

**PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS**

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.*

\* \* \* \* \*

**ASW TX E5 Houston, TX [Amended]**

**Point of Origin**

(Lat. 30°35'01" N., long. 95°28'01" W.)

Anahuac, Chambers County Airport, TX

(Lat. 29°46'11" N., long. 94°39'49" W.)

Galveston, Scholes International at

Galveston, TX

(Lat. 29°15'55" N., long. 94°51'38" W.)

Brookshire, Woods No. 2 Airport, TX

(Lat. 29°47'37" N., long. 95°55'31" W.)

Fulshear, Covey Trails Airport, TX

(Lat. 29°41'24" N., long. 95°50'23" W.)

Conroe, Lone Star Executive Airport, TX

(Lat. 30°21'09" N., long. 95°24'52" W.)

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at the Point of Origin to lat. 29°45'00" N., long. 94°44'01" W.; thence from lat. 29°45'00" N., long. 94°44'01" W. to a point of tangency with the east arc of a 7.6-mile radius of Scholes International at Galveston, and within a 7.6-mile radius of Scholes International at Galveston; thence from lat. 29°17'04" N., long. 95°00'13" W.; to lat. 29°30'01" N., long. 95°54'01" W.; to lat. 30°26'01" N., long. 95°42'01" W.; to the point of origin, and within a 6.6-mile radius of Lone Star Executive Airport, and within a 6.5-mile radius of Woods No. 2 Airport, and within a 6.4-mile radius of Covey Trails Airport excluding that airspace within the Anahuac, TX, Class E airspace area.

\* \* \* \* \*

Issued in Fort Worth, TX, on January 7, 2009.

**Walter L. Tweedy,**

*Acting Manager, Operations Support Group, Central Service Center.*

[FR Doc. E9–516 Filed 1–13–09; 8:45 am]

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**DEPARTMENT OF JUSTICE**

**Bureau of Alcohol, Tobacco, Firearms, and Explosives**

**27 CFR Part 478**

[Docket No. ATF 27P; AG Order No. 3030–2009]

**Decision-Making Authority Regarding the Denial, Suspension, or Revocation of a Federal Firearms License, or Imposition of a Civil Fine (2008R–10P)**

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Department of Justice is amending the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) to delegate to the Director of ATF the authority to serve as the deciding official regarding the denial, suspension, or revocation of federal firearms licenses, or the imposition of a civil fine. The Director will have the flexibility to delegate to another ATF official the authority to decide a revocation or denial matter, or may exercise that authority himself. Such flexibility will allow ATF to more efficiently decide denial, suspension, and revocation hearings and also whether to impose a civil fine, because the Director can redelegate to Headquarters officials, field officials, or some combination thereof, authority to take action as the final agency decision maker. This will give the agency the ability to ensure consistency in decision making and to address any case backlogs that may occur.

The interim rule will remain in effect until superseded by final regulations.

**DATES:** *Effective Date:* This interim rule is effective January 14, 2009.

*Comment date:* Written comments must be postmarked and electronic comments must be submitted on or before April 14, 2009. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

**ADDRESSES:** Send comments to any of the following addresses—

- James P. Ficareta, Program Manager, Room 6N–602, Bureau of Alcohol, Tobacco, Firearms, and Explosives, P.O. Box 50221, Washington, DC 20091–0221; *ATTN:* ATF 27P. Written comments must include your mailing address and be signed, and may be of any length.
- 202–648–9741 (facsimile).

- <http://www.regulations.gov>. Federal e-rulemaking portal; follow the instructions for submitting comments.

You may also view an electronic version of this rule at the <http://www.regulations.gov> site.

See the Public Participation section at the end of the **SUPPLEMENTARY INFORMATION** section for instructions and requirements for submitting comments, and for information on how to request a public hearing.

**FOR FURTHER INFORMATION CONTACT:**

James P. Ficareta, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue, NE., Washington, DC 20226; telephone: (202) 648–7094.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Attorney General is responsible for enforcing the provisions of the Gun Control Act of 1968 (“the Act”), 18 U.S.C. Chapter 44. He has delegated that responsibility to the Director of ATF, subject to the direction of the Attorney General and the Deputy Attorney General. 28 CFR 0.130(a). ATF has promulgated regulations that implement the provisions of the Act in 27 CFR Part 478.

The regulations in Subpart E of Part 478, §§ 478.71–78, relate to proceedings involving federal firearms licenses, including the denial, suspension, and revocation of a license, and the imposition of a civil fine. Section 478.71 provides that whenever the Director of Industry Operations (“DIO”) has reason to believe that an applicant is not qualified to receive a license under the provisions of § 478.47, he may issue a notice of denial, on ATF Form 4498, to the applicant. The notice will set forth the matters of fact and law relied upon in determining that the application should be denied, and will afford the applicant 15 days from the date of receipt of the notice in which to request a hearing to review the denial. If no request for a hearing is filed within such time, the application will be disapproved and a copy, so marked, will be returned to the applicant.

Under § 478.72, an applicant who has been denied an original or renewal license can file a request with the DIO for a hearing to review the denial of the application. On conclusion of the hearing and after consideration of all relevant facts and circumstances presented by the applicant or his representative, the DIO renders a decision confirming or reversing the denial of the application. If the decision is that the denial should stand, a

certified copy of the DIO's findings and conclusions are furnished to the applicant with a final notice of denial, ATF Form 4501. In addition, a copy of the application, marked "Disapproved," is furnished to the applicant. If the decision is that the license applied for should be issued, the applicant will be so notified, in writing, and the license will be issued.

Section 478.73 provides that whenever the DIO has reason to believe that a firearms licensee has willfully violated any provision of the Act or part 478, a notice of revocation of the license (ATF Form 4500), may be issued. In addition, a notice of revocation, suspension, or imposition of a civil fine may be issued on Form 4500 whenever the DIO has reason to believe that a licensee has knowingly transferred a firearm to an unlicensed person and knowingly failed to comply with the requirements of section 922(t)(1), relating to a NICS (National Instant Criminal Background Check System) background check.

As specified in § 478.74, a licensee who received a notice of suspension or revocation of a license, or imposition of a civil fine, may file a request for a hearing with the DIO. On conclusion of the hearing and after consideration of all the relevant presentations made by the licensee or the licensee's representative, the DIO renders a decision and prepares a brief summary of the findings and conclusions on which the decision was based. If the decision is that the license should be revoked or, in actions under section 922(t)(5), that the license should be revoked or suspended, and/or that a civil fine should be imposed, a certified copy of the summary is furnished to the licensee with the final notice of revocation, suspension, or imposition of a civil fine on ATF Form 4501. If the decision is that the license should not be revoked, or in actions under section 922(t)(5), that the license should not be revoked or suspended, and a civil fine should not be imposed, the licensee will be notified in writing.

Under § 478.76, an applicant or licensee may be represented by an attorney, certified public accountant, or other person recognized to practice before ATF, provided certain requirements are met. The DIO may be represented in proceedings by an attorney in the office of the Assistant Chief Counsel or Division Counsel who is authorized to execute and file motions, briefs and other papers in the proceeding, on behalf of the DIO, in his own name as "Attorney for the Government."

Section 478.78 provides that if a licensee is dissatisfied with a post-

hearing decision revoking or suspending the license or denying the application or imposing a civil fine, as the case may be, he may file a petition for judicial review of such action. In such case, when the DIO finds that justice so requires, he may postpone the effective date of suspension or revocation of a license or authorize continued operations under the expired license, as applicable, pending judicial review.

## II. Interim Rule

As indicated above, at present ATF's regulations name the DIO as the deciding official in matters dealing with the denial of an original or renewal firearms license, the suspension or revocation of a license, and the imposition of a civil fine. This interim rule amends the regulations to redesignate the Director as the deciding official. ATF believes that delegating the final authority with respect to those matters to the Director is necessary and proper. ATF further believes that the Director should be able to redelegate this authority to the DIO or any other agency official through issuance of a delegation order, not through regulation. This is consistent with other regulations in part 478. For example, § 478.144 provides that the Director is the deciding authority with respect to applications for relief from firearms disabilities. Pursuant to ATF Order 1120.4 (69 FR 55462, September 14, 2004), the authority to make determinations on applications for relief from federal firearms disabilities was delegated to the Assistant Director (Enforcement Programs and Services).

ATF believes that it is appropriate for the Director to have more flexibility to change the delegation of authority to decide a hearing regarding denial, suspension, or revocation of a federal firearms license, and a hearing regarding imposition of a civil fine, or to exercise that authority himself. Such flexibility will allow ATF to more efficiently decide revocation and denial hearings, because the Director can designate Headquarters officials, field officials, or some combination thereof, as the final agency decision maker. That flexibility will give the agency the ability to ensure consistency in decision making and to address any case backlogs that may occur.

### How This Document Complies With the Federal Administrative Requirements for Rulemaking

#### A. Executive Order 12866

The Attorney General has determined that this rule is not a "significant regulatory action" under Executive

Order 12866, section 3(f), Regulatory Planning and Review. This rule will not have an annual effect on the economy of \$100 million, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health, or safety, or State, local or tribal governments or communities.

This is a rule of agency organization, procedure, and practice. It merely redesignates the Director as the deciding official with respect to the denial, suspension, or revocation of a federal firearms license and the imposition of a civil fine.

#### B. Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Attorney General has determined that this regulation will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### C. Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

#### D. Administrative Procedure Act (APA)

Notice and comment rulemaking is not required for this interim final rule. Under the APA, "rules of agency organization, procedure or practice," 5 U.S.C. 553(b)(3)(A), that do not "affect[ ] individual rights and obligations," *Morton v. Ruiz*, 415 U.S. 199, 232 (1974), are exempt from the general notice and comment requirements of section 553. See *JEM Broadcasting Co. v. FCC*, 22 F.3d 320, 326 (D.C. Cir. 1994) (section 553(b)(3)(A) applies to "agency actions that do not themselves alter the rights or interests of parties, although [they] may alter the manner in which the parties present themselves or their viewpoints to the agency"). The revisions to the regulations in §§ 478.71–78 are purely matters of agency organization, procedure, and practice. The interim final rule will not affect substantive rights or interests of federal firearms licensees or applicants for federal firearms licenses. Nevertheless, ATF welcomes public comments on the interim final rule.

Furthermore, there is good cause for finding that the interim final rule is exempt from the effective date

limitation of section 553(d). The interim final rule will grant the Director more flexibility to change the delegation of authority to decide a hearing regarding denial, suspension, or revocation of a federal firearms license, and a hearing regarding imposition of a civil fine, or to exercise that authority himself. Such flexibility will allow ATF to more efficiently decide revocation and denial hearings, because the Director can designate Headquarters officials, field officials, or some combination thereof, as the final agency decision maker. This will enable the Director to ensure consistency in decision making and to address any case backlogs that may occur.

There is no reason to defer these benefits for thirty days. The interim final rule will not alter the rights or obligations of third parties, although it may alter the manner in which those parties present themselves or their viewpoints to the agency. No matter how the Director delegates his authority to revoke or deny federal firearms licenses pursuant to 18 U.S.C. 923(e), persons who apply for or hold federal firearms licenses will still have a right to due process during the agency administrative proceeding, including a right to a hearing (18 U.S.C. 923(f)(2)), a right to a written notice from the agency specifying the grounds for denial or revocation (18 U.S.C. 923(f)(3)), and a right to judicial review (18 U.S.C. 923(f)(3)). Therefore, there is good cause to make the interim final rule effective immediately.

#### *E. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). As noted above, this rule is not subject to notice and comment rulemaking requirements. *Id.* 553(b)(A). This is a rule of agency organization, procedure, and practice. It merely delegates to the Director the authority to make decisions with respect to the denial, suspension, imposition of a civil fine, or revocation of federal firearms licenses.

#### *F. Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or

more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### *G. Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### *H. Paperwork Reduction Act*

This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

### **Public Participation**

#### *A. Comments Sought*

ATF is requesting comments on the interim final rule from all interested persons. ATF is also specifically requesting comments on the clarity of this interim final rule and how it may be made easier to understand.

All comments must reference this document docket number (ATF 27P), be legible, and include your name and mailing address. ATF will treat all comments as originals and will not acknowledge receipt of comments.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

#### *B. Confidentiality*

Comments, whether submitted electronically or in paper, will be made available for public viewing at ATF, and on the Internet as part of the President's eRulemaking initiative, and are subject to the Freedom of Information Act. Commenters who do not want their name or other personal identifying information posted on the Internet should submit their comment by mail or facsimile, along with a separate cover sheet that contains their personal identifying information. Both the cover sheet and comment must reference this docket number. Information contained in the cover sheet will not be posted on the Internet. Any personal identifying information that appears within the

comment will be posted on the Internet and will not be redacted by ATF.

Any material that the commenter considers to be inappropriate for disclosure to the public should not be included in the comment. Any person submitting a comment shall specifically designate that portion (if any) of his comments that contains material that is confidential under law (e.g., trade secrets, processes, etc.). Any portion of a comment that is confidential under law shall be set forth on pages separate from the balance of the comment and shall be prominently marked "confidential" at the top of each page. Confidential information will be included in the rulemaking record but will not be disclosed to the public. Any comments containing material that is not confidential under law may be disclosed to the public. In any event, the name of the person submitting a comment is not exempt from disclosure.

#### *C. Submitting Comments*

Comments may be submitted in any of three ways:

- *Mail:* Send written comments to the address listed in the **ADDRESSES** section of this document. Written comments must be signed and may be of any length.

- *Facsimile:* You may submit comments by facsimile transmission to (202) 648-9741. Faxed comments must:

- (1) Be legible;
- (2) Be on 8½" x 11" paper;
- (3) Contain a legible, written signature; and

- (4) Be no more than five pages long. ATF will not accept faxed comments that exceed five pages.

- *Federal e-Rulemaking Portal:* To submit comments to ATF via the Federal e-rulemaking portal, visit <http://www.regulations.gov> and follow the instructions for submitting comments.

#### *D. Request for Hearing*

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director of ATF within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

### **Disclosure**

Copies of this interim rule and the comments received will be available for public inspection by appointment during normal business hours at: ATF Reading Room, Room 1E-063, 99 New York Avenue, NE., Washington, DC 20226; telephone: (202) 648-7080.

**Drafting Information**

The author of this document is James P. Ficaretta; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives.

**List of Subjects in 27 CFR Part 478**

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Domestic violence, Exports, Imports, Law enforcement personnel, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

**Authority and Issuance**

■ Accordingly, for the reasons discussed in the preamble, 27 CFR part 478 is amended as follows:

**PART 478—COMMERCE IN FIREARMS AND AMMUNITION**

■ 1. The authority citation for 27 CFR part 478 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 18 U.S.C. 847, 921–931; 44 U.S.C. 3504(h).

**§ 478.71 [Amended]**

■ 2. Section 478.71 is amended by removing “of Industry Operations” in the first sentence.

**§ 478.72 [Amended]**

■ 3. Section 478.72 is amended by removing “of Industry Operations” in the fifth sentence and by removing “Director of Industry Operations” in the sixth sentence and adding in its place “Director’s”.

**§ 478.73 [Amended]**

■ 4. Section 478.73 is amended by removing “of Industry Operations” wherever it appears.

**§ 478.74 [Amended]**

■ 5. Section 478.74 is amended by removing “of Industry Operations” in the fourth sentence.

**§ 478.76 [Amended]**

■ 6. Section 478.76 is amended by removing “of Industry Operations” wherever it appears.

**§ 478.78 [Amended]**

■ 7. Section 478.78 is amended by removing “of Industry Operations” in the last sentence.

Dated: January 7, 2009.

**Michael B. Mukasey,**  
*Attorney General.*

[FR Doc. E9–527 Filed 1–13–09; 8:45 am]

BILLING CODE 4410-FY-P

**DEPARTMENT OF JUSTICE****Bureau of Alcohol, Tobacco, Firearms, and Explosives****27 CFR Part 555**

[Docket No. ATF 10F; AG Order No. 3032–2009]

RIN 1140-AA24

**Commerce in Explosives—Amended Definition of “Propellant Actuated Device” (2004R–3P)**

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice is amending the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) to clarify that the term “propellant actuated device” does not include hobby rocket motors or rocket-motor reload kits consisting of or containing ammonium perchlorate composite propellant (“APCP”), black powder, or other similar low explosives.

**DATES:** This rule is effective February 13, 2009.

**FOR FURTHER INFORMATION CONTACT:**

James P. Ficaretta; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives; U.S. Department of Justice; 99 New York Avenue, NE., Washington, DC 20226, telephone: 202–648–7094.

**SUPPLEMENTARY INFORMATION:****I. Background**

ATF is responsible for implementing Title XI of the Organized Crime Control Act of 1970 (codified at 18 U.S.C. ch. 40) (“Title XI”). One of the stated purposes of that Act is to reduce the hazards to persons and property arising from misuse and unsafe or insecure storage of explosive materials. Under section 847 of title 18, United States Code, the Attorney General “may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter.” Regulations that implement the provisions of chapter 40 are contained in 27 CFR part 555 (“Commerce in Explosives”).

Section 841(d) of title 18, United States Code, sets forth the definition of “explosives.” “Propellant actuated devices,” along with gasoline, fertilizers, and propellant actuated industrial tools manufactured, imported, or distributed for their intended purposes, are exempted from this statutory definition by 27 CFR 555.141(a)(8).

When Title XI was enacted by Congress in 1970, the Judiciary Committee of the United States House of Representatives specifically considered and supported an exception for propellant actuated devices. H.R. Rep. No. 91–1549, at 64 (1970), *as reprinted* in 1970 U.S.C.C.A.N. 4007, 4041.

Neither the statute nor the legislative history defines “propellant actuated device.” In 1981, however, ATF added the following definition of “propellant actuated device” to its regulations: “[a]ny tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge.” 27 CFR 555.11.

In applying the regulatory definition, ATF has classified certain products as propellant actuated devices. These products include aircraft slide inflation cartridges, inflatable automobile occupant restraint systems, nail guns, and diesel and jet engine starter cartridges.

**II. Notice of Proposed Rulemaking (“NPRM”)**

On August 11, 2006, the Department published in the **Federal Register** a notice proposing to amend the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives to clarify that the term “propellant actuated device” does not include hobby rocket motors or rocket-motor reload kits consisting of or containing ammonium perchlorate composite propellant, black powder, or other similar low explosives. See *Commerce in Explosives—Amended Definition of “Propellant Actuated Device,”* 71 FR 46174 (Aug. 11, 2006) (“Notice No. 9P”). ATF engaged in rulemaking with regard to this issue because on March 19, 2004, the United States District Court for the District of Columbia found that ATF has in the past advanced inconsistent positions regarding the application of the propellant actuated device exemption to hobby rocket motors. ATF issued two related letters in 1994 that could be interpreted as taking the position that a fully assembled rocket motor would be considered a propellant actuated device if the rocket motor contained no more than 62.5 grams (2.2 ounces) of propellant material and produced less than 80 newton-seconds (17.92 pound seconds) of total impulse with thrust duration not less than 0.050 second. Prior to assembly, the letters observed, the propellant, irrespective of the quantity, would not be exempt as a propellant actuated device.

The 1994 letters are confusing in that they can be interpreted to intertwine the