Section 6.102, Outside Signs

ATF proposed a new section allowing outside signs in certain circumstances and with a \$500 limit. A few commenters opposed any change in ATF's treatment of outside signs, while others, while not opposing the proposal, expressed concern that the proposed rule did not contain adequate safeguards against abuse. These commenters recommended including various conditions and limitations in proposed § 6.102, among them:

Requiring that the product or the industry member's name appear on the sign for consistency with other exceptions under Subpart D;

Lowering the dollar limitation, though no specific amount was proposed;

Clarifying whether the word "furnished" includes leasing;

Specifying frequency with which signs may be provided;

Stating whether industry members may pool this allowance to provide a sign worth more than the dollar limitation and limiting the number of brands which may appear on a sign;

Limiting the location of the sign to the wall or roof of a building adjacent to or occupied by a retailer, or stating whether retail premises include roofs and parking lots; and

Specifying whether the industry member may pay for installation, repair and maintenance of the sign.

After a careful review of the comments, ATF has decided to adopt a modified version of §6.102 which permits signs to be given or sold on the following conditions:

(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.

These changes were made to take into account the concerns expressed by the commenters and to make this section more consistent with the rest of Subpart D. Interested parties may petition ATF in the future to reconsider the conditions under which outside signs may be provided to retailers.

27 CFR Part 8, Exclusive Outlet

New administrative provisions and definition changes were discussed previously.

Section 8.23, Third Party Arrangements

The current regulation can be interpreted to mean that a violation of the section could occur if a third party requires the retailer to use an industry

member's product without the knowledge of the industry member. ATF proposed clarifying that the industry member's requirement, by agreement or otherwise, with a third party is necessary to violate this section. However, the requirement need not originate with the industry member. If the industry member knows or is aware that the third party controlling the retailer extends such a requirement with respect to the products of the industry member making payments under the arrangement, and the industry member avails itself of such requirement, then the requirement within the proscription of the FAA Act is present.

As discussed in relation to the comments on § 6.42, ATF concurs that the industry member must know or be able to expect that the retailer will be controlled by the third party, in other words, that the industry member will have "the benefit of the deal." This is not a new position; ATF published Industry Circular 75–16 to discuss this interpretation of the exclusive outlet rules. The proposed language is adopted in the final rule.

27 CFR Part 10, Commercial Bribery

New administrative provisions and definition changes were discussed previously.

Section 10.4, Jurisdictional Limits

ATF proposed amending this section to correct the wording of paragraph (a)(1), which appeared in error in ATF TD–74 on September 3, 1980 (45 FR 63242). There were no objections, and this proposal is adopted in the final rule.

Section 10.23, Gifts or Payments to Wholesalers

While no specific change was proposed to this section, ATF asked for comments as to whether the purpose of the section should be clarified. ATF gave an example of a sales representative incentive program which it views as an instance of commercial bribery since it involves the furnishing of a premium or bonus to an employee of a trade buyer: An industry member and a trade buyer meet to discuss, among other things, upcoming programs to promote a particular product or products. They agree that specific promotions will be run over a period of time. Some of these agreed upon promotions include sales incentive programs in which sales representatives can win money and/or prizes. At the conclusion of the meeting, the parties agree or understand, or it is implied, that all or part of the funding for these sales representative incentive programs

will come from monies that have been or will be provided by the industry member, usually under the guise of unrestricted funds.

Several commenters addressed this issue, and cited ATF Ruling 77–17 as allowing the sort of promotion described in the example above. ATF disagrees with this interpretation of ATF Ruling 77–17, and notes that ATF Ruling 77–17 became obsolete when the regulations in 27 CFR Part 10 were originally issued in 1980 (T.D. ATF-74 45 FR 63251). In situations where the industry member and the trade buyer have agreed upon the promotions benefiting employees and other representatives and such promotions are funded by the industry member, it cannot be said that the money is being furnished to the entity in any context other than as a conduit for the employee or representative. No change was made to the language of § 10.23 in the final rule.

27 CFR Part 11, Consignment Sales

New administrative provisions and definition changes were discussed previously.

Section 11.24, Other than Bona Fide Sale

Section 105(d) of the Act addresses "consignment sales." Section 105(d) describes consignment sales to include conditional sales (i.e., where an industry member is not paid for products until they are sold by a trade buyer); sales with a privilege of return (i.e., where an industry member agrees to repurchase products that remain unsold by the trade buyer at the end of a specified period of time); and other sales on any basis otherwise than a bona fide sale.

Consignment sales are essentially arrangements pursuant to which the risk, or cost, of non-sale of a product is retained by an industry member, or transferred from a trade buyer back to an industry member at the expiration of a specified time period. ATF proposed adding a new §11.24 to the consignment sale regulations to specify certain other arrangements, in addition to conditional sales and sales with a privilege of return, in which the risk of non-sale is transferred from the trade buyer back to the industry member and which therefore do not constitute bona fide sales. The only example proposed was the payment of "slotting allowances," which were discussed at length earlier in this supplemental information.

After a review of the comments, ATF has decided the proposed language should be modified to include purchase