

citizen for humanitarian or national interest reasons.

**§ 53.3 Attempt of a citizen to enter without a valid passport.**

The appropriate officer at the port of entry shall report to the Department of State any citizen of the United States who attempts to enter the United States contrary to the provisions of this part, so that the Department of State may apply the waiver provisions of § 53.2 (i) and § 53.2(j) to such citizen, if appropriate.

**§ 53.4 Optional use of a valid passport.**

Nothing in this part shall be construed to prevent a citizen from using a valid U.S. passport in a case in which that passport is not required by this part 53, provided such travel is not otherwise prohibited.

Dated: August 7, 2006,

**Michael Chertoff,**

*Secretary of Homeland Security, Department of Homeland Security.*

**Henrietta H. Fore,**

*Under Secretary for Management, Department of State.*

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**DEPARTMENT OF JUSTICE**

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

**27 CFR Part 555**

[Docket No. ATF 9P; AG Order No. 2830-2006]

RIN 1140-AA24

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

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

**ACTION:** Notice of proposed rulemaking.

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

**DATES:** Comments must be submitted on or before November 9, 2006.

**ADDRESSES:** Send written comments to: James P. Ficaretta, Program Manager; Room 5250; Bureau of Alcohol,

Tobacco, Firearms, and Explosives; P.O. Box 50221; Washington, DC 20091-0221; *ATTN: ATF 9P*. Written comments must include your mailing address and be signed, and may be of any length.

Comments may also be submitted electronically to ATF at [nprm@atf.gov](mailto:nprm@atf.gov) or to <http://www.regulations.gov> by using the electronic comment form provided on that site. You may also view an electronic version of this proposed rule at the <http://www.regulations.gov> site. Comments submitted electronically must contain your name, mailing address and, if submitted by e-mail, your e-mail address. They must also reference this document docket number, as noted above, and be legible when printed on 8½" x 11" paper. ATF will treat comments submitted electronically as originals and ATF will not acknowledge receipt of comments submitted electronically. See the Public Participation section at the end of the **SUPPLEMENTARY INFORMATION** section for requirements for submitting written comments by facsimile.

**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:**

**Background**

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

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

In 1970, when Title XI was enacted by Congress, the Judiciary Committee of

the United States House of Representatives specifically considered and supported an exception for propellant actuated devices. H.R. Rep. No. 91-1549, 91st Cong., 2nd Sess. 64 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4007, 4041. Neither the statute nor the legislative history defines “propellant actuated device.” In 1981, however, ATF added the following definition of “propellant actuated device” to its regulations: “[a]ny tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge.” 27 CFR 555.11.

In applying the regulatory definition, ATF has classified certain products as propellant actuated devices: aircraft slide inflation cartridges, inflatable automobile occupant restraint systems, nail guns, and diesel and jet engine starter cartridges. ATF also examined hobby rocket motors to determine whether they could be classified as propellant actuated devices. To be classified as a “propellant actuated device,” it is, in view of the definition set forth at 27 CFR 555.11, at a minimum necessary that a particular item be susceptible of being deemed a “tool,” a “special mechanized device,” or a “gas generator system.” Additionally, logic dictates that it is necessary that a propellant actuated device contain and be actuated by propellant.

To ascertain the common, contemporary meanings of “tool,” “special mechanized device,” and “gas generator system,” it is useful to look to Merriam-Webster’s Collegiate Dictionary (10th Ed., 1997) (“Webster’s”). Webster’s defines “tool” in pertinent part as follows: “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 \* \* \* ” Id. at 1243. “Device” is defined as “something \* \* \* contrived” and, more specifically, as “a piece of equipment or a mechanism designed to perform a special function.” Id. at 317. For a particular device to be a “special mechanized device,” Webster’s suggests it would be necessary that it be both unique and of a mechanical nature. (See definition of “special,” id. at 1128; definition of “mechanize,” id. at 721.) As to the term “gas generator system,” 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.” Id. at 485. Further, Webster’s defines “system” as “a regularly interacting or interdependent

group of items forming a unified whole." *Id.* at 1197. Thus, Webster's suggests that "gas generator system" is properly defined as "a group of interacting or interdependent mechanical and/or electrical components that generates gas."

Although some may argue that certain hobby rocket motors are the products of complex design and construction, the hobby rocket motor consists essentially of ammonium perchlorate composite propellant (APCP) encased by a cardboard, plastic, or metallic cylinder. Though it also sometimes includes a nozzle, retaining cap, delay grain and ejection charge, the hobby rocket motor is little more than propellant in a casing, incapable of performing its intended function until fully installed (along with an ignition system) within a hobby rocket.

The hobby rocket motor cannot be brought within the regulatory definition of propellant actuated device as a "tool" because it is neither "handheld" nor a complete "device" and because it is not a metal-shaping machine or a part thereof. Further, it cannot be considered to be a "special mechanized device" because, although clearly designed to serve a special purpose, it lacks the necessary indicia of a mechanized device. Indeed, the hobby rocket motor is in no way reminiscent of a "mechanism." See *id.* at 721. Finally, because it has no interacting mechanical or electrical components, the hobby rocket motor cannot be deemed to be a gas generator system.

In addition, in order to classify the hobby rocket motor as a propellant actuated device consistent with the regulatory definition, it would be necessary to conclude that the motor's cylindrical casing is a "device" that is actuated by propellant. This simply is not a reasonable interpretation in light of the context in which the hobby rocket motor is used. Because the hobby rocket motor is, in essence, simply the propellant that actuates the hobby rocket, and for the additional reasons stated in the preceding paragraphs, the motor itself cannot be construed to constitute a propellant actuated device.

### Proposed Rule

This proposed rule amends the definition of "propellant actuated device" in 27 CFR 555.11 to clarify ATF's determination that hobby rocket motors do not fall within the exemption to the explosives regulatory scheme for such devices.

ATF is engaging in rulemaking with regard to this issue because on March 19, 2004, the United States District Court for the District of Columbia found

that ATF has in the past advanced inconsistent positions regarding the application of the propellant actuated device exemption to hobby rocket motors. ATF issued two related letters in 1994 that could be interpreted to state that a fully assembled rocket motor would be considered a propellant actuated device if the rocket motor contained no more than 62.5 grams (2.2 ounces) of propellant material and produced less than 80 newton-seconds (17.92 pound seconds) of total impulse with thrust duration not less than 0.050 second. Prior to assembly, the letters observed, the propellant would not be exempt as a propellant actuated device in any amount.

The 1994 letters are admittedly confusing in that they can be interpreted to intertwine the separate and distinct issues of the "propellant actuated device" exemption found in 27 CFR 55.141(a)(8) (now, § 555.141(a)(8)) and the long-standing ATF policy exempting rocket motors containing 62.5 grams or less of propellant that has its roots in the exemption then found at 27 CFR 55.141(a)(7). Had these 1994 letters been drafted to reflect accurately ATF's interpretation of the regulations in existence at the time, they would have indicated that sport rocket motors were not propellant actuated devices for purposes of the regulatory exemption found in § 55.141(a)(8) but instead that motors containing 62.5 grams or less of propellant were exempt from regulation pursuant to the exemption for "toy propellant devices" then found at § 55.141(a)(7). Although the "toy propellant device" exemption was removed from the regulations and, due to administrative error, was not replaced as intended with a specific reference to the 62.5-gram threshold, ATF continued to treat hobby rocket motors containing 62.5 grams or less of propellant as exempt from regulation as clearly set forth in a 2000 letter to counsel for the National Association of Rocketry and the Tripoli Rocketry Association. The Department notes that the 62.5-gram exemption threshold is the subject of another rulemaking proceeding (see Notice No. 968, 68 FR 4406, January 29, 2003).

To remedy any perceived inconsistency and to clarify ATF's policy, this proposed rule sets forth an amended regulatory definition specifically stating that hobby rocket motors and rocket-motor reload kits consisting of or containing APCP, black powder, or other similar low explosives, regardless of amount, do not fall within the "propellant actuated device" exception and are subject to all applicable Federal explosives controls

pursuant to 18 U.S.C. 841 *et seq.*, the regulations in 27 CFR part 555, and applicable ATF policy.

Implementation of this proposed amendment is important to public safety, and consistent regulatory enforcement efforts. The proposed rule will confirm the position that hobby rocket motors are not exempt from Federal explosives regulation, pursuant to the propellant actuated device exception. The rule also clarifies that hobby rocket motors cannot legally be classified as propellant actuated devices due to the nature of their design and function.

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

#### A. Executive Order 12866

This proposed 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 proposed rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this proposed rule has been reviewed by the Office of Management and Budget. However, this proposed 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 proposed rule is not an "economically significant" rulemaking as defined by Executive Order 12866.

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

Rocketry hobbyists who acquire and use motors containing 62.5 grams of propellant or less, however, can continue to enjoy their hobby on an

exempt basis, i.e., without regard to the requirements of part 555. Without the 62.5 gram exemption, a typical rocket motor would be required to be stored in a type-4 magazine (costing approximately \$400) because of the explosives contained in the motor. ATF has published a proposed rule that will incorporate its existing 62.5-gram exemption threshold into its explosives regulations (see Notice No. 968, 68 FR 4406, January 29, 2003).

As noted above, rocket motors containing more than 62.5 grams of propellant will continue to be regulated by ATF. In 2002, Congress enacted the Safe Explosives Act (SEA) which, in part, imposed new licensing and permitting requirements on the intrastate possession of explosives. Under the SEA, all persons who wish to receive explosive materials must hold a Federal explosives license or permit. Prior to its enactment, only persons who transported, shipped, or received explosive materials in interstate commerce were required to obtain a license or permit. Now, intrastate receipt, shipment, and transportation also are covered. ATF recognizes the possibility that some rocketry hobbyists may be operating under the false assumption that all rocket motors, regardless of size, were exempted from regulation under the "propellant actuated device" exception being clarified by this proposed rule. It remains the case, however, that rocketry hobbyists wishing to utilize rocket motors containing more than 62.5 grams of propellant must comply with the existing applicable requirements in order to obtain such rocket motors. The Department welcomes comments on the number of individuals who may be expected to terminate their participation in the use of rocket motors containing more than 62.5 grams of propellant once they become aware that they must comply with the applicable licensing and permitting requirements. The Department also welcomes comments on what impact any such decline in participation will have on the businesses that provide support to rocketry hobbyists in the form of parts, materials, rocket motors, and other launch accessories.

#### B. Executive Order 13132

This proposed rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Attorney General has

determined that this proposed regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### C. Executive Order 12988: Civil Justice Reform

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

Rocket motors containing 62.5 grams or less of explosive propellants (e.g., APCP) and reload kits that can be used only in the assembly of a rocket motor containing a total of no more than 62.5 grams of propellant are exempt from regulation, including permitting and

storage requirements. Typically, rocket motors containing more than 62.5 grams of explosive propellant would be required to be stored in a type-4 magazine that costs approximately \$400; however, this proposed rule would not impact ATF's storage requirements nor would it affect the applicability of ATF's 62.5-gram exemption.

#### E. Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This proposed 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 proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### G. Paperwork Reduction Act of 1995

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

#### Public Participation

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

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

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of

the person submitting a comment is not exempt from disclosure.

#### A. Submitting Comments by Fax

You may submit written comments by facsimile transmission to (202) 927-0506. Facsimile comments must:

- Be legible;
- Include your mailing address;
- Reference this document number;
- Be 8½" x 11" in size;
- Contain a legible written signature; and
- Be not more than five pages long.

ATF will not acknowledge receipt of facsimile transmissions. ATF will treat facsimile transmissions as originals.

#### B. Request for Hearing

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

#### C. Disclosure

Copies of this proposed rule and the comments received 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.

#### Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the **Federal Register** in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### 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 proposed to be amended as follows:

#### PART 555—COMMERCE IN EXPLOSIVES

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

**Authority:** 18 U.S.C. 847.

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

#### § 555.11 Meaning of terms.

\* \* \* \* \*

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

(b) The term does not include—

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

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

\* \* \* \* \*

Dated: August 7, 2006.

**Paul J. McNulty,**

*Acting Attorney General.*

[FR Doc. E6-13201 Filed 8-10-06; 8:45 am]

**BILLING CODE 4410-FY-P**

#### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

#### 29 CFR Part 1625

**RIN 3046-AA78**

#### Coverage Under the Age Discrimination in Employment Act

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Equal Employment Opportunity Commission ("EEOC" or "Commission") proposes to amend its regulations concerning the Age Discrimination in Employment Act (the "Act" or "ADEA") to reflect a Supreme Court decision interpreting the Act as permitting employers to favor older individuals because of age. This amendment will revise and clarify EEOC regulations that currently

describe the ADEA as prohibiting such age-based favoritism.

**DATES:** Comments must be received on or before October 10, 2006. The Commission will consider any comments received on or before the closing date and thereafter adopt final regulations. Comments received after the closing date will be considered to the extent practicable.

**ADDRESSES:** You may submit written comments by mail to Stephen Llewellyn, Acting Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 1801 "L" Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile ("FAX") machine to (202) 663-4114. (There is no toll free FAX number). Only comments of six or fewer pages will be accepted via FAX transmittal, in order to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663-4078 (voice) or (202) 663-4077 (TTY). (These are not toll free numbers). Copies of the comments submitted by the public will be available for inspection in the EEOC Library, FOIA Reading Room, by advanced appointment only, from 9 a.m. to 5 p.m., Monday through Friday except legal holidays, from October 10, 2006 until the Commission publishes the rule in final form. To schedule an appointment to inspect the comments, contact the EEOC Library by calling (202) 663-4630 (voice), (202) 663-4641 (TDD) (These are not toll free numbers).

#### FOR FURTHER INFORMATION CONTACT:

Raymond Peeler, Senior Attorney Advisor, Office of Legal Counsel, at (202) 663-4537 (voice) or (202) 663-7026 (TTY) (These are not toll free numbers). This notice also is available in the following formats: Large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Information Center at 1-800-669-3362.

**SUPPLEMENTARY INFORMATION:** The ADEA states that employers may not discriminate against individuals who are age forty or older "because of such individual's age," but does not specify the meaning of the term "age." 29 U.S.C. 623(a)(1). When the Supreme Court addressed its meaning in *General Dynamics Land Systems, Inc. v. Cline*, 540 U.S. 581, 586 (2004), it noted that the term is ambiguous because it is commonly used in two different ways: to neutrally refer to the length of