

Drafting Information

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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.

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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:

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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

separate and distinct issues of the “propellant actuated device” exemption found in section 555.141(a)(8) and the long-standing ATF policy exempting rocket motors containing 62.5 grams or less of propellant that has its roots in the exemption then found at 27 CFR 55.141(a)(7). Had these 1994 letters been drafted to reflect accurately ATF’s interpretation of the regulations in existence at the time, they would have indicated that sport rocket motors were not propellant actuated devices for purposes of the regulatory exemption found in section 55.141(a)(8), but instead that motors containing 62.5 grams or less of propellant were exempt from regulation pursuant to the exemption for “toy propellant devices” then found at section 55.141(a)(7). Although the “toy propellant device” exemption was removed from the regulations and, due to administrative error, was not replaced as intended with a specific reference to the 62.5-gram threshold, ATF continued to treat hobby rocket motors containing 62.5 grams or less of propellant as exempt from regulation as clearly set forth in a 2000 letter to counsel for the National Association of Rocketry and the Tripoli Rocketry Association, Inc. The Department notes that the administrative error mentioned above, relating to the 62.5-gram exemption threshold for hobby rocket motors, has been corrected and was the subject of another rulemaking proceeding. See *Commerce in Explosives—Hobby Rocket Motors*, 71 FR 46079 (Aug. 11, 2006). That final rule specifically provided an exemption for model rocket motors that: (1) Consist of ammonium perchlorate composite propellant, black powder, or other similar low explosives; (2) contain no more than 62.5 grams of total propellant weight; and (3) are designed as single-use motors or as reload kits capable of reloading no more than 62.5 grams of propellant into a reusable motor casing. 27 CFR 555.141(a)(10).

To remedy any perceived inconsistency and to clarify ATF’s policy, the proposed rule set forth an amended regulatory definition specifically stating that hobby rocket motors and rocket-motor reload kits consisting of or containing APCP, black powder, or other similar low explosives, regardless of amount, do not fall within the “propellant actuated device” exception and are subject to all applicable federal explosives controls pursuant to 18 U.S.C. 841 *et seq.*, the regulations in 27 CFR part 555, and applicable ATF policy. As proposed, the

term “propellant actuated device” read as follows:

Propellant actuated device. (a) Any tool or special mechanized device or gas generator system that is actuated by a propellant or which releases and directs work through a propellant charge.

(b) The term does not include—

- (1) Hobby rocket motors consisting of ammonium perchlorate composite propellant, black powder, or other similar low explosives, regardless of amount; and
- (2) Rocket-motor reload kits that can be used to assemble hobby rocket motors containing ammonium perchlorate composite propellant, black powder, or other similar low explosives, regardless of amount.

The Department noted in Notice No. 9P that implementation of the proposed amendment is important to public safety and consistent regulatory enforcement efforts. In addition, the proposed rule confirmed the position that hobby rocket motors are not exempt from federal explosives regulation, pursuant to the propellant actuated device exception. The proposed rule also clarified that hobby rocket motors cannot legally be classified as propellant actuated devices due to the nature of their design and function.

The comment period for Notice No. 9P closed on November 9, 2006.

III. Analysis of Comments and Final Rule

ATF received 275 comments in response to Notice No. 9P. Comments were submitted by sport rocketry hobbyists, permittees, one hobby shop owner, two sport rocketry organizations (the National Association of Rocketry and Tripoli Rocketry Association), and others.

In its comment (Comment No. 261), the National Association of Rocketry (“NAR”) stated that it is a non-profit scientific organization dedicated to safety, education, and the advancement of technology in the hobby of sport rocketry in the United States. The commenter further stated that, founded in 1957, it is the oldest and largest sport rocketry organization in the world, with over 4,700 members and 110 affiliated clubs. According to the commenter, it is the recognized national testing authority for safety certification of rocket motors in the United States, and it is the author of safety codes for the hobby that are recognized and accepted by manufacturers and public safety officials nationwide. Ninety-eight comments expressed specific support for NAR’s position as set forth in its comments in response to Notice No. 9P.

According to its Web site (<http://www.tripoli.org/>), the Tripoli Rocketry Association (“TRA”) (Comment No.

219) is an organization dedicated to the advancement and operation of amateur high-power rocketry. Its members are drawn from the United States and 22 other countries.

In general, the commenters expressed opposition to the proposed definition of “propellant actuated device” (“PAD”), arguing that hobby rocket motors are PADs. Their reasons for objecting to the proposed rule are discussed below.

1. Rocket Motors and Rocket Propellants Are Not Explosives

Under the law, the term “explosives” is defined as “any chemical compound[,] mixture, or device, the primary or common purpose of which is to function by explosion.” The definition states that “the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters.” See 18 U.S.C. 841(d). “Propellant actuated devices,” along with gasoline, fertilizers, and propellant actuated industrial tools manufactured, imported, or distributed for their intended purposes, are exempt from this statutory definition by 27 CFR 555.141(a)(8). Approximately 40 comments contended that rocket motors and rocket propellants (including APCP) are not explosives. These commenters also contended that, even if rocket motors and rocket propellants are explosives, they are propellant actuated devices and exempt from regulation. Some of the arguments raised by the commenters to support their position include the following:

- [APCP] only burns at a rate which is[,] in mm/second, far below that which is even considered deflagration. (Comment No. 54)
- Hobby rocket motors and reloadable motor propellant grains are not designed to explode. Scientific and engineering tests and references confirm that the propellants do not detonate or have a burn rate consistent with explosives. (Comment No. 82)
- Ammonium perchlorate/hydroxy-terminated polybutene propellant does not function via explosion but rather by burning at a rate of ~ 0.1”/second and therefore does not meet the definition of an explosive. Explosives have much higher burn rates. (Comment No. 203)
- APCP does not function by explosion, but by the generation of gases through controlled burning. Recent tests by the BATFE [Bureau of Alcohol, Tobacco, Firearms, and Explosives, or ATF] have indicated that the burn rate of APCP is approximately 36–143 mm/sec, though its testing should

concentrate on the actual formulation of APCP used in hobby rocketry, which burns at a much slower rate. The actual burn rate of APCP used in hobby and high-powered rocketry would more closely resemble that of a road flare and is similar to that of common bond paper (4–56 mm/sec). (Comment No. 257)

Department Response

As stated above, the federal explosives laws define the term “explosives” as “any chemical compound[,] mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters.” In order to provide guidance to the public, and in compliance with 27 CFR 555.23, ATF maintains and publishes a list of explosive materials classified in accordance with the statutory definition. Rocket motors generally contain the explosive materials APCP, black powder and/or other similar low explosives. These materials are on the “List of Explosive Materials.” However, there has been some debate regarding the validity of including APCP on the list. Beginning in 2000, the issue of classifying APCP as an explosive material has been litigated in the United States District Court for the District of Columbia. See *Tripoli Rocketry Ass’n, Inc. v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, 337 F. Supp. 2d 1 (D.D.C. 2004). The district court held that ATF’s decision to classify APCP as a deflagrating explosive was permissible. *Id.* at 9. In February 2006, the District of Columbia Circuit Court of Appeals disagreed with the district court on this issue, because in its view ATF failed to provide sufficient justification to support its classification with a specific, articulated standard for deflagration. *Tripoli Rocketry Ass’n, Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 437 F. 3d 75 (D.C. Cir. 2006). The circuit court declined to set aside the classification, and APCP thus remains on the “List of Explosive Materials” that ATF is obligated to maintain. *Id.* at 84. The case was remanded to the district court so that ATF may reconsider the matter and offer an explanation for whatever conclusion it ultimately reaches. ATF submitted the requested information, including test data results, to the United States District Court for review. Pending the outcome of this case, APCP remains an explosive and continues to be regulated as such.

2. The Proposed Rule Holds Hobby Rocket Motors to a Different Standard than Other Products Classified as PADs by ATF

Approximately 40 commenters indicated that ATF’s assertion that hobby rocket motors should not be classified as PADs is arbitrary. Some commenters contended that the same arguments used by ATF to disqualify hobby rocket motors as PADs can apply to other products that ATF has classified as propellant actuated devices. Other commenters noted that the proposed rule failed to explain ATF’s process by which devices such as nail guns, aircraft slide inflation cartridges, etc., warranted classification as PADs. The following excerpts represent the views of most of the commenters:

By BATFE’s rationale that the “rocket motor itself” is not a device because it cannot perform its function until installed, the propellant charges for a nail gun, (or for that matter, an air bag or aircraft escape slide inflator), prior to their installation in the nail gun (or air bag or aircraft slide), would likewise not be PADs. Yet they are exempt as PADs. BATFE’s determination that a nail gun reload is exempt, but a rocket motor is not, is therefore arbitrary and capricious. (Comment No. 70)

The [NPRM] further mischaracterizes a rocket motor and confuses the definition of a PAD. By the convoluted logic of the [NPRM], accepted propellant actuated devices like “nail guns” used to drive concrete anchors, diesel and jet engine starter cartridges, and aircraft slide inflation cartridges would not meet the definition either. In those “tools,” the “propellant” portion of the tool is even simpler than a rocket engine. If you consider the whole tool, i.e. the propellant containing device and the “tool” * * * you must consider the whole of the rocket as the tool and not just the propellant containing element. (Comment No. 182)

You then state * * * “the hobby rocket motor is little more than propellant in a casing, incapable of performing its intended function until full installed (along with an ignition system).” I wish to point out that this statement is also true for aircraft slide inflation cartridges and diesel and jet engine starter cartridges as they are also incapable of performing their intended function until fully installed in a diesel or jet engine or aircraft slide. So are these items not PADs, if we apply the same strictures that have been applied to model rocket motors? (Comment No. 199)

Part of the argument used in the proposed rule states that “the hobby rocket motor is, in essence, simply the propellant that actuates the hobby rocket, and * * * cannot be construed to constitute a propellant actuated device.” The same line of reasoning can easily be applied to any item in which the object containing the propellant is separate from the rest of the device, such as a nail gun cartridge or an automotive airbag

deployment device. Therefore, the agency’s assertion that hobby rocket motors should not be considered as PADs is arbitrary and inconsistent with other devices that operate in a similar fashion but are so considered. (Comment No. 219)

Consider the following examples, where BATFE’s reasoning outlined in the NPRM for hobby rocket motors is applied to other devices cited by BATFE as qualifying as PAD[s].

The automobile airbag [aircraft slide inflation cartridge, jet engine starter cartridge] cannot be brought within the regulatory definition of propellant actuated device as a “tool” because it is neither “handheld” nor a complete “device” and because it is not a metal-shaping machine or a part thereof.

BATFE cannot simultaneously rule hobby rocket motors are not PADs yet declare other devices which function in exactly the same underlying manner as hobby rocket motors to be PADs. Any such attempt would be arbitrary, capricious or otherwise contrary to the statute [sic] underlying the PADS exemption mandated by Congress. (Comment No. 261)

A search of the **Federal Register** * * * found no instances of notice and comment rulemaking regarding any propellant actuated device determinations. Specific searches for aircraft slide inflation cartridges, inflatable automobile occupant restraint systems, nail guns and diesel and jet engine starter cartridges, devices listed as meeting the PADS definition, returned no results. The NPRM is silent about how such devices warranted a PADS determination or how BATFE reached those conclusion[s.] However * * * it appears that BATFE’s PAD classification is completely arbitrary and results driven * * * (Comment No. 261)

Department Response

The Department’s position has been and continues to be that the term “propellant actuated device” does not include rocket motors or rocket-reload kits containing APCP, black powder, or other similar low explosives. The definition of “propellant actuated device” in section 555.11 is “[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.” It is not the intention of this rulemaking to evaluate other items that have been classified as propellant actuated devices. The intention of the rulemaking is to clarify the Department’s position that rocket motors and rocket motor kits are not exempt as propellant actuated devices.

ATF individually reviews each request for a propellant actuated device determination, and the final decision is then relayed in written form to the requestor specifying the reasons for approval or denial. Each submission and response contains detailed and proprietary information on chemical

compositions, system designs, and functionality, most of which may not be disclosed to outside entities.

By way of illustration, an airbag inflation module is an example of an item that would fit the description of a propellant actuated device. ATF has exempted airbag modules as propellant actuated devices but has not exempted the propellant inside the gas-generation canister. The airbag module is a self-contained unit that is deployed by an internal initiator or micro gas generator that receives an electronic pulse from a crash sensor. The propellant charge inside the unit is converted into a gas, which is then released to inflate the airbag cushion. ATF ruled that these fully assembled airbag modules constitute a gas-generating system. Other examples of items that would fit the description of propellant actuated devices would be assembled seatbelt pretensioner units and the aircraft parachute deployment devices referenced elsewhere in this rulemaking.

3. Hobby Rocket Motors Meet the Current Definition of a PAD

As defined in the current regulations, the term "propellant actuated device" means "[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." As several commenters pointed out, there are six possible combinations that would meet the definition of a PAD:

- a. A tool which is actuated by a propellant;
- b. A tool which releases and directs work through a propellant charge;
- c. A special mechanized device which is actuated by a propellant;
- d. A special mechanized device which releases and directs work through a propellant charge;
- e. A gas generator system which is actuated by a propellant; or
- f. A gas generator system which releases and directs work through a propellant charge.

In the proposed rule, ATF stated that the hobby rocket motor cannot be brought within the regulatory definition of propellant actuated device as a "tool" because it is neither "handheld" nor a complete "device" and because it is not a metal-shaping machine or a part thereof. Further, it cannot be considered to be a "special mechanized device" because, although clearly designed to serve a special purpose, it in no way functions as a mechanism. Finally, because it has no interacting mechanical or electrical components, the hobby rocket motor cannot be deemed to be a

gas generator system. Therefore, a rocket motor does not meet the first prong of the definition of a PAD. It is noteworthy that a rocket's flight is powered by a propellant, and in a sense, work is produced through a propellant charge. However, a rocket motor by itself accomplishes neither of these actions. Therefore, a rocket motor does not fit either of the descriptions in the second prong of the definition.

In general, the commenters disagreed with ATF's determination that hobby rocket motors are not PADs. Many commenters were critical of ATF's use of a dictionary to define technical terms (e.g., "gas generator system"), while other commenters criticized ATF for what they considered the agency's selective use of the dictionary to define certain terms. Two commenters expressed concerns regarding ATF's use of one dictionary (Merriam-Webster's Collegiate Dictionary) as the sole source in defining terms. Following are excerpts from some of the comments:

I was struck by the use of the Merriam-Webster's Collegiate Dictionary as the source for the definitions of "gas generator." It is inappropriate to use a dictionary to define terms commonly used in a specialist field such as rocketry. A much better source is the 7th edition of Rocket Propulsion Elements by George P. Sutton (the standard University propulsion course textbook) where you will see in the index "Gas generator; see also Liquid propellant rocket engine; Solid propellant rocket motor." Without a doubt hobby rocket motors meet the definition of gas generators. (Comment No. 77)

A common dictionary is insufficient to define the technical terms involved here; a science textbook would be more appropriate. (Comment No. 212)

The definitions you employ are not wrong, but they are incomplete and therefore misleading because you ignore other equally valid definitions. (Comment No. 66)

[T]he ATF has contrived to select the least pertinent part of Webster's definition of "tool." It is utterly obvious that a "tool" [need] not necessarily be handheld; a Bridgeport Mill is a "tool," but I defy any member of the ATF to "hold" one. Likewise "cutting or shaping" and "machine for shaping metal" are ridiculously limiting statements; the large majority of tools do none of these tasks. Webster's offers the synonym "implement" which is more appropriate, as "a device used in the performance of a task." This definition encompasses all of the devices that the ATF has listed above as "propellant actuated devices." None of those same devices, with the single exception of a handheld nailgun, would conform to any part of the ATF's * * * definition of "tool." (Comment No. 60)

The primary definition of a tool in the Encarta dictionary is "a device for doing work." Work by definition is the application of force through a distance. Force is in turn defined as the product of mass and acceleration. A rocket motor does work by

accelerating the gases it generates through its nozzle, and it generates thrust whether or not it is installed in a rocket. (Comment No. 205)

In the Supplemental Information listed in the **Federal Register**, there were a variety of definitions listed which seem to imply that rocket engines are not special mechanized devices, tools, or gas generators. The conclusion stated * * * is incorrect. Per Merriam-Webster's On-Line Dictionary, Definition 2a clearly indicates that rocket motors can be considered tools.

Definition 2A: "2a: something (as an instrument or apparatus) used in performing an operation or necessary in the practice of a vocation or profession."

Obviously, a rocket engine is an "apparatus" (Webster definition: "1a: a set of materials or equipment designed for a particular use") It is used to perform the "operation" (Webster definitions: "1: performance of a practical work or of something involving the practical application of principles or processes 2a: an exertion of power or influence") of lofting a rocket into the air and it is necessary for the practice of this "vocation" (model rocketry). (Comment No. 233)

There is not, as far as I know, one particular dictionary that has been designated as the final arbiter on the meaning of all words in the English language. Over the years, many groups of learned scholars have labored long and hard to produce many fine dictionaries and associated references. These scholars recognize that, as a result of years of usage, many words have acquired a broad range of meanings, all of which must be considered when interpreting these words. (Comment No. 254)

Many commenters argued that the hobby rocket motor meets at least one of the combinations of the PAD definition. The NAR (Comment No. 261) maintained that the hobby rocket motor meets all of the combinations of the PAD definition:

The [PAD] definition consists of two parts, first a description of the kind of device employed [tool, special mechanized device, gas generator system] and secondly, a description of the means by which work is done by that device [actuated by a propellant; releases and directs work through a propellant charge]. Using these elements, there are six possible combinations which would meet the legal definition of a PAD. A rocket motor meets not one, but all three device definitions in the regulation. It is a tool because its sole purpose is to provide power for rockets. It's a specialized mechanized device because it cannot be used for any purpose other than to propel rockets. It is a gas generator system because an exhaust gas is generated by all rocket motors. A rocket motor meets both types of motive work used in the regulatory definition. Clearly, rocket motors are actuated by propellant, and certainly release and direct work through a propellant charge.

Following are excerpts from other comments:

[T]he devices in question [hobby rocket motors] clearly do meet several and perhaps

all of these six definitions. The point is made most clearly with respect to #5 and #6 [e and f, above]: A * * * rocket motor clearly is a gas generator system, it clearly is actuated by a propellant, and it clearly releases and directs work through a propellant charge. ATF's argument to the contrary is simply false: "Finally, because it has no interacting mechanical or electrical components, the hobby rocket motor cannot be deemed to be a 'gas generator system.'" A hobby rocket motor does have interacting mechanical components, including a carefully chosen nozzle, liners and often o-rings and washers to contain the pressure and protect outer casings, and various components designed to actuate the rocket's recovery system safely * * * [O]ne cannot simply stuff propellant into a cylinder, as the ATF suggests, ignite it, and expect it to perform as a model rocket motor. Hence the devices in question do meet the fifth and sixth of the parts of the definition of "propellant actuated device." (Comment No. 17)

Without resorting to selective use of dictionary definitions, one can certainly argue that hobby rocket motors "generate gas." That is in fact their main purpose. The propellant in the device generates gas, which is directed through a nozzle to release the energy (work) of the expanding gas in a specific direction to thrust the rocket forward. (Comment No. 24)

The argument that a hobby rocket motor is not a "gas generator system which * * * releases and directs work through a propellant charge" is also patently false. A solid-propellant rocket motor is one of the simplest machines known to science, and it operates by burning its propellant charge to generate copious quantities of gas under pressure, which the other parts of the mechanism (such as the combustion chamber and nozzle) work on to produce mechanical energy of motion by confining, directing, and accelerating the gas flow. The solid propellant rocket motor is the simplest, most straightforward example of a device that directs work derived from the burning of a propellant charge. (Comment No. 28)

A rocket motor is precisely a "group of interacting or interdependent mechanical and/or electrical components that generates gas," which is the very definition of "gas generator system" developed in the BATFE NPRM. A rocket motor has at least two and often three interacting components: (1) The combustion or pressure chamber in which the propellant charge is contained and within which it burns, generating gas; (2) the deLaval converging-diverging nozzle assembly which converts the thermal energy of the propellant gas that the combustion chamber generates into directed kinetic energy; and (3) in most motor designs, a mechanical-pyrotechnic system of the opposite end of the pressure chamber that actuates a recovery device. The rocket motor "releases and directs work" (BATFE definition of a PAD) in its normal operation: the precise technical definition of work is the application of force across distance, and the rocket motor delivers force (propulsive thrust) to an object (the rocket airframe) which is directed along and travels across a distance (in flight, directed by its

aerodynamic stabilization system). Thus a rocket motor is a gas generator system that directs work. Therefore, it is by BATFE's own definitions, a propellant actuated device. (Comment No. 63)

Department Response

The Department acknowledges that words have numerous definitions, many of which vary between dictionaries. The argument that ATF selectively used Merriam-Webster's Collegiate Dictionary to better fit its interpretation of propellant actuated device is not valid. The Department's use of a universally accepted publication such as Merriam-Webster's Collegiate Dictionary has been common practice upon which the Department has relied to make past decisions and interpretations. The Department continues in part to rely upon the previously mentioned definitions to determine that rocket motors are not propellant actuated devices. Because regulations should be understandable by all members of the public, the Department does not believe it appropriate to rely upon scientific and technical publications to define terms, as suggested by some commenters. This would result in definitions understood only by scientists and specialists in a particular field. The Department believes this final rule adopts a definition that is technically accurate, clear, and capable of being understood by all interested parties.

Agencies are provided broad latitude to incorporate definitions into the regulations. Several commenters have applied broader definitions to illustrate that a rocket motor should be considered a propellant actuated device. Unfortunately, these definitions are sometimes practically inconsistent with the subject matter. For example, one commenter cites definition 2(a) from Merriam-Webster's On-Line Dictionary of "tool": "something (as an instrument or apparatus) used in performing an operation or necessary in the practice of a vocation or profession." The usage example in this definition is "a scholar's books are his tools." Outside of rocketry context, such a definition could mean almost any physical item or abstract concept. These comments certainly illustrate that words have multiple definitions. However, the definitions of the words chosen by the commenters are not particularly helpful in defining "propellant actuated device" within the context of the federal explosives laws. Applying the reasoning of these commenters to the definition of a propellant actuated device would result in a definition under which virtually any item containing a propellant would qualify as a PAD. While not specifically

addressing PADs in the law, Congress clearly did not mean for ATF to apply definitions so broadly as to render the term "propellant actuated device" meaningless. Exceptions to statutory prohibitions should be narrowly construed. The Department believes that construing the term "propellant actuated device" to include any item containing a propellant would be inconsistent with its mission to reduce the hazards to the public arising from misuse and unsafe or insecure storage of explosive materials. Exempting all propellants from the permit, licensing, prohibited person provisions, and storage requirements of the law would be irresponsible, particularly in light of potential criminal and terrorist use of such items.

Many of the comments describe certain characteristics of rocket-motor function and state that the definition of propellant actuated device, specifically gas generator systems, speaks to these. These comments are unpersuasive in their argument, as they fail to specify that rocket motors function in the manner described largely due to their interaction with other components of a rocket.

It is undisputed that rocket motors produce a large volume of gas when ignited. Further, it is clear that the gas is forced through a nozzle designed to produce thrust. However, the motor alone does not constitute a system, or a "regularly interacting or interdependent group of items forming a unified whole." It is apparent that the motor relies upon other items and parts, such as the rocket body, fins, nosecone, and others, to function properly, and to therefore perform as designed. However, this final rule is not intended to govern fully assembled rockets.

Because the rocket motor does not constitute a system, and because the successful direction of energy produced by a rocket motor requires that the motor be integrated into a rocket, complete with other system components, the Department finds that a rocket motor does not constitute a gas generator system that releases and directs work.

4. Hobby Rocket Motors Are No Different From Other Approved PADs

Many commenters argued that a hobby rocket motor should be classified as a PAD because it functions in a manner similar to other products classified as PADs by ATF. Following are some of the arguments presented by the commenters:

By using a chemical reaction that creates gasses exiting the nozzle of the hobby rocket motor, the [resulting] thrust created

performs the task of lifting the hobby rocket off the ground. This is the same reaction used to inflate aircraft safety slides, automobile airbags and other PADS that enjoy the same exemption. The inner workings of all of these PADS is the same. (Comment No. 112)

The purpose of the other propellant actuated devices that ATF recognizes * * * [is] to convert chemical potential energy into useful mechanical work—i.e., a nail gun, inflatable automobile occupant restraint systems, etc. A rocket motor and the reload kit that can be assembled to create the rocket motor clearly do the same. (Comment No. 123)

It is not shown why it is valid that only hobby rocket motors are proposed to lose this PAD status. Other devices still classified as PADS, i.e., car air bag[,] gas generators and aircraft safety systems, have very similar function, extremely similar mechanical configuration, and contain very similar chemical compositions to hobby rocket motors. Many of these devices classified as PADS contain chemical compositions designed to be much more energetic than the compositions used for hobby rocket motors. (Comment No. 212)

Devices that operate in a very similar function and contain many of the same basic materials as hobby rocket motors are allowed by BATFE to utilize the PAD exemption (including devices that function as part of a larger overall device and that operate in conjunction with other components, just like hobby rocket motors). For example, BATFE has specifically exempted rocket motors of equivalent design and size utilized in aircraft safety systems. (Comment No. 230)

There is regulatory inconsistency present in this NPRM as the proposed regulation fails to address how and the basis for regulating an identical rocket motor (the Industrial Solid Propulsion line throwing rocket motor and the Aerotech 1200) differently. The use in both applications is similar. The line throwing motor delivers a payload to the intended area, and if flown by a conventional rocket it can loft instrumentation for the collection of scientific data or evaluate upper air wind speed and direction during the descent phase. (Comment No. 232)

Rockets use the gas generating properties of burning propellant to generate motion, in this case, to loft satellites, scientific payloads, and even humans to high altitude and into space. This is the exact same concept used by a cartridge in a nail gun, or the propellant which enables an airbag to rapidly deploy. A rocket motor, a nail gun cartridge, an airbag, and numerous similar devices all work by the same princip[les], and should all be categorized and regulated as such. They are all the working portions of large systems which operate in concert to perform specific tasks and functions. (Comment No. 257)

Rocket motors, as used in practice, have parallel operation similar to other devices, listed by BATFE as PADS. The devices cited by BATFE as PADS function as part of a larger whole, and rely on other interacting components, just as rocket motors do. (Comment No. 261)

Department Response

Several commenters argue that rocket motors are similar in function,

construction and composition to other devices previously exempted as PADS and therefore should be exempted as such.

ATF has historically granted propellant actuated device exemptions to devices that are generally aimed at increasing personal safety or enhancing the efficiency of mechanical operations. Each device must contain and be actuated by a propellant, and also must be a complete device, tool component, or mechanism that requires no other parts to perform its intended function, including to whatever degree it may operate within a larger or more complex system. Any such device must not permit ready access to the propellant charge as manufactured.

For example, ATF has exempted airbag modules as propellant actuated devices but has not exempted the propellant inside the unit. The airbag module is a self-contained unit that is deployed by an internal initiator or micro gas generator that receives an electronic pulse from a crash sensor. The propellant charge inside the gas-generation canister is converted into a gas, which is then released to inflate the airbag cushion. ATF ruled that these fully assembled airbag modules constitute a gas-generating system. As demonstrated by this analysis, each item being considered for classification as a PAD is individually assessed based upon design and usage characteristics.

5. There Are No Clear Technical Standards for Previous PADS Classifications Listed in the Proposed Rule

In the proposed rule, ATF stated that in applying the regulatory definition of a PAD it has classified certain products as propellant actuated devices: Aircraft slide inflation cartridges, inflatable automobile occupant restraint systems, nail guns, and diesel and jet engine starter cartridges. Approximately 150 commenters argued that the proposed rule provides no technical standards for those products previously classified by ATF as PADS. According to the NAR,

One device listed is hand held, but others are not. One device is whole and stands unto itself, the others are incorporated into larger machines or devices. The NPRM is silent on the size, shape, functions or other measurable specification[s] associated with listed PADS. Nowhere are clear, measurable standards for PADS outline[d] in any detail. Unless and until BATFE can provide potential PADS applicants such specification, there is no consistent basis on which applicants could determine whether their devices would qualify as PADS. (Comment No. 261)

Another commenter expressed similar concerns:

Although the proposed rule claims that the ATF has classified certain products as PADS, there is no reference provided to support that such judgments were ever shared with the public, or that they exist anywhere for that matter. If they do exist, what are the standards by which such classifications were made? (Comment No. 255)

Department Response

The commenters expressed concern about the lack of specific technical standards to be used in making propellant actuated device determinations. They suggest that a person would be at a loss to make their own determination regarding a particular item that may be a propellant actuated device.

Congress did not provide extensive guidance as to what size, shape, or specific functions should be taken into account with respect to propellant actuated device determinations. In fact, a description of items determined by the Department to be propellant actuated devices would include a wide variety of explosive weights, various shapes, and a number of work functions to be performed. This great variation in the types, sizes, and functions of devices makes it difficult to specify technical standards for such classifications. Moreover, the law clearly distinguishes between a federal agency's general interpretations of the laws it enforces, which cannot be changed without the notice-and-comment process, and federal agency opinions applying that law to the facts of a particular case, which are not subject to notice-and-comment requirements. *York v. Secretary of Treasury*, 774 F.2d 417, 420 (10th Cir. 1985) (classification of firearm as machine gun is "not a rulemaking of any stripe"). ATF classification decisions related to particular items fall squarely in the latter category. *Id.*; *Gun South, Inc. v. Brady*, 877 F.2d 858, 865 (11th Cir. 1989) ("[A]ctivities which involve applying the law to the facts of an individual case, do not approach the function of rulemaking.") The Department is not required to disclose the internal deliberative process used in making PAD classifications and wishes to maintain the flexibility to modify evaluation criteria as products and the market evolve. Any person wishing a classification of an explosive device may request one, free of charge, at any time by contacting ATF.

6. Congress Did Not Specify That Mechanism, Metal Work, or Inclusion in, Exclusion From, or Stand Alone Was a Requirement for a PAD Determination

In the proposed rule, ATF stated that the hobby rocket motor cannot be brought within the regulatory definition

of propellant actuated device as a “tool” because it is neither “handheld” nor a complete “device” and because it is not a metal-shaping machine or a part thereof. Further, it cannot be considered to be a “special mechanized device” because, although clearly designed to serve a special purpose, it in no way functions as a mechanism. Finally, because it has no interacting mechanical or electrical components, the hobby rocket motor cannot be deemed to be a gas-generator system.

Approximately 130 commenters indicated that Congress intended a broad definition be applied to PADs and they argued that the proposed rule set forth a narrow interpretation of the term. As one commenter stated, “Congress did not specify any particular type of device to be excluded from the definition. Nothing about the size, complexity, work product produced, whether or not a PAD might be used in or with other components was specified in [the] statu[te].” (Comment No. 163)

Department Response

Congress did not define the term “propellant actuated device,” nor did it provide significant criteria for use in determining which devices should be PADs. The commenter suggested that Congress did not focus on the nature of the explosive materials in question. The Department disagrees with this contention. By the very nature of the term “propellant” it is clear that Congress did not intend for devices actuated by other types of materials (e.g., high explosives) to be considered propellant actuated devices.

In addition, a review of the Congressional testimony provides insights as to what Congress may have considered as propellant actuated devices. Frederick B. Lee from Olin Corporation provided testimony, *see* H.R. Rep. No. 91–1549, at 64 (1970), *as reprinted in* 1970 U.S.C.C.A.N. 4007, 4041., on smokeless propellants and various Olin smokeless propellant devices that he felt should be exempted. When describing these devices, Mr. Lee stated, “these devices are all aimed at increasing personal safety or enhancing the efficiency of mechanical operations.” Although Congress did not define the term “propellant actuated device,” and did not exempt these devices from the explosives controls in the final legislation, this excerpt provides some indication of the types of devices contemplated by Congress in their deliberations related to propellant actuated devices.

The Department agrees that Congress intended the use of discretion and judgment in determining which devices

should be exempted as propellant actuated devices. Further, the Department believes that Congress intended for this term to include devices designed to perform some type of work. However, the Department believes that Congress did not intend for ATF to disregard considerations such as public safety and the potential for misuse of materials under consideration. Rather, Congress intended for ATF to judiciously apply this term to avoid exempting items that could pose a significant danger to the public if left unregulated. Therefore, the Department disagrees with the commenter’s conclusion that ATF is precluded from considering factors other than the purpose for which the device is used.

7. ATF Has Not Established a Clear Process for Application, Review, Adjudication, and Appeal for Parties Seeking a PADs Definition for Their Devices

Many commenters (approximately 145) stated that the proposed rule failed to provide for any form of due process regarding the application, review, adjudication, and appeal of organizations or individuals seeking PADs exemptions. According to the NAR, ATF “does not appear to have any such mechanisms as regards PADS but merely pronounces selected devices as receiving PADS classification. There is no transparency around PADS determinations or their denial.” Another commenter noted that “[a] clear process is needed to apply a clear standard rather than arbitrary decision making of an arbitrary standard. This allows one rocket motor to be denied PAD status as a hobby rocket while another similar rocket motor could be granted PAD status due to an arbitrary process.” (Comment No. 249)

Department Response

The NPRM does not provide specific guidance regarding the application, review, adjudication, and appeal process for propellant actuated device determinations. Moreover, as stated previously, the law clearly distinguishes between a federal agency’s general interpretations of the laws it enforces, which cannot be changed without the notice-and-comment process, and federal agency opinions applying that law to the facts of a particular case, which are not subject to notice-and-comment requirements. However, procedures for those seeking review of a PAD determination are standardized in the Administrative Procedure Act, and information regarding past determinations can generally be

obtained through Freedom of Information Act requests.

Accordingly, the Department disagrees with the contention that there is any inconsistency or arbitrary application of the PAD exemption. Specifically, 5 U.S.C. 702 *et seq.* provides for judicial review of an agency action, when a person is adversely affected or aggrieved by the action. Therefore, the judicial system is available to review the agency’s actions when an item is submitted for classification under the federal explosives laws. Furthermore, except for confidential, proprietary, or statutorily protected information, copies of classification and exemption letters can be obtained from the Department through the Freedom of Information Act. These letters often contain a description of the submitted item and an analysis applied to the item in order to determine whether it meets the regulatory definition of a propellant actuated device. Finally, classification letters contain the name and phone number of an ATF officer who can be contacted to answer any questions or concerns regarding the classification. It is the Department’s position that information regarding PAD classifications is readily and openly available and review of classifications can be addressed through the judicial system.

8. ATF Has Granted PADs Status to Aircraft Safety Systems That Use the Same Technical Approach as Hobby Rocket Motors

Approximately 155 commenters noted that ATF failed to list in the proposed rule a product that it has classified as a PAD that is functionally equivalent to a hobby rocket motor—an aircraft safety system rocket motor. The following comment represents the views of most of the commenters:

BATFE failed to list aircraft safety system rocket motors in their listing of PADS, even though such systems have been granted PADS status. Details on these systems can be found at <http://brsparachutes.com/default.aspx>. These parachute deployment devices are installed in approximately 1,000 FAA certificated airplanes and 18,000 ultralight aircraft. These devices are exactly functionally equivalent to hobby rocket motors. Either both hobby rocket motors and parachute deployment devices are “propellant actuated devices,” or neither is a PAD. Both systems use PADS involving airframes with parachutes, not operating explosive devices. Any attempt to deny PADS classification to hobby rocket motors while simultaneously exempting parachute deployment devices would be arbitrary. (Comment No. 163)

Department Response

The purpose of the NPRM was not to invite review of, and solicit comments on, propellant actuated device determinations with respect to a broad range or complete list of items. Rather, the purpose of the notice was to propose amendment to the regulations at 27 CFR part 555 to clarify that the term "propellant actuated device" does not apply to rocket motors or rocket-motor reload kits consisting of or containing ammonium perchlorate composite propellant, black powder, or other similar low explosives, and to invite comment on this specific issue. However, the item detailed in the comments (parachute deployment devices) was not determined to be a propellant actuated device. Rather, it was exempted by ATF as a special explosive device under the provisions of 27 CFR 555.32, which contains criteria for exemption different from that used for propellant actuated device determinations. Apart from this difference, it is incorrect to categorize "parachute deployment systems" as similar to rocket motors. The explosives contained in these systems, although critical to their function, are only a small part of the overall product. These parachute deployment systems are sold and have been exempted as complete systems. The described parachute deployment system is a multi-component system that includes, but is not limited to, an activation handle, rocket-motor igniter, propellant rocket motor, parachute harness, canister, and bag. Individual rocket motors apart from the final assembly on the aircraft must still comply with all applicable ATF explosive laws and regulations. This is consistent with the final rule on rocket-motor propellant actuated device status.

9. The Proposed Rule Is a Major Rule Pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996

In Notice No. 9P, ATF stated that the proposed 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, because it would 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. Approximately 125 commenters disagreed with ATF's

assertion. In its comment (Comment No. 261), the NAR noted the following:

U.S. manufacturers currently dominate the export market for rocket motors. Denial of a PADS exemption for hobby rocket motors will adversely affect U.S. rocket motor manufacturers' ability to attract investment, innovate and compete due to the far higher costs of regulatory compliance, and a shrinking market for hobby rocket motors. BATF[E] cannot publish a final rule simply by asserting the rule would not have adverse impacts under the Small Business Regulatory Enforcement Fairness Act of 1996. BATFE must provide the means and economic analysis by which it determined the proposed rule would not have adverse impacts for public comment.

Another commenter stated the following:

The model rocket hobby is interdependent with a number of small businesses engaged in the manufacture, resale, and support of model rocket engines. In further complicating consumer purchase of these engines, this proposal will have serious negative impacts in terms of the Small Business Enforcement Fairness Act of 1996. It will interfere with both domestic and foreign business, putting these U.S. companies at competitive disadvantage. (Comment No. 39)

A hobby shop owner provided the following comments:

The proposed regulations have already had and will have further negative impact on my small business. My ability to compete globally will literally be eliminated as a result of this rule. (Comment No. 260)

Department Response

The commenters' contentions rest on an inaccurate portrayal of this rulemaking and Department policy. Specifically, the commenters suggest that if the proposed rule were adopted, it would significantly change the classification of rocket motors and the Department's regulation of these materials. This is not the case. For many years, ATF has regulated low explosives, including rocket motors not exempted as toy propellant devices (those containing 62.5 grams or less of propellant material). This rulemaking is simply a clarification of a long-standing position. If adopted, this proposed rule will not affect the current and past classification of rocket motors or the determination that they are not propellant actuated devices. The Department's regulatory requirements and enforcement program regarding rocket motors will remain unchanged. Therefore, the Department can assert with confidence that the costs associated with doing business in the United States and abroad, for rocket motor-related businesses, will not be significantly affected by this rulemaking. The commenters have not

provided any substantive support for the assertion that the international rocket-motor industry will be adversely affected.

10. The Proposed Rule, if Adopted, Will Have a Negative Effect on the Sport Rocketry Hobby and Small Businesses

Approximately 70 commenters argued that the proposed rule will have a negative effect on the sport rocketry hobby and on small businesses. Some commenters believe that many individuals currently participating in the hobby will stop doing so and many more potential new participants will decline to participate in the hobby. The commenters contend that reduced participation in the hobby will result in reduced sales of model rocket motors. Some commenters disagreed with the Department's determination that the proposed rule is not an "economically significant" rulemaking as defined by Executive Order 12866. Following are excerpts from some of the comments:

If this rule is enforced most adults participating in the hobby will drop out. Few parents will want to be subjected to paying for an explosive permit fee, background checks, fingerprinting, and ATF inspections. (Comment No. 96)

Every entity that participates in this market is a small entity as defined by statute. ATF should undertake a rigorous assessment of the economic impact of this effectively new regulation. ATF's assertion that everyone involved in the market is already regulated is false; this rule effectively eliminates a means by which a significant number of users were able to participate in this market. A large number of these users may not be able, or elect not to, obtain the requisite permits, thus significantly reducing the market for these products. (Comment No. 205)

I participated in a club buy of a magazine and an associated purchase of primary insurance. The cost of this worked out to be \$100 per person up front plus \$100 per year per person for liability insurance. Even this relatively cost effective method of meeting onerous BATFE expectations would have a major impact on the small rocketry community. In particular, if NAR's 2000 Sport Rocketry flyers were to engage in a similar strategy, they would pay in the aggregate approximately \$200,000 (one time buy of the magazine) plus \$267,000 per year to sustain the cost of principle insurance and the recurring cost of the [low explosives user permit] (LEUP). Add in the Tripoli Rocketry Association's 3000 members who are high-power certified and this only exacerbates the staggering cost. A conservative estimate of the total real cost of this unneeded regulation is as follows:

\$500,000 one-time cost upon implementation of the NPRM
\$665,000 sustained yearly average cost (insurance and LEUP) (Comment No. 255)

Obtaining an LEUP requires the ability to store APCP and most people in urban and

suburban environments aren't able to get permission from local authorities to do so. The net effect of this rulemaking will be to force a large percentage of the rocket enthusiasts out of the hobby and to shut down a 100 million dollar industry. (Comment No. 257)

The proposed regulations have already had and will have further negative impact on my small business. My ability to compete globally will literally be eliminated as a result of this rule. (Comment No. 260)

Department Response

This rulemaking is simply a clarification of a long-standing position. If adopted, the proposed rule will not affect the current and past classification of rocket motors, or the Department's regulatory requirements and enforcement program regarding rocket motors.

One commenter provided estimated costs associated with the proposed rulemaking. The commenter mistakenly suggests that all rocket members of NAR and Tripoli will require storage in approved storage magazines when in fact only those individuals who purchase, store, and use rocket motors that contain more than 62.5 grams of propellant will require access to approved storage magazines. Ninety percent of rocket motors sold in the United States contain 62.5 grams or less of propellant, therefore, this storage requirement only applies to 10 percent of the rocket market. Those individuals who currently purchase and use rockets that contain more than 62.5 grams of propellant should have already obtained the necessary ATF permit and complied with storage requirements, and this proposal should not affect the storage requirements applicable to their rockets. Aside from the renewal fees, these individuals should not incur any additional fees associated with these requirements.

One commenter suggests that the rulemaking will force individuals to stop using hobby rockets due to fees associated with explosive permits, background checks, fingerprinting, and ATF inspections. ATF does not and has never charged fees for inspections. The rulemaking does not affect the permit fees associated with obtaining a federal explosives permit. Current permit fees will remain at \$100.00 for the first three years (less than \$34.00 a year) and \$50 for every subsequent three-year period (less than \$17.00 a year). The background checks and processing of required fingerprint cards are included in the price of the ATF permit.

Therefore, the Department is confident that the costs associated with doing business in the United States and abroad, for rocket motor-related

businesses, will not be significantly affected by this rulemaking.

11. ATF's Statement That "the Hobby Rocket Motor Is Little More Than Propellant in a Casing" Is Factually Incorrect

Eleven commenters disagreed with ATF's description of a hobby rocket motor as being "little more than propellant in a casing." Following are excerpts from some of the comments:

A hobby rocket motor must be considered to be the entire construction of the motor including all components such as but not limited to nozzle, retaining cap, delay grain, ejection charge, and any other components necessary for the proper mechanical operation of the motor. A hobby rocket motor cannot be reduced to "little more than propellant in a casing." (Comment No. 124)

The assertion that [the] hobby rocket [is] "little more than propellant in a casing" is incorrect. Key components of a hobby rocket motor are:

- a. Nozzle
- b. Pressure vessel (with an aft nozzle retaining system and a forward pressure/delay bulkhead)
- c. Propellant grain(s)
- d. Case liner/insulator
- e. Delay grain
- f. Ejection charge
- g. Ejection charge holder

To use the phrase "little more than propellant in a casing" is an oversimplification and demonstrates very little understanding of the overall complexity of the system. (Comment No. 133)

This * * * statement is incorrect because the fundamentals of rocket propulsion require the acceleration of the exhaust gases in a particular direction in order to perform work. A road flare is little more than a combustible mixture and a casing. It has no nozzle by design and is not designed to generate thrust. A rocket motor is at least three components: Propellant, a casing, and an exhaust nozzle. Without a nozzle a rocket motor is functionally just a road flare. (Comment No. 228)

The typical reloadable HP model rocket motor I use(d) is the Aerotech H128. It employs a precisely designed and engineered case (like the smaller motors), and a reload that includes carefully formulated and manufactured propellant, sealing disks and O-rings, liners and a specifically engineered nozzle. This is a patented reloadable rocket motor system. The case is designed for re-use, with engineered tolerances for the various reloads and well established internal pressures they can create. The reloads themselves are basically non-reusable items, each component engineered for specific purposes in the motor's operation. These motor systems are far more complex than the term "propellant in a case" implies. (Comment No. 258)

Department Response

The statement "the hobby rocket motor is little more than propellant in a casing" was taken from a previous

rulemaking regarding rocket motors. The comments failed to address the rest of the statement in the previous rulemaking, which stated that "the hobby rocket motor is little more than propellant in a casing, incapable of performing its intended function until fully installed, along with an ignition system, within a rocket." This statement, taken in context, implied that rocket motors in no way function as a mechanism because they lack the necessary indicia of a mechanized device. The Department previously acknowledged that rocket motors typically include a nozzle, retaining cap, delay grain, and ejection charge. The Department also acknowledges that variations exist among types of rocket motors available for purchase by the general public. The Department maintains its view that rocket motors are in no way analogous to a special mechanized device, because they consist essentially only of propellant encased by a cardboard, plastic, or metallic cylinder.

12. Model Rocket Motors Are Not a Threat to Homeland Security

Approximately 40 commenters argued that model rocket motors do not pose a threat to homeland security, should not be regulated, and should be classified as PADs. Some of the arguments raised by the commenters are as follows:

The rockets we fly would make terrible weapons, [and] therefore pose no risk to national security. The fuel used in them (APCP) burns far too slow to be used for any other purpose than rocket fuel. (Comment No. 32)

BATFE's concern that a hobby rocket motor could be used to launch terror weapons against targets is unfounded. Terrorists have already developed techniques for smuggling their weapons into crowded areas without attracting attention, and therefore have no need of a rocket, which would attract attention toward its launch site when launched. Thus imposing this regulatory burden on the law abiding rocketry community would have no benefit to the common defense and security and is therefore not justified. (Comment No. 70)

I don't believe there has been a single recorded incident of a terrorist action against the public using hobby rocketry motors of any size. (Comment No. 215)

One hypothetical reason for a desire on the part of [the] administration to regulate hobby rocket motors might be the perception of a threat to security. But such a threat is indeed perception and not reality. The Tripoli Rocketry Association is not aware of any specific use of hobby rocket PADs in any security threat, and BATFE does not appear to have made public any such incident. (Comment No. 219)

Department Response

The Department is aware that hobbyists have a legitimate and lawful desire to acquire explosive materials in pursuit of their recreational activities. In keeping with Congress's intention, ATF has maintained a long-standing exemption from the federal explosives controls for hobby rocket motors containing 62.5 grams or less of low explosive materials. This exemption covers 90 percent of all rocket motors that are sold to hobby rocketry enthusiasts.

The Department disagrees, however, with the suggestion that ammonium perchlorate composite propellant rocket motors could not be used for criminal or terrorist purposes. While it is true that APCP in a rocket motor usually burns in a controlled manner, it can react much more violently when more strictly confined. APCP can be used to make an effective pipe bomb or other improvised explosive device. Criminal and terrorist elements do not always focus on precise strikes against specific or small targets. Terrorists have demonstrated in recent international events the effectiveness of indiscriminately firing improvised rockets into civilian areas. Terrorists could effectively accomplish their goals of instilling fear and disrupting our economy through the similar utilization of a large rocket within the United States, regardless of whether they targeted a building or other structure with great accuracy. Terrorism will exploit any vulnerability. Allowing unfettered access to large rocket motors would create opportunities for terrorists and criminals, and could make the United States more vulnerable to the consequences of their activities in many ways.

13. Historically, ATF Has Considered Hobby Rocket Motors To Be PADs

Several commenters maintained that historically ATF has considered hobby rocket motors to be PADs, regardless of the propellant weight. Following are some of the arguments raised by the commenters:

The BATFE exempted all APCP rocket motors regardless of propellant weight up until the mid 1990's. They considered all rocket motors propellant activated devices, which were exempt from BATFE permits. Current APCP rocket motors use the same propellant as before. Since Congress has not changed the definition of an explosive during this time, it is illogical to now start regulating rocket motors, nor within the powers of the BATFE to change. (Comment No. 65)

Furthermore, the "confusing" letters from 1994 are rather clear: "An ATF manufacturer's license would be required to manufacture ammonium perchlorate

composite explosives. The exemption at 27 CRF Part 55, section 141(a)(8) includes propellant-actuated 'devices.' The term 'device' is interpreted to mean a contrivance manufactured for a specific purpose. Under this definition, a fully assembled rocket motor would be exempt." That does not appear to be the least bit confusing. (Comment No. 194)

Department Response

The comments that contend ATF has historically considered hobby rocket motors to be propellant actuated devices are inaccurate. Among industry members and in the rocketry community, there has been some confusion regarding the status of rocket motors as PADs. This confusion may be partially attributable to a classification letter drafted by ATF in 1994 that incorrectly stated that rocket motors containing 62.5 grams or less of propellant were exempt from federal regulation as PADs. A superseding 2000 letter more accurately and clearly stated that rocket motors did not meet the regulatory definition of a PAD. The intention of this rulemaking is to clarify ATF's position that rocket motors are not and have not been exempted from federal explosive regulation as propellant actuated devices.

14. Certain Terms Defined in the Proposed Rule (e.g., "Tool" and "Device") Were Not Included in the Initial Rulemaking That Defined the Term "Propellant Actuated Device"

As explained in the proposed rule, in 1981 ATF added the current definition of a PAD to its regulations. Two commenters questioned whether certain terms defined in the proposed rule, e.g., "tool," "mechanized device," etc., were similarly defined during the rulemaking proceeding that resulted in the 1981 regulation. According to the commenters:

You do not say that the terms used ("tool", "mechanized device," etc.) were themselves carefully defined as a part of the 1981 regulation. Therefore, it appears you are trying to narrowly define them now, after the fact, in order to support your current proposed rulemaking. (Comment Nos. 66 and 254)

Department Response

The Department has been charged with enforcing the federal explosive regulations and applying them as Congress directed. In order to work within the statutory language provided by Congress and the resultant regulatory provisions, ATF analyzed and referenced certain terms such as "tool" and "special mechanized device" in order to give meaning to the technical term "propellant actuated device."

Therefore, the Department is not representing these words to be terms of art that are specific to propellant actuated devices. Instead, these terms are being used to further illustrate and articulate the concept of a "device."

15. Implementation of the Proposed Rule Is Not Necessary for Correction of a Demonstrated Public Safety Issue

ATF stated in the proposed rule that implementation of the proposed definition of a PAD is important to public safety. Approximately 15 commenters argued that model rocketry is a safe hobby and that hobby rocket motors should be exempt from regulation as PADs. Following are excerpts taken from some of the comments:

I have been unable to find any reports of deaths, or even serious injuries, related to hobby rocketry in this country. This is due, in part at least, to the fact that the rocket motors you are most concerned with in this proposed rulemaking (those containing over 62.5 grams of propellant) are not available to the general public * * *. [I]t is necessary that one be certified through, and under the rules of, the NAR or TRA in order to purchase and use these high-power motors. (Comment No. 66)

No example, case, documentation, or threat has been demonstrated or presented to amend the regulation to exclude the devices in question. No reason has been presented as to why this change is "important to public safety." In my extensive professional experience, I am not aware of any case where public safety was jeopardized to the point that would warrant such an expansion of the regulation. (Comment No. 133)

If the purpose [of the proposed rule] is public and personal safety, I would point out that sport rocketry is already one of the safest (if not the safest) outdoor hobbies today. (Comment No. 149)

Department Response

The Department acknowledges that the hobby rocket community, in general, has demonstrated its ability to maintain a safe and functioning hobby for thousands of individuals. However, APCP, a common ingredient in hobby rocket motors, is an explosive material. By nature, explosive materials present unique public safety hazards. Congress determined that these types of materials should be subject to regulation even though they are usually used in a lawful, utilitarian manner. Accordingly, these explosives are regulated by law.

One commenter suggested that one of the reasons that there are few injuries or deaths associated with high-power rocket use is that these items are not available to the general public. Rather, a person must be certified by a rocketry association in order to purchase motors of a certain size. The Department agrees

that the purchase of large motors should be restricted, and it applauds the rocket industry for setting standards to ensure that rockets are not readily available to all members of the general public.

Exempting high power rocket motors as PADs would be inconsistent with the above concerns, and with the Congressional mandate that the Department set standards to ensure that only qualified persons receive explosives.

Another commenter states that “[n]o reason has been presented as to why this change is ‘important to public safety.’” The same commenter states that rocket motors should be excluded from regulation because no reasons have been provided where public safety was jeopardized.

The proposed rulemaking makes no change to the current explosive regulations but rather clarifies existing policies regarding rocket motors. Moreover, explosives of all types provide the means for individuals with nefarious objectives or goals to cause significant damage to life or property. Congressional mandate requires oversight and regulation of these materials.

16. The Proposed Rule Violates the Federal Explosives Law and Fails To Meet the Statutory Intent of the PADs Exemption

ATF is responsible for implementing Title XI of the Organized Crime Control Act of 1970. One of the stated purposes of the federal explosives law is to avoid placing any undue or unnecessary federal restrictions or burdens on law-abiding citizens with respect to the use of explosives for lawful purposes.

Propellant actuated devices, along with gasoline, fertilizers, and propellant actuated industrial tools manufactured, imported, or distributed for their intended purposes, are exempted from the statutory definition of “explosives” in section 841(d) of title 18, United States Code, by 27 CFR 555.141(a)(8). In 1970, when Title XI was enacted by Congress, the Judiciary Committee of the United States House of Representatives specifically considered and supported an exception for propellant actuated devices:

It should be noted that the term “explosives” does not include fertilizer and gasoline, nor is the definition intended to include propellant actuated devices or propellant actuated industrial tools used for their intended purpose.

H.R. Rep. No. 91-1549, at 64 (1970), as reprinted in 1970 U.S.C.A.N. 4007, 4041.

Several commenters argued that the proposed rule either violates the law

because it places an undue burden on the lawful use of explosives or it fails to meet the statutory intent of the PADs exemption. Following are excerpts from some of the comments:

The statute clearly states that its purpose is not to impose an undue burden on the lawful, peaceful uses of explosives. The statutory PAD exemption is clearly and obviously intended to permit use of materials classified as explosives without the burden of permitting, when the explosive action is so limited and directed by design as to be non destructive * * * i.e., when the explosive force is so applied by design of the explosive and its containing device that it does not destroy its container nor other nearby materials, but performs otherwise useful work such as driving a nail, or inflating an aircraft escape slide or automobile air bag, then the explosive falls under the PAD exemption. A rocket (and its fuel) clearly falls within this intent and is therefore entitled to the PAD exemption. (Comment No. 70)

ATF’s proposed rule is contrary to the intent of the enabling law * * * in that it will place any undue and unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, storage, or use of explosive materials for lawful purposes, and in that it seeks to impose Federal regulations, procedures, and requirements that are not reasonably necessary to implement and effectuate the provisions of Title XI. (Comment No. 205)

In light of this legislative history, as well as the purpose of the Act to avoid placing “any undue or unnecessary Federal restrictions or burdens on law abiding citizens” * * * it is quite clear Congress intended a broad definition, not a narrow one, be applied to PADS * * *. BATFE’s proposed rule ignores completely the broad intent of the Congress relative to the nature and usage of PADS by generating an artificially narrow interpretation of Congressional intent. (Comment No. 261)

Department Response

The primary purpose of the federal explosives law, as expressed by Congress, is to protect interstate and foreign commerce and to reduce the hazards associated with the misuse and unsafe or insecure storage of explosive materials. Therefore, this goal is the basis for all regulatory action undertaken by the Department. Regulation is imposed only to the extent that it is “reasonably necessary to implement and effectuate the provisions of this title.”

The Department believes that protecting the general public from the potential for criminal or terrorist misuse of rocket motors greatly outweighs any limited burden placed on individuals acquiring, using, storing or selling these items.

17. The Proposed Rule Is Unreasonable

Several commenters contended that the proposed rule excluding hobby rocket motors from the PAD exemption is unreasonable because it makes no allowance for a “responsible adult” category of use between what is safe enough for minors, e.g., the Consumer Product Safety Commission-based 62.5 gram limit, and what is dangerous enough to require special training, permitting, regulation, etc. The commenters argued that this “responsible adult” category exists in most other human endeavors. For example, children may ride bicycles and adults may drive automobiles, but a Commercial Driver’s License is only required for people who drive tractor trailers and buses, not private automobiles.

Department Response

The Department disagrees that persons deemed to be “responsible adults” should be exempt from regulation of rocket motors. First and foremost, Congress specifically addressed age standards for persons by prohibiting distribution of explosive materials to anyone under the age of 21. See 18 U.S.C. 842(d)(1). In doing so, Congress established a statutory criterion for the age a person should be in order to receive explosive materials. To deviate from that standard specifically for rocket motors would be inconsistent with the statutory scheme. Likewise, there is no basis within the statutory language to create an exemption based upon age.

Although not relevant to the PAD determination, the regulatory exemption set forth in 27 CFR 555.141(a)(10), which exempts rocket motors that contain no more than 62.5 grams of propellant, did take into consideration the Consumer Product Safety Commission standards. This standard did not result in an age limitation, but instead is based upon the safety and potential hazards associated with the motor. ATF’s explosives regulation, section 555.141(a)(10), applies an exemption to rocket motors that are most commonly used by hobbyists, Boy Scouts, and rocketry club members for learning and experimentation, i.e., those with 62.5 grams or less of propellant. In effect, the exemption allows for less-powerful rocket motors to be used by all age groups without regulation, while leaving intact regulatory standards for more-powerful rocket motors. An exemption based solely on age, however, would not be grounded in any statutory provision and would be

inconsistent with the 62.5-gram threshold.

18. Hobby Rocket Motors Meet the Definition of a PAD According to the Department of Commerce and Other Sources

Approximately 15 commenters cited various references to show that the standard usage of the terminology “propellant actuated devices” specifically includes rocket motors. Following are some of the references presented in the comments:

- A document entitled, “National Security Assessment of the U.S. Cartridge and Propellant Actuated Device Industry Third Review,” published in August 2006 by the U.S. Department of Commerce, Bureau of Industry and Security, Office of Strategic Industries and Economic Security.
- A study released in 1963 by Frankford Arsenal, “Propellant Actuated Device (PAD) Assisted Parachute System for Aerial Delivery of Cargo.”
- A test conducted in 1971 by the Aberdeen Proving Ground MD Material Testing Directorate, “Engineering Test of Rocket, Compensating, Tip-Off for the OV-1 Mohawk Escape System” (Report Number APG-MT-3858).
- A file entitled, “Ordnance Technology,” authored at the Naval Surface Warfare Center, Indian Head Division.
- The U.S. Army Project Manager Close Combat Systems.
- The Army Materiel Command publication, “Propellant Actuated Devices” (AMCP 706-270, 1963).
- “Rocket Basics, A Guide to Solid Propellant Rocketry,” published by Thiokol Propulsion (now ATK).

Department Response

The Department’s purposes for and methods of classifying propellant actuated devices under the federal explosives laws may vary from those of other government agencies. Each government entity is charged with fulfilling its own unique mission and interpreting its own unique statutory authorities, as reflected in their corresponding regulations, rulings, and policies. The Department’s classification of these items and its definition of “propellant actuated device” may vary from other organizations’ definitions of the same term. ATF must define the term PAD and determine its application with reference to the statutory mandates of title 18 U.S.C. chapter 40, ATF’s specific mission, and the goal of public safety; other agencies’ interpretations of terms applicable to their mission should

have no effect on the Department’s deliberations in this regard.

The Department rejects the argument that because other entities identify certain devices, some of which contain substantial explosives weight, as propellant actuated devices, then the Department should follow suit. Nonetheless, the Department has reviewed the aforementioned documents and rejects the inference that these documents identify a rocket motor alone as a propellant actuated device. The Army Materiel Command Publication, “Propellant Actuated Devices,” was replaced in 1975 by an updated version, which has since been rescinded. The PADs referred to in the Army publication are complex systems involving multiple components, designed for use in military vehicles. Furthermore, the definition in the Army publication specifically states that a PAD must accomplish or initiate a mechanical action. The rocket motors in this final rule do not initiate or accomplish a mechanical action.

The study by Frankford Arsenal, “Propellant Actuated Device Assisted Parachute System for Aerial Delivery of Cargo,” was initiated to study the feasibility of using PAD-type rockets to reduce the ground contact velocity of air-delivered cargo.

The Department’s review of “Ordnance Technology” from the Naval Surface Warfare Center revealed no reference suggesting that rocket motors alone are considered propellant actuated devices. This file made no attempt to define propellant actuated device, nor did it establish any criteria for such a designation.

The U.S. Department of Commerce’s “National Security Assessment of the U.S. Cartridge and Propellant Actuated Device Industry” was initiated to analyze the current and long-term health and economic competitiveness of the cartridge actuated device/propellant actuated device industry and to develop recommendations for the Navy to ensure the continued ability of the industry to support defense missions and programs. The document was not intended to define “propellant actuated device,” nor did it define or provide criteria to determine what a PAD is. The Department questions the relevancy of this document to this rulemaking proceeding.

The U.S. Army Project Manager Close Combat Systems manages over 190 separate programs that meet Army transformation goals of providing smaller, lighter, more-lethal munitions over the next 20 years. The Department found no reference to propellant actuated devices in their publications

and questions the relevancy of this program to the question of whether rocket motors should be classified as PADs.

19. ATF’s Statement That “the Hobby Rocket Motor Is, in Essence, Simply the Propellant That Actuates the Hobby Rocket” Is Incorrect

Three commenters disagreed with ATF’s statement that because the hobby rocket motor is, in essence, simply the propellant that actuates the hobby rocket, the motor itself cannot be construed to constitute a propellant actuated device. Following are excerpts from the comments:

The ATF suggests “the hobby rocket motor is, in essence, simply the propellant that actuates the hobby rocket.” No, the propellant is the material (e.g., APCP) inside the motor. What is actuated is the conversion of this propellant into a gas inside the motor. The gas exiting the motor’s nozzle moves the rocket motor in the opposite direction. Used as intended in a rocket airframe (typically nosecone, body and fins designed so as to be stable in flight) the rocket motor moves the rocket upward. (Comment No. 152)

[T]he propellant alone cannot make a rocket motor function, but the mechanical interaction of all the components does constitute a propellant actuated device. (Comment No. 174)

The premise, that a motor is propellant, (in essence or otherwise) is flatly, provably, wrong. If I put propellant in my rocket, I will burn up my rocket. I need to load that propellant into a motor in order to create thrust. Since the premise is wrong, the conclusion can not follow. (Comment No. 205)

Department Response

The Department considers APCP, whether in powder form or fabricated into propellant grains, an explosive. The Department is required under the federal explosives laws to publish an annual list of explosives. Since publication of the first “Explosives List” in 1971, ammonium perchlorate composite propellant, the propellant used in many high-powered rocket motors, has been classified as an explosive.

One commenter implies that rocket motors are not propellants. The Department disagrees with this suggestion. Rocket motors, consisting principally of propellant grains, are manufactured with APCP, which is a regulated explosive.

Each of the above comments makes the distinction between APCP propellant and a rocket motor containing APCP. Also, each suggests that the rocket motor performs a function beyond what the APCP alone can accomplish. The Department finds these to be reasonable assertions.

However, it is unclear how this differentiation between the rocket motor and the APCP propellant makes more convincing the argument that rocket motors are propellant actuated devices. The rocket motor has no self-contained igniter, nor is it by itself serving any intended, "actuated" purpose. Therefore, rocket motors do not fall within the definition of a PAD.

20. The Proposed Rule Will Have an Effect on the States (Executive Order 13132)

In the NPRM, the Department stated that the proposed rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, in accordance with section 6 of Executive Order 13132, the Attorney General determined that the proposed regulation did not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Two commenters, including the NAR, raised similar concerns regarding the Department's determination that the preparation of a federalism summary impact statement was not warranted. The NAR stated the following in its comment:

First, the NPRM is silent about how this conclusion was reached. There is no analysis or rational[e] provided for this conclusion. BATFE fails to comment on the types, number and work of state agencies who might be forced [to] change procedures by the proposed rule. There is no qualification given to the size, duration or nature of potential economic or regulatory impacts on state governments. Secondly, state regulators who currently do not license hobby rocket motors users, would face a great increase in licensed explosive users should a PADS exemption not apply to hobby rocket motors. Workloads for these state regulators will increase dramatically, both as regards licensing and inspection without any corresponding staff or funding increase. BATF[E] must address these potential state impacts prior to publication of any final rule. (Comment No. 261)

Department Response

The commenters' contentions appear to rest on inaccurate assumptions regarding the relationship between state requirements and the federal explosives regulations as well as a misunderstanding of this rulemaking. Title XI of the Organized Crime Control Act of 1970 and its implementing regulations make clear that this law and the regulations are not intended to affect state or other law. A license or permit issued under the federal explosives

requirements confers no right or privilege to conduct business contrary to state or other law. Similarly, compliance with state law affords no immunity from the consequences of violation of the federal law and regulations. Finally, the federal explosives laws under title XI of the Organized Crime Control Act of 1970 place no enforcement burden or expectation on state or other nonfederal authorities.

21. ATF Does Not Need To Regulate Model/Sport Rocketry

Three commenters argued that ATF's regulation of the model/sport rocketry hobby is unnecessary. Following are some of the commenters' reasons given to support their position:

[W]e have a safety record that is better than any other hobby or sport; including baseball, swimming, or riding a bicycle. This incredible safety record is a result of a safety code originally developed by a former White Sands Range Safety Officer that is always followed when our rockets are flown. We're a self-policing hobby that needs no Federal intervention. (Comment No. 189)

The sport and high power rocketry community is fully able to regulate itself without further intrusion of the United States government. (Comment No. 223)

Hobbyists who wish to use large hobby rocket PADs for their intended purpose must first gain permission from the Federal Aviation Administration * * * to use the motors in U.S. airspace. To require permission from yet another agency to purchase the motors is redundant, an unnecessary duplication of effort to no logical purpose. (Comment No. 219)

Department Response

The Department acknowledges that rocketry clubs and organizations have implemented self-regulating procedures and policies that are commendable. Voluntary club regulation and certification provide some oversight of club members, but this final rule clarifies existing policy that governs all persons, including potential terrorists, felons, or illegal aliens.

One commenter incorrectly implies that ATF and the Federal Aviation Administration ("FAA") have duplicative roles in the regulation of explosives. While it is true that FAA permission is necessary for certain activities, ATF is the Federal agency primarily responsible for regulating the purchase and storage of, and interstate commerce (with the exception of transportation) in, these explosive materials.

Government agencies tailor their regulations to facilitate their specific mission. For instance, Department of Transportation ("DOT") regulations are primarily designed to ensure the safe

transportation of explosive materials. The Department's regulations, on the other hand, are designed to prevent the diversion and criminal misuse of explosives and also to ensure that explosives are safely and securely stored. Therefore, although there are numerous agencies and organizations involved in the regulation of explosives, the Department's regulations are necessary to accomplish its specific mission.

In addition to Government agencies, the Department is aware of the self-regulation efforts of rocketry clubs and organizations. This self-regulation is laudable. However, it does not, nor can it, provide a mechanism to ensure that persons prohibited under federal law from acquiring explosives are denied access to large rocket motors. Voluntary club regulation and certification provide some oversight of club members, but this final rule governs all persons, including potential terrorists, felons, or illegal aliens. Moreover, it applies to all sellers of rocket motors containing more than 62.5 grams of explosive material, as well as to sellers of reload kits designed to enable the assembly of motors containing more than 62.5 grams of explosive material.

22. Removal of Hobby Rocket Motors From Their Current Classification as PADs Will Increase ATF's Work Load

One commenter, the Tripoli Rocketry Association (Comment No. 219), contended that adoption of the proposed rule would place a burden on ATF's resources. According to the commenter:

Currently, the classification of hobby rocket motors as PADs eliminates or reduces the time-consuming and unnecessary inspections by BATFE employees of records and storage of these harmless and educational PADs by hobbyists. If the proposed rulemaking is imposed, inspection of records and storage of such devices must be resumed. The BATFE may have to provide further training to those field operatives unfamiliar with rocket motors. The BATFE will also have to deal with the applications for user's permits from hobbyists who wish to use these devices. All such additional effort would be unnecessary if the current classification of hobby rocket motors as PADs is retained.

Department Response

The commenter has misinterpreted the Department's position on rocket motors. It is and has been the Department's position that all rocket motors and kits containing explosive materials such as APCP and black powder are subject to the provisions of 27 CFR part 555. One of these provisions provides an exemption for

motors and kits containing 62.5 grams or less of explosive material. However, with respect to rocket motors and kits containing more than 62.5 grams of explosive material, ATF has been processing applications from rocketry enthusiasts and conducting inspections as a regular course of business. Therefore, the Department does not anticipate an increased workload due to this rulemaking. Further, the Department's field personnel have been regularly exposed to training and field activities regarding rocket motors.

IV. Request for Hearings

Two comments requested that ATF hold public hearings on the proposed definition of a PAD set forth in Notice No. 9P. According to one commenter (Comment No. 247), the proposed rule "is arbitrary and capricious in many ways and violates a recent court decision of which the ATF must be well aware. On this basis the proposed rule should not be enacted. * * * The issuance of an arbitrary and capricious rule change through a process that violates a recent DC Circuit of Appeals decision must surely be an action that the Director should not take solely on his own discretion."

After careful consideration, the Director has determined that the holding of public hearings with respect to the proposed definition of a propellant actuated device is unnecessary and unwarranted. First, issuance of this final rule complies in all respects with the Administrative Procedure Act. Any party who believes the rule to be arbitrary, capricious, or in excess of statutory authority may challenge it in federal court. In addition, ATF's public hearings are generally conducted to permit the public to participate in rulemaking by affording interested parties the chance to present oral presentation of data, views, or arguments. Most commenters who addressed the proposed definition of a PAD expressed similar views and raised similar objections and concerns. As such, the Director believes that the holding of public hearings would not produce any new information on this issue.

V. Final Rule

After careful consideration of the comments received in response to Notice No. 9P, this final rule adopts the definition of a propellant actuated device as proposed, and confirms the Department's position that hobby rocket motors are not exempt from federal explosives regulation, pursuant to the propellant actuated device exception.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

This rule has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866 ("Regulatory Planning and Review"). The Department of Justice has determined that this rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, and accordingly this rule has been reviewed by the Office of Management and Budget. However, 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, safety, or State, local, or tribal governments or communities. Accordingly, this rule is not an "economically significant" rulemaking as defined by Executive Order 12866.

This rule merely clarifies ATF's long-held position that hobby rocket motors and rocket-motor reload kits consisting of or containing APCP, black powder, or other similar low explosives, regardless of amount, do not fall within the "propellant actuated device" exception. The rule does not in any way expand the universe of rocket motors and rocket-motor reload kits that will remain subject to ATF regulation. Accordingly, unless they fall within ATF's exemption for rocket motors containing 62.5 grams or less of propellant, rocket motors will remain subject to all applicable federal explosives controls pursuant to 18 U.S.C. 841 *et seq.*, the regulations in part 555 of title 27 of the CFR, and applicable ATF policy.

Rocketry hobbyists who acquire and use motors containing 62.5 grams of propellant or less, however, may continue to enjoy their hobby on an exempt basis, i.e., without regard to the requirements of part 555. Without the 62.5 gram exemption, a typical rocket motor would be required to be stored in a type-4 magazine (costing approximately \$400) because of the explosives contained in the motor. ATF has published a rule that incorporates its existing 62.5-gram exemption threshold into its explosives regulations. See 27 CFR 555.141(a)(10); Commerce in Explosives—Hobby Rocket Motors (2004R-7P); 71 FR 46079 (Aug. 11, 2006).

As noted above, rocket motors containing more than 62.5 grams of propellant will continue to be regulated by ATF. In 2002, Congress enacted the Safe Explosives Act ("SEA") which, in part, imposed new licensing and

permitting requirements on the intrastate possession of explosives. Under the SEA, all persons who wish to receive explosive materials must hold a Federal explosives license or permit. Prior to its enactment, only persons who transported, shipped, or received explosive materials in interstate commerce were required to obtain a license or permit. Now, intrastate receipt, shipment, and transportation also are covered. ATF recognizes that some rocketry hobbyists may have been operating under the false assumption that all rocket motors, regardless of size, were exempted from regulation under the "propellant actuated device" exception. However, rocketry hobbyists wishing to utilize rocket motors containing more than 62.5 grams of propellant must comply with the existing requirements in order to obtain such rocket motors. See also *infra* section V.D (discussing cost analysis pursuant to the Regulatory Flexibility Act).

B. Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National 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 rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988: Civil Justice Reform

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

D. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 605(b), 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. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The Attorney General has reviewed this rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. As indicated, the rule merely clarifies ATF's long-held position that hobby rocket motors and rocket-motor reload

kits consisting of or containing APCP, black powder, or other similar low explosives, regardless of amount, do not fall within the "propellant actuated device" exception and are subject to all applicable Federal explosives controls pursuant to 18 U.S.C. 841 *et seq.*, the regulations in part 555 of title 27 of the CFR, and applicable ATF policy. The Department believes that the rule will not have a significant impact on small businesses. Under the law and its implementing regulations, persons engaging in the business of manufacturing, importing, or dealing in explosive materials are required to be licensed (e.g., an initial fee of \$200 for obtaining a dealer's license for a 3-year period; \$100 renewal fee for a 3-year period). Other persons who acquire or receive explosive materials are required to obtain a permit. Licensees and permittees must comply with the provisions of part 555, including those relating to storage and other safety requirements, as well as recordkeeping and theft-reporting requirements. This will not change upon the effective date of this rule.

Rocket motors containing 62.5 grams or less of explosive propellants (e.g., APCP) and reload kits that can be used only in the assembly of a rocket motor containing a total of no more than 62.5 grams of propellant are exempt from regulation, including permitting and storage requirements. Typically, rocket motors containing more than 62.5 grams of explosive propellant would be required to be stored in a type-4 magazine that costs approximately \$400; however, this rule does not impact ATF's storage requirements, nor does it affect the applicability of ATF's 62.5-gram exemption.

E. 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 the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

F. 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.

G. Paperwork Reduction Act of 1995

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

Disclosure

Copies of the notice of proposed rulemaking, all comments received in response to the NPRM, and this rule 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 555

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Authority and Issuance

■ Accordingly, for the reasons discussed in the preamble, 27 CFR part 555 is amended as follows:

PART 555—COMMERCE IN EXPLOSIVES

■ 1. The authority citation for 27 CFR part 555 continues to read as follows:

Authority: 18 U.S.C. 847.

■ 2. Section 555.11 is amended by revising the definition for "Propellant actuated device" to read as follows:

§ 555.11 Meaning of terms.

* * * * *

Propellant actuated device. (a) Any tool or special mechanized device or gas generator system that is actuated by a propellant or which releases and directs work through a propellant charge.

(b) The term does not include—

(1) Hobby rocket motors consisting of ammonium perchlorate composite propellant, black powder, or other similar low explosives, regardless of amount; and

(2) Rocket-motor reload kits that can be used to assemble hobby rocket

motors containing ammonium perchlorate composite propellant, black powder, or other similar low explosives, regardless of amount.

* * * * *

Dated: January 7, 2009.

Michael B. Mukasey,
Attorney General.

[FR Doc. E9-578 Filed 1-13-09; 8:45 am]

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 545 and 550

[Docket Nos. BOP-1093-F; BOP-1109-F; BOP-1139-F]

RIN 1120-AA88; RIN 1120-AB07; RIN 1120-AB41

Drug Abuse Treatment Program: Subpart Revision and Clarification and Eligibility of D.C. Code Felony Offenders for Early Release Consideration

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) finalizes three proposed rules on the drug abuse treatment program. Finalizing all three proposed rules together results in a more uniform and comprehensive revision of our drug abuse treatment program (DATP) regulations. Specifically, this amendment will streamline and clarify these regulations, eliminating unnecessary text and obsolete language, and removing internal agency procedures that need not be in rules text.

This rule clarifies the distinction between mandatory and voluntary participation in the drug abuse education course, removes eligibility limitations pertaining to cognitive impairments and learning disabilities, and addresses the effects of non-participation both in the drug abuse education course and in the residential drug abuse treatment program (RDAP). In this rule, we also add escape and attempted escape to the list of reasons an inmate may be expelled from the RDAP. Furthermore, in our regulation on considering inmates for early release, we remove obsolete language, add as ineligible for early release inmates with a prior felony or misdemeanor conviction for arson or kidnapping, and clarify that inmates cannot earn early release twice.

DATES: This rule is effective on March 16, 2009.