

NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION

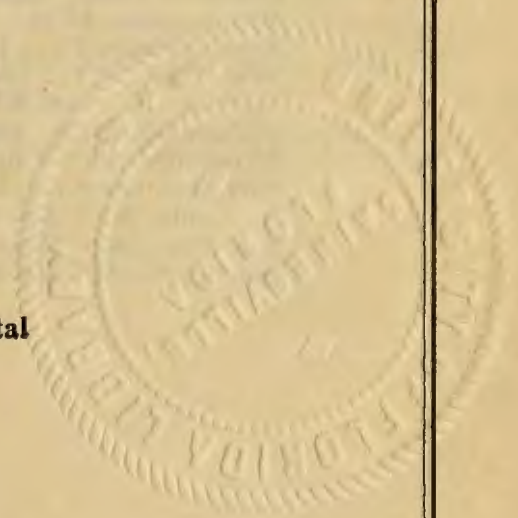
FOR THE

**CANNING AND PACKING
MACHINERY INDUSTRY**

AS APPROVED ON OCTOBER 31, 1933

BY

PRESIDENT ROOSEVELT



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U.S. DEPOSITORY

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(II)

EXECUTIVE ORDER

CODE OF FAIR COMPETITION FOR THE CANNING AND PACKING MACHINERY INDUSTRY

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 Canning and Packing Machinery Industry, and hearings having been held thereon and the Administrator having rendered his report containing an analysis of the said code 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 the 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 31, 1933.

Approval recommended:

HUGH S. JOHNSON,
Administrator.

(III)

OCTOBER 23, 1933.

The PRESIDENT,
The White House.

SIR: This is a report of the hearing on the Code of Fair Competition for the Canning and Packing Machinery Industry in the United States, conducted in Washington on October 11, 1933, in accordance with the provisions of the National Industrial Recovery Act.

PROVISIONS AS TO WAGES AND HOURS

No person under eighteen (18) years of age shall be employed on work of a hazardous nature, and no person under sixteen (16) years of age shall be employed in this industry.

A minimum wage rate of 40 cents per hour is established for factory employees unless the rate on July 15, 1929 was lower, in which case the rate per hour shall not be less than the rate then paid, provided, however, that in no event shall the rate be less than 32 cents per hour.

The minimum wage paid to any other employee shall not be less than \$15.00 per week in any city or trade area of over 500,000 population; not less than \$14.50 in any city or trade area of between 250,000 and 500,000 population; and not less than \$14.00 in cities or towns of less than 250,000 population.

Office boys and girls, not exceeding 5 percent in number of the total office force of any employer, may be paid not less than 80 percent of the minimum weekly wage.

Existing wage differentials above the minimum shall be maintained as far as practicable, and in no case shall the wage rate, whether on an hourly, weekly, or monthly basis be reduced.

Existing or future apprenticeship contracts shall be filed with the Code Authority.

40 hours is established as the maximum week.

Exceptions cover executives, professional persons, heads of administrative departments, technical engineers, and the immediate assistants of all the foregoing classifications, factory and office supervisory staffs, who receive more than \$35.00 per week, outside service men, salesmen, and watchmen, provided that watchmen shall in no case work more than 56 hours during any one week.

It is further provided that in case of emergency when delay would result in the loss of perishable animal, fruit, or vegetable products a tolerance of 20 percent over 40 hours may be worked, but such extra time must be averaged down to 40 hours during any six months' period.

Emergency installation and stores service employees during the canning season are permitted to work extra hours and if the available supply of skilled employees in any particular area is absorbed, such

departments as may be affected may also be permitted to exceed the schedule.

Shipping clerks, stock clerks, and firemen are allowed a tolerance of 10 percent.

ECONOMIC EFFECT OF THIS CODE

This industry is operating at about 30 percent of capacity and has suffered severely during the depression. Employment will be increased at least 20 percent and pay rolls increased approximately 27 percent. This is effected through operating on the shortened schedule of hours provided in this Code. Under normal conditions the industry has worked as high as 60 hours per week during peak production with annual averages of 45 hours per week.

Very little machinery can be built for stock and a large proportion must be assembled under emergency conditions, sales of new equipment to a large extent depending on any surplus vegetable, fruit, or animal products which might otherwise deteriorate.

FINDINGS

The Administrator finds that:

(a) The Code as recommended complies in all respects with the pertinent provisions of Title I of the Act, including, without limitation, subsection (a) of section 7 and subsection (b) of section 10 thereof; and that

(b) The applicant group imposes no inequitable restrictions on admission to membership therein and is truly representative of the Canning and Packing Machinery Industry; and that

(c) The Code as recommended is 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 Title I of the National Industrial Recovery Act.

It is recommended, therefore, that this Code be approved.

Respectfully,

HUGH S. JOHNSON,
Administrator.

CODE OF FAIR COMPETITION FOR THE CANNING AND PACKING MACHINERY INDUSTRY

ARTICLE I—PURPOSE

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 Canning and Packing Machinery Industry and shall be binding upon every member thereof.

ARTICLE II—DEFINITIONS

“Industry” as used herein means the Canning and Packing Machinery Industry, which embraces the manufacture for sale or sale in the open market and within the United States of America or its territories of canning machinery used for the preparation and processing of foods for human or animal consumption; machinery used for the manufacture of cans and containers for such foods; machinery used for the preparation and packing of fresh fruits and vegetables; machinery used for the dressing, processing, and packing of animal, poultry, and fish products, whether intended for final sale in fresh, frozen, or canned form; and machinery used for the processing and packing of dried or dehydrated fruits and vegetables and parts thereof.

The term “employee” as used herein includes anyone engaged in the industry in any capacity receiving compensation for his services, irrespective of the nature or method of payment of such compensation.

The term “employer” as used herein includes anyone by whom any such employee is compensated or employed.

The term “member of the industry” includes anyone engaged in the industry as above defined, either as an employer or on his own behalf.

The terms “President”, “Act”, and “Administrator” as used herein shall mean respectively the President of the United States, the National Industrial Recovery Act, and the Administrator of said Act.

Population for the purposes of this Code shall be determined by reference to the 1930 Federal Census.

The term “Institute” as used herein means the Canning and Packing Machinery Institute, or any committee, or section thereof, to whom it has delegated authority.

The term “Code Authority” as used herein means the supervising and administering body charged with representing the Industry and the Administrator in promulgating the rules governing the operation of the Industry under this Code.

The term “effective date” as used herein means the eleventh day after the approval of this Code by the President.

ARTICLE III—EMPLOYMENT

(a) (1) 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; (2) 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; and (3) employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

(b) This Code establishes a minimum rate of pay, regardless of whether an employee is compensated on a time-rate, piece-work, or other basis.

(c) Female employees performing substantially the same work as male employees shall receive the same rates of pay as male employees.

(d) No employer shall engage any employee for any time which, when totaled with that already performed with another employer, or employers, exceeds the maximum permitted herein.

(e) No employer shall operate on other than a schedule of 6 days work in seven except in cases of emergency.

(f) Within each State this Code shall not supersede any laws of such State imposing more stringent requirements on employer regulating the age of employees, wages, hours of work, or health, fire, or general working conditions than under this Code.

(g) Employers shall not reclassify employees or duties of occupations performed by employees so as to defeat the purposes of the Act.

(h) Each employer shall post in conspicuous places full copies of this Code.

ARTICLE IV—MINORS

No person under sixteen (16) years of age shall be employed by any employer and where State laws require higher wages or shorter hours of employment, such requirements shall be complied with in such States. No minor under the age of eighteen (18) years shall be employed on any power-driven, wood-working or metal-working machinery or in hot or cold forging processes or in any other occupation determined by the Code Authority to be hazardous provided, however, that on complaint the Administration may review and disapprove or modify such determination.

ARTICLE V—WAGES

(a) On and after the effective date the minimum wage that shall be paid by any employer to any factory employee engaged in the Industry, and in labor operations directly incident thereto, shall be not less than forty (40) cents per hour unless the rate per hour for the same class of labor on July 15, 1929, was less than forty (40)

cents in which case the rate per hour paid shall be not less than the rate per hour paid on July 15, 1929, and provided that in no event shall the rate per hour paid be less than thirty-two (32) cents per hour.

(b) On and after the effective date, the minimum wage that shall be paid by any employer, to all other employees shall be not less than fifteen dollars (\$15) per week in any city of over 500,000 population or in the immediate trade area of such city, nor less than fourteen and a half dollars (\$14.50) per week in any city of between 250,000 and 500,000 population or in the immediate trade area of such city, nor less than fourteen dollars (\$14) per week in any city or town of less than 250,000 population or in the immediate trade area of such city or town.

Provided, however, that office boys or girls (other than apprentices) may be paid not less than eighty (80) percent of such minimum wage, but the total number of such office boys or girls at such reduced rate shall not exceed in any calendar month five (5) percent of the total number of all employees covered by the provisions of this paragraph (b), provided that each employer may employ a minimum of one office boy or girl.

(c) To the extent practicable, the wage rates, whether on an hourly, weekly, monthly, or piecework basis, of employees receiving more than the minimum wage rates shall be equitably adjusted, and in no case shall the aforesaid wage rate and/or rates be decreased as a result of this adjustment of hours, so that existing differentials shall be maintained and, to the extent practicable, recognition shall be given to the desirability of maintaining earnings, provided such adjustment has not already been made since June 16, 1933; further, each employer shall report action taken under this section to the Code Authority.

(d) Nothing in this Article V shall apply to, or affect, any employee apprenticed to any employer by an indenture made in pursuance of the laws of any state of the United States, or by a written contract under any apprentice system established and maintained by any employer, provided such agreements are, and each additional agreement as made is, filed with the Code Authority, and provided that this exception shall apply to such employees only during the period that they are receiving less than the minimum rate.

(e) Any employee who, by reason of disability or infirmity, is competent only for light employment shall be paid not less than eighty (80) percent of the minimum wage referred to in paragraph (a) of this Article V, provided that a record of each case shall be filed with the Code Authority.

ARTICLE VI—HOURS

SECTION 1. (a) The proponents of the code represent that the demand for canning and packing machinery is subject to fluctuations not believed to prevail in many other industries and that there is but one customer for these machines, the canner or packing house or farmer who uses the same, and the ability of this customer

to buy is conditioned upon the price, quality, and quantity of the various crops. The demand, even in periods of comparative prosperity, is greatly varied and often obliterated by unforeseeable weather conditions, pests, or plant diseases such as drought, hail, and tornadoes, or the prevalence of corn borers, aphids, blight, codling moths, and the like. Probably 75% of the variations in yields is due to such or similar causes. An emergency demand for certain machinery is often created by the same conditions. For example, the failure of a crop in one section of the country may result in a substantial increase in late plantings in another section, and to care for the handling of the same, machinery must be provided almost overnight.

(b) While this Industry recognizes and sympathizes with the ideal of a limited work day and work week and believes that 8 hours per day and 5 days per week is desirable, yet it is impossible to adopt such limitations in meeting the requirements of the processors of perishable food products, as a considerable variation in factory hours has always been essential and must be permitted.

SEC. 2. (a) No employer shall employ any employee in excess of forty (40) hours per week.

(b) Provided, that these limitations of hours shall not apply to executives, professional persons, heads of administrative department, technical engineers, and the immediate assistants of all the foregoing classifications, factory and office supervisory staffs, not including foremen primarily engaged in productive work, provided that no person receiving less than thirty-five (\$35.00) dollars per week shall be considered to come under any of the foregoing exempted classifications of this paragraph, outside service men and traveling salesmen, and watchmen, provided, however, that watchmen shall not work more than fifty-six (56) hours in any one week.

(c) Provided, further, in order to meet any emergency demands where the delay in furnishing equipment might result in the loss of perishable animal, fruit, or vegetable products a tolerance of not more than 20% in the number of hours worked may be permitted, but in no case shall the time worked exceed 40 hours per week on a six-month average and further provided that all such emergencies be reported to the Code Authority and such information made available to the Administrator.

(d) Provided further, that these limitations shall not apply to highly skilled employees engaged in emergency installation work nor to stores service employees during active canning and/or packing seasons, nor when the available supply of employees in any certain skilled trade within a locality or trade area have been absorbed into the industry, but in all such emergencies the Administrator shall be advised; provided further, as to employees engaged in the care of plant and production facilities, firemen, and stock and shipping clerks there shall be a tolerance of 10 percent.

(e) For the purpose of adjusting operations to comply with the six months' average requirement, any employer may adopt for each location such six-month period as is most appropriate for the business there conducted.

ARTICLE VII—ADMINISTRATION

1. To further effectuate the policies of the Act, a Code Authority is hereby constituted to cooperate with the Administrator in the administration of this Code.

(a) The Code Authority shall consist of the Executive Committee of the Institute. In addition, its membership may include two (2) nonmembers of the Institute elected by some fair method of selection by the nonmembers, and upon his request not more than three (3) nonvoting appointees of the Administrator.

(b) Each trade or industrial association directly or indirectly participating in the selection of activities of the Code Authority shall: (1) Impose no inequitable restrictions on membership, and (2) submit to the Administrator true copies of its articles of association, bylaws, regulations, and any amendments when made thereto, together with such other information as to membership, organization, and activities as the Administrator may deem necessary to effectuate the purposes of the Act.

(c) In order that the Code Authority shall at all times be truly representative of the industry and in other respects comply with the provisions of the Act, the Administrator may provide such hearings as he may deem proper; and thereafter if he shall find that the Code Authority is not truly representative or does not in other respects comply with the provisions of the Act, may require an appropriate modification in the method of selection of the Code Authority.

2. The Code Authority shall have the following duties and powers to the extent permitted by the Act, subject to the right of the Administrator on review to disapprove or modify any action taken by the Code Authority.

(a) To collect from employers in the Industry all data and statistics required by this Code or by the President or his agents under the National Recovery Act and make same available to the Administrator; provided, however, that such information shall be confidential except insofar as disclosure may be necessary for the effective administration and enforcement of this Code, and in no case shall the data and statistics furnished by any employer be revealed to the competitor of said employer.

(b) In addition to information required to be submitted to the Code Authority, there shall be furnished to Government agencies such additional information as the Administrator may deem necessary for the purposes recited in Section 3 (a) of the National Industrial Recovery Act.

(c) To represent the Industry in conferring with the President or his agents with respect to the Administration of this Code and in respect of the National Industrial Recovery Act and any regulation issued thereunder.

(d) To hear complaints and attempt to adjust the same and report the results thereof to the Administrator.

(e) To coordinate the administration of this Code with such Codes, if any, as may be adopted by any subdivision of this Industry or any related Industry, with a view to providing joint and harmonious action on all matters of common interest, all with the approval of the National Recovery Administration.

(f) Members of the Industry shall be entitled to participate in and share the benefits of the activities of the Code Authority and to participate in the selection of the members thereof by assenting to and complying with the requirements of this Code and sustaining their reasonable share of the expenses of its administration. The reasonable share of the expenses of administration shall be determined by the Code Authority, subject to review by the Administrator, on the basis of volume of business and/or such other factors as may be deemed equitable to be taken into consideration.

(g) No employer shall use any subterfuge to frustrate the spirit and intent of the purposes of this Code, which is, among other things, to increase employment, to remove obstructions to commerce and to shorten hours and raise wages for the shorter week.

(h) Aggregations of employers having a common interest and common problems may be grouped by Code Authority for administrative purposes into various subdivisions or product classifications, and such subdivisions shall be subject to review by the Administrator.

(i) In each subdivision or product classification there may be a sub-supervisory Authority approved or appointed by Code Authority subject to the approval of the Administrator. If formal complaint is made that provisions of this Code have been violated by any employer, Code Authority may delegate the proper sub-supervisory Authority to investigate the facts, or may cause such investigation to be made as it may deem necessary, and the results of said investigation shall be reported to the Administrator.

ARTICLE VIII—ACCOUNTING AND COSTING

Every employer shall use an accounting system which conforms to the principles of and is at least as detailed and complete as a standard method of accounting and a standard method of costing to be formulated or approved by Code Authority with such variations therefrom as may be required by the individual conditions affecting any employer or group of employers, and which standards shall be subject to the approval of the Administrator.

ARTICLE IX—NOT TO SELL BELOW COST

In recognition of the fact that the Industry has suffered from non-profit sales no employer shall sell or exchange any product of the Industry manufactured by him at a price or upon terms and conditions which will result in the purchaser paying for the goods received less than the cost thereof to the employer as determined in accordance with the method of costing described in Article VIII; provided, that dropped lines, or seconds, or inventories which must be converted into cash to meet emergency needs may be disposed of by any employer at any lesser price and on any terms and conditions, but all such sales shall be reported to the Code Authority; provided further, should subnormal conditions continue a member of the Industry with the approval of the Administrator may take his costs prevailing during the last year in which such individual employer made a profit as cost for the purpose of this Section.

Upon new machines developed since the aforesaid profit year overhead rates used in said profit year shall be used unless actual cost figures thereon shall be filed with the Code Authority.

ARTICLE X—PRICE LISTS

(a) Each employer in the Industry shall immediately file with Code Authority or with some other responsible, disinterested agent designated by it at such place as shall be determined, a confidential net price list and discount sheet independently prepared by such employer, showing his current prices and discounts and terms of payment, and no sales shall be made except upon such price lists. Any change price lists and discount sheets shall be similarly filed from time to time thereafter, to become effective upon a date specified therein, which shall not be less than ten days after the same shall be so filed, except that upon machines newly designed and/or invented the price list therefor shall become effective immediately upon same being offered for sale and the price list filed within five days thereafter. No employer in the Industry shall sell any product referred to therein for any other prices or upon any other discounts or better terms than as set forth in his last net price list and discount sheet filed as herein provided.

(b) Included in such deposited price list shall be a schedule of installation charges, setting forth the rates to be charged for such work, including traveling and living expense.

(c) At its discretion, and upon the approval of the Administrator, Code Authority may appoint an Auditor who shall not be an employee of any employer to visit the various employers' offices, check the sales records as compared to the aforesaid deposited price lists, terms, and discount sheets, and report his findings to it.

(d) Code Authority shall review all Auditor's findings and shall report violations of this Code to the Administrator.

ARTICLE XI—UNFAIR PRACTICES

The practices hereafter enumerated in this paragraph, if indulged in by any member of the Industry, shall constitute acts of unfair competition within the meaning of, and with the effect and penalties set forth in paragraph (b) of Section 3 of the Act.

(a) Knowingly or willfully failing to comply with any of the provisions of this Code;

(b) Making or promising of any bribe, gratuity, gift, or other remuneration, directly or indirectly, to any employee or officer of any purchaser or prospective purchaser for the purpose or with the effect of making a sale of any product of the industry;

(c) Circulating or disseminating false or misleading information relative to the product, price, credit standing, ability, or performance of any competitor in the industry;

(d) Knowingly inducing or trying to induce in any manner the violation of any contract with any competitor in the industry;

(e) Granting the secret payment or allowance of rebates, refunds, commissions, credits, or unearned discounts, whether in the form of

money or otherwise, or the secret extension to certain purchasers of special services or privileges not extended to all purchasers on like terms and conditions;

(f) Procuring any information concerning the business of any employer in the industry which is properly guarded by such employer as a trade secret or as confidential within its organization otherwise than with the consent of such employer; provided, however, that this shall not apply to information obtained relevant and pertinent to any investigation undertaken under this Code;

(g) Selling or offering to sell any new machine upon which the seller thereof has not deposited a price list in effect on the date of such sale or offer except for newly designed and/or invented machines;

(h) Making or offering to make a trade-in allowance for any machine more than two years old greater than 15% of the price of the new machine or of the original price of the trade-in machine, whichever is lower;

(i) Selling or offering to sell any product of the industry at a price less than or upon discounts and terms other than those set forth in the deposited price list of the manufacturer thereof or secretly or openly agreeing to divide with the purchaser or intending purchaser any selling commission or discount granted by an employer to the selling agent or agency;

(j) Agreeing to install any machine or equipment free of charge to the purchaser thereof or failing to charge the deposited rate for installation as set forth in the price list.

(k) So long as the maker of any trade-marked machine or design (or his successor in business) continues to make the same or to supply repair parts therefor, it shall be an unfair method of competition for any other employer to make and supply either repair parts for or such machine and design unless (a) the name of the maker thereof is plainly marked on each machine, design or part, and if this is impractical as to parts on the package or tag thereof and (b) unless in such a manner as to clearly indicate to the ultimate user that said machine, design or parts were not made by the maker of the original machine, design or part.

ARTICLE XII—SALES FOR EXPORT

Except as may be subsequently set forth in a specific or supplementary Export Code for the industry, the provisions of this Code now or hereafter adopted with regard to prices, discounts, deductions, allowances, extras, commissions, or methods and/or terms of sale, are not to apply to direct export sales or to sales in course of export, (i.e., sales destined ultimately for export) or to sales of materials used in the manufacture of products for export, but the provisions of Article IX shall apply to such sales.

ARTICLE XIII—RIGHTS OF PRESIDENT

This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provisions of subsection (b) of Section 10 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 and specifically, but without limitation, to the right of the President to cancel or modify his approval of this Code or any conditions imposed by him upon his approval thereof.

ARTICLE XIV—AMENDMENTS CONTEMPLATED

This Code is intended to be a basic Code. Study of the trade practices of the industry will be continued by Code Authority with the intention of submitting from time to time after its effective date additions to, or revisions of, or supplements to, this Code; such additions, such revisions, and such supplements, however, shall conform to and be consistent with the provisions of this Code as now constituted, or hereafter changed.

Any such amendments, additions, revisions, or supplements proposed by Code Authority and approved by the President shall be in full force and effect from and after such approval.

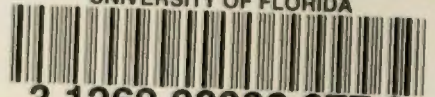
ARTICLE XV—SEGREGATION OF INDUSTRY

If any employer of labor in the industry is also an employer of labor in any other industry, the provisions of this Code relating to selling and business practices shall apply to and affect only that part of his business and product which is included in this industry.

ARTICLE XVI—EFFECTIVE DATE

This Code shall become effective on the 11th day after its approval by the President.





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