

## § 10.21

of this part by TTB Order 1135.10, Delegation of the Administrator's Authorities in 27 CFR Part 10, Commercial Bribery.

*Industry member.* Any person engaged in business as a distiller, brewer, recitifier, blender, or other producer, or as an importer or wholesaler of distilled spirits, wine or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits; industry member does not include an agency of a State or political subdivision thereof, or an officer or employee of such agency.

*Officer.* All corporate executives, including presidents, vice presidents, treasurers, and chief executive officers.

*Product.* Distilled spirits, wine or malt beverages, as defined in the Federal Alcohol Administration Act.

*Trade buyer.* Any person who is a wholesaler or retailer of distilled spirits, wine, or malt beverages.

[T.D. ATF-74, 45 FR 63257, Sept. 30, 1980, as amended by T.D. ATF-364, 60 FR 20426, Apr. 26, 1995; T.D. ATF-428, 65 FR 52020, Aug. 28, 2000; T.D. TTB-44, 71 FR 16924, Apr. 4, 2006]

## Subpart C—Commercial Bribery

### § 10.21 Commercial bribery.

It is unlawful for an industry member, directly or indirectly or through an affiliate, to induce a trade buyer to purchase the industry member's products, to the complete or partial exclusion of products sold or offered for sale by other persons in interstate or foreign commerce, by offering or giving a bonus, premium, compensation, or other thing of value to any officer, employee, or representative of the trade buyer. The bonus, premium, compensation, or other thing of value need not be offered or given for the purpose of directly inducing a trade buyer to purchase from the seller, but rather is applicable if an industry member induces officers, employees or representatives of the trade buyer to promote sales of the industry member's products and thereby indirectly induces the trade buyer to purchase from the industry member.

### § 10.22 Employee associations.

Gifts, donations, and other payments such as for advertising in publications,

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by an industry member, to trade buyer employee associations are considered the same as bonuses, premiums, compensation, or other things of value given directly to the employees, since the benefits resulting from the gifts or payments flow to the individual members of the association.

### § 10.23 Gifts or payments to wholesalers.

Although industry members are not prohibited from offering or giving money or other things of value to a wholesale entity (i.e., the corporation, partnership, or individual who owns the business), the wholesaler will be considered as acting as a mere conduit between its officers, employees, or representatives and the industry member, if:

(a) There is an agreement or understanding, implied or explicit, that the money or thing of value will be passed on to the officers, employees, or representatives, or

(b) It is obvious by the very nature of the item given (such as a free trip) that a pass through to the officers, employees, or representatives is clearly contemplated, or

(c) The records of the recipient wholesaler do not accurately reflect such money or item as an asset or the wholesale entity, thus being subject to all ensuing tax consequences as distinguished from the receipt of the money or item as a personal asset of an officer, employee, or representative.

### § 10.24 Sales promotion contests.

Sales contests sponsored by an industry member which offer prizes directly or indirectly to trade buyer officers, employees or representatives are inducements within the meaning of the Act.

## Subpart D—Exclusion

SOURCE: T.D. ATF-364, 60 FR 20427, Apr. 26, 1995, unless otherwise noted.

### § 10.51 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