compliance with the dollar limitations and any other requirements of Subpart D. The limitations in each exception section of the regulations would be unenforceable if ATF had no way to verify compliance with the requirements of such exceptions. ATF did propose to add a sentence to § 6.81(b) to state that, where an industry member fails to keep the required records, such industry member is not eligible for the regulatory exception in that particular transaction. No separate recordkeeping violation would be charged.

In its comment, DISCUS continued to request elimination of § 6.81(b) in its entirety, but said if § 6.81(b) is retained, ATF should amend it to allow industry members to use unspecified other means to show compliance. ATF disagrees, since the recordkeeping requirement as written gives considerable flexibility to the industry member. No specific form or record has been prescribed, as long as the industry member can provide information an ATF officer would need to verify that a promotion is within the scope of Subpart D. ATF is adopting § 6.81 as proposed, except for some minor editing changes suggested by the Federal Register.

Section 6.82, Cost Adjustment Factor

While the petitioners did not request a specific change to this section, they requested that ATF explore alternate methods which would be cost effective for ATF to convey this information in a manner that continues to ensure that all permittees are apprised of the annual dollar adjustments. Instead, ATF proposed to delete this section, increase the dollar limitations and periodically review the amounts if necessary.

Although a few commenters supported the proposal, most objected to the size of the proposed increase in the dollar limitations. For instance, on product displays, ATF had proposed to increase the limitation from \$160 (1994 adjusted rate) to \$500. Many commenters who characterized themselves as small or medium size businesses said they simply could not afford to compete with large industry members if their competitors were providing displays worth \$500 per brand.

After a thorough review of the comments, ATF concurs that such a large increase could create the sort of tie or link identified by Fedway. ATF has determined that making a smaller increase in the dollar amounts is appropriate. The final rule deletes this section as proposed in Notice No. 794.

Section 6.83, Product Displays

The petitioners recommended amending the definition of product display to substitute "* * * and similar items the primary function of which is to hold, display or shelve consumer products" for "* * * and the like," which appears in the current regulation. ATF proposed this change, but used the phrase "hold and display" for clarity.

The petitioners also requested that ATF amend the dollar limitation in the regulation to reflect the current adjusted rate of \$160. Instead, ATF proposed changing the dollar limit to \$500 per brand at any one time per retail establishment, from the current \$100 (as adjusted) per brand at any one time per retail establishment.

Although the general prohibition against an industry member imposing conditions on receipt of items allowed in Subpart D has been removed from § 6.81, ATF proposed adding a statement to § 6.83 that giving or selling product displays may be conditioned upon the purchase of the distilled spirits, wine or malt beverage product advertised thereon in a quantity only necessary for the initial completion of the product display. From the mid-1960s to the 1980 recodification of the trade practice regulations, conditioning was allowed for window or other interior displays. Industry members have long argued that they should be allowed to condition receipt of product displays on the purchase of a limited quantity of the product advertised. ATF also proposed to delete the language which allows lending or renting of product displays in the current regulation. Such a continuing tie would not be consistent with the intent of the Act. In making these proposals, ATF believed the dollar limit of \$500 per brand, coupled with the requirements for permanently inscribed advertising and transfer of ownership of product displays to the retailer minimizes the inducement value to the retailer. The combination of these factors would allow product displays to be excepted from the regulations of Part 6, and would be the basis for allowing the industry member to condition receipt of such materials as described above.

Commenters requested a number of amendments to this proposed section. First, E. & J. Gallo Winery noted that in the preamble, ATF had said § 6.83 would allow conditioning product displays upon the purchase of the product advertised thereon in a quantity only necessary for the initial completion of the product display, and yet the regulatory text omitted the word

''initial.'' This omission is corrected in the final rule.

In the proposed amendment to § 6.83, ATF eliminated the words "furnish, loan or rent." DISCUS requested reinstatement of these options, but ATF maintains its position that allowing lending or renting of product displays creates a tie or link which is inconsistent with the goals of the FAA Act. As a result of the *Fedway* decision, any element of a promotion which indicates a continuing character is subject to greater scrutiny.

Several other commenters, among them the American Brandy Association, expressed concern that the higher dollar limit would allow a large industry member to "install a new \$500 display every week in a specific store." For the reasons discussed here and under § 6.82, the dollar limit has been set at \$300. That dollar limit and the aforementioned amendment to allow only outright giving or selling of displays should also prevent the sort of monopolization of retail premises feared

by these commenters.

Finally, several commenters requested substitution of the word "securely" for the word "permanently" in describing how the advertising material would be inscribed or affixed to the product display. They argued that, when they give or sell a product display, they cannot control the actions of a retailer, who may choose to remove such advertising material. ATF will use the phrase "permanently inscribed or securely affixed" in this section and in § 6.84. However, ATF will revisit this subject in later rulemaking if abuses are found.

Section 6.84, Point of Sale Advertising and Consumer Advertising Specialties

Promotions and practices currently allowed under the regulatory exceptions to the tied-house provisions are safe harbors. Notice No. 794 proposed a revision to those exceptions which would combine several of the current exceptions into one general regulatory section. The approach of having a single general section addressing all of the similar activities gives greater flexibility to the industry.

The proposed regulations combine the exceptions listed in §§ 6.84, 6.85, 6.86 and 6.87 (inside signs, retailer advertising specialties, wine lists and consumer advertising specialties), into a revised § 6.84, Point of sale advertising and consumer advertising specialties. Items intended for consumers currently identified in section 6.47 are also included in the proposed listing of exceptions. The petitioners requested that ATF amend the dollar limitation to