

**Illegal Fireworks Task Force
October 19, 2010**

MINUTES

I. Meeting called to order - 10:05 AM

Members present

Voting members:

Co-Chair Will Espero, Senator, Chair of the Senate Committee on Public Safety and Military Affairs

Co-Chair Faye Hanohano, Representative, Chair of the House Committee on Public Safety

Socrates Bratakos, City and County of Honolulu Fire Department

Chad Cloutier, representative of the fireworks industry

Dolores Cook, on behalf of Edward Teixeira, Hawaii Department of Defense

Joseph Dietrick, Federal Aviation Administration

Jerald Farley, representative of the fireworks industry

Ray Galas, appointee of the Senate President

Peter Hanano, County of Maui, Office of the Prosecuting Attorney

Harry Kubojiri, County of Hawaii Police Department

Mar Labrador, appointee of the Speaker of the House of Representatives

Danny Matsuura, County of Maui Police Department

Michael Moses, City and County of Honolulu Police Department

Bruce Murley, U.S. Customs and Border Protection

Darryl Oliveira, County of Hawaii Fire Department

Richard Rosa, on behalf of Darryl Perry, County of Kauai Police Department

Davis Yogi, Hawaii Department of Transportation

Non-voting members:

David Cheng, U.S. Consumer Product Safety Commission

Michelle Kidani, Senator, 17th District

Enriqueta Tanaka, representative of the shipping industry

Dustin Widman, Coast Guard

Members not present

Vic Angoco, representative of the shipping industry

David Chang, appointee of the Governor

Amy Cocanour, Coast Guard

Domingo Cravalho, Hawaii Department of Agriculture

Velma Fish, Federal Aviation Administration

Clayton Frank, Hawaii Department of Public Safety

Jordan Lowe, Bureau of Alcohol, Tobacco, Firearms and Explosives

Manuel Neves, City and County of Honolulu Fire Department
Duane Okamoto, Hawaii Department of Agriculture
Gareth Sakakida, representative of the trucking industry
Ty Torco, Bureau of Alcohol, Tobacco, Firearms and Explosives
Lynne Goto Uyema, City and County of Honolulu Office of the Prosecuting Attorney

Others present

Stephen Kishida, City and County of Honolulu Fire Department; Hilda Montoya, U.S. Customs and Border Protection; Ku'uhaku Park, Horizon Lines; Gordon Pang, Honolulu Star-Advertiser; Marlene Uesugi, Office of Senator Will Espero; Kaliko Chun, Office of Representative Faye Hanohano; Sharon Lum Ho, Office of Senator Kalani English; Charlotte Carter-Yamauchi and Terrence Lee, Legislative Reference Bureau; members of the public.

II. General Business

- The minutes from the September 21, 2010, meeting were adopted by the Task Force with amendments
- During the meeting, the Task Force discussed the possibility of submitting a minority report in addition to its main report to the Legislature

III. Substantive Matters

A. Presentation by Jerald Farley on behalf of the consumer fireworks industry*

Highlights of the presentation (information in this section is taken from both materials actually presented to the Task Force at this meeting and from presentation materials submitted after the meeting):

- Background information on fireworks
 - Legal definitions from the state Fireworks Control Law under Chapter 132D, Hawaii Revised Statutes
 - Focus points
 - Fireworks are display fireworks, articles pyrotechnic, or consumer fireworks
 - Consumer fireworks are non-aerial or aerial
 - Only non-aerial consumer fireworks, novelty /trick items, and combination items of non-aerial consumer

* Copies of the materials from all presentations at this meeting are available on the Capitol website at <http://www.capitol.hawaii.gov/>.

- fireworks are legal for the general public to purchase, possess, or use without a license or permit
 - Permit requirement for firecrackers
 - Illegal fireworks and illegal uses of fireworks
- Key terms
 - Combustion (consumer fireworks)
 - Deflagration (display fireworks)
 - Detonation (dynamite; TNT; military explosives)
- Historical uses of fireworks
- Agencies that regulate fireworks
 - The Bureau of Alcohol, Tobacco, Firearms and Explosives and the U.S. Occupational Safety and Health Administration
 - Consumer fireworks manufacturing
 - Display fireworks
 - Storage of consumer fireworks, articles pyrotechnic, and display fireworks
 - U.S. Department of Transportation (USDOT) regulates the transportation of articles pyrotechnic, display fireworks, and fireworks items that may be classified as consumer fireworks
 - U.S. Coast Guard, Customs, and Federal Aviation Administration regulate the flow of fireworks in international commerce
 - U.S. Consumer Product Safety Commission (CPSC) has regulations that affect consumer fireworks
 - Hawaii fire departments regulate storage of all fireworks and issue licenses and permits.
 - Hawaii police departments enforce fireworks laws
- Requirements for consumer fireworks
 - Qualifications for consumer fireworks are set forth in federal law
 - There are specific construction and labeling requirements imposed by USDOT and CPSC
 - About 80 percent of all consumer fireworks in U.S.commerce are imported and sold by fireworks companies that are voluntary members of the American Fireworks Standards Laboratory (AFSL), whose standards exceed federal. AFSL does random, unannounced testing at consumer fireworks factories to ensure compliance with federal and AFSL standards
 - USDOT-approved shipping cartons for fireworks bear a uniquely numbered AFSL label that resists removal and tampering and allows the contents of the box to be traced back to the factory where the items were made
- Hawaii fireworks laws

- Prior to 1994, no state fireworks law. Each county had its own ordinance
 - In 1994, a single, statewide law allowing non-aerial fireworks and firecrackers was enacted
 - In 2000, a \$25 permit fee was imposed on each purchase of up to 5,000 firecrackers. There were also substantial increases on licensing fees for importers, storage, wholesalers, and retailers. Harsher penalties were imposed. Over 40 percent of all retailers left the fireworks market
 - Fireworks legislation in 2010 increased the penalties for certain illegal acts and granted counties the authority to enact ordinances that are at least as stringent as the state fireworks law
 - Issue/Problem: There is a constant supply and rampant illegal use of aerial fireworks. There are also illegal uses of display fireworks and homemade, improvised explosive devices
- Discussion of fireworks issues
 - Statistics can be misleading and should be cautiously considered
 - Fireworks statistics as presented to the Task Force do not specify whether the incidents, calls, or events resulted from the possession or use of illegal explosive devices, improvised explosive devices, legal consumer fireworks, or the circumstances (times and locations) under which fireworks were used
 - Without further details, it is difficult to ascertain from statistics what is really happening
 - Bans are not the answer
 - It has never been proven that a complete fireworks ban would be easier to enforce
 - Bans encourage otherwise law-abiding citizens to break the law to celebrate their heritage, religious beliefs, or cultural values with fireworks
 - Restricting the supply of all fireworks does not mean restricting the supply of illegal fireworks. The consumer fireworks ban (excluding permitted fireworks) slated to go into effect on January 2, 2011, for the City and County of Honolulu (Bill 34) will only reduce the legal supply of non-aerial consumer fireworks
 - The best way to regulate fireworks use is to allow legal uses. The solution is to strike a careful balance that allows fireworks use so that the majority choose to be law-abiding rather than be part of the problem

- It is unfair to abridge the rights of the law-abiding majority of fireworks users because of the illegal acts of a few
- Enforcement is key
 - Enforcement needs to be more proactive
 - Limited enforcement resources must be used more effectively and efficiently
 - Better enforcement will help address storage and disposal issues with seized fireworks
 - Restrictions on the importation, storage, and sale of fireworks have been in place for years. Yet, illegal importation, storage, sale, purchase, possession, and use of fireworks will persist without adequate enforcement
 - Focus should be on fireworks suppliers rather than users, but this requires better enforcement. There is a common belief that the import of display fireworks for licensed uses has been used for years to bring in and sell aerial fireworks illegally
- The legal, licensed, non-aerial consumer fireworks industry is not the problem
 - Police sting operations and fireworks bans targeting the legal, licensed consumer fireworks industry punishes law-abiding businesses while ignoring the problem of illegal fireworks
 - The legal consumer fireworks industry has a long history of educating the public about its products and how to use them safely and responsibly
- Cargo inspections are difficult because the sheer number of shipping containers entering Hawaii makes it neither financially feasible nor logistically possible to conduct searches for illegal fireworks
- There is no evidence that firework product malfunction is associated with fires, injuries, or illegal uses
 - However, product misuse could logically be associated with fires and injuries, although no data has been collected in such a way to substantiate this
 - There is ample evidence that the use of illegal aerials, illegal uses of display fireworks, and illegally manufactured and used improvised explosive devices have been associated with injuries and fires
- Cooperation between affected parties is important
 - Bill 34 will force out the legal consumer fireworks industry and eliminate this party as a partner in addressing problems with illegal fireworks use

- Elimination of the legal consumer fireworks industry will leave only those in the illegal fireworks market, who will not cooperate with the authorities

B. Presentation by Chad Cloutier of American Promotional Events, on behalf of the consumer fireworks industry

Highlights of the presentation:

- 2010 estimates for the legal fireworks industry
 - Importers: 14 statewide
 - 7 display fireworks companies
 - 7 consumer fireworks companies, 3 of which are fireworks-only companies
 - Wholesalers: 7 statewide
 - 3 fireworks-only companies
 - 4 engage in fireworks as a secondary business
 - Retailers: 221 statewide (Oahu 135 locations, Hawaii Island 40, Maui 24, Kauai 22)
 - About 90 percent of retailers are supermarkets
 - About 10 percent are independent retailers: Tent and temporary store operators (28 statewide) consisting of non-profit groups or individuals
- State of Legal Fireworks Industry
 - Prior to 1994, county ordinances did little to prohibit the sale of illegal fireworks
 - Minimal penalties; no risk for selling illegal fireworks. Minimal enforcement
 - Fireworks industry became known as a way to make fast, easy money
 - Stands were everywhere, some of which were believed to be a front for illegal fireworks sales
 - Everyone had a friend selling fireworks, legal or illegal
 - Changes to fireworks laws increased the licensing fee on import, storage, and retailer licenses and imposed a permit fee for firecracker purchases
 - This reduced the number of retailers and wholesalers during the first couple of years after the law changed
 - 3-4 years later, individuals found a way to sell firecrackers illegally
 - In 2009, an estimated 3,000 counterfeit permits appeared in the fireworks market
 - The variety of fireworks items on the market increased
 - Legal retailers had to stock more items to compensate for lost sales

- New items entered the market, creating more smoke and noise
 - Retailers found ways to sell fireworks cheaper, which increased demand
 - Fireworks tents became rampant
 - Some tent operators circumvented the law by using small tents that were not subject to fire and building codes
 - Tents operated by nonprofit groups entered the market and consequently eliminated small, questionable operators. These tents complied with fire and building codes
- Future of the fireworks industry after Bill 34 is implemented
 - Fireworks-only wholesalers will leave Oahu and some may leave the State
 - Brokers (importers of other goods) will adapt by relying more on their core business because fireworks are a side business for them
 - Retailers will adapt by selling items that are still legal
 - Firecrackers will be sold on Oahu. The question is by whom and at how many locations. There will not be many
 - The firecracker market may grow and be sold under more brand names
 - There may be an increase in firecracker permit sales, mostly on Oahu
 - The illegal counterfeit permit firecracker market and resales of firecrackers and permits will likely increase
 - Firecracker prices will increase
 - In the past, some bought many firecracker permits, bought out the retail supply of firecrackers, and then resold them at higher prices
 - Residents on Neighbor Islands will see an increase in the cost of fireworks due to a limited supply of legal consumer fireworks being imported to those counties that still allow sales of fireworks
 - Criminal activities, including burglaries of display and consumer fireworks storage facilities will probably increase as criminals look for more options to make money
- The best solution is allowing all Hawaii residents statewide to purchase non-aerial consumer fireworks and firecrackers, along with tougher enforcement to push out all sellers of illegal fireworks

C. Presentation by Dolores Cook of the Hawaii Department of Defense, on the State Civil Defense, Homeland Security Program

Highlights of the presentation:

- The Homeland Security Grant Program supports implementation of State Homeland Security Strategies to address identified planning, organization, equipment, training, and exercise needs to prevent, protect against, respond to, and recover from acts of terrorism and other catastrophic events
- Suite of federal grant programs for specific purposes
 - Homeland Security Grant Program
 - Urban Areas Security Initiative
 - Citizen Corps Program
 - Metropolitan Medical Response Program
 - Regional Catastrophic Preparedness Program
 - Buffer Zone Protection Program
 - Transit Security Grant Program
 - Interoperable Emergency Communications Grant
 - Port Security Grant Program
- Breakdown of Homeland Security Program grants for fiscal years 2008 through 2010 by program and county. Totals for Hawaii grants in that period average nearly \$12 million per fiscal year
- Port Security Grant Program
 - Purpose is to protect critical port infrastructure from terrorism, particularly attacks using explosives and non-conventional threats that could cause major disruption to commerce. Provides grant funding to port areas for the protection of critical port infrastructure from terrorism
 - State Civil Defense is the designated fiduciary agent
 - Department of Transportation is the sub-grantee/recipient of funds
 - Four major focuses
 - Enhancing maritime domain awareness
 - Enhancing improvised explosive device (IED) and chemical, biological, radiological, nuclear, explosive (CBRNE) prevention, protection, response, and recovery capabilities
 - Training and exercises
 - Efforts supporting implementation of the Transportation Worker Identification Credential (TWIC)
 - Since 2008, Port of Honolulu includes all 10 commercial ports
 - Fiscal years 2008 and 2009 required a 25 percent match
 - Fiscal Year 2010 had no match requirement
- Breakdown of funding for port projects for 2008-2010
- Trends for the Homeland Security Grant Programs
 - Increased requirements
 - Shrinking funds

- Matching requirements
- Urban areas may continue to receive funds
- Regional planning through Urban Area
- Decentralization of grant programs to FEMA Regions

D. Other Issues Discussed

1. Fireworks regulation

- Amending the firecracker permitting system, such as by putting a cap on the number of permits that can be issued, was discussed
 - It was suggested that the permitting system itself is flawed because it encourages the purchase of illegal fireworks, counterfeiting of permits, and buying up supply to corner the market
- Minimum standards for a statewide fireworks law may need to be determined in-depth before considering replacing the recently passed county option
- Availability of federal grants for fireworks enforcement and education efforts
 - May require reshuffling of funds and other priorities requiring funding
- Availability of federal grants to enhance personnel during fireworks high-use dates

2. Shipping container inspections

- Explosives detection technology for shipping containers has not been fully fleshed out
 - Port security has been enhanced only since the terrorist attack on September 11, 2001, and is behind the curve compared to airports
 - There are ongoing efforts to integrate surveillance technologies with existing efforts for screening containers, but there are challenges regarding lack of space and resources
 - The state Department of Transportation has no inspection authority. Further discussion may be needed to determine whether this department and others should be given this authority
 - Coast Guard inspection program is limited to making sure that hazardous materials are transported properly. No special technology used; inspections are done through customs
- The amount of domestic cargo requiring processing is enormous. International cargo is more manageable. Delays caused by inspections could affect users

- Using dogs to inspect shipments has been difficult because there is a logjam in providing compensation for dog handlers
 - Port Security Grant Program includes possible funding for dogs and handlers; however, only 1 dog may be purchased each year

3. Task Force Issues

Senator Espero made the following observations regarding the focus of the Task Force

- The purpose of the Task Force is to address fireworks issues going forward
 - Actual impact of Bill 34 will not be known until it goes into effect after New Year's Eve 2010
- The Task Force's report to the Legislature should focus on concrete proposals for action to address identified needs

E. The following remaining task force meeting dates and topics of discussion were noted:

- November 16 - Container inspectors; Federal Aviation Administration; Coast Guard; cultural organizations
- December 14 - Shipping industry

IV. Public Comments

There were no comments or questions from members of the public present at the meeting.

V. Adjournment - The meeting was adjourned at 12:31 p.m.