

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 re-

tailer 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.