

**§ 10.53 Practices not resulting in exclusion. [Reserved]****§ 10.54 Criteria for determining trade buyer independence.**

The criteria specified in this section are indications that a particular practice between an industry member and an officer, employee, or representative of a trade buyer, other than those in § 10.52, places trade buyer independence at risk. A practice need not meet all of the criteria specified in this section in order to place trade buyer independence at risk.

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

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

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

(d) The trade buyer 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 trade buyer. For example, the industry member controls the trade buyer'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 trade buyer's premises.

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

**PART 11—CONSIGNMENT SALES****Subpart A—Scope of Regulations**

Sec.

- 11.1 General.
- 11.2 Territorial extent.
- 11.3 Application.
- 11.4 Jurisdictional limits.
- 11.5 Delegations of the Director.
- 11.6 Administrative provisions.

**Subpart B—Definitions**

- 11.11 Meaning of terms.

**Subpart C—Unlawful Sales Arrangements**

- 11.21 General.
- 11.22 Consignment sales.
- 11.23 Sales conditioned on the acquisition of other products.
- 11.24 Other than a bona fide sale.

**Subpart D—Rules for the Return of Distilled Spirits, Wine, and Malt Beverages**

- 11.31 General.

**EXCHANGES AND RETURNS FOR ORDINARY AND USUAL COMMERCIAL REASONS**

- 11.32 Defective products.
- 11.33 Error in products delivered.
- 11.34 Products which may no longer be lawfully sold.
- 11.35 Termination of business.
- 11.36 Termination of franchise.
- 11.37 Change in product.
- 11.38 Discontinued products.
- 11.39 Seasonal dealers.

**EXCHANGES AND RETURNS FOR REASONS NOT CONSIDERED ORDINARY AND USUAL**

- 11.45 Overstocked and slow-moving products.
- 11.46 Seasonal products.

AUTHORITY: 15 U.S.C. 49-50; 27 U.S.C. 202 and 205.

SOURCE: T.D. ATF-74, 45 FR 63258, Sept. 23, 1980, unless otherwise noted.

**Subpart A—Scope of Regulations****§ 11.1 General.**

The regulations in this part, issued pursuant to section 105 of the Federal Alcohol Administration Act (27 U.S.C. 205), specify arrangements which are consignment sales under section 105(d) of the Act and contain guidelines concerning return of distilled spirits, wine and malt beverages from a trade buyer. This part does not attempt to enumerate all of the practices prohibited by section 105(d) of the Act. Nothing in this part shall operate to exempt any person from the requirements of any State law or regulation.

[T.D. ATF-364, 60 FR 20427, Apr. 26, 1995]

**§ 11.2 Territorial extent.**

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.