

**Illegal Fireworks Task Force
November 16, 2010**

MINUTES

I. Meeting called to order - 10:00 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

Vic Angoco, representative of the shipping industry

Socrates Bratakos, City and County of Honolulu Fire Department

Chad Cloutier, representative of the fireworks industry

Amy Cocanour, Coast Guard

Jerald Farley, representative of the fireworks industry

Velma Fish, Federal Aviation Administration

Ray Galas, appointee of the Senate President

Lynne Goto Uyema, City and County of Honolulu Office of the Prosecuting Attorney

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

Hilda Montoya, on behalf of Bruce Murley, U.S. Customs and Border Protection

Michael Moses, City and County of Honolulu Police Department

Darryl Oliveira, County of Hawaii Fire Department

Gareth Sakakida, representative of the trucking industry

Edward Teixeira, Hawaii Department of Defense

Davis Yogi, Hawaii Department of Transportation

Non-voting members:

David Cheng, U.S. Consumer Product Safety Commission

Joseph Dietrick, Federal Aviation Administration

Enriqueta Tanaka, representative of the shipping industry

Dustin Widman, Coast Guard

Members not present

David Chang, appointee of the Governor

Domingo Cravalho, Hawaii Department of Agriculture

Clayton Frank, Hawaii Department of Public Safety

Michelle Kidani, Senator, 17th District

Jordan Lowe, Bureau of Alcohol, Tobacco, Firearms and Explosives
Manuel Neves, City and County of Honolulu Fire Department
Duane Okamoto, Hawaii Department of Agriculture
Darryl Perry, County of Kauai Police Department
Ty Torco, Bureau of Alcohol, Tobacco, Firearms and Explosives

Others present

Jim Kosciuk, U.S. Customs and Border Protection; Delores Cook, Hawaii Department of Defense; Jon Riki Karamatsu, City and County of Honolulu Office of the Prosecuting Attorney; Ernest Loo, Lung Kong, Physical Cultural Club; Robert Wong, Lin Yee Chung Association; Stephen Kishida and Chuck Perry, City and County of Honolulu Fire Department; Gordon Pang, Honolulu Star-Advertiser; Georgette Deemer, House of Representatives; Marlene Uesugi, Office of Senator Will Espero; Kaliko Chun, Office of Representative Faye Hanohano; Sharon Lum Ho, Office of Senator Kalani English; Terrence Lee, Legislative Reference Bureau; members of the public.

II. General Business

- The minutes from the October 19, 2010, meeting were adopted by the Task Force

III. Substantive Matters

- A. Presentation by Velma Fish and Joseph Dietrick of the Federal Aviation Administration (FAA), Hazardous Materials (HAZMAT) Division *

Highlights of the presentation:

- FAA objectives: The safe and secure transportation of hazardous materials in air commerce
- Regulations
 - Title 49, Code of Federal Aviation, Parts 100-185. Also referred to as Hazardous Materials Regulations (HMR). Governs the safe transport of hazardous materials in commerce
 - International Civil Aviation Organization (ICAO) issues technical instructions for the safe transportation of dangerous goods
 - International Air Transport Association (IATA) issues Dangerous Goods Regulations (DGR) developed by the IATA Dangerous Goods Board, composed of members of various air

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

carriers. The DGR is a user-friendly guide to air regulations for dangerous goods

- HAZMAT Division responsibilities
 - Makes unannounced visits to air carriers of hazardous materials
 - Responds to incidences, discrepancies, spills, broken packages -- all leading to investigations
 - Provides a thorough, accurate, and complete accounting of a case; hence the Division is particularly interested in preemptive action to decrease the number of cases in which it would have to assume a "responder" or "enforcer" role after incidents have already occurred
 - Provides information from investigations to a legal team that decides whether to pursue cases
 - Provides testimony in hearings before judges
- Outreach
 - Media advisories provide public reminders of hazardous-materials regulations relating to fireworks, penalties for violations, and sources of information about requirements and prohibitions
 - Literature is distributed and signs posted informing air travelers about fireworks prohibitions for carry-on and checked baggage, subject commodities, and penalties for violations
 - Letters to carriers provide information and guidance
 - FAA answers questions on regulations and receives complaints
- Carrier requirements
 - All air carrier personnel must be trained to handle hazardous materials. Regulations on the handling of such materials must be followed by individuals and large companies alike
 - There is a code and classification for every type of material transported and acceptable modes of transport
 - Regulations change frequently, so it is important to keep updated
- Carrier violations
 - The most common violation is insufficient training (75 percent)
 - Problems with carrier personnel training mostly concern HAZMAT shipping
 - Common excuses from carriers include lack of knowledge about regulations and claims that a violation is a one-time occurrence only
 - Violations are often detected after incidents occur, such as containers breaking open.
 - Carriers operate on an honor system in which they assume that packages contain what is on the label, and they will not inspect packages without cause

- The problem is not so much with established, reputable companies with longstanding relationships with the FAA, but rather with smaller, individual entities
- Air carrier restrictions on hazardous materials are the most strict because planes cannot simply be pulled over and stopped
 - Civil fines of up to \$50,000 per violation; criminal fines of up to \$500,000 per violation plus prison time
 - In 2009, FAA imposed over \$3 million in fines for HAZMAT violations
- Fireworks are at the top of the list of the Division's "problem" materials
 - There was an air carrier incident in which 450 pounds of boxes containing fireworks were labeled as plumbing goods and household supplies
 - FAA learned of the incident after one of the 10 boxes broke open, exposing the fireworks. The rest of the boxes had already been delivered
 - FAA and Honolulu police visited the recipients, who claimed that they threw away the boxes because they didn't recognize the packages
 - Once fireworks importation by ship is effectively regulated, illegal importers may attempt to transport more fireworks by air carrier
 - Shipping fireworks by air is more expensive but faster; thus shipping by this method would seem to indicate situations in which the recipient wants the fireworks right away
 - Undeclared/improperly packaged fireworks containers are frequent concerns
 - Consumers may stock up on fireworks this year, ahead of the impending Honolulu ban on consumer fireworks, and store them for future use. This is troubling in light of reports that old fireworks may present a risk of exploding when stored over time

B. Presentation by Dustin Widman, Coast Guard, and Hilda Montoya, U.S. Customs and Border Protection

Highlights of the presentation:

- Coast Guard Authority
 - International Safe Container Act
 - Title 49, Code of Federal Regulations
 - Port and Waterways Safety Act
 - Commandant Instruction (COMDTINST) 16616.11B regarding containerized HAZMAT inspections
- Coast Guard Inspection Requirements

- Current policy - 14 containers per week in Hawaii or 728 annually
- Proposed policy - 0.05% of twenty-foot equivalent units (TEUs, a measure used for capacity in container transportation) or 562 annually (alternatively, 10% of all declared HAZMAT)
 - 70-90% HAZMAT
 - 10-30% general cargo
 - <10% structural exams for container integrity
 - Constitutes a better system for categorizing cargo inspections
- Shipping Container Traffic thru Hawaii from 2006-2008
 - Container traffic by island, from highest to lowest:
 - Honolulu, Oahu
 - Kahului, Maui
 - Kawaihae, Hawaii
 - Hilo, Hawaii
 - Nawiliwili, Kauai
 - Kaunakakai, Molokai
- Facilities in Area of Responsibility (AOR)
 - All containers are initially delivered into Honolulu before they are barged to the neighboring islands
 - Oahu is the site of the vast majority of inspections
 - Four qualified container inspectors in Honolulu
 - One qualified inspector for Hilo and Kawaihae on Hawaii Island
 - No qualified inspectors for Kauai and Maui
 - No Coast Guard personnel on Molokai
- Partner Agencies
 - Customs and Border Protection
 - National Cargo Bureau
 - Department of Transportation
 - Pipeline and Hazardous Materials Safety Administration
 - Honolulu Police and Fire Department
- Customs and Border Protection Capabilities
 - 100 percent of international containers are screened, either via paperwork or physical inspections (no actual numbers provided)
 - At a minimum, paperwork is verified
 - Mobile X-ray unit used to inspect foreign shipments; Container Exam Station is setup for all foreign examinations
 - Not all containers are x-rayed; it is discretionary and applied to specific containers for specific reasons
 - All containers checked for radiation before leaving the container yard
 - No jurisdiction over domestic containers; only foreign cargo

- Multi-Agency Strike Force Operations (MASFO) Data
 - In 2008, of 136 containers inspected in Oahu, Maui, and Hawaii Island, 13 discrepancies found
 - In 2009, of 36 container inspected, 6 discrepancies found
- Explosive Load Data
 - A Coast Guard detail is required to supervise the loading/unloading of:
 - All 1.1 and 1.2 explosives; and
 - Certain 1.5 and 5.1 materials
 - Totals for explosive loads requiring supervisory details between 2007 and 2010 indicate doubling or more of such loads year-to-year from 2008 to 2010
- Future Plans
 - Continue partnering with agencies through MASFO and biannual fireworks meetings
 - Improve targeting methods for illegal imports by working within intelligence communities to focus on repeat offenders

C. Presentation and remarks from Ernest Loo and Robert Wong on behalf of local cultural organizations

Highlights of the presentation:

- Religious and cultural uses of fireworks
 - Have been practiced in Hawaii for over 150 years
 - Used to bring good luck, chase away evil spirits, and to add a festive and auspicious atmosphere to events
 - These uses include Chinese New Year, weddings, birthdays, anniversaries, deities' birthdays, parades, grand openings, housewarmings, graduations, religious holidays, ground breaking, burial and ancestors' offerings, funerals, and store blessings
 - Burned during legal hours and in a controlled environment
- Fireworks regulations should be carefully crafted
 - It is unfair to punish the majority for the actions of a few who abuse fireworks use
 - Eliminating fireworks use will eliminate a significant portion of Chinese culture and customs in Hawaii
 - Limited exceptions from current restrictions on allowable times for using fireworks would help accommodate Chinese cultural/religious practices that are specific to particular time frames
 - Asking for limited allowances for cultural uses that are not abusive

- Hawaii is a multi-cultural society that can share with and learn from each culture
 - Chinese fireworks practices have been in use in Hawaii since the 1800s and has become an important community tradition
 - Problems arise when community members start questioning the practices of other cultures. Respect and understanding plays a role
 - There are concerns that the ongoing debate over fireworks use in Hawaii may provoke negative public sentiment about the Chinese community

D. Other Issues Discussed

1. Collection and sharing of intelligence from fireworks cases

- A question was posed on whether intelligence collected from FAA fireworks incidences and inspections was forwarded to other agencies for enforcement purposes
 - The Fire and Emergency Manufacturers and Services Association (FEMSA) is a trade association that provides a public safety resource website used by regulators of all modes of transportation
 - Records violations and inspections
 - FAA uses it to learn the background and history of a carrier prior to conducting inspections

2. Effective deterrents for violations

- Education and training is easier than enforcement
 - Underscores need to close the pathways for illegal importation of fireworks
- Penalties, if severe enough, will lessen supply
 - Consumer demand drives illegal fireworks importation
 - Current FAA penalties are sufficient deterrents
 - There are separate violations that can all stem from the same case, including paperwork, training, and packaging, each subject to thousands of dollars in fines
 - There is a preemptive effect when companies and industry colleagues who have faced penalties warn and educate each other from their experience
 - There was a HAZMAT incident, after which the violator requested that FAA speak to his colleagues at an industry event to use the example of his violation to educate peers

3. Improving cargo inspections

- The State should have greater domestic inspection authority beyond just agricultural inspections
- Coast Guard has authority to inspect domestic cargo and conducts inspections depending on the availability of personnel and other resources
 - These inspections are therefore targeted at risk-based packages and suspected threats
 - No authority to conduct inspections unless there is a reason based on risk
 - Without criteria or reasons to inspect, Fourth Amendment issues may prohibit inspections
 - There is a lack of a reasonable basis to inspect if the containers are not declared HAZMAT. Therefore, mislabeling and paperwork can be an issue
- Deficiencies in air cargo inspections
 - Majority of air cargo at some point in time gets screened for drugs, explosives, etc., yet fireworks are still coming in undiscovered until containers are accidentally broken and their contents revealed
 - FAA has a memo of understanding with carriers to have them notify FAA if they suspect a container with prohibited goods
 - No federal guidelines on what air cargo is inspected, including minimum percentages of packages to be inspected. This matter is largely left up to the private common carriers
 - At some point, the Transportation Security Administration will inspect all air cargo, with a focus on explosives and improvised explosive devices
 - No technology yet to specifically detect fireworks in cargo. Dogs can be used, but are expensive (funding available through Port Security Grants)
- Challenges with inspections of cargo by ship
 - Additional equipment to inspect shipping cargo is problematic because of a lack of designated spaces to station equipment
 - Fixed spaces would negate having to move equipment around to available spots

E. The following were noted:

- The next scheduled Task Force meeting is on December 14¹, with presentations from the shipping industry

¹ This date was subsequently amended to December 13, 2010. See hearing notice at: http://www.capitol.hawaii.gov/session2011/hearingnotices/HEARING_IFTF_12-13-10_INFO_.PDF

- The Task Force's report to the Legislature is due on January 10, 2011, pursuant to Act 170, Session Laws of Hawaii 2010. Task Force members were encouraged to submit their recommendations for inclusion in the report
- Senator Espero requested Honolulu law enforcement to report on the dispositions of fireworks-related citations (challenges, fines imposed, etc.)

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 11:47 a.m.