

This document provides examples of the scientifically-supported conclusions and opinions that may be contained in Department of Justice reports and testimony. These examples are not intended to be all inclusive and may be dependent upon the precedent set by the judge or locality in which a testimony is provided. Further, these examples are not intended to serve as precedent for other forensic laboratories and do not imply that statements by other forensic laboratories are incorrect, indefensible, or erroneous. This document is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable by law by any party in any matter, civil or criminal, nor does it place any limitation on otherwise lawful investigative and litigative prerogatives of the Department.

**DEPARTMENT OF JUSTICE
PROPOSED UNIFORM LANGUAGE FOR TESTIMONY AND REPORTS
FOR THE EXPLOSIVES CHEMISTRY DISCIPLINE**

Purpose and Scope

If adopted, this document will apply to Department of Justice personnel who perform forensic examinations and/or provide expert witness testimony regarding the forensic examination of evidence within the explosives chemistry discipline. This document does not imply that statements made or language used by Department personnel that differed from these proposed statements were incorrect, indefensible, or erroneous.

This document provides the acceptable range of opinions expressed in both laboratory reports and during expert witness testimony while acknowledging that this document cannot address every variable in every examination.

Statements Approved for Explosives Chemistry Testimony and/or Laboratory Reports

1. The examiner may report analytical findings and/or state opinions/conclusions about the presence or absence of a targeted chemical or product (e.g., explosives, explosive precursors, explosive reaction products, general unknowns).
2. The examiner may report and/or state opinions as to the identification or chemical classification (if identification was not achieved) of a substance. The examiner may also report and/or state the general properties and potential uses of the substance or class of substances.
3. The examiner may report and/or state an opinion that the conclusions apply to the entirety of an item (or a percentage of the item) when there is a reasonable assumption of homogeneity of the item or an appropriate sampling plan was used.
4. The examiner may report results of examinations and/or state opinions/conclusions regarding a chemical comparison that was performed between items, provided that the opinions/conclusion are supported by the appropriate chemical analyses.

5. The examiner may report and/or state a determined quantity of a substance (e.g., weight, volume, purity, or concentration) when a validated quantitative method was used. The reported/stated quantity will include an associated estimated measurement uncertainty and confidence level.
6. The examiner may report and/or state an opinion about an estimated quantity of a substance (e.g., weight, volume, purity, or concentration) when a validated quantitative method was not used, as long as the method(s) used is reliable for such estimation and it is clearly stated that the estimate is not the result of a validated quantitative method.
7. The examiner may report and/or state the limitations of his/her examinations and opinions.
8. The examiner may report and/or state general explosive science terms and principles.

Statements Not Approved For Explosives Chemistry Testimony and/or Laboratory Reports

1. The examiner may not state or imply that two chemicals, chemical mixtures, or chemical products originated from the same source to the absolute exclusion of all other sources.
2. In cases involving comparisons of items, an examiner generally may not report and/or state an opinion about the exact source of a chemical or material. However, there may be instances when this is acceptable (e.g., chemical 'tags' were incorporated in the sample(s), entire population of comparison item was tested).
3. An explosives chemistry examiner may not report or testify to legal hazardous device determinations or to the potential resultant damage from explosives and/or hazardous devices.

**DEPARTMENT OF JUSTICE PROPOSED UNIFORM LANGUAGE
FOR TESTIMONY AND REPORTS REVIEW SHEET**

Directions: This review sheet is designed to assist you in evaluating the attached Proposed Uniform Language for Testimony and Reports document against certain criteria while maintaining internal consistency in review and assessing comments.

Your use of this rating sheet is completely **optional**. While it is anticipated this review sheet will encourage comments on issues of particular importance, you are welcome to submit comments in any format that you believe appropriate. This review sheet is not intended to limit comments in any way.

If you elect to use the review sheet, you may find it helpful to frame your comments as suggested below.

Proposed Uniform Language Discipline Reviewed:

Reviewer Name:

Reviewer Organization:

Reviewer Email:

Statements Approved for Use in Laboratory Reports and Expert Witness Testimony

Provide a summary of your assessment of the statements approved for use, including the most important highlights from the individual criteria comments.

- The statements approved for use are supported by scientific research.
- The statements approved for use accurately reflect consensus language.
- The statements approved for use are stated clearly.

Statements Not Approved for Use in Laboratory Reports and Expert Witness Testimony

Provide a summary of your assessment of the statements not approved for use, including the most important highlights from the individual criteria comments.

- The statements not approved for use are supported by scientific research.
- The statements not approved for use accurately reflect consensus language.
- The statements not approved for use are stated clearly.