

reflect the adjusted rates, but instead, under ATF's proposed revision there will be no limit to the dollar value of the specified point of sale (POS) materials furnished by an industry member to a retail establishment.

The petitioners also requested that the term "wine lists" be expanded to include all alcoholic beverages. Instead, the proposed 6.84 permits all lists or menus, subject to the conditions in paragraph (c) of the section.

Several commenters on these proposals requested that ATF limit lists or menus to alcoholic beverage lists or menus. On review, ATF concurs that there is more of a continuing character and more potential for industry member involvement in day to day operations at a retailer if full menus are allowed, and has revised this portion of the final rule accordingly.

DISCUS requested that "mechanical devices," which had been permitted under "inside signs" in the current regulations but had been omitted from the proposed rule, be reinstated, and that the rule be further expanded to include "electronic devices." After considering this and related comments, ATF has revised the definition of "point of sale advertising materials" to eliminate the distinctions (inside signs and retailer advertising specialties) within that definition and simply list examples. In that context, ATF has added "inside signs (electric, mechanical or otherwise)" to the listing of point of sale advertising materials in the final rule. The restriction of electronic devices to signs is consistent with the current regulatory approach and prevents abuses which could occur if all electronic devices were allowed (since the point of sale section contains no dollar limitations).

In their comment, E. & J. Gallo Winery suggested that the condition in § 6.84(c)(2) need not be limited to retailer and consumer advertising specialties, and ATF concurs. In the final rule, the condition applies to all point of sale materials and consumer advertising specialties.

The Forum and the American Brandy Association suggested an annual dollar limit per retail location. In the past, some of the items listed in this section had a limitation and others did not. ATF does not believe, given the nature of the items described and the requirement for substantial advertising material, that furnishing such items would create a tie or link between the industry member and the retailer. In the final rule, ATF imposes no dollar limit, but will revisit this subject if abuses are found.

Section 6.85, Temporary Retailers

ATF proposed adding a new section which will allow furnishing things of value to a temporary retailer. The proposed regulations recognize that certain retail activities of a temporary nature, such as weekend events and community festivals, are so minor in the retail marketplace so as not to justify Federal intervention; rather, State agencies can regulate these situations to prevent abuses. There were numerous comments concerning this section.

DISCUS suggested extending the provisions to cover things of value given to a retailer for a "temporary event." ATF disagrees; the reason for excepting temporary retailers was that their short-term existence as a retailer did not justify Federal intervention. However, since a permanent retailer can operate at a "temporary event," it is proper to apply the trade practice provisions to the industry member's dealings with those retailers. A number of commenters opposed allowing any special privileges to temporary retail dealers. ATF believes that the impact of giving things of value to temporary retailers, within the limitations of the proposed rule, would not be disruptive to the retail marketplace. However, the issue will be revisited if substantial abuses are found. NABCA suggested there may be conflicts between ATF's definition of a temporary retailer and any definition in State rules. After considering the comments, ATF has amended the section to show that the definition of temporary retailers applies only for purposes of administration of the tied-house rules.

Section 6.88, Glassware—Section 6.89, Tapping Accessories—Section 6.90, Supplies—Section 6.97, Coil Cleaning Service

The petitioners recommended that these four sections be combined in a new § 6.88, under the title "Equipment and supplies," because they deal with similar types of merchandise and impose similar conditions. As with other Subpart D exceptions which combine similar types of merchandise, (viz., §§ 6.83, 6.87 and 6.89), the petitioners felt that combining these items in one section will enhance the simplicity and clarity of the rules.

The petitioners also recommended several other revisions to this consolidated section:

Extend coil cleaning service from "a retailer of wine or malt beverages" to "a retailer" to provide equal treatment for wine, malt beverages and distilled spirits;

Substitute the term "dispensing accessories" in § 6.88 for "tapping accessories" because the former term more

accurately describes the modern type of accessories falling within this category and reflects present marketplace practices where, for example, wine also is served by dispensing equipment;

Add cold plates to the list of examples of "dispensing accessories" and,

Allow carbon dioxide gas or ice to be sold at a price not less than the cost to the industry member who initially purchased it.

While the petitioners' proposal to combine various sections into one all inclusive section covering equipment and supplies is structurally logical and the terminology change from tapping equipment to dispensing equipment has merit, some of the items listed in the petition have not in the past been recognized as exceptions by ATF.

ATF proposed consolidating these sections with the following additional changes. ATF proposed to revise the definition of glassware to include similar containers made of materials other than glass. The proposed regulation also specifies that the industry member must pass on the cost of initial installation of equipment to the retailer.

The proposed regulation expanded the original coil cleaning service exception currently in § 6.97 to cover distilled spirits, as well as wine and malt beverages. Keeping the coils clean and free of contamination is clearly in the interest of public health. Therefore, it is in the public interest to allow such services without a dollar limit.

The current regulation allows industry members to sell carbon dioxide gas to retailers. The regulation does not provide for the sale of other gases, such as nitrogen, which are used in various existing alcoholic beverage dispensing systems. ATF proposed modifying this regulatory section to allow industry members to sell any gas to a retailer provided it is used in a beverage dispensing system. This proposal should not be viewed as sanctioning treatment which would change still wine to sparkling wine.

Comments on these proposals were generally favorable, and the regulation is adopted as proposed. Forum members, in their comment, stated the extension of coil cleaning service to distilled spirits is unnecessary, since spirits have a longer shelf life and a higher alcohol content. The provision was retained, to be used at the option of the industry member. DISCUS asked that ATF amend the definition of equipment and supplies by changing the word "means" to the phrase "includes, but is not limited to." The use of the proposed phrase would add an element of uncertainty and indefiniteness to the scope of the exception. Therefore, ATF