

**NATIONAL RECOVERY ADMINISTRATION**

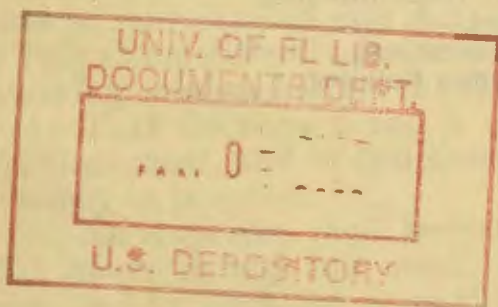
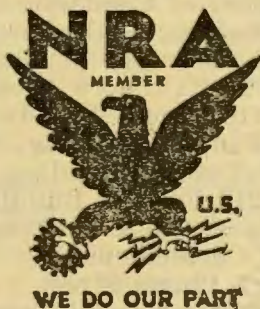
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**CODE OF FAIR COMPETITION**

**FOR THE**

**OPTICAL WHOLESALE  
INDUSTRY AND TRADE**

**AS APPROVED ON MAY 31, 1934**



**UNITED STATES  
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Approved Code No. 448

## CODE OF FAIR COMPETITION

FOR THE

## OPTICAL WHOLESALE INDUSTRY AND TRADE

As Approved on May 31, 1934

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### ORDER

#### APPROVING CODE OF FAIR COMPETITION FOR THE OPTICAL WHOLESALE INDUSTRY AND 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 Code of Fair Competition for the Optical Wholesale Industry and Trade, and hearings having been duly held thereon and the annexed report on said 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 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 Code of Fair Competition be and it is hereby approved, provided, that the following changes be, and the same hereby are, made:

(1) That Sections 1 and 2 of Article III, be and they hereby are, eliminated, and in lieu thereof, the following provision be, and it hereby is, inserted:

"1. No employee shall be permitted to work in excess of forty (40) hours in any one week, except that any employee may be permitted to work for a maximum of forty-eight (48) hours per week during any twelve (12) weeks in any fifty-two (52) week period."

(2) That Subsection 1, Section 6, Article VI, be amended, and the same hereby is, to read as follows:

"(1) To provide facilities for arbitration, other than in labor disputes, and subject to the approval of the Administrator, to prescribe rules of procedure and rules to effect compliance with awards and determination."

(3) That Section 5 of Article VII be, and the same hereby is, eliminated from the Code.

(4) That Subsection (a), Section 11 of Article X be amended, and the same hereby is, to read as follows:

"(a) The Code Authority shall, subject to the approval of the Administrator, as soon as practicable, issue a list of such allowances on all opthalmic equipment and machinery, classifying the same by name, type and model. Allowances shall not be made in excess of the amounts named in this list.

Pending the issuance thereof, and after the issuance thereof, in the case of items not included in such list, no member of the industry and trade shall allow on merchandise trade in more than a fair resale price, minus the cost of reselling on the goods or equipment taken in trade."

HUGH S. JOHNSON,  
*Administrator for Industrial Recovery.*

Approval recommended:

GEO. L. BERRY,  
*Division Administrator.*

WASHINGTON, D. C.,  
May 31, 1934.



## REPORT TO THE PRESIDENT

THE PRESIDENT,  
*The White House.*

SIR: A Public Hearing on the Code of Fair Competition for the Optical Wholesale Industry and Trade, submitted by a Code Committee representing approximately 80 percent of the volume of business of said Trade, was conducted in Washington on December 4, 1933, in accordance with the provisions of the National Industrial Recovery Act.

The maximum hours permitted under this Code are forty (40) in any one week. Provision is made for 96 hours extra work in any 52 week period, provided, that any employee working these extra hours will be granted leave with pay for a period equal to the overtime worked.

The minimum wage provided in this Code is \$16.00 per week of forty (40) hours. Learners, who are limited to a six months learning period, are to be paid 80 percent of the minimum wage. Messengers are to be paid at the rate of \$12.00 per week. Provision is made for an equitable adjustment of the wage above the minimum.

The members of the Optical Wholesale Industry and Trade, in addition to performing the usual functions of wholesale distribution, are engaged in the vast majority of establishments in the fabricating of lenses from the rough, semi-finished or uncut form to a finished product to conform to the practitioner's prescription, and the fitting of these lenses to a suitable spectacle or eyeglass frame or mounting.

Prescriptions cannot be handled in volume and styled to a definite pattern inasmuch as each unit must be handled separately to meet certain individual requirements. It is necessary to have a flexible organization capable of handling a varying volume of work with at least a small percentage of the employees being able to perform various operations in prescription work in order to properly fabricate the varying types of work that come into the shop. It is necessary to maintain prompt service at all times and this requires a skeleton force, almost equal to the full time force, to handle orders which cannot be anticipated. The demand is occasioned by the highly personal character of the product, in that it meets the urgent needs of a wearer who would otherwise be unable to see with comfort and perform his usual duties.

There were 5,700 wage earners employed in this industry in the first part of 1933. The 40 hour week would necessitate the reemployment of about 1,100 wage earners or an increase of slightly more than 16 percent.

As a result of the increase in minimum wages, and in the total number employed, it has been estimated that the increase in total wages since the President's Reemployment Agreement is about 7 percent over the wage total prior to that date.



## FINDINGS

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

I find that:

(a) Said 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 the 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 utilization of the present productive capacity of industries, 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 Industry normally employs not more than 50,000 employees; and is not classified by me as a major industry.

(c) The 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 group is an industrial group truly representative of the aforesaid Industry; and that said group imposes no inequitable restrictions on admission to membership therein.

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

(e) The 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 approval of said Code.

This Industry has cooperated in a most satisfactory manner with the Administrator in the preparation of this Code. From evidence adduced during the hearing and from recommendations and reports of the various Advisory Boards it is believed that this Code as now proposed and revised represents an effective, practical, equitable solution for this Industry and for these reasons this Code has been approved.

Respectfully,

HUGH S. JOHNSON, *Administrator.*

MAY 31, 1934.



# CODE OF FAIR COMPETITION FOR THE OPTICAL WHOLESALE INDUSTRY AND TRADE

## ARTICLE I—PURPOSES

To effect the policies of Title I of the National Industrial Recovery Act, this Code is submitted as a Code of Fair Competition for the Optical Wholesale Industry and Trade and upon approval its provisions shall be the standards of fair competition for such Industry and Trade and binding upon every member thereof.

## ARTICLE II—DEFINITIONS

1. The term "Optical Wholesale Industry and Trade" as used herein shall mean the wholesale distribution to the optical retail and wholesale trade, of spectacles, oxfords, lorgnettes and other ophthalmic frames, mountings and accessories, all ophthalmic lenses, eyeglass and spectacle cases, parts, artificial eyes, sun-glasses, industrial goggles and eye protectors when equipped with prescription lenses, and the servicing of prescriptions and otherwise servicing eye wear and ophthalmic products, at wholesale to the optical retail and wholesale trade.

The term also includes the sale to the retail trade of instruments, equipment, tools, machinery and furniture for use in examining eyes and making, fitting and repairing ophthalmic products.

2. The term "member of the industry and trade" as used herein includes, but without limitation, any individual, partnership, association, corporation or other form of enterprise engaged in the Optical Wholesale Industry and Trade, either as an employer or on his or its own behalf.

3. The term "employee" as used herein includes any and all persons engaged in the industry and trade, however compensated, except a member of the industry and trade.

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

5. The term "Optical Retailer" or "Retailer" as used herein shall mean a retailer whose sale of ophthalmic merchandise at retail prices represents more than twenty-five percent (25%) of total sales of ophthalmic merchandise.

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

7. The terms "President", "Act" and "Administrator" as used herein mean respectively the President of the United States, Title I of the National Industrial Recovery Act and the Administrator for Industrial Recovery.



## ARTICLE III—HOURS

1. In cities over 200,000 population or the immediate trade area of such city, no employees, except as hereinafter specified, shall be permitted to work in excess of forty (40) hours in any one week, except that any employee may be permitted to work for a maximum of forty-eight (48) hours per week during any twelve (12) weeks in any fifty-two (52) week period.<sup>1</sup>

2. In cities of 200,000 population or less, or the immediate trade area of such city, no employee shall be permitted to work in excess of forty-two (42) hours in any one week, except that any employee may be permitted to work for a maximum of forty-eight (48) hours per week during any twelve (12) weeks in any fifty-two (52) week period.<sup>1</sup>

3. In no event shall any employee be permitted to work in excess of ten (10) hours in any twenty-four (24) hour period, except when actually engaged in emergency maintenance or emergency repair work, provided, however, that all such instances of emergency overtime work shall be reported immediately to the Code Authority.

4. The maximum hours herein established shall not apply to persons engaged in a managerial, supervisory and/or executive capacity, who are paid thirty-five dollars (\$35.00) or more per week, nor to outside salesmen.

5. Each employee shall be granted leave of absence with pay for a period equal to the overtime worked as permitted and limited in Sections 1 and 2 of this Article. Such leave of absence shall be granted in daily periods, to be agreed upon between employer and employee, within the calendar year in which the overtime occurs, provided, however, that the following holidays, namely, New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas, shall not be considered as leave of absence under the above rule.

(a) If any employee voluntarily or involuntarily leaves the employ of an employer before said employee has been allowed leave of absence sufficient to compensate said employee for the overtime work, said employee shall be paid for such overtime based upon the regular hourly or weekly compensation.

6. No employee shall be permitted to work more than six (6) days in any seven (7) day period.

7. No employer shall knowingly permit any employee to work for any time which, when added to the time spent at work for another employer or employers in this industry and trade, exceeds the maximum permitted herein.

## ARTICLE IV—WAGES

1. No employee, except as hereinafter specified, shall be paid at less than sixteen dollars (\$16.00) per week of forty (40) hours or forty-two (42) hours as provided in this Code.

<sup>1</sup> Sections 1 and 2 of this Article eliminated and following inserted in lieu thereof:  
 "1. No employee shall be permitted to work in excess of forty (40) hours in any one week, except that any employee may be permitted to work for a maximum of forty-eight (48) hours per week during any twelve (12) weeks in any fifty-two (52) week period."  
 (See paragraph 2 (1) of order approving this Code.)



2. Learners shall be paid not less than eighty per cent (80%) of the minimum wage herein provided; provided, however, that such learners thus paid shall be limited to a six (6) months learning period, whether served under one or more employers, and provided further that such learners thus paid shall not exceed in number the following schedule:

Establishments employing six or less employees shall be entitled to one learner thus paid; establishments employing between seven and twenty employees, inclusive, shall be entitled to two learners, thus paid; establishments employing more than twenty employees shall be entitled to one additional learner, thus paid, for every twenty employees or fraction thereof.

3. Messengers shall be paid not less than twelve dollars (\$12.00) per week for a forty (40) or forty-two (42) hour week, as provided in this code.

4. Females performing substantially the same work as male employees shall receive the same rate of pay as male employees.

5. This Article establishes minimum rates of pay which shall apply, irrespective of whether an employee is actually compensated on time-rate, piece-work or other basis.

6. A person whose earning capacity is limited because of age, physical or mental handicap may be employed on light work at a wage below the minimum established by a Code, if the employer obtains from the state authority, designated by the United States Department of Labor a certificate authorizing such person's employment at such wages and for such hours as shall be stated in the certificate. Each employer shall file monthly with the Code Authority a list of all such persons employed by him, showing the wages paid to, and the maximum hours of work for such employees.

7. For employees who are paid thirty-five dollars (\$35.00) a week or less, no hourly, daily or weekly rates of pay shall be less than such rates existing as of June 16, 1933; and no employee shall be paid a wage rate which will yield a less wage for the shorter full time week of forty (40) or forty-two (42) hours herein established than could be earned for the same class of work for the longer full time week existing as of June 16, 1933. Wage increases for such employees established under P.R.A. shall at least be maintained.

## ARTICLE V

1. No person under eighteen (18) years of age shall be employed in the Industry and Trade except office boys, office girls and messengers. No person under sixteen (16) years of age shall be employed in the Industry and Trade in any capacity. In any state any employer shall be deemed to have complied with this provision as to age if he shall have on file a certificate or permit, duly signed by the authority in such state empowered to issue employment or age certificates or permits showing that the employee is of the required age.

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

3. No provision in this Code shall supersede any State or Federal law which imposes on employers more stringent requirements as to age of employees, wages, hours of work, or as to safety, health, sanitary or general working conditions, or insurance or fire protection, than are imposed by this Code.

4. No employer shall reclassify employees or duties of occupations performed, or engage in any other subterfuge, so as to defeat the purposes or provisions of the Act or of this Code.

5. All employers shall post and keep posted copies of this Code in conspicuous places accessible to all employees. Every member of the Industry and Trade shall comply with all rules and regulations relative to the posting of provisions of codes of fair competition which may from time to time be prescribed by the Administrator.

6. Every employer shall provide for the safety and health of employees during the hours and at the places of their employment. Standards for safety and health shall be submitted by the Code Authority to the Administrator within six (6) months after the effective date of the Code.

## ARTICLE VI—ADMINISTRATION

### Organization and Constitution.

1. A Code Authority is hereby established consisting of nine (9) members to be selected by the members of the Industry and Trade through a fair method of selection approved by the Administrator.

In addition to membership as above provided, there may be three (3) members, without vote, to be known as Administration members, to be appointed by the Administrator to serve for such terms as he may specify.

2. Each trade or industrial association, directly or indirectly participating in the selection or activities of the Code Authority, shall (1) impose no inequitable restriction on membership, and shall (2) submit to the Administrator true copies of its articles of association, by-laws, 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 purpose of the Act.

3. In order that the Code Authority shall at all times be truly representative of the industry and trade and in other respects comply with the provisions of the Act, the Administrator may prescribe 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 of the Code Authority.



4. Nothing contained in this Code shall constitute the members of the Code Authority partners for any purpose. Nor shall any member of the Code Authority be liable in any manner to anyone for any act of any other member, officer, agent or employee of the Code Authority. Nor shall any member of the 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 Code, except for his own willful mis-feasance or non-feasance.

5. If the Administrator shall determine that any action of a 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 further consideration by such 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 (30) days' notice to him of intention to proceed with such action in its original or modified form.

6. Subject to such rules and regulations as may be issued by the Administrator, the Code Authority shall have the following powers and duties, in addition to those authorized by other provisions of this Code.

(a) To insure the execution of the provisions of this Code and to provide for the Compliance of the industry and trade with the provisions of the Act.

(b) To adopt bylaws and rules and regulations for its procedure.

(c) To obtain from members of the industry and trade such information and reports as are required for the administration of the Code. In addition to information required to be submitted to the Code Authority, members of the industry and trade subject to this 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 Code shall relieve any member of the industry and trade of any existing obligations to furnish reports to any Government agency. No individual report shall be disclosed to any other member of the industry and trade or any other party except to such Governmental agencies as may be directed by the Administrator.

(d) To effectuate further the policies of the Act, the Code Authority shall act as a planning and fair practice agency for the optical wholesale industry and trade and may from time to time present to the Administrator recommendations based on conditions in the industry as they may develop which will tend to promote the operation of this Code and the policy of the Act.

(e) If at any time the Code Authority feels that any provision of this Code is being violated by any member of the industry and trade, it may require reports to be submitted by such member, certified by some impartial agency and person approved by the Code Authority and the member of the industry and trade, provided such member of the industry and trade agrees to submit such reports.

(f) 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 Code Authority



of its duties or responsibilities under this Code and that such trade associations and agencies shall at all times be subject to, and comply with the provisions hereof.

(g) To make recommendations to the Administrator for the coordination of the administration of this Code with such other codes, if any, as may be related to the trade.

(h) (1) It being found necessary to support the administration of this Code, in order to effectuate the policy of the Act and to maintain the standards of fair competition established hereunder, the Code Authority is authorized:

(a) To incur such reasonable obligations as are necessary and proper for the foregoing purposes and to meet such obligations out of funds which shall be held in trust for the purposes of the Code and raised as hereinafter provided;

(b) 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 all members of the Industry and Trade entitled to the benefits accruing from the maintenance of such standards, and the administration thereof.

(c) After such budget and basis of contribution have been approved by the Administrator, to determine and collect equitable contributions as above set forth, and to that end, if necessary, to institute legal proceedings therefor in its own name.

(2) Each member of the industry and trade shall be liable for his or its equitable contribution to the expenses of the maintenance of the Code Authority as hereinabove provided. Only members of the industry and trade complying with the Code and making such contribution shall be entitled to participate in the selection of the members of the Code Authority or to receive the benefits of its voluntary activities or to make use of any N.R.A. insignia.

(i) To cooperate with the Administrator in regulating the use of any N.R.A. insignia solely by those members of the industry and trade who have assented to, and are complying with, this Code.

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

(k) 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 industry and trade for the purpose of formulating fair trade practices to govern the relationship between employers under this code and under such other codes to the end that such fair trade practices may be proposed to the Administrator as amendments to this code and such other codes.



(1) To provide facilities for arbitration, and subject to the approval of the Administrator, to prescribe rules of procedure and rules to effect compliance with awards and determination.<sup>2</sup>

7. Failure of any member of the industry and trade to furnish any of the information required under this Code shall constitute a violation of the Code.

## ARTICLE VII—MERCHANDISING

(1) *Filing price lists.*—(a) Every member of the industry and trade shall file, within thirty (30) days from the effective date of this Code, with the Code Authority either one of the following documents as set out in sub-sections (1) and (2) hereof.

(1) A list of his prices which shall become effective immediately upon filing. Copies of said price lists, and any revision thereof, shall bear the date on which such list or lists are effective and shall be made available immediately to all interested persons including members of the industry and trade and their customers. Members of the industry and trade may file revisions of their price lists with the Code Authority at any time.

(2) A written statement specifying that he elects to follow a designated standard price list or designated lists previously filed with the Secretary of Code Authority. Price lists adopted by members who do not file their own price list must be followed complete; all extra charges, changes in price, and the like appearing on the adopted price list must be observed by the member adopting the list. Members of the industry and trade, adopting a price list pursuant to this paragraph, are bound by the revisions in the price lists so adopted unless they withdraw their election under this paragraph and file a complete price list or lists of their own.

(b) The net prices (after deduction of all discounts, allowances, etc.) of products listed on any price list filed or adopted by any member of the industry and trade shall, in every instance, represent at least the cost of the member filing or adopting the same.

(2) *Cost accounting.*—(a) The standards of fair competition for the industry with reference to pricing practices are declared to be as follows (for definition of terms see subsection (4)):

1. The principle.—(i) Destructive price cutting is an unfair method of competition and is forbidden at all times, irrespective of the existence of an emergency;

(ii) When no declared emergency exists as to any given product, there is to be no fixed minimum basis for prices but it is intended that sound cost estimating methods should be used;

(iii) When an emergency exists, as to any given product, sale below the lowest reasonable cost of such product, in violation of subsection (3) hereof, is forbidden.

(2) *Normal provision (cost estimating methods).*—The Code Authority shall cause to be formulated methods of accounting and cost finding and/or estimating capable of use by all members of the industry and trade and shall submit such methods to the Administrator

<sup>2</sup> Changed to read as follows: "(1) To provide for facilities for arbitration, other than in labor disputes, and subject to the approval of the Administrator, to prescribe rules of procedure and rules to effect compliance with awards and determination." See paragraph 2 (2) of order approving this Code.



for review and possible disapproval. Full details and instructions concerning such methods shall be made available to all members of the industry and trade and to the Administrator and thereafter it is intended that all members should utilize the principles of such methods.

(3) *Emergency provision (lowest reasonable cost).*—When an emergency exists, the Code Authority may cause an impartial agency to investigate costs and to determine the lowest reasonable cost of the product affected by the emergency. Such determination shall exclude all cost elements set forth in and shall be in all respects subject to such rules and regulations as may be issued by the Administrator and subject to his approval or modification after such notice and opportunity to be heard as he may prescribe. The Code Authority or the Administrator may, from time to time, cause such determinations to be reviewed or reconsidered and appropriate action taken.

(4) *Definitions.*—An “Emergency” exists whenever the Administrator determines that destructive price cutting is rendering ineffective or seriously endangering the maintenance of the provisions of this Code.

“Destructive price cutting”—

(i) When no emergency exists, the terms shall have the meaning declared in rules and regulations promulgated by the Administrator on recommendation of the Code Authority or on his own motion;

(ii) When an emergency exists, the term shall mean any sale in violation of subsection (3) hereof;

(iii) It shall be an absolute defense to any charge of destructive price cutting, if an impartial agency, designated or approved by the Administrator, shall find,

(aa) That the price complained of is justified by existing competition, evidence of which has been reported to the Code Authority;

(bb) That the price complained of is justified as a method of disposal of dropped lines or seconds, or

(cc) When no declared emergency exists, that the member charged with destructive price cutting has in good faith endeavored to make proper use of the announced cost estimating methods.

3. *Sales Below Cost or Prices Listed.*—(a) No member of the industry and trade shall sell, or offer to sell, at prices lower than those specified in price lists duly filed or adopted and/or sell, or offer to sell, below cost; except that obsolete, discontinued lines or surplus stocks may be disposed of, or inventory may be converted into cash to meet pressing financial needs, at such prices as are necessary to accomplish these purposes. Such stocks shall not be sold until fifteen (15) days after notice thereof has been filed with the Code Authority, together with an itemized list of the merchandise to be sold.

(1) The cost of every member of the Optical Wholesale Industry and Trade shall be calculated solely on the basis of the wholesale business conducted by such member, whether or not such member is also engaged in the Optical Manufacturing Industry and/or the Optical Retail Trade. The fact that a member engages in either the Optical Manufacturing Industry or the Optical Retail Trade at a



profit shall be wholly immaterial to any complaint that a member of the Optical Wholesale Trade has violated this article of the Code.

4. *Price Protection.*—(a) It shall be an unfair trade practice for any member of the industry and trade to guarantee the delivery of merchandise, or to deliver merchandise, at prices other than those that are in effect in the printed list or lists filed by the member, or designated list or lists adopted by the member, on file with the Code Authority at the time the delivery is made.

5. *Discounts.*—(a) The Code Authority, with the approval of the Administrator, may from time to time classify optical retailers for the purpose of establishing maximum trade discounts which may be granted by members of the Industry and Trade to such optical retailers.<sup>3</sup>

6. *Dispensing for Oculists and Optometrists.*—(a) Where a member of the Industry and Trade dispenses glasses directly to a customer's patient for the account of a customer he must furnish said customer's patient with a printed statement which shall indicate plainly to the patient that the sale, replacing or repairing of glasses is being made by the wholesaler for the prescriber and that the price charged is the retail price charged as set by the prescriber. A charge shall be made by a member of the Industry and Trade against the prescriber for such service.

(b) Any transaction involving secret rebates is an unfair trade practice.

#### ARTICLE VIII—CREDIT CONTROL

1. *Terms.*—(a) Except as provided in Article X, Section 14 thereof, with respect to the sale of ophthalmological and shop equipment on deferred payments, the maximum terms, which shall be given by any member of the Optical Wholesale Industry and Trade, shall be two percent (2%) cash premium, if remittance is dated and mailed by the tenth (10th) of the month following date of invoice, when the account is due; thereafter, the net price must be paid. Terms shall be stated on all invoices.

2. *Credit information.*—(a) The Code Authority is hereby authorized to establish a Credit Bureau to act as the agency of the Code Authority in the dissemination of credit information throughout the Industry. Information so disseminated by it, and any other confidential credit information, shall not be revealed by any member of the Optical Wholesale Industry and Trade to any customer or to anyone not entitled thereto.

3. *Past-due accounts.*—(a) Interest at the rate of six percent (6%) per annum shall be charged on balances sixty (60) days or more past due, the interest to commence from the time when the balance became due. Such balance shall be reported promptly to the Credit Bureau in accordance with the Credit Bureau's recording system and on the forms provided by said Bureau.

(1) Every member of the industry and trade shall request a promissory note for such balances, together with the interest rate herein prescribed.

<sup>3</sup> Eliminated. (See par. 2 (3) of order approving this Code.)



## ARTICLE IX—QUALITY MAINTENANCE

1. In view of the importance of the high quality of ophthalmic merchandise to the preservation and improvement of eyesight, the Code Authority may from time to time promulgate rules and regulations specifying and defining the quality of ophthalmic merchandise which may be sold by members of the Optical Wholesale Industry and Trade. Such rules and regulations, when approved by the Administrator, shall have the same force and effect as the provisions of this Code.

2. No member of the industry and trade shall knowingly purchase ophthalmic merchandise for resale which shall be manufactured wholly or in part under circumstances which violate the provisions of any such code or codes of fair competition under the National Industrial Recovery Act as may, from time to time, be in force with respect to the manufacture of such merchandise.

## ARTICLE X—UNFAIR TRADE PRACTICES

1. No member of the industry and trade shall publish advertising (whether printed, radio, display or of any other nature) which is misleading or inaccurate in any material particular, nor shall any member in any way misrepresent any goods (including, but without limitation, its use, trade-mark, grade, quality, quantity, origin, size, substance, character, nature, finish, material, content or preparation) or credit terms, values, policies, services or the nature or form of the business conducted.

2. No member of the industry and trade shall publish any statement, advertisement or representation which falsely lays claims to a policy, or continuing practice of generally underselling competitors.

3. No member of the industry and trade shall publish advertising, which refers inaccurately in any material particular to any competitors or their goods, prices, values, credit terms, policies or services.

4. No member of the industry and trade shall give, permit to be given, or directly offer to give, anything of value for the purpose of influencing or rewarding the action of any employee, agent or representative of another in relation to the business of the employer of such employee, the principal of such agent or the represented party, without the knowledge of such employer, principal or party. This provision shall not be construed to prohibit free and general distribution of articles commonly used for advertising except so far as such articles are actually used for commercial bribery as hereinabove defined.

5. No member of the industry and trade shall operate a separate optical business whether wholesale or retail; or own or control, either by stock ownership or otherwise, directly or indirectly, any such separate optical business, except, (a) where such separate business is operating under the same firm or trade name as that of the member owning, operating or controlling the same, or under a name which clearly discloses the fact of such operation, ownership or control; or (b) where full details of the operation, ownership or control of such separate business have been previously filed with the Secretary



of the Code Authority by the member owning, operating or controlling such separate business, and such information shall be available to any interested party.

6. No member of the industry and trade shall advertise in programs of meetings, conventions or social affairs conducted by members of societies of the ophthalmic profession.

7. No member of the industry and trade shall offer or make any payment or allowance of a rebate, refund, commission, credit, unearned discount or excess allowance, whether in the form of money or otherwise, nor shall a member of the industry and trade offer or extend to any customer any special service or privilege not extended to all customers of the same class, for the purpose of influencing a sale.

8. No member of the industry and trade shall make price discriminations between different purchasers or between different localities which prices are not based on legitimate cost, or sales and delivery costs. This provision, however, shall not apply with respect to clergymen, religious and charitable institutions, sales to a member's employees, or to persons whose inability to pay has been established by a reputable social service agency.

9. No member of the industry and trade shall bill small quantities at rates applying to larger quantities, or sell merchandise at quantity rates and permit the buyer to withdraw his purchases from stock in small quantities according to his current needs (except in the case of customers' printed cases held for delivery with prescription jobs).

10. No member of the industry and trade shall withhold from or insert in any quotation or invoice any statement that makes it inaccurate in any material particular.

11. No member of the industry and trade shall make excessive "trade in" allowances.

(a) The Code Authority shall, as soon as practicable, issue a list of such allowances on all ophthalmic equipment and machinery, classifying the same by name, type and model. Allowances shall not be made in excess of the amounts named in this list.

Pending the issuance thereof, and after the issuance thereof, in the case of items not included in such list, no member of the Industry and Trade shall allow on merchandise traded in more than a fair resale price, minus the cost of reselling on the goods or equipment taken in trade.<sup>4</sup>

12. No member of the industry and trade shall accept single frames, mountings or parts for exchange unless in condition suitable for return to stock. If suitable and if accepted by the seller they shall be credited to the purchaser at not more than the price at which purchased and items furnished in exchange shall be charged at the prevailing prescription price.

<sup>4</sup> Subsection (a) amended to read as follows:

"(a) The Code Authority shall, subject to the Approval of the Administrator, as soon as practicable, issue a list of such allowances on all ophthalmic equipment and machinery, classifying the same by name, type and model. Allowances shall not be made in excess of the amounts named in this list.

Pending the issuance thereof, and after the issuance thereof, in the case of items not included in such list, no member of the industry and trade shall allow on merchandise trade in more than a fair resale price, minus the cost of reselling on the goods or equipment taken in trade." (See par. 2 (4) of order approving this Code.)



(a) Lenses, fitting sets or samples are not subject to exchange or return for credit except for defects of manufacture, delays or errors in filling orders.

13. No member of the industry and trade shall ship merchandise, supplies, samples or fitting cases on consignment, except that lorgnettes, oxfords and artificial eyes may be shipped on consignment, provided, they are not subject to return after fifteen (15) days, except that for legitimate credit reasons where such merchandise is returned after fifteen days, the complete circumstances shall be reported to the Code Authority, and except that ophthalmological instruments and equipment may be consigned for demonstration and trial for a period not to exceed thirty (30) days.

14. The Code Authority may establish a uniform contract for the sale of ophthalmological and shop equipment on a deferred payment plan and, when such contract is approved by the Administrator, all members of the Industry and Trade shall use the same.

15. No member of the industry and trade shall deliberately infringe on or evade patents or imitate trade marks or trade names with intent to mislead or deceive purchasers.

#### ARTICLE XI—EVASION

1. No member of the industry and trade shall engage in any subterfuge to defeat the purposes or provisions of the Act or of this Code.

#### ARTICLE XII—MODIFICATION

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

2. Such of the provisions of this Code as are not required to be included herein by the Act may, with the approval of the Administrator, be modified or eliminated in such manner as may be indicated by the needs of the public, by changes in circumstances, or by experience.

#### ARTICLE XIII—MONOPOLIES

1. No provision of this Code shall be so applied as to permit monopolies or monopolistic practices, or to eliminate, oppress or discriminate against small enterprises.

#### ARTICLE XIV—PRICE INCREASES

1. Whereas the policy of the Act to increase real purchasing power will be made more difficult of consummation if prices of goods and services increase as rapidly as wages, it is recognized that price increases except such as may be required to meet individual cost should be delayed, but when made such increases should,



so far as possible, be limited to actual additional increases in the seller's costs.

ARTICLE XV—EFFECTIVE DATE

This Code shall become effective on the second Monday after its approval by the President.

Approved Code No. 448.  
Registry No. 1031-3-03.

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