

determining whether other practices can put retailer independence at risk.

§ 8.52 Practices which result in exclusion.

The practices specified in this section result in exclusion under section 105(a) of the Act. The practices specified here are examples and do not constitute a complete list of such practices:

(a) Purchases of distilled spirits, wine or malt beverages by a retailer as a result, directly or indirectly, of a threat or act of physical or economic harm by the selling industry member.

(b) Contracts between an industry member and a retailer which require the retailer to purchase distilled spirits, wine, or malt beverages from that industry member and expressly restrict the retailer from purchasing, in whole or in part, such products from another industry member.

§ 8.53 Practice not resulting in exclusion.

The practice specified in this section is deemed not to result in exclusion under section 105(a) of the Act: a supply contract for one year or less between the industry member and retailer under which the industry member agrees to sell distilled spirits, wine, or malt beverages to the retailer on an "as needed" basis provided that the retailer is not required to purchase any minimum quantity of such product.

§ 8.54 Criteria for determining retailer independence.

The criteria specified in this section are indications that a particular practice, other than those in §§ 8.52 and 8.53, places retailer independence at risk. A practice need not meet all of the criteria specified in this section in order to place retailer independence at risk.

(a) The practice restricts or hampers the free economic choice of a retailer to decide which products to purchase or the quantity in which to purchase them for sale to consumers.

(b) The industry member obligates the retailer to participate in the promotion to obtain the industry member's product.

(c) The retailer has a continuing obligation to purchase or otherwise promote the industry member's product.

(d) The retailer has a commitment not to terminate its relationship with the industry member with respect to purchase of the industry member's products.

(e) The practice involves the industry member in the day-to-day operations of the retailer. For example, the industry member controls the retailer's decisions on which brand of products to purchase, the pricing of products, or the manner in which the products will be displayed on the retailer's premises.

(f) The practice is discriminatory in that it is not offered to all retailers in the local market on the same terms without business reasons present to justify the difference in treatment.

PART 10—COMMERCIAL BRIBERY

Par. 45. The authority citation for part 10 is revised to read as follows:

Authority: 15 U.S.C. 49–50; 27 U.S.C. 202 and 205; 44 U.S.C. 3504(h).

Par. 46. Section 10.1 is revised to read as follows:

§ 10.1 General.

The regulations in this part, issued pursuant to section 105 of the Federal Alcohol Administration Act (27 U.S.C. 205), specify practices which may result in violations of section 105(c) of the Act and criteria for determining whether a practice is a violation of section 105(c) of the Act. This part does not attempt to enumerate all of the practices prohibited by section 105(c) of the Act. Nothing in this part shall operate to exempt any person from the requirements of any State law or regulation.

Par. 52. Section 10.4 is amended by revising paragraph (a)(1) to read as follows:

§ 10.4 Jurisdictional limits.

(a) *General.* * * *

(1) The industry member induces a trade buyer to purchase distilled spirits, wine, or malt beverages from such industry member to the exclusion, in whole or in part, of products sold or offered for sale by other persons in interstate or foreign commerce; and

Par. 47. Section 10.5 is added to subpart A to read as follows:

§ 10.5 Administrative provisions.

(a) *General.* The Act makes applicable the provisions including penalties of sections 49 and 50 of Title 15, United States Code, to the jurisdiction, powers and duties of the Director under this Act, and to any person (whether or not a corporation) subject to the provisions of law administered by the Director under this Act. The Act also provides that the Director is authorized to require, in such manner and such form as he or she shall prescribe, such reports as are necessary to carry out the powers and duties under this chapter.

(b) *Examination and subpoena.* The Director or any authorized ATF officers shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, partnership, or corporation being investigated or proceeded against. The Director shall also have the power to require by

subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation, upon a satisfactory showing that the requested evidence may reasonably be expected to yield information relevant to any matter being investigated under the Act.

(c) *Reports required by the Deputy Associate Director (Regulatory Enforcement Programs).*

(1) *General.* The Deputy Associate Director (Regulatory Enforcement Programs) may, as part of a trade practice investigation of an industry member, require such industry member to submit a written report containing information on sponsorships, advertisements, promotions, and other activities pertaining to its business subject to the Act conducted by, or on behalf of, or benefiting the industry member.

(2) *Preparation.* The report will be prepared by the industry member in letter form, executed under the penalties of perjury, and will contain the information specified by the Deputy Associate Director (Regulatory Enforcement Programs). The period covered by the report will not exceed three years.

(3) *Filing.* The report will be filed in accordance with the instructions of the Deputy Associate Director (Regulatory Enforcement Programs).

(Approved by the Office of Management and Budget under control number 1512-0392)

Par. 48. Section 10.11 is amended by adding definitions for "ATF officer," "Deputy Associate Director (Regulatory Enforcement Programs)," and "Director" as follows:

§ 10.11 Meaning of terms.

* * * * *

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Deputy Associate Director (Regulatory Enforcement Programs). The principal ATF headquarters official responsible for administering regulations in this part.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

* * * * *

Par. 49. Part 10 is amended by adding a new subpart D to read as follows: