



ATF Rulemaking

Issue: Does ATF's reliance on interim final rules (IFR) disregard congressional intent for issuing explosives regulations?

Background: Federal Explosives Law obligates ATF to take into account industry safety and security standards when issuing rules and requirements. The commercial explosives industry has endeavored to fulfill this obligation through the development of industry best practices for safety and security, participation in relevant standard-setting organizations, and forums for training. We have offered ATF recommendations that we believe will enhance safety and security through participation in the rulemaking process, in the Bureau's research efforts, and in other standard setting activities.

Discussion: ATF currently has several open rulemakings of interest and concern to the explosives industry. The oldest was proposed in 2003. It resulted from the enactment of the 2002 Safe Explosives Act (SEA) and was issued as an "interim final rule" (IFR). IFRs are enforceable without public input as to the effect of the rule on the regulated community. Subsequently, IME raised a number interpretative questions and concerns about the IFR provisions which are critical to the continued commerce of commercial explosives. Although Congress has directed ATF to address these long-standing rulemaking concerns, ATF continues to delay the projected date for finalizing this IFR.

In the absence of rulemaking that is capable of keeping up with new developments and practices, industry must rely on interpretive guidance and variances from rules to conduct business. While we appreciate the Bureau's accommodations, these stop-gap measures do not afford the protections that rulemaking would provide the regulated community, nor does regulation by variance allow the oversight necessary to ensure that all parties are being held to the same standard of compliance. These regulatory tasks may be at odds with ATF's vision as a law enforcement agency, but they are critical to the lawful conduct of the commercial enterprises the Bureau controls. In addition, the continued reliance on an IFR runs counter to the spirit of section 610 of the Regulatory Flexibility Act. Section 610 directs agencies to review rules within ten years of the publication of final rules. Although the SEA IFR has been in effect over 14 years, it has not been subject to public review to determine whether or not changes to requirements are warranted.

Recommendations: ATF should not rely on IFR as a regulatory tool. The Bureau should re-open the rulemaking petition filed by industry, and should otherwise, allow stakeholders to submit comments to update and clarify IFRs that have been pending for years.