

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Supporting Statement
OMB No. 1140-0042

Statement of Process - Marking of Plastic Explosives for the Purpose of Detection

A. Justification

1. Public Law 104-132, 110 Stat. 1214, the Antiterrorism and Effective Death Penalty Act of 1996 ("the Act") was enacted on April 24, 1996. Title VI of the Act, "Implementation of Plastic Explosives Convention," added new requirements to the Federal explosives laws in 18 U.S.C. Chapter 40. Section 607 of the Act states that, except as otherwise provided, the amendments made by Title VI shall take effect 1 year after the date of enactment, i.e., on April 24, 1997. The stated purpose of Title VI is to fully implement the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991 ("the Convention").

The Convention represents an important achievement in international cooperation in response to the threat posed to the safety and security of international civil aviation by virtually undetectable plastic explosives in the hands of terrorists. Such explosives were used in the tragic destruction of Pan Am flight 103 over Lockerbie, Scotland, in December 1988, and UTA flight 772 in September 1989. In the aftermath of these bombings, the international community moved to draft a multilateral treaty to ensure that plastic explosives would thereafter contain a chemical marking agent to render them detectable.

The Act amended the Federal explosives laws in 18 U.S.C. Chapter 40 by adding new subsections (l)-(o) to section 842. Section 842(o) makes it unlawful for any person to manufacture any plastic explosive that does not contain a detection agent. Section 842(m) makes it unlawful for any person to import or bring into the U.S. or export from the U.S. any plastic explosive that does not contain a detection agent. The provisions of this section do not apply to the importation or bringing into the U.S. or the exportation from the U.S. of any plastic explosive that was imported or brought into or manufactured in the U.S. prior to the date of enactment of the Act by or on behalf of any agency of the U.S. performing military or police functions (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the Convention enters into force with respect to the U.S. or by or on behalf of the National Guard of any State, not later than 15 years after the Convention enters into force with respect to the U.S.

Section 842(n) provides that it is unlawful for any person to ship, transport, transfer, receive, or possess any plastic explosive that does not contain a detection agent. Exceptions to the prohibitions are provided for any plastic explosive that was imported or brought into, or manufactured in the U.S. prior to the date of enactment of the Act by any person during the period beginning on that date, i.e., April 24, 1996, and ending 3 years after that date, i.e., April 24, 1999. Exceptions to the prohibitions are also provided for any plastic explosive that was imported or brought into, or manufactured in the U.S. prior to the date of enactment of the Act by or on behalf of any agency of the U.S. performing a military or police function (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the marking of Plastic Explosives with respect to the U.S. Changes to the regulations are prescribed in § 555.180. In addition, to ensure compliance with the law, § 555.184(a) provides that a complete and accurate statement of process with regard to any plastic explosive or to any detection agent that is to be introduced into a plastic explosive or formulated in such plastic explosive shall be submitted by any licensed manufacturer or licensed importer, upon request, to the Director.

2. A complete and accurate statement of process with regard to any plastic explosive or to any detection agent that is to be introduced into a plastic explosive or formulated in such plastic explosive shall be submitted by any licensed manufacturer or licensed importer upon request, to the Director. The information contained in the Statement of Process is required to ensure compliance with the provisions of Public Law 104-132. The respondent will be required to record the acquisition of all taggant materials along with the quantity used in each batch and lot. Additionally, all batch/lot numbers must be recorded. This information will be used to ensure that plastic explosives contain a detection agent as required by law.
3. The Statement of Process is a written document that can be submitted by fax, email or mailed.
4. ATF uses a Subject Classification Code to identify duplication. Similar information is not available elsewhere for this information collection requirement.
5. ATF does not use any method to minimize the burden to small businesses since all entities regardless of size, are required by statute to complete this collection of information statement.
6. If this information collection was not conducted or is conducted less frequently there would be a threat posed to the safety and security of international civil aviation by virtually undetectable plastic explosives in the hands of terrorists.
7. This information collection is conducted in a manner consistent with 5 CFR 1320.6.
8. ATF consulted with the explosives industry with regard to this information collection. A 60-day and 30-day Federal Register notice was published in order to solicit comments from the general public. No comments were received.
9. No payment or gift is offered to the respondents. -
10. The responses are kept in a secure location and is handled by staff with special clearances. Confidentiality is not assured.
11. No questions of a sensitive nature are asked of the respondents.
12. The estimated number of respondents is 8 annually. The frequency of responses is quarterly. The total number of responses is 32. We estimate the respondent can retrieve the required information in approximately 20 minutes and complete the statement in an additional 10 minutes. This totals 30 minutes of reporting burden. The total burden associated with this information collection is 16 hours.
13. There is no startup cost or annual cost to the respondent.
14. There is no cost to the Federal Government.
15. There are no program changes or adjustments. There is no change in burden from the previous submission.
16. The results of this collection will not be published.
17. ATF does not request approval to not display the expiration date for OMB approval of the information for this collection.
18. There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods.

This information does not employ statistical methods.