

Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives Information
Collection Request
Supporting Statement
1140-0026
Report of Theft or Loss - Explosive Materials - ATF Form 5400.5

A. JUSTIFICATION

1. Necessity of Information Collection

The Organized Crime Control Act of 1970 added Chapter 40 to Title 18 of the United States Code (U.S.C), to reduce the hazards to persons and property arising from misuse and unsafe or insecure storage of explosive materials. Specifically, Title 18, U.S.C. § 842(k) makes it unlawful for any person who has knowledge of the theft or loss of any explosive materials from their stock, to fail to report such theft or loss to ATF and the appropriate local authorities, within 24 hours of the discovery.

According to 27 CFR § 555.30 (a) entitled *Reporting Theft or Loss of Explosive Materials*, “Any licensee or permittee who has knowledge of the theft or loss of any explosive materials from his stock shall, within 24 hours of discovery, report the theft or loss by telephoning 1-800-461-8841 (nationwide toll free number) and on ATF Form 5400.5, in accordance with the instructions on the form. Theft or loss of any explosive materials shall also be reported to appropriate local authorities.”

In an October 2017 recommendation, and a September 2018 response to an ATF Information Collection Request notice, the Institute of Makers of Explosives (IME) pointed out that ATF Form 5400.5 is not conducive to reporting explosive materials that did not function and cannot be retrieved, and recommended specific amendments to the form.

ATF is requesting approval to make the following amendments to ATF Form 5400.5, Report of Theft or Loss - Explosive Materials:

- Item 2: Creation of separate categories of “loss,” with check boxes along with a description and example scenarios
 - Theft
 - Loss – Failure to account for explosive materials - e.g., records do not match physical inventory
 - Loss – Explosives failed to function - e.g., avalanche explosives did not detonate and remain in a snowfield; seismic explosives did not detonate and remain in the ground; or explosives in blastholes did not detonate and fell into debris, but cannot be located (Complete only items 1 – 6, 7c – e, 8 – 12, 13c, 16, 16a, 17 and 18)

- Loss – Other – e.g., explosives fell off a truck while in transport; explosives were inadvertently left in a blasting area (Complete only items 1 – 6, 7c – e, 8 – 12, 13c, 16, 16a, 17 and 18)
 - Attempted Theft/Suspicious Activity
 - Supplement to previous report of theft or loss
- In addition, and in response to the IME’s concerns, two of the loss categories instruct the reporting party to respond only to certain additional and relevant items on the form, relieving them from the requirement to attempt to respond to inapplicable items.

2. Needs and Uses

The purpose of this information collection, ATF Form 5400.5, Report of Theft or Loss - Explosive Materials, is to notify ATF about the theft or loss of explosive materials and the details about such incidents. The information requested on the form is necessary to enable ATF to initiate a criminal investigation of the incident. Since 1976, the information gathered from these forms has been entered into a computerized national clearinghouse containing records regarding thefts, losses, and recoveries of explosive materials. The information compiled in this system also assists ATF in the administration of laws within its jurisdiction concerning the regulation of explosive materials, while facilitating the review of other pertinent information regarding the theft or loss of explosive materials.

3. Use of Information Technology

Currently, ATF Form 5400.5 can be submitted by electronic mail (email), fax or regular mail for processing. The e-fillable form is available on the ATF website for download and print, and can be digitally or electronically signed by individuals possessing these capabilities, and then electronically submitted to ATF at USBDC@atf.gov. The availability of this electronic reporting option for this information collection eliminates the public burden associated with completing, printing, and mailing the completed form by regular mail. However, smaller licensees and permittees who do not have internet access can still continue to mail or fax the form. An effort will also be made to explore additional opportunities to improve the existing electronic reporting capability for this collection, as funding permits.

4. Efforts to Identify Duplication

ATF uses a uniform subject classification system for forms to identify duplication and to ensure that any similar information already available cannot be used or modified, for the purpose of this information collection.

5. Minimizing Burden on Small Businesses

The reporting requirement for this information collection is the same for all explosives users and business owners, who are required to report the theft or loss of explosives, regardless of their size. ATF offers multiple reporting options, including electronic submission via email or fax, alongside regular mail. If a small business owner does not have internet access to electronically complete, sign, send a report to the ATF, they can submit it via mail or fax.

6. Consequences of Not Conducting or Less Frequent Collection

Pertinent investigative and recovery information about lost and stolen explosives would be unavailable without this information collection. 18 U.S.C. § 842(k) also makes it unlawful for any person, who has knowledge about the theft or loss of explosive materials from his stock, to fail to report such theft or loss within 24 hours of discovery. Without a form to report theft or loss of explosive materials, inaccurate or incomplete reports would emerge, thereby hindering ATF's public safety efforts. The existence of incomplete reports would also incur additional administrative costs to obtain the other relevant information via subsequent interviews. The penalty for violation of this section is a fine under Title 18, imprisonment for not more than one year, or both. In addition, 18 U.S.C § 844(p) requires a licensee or permittee who knows explosive materials have been stolen to report the theft to the Attorney General within 24 hours after discovery or face a \$10,000 fine, 5 years in prison, or both.

7. Special Circumstances

This information will be collected in a manner consistent with the guidelines in 5 CFR 1320.6.

8. Public Comments and Consultations

ATF responded to all comments received during the 60-day Federal Register notice period. A 30-day notice will be published in the Federal Register to solicit public comments.

9. Provision of Payments or Gifts to Respondents

ATF will not provide any payment or gift of any type to respondents.

10. Assurance of Confidentiality

In accordance with System of records notice (SORN) Justice/ATF-008 Regulatory Enforcement Record System FR Vol. 68, No. 16, Page 3558, January 24, 2003, the information collected on form ATF Form 5400.5, is reviewed by ATF officials and kept in a secured location. The computerized national clearinghouse is also a secure database. Confidentiality is not assured.

11. Justification for Sensitive Questions

No questions of a sensitive nature are asked.

12. Estimate of Respondent's Burden

There are 300 respondents associated with this collection. Each respondent will respond one time. It is estimated that it takes 1 hour and 48 minutes to complete this form. This includes the time it takes to accomplish a physical inventory, to identify the stolen or lost explosives by type, date shift code, size, percentage and other particulars relating to the explosives, site and situation. The total annual burden for this information collection is 540 hours.

13. Estimate of Cost Burden

It is estimated that approximately 80% of the respondents e-mail the form, while the other 20% fax the form to ATF. Since ATF has not received any forms by mail within the past two years, there is no public cost associated with this reporting process for this information collection.

14. Cost to the Federal Government

The Federal Government cost is estimated to be 0, as this form is available for free online and is e-fillable and can be electronically signed and submitted.

15. Reason for Change in Burden

There are no changes to the public burden associated for this information collection.

16. Anticipated Publication Plan and Schedule

The results of this collection will not be published.

17. Display of Expiration Date

ATF is not seeking approval to not display the expiration date.

18. Exception to the Certification Statement

There are no exceptions to the certification statement.

B. STATISTICAL METHODS

This collection does not employ statistical methods.