

Mr. Jim Zammillo
Technical Advisor for Explosives
Bureau of Alcohol, Tobacco and Firearms
650 Massachusetts Ave., N.W.
Washington, D.C. 20226
(202) 927-8053 (Ph)
(702) 927-7488 (Fax)
(888) 509-5957 (Pager)

11/4/98

BY FACSIMILE

Dear Mr. Zammillo:

I am writing you to request your assistance in reversing or correcting a recent change in the Bureau of Alcohol, Tobacco & Firearms (BATF) regulations which, left unchecked, will adversely affect my company and our entire industry. These new regulations become effective December 22, 1998.

AeroTech is a Las Vegas-based small business that manufactures single-use and reloadable solid and hybrid propellant rocket motors, rocket kits, starter sets, ground support equipment and accessories for hobby, educational and motion picture special effects markets. AeroTech's parent company, Industrial Solid Propulsion (ISP), Inc., designs and manufactures rocket motor products for commercial and military markets. Together both businesses employ about 23 people. You can read more about AeroTech and ISP on our websites at www.aerotech-rocketry.com and www.specificimpulse.com.

Congress has mandated that the BATF "*protect interstate and foreign commerce against interference and interruption by reducing the hazard to persons and property arising from the misuse and unsafe or insecure storage of explosive materials.*" Further, Congress authorizes the Director of the BATF to determine what an "explosive" material is, as defined in 18 U.S.C. Chapter 40, § 841 (d) and publish a revised "List of Explosive Materials" at least annually.

AeroTech rocket motors utilize ammonium perchlorate composite propellant (similar to that used in the Space Shuttle solid rocket boosters) in their design and construction. Ammonium perchlorate composite propellant is included in the BATF "List of Explosive Materials", though it should not be there by statutory definition¹. In the past, discussions involving BATF agents and rocket industry representatives indicated that the BATF considered all rocket motor products, including those containing "Ammonium perchlorate composite propellant", to fall within the definition of "propellant actuated devices", which are exempted from federal regulation at 27 CFR § 55.141 (a) (8), along with gasoline, fertilizers and some other items (a copy of 27 CFR § 55.141 is attached). Additionally, certain devices, including some rocket motor products, are also exempt at 27 CFR § 55.141 (a) (7). This exemption paragraph deals with specific articles that are classified by the U.S. Department of Transportation (DOT) as various types of "Class C explosives". In AeroTech's case, these articles were termed "toy propellant devices" (see copies of excerpt from 1985 DOT regulations and AeroTech's DOT classifications, attached). Note: In order to align itself with United Nations (UN) hazardous material naming conventions, the DOT subsequently classified AeroTech's "toy propellant devices" as "Articles, explosive, n.o.s.", with UN "identification numbers" of UN0349, UN0351 and UN0471.

In 1994, at the request of AeroTech and a representative of the hobby rocket manufacturers' association, the BATF issued "clarifications" of its intent/interpretation of the meaning of "propellant actuated device" at 27 CFR § 55.141 (a) (8) (copies of two letters to AeroTech attached). The BATF narrowed their previous interpretation of this exemption to include only those rocket motors that met certain requirements of model rocket motors in the Consumer Product Safety Commission (CPSC) regulations (though these CPSC regulations only deal with the sale of rocket motors to children). This "clarification" left some of AeroTech's rocket motors, which had been previously exempt from BATF regulations at 27 CFR 55.141 (a) (8), to rely on the remaining applicable exemption at 27 CFR 55.141 (a) (7).

On October 15, 1996, the BATF proposed rulemaking to amend the explosives regulations in order to, among other things, "*update references and definitions to reflect current industry and U.S. Department of Transportation terminology*" (copy of proposed rule attached).

In the final rule published August 24, 1998 (copy attached), the BATF made a number of changes to 27 CFR Part 55, including a revision of 27 CFR 55.141 (a) (7) to include only the specific UN numbers of UN0336, UN0337, UN0431 and UN0432. Instead of only updating "*references and definitions to reflect current industry and U.S. Department of Transportation terminology*", as the proposed rule summary text stated, the BATF also edited the list of articles to eliminate the hobby rocket products that were previously exempted. This will have the immediate effect to AeroTech of having to withhold sale of about 20% of its product line (specifically 'G'-class single-use motors) as of December 22, 1998. Note: Though the "toy propellant device" equivalent UN numbers issued to AeroTech include UN0349, UN0351 and UN0471, additional UN numbers may have been issued to other hobby rocket manufacturers as well.

AeroTech also questions the BATF's assertion that the final rule is not a "*significant regulatory action*" and "*will not have a significant economic impact on a substantial number of small entities*" (see "Executive Order 12866" and "Regulatory Flexibility Act" paragraphs on page 45001 of the final rule). The final rule will in fact have a very significant adverse economic impact on dozens, if not hundreds, of small businesses, including manufacturers, dealers and distributors by requiring resellers and users of these presently unregulated products to obtain low explosives user permits (LEUP's) or low explosive dealer licenses (LEDL's) for purchase and approved "magazines" for storage. These requirements are similar to those that govern the purchase of dynamite and other true explosives. Users of these articles are simply hobbyists that would have to deal with what would become a highly regulated product. In many instances local and state laws already forbid the residential storage of a product that the BATF considers to be an explosive, even if the product displays no explosive properties. Implementation of these new regulatory changes will likely drive away many current and future customers from AeroTech and other manufacturers' products, and the hobby of sport rocketry in general.

¹It should be noted that the ammonium perchlorate composite propellants currently used in these hobby rocket motor products do not meet the statutory definition of an explosive in 18 U.S.C., Chapter 40, § 841 (d), since they do not function by explosion or possess any demonstrable explosive potential. Thus, they are being regulated unnecessarily. This assertion is based upon industry experience and UN hazards and DOD testing that has been repeatedly conducted on ammonium perchlorate composite propellants of the type used in hobby rocketry, including those manufactured by AeroTech and ISP. On April 26, 1997 AeroTech sent a letter to Mr. John Magaw, the Director of the BATF (copy attached), requesting that the "List of Explosive Materials" be revised to only include those propellants which demonstrate explosive characteristics. No response to that letter has yet been received from the BATF.

To make matters worse, BATF representatives have recently stated that they are in the process of preparing yet another proposed rule that would effectively eliminate another 30-50% of AeroTech's market. This is to be accomplished by further "clarifying" the remaining hobby rocket exemption

at 27 CFR 55.141 (a) (8) to restrict the availability of another class of currently unregulated AeroTech products to holders of LEUP's and LEDL's. Many of AeroTech's customers currently purchasing these products will be unwilling or unable to comply with the new restrictions. Adoption of these proposed regulations would result in further adverse impact to AeroTech and the hobby rocket industry.

Finally, it appears that the only permanent solution to the BATF regulatory status of hobby rocketry is to incorporate a Congressional exemption for hobby rocketry in the explosives law, just as was allowed for antique firearms enthusiasts in 18 U.S.C. Chapter 40, § 845 (a) (5) (copy attached).

Thank you for your kind attention to AeroTech's dilemma. Any help you can offer us in this matter would be greatly appreciated.

Sincerely,

Gary C. Rosenfield
President, AeroTech, Inc., and Industrial Solid Propulsion, Inc.

attachments