

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

TRIPOLI ROCKETRY ASSOCIATION, INC.,)
675 East 1600 South, Orem, Utah, 84097,)

and)

NATIONAL ASSOCIATION OF ROCKETRY,))
1311 Edgewood Drive, Altoona, Wisconsin, 54720,)

Plaintiffs,)

versus)

U.S. BUREAU OF ALCOHOL,)
TOBACCO & FIREARMS,)
650 Massachusetts Ave., N.W.,)
Washington, D.C., 20226,)

Defendant.)

**PLAINTIFFS' COMPLAINT FOR JUDICIAL REVIEW OF AGENCY ACTION,
DECLARATORY JUDGMENT, AND INJUNCTIVE RELIEF**

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Nature of the Action

1. Plaintiffs Tripoli Rocketry Association, Inc. ("Tripoli") and National Association of Rocketry ("NAR") bring this action for judicial review of agency action taken by the United States Bureau of Alcohol, Tobacco & Firearms ("ATF"), pursuant to Section 10 of the Administrative Procedure Act, *codified at* 5 U.S.C. §§ 701, *et seq.*, and for declaratory judgment and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

The High-Powered Sport Rocket Hobby

2. This action arises as a result of ATF's unlawful assertion of civil regulatory authority over high-powered sport rocketeers that for years have been engaging in a safe hobby which is regulated extensively by other federal, state, and local governments, as well as various industry organizations. The hobby involves the design, construction, launch, and recovery of aero-vehicles that ascend into the air without the use of aerodynamic lifting forces against gravity (i.e., rockets), using motor engines generally classified in the "H" through "O" size range (i.e., having more than 62.5 grams of propellant) that typically use ammonium perchlorate composite propellant ("APCP") as the fuel source.

3. The formulation of APCP utilized in high-powered sport rockets consists of approximately 70 percent ammonium perchlorate as the oxidizer, and the remainder consists of a supplemental metal such as aluminum for fuel, various other chemicals serving 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. As a result, when lit APCP burns in a controlled, predictable, and focused manner. Precisely because it is unlike compounds that function by explosion or that cause an explosion when ignited (e.g., black powder, dynamite, nitroglycerin, etc.), APCP is ideal for use in rocket motors and, in fact, APCP has no other known use.

4. Individuals pursuing the hobby as an educational and technology-centered pastime conform with regulations established by other federal, state, and local

governments and numerous industry codes and certifications. For example, the U.S. Department of Transportation ("DOT") regulates the storage, transport, containerization, and sale of 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") also regulates the hobby by prohibiting minors from purchasing motors and propellants used in high-powered rockets. Local and county ordinances as well as state regulations address fire protection issues and launch locale restrictions. In addition, the hobby is extensively monitored for compliance with codes promulgated by the National Fire Protection Association ("NFPA"), which are incorporated by reference into many state laws. As a result of all these regulations already applicable to sport rocketry, no one has ever been fatally or seriously injured as a result of the use of APCP in sport rockets.

5. Many of the hobbyists have joined one of two national organizations that are devoted to supporting high-powered model rocketeers -- Tripoli and NAR. Members of these organizations are required to conform to a mandatory rocketeer certification program. Vendors of motors used by the rocketeers must comply with a mandatory motor certification program. In addition, the national organizations establish and implement safety codes, utilize range safety officers at launches, and implement various technology controls and administrative protections designed to ensure the continuation of the exemplary safety record compiled by the hobbyists.

6. For decades, the hobby has served as the primary educational conduit for thousands of young U.S. engineers and scientists interested in aerospace. Over the years, members of Tripoli and NAR have included U.S. astronauts, aerospace engineers, scientists working for the National Aeronautic and Space Administration, university professors, secondary school educators and their students, and members of Congress.

7. Against this backdrop, in the last few years ATF has swooped down on the hobby and, with utterly no statutory authority, adopted various regulatory measures, including onerous and prohibitive civil regulations, that threaten to regulate high-powered sport rocketry out of existence. (ATF has separate statutory authority to criminally prosecute individuals that use high-powered sport rockets as weapons or destructive devices, however, that authority is not being challenged in this action.) ATF justifies its civil regulation of the hobby by classifying the APCP used in the rockets as an "explosive" -- without any supporting technical analysis and despite a recent conclusion to the contrary by the Pittsburgh Research Center for DOT -- and thus subjecting the hobbyists to extensive permitting and storage regulations applicable to "explosives." However, because APCP does not function by explosion or explode when ignited (the statutory predicate for ATF's civil regulation), ATF lacks the statutory authority to regulate high-powered sport rocketeers. In addition, rocket motors, regardless of the source or the amount of fuel source, are "propellant actuated devices," and as such fall squarely within an existing exemption that has been wholly ignored by ATF. Finally, ATF abandoned all legally required procedures in its haste to regulate the hobby, and is

currently taking adverse actions against numerous members of both Tripoli and NAR that are arbitrary, capricious, an abuse of discretion, and/or not in accordance with the law.

8. Many county and local municipal ordinances altogether prohibit the storage of materials that have been classified as "explosives" by ATF no matter what precautions are taken. Thus, ATF's final determination that APCP used in sport rocket motors are "explosives" precludes possession of such motors by many rocketeers even if they otherwise comply with ATF's regulations or obtain a Low Explosive Users Permit from ATF. In addition, ATF's unlawful assertion of regulatory jurisdiction over the hobby is resulting in a precipitous decline in the purchase and use of sport rockets, a precipitous decline in the number of individuals that can afford to participate in the hobby (in either time or money or both), and a dramatic increase in costs and administrative burdens for sport rocketeers. Moreover, ATF has demonstrated no benefit whatsoever to the public from such ultra vires, over-zealous, and duplicative regulation.

The Parties

9. Plaintiff Tripoli is a non-profit organization (classified as a Section 501(c)(3) institution by the Internal Revenue Service ("IRS")) dedicated to the advancement and operation of non-professional high-powered rocketry. Plaintiff Tripoli was incorporated in the State of Alaska in 1986, and maintains its headquarters and place of business operations in Orem, Utah. Plaintiff Tripoli currently has over 3800 members.

10. Plaintiff NAR is a non-profit organization (classified as a Section 501(c)(3) institution by the IRS) devoted to promoting safety, education and fun for sport rocket

hobbyists. Plaintiff NAR was incorporated in the State of Colorado in 1983, and maintains its headquarters and principal place of business in Altoona, Wisconsin. Plaintiff NAR currently has over 5200 members, and throughout its history (extending back to 1957) has had tens of thousands of members.

11. Defendant ATF is a U.S. government agency within the Department of the Treasury created pursuant to Treasury Department Order 221, dated June 6, 1972, effective July 1, 1972, and published at 37 Fed. Reg. 11696 (June 10, 1972).

Jurisdiction and Venue

12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, and is entitled to review ATF's actions pursuant to 5 U.S.C. §§ 702, 704, and 706.

13. Venue is proper in this Court under 28 U.S.C. 1391(e).

Underlying Statutory Framework

14. Title XI of the Organized Crime Control Act of 1970 contains statutes meant to govern the manufacture, distribution, and storage of explosive materials. *See* Pub. L. 91-452, Sec. 1102, 84 Stat. 952, *codified at* 18 U.S.C. Ch. 40, §§ 841-848. The applicability of Title XI (also referred to as the "Explosives Control Act") is premised on the meaning of the term "explosive materials," which is defined as "explosives, blasting agents, and detonators," 18 U.S.C. § 841(c), each word being further defined in Title XI.

15. For the civil provisions of the Explosives Control Act, the word "explosives" is defined, in relevant part, as "any chemical compound[,] mixture or device, the primary or common purpose of which is to function by explosion." 18 U.S.C. §

841(d). When ATF's predecessor agency, the Internal Revenue Service ("IRS"), promulgated the initial regulations implementing Title XI, this statutory definition of "explosives" was adopted verbatim. *See* 26 C.F.R. § 181.11 (1971), *promulgated at* 36 Fed. Reg. 658, 660 (Jan. 15, 1971). The same definition of "explosives" survives today in ATF's current set of regulations. *See* 27 C.F.R. § 55.11 (1999).

16. For the criminal provisions of the Explosives Control Act, the word "explosive" is separately defined, in relevant part, as "any chemical compound[], mechanical mixture, or device that contains any oxidizing and combustible unit, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion." 18 U.S.C. § 844(j). (The criminal definition of "explosive" is set forth in this complaint for purposes of completeness; however, Plaintiffs are not challenging Defendant's interpretation or application of this definition, or any of the criminal provisions of the Explosives Control Act.)

17. The Explosives Control Act also directs the Secretary of the Treasury, or his designee, to publish in the Federal Register on an annual basis a list of "explosives which he determines to be within the coverage of this chapter." 18 U.S.C. § 841(d). ATF's implementing regulations reflect the same requirement. *See* 27 C.F.R. § 55.23. The first explosives list was published on January 15, 1971. *See* 36 Fed. Reg. 675. ATF's current explosives list was published on September 14, 1999. *See* 64 Fed. Reg. 49840.

18. "Ammonium perchlorate composite propellant" was specifically itemized by ATF on ATF's 1999 explosive list referred to above.

19. When initially promulgated, the regulations implementing Title XI expressly did not apply with respect to, *inter alia*, "propellant actuated devices, or propellant actuated tools manufactured, imported, or distributed for their intended purposes." 26 C.F.R. § 181.141(i) (1971), *promulgated at* 36 Fed. Reg. 658, 670 (Jan. 15, 1971). The same exemptions, verbatim, are contained in ATF's current set of regulations. *See* 27 C.F.R. § 55.141(a)(8) (1999).

20. In 1981, ATF amended its regulations implementing Title XI to include a definition for the phrase "propellant actuated device." *See* 46 Fed. Reg. 40382, 40386 (Aug. 7, 1981). Specifically, ATF defined the phrase "propellant actuated device" to mean: "Any 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 C.F.R. § 55.11 (1981). The same definition appears today in ATF's current set of regulations. *See* 27 C.F.R. § 55.11 (1999).

21. The Gun Control Act of 1968 contains directives meant to govern the acquisition, possession, and use of firearms. *See* Pub. L. 90-618, 82 Stat. 1213, *codified at* 18 U.S.C. §§ 921-928, and 26 U.S.C. §§ 5801-5872. The applicability of the Act is premised on the meaning of the term "firearm," which is defined as including not only various types of weapons but also "any destructive device." *See* 18 U.S.C. § 921(a)(3); 26 U.S.C. § 5845(a). In turn, "destructive device" is defined, in relevant part, as meaning

"any explosive [or] incendiary ... rocket having a propellant charge of more than four ounces," but specifically excluded from the definition, in relevant part, is "any device which is neither designed nor redesigned for use as a weapon." *Id.*, §§ 921(a)(4); 5845(f). ATF's current set of regulations implementing the 1968 Gun Control Act contain the same definitions of the terms firearm and destructive device, and the same exclusions from the term destructive device. *See* 27 C.F.R. §§ 178.11 and 179.11. (The foregoing statutory and regulatory requirements are set forth in this complaint for purposes of completeness; however, Plaintiffs are not challenging Defendant's interpretation or application of the Gun Control Act.)

ATF's Regulation of High-Powered Sport Rocketeers

22. On April 20, 1994, the Chief of ATF's Explosives Division wrote a letter to one of the manufacturers of motors used in high-powered sport rockets (Aerotech, Inc.), and therein asserted tautologically that APCP is an "explosive" because it has been on ATF's annual explosives list since it was first published in 1971. In the letter, for the first time, ATF asserted that a fully assembled rocket motor qualifies for the "propellant actuated device" exemption at 27 C.F.R. § 141(a)(8), but prior to its assembly in a rocket motor the propellant itself (i.e., the APCP module) is not exempt. ATF also arbitrarily asserted in the letter that its exemption for propellant actuated devices at 27 C.F.R. § 141(a)(8) applies only to rocket motors that: (a) have been classified as "a flammable solid 4.1 or as explosives 1.4c" by DOT; (b) contain propellant "within the 62.5 grams limit contained in NFPA [Code] 1122"; and (c) "conform to the [CPSC] requirements of

model rocket motors set forth in 16 C.F.R. § 1500.85(a)(8)(ii)." ATF further asserted in the letter that its exemption for rocket motors "was intended to cover explosive items that because of the small quantities involved, would not likely be a source of explosives for a bomb or be a hazard during storage situations," referring to rockets that utilize Model "D" size engines or under (i.e., those that contain less than 62.5 grams of propellant).

23. On June 20, 1994, the Chief of ATF's Explosives Division wrote a second letter to Aerotech, Inc. In the second letter ATF reaffirmed that, with regard to rocket motors, it had intended to exempt "only those items that meet all of the requirements we listed in our letter to you dated April 20, 1994." Accordingly, in the second letter ATF identified one particular type of rocket motor (classified as 1.4S UN 0349, and assigned a shipping name of Articles Explosives N.O.S.) that was not exempt.

24. In February 1997, ATF developed and issued a "briefing paper" to articulate a definitive program regarding the storage and licensing requirements for high-powered rocket motors. Consistent with the two 1994 letters to Aerotech, Inc., the 1997 briefing paper reiterated the final ATF position that any rocket motor having a propellant weight greater than 62.5 grams would be subject to the Explosives Control Act (as would propellant modules weighing less than 62.5 grams but intended to be used as segments in larger motors of over 62.5 grams total weight). Thus, ATF's briefing paper required individuals purchasing such motors from outside their state of residence (unless state law permitted purchases from contiguous states) to obtain a Low Explosive Users Permit from ATF pursuant to 27 C.F.R. Part 55, Subpart D. ATF's briefing paper also required all

hobbyists that possess such motors to comply with the ATF storage requirements set forth at 27 C.F.R. Part 55, Subpart K.

25. As relevant here, under ATF's permitting regulations an applicant for a Low Explosive Users Permit would have to specify the specific type(s) of rocket motors that are to be purchased, and when issued the permit would be limited to purchases of only those specific type(s) of rocket motors. *See* 27 C.F.R. §§ 55.52(b) and 55.55. The cost to obtain a three-year, renewable, Low Explosives Users Permit is \$100 (non-renewable permits issued for one-time purchases cost \$75), and the cost to renew the permit is \$50. *See* 27 C.F.R. § 55.43. In addition, holders of Low Explosive Users Permits are required to maintain detailed records regarding their activities, and are subject to on-site inspections regarding their activities. *See* 27 C.F.R. §§ 55.121 and 55.125-55.127.

26. As relevant here, under ATF's storage regulations all hobbyists that possess high-powered rocket motors (as well as holders of Low Explosive Users Permits) are required to store rocket motors in an approved "Type 4 magazine." *See* 27 C.F.R. §§ 55.49(a)(6), 55.55, 55.63, 55.202, 55.206(b), 55.210, and 55.219. The cost to build a magazine to Type 4 requirements generally ranges between \$100 and \$300. The cost to purchase a pre-built Type 4 magazine ranges between \$200 and \$600, depending on size.

27. If a high-powered sport rocketeer purchases rocket motors containing APCP in amounts greater than 62.5 grams from sources outside his/her state of residence (or, if authorized by state law, a contiguous state) without first obtaining a Low Explosive Users Permit from ATF, or fails to maintain records considered appropriate by ATF, or fails to

utilize a Type 4 magazine acceptable to ATF to store such rockets, the hobbyist is subject to criminal sanctions including imprisonment for up to 10 years and fines of up to \$10,000. *See* 27 C.F.R. §§ 55.161-55.165. In addition, the hobbyist's rocket motors can be seized or destroyed by ATF if, as deemed by ATF, actions are taken contrary to either the Explosives Control Act or ATF's implementing regulations. *See* 27 C.F.R. § 55.166. In light of the severity of these sanctions, high-powered sport rocketeers have presently complied with ATF's regulation of their hobby even though neither the Explosives Control Act nor the Gun Control Act empower ATF to regulate the hobby.

28. Despite highly prescriptive regulations, ATF officials have applied 27 C.F.R. Part 55 in a wildly inconsistent manner to numerous members of Tripoli and NAR, and have subjected numerous members of Tripoli and NAR, as applicants for or holders of Low Explosive Users Permits, to requirements above and beyond those specified in 27 C.F.R. Part 55. The following are examples of inconsistent ATF regulation:

a. A member of Tripoli in Oregon was issued a Low Explosives Users Permit that prohibits storage of any black powder in a magazine also used to store rocket motors, contrary to other Tripoli members with Low Explosive Users Permits that are not prohibited from storing black powder in their magazines.

b. A member of Tripoli in Pennsylvania that has a Low Explosives Users Permit was informed by an ATF inspector that his storage magazine could be used by more than one hobbyist; however, another member of Tripoli in Pennsylvania was told

by an ATF inspector that each holder of a Low Explosive Users Permit was required to have his/her own storage magazine.

c. In conjunction with an application for a Low Explosive Users Permit filed by a member of Tripoli in Wisconsin, an ATF official required the applicant to secure the approval of the local fire department and the local zoning board, and then another ATF official communicated with those local government officials that rocket motors can explode and therefore should not be stored indoors even if in magazines.

d. In conjunction with an application for a Low Explosive Users Permit filed by a member of NAR in Pennsylvania, an ATF official required the applicant to demonstrate the availability of "contingent" storage and categorically rejected the use of essentially a bomb shelter to house a Type 4 storage magazine.

e. A member of Tripoli in New York has been told by several different ATF officials that previously acceptable storage magazines, storage locations, and storage documentation are no longer acceptable, and was recently given several weeks to revise everything or risk seizure.

f. In conjunction with an application for a Low Explosive Users Permit filed by a member of Tripoli in Texas in the fall of 1999, an ATF official required the applicant to obtain local approval to conduct an "explosives business" at the planned storage location (a residential subdivision) since a Low Explosives Users Permit is allegedly issued only for a "business."

Facts Giving Rise to This Action

29. Seeking clarification for the basis and extent of ATF's regulation of the high-powered sport rocketry hobby, on February 4, 1999, Plaintiffs' representatives met with Defendant's representatives in Washington, D.C. At the meeting Defendant stated that APCP was itemized on ATF's annual explosives list because it is a chemical mixture which may be explosive, even though ATF acknowledged that when used as intended APCP does not detonate. At the meeting Defendant also stated that the 62.5 gram limit for regulating APCP purchases was based simply upon the same limit established by CPSC for over-the-counter sales of APCP. No technical basis whatsoever for the limit was provided.

30. Disagreeing with the positions articulated by Defendant's representatives at the meeting of February 4, 1999 (as well as similar earlier positions taken by ATF in the 1994 letters to Aerotech, Inc., and the 1997 briefing paper), on September 7, 1999, counsel for Plaintiffs submitted to Defendant a letter addressing ATF's regulation of high-powered sport rockets with motors that use APCP. The letter outlined the statutory and regulatory background discussed above, and set forth in detail legal reasons for the following conclusions.

a. Plaintiffs concluded that APCP does not function by explosion or explode when ignited; and therefore, APCP should not be on ATF's explosives list.

b. Plaintiffs also concluded that motors used in high-powered sport rockets are "propellant actuated devices," and therefore motors used in high-powered sport rockets are wholly exempt from ATF regulation under the Explosives Control Act.

c. Plaintiffs further concluded that the inclusion of APCP on ATF's explosives list was not properly noticed for public comment prior to inclusion, and a proper determination has not been made to support the inclusion of APCP on the explosives list. Therefore, Plaintiffs asserted that the explosives list was both procedurally and substantively defective.

31. Accordingly, Plaintiffs requested in the letter dated September 7, 1999, that ATF reconsider its final positions reflected in the 1994 letter to Aerotech, the 1997 briefing paper, and the meeting in February 1999, and remove APCP from the annual explosives list, and refrain from any further civil regulation of high-powered sport rockets with motors that use APCP.

32. On October 15, 1999, Plaintiffs' representatives again met with Defendant's representatives in Washington, D.C. to discuss further the positions reflected in the letter dated September 7, 1999. At that meeting, Defendant finally and categorically rejected the conclusions and requests contained in the letter (although they agreed to look again at the procedural issues involving the issuance of the annual explosives list). ATF stated that if more than 62.5 grams of APCP were used in a rocket motor, ATF had the authority under the Explosives Control Act (and the implementing regulations at 27 C.F.R. Part 55) to regulate the purchase and storage of such material.

33. In a letter dated October 22, 1999, ATF informed Plaintiffs (in response to a request filed by Plaintiffs under the Freedom of Information Act on August 25, 1999) that ATF had no records whatsoever evidencing any determination to include (or continue the inclusion) of APCP on ATF's annual explosives list.

34. On November 24, 1999, one of Defendant's representatives contacted counsel for Plaintiffs by telephone and stated that ATF had categorically rejected Plaintiffs' conclusion (contained in the letter dated September 7, 1999) that ATF's annual explosives list was both procedurally and substantially defective.

35. While Plaintiffs understand that Defendant may confirm in writing its positions (as articulated in the meeting of October 15, 1999, and in the telephone call of November 24, 1999) regarding the letter dated September 7, 1999, to await such a writing without knowing when (if ever) it may be issued would serve no useful purpose and be futile since Defendant's positions are categorical and final. Meanwhile, Plaintiffs' members continue to suffer irreparable injury as a result of Defendant's final positions.

36. In sum, APCP is not an explosive within the meaning of the civil provisions of the Explosives Control Act. In addition, rocket motors are propellant actuated devices, as opposed to explosives, and hence are not subject to civil regulation under the Explosives Control Act. These conclusions apply regardless of the amount of the fuel source used in rocket motors, and hence high-powered sport rockets that use APCP as a fuel source are not subject to civil regulation by ATF.

Count One:

ATF's Positions Regarding APCP

37. Plaintiffs incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 36 above.

38. Defendant's positions regarding the explosive nature of APCP in the 1994 ATF letters to Aerotech, Inc., in the 1997 ATF briefing paper, and in the 1999 meetings and telephone calls with Plaintiffs violate 18 U.S.C. § 841(d) and 27 C.F.R. § 55.11 because APCP is not "a chemical compound, mixture or device whose primary or common purpose is to function by explosion."

39. Defendant's inclusion of APCP on its 1999 explosives list, a statutory prerequisite for civil regulation pursuant to Explosives Control Act, violates 18 U.S.C. § 841(d) and 27 C.F.R. §§ 55.11 and 55.23 because APCP is not "a chemical compound, mixture or device whose primary or common purpose is to function by explosion."

40. Because APCP is not "a chemical compound, mixture or device whose primary or common purpose is to function by explosion," APCP is not an "explosive" within the meaning of the civil provisions of the Explosives Control Act, and therefore, ATF lacks statutory authority to civilly regulate APCP pursuant to the Explosives Control Act.

Count Two:

ATF's Inclusion of APCP on 1999 Explosives List

41. Plaintiffs incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 40 above.

42. Defendant's inclusion of APCP on its 1999 annual explosives list violates 18 U.S.C. § 847 and 5 U.S.C. §§ 551(4) and 553(b) & (c) because ATF did not provide the public with reasonable notice of, or an opportunity to comment on, ATF's proposed inclusion of APCP on the list, and the rationale for such inclusion, prior to promulgating the list in final form.

43. Thus, ATF's decision to civilly regulate APCP as an explosive pursuant to the Explosives Control Act is arbitrary, capricious, an abuse of discretion, and/or not in accordance with law.

Count Three:

ATF's Civil Regulation of Rocket Motors

44. Plaintiffs incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 43 above.

45. Defendant's civil regulation of individuals that purchase and store rocket motors violates 18 U.S.C. § 841(d) and 27 C.F.R. §§ 55.11 and 55.141(a)(8) because rocket motors are "special mechanized devices that either are actuated by a propellant or release and direct work through a propellant charge."

46. Because rocket motors are "special mechanized devices that either are actuated by a propellant or release and direct work through a propellant charge," rocket motors qualify as "propellant actuated devices," and therefore ATF lacks statutory jurisdiction under the Explosives Control Act to civilly regulate individuals that purchase and store rocket motors.

Count Four:

ATF's Civil Regulation of High-Powered Sport Rockets

47. Plaintiffs incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 46 above.

48. Defendant's civil regulation of individuals that purchase and store rockets that use more than 62.5 grams of APCP as a fuel source violates 18 U.S.C. § 847 and 5 U.S.C. §§ 551(4) and 553(b) & (c) because ATF did not provide the public with reasonable notice of, or an opportunity to comment on, ATF's decision (and its underlying rationale) to civilly regulate individuals that purchase and store rockets that use more than 62.5 grams of APCP as a fuel source, notwithstanding its exemption of those individuals that purchase and store rockets using the identical material containing no more than 62.5 grams of APCP as a fuel source.

49. Thus, ATF's civil regulation of individuals that purchase and store rockets that use more than 62.5 grams of APCP as a fuel source is arbitrary, capricious, an abuse of discretion, and/or not in accordance with law.

Prayer for Relief

50. WHEREFORE, based on all of the foregoing, Plaintiffs Tripoli and NAR pray that this Court grant the following relief.

51. For Count One, enter a declaratory judgment that (a) APCP is not "a chemical compound, mixture or device whose primary or common purpose is to function by explosion," and therefore (b) APCP is not an "explosive" as that term as defined in the civil provisions of the Explosives Control Act. Also for Count One, issue an injunction precluding any civil regulation by ATF, pursuant to the Explosives Control Act, of APCP.

52. For Count Two, enter a declaratory judgment that ATF's decision to include APCP on its 1999 explosives list is arbitrary, capricious, an abuse of discretion, and/or not in accordance with law. Also for Court Two, issue an injunction precluding any civil regulation by ATF of APCP as a result of its inclusion on ATF's 1999 explosives list.

53. For Count Three, enter a declaratory judgment that (a) rockets motors are "special mechanized devices that either are actuated by a propellant or release and direct work through a propellant charge," and therefore (b) rocket motors are "propellant actuated devices" within the meaning of the Explosives Control Act. Also for Count Three, issue an injunction precluding any civil regulation by ATF, pursuant to the Explosives Control Act, of rocket motors.

54. For Count Four, enter a declaratory judgment that ATF's decision to civilly regulate individuals that purchase and store rockets that use more than 62.5 grams of

APCP as a fuel source is arbitrary, capricious, an abuse of discretion, and/or not in accordance with law. Also for Court Four, issue an injunction precluding any civil regulation by ATF of individuals that purchase and store rockets that use more than 62.5 grams of APCP as a fuel source.

55. In the alternative for Counts One, Two, Three, and/or Four, remand as appropriate matters to be addressed by ATF, and issue an injunction that precludes civil regulation by ATF, pursuant to the Explosives Control Act, of APCP or rocket motors that use APCP effective until such time as ATF fully complies with its responsibilities under the Explosives Control Act and the Administrative Procedure Act by completing notice and comment rulemaking on: (a) listing APCP as an explosive; and, (b) distinguishing the regulation of rockets that use more than 62.5 grams of APCP from those that use less.

56. For all counts, in light of the fact that Plaintiffs are non-profit organizations, classified as Section 501(c)(3) institutions by the IRS, and pursuant to Federal Rule of Civil Procedure 54(d) and 28 U.S.C. § 2412, an award of all costs and all reasonable attorneys fees and expenses.

57. Any and all other relief as may be appropriate or necessary.

Respectfully submitted,

Martin G. Malsch
D.C. Bar No. 436604
John W. Lawrence
D.C. Bar No. 449928
LeBOEUF, LAMB, GREENE & MacRAE, L.L.P.
1875 Connecticut Avenue, N.W., Suite 1200
Washington, D.C. 20009
Telephone No. (202) 986-8000
Facsimile No. (202) 986-8102

Joseph R. Egan
D.C. Bar No. 433641
EGAN & ASSOCIATES, P.C.
1500 K Street, N.W., Suite 200
Washington, D.C. 20005
Telephone No. (202) 220-9610
Facsimile No. (202) 220-9608

COUNSEL FOR PLAINTIFFS

Dated: February 11, 2000