

NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION

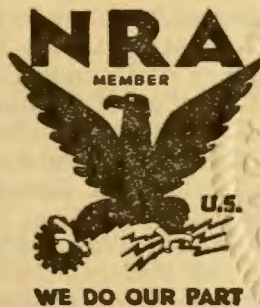
FOR THE

RETAIL TRADE

AS APPROVED ON OCTOBER 21, 1933

BY

PRESIDENT ROOSEVELT



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U.S. DEPOSITORY

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**UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1933**

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EXECUTIVE ORDER

CODE OF FAIR COMPETITION FOR THE RETAIL 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 my approval of a Code of Fair Competition for the Retail Trade, and hearings having been held thereon and the Administrator having rendered his report containing an analysis of the said code of fair competition, together with his recommendations and findings with respect thereto, and the Administrator having found that the said code of fair competition complies in all respects with the pertinent provisions of title I of said act and that the requirements of clauses (1) and (2) of subsection (a) of section 3 of said act have been met;

NOW, THEREFORE, I, Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise, do adopt and approve the report, recommendations, and findings of the Administrator and do order that the said code of fair competition be and is hereby approved.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
October 21, 1933.

Approval recommended:

HUGH S. JOHNSON,
Administrator.

(III)

NATIONAL RECOVERY ADMINISTRATION,
October 20, 1933.

The PRESIDENT,
The White House, Washington, D.C.

I. INTRODUCTION

MY DEAR MR. PRESIDENT: This is a report of the hearing on the Code of Fair Competition for the Retail Trade as proposed by the following associations:

The National Retail Furniture Association.
The National Retail Hardware Association.
Mail Order Association of America.
The National Association of Retail Clothiers & Furnishers.
The National Retail Dry Goods Association.
The National Shoe Retailers Association.
The National Council of Shoe Retailers.
The Limited Price Variety Stores.
National Association of Music Merchants.

Attached herewith is a copy of the Code as finally proposed and the Report of the Deputy Administrator.

This Code covers all the retail field except the selling of foods, tobacco, and milk, and except such other divisions of the retail trade as are now or may subsequently be governed by separate codes. Schedule A, attached to the Code, contains certain special provisions which apply only to drug retailers. Inasmuch as the drug retailers asked for a separate code, we are submitting at the same time with this Code a Code for the Retail Drug Trade which is identical in all its provisions with the provisions of the Code for the General Retail Trade, including Schedule A.

The hearing was conducted in Washington on August 22, 23, and 24. Every person who requested an appearance was heard in accordance with statutory and regulatory requirements. The Code has the approval of a substantial portion of the retail trade.

II. PRICE PROVISIONS

The general retail hearing required three full days, and during the entire period the majority of witnesses presented statements to substantiate their belief that it was imperative that regulations of a drastic nature be incorporated in the Retail Trade Code.

Retailers were insistent that the Administration should recognize their position as expressed in the Code submitted regarding the "loss limitation" provisions and "trade practice" provisions affecting selling, pricing, and advertising policies.

The Code had been given Nation-wide publicity by the sponsoring associations prior to the hearing, and the conviction that these pro-

visions must be included in the Code had become firmly entrenched in the minds of the great majority of those present, who claimed to reflect the attitude of the retailers in their respective communities.

Retailers stated that in working under the wage and hour provisions of the substitute Retail Code, which had been in effect about 30 days, operating expenses had been substantially increased due to the additions to pay rolls which required enlarged current cash outlays, and that this new burden could not be carried by tens of thousands of financially weakened concerns unless provisions for protection against predatory price cutting became effective at once.

III. LABOR PROVISIONS

The elective provisions regarding wages, work hours, and store hours suggested by the Administration were generally accepted as equitable.

The working hours may not be entirely satisfactory from a purely social viewpoint; but they represent a substantial reduction from the hours which prevailed in the retail trade. This reduction in working hours will restore employment in retailing to the 1929 level.

IV. ADMINISTRATION

The provisions for administration of this Code are capable of providing the NRA and the retail trades with sufficient data to make recommendations for the limitation of certain provisions of the Code as herewith presented and/or the addition of further provisions to this Code which would be beneficial to the trade as a whole.

The Administrator finds that—

(a) The provisions of the Code as recommended comply in all respects with the pertinent provisions of clauses one and two, subsection (a) of Section 3 of the National Industrial Recovery Act; and that

(b) The applicant group imposes no inequitable restrictions on admission to membership therein, and is truly representative of the Retail Trade; and that

(c) The provisions of the Code as recommended are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of Clauses one and two of the National Industrial Recovery Act.

It is recommended, therefore, that the provisions of this Code be adopted immediately.

Respectfully submitted,

HUGH S. JOHNSON,
Administrator.

EXECUTIVE ORDER

In order to effectuate the policy of title I of the National Industrial Recovery Act, approved June 16, 1933, and to provide for equitable enforcement of agreements heretofore made with the President and codes approved by the President under said act, I, Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by title I of said National Industrial Recovery Act, hereby prescribe the following rules and regulations which shall have the effect of modifying any inconsistent provisions of any order, approval, rule or regulation heretofore issued under title I of said act.

1. The provisions of the President's reemployment agreement, issued July 27, 1933, shall not be held to apply to employers engaged only locally in retail trade or in local service industries (and not in a business in or affecting interstate commerce) who do not employ more than five persons and who are located in towns of less than 2,500 population (according to the 1930 Federal census) which are not in the immediate trade area of a city of larger population, except so far as such employers who have signed the President's reemployment agreement desire to continue to comply with the terms of said agreement after the date of this order; and this release of such employers who have heretofore signed the President's reemployment agreement shall be further extended so as to release to the same extent all such employers of obligations not voluntarily assumed under the provisions of a code of fair competition approved by the President. This exemption is intended to relieve small business enterprises in small towns from fixed obligations which might impose exceptional hardship, but it is expected that all such enterprises will conform to the fullest extent possible with the requirements which would be otherwise obligatory upon them.

2. In view of general increases in prices which may or may not be justified in specific instances by increased costs caused by compliance with the President's reemployment agreement, or with approved codes of fair competition, the Administrator for Industrial Recovery is hereby directed to cause to be conducted such investigations as may be necessary to determine the extent to which manufacturers and producers have increased prices following, or in anticipation of, the approval of codes of fair competition, or after the signing of the President's reemployment agreement, and to set up adequate organizations for the handling of complaints against such price increases and of local complaints against retail price increases alleged to be contrary to the requirements of codes of fair competition, or the President's reemployment agreement, or in conflict with the policy of the National Industrial Recovery Act.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
October 23, 1933.

CODE OF FAIR COMPETITION FOR THE RETAIL TRADE

To effectuate the policies of Title I of the National Industrial Recovery Act the following provisions are established as a Code of Fair Competition for the Retail Trade.

ARTICLE I. APPLICATION OF CODE

SECTION 1. *Application of Code.*—The provisions of this Code, except such provisions as are included in Schedule A annexed hereto and in such other schedules as may subsequently be approved and annexed hereto, and except as hereinafter specifically provided, shall apply to all retailers and/or retail establishments engaged in the retail trade as defined in Article II hereinafter. The provisions of Schedule A and such other schedules as may subsequently be annexed hereto shall apply only to those retailers and/or retail establishments as are specifically included within the provisions of such schedules.

SECTION 2. *Request for separate Code.*—Any division of the retail trade which has not participated in the formation or establishment of this Code may make application to the Administrator to operate under a separate Code of Fair Competition. The Administrator shall determine whether such division of the retail trade shall operate under this Code or under a separate Code, and may, if justice requires, stay the application of this Code to such division pending his decision or pending the approval by the President of the United States of a Code of Fair Competition for such division.

ARTICLE II. DEFINITIONS

SECTION 1. *Retail trade.*—The term “retail trade” as used herein shall mean all selling of merchandise to the consumer and not for purposes of resale in any form, in the continental United States excluding the Panama Canal Zone. It is provided, however, that the term shall not include the selling at retail of milk and its products, tobacco and its products, and foods and foodstuffs, or the dispensing of drugs, medicines, and medical supplies by a physician, dentist, surgeon or veterinarian in the legitimate practice of his profession; and it is further provided that the term shall not include any division of retail selling (except the selling of drugs and allied products) which is now or may hereafter be governed by a separate Code of Fair Competition approved by the President of the United States.

SECTION 2. *Retailer.*—The term “retailer” as used herein shall mean any individual or organization engaged wholly or partially in the retail trade.

SECTION 3. *Establishment.*—The term “establishment” as used herein shall mean any store or department of a store, shop, stand,

or other place where a retailer carries on business, other than those places where the principal business is the selling at retail of products not included within the definition of retail trade. The term is also used herein to refer to the retailer who carries on business in such establishments.

SECTION 4. *Employee*.—The term “employee” as used herein shall mean any person employed by any retailer but shall not include persons employed principally in the selling at retail of products not included within the definition of retail trade.

SECTION 5. *Definitions of personnel*.—(a) Executive: The term “executive” as used herein shall mean an employee responsible for the management of a business or a recognized subdivision thereof.

(b) Professional person: The term “Professional person” as used herein shall mean lawyers, doctors, nurses, research technicians, advertising specialists, and other persons engaged in occupations requiring a special discipline and special attainments.

(c) Outside salesmen: The term “outside salesmen” as used herein shall mean a salesman who is engaged not less than sixty (60) percent of his working hours outside the establishment, or any branch thereof, by which he is employed.

(d) Outside collector: The term “outside collector” as used herein shall mean a collector of accounts who is engaged not less than sixty (60) percent of his working hours outside the establishment, or any branch thereof, by which he is employed.

(e) Watchmen and guards: The terms “watchmen” and “guards” as used herein shall mean employees engaged primarily in watching and safeguarding the premises and property of a retail establishment.

(f) Store detective: The term “store detective” as used herein shall mean an employee engaged exclusively in detective work.

(g) Maintenance employee: The term “maintenance employee” as used herein shall mean an employee essential to the upkeep and/or preservation of the premises and property of a retail establishment.

(h) Outside service employee: The term “outside service employee” as used herein shall mean an employee engaged primarily in delivering, installing, or servicing merchandise outside the establishment, and shall include stable and garage employees.

(i) Junior employee: The term “junior employee” as used herein shall mean an employee under eighteen (18) years of age.

(j) Apprentice employee: The term “apprentice employee” as used herein shall mean an employee with less than six (6) months’ experience in the retail trade.

(k) Part-time employee: The term “part-time employee” as used herein shall mean an employee who works for less than the maximum work week.

SECTION 6. *South*.—The term “South” as used herein shall mean Virginia, West Virginia, Maryland, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, New Mexico, Texas, and the District of Columbia.

SECTION 7. *Population*.—Population shall be determined by reference to the Fifteenth Census of the United States (U.S. Department of Commerce, Bureau of Census, 1930).

ARTICLE III. EFFECTIVE DATE

The effective date of this Code shall be the second Monday after its approval by the President of the United States.

ARTICLE IV. GENERAL LABOR PROVISIONS

SECTION 1. *Collective bargaining*.—(a) Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing.

(c) Employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

SECTION 2. *Child labor*.—On and after the effective date of this Code, no person under the age of sixteen (16) years shall be employed, except that persons fourteen (14) and fifteen (15) years of age may be employed either—

(a) for a period not to exceed three (3) hours per day on six (6) days per week, or

(b) for one day per week, such day not to exceed eight (8) hours.

In either case, all such hours of work shall be between 7 A.M. and 7 P.M. and shall not conflict with the employee's hours of day school. It is provided, however, that no person under the age of sixteen (16) years shall be employed in delivering merchandise from motor vehicles.

It is further provided that where a State law prescribes a higher minimum age no person below the age specified by such State law shall be employed within such State.

ARTICLE V. STORE HOURS AND HOURS OF LABOR

SECTION 1. *Basic store and working hours*.—On and after the effective date of this Code establishments in the retail trade shall elect to operate upon one of the following schedules of store hours and hours of labor:

Group A.—Any establishment may elect to remain open for business less than fifty-six (56) hours but not less than fifty-two (52) hours per week, unless its store hours were less than fifty-two (52) hours prior to June 1, 1933, in which case such establishment shall not reduce its store hours; no employee of these establishments shall work more than forty (40) hours per week, nor more than eight (8) hours per day, nor more than six (6) days per week.

Group B.—Any establishment may elect to remain open for business fifty-six (56) hours or more per week but less than sixty-three (63) hours per week; no employee of such establishment shall work more than forty-four (44) hours per week, nor more than nine (9) hours per day, nor more than six (6) days per week.

Group C.—Any establishment may elect to remain open for business sixty-three (63) hours or more per week; no employee of such establishment shall work more than forty-eight (48) hours per week, nor more than ten (10) hours per day, nor more than six (6) days per week.

No employee shall work for two or more establishments a greater number of hours, in the aggregate, than he would be permitted to work for that one of such establishments which operates upon the lowest schedule of working hours.

No employee not included in the foregoing paragraphs, and not specifically excepted hereinafter, shall work more than forty (40) hours per week, nor more than eight (8) hours per day, nor more than six (6) days per week.

SECTION 2. *Schedule of hours to be posted.*—On or within one week after the effective date of this Code every retail establishment shall designate under which of the Groups set forth in the preceding Section it elects to operate and shall post and maintain in a conspicuous place in the establishment a copy of such election showing its store hours and employee working hours.

SECTION 3. *Changes in store hours and employee working hours.*—

(a) No establishment may change from the Group in which it has elected to operate except upon December 31 of every year.

(b) Any establishment, however, may at any time increase its store hours, provided it maintains the basic employee work week of the Group in which it originally elected to operate.

(c) Any establishment may, for a period not to exceed three (3) months during the Summer, temporarily reduce its store hours, but the weekly wages of its employees shall not on that account be reduced.

SECTION 4. *Exceptions to maximum periods of labor.*—

(a) *Professional persons, outside salesmen, outside collectors, watchmen, guards, and store detectives.*—The maximum periods of labor prescribed in Section 1 of this Article shall not apply to professional persons employed and working at their profession, or to outside salesmen, outside collectors, watchmen, guards, and store detectives.

(b) *Maintenance and outside service employees.*—The maximum periods of labor prescribed in Section 1 of this Article shall not apply to maintenance and outside service employees; but such employees shall not work more than six (6) hours per week above the maximum hours per week otherwise prescribed by Section 1 unless they are paid at the rate of time and one-third for all hours over such additional six (6) hours per week.

(c) *Executives.*—Subject to the conditions set forth in Section 5 of this Article, executives receiving \$35.00 or more per week in cities of over 500,000 population, or receiving \$30.00 or more per week in cities of 100,000 to 500,000 population, or receiving \$27.50 or more

per week in cities of 25,000 to 100,000 population, or receiving \$25.00 or more per week in cities, towns, villages, and other places under 25,000 population, may work in excess of the maximum periods of labor prescribed in Section 1 of this Article. In the South executives paid not less than ten (10) per cent below the wages just specified may work in excess of such maximum periods.

(d) *Peak periods.*—At Christmas, inventory, and other peak times, for a period not to exceed two (2) weeks in the first six (6) months of the calendar year and not to exceed three (3) weeks in the second six (6) months, an employee whose basic work week is forty (40) hours may work not more than forty-eight (48) hours per week and nine (9) hours per day; an employee whose basic work week is forty-four (44) hours may work not more than fifty-two (52) hours per week and nine and one-half (9½) hours per day; an employee whose basic work week is forty-eight (48) hours may work not more than fifty-six (56) hours per week and ten (10) hours per day. All such work may be without the payment of overtime.

SECTION 5. *Limitation upon number of persons working unrestricted hours.*—Notwithstanding the provisions of the foregoing sections of this Article, and regardless of the number of persons otherwise permitted to work unrestricted hours, the total number of workers in any establishment (whether such workers are executives, proprietors, partners, persons not receiving monetary wages, or others) who shall be permitted to work unrestricted hours shall not exceed the following ratio: In establishments comprised of twenty (20) workers or less the total number of workers who may work unrestricted hours (not including those workers specified in Section 4 (a) of this Article) shall not exceed one worker for every five (5) workers or fraction thereof; in establishments comprised of more than twenty (20) workers the total number of workers who may work unrestricted hours (not including those workers specified in Section 4 (a) of this Article) shall not exceed one worker for every five (5) workers for the first twenty (20) workers, and shall not exceed one worker for every eight (8) workers above twenty (20).

SECTION 6. *Hours of work to be consecutive.*—The hours worked by any employee during each day shall be consecutive, provided that an interval not longer than one hour may be allowed for each regular meal period, and such interval not counted as part of the employee's working time. Any rest period which may be given employees shall not be deducted from such employee's working time.

SECTION 7. *Extra working hour on one day a week.*—On one day each week employees may work one extra hour, but such hour is to be included within the maximum hours permitted each week.

SECTION 8. *Conflict with State laws.*—When any State law prescribes for any class of employees shorter hours of labor than those prescribed in this Article, no employee included within such class shall be employed within such State for a greater number of hours than such State law allows.

ARTICLE VI. WAGES

SECTION 1. *Basic schedules of wages.*—On and after the effective date of this Code, the minimum weekly rates of wages which shall be

paid for a work week as specified in Article V—whether such wages are calculated upon an hourly, weekly, monthly, commission, or any other basis—shall, except as hereinafter provided, be as follows:

(a) *Within cities of over 500,000 population*, no employee shall be paid less than at the rate of \$14.00 per week for a forty (40) hour work week, or less than at the rate of \$14.50 per week for a forty-four (44) hour work week, or less than at the rate of \$15.00 per week for a forty-eight (48) hour work week.

(b) *Within cities of from 100,000 to 500,000 population*, no employee shall be paid less than at the rate of \$13.00 per week for a forty (40) hour work week, or less than at the rate of \$13.50 per week for a forty-four (44) hour work week, or less than at the rate of \$14.00 per week for a forty-eight (48) hour work week.

(c) *Within cities of from 25,000 to 100,000 population*, no employee shall be paid less than at the rate of \$12.00 per week for a forty (40) hour work week, or less than at the rate of \$12.50 per week for a forty-four (44) hour work week, or less than at the rate of \$13.00 per week for a forty-eight (48) hour work week.

(d) *Within cities, towns, villages of from 2,500 to 25,000 population*, the wages of all classes of employees shall be increased from the rates existing on June 1, 1933, by not less than twenty (20) percent, provided that this shall not require an increase in wages to more than the rate of \$11.00 per week and provided further that no employee shall be paid less than at the rate of \$10.00 per week.

(e) *Within towns, villages, and other places with less than 2,500 population*, the wages of all classes of employees shall be increased from the rates existing on June 1, 1933, by not less than twenty (20) percent, provided that this shall not require an increase in wages to more than the rate of \$10.00 per week.

The minimum wages paid to professional persons, outside salesmen, outside collectors, watchmen, guards, store detectives, and maintenance and outside service employees shall be upon the basis of the basic employee work week upon which the establishment by which they are employed has elected to operate.

The minimum wages of any employee not included in the foregoing paragraphs and not specifically excepted hereinafter shall be upon the basis of a forty (40) hour work week.

SECTION 2. *Juniors and apprentices.*—Junior and apprentice employees may be paid at the rate of \$1.00 less per week than the minimum wage otherwise applicable; it is provided, however, that no employee shall be classified both as a junior and as an apprentice employee, and it is further provided that the number of employees classified as junior and as apprentice employees, combined, shall not exceed a ratio of one such employee to every five employees or fraction thereof up to twenty (20), and one such employee to every ten (10) employees above twenty (20).

SECTION 3. *Southern wage differential.*—In the South, within cities of over 25,000 population, the minimum wages prescribed in the foregoing sections may be at the rate of \$1.00 less per week; within cities, towns, and villages of from 2,500 to 25,000 population the wages of all classes of employees shall be increased from the rates existing on June 1, 1933, by not less than twenty (20) percent, provided that this shall not require an increase in wages to more than the rate of

\$10.00 per week; and provided further that no employee shall be paid less than at the rate of \$9.00 per week except as provided in Section 2 of this Article; within cities, towns, villages, and other places under 2,500 population the wages of all classes of employees shall be increased from the rates existing on June 1, 1933, by not less than twenty (20) percent, provided that this shall not require an increase in wages to more than the rate of \$9.00 per week.

SECTION 4. *Part-time employees.*—Part-time employees shall be paid not less than at an hourly rate proportionate to the rates prescribed in the foregoing sections of this Article.

SECTION 5. *Weekly wages above minimum not to be reduced.*—The weekly wages of all classes of employees receiving more than the minimum wages prescribed in this Article shall not be reduced from the rates existing upon July 15, 1933, notwithstanding any reduction in the number of working hours of such employees.

SECTION 6. *Conflict with State laws.*—When any State law prescribes for any class of employees of either sex a higher minimum wage than that prescribed in this Article, no employee of such class of either sex employed within that State shall be paid less than such State law requires.

ARTICLE VII. LIMITATIONS UPON PRICE INCREASES; PRIOR CONTRACTS

SECTION 1. *Limitation upon price increases.*—No retailer shall increase the price of any merchandise sold after the effective date of this Code over the price existing June 1, 1933, by more than is made necessary by the amount of increases in production, operating, replacement, and/or invoice costs of merchandise, and/or by taxes or other costs resulting from action taken pursuant to the National Industrial Recovery Act and/or the Agricultural Adjustment Act since June 1, 1933, and in setting such price increases retailers shall give full weight to probable increases in sales volume. It is provided, however, that if any price on June 1, 1933, was a distress price, an equitable adjustment may be made.

SECTION 2. *Adjustment of prior contracts.*—Where costs of executing contracts entered into before June 16, 1933, by any retailer for the purchase of goods at fixed prices for delivery during the duration of this Code are increased by the application of the provisions of the National Industrial Recovery Act and/or the Agricultural Adjustment Act, it is deemed equitable and promotive of the purposes of the Act that appropriate adjustments of such contracts to reflect such increased costs actually incurred be arrived at by mutual agreement or arbitral proceedings or otherwise, and the National Retail Trade Council provided for in Article I hereinafter is constituted an agency to assist in effecting such adjustments.

ARTICLE VIII. LOSS LIMITATION PROVISION

SECTION 1. *Loss limitation provision.*—In order to prevent unfair competition against local merchants, the use of the so-called "loss leader" is hereby declared to be an unfair trade practice. These "loss leaders" are articles often sold below cost to the merchant for the purpose of attracting trade. This practice results, of course,

either in efforts by the merchant to make up the loss by charging more than a reasonable profit for other articles, or else in driving the small merchant with little capital out of legitimate business. It works back against the producer of raw materials on farms and in industry and against the labor so employed.

1. This declaration against the use of "loss leaders" by the storekeeper does not prohibit him from selling an article without any profit to himself. But the selling price of articles to the consumer should include an allowance for actual wages of store labor, to be fixed and published from time to time by the Trade Authority hereinafter established.

2. Such an allowance for labor need not be included in the selling price of any article of food, or be applied by storekeepers doing business only in communities of less than 2,500 population (according to the 1930 Census) which are not part of a larger trade area.

Provided, however, That any retailer may sell any article of merchandise at a price as low as the price set by any competitor in his trade area on merchandise which is identical or essentially the same, if such competitor's price is set in conformity with the foregoing provision. A retailer who thus reduces a price to meet a competitor's price as above defined shall not be deemed to have violated the provisions of this section if such retailer immediately notifies the nearest representative retail trade organization of such action and all facts pertinent thereto.

SECTION 2. *Exceptions.*—(a) Notwithstanding the provisions of the preceding Section, any retailer may sell at less than the prices specified above, merchandise sold as bona fide clearance, if advertised, marked, and sold as such; highly perishable merchandise, which must be promptly sold in order to forestall loss; imperfect or actually damaged merchandise, or bona fide discontinued lines of merchandise, if advertised, marked, and sold as such; merchandise sold upon the complete final liquidation of any business; merchandise sold in quantity on contract to public carriers, departments of government, hospitals, schools and colleges, clubs, hotels, and other institutions, not for resale and not for redistribution to individuals; merchandise sold or donated for charitable purposes or to unemployment relief agencies; and drugs or drug sundries sold to physicians, nurses, dentists, veterinarians, or hospitals.

(b) Nothing in the provisions of the preceding Section shall be construed to prevent bona fide farmers' associations engaged in purchasing supplies and/or equipment for their membership from making patronage refunds to their membership.

(c) Where a bona fide premium or certificate representing a share in a premium is given away with any article the base upon which the minimum price of the article is calculated shall include the cost of the premium or share thereof.

ARTICLE IX. TRADE PRACTICES

All retailers shall comply with the following trade practices:

SECTION 1. *Advertising and selling methods.*—(a) No retailer shall use advertising, whether printed, radio, or display or of any other nature, which is inaccurate in any material particular or misrepres-

sents merchandise (including its use, trade-mark, grade, quality, quantity, size, origin, material, content, preparation, or curative or therapeutic effect) or credit terms, values, policies, or services; and no retailer shall use advertising and/or selling methods which tend to deceive or mislead the customer.

(b) No retailer shall use advertising which refers inaccurately in any material particular to any competitor or his merchandise, prices, values, credit terms, policies, or services.

(c) No retailer shall use advertising which inaccurately lays claim to a policy or continuing practice of generally underselling competitors.

(d) No retailer shall secretly give anything of value to the employee or agent of a customer for the purpose of influencing a sale, or in furtherance of a sale render a bill or statement of account to the employee, agent, or customer which is inaccurate in any material particular.

(e) No retailer shall place obstacles in the way of the purchase of a product which a consumer orders by brand name by urging upon the consumer a substitute product in a manner which disparages the product ordered.

SECTION 2. *N.R.A. label*.—No retailer shall purchase, sell, or exchange any merchandise manufactured under a Code of Fair Competition which requires such merchandise to bear an N.R.A. label, unless said merchandise bears such label. Any retailer rightfully possessing the insignia of the N.R.A. who has in stock or purchases similar merchandise which has been manufactured before the effective date of the Code of Fair Competition requiring such merchandise to bear an N.R.A. label may attach thereto the N.R.A. insignia.

SECTION 3. *Prison-made goods*.—Pending the formulation of a compact or code between the several States of the United States to insure the manufacture and sale of prison-made goods on a fair competitive basis with goods not so produced, the following provisions of this Section will be stayed for ninety (90) days, or further at the discretion of the Administrator:

(a) Where any penal, reformatory, or correctional institution, either by subscribing to the code or compact hereinbefore referred to, or by a binding agreement of any other nature, satisfies the Administrator that merchandise produced in such institution or by the inmates thereof will not be sold except upon a fair competitive basis with similar merchandise not so produced, the provisions of paragraph (b) hereof shall not apply to any merchandise produced in such manner in the institutions covered by such agreement.

(b) Except as provided in the foregoing paragraph, no retailer shall knowingly buy or contract to buy any merchandise produced in whole or in part in a penal, reformatory, or correctional institution. After May 31, 1934, no retailer shall knowingly sell or offer for sale such merchandise. Nothing in this Section, however, shall affect contracts, which the retailer does not have the option to cancel, made with respect to such merchandise before the approval of this Code by the President of the United States.

(c) Nothing in this Section shall be construed to supersede or interfere with the operation of the Act of Congress approved January 19, 1929, being Public No. 669 of the 70th Congress and en-

titled "An Act to Divest Goods, Wares, and Merchandise Manufactured, Produced or Mined by Convicts or Prisoners of their Interstate Character in Certain Cases", which Act is known as the Hawes-Cooper Act, or the provisions of any State legislation enacted under, or effective upon, the effective date of the said Hawes-Cooper Act, the said effective date being January 19, 1934.

SECTION 4. *Company scrip*.—The following provisions of this Section shall not become effective until March 1, 1934. Pending such effective date the Administrator shall appoint a Committee of not more than three persons to investigate the economic and social implications of these provisions. Said Committee may make recommendations, based upon its investigations, and such recommendations shall, upon approval by the President of the United States, become effective in the place of these provisions:

(a) No retailer shall accept as payment for merchandise any non-negotiable scrip, company checks, or other evidence of wage payment issued by any individual or private profit organization in payment of wages or as an advance upon unearned wages. A negotiable instrument issued by any individual or private profit organization in payment of wages shall be accepted only if it is payable in cash within one month of the date of issue. This paragraph shall not apply in cases where the cash funds of any individual or organization are rendered temporarily unavailable due to the closing by state or federal order of the bank in which such funds are deposited.

(b) No retailer shall extend credit in the form of goods, money, or services to any person other than its own employees engaged exclusively in the retail trade, upon any employer's guarantee of part or all of said person's future wages, or pursuant to a wage-deduction arrangement entered into with said employer, unless an identical guarantee or wage-deduction arrangement is available to all retailers.

ARTICLE X. ADMINISTRATION

The following provisions for the administration of this Code shall not apply to the retail drug trade, which shall be governed by the provisions of Section 5 of Schedule A annexed hereto.

SECTION 1. *Retail Trade Authority*.—The Retail Trade Authority shall consist of the Administrator or his Deputy, and three members appointed by the President of the United States, who shall advise and assist the Administrator or his Deputy. Members of the Retail Trade Authority shall be members, without vote, of the National Retail Trade Council provided for hereinafter.

SECTION 2. *National Retail Trade Council*.—(a) *Composition*.—The National Retail Trade Council shall consist of at least one, but not more than three, representatives from each major division of the retail trade presenting this Code or hereafter subscribing to it, as the Administrator shall designate.

Such representatives shall be elected, in accordance with a fair method approved by the Administrator, by the national trade associations representing the above divisions of the retail trade. Where more than one national trade association each represents a portion of a single division of the retail trade, the Administrator shall, for the purpose of establishing the membership of the National Retail

Trade Council in the first instance, determine whether such associations are truly representative and what shall be the number and proportionate vote of such associations upon the Council; after the initial establishment of the Council such decisions shall be made by the Council subject to an appeal to the Administrator. Regardless of the number of its representatives, each division of the retail trade shall have one vote in all action taken by the National Retail Trade Council.

(b) *General powers.*—The National Retail Trade Council shall, in addition to the specific powers herein conferred, have all general powers necessary to assist the Administrator or his Deputy in the administration and enforcement of this Code.

(c) *Reports and investigations.*—The National Retail Trade Council shall, subject to the approval or upon the request of the Administrator, require from all retailers such reports as are necessary to effectuate the purposes of this Code, and may, upon its own initiative or upon complaint of any person affected, make investigation as to the functioning and observance of any provisions of the Code and report the results of such investigation to the Administrator.

(d) *Recommendations.*—The National Retail Trade Council may from time to time present to the Administrator recommendations (including interpretations) based on conditions in the trade, which will tend to effectuate the operation of the provisions of this Code and the Policy of the National Industrial Recovery Act. Such recommendations shall, upon approval by the Administrator, become operative as part of this Code.

(e) *Local committees.*—The National Retail Trade Council shall, subject to the approval of the Administrator, supervise the setting up, within local trading areas, of local committees for the purpose of assisting in the administration and enforcement of this Code within such local areas.

(f) *Expenses.*—The expenses of the National Retail Trade Council shall be equitably assessed and collected by the Council, subject to the approval of the Administrator.

SECTION 3. *Regional Advisory Committee.*—The National Retail Trade Council shall, subject to the approval of the Administrator, appoint annually a Regional Advisory Committee consisting of one member appointed from and representing each major geographical section of the country as established by Federal Reserve Districts. It shall be the function of the Regional Advisory Committee to serve in an advisory capacity to the Administrator and to the National Retail Trade Council on matters pertaining to the administration of this Code in the respective districts. The Committee shall meet subject to the call of the Administrator, the National Retail Trade Council, or the Committee's chairman.

SECTION 4. *National Retail Trade Economics Board.*—The National Retail Trade Economics Board shall consist of five (5) members appointed by the President of the United States or by the Administrator. Such Board shall observe and study the economic effects and results of the various provisions of this Code and shall report from time to time to the Administrator.

SECTION 5. *Interpretations.*—The Administrator may from time to time, after consultation with the National Retail Trade Council, issue such administrative interpretations of the various provisions of this Code as are necessary to effectuate its purposes, and such interpretations shall become operative as a part of this Code, unless the Administrator shall otherwise specify.

SECTION 6. *Exceptions in cases of unusual or undue hardship.*—Where the operation of the provisions of this Code impose an unusual or undue hardship upon any retailer or group of retailers, such retailer or group of retailers may make application for relief to the Administrator or to his duly authorized agent, and the Administrator or his agent may, after such public notice and hearing as he may deem necessary, grant such exception to or modification of the provisions of this Code as may be required to effectuate the purpose of the National Industrial Recovery Act.

ARTICLE XI. GENERAL

SECTION 1. *Membership in associations.*—Membership in the national retail associations represented upon the National Retail Trade Council, or in any affiliated associations, shall be open to all retailers of that portion of the retail trade which said associations respectively represent and said associations shall impose no inequitable restrictions upon admission to membership therein.

SECTION 2. *Information to be furnished Government agencies.*—In addition to information required to be submitted to the National Retail Trade Council, there shall be furnished to Government agencies such statistical information as the Administrator may deem necessary for the purposes recited in Section 3 (a) of the National Industrial Recovery Act.

SECTION 3. *Prohibition against monopolies.*—The provisions of this Code shall not be interpreted or applied to promote monopolies or monopolistic practices or to eliminate or oppress small enterprises or to discriminate against them.

SECTION 4. *Prohibition against use of subterfuge.*—No retailer shall use any subterfuge to frustrate the spirit and intent of this Code, which is, among other things, to increase employment by universal covenant, to remove obstructions to commerce, to shorten hours of work, and to raise wages to a living basis.

SECTION 5. *Right of President to cancel or modify.*—This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provisions of Section 10 (b) of Title I of the National Industrial Recovery Act, from time to time to cancel or modify any order, approval, license, rule, or regulation, issued under Title I of said Act.

SECTION 6. *Modifications and supplementary provisions.*—Such of the provisions of this Code as are not required to be included herein by the National Industrial Recovery Act may, with the approval of the President, be modified or eliminated as changes in conditions or experience may indicate. It is contemplated that from time to time supplementary provisions to this Code or additional Codes will be

submitted for the approval of the President to prevent unfair competitive practices and to effectuate the other purposes and policies of Title I of the National Industrial Recovery Act.

SECTION 7. *Expiration.*—This Code shall continue in effect until June 16, 1935, or the earliest date prior thereto on which the President shall by proclamation, or the Congress shall by joint resolution, declare that the emergency recognized by Section 1 of the National Industrial Recovery Act has ended.

SCHEDULE A

SUPPLEMENTAL PROVISIONS APPLICABLE TO RETAIL DRUG ESTABLISHMENTS AND TO ALL RETAILERS DEALING IN DRUGS AND ALLIED PRODUCTS

In addition to the foregoing provisions of this Code, the following supplemental provisions shall apply to retail drug establishments and to all retailers dealing in drugs and allied products.

SECTION 1. DEFINITIONS

(1) *Retail drug trade.*—The term “retail drug trade” as used herein shall mean all selling to the consumer and not for the purpose of resale in any form of drugs, medicines, cosmetics, toilet preparations, drug sundries, and/or allied items, in the continental United States excluding the Panama Canal Zone. It is provided, however, that the term “retail drug trade” shall not include the dispensing of drugs, medicines, and medical supplies by a physician, dentist, surgeon, or veterinarian in the legitimate practice of his profession.

(2) *Drug retailer.*—The term “drug retailer” as used herein shall mean any individual or organization engaged wholly or partially in the retail drug trade.

(3) *Retail drug establishment.*—The term “retail drug establishment” as used herein shall mean any store or department of a store engaged in the retail drug trade, but shall not include stores or departments in which the principal business is the selling at retail of products other than drugs, medicines, cosmetics, toilet preparations, drug sundries, and/or allied items.

(4) *Drugs.*—The term “drug” as used herein shall mean all medicinal substances and preparations recognized in the United States Pharmacopoeia and National Formulary or any supplements thereto, and all substances and preparations intended for external or internal use in the cure, mitigation, treatment, or prevention of disease in man or other animals, and all substances and preparations other than food (but including medicinal or quasi-medicinal preparations, such as those sold or produced primarily for their vitamin content), intended to affect the structure or any function of the body of man or other animals.

(5) *Cosmetics and toilet preparations.*—The term “cosmetics” and the term “toilet preparations” as used herein shall mean toilet articles and perfumes, toilet waters, face powders, face creams, rouges, shaving creams, dentifrices, soaps, and similar substances and preparations designed and intended for application to the person for the purpose of cleansing, improving the appearance of, refreshing or preserving the person.

(6) *Drug sundries.*—The term “drug sundries” as used herein shall mean such articles as are used in conjunction with but not included in “drugs”, “cosmetics”, or “toilet preparations”.

(7) *Registered pharmacist, assistant pharmacist, apprentice pharmacist.*—The terms “registered pharmacist”, “assistant pharmacist”, and “apprentice pharmacist”, as used herein shall have the meaning given to them under the laws of the respective states of the United States and of Alaska.

(8) *Curb boys or girls.*—The term “curb boys or girls” as used herein shall mean employees engaged exclusively in serving curb customers.

SECTION 2. STORE HOURS AND HOURS OF LABOR

(1) *Group D, for retail drug establishments.*—In place of any of the schedules of store hours and hours of labor set forth in Article V, Section 1, retail drug establishments may elect to remain open for business seven (7) days a week for a total of eighty-four (84) hours or more per week, but on no day for less than eight (8) hours; no employee of such establishment, except as provided in Article V, Sections 4 and 5, shall work more than fifty-six (56) hours per week, nor more than ten (10) hours per day, nor more than thirteen (13) days in any two consecutive weeks.

(2) *Exception in case of pharmacists.*—The maximum hours of labor prescribed in Article V and in paragraph (1) of this Section shall not apply to registered pharmacists, assistant pharmacists, and apprentice pharmacists, employed and working as such, who may work ten (10) percent above the maximum hours otherwise applicable, or more in cases of emergency.

SECTION 3. WAGES

(1) *Basic rates for retail drug establishments electing to operate in Group D.*—No employee of a retail drug establishment which has elected to operate in Group D as set forth above, shall, except as provided in Article VI, Sections 2 and 3, be paid for a fifty-six (56) hour work week less than at the rate of \$16.00 per week in cities of over 500,000 population, or less than at the rate of \$15.00 per week in cities of from 100,000 to 500,000 population, or less than at the rate of \$14.00 per week in cities of from 25,000 to 100,000 population; in cities, towns, and villages of from 2,500 to 25,000 population, the wages of all classes of employees of such establishments shall be increased from the rates existing on June 1, 1933, by not less than twenty (20) per cent, provided that this shall not require an increase in wages to more than the rate of \$11.00 per week, and provided further that no employee shall be paid less than at the rate of \$10.00 per week; in towns, villages, and other places with less than 2,500 population, the wages of all classes of employees of such establishments shall be increased from the rates existing on June 1, 1933, by not less than twenty (20) percent, provided that this shall not require an increase in wages to more than the rate of \$10.00 per week.

(2) *Exception for establishments employing curb boys or girls.*—The minimum wages prescribed in Article VI and paragraph (1) of this Section may not apply to curb boys or girls employed by retail drug establishments when such employees are paid upon a commission basis.

SECTION 4. TRADE PRACTICES

In addition to the trade practices set forth in Article IX, all drug retailers shall comply with the following:

(a) No drug retailer shall substitute another article or any part thereof for the kind ordered, without due notice to and consent of the customer.

(b) No drug retailer shall advertise to fill prescriptions at a uniform price irrespective of cost of ingredients or quantity prescribed.

(c) No drug retailer shall permit any demonstrator or sales employee, whose salary is wholly or partially paid by a manufacturer or distributor, to work in his establishment unless such demonstrator or sales employee is clearly and openly identified as the agent of such manufacturer or distributor.

SECTION 5. ADMINISTRATION

The administration of this Code, including this Schedule, insofar as it relates to the retail drug trade shall be governed by the following provisions:

(1) *Retail Drug Trade Authority.*—The Retail Drug Trade Authority shall consist of the Administrator or his deputy, and three members appointed by the President of the United States, who shall advise and assist the Administrator or his Deputy. Members of the Retail Drug Trade Authority shall be members, without vote, of the National Retail Drug Trade Council, provided for hereinafter.

(2) *National Retail Drug Trade Council.*—(a) *Composition.*—The National Retail Drug Trade Council shall consist of one representative from the American Pharmaceutical Association, one representative from the Drug Institute of America, Incorporated, two representatives from the National Association of Retail Druggists, and such representation from any national association of the retail drug trade as may be approved by the Administrator.

Such representatives shall be elected, in accordance with a fair method approved by the Administrator, by the respective national trade associations.

(b) *General powers.*—The National Retail Drug Trade Council shall in addition to the specific powers herein conferred, have all general powers necessary to assist the Administrator or his deputy in the administration and enforcement of this Code insofar as it relates to the retail drug trade.

(c) *Reports and investigations.*—The National Retail Drug Council shall, subject to the approval or upon the request of the Administrator, require from all drug retailers such reports as are necessary to effectuate the purposes of this Code insofar as it relates to the retail drug trade, and may, upon its own initiative or upon complaint of any person affected, make investigation as to the functioning and observance of any provisions of the Code relating to the retail drug trade and report the results of such investigation to the Administrator.

(d) *Recommendations.*—The National Retail Drug Trade Council may from time to time present to the Administrator recommendations (including interpretations), based on conditions in the retail drug trade, which will tend to effectuate the operation of the provisions of this Code, and the policy of the National Industrial Recovery Act. Such recommendations shall, upon approval by the Administrator, become operative as part of this Code.

(e) *Local committees.*—The National Retail Drug Trade Council shall, subject to the approval of the Administrator, supervise the setting up within local trading areas of local committees for the purpose of assisting in the administration and enforcement of this Code within such local areas insofar as it relates to the retail drug trade.

(f) *Expenses.*—The expenses of the National Retail Drug Trade Council shall be equitably assessed and collected by the Council, subject to the approval of the Administrator.

(3) *Interpretations.*—The Administrator may from time to time, after consultation with the National Retail Drug Trade Council, issue such administrative interpretations of the various provisions of this Code relating to the retail drug trade as are necessary to effectuate its purposes, and such interpretations shall become operative as part of this Code unless the Administrator shall otherwise specify.

(4) *Exceptions in cases of unusual or undue hardship.*—Where the operation of the provisions of this Code imposes an unusual or undue hardship upon any drug retailer or group of drug retailers, such drug retailer or group of drug retailers may make application for relief to the Administrator or to his duly authorized agent, and the Administrator or his agent may, after such public notice and hearing as he may deem necessary, grant such exception to or modification of the provisions of this Code as may be required to effectuate the purposes of the National Industrial Recovery Act.



