

be listed for "a private retailer acting as an agent" for a State or local agency. ATF is not adopting this suggestion at this time. The trend toward privatization of State agency sales is an evolving area. States which are privatizing are doing so in various ways. Therefore, it is not possible to set a single rule which will cover these changes.

Section 6.99, Stocking, Rotation, and Pricing Service

The petitioners recommended revising this section to allow industry members to "recommend shelf plans." The petitioners stated that this revision would permit an industry member to provide services to a retailer consistent with present day marketplace realities. ATF proposed to amend this section in line with the petitioners' proposal.

Most commenters approved of this proposal, and it is adopted as proposed. However, serious concerns were raised by Kendall-Jackson Winery and American Vintners' Association about the potential for abuse of shelf plans or schematics, through biased analysis of retailer needs or by an industry member supplying additional services which are not hereby authorized. ATF will revisit this subject if it appears the new exception is being abused or creating a situation in which a retailer becomes dependent on a single industry member's purchasing advice.

Section 6.100, Participation in Retailer Association Activities

Section 6.100 permits industry members to participate in retailer association activities under certain circumstances. Paragraphs (b) and (d) permit rental of display booth space and purchase of tickets or payment of registration fees, respectively. Each of these paragraphs contains the phrase "if * * * not excessive and * * * the same as paid by all exhibitors." ATF proposed amending the section to delete "not excessive" and specifying the fees must be the same as the fees paid by all exhibitors "at that event." ATF also proposed raising the limitation for payments for advertisements in programs or brochures authorized by paragraph (e) from \$100 (as adjusted) to \$500.

Several commenters objected to the large increase in the dollar limitation, as discussed earlier. ATF is revising the dollar limit to \$300 in the final rule. NABCA pointed out that at some retailer activities, there are no exhibitors, so the term "exhibitors" may not always be appropriate in paragraph (d). ATF concurs, and has substituted the phrase,

"attendees, participants or exhibitors" in the final rule.

Section 6.101, Merchandise

Paragraph (a) currently provides that an industry member who also is engaged in business as a bona fide vendor of other merchandise may sell such merchandise to a retailer if three conditions are met, the first of which is that the merchandise is "sold at its fair market value." The petitioners recommended changing this condition to state that the merchandise is "furnished, distributed, or sold according to the custom and practice of that business." The petitioners also recommended eliminating paragraph (b) regarding things of value covered in other sections of Part 6 since they believe it is redundant and unnecessary in light of other sections of Subpart D.

ATF did not propose either of these changes. Section 6.101 excepts sales transactions by industry members who are engaged in the business as bona fide vendors of other merchandise in addition to alcoholic beverages. This section sanctions sales of other merchandise to retailers in addition to alcoholic beverages if the merchandise is sold at its fair market value, not in combination with distilled spirits, wines, or malt beverages, and the merchandise is itemized separately on the industry member's invoices and other records. The records are necessary so that ATF can determine the real cost of the merchandise to the industry member and whether the industry member is reselling the merchandise to retailers at its fair market value. Likewise, ATF needs these records to determine whether the industry member is a bona fide vendor of the merchandise or whether it is using the merchandise as a means to induce.

Accordingly, ATF proposed to revise the records requirement of the regulation to state that, first, acquisition costs must appear on the industry member's purchase invoices (available upon request to ATF) and, second, the merchandise and the distilled spirits, wines, or malt beverages sold to the retailer in a single sales transaction must be itemized separately on the same invoice.

DISCUS, in its comment reiterated the petitioners' original requests for changes, and noted ATF's proposal to require alcoholic beverages and other merchandise to be shown on the same invoice was not practical. WSWA commented further:

* * * [W]e support the objective of assuring an audit trail when other items are offered for sale in conjunction with alcoholic beverages. We view as impractical and unnecessarily

burdensome the proposal to require that "merchandise and distilled spirits, wines or malt beverages sold in a single transaction" be "itemized separately on the same invoice covering the sales transaction."

Inventory systems commonly print invoices that sequence items sold by their warehouse location. Alcohol beverages are routinely stored separately from other items. It is not unusual for delivery of non-alcoholic items to be made on separate days or by a separate, but affiliated company having its own invoicing system. Furthermore, some states forbid using the same invoice for alcohol beverages and other items.

It should be sufficient to require that invoices for sales of other items with alcohol beverages to a retailer be maintained in a manner similar to invoices for alcohol beverages.

In response to these comments, ATF is removing the requirement for showing alcoholic beverages and other merchandise on the same invoice. Instead, the final rule will require that the sale price of each commodity be on the records covering the transaction. ATF still believes the change requested by DISCUS, from "sold at its fair market value" to "furnished, distributed or sold according to the custom and practice of that business" is not appropriate. The requested language appears to sanction giving things of value (other merchandise) to retailers, in direct conflict with the statute. Additionally, the phrase "custom and practice" is vague and does not provide clarity to the industry member relying on the regulations. Paragraph (b), which DISCUS advocates removing, is also retained in the final rule.

Hinman & Carmichael expressed a different concern in their comment on the proposed revision to § 6.101:

Section 6.72 allows certain combination sales of alcoholic brands or products, but § 6.101 seems to take this away if the producer is also a producer (as opposed to a vendor) of nonalcoholic beverage products. A fairly common marketing situation in California is the packaging of gift packs of wine and olive oil, or wine and another commodity produced by the winery. In this situation, there is no acquisition cost to report.

ATF has modified the wording of the section to make it clear that the exception applies to industry members who are bona fide producers or vendors of other merchandise, if the conditions are met. As stated earlier, § 6.72 only applies to "products" that are distilled spirits, wine or malt beverages. In addition, in response to this comment and a request by DISCUS, a cross reference to the exception for combination packaging under § 6.93 has been added.