



NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION

FOR THE

CAP AND CLOSURE INDUSTRY

AS APPROVED ON OCTOBER 20, 1933

BY

PRESIDENT ROOSEVELT



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(II)

EXECUTIVE ORDER

CODE OF FAIR COMPETITION FOR THE CAP AND CLOSURE 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 Cap and Closure Industry, 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 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 approve the report and recommendations and adopt the findings of the Administrator and do order that the said Code of Fair Competition be, and it is hereby, approved.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
October 20, 1933.

Approval Recommended:

HUGH S. JOHNSON.

OCTOBER 16, 1933.

THE PRESIDENT,
The White House.

SIR: A proposed Code of Fair Competition for the Cap and Closure Industry was submitted to the Administrator on August 8, 1933, by the Cap and Closure Division of the Glass Container Association of America, representing 83% of the known members of the Industry. The hearing was conducted in Washington on September 15, 1933, and the Code was revised during the recess of this hearing and is submitted in its present form for approval. Every person who requested an appearance was properly heard in accordance with statutory and regulatory requirements. Only one person, the President of the Amalgamated Lithographers of America, requested recognition and entered an objection to the labor provisions of the Code as submitted.

The Industry which is relatively small and closely interrelated with the Glass Containers Industry, experienced, during the past four years, a drop of only 10% in unit volume of sales. This was coincident, however, with a drop of 18% in the number of employees. It is estimated that the insertion of the labor provisions of this Code, which are essentially the same as those of the Glass Container Industry, will necessitate an 11% increase in employment and that 350,000 dollars will be added to the yearly payroll.

RÉSUMÉ OF CODE

Article I states the purpose of the Code.

Article II accurately defines specific references made in the Code.

Article III sets forth the mandatory labor provisions, minimum age requirements, maximum hours, and minimum wage rates. The maximum hours are limited to 40 per week for factory, office, and branch employees. Factory hours are permitted to be flexible over a six-months' period, but are not to be in excess of 48 hours for any one week. The minimum wage rate, varying from \$15.00 to \$14.00 for accounting, clerical, office, service, and sales employees (excepting outside salesmen), is based on population differentials. For factory, mechanical, and artisan employees the minimum is 40¢ per hour.

Apprentices and learners without previous experience may not constitute more than 5% of the total number of employees and their wages shall not be less than 80% of the specified minimums. The period of apprenticeship and learning is limited to three months. Higher paid employees (up to \$35.00 per week) are protected by an equitable readjustment clause.

Article IV establishes a Code Authority of five members elected by the Industry with additional (not exceeding three) representatives to be appointed by the Administrator and provides machinery for obtaining statistics.

Article V sets forth the Fair Trade Practices for the Industry, including an open-price structure with no limitation placed upon the prices any firm may quote.

Article VI contains the mandatory provision respecting amendments and provides for the submission of proposed amendments by members of the Industry.

Article VII sets forth the action followed pursuant to a violation of the code.

Article VIII states the effective date.

FINDINGS

The Administrator finds: A. This Code complies in all respects with the pertinent phrases of Title I of the Act, including without limitation, subsection A of Section 7, and subsection B of Section 10 thereof; B. The Cap and Closure Division of the Glass Container Association is truly representative of the Cap and Closure Industry, and the bylaws of this Association provide no inequitable restrictions to membership; C. The code 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.

The Industrial and Labor Advisory Boards have approved the Code as now presented. The Consumers Advisory Board approves the Code with one additional recommendation. The Legal Department has checked the Code as to form and has approved it.

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

Respectfully,

HUGH S. JOHNSON,
Administrator.

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CODE OF FAIR COMPETITION FOR THE CAP AND CLOSURE INDUSTRY

ARTICLE I—PURPOSE

To effectuate the policy and purposes of the National Industrial Recovery Act, the following provisions are established as a Code of Fair Competition for the Cap and Closure Industry, and shall be binding upon every member thereof.

ARTICLE II—DEFINITIONS

SECTION 1. The term "Industry" means and includes the business of producing in the United States and selling caps or closures and liners therefore of the types and kinds referred to in connection with the following Divisions of the Industry which are hereby recognized and defined:

A. The "Tinplate, Aluminum and Zinc Screw and Lug Cap" Division consists of members of the Industry producing and selling caps and closures made of tinplate, aluminum, or zinc, designed for use in connection with G.C.A. (Glass Container Association) Numbers 300, 100, 125, 150, 175, 425, 400, 410, 415, 450, 1300, 2900, 1200, 2200, 1600, and 1900 Glass Finishes, and all other screw or lug types of caps or closures made of tinplate, aluminum, or zinc for any other glass finishes than those herein specified, except cover caps for catsup bottles and screws caps designed as a unit or in combination with bands to serve as nontamperable seals and caps for use in home canning or preserving.

B. The "All Other Tinplate, Aluminum, and Zinc Cap" Division consists of members of the Industry producing and selling all types of caps and closures for glass containers made of tinplate, aluminum, or zinc other than those specified in Section 1, A, except Crown caps and milk-bottle caps.

C. The "Molded Cap" Division consists of members of the Industry producing or selling caps or closures of every type and kind of molding compounds.

D. "The Cap and Closure Liner" Division consists of members of the Industry processing and selling liner pasteboard and paper liner material for use in metal and molded caps as defined in Section 1, Paragraph A, B, and C.

Other divisions may be formed from time to time by interested groups of members on application to and approval by the Code Authority and of the Administrator. When so approved the definition of the division shall be added to the list of divisions recognized by this section.

SEC. 2. 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.

SEC. 3. 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.

SEC. 4. The term "employer" as used herein includes anyone by whom any such employee is compensated or employed.

SEC. 5. The term "plant" means a plant engaged in the Industry as herein defined.

SEC. 6. "Majority vote." Each member of the Industry shall have one vote. At any meeting of members of the Industry, members thereof having the right to cast at least 51 percent of all the votes and whose sales volume for the preceding calendar year equals at least 51 percent of the total sales volume shall constitute a quorum. Sixty percent of the members present at each qualified meeting shall constitute a majority vote; provided, however, that the total sales volume of the preceding calendar year of such number of members shall also equal at least 60 percent of the total sales volume of all members present at such meeting.

SEC. 7. The term "Code Authority" means the Administrative body provided for in Article IV of this Code.

SEC. 8. The term "The Association" means the Glass Container Association of America.

ARTICLE III—LABOR PROVISIONS

SECTION 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.

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.

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

SEC. 2. No member of the Industry shall employ any person under the age of sixteen (16) years, and no person under 18 years of age shall be employed or allowed to work on or in connection with any hazardous manufacturing processes.

SEC. 3. The maximum number of working hours for all employees in the Industry except as hereinafter provided shall not be in excess of 40 hours per week averaged over a six months' period, and not in excess of forty-eight (48) hours in any one week. For the purpose of this section the balance of the year 1933, from the effective date of this Code to December 31, 1933, inclusive, shall be considered the first period. Subsequent periods shall begin on January 1st and July 1st, to end on June 30th and December 31st, respectively.

The maximum number of working hours for office or branch employees in the Industry shall not be in excess of an average of forty (40) hours per week over any one month's period, and not in excess of forty-eight (48) hours in any one week. Provided, however, that the provisions of this section shall not apply to executives and supervisors, outside salesmen, technical and laboratory staffs, watchmen, and those employed in emergency maintenance and emergency repair work.

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

SEC. 4. No employee shall be permitted to work for two or more employers for a longer period in any week than is specified herein for a single employer.

SEC. 5. No employer shall pay any accounting, clerical, office, service, or sales employee (except outside salesmen) less than at the rate of \$15.00 per week in any city of over 500,000 population, or in the immediate trade area of such city; nor less than at the rate of \$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 at the rate of \$14.00 per week in any town or city of 250,000 population or less.

SEC. 6. No employer shall pay any factory or mechanical worker or artisan less than forty (40¢) cents per hour unless the hourly rate for the same class of work on July 15, 1929, was less than forty (40¢) cents per hour, in which latter case not to pay less than the hourly rate on July 15, 1929, and in no event less than thirty (30¢) cents per hour. It is agreed that this paragraph establishes a guaranteed minimum rate of pay regardless of whether the employee is compensated on the basis of a time rate or on a piece work performance.

Female employees doing the same work as that performed by male employees shall receive a rate of compensation equal to that of such male employees.

Apprentices and learners without previous experience in the Industry shall be excepted from the provisions of this Section; provided, however, that the total number of such apprentices and learners shall not constitute more than five (5%) percent of the total number of employees subject to the provisions of this Code in any one plant; and provided further, that the wages paid to such apprentices and learners shall not be less than eighty (80%) percent of the minimum rates of pay specified in this Code; and provided further, the period of apprenticeship or learning shall not exceed one month.

SEC. 7. The existing amounts by which wages in the higher-paid classes of employees, up to employees receiving thirty-five (\$35.00) dollars per week, exceed wages in the lower-paid classes of employees, shall be maintained; provided, however, that where the foregoing provision results in rates that are inequitable as between plants, for the same work, revision or wage rates for higher-paid classes shall be adjusted in a reasonable manner, subject to the supervision of the Code Authority.

SEC. 8. Any employee excepted in Article III, Section 3 of this Code other than executives and supervisors who receive more than thirty-five dollars (\$35) per week, watchmen, and outside salesmen,

shall be paid overtime at the rate of time and a half for all hours in excess of 40 hours per week averaged over a six months' period.

SEC. 9. Each employer shall post in a conspicuous place full copies of the labor provisions of this Code. (Article III and Article VI, Section 2.)

ARTICLE IV—ADMINISTRATION

SECTION 1. To effectuate the policies of the National Industrial Recovery Administration and to provide for administration of this Code within the Industry, a Code Authority of five members shall be established by the Industry and upon request of the Administrator such additional nonvoting representatives of the Administrator, not to exceed three, to be appointed by him shall be added to such Code Authority. All persons engaged in the Industry as herein defined shall be entitled to participate in the election of such members of the Code Authority. Such election shall be by a majority as defined in Section 6 of Article II. The method of selection shall be subject to review by the Administrator.

Each trade or industrial association directly or indirectly participating in the selection or 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.

In order that the Code Authority shall at all times be truly representative of the trade/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.

SEC. 2. Each division shall have authority to prepare and from time to time recommend revisions of its own schedule of Trade Practices by majority vote of such division. Recommendations as to schedules or revisions adopted by any division shall be submitted by such division to the Code Authority. If the recommendations so submitted relate solely to the interests of the division, the Code Authority shall approve such action forthwith, subject only to review by the Administrator. If the recommendations so submitted affect other divisions of the Industry, then the Code Authority shall take such action as it deems necessary; all to the end that each division shall be independent and self-governing on all matters relating exclusively to such division. Any action taken pursuant to this Section shall be subject to approval by the Administrator after such notice and hearing as he may prescribe.

SEC. 3. In addition to the powers herein specifically conferred upon the Code Authority, it shall have the following powers and duties to the extent permitted by the Act, subject to the right of the Administrator, on review, to disapprove or modify any action taken.

(a) The Code Authority shall be charged with the supervision, administration and enforcement of this Code and may issue such rules and regulations as may be necessary to effectuate the purposes of this Code. The Code Authority shall have the right to establish its own rules for the conduct of its business.

(b) In order that the President may be informed of the extent of observance of the provisions of this Code and of the extent to which the declared policy of the National Industrial Recovery Act is being effectuated in the Industry as herein defined, the Code Authority shall make such reports as the Administrator may require, and each employer shall make such sworn or unsworn reports to the Code Authority periodically, or as often as it may direct on wages, hours of labor, conditions of employment, number of employees, production, shipments, sales, stocks, prices, and other matters pertinent to the purposes of this Code as the Code Authority may require, and each employer subject to the jurisdiction of this Code and accepting the benefits of the activities of the Code Authority hereunder shall either become a member of the Association or pay to the Code Authority his proportionate share of the amounts necessary to defray the cost of the assembly, analysis, and publication of such reports and data, and of the maintenance of the said Code Authority and its activities. Said proportionate share shall be based upon value of net sales.

In addition to information required to be submitted to the Code Authority, 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.

(c) Any and all information furnished to the Code Authority shall be deemed confidential and shall not be divulged to any member except in summary, but shall be available to the Administrator upon request.

(d) The Code Authority may designate the Glass Container Association or any other appropriate agency to assist it in carrying out the powers and duties conferred upon it by this Code, provided, that the Code Authority shall not be relieved of responsibility and that when such Association acts in such capacity, it shall comply with all the provisions of this Code applicable to the Code Authority.

(e) The Code Authority may from time to time appoint such subcommittees or designate such agencies, and may delegate to any of them such of its powers and duties, as it shall deem necessary or proper in order to effectuate the provisions and purposes of this Code.

(f) The Code Authority shall receive, and if it shall approve, shall present for the approval of the Administrator, any proposals for supplementary provisions or amendments of this Code or additional Codes, applicable to the Industry defined herein or to any part thereof, with respect to wages, hours, trade practices, or related matters or conditions in the Industry.

SEC. 4. (a) Any interested party shall have the right of complaint to the Code Authority and of a prompt hearing and decision thereon in respect to any decision, rule, regulation, or other course of action

of such Code Authority. Such complaint must be filed in writing with the Code Authority within a reasonable period of time after said decision, rule, regulation, or course of action is issued or taken. The decision of such Code Authority may be appealed by any interested party to the Administrator.

(b) Any interested party shall have the right of appeal to the Administrator, under such rules and regulations as he may prescribe, in respect to any decision, rule, regulation, or other course of action, issued or taken by the Code Authority. The Administrator may cancel or modify any such action of the Code Authority.

ARTICLE V—TRADE PROVISIONS

SECTION 1. The rules of fair trade practice for the Tinplate, Aluminum and Zinc Screw, and Lug Cap Division and the Cap and Closure Liner Division of the Cap and Closure Industry as set forth in Schedule A attached hereto, are specifically made a part of this Code.

SEC. 2. Where the costs to a member of the Industry of executing contracts entered into prior to approval of this Code by the President are increased by the application of the provisions of this Code, it is equitable and promotive of the purposes of the National Industrial Recovery Act that appropriate adjustments of such contracts to reflect such increased costs be determined by arbitral proceedings or otherwise. The Code Authority shall assist in effecting such adjustments.

ARTICLE VI—GENERAL

SECTION 1. No provision of this Code shall be construed, interpreted, or applied in such a manner as to—

- (a) Promote monopolies or monopolistic practices.
- (b) Promote or encourage unfair competition.
- (c) Eliminate or oppress small enterprises.
- (d) Discriminate against small enterprises.

SEC. 2. 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.

SEC. 3. Prior to December 31, 1933, no member of the Industry shall increase the sale price of his product sold after the effective date hereof over the price on July 1, 1933, by more than is made necessary by actual increases in manufacturing, distribution and material costs, or by taxes or other costs resulting from action taken pursuant to the Agricultural Adjustment Act and/or this code since July 1, 1933, and in setting such price increases, full weight shall be given to probable increases in sales volume. In case a member of the Industry on July 1, 1933, was selling his product at less than actual cost, he may take his cost price on that date as the base for such increase in selling price as is permitted by this section.

SEC. 4. Any member of the Industry shall be eligible to membership in the Association and there shall be no inequitable restrictions imposed upon such membership.

SEC. 5: The President may from time to time cancel or modify any order approval, license, rules, or regulations issued under Title I of the National Industrial Recovery Act, and specifically, without limitation, may cancel or modify his approval of this Code or any conditions imposed by him upon his approval thereof.

ARTICLE VII—VIOLATIONS

Violation by any person of any provision of this Code or of any rule or regulation issued thereunder or any false statement or report made to the President or the Code Authority shall be constituted an unfair method of competition and the offender shall be subject to the penalties provided by the National Industrial Recovery Act.

ARTICLE VIII—EFFECTIVE DATE

This Code shall become effective eleven (11) days after it is approved by the President.

SCHEDULE A

RULES FOR FAIR TRADE PRACTICE FOR THE TINPLATE, ALUMINUM, ZINC-SCREW AND LUG CAP DIVISION, AND CAP AND CLOSURE LINER DIVISION

It is agreed by the members of each of the above-named Divisions in subscribing to this Schedule A that it becomes necessary to conduct the Divisions in an orderly way and to maintain fair competitive conditions in order that the provisions and intent of the National Recovery Act may be carried out. The members of each Division therefore agree that:

SECTION 1. No member of the Divisions shall make any sale at a price or terms more favorable to the purchaser thereof than the price, terms, or conditions established by such member in accordance with the provisions of this Schedule A which are in effect at the time of such sale.

SEC. 2. Each member of the Divisions shall, within ten days after the effective date of the Code, file with the Code Authority as many copies of a list showing the complete prices for all his products in the Division as the Code Authority shall require, and from and after the expiration of such ten days such member shall at all times maintain on file with the Code Authority a list showing complete prices for all his products in the Divisions and shall not make any change in such prices except as provided in this Schedule A.

Each such list shall state the date upon which it shall become effective, which date shall be not less than ten days after the date of filing sufficient copies of such list with the Code Authority so that copies may be sent to each member of the Division; provided, however, that the first list of prices filed by any member of the Division as above provided shall take effect on the date of filing thereof.

The Code Authority shall immediately send copies of the first list so filed to all members of the Division and if any member shall file a revised list, copies thereof shall immediately be sent to all members of the Division, who thereupon may file if they so desire, revisions of their price lists which shall become effective upon the date when the revised price list first filed shall go into effect.

These lists shall be open for inspection to all interested parties.

SEC. 3. None of the prices shown in any list shall be changed except by the filing of a new list as provided in Section 2.

SEC. 4. Recognizing the necessity for uniform practices in regard to discounts, credit terms, freight allowances, and all other terms of sale, the members of the Division may by a majority vote of the members of the Division from time to time determine on such uniform practices and file them with the Code Authority. After approval by the Administrator, any violation of such uniform practices shall be an unfair trade practice.

SEC. 5. Nothing in this Schedule contained shall be so construed as to prevent the performance by any member of any valid bona fide contract made and entered into before the effective date of this Code; provided, however, that such contract has not been made and entered into before the effective date hereof in contemplation thereof and with the intent to defeat the purpose thereof.

SEC. 6. The sale of discontinued lines or obsolete or imperfect caps is permitted provided they are sold at not more than 50% of the seller's lowest price as published for the same size or type of cap in effect at the time of such sale, and such sales shall not be a violation of this Schedule.

SEC. 7. For all purposes of the Code the following-described acts shall constitute unfair practices:

A. The imitation of the exclusive trade mark or trade name of a competitor.

B. The sale or offer for sale of any product of the Industry with intent to deceive customers or prospective customers as to the quantity, quality, or specifications of such product.

C. The marking or branding of products of the Industry for the purpose or with the effect of misleading or deceiving purchasers with respect to quantity, quality, grade, or specifications of the goods purchased.

D. The payment or allowance of secret rebates, refunds, credits, or unearned discounts, whether in the form of money or otherwise, or extending to certain purchasers confidential prices, special services, or privileges not extended to all purchasers of the same class under like terms and conditions.

E. *Commercial Bribery*.—Directly or indirectly to give or permit to be given, or offer to give, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase from the makers of such gift or offer, or to influence such employers or principals to refrain from dealing or contracting to deal with competitors.

F. To permit sales agents or representatives to split commissions with purchasers.

G. *Free Deals and/or Contributions*.—The offering or giving of prizes, premiums, or gifts in connection with the sale of products, or as an inducement thereto.

H. To make false invoices.

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