

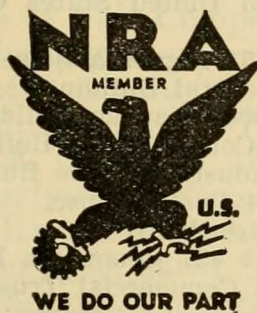
NATIONAL RECOVERY ADMINISTRATION

AMENDMENT TO
CODE OF FAIR COMPETITION

FOR THE

RETAIL TOBACCO TRADE

AS APPROVED ON APRIL 23, 1935

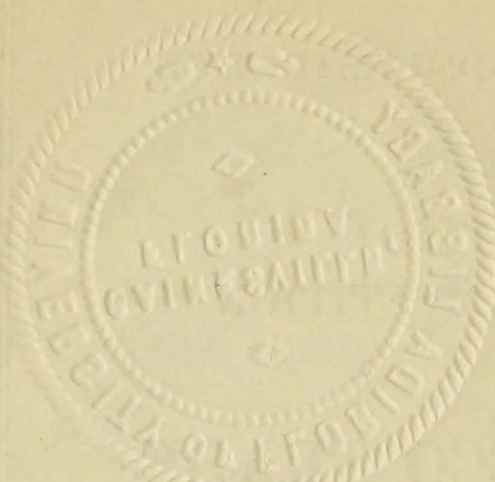


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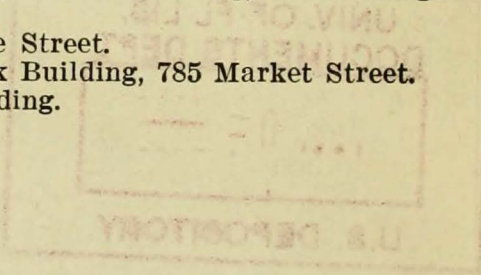
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AMENDMENT TO CODE OF FAIR COMPETITION

FOR THE

RETAIL TOBACCO TRADE

As Approved on April 23, 1935

ORDER

APPROVING AMENDMENT OF CODE OF FAIR COMPETITION FOR THE
RETAIL TOBACCO TRADE

An application having been duly made pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for the approval of an amendment to the Code of Fair Competition for the Retail Tobacco Trade, and hearings having been held thereon and the annexed report on said amendment, containing findings with respect thereto, having been made and directed to the President:

NOW, THEREFORE, on behalf of the President of the United States, the National Industrial Recovery Board, pursuant to authority vested in it by Executive Orders of the President, including Executive Order Number 6859, dated September 27, 1934, and otherwise, does hereby incorporate by reference said annexed report and does find that said amendment and the Code as constituted after being amended comply in all respects with the pertinent provisions and will promote the policy and purposes of said Title of said Act and does hereby order that said amendment be and it is hereby approved, and that the previous approval of said code is hereby modified to include an approval of said code in its entirety as amended.

NATIONAL INDUSTRIAL RECOVERY BOARD,
By W. A. HARRIMAN, *Administrative Officer*.

Approval recommended:

ARMIN W. RILEY,
Division Administrator.

WASHINGTON, D. C.,
April 23, 1935.

REPORT TO THE PRESIDENT

The PRESIDENT,
The White House.

SIR: The Code Authority for the Retail Tobacco Trade has requested that the Code of Fair Competition for said trade be amended by striking out Sections 1 and 2, Part II of Article VI and substituting in their place two new Sections.

The Sections of the Code which are being removed provide that willfully destructive price cutting is an unfair method of competition and is forbidden. Furthermore, they provide that in cases of emergency a basis for computing minimum prices on the products affected may be established upon the recommendation of the Code Authority with the approval of the National Recovery Administration.

The proposed amendment declares it to be an unfair trade practice and forbids the selling of tobacco products at less than merchandise cost. Furthermore, it defines merchandise cost of cigarettes to be the manufacturer's list price less 9.1% and the merchandise cost of other tobacco products to be the manufacturer's list price less 7.1%. In addition, the proposal states that an allowance for the cost of retail distribution, or any part thereof, may be recommended by the Code Authority and may be fixed by the National Industrial Recovery Board. If such an allowance is fixed, no member of the trade may sell at a price which does not include such allowance.

This amendment has arisen from the fact that for a considerable period of time tobacco products have been used as "loss leaders", such use occurring primarily in those establishments whose principal line of business consists in the selling of merchandise other than tobacco products. This practice resulted in destructive price cutting among members of the trade and on July 12, 1934, an emergency was declared to exist in the selling of cigarettes at retail. At that time, an Administrative Order was approved which fixed the basis for the computation of minimum retail cigarette prices. Said Order became effective on July 16, 1934, for a ninety day period. At the end of that time, it was found that the causes leading to the emergency had not been removed and the Order has subsequently been extended from time to time and is now due to terminate on April 30, 1935.

A study of this situation has revealed that the causes of this emergency do not yield to treatment on an emergency basis and are perhaps of a more permanent nature than was originally believed to be the case. Consequently, in view of the fact that the emergency Order has had a very beneficial effect upon the Retail Tobacco Trade as a whole, and particularly upon small enterprises engaged in the distribution of cigarettes, the Code Authority has deemed it necessary to so amend the Code that the principles of said emergency

Order and its effects may be continued. The Code Authority also finds that tobacco products other than cigarettes have been used extensively as "loss leaders" and consequently, the proposed amendment includes all tobacco products rather than cigarettes only.

The Deputy Administrator in his final report to the National Industrial Recovery Board on said amendment of said Code having found as herein set forth and on the behalf of all proceedings in this matter:

The National Industrial Recovery Board finds that:

(a) The Amendment of said Code and the Code as amended are well designed to promote the policies and purposes of Title I of the National Industrial Recovery Act, including the removal of obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof, and will provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, by inducing and maintaining united action of labor and management under adequate governmental sanction and supervision, by eliminating unfair competitive practices, by promoting the fullest possible utilization of the present productive capacity of industries, by avoiding undue restriction of production (except as may be temporarily required), by increasing the consumption of industrial and agricultural products through increasing purchasing power, by reducing and relieving unemployment, by improving standards of labor, and by otherwise rehabilitating industry.

(b) The Code as amended complies in all respects with the pertinent provisions of said Title of said Act, including without limitation subsection (a) of Section 3, subsection (a) of Section 7 and subsection (b) of Section 10 thereof.

(c) The Code empowers the Code Authority for the Retail Tobacco Trade to present the aforesaid amendment on behalf of the trade as a whole.

(d) The amendment and the Code as amended are not designed to and will not permit monopolies or monopolistic practices.

(e) The amendment and the Code as amended are not designed to and will not eliminate or oppress small enterprises and will not operate to discriminate against them.

(f) Those engaged in other steps of the economic process have not been deprived of the right to be heard prior to approval of said amendment.

(g) The "loss leader" practice sought to be removed by the proposed amendment results either in efforts by the tobacconist to make up the loss by charging more than a reasonable profit for other articles, or in driving the small tobacconist with little capital out of legitimate business. It works back against the tobacco grower, and the labor which he employs.

For these reasons the amendment has been approved.

For the National Industrial Recovery Board:

W. A. HARRIMAN,
Administrative Officer.

APRIL 23, 1935.

AMENDMENT TO CODE OF FAIR COMPETITION FOR THE RETAIL TOBACCO TRADE

Amend Part II of Article VI of the Code of Fair Competition for the Retail Tobacco Trade by striking out Sections 1 and 2 thereof and substituting therefor the following:

SECTION 1. *Loss Limitation Provision: Merchandise Cost.*—It is hereby declared to be an unfair trade practice, and it is hereby forbidden, to sell tobacco products, which at the time may be subject to the provisions of this Part II, at less than merchandise cost.

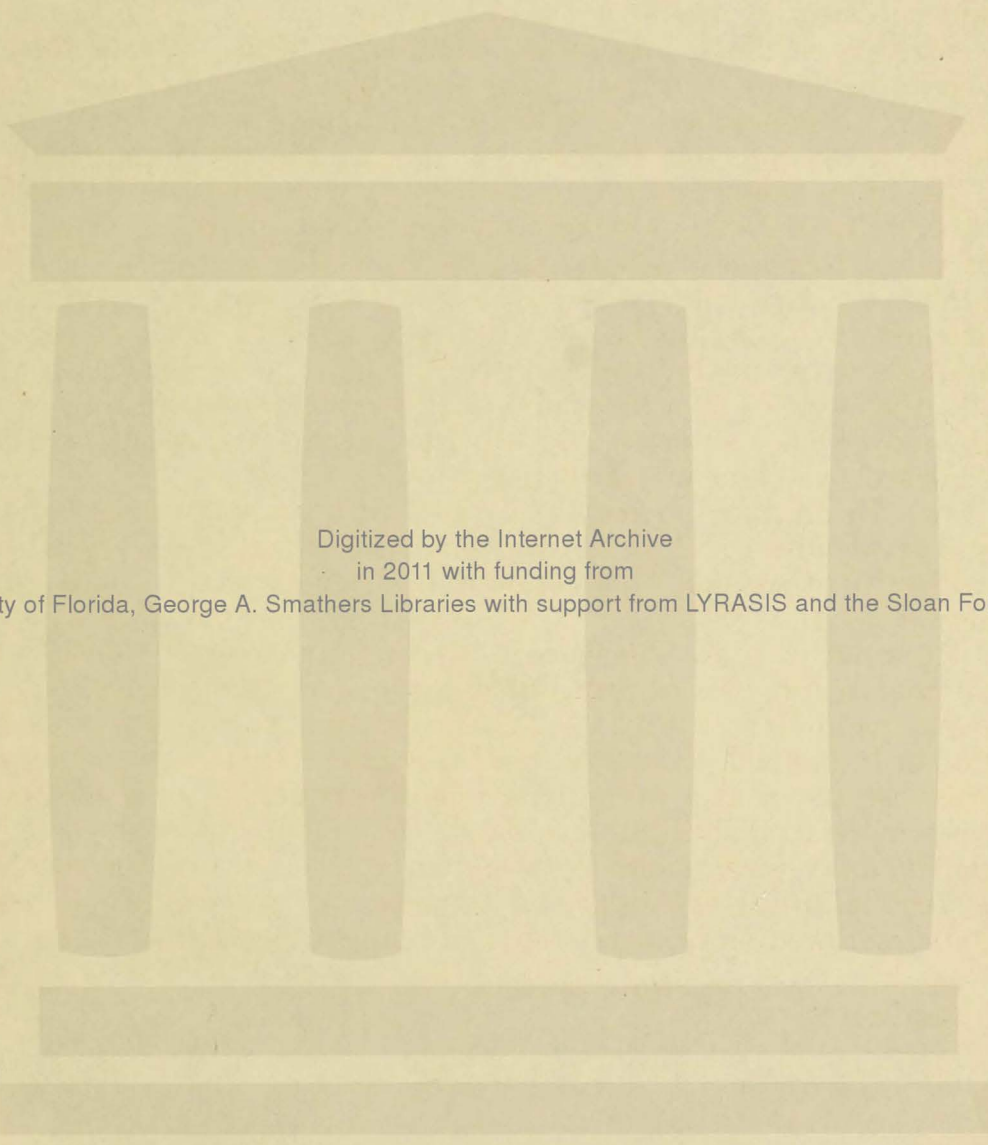
(a) Any sale of cigarettes at a price which is below the manufacturer's list price less nine and one tenth percent (9.1%), and any sale of other tobacco products, at a price which is below the manufacturer's list price less seven and one tenth percent (7.1%), shall be deemed to be a sale below merchandise cost. Any change by the manufacturer in the discount from his list price occurring after the effective date of this provision shall be translated into an equivalent change of his list price and all calculations above referred to shall be based on such equivalent list price.

(b) From time to time, the Code Authority may recommend review and reconsideration, or the National Industrial Recovery Board may cause this provision to be reviewed or reconsidered and appropriate action taken.

SECTION. 2. *Loss Limitation Provision: Distribution Costs.*—An allowance for costs of retail distribution, or any part thereof, may be recommended by the Code Authority, and may be fixed by the National Industrial Recovery Board, and thereafter no member of the trade shall sell at a price which does not include such allowance for costs of retail distribution so fixed. From time to time, the Code Authority may recommend review and reconsideration, or the National Industrial Recovery Board may cause any determination hereunder to be reviewed or reconsidered and appropriate action taken.

Approved Code No. 466—Amendment No. 1.
Registry No. 1615-30.

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