

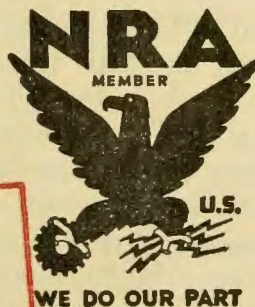
NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION
FOR THE
WHOLESALE DRUG
INDUSTRY

AS SUBMITTED ON AUGUST 25, 1933

REGISTRY No. 698—2—23

The Code for the Wholesale 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



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CODE OF FAIR COMPETITION OF THE WHOLESALE DRUG INDUSTRY

ARTICLE I—PURPOSE

SECTION 1. The Code is adopted pursuant to Title I of the National Industrial Recovery Act.

SEC. 2. The purpose of the Code is to effectuate the policy of Title I of the National Industrial Recovery Act insofar as it is applicable to Wholesale Druggists.

ARTICLE II—DEFINITIONS

SECTION 1. The term "Wholesale Druggist" is defined in accordance with the definition adopted by the Bureau of Industrial Alcohol, U.S. Treasury Department, Regulations No. 2 Article 15, Section 1501 (e), issued April 1, 1931, as follows:

"'WHOLESALE DRUGGIST' means a person who is engaged in the business of selling at wholesale a representative assortment of pharmaceuticals and other articles and materials such as drugs, oils, chemicals, proprietary medicines, and druggists' sundries, and who carries a stock of representative pharmaceuticals and such other articles and materials in such assortments and quantities as will enable him regularly to supply from stock, from day to day, the usual and immediate medical requirements of retail druggists, pharmacists, physicians, hospitals, and dispensaries, and who is duly qualified under the laws of the State in which he does business to carry on such business."

Wherever in this Code the words "Wholesale Druggist" or "employer" or words of similar import are used, they are intended to refer to a Wholesale Druggist as hereinbefore defined.

SEC. 2. The word "merchandise" as used in this Code is defined to mean: (a) drugs and (b) cosmetics and toilet preparations.

(a) The term "drug" means and includes all pharmaceutical products, including substances and preparations recognized in the United States Pharmacopoeia or National Formulary or any supplements thereto and all substances, preparations and devices intended for use in the cure, mitigation, treatment or prevention of disease in, or the preservation or enhancement of bodily or mental comfort or condition of, 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 substances, preparations and 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 perfumes, toilet waters, face powders, face

creams, rouges, shaving creams, dentrifices, 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.

ARTICLE III—MEMBERSHIP

Any Wholesale Druggist is eligible for membership in the Code, and may become a member of the Code by signing and delivering to the Secretary of the Drug Institute of America, Incorporated, 330 West 42nd Street, New York, N.Y., a letter substantially in the form annexed hereto.

ARTICLE IV—HOURS OF LABOR, RATES OF PAY, AND OTHER CONDITIONS OF EMPLOYMENT

SECTION 1. Pursuant to subsection (a) of Section 7 of the National Industrial Recovery Act, the Code shall be subject to the following conditions:

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

(b) That 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

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

SEC. 2. On and after the effective date of this Code, no Wholesale Druggist shall employ any employee for more than a maximum of forty-five (45) hours in any one week; excepting, however, all executive, administrative, and supervisory employees who receive \$35 per week or more, and all salesmen and delivery and maintenance men, all of whom shall be exempt from this regulation; and provided that the employees of Wholesale Druggists, who are necessarily technically trained or whose services shall otherwise be required for the purpose, shall be exempt from the operation of this section during periods of emergency or epidemics in order that there may be no undue delay in meeting the demands of the medical profession, hospitals, dispensaries, and the general public through the retail pharmacies.

No employer shall permit an employee who shall also have performed work for one or more other employers to work such number of total hours for all employers as would result in a violation of this Code had all such work been performed for one employer.

SEC. 3. On and after the effective date of this Code, each Wholesale Druggist shall adopt a schedule of minimum wages under which no employee (other than apprentices) shall be paid less than \$14 per week in any city with a population of 100,000 or more; and

under which no employee (other than apprentices) shall be paid less than \$12 per week in any city with a population of less than 100,000; and under which apprentice employees shall be paid not less than \$2 per week under these minimum wages. The population in each case shall be determined by the United States census of 1930.

SEC. 4. No person under sixteen (16) years of age shall be employed, except that persons between fourteen (14) and sixteen (16) years of age may be employed not to exceed three (3) hours per day, between 7:00 a.m. and 7:00 p.m. in such work as will not interfere with the hours of daytime schooling.

ARTICLE V—PRICE AND TERMS OF PAYMENT

SECTION 1. From time to time after the effective date of this Code, the Drug Institute of America, Incorporated, shall publish or cause to be published and shall furnish or cause to be furnished to each Wholesale Druggist who is a member of the Code, lists specifying the "cost-sold" of as many items and groups of items of merchandise as practicable, and from time to time shall publish or cause to be published and shall furnish or cause to be furnished to each member of the Code as promptly as practicable any amendment of the "cost-sold" of any such items and groups of items of merchandise when and as circumstances require such amendment. The "cost-sold" of any such item or group of items of merchandise shall be calculated by the Drug Institute of America, Incorporated, in consultation with the Statistical Division of the National Wholesale Druggists Association and the Federal Wholesale Druggists Association on the basis of their own research and the economic, statistical, and accounting reports submitted to them from time to time by the members of the Code. In calculating the "cost-sold" of any merchandise, the cost to the entire Wholesale Drug Industry shall be approximately determined, including cost of acquisition or replacement of the merchandise, handling charges, the allocable portion of overhead, including all general and administrative expense and taxes, the cost of sales and deliveries, and any other appropriate charges, all determined in accordance with good accounting practice. The "cost-sold" of any merchandise may, in the discretion of the Drug Institute of America, Incorporated, be published in the form of manufacturers' list prices with specified maximum discounts indicated. The "cost-sold" of any specified merchandise, or any amendment of such "cost-sold", shall go into effect on the tenth day following its publication, as above provided; and no member of the Code shall sell any such specified merchandise at a price or prices below the "cost-sold" therefor in effect at the time of the sale or of contracting to sell. All discounts allowed by members of the Code shall be cash discounts and shall be allowed only if paid within the customary cash discount period; and no discount whatever shall be allowed which brings the net selling price to the purchaser of any merchandise below the "cost-sold" then in effect for such merchandise.

SEC. 2. Subject to such regulations as may be adopted in a Code for the entire Drug Industry: (a) Wholesale Druggists shall have the right to contract with manufacturers to observe the resale prices

of proprietary and/or trade-marked merchandise at all times during the operation of this Code; and (b) Wholesale Druggists shall have the right to contract with retail druggists or other distributors of merchandise to observe the resale prices of proprietary and/or trade-marked merchandise as established by the manufacturer.

ARTICLE VI.—UNFAIR PRACTICES

For all purposes of the Code the following described acts shall constitute unfair practices:

SECTION 1. Making or promising to any purchaser or prospective purchaser of any products, or to any officer, employee, agent, or representative of any such purchaser or prospective purchaser, any bribe, gratuity, gift, or other payment or remuneration, directly or indirectly.

SEC. 2. Procuring, otherwise than with the consent of any member of the Industry, any information concerning the business of such member which is properly regarded by it as a trade secret or confidential within its organization, other than information relating to a violation of any provision of the Code.

SEC. 3. Imitating or simulating any design, style, mark, or brand used by any other member of the Industry or knowingly selling or passing off any product with any such imitated or simulated design, style, mark, or brand.

SEC. 4. Using or substituting any material or product different in brand, kind, or quality from that specified by the purchaser thereof.

SEC. 5. Using or substituting any material or any method of manufacture, distribution, marketing, or sale not in accord with any applicable law, rule, or regulation of any governmental authority.

SEC. 6. The secret payment or allowance of rebates, refunds, concessions, advertising allowances, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers under like terms and conditions.

SEC. 7. To prevent, by uninvited persuasion, disparaging innuendo, or by concealment, a customer or prospective customer from purchasing a particular product which he has requested—

The uninvited dissuading or the attempt to dissuade a customer or prospective customer from purchasing an article of a particular brand, trade mark or type, which such customer has requested, and persuading or attempting to persuade such customer to purchase an article calculated and designed to serve the same purpose, but of a different brand, trade mark or type than the article requested, unless the vendor has not available for sale the article so requested, and unless such fact is so disclosed to such customer or prospective customer.

SEC. 8. To permit the substitution of a product for one which the customer believes he is purchasing, including the sale and/or delivery to a person of an article of a different type, brand or trade mark from that which the customer or prospective customer believes he is purchasing, unless such fact be disclosed at the time of sale or offer for sale by the vendor to the customer or prospective customer.

SEC. 9. Disseminating, publishing or circulating any false or misleading information relative to any member of the Industry or to any product or price for any product manufactured or sold by any member of the Industry (including one's own business or products), or the credit standing, business conduct or ability of any member thereof to manufacture any product, or to the conditions of employment among the employees of any member thereof.

SEC. 10. All advertising or statements made to promote the sale of drugs, cosmetics and toilet preparations, whether written or oral, including all forms of printed or oral recommendation of one's goods under the control of the manufacturer, such as publicity of all kinds, including newspaper and magazine advertising, circulars, labels, booklets, radio advertising, and statements made orally in the promotion of sales of such products by salesmen or others employed directly or indirectly by any member of the Industry, must be truthful and shall not be false directly, or by ambiguity or inference tend to create a misleading impression. The truth of an advertisement shall be judged by its intended effect as well as by a literal rendering thereof.

SEC. 11. Inducing or attempting to induce by any means any party to a contract with a member of the Industry to violate such contract.

SEC. 12. Aiding or abetting any person, firm, business trust, association or corporation in any unfair practice.

SEC. 13. Making any sale or contract of sale of any product under any description which does not fully describe such product in terms customarily used in the Industry and conforming to any applicable law, rule or regulation of any governmental authority.

SEC. 14. Any violation of any State or Federal law now or hereafter in force relating to the manufacture and sale or advertising of the products of the Industry.

SEC. 15. Any violation of any other provision of the Code, whether or not therein expressed to be such, or using or employing any practice not hereinabove in this Article described which the Committee shall have declared to be a practice that would tend to defeat the policy of Title I of the National Industrial Recovery Act and, therefore, an unfair practice, and of which determination by the Committee its Secretary shall have given notice to the members of the Code and to the President of the United States.

ARTICLE VII—REPORTS AND STATISTICS

The Drug Institute of America, Incorporated, 330 West 42nd Street, New York, N.Y., and the Statistical Division of the National Wholesale Druggists' Association, 51 Maiden Lane, New York, N.Y., and the Federal Wholesale Druggists' Association, 123 Market Place, Baltimore, Md., are hereby constituted as agencies of the Industry to conduct research for all purposes of the Code, and to collect, receive, and transmit to the President of the United States such reports concerning wages, hours of labor, "cost-sold" and unfair methods of competition as the Committee may deem advisable or as may be required by the President under the provisions of the National Industrial Recovery Act, unless and until any other agencies are selected by the Committee.

ARTICLE VIII—ADMINISTRATION

SECTION 1. The administration of this Code shall be under the direction of a Committee of seven members, four of whom shall be elected annually by the Board of Control of the National Wholesale Druggists' Association, two of whom shall be elected annually by the Executive Committee of the Federal Wholesale Druggists' Association and the seventh of whom shall be elected annually by the other six members of the Committee from the proprietors or executive officers of companies in the group of Wholesale Druggists who are members of the Code but who do not belong to either the National Wholesale Druggists' Association or the Federal Wholesale Druggists' Association.

SEC. 2. The Committee shall have all such powers and duties as may be necessary and proper, in its discretion, to enable it fully to administer and effectuate the purposes of the Code.

The Committee shall also have the power to make such assessments against the members of this Code as may be necessary to defray the expenses of administration. Such assessments shall be made on such equitable basis as the Committee may from time to time determine, giving some consideration to the relative gross sales during the preceding calendar year made and reported by each member of the Code; and the aggregate assessments made against any one member in respect of any one calendar year shall not exceed \$250. The failure of any member of the Code to pay any such assessment for a period of thirty (30) days after the date on which it becomes payable shall constitute a violation of the Code.

ARTICLE IX—GENERAL PROVISIONS

SECTION 1. No provisions of this Code shall be interpreted, applied or practiced in such manner as to promote or permit monopoly or monopolistic practices, or to eliminate or oppress small enterprises, or to discriminate against them.

SEC. 2. The violation of any of the provisions of this Code or of any rule or regulation issued thereunder approved by the President of the United States shall be deemed to be an unfair method of competition.

SEC. 3. None of the provisions of this Code shall become effective until the Code is approved by the President of the United States.

SEC. 4. If any provision of this Code be declared invalid or unenforceable, the remaining provisions shall nevertheless continue in full force and effect the same as if they had been separately presented for approval and approved by the President of the United States.

SEC. 5. This Code shall be in effect beginning ten (10) days after its approval by the President of the United States and shall remain in effect unless and until modified or revoked, and until the expiration of the National Industrial Recovery Act.

SEC. 6. 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. The term "export" shall include in addition to shipments to foreign countries, shipments to such United States' possessions as may be defined by the Industry, but shall exclude the re-importation of any export shipments.

SEC. 7. If any member of the Code, whether his capacity be that of a manufacturer, wholesaler, or retailer, acts in addition thereto in any other capacity or capacities, the business conducted by such member shall be governed in each of the capacities in which he may so act by the provisions of the Code applicable to any capacity or capacities in which such member's business may be conducted.

ARTICLE X—AMENDMENTS

SEC. 1. This Code and all the provisions hereof are expressly made subject to the power of the President of the United States, in accordance with the provision 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 I of said Act and specifically to the power of the President to cancel or modify his approval of this Code or any conditions imposed by him upon his approval hereof.

SEC. 2. 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 circumstances or experiences may indicate, by methods to be outlined by the Committee. It is contemplated that from time to time supplementary provisions to this Code or additional Codes, not inconsistent with the provisions hereof, will be submitted for the approval of the President to prevent unfair competition in price and other unfair and destructive competitive practices and to effectuate the other purposes and policies of Title I of the National Industrial Recovery Act.

FORM OF LETTER OF ASSENT TO THE CODE

To the Secretary of

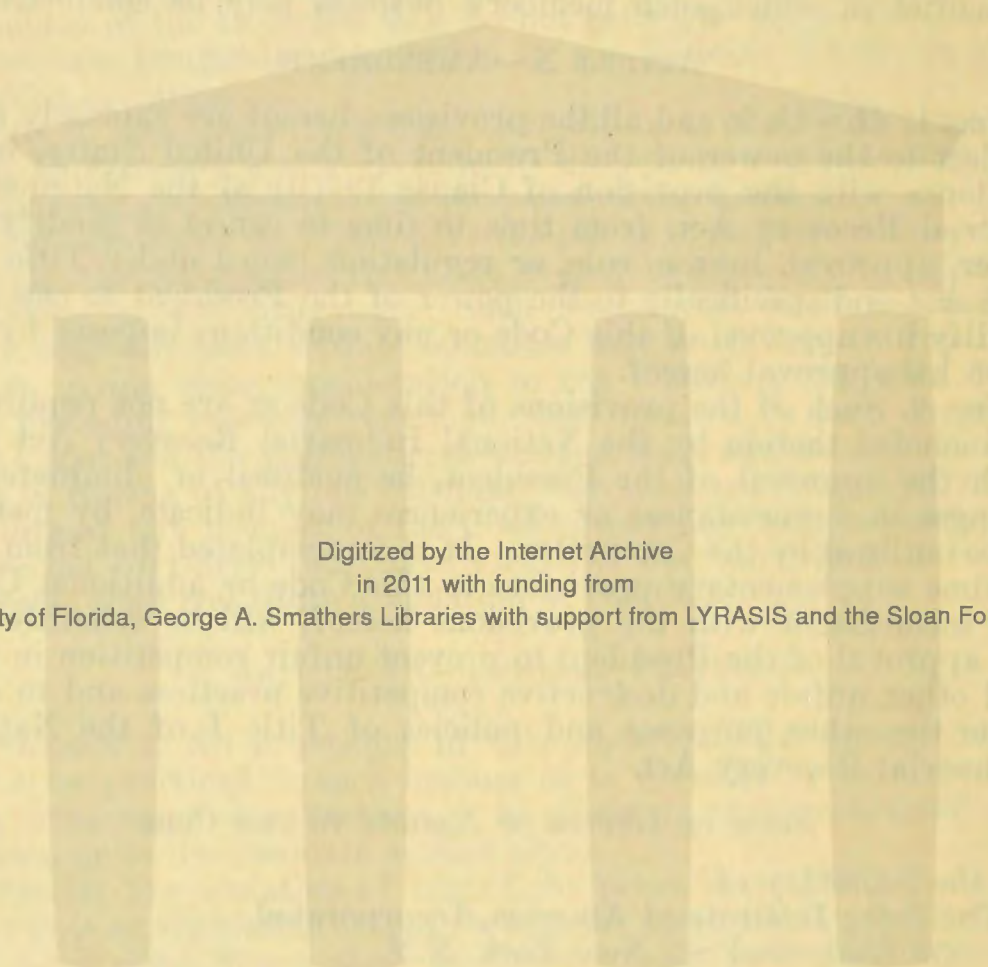
The Drug Institute of America, Incorporated,
330 West 42nd St., New York, N.Y.

Dear Sir: The undersigned, desiring to become a member of the Code of Fair Competition of the Wholesale Drug Industry, dated -----, 1933, a copy of which has been received by the undersigned, hereby assents to all of the provisions of said Code and by so doing hereby becomes a member of the Code. This assent becomes effective as of the date on which the Code shall have been approved by the President of the United States of America as therein provided, or as of the date on which the Code shall have been delivered if such date shall be subsequent to the approval of the Code by the President as aforesaid.

For all purposes of the Code, the address of the undersigned, until it shall file with you written notice of a change of such address, shall be as set forth at the foot of this letter.

Very truly yours,

Address:



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