

NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION
FOR THE
RETAIL DRUG INDUSTRY

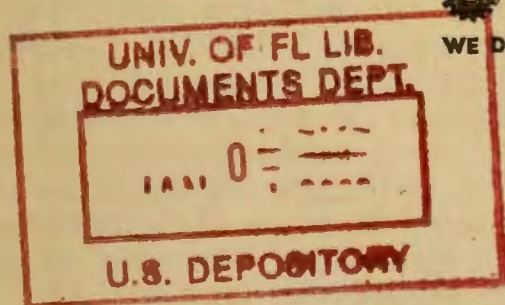
AS REVISED AUGUST 26, 1933

REGISTRY No. 1—98—2—21

The Code for the Retail Drug Industry in its present form merely reflects the proposal of the above-mentioned industry, and none of the provisions contained therein are to be regarded as having received the approval of the National Recovery Administration as applying to this industry



WE DO OUR PART



UNITED STATES
GOVERNMENT PRINTING OFFICE
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CODE OF FAIR COMPETITION FOR THE RETAIL DRUG TRADE

AS REVISED AUGUST 26, 1933

To effectuate the policy of Title I of the National Industrial Recovery Act, the following provisions are established as a Code of Fair Competition for the retail Drug Trade.

ARTICLE I

SECTION 1. *Application of the Code.*—The provisions of this code shall apply to any individual or organization engaged in the selling at retail of drugs, medicines, cosmetics, toilet preparations, and drug sundries.

SEC. 2. *Definitions.*—(a) The term “Drug” means and includes all medicinal substances and preparations recognized in the United States Pharmacopeia and National Formulary or any supplements thereto and all substances, preparations, and devices 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) and all devices intended to affect the structure or any function of the body of man or other animals.

(b) The term “cosmetics” and the term “toilet preparations” means and includes “toilet articles” and perfumes, extracts, toilet waters, face powders, face creams, rouges, shaving creams, dentifrices, perfumes, 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.

(c) The term “drug sundries” shall include such articles used in conjunction with but not included in the words “drugs”, “cosmetics”, or “toilet preparations.”

(d) The term “Drug Store” or “Pharmacy” means a retail establishment primarily engaged in the business of compounding and dispensing physicians’ prescriptions and the selling of drugs, medicines, chemicals, and allied items and which place of business shall at all times be under the direct and personal supervision of one or more registered pharmacists.

(e) The term “Registered Pharmacist” has the significance given it under the laws of the respective States or Territories of the United States.

(f) The term “assistant pharmacist” has the significance given it under the laws of the respective States or Territories of the United States.

(g) The term "apprentice" has the signification given it under the laws of the respective States or Territories of the United States.

(h) The term "member" means any person engaged wholly or partially in the trade. Where a member is engaged partially in the industry, only that part of his business which is included in the industry shall be covered by this code.

ARTICLE II—EFFECTIVE DATE

The effective date of this code shall be ten (10) days after its approval by the President of the United States.

ARTICLE III—LABOR PROVISIONS

SECTION 1. All employers in the retail Drug trade shall comply with the following provisions of Section 7 (a), of Title I of the National Industrial Recovery Act.

(a) Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interferences, 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.

SEC. 2. On and after the effective date of this Code, no person under the age of sixteen years shall be employed by any member of the retail Drug trade, except that persons between fourteen and sixteen may be employed for not to exceed three hours per day, and these hours between 7 a.m. and 7 p.m., in such work as will not interfere with the hours of day school; it is provided, however, that where a State law prescribes a higher minimum age, no employer shall employ within such State any person below the age specified by such State law.

ARTICLE IV—STORE HOURS AND EMPLOYEE HOURS

SECTION 1. (A) On and after the effective date of this code, no nonregistered employee in any retail drug store open for business 180 hours or less in any two (2) consecutive weeks shall work more than 96 hours in the two consecutive weeks, and shall not work more than 13 calendar days in any two consecutive weeks.

(b) In any store open over 180 hours in two (2) consecutive weeks no nonregistered employee shall work over 112 hours in any two (2) consecutive weeks and shall not work more than 13 calendar days in any two consecutive weeks.

(c) Nothing in this section shall apply to executives, whose salaries are \$30 a week or more, nor to registered pharmacists, assistant pharmacists, or apprentice pharmacists or other professional per-

sons employed in their profession, nor to outside salemen nor to delivery or maintenance employees, which delivery and maintenance employees may work 60 hours a week or more, if paid time and one third for all hours over 60 hours weekly. Curb boys and delivery boys not continuously employed may be on duty not over 63 hours in any one week and may be actually employed not over 56 hours in any one week.

(d) The maximum hours fixed in the foregoing paragraphs one and two shall not apply to employees in retail drug stores employing not more than two (2) persons in towns of less than 2,500 population, which towns are not part of a larger trading area; to registered pharmacists or other professional persons employed in their profession; nor to employees in a managerial or executive capacity, who now receive more than \$30 per week; nor to employees on emergency, maintenance, and repair work, except that employees engaged in such emergency, maintenance, or repair work shall be paid at the rate of time and one third for all hours in excess of 60 in any one week.

Population for the purpose of this agreement shall be determined by reference to the 1930 Federal Census.

ARTICLE V—WAGES

SECTION 1. On and after the effective date of this code, members of the retail drug trade shall establish minimum weekly rate of wages of all employees except registered pharmacists, assistant pharmacists, and apprentice pharmacists and executives for a work week specified in Article IV, Section 1, as follows:

(1) Within cities of over 500,000 population (by reference to the 1930 Federal Census) at the rate of \$15.00 per week for a 48-hour week and at the rate of \$16.00 for a 56-hour work week.

(2) Within cities of from 100,000 to 500,000 population (by reference to the 1930 Federal Census) at the rate of \$14.00 per week for a 48-hour work week, and at the rate of \$15.00 per week for a 56-hour work week.

(3) Within cities of from 25,000 to 100,000 population (by reference to the 1930 Federal Census) at the rate of \$13.00 per week for a 48-hour work week, and at the rate of \$14.00 per week for a 56-hour work week.

(4) Within villages, towns, and cities of from 2,500 to 25,000 population (by reference to the 1930 Federal Census) all wages shall be increased from the rates at which they were on July 1, 1933, by not less than 20 percent, provided that this shall not require wages in excess of \$11.00 per week, but in no case shall the minimum be less than \$10.00 per week.

(5) Within villages and towns of less than 2,500 population (by reference to the 1930 Federal Census), all wages shall be increased from the rates at which they were on July 1, 1933, by not less than 20 percent, provided that this shall not require wages in excess of \$10.00 per week.

(6) In the South all minimum wages specified in this Section shall be \$1.00 less provided, however, that in no case shall the minimum wage be less than \$10.00 per week, except in villages and

towns of less than 2,500 population, in which villages and towns all wages shall be increased from the rates at which they were on July 1, 1933, by not less than 20 percent.

(7) Curb boys and delivery boys not continuously employed may be paid on a commission basis or on a per package delivery basis.

ARTICLE VI—RIGHT OF CONTRACT

The retailer shall have the right to and nothing in the anti-trust laws as designated in Section 1 of the Act entitled "an act to supplement existing laws under unlawful restraints and monopolies and for other purposes approved October 15, 1914", shall be deemed to prevent him from entering into contracts with manufacturers, wholesalers, or distributors relative to price agreements on trade-marked, copyrighted, or identified merchandise.

ARTICLE VII—TRADE PRACTICES

To effectuate the purposes of the National Industrial Recovery Act all members of the retail drug trade shall comply with the following trade practices, and violation of any of them shall constitute an act of unfair competition within the meaning of the Federal Trade Commission Act and amendments thereto:

SECTION 1. It shall be considered an unfair trade practice for any retailer to receive or accept any secret payment or allowance of rebates, refunds, concessions, or unearned discounts whether in the form of money, or otherwise, or to accept any offer on the part of any manufacturer or wholesaler to pay any commission or any part of the salary or wages of any employee, demonstrator, or sales persons in the retail shop or store.

Any payment for advertising including window or counter displays shall be paid for in cash and the amount paid shall in no way be contingent upon the amount of merchandise purchased.

SEC. 2. Any trading allowance given to any purchaser in connection with the sale of any product or article or delivering to such purchaser in connection with such sale any other merchandise of any description, except upon payment in accordance with the provisions of the Code. Note: Nothing in this code shall prevent any person from selling any drug or drug sundry at retail at a different price to a physician, nurse, dentist, veterinarian, or hospital.

SEC. 3. No plans, schemes, subterfuges, such as gifts, prizes, chances, secret discounts, bonuses, rebates, concession, combination deals, or any other devices whatsoever intended to evade or obviate, weaken, or nullify this code or prevent the effectuation of this code shall be permitted.

SEC. 4. Substituting another article for the kind ordered without due notice to the purchaser.

SEC. 5. Packaging or selling any product or item that is an imitation or unfairly similar to another product in design, style, mark, or brand.

Section 7 in the new code will be Section 6.

SEC. 7. No member of the retail drug trade shall use advertising (whether printed, radio, display, or of any other nature) which is inaccurate and/or in any way misrepresents merchandise (including

its use, trade mark, grade, quality, quantity, substance, character, nature, origin, size, material, content, or preparation), or credit terms, values, policies, or services, nor shall any member of the retail drug trade use advertising or selling methods which tend to deceive or mislead the consumer, including "bait" offers of merchandise.

The term "bait offer of merchandise" as used herein means the practice whereby a member of the retail drug trade, through an appeal by price, brand, description, or other means, attracts prospective customers into his store and then, through inadequate or disparaging sales presentation or through the quantity available or through other means, places obstacles in the way of the purchase of the advertised merchandise.

SEC. 8. To misbrand merchandise as to quality and/or misrepresentation as to price.

Sections 9 and 10 will be deleted, and in place of 9 we have the following:

To advertise, to fill prescriptions, irrespective of cost of ingredients or quantity prescribed, at a uniform price.

Section 11 as it is here; the number will have to be changed.

No member of the retail drug trade shall use advertising which lays claim to or implies a policy or continuing practice of generally underselling competitors.

Under the heading of control of stock leaders, a cut price by the retailers of trade-marked and identified merchandise covered by this code shall not be sold at a discount greater than 21 percent from the manufacturers' base price.

On all other products covered by this code percentages of mark-up are to be applied to the prevailing wholesale price to secure to the retailer cost sold on such sales, to be established on the basis of the National Drug Store survey and further cost research.

Base price means the manufacturers' published or declared retail price.

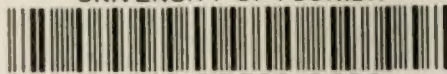
It is the intent of this provision that, in making the computation of prices as indicated above, federal and state excise or sales tax shall not be included as a part of costs, but shall be added to the prices of the goods after such computations have been made.

Under the heading of general sales provisions—and number this subsection 12—

Nothing in the code shall be interpreted to prevent bona fide seasonable clearances of merchandise when so advertised, plainly marked; of highly perishable or damaged goods, so advertised, plainly marked in order to show individually to the retail organization for the purpose of bona fide discontinuance of the handling of any line when so advertised or plainly marked, to be stopped from selling such merchandise, provided, however, in all cases the manufacturer shall, if his address be known, be given an opportunity to repurchase his own merchandise.

Under the heading of Administration, page 9, Article VIII, Section 1:

To effectuate further the policies of the Act, a National Retail Drug Trade Governing Board is hereby set up to act as a planning and fair-practice agency for the retail drug trade and to cooperate with the Administrator in the administration and enforcement of this Code. This Authority shall be constituted as follows:



(a) Four members appointed by the National Association of Retail Druggists elected by a fair method of selection.

(b) Three members appointed by the American Pharmaceutical Association elected by a fair method of selection.

(c) One member appointed by the Drug Institute of America, Incorporated, elected by a fair method of selection.

(d) A representative of representatives, without vote, appointed by the President of the United States.

SEC. 2. The National Retail Drug Trade Governing Board may from time to time present to the Administrator recommendations based on conditions in the trade which will tend to effectuate the operations of the provisions of this Code and the policy of the National Industrial Recovery Act.

SEC. 3. The Drug Institute of America, Incorporated, of 330 West 42nd Street, New York, New York, acting through the National Retail Drug Trade Governing Board, is hereby constituted an agency of the trade to collect, receive, and transmit, subject to the approval of the Administrator and through the National Retail Drug Trade Governing Board and its agencies, such reports concerning wages, hours of labor, and unfair methods of competition as may be required by the National Retail Drug Trade Governing Board, subject to the approval of the Administrator, unless and until any other agency is selected by the National Retail Drug Trade Governing Board.

SEC. 4. The National Retail Drug Store Governing Board shall, subject to approval of the Administrator, designate in the several states, committees, and the manner of their selection, for the purpose of assisting in the administration and enforcement of this Code.

ARTICLE IX—GENERAL

SECTION 1. The Associations mentioned in this Code shall impose no inequitable restrictions upon admission to membership in their organizations.

SEC. 2. 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 discriminate against them.

SEC. 3. This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provisions of Clause (10) (b) of the National Industrial Recovery Act, from time to time to cancel or modify any order, approval, license, rule, or regulation, issued under Title 1 of said Act, and specifically 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.

SEC. 4. Such of the provisions of this Code as are not required to be included therein 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 competition practices and to effectuate the other purposes and policies of Title 1 of the National Industrial Recovery Act.