criminal action, all with the goal of reducing fraud and consumer harm that is a result of unscrupulous movers.

Council Member Weitekamp commented that he thinks the MOA is a good step and meeting with the Texas DMV is a promising idea. Council Member Weitekamp stated he hopes this meeting and the MOA will be a positive impact on the FMCSA.

Public comment was opened. No questions were asked.

9. Review and Discuss Future Meeting Dates

The Advisory Council agreed to tentatively schedule the next meeting for August 26, 2021.

10. Adjournment