

STATE FIRE MARSHAL RESPONSE TO RESISTANCE/AGGRESSION & FIREARMS POLICY

I. PURPOSE

To establish uniform standards and authorizations for: the response to resistance and aggression, the issuance and use of firearms, the use of force and the arrest of offenders by the State Fire Marshal (SFM), Chief Deputy State Fire Marshal and Assistant State Fire Marshals (ASFM) appointed by the State Fire Marshal to the Ohio Department of Commerce, Division of State Fire Marshal's (Division) Fire and Explosion Investigations Bureau (FEIB) while on Departmental business; to reduce the psychological effects on any ASFMs involved in critical incidents; to give immediate attention to those involved and provide evidence of their psychological good health before they return to their assigned job duties.

II. SCOPE

This Policy is for Division use only and does not apply in any criminal or civil proceeding. This Policy should not be construed as creating a higher legal standard of safety or care in an evidentiary sense with respect to third party claims involving the Division. Any violation of this Policy by an ASFM will only form the basis for internal administrative direction and sanctions.

III. DEFINITIONS

1. "Active Resistance" – Behavior that consists of non-threatening physical opposition to being controlled.
2. "ASP" – the ASP brand expandable baton common to law enforcement, issued and used by ASFMs assigned to the FEIB.
3. "Assaultive Behavior" – Aggressive physical opposition directed towards the Assistant State Fire Marshal or others. Assaultive Behavior can be either an actual attack or the threat of attack conveyed through body language and assaultive verbalization.
4. "Assistant State Fire Marshal" – Means a person duly appointed by the State Fire Marshal pursuant to Chapter 3737 of the Ohio Revised Code (R.C.) to act as an

- Assistant State Fire Marshal for the Division's Fire and Explosion Investigations Bureau and who has been specifically designated by the State Fire Marshal pursuant to this policy and the State Fire Marshal's "Policy for the Appointment of Assistant State Fire Marshals" to possess/use a weapon and/or force in accordance with this policy.
5. "Back-up or Secondary Weapon" – Means an authorized weapon(s) that may be carried in addition to a Division issued weapon. The "back-up or secondary" weapon may not replace an Division issued weapon.
 6. "Controlling Force" – Usually the minimal amount of physical force needed to control a subject who will not submit to verbal commands. Generally, this level of force involves the application of pain without injury. Control techniques are used to encourage a subject to go in a desired direction and are usually applied to subject(s) who are either passively or actively resisting the Assistant State Fire Marshal's attempt to control them.
 7. "Chief Deputy Fire Marshal" – Means a person duly appointed by the State Fire Marshal to serve as the Chief Deputy Fire Marshal pursuant to Chapter 3737 of the Ohio Revised Code.
 8. "Deadly Force" – Any force, which carries a substantial risk that it will proximately result in the death or serious bodily injury of any person.
 9. "Fire Marshal" - Means the State Fire Marshal who is duly appointed by the Director of the Ohio Department of Commerce pursuant to Chapter 3737 of the Ohio Revised Code to serve as the State Fire Marshal.
 - a. Note: When appropriate, all references in this policy to the Fire Marshal shall also include the Chief Deputy Fire Marshal.
 10. "Firearms Officer" – Means that Investigator who is appointed by the Division's Fire and Explosion Investigations Bureau Chief to fulfill specific firearms training, inventory control and maintenance tasks as described in this policy and any other related duties to which he might be assigned.
 11. "Force" Means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.
 12. "Injurious Conduct" – Means acts that would constitute "serious physical harm" as defined in R.C. 2901.01.
 13. "Investigator" – Means an employee of the Division's Fire & Explosion Investigations Bureau who is appointed by the State Fire Marshal as an Assistant State Fire Marshal – Law Enforcement Officer, is directed to investigate fires in

Ohio and is classified as the Investigations Bureau Chief, an Investigator/Supervisor, or an Investigator.

14. “Physical Harm” – Means any injury, illness, or other physiological impairment, regardless of its gravity or duration.
15. “Reasonable Belief” – That belief by an Assistant State Fire Marshal, acting on personal knowledge of facts and circumstances which are reasonably trustworthy, that would justify a person of average caution to believe a crime has been or is being committed. (Similar to the Probable Cause Standard)
16. “Reasonable Force” – Force that will likely lead to safe control of the subject. If a lesser force would likely lead to safe control, then the lesser force should be used.
17. “Serious Physical Harm” – Means any physical harm that: carries a substantial risk of death, involves some permanent incapacity whether partial or total, involves some temporary or substantial incapacity, involves some permanent disfigurement, involves some temporary serious disfigurement, involves acute pain of such duration as to result in substantial suffering, or involves any degree of prolonged or intractable pain.

IV. AUTHORIZATION FOR USE OF FORCE

The State Fire Marshal or Assistant State Fire Marshals, while on official Departmental business, are authorized to use force during the course of their employment and duties as a law enforcement officers/peace officers only if such actions are based upon, and are consistent with, Ohio law, applicable Department of Commerce and Division of State Fire Marshal policies, including the State Fire Marshal’s “Policy for the Appointment of Assistant State Fire Marshals”, and the following guidelines:

V. POLICY: GENERAL CONSIDERATIONS

1. When using force to control a subject or to overcome resistance, the force must be based on the actions and behavior of the subject and be reasonable for the situation.
2. The level of force used must be balanced against the likelihood of injury to the subject, to innocent bystanders, and/or to law enforcement officers.
3. The use of force must be objectively reasonable.
4. Furthermore, the standard of care and safety required of SFM personnel and promulgated in this policy is not to replace the legal standard applicable to civil or criminal proceedings.

5. The State Fire Marshal or Assistant State Fire Marshals will use only that force which is reasonable to effect an arrest, detention, or mission.
6. The amount or type of force needed will be determined and reassessed as an incident progresses.
7. The State Fire Marshal or Assistant State Fire Marshals must react to aggressors in a manner that will limit injury to themselves, the suspect, other law enforcement officers and the public.
8. Under no circumstances will the State Fire Marshal or an Assistant State Fire Marshal discharge warning shots.
9. The State Fire Marshal or Assistant State Fire Marshals must clearly document any situation in which force is used to control and/or overcome a subject. There may be situations and instances in which these guidelines do not apply.
10. In such situations, the State Fire Marshal or Assistant State Fire Marshals must use force that is reasonable and in proportion to the subject's actions and behavior and in accordance with the laws of this state and the United States.
11. In reporting these incidents, the State Fire Marshal or Assistant State Fire Marshals must clearly explain the actions they took and why.
12. A State Fire Marshal or Assistant State Fire Marshals who cannot or will not comply with this policy will subject themselves to disciplinary action up to including termination as well as the possibility of criminal or civil liability.
13. Any SFM or ASFM authorized to use force and/or carry a weapon shall carry an SFM issued badge and identification at all times when such persons are on duty.
14. All ASFMs that this policy applies to shall be given a copy of this policy and turn in a signed receipt indicating receipt, acknowledgment and understanding of the policy.

VI. DIVISION USE-OF-FORCE CONTINUUM

1. The Use of Force Continuum is a general guideline to be used in subject control and State Fire Marshal or Assistant State Fire Marshal defense.
2. Since confrontation is dynamic and is often unpredictable, the State Fire Marshal or Assistant State Fire Marshal may be forced to escalate, de-escalate, or go

from minimum to maximum use of force without going to each intermediate step.

3. The Division's Use-of-Force Continuum is designed to aid and assist the State Fire Marshal and Assistant State Fire Marshals in the decision-making process.
4. The use of any of the types of force described under sections 3, 4, and 5 of this continuum is appropriate only if the State Fire Marshal or Assistant State Fire Marshal has the proper training to use such devices or techniques.

VII. USE-OF-FORCE CONTINUUM (minimum to maximum)

1. Physical Presence of the State Fire Marshal or Assistant State Fire Marshal

2. Issuance of Verbal and Physical Directions or Commands by the State Fire Marshal or Assistant State Fire Marshal

1. To direct subject;
2. To inform bystanders;
3. To create a voice stunning value;
4. To calm subject(s);

3. Empty Hand Control

Soft Assistance from other Assistant State Fire Marshals or Law Enforcement Officers;
Using the Escort Position;

Hard Joint Manipulations or Pressure Points;
Striking Motor Points, Muscle Masses;
Takedowns;

4. Intermediate Weapons

Soft Baton (ASP) Pressure Point Control Techniques;
Handcuffs or Restraints;

Note: Division personnel are not authorized to carry or use chemical irritant devices such as Mace, OC Spray or Tear gas. Division personnel are not trained in use of such devices.

Hard Baton (ASP) Techniques;
Striking Structural Areas;

Note: Division personnel are not authorized to carry or use TASERS or similar electrical devices. Division personnel are not trained in use of such devices.

5. Deadly Force

The State Fire Marshal or an Assistant State Fire Marshal shall be justified in using deadly force only under the following circumstances:

- a. To defend themselves from serious injury or death.
- b. To defend another person from serious injury or death.
 - i. The State Fire Marshal or an Assistant State Fire Marshal must have reasonable belief that deadly force is necessary to protect life.
 - ii. Deadly force will not be used against a fleeing felon unless the situation falls within the above guidelines.

Effective and proper use of the Use-of-Force Continuum is dependent on the actions against the State Fire Marshal or the Assistant State Fire Marshal, special circumstances, and the State Fire Marshal and/or Assistant State Fire Marshal/subject comparative factors, such as:

6. Actions Against the State Fire Marshal or Assistant State Fire Marshals

- Verbal or physical danger cues
- Not responding to commands
- Refusing to move-dead weight
- Pulling away
- Pushing
- Wrestling
- Striking or kicking
- Life-threatening weaponless assaults
- Attempting to disarm
- Weapons attempted/used against officer or other person

7. Special Circumstances

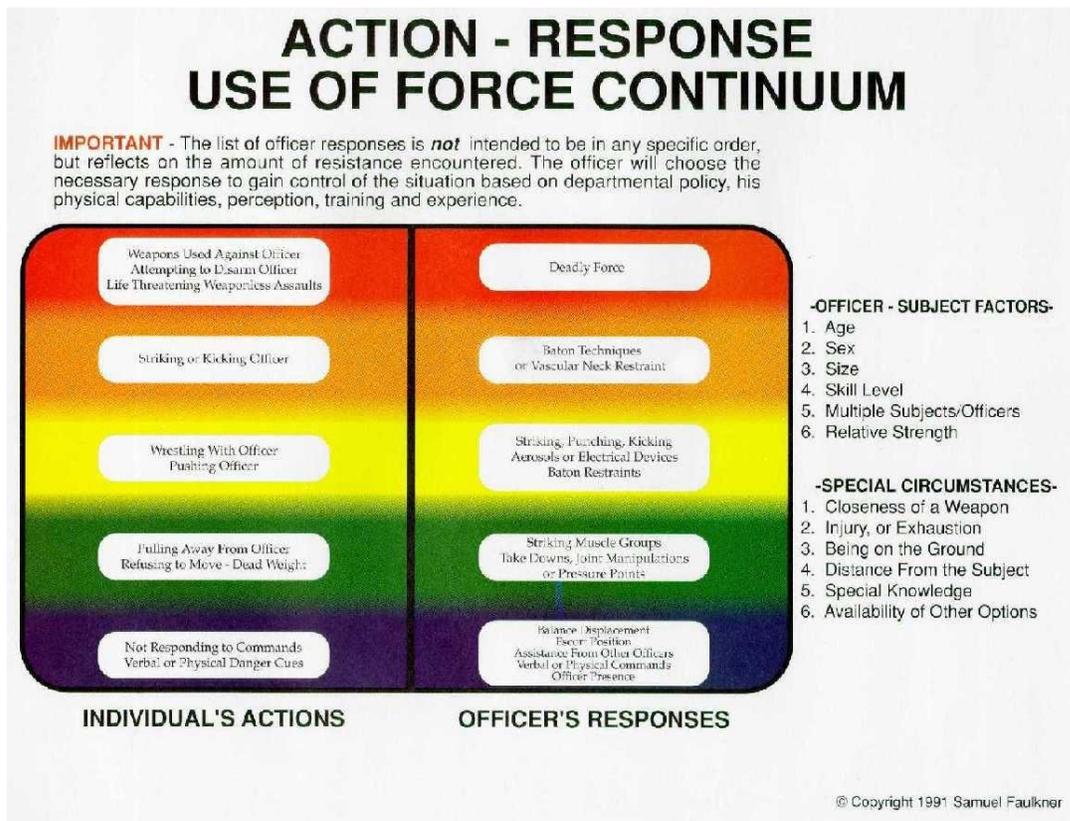
- Closeness of a weapon
- Injury or exhaustion
- Being on the ground
- Distance from the subject

- Special knowledge
- Availability of other options or lack thereof

8. Assistant State Fire Marshal / Subject Comparative Factors

- Age
- Sex
- Size
- Skill level
- Multiple subjects/State Fire Marshal or Assistant State Fire Marshals
- Relative strength

The following illustration is produced by Samuel Faulkner, a recognized expert on the use of force by law enforcement officers. Mr. Faulkner is a training specialist with the Ohio Attorney General’s Office.



The list of responses is not intended to be in any specific order, but reflects on the amount of resistance encountered. The State Fire Marshal or Assistant State Fire Marshal will choose the reasonable response to gain control of the situation based on Division Policy, his/her physical capabilities, perceptions, training, and experience.

It is recognized that in certain, rare situations, a State Fire Marshal or Assistant State Fire Marshal may be attacked so suddenly and/or so viciously, that the use of approved

Division techniques and/or weapons is compromised. In these situations, the State Fire Marshal or Assistant State Fire Marshal may utilize non-traditional weapons. This includes any object or technique the State Fire Marshal or Assistant State Fire Marshal may need to insure his/her survival.

VIII. PROHIBITIONS

Regardless of the above stated continuum, the State Fire Marshal or an Assistant State Fire Marshal shall not use a firearm (although as appropriate, other forms of Force may be used) in the following situations:

- To fire across road traffic;
- To fire at or from a moving vehicle;
- To fire warning shots;
- To fire at a fleeing suspect;
- To fire into buildings or through doorways unless at an identifiable target;
- Solely to protect or preserve personal property;

IX. MEDICAL AID AFTER USE OF FORCE

1. The use of lethal or less than lethal weapons may result in injury to the subject involved. The use of any level of force on an individual(s) may require that the State Fire Marshal or Assistant State Fire Marshal summon emergency medical personnel to the scene, and that first-aid be rendered until such time as medical crews arrive.
2. The State Fire Marshal or Assistant State Fire Marshal involved will immediately notify his/her immediate supervisor of any incident in which any person is injured in an event where the State Fire Marshal or Assistant State Fire Marshal used force. The immediate supervisor will then notify the Chief of Investigations of the incident, who will contact the State Fire Marshal. An Assistant State Fire Marshal will accompany the medic crew to the nearest Medical Facility of treatment and obtain the medical condition of the subject once examined and furnish that information to his supervisor upon request.

X. USE OF FORCE INVESTIGATION

1. Except during training (unless an accident occurs), whenever an Assistant State Fire Marshal that is a member of the Fire & Explosion Investigations Bureau, while on duty or off duty, discharges any state issued or approved firearm either unintentionally or purposefully or *uses any force under that ASFM's authority as*

- a peace officer, uses force that causes physical harm to a person or injurious force, they shall promptly report the fact orally to their Fire and Explosion Investigations Bureau supervisor, who shall promptly inform the Fire and Explosion Investigations Bureau Chief or senior firearms officer. The Fire Marshal or Chief Deputy Fire Marshal shall be immediately notified of the incident by the senior person on duty in the FEIB.*
2. All other Assistant State Fire Marshals, while on duty or off duty, who discharge any state issued or approved firearm either unintentionally or purposefully or *uses force under the authority of the State Fire Marshal that causes physical harm to a person or uses injurious force shall promptly report the fact orally to the State Fire Marshal. If the State Fire Marshal's firearm is discharged or the State Fire Marshal uses force that causes physical harm to a person or injurious force, such incidents shall be reported immediately to the Director of the Ohio Department of Commerce.*
 3. If the use of force involves a firearm, the State Fire Marshal or Assistant Fire Marshal shall promptly surrender their firearm for examination to the senior firearms officer regardless of the reason for discharge. *The firearms officer shall inspect the weapon and issue a report about the functioning condition of the weapon as soon as is practicable.*
 4. A complete detailed report written by the involved Assistant State Fire Marshal that is a member of the Fire and Explosion Investigations Bureau shall be forwarded to the Fire and Explosion Investigations Bureau Chief and senior firearms officer within twenty-four (24) hours of the discharge or use of force. The Fire and Explosion Investigations Bureau Chief and/or senior firearms officer may grant extensions with the approval of the State Fire Marshal. *The Director may require the State Fire Marshal and Chief Deputy State Fire Marshal to prepare written reports of their discharge of a weapon or use of force.*
 - a. *The force report shall include a detailed narrative of the incident and may include incidental, supplemental, or arrest reports taken in connection with the incident. Absent a separate report, the details of the force shall be reported in memorandum form. If a State Fire Marshal or Assistant State Fire Marshal is physically unable to complete the required report, it may be given orally to a designated Assistant State Fire Marshal who shall reduce it to writing and file it as stated above.*
 5. *Other Communications about the incident:*
 - a. *External: Any SFM or ASFM using force or discharging a weapon in a manner subject to this section shall cooperate with law enforcement authorities in any external investigation of the incident. Unless*

otherwise prohibited by law or contract, the State Fire Marshal or Assistant State Fire Marshals shall not otherwise discuss the incident with anyone outside of the Department without the consent of the Director or the Director's designee, State Fire Marshal, Chief Deputy Fire Marshal, Division Legal Counsel or an Assistant Attorney General assigned to represent the Division.

- b. Internal: Unless otherwise approved by the Director or Fire Marshal, the SFM or ASFM using force or discharging a weapon subject to this section shall not discuss the incident internally within the office except for discussions with the Director of Commerce or the Director's designees, the State Fire Marshal, the Chief Deputy State Fire Marshal, the employee's supervisor (if relevant to the ongoing inquiry), Department Legal Counsel/Attorney General or the firearms officer .*
- c. The SFM or ASFM may discuss the incident with a critical incident stress or debriefing team/personnel as approved by the Division.*

- 6. This section does not apply to ordinary use of a firearm during training (unless an improper discharge occurs.)
- 7. The Division shall conduct a thorough investigation of the ASFM's discharge of a firearm, *use any force under an ASFM's authority as a peace officer, use of force that causes physical harm to a person or or use of injurious force through a Firearms and Force Review Board. The Director of Commerce or the State Fire Marshal may waive or suspend any portion of this reporting requirement or review board if the Director or Fire Marshal determines that*

XI. FIREARMS AND FORCE REVIEW BOARD

Except during training (unless an accident occurs), any time an Assistant State Fire Marshal discharges a firearm while on or off official duty or uses injurious force, a Firearms and Force Review Board shall be convened.

The Firearms and Force Review Board shall consist of the Director or the Director's designee, the Fire Marshal or the Marshal's designee and the FEIB firearms officer. The Director may also appoint (but is not required to) an a representative approved by OPOTC and/or an ASFM who is a bargaining unit employee of the SFM.

The Firearms and Force Review Board shall convene within five (5) days of the State Fire Marshal report to the Director of the Ohio Department of Commerce. The board shall review all facts and statements pertinent to the discharge and formulate an opinion as to whether or not the discharge was lawful, consistent with bureau/division policy or accidental.

The Fire Marshal or Assistant State Fire Marshal being investigated shall be afforded their due process rights prior to and during the inquiry by the Board. Such rights shall include notice of the nature of the inquiry and an opportunity to respond and make statements before the Board.

Procedures described in the Collective Bargaining Agreement in effect at the time of the discharge with respect to pre-disciplinary hearings shall apply to hearings before the Board.

The Firearms and Force Review Board shall send to the Director of the Ohio Department of Commerce, the State Fire Marshal and the Fire and Explosion Investigations Bureau Chief, within fifteen (15) days after the conclusion of the hearing, a written report of its findings and any recommendations.

The Director of the Ohio Department of Commerce may grant extensions to the fifteen (15) day deadline for good cause shown and may appoint or remove any other person(s) on this Board the Director of the Department of Commerce deems necessary if the investigation involves a discharge of a weapon or injury caused by the State Fire Marshal.

If the investigation involves a member of the Fire and Explosion Investigations Bureau, the Fire and Explosion Investigations Bureau Chief shall review the report and send his recommendation for any actions to the State Fire Marshal, who shall send his recommendations to the Director of the Ohio Department of Commerce

If the investigation involves any other Assistant State Fire Marshal, the State Fire Marshal, the State Fire Marshal shall send the State Fire Marshal's recommendations to the Director of the Ohio Department of Commerce. In either case, the Director of the Ohio Department of Commerce shall determine what action, if any is to be taken.

The Director of the Ohio Department of Commerce may amend this policy as the Director of the Ohio Department of Commerce deems necessary if the review involves the discharge of the weapon by the State Fire Marshal.

XII. POST SHOOTING ACTIVITIES/ADMINISTRATIVE LEAVE

When the State Fire Marshal or an Assistant State Fire Marshal is involved in an incident in which injurious force is used or a weapon is discharged either by or against the State Fire Marshal or Assistant State Fire Marshal, the State Fire Marshal or Assistant State Fire Marshal: should be removed from the scene as soon as possible and should be attended by an uninvolved Assistant State Fire Marshal

The State Fire Marshal may require the ASFM to meet with Division approved psychologist or psychiatrist. In addition, ASFM's spouse may be invited to participate in the counseling program.

An Assistant State Fire Marshal directly involved in the discharge of their firearm may be placed on administrative leave or may be assigned to other duties for a period of time deemed appropriate by the State Fire Marshal. If the discharge of the weapon is by the State Fire Marshal, the Director of the Ohio Department of Commerce may place the State Fire Marshal on Administrative Leave.

In accordance with Ohio law and collective bargaining agreements, administrative leave shall be without loss of pay or benefits, pending the outcome of the investigation, the report of the Firearms and Force Review Board and the decision of the Director of the Ohio Department of Commerce.

The assignment of administrative leave shall not be interpreted to imply or indicate that the State Fire Marshal or Assistant State Fire Marshal has acted improperly.

While on administrative leave the State Fire Marshal and Assistant State Fire Marshal shall remain available at all times for official division interviews and statements regarding the discharge and shall be subject to recall to duty at any time.

XII. FIREARMS - FIREARMS WEAPONS SPECIFICATIONS

1. As described in the "Use of Force" section of this policy, ASFMs are permitted to use force in accordance with and as limited by Ohio law and Department/Division policy. This authorization to use force includes the authorization to carry and use a firearm and other Division approved weapons and restraining devices.
2. Unless approved in accordance with this policy, ASFM's shall not possess, carry, discharge or otherwise use any firearms pursuant to the authority of the Division.
3. Only those ASFMs specifically designated by the State Fire Marshal in the State Fire Marshal's "Policy for the Appointment of Assistant State Fire Marshals" are authorized to possess and use a firearm or any other type of force while on official business for the Division.
4. The primary Division issued firearm is the Sig Sauer semi-automatic pistol, model 229 40 caliber, or the Sig Sauer model 239 40 caliber. The primary issued shotgun is the Mossberg, Model 590A1, 12 gauge pump shotgun.
5. Firearms, ASP batons and handcuffs shall be carried according to procedures set forth in this and other applicable policies for those ASFMs who have successfully completed the training required in this policy.
6. Only FEIB approved firearms and FEIB issued duty ammunition authorized in this policy may be carried and used by the ASFM when such persons are acting

under the authority of the SFM. Duty ammunition is that ammunition that provided by the SFM to ASFMs and is carried in the firearm and ammunition clips while on duty. This does not include any practice or re-qualifying ammunition used in or for training purposes.

7. The firearms officer shall maintain records of all persons authorized to carry weapons pursuant to this policy. For each weapon issued pursuant to this policy, such records shall include signed receipts for all Division issued equipment and the serial number of each firearm which such persons are authorized to carry, regardless of whether or not it is Division issued or an otherwise authorized firearm (privately owned). For any firearm issued or used in accordance with this policy, the firearms officer shall collect and securely maintain a shell casing and discharged projectile from the weapon.
8. All ASFMs in the FEIB or those person otherwise authorized by the State Fire Marshal to carry a weapon shall carry their Division issued badge, identification, issued authorized firearm, spare magazine and handcuffs at all times while on official business.
9. The standard carry of the primary pistol firearm will be in a belt slide type or paddle-back type holster, at least single retention type, on the belt at the waist of the strong side of the wearer, with badge on a belt clip attached immediately to the front of the firearm holster. Handcuffs and spare magazine will be worn in a belt slide dual type holster on the weak side on the belt.
10. The optional carry of the primary sidearm in the issued drop-down thigh holster type is authorized for tactical operations, when wearing the ballistic vest. If the badge is not visible on the belt due to the ballistic vest, it will be clipped to the front outside of the vest, or worn on a neck chain outside of the vest, or clipped to the leg holster straps facing front.
11. The primary firearm may be covered by a coat, jacket or vest as needed for investigative purposes or when wearing a coat for official business. The primary firearm will not be carried inside the pants, in a shoulder holster or on an ankle holster unless deemed necessary for undercover operations and approved by a supervisor.
12. The ASP baton may be carried, and when carried may be carried in a belt slide holder, or pants pocket, or in a tactical ballistic vest pocket.

XIV. FIREARMS - SECONDARY (BACKUP) FIREARMS SPECIFICATIONS

1. The purpose of a backup firearm is for danger situations where the primary weapon is malfunctioning, out of ammunition, or lost in physical confrontation with a suspect.

2. The carry of a secondary or backup firearm is authorized, but not required. The Division will not provide a secondary weapon to any ASFM without specific approval of the SFM.
3. Secondary weapons will not be carried in lieu of carrying the primary issued firearm. All secondary or backup firearms will be semiautomatic pistols in 9mm, .40 or .45 caliber.
4. The back-up firearm will be carried concealed in the location of choice by the investigator; ankle holster, vest holster, pocket holster, or concealed clothing carry space.
5. A privately owned handgun may be used as a secondary or backup firearm by an ASFM provided that the Chief of the Investigations Bureau grants, in writing, prior approval for such use, the weapon is inspected and tested by the firearms officer and found to be in good operating condition, the ASFM maintains the weapon in good operating condition and the person requesting such privilege is properly trained and qualified to use such a firearm pursuant to this policy.
6. The investigator must qualify with the back-up firearm at the same time training and qualification is conducted with the primary firearm.

XV. FIREARMS - OFF DUTY CARRY OF A FIREARM

The off duty carrying, discharge or use of a Division provided weapon by an ASFM is prohibited. The off duty use of any weapon or any force by an ASFM, when such ASFM purports to be acting under the authority of the SFM, is prohibited.

XVI. FIREARMS - TRAINING

1. Before any ASFM can be authorized to carry any firearm, be it bureau issued or backup, they must have successfully completed bureau recognized firearms training appropriate for each firearm and type of ammunition carried.
2. The only training recognized by the Division of State Fire Marshal Office will be that which meets or exceeds standards set by the Ohio Peace Officer Training Council (OPOTC) and is taught by an instructor certified by the OPOTC.
3. Unless otherwise required by OPOTC, every six (6) months Assistant State Fire Marshals shall successfully complete refresher training appropriate for the firearm

being carried. The only training recognized by the Division will be that which meets or exceeds standards set by the OPOTC and is taught by an instructor certified by the OPOTC.

4. Each training session will be under the direction of a training officer certified by the OPOTC. For purposes of this policy, any firearms/training officer serving in a supervisory or managerial capacity with regard to firearms training, range activity, or other training opportunity, etc. shall be considered a supervisor of the Division for that period of training.
5. An ASFM who fails to successfully complete the re-qualification training on the first run for a particular firearm will re-fire the course one time during the session. An ASFM who fails firearm re-qualification has seven (7) calendar days to successfully pass the re-qualification. Failure to re-qualify after seven (7) days will result with the ASFM immediately surrendering the ASFM's issued firearm to the firearm officer; it may only be reissued to that individual for the purpose of further training. After surrendering the issued firearm, the ASFM is limited to office duties only and has 30 days from the surrender, to successfully pass firearms re-qualification. Failure to qualify within the thirty 30 day limit may result in discipline or dismissal.
6. Before any Assistant Fire Marshal who carries a firearm may utilize force or attempt an arrest, they must have successfully completed use of force and arrest procedure training which meets or exceeds standards set by the OPOTC and is taught by an instructor certified by the OPOTC. Such Assistant State Fire Marshals must successfully complete refresher training in the use of force and arrest procedures every year.
7. The Division shall pay any reasonable cost for any required and approved training for primary weapons.

**State of Ohio
Department of Commerce
Division of State Fire Marshal**



**Policy for the Appointment of
Assistant State Fire Marshals**

Effective Date: January 7, 2011

I. SCOPE

To establish a policy for the appointment of Assistant State Fire Marshals (ASFM's) by the State Fire Marshal (SFM). The SFM shall appoint ASFM's in accordance with Revised Code (R.C.) §§ 3737.01(A) and R.C. 3737.22(A).

The SFM shall establish a list showing which SFM employees are appointed as ASFM's. ASFM's may be appointed for the following purposes:

A. Code Enforcement Bureau: Ohio Revised Code (selected provisions) and Ohio Fire Code Administration and Enforcement, including:

1. Administering and enforcing the licensure and fire safety provisions of R.C. Chapter 3731 (Hotels), including R.C. §§ 3731.02 to 3731.21 and 3731.99.
2. Administering and enforcing the licensure and fire safety provisions Chapter 3737, including R.C. §§ 3737.14, 3737.22(A)(1)(2) and (3),(D),(F) and (G), 3737.41, 3737.42, 3737.43, 3737.44, 3737.45, 3737.46, 3737.51, 3737.61, 3737.65, 3737.72 , 3737.73 and 3737.99 (B), (C), (E) and (F) and other selected R.C. provisions, including R.C. §§ 3701.82, 3721.02, 3721.03.2, 3721.07, 3722.02, 3722.04 and 3741.14.
3. Administering, developing and enforcing the state fire code promulgated under R.C §§ 3737.22(A)(1), 3737.82, 3737.83, 3737.84, 3737.85 and 3737.86 or other rules promulgated by the SFM pursuant to R.C. Chapters 3731, 3737 (except Bureau of Underground Storage Tank [BUSTR] matters described in R.C. §3737.81-98), 3741 or 3743.
4. Per R.C. § 3781.03(A), enforcing rules related to fire prevention promulgated pursuant to R.C. Chapters 3781 or 3791.
5. Per R.C. § 3737.22(A)(14), administering and enforcing R.C. Chapter 3743 (Fireworks) in accordance with applicable laws and SFM guidelines and procedures, including R.C. §§ 3743.02 to 3743.08, 3743.15 to 3743.25, 3743.40, 3743.44, 3743.45, 3743.50 to 3743.56, 3743.58, 3743.59, 3743.60 to 3743.68 (for

licensing/Ohio Fire Code violations only), 3743.70, 3743.75, 3743.80 and 3743.99 (as it relates to licensing/Ohio Fire Code violations only). This enforcement authority does not include any grant of authority to any person in the Code Enforcement Bureau to arrest persons for violations of R.C. Chapter 3743 as described in R.C. §3743.68.

6. Administering, developing rules and enforcing R.C. Chapter 3739 (Reduced Ignition Propensity Cigarettes) in accordance with applicable laws and SFM guidelines and procedures, including R.C. §§3739.03(E); 3739.04(B); 3739.05(B); 3739.07(D); 3739.10; 3739.11; 3739.13; 3739.14; 3739.18; and 3739.99.

B. Bureau of Underground Storage Tank Regulation: Bureau of Underground Storage Tank Regulation Program enforcement, including:

1. Administering and enforcing the licensure, environmental and fire safety provisions of R.C. §§ 3737.88, 3737.88.1, 3737.88.2, 3737.89, 3737.99(H) & (I).
2. Administering, developing and enforcing the Underground Storage Tank code promulgated in accordance with R.C §§ 3737.87, 3737.88, 3737.881, 3737.882 and 3737.89.

C. Fire Prevention Bureau: Operation of the Fire Prevention Bureau pursuant to R.C. §§ 3737.22(A)(5), (A)(7), (A)(9) and (A)(15), 3737.22(E) and 3737.23.

D. Forensic Lab: Operation of the Forensic lab in accordance with R.C. §3737.22(A)(8).

E. Ohio Fire Academy: Operation of the Fire Academy in accordance with R.C. §3737.22(A)(8)and (A)(9) and 3737.33.

F. Fire and Explosion Investigation Bureau: Investigation of the cause, origin and circumstances of fires in Ohio and the arrest of and assistance in the prosecution of persons believed to be guilty of arson or a similar crime in accordance with R.C. §§ 2901.01(A)(11)(b), 3737.16, 3737.22(A)(4), (A)(13) and (C), 3737.22.1, 3737.24, 3737.25, 3737.26 (such as investigation of violations of R.C. §§2909.02, 2909.03, 2923.17 and associated statutes), 3737.27, 3737.28, 3737.29, 3737.31, 3737.32, 3737.33.1, 3737.62, 3737.63 and 3737.99 (A), (D) and (E). Pursuant to R.C. §3743.68(A) and (B), the investigation and arrest of a person for violations of R.C. §§ 3743.54.1, 3743.60, 3743.61, 3743.62, 3743.63, 3743.64, 3743.65 and 3743.66, seizures of contraband fireworks associated with such violations and 3743.99.

Acts as Peace Officers in accordance with R.C. §§109.71(A)(23), 2935.01(B), 2935.03(A)(2) and applicable Department of Commerce and/or Division of State Fire Marshal policies.

As directed, assisting the State Fire Marshal in enforcing R.C. chapters 3731(Hotels), 3737 (Ohio Fire Code) and 3739 (Reduced Ignition Propensity Cigarettes) in accordance with applicable laws and SFM guidelines and procedures,

G. Bureau of Testing and Registration:

1. Operation of the Bureau of Testing and Registration and issuing licenses, certifications and registrations in accordance with R.C. §§ 3731.03, 3731.06, 3737.22 (A)(10) and (12), 3737.65 (B) and (C), 3737.83 (B) and (C), 3737.88(A), 3737.88.1(A), (B) and (D) and R.C. Chapter 3743 (Fireworks), including R.C. §3743.50, 3743.51, 3743.52, 3743.56, 3743.70 and 3743.99(D).
2. Administering, developing rules and enforcing R.C. Chapter 3739 (Reduced Ignition Propensity Cigarettes) in accordance with applicable laws and SFM guidelines and procedures, including R.C. §§3739.03(E); 3739.04(B); 3739.05(B); 3739.07(D); 3739.10; 3739.11; 3739.13; 3739.14; 3739.18; and 3739.99.

H. Other ASFM's: Other duties as assigned by the SFM in accordance with law. Includes Division Legal Counsel and Academy staff assigned to the State Emergency Operations Center.

Pursuant to R.C. §3737.01(A)(1), each ASFM appointed by the Fire Marshal only has, consistent with and controlled by the scope of that ASFM's appointment, a limited, specific authority to enforce laws or otherwise carry out the duties assigned to that ASFM.

NO ASFM may possess a weapon, use force or arrest an offender or in the course of their employment as an ASFM unless the Fire Marshal specifically grants the ASFM such authority under this and other applicable policies and law.

II. APPOINTMENT LIST

The appointment list shall be reviewed and updated at least once a year. If a new State Fire Marshal is appointed in accordance with R.C. § 3737.21 or an interim Fire Marshal or the Chief Deputy Fire Marshal temporarily assumes the duties of the Fire Marshal pursuant to R.C. § 3737.22(B), any existing appointments of ASFM's shall remain in effect. Any new Fire Marshal appointed pursuant to R.C. § 3737.21 will review and update this list as soon as practicable after assuming the duties of Fire Marshal.

All appointments shall be based on the employee's qualifications and particular position description.

Only those persons specifically listed on the attached appointment list (Exhibit A) shall be and have the authority of an Assistant State Fire Marshal.

III. Authority to possess a weapon or arrest an offender:

The authority to possess a weapon or arrest an offender is limited to the State Fire Marshal, Chief Deputy State Fire Marshal and ASFMs assigned to the Fire and Explosion Investigations Bureau (as described under section "I.F" above). Only those ASFMs who have completed and maintained proficiency in the relevant and approved Ohio Peace Officers Training Commission (OPOTC) training program(s) appropriate for the possession of a weapon and arrest by a law enforcement officer can be authorized to carry a weapon or make an arrest under this policy. Specifically:

- A. Possession of a Weapon: Before any ASFM can be authorized to carry any firearms, be it SFM issued or a backup weapon, the ASFM must have successfully completed Division recognized firearms training appropriate

for each firearm and type of ammunition to be carried. The only training recognized by the SFM will be that which meets or exceeds standards set by the Ohio Peace Officers Training Council (OPOTC) and is taught by an instructor certified by the OPOTC. Any possession of a weapon by an AFSM during the performance of the ASFM's assigned duties must be in accordance with the Department of Commerce's and the SFM's possession of weapons, use of force/response to resistance, arrest and/or similar policies.

- B. Arrest authority. Before any ASFM can be authorized to arrest an offender, the ASFM must have successfully completed Division recognized OPOTC training for making arrests by a law enforcement officer. The only training recognized by the SFM will be that which meets or exceeds standards set by the OPOTC and is taught by an instructor certified by the OPOTC. Any exercise of an arrest authority by an AFSM must be in the performance of the ASFM's assigned duties and in accordance with the Department of Commerce's and the SFM's possession of weapons, use of force/response to resistance, arrest and/or similar policies.

IV. Authority to Act as a Peace Officer.

The authority act as an ASFM-Peace Officer (including possession and use of a weapon and the authority to arrest an offender) is strictly limited to ASFMs assigned to the Fire and Explosion Investigations Bureau (as described under section "I.F" above). Only those ASFMs who have completed and maintained proficiency in the relevant and approved Ohio Peace Officers Training Commission (OPOTC) training program(s) appropriate for the possession of a weapon, use of force and arrest by a Peace Officer are authorized to carry a weapon, use force or make an arrest under this policy. Furthermore, the status of and authorization to act as a Peace Officer are limited as follows:

- A. Peace Officer Status: An ASFM shall be considered as a Peace Officer appointed by the State Fire Marshal if:
 - 1. that ASFM has been specifically designated as a Peace Officer pursuant to Appendix A of this policy;
 - 2. the ASFM has successfully completed all of the initial and subsequently required training for Peace Officers per OPOTC rules and is otherwise in compliance with all applicable OPOTC rules for Peace Officers;
 - 3. the ASFM is on duty as FEIB investigator; and

4. the ASFM is otherwise in compliance with Department employment, possession of weapons, use of force/response to resistance, arrest and/or similar policies.
- B. Functioning as a Peace Officer: A duly appointed ASFM is authorized, in accordance with R.C. §109.71(A)(23), 2935.01(B) and 2935.03(A)(2), to act as a Peace Officer at any location within the State of Ohio only under the following conditions:
1. the ASFM is on duty as FEIB investigator;
 2. the ASFM applies his/her Peace Officer authority to a person(s) to prevent an imminent offense of violence, stop an ongoing offense of violence or arrest a suspect who has committed an offense of violence, when such imminent, ongoing or completed offenses of violence are occurring/occurred in the physical presence of the ASFM.
 3. the ASFM's actions as a Peace Officer are in compliance and consistent with Department of Commerce, Division of employment, possession of weapons, use of force/response to resistance, arrest and/or similar policies;
 4. for the purposes of this policy, a "Offense of Violence" is:
 - a. a violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, or 2923.161, of division (A)(1), (2), or (3) of section 2911.12, or of division (B)(1), (2), (3), or (4) of section 2919.22 of the Revised Code or felonious sexual penetration in violation of former section 2907.12 of the Revised Code;
 - b. a violation of an existing or former municipal ordinance or law of this or any other state or the United States, substantially equivalent to any section, division, or offense listed in division (A)(9)(a) of this section;
 - c. an offense, other than a traffic offense, under an existing or former municipal ordinance or law of this or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;

- d. a conspiracy or attempt to commit, or complicity in committing, any offense under division (a), (b), or (c) of this section.

Policy for the Appointment of Assistant State Fire Marshals

Receipt of "Policy on the Appointment of Assistant State Fire Marshals" dated: January 7, 2011.

I hereby acknowledge receipt of a copy of the **Policy on the Appointment of Assistant State Fire Marshals January 7, 2011.** and have read it (or had it explained to me). I further state that I understand and accept the entirety of its contents and will act in accordance with the guidelines promulgated herein.

Signature

_____/_____/_____
Date