

NATIONAL RECOVERY ADMINISTRATION

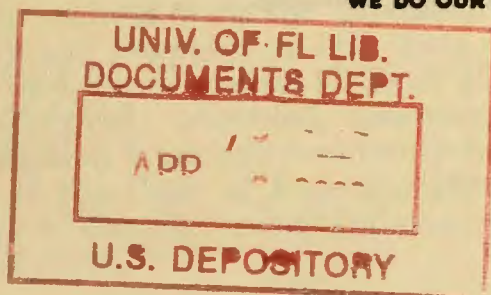
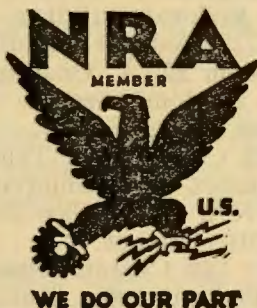
**SUPPLEMENTARY
CODE OF FAIR COMPETITION**

FOR THE

**WHOLESALE PAINT, VARNISH,
LACQUER, ALLIED AND KINDRED
PRODUCTS TRADE**

(A Division of the Wholesaling or Distributing Trade)

AS APPROVED ON AUGUST 4, 1934



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Approved Code No. 201—Supplement No. 18

SUPPLEMENTARY CODE OF FAIR COMPETITION

FOR THE

**WHOLESALE PAINT, VARNISH, LACQUER,
ALLIED AND KINDRED PRODUCTS TRADE**

As Approved on August 4, 1934

ORDER

**APPROVING SUPPLEMENTARY CODE OF FAIR COMPETITION FOR THE
WHOLESALE PAINT, VARNISH, LACQUER, ALLIED AND KINDRED PROD-
UCTS TRADE**

A DIVISION OF THE WHOLESALING OR DISTRIBUTING 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 approval of a Supplemental Code of Fair Competition for the Wholesale Paint, Varnish, Lacquer, Allied and Kindred Products Trade to the Code of Fair Competition for the Wholesaling or Distributing Trade, and hearings having been duly held thereon and the annexed report on said Supplemental Code, containing findings with respect thereto, having been made and directed to the President:

NOW, THEREFORE, on behalf of the President of the United States, I, Hugh S. Johnson, Administrator for Industrial Recovery, pursuant to authority vested in me by Executive Orders of the President, including Executive Order No. 6543-A, dated December 30, 1933, and otherwise; do hereby incorporate by reference said annexed report and do find that said Supplemental Code complies in all respects with the pertinent provisions and will promote the policy and purposes of said Title of said Act; and do hereby order that said Supplemental Code of Fair Competition be and it is hereby approved; provided, however, that the provisions of Article IV, Section 5 are approved only so long as the provisions of Article XX of the Code of Fair Competition for the Paint, Varnish, and Lacquer Manufacturing Industry as approved on October 31, 1933 are effective.

HUGH S. JOHNSON,
Administrator for Industrial Recovery.

Approval recommended:

ROBERT L. HOUSTON,
Division Administrator.

WASHINGTON, D.C.,
August 4, 1934.

REPORT TO THE PRESIDENT

The PRESIDENT,
The White House.

SIR: This is a report of the Hearing on the Supplemental Code of Fair Competition of the Wholesale Paint, Varnish, Lacquer, Allied and Kindred Products Trade, conducted in the Green Room of the Raleigh Hotel, on May 4, 1934. The Supplemental Code, which is attached, was presented by a duly qualified and authorized representative of the Trade, complying with the statutory requirements, said to represent 15 per cent in number and about 50 per cent in volume of sales of the Trade which could be included in this Code.

THE TRADE

No adequate current statistics are available with respect to this Trade. According to the Census of Distribution, however, there were about 1,027 establishments handling paint with aggregate annual sales of \$304,999,000; the total employees numbered 12,571.

PROVISIONS OF THE CODE

Since this Code is supplemental to the Code of Fair Competition for the Wholesaling or Distributing Trade, it contains no labor provisions.

The provisions containing supplemental definitions are considered inclusive and accurate.

The supplement to the Administrative provisions of the General Code establishes a Divisional Code Authority which is fairly and adequately representative of all the different elements in the Trade.

The Trade Practices proposed are not considered in any way objectionable.

FINDINGS

The Deputy Administrator in his final report to me on said Supplemental Code having found as herein set forth and on the basis of all the proceedings in this matter;

I find that

(a) Said Supplemental Code is well designed to promote the policies and purposes of Title I of the National Industrial Recovery Act, including removal of obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof, and will provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, by inducing and maintaining united action of labor and management under adequate governmental sanctions and supervision, by eliminating unfair competitive practices, by promoting the fullest possible use of the present productive capacity of in-

dustries, by avoiding undue restriction of production (except as may be temporarily required), by increasing the consumption of industrial and agricultural products through increasing purchasing power, by reducing and relieving unemployment, by improving standards of labor, and by otherwise rehabilitating industry.

(b) Said Trade normally employs not more than 50,000 employees and it is not classified by me as a major industry.

(c) The Supplemental Code as approved complies in all respects with the pertinent provisions of said Title of said Act, including without limitation Subsection (a) of Section 3, Subsection (a) of Section 7 and Subsection (b) of Section 10 thereof; and that the applicant association is a trade association truly representative of the aforesaid Trade; and that said association imposes no inequitable restrictions on admission to membership therein.

(d) The Supplemental Code is not designed to and will not permit monopolies or monopolistic practices.

(e) The Supplemental Code is not designed to and will not eliminate or oppress small enterprises and will not operate to discriminate against them.

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

For these reasons, the Supplemental Code has been approved.

Respectfully,

HUGH S. JOHNSON,
Administrator.

AUGUST 4, 1934.

SUPPLEMENTARY CODE OF FAIR COMPETITION FOR THE WHOLESALE PAINT, VARNISH, LACQUER, AL- LIED AND KINDRED PRODUCTS TRADE

A DIVISION OF THE WHOLESALING OR DISTRIBUTING TRADE

ARTICLE I—PURPOSES

To effectuate the policies of Title I of the National Industrial Recovery Act, this Supplemental Code is established as a Code of Fair Competition for the Wholesale Paint, Varnish, Lacquer, Allied and Kindred Products Trade pursuant to Article VI, Section 1 (c) of the General Code of Fair Competition for the Wholesaling or Distributing Trade, approved by the President of the United States on January 12, 1934. All provisions of the said General Code which are not in conflict with the provisions of this Supplemental Code are hereby incorporated by reference in this Supplemental Code and made a part hereof. Such provisions of the General Code together with the supplementing provisions of this Code are the standards of fair competition for and are binding upon every member of said Wholesale Paint, Varnish, Lacquer, Allied and Kindred Products Trade.

ARTICLE II—DEFINITIONS

SUPPLEMENTING ARTICLE II OF THE GENERAL CODE

SECTION 1. *Wholesaler or Distributor*.—The term “wholesaler” or “distributor” as used herein shall mean any individual, partnership, association, corporation, or other form of enterprise, or a definitely organized division thereof, definitely organized to render and rendering a general distribution service, which buys and maintains at his or its place of business a stock of paints, varnishes, lacquers, allied and/or kindred products, and which through salesmen, advertising, and/or sales promotion devices sells not less than seventy (70) per cent of his or its total volume of sales to retailers and/or to institutional, commercial, and/or industrial users. It is not the character of a concern's buying but the character of its selling which marks it as a wholesaler.

SECTION 2. *The Trade*.—The term “the Trade” as used herein shall mean the business in which wholesalers or distributors as above defined are engaged.

SECTION 3. *Association*.—The term “Association” as used herein shall mean the National Wholesale Paint Association.

SECTION 4. *Divisional Code Authority*.—The term “Divisional Code Authority” as used herein shall mean the Divisional Code Authority for the Wholesale Paint, Varnish, Lacquer, Allied and Kindred Products Trade, a division of the Wholesaling or Distributing Trade.

SECTION 5. *General Code.*—The term “General Code” as used herein shall mean the Code of Fair Competition for the Wholesaling or Distributing Trade.

SECTION 6. *Trade Sales.*—The term “trade sales” as used herein shall mean all sales to jobbers, dealers, painters, automotive refinishing shops, institutions, hospitals, office buildings, apartment houses, and/or other commercial enterprises not excluded under industrial sales and sales made directly to the ultimate consumer.

SECTION 7. *Industrial Sales.*—The term “industrial sales” as used herein shall mean all sales to the following classes of buyers covering products of the Trade used by such buyers on their products or for the finishing of their equipment and for the upkeep and maintenance of their plants, equipment, tenements, and for any other purposes:

Industrial plants of all kinds (such as automobile manufacturers, furniture manufacturers, etc.).

Transportation companies (including street railways, bus and air transportation companies).

Car and locomotive builders.

Public-service companies.

Oil refiners and pipe-line companies.

Packing houses.

Steel manufacturers and those who fabricate their own products.

Bridge builders and bridge operating companies.

Coal or other mining operations.

Steamship lines, shipyards, wharves, and docks.

All departments of any State, County, Municipal, or other political subdivision, but only for the following products: Traffic paint, road paint, products used on bridges, trucks, and machinery; automobile license tag coatings; or materials for finishing furniture, or any other products manufactured in prisons or reformatories. All other business from State, County, Municipal and other political subdivisions, such as products used on buildings, institutions, etc., to be classified as “trade sales.”

All departments of the United States Government regardless of usage.

ARTICLE III—ADMINISTRATION

SUPPLEMENTING ARTICLE VI, OF THE GENERAL CODE

SECTION 1 (a) The Divisional Code Authority for the Wholesale Paint, Varnish, Lacquer, Allied and Kindred Products Trade (which may be incorporated, not for profit) shall be composed of eleven (11) members of the Trade, six (6) of whom shall be elected by the Association, and five (5) of whom shall be selected from the members of the Trade not members of the Association, in the following proportion:

One (1) member representing wholesale hardware concerns distributing paint.

One (1) member representing wholesale building materials (including lumber) concerns distributing paint.

One (1) member representing wholesale wall paper concerns distributing paint.

One (1) member representing wholesale drug concerns distributing paint.

One (1) member representing wholesale glass concerns distributing paint.

No more than two (2) of the five (5) members of the Divisional Code Authority selected from among non-members of the Association shall be chosen from any one State.

(b) The five (5) members to be selected from among non-members of the Association shall be nominated by the Administrator. The names of the five (5) persons so nominated shall be placed upon a ballot which contains, in addition, five (5) blank spaces for the inclusion of other names. These ballots shall be sent to all members of the Trade not members of the Association who can be discovered after diligent search. Each ballot shall be accompanied by a letter stating that no ballot will be counted unless it is accompanied by a certificate of assent to and compliance with this Supplemental Code and the General Code, and each vote in order to be counted shall be postmarked not later than ten (10) days after the ballots are mailed by the Association.

Each member of the Trade voting for the Divisional Code Authority may vote for the five (5) nominees selected by the Administrator, or may write in on the ballot such additional names as he desires.

All duly elected members of the Divisional Code Authority shall serve for a period of twelve (12) months.

(c) The successor or any member of the Divisional Code Authority whether to fill an unexpired term or a full new term shall be elected in the same manner as provided in this Section.

SECTION 2. The Divisional Code Authority shall have the following duties and powers in addition to those prescribed in the General Code subject to such rules and regulations as may be issued by the Administrator:

(a) To appoint a Trade Practice Committee, which shall meet with the Trade Practice Committees appointed under such other Codes as may be related to the Trade, except other Supplemental Codes to the General Code, for the purpose of formulating fair trade practices to govern the relationship between production and distribution employers under this Supplemental Code and under such other Codes, to the end that such fair trade practices may be proposed to the Administrator, as an amendment to this Supplemental Code and such other Codes.

(b) To organize, elect officers, hire employees, appoint agents and perform such other acts as may be necessary for the proper administration of this Supplemental Code and of the General Code.

(c) To appoint such Regional Committees as it desires to aid in the administration of this Supplemental Code and the General Code; provided, however, that nothing herein contained shall be construed to relieve the Divisional Code Authority from its duties and liabilities as such.

(d) To adopt by-laws and rules and regulations for its procedure.

(e) To use such trade associations and other agencies as it deems proper for the carrying out of any of its activities provided for herein, provided that nothing herein shall relieve the Divisional Code Authority of its duties or responsibilities under this Supple-

mental Code, and that such trade associations and agencies shall at all times be subject to and comply with the provisions hereof.

(f) To obtain from members of the Trade such information and reports as are required for the administration of this Supplemental Code. In addition to information required to be submitted to the General Code Authority and to the Divisional Code Authority members of the Trade subject to this Supplemental Code shall furnish such statistical information as the Administrator may deem necessary for the purposes recited in Section 3 (a) of the Act, to such federal and state agencies as he may designate; provided that nothing in this Supplemental Code shall relieve any member of the Trade of any existing obligations to furnish reports to any government agency. No individual report shall be disclosed to any other member of the Trade or any other party except to such other governmental agencies as may be directed by the Administrator.

(g) To appoint within one month after the effective date of this Supplemental Code a committee so constituted as to give producer, consumer, and governmental representation satisfactory to the Administrator. This committee shall make a study with a view to the establishment of classifications and standards of definitions of each class of staple products of the Trade wherever such standards are deemed feasible. The findings and recommendations of this committee shall within six months be submitted to the Administrator and, after such hearings and investigations as he may designate, and upon approval by him shall be made a part of this Supplemental Code and be binding upon every member of the Trade.

(h) To recommend to the Administrator any action or measures deemed advisable, including further fair Trade practice provisions to govern members of the trade in their relations with each other or with other trades, measures for industrial planning, and stabilization of employment; and including modifications of this Supplemental Code which shall become effective as part hereof upon approval by the Administrator after such notice and hearing as he may specify.

SECTION 3. Nothing contained in this Supplemental Code shall constitute the members of the Divisional Code Authority partners for any purpose nor shall any members of the Divisional Code Authority be liable in any manner to anyone for any act of any other member, officer, agent, or employee of the Divisional Code Authority. Nor shall any member of the Divisional Code Authority, exercising reasonable diligence in the conduct of his duties hereunder, be liable to anyone for any action or omission to act, under this Supplemental Code, except for his own willful misfeasance or nonfeasance.

SECTION 4. If the Administrator shall determine that any action of the Divisional Code Authority or any agency thereof may be unfair or unjust or contrary to the public interest the Administrator may require that such action be suspended to afford an opportunity for investigation of the merits of such action and for further consideration by such Divisional Code Authority or agency, pending final action, which shall not be effective unless the Administrator approves or unless he shall fail to disapprove after thirty days'

notice to him of intention to proceed with such action in its original or modified form.

SECTION 5 (a). It being found necessary in order to support the administration of this Supplemental Code and to maintain the standards of fair competition established hereunder and to effectuate the policy of the Act, the Divisional Code Authority is authorized:

1. To incur such reasonable obligations as are necessary and proper for the foregoing purposes, and to meet such obligations out of funds which may be raised as hereinafter provided and which shall be held in trust for the purposes of this Supplemental Code;

2. To submit to the Administrator for his approval, subject to such notice and opportunity to be heard as he may deem necessary (1) an itemized budget of its estimated expenses for the foregoing purposes, and (2) an equitable basis upon which the funds necessary to support such budget shall be contributed by members of the Trade;

3. After such budget and basis of contribution have been approved by the Administrator, to determine and obtain equitable contribution as above set forth by all members of the Trade, and to that end, if necessary, to institute legal proceedings therefor in its own name.

(b) Each member of the Trade shall pay his or its equitable contribution to the expenses of the maintenance of the Divisional Code Authority, determined as hereinabove provided, and subject to rules and regulations pertaining thereto issued by the Administrator. Only members of the Trade complying with this Supplemental Code and contributing to the expenses of its administration as hereinabove provided, unless duly exempted from making such contribution, shall be entitled to participate in the selection of members of the Divisional Code Authority or to receive the benefits of any of its voluntary activities or to make use of any emblem or insignia of the National Recovery Administration.

(c) The Divisional Code Authority shall neither incur nor pay any obligation in excess of the amount thereof as estimated in its approved budget, except upon approval of the Administrator; and no subsequent budget shall contain any deficiency item for expenditures in excess of prior budget estimates except those which the Administrator shall have so approved.

ARTICLE IV—TRADE PRACTICES

SUPPLEMENTING ARTICLES VII AND VIII OF THE GENERAL CODE

SECTION 1. *Exchange of Goods*.—It shall be a violation of this Supplemental Code for any member of the Trade to take or allow to be taken in exchange for the product or products of one manufacturer, any product or products of any other manufacturer of the Paint, Varnish, Lacquer, Allied and Kindred Products Industry, nor shall he give or permit the giving of any advice or assistance, in facilitating such exchange or replacement, nor shall he make or receive, or permit to be made or received, any concessions, allowances, or gifts of any kind to promote or facilitate such exchange, provided that the restrictions imposed by this Section shall not apply to any transaction and/or sale made directly by a wholesaler or indirectly by him through a dealer wherein the ultimate nonindustrial user is dissatisfied with the quality of the merchandise. In such

cases the product of one manufacturer may be replaced either directly by the wholesaler or by him through the dealer with the products of another manufacturer, provided that both manufacturers' products are stocked and distributed in the same territory at the same time by the same wholesaler.

SECTION 2 (a). *Standard Terms and Discount*.—On and after the effective date, the terms granted by wholesalers and/or distributors for products of the Paint, Varnish and Lacquer Manufacturing Industry as defined in their Code shall not exceed: 2% for cash in 10 days, net 60 days, except artists' colors, on which the terms shall be 2% for cash in 10 days, net 30 days. Except that discount to Trade Sales Accounts may be extended to the tenth day of the month following purchase and the discount to Industrial Sales Accounts may be extended to the twentieth day of the month following purchase to customers who regularly discount in the month following purchase, and provided that no discount shall be allowed after the discount date.

(b) *Datings*.—Except as specifically provided by this Article, members of the Trade shall not grant any advance datings on the sales of any products of the Trade.

(c) *Spring Stock Orders*.—Datings on orders excluding those for artists' colors to established dealer accounts shall be limited to datings on Spring Stock Orders for products of the Paint, Varnish and Lacquer Manufacturing Industry as defined in the Code of that Industry shipped at the distributor's convenience after October 15, with an April 1st dating and regular terms; only one order on any one manufacturer's line to any one account.

(d) *New Accounts*.—The maximum dating on trade sales initial stock orders for products of the Paint, Varnish and Lacquer Manufacturing Industry as defined in the Code of that Industry of any one manufacturer's line to new dealer accounts shall be limited to four months from the date of shipment and with standard terms, provided that orders shipped between October 15 and December 1st in any year may be with an April 1st dating and regular terms. Datings on initial stock orders of artists' colors from new dealer and/or jobber accounts shall be limited to two months from date of shipment and shall be sold on standard terms.

(e) *Fall Stock Orders on Artists' Colors*.—Datings on orders to establish dealer and/or jobber accounts shall be limited to datings on fall stock orders and shipped at the wholesaler's convenience after April 1, with a September 1 dating, sold on regular terms and only one order to any one account. In the case of show-card colors and inks, which are subject to freezing, dating shall be limited on spring stock orders shipped at the wholesaler's convenience after November 1st (or, in the event shipment is made by a water route, which is affected by the closing of navigation, this date may be advanced not to exceed ten days prior to the official closing of navigation over such route), with an April 1st dating and sold on regular terms and only one order to any one account.

(f) *Anticipated Discounts*.—If any advance dating shall be permitted under this Article, an anticipation discount may be allowed to the extent of one half of one percent per month.

SECTION 3. (a) *Price Guarantees*.—Guarantees against price decline are prohibited except in the case of an order on which a dating has been allowed, as herein provided, when such price guarantee may be given for a time not to exceed the dating period granted.

(b) *Time Guarantees*.—Definite time guarantees on the life and/or service of the products of the Trade are hereby prohibited.

SECTION 4. *Consignment*.—No member of the Trade shall ship goods on consignment except under circumstances to be defined by the Divisional Code Authority, where peculiar circumstances of the Trade require the practice.

SECTION 5. *Returned Goods*.—No member of the Trade shall accept the return of merchandise from any customer without having given prior consent to the return thereof, except in the case of defective products or where in some other way the member of the Trade may be responsible. On such goods as are accepted for return in accordance with prior consent given by a member of the Trade, a reasonable charge, not less than five (5) percent of the selling price shall be made and the freight charges shall be charged to the shipper returning goods except in the case of defective products or where in some other way the member of the Trade may be responsible.¹

SECTION 6. (a) *Selling Below Cost*.—Destructive price cutting is an unfair method of competition and is forbidden. Any sale shall be deemed *prima facie* destructive price cutting if the net sales price shall be less than the seller's net invoice cost plus cost of transportation; provided, however, that no sale shall be deemed destructive price cutting if made in good faith to meet existing competition.

(b) *Clearance Sales*.—Bona fide sales for the purpose of closing out discontinued, obsolete, or damaged merchandise may be made at such prices and upon such terms and conditions as may be necessary to effect their sale. Full details concerning such sales, including the amount of such merchandise on hand and the date of its purchase, must be reported to the Divisional Code Authority at least one week before the date of such sale. If the Divisional Code Authority shall so demand, any wholesaler making such sales shall furnish to it proof that such sales were made in good faith. If at any time the Administrator finds that the Divisional Code Authority is abusing the authority granted to it by this Section, he shall declare it inoperative either temporarily or permanently.

(c) *Free Goods*.—No goods shall be given free by any member of the Trade either alone or in connection with the sale of other merchandise, except where such free goods are given by a manufacturer and merely passed on by the wholesaler to his customer.

SECTION 7. *Emergency Provision*.—When the Divisional Code Authority determines that an emergency exists in this Trade and that the cause thereof is destructive price cutting such as to render ineffective or seriously endanger the maintenance of the provisions of this Supplemental Code, the Divisional Code Authority may request the Administrator, subject to such notice and hearing as he may require, to declare such emergency and determine a minimum markup to be added to the cost as established in paragraph (a), Section 6 of this Article. During the period of the emergency it shall be an unfair trade practice for any member of the Trade to

¹ See paragraph 2 of order approving this Code.

sell or offer to sell any products of the Trade at such prices or upon such terms or conditions of sale that the buyer will pay less therefor than net invoice cost plus the minimum markup and cost of transportation, except as provided elsewhere in this Article.

When it appears that conditions have changed, the Divisional Code Authority, upon its own initiative or upon the request of any interested party, shall cause such determination to be reviewed. The Administrator may at any time review such determination and modify or discontinue the operation of this Section.

SECTION 8. *Subterfuge*.—It shall be an unfair trade practice for any member of the Trade to employ subterfuge directly or indirectly to avoid or attempt to avoid the provisions of this Supplemental Code, or of the General Code, or the purposes and intent of the National Industrial Recovery Act, which are to increase employment, provide better wages, promote fair competitive methods, better business conditions, and promote the public welfare.

ARTICLE V—POWER OF PRESIDENT TO MODIFY

This Supplemental Code and all the provisions thereof are expressly made subject to the right of the President in accordance with the provisions of Sub-section (b) of Section 10 of the Act, from time to time to cancel or modify any order, approval, license, rule or regulation issued under Title I of said Act.

ARTICLE VI—EFFECTIVE DATE

This Supplemental Code shall become effective ten (10) days after its approval by the Administrator.

Approved Code No. 201—Supplement No. 18.
Registry No. 619-06.



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