DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 555

[Docket No. ATF 6F; AG Order No. 2829–2006]

RIN 1140–AA25

Commerce in Explosives—Hobby Rocket Motors (2004R–7P)

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), 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 requirements of part 555 do not apply to model rocket motors consisting of ammonium perchlorate composite propellant, black powder, or other similar low explosives, containing no more than 62.5 grams of total propellant weight, and 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. This final rule is intended to provide rocketry hobbyists with guidance to enable them to enjoy their hobby in compliance with the safety and security requirements of the law and regulations.

The remaining proposals made in ATF's notice of proposed rulemaking (Notice No. 968) will be addressed separately in a forthcoming rulemaking document or documents.

DATES: This rule is effective October 10, 2006.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives; U.S. Department of Justice; 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8203.

SUPPLEMENTARY INFORMATION:

I. Background

ATF is responsible for implementing Title XI, Regulation of Explosives (18 United States Code (U.S.C.) chapter 40), of the Organized Crime Control Act of 1970. One of the stated purposes of the Act is to reduce the hazards to persons and property arising from misuse and unsafe or insecure storage of explosive materials. Organized Crime Control Act of 1970, Public Law 91–452, § 1101, 84 Stat. 952 (1970). Under section 847 of title 18, U.S.C., 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 title 27, Code of Federal Regulations (CFR), part 555 (''Commerce in 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).

ATF is required under the law to publish an annual list of items that fall within the coverage of the definition of explosives. Since publication of the first ''Explosives List'' in 1971, ammonium perchlorate composite propellant (APCP) has been classified by ATF as an explosive. This classification is based upon the statutory definition of ''explosives,'' which contemplates that items can ''function by explosion'' either by detonating (dynamite and other high explosives detonate) or by deflagrating (low explosives, such as black powder, pellet powder, and rocket propellants, deflagrate, or burn very quickly). Because APCP deflagrates when confined, it has been classified by ATF as an explosive.

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. 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. However, certain activities and items have been given exempt status under the law (see exemptions at 18 U.S.C. 845(a)) and its implementing regulations at 27 CFR 555.141.

Although APCP is an explosive material, ATF currently exempts from regulation rocket motors containing 62.5 grams or less of this and other explosive propellants for reasons set forth below. Rocket motors that contain more than 62.5 grams of APCP are subject to all applicable Federal explosives controls pursuant to 18 U.S.C. 841 *et seq.* and the regulations in part 555.

II. Regulatory History

In 1981, ATF exempted from regulation Class C explosives, including ''common fireworks,'' and certain other explosives designated by United States Department of Transportation (DOT) regulations. Included among the items in the DOT regulations that were exempted by ATF were ''toy propellant devices and toy smoke devices'' that were defined by DOT as items ''consist[ing] of small paper or composition tubes or containers containing a small charge of slow burning propellant powder or smoke producing powder.'' ATF determined that 62.5 grams was the maximum amount of propellant that could be deemed a ''small charge'' for toy propellant devices as described in 49 CFR 173.100(u). Subsequently, DOT regulations were revised and the term ''model rocket motor'' was used to apply to items previously described as ''toy propellant devices.''

Between 1996 and 1998, ATF updated its regulations (27 CFR 555.141(a)(7)) to reflect various DOT revisions. In doing so, however, ATF inadvertently removed from the subsection all language under which ''toy'' sport rocket motors had previously been exempted and failed to add language documenting the continued exemption of motors containing 62.5 grams or less of propellant. See 61 FR 53688 (Notice No. 841, October 15, 1996); 63 FR 44999 (T.D. ATF–400, August 24, 1998). Despite this administrative error, ATF has continued to exempt sport rocket motors containing 62.5 grams or less of propellant from the provisions of the Federal explosives laws and regulations.

The Safe Explosives Act (SEA), enacted in 2002 as Title XI of the Homeland Security Act, substantially amended the Organized Crime Control Act of 1970. In drafting the SEA, Congress took into consideration existing Federal explosives law and regulation, but did not do away with ATF's regulation of rocket motors containing more than 62.5 grams of propellant, nor did it decide that motors containing no more than 62.5 grams of propellant should be regulated. Thus, it can be argued that Congress acquiesced in continuance of the exemption. *Cammarano* v. *United States*, 358 U.S. 498, 79 S.Ct. 524, 3 L.Ed.2d 462 (1959); *Ward* v. *Commissioner* of the Internal Revenue Service, 784 F.2d 1424 (9th Cir. 1986). This final rule clarifies in the regulations ATF's long-standing policy and reflects that, after careful consideration, ATF has determined that the 62.5-gram threshold is an appropriate exemption level.

III. Litigation—Tripoli Rocketry Association and National Association of Rocketry v. ATF

In February 2000, the Tripoli Rocketry Association (Tripoli) and the National Association of Rocketry (NAR) brought a cause of action against ATF in United States District Court for the District of Columbia, alleging that:

1. APCP does not ''function by explosion'' and, therefore, APCP is not an explosive material subject to control by ATF;

2. ATF violated the Administrative Procedure Act (APA) by including APCP on the ''List of Explosive Materials'' without subjecting the List to ''notice-and-comment'' rulemaking;

3. Even if APCP is an explosive, sport rocket motors are propellant actuated devices (PADs) and are, therefore, exempt from regulation pursuant to section 555.141(a)(8); and

4. ATF violated the APA and acted arbitrarily and capriciously in setting the maximum-propellant-weight threshold for exempting sport rocket motors at 62.5 grams.

In a subsequent amendment to the complaint, the plaintiffs alleged that certain kits are designed to enable rocket hobbyists to construct rocket motors containing more than 62.5 grams of propellant by placing multiple propellant grains (each weighing 62.5 grams or less) in a reusable motor casing, and that ATF had determined that these kits pose the same dangers and require the same controls as single-use rocket motors containing more than 62.5 grams of propellant and had classified them accordingly. According to plaintiffs, this classification is invalid because ATF did not engage in ''notice-and-comment'' rulemaking before making this determination.

On March 19, 2004, the district court granted partial summary judgment to ATF on the issue of whether APCP is an explosive. In addition, the court concluded that ATF's determination that sport rocket motors containing not more than 62.5 grams of propellant are not PADs, which was confirmed by ATF in a letter dated December 22, 2000, was invalid because it was made without compliance with the APA. The court based its decision on its review of two letters issued by ATF in 1994 that appeared to take a different position from the 2000 letter with respect to the applicability of the PAD exemption to hobby rockets containing not more than 62.5 grams of propellant. Finally, the court held in abeyance a ruling on the remaining counts of the lawsuit pending the completion of ATF's rulemaking that, among other things, as reflected in this document, will establish by regulation ATF's exemption for rocket motors containing no more than 62.5 grams of APCP, black powder or other similar low explosives (Notice No. 968, 68 FR 4406, January 29, 2003).

On February 10, 2006, the United States Court of Appeals for the District of Columbia Circuit determined that ATF's classification of APCP as an explosive could not ''be sustained on the basis of the administrative record,'' 437 F.3d at 81, and therefore remanded the case to the district court in order to allow ATF to ''reconsider'' the classification of APCP and offer a coherent explanation for whatever conclusion it ultimately reaches. *Tripoli Rocketry Ass'n* v. *Bureau of Alcohol, Tobacco, Firearms and Explosives*, 437 F.3d 75, 84 (D.C. Cir. 2006). The court explained that ATF had not ''provided a clear and coherent explanation for its classification of APCP'' and did not ''articulate the standards that guided its analysis.'' Id. at 81. The court did not vacate ATF's designation of APCP as an explosive, because it ''was in place long before the present litigation.'' Id. at 84. Therefore, APCP remains classified as an explosive material and continues to be regulated accordingly by ATF.

On remand, the district court held a status conference with the parties on April 20, 2006, in which the court stated that ATF could pursue its testing and reconsideration efforts and work to provide a more thorough basis for the classification of APCP pursuant to the D.C. Circuit opinion. Presently, ATF is engaged in the reconsideration process and the matter is pending in district court.

IV. Miscellaneous

The carefully-framed exemption embodied in this rule is maintained with a view to maximizing ATF's performance of its statutory responsibilities within the limits of available resources, without compromising public safety. If all hobbyists and retailers who receive or distribute rocket motors containing no more than 62.5 grams of explosive were required to obtain permits and licenses, ATF resources would be stretched beyond their limits to ensure compliance with regulatory requirements and effective administration of the existing Federal explosives laws.

Specifically, the legal requirements placed upon hobbyists and retailers would, in turn, impose an unmanageable administrative burden on ATF. Industry statistics garnered from proprietary manufacturing information reflect that in 2004, there were more than 1.5 million purchasers of small rocket motors. Without the proposed exemption, hobbyists seeking permits to purchase the motors would undergo background checks, submit applications, and be subject to inspection by ATF. Additionally, based upon U.S. Census Bureau and industry information, it is conservatively estimated that there are approximately 10,000 retailers, including nationwide chain retail stores, as well as hobby, game, and toy stores that sell small rocket motors. These retailers sell the vast majority of their smaller motors to children and other hobbyists who use these smaller rocket motors exclusively. If required to obtain licenses, these retailers would be subject to requirements similar to those enumerated above and would need to maintain proper records of receipt and distribution of rocket motors.

In view of the large universe of hobbyists who use small rocket motors and currently are not required to obtain permits—and also in view of the large number of currently-unlicensed retailers selling small rocket motors, it is apparent that to discontinue ATF's long-standing practice of exempting motors containing no more than 62.5 grams of explosive material would be to place upon ATF an administrative burden that would greatly outstrip the agency's licensing, inspection, and enforcement resources. An increase from the current 4,000 Federal explosives licensees to a potential 14,000 licensees and an increase from 8,000 permittees to a potential 1.5 million permittees would result in an unmanageable workload for ATF's administrative personnel and would hamper the agency's ability to effectively manage the overall regulation program with respect to both explosives and firearms. For instance, a massive increase in license and permit applications would undercut ATF's ability to promptly process firearms license applications if it became necessary to draw upon the firearms licensing staff already working at capacity. Furthermore, regulating motors with no more than 62.5 grams would consume these resources even though the hobby rockets that use these smaller motors have been found to pose a relatively small public safety hazard.

V. Notice of Proposed Rulemaking

On January 29, 2003, ATF published in the **Federal Register** a notice of proposed rulemaking (NPRM) soliciting comments from the public and industry on a number of proposals to amend the regulations in part 555 (Notice No. 968, 68 FR 4406). ATF issued the NPRM, in part, pursuant to the Regulatory

Flexibility Act (RFA), which requires an agency to review—within ten years of publication—rules for which an agency prepared a final regulatory flexibility analysis addressing the impact of the rule on small businesses or other small entities.

Notice No. 968 proposed amendments to the regulations that were initiated by ATF and amendments proposed by members of the explosives industry. One proposal initiated by ATF concerned an amendment of the regulations to clarify the items that are exempt from the requirements of part 555. In particular, ATF proposed to amend 27 CFR 555.141 to provide that the regulations in part 555 do not apply to the importation and distribution of model rocket motors consisting of APCP, black powder, or other similar low explosives; containing no more than 62.5 grams of total propellant weight; and 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. This proposal mirrored ATF's long-standing policy, which had initially been adopted by the agency to give effect to the ''toy propellant device'' exemption that had existed in the regulations until 1998. Discontinuance of the 62.5 gram or less exemption would render it infeasible for ATF effectively to administer the Federal explosives controls with respect to rocket motors, including those that pose the most threat to public safety and homeland security. Without the exemption, all requirements of the Federal explosives controls would apply to all persons who acquire and store hobby rockets, regardless of the amount of propellant contained in the motors, thereby spreading ATF resources so thin that ATF could not ensure compliance with regulatory requirements and effective administration of the Federal explosives law.

The comment period for Notice No. 968, initially scheduled to close on April 29, 2003, was extended until July 7, 2003, pursuant to ATF Notice No. 2 (68 FR 37109, June 23, 2003). ATF received approximately 1,640 comments in response to Notice No. 968. This final rule addresses only the proposal made in Notice No. 968 with respect to model rocket motors. The remaining proposals made in Notice No. 968 will be addressed separately in a forthcoming rulemaking document or documents.

VI. Analysis of Comments and Decisions With Respect to Model Rocket Motors

Approximately 620 comments addressed ATF's proposal to exempt from regulation model rocket motors containing up to 62.5 grams of propellant. Comments were submitted by sport rocketry hobbyists, businesses that manufacture or sell hobby rocket motors and related products, one sport rocketry organization (the National Association of Rocketry (NAR)), and others.

In its comments (Comment Nos. 974 and 1570), NAR stated that it is a ''non-profit scientific organization dedicated to safety, education, and the advancement of technology in the sport rocket hobby 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 4,800 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. Thirty-seven (37) comments expressed specific support for NAR's position as set forth in its comments in response to Notice No. 968.

Most commenters addressing the proposal argued that ATF should not regulate model rocket motors or model rocket propellant for reasons discussed below. Other commenters expressed specific concerns regarding the proposed regulation and those concerns are also addressed below.

A. Commenters' Reasons for Objecting to ATF's Regulation of Model Rocket Motors and Model Rocket Propellant

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).

As previously explained, ATF is required under the law to publish an annual list of items that fall within the coverage of the definition of explosives. Since publication of the first ''Explosives List'' in 1971, ammonium perchlorate composite propellant (APCP), the propellant used in many high-powered rocket motors, has been classified by ATF as an explosive. This classification is based upon the statutory definition of ''explosives,'' which contemplates that items can ''function by explosion'' either by detonating (dynamite and other high explosives detonate) or by deflagrating (low explosives, such as black powder, pellet powder, and rocket propellants, deflagrate, or burn very quickly). Because APCP deflagrates when confined, it has been classified by ATF as an explosive.

Approximately 500 commenters contended that rocket motors and rocket propellants (including APCP) are not explosives because they do not ''function by explosion.'' In general, the commenters argued that rocket motors and rocket propellants neither detonate nor deflagrate. NAR argued that ATF's authority to regulate, in any manner, any form of propellant or rocket motor under the Federal explosives law first requires a determination that such items have as their primary or common purpose to function by explosion. NAR contended that ATF failed to make the required statutory determination for rocket motors or APCP in the notice of proposed rulemaking. As such, NAR concluded that ATF cannot regulate rocket motors consisting of APCP as an explosive. NAR also argued that ATF has failed to recognize that rocket motors containing APCP as a fuel source do not have as their primary or common purpose to function by explosion. According to the commenter—

> The leading manufacturer of APCP for rockets (Aerotech, Inc.) has recently explained that the formulation of APCP utilized in such rockets consists of between 40 and 77 percent ammonium perchlorate as the oxidizer, with the remainder consisting of various supplemental metals such as aluminum or magnesium for fuel, various other chemicals that serve as burn rate catalysts and antioxidants, and a synthetic rubber binder. The rubber binder effectively passivates the ammonium perchlorate rendering the resultant composite non-explosive.

NAR disagreed with ATF's determination that rocket motors containing APCP function by explosion because they deflagrate when ignited. As stated in its comment:

> It is widely acknowledged, and accepted by ATFE, that the speed of the burn front in materials that deflagrate is on the order of meters per second (in a detonation reaction the velocity is typically more than one kilometer per second), whereas the speed of the burn front in materials that burn is on the order of millimeters per second * * * the data relied upon by ATFE to date clearly reveals that when APCP is lit the burn front propagates on the order of 'millimeters per second,' which under ATFE's own concept is indicative that APCP 'burns' and does not 'deflagrate.'

NAR provided information to support its position that APCP burns and does not deflagrate. Based on that information, NAR concluded that ''when ignited APCP in rocket motors typically burns at a rate of less than 25 millimeters per second. Accordingly, APCP in rocket motors does not deflagrate when ignited, and thus ATFE cannot classify APCP in rocket motors as an explosive.''

Most commenters expressed views similar to that of NAR. The following excerpts reflect the commenters' position:

If the ATF's interpretation were correct every rocket ever lit would explode on the pad every time without fail. Obviously it doesn't do that. Solid Rocket Propellant (APCP) is a tried and true, safe technology and that is why most of the worlds [sic] professional and hobby rockets use it as the fuel of choice. (Comment No. 88)

APCP does not 'function by explosion.' It functions by combustion * * * It is and has been obvious to the professionals in the field for several decades that APCP does not function by explosion. It does not belong, and never has belonged, on the BATFE's list of explosives. (Comment No. 834)

'Explosion' entails either 'deflagration' or 'detonation'. The generally accepted definition for detonation is the propagation of the burn front at greater than 1 kilometer per second. Deflagration is defined by a burn front propagating on the order of meters per second. Ammonium Perchlorate Composite Propellant (APCP), the most common hobby rocketry propellant, generally burns at less than 25 millimeters per second, putting it well below the definition of both deflagration and detonation. Thus, APCP burns; it does not explode. (Comment No. 854)

Their [solid rocket motors] sole purpose is to propel a rocket by the ejection of hot, high pressure gases produced by the controlled combustion of one of more solid monolithic propellant grains in a high-pressure combustion chamber through an expansion controlling orifice device called a nozzle. The solid rocket motor/propellant system is specifically designed not to explode, and therefore is not an explosive, nor is it an explosive device, and therefore should not be regulated by the BATFE. (Comment No. 895)

Deflagration is characterized by a subsonic burn rate measured in meters per second; * * * APCP merely burns at the rate of millimeters per second. When confined, and should the casing rupture due to over-pressure, the remaining unburnt APCP typically self-extinguishes. An individual could safely ignite one end of APCP, and it would burn much like a road flare! The inclusion of APCP on the list of regulated explosives has no logical basis * * * (Comment No. 1071)

[H]obby rocketry fuel, particularly APCP, is not an explosive, either by nature or by design. APCP neither detonates nor deflagrates. Detonation is characterized by a supersonic burn rate, measured in kilometers per second. The APCP used in hobby rockets cannot be made to detonate by use of a blasting cap. (Comment No. 1164)

ATF has never produced any technical studies, tests, or scientific papers to support the contention that APCP functions by explosion, or even that APCP does detonate or deflagrate. (Comment No. 1547)

Department Response

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* v. *Bureau of Alcohol, Tobacco, Firearms and Explosives*, 337 F. Supp. 2d 1 (2004). After assessing technical and legal arguments presented by the Government and opposing rocketry associations, the district court held that ATF's decision that APCP is a deflagrating explosive was permissible. *Tripoli Rocketry Association* v. *ATF* Civil Action No. 00–273 (Mar. 19, 2004).

As previously stated, in February 2006, the D.C. Circuit disagreed with the district court on this issue because in its view ATF had failed to provide a sufficiently thorough justification to support its classification with a specific, articulated standard for deflagration. *Tripoli Rocketry Assoc., Inc.* v. *Bureau of Alcohol, Tobacco, Firearms and Explosives*, 437 F. 3d 75 (D.C. Cir. 2006). However, the court declined to set aside the classification, and APCP thus remains on the ''List of Explosive Materials'' that ATF is obligated to maintain. *See Tripoli Rocketry Assoc.*, 437 F. 3d at 84. The case was remanded to the district court so that ATF may reconsider the matter and offer a coherent explanation for whatever conclusion it ultimately reaches. Id. Furthermore, the Court of Appeals offered clear guideposts as to the characteristics of a classification decision that would pass judicial review. See, e.g., id. at 81. Accordingly, ATF will utilize those guideposts in conducting testing of APCP as part of the reconsideration process. ATF will test and analyze APCP throughout the summer and fall of 2006 and submit reconsideration results upon completion.

2. Model Rockets/Rocket Motors Containing APCP Are ''Propellant Actuated Devices'' and, as Such, Are Exempt From ATF Regulation

Propellant actuated devices (PADs) imported or distributed for their intended purposes are exempt from regulation pursuant to 27 CFR 555.141(a)(8). The term ''propellant actuated device'' is defined in section 555.11 as ''[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.'' In applying the regulatory definition, ATF has classified certain types of products as propellant actuated devices: Aircraft slide inflation cartridges, inflatable automobile occupant restraint systems, nail guns and diesel and jet engine starter cartridges.

Approximately 300 commenters contended that model rocket motors meet the definition of a PAD and, as such, are exempt from ATF regulation. Some of the arguments raised by the commenters include:

A rocket motor, fuel grains and rockets are comparable to exempted tools such as a nail gun with it's [sic] cartridges and nails. Like a nailgun, a rocket motor directs the gases generated by a propellant. Just as the nailgun and cartridge are used to propel a nail, the rocket motor and fuel grains are used to propel a rocket vehicle. (Comment No. 331)

APCP burning inside a rocket motor casing produces hot, pressurized gasses which are directed out of the nozzle end of the motor. These rapidly exiting gasses cause the rocket to move in the opposite direction. No explosion occurs. Thus an APCP rocket motor is essentially a 'propellant actuated device', a category of devices that is already explicitly exempted from regulation. (Comment No. 734)

Until the mid 1990s, the BATFE had exempted all APCP rocket motors, regardless of propellant weight, because APCP motors were considered to be propellant actuated devices, which were exempt from BATFE permits. APCP rocket motors have not changed since then, and Congress has not changed its definition of an explosive; therefore, the BATFE should never have started regulating APCP as an explosive in the first place, and should not start regulating APCP in the future. (Comment No. 982)

NAR commented that although the Federal explosives law does not specifically include an exemption for PADs, the legislative history of the law clearly intended that such devices should be exempt by noting that the term ''explosives'' is not ''intended to include propellant actuated devices or propellant actuated industrial tools used for their intended purpose.'' According to the commenter:

Congress must have intended that propellant actuated devices be exempted because their 'primary or common purpose' is not to function by explosion but rather is to perform useful non-destructive work. Rocket motors fit this concept precisely—their purpose is not destructive, but to perform useful work by propelling a rocket.

NAR stated that a rocket motor serves but one function, i.e., to expel gases through its nozzle from a burning propellant for the purpose of generating the thrust necessary to launch the rocket. Based on its nature and function, the commenter contended that a rocket motor is a propellant actuated device that is exempt from regulation because ''it qualifies as either a 'special mechanized

device,' or a 'gas generator system,' if not both, and because a rocket motor is both 'actuated by a propellant' and 'releases and directs work' (i.e., thrust) 'through a propellant charge' * * *''

Department Response

ATF's position is that the term ''propellant actuated device'' does not include hobby rocket motors or rocket-motor reload kits containing APCP, black powder, or other similar low explosives. The definition of ''propellant actuated device'' in 27 CFR 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.'' To determine the common meanings of ''tool,'' ''special mechanized device,'' and ''gas generator system,'' it is useful to look to Merriam-Webster's Collegiate Dictionary (Tenth Edition, 1997) (Webster's). Webster's defines ''tool'' in pertinent part as: ''a handheld device that aids in accomplishing a task; the cutting or shaping part in a machine or machine tool; a machine for shaping metal.'' Webster's defines the word ''device'' as ''a piece of equipment or a mechanism designed to perform a special function.'' For a particular device to be a ''special mechanized device,'' Webster's appears to suggest, it would be necessary that it be both unique and of a mechanical nature. Webster's defines ''generator'' as ''an apparatus in which vapor or gas is formed'' and as ''a machine by which mechanical energy is changed into electrical energy.'' Further, Webster's defines ''system'' as ''a regularly interacting or interdependent group of items forming a unified whole.'' Thus, Webster's may be read to suggest that a ''gas generator system'' is properly defined as a group of interacting or interdependent mechanical and/or electrical components that generates gas.

Based on the above definitions and conclusions, the Department believes that rocket motors, regardless of the amount of propellant contained therein, cannot be brought within the regulatory definition of propellant actuated device. Rocket motors are not ''tools,'' because they are neither handheld nor a complete device. Nor are they a metal-shaping machine or a part thereof. Further, they cannot be considered to be a ''special mechanized device'' because, although clearly designed to serve a special purpose, they lack the necessary indicia of a mechanized device. Clearly, rocket motors are in no way reminiscent of a mechanism since they consist essentially only of propellant encased by a cardboard, plastic, or metallic cylinder. Though such motors may include a nozzle, retaining cap, delay grain and ejection charge, the rocket motor is little more than a propellant in a casing, incapable of performing its intended function until fully installed, along with an ignition system, within a rocket. Finally, because rocket motors have no interacting mechanical or electrical components, rocket motors cannot be deemed to be a gas generator system.

For the reasons set forth above, the Department does not believe that rocket motors of any size should be classified as propellant actuated devices.

On March 19, 2004, the United States District Court for the District of Columbia issued a memorandum opinion in *Tripoli Rocketry Ass'n.* 337 F. Supp. 2d 1. In its opinion, the court specifically addressed two letters issued by ATF, one dated April 20, 1994, and the other dated December 22, 2000, in which ATF had discussed the applicability of the propellant actuated device (''PAD'') exemption to rocket motors. *See id.* at 10–13. The 1994 letter gave the impression that ATF had exempted sport rocket motors containing 62.5 grams or less of propellant as propellant actuated devices (PADs) under 27 CFR 555.141(a)(8). The 2000 letter more accurately and clearly stated that rocket motors did not meet the regulatory definition of a PAD, but that rocket motors with 62.5 grams or less of propellant were exempt from regulation, in light of the pre-existing ''small charge'' threshold that has historically been in place to exempt ''toy'' devices.

The court unambiguously determined that ATF's 2000 letter was at variance with its 1994 letter. The court then concluded:

> Thus, before the ATF could [have] altered its earlier interpretation of the applicability of the PAD exemption, it was required to undertake notice-and-comment rulemaking as required by the [Administrative Procedure Act] and the [Organized Crime Control Act of 1970]. Because the ATF failed to do so, the Court concludes that its December 22, 2000 pronouncement regarding the applicability of the PAD exemption to sport model rockets was not in compliance with the OCCA and the APA.

The court also explicitly set out the controlling 1994 ATF statement on the applicability of the PAD exemption in its Opinion:

> Of particular significance to the plaintiffs, is the statement in the April 20 Letter that
>
> [t]he exemption at 27 CFR 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. However, the propellant, prior to assembly, would not be exempt.

Id. (emphasis added). The ATF went on to state that

> [t]he AeroTech products which have been classified by the Department of Transportation as a flammable solid 4.1 or as explosives 1.4c, which are within the 62.5 grams limit contained in NFPA 1122 and conform to the requirements of model rocket motors set forth in 16 CFR section 1500.85(a)(8)(ii), would meet ATF requirements for exemption under 27 CFR Part 55, section 141(a)(8).

Id. Opinion at 15.

ATF is currently regulating rocket motors in conformity with this ruling, exempting from regulation fully assembled rocket motors containing no more than 62.5 grams of propellant, and producing less than 80 newton-seconds (17.92 pound seconds) of total impulse with thrust duration not less than 0.050 seconds. This final rule does not materially change this state of affairs inasmuch as rocket motors containing 62.5 grams or less of propellant will continue to be exempt from regulation. However, the final rule does alter ATF's position in that a fully assembled rocket motor containing 62.5 grams or less of propellant, while still exempt from regulation, will not be classified as a propellant actuated device under this final rule.

3. The Proposed 62.5-Gram Exemption Threshold Is Arbitrary and Lacks a Reasoned Basis, Is Unreasonable and Unnecessarily Restrictive, and Is Inconsistent With Existing Weight Limits for Other Explosives

a. The Proposed 62.5-Gram Limit Is Arbitrary and Lacks a Reasoned Basis

Approximately 120 comments objected to ATF's proposal to exempt from regulation rocket motors containing 62.5 grams or less of propellant, arguing that the proposed limit is arbitrary and that ATF did not explain the basis for the proposed limit. In its comment, NAR stated that the agency failed to present any scientific basis to support the proposed 62.5-gram limit, presented no factual data that demonstrates why the proposed amount represents a reasonable limit on possession of APCP, and offered no data or test results as to the relative properties of this quantity of APCP. To the extent that ATF based its 62.5-gram weight limitation on regulations enacted by the United States Department of Transportation (DOT) or the Consumer Product Safety Commission (CPSC), the commenter argued that ATF failed to explain in the NPRM why a weight limit

created by another Federal agency should be applied to ATF's explosives regulations. As stated by the commenter:

What possible bearing does a DOT regulation imposing a weight limit on rocket motors in order to avoid hazardous synergistic effects with other hazardous materials, or a CPSC regulation protecting children from using rocket motors above a specific weight limit have on adults that possess and store rockets?

Several commenters argued that the proposed 62.5-gram exemption is not based on Federal explosives law, noting that the law ''makes no exemptions of explosives based on weight except for black powder used in antique firearms and devices.'' (Comment No. 88)

Other commenters raised concerns similar to those mentioned above:

I'd also like to know from whence the threshold weight of 62.5 grams was derived. This seems to be an arbitrary number since the behavior of 62.5 grams of APCP is not much different than that of 80 grams. Does the Bureau have any scientific basis for this figure? (Comment No. 33)

The 62.5 gram limit * * * has no scientific basis. The BATF has no tests or justification to show that this 62.5-gram limit (which is inherited from old shipping regulations) has any rational meaning in this situation. (Comment No. 325)

The 62.5 gram limit is arbitrary * * * It has no technical basis as to what may or may not constitute a hazard to the public. (Comment No. 327)

ATFE has focused on a 62.5 gram limit without showing the reasoning behind this number. ATFE has quoted (in the past) other agencies' use of a 62.5 gram unregulated limit, such as DOT and CPSC, for ATFE's unregulated limit. However, the absence of technical data does not support ATFE's reasoning. (Comment No. 864)

ATFE has failed to present any scientific basis to support the 62.5 gram limit. ATFE presents no factual data that demonstrates why this amount represents a reasonable limit on possession of this non-explosive material. (Comment No. 974)

The proposed change in exemptions for model rocket motors introduces an arbitrary limit of 62.5 grams per motor or reload kit. This limit has no basis in scientific data. The proposed rule implies that a single rocket motor of 62.5 grams of propellant is safe, but one with 62.6 grams is unsafe. Two motors with 62.5 grams of propellant are safe, but one with 62.6 grams is unsafe. One thousand motors with 62.5 grams of propellant is safe, but a single motor with 62.6 grams is unsafe. ATFE is obviously not concerned with safety issues related to the total amount of APCP stored since there is no limit on the total number of motors or reloads stored, as long as no single motor exceeds 62.5 grams. (Comment No. 1033)

[A] total weight limit of APCP such as 40–50 pounds would address the individual who, without a permit, would be able to obtain as many motors containing 62.5 g or less as he wants. For example, the proposed arbitrary 62.5g limit would not stop somebody from having 1000 motors each containing 62.5 g for a total of 62.5 kg (137.5 pounds!) of APCP. (Comment No. 1170) The ATFE gives no explanation or justification why 62.5 gram is an appropriate limit. I notice that my state (New Jersey) regulations do not require a permit for owning and storing up to 220 pounds (100,000 grams!) of rocket propellant; likewise no permit is required for owning and storing up to 50 pounds of black powder * * * ATF is basing the 62.5 gram limit on the Consumer Product Safety Commission limit, which was set as a limit for children handling rocket motors. This limit for requiring permits is arbitrary and excessive and has not been demonstrated by the ATFE as being appropriate. (Comment No. 1230)

The proposed limit of 62.5 grams is without substantiation. Why not higher? Why not lower? What is the technical reason that a higher limit would be problematical? * * * Rocket motors containing less than 62.5 grams of propellant comprise only a small part of the hobbyist rocket spectrum. (Comment No. 1626)

Department Response

The Department has considered the comments and disagrees with the arguments suggesting the exemption from regulation should be higher than 62.5 grams.

The origin of the 62.5-gram limit is found in regulations covering devices that are in the nature of toys. In 1981, ATF exempted from regulation, under 27 CFR 55.141(a)(7), ''[t]he importation and distribution of fireworks classified as Class C explosives and generally known as 'common fireworks,' and other Class C explosives, as described by U.S. Department of Transportation regulations in 49 CFR 173.100(p), (r), (t), (u) and (x).'' One of these DOT subsections, 49 CFR 173.100(u), listed ''toy propellant devices and toy smoke devices'' as Class C explosives and described them as ''consist[ing] of small paper or composition tubes or containers containing a small charge of slow burning propellant powder or smoke producing powder.'' It also provided that ''these devices must be so designed that they will neither burst nor produce external flame on functioning * * *.'' In construing its regulation, ATF determined that 62.5 grams was an appropriate ceiling for what could be considered a ''small charge'' of propellant for these ''toy'' devices, a determination that was in keeping with guidelines published by the National Fire Protection Association and with regulations promulgated by the Consumer Product Safety Commission's (CPSC's) predecessor organization at the request of both the National Association of Rocketry and Estes Industries. CPSC applies its 62.5-gram exemption in such a manner as to prohibit the sale of some rocket motors to children, by regulating propellant weight and energy output. The Department believes it is appropriate, whenever possible, for Federal agencies to regulate commodities in a consistent manner.

ATF is charged with safeguarding the public from dangers associated with explosives that are misused, criminally diverted or improperly stored. Public safety would no doubt be increased were ATF to apply regulatory controls to all sport rocket motors. However, ATF has rationally crafted an exemption from its explosives controls for sport rocket motors containing small amounts of explosive material and for other devices that are in the nature of toys (*e.g.*, toy plastic or paper caps for toy pistols, trick matches, and trick noise makers). ATF has drawn the line for exemption at 62.5 grams of propellant because this amount represents a reasonable balance between ATF's goal of allocating its resources in the most efficient and effective manner and its goals of maintaining public safety. ATF believes that rockets utilizing motors containing 62.5 grams of propellant or less have a shorter range that is less likely to allow use as a weapon against a particular target without detection. In addition, rockets powered by motors containing no more than 62.5 grams of propellant have less power to cause significant damage when used against a target. As discussed in more detail below, the Department believes that rocket motors containing more than 62.5 grams of propellant pose a significant threat to public safety because they can be modified for use as weapons.

ATF has conducted testing of the performance characteristics associated with rockets powered by motors containing 62.5 grams or less of APCP and of the performance characteristics associated with rockets powered by motors containing more than 62.5 grams of APCP. Although many of the results of this testing are classified, the testing showed clearly that to raise the exemption threshold beyond 62.5 grams would pose an increased threat to public safety and homeland security.

In conclusion, the exemption of rocket motors containing 62.5 grams or less of propellant is consistent with ATF's congressional mandate to reduce the hazard arising from misuse and unsafe storage of explosive materials while not unduly or unnecessarily restricting or burdening law-abiding citizens in their lawful use of explosives.

b. The Proposed 62.5-Gram Limit Is Unreasonable and Unnecessarily Restrictive

Approximately 190 comments maintained that the proposed exemption threshold is unreasonable and too restrictive for adult sport rocketry hobbyists and the commenters recommended that the threshold be increased. Several commenters proposed various upper limits for APCP in rocket motors, with one commenter suggesting that the exemption threshold be increased to 1,000 pounds. Following are excerpts from some of the comments:

The 62.5 gram limit proposed by the ATF is based on the regulations of the consumer product safety commission * * * These regulations allow any motor less than 62.5 grams to be sold to the general public and to be used by unsupervised minors to fly toy rockets. However, large rocket motors cannot be purchased by the general public * * * It should be possible to allow responsible certified adults to buy and use the larger hobby rocket motors that are controlled by the certification process of the TRA and NAR without adding ATF regulation. (Comment No. 69)

This proposal to exempt only rocket motors with no more than 62.5 grams propellant is too strict. Rocket motors currently conforming to this requirement are only suitable for model (low-power) rockets, which are considered by many adults to be essentially toys or entry level projects. Adults are interested in certifying in and taking on the many challenges of high-power rocketry, requiring higher total impulses, and thus, rocket motors with more propellant. (Comment No. 128)

I urge you to reconsider the 62.5 gram hobby/amateur rocketry exemption limit as unreasonable and at the very least increase the limit for APCP to 7800 grams [17.2 pounds] with a motor diameter not-to-exceed 98mm, the size and amount of APCP necessary to make an 'N' -class motor which is the highest used with any frequency by hobby and amateur rocketeers. (Comment No. 326)

Within the Tripoli Rocketry Association, there are currently 3072 individuals who are on record as being certified to use motors containing more than 62.5 grams of APCP * * * Increase the exemption to include motors containing up to 40 pounds of propellant. This is equivalent to the largest rocket motor that can be flown under NFPA, Tripoli Rocketry Association and National Association of Rocketry rules. (Comment No. 819)

[T]he selection of 62.5 grams of APCP as the upper limit of what is permitted for unrestricted access * * * does not even come close to satisfying the needs of rocket hobbyists * * * the large majority of high-power rocket flyers would have their needs served if an exemption were granted to allow them to acquire and use rocket motors that contained up to 2,800 grams [6.17 pounds] of APCP without the need for a permit. (Comment No. 924)

Department Response

APCP is an explosive material. By nature, explosive materials present unique safety hazards. Accordingly, they are regulated by law and very few categories of explosive materials are expressly exempted in any way from the law's requirements. Therefore, it cannot be said that ATF's regulatory stance with respect to rocket motors containing APCP or other explosive materials is unreasonable or unnecessary. Indeed, ATF's long-standing policy to exempt from regulation motors containing 62.5 grams or less of propellant reflects the agency's desire to accommodate the interests of rocketry hobbyists and to balance those interests with important public safety and homeland security concerns. As noted previously, in view of their inherent dangers, very few types of explosive materials are exempted in any way from the Federal explosives controls administered by ATF.

Some commenters suggested that the exemption be extended to 40 pounds, 17.2 pounds or 6.17 pounds. However, unrestricted commerce in motors containing APCP in these amounts would present a significant risk to public safety and homeland security. By regulating motors with more than 62.5 grams of propellant, terrorists, felons, and other prohibited persons will be prevented from gaining access to large motors that could pose an increased threat and that could be more readily adapted for terrorist or other criminal purposes. APCP can be used to make a very effective pipe bomb or other improvised explosive device that could be used for criminal or terrorist purposes. Furthermore, motors containing more than 62.5 grams of propellant can be used to power rockets capable of carrying large warheads containing either explosives or other noxious substances. Rockets powered by motors containing more than 62.5 grams of propellant can be directed at targets from a great distance, avoiding detection and apprehension of persons who would use them for criminal or terrorist purposes. Likewise, the proposed exemption is reasonable because it is comparable to other regulations and exemptions from other agencies addressing low explosives.

A commenter points out that ''responsible certified adults'' should have access to larger hobby rocket motors for lawful purposes. Such certification refers to procedures required by rocketry associations, which are not imposed upon hobbyists who are not members of the specific associations and which have no application whatsoever to terrorists or criminals who might seek to gain access to large rocket motors for nefarious purposes. ATF does not believe that voluntary procedures are sufficient to safeguard public safety and homeland security. In order to responsibly implement the Federal explosives laws, the exemption established by this final rule will impose mandatory controls on all persons seeking to acquire rocket motors containing more than 62.5 grams of propellant and, in this regard, will among other things require that persons acquiring such large motors undergo a background check and obtain a Federal permit.

c. The Proposed 62.5-Gram Limit Is Inconsistent With Existing Weight Limits for Other Explosives

In general, the regulations at 27 CFR 555.141(b) specify that the requirements of part 555 do not apply to commercially manufactured black powder in quantities not to exceed 50 pounds if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms.

Approximately 30 commenters maintained that a similar exemption should be established for rocket motors containing APCP. In its comment, NAR stated the following:

[N]otwithstanding ATFE's proposal to limit the exemption for rocket motors containing 62.5 grams or less of APCP * * * elsewhere in its explosives regulations ATFE establishes higher weight limits for arguably similar materials * * * ATFE permits an individual that possesses an antique firearm to purchase up to 50 pounds of black powder for use in that firearm without obtaining an ATFE-issued permit or storing the material in an ATFE-approved magazine * * * Those ATFE exemptions are not conditioned upon whether the bullet to be used in the antique firearm contains a specific quantity of black powder or whether, by design or intent, the individual will use one or more bullets at the same time in the antique firearm.

Other commenters argued that APCP is less of a public safety hazard than black powder, due to its significantly lower burn rate and non-explosive nature and, as such, should also be exempt from regulation. Some of their arguments are set forth below:

[T]he best solution to regulating hobby rocket motors * * * would be a parallel to the exemption for black powder * * * while I would feel vastly safer having 50 pounds of APCP around the house than I would having 50 pounds of black powder (because APCP is inherently much safer to handle and store, compared to black powder), I think most educational and hobby and rocketeers don't need 50 pounds of propellant on hand * * * an exemption for a total weight limit of 20 pounds * * * of propellant would be equitable and reasonable. (Comment No. 325)

My understanding is that gun enthusiasts are allowed to own and transport as much as 50 pounds of black powder. A similar rule for rocketry makes better sense. In fact, it is easy to argue that rocket users should be allowed to have more total mass than gun owners because the black powder used in guns is in powder form which is much more flammable than the pellet form used for rockets. (Comment No. 142)

APCP is far less dangerous than Black Powder for which there exists an exemption of 50 lbs for antique firearms collectors. For rocketry, I believe an exemption on the order or [sic] 100–200 lbs would be very reasonable. This amount * * * would allow small business in the industry and the majority of the consumers to function unburdened and within very safe limits. (Comment No. 806)

I understand that antique gun owners do not need a LEUP [low explosives user permit] to purchase, or are required to use a explosives magazine to store, up to 50 pounds of Black Powder propellant (which unlike APCP is very explosive). I have a hard time understanding why I can store 50 pounds of very explosive Black Powder in my closet if I'm an antique gun hobbyist but I can't store 3 ounces of APCP non-explosive rocket propellant if I'm a rocketry hobbyist. I propose that rocket hobbyist[s] be given the same 50 pound exemption * * * (Comment No. 1444)

BATFE's proposal to impose a weight limit of 62.5 grams of APCP in rocket motors in order for the exemption of 27 CFR 55.141(a)(7)(v) to apply is wholly inconsistent with existing weight limits for other explosives. It is well-established that loose black powder poses a significantly greater hazard than chunks of APCP, in its easier ignitability, rapid burn rate even when unconfined, and its sensitivity to static electricity. Yet, the regulations permit up to 50 pounds of black powder to be stored without restriction. (Comment No. 1537)

Department Response

Congress determined that any person may purchase commercially manufactured black powder in quantities of 50 pounds or less, solely for sporting, recreational, or cultural purposes for use in antique firearms or antique devices without complying with the Federal explosives laws. Congress enacted this exemption as part of the original 1970 Act, although the exemption initially allowed the acquisition of only five pounds of black powder. In 1975 the exemption was increased to 50 pounds, again by the Congress. Accordingly, the commenters who refer to the black powder exemption as one created by ATF are in error.

The comparison between the black powder exemption and the exemption for certain model rocket motors is a poor one. The Department's regulatory authority lies within the sound discretion of the Attorney General, consistent with the scope of his authority under 18 U.S.C. chapter 40 and the Administrative Procedure Act. It is being exercised in this final rule in the Attorney General's best efforts to give voice to Congress's intention that the Federal explosives controls be administered in such a way as to balance the need to prevent the misuse of explosives with the need for persons to have access to explosives for lawful purposes without undue regulation. It is significant that the exemption for black powder was increased in 1975 through legislation, rather than by regulation. Accordingly, the commenters' comparison of the proposed regulatory exemption to the statutory exemption for black powder is not persuasive and will not result in a change in the final rule.

4. Model Rocket Motors, Propellants, and Model Rockets Are Not a Threat to Homeland Security

Approximately 45 commenters argued that model rocket motors and propellants, as well as model rockets, do not pose a threat to homeland security and should not be regulated by ATF. Other commenters (approximately 50) contended that the proposed regulation, if adopted, might actually jeopardize homeland security. The commenters argued that requiring sport rocketry hobbyists to obtain a Federal permit would result in an increase in the number of people with access to explosives. Following are excerpts from some of the comments:

ATFE's concern with hobby rocket propellants such as Ammonium Perchlorate Composite Propellant is misplaced. It is simply not effective as an explosive for destructive purposes * * * Neither is it a credible terrorist threat as a missile against aircraft. Hobby rockets do not have guidance systems. The subtleties of the physics of dynamic stability, the vagaries of the wind, and available launch systems simply do not allow an unguided rocket to be aimed accurately against any target as small as an aircraft. Since terrorists can presumably acquire guided military rockets on the black market, the weaponization of hobby rocket motors is not credible. (Comment No. 91)

Simple analysis of the attributes of sport rockets would make it abundantly clear that they are wholly unsuited to the tasks sought by terrorists:

- Sport rockets are unguided.
- Sport rockets have very limited range (only a few can reach 10,000 feet; most go no higher than 2,000 to 3,000 feet) and are highly susceptible to adverse weather conditions * * *
- Payloads are minimal at best * * *
- Rockets are not easy to setup and launch unobtrusively * * *
- Substantial modifications would be necessary to turn a sport rocket, even a large one, into a weapons delivery system * * * (Comment No. 269)

Requiring rocket hobbyists to obtain an explosives permit is counterproductive to security, as it means that thousands of hobbyists who normally would never have a need for real explosives would now be permitted to obtain them. (Comment No. 301)

Possession of an LEUP may encourage otherwise disinterested persons to obtain real explosives. I believe that an increased number of people having access to true explosives will have an adverse and significant impact on public safety. (Comment No. 740)

A terrorist or other illicit user has many explosives available to them and wouldn't logically use amateur rocket propellants because they are relatively expensive (as compared to fertilizer and fuel oil, gasoline, gunpowder, lpg [liquefied petroleum gas], propane, etc.). (Comment No. 849)

Given all of the readily available unregulated materials that are available to a terrorist, the BATFE's approach to the regulation of APCP is by this analysis a waste of taxpayer's time and money. If large numbers of APCP-based IEDs [improvised explosive devices] were being encountered by law enforcement, there might be a cause of action * * * IEDs are typically constructed of far more commonly available, less expensive, and unregulated materials * * * (Comment No. 1622)

Department Response

The Department has considered the comments regarding the threat posed by sport rocket motors. For the following reasons, motors with more than 62.5 grams of propellant present very real security and public safety risks. Rocket motors containing large amounts of APCP can power rockets more than 30,000 feet into the air, frequently requiring high-power rocketry hobbyists to obtain waivers from the Federal Aviation Administration prior to a launch. These large rocket motors could also be used to power rockets carrying explosive or noxious warheads miles downrange into a fixed target. Commenters state that sport rockets are unguided, not easy to set up, and have a limited range. These are, in fact, some of the reasons ATF has maintained an exemption for small sport rockets with 62.5 grams or less of propellant. However, rockets using more than 62.5 grams of propellant are capable of stable flight over a fairly long range (one mile or greater). A willing, determined criminal or terrorist could assemble a weapon that utilizes a large rocket motor and launch such a device at a populated area, stadium, or transportation center in a matter of minutes from a distance sufficient to avoid detection. In addition, commercially available software can calculate launch parameters to fire a rocket horizontally or at an angled

trajectory. Rockets can be utilized to hit fixed targets, such as buildings, or be shot into populated areas with a reasonable degree of accuracy. Likewise, a rocket being used as a weapon could be launched from the bed of a truck, thereby making the launch site and any evidence of the launch mobile. The longer the range of the rocket, the greater the likelihood that the persons using them for criminal purposes would succeed in their attack and evade detection and apprehension. Finally, APCP could be used as an explosive filler in a pipe bomb or other improvised explosive device. For purposes of homeland security and the global fight against terrorism, all of these factors must be taken into account.

The potential for terrorist or criminal misuse of rocket motors containing APCP or other propellant explosive is, of course, only one side of the equation when balancing homeland-security needs against the ability of law-abiding citizens to participate in hobby rocketry activities. The Department is fully 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 more than 90 percent of all rocket motors that are sold to hobby rocketry enthusiasts and encompasses all rocket motors that can lawfully be possessed without a license or permit or complying with the other requirements of Federal law. Under this final rule, a Federal permit will be required for persons purchasing motors containing more than 62.5 grams of propellant and reload kits designed to enable the assembly of motors containing more than 62.5 grams of propellant per motor. Again, establishing the exemption level at no more than 62.5 grams of propellant mitigates the burden on rocketry enthusiasts while addressing the threat to public and homeland security presented by larger motors.

Even if this rule results in more permits being issued to rocketry hobbyists, the Department does not believe that this requirement will result in such permittees using the permit to acquire other types of low explosives. There is no evidence to indicate that rocketry enthusiasts are interested in acquiring explosives other than those contained in rocket motors, and associated components. Even if rocketry enthusiasts choose to use their Federal explosives permit to acquire other types of explosives, only persons with no criminal record or other prohibiting factors will be issued a permit. In addition, all permittees must demonstrate their ability to store the explosives they acquire in accordance with the regulations in 27 CFR part 555. Accordingly, even if the commenters are correct, the acquisition of other types of explosive materials by rocketry enthusiasts will not pose a threat to public safety. For this reason, the Department does not believe these comments warrant a change in the proposed rule.

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

Approximately 100 commenters maintained that there is no need for ATF to regulate the model/sport rocketry hobby. Some commenters argued that the hobby is already subject to the requirements of many other governmental authorities at the Federal, State, and local levels. Other commenters stated that the hobby is also subject to the rules and regulations of non-governmental organizations, including the National Fire Protection Association (NFPA), NAR, and the Tripoli Rocketry Association. In its comment, NAR stated the following:

[R]ocket motors themselves as well as their operation are specifically regulated by a variety of other government authorities. Specifically, the U.S. Department of Transportation ('DOT') regulates the storage, transport, containerization, and sale of rocket motors used by the hobbyists * * * the U.S. Federal Aviation Administration ('FAA') regulates launches, flight locations, airframe composition, rocket weight, and requires various governmental notifications * * * the U.S. Consumer Product Safety Commission ('CPSC') regulates the hobby by prohibiting minors from purchasing motors and propellants used in high-powered sport rockets * * * Local and county ordinances as well as state regulations address fire protection issues and launch locale restrictions. The hobby is also extensively monitored for compliance with codes promulgated by the National Fire Protection Association, which are incorporated by reference into many state laws.

Other commenters expressed similar views:

Sport rocketry is subject to many, many regulatory agency rules and regulations including those of the Department of Transportation, Federal Aviation Administration, Consumer Product Safety Commission, and local and national Fire Marshalls [sic]. Government regulations notwithstanding, sport rocketry is also directed by self regulation from national organizations concerned with the safety and promotion of sport rocketry. (Comment No. 15)

The existing National Fire Protection Association rules on rocketry provide adequate rules for safety in the use of hobby rocket propellant, and no further rules are necessary by the Federal government. (Comment No. 852)

Regulation of rocket motors is unnecessary. The high power rocket motor industry and the National Association of Rocketry and the Tripoli Rocketry Association already do a good job regulating access to high power rocket motors. (Comment No. 1439)

Department Response

Government agencies tailor their regulations to facilitate their specific mission. For instance, DOT regulations are primarily designed to ensure the safe transportation of explosive materials. ATF'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, ATF's regulations are necessary to accomplish its specific mission.

In addition to Government agencies, ATF 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 will govern all persons, including potential terrorists, felons, or illegal aliens. Moreover, it will apply 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.

6. The Proposed Regulation Is Not Necessary or Justified for Correction of a Demonstrated Public Safety Issue

Several commenters objected to the proposed rule, contending that ATF does not need to regulate model rocket motors or propellant because model rocketry is a safe hobby, both in terms of personal injury and homeland security. Following are excerpts taken from some of the comments:

[I]n the well over 250 million flights in the many decades that the hobby has existed, there have been a grand total of zero fatalities (yes, zero) due to rocketry. * * * Given the exemplary safety record of rocketry as a hobby, what possible reason can there be for regulating the motors we use? (Comment No. 30)

I have flown over 5000 rockets in my years in the hobby and watched over 25,000 others fly, including many large rockets that this regulation would cover. I have never seen anyone seriously injured by a rocket, nor

have I ever seen one that was used as a weapon or explosive device or that could have been used as an effective weapon* * * Several million adults and young people build and fly model rockets each year without danger to public safety; the hobby is safer than any outdoor sport. (Comment No. 49)

The ATFE has no need to regulate rocket motors, since they pose little risk to the public. According to the most recent data published on the ATFE web site referencing the comprehensive list of materials used in explosive and incendiary devices since 1991, APCP is not listed in the construction of even one device. (Comment No. 797)

The consumers who use APCP rocket motors have done so for decades with an unprecedented safety record, a record that is far better than that of (for example) any high-school sporting activity. Those consumers have pursued their activities under the watchful eye of the Department of Transportation * * * and the Federal Aviation Administration * * * Commercial consumer rocket motors are certified via rigorous test by one or more organizations * * * Additional regulations to an already-highly-regulated activity will not provide additional safety, when that safety has already been realized. (Comment No. 834)

Sport Rocketry * * * has one of the best safety records of all hobbies during the past 50 years. There have been no major injuries or property damage when conducted according to the rules established by the National Association of Rocketry and the Tripoli Rocketry Association. (Comment No. 1008)

Department Response

The Department acknowledges the efforts of many within the rocket hobbyist community to promote safety; however, this final rule is designed not simply to promote safety among rocket hobbyists but rather to promote the safety of all persons, including persons who potentially could be targets of terrorist or other attacks involving rockets powered by large APCP rocket motors.

Access to large unregulated amounts of APCP poses a threat to homeland security and U.S. transportation systems because the explosive material could be used against U.S. buildings, transportation centers, or metropolitan areas. The rocket motors themselves are essentially packets of explosives that can be modified or used in such a manner as to create an effective weapon or explosive device. APCP would make an effective filler for a pipe bomb or other improvised explosive device. Permitting, licensing, and recordkeeping requirements make the explosive less attractive and less available to prohibited persons. All explosive materials present some safety hazard and this regulation serves to limit the hazards presented by unregulated use, possession, and storage of APCP.

In a post-September 11 environment, the Department believes it would be irresponsible to allow unregulated access to large quantities of explosive materials, particularly in configurations that can power the flight of large rockets capable of being outfitted with large warheads. Despite the safety efforts of NAR and Tripoli, the Department believes the potential acquisition and criminal and terrorist use of rocket motors containing more than 62.5 grams of propellant poses an unacceptable risk. Accordingly, the Department believes this rule is essential to protect the public and safeguard homeland security.

7. The Proposed Amendment Violates the Federal Explosives Law

Section 1101 of the Organized Crime Control Act of 1970 (Pub. L. 91–452, Title XI, October 15, 1970) states, in part:

> It is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, storage, or use of explosive materials for industrial, mining, agricultural, or other lawful purposes, or to provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title.

Three commenters argued that the proposed amendment relating to model rocket motors violates the Federal explosives law because it imposes undue and unnecessary restrictions and burdens on the public. Following are excerpts from some of the comments:

[The proposed rule] is in fact in direct violation of this Section* * * [it] appears to be designed specifically to impose undue and unnecessary Federal restrictions and burdens on law-abiding citizens who have been enjoying an exciting yet safe and educational hobby. When one considers that those citizens * * * have over the last forty years the most extraordinary safety record that might be imagined, and have not only presented no danger to the public, but in fact have provided significant public benefit both economic and educational, it is clear that any attempt to impose additional restraints and regulations is not in the best interests of the public. (Comment No. 834)

BATFE regulation of hobby rocketry violates the direction of Congress by placing unnecessary federal restrictions and burdens on law-abiding citizens with respect to the acquisition, possession, storage, and use of APCP and other materials necessary to pursue the lawful hobby of rocketry. Most hobbyists will be unable to meet the storage requirements for a LEUP [low explosives user permit], and will be unable to acquire motors containing greater than 62.5 grams of propellant. (Comment No. 934)

[T]here is no way to argue that the proposed changes regarding rocket motors would be in keeping with the spirit of section SEC. 1101 of the law. Requiring an LEUP to purchase and store hobby rocket motors will end the sport for many who currently enjoy flying rockets. Especially with the requirements imposed not only by the application, but the need to have a storage magazine for a non-explosive material is burdensome at best, and prohibitory for the majority fliers. The cost of the permit and magazine represent a substantial outlay and will certainly cause many to abandon the hobby. (Comment No. 1521)

Department Response

These comments appear to be based on the misconception that the final rule would ''impose'' the requirements of 27 CFR part 555 on rocket motors containing more than 62.5 grams of propellant. The Department's view is that this characterization of the rule is incorrect. The Department's position is that APCP is properly classified as an explosive and, in the absence of an exemption, the requirements of 27 CFR part 555 apply to all rocket motors, regardless of the quantity of propellant. As stated above, the final rule formally implements ATF's long-standing policy of exempting from part 555 rocket motors containing 62.5 grams or less of propellant. If this exemption did not exist, the consequences outlined in the comments, if accurate, would be more pronounced because there would be no exemption whatsoever for hobby rocket motors of any size.

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 of explosive materials. Therefore, this goal is the basis for all regulatory action undertaken by the Department. The Department regulates only to the extent that it is ''reasonably necessary to implement and effectuate the provisions of this title.'' The Department has considered the submitted comments. However, it does not believe that the proposed amendment exceeds the scope of the law.

As previously discussed, APCP does not generally function by detonation, but by deflagration. Therefore it has been classified as a low explosive pursuant to ATF's implementing regulations. The Department must strike a balance between its obligation to regulate APCP and Congress's intent to avoid unnecessarily burdening industry, mining, agriculture or other lawful users of explosives. The proposed amendment comports with the congressional intent in that the exemption allows for the unregulated, lawful use of an explosive in an amount that is unlikely to endanger interstate or foreign commerce

or the public at large. Therefore, the limitation within the exemption is reasonable.

The legislative history for Title XI references items that are not intended to be regulated by the Federal explosives laws and provides guidance to the agency with regard to how to implement exemptions. Specifically, the Judiciary Committee of the United States House of Representatives stated in its report 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 purposes.'' (See H.R. Rep. No. 91–1549, at 35 (1970), reprinted in 1970 U.S.C.C.A.N. 4007, 4041.) Therefore, it appears that Congress considered the impact of the law on industry and other lawful users, yet did not limit ATF's mandate to regulate APCP, even when used by law-abiding hobbyists. Since 1970, Title XI has been amended a number of times. However, Congress has never added to the laws any additional exemptions related to hobbyists or APCP. (See Pub. L. 93–639, section 101, 88 Stat. 2217 (1975); Pub. L. 104–132, Title VI, section 605, 100 Stat. 1289 (1996); Pub. L. 107–296, Title XI, Subtitle B, section 1112(e)(3), Subtitle C, section 1126, 116 Stat. 2276, 2285 (2002).) The Department notes that very few explosives are given any sort of exemption from the Federal explosives controls and that, in exempting motors containing 62.5 grams or less of propellant, ATF is, indeed, following Congress's mandate to balance the rights of law-abiding citizens to have access to explosives with the important safety and security concerns at issue.

Most recently, Congress addressed the ongoing serious threat posed by terrorists who seek to attack America on its own soil. In enacting the Safe Explosives Act, Congress took into consideration the fact that terrorists have used explosives to attack the World Trade Center in 1993, destroyed the Murrah Federal Building in Oklahoma City in 1995, attempted to detonate a ''shoe bomb'' on an aircraft in 2002, and planned to detonate a ''dirty bomb''—a mixture of common explosives and radioactive materials, in a United States metropolitan area in 2002. (House Report No. 107–658; 107th Cong. 2d Session Sept. 17, 2002). Congress took steps to prevent further attacks against Americans and enacted legislation that requires all persons acquiring explosives to obtain a permit from ATF.

The legislative history for the Safe Explosives Act indicates Congress's concern with terrorist use of explosives and indicates that the Department should implement the provisions of the Federal explosives laws with homeland security as a paramount concern. The regulatory amendment embodied by this final rule, establishing a limited exemption for rocket motors containing 62.5 grams or less of explosive material, is consistent with the purposes of Title XI and the Safe Explosives Act. It balances the needs of legitimate law-abiding rocketry enthusiasts against the need to prevent acts of terrorism using explosives and it represents one of the very few instances in which an exemption from the Federal explosives controls has been deemed appropriate, either by Congress, the Department of the Treasury, or the Department of Justice.

8. The Proposed Regulation Fails To Recognize the Economic Effects on Small Businesses as Required Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires an agency to give particular attention to the potential impact of regulation on small businesses and other small entities. Approximately 200 commenters contended that the proposed rule, if adopted, would result in reduced participation by sport rocket hobbyists which, in turn, would have a negative effect on small businesses.

AeroTech, Inc. is a manufacturer and supplier of composite propellant rocket motors, as well as a supplier of mid-power rocket kits and related products. In its comment (Comment No. 799), the manufacturer contended that the proposed rule would have a significant impact on small businesses—

> AeroTech is a small business with 10 employees, and derives approximately 50–60% of its revenue from rocket motors that would be regulated under the proposed rule. It is expected that revenues from the sale of these motors will be drastically reduced as a result of hobbyists unwilling or unable to comply with the licensing and/or storage requirements mandated by the proposed rule. This would have a devastating effect on the ability of AeroTech to remain in business. AeroTech is aware of dozens of other small businesses that will be adversely affected by the proposed rule to a greater or lesser extent.

In its comment, NAR stated that it maintains a database of manufacturer contact information for the sport rocketry hobby and from that database it estimates that, at any given time, there are 200 commercial entities providing support to model rocketeers nationwide in the form of materials, parts, motors, and launch accessories. According to the commenter, assuming that each such manufacturer realizes annual sales of $50,000 to the hobby, those commercial entities provide an annual economic benefit to the U.S. economy of approximately $10 million. Based on its information, NAR stated that AeroTech estimates a loss of 30 to 40 percent of its market as a result of the proposed regulations. NAR went on to state that ''[a]ssuming a similar drop in sales will occur for all other manufacturers supplying the rocketry hobby, NAR estimates that the annual small business economic impact resulting from the NPRM is approximately $4 million.''

Following are excerpts from other commenters who also argued that the proposed regulation would have a significant impact on small entities:

> To the extent that new regulations are imposed, making the purchase of such motors [motors exceeding 62.5 grams of propellant] more difficult, the vast majority of these adults currently enjoying the hobby will stop. The dollars spent on high-power rocketry products will mostly stop * * * the small-business distributors and hobby shops that rely upon these products will also quickly give up and close, as such small businesses focus their efforts and receive most of their sales from high-power rocketry. (Comment No. 1417)

> [O]ur * * * hobby evolved into Total Impulse Rocketry. It's just a very small business that makes recovery harnesses and harness protectors for the high power rocketry market. If the proposed rules concerning the 62.5 gram limit on motors go into effect, many of our fellow rocketeers will be unable to meet the storage requirements and will drop out of the hobby * * * Our business and many others just like us will be severely impacted or forced to close our doors due to the resulting decrease in sales. (Comment No. 1436)

> [T]he [proposed] exemption for model rocket motors will have a significant impact on my business. I design and manufacture model rocket kits. The rockets made from these kits use these [greater than 62.5 grams propellant] motors. A[t] least half my customers will be required to obtain a license in order to continue using the kits they have already purchased. It is unlikely that they will buy any more kits in the future. Many of them will find the licensing process more trouble than it is worth and * * * in some cases [will] get out of the model rocket hobby entirely. This will lead to a significant drop in sales. (Comment No. 1449)

> There is an entire industry built up around the manufacture and distribution of APCP motors—and also larger hobby rocket kits, parachutes, and electronic devices to fly as payloads and flight instrumentation. I maintain that not only the rocket motor manufacturers would be hurt by this [proposed] regulation, but also the distibutors [sic] and small businesses that depend on selling the larger rocket kits and other materials that we buy to fly our rockets* * * The people that manufacture and sell these other parts (mostly small businesses) would also feel a huge financial impact. (Comment No. 1613)

Department Response

The commenters' contention that the proposed rule, if adopted, will have a negative effect on small businesses is based on their assumption that there will be reduced participation in the hobby by sport rocket hobbyists. Many commenters argued that the permitting, storage, and other requirements for rocket motors containing more than 62.5 grams of propellant are overly burdensome for the average sport rocket hobbyist and, as such, many will choose to leave the sport. In that regard, NAR stated the following:

> It has been estimated that approximately 3000 individuals currently participating in the rocket hobby will stop doing so, and hundreds more potential new participants will decline to get involved, as a direct result of ATFE's positions reflected in the NPRM* * * . NAR estimates membership in its various sections across the country will decline anywhere between 10 and 80 percent (and the Tripoli Rocketry Association estimates a 40 percent decline in membership).

These comments appear to be based on the misconception that the final rule would ''impose'' the requirements of 27 CFR part 555 on rocket motors containing more than 62.5 grams of propellant. The Department's view is that this characterization of the rule is incorrect. The Department's position is that APCP is properly classified as an explosive and, in the absence of an exemption, the requirements of 27 CFR part 555 would apply to all rocket motors, regardless of the quantity of propellant. As stated above, the final rule formally implements ATF's long-standing policy of exempting from part 555 rocket motors containing not more than 62.5 grams of propellant. If this exemption did not exist, the consequences outlined in the comments, if accurate, would be more pronounced because there would be no exemption whatsoever for hobby rocket motors of any size.

The Department disagrees with the commenters' assertion that the proposed rule, if adopted, will result in significant reduction in participation by sport rocket hobbyists which, in turn, will have a negative effect on small businesses. By contrast, the result of the exemption would be to lessen the burden of complying with requirements of the Federal explosives laws and to encourage participation in sport rocketry. Without the exemption, all rocket motors and all persons who acquire them would be required to comply with the permit, storage, and other requirements of Federal law. Likewise, without the exemption, all retailers, hobby, game and toy stores that distribute and store rocket motors containing not more than 62.5 grams of explosive would be obligated to obtain Federal explosives licenses and comply with all regulatory, recordkeeping and inspection requirements. As stated previously, APCP has been regulated under the Federal explosives controls since 1971. Thus, requirements to comply with the law when acquiring, transporting, selling or storing non-exempt rocket motors is nothing new, and many persons who have acquired non-exempt motors without obtaining a Federal permit and who fail to store them properly have committed a crime. Moreover, a number of commenters indicates they have acquired large rocket motors and transported them across State lines for rocket shoots without obtaining a Federal license or permit. Such transportation violates Federal law now and violated the law prior to enactment of the Safe Explosives Act. Again, the exemption embodied by this final rule is intended to provide some relief to rocketry enthusiasts while taking into account the clear mandate of Congress that explosives be effectively regulated.

Moreover, the burden of complying with the law and regulations for non-exempt rocket motors can be minimized through participation in rocketry clubs. Comments indicate that a significant number of rocket hobbyists belong to such organizations. ATF has recently advised rocket clubs that, if they hold a valid Federal explosives user permit, they may sponsor rocket launches and provide rocket motors to club members. A club ''member,'' as defined under the club's bylaws establishing club membership, may participate in the rocket launch without having an individual permit so long as the member is not prohibited under Federal law from possessing explosives. With respect to storage, ATF has advised rocketry clubs that any unused rocket motors must be stored in either a club magazine or that the club must arrange for storage with another licensee or permittee (contingency storage).

Under this procedure, sport rocketry hobbyists may continue to participate in rocket launches using rocket motors containing more than 62.5 grams of explosive propellant without having to obtain an individual Federal permit or explosives magazine to store their rocket motors. All members of the club can share in the cost of a single permit and storage magazine, reducing the cost to an insignificant amount. Additionally, this final rule will allow retailers such as toy and game stores and hobby shops to continue to sell smaller rocket motors without obtaining a license, maintaining records applicable to distribution of explosives, or being subject to ATF inspection. Accordingly, the Department does not anticipate that the rule will cause a significant reduction in participation by rocket hobbyists or have a significant impact on small businesses.

9. The Proposed Regulation Is a ''Significant Regulatory Action'' Under Executive Order 12866

Under Executive Order 12866, a Federal agency must determine whether a regulatory action, which includes notices of proposed rulemaking, is ''significant'' and therefore subject to review by the Office of Management and Budget and the analytical requirements of the executive order. The executive order defines ''significant regulatory action,'' in part, as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities. In Notice No. 968, ATF stated that the proposed rule was not a significant regulatory action and, therefore, a Regulatory Assessment was not required.

Thirty commenters did not agree with ATF's assessment and contended that the proposed regulation, with respect to hobby rocket motors, is a significant regulatory action. NAR stated that the proposed exemption would ''significantly reduce the market for rocket motors containing APCP because rocketeers will be unwilling or unable to purchase such items.'' According to the commenter, it has been estimated that approximately 3,000 individuals currently participating in the sport rocketry hobby will stop doing so and many more potential new participants will decline to participate in the hobby. The commenter went on to state the following:

> NAR estimates membership in its various sections across the country will decline anywhere between 10 and 80 percent (and the Tripoli Rocketry Association estimates a 40 percent decline in membership)* * * In addition, manufacturers, distributors and retailers of rocket motors containing APCP will not only suffer the financial impact associated with less purchases by rocketeers, but in addition they will be unable or unwilling to economically comply with ATFE's regulations and remain in business.

In its comment, NAR provided information relating to local economics, small businesses, and magazine cost requirements. Based on that information, the commenter estimated

that the total impact of the proposed regulation on those participating in the sport rocketry hobby, as well as those benefiting from the hobbyists' participation, exceeds $23 million.

Other commenters also argued that the proposed regulation is a significant regulatory action:

[T]he NPRM will adversely impact the entire hobby rocketry industry because of network effects. By diminishing the high power sector of the hobby, overall cash flows to vendors of mid-power and low-power rockets will be reduced. This will cause a contraction in the entire industry as high power vendors go out of business and can no longer serve other sectors of the hobby. Mid-power and low-power flyers will thus have less choice and product availability. (Comment No. 882)

Sport rocketry is unique in that your proposed rules will apply not only to the vendors that provide motor reloads and supplies to the hobby but also to most of their customers. A majority of the members of both national sanctioning bodies of sport rocketry * * * fly motors containing APCP grains over 62.5g. More than half of all motors currently available will become regulated* * * All of the companies that manufacture and sell APCP motors and supplies * * * are relatively small businesses and any further impact will put most of these companies out of business. (Comment No. 1321)

I normally fly rockets in a three state area * * * so I would need to purchase the more expensive LEUP at $100. In addition[,] the meets where I fly my rockets do not typically have vendors on the site, so I would have to purchase a type 4 magazine ($200) so that I could purchase them ahead of time and to store them. I would not be able to store the magazine in my garage since it is less the [sic] 75 feet from the living quarters of my neighbor, so I would have to build a storage shed at a cost of at least $1500. This would bring my total cost to comply with the new proposed regulation to $1800. I typically only fly two or three high power models per year at a cost of less than $100. The effect of the new [proposed] regulation would force me to spend 18 times what I normally spend on these motors. (Comment No. 1424)

Based on the costs to comply with proposed storage requirements, user permits and local launch impacts, I estimated the total impact of the [proposed] regulation on the rocketry community would exceed $20 million annually. (Comment No. 1527)

The impact on individual hobbyist[s] and to the hobby industry could be devastating economically, if the proposed rule's go into effect* * * it would force many of the current participants to drop out due to the excessive requirements forced on the hobby. Many of the small businesses would not be able to stay in business also due to the added requirements. Hundreds of hobbyist[s] and their family's travel * * * each year * * * to regional or national launches. National launches bring thousands of dollars into the local economy around the launch. This [proposed] regulatory action will have significant economic impact on both sport rocketry enthusiasts and APCP motor manufacturers and vendors. (Comment No. 1653)

Department Response

As stated previously, the result of this final rule will be to mitigate the impact of the Federal explosives law on sport rocketry. A strict reading of the statute without the establishment of a regulatory exemption would result in a far greater economic impact on rocketry hobbyists. Moreover, the Department maintains that the proposed rule with respect to model rocket motors is not a significant regulatory action and will not have a significant economic impact. The commenters' assertion that the proposal will have a significant impact on the economy is based on their assumption that there will be a reduction in participation by rocketry hobbyists.

NAR estimated that the total impact of the proposed regulation on those participating in the sport rocketry hobby, as well as those benefiting from the hobbyists' participation, exceeds $23 million. The Department believes that this figure is excessive and unrealistic. NAR's estimate is based, in part, on its contention that 3000 individuals currently participating in the rocketry hobby will stop doing so. However, as explained in the preceding section, the Department believes that most rocket hobbyists will continue to participate in the sport, whether through rocketry clubs or otherwise. Additionally in this regard, it bears noting that this final rule merely formalizes ATF's existing (and long-standing) policy of exempting rocket motors containing no more than 62.5 grams of explosive material.

NAR's estimate is also based on its contention that ''a minimum of 6,000 rocketeers will be forced to obtain a permit from the ATFE [approximately $200] and to purchase a storage magazine for his/her rocket motors [approximately $300] in order to comply with the proposed regulations contained in the NPRM.'' The Department also finds this figure to be excessive. As explained earlier, the comments indicate that many rocketeers belong to a rocket club. ATF has advised rocket clubs that if they obtain a Federal permit and provide storage for the rocket motors, the individual club members would not have to obtain a permit or purchase an explosives magazine to store their rocket motors. Accordingly, the Department believes that only a small percentage of rocketeers will be purchasing explosives magazines, relying instead on shared storage facilities of rocketry clubs.

NAR also argued that the 6,000 rocketeers would need to purchase two ½-inch diameter locks for their explosives storage magazine, at a cost of $2,500. Based on NAR's estimate, the total cost of the locks for 6,000 magazines would be $15,000,000. However, ½-inch diameter locks are not required under the current regulations. The cost of a ⅜-inch diameter lock, which is the type of lock currently required by regulation, is approximately $28.

NAR further estimated that the total impact of the proposed regulation on local economics and small businesses to be approximately $8.8 million annually. Again, this figure is based on NAR's contention that the proposed rule, if adopted, will result in a significant reduction in participation by model rocket hobbyists. As explained above, the Department believes that adoption of the proposed rule will result in only a small number of rocket hobbyists leaving the sport.

B. Commenters' Concerns Regarding ATF's Proposal Relating to Model Rocket Motors and Model Rocket Propellant

1. Adoption of the Proposed Rule Will Result in Overly Burdensome Federal Requirements for Sport Rocketry Hobbyists

If the proposed amendment is adopted, model rocket motors containing more than 62.5 grams of propellant and reload kits that can be used in the assembly of a rocket motor containing more than 62.5 grams of propellant will be subject to the permitting, storage, and other requirements of Federal explosives law and the regulations in part 555. Approximately 150 commenters argued that the compliance requirements for rocket motors containing more than 62.5 grams of propellant are overly burdensome for the average sport rocket hobbyist and, as such, many will choose to leave the sport. The following is a representative sample of the commenters' views:

The cost of a storage magazine is very prohibitive to the average rocket hobbyist and is way out of proportion to the cost of the motor being stored. For example, an H128W motor from Aerotech Inc. * * * has a retail cost of $12.50. * * * this motor would be regulated and the hobbyist must store it in a type 4 low explosives magazine. The least expensive type 4 magazine that I have been able to find is one offered * * * for $194.95 plus a shipping cost of $25.00. This is a total cost of at least $219.95 to store a $12.50 motor. (Comment No. 69)

Subjecting rocket motors containing more than 62.5 grams of propellant to BATFE

explosives regulations would be onerous and burdensome. In addition to the cost of the permit, fingerprinting and background checks, there is also the problem of storage. BATFE would require APCP and other hobby rocketry materials to be stored in an explosives magazine far from any building or road. For most people this is a physical impossibility * * * (Comment No. 331)

The BATF requirements for permitting & storage cannot be met by a majority of these hobbyists, since they do not have access to a BATF-approved magazine, nor can they meet the BATF requirements for having such a magazine on their premises. (Comment No. 812)

Most model rocket hobbyists are not going to be willing to go through the process of obtaining a Low Explosives User Permit (LEUP) to be able to continue to use the APCP rocket motors * * * The paperwork effort and intrusive nature of the permitting process (background check including photographs, fingerprints, and interviews) and recordkeeping requirements * * * will cause most amateurs to drop out of the hobby. (Comment No. 954)

Under the new proposed regulations * * * model rocketry hobbyists, educators, and students will have to obtain an BATFE permit to buy a consumer rocket motor. Even the simplest permit under the law will require the hobbyist to be subjected to a background check by the BATFE, which includes fingerprints, photographs and interviews. The law also requires permit holders to keep records that can be inspected by BATFE agents. Since these records will most likely be kept in the permit holder's home, it will open their home to a visit by the BATFE. The response by many Americans to these new restrictions will be to drop out of rocketry * * * (Comment No. 1544)

A significant, and debilitating for the hobby, side effect of the proposed rule * * * is that storage will be required for all but very small APCP motors. Storage requirements will cause this hobby to wither over the next few years as older rocketeers leave the hobby and new enthusiasts find the regulatory hurdles far too steep to clear. Many, likely most, hobbyists will not be able to secure storage for their motors * * * (Comment No. 1614)

Department Response

These comments appear to be based on the misconception that the final rule would ''impose'' the requirements of 27 CFR part 555 on rocket motors containing more than 62.5 grams of propellant. The Department's view is that this characterization of the rule is incorrect. The Department's position is that APCP is properly classified as an explosive and, in the absence of an exemption, the requirements of 27 CFR part 555 would apply to all rocket motors, regardless of the quantity of propellant. As stated above, the final rule formally implements ATF's long-standing policy of exempting from part 555 rocket motors containing 62.5 grams or less of propellant. If this exemption did not exist, the consequences outlined in the comments, if accurate, would be more pronounced because there would be no relief at all for hobby rockets.

The Department recognizes that some individuals wishing to obtain a Federal explosives license or permit may not be able to do so based solely upon the individual's inability to meet the storage requirements stipulated under 27 CFR part 555, subpart K. The Department also recognizes that some individuals may feel that the Federal licensing and permitting requirements are too intrusive and may decide to discontinue their participation in rocketry rather than obtain a Federal explosives license or permit. The exemption recognized in this final rule should make it easier for hobbyists to comply with the law, and the Department notes there are a number of resources and alternatives available to rocket motor enthusiasts which will likely prevent any drastic drop in participation.

Off-Site Storage: The Department believes that many individuals will continue to participate in the sport because ATF has approved, in certain circumstances, the storage of explosive materials at a location other than the premises address recorded on the permit or license. Off-site storage of explosive materials is permitted so long as the applicant, licensee, or permittee notifies ATF of the storage location. This location must be in compliance with the tables of distances requirements in the regulations, and the magazine must be in a location that can be visually inspected once every seven days.

Contingency Storage: Participation may not depreciate as dramatically as projected by rocket hobbyists because ATF will allow industry members to have contingency storage. Upon approval from ATF, contingency storage allows an individual to arrange to have his explosive materials stored at the premises of another Federal explosives licensee or permittee. Approval is generally granted to an applicant so long as the magazine is located so it is readily accessible to all individuals utilizing the magazine and the applicant has written approval from the owner of the magazine.

Contingency storage could allow several hobbyists to pool their resources to obtain a single magazine in which to store explosives and to obtain an acceptable location to place their magazine. In addition, some licensees and permittees have already rented out space in their magazines to provide a location for an applicant's contingency storage. Each of these options is a viable way in which contingency storage might be utilized for those who cannot obtain a location to store explosive materials.

Storage by Variance: Along with off-site and contingency storage, hobbyists can apply for a variance from the storage regulations. Variances may be available to applicants who are able to support a means of storing the explosive materials in a manner substantially equivalent to the requirements outlined in the regulations. For instance, ATF may approve a variance for the storage of rocket motors inside attached garages. Those individuals meeting certain conditions outlined in the variance, such as a requirement to provide proof of approval from State or local officials, may continue to store rocket motors at their licensed premises.

Clubs: Membership in a ''rocketry club'' will also limit the need for individual permits thereby reducing the regulatory obligations imposed on individual hobbyists. ATF has informed rocketry clubs that club members can participate in club shoots without having to obtain their own Federal explosives license or permit. The club is the entity responsible for obtaining the Federal explosives license or permit, for obtaining the approved storage locations and magazines, and for ensuring that club members do not fall into any of the prohibited persons categories. The individual club member may then receive explosive materials on behalf of the club while participating at launches under the appropriate club supervision.

Students/Educators: Finally, the sport will not see a dramatic loss in the participation of students and educators at public schools and public universities as they will continue to be exempt from the requirements of obtaining a Federal explosives license or permit pursuant to 18 U.S.C. 845(a)(3) and 27 CFR 555.141(a)(3). The law and its implementing regulation exempt the transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof. This exemption allows public schools or public universities to obtain rocket motors of any size without a license or permit. These institutions must, however, continue to comply with all storage requirements for explosive materials and cannot knowingly allow a prohibited person to receive or possess explosive materials.

2. The Wording of the Proposed Regulation Effectively Bans All Reload Kits

The proposed regulation limits the exemption for motor reload kits to those

''capable of reloading no more than 62.5 grams of propellant into a reusable motor casing.'' Several commenters argued that the proposed wording effectively bans all reload kits for reusable motor casings, even those using 62.5 grams or less of propellant. The following excerpts were taken from the comments:

After all, it is physically possible to take several reload kits, each intended to be used in a motor containing 62.5 grams or less of propellant, and to combine them into a larger motor. Thus, by the wording of this proposed 'exemption', you are effectively banning all reload kits. (Comment No. 30)

[T]he term 'capable of reloading more than 62.5 grams into a single casing' could be interpreted to eliminate all reloadable rocket motors. If a reloadable rocket motor was designed to use one and only one 10 gram APCP slug, with this wording, this reload kit could still be considered subject to regulation as the BATFE could determine that someone could create a motor casing to accommodate 7 of this fictional slug, making a motor with 70 grams total propellant weight. In addition, many commercial rocket motors that are used safely at high power rocket launches are composed of multiple 62.5 gram or less slugs. This wording would regulate all of those motors. (Comment No. 286)

It will always be theoretically possible for someone to take the propellant grains from several reload kits intended for use in a motor casing containing 62.5 grams or less of propellant, and place all of them into a larger motor casing. Because there is no practical way to prevent this possibility, all reload kits are 'capable' of reloading more than 62.5 grams of propellant into a reusable motor casing. (Comment No. 749)

The way the proposed change is worded, it would regulate all reloadable motors, regardless of size, since someone could always produce a case capable of holding say 13 chunks of 5 grams each. Most of my 29mm reload kits are under 62.5g, but they could be loaded into a very long 29mm casing that they are not designed to be used in. Even a case of 13mm reload slugs could be crammed into a 54mm casing. It wouldn't work, but would be over 62.5g and thus regulated by this rule. (Comment No. 889)

You only need to look at this hypothetically to see the problem of this rule: If a consumer had 63 kits, each weighing only 1 gram, they could possibly be assembled in a reload casing. So even 1 gram of ammonium perchlorate composite propellant would not be exempt. (Comment No. 1195)

Department Response

The Department has reviewed the comments that claim that the regulation effectively bans all reload kits. The Department does not believe that this concern is warranted or valid. First, the rule does not ''ban'' rocket motors or reload kits. Rather, the rule allows persons to acquire without regulation rocket motors containing 62.5 grams or less of propellant and reload kits designed to enable the assembly of motors containing 62.5 grams or less of propellant. Rocket motors and reload kits exceeding these parameters may still be lawfully acquired by obtaining a Federal permit and complying with the storage, recordkeeping, and other provisions of the law and regulations. Thus, using the term ''ban'' to refer to this final rule is inappropriate and misleading.

Presently, ATF is aware of only a small number of commercially available reload kits that contain propellant modules designed to be combined to exceed the 62.5-gram total propellant weight within a single sport rocket casing. In these kits, the individual propellant modules each contain 62.5 grams of propellant or less; however, the kits are subject to the permitting/licensing and storage requirements of the Federal explosives law because they are designed to be stacked together within a re-usable casing designed to hold more than 62.5 grams of propellant. There are other reload kits on the market that are designed solely to be used in the assembly of rocket motors that contain no more than 62.5 grams of propellant per assembled motor. These reload kits will remain exempt under this final rule.

Many of the scenarios offered by commenters refer to hypothetical possibilities as opposed to actual products used or available to rocket hobbyists. For instance, ATF is unaware of any rocket casing that accepts seven 10-gram slugs of APCP, resulting in 70 grams of total propellant weight. However, if such a kit were to be designed it would be subject to regulation.

ATF recognizes that reload kits can provide rocketry enthusiasts with a cost-effective means to enjoy their hobby. Accordingly, ATF has included within the scope of the 62.5-gram exemption reload kits that are designed to enable the assembly of motors containing 62.5-grams or less explosive material. Hobbyists and manufacturers of rocket motors should, however, be aware that this final rule does not provide a ''loophole'' affording exempt treatment for reload kits (e.g., the AeroTech ''Easy Access'' kit) that, although containing propellant modules no larger than 62.5 grams, are designed to allow more than one of these propellant modules to be combined in a fully assembled motor containing a total of more than 62.5 grams of propellant. Logic dictates that if single-use motors containing more than 62.5 grams are not exempt under this final rule, reload kits designed to enable the assembly of such motors must also be subject to regulation.

3. The Proposed Regulation Limits the Scope of the Exemption to ''Importation and Distribution''

The wording of the proposed regulation limits the exemption to ''importation and distribution.'' Several commenters contended that the proposal is too restrictive and that rocket motors containing 62.5 grams or less of propellant should be exempt from all of the requirements in part 555. One commenter, NAR, pointed out that the current language in 27 CFR 555.141(a)(7) includes importation, distribution, and storage. The commenter went on to state the following:

[T]he NPRM has dropped the reference to 'storage' from the introductory text for exemptions in Section 55.141(a)(7). To the degree that the deletion was purposeful, ATFE has severely limited its exemptions by requiring compliance with storage requirements even where compliance with importation and distribution requirements is not necessary. Clearly such a result represents an unnecessary and undue burden on many retail establishments distributing and selling these items. To the degree the deletion was inadvertent, the reference to 'storage' should be re-inserted when the final rule is issued.

Other commenters raised similar concerns:

The exempted materials should be considered non-explosive for all legal purposes, not just importation and distribution * * * rocket hobbyists need to be free to buy, sell, ship, store, transport, and use rocket propellants, and the manufacturers and dealers need to be free to make, buy, ship, store, transport and sell them. (Comment No. 30)

The current language of 27 CFR 555.141(a)(7) explicitly exempts storage as well. Requiring storage for these items [rocket motors containing up to 62.5 grams of propellant] will impose a significant burden on the entire supply chain and make thousands (millions?) who currently possess these items criminals. (Comment No. 1330)

Department Response

The Department has reviewed the comments that question the exclusion of storage from the exemption language. It was not the intention of the proposed rule to impose storage requirements on hobby rocket motors containing 62.5 grams or less of propellant. Historically, ATF's policy has been to exempt the smaller rocket motors from all regulations applicable to other explosives. This final rule was intended to clarify that long-standing policy. Therefore, in this final rule, the language has been revised to clarify that the designated rocket motors are exempt from all the requirements of 27 CFR part 555.

4. Increased Regulation of Model Rocket Engines Will Limit the Availability and Drive Up the Already High Price of Rocket Motors

Several commenters contended that many hobby rocketry enthusiasts will leave the hobby if the proposed regulation is adopted, resulting in limited availability of rocket motors and higher prices for them. Excerpts from some of the comments follow:

As a result of members leaving the hobby, these [proposed] regulations will have a very significant negative economic impact on the companies that manufacture, distribute, and sell hobby rocket motors. Prices will rise for these motors since demand and volume will be significantly reduced. Higher prices will hurt the average hobbyist * * * (Comment No. 69)

By imposing limits that only allow less than 62.5 grams of 'total' propellant, rocketeers, who are not currently permitted, will be unable to purchase and fly the vast majority of mid to high power rockets * * * This will in turn lower the demand for these types of motors and will in turn drive the prices up for those of us that have the ability to purchase, store and use * * * those manufactures [sic] and businesses that provide these products * * * will have to lower their inventory levels, manufacturing component commitments, and raise their prices overall just to stay in business at a reduced revenue level. (Comment No. 896)

A majority of hobbyists can not * * * and many will not * * * qualify for a LEUP; those hobbyists have stopped purchasing rocket motors * * * Almost overnight the few small dealers and manufacturers have seen their small profit margins disappear. As demand drops, prices will rise to the point where the typical hobbyist will not be able to afford it. (Comment No. 1536)

A reduction * * * in participation would also negatively impact those who keep going with the hobby. As with any other consumer product, as rocket motor production increases, prices decrease. Unfortunately, the opposite is also true and the remaining consumers of APCP rocket motors would be forced to bear the added cost. This will also result in decreased participation. (Comment No. 1607)

Department Response

The Department has considered the commenters' concerns about potentially inflated costs associated with high power rocket motors. These comments appear to be based on the misconception that the final rule would ''impose'' the requirements of 27 CFR part 555 on rocket motors containing more than 62.5 grams of propellant. The Department's view is that this characterization of the rule is incorrect. The Department's position is that APCP is properly classified as an explosive and, in the absence of an exemption, the requirements of 27 CFR part 555 apply to all rocket motors, regardless of the quantity of propellant. As stated above, the final rule formally implements ATF's long-standing policy of exemption from part 555 rocket motors containing not more than 62.5 grams of propellant. If this exemption did not exist, the consequences outlined in the comments, if accurate, would be more pronounced because there would be no relief for hobby rockets at all.

Moreover, the Department does not believe the concerns outweigh the safety and homeland security threats that would be posed by the unregulated sale of large rocket motors. Additionally, the concern is not supported by facts.

Federal controls applicable to rocket motors containing more than 62.5 grams of propellant and on reload kits enabling persons to construct motors containing more than 62.5-grams of propellant are reasonable in scope. The controls were applicable to motors containing more than 62.5 grams of propellant prior to the proposed rule. Therefore, any perceived shift in market prices associated with this proposal is simply a result of hobbyists coming into compliance with ATF's long-standing policy and with the expanded permitting requirements imposed by Congress under the Safe Explosives Act. Likewise, ATF has not been provided with any information to support the contention that affected hobbyists are quitting their hobby due to the cost of compliance.

In fact, the Department has identified a number of resources and alternatives that will reduce the regulatory obligations of individual hobbyists. These alternatives should limit any projected decrease in the number of hobby participants thereby lessening the overall impact on the commercial market.

5. Subjecting Rocket Motors Containing More Than 62.5 Grams of Propellant to Permitting and Storage Requirements Would Be Onerous and Burdensome

Approximately 80 commenters argued that subjecting rocket motors containing more than 62.5 grams of propellant to the permitting and storage requirements of Federal explosives and regulations would be unduly burdensome. The commenters expressed concern regarding the costs associated with obtaining a Federal permit, *e.g.*, fingerprinting and background check, and the problems involved in providing proper storage for the rocket motors. The following excerpts represent the views of most commenters:

The regulations you proposed in this NPRM will eliminate my ability to participate in high power hobby rocketry. All of the rocket motors I have used in the past few years and those I prefer to use would be regulated under this proposed regulation. In order to continue to use them, I would be required to obtain a * * * low explosives user permit * * * Since I currently live in a multiple family dwelling, I would not be eligible to have a magazine for motor storage, a requirement to obtain a low explosives user permit, and thus would not be able to fly motors above your proposed 62.5 gram limit. (Comment No. 286)

[M]ost of us do not have the required storage facilities for our motors. Current storage requirements are an outbuilding 100 feet from any other building. And if we can't store our motors * * * I don't know how we are going to fly. (Comment No. 732)

All High Power flyers will have to obtain a permit to continue their sport under the proposed regulations. The lower cost intrastate [limited] permit is useless in many states where there are no High Power Motor retailers. The full LEUP is the only viable option under the proposed regulations and the economic impact can be severe. The increase in the permit fee is a very small part of the increase. The requirement for storage is where virtually all of the expenses are. (Comment No. 895)

Storage is the most burdensome part of the regulatory requirements for individuals to meet. Many people who engage in model rocketry live in homes which are not able to meet the storage requirements (such as Townhouse[s], Apartments and areas of cities where homes are located close together). (Comment No. 969)

Subjecting rocket motors containing more than 62.5 grams of propellant to BATFE explosives regulations would be onerous and burdensome. In addition to the cost of the permit, fingerprinting and background checks, there is also the problem of storage. BATFE would require APCP and other hobby rocketry materials to be stored in an explosives magazine far from any building or road. For most people this is a physical impossibility * * * 'Contingent storage' via a second party is not a solution either, as it is often unavailable. (Comment No. 1034)

Department Response

The Department objects to characterization of this rule as ''subjecting'' rocketry hobbyists to requirements of the law. As stated previously, this rule merely clarifies ATF's long-standing policy exempting certain rocket motors containing 62.5 grams or less of propellant from the requirements of part 555. Without this exemption, rocketry hobbyists would be required to obtain a Federal permit and abide by all the requirements of the law and regulations for all rockets and reload kits.

In addition, the Department contends that the time and costs of obtaining a ''user permit'' (UP) or a ''limited permit'' for users of rocket motors or reload kits containing more than 62.5 grams of APCP, as well as the cost of obtaining an approved storage

magazine, do not impose an excessive burden on individuals.

In amending regulations to implement provisions of the Safe Explosives Act (**Federal Register**, March 20, 2003, 68 FR 13777), ATF estimated the time and cost for 20,000 unlicensed individuals to obtain a ''limited permit.'' ATF estimated that the total amount of time it would take an individual to complete a Federal explosives license or permit application is approximately 1.5 hours. The time spent on inspecting the qualification documents, business premises, and storage magazines is approximately 2 hours.

ATF also estimated the total cost imposed on an individual applying for a ''user permit'' or a ''limited permit.'' First, there would be the cost of each permit, which is $25 per year for a ''limited permit'' and $100 for 3 years for a LEUP. The cost of photographs for an individual was estimated at $1.50; fingerprints for individuals were estimated at $10.00. ATF estimated the cost for the time it would take to complete the application as $19.50, based upon a mean hourly wage of $13. Finally, ATF estimated the total cost for the time spent by the individual during an ATF application inspection at $34, based upon a mean hourly wage of $17.

Based on these figures, ATF was able to conclude that the total cost and amount of time spent on applying for a Federal explosives permit would be an estimated $90.00 to $164.50 and 3.5 hours per applicant. The Department contends that this amount of time and cost is not disproportionately burdensome, especially when considering the benefits to public safety and security.

The Department does recognize that the cost of a storage magazine is significant when compared to the cost of a single rocket motor. However, most rocket motor enthusiasts store more than a single rocket motor in a magazine. In addition, there are alternative means of storing rocket motors. Contrary to the views expressed by some commenters, contingency storage is a viable option for hobbyists. Contingency storage would allow several hobbyists to pool their resources together to obtain a single magazine to store explosives and to obtain an acceptable location to place their magazine. It also allows individuals who might otherwise be prohibited from storing at their licensed location, possibly due to State or local requirements, to store in a magazine at a location provided by another licensee or permittee.

Furthermore, rocketry enthusiasts may join or form rocketry clubs. These clubs are responsible for obtaining all appropriate licenses or permits, as well as storage. The club members may incur the cost of membership dues, but as members they may participate in their hobby without having to individually comply with storage, licensing, or permitting requirements. Sharing the cost of compliance will dramatically reduce the cost and burden to any individual club member.

6. The Proposed Regulation Places an Undue Burden on Adult Sport Rocketry Hobbyists

Approximately 110 commenters expressed a concern that the proposed regulation places an undue burden on adult rocketry hobbyists because most adults in the hobby use motors that contain more than 62.5 grams of propellant. Following are excerpts from some of the comments:

The point I am trying to make here is it [is] the adults that drive the hobby. Approximately 56% of all consumer hobby rocket motors sold are above the 62.5 gram propellant weight exemption proposed by the ATFE. 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 possible ATF inspections. (Comment No. 769)

The proposed 62.5-gram propellant weight limit in the NPRM will have detrimental effects on the hobby. It will subject about 5000 high power rocket flyer hobbyists in the United States to a series of regulations that will stifle the growth and adult participation in this hobby. Many current adult flyers that were involved with this hobby as middle and high school students have returned to this hobby because of the high power aspects. (Comment No. 801)

[M]ore than 90 percent of the rockets that I currently fly contain between 125 and 1000 grams of APCP * * * Most of the individuals involved in high-power rocketry devote the greater part of their efforts to flying rockets that use more than 62.5 grams of propellant. There are currently approximately 5,000 such individuals certified by NAR and/or TRA who routinely fly rockets that fall into this category. (Comment No. 924)

While most minors fly these types of motors [under 62.5 grams propellant weight] the majority of adult hobbyists do not * * * The 62.5g rule was made by CSPC to protect minors from injury. I agree that this threshold is a good limit for minor[s], but for minors only. (Comment No. 999)

Although most of the rocket motors burnt are not affected by this [proposed] regulation, it is often the adults who are burning the larger motors that coordinate the launches for the younger generation. Placing this unnecessary burden on them will drive them out of the hobby * * * (Comment No. 1008)

Department Response

These comments appear to be based on the misconception that the final rule would ''impose'' the requirements of 27 CFR part 555 on rocket motors containing more than 62.5 grams of propellant. This characterization of the rule is incorrect. The Department's position is that APCP is properly classified as an explosive and that, in the absence of an exemption, the requirements of 27 CFR part 555 apply to all rocket motors, regardless of the quantity of propellant. As stated above, the final rule formally implements ATF's long-standing policy of exempting from part 555 rocket motors containing not more than 62.5 grams of propellant. If this exemption did not exist, the consequences outlined in the comments, if accurate, would be more pronounced because there would be no relief for hobby rockets at all.

ATF as well as other Federal agencies, including the Consumer Product Safety Commission and the Department of Transportation, have long considered rocket motors containing no more than 62.5 grams of propellant to be exempt from Federal regulations. For years, many rocketry enthusiasts had also accepted this threshold, obtaining user permits for interstate transfers of rocket motors containing more than 62.5 grams of propellant. It was only after the SEA was enacted in 2002, with its requirement for licenses or permits on intrastate purchases, that the rocketry groups began to contend that the 62.5-gram threshold was too burdensome.

The 62.5-gram threshold was based on the historical acceptance of this amount of explosive material as suitable for ''toys.'' Anything above this amount cannot reasonably be classified as a toy. As explained previously, a result of this exemption is the mitigation of the burden of complying with the law for rocket motors that do not pose a significant threat to public safety and homeland security. The fact that most of the rockets containing propellant in excess of 62.5 grams are acquired by adults is irrelevant. The Department believes that limiting the exemption to motors at or under the 62.5-gram threshold is reasonable and necessary to prevent unregulated access to dangerous quantities of explosives by criminals and terrorists-most of whom are adults.

7. The Limited Permit Is Not Practical for Sport Rocketry Hobbyists

The Federal explosives law requires that all persons receiving explosives on and after May 24, 2003, obtain a Federal permit. A ''user permit'' is necessary only if the holder transports, ships, or receives explosive materials in interstate or foreign commerce. The fee for a user permit is $100 for a three-year period and $50 for each three-year renewal.

The ''limited permit'' authorizes the holder to receive explosive materials only within his State of residence on no more than 6 separate occasions during the one-year period of the permit. The fee for an original limited permit is $25 for a one-year period and $12 for each one-year renewal.

Fifty-five commenters argued that the limited permit is not a viable option for sport rocketry hobbyists, citing various reasons:

'Limited' permits cannot be used by most hobby racketeers [sic], as dealers are out of state and the 'Limited' permit is restricted to resident in-state purchases. Rocketeers must get a LEUP [limited explosives user permit] costing $100. (Comment No. 323)

The use of the ATF's new limited [permit] * * * while a step in the right direction will not serve most users largely because most of us currently need to order supplies out of state, as there are a limited number of vendors nationwide and very few of us have the luxury of an in state vendor. (Comment No. 737)

The 'limited' permit proposed by ATFE is useless or of limited usefulness for the vast majority of rocket flyers, as it only allows a maximum of 6 purchases per year, and only allows in-state purchase and use. Most rocket clubs hold launches at least monthly (some much more often), and there simply are no dealers of high power rocket motors in most states. Most high power rocket motor sales are done through dealers in other states, either by mail order, or from dealers who travel to launch events held in other states. Also, rocket flyers frequently travel to launch events held in other states. (Comment No. 749)

The limited permit has very limited usefulness because it does not allow fliers to fly out of state, it unrealistically limits motor purchases, and it causes problems for transportation and storage. (Comment No. 778)

The new six purchases per year intrastate limited permit is of little use, since most hobbyists do not have both a launch site and dealer in their home state. (Comment No. 840)

Department Response

Commenters pointing out the limitations of the Limited Permit fail to recognize the benefits of this rule to sport rocketry. This rule clarifies ATF's long-standing policy exempting certain rocket motors containing 62.5 grams or less of propellant from the requirements of part 555. Without the exemption, all persons acquiring rocket motors would be required to obtain a permit and comply with all other requirements of Federal law.

An alternative to the limited permit is the user permit (UP), which allows for unlimited interstate purchases of explosive materials for a period of up to three years. The UP also permits those individuals attending out-of-state launches to purchase rocket motors interstate, or to transport explosive materials from state to state. The UP is useful in instances in which there are no model rocket motor dealers in the hobbyist's state, since it allows the hobbyist to purchase non-exempt rocket motors outside of his state of residence and receive the motors in his own state as long as the purchase complies with other Federal, State, or local laws. The cost of the UP is only slightly higher than the cost of a limited permit. The limited permit application fee is $25 per year with a renewal feel of $12 per year. The full price of a UP for 3 years is $100 for the initial three-year permit (averaging out to $33.33 per year), with a renewal fee of $50 every three years thereafter (average of $16.67 per year).

8. Sport Rocketry Hobbyists May Not Be Able To Comply With State and Local Requirements

Approximately 40 comments contended that under the proposed regulation rocketry hobbyists would need to obtain permission from State and local authorities to store rocket motors containing more than 62.5 grams of propellant. The commenters argued that obtaining such permission is often difficult or impossible in many areas. The following excerpts are representative of the commenters' concerns:

BATFE regulation of hobby rocket materials would also require users to get the permission of state and local authorities for storage of 'explosives'—something that is often difficult or impossible in many areas. In some cases, users would be required to undergo training in the use and storage of high explosives. (Comment No. 333)

Many, likely most, hobbyists will not be able to secure storage for their motors because APCP has been misclassified as an explosive and, quite naturally, most cities are reluctant to allow storage of explosives in a residence. (Comment No. 824)

Most of the hobbyists I know cannot meet storage requirements because they live in an apartment or condominium or live in a city that won't allow 'explosives' to be stored in a residential area, and therefore most of them cannot get a permit. (Comment No. 1065)

Department Response

The statutory criteria for issuance of a Federal explosives license or permit do not require applicants to comply with or certify compliance with requirements of State or local law. The only aspect of Federal regulation that is conditioned upon compliance with State and local law is ATF's granting of storage variances. As stated in ATF Ruling 2002–3, Indoor Storage of Explosives in a Residence or Dwelling (approved August 23, 2002), ATF will approve variances to store explosives in a residence or dwelling upon certain conditions including, but not limited to, receipt of a certification of compliance with State and local law, and documentation that local fire safety officials have received a copy of the certification. ATF has issued numerous variances permitting storage of explosive materials, particularly APCP, in a residence or dwelling.

9. ATF's Definitions and Classifications of Explosives Are Not Consistent With Those of Other Federal Agencies and International Agreements

Several comments argued that there should be some consistency among Federal agencies with respect to the definitions and classifications of explosives. Following are some of the arguments raised by the commenters:

[T]he definitions and classifications [of explosives] should agree with other federal agencies and international agreements such as the United States Department of Transportation, the Bureau of Explosives, and UN standards. Ammonium perchlorate, and rocket motors definitions and classifications should be regulated by * * * [ATF] as it has been by the United States Department of Transportation, the Bureau of Explosives, and UN standards in the BOE–600 Hazardous Materials Regulations of the Department of Transportation since around WW 1. (Comment No. 907)

The APCP formulations in the geometric configurations available to the hobby rocketry community do not meet the U.S. Government specified characteristics of low explosive materials when evaluated by approved U.S. Government explosive testing laboratories and by the Department of Defense (DOD). (Comment No. 1044)

The Department of Transportation has labeled APCP as a flammable solid and has granted an emergency revision to DOT exemption DOT–E 10996 that allows the shipment of articles covered by the exemption (certain rocket motors and reload kits normally classified as division 1.3C explosives). (Comment No. 1052)

It seems odd to me that two different branches of government choose to have such differing opinions on the same substance. I believe that the definition of 'toy propellant devices' use[d] by DOT [is] more accurate when talking about hobby rocket motors. (Comment No. 1362)

[I]t appears that BATFE is backing off from its early laudable efforts to coordinate its regulations with those of other governmental and quasi-governmental regulatory bodies. For example, BATFE specifically declines to recognize or adopt even portions of NFPA codes * * * BATFE has in the current NPRM eliminated several helpful references to UN codes, and * * * BATFE is proposing to adopt definitions of terms and regulatory limits that are different from, and will inevitably interfere or even conflict with, those used by FAA and DOT. (Comment No. 1622)

Department Response

The Department has considered the comments regarding differing classifications and definitions used by other Government agencies. However, it does not believe the proposed amendment would result in inconsistency among Government agencies because different Federal statutes serve different purposes.

APCP, being a deflagrating propellant, is considered an explosive and classified under ATF regulation as a ''low explosive.''

The National Fire Protection Association (NFPA) has adopted a definition of ''explosives'' that is the same as the statutory definition set forth in 18 U.S.C. 841(d). ''Explosives'' as classified in 18 U.S.C. 841(d) are ''* * * 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.'' Moreover, the NFPA's classification of ''low explosives'' is consistent with that in 27 CFR 555.202(b). In its ''Fire Protection Handbook,'' NFPA has included propellants in its listing of ''types of explosive,'' and states that black powder, smokeless powder, and solid rocket fuels fall into the category of ''low explosives/propellant.'' Furthermore, in its ''Code of High Power Rocketry,'' NFPA uses the same criteria for the storage of rocket motors that mirror the requirements of the table of distances for low explosives that are addressed in 27 CFR part 555.

DOT classifications sometimes differ from ATF because the two agencies use different standards to make their explosives classifications. DOT uses standards that are based primarily on the controls for the transportation, storage, packaging, and shipping safety. For example, when packaging will reduce the likelihood of mass explosion, DOT will assign a ''lower'' hazard classification (triggering less stringent transportation requirements). DOT's standards are such that the same explosive material can be classified differently in different circumstances, based solely upon its packaging. ATF's classifications are static and are based upon the material itself, not the safety of its packaging. Likewise, the United Nations (UN) uses classifications for explosives that are designed to ensure the harmonization of transportation of hazardous materials in global commerce. These classifications serve to facilitate commerce while maintaining safety standards that can be adhered to throughout the world. This goal differs significantly from that of ATF. ATF's classifications are designed to maximize public safety and protect interstate and foreign commerce against interference and interruption from the misuse of explosive materials. Therefore, although there are some distinctions in classification among Federal agencies, they should not be viewed as inconsistencies.

10. The Proposed Exemption Would Not Apply to Rocket Motors Containing Multiple Segments up to 62.5 Grams of Propellant Each, but Whose Total Combined Weight Is More Than 62.5 Grams

One commenter (Comment No. 18) expressed concern that the proposed regulation would not exempt rocket motors containing multiple segments having no more than 62.5 grams of propellant each, but whose total combined weight in the motor is more than 62.5 grams. The commenter contended that the proposed exemption should apply to all model rocket motors whose segment weight is less than 62.5 grams, regardless of the number of segments, citing various reasons including: The proposed rule does not make sense—there is no difference between purchasing or selling three separate motors each containing 62.5 grams of propellant and one motor reload with three segments, each weighing 62.5 grams; a 62.5 gram per segment exemption is self-limiting, i.e., it becomes impracticable from a physics point of view for rocket motors to have more than a certain number of segments that are limited to 62.5 grams, and; the proposed exemption will encourage clustering of smaller motors to achieve the effect of a larger motor-this is not a good practice because it relies on simultaneous ignition of the motors.

Department Response

All reload kits and propellant modules that can be used only in the assembly of rocket motors that contain a total of no more than 62.5 grams of propellant per assembled motor are exempt from regulation under this final rule. This exemption applies to single-use motors containing 62.5 grams or less of explosive material and to reload kits that are designed solely to create motors containing 62.5 grams or less of APCP per assembled motor. The range and power of rockets powered by the smaller rocket motors would not be as useful to terrorists or other criminals in constructing weapons designed to serve as delivery systems for explosive, chemical, or biological weapons. An individual purchasing larger rocket motors may assemble a large rocket motor that is capable of carrying explosive warheads or other dangerous payloads long distances.

The Department believes that the regulation of single-use motors containing more than 62.5 grams of propellant and reload kits and propellant modules designed to enable the assembly of such large motors can protect public safety by preventing the misuse of these motors. Also, the Department has determined that this threshold affords a reasonable balance between the need to prevent terrorists and other criminals from acquiring explosives and the legitimate desire of hobbyists to have access to explosives for lawful use.

11. The Proposed Exemption Does Not Appear to Include Bulk Packs of Rocket Motors

One commenter (Comment No. 59) inquired whether the proposed exemption applied to bulk packs of rocket motors where each motor contains no more than 62.5 grams of propellant. The commenter stated that he purchases bulk packs of rocket motors for his students who are in a model rocket club. He explained that the bulk packs usually contain 24 motors and that each individual motor contains 5.6 grams of propellant, resulting in a total propellant weight of 134 grams (5.6×24). Because the total weight of the bulk pack exceeds 62.5 grams, the commenter is concerned that bulk packs of rocket motors would not be included in the proposed exemption.

Department Response

As stated previously, any person purchasing explosives, including non-exempt rocket motors, for use at a public educational institution, is exempt from the permit provisions of the Federal explosives laws. State and local institutions would be required to store rocket motors in compliance with the law and regulations and could not knowingly allow prohibited persons to receive or possess explosive materials.

Persons purchasing rocket motors for a private school would not be exempt from the permit requirements of the law. However, if the ''bulk packs'' referred to by Comment No. 59 are non-stackable, fully-assembled single-use motors, each of which contains no more than 62.5 grams of propellant, then such ''bulk packs'' would fall within the exemption of the regulations, no matter how many motors are contained in the package. Accordingly, the commenter's concerns are misplaced.

12. The Proposed Regulation Should Be Amended To Include Other Explosives

As indicated, many commenters argued that the proposed regulation is too restrictive and would have a negative effect on hobby rocketry. Approximately 175 comments recommended specific changes to the proposed regulation. For example, many commenters stated that the proposed regulation should be revised to exempt from regulation model rocket motors consisting of ammonium perchlorate composite propellant, black powder, or non-detonable rocket propellant and designed as single-use motors or as reload kits, as well as commercially manufactured black powder in quantities not to exceed two pounds, safety and pyrotechnic fuses, quick and slow matches, electric matches and igniters when used in model rocket motors. This suggestion is similar to the proposals contained in Senate Bill 724, introduced during the 108th Congress by Senator Michael Enzi.

Other commenters argued that there should be an exemption for black powder in small quantities, e.g., two pounds, for use in model rocket ejection systems, i.e., to deploy the parachute. Two commenters recommended that the proposed regulation be revised to exempt model rocket motors designed as single use and reload kits consisting of APCP, black powder, or other similar propellant purchased for hobby and educational use by persons (and organizations) who have successfully completed the certification processes offered by the National Association of Rocketry, Tripoli Rocketry Association, or similar organizations.

Two other commenters suggested that the proposed regulation should be revised to exempt any size rocket motor or propellant reload, except those materials which present such a hazard of accidental explosion as to be suitable for classification as ''UN Class 1 Division 1.1 or 1.2 Hazardous materials,'' or any material used as a propulsive or explosive charge in a rocket that qualifies as a ''destructive device'' as defined in 18 U.S.C. 44.92(a)(4)(iii). One commenter recommended that the proposed regulation be revised to exempt model rocket motors classified by the Department of Transportation as Class 1.4 explosives, since United Nations hazard Class 1.4 replaces the former Class C explosive designation. Another commenter stated that the proposed regulation needed to be revised to clarify the phrase ''or other similar low explosives.'' The commenter stated that it was not clear whether the word ''similar'' means similar in chemical composition, method of operation, or similar in ability to lift large payloads.

Department Response

The Department has considered the comments that request the proposal be amended. Based upon the present language of Federal explosives law, the Department does not believe that the proposed regulation should be amended in the manner suggested by the commenters.

ATF is familiar with the commenters' proposed language that seeks to establish additional exemptions: Model rocket motors consisting of ammonium perchlorate composite propellant, black powder, or non-detonable rocket propellant and designed as single-use motors or as reload kits, as well as commercially manufactured black powder in quantities not to exceed two pounds, safety and pyrotechnic fuses, quick and slow matches, electric matches and igniters when used in model rocket motors. This suggestion mirrors language in Senate Bill 724, introduced by Senator Michael Enzi in March 2003. The bill was not enacted and will have to be reintroduced before Congress may consider it. The Department believes that expanding the current exemption, even for the sole purpose of hobby rocketry, will harm homeland security by providing terrorists and other criminals with unrestricted access to rocket motors containing large amounts of explosive material. The Department believes this to be an unnecessary and unacceptable risk in the current security environment. Moreover, allowing exemptions only for fuses and igniters, as opposed to non-exempt rocket motors, would be impossible to implement, as the same types of fuses and igniters are used for both large and small rocket motors, as well as commercial explosives and blasting operations. Additionally, there would be no mechanism to ensure that only rocketry hobbyists or others with lawful intentions will be able to avail themselves of the exemption. If the exemption were to be expanded as suggested by the commenters, it would become very easy for terrorists or other criminals to acquire large rocket motors, fuses, igniters, and other materials for use in bombs and/or for use in rockets.

The proposal to include an exemption for up to two pounds of black powder for use in model rocket ejections is not being adopted in this final rule. As explained previously, the exemption for black powder was enacted by Congress and not as a regulatory exemption. The Department declines to add this exemption to the final rule. Accordingly, the Department recommends that commenters on this issue seek legislation.

The Department also believes it is unnecessary to revise the language in the regulation to clarify the meaning of ''or other similar low explosives.'' In the context of this regulation, this language refers to rocket propellants classified as low explosives that perform in a similar manner to those specifically listed as low explosives, i.e., ammonium perchlorate composite propellant and black powder. To the extent the commenter is suggesting that the Department list each and every low explosive propellant that could conceivably be used in rockets, the Department believes this would create an unnecessarily lengthy regulatory exemption that would not improve its clarity. It is not the purpose of the regulations to address each and every chemical compound that might be used in a rocket motor and that performs in a manner similar to those explosives listed in the regulation. The propellants that are specifically listed are those currently used in commercially available rocket motors. It is unnecessary to list each and every possible low explosive that may be used now or in the future as rocket propellants. Any person wishing a determination on a particular rocket propellant and whether it fits within the exemption may submit a written request for a letter ruling to ATF's Arson and Explosives Programs Division.

The purpose of the Federal explosives controls, as expressed by Congress, is to ''protect interstate and foreign commerce against interference and interruption by reducing the hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials.'' In 2002, with the enactment of the Safe Explosives Act, Congress also extended ATF's permitting authority to require all persons wishing to obtain explosives to obtain permits thereby allowing ATF to perform background checks on all applicants. The legislation sought to ensure proper handling and storage procedures and prevent mishandling and misuse of explosives. House Report No. 107–658 107th Cong. 2d Sess. Sept. 17, 2002. The Department believes the controls imposed by this final rule are reasonable and consistent with the purposes of the 1970 Act and the congressional intent expressed with passage of the SEA.

VII. Request for Hearings

Fifteen (15) comments requested that ATF hold public hearings on the proposed regulations set forth in Notice

No. 968. Most commenters contended that holding public hearings would provide the explosive and model rocketry industries an opportunity to present additional information regarding the complex proposals made in the proposed rule. They further stated that such hearings would provide other interested parties, including model rocket hobbyists, an opportunity to present their views ''and allow time for BATFE to respond to our questions.''

Generally, ATF's public hearings are conducted to permit the public to participate in rulemaking by affording interested parties the chance to present oral presentation of data, views, or arguments. After careful consideration, the Director has determined that the holding of public hearings with respect to the model rocket proposal is unnecessary and unwarranted. First, while the Director acknowledges that the proposals made in Notice No. 968 were numerous and complex, this final rule addresses only the proposal relating to model rocket motors. In addition, most commenters who addressed the model rocket motor proposal 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. Finally, contrary to the views expressed by the commenters, the purpose of a public hearing is to afford the public the opportunity to participate in rulemaking by presenting data, opinions, etc. It is not the proper forum for responding to interested parties' questions.

A determination as to whether hearings will be held on the remaining proposals in Notice No. 968 will be made by the Director at a later date.

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 Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, 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, or 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 final rule is deregulating in nature. It merely clarifies ATF's long-standing position that hobby rocket motors containing 62.5 grams or less of explosive propellant are exempt from regulation. The exemption is intended to mitigate the impact of compliance with Federal law by allowing persons who acquire and store motors containing 62.5 grams or less of propellant to continue to enjoy their hobby on an exempt basis. The 62.5-gram exemption threshold covers the vast majority (more than 90 percent) of all rocket motors acquired and used by hobbyists in the United States. Thus, persons dealing in or acquiring motors containing no more than 62.5 grams of propellant will not be subject to the cost of obtaining a Federal license (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) or permit (an initial fee of $100 for obtaining a user permit for a 3-year period; $50 renewal fee for a 3-year period). Moreover, because of the exemption for rocket motors containing 62.5 grams or less of propellant, such persons are not subject to the storage requirements of Federal explosives law and regulations for their rocket motors. Without the 62.5 gram exemption, a typical rocket motor otherwise would be required to be stored in a type 4 magazine (costing approximately $300) because of the explosives contained in the motor. The cost for two 3/8-inch diameter shackle locks for the storage magazine is approximately $56.

Retailers who distribute the rockets will also avoid certain obligations that apply to the regulated explosives industry, such as storage standards, recordkeeping requirements, licensing and inspection by ATF.

Rocket motors containing more than 62.5 grams of propellant will continue to be regulated by ATF. ATF estimates that approximately 300 individuals currently participating in the rocketry hobby will stop doing so as a result of the final rule. ATF further estimates that approximately 60 rocketry hobbyists who use rocket motors containing more than 62.5 grams of explosive propellant will obtain a Federal permit and purchase a type 4 explosives magazine, while an additional 100 rocketry clubs will obtain a Federal permit and obtain an explosives magazine. ATF estimates that the total impact of the final rule is approximately $606,000. This figure is based on an examination of local economics, small businesses, and magazine and permitting requirements, as discussed below.

Local Economic Analysis

Based on historical data, NAR estimates that there are 1,000 model rocket launches annually, typically for a period of two days per launch, with each launch attracting 30 flyers. The commenter stated that an additional 60 participants would attend each launch as supporters, family members, or spectators. As a result of the proposed regulation, ATF estimates that there would be 10 percent fewer people attending each launch. Therefore, based on an average cost for meals and lodging, ATF estimates that the local economic impact associated with the proposed rule would be approximately $480,000 annually.

Small Business Analysis

In its comment, NAR stated that it maintains a database of manufacturer contact information for the rocketry hobby. From that database, the commenter estimates that, at any given time, there are 200 commercial entities providing support to model rocketeers nationwide in the form of parts, materials, motors, and launch accessories. Assuming each such manufacturer realizes annual sales of $50,000, NAR stated that those commercial entities provide an annual economic benefit to the U.S. economy of approximately $10 million. ATF does not anticipate the significant drop in participation that NAR assumes. As previously explained, the permitting and storage requirements are not so burdensome or expensive as to drive a large number of participants out of the hobby.

ATF estimates that the final rule will result in a drop in rocket motor and other rocketry-related sales of .5 percent, resulting in an annual small business economic impact of approximately $50,000.

Magazine and Permitting Cost Requirements

ATF estimates that 60 additional rocketry hobbyists and 100 rocketry clubs will obtain a permit from ATF and purchase a storage magazine for their high-power rocket motors. ATF estimates the permitting costs for the hobbyists and the rocketry clubs to be approximately $19,200, including the fee and photo and fingerprinting services. The cost of 160 type 4 explosives magazines is approximately $48,000 and the cost of two 3/8-inch diameter locks ($56) for the 160 magazines is $8,960. Collectively, for the 160 affected individuals/rocketry

clubs, the economic cost to comply with the permitting and storage requirements is approximately $76,160.

B. Executive Order 13132

This regulation 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 regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

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

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 regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule clarifies ATF's long-standing policy exempting certain model rocket motors from the requirements of part 555. The rule provides an exemption from the requirements of part 555 for model rocket motors consisting of ammonium perchlorate composite propellant, black powder, or other similar low explosives; containing no more than 62.5 grams of total propellant weight; and 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.

Without the exemption, all retailers, hobby, game and toy stores that distribute and store rocket motors containing not more than 62.5 grams of explosive would be obligated to obtain Federal explosives licenses and comply with all regulatory, recordkeeping and inspection requirements.

The Department believes that the final rule will not have a significant impact on small businesses. The 62.5-gram exemption threshold covers the vast majority (more than 90 percent) of all rocket motors acquired and used by hobbyists in the United States. Thus, persons dealing in or acquiring motors containing no more than 62.5 grams of propellant will not be subject to the cost of obtaining a Federal license (*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) or permit (an initial fee of $100 for obtaining a user permit for a 3-year period; $50 renewal fee for a 3-year period). Moreover, because of the exemption for rocket motors containing 62.5 grams or less of propellant, such persons are not subject to the storage requirements of Federal explosives law and regulations for their rocket motors. Without the 62.5 gram exemption, all rocket motors containing explosive material would be required to be stored in a type 4 magazine (costing approximately $300) with adequate locks (costing approximately $56). With the exemption, only motors with more than 62.5 grams of propellant must be stored in compliant magazines and appropriately secured.

The Department estimates that approximately 300 high-power rocketry hobbyists currently participating in the sport will stop doing so as a result of the final rule. Based on the comments, this figure represents approximately three percent of the total number of rocketry hobbyists who use rocket motors containing more than 62.5 grams of explosive propellant.

The Department believes that the impact on small businesses as a result of reduced participation in the rocketry hobby will be minimal. In its comment, NAR estimated that at any given time there are 200 commercial entities providing support to model rocketeers nationwide in the form of parts, materials, motors, and launch accessories. Assuming each such manufacturer realizes annual sales of $50,000, NAR stated that those commercial entities provide an annual economic benefit to the U.S. economy of approximately $10 million. As a result of the final rule, the Department estimates a drop in sales of .5 percent for small manufacturers supplying the rocketry hobby. Accordingly, the Department estimates the annual small business economic impact resulting from the final rule to be approximately $50,000.

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 on 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

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

Disclosure

Copies of the notice of proposed rulemaking (NPRM), all comments received in response to the NPRM, and this final rule will be available for public inspection by appointment during normal business hours at: ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–7890.

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 555.141 is amended by adding new paragraph (a)(10) to read as follows:

§ 555.141 Exemptions.

(a) * * *

(10) Model rocket motors that meet all of the following criteria—

(i) Consist of ammonium perchlorate composite propellant, black powder, or other similar low explosives;

(ii) Contain no more than 62.5 grams of total propellant weight; and

(iii) 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.

* * * * *

Dated: August 7, 2006.

Paul J. McNulty,

Acting Attorney General.

[FR Doc. 06–6862 Filed 8–10–06; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–06–102]

RIN 1625–AA00

Safety Zone; R. Ozzie Wedding Fireworks Display, Manchester By The Sea, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the R. Ozzie Wedding Fireworks display on August 12, 2006 in Manchester By The Sea, MA, temporarily closing all waters in the vicinity of Manchester Bay and Manchester Harbor within a four hundred (400) yard radius of the fireworks barge located at approximate position 42°50.00′ N, 070°47.00′ W. This zone is necessary to protect the maritime public from the potential hazards posed by a fireworks display. The safety zone temporarily prohibits entry into or movement within this portion of Manchester Bay and Manchester Harbor during its closure period, unless authorized by the Captain of the Port, Boston, MA.

DATES: This rule is effective from 9 p.m. EDT on August 12, 2006 until 10:15 p.m. EDT on August 12, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–06–102 and are available for inspection or copying at Sector Boston, 427 Commercial Street, Boston, MA, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Paul English, Sector Boston, Waterways Management Division, at (617) 223–5456.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM because the logistics with respect to the fireworks presentation were not presented to the Coast Guard with sufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to the public interest since the safety zone is needed to prevent traffic from transiting a portion of Manchester Bay and Manchester Harbor during the fireworks display and to provide for the safety of life on navigable waters.

For the same reasons, the Coast Guard finds, under 5 U.S.C. 553(d)(3), that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The zone should have a minimal negative impact on vessel transits in Manchester Bay and Manchester Harbor because vessels will be excluded from the area for only one and one quarter hours, and vessels can still safely operate in other areas of Manchester Bay and Manchester Harbor during the event.

Background and Purpose

The Ozzie Family is holding a fireworks display to celebrate a wedding. This rule establishes a temporary safety zone on the waters in the vicinity of Manchester Bay and Manchester Harbor within a four hundred (400) yard radius of the fireworks barge located at approximate position 42°50.00′ N, 070°47.00′ W. This safety zone is necessary to protect the life and property of the maritime public from the potential dangers posed by this event. It will protect the public by prohibiting entry into or movement within the proscribed portion of Manchester Bay and Manchester Harbor during the fireworks display.

Marine traffic may transit safely outside of the zone during the effective period. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to and during the effective period via marine information broadcasts and Local Notice to Mariners.

Discussion of Rule

This rule is effective from 9 p.m. EDT on August 12, 2006 until 10:15 p.m. EDT on August 12, 2006. Marine traffic may transit safely outside of the safety zone in the majority of Manchester Bay and Manchester Harbor during the event. Given the limited time-frame of the effective period of the zone, and the actual size of the zone relative to the amount of navigable water around it, the Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Public notifications will be made prior to and during the effective period via Local Notice to Mariners and marine information broadcasts.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory evaluation is unnecessary. Although this rule will prevent traffic from transiting a portion of Manchester Bay and Manchester Harbor during this event, the effect of this rule will not be significant for several reasons: Vessels will be excluded from the area of the safety zone for only one and one quarter hours; although vessels will not be able to transit the area in the vicinity of the zone, they will be able to safely operate in other areas of Manchester Bay and Manchester Harbor during the effective period; and advance notifications will be made to the local maritime community by marine information broadcasts and Local Notice to Mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small