§ 6.101 Merchandise.

(a) *General.* The act by an industry member, who is also in business as a bona fide producer or vendor of other merchandise (for example, groceries or pharmaceuticals), of selling that merchandise to a retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act, provided:

(1) The merchandise is sold at its fair market value;

(2) The merchandise is not sold in combination with distilled spirits, wines, or malt beverages (except as provided in § 6.93);

(3) The industry member's acquisition or production costs of the merchandise appears on the industry member's purchase invoices or other records; and

(4) The individual selling prices of merchandise and distilled spirits, wines, or malt beverages sold in a single transaction can be determined from commercial documents covering the sales transaction.

(b) *Things of value covered in other sections of this part.* The act by an industry member of providing equipment, fixtures, signs, glassware, supplies, services, and advertising specialties to retailers does not constitute a means to induce within the meaning of section 105(b)(3) of the Act only as provided in other sections within this part.

[T.D. ATF–364, 60 FR 20424, Apr. 26, 1995]

§ 6.102 Outside signs.

The act by an industry member of giving or selling outside signs to a retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act provided that:

(a) The sign must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed;

(b) The retailer is not compensated, directly or indirectly such as through a sign company, for displaying the signs; and

(c) The cost of the signs may not exceed $400.

[T.D. ATF–364, 60 FR 20424, Apr. 26, 1995]

Subpart E—Exclusion

SOURCE: T.D. ATF–364, 60 FR 20424, Apr. 26, 1995, unless otherwise noted.

§ 6.151 Exclusion, in general.

(a) Exclusion, in whole or in part occurs:

(1) When a practice by an industry member, whether direct, indirect, or through an affiliate, places (or has the potential to place) retailer independence at risk by means of a tie or link between the industry member and retailer or by any other means of industry member control over the retailer; and

(2) Such practice results in the retailer purchasing less than it would have of a competitor's product.

(b) Section 6.152 lists practices that create a tie or link that places retailer independence at risk. Section 6.153 lists the criteria used for determining whether other practices can put retailer independence at risk.

§ 6.152 Practices which put retailer independence at risk.

The practices specified in this section put retailer independence at risk. The practices specified here are examples and do not constitute a complete list of those practices that put retailer independence at risk.

(a) The act by an industry member of resetting stock on a retailer's premises (other than stock offered for sale by the industry member).

(b) The act by an industry member of purchasing or renting display, shelf, storage or warehouse space (*i.e.* slotting allowance).

(c) Ownership by an industry member of less than a 100 percent interest in a retailer, where such ownership is used to influence the purchases of the retailer.

(d) The act by an industry member of requiring a retailer to purchase one alcoholic beverage product in order to be allowed to purchase another alcoholic beverage product at the same time.

§ 6.153 Criteria for determining retailer independence.

The criteria specified in this section are indications that a particular practice, other than those in § 6.152, 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 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Subpart A—Scope

Subpart B—Definitions

Subpart C—Labeling Requirements for Malt Beverages

Subpart D—Requirements for Withdrawal of Imported Malt Beverages From Customs Custody

Subpart E—Requirements for Approval of Labels of Malt Beverages Domestically Bottled or Packed

Subpart F—Advertising of Malt Beverages

Subpart G—General Provisions

Subpart H—Interim Regulations for Alcoholic Content Statements

Subpart I—Use of the Term "Organic."

AUTHORITY: 27 U.S.C. 205.

SOURCE: T.D. 6521, 25 FR 13859, Dec. 29, 1960, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 7 appear by T.D. ATF–425, 65 FR 11891, Mar. 7, 2000.

Subpart A—Scope

§ 7.1 General.

The regulations in this part relate to the labeling and advertising of malt beverages.