

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TRIPOLI ROCKETRY ASSOCIATION, INC., and))	
NATIONAL ASSOCIATION OF ROCKETRY,))	
)	
Plaintiffs,))	Civil Action No. 00-273 (RBW)
)	
v.))	
)	
UNITED STATES BUREAU OF ALCOHOL,))	
TOBACCO, FIREARMS AND EXPLOSIVES,))	
)	
Defendant.))	
_____))	

**DEFENDANT'S STATEMENT OF MATERIAL FACTS
NOT IN GENUINE DISPUTE**

Pursuant to Local Civil Rule 7(h), defendant United States Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF” or “Bureau”), respectfully submits this Statement of Material Facts Not in Genuine Dispute in support of Defendant’s Renewed Motion for Partial Summary Judgment.

1. Plaintiffs are two national organizations whose members enjoy the hobby of high-power sport rocketry. Third Amended Complaint (“3d Compl.”), ¶¶ 2-5.

2. Plaintiffs’ members commonly use ammonium perchlorate composite propellant (“APCP”) as fuel to power the sport rockets they launch as part of their hobby. Id. ¶¶ 2-3.

3. The term “explosives” is defined by statute as:

any chemical compound[,] mixture, or device, the primary or common purpose of which is to function by explosion. . . [and] 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.

18 U.S.C. § 841(d). Congress mandates that ATF maintain a List of Explosive Materials including “any additional explosives which [it] determines to be within the coverage of” 18 U.S.C. Chapter 40. Id.

4. For over three decades, ATF has classified APCP as an “explosive” under the Federal explosives laws found at 18 U.S.C. Chapter 40. See 3d Complaint, ¶ 21; 36 Fed. Reg. 675 (January 15, 1971); see, e.g., 40 Fed. Reg. 17602 (April 21, 1975); 50 Fed. Reg. 50378 (December 10, 1985); 60 Fed. Reg. 20553 (April 26, 1995); 64 Fed. Reg. 49840 (September 14, 1999).

5. When ignited, APCP burns very quickly or deflagrates. See 3d Complaint, ¶¶ 3; see also Seymour M. Kaye, Encyclopedia of Explosives and Related Items, Part 2700, Vol. 8 (Admin. Record I, Document 10) at 409.

6. Congress included specific examples of deflagrating materials in the definition of “explosive” found at 18 U.S.C. § 841(d). These materials include black powder and safety fuses. Id.

7. ATF tested the linear burn rates of black powder and safety fuses and determined that they burn between 7.3 mm / s and 9615 mm / s. Administrative Record II at 120. Smokeless powder tested at 18 mm/s. Id.

8. ATF gathered data on the linear burn rate of APCP and found that it varied between 22 and 143 mm / s. See Administrative Record II at 120.

9. ATF was aware of the relevant scientific facts concerning the relative reaction rates of APCP and other materials identified in the statute as explosives, and APCP’s burning rate falls within the range established by safety fuses and black powder. See Agency Decision at 1-5

& Attachment of Materials Reviewed. ATF's decision was based on that information. Id. ATF was further aware that "all references reviewed, except one of two provided by the plaintiffs . . . , identified APCP as an explosive material." Id. at 3, citing Department of Transportation classification and a study by the Naval Surface Weapons Center.

10. In 2006, ATF amended the regulations challenged in Count Four and Five. ATF published in the Federal Register its final rule on the 62.5 gram exemption. See Commerce in Explosives - Hobby Rocket Motors (2004R-7P) (RIN 1140-AA25), 71 Fed. Reg. 46,079 (August 11, 2006)(announcing final rule codified at 27 C.F.R. § 555.141(a)(10). This new rule added to list of items exempted from regulation as explosives:

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.

27 C.F.R. § 555.141(a)(10).

11. ATF's final rule was the product of thorough notice-and-comment rulemaking. On January 29, 2003, ATF published in the Federal Register Notice of Proposed Rulemaking (NPRM) 968, soliciting comments from the public and industry on a number of proposals to amend the regulations in part 555. Commerce in Explosives (2000R-9P) (RIN 1512-AB48), 68 Fed. Reg. 4406. The comment period was initially set to close on April 29, 2003, but was extended until July 7, 2003, pursuant to ATF Notice No. 2. See 68 Fed. Reg. 37,109 (June 23,

2003). The final rule reflects ATF's consideration of comments received from the public and other government entities. See 71 Fed. Reg. 46,079 (August 11, 2006).

12. ATF's final rule, codified at 27 C.F.R. § 555.141(a)(10), replaced 27 C.F.R. § 555.141.

Dated: January 31, 2007.

Respectfully submitted,

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