Defining Small Arms Ammunition

An NFATCA sponsored White Paper created by an inter-industry committee representing the interests of the entire shooting sports community, public safety and legislative clarity.

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Introduction

The Bureau of Alcohol Tobacco Firearms and Explosives (ATF) is charged with, among other missions, enforcing regulations surrounding firearms, ammunition and explosives. ATF is often required to render interpretations of enforcement policy when legislation is received from Congress and when confusion or uncertainty results from legislative or regulatory conflict or vagueness. In 2002, Congress passed the Homeland Security Act. This Act was in direct response to the tragic events of September 11th, 2001, known as 9/11. Included in this Act was a provision known as the Safe Explosives Act (SEA), which substantially amended existing Federal explosives law. The pre-SEA law was enacted as Title XI of the Organized Crime Control Act of 1970. Federal explosives law is codified as Title 18 United States Code, Chapter 40. Importation, Manufacture, Distribution and Storage of Explosive Materials

A March, 2005 report of the Department of Justice, Office of Inspector General (OIG) clearly stated that " SEA did not change the explosives types subject to the ATF's licensing authority, as defined in 18 U.S.C. § 841, and it did not increase the number of explosives under the ATF's control." Indeed, since the effective date of the 1970 Act, except for criminal misuse, small arms ammunition and components thereof have been exempt from its provisions. However, regulation writers at ATF have determined a need to define the term “small arms ammunition” for the first time to exclude "large bore" ammunition designed for small arms from the historic exemption.. This activity has caused much confusion and uncertainty in the firearms community for a variety of reasons. There are two main issues at hand to be considered.

Primarily, most legislation, including Federal firearms and explosives laws, and regulations pertaining to small arms never actually defines the term s*mall arms*. The term is referred to on a regular basis in legal and regulatory documentation (some referenced in this White Paper) stretching back nearly 100 years. Still, there is no clear definition of the term. As a result, ATF has had to operate under "individual response" or "private letter" determinations as to what is and is not a small arm on a case by case basis. It is essential that *small arms* must be defined before *small arms ammunition* can be defined.

Secondarily, if real threats to public safety are to be regulated, they should be clearly defined and the relationship of any proposed restriction should be clearly explained. This process not only lends credibility to restrain an otherwise lawful conduct but also avoids expenditure of unnecessary resources against undefined or ill-conceived objectives. Should the ATF wish to create a legal definition of small arms, it should follow the rule-making process with precision.

In an era of fiscal restraint and recession, limited resources and continued public mandate, ATF should clearly illustrate the presence of an identified threat to public safety and use a fact-based, legally proscribed approach to regulation that is neither arbitrary nor capricious.

The Issue at Hand

Both the Gun Control Act, Title 18, Chapter 44 of the United States Code and the National Firearms Act, Title 26, Chapter 53 of the United States Code include within the definition of destructive devices, along with grenades, bombs, rockets and missiles, firearms with a bore diameter greater than one half inch. It is important to note that there are a great many firearms that do have a bore larger than one half inch that are not destructive devices. And while these laws allow for the Attorney General to exempt shotguns and large-bored rifles with a sporting purpose from this definition, an example of a "class" of firearm that can be defined as both firearm and destructive device is a 12 gauge shotgun. In a standard hunting configuration sporting shotguns are defined as a *firearm*. Maintain the shoulder fired configuration but shorten the barrel to 14 inches and the gun is now classified as a *National Firearms Act (NFA) item* (a short barreled shotgun). Add a large capacity 20 round drum magazine and the firearm is now classified as a *destructive device*. All three firearms utilize the same ammunition. Despite their different classifications, are not all three firearms small arms? Furthermore, the non-explosive ammunition for a 20mm firearm, which is a destructive device under both laws, is not itself a destructive device.

Clearly, the classification of the firearm does not eliminate its nature as a small arm, nor does it change the definition of the ammunition used. However, that is precisely what ATF Counsel seeks to accomplish by unilaterally declaring that all ammunition above a certain size should no longer be considered as small arms ammunition and should now be regulated as an explosive. Ammunition is a component of a system that can generally be used in a variety of firearms platforms. Similar to fertilizer components, it is not the component itself or the quantity involved that solely determines explosive nature. It is also the use intent and method of use that contributes to the explosive nature.

We believe that large caliber firearms are already sufficiently regulated to protect the interests of public safety. Further, particularly dangerous ammunition (such as explosive-tipped) is also currently regulated as destructive devices and as an explosive. In the case of this dangerous ammunition, a reasoned approach is employed that utilizes a variety of salient features. Classification is based upon destructive capacity, not arbitrary metrics (such as single attributes of diameter alone). We are unaware of any public safety situation that would warrant ATF to dramatically expand its regulatory authority in such a needless manner as "all ammunition above .50 caliber is now considered an explosive." However, that is *exactly* what is happening. Further, ATF wishes to require that all possessors or users of such "large ammunition" hold ATF explosives user permits, with all of the associated administration, inspection and regulation. This will inevitably burden an already under-funded Bureau and enable a significant number of new permittees to acquire *actual* explosives.

History

As previously mentioned, there is a distinct absence of a definition of small arms (or the attendant ammunition), including in the Gun Control Act (GCA), the Organized Crime Control Act (OCCA) or in an ATF Rulings. However, many United States Departments, various organizations and international bodies have defined the term. And while there is a good bit of variation in each definition, there is remarkable similarity.

Small Arms:

- Man portable, individual, and crew-served weapon systems used mainly against personnel and lightly armored or unarmored equipment**.** (DOD Dictionary of Military Terms, 2009)
- Small arms and light weapons range from clubs, knives and machetes to those weapons just below those considered major conventional weapon systems. (United Nations, 1977, para. 24)
- A term used by the military. Small arms include all weapons that can be carried by one man and fired with one or both hands. By military definition, this also includes machine guns and all weapons with a bore diameter of no more than 1". (Steindler's New Firearms Dictionary, p. 259, 1985)
- Firearms capable of being carried by a person and fired without mechanical support; usually have a bore diameter of less than one inch. (NRA Firearms Sourcebook, p. 462, 2006)
- Guns that can be carried and operated by one man. They include shoulder arms, sometimes called long guns, hand guns (pistols and revolvers), and machine guns. Generally firearms with calibers up to 1 inch in diameter are so classified. (Olson's Encyclopedia of Small Arms, p. 164, 1985)
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Small Arms Ammunition:

- Small arms ammunition including ammunition not exceeding .75 caliber for a rifle or shotgun shells of any caliber. (Department of Transportation, SafetTravel.dot.gov website)
- Small- caliber ammunition, as used herein, describes a cartridge or families of cartridges intended for use in various types of hand-held or mounted weapons through 30 millimeter. (Dept. of Army, TM 9-1300-200, Sec 3-1, Small Arms Ammunition)
- Ammunition for small arms, i.e., all ammunition up to and including 20 millimeters (.787 inches). (DOD Dictionary of Military Terms, 2009)

- A military term for ammunition for firearms with bores not larger than one inch. (SAAMI Glossary)
- A military term for ammunition for firearms with bores not larger than one inch. (AFTE Glossary, p.6, 1980)
- Any small arms cartridge with a bullet that has a diameter up to and including 1". (Steindler's New Firearms Dictionary, p. 259, 1985)
- Ammunition having a bullet diameter of one inch or less, used in small arms. (Olson's Encyclopedia of Small Arms, p. 164, 1985)
- Ammunition having a bullet diameter of one inch or less, used in small arms. (Shooter's Bible Small Arms Lexicon and Concise Encyclopedia, p. 197, 1968)

ATF Firearms Technology Branch (FTB) has regularly held via opinion letters that many types of ammunition in excess of .50 caliber are, in fact, neither explosives nor destructive devices.

The OCCA purpose, at Section 1101, demonstrates that it was not the intent of Congress to impede the firearms community or obstruct commerce within that community by restricting ammunition as an explosive.

The Sporting Arms and Ammunition Manufacturers' Institute, Inc. (SAAMI) has rigorously tested the behavior of a sampling of a wide range of ammunition when subject to fire and other perilous activities. Through careful documentation, SAAMI can categorically state that the tested ammunition does not behave as a traditional explosive and does not present a substantially increased risk when subjected to such activities.

- Ammunition ignited outside a firearm has significantly lower velocities and energies than when shot from a firearm.
- Ammunition dropped from extreme heights is unlikely to ignite. If a cartridge ignites, it does not "propagate".
- Ammunition struck by a fired round of ammunition tends to not ignite. When one does, there is no chain reaction in ammunition groups.
- Blasting caps are commonly used to ignite explosives. Igniting ammunition with a blasting cap is difficult and when it does happen, it does not propagate in groups of ammunition.
- Even in the most extreme conditions of compression and friction (impact from large objects such as a forklift, bulldozer, etc.), ammunition is unlikely to ignite and does not propagate in groups of ammunition.
- Large quantities of ammunition subject to a bonfire provided a lot of noise, but did not present significant danger to even a "turn out" uniformed fire fighter at normal working distances.
- A fully involved retail ammunition store fire, where enormous quantities of ammunition were present, was controlled within 10 seconds by fire fighters. Projectiles were low velocity and did not impede the fire fighters' activities.

- A loaded semi-trailer full of ammunition was set ablaze. Again, the fire was controlled within 10 seconds by fire fighters. Projectiles were low velocity and did not impede the fire fighters' activities.

The Homeland Security Act of 2002 is incorporated herein for reference.

The March 2005 report of the OIG is incorporated herein for reference.

The Congressional testimony supporting the OCCA is incorporated herein for reference.

Proposed Solution

The OIG determined that the Safe Explosives Act did not change or expand the explosives types subject to ATF's regulatory authority. However, the Act and current ATF action present an opportunity to clearly define terms and actions for the firearms community and the public at large. It is incumbent upon ATF to "fill in the blanks" and utilize the rule making process to define terms and communicate effectively.

1. Define the term *small arms*. Any definition that is considerably more restrictive than the ones previously cited should clearly demonstrate a current public safety concern.
2. Define the term *small arms ammunition*. We propose as a definition the following:
    - All cartridges or shot shells (including blanks) for rifles, shotguns or handguns (as defined in 18 U.S.C. § 921) other than destructive devices, as long as they use inert projectiles (including tracers)
    - Cartridges or shells (including blanks) for destructive devices or antique firearms (e.g., black powder cannons), as long as they use inert projectiles (including tracers) or projectiles designed for target practice containing less than 1/4 ounce of explosive (e.g., 40mm practice grenades)
    - Cartridges for powder actuated industrial devices
    - Components for all cartridges and shells described above, including:
        - Smokeless powder and black powder substitutes
        - Black powder used in fixed cartridges, or bulk black powder as excluded from certain federal regulation under 18 U.S.C. § 845(a)
        - Primers
        - Projectiles, bullets and shot
3. Exempt the defined small arms ammunition from explosives regulation.

Further, it should be clearly communicated that the classification of a firearm as a destructive device does not automatically confer the same status on the ammunition that the referenced firearm utilizes.

Implementation

Inasmuch as it is demonstrated that ammunition of a given size or greater does not become an explosive or even behave like one, it is still necessary to create definitions and clarify the implementation of existing regulations so that the interests of public safety can continue to be served. It is crucial that any effort expended by ATF in streamlining this issue and the regulations relating to it be done in cooperation with the firearms community.

- Form a working group composed of FTB, industry associations, leaders and subject matter experts to provide informed content and perspective.
- Clarify existing definitions of firearms (destructive device, etc.)
- Implement the formal rule making process to:
    - Define small arms
    - Define small arms ammunition
    - Clearly define what does constitute ammunition as explosive with meaningful metrics
- Create a communication program via participating organizations to inform the community of what is happening.

Summary

We are aware of no bona fide public safety issue requiring the reclassification of non-explosive ammunition as an explosive. Extensive testing has shown that ammunition does not behave as a traditional explosive and poses no immediate threat to the general public or first responders. Regulations are currently in place to restrict public access to items classified as destructive devices and some types of ammunition that possess explosive characteristics. Components of military ordnance are likewise heavily regulated and restricted.

Should ATF take the position that any ammunition with a diameter larger than one half inch is an explosive, the results would be severely catastrophic and riddled with unintended consequences. This classification would result in numerous possessors of the newly reclassified ammunition applying for an explosives licenses and user permits. In turn, this would result in Industry Operations Investigators (IOI's) being responsible for an exponentially increased volume of un-funded work. Additional burdens on the owners of this ammunition, such as having to abide by Department of Transportation regulations for movement of the ammunition (over the road, sea and air) and having to maintain an approved and regularly inspected storage magazine, would further inundate the IOI division.

Still, the firearms community can always benefit from clarification of existing regulations and the development of precise and understandable definitions where none exist. ATF should endeavor to serve the public interest by collaborating with the firearms community to create these clarifications and new definitions.

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with assistance from NRA, NRA-ILA, SAAMI, SCI & NSSF