



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Washington, DC 20226

www.atf.gov

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OPEN LETTER TO ALL FEDERAL LAW ENFORCEMENT AGENCIES AND MILITARY COMPONENTS

The purpose of this letter is to remind all Federal law enforcement agencies and military components of certain provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (“the Act”) pertaining to plastic explosives that do not contain a detection agent. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is charged with enforcing the plastic explosives provisions of the Act.

The Act, which passed on April 24, 1996, generally makes it unlawful to manufacture, import, export, ship, transport, transfer, receive, or possess any plastic explosive that does not contain a detection agent. While the Federal explosives law at 18 U.S.C. § 845(a), and implementing regulations at 27 CFR 555.141 grant Federal agencies and the U.S. military certain exemptions from the explosives laws and regulations, these exemptions do not apply to the plastic explosives laws and regulations found under 18 U.S.C. § 842(l), (m), (n), (o) and 27 CFR 555.180 – 555.186.

Under the Act, persons in possession of unmarked plastic explosives were provided with a 3-year “use-up” period for unmarked plastic explosives manufactured or imported before April 24, 1996. The materials were to be used, destroyed, or marked within 3 years of passage of the Act, or by April 24, 1999. Therefore, all possessors of unmarked plastic explosives—except for the military and Federal law enforcement agencies—were required to use, destroy, or mark their plastic explosives with a detection agent by that date.

The Act also provided for a 15-year use-up period for the military and Federal law enforcement agencies, beginning on June 21, 1998 (the date of entry into force of the Convention on the Marking of Plastic Explosives with respect to the United States). In general, all Federal agencies having a military or law enforcement function—including any military reserve component or the National Guard of any State—may possess unmarked plastic explosives only until June 21, 2013, at which time, all stocks of unmarked plastic explosives must be used, destroyed, or marked with a detection agent.

Finally, the law provides certain “affirmative defenses” to the prohibitions mentioned above. The law at 18 U.S.C. §845(c) states that it is an affirmative defense against any proceeding involving these prohibitions if the proponent proves that the plastic explosive consisted of a small amount intended for and utilized solely in lawful (1) research, development or testing of new or modified explosive materials; (2) training in explosives detection or development or testing of explosives detection equipment; or (3) forensic science purposes. The law further specifies an affirmative defense for materials that were, or will be, incorporated into a military device in the United States and that remain an integral part of such a device. Such devices must be, or be intended to become, property of the military or a Federal agency performing a police function—including any military reserve component or the National Guard of any State.

Please feel free to contact ATF’s Explosives Industry Programs Branch at 202-648-7120 or via e-mail at EIPB@atf.gov if you have any questions regarding the requirements of the Act pertaining to plastic explosives not containing a detection agent.

Thank you for your continued cooperation and vigilance.

A handwritten signature in black ink that reads "C Yoder". The signature is written in a cursive, flowing style.

Chad J. Yoder

Chief, Firearms and Explosives Industry Division