Beer and Wine Regulation
Federal Overview

Shelf Plan and Shelf Schematic
Exception to “Tied House” Prohibition
under 27 U.S.C. 205(b)

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• It is not intended to establish any new, or change any existing, definitions, interpretations, standards, or procedures regarding those laws and regulations.
• In addition, this presentation may be made obsolete by changes in laws and regulations.
• Please consult the regulations for the most current regulatory requirements.
Federal Alcohol Administration Act
27 U.S.C., chapter 8, subchapter I

• Requires producers, importers and wholesalers of beverage alcohol to obtain a Federal basic permit (27 U.S.C. 203-204);

• Makes unlawful certain non-competitive trade practices (27 U.S.C. 204(a)-(d)); and

• Legislates the labeling and advertising of beverage alcohol products sold in interstate commerce (27 U.S.C. 205(e)-(f)).

TTB Regulatory Authority

• Title 27, Code of Federal Regulations (C.F.R.),
Federal Alcohol Administration Act


• Consignment Sales – 27 U.S.C. 205(d); 27 C.F.R. part 11.
Tied House

27 U.S.C. 205(b) makes it unlawful for any person engaged in the business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages:

• “[T]o induce through any of the following means, any retailer, engaged in the sale of distilled spirits, wine or malt beverages. To purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine or malt beverages sold or offered for sale by other persons in interstate or foreign commerce. . .
Tied House - Purpose

The forgoing practices [those prohibited by this subsection] have in this industry constituted the principal abuses whereby interstate and foreign commerce have been restrained and monopolistic control has been accomplished or attempted. The most effective means of preventing monopolies and restraints of trade in this industry is by prohibiting such practices, thereby striking at the causes for restraints of trade and monopolistic conditions and dealing with such conditions in their incipiency.

The Tied-house provision was designed to prevent control by alcoholic beverage producers and wholesalers over retail outlets.” National Distributing Co. v. United States Treasury Department, Bureau of Alcohol, and Firearms, 626 F. 2d 997, 1008 (D.C. Cir. 1980).

Control over retailers, “involve[s] a link or tie between the wholesaler or producers and the retailer, resulting in a relationship that threatens the retailers independence.” Fedway Associates, Inc. v. U.S. Treasury Dept., BATF, 976 F. 2d 1416, 1420-24 (D.C. Cir. 1992).

Where the retailers purchasing decisions being made by the producer, importer or wholesaler or a retailer so strongly influenced by the producer, importer or wholesaler that no independent decision is being made.
Tied House – Means to Induce Exceptions

27 U.S.C. 205(b) sets out seven specific means to induce—for purposes of this discussion will focus on 205(b)(3):

• “by furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services, or other things of value subject to such exceptions as the Secretary of the Treasury shall by regulations prescribe. . .”

• Exceptions can be found in 27 C.F.R. Part 6 (6.81 – 6.102).

✓ Shelf plans and shelf schematics addressed in 27 C.F.R. 6.99(b).
Shelf Plans and Shelf Schematics Exception

Background

- Stein Distributing Company v. Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, 779 F. 2d 1407 (9th Cir. 1986). This was pre-6.99(b) case that addressed issue of shelf plans and shelf schematics as a thing of value.

- Notice of Proposed Rulemaking (ATF Notice No. 794, April 26, 1994, 59 FR 21698) proposed several changes to trade practice regulations to include a proposed amendment to section 6.99 to allow industry members to provide retailers with a recommended shelf plan or shelf schematic. The amendment to 6.99 (current 6.99(b)) was adopted on May 26, 1995.
Shelf Plans and Shelf Schematics Exception
27 C.F.R. 6.99(b)

(b) **Shelf plan and shelf schematics.** The act by an industry member of providing a recommended shelf plan or shelf schematic for distilled spirits, wine, or malt beverages does not constitute a means to induce within the meaning of 105(b)(3) (205(b)(3)) of the Act.

☑️ The scope of this regulatory exception is limited and merely allows industry members (producers, importers, wholesalers) to furnish retailers with shelf plans and shelf schematics recommending product placement on the retailer’s shelves.
Since adoption of 6.99(b) industry practices have evolved from the simple act of providing a recommended shelf plan to providing additional services along with the shelf plan.

These additional services range from receiving and analyzing (on behalf of retailer) confidential and/or proprietary competitor information; furnishing market data from third party vendors; follow-up services to revise the schematic.
TTB Ruling 2016-1 (February 11, 2016). Issued to clarify the application of the provisions of the 27 U.S.C. 2059b)(3) and the extent of the 6.99(b) exception.

✓ **Held** that furnishing retailers with a shelf plan or shelf schematic, as stated unambiguously at 27 C.F.R. 6.99(b) is not an inducement under the tied-house provisions.

✓ **Held also** that providing additional services (as described in the Ruling), furnished by an industry member to a retailer, with respect to alcohol beverages, are not exempted by 6.99(b) and will be considered a means to induce under 27 U.S.C. 205(b)(3).
The ruling provides the following examples of practices not exempted by 6.99(b):

- Assuming, in whole or in part, a retailer’s purchasing or pricing decisions, or shelf stocking decisions involving a competitor’s products;
- Receiving and analyzing, on behalf of the retailer, confidential and/or proprietary competitor information;
- Furnishing to the retailer items of value, including market data from third party vendors;
- Providing follow-up services to monitor and revise the schematic where such activity involves an agent or representative of the industry member communicating (on behalf of the retailer) with the retailer's stores, vendors, representative, wholesalers, and suppliers concerning daily operational matters (such as store resets, add and delete item lists, advertisements and promotions);
- Furnishing a retailer with human resources to perform merchandising or other functions, with the exception of stocking, rotation or pricing services of the industry member’s own product, as permitted under 6.99(a).
Shelf Plans and Shelf Schematics Exception
TTB Ruling 2016-1

Additional Information on the TTB Website
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Questions?