

NATIONAL RECOVERY ADMINISTRATION

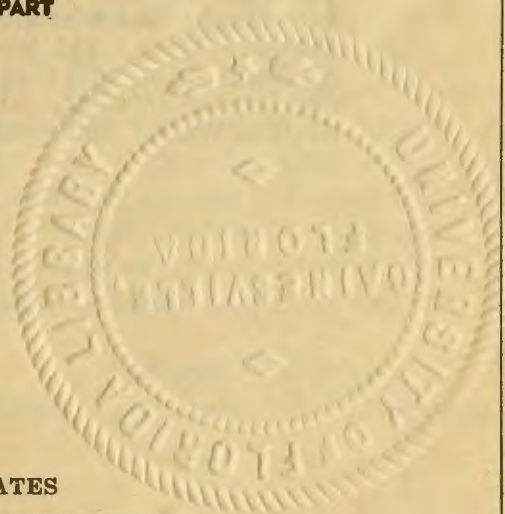
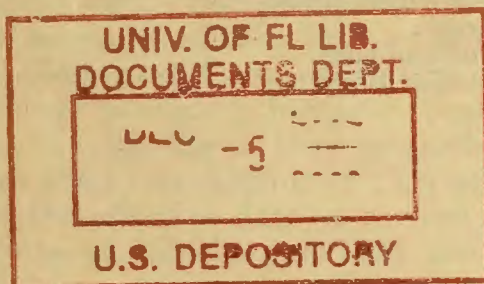
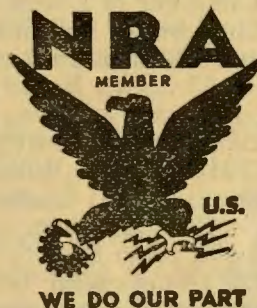
**SUPPLEMENTARY
CODE OF FAIR COMPETITION**

FOR THE

**AGRICULTURAL INSECTICIDE
AND FUNGICIDE INDUSTRY**

(A Division of the Chemical Manufacturing Industry)

AS APPROVED ON MAY 1, 1934

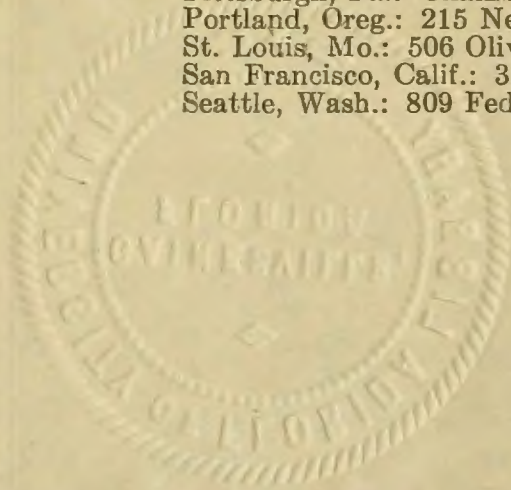


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Approved Code No. 275—Supplement No. 1

SUPPLEMENTARY CODE OF FAIR COMPETITION

FOR THE

AGRICULTURAL INSECTICIDE AND FUNGICIDE INDUSTRY

As Approved on May 1, 1934

ORDER

SUPPLEMENTAL CODE OF FAIR COMPETITION FOR THE AGRICULTURAL INSECTICIDE AND FUNGICIDE INDUSTRY

A DIVISION OF THE CHEMICAL MANUFACTURING INDUSTRY

An application having been duly made pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for approval of a Supplemental Code of Fair Competition for the Agricultural Insecticide and Fungicide Industry to the Code of Fair Competition for the Chemical Manufacturing Industry, 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 VI, Section (a), insofar as they prescribe a waiting period between the filing with the Code Authority (i.e. actual receipt by the Code Authority) and the effective date of revised price lists or revised terms and conditions of sale be and they are hereby stayed pending my further order.

HUGH S. JOHNSON,
Administrator for Industrial Recovery.

Approval recommended.

GEORGE L. BERRY,
Division Administrator.

WASHINGTON, D. C.,
May 1, 1934.

REPORT TO THE PRESIDENT

The PRESIDENT,
The White House.

SIR: This is a report on the Supplementary Code of Fair Competition for the Agricultural Insecticide and Fungicide Industry, a division of the Chemical Manufacturing Industry, the hearing having been conducted thereon in Washington, D.C., March 9, 1934, in accordance with the provisions of Title I of the National Industrial Recovery Act.

GENERAL STATEMENT

The Agricultural Insecticide and Fungicide Industry, being truly representative of this division of the Chemical Manufacturing Industry, has elected to avail itself of the option of submitting a Supplementary Code of Fair Competition, as provided for in Articles XI and XII of the Basic Code for the Chemical Manufacturing Industry approved by you on the tenth day of February, 1934.

RESUME OF THE CODE—LABOR PROVISIONS

Article III states—

“All provisions of the Code of Fair Competition for the Chemical Manufacturing Industry as approved by the President on February 10, 1934, or as it may thereafter be modified or amended, are hereby incorporated by reference as though completely set forth herein.”

Inasmuch as the Basic Code for the Chemical Manufacturing Industry, of which the Agricultural Insecticide and Fungicide Industry is a division, contains the labor provisions and as one of the principal objects in having a basic code for the Chemical Manufacturing Industry was to furnish a master code for the entire Industry which covered wages and hours for all chemical products produced by the same company, the labor provisions specified in the Basic Code for the Chemical Manufacturing Industry are those applying to the Division of the Agricultural Insecticide and Fungicide Industry.

OTHER PROVISIONS

Article II gives the necessary definitions applicable to this division of the Chemical Manufacturing Industry. The re-processing or mixing of the finished products of the Industry are not regarded as a part of this Industry and are not included in this Supplementary Code because the consumer, that is, the farmer or grower, often buys material which he mixes himself. They are not covered by the Code, therefore, because it is recognized that the farmer or grower has the right to do this if he wishes, and because it is, from a practical standpoint, inadvisable to include such operations in the Code.

Article IV establishes a Supplementary Code Authority consisting of ten members to be elected at a general meeting of the Industry which will be called by the Temporary Code Committee. Every member of the Industry will be allowed to participate in the election. In addition there will be not more than three members (who shall be without vote) appointed by the Administrator to represent the National Recovery Administration.

Article V provides the trade practice rules which shall apply to this division of the Chemical Manufacturing Industry. These provisions have been given a great deal of consideration in order that the Industry's requirements for eliminating destructive price competition may be adequately met without conflicting with the policies of the various advisory boards of the Administration.

In this connection, Section 2 requires the jobbers of the Industry to observe certain of the fair trade practice provisions approved for the manufacturers of the Industry. This provision is regarded as essential by the Industry. However, it is provided that "This section shall remain in force only for a period beginning with the effective date of this Code and ending on the last day of the sixth calendar month thereafter unless such period shall be extended by the Administrator."

Article VII exempts from the provisions of this Supplementary Code sales or shipments for export trade.

Article IX provides 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."

FINDINGS

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

I find that:

(a) Said Supplementary 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 purposes 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 Supplementary Code as approved complies in all respects with the pertinent provisions of said Title of said Act, includ-

ing without limitation Subsection (a) of Section 3, Subsection (a) of Section 7, and Subsection (b) of Section 10 thereof; and that the applicant group of manufacturers is truly representative of the aforesaid Industry; and that the Agricultural Insecticide and Fungicide Association, which was organized since the public hearing was scheduled, imposes no inequitable restrictions on admission to membership therein.

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

(e) The Supplementary 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 Supplementary Code.

For these reasons, therefore, I have approved this Supplementary Code.

Respectfully,

HUGH S. JOHNSON,
Administrator.

MAY 1, 1934.

SUPPLEMENTARY CODE OF FAIR COMPETITION FOR THE AGRICULTURAL INSECTICIDE AND FUNGICIDE INDUSTRY

A DIVISION OF THE CHEMICAL MANUFACTURING INDUSTRY

ARTICLE I—PURPOSES

To effectuate the policy of Title I of the National Industrial Recovery Act, the following provisions are established as a Supplementary Code for the Agricultural Insecticide and Fungicide Industry, supplemental to the Code of Fair Competition for the Chemical Manufacturing Industry as approved on February 10, 1934.

ARTICLE II

(a) The term "Agricultural Insecticide and Fungicide Industry" or "Industry" as used herein shall be construed to include the manufacture of the products which are used as methods of protection against agricultural insect pests and fungus diseases and are such as chemical plant sprays and dusts, soil disinfectants, cattle dips, agricultural scalecides and baits, except cyanides and cyanide compounds. The reprocessing or mixing of the finished products of the Industry, such as prepared dusts or sprays, shall not be regarded as a part of the Industry and are not included in this Code.

(b) The term "Member of the Industry" includes, but without limitation, any individual, partnership, association, corporation, legal entity, or other form of enterprise producing the products of the Industry as defined in this Article, provided that if any manufacturer in this Industry is also a manufacturer in any other industry, the provisions of this Code shall apply to and affect only that part of the business of such manufacturer which is defined in this Code.

(c) The term "Association" as used herein means the Agricultural Insecticide and Fungicide Association, a nonprofit-sharing corporation organized under the laws of the State of Delaware.

(d) The term "Agricultural Sulphur Sales Agent or Distributor" means and includes a sales agent who buys from the manufacturer and sells in his own name or for the account of the manufacturer and who supplements the manufacturer's sales force and who sells as would the manufacturer to jobbers, dealers, and/or consumers. This classification applies only to the sale of sulphur, and not to the other products of the Industry.

(e) The term "Jobber" means and includes any established wholesale purchaser who purchases from the manufacturer products of the Industry as defined in this article; who carries a stock of goods of the Industry, and who sells to dealers or consumers, and who employs

at least three outside salesmen and sells the products of the Industry principally to dealers, and/or at least 50% of whose sales must be to dealers.

(f) The term "Dealer" means and includes anyone who regularly purchases the products of the Industry and carries a stock of the products of the Industry, selling to consumers at a profit. One buying for his own use or principally for his own use or that of his tenants shall not be deemed to be a dealer. A group of unincorporated consumer buyers acting collectively or through an individual for the purpose of contracting for a joint order, is not a dealer.

(g) The term "Consumer" means and includes any purchaser who purchases the products of the Industry for the purchaser's own use.

(h) The term "The Broker" means and includes any person, partnership, corporation, or legal entity, who sells the products of the Industry for a commission at the manufacturer's schedule prices and terms for the account of the manufacturer.

ARTICLE III

All provisions of the Code of Fair Competition for the Chemical Manufacturing Industry as approved by the President on February 10, 1934, or as it may thereafter be modified or amended, are hereby incorporated by reference as though completely set forth herein.

ARTICLE IV—ORGANIZATION, POWERS AND DUTIES OF THE CODE AUTHORITY

ORGANIZATION AND CONSTITUTION

SECTION 1. After this Code has been approved it shall be administered by a Code Authority to be immediately created and known as the Code Authority of the Agricultural Insecticide and Fungicide Industry. The Code Authority shall consist of ten persons, to be selected in the following manner: A general meeting of the Industry shall be called by the Temporary Code Committee to which shall be invited every member of the Industry. At this meeting ten members shall be elected by a fair method of election, subject to the approval of the Administrator. Of these ten members, one member shall represent the Sulphur Group; one member shall represent the Nicotine Group; one member shall represent the Pyrethrum-Retone Group; and seven members shall represent such other interests or territory as deemed advisable by members of the Industry.

SECTION 2. In addition to membership as above provided, there may be not more than three members, without vote and without compensation from the Industry, appointed by the Administrator. The Code Authority first elected shall hold office until August 31st, 1934, at which time successors shall be elected.

SECTION 3. The Association participating in the activities of the Code Authority shall (1) impose no inequitable restrictions on membership and (2) submit to the Administrator for his approval 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 Admin-

istrator may deem necessary to effectuate the purposes of the Act, or the provisions of the Code.

SECTION 4. In order that the Code Authority shall at all times be truly representative of the Industry and in other respects comply with the provisions of the Code, the Administrator may require an appropriate modification in the method of selection of the Code Authority if, after such notice and hearing as he may prescribe, he shall find that the Code Authority is not truly representative or does not in other respects comply with the provisions of the Code.

SECTION 5. Members of the Industry shall participate in the selection of the members of the Code Authority, share in the benefits of the activities of the Code Authority and sustain their reasonable share of the expenses of its administration. Said reasonable share of the expenses of administration shall be determined by the Code Authority on the basis of volume of business and/or such other factors as may be deemed equitable, subject to review by the Administrator.

SECTION 6. 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 misfeasance or nonfeasance.

POWERS AND DUTIES

SECTION 7. The Code Authority shall have the following powers and duties and all such other powers and duties as may be necessary for the proper administration of this supplemental Code, the exercise of which shall be reported to the Administrator, and if the Administrator shall determine that any action of the Code Authority or any agent thereof may be unfair or unjust or contrary to the public interest, the Administrator may require that the action be suspended to afford an opportunity for investigation of the merits of such action and further consideration by the 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 the action in its original or modified form:

(a) To insure the execution of the provisions of this Code and provide for the compliance of the Agricultural Insecticide and Fungicide Industry with the provisions hereof; to receive from members of the Industry reports of complaints and violations of the Code and to attempt to adjust all complaints and violations of the Code which may be filed and in case of failure to adjust same to report such complaints and violations with all facts pertaining thereto to the Administrator. Nothing herein contained shall be construed to relieve any member of the Industry from responsibility for violations of this Code in any legal proceedings which may be instituted against such member.

(b) To adopt by-laws, rules and regulations for its procedure and for the administration and enforcement of the Code.

(c) 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 Industry or affect members of this Industry.

(d) To secure from members of the Industry an equitable and proportionate payment of the reasonable expenses of maintaining the Code Authority and its activities.

(e) To appoint a trade practice committee which shall meet with the trade practice committees appointed under other codes which may be related to this Industry or affect members of this Industry for the purpose of formulating fair trade practices to govern the relationships between such industries and between members of such industries and their distribution outlets to the end that such fair trade practices may be proposed to the Administrator as amendments to this Code and such other codes.

(f) The Code Authority shall obtain from members of the Industry such data and statistics, which shall be submitted by each member, upon its request or upon the request of the Administrator, as are required for the administration of this Code, except those in relation to number of employees, hours of labor and rates of pay.

(g) When the Code Authority determines that an emergency exists in this Industry because of destructive price cutting which is such as to render ineffective or seriously endanger the maintenance of the provisions of this Code, it may cause to be determined the lowest reasonable cost of the products of this Industry, below which costs products shall not be sold, such determination to be subject to such notice and hearing as the Administrator may require. The Administrator may approve, disapprove or modify the determination. When it appears that conditions have changed, the Code Authority upon its own initiative or upon the request of any interested party shall cause the determination to be reviewed.

ARTICLE V—TRADE PRACTICE RULES

SECTION 1. The following are declared to be unfair trade practices, the engaging in which by members of the Industry is hereby declared to be a violation of this Code:

(a) During the period of an emergency and after the lowest reasonable costs of products of the Industry have been approved in accordance with the provisions of Article IV, Section 7 (g), it shall be an unfair trade practice for any member of the Industry to sell or offer to sell any products of the Industry for which the lowest reasonable cost has been determined at such prices or upon such terms or conditions of sale that the buyer will pay less therefor than the lowest reasonable cost of such products.

(b) To give free goods for experimental or other purposes, with the exception of free samples to Agricultural Experimental Stations and other Government agencies, excepting in amounts not exceeding the value of \$5.00 at one time and except where materials are used for experimental purposes directly under the supervision of the seller, and excepting new products which have been on the market for less than one year.

(c) To 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 hereinbefore defined.

(d) To make or offer to make any payment of a bonus, advertising allowance, secret rebates, secret refunds, unearned credits, unearned discounts, or unearned commissions, whether in the form of money or otherwise, or extend to certain purchasers special services or privileges not extended to all purchases on like terms and conditions.

(e) To give or offer prizes, premiums, or gifts, in connection with the sale of products or as an inducement thereto, by any scheme which involves lottery, misrepresentation or fraud.

(f) To withhold from or insert in any quotation or invoice any statement that makes it inaccurate in any material particular.

(g) To make any guarantee against decline in price.

(h) To supply accounts on consignments and/or trust certificate agreements, except that patented phytonomic oils may be consigned to spray oil emulsion manufacturers.

(i) To warehouse unsold merchandise with any jobber or dealer who sells products of the Industry when such arrangement is a subterfuge for consignments or constitutes a rebate. Every manufacturer who has such warehoused stocks must report same to the Code Authority. However, where merchandise is warehoused with jobbers or dealers not in violation of the above the manufacturer shall not pay a warehousing fee for such service in excess of public warehouse rates.

(j) To sell the products of the Industry through brokers, excepting on the basis of 1% commission.

(k) To make any sales at prices lower or on terms and conditions more favorable than those specified in his price schedules then in effect, filed in accordance with Article VI.

(l) Agricultural sulphur distributors and jobbers shall be classified under the supervision of the Code Authority in accordance with the definitions given in Article II and after being so classified the terms and conditions of all sales to such distributors and jobbers shall be in accordance with the price schedules required by the provisions of Article VI. Final determination of the propriety of the classification of any agricultural sulphur distributor and/or jobber shall rest with the Code Authority subject to the disapproval of the Administrator as provided in Section 7 of Article IV.

(m) No sales or shipments of agricultural sulphur shall be made unless all bags, barrels, or other containers are labeled or branded according to the Federal Insecticide Act of 1910 as amended, and in addition all ground agricultural sulphurs or prepared sulphurs, except when sold as an insecticide in Florida, shall be marked or labeled to show fineness of elemental sulphurs contained therein, except that any manufacturer may first dispose of all stocks of merchandise and containers now on hand and not so marked or designated.

(n) Sizes of packages for the products of the Industry shall be restricted to those shown on the published price lists. Where packages for the Industry are covered by the specifications of the Interstate Commerce Commission regulations, only such packages shall be supplied regardless of the method of delivery and no allowances shall be made for the return of non-returnable packages as defined in the Poisonous Articles Sections of the Interstate Commerce Commission regulations.

(o) On and after the effective date, all terms granted shall not exceed 1% for cash in ten days net thirty days, except that upon notice to the Code Authority the discount date for running accounts may be extended to the tenth 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. Discounts as referred to above are for cash payment and do not apply to trade discounts which may be made to agricultural sulphur distributors, brokers, jobbers, dealers and/or consumers.

(p) No post datings on the sales of products of the Industry shall be granted except that on spring stock orders for shipment at the convenience of the manufacturer to agricultural sulphur distributors, jobbers, dealers and/or consumers, datings not to exceed May 1st with regular terms may be given, provided that the Code Authority shall make a survey of trade conditions by zones and shall authorize and approve datings for such zones subject to the approval of the Administrator.

SECTION 2. Every member of the Industry shall enter into a written agreement with his jobbers whereby all such jobbers agree to file price schedules in accordance with Article VI of this Code and abide by the following provisions of this Article V, Section 1 (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (o), (p). This Section shall remain in force only for the period beginning with the effective date of this Code and ending on the last day of the sixth calendar month thereafter, unless such period shall be extended by the Administrator.

ARTICLE VI

(a) Within five days after the effective date of this Code, each member of the Industry shall file with the Secretary of the Association his price schedules together with terms, discounts, and conditions applicable thereto, showing any differentials which may be allowed jobbers and dealers, and commissions to brokers, and such additional copies as may be requested by the Secretary of the Association. Copies of all price schedules with terms, discounts and conditions of sale or any other changes or additions made therein, shall be publicly announced by each member of the Industry immediately to all other members of the Industry through the Association. No new schedules advancing or reducing such prices, or changes of terms, discounts, or conditions, shall be deemed to become effective hereunder until three days after they have been filed with the Secretary, except that any such schedule filed to meet a new schedule filed by another member of the Industry may become effective on the same day that the competitor's becomes effective if a copy thereof is filed

with the Secretary at least 24 hours before meeting such competitor's schedule.¹

(b) Nothing in this section shall be construed to prevent reasonable and fair price differentials from being allowed to anyone or any class of purchaser on the basis of quantity purchased.

ARTICLE VII

No provisions in this Code relating to prices or terms of selling, shipping or marketing, shall apply on scales or shipments for the export trade, unless the product has been manufactured in the United States and is offered for resale in the United States after being exported.

ARTICLE VIII

Such provisions of this Code as are not required to be included therein by the Act, may, with the approval of the Administrator, be modified or eliminated as changes in circumstances or experience may indicate upon application by the Code Authority, approved by a majority of the members of the Industry affected thereby. It is contemplated that from time to time supplementary provisions of this Code will be submitted for the approval of the Administrator to prevent unfair and destructive practices and to effectuate the other purposes and policies of Title I of the National Industrial Recovery Act.

ARTICLE IX—PRICE INCREASES

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.

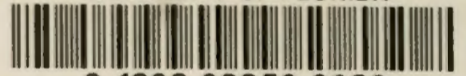
ARTICLE X

On the tenth day after the Administrator shall have approved this supplementary Code, the provisions hereof shall constitute standards of fair competition for the Industry and shall be binding upon all members of the Industry.

Approved Code No. 275—Supplement No. 1.
Registry No. 615-02.

¹ See paragraph 2 of order approving this Code.

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