

official and relied on by that official is still a criminal offense under 18 U.S.C. 1001.

In the proposed rule, ATF delegated authority for requiring this report to the regional director (compliance). Several commenters expressed concern that these reports could be required at any time, without any justification, and that the policy for requiring such reports might vary from region to region. ATF addressed these concerns by revising the final rule to authorize the Deputy Associate Director (Regulatory Enforcement Programs) to require these reports, and by adding language to the section specifying that the reports would only be required as part of an investigation. Further, the final rule also provides that the report shall cover a period of no more than three years.

Several commenters expressed the opinion that ATF had understated the time needed to comply with this requirement, but since no alternative time burden estimate was offered, ATF is retaining the one hour estimated burden in the final rule. Comments on this estimate may be submitted to the address shown in the Paperwork Reduction Act section of the supporting data.

Meaning of Terms Revisions in Parts 6, 8, 10 and 11

ATF proposed to add the terms "ATF officer" and "Director" to the definitions in 27 CFR 6.11, 8.11, 10.11, and 11.11 to correspond to the terms in the proposed administrative provisions in §§ 6.5, 8.5, 10.5, and 11.5, discussed above. ATF also proposed adding the term "Regional director (compliance)" to the definitions in 27 CFR 6.11, 8.11 and 10.11 to correspond to the term in the proposed administrative provisions. In view of the change in this delegation in the final rule, a definition for "Deputy Associate Director (Regulatory Enforcement Programs)" has been substituted.

ATF proposed to define the term "brand" in 27 CFR 6.11, since a number of dollar limitations on things of value which may lawfully be given to retailers is on a "per brand" basis. The definition proposed was drawn from ATF Ruling 81-1, Q.B. 1981-2, page 27, excluding changes in the color or design of the label. Commenters on this issue were divided.

While most commenters supported narrowing the definition of the word "brand" as proposed, Hinman & Carmichael, attorneys, noted in their comment that label color is sometimes used to distinguish "different quality designations of similar products produced by the same manufacturer,"

and suggested adding "different quality standard or grade" to the list of examples of different brands. ATF believes the items listed in the proposed definition, such as age and alcohol content, should address most such differences.

NBWA and the President's Forum of the Beverage Alcohol Industry both commented that the proposed increase in the dollar limits in Part 6, Subpart D, combined with such a broad definition of the term "brand," would have an anticompetitive effect by allowing industry members with diverse brand portfolios to give a large number of valuable items to retailers. As discussed later in the supplementary information, a number of commenters expressed concern about the large proposed increase in the dollar limitations, but did not comment on the proposed definition of brand. Since ATF has decided to address these concerns by raising the dollar limitations less than originally proposed, it will not be necessary to further narrow the proposed definition of "brand."

NBWA expressed concern that beverage varieties "have proliferated at an unprecedented rate" and that "even the most subtle variation in the product line would be construed to create another 'brand'" under our proposed definition. NBWA further stated in their comment that the "whole matter of what constitutes a brand is at the center of controversy and litigation across the country." They suggested airing this issue in a separate rulemaking and, if a definition is adopted at all, specifying that the definition is only intended to apply to Part 6. In view of this comment, ATF has decided to adopt the definition of brand as proposed, with the addition of a note in the definition that it only applies to the administration of the exceptions in Part 6.

Although the petitioners suggested revising the definition of "retailer" in 27 CFR Parts 6 and 8, ATF proposed no changes in this definition. The petitioners suggested removing the language which specifies that a wholesaler who makes incidental retail sales *representing less than 5 percent of its sales during the preceding two months* shall not be considered a retailer. The petitioners state that a supplier cannot know whether the wholesaler's retail sales are within the 5 percent limitation and suggest eliminating that standard. The petitioners also believe that the definition of "retailer" should be clarified in order to ensure that this definition is consistent with § 6.2 which defines the territorial extent of Part 6 of the regulations.

ATF believes that removal of the 5 percent limitation would make the definition too broad. For example, without the percent limitations, a wholesaler who makes a single sale to a consumer is deemed to be a retailer. Also, the petitioners' proposed definition would exclude, as a retailer, someone within the United States who makes sales for consumption *outside* of the United States; i.e., a duty free shop. The FAA Act itself does not allow this type of exception to the territorial coverage of the law. Therefore, ATF did not agree with this proposal, and proposed no change to the definition of "retailer." DISCUS, in their comment on the proposed rules, reiterated the request for these revisions, but presented no new arguments. No other comments addressed the definition of the word "retailer." For the same reasons, ATF did not propose conforming amendments to the definition of "retailer establishment." ATF holds to its comments as expressed in Notice No. 794, and made no changes to these definitions in the final rule.

ATF proposed to change the term "retailer establishment" in 27 CFR 6.11 to "retail establishment", since that is the term used in 27 CFR Part 6 regulations. The term "retail establishment" in 27 CFR 8.11 will be removed because the term is not used in 27 CFR Part 8 regulations. No commenters objected to these proposals, and they were adopted in the final rule. Since the term "retailer" is being added to Part 11, ATF has added a definition for that term in section 11.11 which conforms to the definition in 6.11.

Discussion of Changes to Individual Sections

Sections 6.25 through 6.33, Interest in Retail Licensee

The petitioners stated that these sections of the regulations provide identical treatment concerning an interest of an industry member in a license with respect to a retailer's premises (Sections 6.25-6.27) and in real or personal property owned, occupied, or used by the retailer in the conduct of the business (Sections 6.31-6.33). The petitioners proposed combining the provisions which they believe parallel each other (Sections 6.25 and 6.31; 6.26 and 6.32; and 6.27 and 6.33).

ATF does not believe that the provisions of §§ 6.25 through 6.33 should be combined in the various ways proposed by the petitioners. From a structural point of view, merging §§ 6.25 through 6.33 fundamentally alters the organization of Subpart C of Part 6.