

**REPORT OF THE
ILLEGAL FIREWORKS TASK FORCE
TO THE LEGISLATURE FOR
THE REGULAR SESSION OF 2011**

**In Accordance with Act 170
Session Laws of Hawaii 2010**

**Prepared by the
Legislative Reference Bureau
State of Hawaii**

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TABLE OF CONTENTS

	<i>Page</i>
Executive Summary	v
I. Act 170, Session Laws of Hawaii 2010	1
II. The Task Force.....	1
State Legislature.....	2
Federal.....	2
State of Hawaii.....	3
Counties	3
Shipping and Trucking Industry	3
Fireworks Industry	4
Appointees	4
III. Goals and Objectives	4
IV. Presentations at Public Meetings.....	5
August 24 Meeting.....	5
September 21 Meeting	6
<i>Hawaii Island</i>	6
<i>Maui</i>	6
<i>Kauai</i>	7
<i>Oahu</i>	7
October 19 Meeting	8
<i>Presentations from the Fireworks Industry</i>	8
<i>Civil Defense</i>	10
November 16 Meeting	10
<i>Federal Aviation Administration</i>	10
<i>U.S. Coast Guard and Customs and Border Protection</i>	11
<i>Coast Guard</i>	11
<i>Customs and Border Protection</i>	11
<i>Cultural Organizations</i>	11
December 13 Meeting.....	12

	<i>Page</i>
V. Issues and Challenges	13
(1) Establishing a Clear Statement of the Illegal Fireworks Problem	13
(2) Inadequate Resources for Enforcement	14
<i>Ineffective Deterrents</i>	14
<i>Insufficient Resources and Funding</i>	14
<i>Other Crimes are Given Priority</i>	14
<i>Difficulty Obtaining Evidence</i>	14
(3) Prosecution	15
<i>Difficulty Meeting Burden of Proof</i>	15
<i>Prosecutions Have Been Ineffective Deterrents</i>	15
(4) Storage and Disposal of Seized Fireworks	15
(5) Inspections	16
<i>Numerous Agencies with Varying Degrees of Inspection Authority</i>	16
<i>Issues in Cargo Inspections</i>	16
<i>Freight Forwarders</i>	17
<i>Lack of Technology to Specifically Detect Fireworks</i>	18
(6) Cooperation Between Stakeholders	19
(7) Consistency In Fireworks Laws	19
VI. RECOMMENDATIONS	19
(1) Increase Fireworks Fees and Fines	19
<i>Effective Deterrents</i>	19
<i>Decreases the Amount of Fireworks Entering Hawaii</i>	20
<i>Funding for Enforcement, Education, and Industry Monitoring</i>	20
(2) Decriminalize Fireworks Offenses in Favor of Civil Fines to Make Enforcement Easier (Suggested by the Fireworks Industry)	20
(3) Increase Random Inspections	20
<i>Consider Expanding Inspection Authority</i>	20
<i>Focus Cargo Inspections to Make Them More Manageable</i>	21

	<i>Page</i>
(4) Consider Alternatives Such as Education and Training	21
(5) Promote Cooperation Between Stakeholders.....	21
<i>Collaboration Between Affected Parties</i>	21
<i>Establish a Reward System Similar to CrimeStoppers to Encourage</i> <i>People to Report Fireworks Violations</i>	22

Executive Summary

Act 170, Session Laws of Hawaii, 2010, established an Illegal Fireworks Task Force to develop strategies to address the illegal fireworks problem in Hawaii.

The Act directed the Task Force to submit a preliminary plan and strategy report to the Legislature prior to the Regular Session of 2011. Pursuant to the Act, the Task Force was formed, consisting of twenty-five voting members and eight non-voting members representing various public and private interests. The co-chairs of the Task Force were Senator Will Espero, Chair of the Senate Committee on Public Safety and Military Affairs, and Representative Faye Hanohano, Chair of the House Committee on Public Safety.

Over the course of several public meetings during the legislative interim of 2010, the Task Force discussed various issues relating to fireworks regulation in Hawaii, including a delineation of the various activities that constitute fireworks violations, consistency and enforcement of relevant laws, prosecution of offenders, and enhancing cargo inspections to stop the importation of illegal fireworks. Based upon these discussions, the Task Force adopted several recommendations in its report to the Legislature. These recommendations included increasing random cargo inspections; promoting education and training on appropriate uses of fireworks; directing revenues from fireworks fees and fines toward public education, law enforcement, and government monitoring of the fireworks industry; fostering cooperation between stakeholders; and increasing penalties for fireworks violations or decriminalizing fireworks offenses in favor of civil penalties.

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REPORT OF THE ILLEGAL FIREWORKS TASK FORCE TO THE LEGISLATURE FOR THE REGULAR SESSION OF 2011

I. Act 170, Session Laws of Hawaii 2010

Act 170, Session Laws of Hawaii 2010, established an Illegal Fireworks Task Force to develop a plan and make recommendations to:

- Stop the importation of illegal fireworks and explosives into Hawaii; and
- Develop a strategy to ensure the safety and security of the airports, harbors, and other facilities and institutions in Hawaii against the discharge of illegal fireworks and explosives.

As the rationale for the Act, the Legislature found that each year, the use of illegal fireworks continues to increase, posing a public safety risk. Enhanced enforcement strategies among state, county, and federal agencies are essential to address the problem. The Task Force was therefore established to facilitate various agencies and stakeholders working collaboratively on solutions to better address the growing distribution and use of illegal fireworks in Hawaii.

The Act placed the Illegal Fireworks Task Force within the Legislative Reference Bureau for administrative purposes. The Act furthermore mandated the Task Force, with the assistance of the Legislative Reference Bureau, to submit a preliminary plan and strategy report to the Legislature prior to the 2011 regular session.

This document constitutes the Task Force's report for 2011.¹ Materials distributed at the public meetings of the Task Force are available at:

<http://www.capitol.hawaii.gov/session2010/studies/commIFTF.asp>.

II. The Task Force

Pursuant to Act 170, the Task Force was formed, consisting of twenty-five voting members and eight non-voting members. Act 170 designated the Chair of the Senate Committee on Public Safety and Military Affairs and the Chair of the House Committee on Public Safety as the co-chairs of the Task Force. The Act also required seven additional Task Force members: three appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives, respectively; two representatives of the shipping and trucking industries; and

¹ At the Task Force's public meeting on January 11, 2011, the Task Force approved this report for submission to the Legislature.

two representatives of the fireworks industry. The remaining members were from various government agencies referenced by the Act for possible inclusion.²

Ultimately, the Task Force members consisted of the following:

State Legislature

- (1) Co-Chair Will Espero, Senator, Chair of the Senate Committee on Public Safety and Military Affairs (voting)
- (2) Co-Chair Faye Hanohano, Representative, Chair of the House Committee on Public Safety (voting)
- (3) Michelle Kidani, Senator, 17th District (non-voting)

Federal

- (4) Jordan Lowe, Bureau of Alcohol, Tobacco, Firearms and Explosives (voting)
- (5) Ty Torco, Bureau of Alcohol, Tobacco, Firearms and Explosives (non-voting)
- (6) Velma Fish, Federal Aviation Administration (voting)
- (7) Joseph Dietrick, Federal Aviation Administration (non-voting)
- (8) Bruce Murley, U.S. Customs and Border Protection (voting)
- (9) Amy Cocanour, Coast Guard (voting)
- (10) Dustin Widman, Coast Guard (non-voting)
- (11) David Cheng, U.S. Consumer Product Safety Commission (non-voting)

² Section 3(d) of the Act provided that "the task force *may* include representatives" from the Federal Bureau of Investigation, U.S. Drug Enforcement Agency, U.S. Coast Guard, Department of Homeland Security, Department of Public Safety, Department of Transportation, Department of Agriculture, the Harbors Division and Airports Division of the Department of Transportation, Department of Defense, Department of the Attorney General, county police departments, county prosecutors, State Fire Council, Consumer Product Safety Commission, Federal Aviation Administration, Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives, and United States Customs and Border Protection (emphasis added).

State of Hawaii

- (12) Domingo Cravalho, Hawaii Department of Agriculture (voting)
- (13) Duane Okamoto, Hawaii Department of Agriculture (non-voting)
- (14) Davis Yogi, Hawaii Department of Transportation (voting)
- (15) Clayton Frank, Hawaii Department of Public Safety (voting)
- (16) Manuel Neves, State Fire Council and City and County of Honolulu Fire Department (non-voting)
- (17) Socrates Bratakos, State Fire Council and City and County of Honolulu Fire Department (voting)
- (18) Edward Teixeira, Hawaii Department of Defense (voting)

Counties

- (19) Michael Moses, City and County of Honolulu Police Department (voting)
- (20) Harry Kubojiri, County of Hawaii Police Department (voting)
- (21) Danny Matsuura, County of Maui Police Department (voting)
- (22) Darryl Perry, County of Kauai Police Department (voting)
- (23) Darryl Oliveira, County of Hawaii Fire Department (voting)
- (24) Lynne Goto Uyema, City and County of Honolulu Office of the Prosecuting Attorney (voting)
- (25) Peter Hanano, County of Maui, Office of the Prosecuting Attorney (voting)

Shipping and Trucking Industry

- (26) Gareth Sakakida, Hawaii Trucking Association (voting)
- (27) Vic Angoco, Matson Navigation Company, Inc. (voting)
- (28) Enriqueta Tanaka, Matson Navigation Company, Inc. (non-voting)

Fireworks Industry

- (29) Jerald Farley, representative of the fireworks industry (voting)
- (30) Chad Cloutier, representative of the fireworks industry (voting)

Appointees

- (31) Ray Galas, appointee of the Senate President (voting)
- (32) Mar Labrador, appointee of the Speaker of the House of Representatives (voting)
- (33) David Chang, appointee of the Governor (voting)

Act 170 required the Task Force to meet a minimum of five times between June 1, 2010, and December 31, 2010, and authorized meetings beyond December 31, 2010, if necessary. The Task Force is scheduled to dissolve on June 30, 2011.

The Task Force held six public meetings between August 2010 and January 2011, specifically on August 24, September 21, October 19, November 16, December 13, and January 11. All public meetings were held in the State Capitol. A quorum of the members was present at each meeting.³ During these meetings, the Task Force identified and discussed various topics relating to fireworks regulation.

At its final meeting on January 11, 2011, the Task Force as a whole adopted its recommendations. Pursuant to Act 170, the Legislative Reference Bureau assisted the Task Force in compiling the final recommendations of the Task Force into this report to the Legislature.

III. Goals and Objectives

At its first meeting on August 24, 2010, the Task Force established the following goals and objectives:

- Determine how to best provide law enforcement with additional resources to address illegal fireworks, especially on New Year's;

³ The quorum for this twenty-five-member task force appears to be thirteen members. Since Act 170 itself does not specify a number for the quorum, the Sunshine Law is invoked. Specifically, section 92-15, Hawaii Revised Statutes, provides that:

...a majority of all the members to which the board or commission is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board or commission is entitled shall be necessary to make any action of the board or commission valid...

- Determine what resources will be needed to increase the percentage of shipping containers inspected;
- Increase collaboration with the fireworks industry; and
- Define what are "illegal" fireworks and examine the differences between the illegal fireworks problem in the City and County of Honolulu and the other counties.

IV. Presentations at Public Meetings

Over the course of the public meetings, Task Force members and other stakeholders provided overviews of their respective areas of expertise relating to fireworks. The schedule of presentations was as follows:

- Hawaii Department of Agriculture -- August 24
- County police departments -- September 21
- Fireworks industry; Hawaii Department of Defense -- October 19
- Federal Aviation Administration; U.S. Coast Guard; U.S. Customs and Border Protection; Cultural organizations -- November 16
- Shipping industry -- December 13

A brief summary of the presentations follows. More in-depth information may be found in the meeting minutes and presentation materials posted at:

<http://www.capitol.hawaii.gov/session2010/studies/commIFTF.asp>

August 24 Meeting

On behalf of the Hawaii Department of Agriculture, Duane Okamoto, Deputy to the Chairperson of the Board of Agriculture, and Domingo Cravalho, Jr., Plant Quarantine Branch Inspection and Compliance Section Chief, provided an overview of the Hawaii Department of Agriculture Plant Quarantine Branch (HDOA), which is responsible for inspecting and clearing cargo to prevent the entry of invasive species. As a state agency with inspection authority, HDOA's example may provide some insight into issues and challenges that may also relate to cargo inspections targeted at fireworks.

The presenters noted that because nearly ninety per cent of Hawaii's consumer goods are imported, there are ample ways for invasive species to be transported into the State. HDOA

collaborates with federal agencies to inspect items entering the State, focusing on domestic cargo while federal agencies inspect items entering the State from foreign countries. The presenters indicated that the establishment of a joint inspection facility would facilitate cooperation and communication between the state and federal agencies.

HDOA bases its inspection of containers on a risk assessment matrix of cargo. The presenters stated that consolidated cargo containers are especially problematic for HDOA. When the contents of a container are described as "freight of all kinds," HDOA relies upon the company that deconsolidates the shipment after arrival to contact HDOA if agricultural products are found.

September 21 Meeting

The Task Force heard presentations from the county police departments as follows:

Hawaii Island

County of Hawaii Police Chief Harry Kubojiri and Fire Chief Darryl Oliveira presented a report of police and fire department statistics for fireworks incidents from 2005-2010, involving either illegal fireworks or illegal uses of legal fireworks. The report indicated that fireworks complaints rose dramatically in 2006 from the year before and have held steady in recent years. The most common fireworks complaints in Hawaii County involve aerial fireworks, noise, times of use, and health concerns relating to smoke, child endangerment, and traffic safety.

It was noted that Hawaii County lacks sufficient resources for fireworks enforcement, especially for dates such as New Year's Eve. In addition, current fireworks licensing fees do not generate enough funding for enforcement.

Maui

Assistant Chief Danny Matsuura of the Maui County Police Department presented statistics for fireworks-related calls to Maui police from 2005 through 2010, excluding cases classified as endangerment of a minor or under other offenses. The number of incidents increased dramatically over those years, although most of these calls did not generate criminal cases. There have been more police warnings issued than arrests made on Maui. Assistant Chief Matsuura noted that by the time police arrive at the scene of a fireworks incident, the offenders are usually gone.

Assistant Chief Matsuura also stated that there needs to be consistency between various county ordinances and state laws on fireworks, to make enforcement easier and more effective.

Kauai

In contrast to the situation in other counties, Police Chief Darryl Perry of the Kauai County Police Department indicated that Kauai does not have a huge fireworks problem. This is especially true in comparison with Oahu. From 2006-2010, there have been only 465 total fireworks calls made, resulting in 1 fireworks-related arrest and 2 citations, both in 2009. Most calls resulted in warnings issued rather than citations.

Chief Perry noted that the number of fireworks incidents have been relatively few in relation to the overall calls to Kauai police. Furthermore, calls involving more serious crimes routinely receive priority over fireworks-related calls.

Oahu

Major Michael Moses of the Honolulu Police Department (HPD) provided statistics for fireworks incidents from New Year's Eve 2005 through 2009, and July 4th in 2006 through 2010. The New Year's Eve statistics indicated that while the number of arrests for fireworks incidents remained consistently scant in all covered years (between 1-3 per year), the number of citations increased dramatically from 14 in 2008 to 93 in 2009. There was also a noticeable increase in reported fireworks incidents, from 1,361 in 2008 to 1,840 in 2009.

There were considerably less fireworks incidents reported to police for July 4th as compared to New Year's Eve. Reported incidents on July 4th remained below 400 in each of the last 3 years, and there were no arrests in the last four years. No more than 11 citations were issued in each year since 2006.

Major Moses indicated that the main challenges HPD has encountered in addressing fireworks violations include the high burden of proof required for criminal convictions, an insufficient amount of staff to field fireworks calls and to conduct forensic analyses of seized fireworks, limited and expensive facilities to store seized fireworks, and limited authority to inspect cargo containers. For example, at one time, a lack of adequate resources resulted in HPD not having trained and certified experts to conduct necessary chemical tests and analysis of fireworks to prove a substance illegal under statutory provisions. (HPD now has several trained and certified personnel.) It was also noted that fireworks offenses differ from drug trafficking or other organized crime, in that many violators are friends, family members, or neighbors. This results in a lack of community cooperation in identifying illegal importers and distributors.

Major Moses also noted that past HPD strategies to address fireworks have been largely unsuccessful. For example, HPD experimented with having each patrol district dedicate officers exclusively to fireworks enforcement, but the officers would often get diverted to other calls with higher priority. HPD has also tried concentrating officers in fireworks "hot spots" (i.e., areas in which a greater concentration of complaints have been received in the past) but the wide range of areas were difficult to cover. Finally, HPD encountered no violations after sending undercover officers to purchase fireworks without permits from licensed vendors.

HPD also stated that while developing intelligence and leads through cooperation with state and federal agencies can be beneficial, the entire process of prosecuting fireworks violators takes a long time. Even when significant arrests occur, they are so few and far between that the public forgets about them and the arrests lose their preemptive effect.

Strategies to increase resources and target them toward enforcement were discussed, but many are problematic. For example, assigning police officers to a law enforcement task force to patrol for fireworks violations could require significant overtime pay on top of regular pay. To address this concern, a suggestion was made to use volunteers. However, law enforcement officials noted their concern with using volunteers from the public in a fireworks law enforcement role. Such volunteers would be unarmed and lack the training necessary to deal with potentially dangerous and confrontational fireworks situations. Prosecutors may also object to using non-trained volunteers to testify in fireworks cases. There are also concerns voiced about using volunteers in non-confrontational roles in which they merely patrol areas and report to police what they witness because, as a practical matter, increasing the volume of complaints received by police on New Year's Eve would only strain police dispatch resources, as most of the calls would occur within a 4-hour time frame. Finally, use of members of the National Guard was discussed, but it was noted that their involvement would be limited to national or state emergencies.

October 19 Meeting

Presentations from the Fireworks Industry

Jerald Farley, a representative of the consumer fireworks industry, presented background information on fireworks that included a history of fireworks use, legal definitions, key terms and categories of fireworks, agencies that regulate fireworks, a history of fireworks regulation in Hawaii, and requirements for consumer fireworks construction and labeling.

Mr. Farley emphasized that the main issue regarding fireworks violations is the constant supply and rampant illegal use of aerial fireworks. There are also illegal uses of display fireworks and homemade, improvised explosive devices.

He stated that statistics can be misleading and should be cautiously considered, noting that the fireworks statistics reviewed by the Task Force did 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.

Mr. Farley cautioned against fireworks bans, stating that it has never been proven that a complete fireworks ban would be easier to enforce. He said that bans encourage otherwise law-abiding citizens to break the law to celebrate their heritage, religious beliefs, or cultural values with fireworks. In addition, restricting the supply of all fireworks does not mean restricting the supply of illegal fireworks. The solution, he said, 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. Similarly, 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.

Mr. Farley indicated that 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. He noted that 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. Mr. Farley urged focusing on fireworks suppliers rather than users, noting that 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.

Chad Cloutier, also of the fireworks industry, presented 2010 estimates for the number of fireworks importers, wholesalers, and retailers statewide. He also reviewed the history of the legal fireworks industry in Hawaii, noting that, prior to 1994, county ordinances did little to prohibit the sale of illegal fireworks and the fireworks industry became known as a way to make fast, easy money. Since then, changes to fireworks laws have 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. Eventually, individuals found a way to sell firecrackers illegally. In 2009, an estimated 3,000 counterfeit permits appeared in the fireworks market. 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.

Mr. Cloutier indicated that as a result of the recently passed consumer fireworks ban by the City and County of Honolulu, fireworks-only wholesalers will leave Oahu and some may leave the State entirely. Brokers (importers of goods besides fireworks) will adapt by relying more on their core business, because fireworks are a side business for them. Similarly, retailers will adapt by selling items that are still legal. In addition, the Neighbor Islands will likely see an increase in the cost of fireworks, due to a limited supply of legal consumer fireworks being imported to those counties allowing the sale of fireworks.

The new county law will also affect firecracker sales and use on Oahu. Mr. Cloutier said that because firecrackers will be the only type of consumer fireworks available on Oahu, the firecracker market may grow and be sold under more brand names, while firecracker prices may increase. There may be more firecracker permit sales, mostly on Oahu. The illegal counterfeit permit firecracker market and resales of firecrackers and permits will likely increase as well.

Mr. Cloutier recommended allowing all Hawaii residents statewide to purchase non-aerial consumer fireworks and firecrackers, along with tougher enforcement to deter sellers of illegal fireworks.

Civil Defense

Dolores Cook of the Hawaii Department of Defense provided an overview of the State Civil Defense, Homeland Security Program, which supports implementation of State Homeland Security Strategies to address identified needs to prevent, protect against, respond to, and recover from acts of terrorism and other catastrophic events. Ms. Cook indicated that Homeland Security Program grants for Hawaii in fiscal years 2008 through 2010 average nearly \$12 million per fiscal year.

Ms. Cook also noted that the Port Security Grant Program provides funding for the protection of critical port infrastructure from terrorism. The purpose of the program includes protection of ports from attacks using explosives and non-conventional threats that could cause major disruption to commerce. State Civil Defense is the designated fiduciary agent for these grants, and the state Department of Transportation is the sub-grantee/recipient of funds.

Ms. Cook stated that recent trends for the Homeland Security Grant Programs include increased requirements, shrinking funds, and state fund-matching requirements.

November 16 Meeting

Federal Aviation Administration

Velma Fish and Joseph Dietrick of the Federal Aviation Administration (FAA), Hazardous Materials (HAZMAT) Division noted that their agency's objective is the safe and secure transportation of hazardous materials in air commerce. The HAZMAT Division's responsibilities include making unannounced visits to air carriers of hazardous materials and responding to incidences, discrepancies, spills, and broken packages -- all of which may lead to investigations.

The Division also engages in considerable public outreach. With relevance to fireworks, 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. In addition, FAA answers questions on regulations and receives complaints.

The presenters stated that insufficient training accounts for approximately seventy-five percent of air carrier violations. 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.

Fireworks are at the top of the list of the HAZMAT Division's "problem" materials. The presenters noted that undeclared or improperly packaged fireworks containers are frequent

concerns. FAA HAZMAT violations are often detected after incidents occur, such as containers breaking open, although the Transportation Security Administration will soon be inspecting all air cargo, with a focus on explosives and improvised explosive devices. The presenters observed that once fireworks importation by ship is effectively regulated, illegal importers may attempt to transport more fireworks by air carrier.

U.S. Coast Guard and Customs and Border Protection

Coast Guard. Dustin Widman of the Coast Guard summarized the legal sources of the Coast Guard's inspection authority and reviewed shipping container traffic thru Hawaii from 2006-2008, including container traffic by island. Oahu is the site of the vast majority of Coast Guard inspections.

Mr. Widman noted that a Coast Guard detail must supervise the loading and unloading of certain explosives and other hazardous materials. The total number of explosive loads requiring supervisory details between 2007 and 2010 indicate doubling or more of such loads year-to-year from 2008 to 2010.

The Coast Guard's future plans include continuing to partner with agencies and improve targeting methods to identify illegal imports by working within intelligence communities to focus on repeat offenders.

Customs and Border Protection. Hilda Montoya of the U.S. Customs and Border Protection explained that Customs and Border Protection screens all international containers, either via paperwork or physical inspections. A mobile x-ray unit is used to inspect foreign shipments, although not all containers are x-rayed; it is discretionary and applied to specific containers for specific reasons. All containers are checked for radiation before leaving the container yard. Ms. Montoya also noted that Customs has no jurisdiction over domestic containers.

Cultural Organizations

Ernest Loo and Robert Wong, appearing on behalf of local cultural organizations, explained the religious and cultural uses of fireworks. They noted that fireworks have been used in Hawaii for over 150 years 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.

Prohibiting fireworks use will significantly constrain existing Chinese cultural practices and customs in Hawaii. The presenters observed that it is unfair to punish the majority for the actions of a few who abuse fireworks use and urged that fireworks regulations be carefully

crafted to allow their use during legal hours and in controlled environments. Limited exceptions from current restrictions would help accommodate cultural and religious practices while maintaining reasonable controls over fireworks use.

December 13 Meeting

Vic Angoco of Matson Navigation Company, Inc., and Mar Labrador of Horizon Lines provided an overview of the shipping industry in Hawaii. They explained that shipments first arrive at Honolulu ports and are then barged out to the Neighbor Islands. The volume of shipping containers at Honolulu Harbor in fiscal year 2010 totaled over 200,000 annually, with approximately 70,000 containers (one-third) destined for the Neighbor Islands.

The presenters noted that The Adherence Group (TAG) is hired by shipping carriers as a third-party inspector to ensure that cargo complies with shipping tariffs -- i.e., freight rates charged according to the nature and quantity of the cargo. The authority to inspect shipping containers flows from shipping agreements. Containers are randomly selected for TAG inspections, which are limited to checks for cargo misdescriptions. If misdescriptions are discovered, the shipment is re-rated and a penalty applied. Flagged customers may also be subjected to subsequent inspections.

TAG inspections have limited use in searching for illegal fireworks. TAG inspectors do not have the expertise to distinguish between legal and illegal fireworks. In addition, TAG inspections are limited to paperwork evaluations or opening shipping containers to visually check whether the contents match descriptions, but without actually opening the individual packages within the container.

The presenters also noted the general challenges of proposals to inspect all domestic containers. Time-consuming inspection processes may delay tight turnarounds for barging shipments to Neighbor Islands and other business schedules. Increasing the number of shipping containers that are emptied for inspections would result in delays from having to unpack and re-pack containers. In addition, re-packing containers can be difficult because the original packers of a container, such as freight forwarders, tend to be more adept than inspectors in packing containers to their fullest. Packages may also break from being handled while a container is unpacked and re-packed.

Such delays from increased inspection requirements could impair the efficient flow of commerce. Major retailers are highly reliant on just-in-time delivery of goods and quick restocking of shelves and inventory. In particular, big-box retailers typically do not have warehouses to store goods prior to shelving; hence shipments go straight to their store locations. The presenters indicated that some businesses may not have established operations in Hawaii without the current on-time delivery of goods and critical logistical supply chain.

Inefficiencies in commerce stemming from delays caused by heightened inspection processes ultimately result in higher costs for businesses and consumers. To illustrate this point, the presenters referenced a 2007 study estimating that failure to make \$600 million in harbor

upgrades would result in losses of \$50 billion by 2030 due to inefficiencies in the delivery of goods. Public safety must therefore be balanced against commerce to ensure imports to Hawaii are not unnecessarily restricted or that consumer costs are needlessly driven up.

The presenters recommended increasing funding for enforcement. Many fireworks violations involve the illegal use or diversion of fireworks brought in legally, and more inspections will not help this. They observed that increasing the severity of penalties for fireworks violations would provide better deterrents.

Increased public outreach and education were also suggested as alternatives to shipping container inspections, focusing on preempting violations through greater awareness of fireworks requirements, prohibitions, and penalties.

The presenters also recommended further studying the effectiveness and related costs of container inspections. They contended that it is unfair to make comparisons to other forms of inspections that have been successful for other purposes (e.g., TAG, agricultural, and Customs and Border Protection) because inspections to search for fireworks are different. For example, TAG inspections only look for misdescriptions of cargo by looking at packages without opening them, whereas fireworks inspections would likely require more thorough searches. Similarly, agricultural inspectors are looking for pests, which are easier to find than fireworks that are purposely being disguised.

Based on the foregoing concerns, the presenters observed that an aggressive shipping container inspection program for fireworks would probably not be feasible. They noted, however, that shipping carriers are open to any further studies that may refute the industry's position that increased inspections are problematic.

V. Issues and Challenges

(1) Establishing a Clear Statement of the Illegal Fireworks Problem

Fireworks violations are varied and involve both illegal importation of fireworks or explosives and legal fireworks that are sold or handled illegally. These include but are not limited to:

- Illegal aerial or display fireworks imported for sale to consumers;
- Consumer fireworks that are legally imported but are subsequently used in a manner that falls outside of the permit parameters;
- Fireworks, such as aerial devices for use in a fireworks display, that may be legally imported but are diverted into the hands of consumers;
- Fireworks that are imported, stored, sold, or possessed without a proper license; and

- Improvised explosive devices or other illegal devices, such as bombs or other explosive devices that sound like fireworks.

A greater understanding of the various types of fireworks violations is needed so that resources and efforts to enforce fireworks laws can be focused efficiently. Clarification of the illegal fireworks problem would also help the public comply with fireworks requirements and restrictions.

(2) Inadequate Resources for Enforcement

Ineffective Deterrents

Ongoing sales, possession, and use of illegal fireworks, along with other fireworks violations every year, seem to indicate that current penalties, although already severe, may not discourage illegal fireworks activity without effective enforcement. Without effective deterrents in place, the type and frequency of fireworks violations that law enforcement must deal with are unlikely to change.

Insufficient Resources and Funding

HPD has stated that it has insufficient staff to handle the overwhelming number of violations occurring island-wide. It is also uncertain how much of a difference more resources would actually make in enforcement because fireworks violations involve many different issues, from investigations to arrests, seizure, storage, convictions, and disposals.

Other Crimes are Given Priority

Providing additional personnel to address fireworks enforcement appears problematic. Even if police personnel dedicated to fireworks enforcement is increased, more serious crimes will always receive priority over fireworks complaints. For example, HPD had each patrol district dedicating officers exclusively to fireworks enforcement. In practice, however, these officers would often get diverted to other calls with higher priority.

Difficulty Obtaining Evidence

Rather than involving organized crime, fireworks offenses often involve individuals in isolated incidents. Persons who may be in a position to know about fireworks violations are often friends, family members, or neighbors. Thus, fireworks offenses do not generally give rise to "tips" to law enforcement similar to those frequently received in relation to drug offenses.

(3) Prosecution

Difficulty Meeting Burden of Proof

Criminal prosecution of fireworks offenses presents legal and practical issues that complicate efforts to effectively address the problems caused by fireworks. For one thing, the high burden of proof in criminal cases -- proof beyond a reasonable doubt -- requires more extensive investigations than may be required for administrative or civil proceedings. For example, evidence that fireworks were merely in the vicinity of the suspect or the suspect's residence is not sufficient in a criminal prosecution to prove possession -- an essential element of many fireworks offenses under state law. In addition, state constitutional requirements relating to privacy, generally, and search and seizure, in particular, are more stringent than those found under the federal constitution. State statutory requirements relating to, for example, wiretaps are also more stringent. These higher standards may make it more difficult to obtain the evidence necessary to meet the burden of proof in a criminal case.

Prosecutions Have Been Ineffective Deterrents

The difficulty of successfully prosecuting state criminal fireworks cases has resulted in few actual convictions. Furthermore, the entire process of prosecuting fireworks violators can take a long time. Even when significant arrests occur, they are so few and far between that the public forgets about them and they lose their preemptive effect.

The need to use limited resources efficiently may also affect the likelihood of federal prosecutions. For example, federal prosecutors will not usually go after a person setting off just one or two illegal fireworks. Moreover, the decision whether to pursue a federal prosecution depends upon factors such as an offender's criminal history, information the offender can offer, and the potential to turn offenders against higher-ups in the criminal food chain.

(4) Storage and Disposal of Seized Fireworks

Seized fireworks (e.g., aerial fireworks, display fireworks, and improvised explosive devices) accumulate in Hawaii for a number of reasons. It is usually difficult to ship fireworks back to the place of origin because of disputes over issues such as who pays for the return shipping costs. Also, storage of fireworks is often preferable to transporting them, which carries a risk of triggering explosions. In addition, seized fireworks are often stored as evidence until criminal cases are adjudicated or otherwise disposed of.

Storage can be expensive. Rental costs for storage sites are substantial, and seized fireworks may need to be stored for years in some cases pending adjudication. Furthermore, appropriate storage facilities may not be readily available. Storage sites must be large enough to accommodate the amount of seized fireworks and meet specifications for safe storage. According to HPD, the only fireworks storage available to it that meets specifications is a small bunker that costs \$1,500 per month to rent.

Improperly stored fireworks may tend to pose a risk of exploding and may dry out over time, causing packaging to deteriorate and powder to leak out. Water-doused fireworks are even more prone to exploding because their contents become unsettled.

Fireworks disposal is costly and complicated by federal safety protocols and Hawaii's environmental laws. Disposals are restricted to above-ground facilities that must comply with pollution laws, and H-Power will not dispose of fireworks because of clean-air standards. Disposal also requires the expertise of bomb technicians who may have to be flown in from the mainland, and poses a danger to those conducting disposals.

(5) Inspections

Numerous Agencies with Varying Degrees of Inspection Authority

Cargo searches for illegal fireworks are hindered by the limited authority of relevant regulatory agencies to conduct inspections. For example, the state Department of Transportation has no inspection authority. This raises the issue of whether effective searches for illegal fireworks may require further examination into whether the State should have greater domestic inspection authority beyond just agricultural inspections. Furthermore, cargo inspections by the state Department of Agriculture are limited to looking for pests. Local police authority to inspect cargo containers is limited to only those containers for which police have probable cause to obtain search warrants or when there are exigent circumstances. The Coast Guard inspection program is focused on ensuring that hazardous materials are transported properly, while Customs and Border Protection inspects foreign shipments only. The FAA HAZMAT program employs a risk-based, trend-driven approach to inspections that targets companies that appear to be responsible for multiple HAZMAT incidents for air cargo, while the Transportation Security Administration handles security screening of cargo.

Aside from dealing with the limits of their respective inspection authority, agencies may conduct their inspections depending on the availability of personnel and other resources, sometimes requiring inspections to be targeted at risk-based packages and suspected threats. However, Fourth Amendment issues may prohibit such inspections if there is no reasonable basis to scrutinize a container, such as a package declared as HAZMAT. Hence, inspectors often rely upon accurate package labeling and declarations in shipping paperwork. This makes discoveries of illegal fireworks extremely challenging since these goods are purposely mislabeled and undeclared to avoid detection.

Issues in Cargo Inspections

Perhaps the most daunting challenge for air and maritime cargo inspections is the sheer amount of domestic cargo requiring processing. Realistically, only a very small percentage of the roughly 200,000 shipping containers that arrive in Hawaii every year will contain illegal fireworks. The large volume of shipping containers entering Hawaii makes it financially and

logistically challenging to conduct searches for illegal fireworks. Until technology allows inspection of all shipping containers at a rate that accommodates the flow of commerce, new strategies are needed to target cargo inspections in a way that is both efficient and effective.

There are deficiencies in both air and shipping cargo inspections that provide avenues for illegal fireworks to enter Hawaii. Although the Task Force was informed that the majority of air cargo at some point in time is screened for drugs and explosives, fireworks are still coming into Hawaii undiscovered until packages are accidentally broken and their contents revealed.

With regard to shipping cargo inspections, additional equipment to inspect shipping containers is problematic because of a lack of designated spaces to station equipment. Congested terminal facilities and truck traffic may make inspections difficult. More significantly, as inspections increase, so do inefficiencies in commerce, which ultimately leads to higher costs for consumers. Time-consuming inspection processes may delay tight turnarounds for barging shipments to Neighbor Islands and other business schedules. Delivery of cargo to Neighbor Islands can begin less than a day after the cargo arrives in Honolulu from the mainland (16-19 hours). Furthermore, major retailers are highly reliant on just-in-time delivery of goods and immediate unloading and shelving of goods. Hence there is a need to balance safety concerns against efficient commerce to ensure that imports to Hawaii are not unnecessarily restricted or that consumer costs are not needlessly driven up.

Although the Task Force considered dog inspections conducted at the originating end of shipments, this would be logistically difficult because there is a short time window for consolidating containers and loading them onto ships. Accordingly, this would still result in delays and inefficiencies that would affect commerce. Further, it would be difficult to manage because shipments originate from all over the country.

Freight Forwarders

One suggestion made to target shipping cargo inspections and avoid delays and inefficiencies at the harbors was to use dogs to detect fireworks at freight forwarder locations after recipients pick up, open, and unload containers. The inspections would occur at some point after cargo is brought into warehouses for unloading and separation. The rationale is that freight forwarders handle the shipment of packages from many different clients, often consolidating packages from multiple sources into shipping containers. This collection of packages, many of which may contain personal effects shipped by individuals, provides ample opportunities for illegal fireworks to be brought into Hawaii. The purpose of conducting random inspections at freight forwarder locations would be to put illegal fireworks importers on notice that their packages may be subject to random inspection at any time and thus establish an effective deterrent.

Feedback from local freight forwarders on this inspection proposal brought several issues and concerns to light. For example, freight forwarders process not only personal cargo, but also commercial shipments. Shipping containers used by freight forwarders could therefore include a mix of packages shipped by individuals and businesses. Because it is commonly believed that

most illegal fireworks are shipped via personal packages, one consideration may be to figure out the percentage of freight forwarder shipments that are personal packages that would be the main targets of a random inspection program. It was noted that there are other types of shipping forwarders, different from freight forwarders, that specialize in shipping personal packages.

Freight forwarders also noted that if inspections are conducted at their locations, then common carriers should also be subject to the same scrutiny because consumer fireworks that were recently banned in Honolulu are still legal on the Neighbor Islands, and shipments handled by common carriers between islands could therefore contain fireworks heading back to a black market in Honolulu.

Other considerations include the frequency and timing of inspections with regard to potential disruptions of freight forwarder operations, although one freight forwarder noted that it was largely able to adjust to previous dog inspections for drugs conducted under a federal task force program. Another concern is that, because freight forwarders handle a lot of fireworks shipments on a seasonal basis, dogs searching for fireworks may be thrown off by the scent of fireworks residue from previous shipments or from the scent of firecrackers or other pyrotechnic devices that still may be legally imported into Honolulu.

Lack of Technology to Specifically Detect Fireworks

While the Task Force was told that at some point in the future, the Transportation Security Administration will inspect all air cargo, focusing on explosives and improvised explosive devices, there is no commercially viable technology yet to specifically detect fireworks in air or maritime cargo.

Port security has been enhanced only since the terrorist attack on September 11, 2001, and is behind the curve compared to airports. According to the Department of Transportation, there are ongoing efforts to integrate surveillance technologies with existing efforts for screening containers, but there are challenges regarding lack of space and resources.

This means that for now, cargo inspections that turn up illegal fireworks are mainly limited to: visual inspections and checks for cargo misdescriptions that are unlikely to find well-disguised contents hidden in a sea of packages; and occasional fluke discoveries from broken containers.

Dogs can be trained and used to detect fireworks in cargo and would cost approximately \$70,000 to \$80,000 per year for each dog with a full-time handler, excluding startup costs. The Task Force was informed that while the federal Port Security Grant Program includes possible funding for dogs and handlers, only one dog may be purchased each year.

(6) Cooperation Between Stakeholders

Greater collaboration and communication among the various county, state, and federal agencies and other affected parties, such as the shipping and fireworks companies, will keep every party involved and eliminate communication gaps at each stage of fireworks enforcement.

Existing informal arrangements between fireworks stakeholders demonstrate the feasibility of cooperation. For example, fireworks importers or consignees must notify the appropriate county official (for example, on Oahu, it is the City and County fire chief) of incoming fireworks shipments. Shipping companies will be required to provide this notification effective January 2, 2011, pursuant to the new Honolulu fireworks ordinance.⁴ However, shipping carriers have already been doing this voluntarily. In addition, it was indicated to the Task Force that if a shipping party or container gets flagged for further review, authorities are informed. With regard to air cargo, the FAA has a memo of understanding with carriers to have them notify FAA if they suspect a container with prohibited goods. This kind of cooperation from the shipping industry helps agencies identify risks based on actual leads.

(7) Consistency in Fireworks Laws

Inconsistency among county laws and enforcement may be problematic. Act 170, Session Laws of Hawaii 2010, amended state law to allow counties to enact fireworks restrictions that are more stringent than state statutes.⁵ In addition, the types of actions that constitute fireworks violations vary widely, from sale or possession and use of illegal fireworks to illegal sale or use of legal fireworks. This lack of consistency and clarity in the law creates confusion and makes both compliance and enforcement difficult. Effective enforcement may hinge upon all counties and the State being consistent in the provisions and implementation of their respective laws and ordinances on fireworks.

VI. Recommendations

(1) Increase Fireworks Fees and Fines

Effective Deterrents

Increased fines may discourage illicit fireworks activities, if the consequences are sufficiently harsh. Task Force members indicated that current FAA penalties are an example of effective deterrents. There are separate FAA violations that can all stem from the same case, including violations relating to paperwork, training, and packaging, each subject to thousands of dollars in fines. Violations of air carrier restrictions on hazardous materials carry civil fines of up to \$50,000 per violation and criminal fines of up to \$500,000 per violation plus prison time. In 2009, FAA imposed over \$3 million in fines for HAZMAT violations.

⁴ Honolulu Ordinance 10-25.

⁵ See §132D-17.5, Hawaii Revised Statutes

There may also be a preemptive effect when violators who have faced penalties are willing to warn and educate others from their experience. For example, the Task Force was told by its FAA members that 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.

Decreases the Amount of Fireworks Entering Hawaii

Increasing the penalties for the illegal import, possession, sale, and use of fireworks may help avoid the mounting piles of illegal fireworks that are seized and later stored or destroyed. Penalties, if severe enough, will lessen supply. Consumer demand drives illegal fireworks importation.

Funding for Enforcement, Education, and Industry Monitoring

Fines for fireworks violations and fees for licenses and permits can provide resources for addressing illegal fireworks. The revenue can be specifically directed toward promoting education and training on appropriate uses of fireworks, enforcement of fireworks laws, and government monitoring⁶ of the fireworks industry.

(2) Decriminalize Fireworks Offenses in Favor of Civil Fines to Make Enforcement Easier (Suggested by the Fireworks Industry)

Civil citations and fines are easier to impose than criminal sanctions because they eliminate the challenge of the high burden of proof in criminal cases. Civil citations may also obviate the need to store fireworks as evidence for criminal prosecutions.

(3) Increase Random Inspections

Consider Expanding Inspection Authority

Effective searches for illegal fireworks will require greater state domestic inspection authority beyond agricultural inspections. Random inspections targeting illegal fireworks should occur by giving state or county agencies with relevant jurisdiction over fireworks and the importation thereof, the authority to inspect cargo containers at the harbors and other areas where cargo is unloaded.

⁶ Section 132D-11, Hawaii Revised Statutes, requires license fees for fireworks importers and sellers to be used solely by each county fire department to pay for an auditor of fireworks tasked with ensuring that sales of fireworks or articles pyrotechnic are made only to appropriate parties.

Focus Cargo Inspections to Make Them More Manageable

Data collection and analysis from shipping companies; freight companies; state, county, and federal inspectors; the respective fire departments and law enforcement agencies; and other entities who encounter illegal fireworks at the county, state, and federal levels can be collected, shared, and used to pinpoint where the risky cargo loads are and target them for selective screening. Data also can be used to pare down the number of packages for inspection. Intelligence collected from fireworks incidents and inspections can be forwarded to other agencies for enforcement purposes.

Shipping container inspection programs can also be made more manageable if established businesses and military shipments are excluded from inspection, focusing instead on suspect containers and shippers, as well as mixed, consolidated cargo that is shipped by many different individuals, such as cargo handled by freight forwarders.

Inspections could be conducted after recipients pick up their shipments from the harbor to avoid congestion at the ports. Random inspections at freight forwarder and common carrier locations after they pick up, open, and unload containers would help avert congestion and inefficiencies at the ports. Dogs trained to detect explosives could be run through packages at that point. This is similar to the "airport model" in which inspections are conducted at the final destination (baggage claim).

(4) Consider Alternatives Such as Education and Training

Education on appropriate consumer uses of fireworks would promote compliance with the law. Targeted education efforts, similar to public education campaigns for the seatbelt law, can be ramped up during holiday periods. The varied nature of fireworks violations can make relevant laws confusing and hence compliance with these laws difficult. Public outreach and education may provide alternatives to shipping container inspections by focusing on preempting violations through greater awareness of requirements, prohibitions, and penalties.

Furthermore, awareness of fireworks restrictions and requirements would be especially important if relevant laws are made more stringent, such as by increasing fees and fines as previously suggested.

(5) Promote Cooperation Between Stakeholders

Collaboration Between Affected Parties

If targeted inspections are to be implemented, all relevant parties should be included in the discussion to ensure that everyone is on the same wavelength about any new inspection requirements. This will increase compliance, cooperation, and awareness, thereby preempting violations.

Similarly, cooperation and coordination with law enforcement and prosecuting agencies will help ensure that they would be willing to pursue cases arising from, for example, any new inspection programs.

Establish a Reward System Similar to CrimeStoppers to Encourage People to Report Fireworks Violations

Providing incentives for the general public to report fireworks violations would help law enforcement identify and track illegal importers and distributors. It would also assist law enforcement with violations of laws on fireworks use, which are often difficult to prove without an eyewitness.

The CrimeStoppers Honolulu Program allows anonymous callers to give information about a potential crime to law enforcement without the prospect of retribution. By offering rewards for information leading to indictment or arrests, the program encourages otherwise reluctant callers to provide information. A similar program to encourage the submission of leads to police regarding illegal fireworks activities may promote community awareness and vigilance of the fireworks problem, empower community members to make a difference, and foster relationships between communities and police to make enforcement of fireworks laws easier.