

NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION

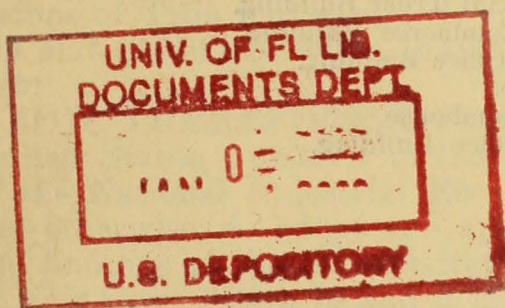
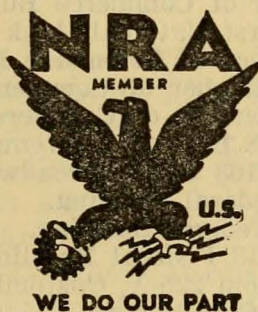
FOR THE

RETAIL TOBACCO TRADE

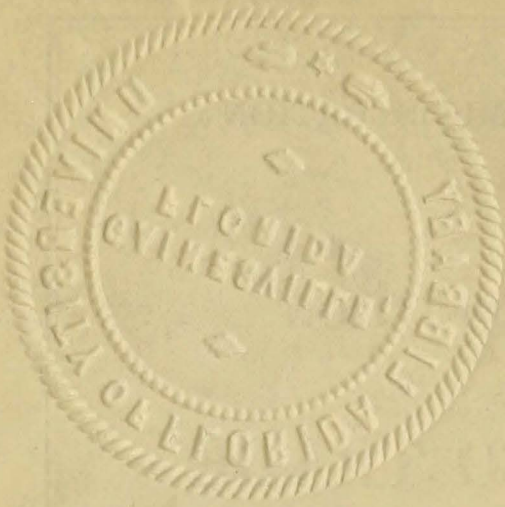
AS APPROVED ON JUNE 19, 1934

BY

PRESIDENT ROOSEVELT



UNITED STATES
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Approved Code No. 466

CODE OF FAIR COMPETITION

FOR THE

RETAIL TOBACCO TRADE

As Approved on June 19, 1934

BY

PRESIDENT ROOSEVELT

EXECUTIVE ORDER

CODE OF FAIR COMPETITION FOR THE RETAIL TOBACCO 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 my approval of a Code of Fair Competition for the Retail Tobacco Trade, and hearings having been held thereon and the Administrator having rendered his report containing an analysis of the said Code of Fair Competition together with his recommendations and findings with respect thereto, and the Administrator having found that the said Code of Fair Competition complies in all respects with the pertinent provisions of Title I of said Act, and that the requirements of clauses (1) and (2) of subsection (a) of section 3 of the said Act have been met:

NOW, THEREFORE, I, Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by Title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise, do adopt and approve the report, recommendations, and findings of the Administrator and do order that the said Code of Fair Competition be and it is hereby approved, and shall become effective on the date of this Order; subject, however, to the following conditions:

(1) That the provisions of Part I of Article VI and of Schedule I—the Cigar Merchandising Plan—be stayed and shall not become effective until Monday, June 25, 1934.

(2) That the waiting periods of five and three days contained in Schedule I, Part A, Section 1, and in Schedule I, Part B, Sections 1 and 2, respectively, be stayed and shall not become effective, notwithstanding said cigar merchandising plan become effective, until the further order of the Administrator.

(3) That all provisions for the filing of prices and discounts in said cigar merchandising plan be stayed until arrangements satisfactory to the Administrator, are made for confidential treatment and for simultaneous distribution thereof to all members of the trade and customers willing to pay the cost thereof.

(4) That the preamble and Sections 1, 2, 3, 4, and 6, Part II of Article VI be stayed and that the trade accept in place thereof, the following:

"As to cigars, with respect to which the provisions of Part I or Schedule I shall not at the time be operative or shall be stayed, and as to cigarettes, smoking tobacco, chewing tobacco and snuff, the standards of fair competition for the trade with reference to pricing practices are declared to be as follows:

"SECTION 1. (a) Wilfully destructive price cutting is an unfair method of competition and is forbidden. Any member of the trade or of any other trade or industry or the customers of either may, at any time, complain to the Code Authority that any actual price constitutes unfair competition as destructive price cutting, imperiling small enterprises or tending toward monopoly or the impairment of code wages or working conditions. The Code Authority shall, within five days, afford an opportunity to the member making such price to answer such complaint and shall, within fourteen days, make a ruling or adjustment thereon. If such ruling is not concurred in by either party to the complaint, all papers shall be referred to the Research and Planning Division of NRA, which shall render a report and recommendation thereon to the Administrator.

"(b) When no declared emergency exists as to such products or any specified part thereof, there is to be no fixed minimum basis for prices.

"It is intended that sound cost estimating methods should be used and that consideration should be given to costs (including costs of retail distribution) in the determination of pricing policies.

"(c) When an emergency by reason of unfair competitive practices or other conditions, exists in the trade as to such products or any specified part thereof, sale below the stated minimum price of such products or such specified part thereof, in violation of Section 2 hereof, is forbidden.

"SECTION 2. *Emergency Provisions*

"(a) If the Administrator, after investigation, shall at any time find both (1) that an emergency has arisen within the trade, adversely affecting small enterprises or wages or labor conditions, or tending toward monopoly or other acute conditions which tend to defeat the purposes of the Act; and (2) that the finding of a basis for determining minimum prices for such products or any specified part thereof is necessary for a limited period, to correct the conditions constituting such emergency and to effectuate the purposes of the Act, the Code Authority may cause an impartial agency to investigate costs (including the costs of retail distribution) and to recommend to the Administrator a basis for determining minimum prices of the said products or the said specified part thereof affected by the emergency, and thereupon the Administrator may proceed to fix a basis for determining such minimum prices.

"(b) When the Administrator shall have fixed a basis for determining minimum prices for the said products or said specified part thereof for a stated period, which prices shall be reasonably calculated to correct the conditions of such emergency and to effectuate the purposes of the Act, he shall publish the said basis. Thereafter, during such stated period, no member of the trade shall sell such products at a net realized price below the minimum price determined upon the basis so fixed, and any such sale shall be deemed destructive price cutting. From time to time, the Code Authority may recommend review or reconsideration or the Administrator may cause any determination hereunder to be reviewed or reconsidered, and appropriate action taken."

(5) That the provisions of Articles III and IV shall be and the same hereby are stayed until, and shall become effective on, Monday, June 25, 1934.

FRANKLIN D. ROOSEVELT.

Approval recommended:

HUGH S. JOHNSON,
Administrator.

THE WHITE HOUSE,
June 19, 1934.

LETTER OF TRANSMITTAL

The PRESIDENT,
The White House.

SIR: A Public Hearing on a Code of Fair Competition for the Wholesale and Retail Tobacco Distributing Industry, submitted by the National Association of Tobacco Distributors, Inc., and the Retail Tobacco Dealers of America, Inc., was held in Washington, D.C., on the 15th and 16th of December, 1933, in accordance with the provisions of the National Industrial Recovery Act, pursuant to Notice of Hearing signed by the Secretary of Agriculture under Executive Order of June 26, 1933. By Executive Order of January 8, 1934, jurisdiction over that Code was transferred to the Administrator for Industrial Recovery.

The original Code has now been divided into separate codes: this Code and the Code for the Wholesale Tobacco Trade. The separation was made because it was thought that the divergent problems of these trades could be more conveniently handled in this way. In all other respects the post-hearing revisions have been minor, and the provisions of this Code, as submitted for your approval, are substantiated by the official record of the Public Hearing, information and facts in filed briefs, or as a result of Post-Hearing conferences held with the Code Committee.

ECONOMIC EFFECT OF THE CODE

The Association claims to represent more than 200,000 retail establishments comprising cigar stores, drug stores, confectionery stores, news dealers, and others who deal in and are responsible for annual sales of tobacco products in excess of \$1,300,000,000, with an aggregate invested capital of approximately \$300,000,000. It is the further claim of the Association that the sale of tobacco products by members of the Association is approximately 80 percent of the total sales of all tobacco products.

The retail sale of tobacco products takes place through many diverse outlets. It is therefore difficult to obtain accurate figures to show the full extent of this business. The Census of Distribution for 1929 which regards only those stores as tobacco outlets whose business is over fifty per cent in tobacco lines, shows that there were approximately 33,000 such establishments employing 34,238 employees. The variance between these figures and those submitted by the Association, is presumably due to this difference in method of computation. Due to the fact that they are the only official figures available, they have been used by the Division of Research and Planning in their report.

The Retail Tobacco Trade covers the retail distribution of cigars, cigarettes, smoking tobacco, chewing tobacco, snuff, and other tobacco products.

The Association and the Research and Planning Division are in accord with the statement that 90 per cent of all retail tobacco establishments can be classified as independent one-store tobacconists who account for two-thirds of all sales of tobacco products.

One of the outstanding features of the fair trade practice provisions is the cigar merchandising plan, which is also found in the Wholesale Tobacco Code and the Code for the Cigar Manufacturing Industry. It provides for the retail sale of cigars at prices not less than those declared by the manufacturer for each of his products, and further prescribes maximum discounts allowable by manufacturers or wholesalers from those prices.

The retail dealers originated this plan, and it was proposed by them to the wholesalers and cigar manufacturers. At the Public Hearing on this Code it was supported by these three groups as well as by representatives of tobacco growers. It now has the approval of the Consumers Advisory Board, the Industrial Advisory Board, the Labor Advisory Board, and the Legal Division.

It has long been a recognized custom of the industry for manufacturers to declare intended retail prices, and the internal revenue taxes on cigars are computed on such a basis. The plan is based on this custom, but free competition between manufacturers, as well as the industry's recognition of the imperative need for retention of the five-cent cigar, should serve to prevent increase in prices.

The sale of "long shot" cigars, induced by excessive discounts to distributors has been an abuse of consumers which will be remedied by the provisions limiting the amount of such discounts. This plan will permit each manufacturer to make the best possible cigar in each price class.

At the same time the use of cigars as "loss leaders" by unrelated business has placed a severe burden on persons whose welfare depends on the tobacco business. It is hoped that the establishment of minimum retail prices will stabilize employment for this large class of persons who are, for the most part, small business men, dependent for their livelihood on this trade.

For further protection, Part II of Article VI in the proposed Code provides that no retailer shall sell any tobacco products, which are not covered by the merchandising plan in Part I, below the lowest reasonable cost of the retail distribution of such tobacco products. Such lowest reasonable cost will be determined by the Code Authority with the approval of the Administrator. Meanwhile the Administrator may, in order temporarily to restrict destructive price cutting, fix a basis for the computation of the minimum retail price of these tobacco products other than cigars.

HOURS AND WAGES

By defining an establishment, as any store, shop, stand or other place of retail business at which more than one-half in dollar volume of sales made consist of tobacco products, or at which the principal line of business is the sale of tobacco products, the wage and hour provisions are limited to such places of business.

Work hours and store hours are elective and, with the exception of wages, the Labor Provisions conform substantially to the Labor

Provisions of the approved Codes of Fair Competition for the Retail Trade and the Retail Drug Trade, respectively.

Minimum wage rates, established in the Code, are approximately 15 percent higher than the rates of wages now prevailing in other retail codes.

The working hours are not entirely satisfactory from a purely social viewpoint; but they represent reduction from the hours which prevailed in the retail tobacco trade. Increased employment will depend upon the store hours elected by the majority of the trade.

It is estimated that the minimum wage rates established in the Code will result in an increase of approximately 10 per cent, in the total payrolls of the trade.

FINDINGS

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

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

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

(e) 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.

For the above reasons this Code is recommended for approval.

Respectfully,

HUGH S. JOHNSON,
Administrator.

JUNE 19, 1934.

CODE OF FAIR COMPETITION FOR THE RETAIL TOBACCO TRADE

ARTICLE I—PURPOSES

To effectuate the policies of Title I of the National Industrial Recovery Act, this Code is established as a Code of Fair Competition for the Retail Tobacco Trade, and its provisions shall be standards of fair competition for such trade and shall be binding upon every member thereof.

ARTICLE II—DEFINITIONS

As used in this Code, the following words and phrases shall be defined as follows:

SECTION 1. The term "President" means the President of the United States of America.

SECTION 2. The term "Administrator" means the Administrator for Industrial Recovery.

SECTION 3. The term "Act" means Title I of the National Industrial Recovery Act.

SECTION 4. The term "tobacco products" includes, without limitation, all cigars, stogies, cheroots, little cigars, cigarettes, smoking tobacco, chewing tobacco and snuff.

SECTION 5. The term "retail tobacco trade" means and includes all selling of tobacco products directly to the consumer and not for the purposes of resale in any form.

SECTION 6. The terms "tobacco retailer", "retailer", and "member of the trade" mean any person engaged wholly or partially either as an employer or for his own account in the selling of tobacco products directly to the consumer and not for purposes of resale in any form.

SECTION 7. The term "cigar manufacturer" means and includes any person engaged in the manufacturing into cigars of cured leaf tobacco, stemmed tobacco, scrap, and/or shredded filler.

SECTION 8. The term "cigar" means and includes cigars, stogies, cheroots and little cigars.

SECTION 9. The term "jobber" means any wholesale tobacco distributor who buys directly from the manufacturer.

SECTION 10. The term "sub-jobber" means any wholesale tobacco distributor who purchases tobacco products from jobbers or jobbing establishments of manufacturers instead of directly from manufacturers.

(A person may be a jobber as to certain tobacco products and a sub-jobber as to others.)

SECTION 11. The term "accredited cigar jobber" means any wholesale distributor of cigars who maintains a sales organization and

has an exclusive selling arrangement for a brand or brands of cigars for which he assumes the responsibility of promotion, distribution and care in a definite territory assigned to him.

SECTION 12. The term "cigar service jobber" means any wholesale distributor of cigars other than an accredited cigar jobber.

(A jobber may be an accredited cigar jobber as to a certain brand or brands and a cigar service jobber as to others.)

SECTION 13. The term "chain of stores" means a group of retail stores having single ownership and maintaining one or more bona fide central distributing depots from which individual units are serviced, and also bona fide central buying, storing, supervising and accounting organizations.

SECTION 14. The term "retail tobacco establishment" or "establishment" means any store, shop, stand or other place of retail business at which more than one-half in dollar volume of the sales made consists of tobacco products, or at which the principal line of business is the sale of tobacco products.

SECTION 15. The term "employee" includes any and all persons engaged in the retail tobacco trade, however compensated, except a member of the trade.

SECTION 16. The term "employer" means any person by whom any such employee is compensated or employed.

SECTION 17. The term "executive" means an employee responsible for the management of a business or a recognized subdivision thereof.

SECTION 18. The term "outside salesman" means an employee who is engaged not less than eighty per cent (80%) of his working hours in selling outside the establishment, or any branch thereof, where he is employed.

SECTION 19. The term "junior employee" means an employee under eighteen (18) years of age.

SECTION 20. The term "apprentice employee" means an employee with less than two (2) months experience in the retail tobacco trade.

SECTION 21. The term "outside delivery employee" means an employee engaged primarily in delivering merchandise outside the establishment where he is employed.

SECTION 22. The term "person" includes all individuals, firms, partnerships, unincorporated associations, corporations, and other forms of enterprise.

SECTION 23. The term "State" means any State or Territory and the District of Columbia.

SECTION 24. The term "South" includes the following States: Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, New Mexico and Texas.

SECTION 25. Population for the purposes of this Code shall be determined by reference to the latest Census of the United States.

SECTION 26. The term "Association" means Retail Tobacco Dealers of America, Inc.

SECTION 27. The term "Council" means National Tobacco Council, Inc., a New York Corporation, or such other agency as shall be designated for the purposes of Schedule I, hereto attached, by the Code Authority hereby established and by the Code Authorities for the Cigar Manufacturing Industry and the Wholesale Tobacco Trade.

ARTICLE III¹—RETAIL STORE HOURS AND HOURS OF LABOR

SECTION 1. *Basic Store Hours and Hours of Labor.*—Each retail tobacco establishment shall within two weeks following the effective date of this Code elect to operate upon one of the following schedules of store hours and hours of labor, and shall post and maintain in a conspicuous place in the store a copy of such election showing its elected store hours and hours of labor, such posting to be in addition to the requirements of Article V, Sections 10 and 11 of this Code.

GROUP (A). Any retail tobacco establishment may elect to remain open for business less than fifty-six (56) hours but not less than fifty-two (52) hours per week, unless its store hours were less than fifty-two (52) hours prior to June 1, 1933, in which case such establishment shall not reduce its store hours; except as herein otherwise provided no employee of such establishment shall work more than forty (40) hours per week, nor more than eight (8) hours per day nor more than six (6) days per week.

GROUP (B). Any retail tobacco establishment may elect to remain open for business fifty-six (56) hours or more per week but less than sixty-three (63) hours per week; except as herein otherwise provided, no employee of such establishment shall work more than forty-four (44) hours per week, nor more than nine (9) hours per day, nor more than six (6) days per week.

GROUP (C). Any retail tobacco establishment may elect to remain open for business sixty-three (63) hours or more per week; except as herein otherwise provided, no employee of such establishment shall work more than forty-eight (48) hours per week, nor more than ten (10) hours per day, nor more than six (6) days per week.

GROUP (D). In place of any of the foregoing schedules, any retail tobacco establishment may elect to remain open for business seven (7) days a week for a total of eighty-four (84) hours or more per week, but on no day for less than eight (8) hours; except as herein otherwise provided, no employee of such establishment shall work more than fifty-six (56) hours per week, nor more than ten (10) hours per day, nor more than six (6) days in any consecutive seven (7) days.

No employee shall work for two or more establishments a greater number of hours, in the aggregate, than he would be permitted to work for that one of such establishments which operates upon the lowest schedule of working hours.

SECTION 2. No office employees shall work more than forty (40) hours per week, nor more than eight (8) hours per day, nor more than six (6) days per week except that two such employees in each establishment may be permitted to work not in excess of forty-eight (48) hours per week.

SECTION 3. No retail tobacco establishment may change from the Group in which it has elected to operate except upon December 31, of every year.

Any retail tobacco establishment may at any time, however, increase its store hours, provided it maintains the basic work week of the Group in which it originally elected to operate.

¹ Effective June 25, 1934. See paragraph 2 (5) of order approving this Code.

Any retail tobacco establishment may, for a period not to exceed three months during the summer, temporarily reduce its store hours, but the weekly wages of employees shall not on that account be reduced.

SECTION 4. Executives who earn not less than \$30.00 per week, and outside salesmen, may be permitted to work in excess of the maximum hours provided in this Code.

SECTION 5. Outside delivery employees may be permitted to work not in excess of forty-eight (48) hours per week and not in excess of ten (10) hours per day.

SECTION 6. For a period not to exceed two (2) weeks in the calendar year, an employee whose basic work week is forty (40) hours may work not more than forty-eight (48) hours per week and nine (9) hours per day; an employee whose basic work week is forty-four (44) hours may work not more than fifty-two (52) hours per week and nine and one-half ($9\frac{1}{2}$) hours per day; an employee whose basic work week is forty-eight (48) hours may work not more than fifty-six (56) hours per week and ten (10) hours per day. All such work may be without payment of overtime.

SECTION 7. On one day each week employees may work one extra hour, but such hour is to be included within the maximum hours permitted each week.

SECTION 8. The hours worked by an employee during each day shall be consecutive, provided that an interval not longer than one hour may be allowed for each regular meal period, and such interval not counted as part of the employees' working time.

ARTICLE IV ¹—WAGES OF EMPLOYEES OF RETAIL TOBACCO ESTABLISHMENTS

SECTION 1. The minimum weekly rates of wages which shall be paid to employees of retail tobacco establishments for a work week as specified in Article III whether such wages are calculated upon an hourly, weekly, monthly, commission, or any other basis, shall except as hereinafter provided be as follows:

(a) Within cities of over 500,000 population, no employee shall be paid less than at the rate of \$15.50 per week for a forty (40) hour work week, nor less than at the rate of \$16.00 per week for a forty-four (44) hour work week, nor less than at the rate of \$16.50 per week for a forty-eight (48) hour work week, nor less than at the rate of \$17.50 per week for a fifty-six (56) hour work week.

(b) Within cities of from 100,000 to 500,000 population, no employee shall be paid less than at the rate of \$14.50 per week for a forty (40) hour work week, nor less than at the rate of \$15.00 per week for a forty-four (44) hour work week, nor less than at the rate of \$15.50 per week for a forty-eight (48) hour work week, nor less than at the rate of \$16.50 per week for a fifty-six (56) hour work week.

(c) Within cities of from 25,000 to 100,000 population, no employee shall be paid less than at the rate of \$13.00 per week for a forty (40) hour work week, nor less than at the rate of \$13.50 per week for a forty-four (44) hour work week, nor less than at the

¹ Effective June 25, 1934. See paragraph 2 (5) of order approving this Code.

rate of \$14.00 per week for a forty-eight (48) hour work week, nor less than at the rate of \$15.00 per week for a fifty-six (56) hour work week.

(d) Within cities, towns, villages of from 2,500 to 25,000 population, the wages of all classes of employees shall be increased from the rates existing on June 1, 1933, by not less than 20 per cent, provided that this shall not require an increase in wages to more than the rate of \$11.50 per week, and provided further that no employee shall be paid less than at the rate of \$11.00 per week.

(e) Within towns, villages and other places with less than 2,500 population, the wages of all classes of employees shall be increased from the rates existing on June 1, 1933, by not less than twenty per cent (20%), provided that this shall not require an increase in wages to more than the rate of \$10.00 per week.

SECTION 2. The minimum wages paid to outside salesmen and outside delivery employees shall be upon the basis of the basic employee work week upon which the establishment by which they are employed has elected to operate.

SECTION 3. In the South all minimum wages specified in Section 1 of this Article may be at the rate of \$1.00 less per week.

SECTION 4. No office employee shall be paid less than at the rate of \$16.00 for a forty (40) hour work week.

SECTION 5. Office boys and messengers may be paid \$2.00 per week less than the minimum wage rate provided in Section 4 of this Article, provided that where there is more than one such office boy or messenger not more than ten per cent (10%) of the total number of office employees shall be so paid.

SECTION 6. Junior employees, other than office boys and messengers, may be paid for the first six (6) months of their employment at the rate of \$2.00 less per week than the minimum wage otherwise applicable; apprentice employees, other than office boys and messengers, may be paid at the rate of \$1.00 less than the minimum wage otherwise applicable. The number of employees classified as junior and apprentice employees combined shall not exceed a ratio of one such employee to every five (5) employees or fraction thereof up to twenty (20) or more than one such employee for every ten (10) employees above twenty (20).

SECTION 7. The weekly wages of all employees receiving more than the minimum wages specified in this Article shall not be reduced below the rates existing on June 1, 1933, notwithstanding any reduction in the number of working hours of such employees.

SECTION 8. A person whose earning capacity is limited because of age or physical or mental handicap or other infirmity may be employed on light work at a wage below the minimum established by this Code if the employer obtains from the 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 employee.

ARTICLE V—GENERAL LABOR PROVISIONS

SECTION 1. 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.

SECTION 2. 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.

SECTION 3. Employers shall comply with the maximum hours of labor, minimum rates of pay and other conditions of employment, approved, or prescribed by the President.

SECTION 4. No person under the age of sixteen (16) years shall be employed in the retail tobacco trade, except that persons fourteen (14) and fifteen (15) years of age, being members of the family of an individual retailer, may be employed by that retailer, either

(a) for a period of not to exceed three (3) hours per day on six (6) days per week: or

(b) for one day per week, such day not to exceed eight (8) hours.

In either case, all such hours of work shall be between 7 A.M. and 7 P.M., and shall not conflict with the employee's hours of day school, provided, however, that no person under the age of eighteen (18) years shall be employed in delivering merchandise from motor vehicles.

SECTION 5. No person under eighteen (18) years of age shall be employed, or be permitted to work, at operations or occupations hazardous in nature or detrimental to health. The Code Authority shall submit to the Administrator, within sixty (60) days after the effective date of this Code, a list of such occupations for his approval.

SECTION 6. Employers shall make payment of all wages in lawful currency or by negotiable check, payable on demand. All contracts of employment shall prescribe payment of wages at least every two weeks and salaries at least as often as every month.

SECTION 7. 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.

SECTION 8. Employers shall not change the method of payment of employees' compensation or re-classify employees or duties of occupations performed by employees or engage in any other subterfuge so as to defeat the purposes of the Act or the provisions of this Code.

SECTION 9. No employee paid at a rate in excess of the minimum shall be discharged and reemployed at a lower rate of pay for the purpose of evading the provisions of this Code.

SECTION 10. All employers shall post complete copies of the provisions of this Code dealing with hours, wages and conditions of employment in conspicuous places of easy and continuous access to employees.

SECTION 11. Each member of the industry shall comply with such rules and regulations with regard to the posting of notices, bulletins and extracts of Code provisions as may be from time to time further issued by the Administrator. Such notices, bulletins and extracts of Code provisions shall be written in English and such other language as may be in general use throughout the establishment.

SECTION 12. Every employer shall make reasonable provision for the safety and health of his employees at the place and during the hours of their employment.

Standards for safety and health shall be submitted by the Code Authority to the Administrator within six months after the effective date of this Code.

SECTION 13. After the effective date of this Code, wages shall be exempt from fines and rebates; and from charges and deductions, except charges and deductions for employees' contributions, voluntarily made by employees or required by law, for pension, insurance or benefit funds. No employer shall withhold wages except upon service of legal process or other papers lawfully requiring such withholding.

Deductions for other purposes not heretofore stated may be made only pursuant to a contract in writing and kept on file by the employer for six months after the termination of the contract and which shall be kept open for inspection of Government representatives.

SECTION 14. Female employees performing substantially the same work as male employees, shall receive the same rate of pay as male employees.

ARTICLE VI—PRICES

PART I—CIGAR MERCHANDISING PLAN ² ³

The Merchandising Plan in Schedule I annexed hereto, adopted for the Cigar Manufacturing Industry and for the Wholesale Tobacco Trade in their respective Codes of Fair Competition and hereinafter for convenient reference in part repeated, is hereby accepted, adopted and approved; and all of the provisions of the said plan insofar as they purport to regulate the conduct of members of the retail tobacco trade are hereby made rules of fair practice and fair competition for all members of the retail tobacco trade.

The provisions of said Schedule I and of this Article VI may be amended only by amendment of this Code and of the Codes for the Wholesale Tobacco Trade and the Cigar Manufacturing Industry. The said provisions may at any time be stayed by the Administrator, of his own motion or on application by any interested party, and on such notice and hearing, if any, as the Administrator may direct; and said provisions shall automatically be stayed upon the election of the Code Authority established by any one of said three Codes, such stay to become effective, unless such election shall have been meanwhile withdrawn, thirty (30) days after notice of such election shall have been filed with the Administrator.

² Effective June 25, 1934. See paragraph 2 (1) of order approving this Code.

³ Provisions for filing of prices and discounts stayed until further orders. See paragraph 2 (3) of order approving this Code.

SECTION 1. In the case of all cigars purchased by retailers from cigar manufacturers, jobbers, or sub-jobbers in connection with which a retail price shall have been recorded by the manufacturer with the Council, the retailer shall sell such cigars at retail at not less than the retail price so recorded, provided, however, that (1) in the case of the sale at retail of multiples of not less than ten units (except in the case of cigars selling for less than five cents (5¢ each) a discount may be allowed of not more than five per cent (5%) from the retail price, and (2) in the case of sales at retail of boxes of twenty-five cigars or more a discount of not more than eight per cent (8%) from the retail price may be allowed unless the cigar manufacturer shall record with the Council and mark a box price thereon involving a discount of less than eight per cent (8%), in which case the marked box price shall be observed as a minimum, and (3) the retailer may give not more than one pad of matches for each unit sold, or five pads per box of twenty-five cigars or ten pads per box of fifty cigars sold. In the case of any retailer granting a cash discount upon all purchases made, any sales of cigars shall be excluded in computing the cash discount to be allowed, or the amount of cash discount shall be included in the price of the merchandise sold in addition to the minimum prices herein provided.

SECTION 2. Upon any sale to a consumer, situated at the time of such sale in a State imposing a tax on tobacco products or the sale thereof (other than a tax payable by the manufacturer) the amount of such tax, if not paid by the consumer, shall be added to the minimum price herein provided, whether the seller shall be located within or without such State.

SECTION 3. Notwithstanding the provisions of this merchandising plan any tobacco retailer may sell at less than the prices therein prescribed merchandise sold as bona fide clearance or bona fide discontinued lines of merchandise or imperfect or actually damaged merchandise or merchandise sold upon the complete final liquidation of any business or merchandise donated for charitable purposes or to unemployment relief agencies, provided that all such merchandise shall be advertised, marked and sold as such and that a strip label shall be placed across the inside lid label of box goods to be disposed of, stating the reason the said merchandise is being sold below the prescribed prices therefor and provided further that such merchandise shall be disposed of pursuant to any regulation as to the manner of such disposal as shall be issued by the Code Authority subject to the approval of the Administrator.

SECTION 4. Except as in this merchandising plan otherwise expressly provided wherever under any of the provisions of this merchandising plan any cigar is required to be sold at retail at a minimum price, such minimum retail price shall not be reduced directly or indirectly or by any device or subterfuge such as the giving of any trading or merchandise coupons, prizes, or premiums or any other thing of value or discount, rebate, refund, commission, credits or allowances whether in the form of money or otherwise; nor shall any retailer offer or extend special service or privilege to any customer which is not available to all customers.

SECTION 5. Upon the recommendation of the Code Authority established by this Code, or the Code for the Cigar Manufacturing Industry or the Code for the Wholesale Tobacco Trade or upon application

of any member of the cigar manufacturing industry or of the wholesale tobacco trade or of the retail tobacco trade and the approval of such recommendation or application by the Administrator the Code Authorities established by the said several Codes shall, upon such notice and opportunity to be heard, if any, as the Administrator may require, determine by joint action minimum discounts to be prescribed in connection with sales of cigars by any member of the trade, and such determination shall be effective only upon the concurrence of all three Code Authorities and, subject to the further approval of the Administrator, such minimum discounts shall be binding upon all members of the trade.

SECTION 6. Any change in the retail price shall be applicable as at the effective date of such change to all merchandise thereafter sold by retailers.

SECTION 7. Nothing in this merchandising plan shall be construed to prevent the free and general distribution of articles commonly used for advertising purposes and premiums, except insofar as such distribution or use of premiums would constitute, in effect, an additional discount or a reduction in price below the minima established hereby.

SECTION 8. All prices and discounts filed with the Council by manufacturers, jobbers or subjobbers, as hereinbefore provided shall immediately be reported by the Council to the respective Code Authorities for the cigar manufacturing industry, the wholesale tobacco trade and the retail tobacco trade. Each such Code Authority shall cause such prices and discounts to be made available to all members of its respective industry or trade, and shall comply with any regulations which may be issued by such Code Authority with the approval of the Administrator as to the publication and dissemination thereof.

PART II—MINIMUM PRICES FOR PRODUCTS NOT GOVERNED BY THE PLAN

*As to cigars with respect to which the provisions of Part I or Schedule I shall not at the time be operative or shall be stayed and as to cigarettes, smoking tobacco, chewing tobacco and snuff, the following trade practices shall be observed by all members of the retail tobacco trade.*⁵

*Section 1. No tobacco retailer shall at any time sell any such tobacco product below the merchandise cost thereof to such retailer. For the purposes of this Article the term "merchandise cost" means (1) actual net delivered cost less trade discounts, or current replacement cost, whichever is lower; and in addition thereto, (2) the amount of any tax on the sale of the product directly paid by the retailer, or (3) in the event of a sale involving a shipment to a buyer situated at the time of such sale in another State, an amount equal to all taxes (other than taxes paid directly by the manufacturer) which would be included in the sale price of such product were such product bought from a retailer located in such State.*⁵

Section 2. The Code Authority shall from time to time upon such notice and opportunity to be heard, if any, as the Administrator may require, determine the lowest reasonable cost of the retail distribution of tobacco products, such determination to be subject to the ap-

⁵ Italicized words deleted. See paragraph 2 (4) of order approving this Code.

proval of the Administrator. In determining the lowest reasonable cost of the retail distribution of tobacco products, no significant channel of distribution shall be excluded from consideration upon the ground that only a partial distribution of tobacco products is made through such channel, but the extent and character of distribution in the several respective significant channels of distribution are factors that shall be given due weight by the Code Authority in reaching its determination of lowest reasonable cost. It shall be an unfair trade practice and is hereby prohibited for any tobacco retailer to sell or offer to sell any tobacco product at such price or upon such terms or conditions of sale that the buyer will pay less therefor than such lowest reasonable cost of distribution as so determined and approved, plus the merchandise cost thereof to such retailer, provided, however, that such minimum price, in the case of any tobacco product purchased by the retailer directly from the manufacturer, shall include, in addition to the foregoing, the difference, if any, between the net delivery cost less trade discounts to the retailer upon such direct purchase from the manufacturer, and the jobbers' net wholesale price then prevailing with respect to the said product.

The tobacco retailer may give not more than one pad of matches for each unit sold or five pads for each package of ten units sold. In the case of all sales in combination of two or more articles, the price of each article shall be plainly indicated.⁵

Section 3. Pending a determination pursuant to Section 2 of this Part II, and in order temporarily to restrict destructive price-cutting in the retail tobacco trade, the Administrator may, subject to such notice and opportunity to be heard as he may deem necessary, fix a basis for the computation of the minimum retail price of tobacco products, which shall be binding on all retailers.⁵

Section 4. Notwithstanding the provisions of this Part II, any tobacco retailer may sell any tobacco products as low as the price set by any competitor in his trade area on merchandise which is identical or essentially the same, if such competitor's price is set in conformity with the provisions of this Section, provided that such tobacco retailer shall immediately notify the Code Authority or its nearest local agency of such action and of all facts pertinent thereto.⁵

Section 6. In computing minimum unit prices under this Part II, a fraction of a cent shall be treated as a full cent. In computing minimum prices for more than one unit of the same article, such minimum unit price shall be multiplied by the number of units sold. If the resulting total be one dollar or less, a discount of not more than 5% may be allowed, and if it be greater than one dollar, a discount of not more than 8% may be allowed. If the net multiple price, so calculated, contains a fraction of one cent, such fraction shall be treated as one full cent.⁵

"As to cigars, with respect to which the provisions of Part I or Schedule I shall not at the time be operative or shall be stayed, and as to cigarettes, smoking tobacco, chewing tobacco and snuff, the standards of fair competition for the trade with reference to pricing practices are declared to be as follows:

⁵ Italicized words deleted. See paragraph 2 (4) of order approving this Code.

"SECTION 1. (a) Wilfully destructive price cutting is an unfair method of competition and is forbidden. Any member of the trade or of any other trade or industry or the customers of either may, at any time, complain to the Code Authority that any actual price constitutes unfair competition as destructive price cutting, imperiling small enterprises or tending toward monopoly or the impairment of code wages or working conditions. The Code Authority shall, within five days, afford an opportunity to the member making such price to answer such complaint and shall, within fourteen days, make a ruling or adjustment thereon. If such ruling is not concurred in by either party to the complaint, all papers shall be referred to the Research and Planning Division of NRA, which shall render a report and recommendation thereon to the Administrator.

"(b) When no declared emergency exists as to such products or any specified part thereof, there is to be no fixed minimum basis for prices.

"It is intended that sound cost estimating methods should be used and that consideration should be given to costs (including costs of retail distribution) in the determination of pricing policies.

"(c) When an emergency by reason of unfair competitive practices or other conditions, exists in the trade as to such products or any specified part thereof, sale below the stated minimum price of such products or such specified part thereof, in violation of Section 2 hereof, is forbidden.

"SECTION 2. *Emergency Provisions*—

"(a) If the Administrator, after investigation, shall at any time find both (1) that an emergency has arisen within the trade, adversely affecting small enterprises or wages or labor conditions, or tending toward monopoly or other acute conditions which tend to defeat the purposes of the Act; and (2) that the finding of a basis for determining minimum prices for such products or any specified part thereof is necessary for a limited period, to correct the conditions constituting such emergency and to effectuate the purposes of the Act, the Code Authority may cause an impartial agency to investigate costs (including the costs of retail distribution) and to recommend to the Administrator a basis for determining minimum prices of the said products or the said specified part thereof affected by the emergency, and thereupon the Administrator may proceed to fix a basis for determining such minimum prices.

"(b) When the Administrator shall have fixed a basis for determining minimum prices for the said products or said specified part thereof for a stated period, which prices shall be reasonably calculated to correct the conditions of such emergency and to effectuate the purposes of the Act, he shall publish the said basis. Thereafter, during such stated period, no member of the trade shall sell such products at a net realized price below the minimum price determined upon the basis so fixed, and any such sale shall be deemed destructive price cutting. From time to time, the Code Authority may recommend review or reconsideration or the Administrator may cause any determination hereunder to be reviewed or reconsidered, and appropriate action taken."⁶

⁶ Preamble and Sections 1 and 2 added. See paragraph 2 (4) of order approving this Code.

SECTION 3. Notwithstanding any of the provisions of this Part II, any tobacco retailer may sell at less than the prices therein prescribed merchandise sold as bona fide clearance or bona fide discontinued lines of merchandise or imperfect or actually damaged merchandise or merchandise sold upon the complete final liquidation of any business or merchandise donated for charitable purposes or to unemployment relief agencies, provided that all such merchandise shall be advertised, marked and sold as such and that a strip label shall be placed across the inside lid label of box goods to be disposed of, stating the reason the said merchandise is being sold below the prescribed prices therefor and provided further that such merchandise shall be disposed of pursuant to any regulation as to the manner of such disposal which shall be issued by the Code Authority subject to the approval of the Administrator.

SECTION 4. Except as in this Part II otherwise expressly provided wherever, under any of the provisions of this Article VI, any tobacco product is required to be sold at retail at a minimum price, such minimum retail price shall not be reduced directly or indirectly or by any device or subterfuge such as the giving of any trading or merchandise coupons, prizes or premiums, or any other thing of value or any discount, rebate, refund, commission, credit or allowance whether in the form of money or otherwise; nor shall any retailer offer or extend any special service or privilege to any customer which is not available to all customers.

SECTION 5. Nothing in this Part II shall be construed to prevent the free and general distribution of articles commonly used for advertising, except so far as such distribution would constitute in event an additional discount or reduction in price below the minima established hereby.

ARTICLE VII—TRADE PRACTICES

SECTION 1. *False Advertising.*—The making or causing or permitting to be made or published of any false, untrue or deceptive statement by way of advertising or otherwise concerning the grade, quality, quantity, substance, character, nature, origin, size or preparation of any product of the trade, having the tendency or capacity to mislead or deceive purchasers or prospective purchasers and the tendency injuriously to affect the business of competitors, is prohibited as an unfair method of competition.

SECTION 2. *Deceptive Branding.*—The infringement of established trademarks and the use of trademarks or trade names which will result in deception of the public or enable dealers to perfect such deception is prohibited as an unfair method of competition.

SECTION 3. *False Billing.*—No tobacco retailer shall knowingly withhold from or insert in any quotation or invoice any statement that makes it inaccurate in any material particular.

SECTION 4. *Inaccurate Labelling.*—No tobacco retailer shall brand or mark or pack any tobacco product in any manner which is intended to or does deceive or mislead purchasers with respect to the brand, grade, quality, quantity, origin, size, substance, character, nature, material content, or preparation of such tobacco product.

SECTION 5. *Inaccurate References to Competitors, etc.*—No tobacco retailer shall publish advertising which refers inaccurately in any material particular to any competitor or his goods, prices, values, credit terms, policies or services.

SECTION 6. *Threats of Law Suits.*—No tobacco retailer shall publish or circulate unjustified or unwarranted threats of legal proceedings which tend to or have the effect of harassing competitors or intimidating their customers. Failure to prosecute in due course shall be evidence that such threat is unwarranted or unjustified.

SECTION 7. *Bribing Employees.*—No tobacco retailer shall give, permit to be given, or directly or indirectly 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 herein above defined.

SECTION 8. *Interference with Another's Contracts.*—No tobacco retailer shall attempt to induce the breach of an existing contract between a competitor and his customer or source of supply; nor shall any such retailer interfere with or obstruct the performance of such contractual duties or services, with the purpose and effect of hampering, injuring or embarrassing competitors in their business.

SECTION 9. *Coercion.*—No tobacco retailer shall require that a purchase of any tobacco products or other goods be a prerequisite to the purchase of any other tobacco products.

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

ORGANIZATION AND CONSTITUTION

SECTION 1. There shall forthwith be constituted a Code Authority consisting of not more than ten (10) members selected as follows:

Two (2) members shall be members respectively of the retail food and grocery trade and of the retail drug trade engaged in the sale at retail of tobacco products and each shall be designated by the Code Authority established by the code of fair competition for his trade.

One (1) member shall be appointed by the Consumers' Advisory Board of the National Recovery Administration.

Six (6) members shall be representative of the retail tobacco trade and shall be designated by the Board of Directors or the Executive Committee of Retail Tobacco Dealers of America, Inc. One of the said six (6) members shall represent a national chain of tobacco stores and five (5) of the said six (6) shall represent other tobacco retailers.

One (1) member shall be representative of and selected by the non-members of Retail Tobacco Dealers of America, Inc., non-members of any of its affiliated associations and shall be designated pursuant to a plan which shall be submitted to the Administrator for his approval by the other members of the Code Authority within fifteen (15) days after the effective date hereof.

SECTION 2. In addition to membership as above provided, there may be not more than three (3) members, to be appointed by the Administrator, to serve without vote or expense to the trade.

SECTION 3. The Association and each trade or industrial association directly or indirectly participating in the selection or activities of the Code Authority shall (1) impose no inequitable restrictions on membership, and (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.

SECTION. 4. In order that the Code Authority shall at all times be truly representative of the 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 in the method of selection of the Code Authority.

SECTION 5. 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 non-feasance.

SECTION 6. If the Administrator shall at any time determine that any action of the 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.

POWERS AND DUTIES

SECTION 7. 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 trade with the provisions of the Act.

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

(c) To obtain from members of the 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 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 trade of any existing obligations to furnish reports to any Government agency. No individual report shall be disclosed to any other member of the trade or any other party except to such other Governmental agencies as may be directed by the Administrator.

(d) To use such 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.

(e) 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 or affect members of the trade.

(f) (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 trade.

(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 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 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.

(g) To cooperate with the Administrator in regulating the use of any N.R.A. insignia solely by those members of the trade who are complying with this Code.

(h) To recommend to the Administrator any action or measures deemed advisable, including further fair trade practices, 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.

(i) To appoint a Trade Practice Committee which shall meet with the Trade Practice Committees appointed under such other codes as may be related to the trade for the purpose of formulating fair trade

practices to govern the relationships 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.

(j) To provide appropriate facilities for arbitration, and subject to the approval of the Administrator to prescribe rules of procedure and rules to effect compliance with awards and determinations.

SECTION 8. Any member of the trade may submit data tending to prove that such member is placed at a competitive disadvantage with, or is subject to different economic conditions to those of other members of the trade; and the Code Authority may, after investigation, recommend to the Administrator that changes be made in the Labor Provisions of this Code, and upon approval by the Administrator after such notice and hearing as he may specify, such new provisions shall become effective for that member of the trade.

SECTION 9. Whenever any question may arise under this Code as to the construction and meaning of any portion thereof, the Code Authority may issue such interpretations as may be necessary to effectuate the operation of and compliance with the policy of the Act, subject at all times to the approval of the Administrator, and such interpretations approved by the Administrator shall become operative as a part of this Code.

SECTION 10. No provision of this Code shall deny to any member of the trade or to any party in any proceeding the right to appeal to the Administrator nor prevent, at any time, direct appeal to him from any determination of the Code Authority. The Code Authority may, if it chooses, invoke the procedure provided for in this Section.

ARTICLE IX—MODIFICATION

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

SECTION 2. This Code, except as to provisions required by the Act, may be modified on the basis of experience or changes in circumstances, such modifications to be based upon application to the Administrator and such notice and hearing as he shall specify and to become effective on approval of the Administrator.

ARTICLE X—MONOPOLIES, ETC.

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 XI—EFFECTIVE DATE

This Code shall become effective on the date specified in the order of approval by the President of the United States.

Approved Code No. 466.
Registry No. 1615-30.

SCHEDULE I

CIGAR MERCHANDISING PLAN²

A. SALES BY CIGAR MANUFACTURERS

SECTION 1. As to each of the cigars of his manufacture, each cigar manufacturer shall record with the Council the minimum sales price at which such cigar is intended to be sold at retail (exclusive of any governmental tax or charge thereon required to be paid by the jobber or retailer), which price, hereinafter referred to as "the retail price" shall constitute the basis for computing the discounts and terms for all dealers as hereinafter provided; and shall also record with the Council the discounts and credit terms to be allowed by him from the retail price in connection with the several respective classes of transaction described in subdivisions (a) to (d) inclusive of Section 2 of this Division A. The retail price and, within the limits hereinafter prescribed, the discounts shall be subject to change at the discretion of the manufacturer, provided the revised price or discounts as the case may be, be recorded with the Council *at least five (5) days* before the change becomes effective *unless a shorter time be required by a cigar manufacturer in order to meet a competitor's reduction of price which is not in violation of this merchandising plan.*⁴ The retail price shall be prominently marked on each container of cigars.

SECTION 2. From the recorded retail price, each cigar manufacturer shall, as to each of his cigars, grant discounts to be established by him in his discretion within the limits hereinafter in this Section 2 prescribed, as follows:

(a) In the case of sales, if any, to retailers other than sales to chains of stores and other than drop shipment sales under subdivision (d) of this Section 2, a discount of not more than twenty-eight percent (28%).

(b) In the case of sales to accredited cigar jobbers, a discount, in addition to the discount which shall have been established by the manufacturer under subdivision (a), of not more than fourteen percent (14%).

(c) In the case of sales to cigar service jobbers, a discount, in addition to the discount which shall have been established by the manufacturer under subdivision (a), of not more than sixty-six and two-thirds percent (66⅔%) of the established discount to accredited jobbers. Provided, however, that in territories where no accredited cigar jobber exists, a manufacturer may allow a cigar service jobber a discount not to exceed ten percent (10%) on any particular class of cigars in addition to the discount which shall have been established by the manufacturer under subdivision (a).

(d) In a territory where a cigar manufacturer has an accredited cigar jobber, the cigar manufacturer may, in his discretion, make drop shipments to retailers or sub-jobbers, provided the accredited cigar jobber agrees to or requests such shipments; in a territory where the cigar manufacturer has no accredited cigar jobber, the cigar manufacturer may, in his discretion, make drop shipments to retailers. Provided that in either case shipments shall be made only in quantities of not less than 2,000 cigars in the case of Class A and Class B cigars, and not less than 1,000 cigars in the case of Class C or higher classes.

For such sales or drop shipments, there shall be established a discount for the drop shipment purchaser, in addition to the discount which shall have been established by the manufacturer under subdivision (a), of not more than five percent (5%), and this discount shall be allowed by the manufacturer or jobber, whichever shall make the billing.

The cigar manufacturer may in connection with each drop shipment sale allow to the accredited cigar jobber who has requested or consented to such

² Effective June 25, 1934. See paragraph 2 (1) of order approving this Code.

³ Provisions for filing of prices and discounts stayed until further orders. See paragraph 2 (3) of order approving this Code.

⁴ Italicized words deleted. See paragraph 2 (2) of order approving this Code.

sale a service credit. Provided, that the total of the service credit and the discount allowed to the drop shipment purchaser and the accredited cigar jobber shall not exceed the fourteen percent (14%) set forth in subdivision (b) above.

(e) In the case of sales to chains of stores, discounts not exceeding the discounts which the manufacturer shall have established for his sales to accredited cigar jobbers under subdivision (b), provided, however, that each cigar manufacturer may determine in his own discretion to which chains, if any, he will make direct sales and, within the limits hereinabove prescribed, the amount of discounts on each such sale.

On each transaction in any of the categories (a) to (d) inclusive above described, the cigar manufacturer may allow a further discount of two percent (2%) for cash within his established credit terms.

Nothing herein contained shall prevent any cigar manufacturer from establishing within the maximum percentage limits hereinabove prescribed a different schedule of discounts with respect to each of the several brands, sizes, shapes or prices of his products, or a schedule of discounts different from that of any other cigar manufacturer; but each cigar manufacturer shall apply his established system of discounts uniformly as to each of the classes of transactions above enumerated in subdivisions (a) to (d) inclusive, and within each of the said classes of transactions there shall in no case be any individual variation or variations from the discount or discounts so established by such cigar manufacturer. The service credits provided for in subdivision (d) need not be uniform and may vary in each individual case.

SECTION 3. No manufacturer shall sell cigars at retail to consumers except in accordance with the provisions of this merchandising plan relating to sales by retailers; but the provisions of this merchandising plan shall not apply to any cigar manufacturer who sells exclusively and directly to the consumer.

SECTION 4. No manufacturer shall offer or give a free deal. The term "free deal" as used in this paragraph means the gift of cigars or anything of value or any special deal, discount or allowance conditioned upon the purchase of a product.

SECTION 5. All sales by manufacturers shall be evidenced by itemized invoices showing the retail price and the discounts granted therefrom.

B. SALES BY JOBBERS AND SUB-JOBBERS

SECTION 1. Each jobber shall record with the Council the discounts and credit terms (not exceeding the discounts which such jobber shall have received from the manufacturer) to be allowed by the jobber from the retail price in connection with all resales of cigars which in his discretion he may make to sub-jobbers. Such discounts shall be subject to change at the discretion of the jobber provided that the revised discounts be recorded with the Council *at least three (3) days before the change becomes effective unless a shorter time be required in order to meet a competitor's reduction of price which is not in violation of this merchandising plan;*⁴ and the discounts so recorded shall so long as effective apply to all such resales by the jobber to sub-jobbers and there shall in no case be any individual variation or variations from the discount or discounts so established.

SECTION 2. Each jobber and each sub-jobber shall record with the Council the discounts and credit terms (not exceeding the discounts from the retail price which such jobber or sub-jobber shall have received from the manufacturer or jobber, as the case may be) to be allowed upon all resales of cigars to retailers. Such discounts shall be subject to change at the discretion of the jobber or sub-jobber provided the revised discounts be recorded with the Council *at least three (3) days before the change becomes effective unless a shorter time be required in order to meet a competitor's reduction of price which is not in violation of this merchandising plan;*⁴ and the discounts so recorded shall, so long as effective, apply to all such resales to retailers and there shall in no case be any individual variation or variations from the discount or discounts so established.

SECTION 3. Each resale by a jobber or sub-jobber under this merchandising plan shall be evidenced by an itemized invoice.

⁴ Italicized words deleted. See paragraph 2 (2) of order approving this Code.

SECTION 4. Nothing in this Division B contained shall affect or modify the provisions above set forth in Division A in relation to drop shipment sales.

SECTION 5. No jobber or sub-jobber shall sell cigars directly to the consumer except through an established retail department and in compliance with the provisions of this merchandising plan relating to sales by retailers.

C. SALES BY RETAILERS

SECTION 1. In the case of all cigars purchased by retailers from cigar manufacturers, jobbers or sub-jobbers in connection with which a retail price shall have been recorded by the manufacturer as hereinabove provided, the retailer shall sell such cigars at retail at not less than the retail price so recorded, provided, however, that (1) in the case of the sale at retail of multiples of not less than ten (10) units (except in the case of cigars selling for less than five cents (5¢) each) a discount may be allowed of not more than five percent (5%) from the retail price, and (2) in the case of sales at retail of boxes of twenty-five (25) cigars or more a discount of not more than eight percent (8%) from the retail price may be allowed unless the cigar manufacturer shall record with the Council and mark a box price thereon involving a discount of less than eight percent (8%) in which case the marked box price shall be observed as a minimum, and (3) the retailer may give not more than one (1) pad of matches for each unit sold, or five (5) pads per box of twenty-five (25) cigars or ten (10) pads per box of fifty (50) cigars sold. In the case of any retailer granting a cash discount upon all purchases made, any sales of cigars shall be excluded in computing the cash discount to be allowed, or the amount of cash discount shall be included in the price of the merchandise sold in addition to the minimum prices herein provided.

SECTION 2. Upon any sale to a consumer, situated at the time of such sale in a state imposing a tax on tobacco products or the sale thereof (other than a tax payable by the manufacturer) the amount of such tax, if not paid by the consumer, shall be added to the minimum price herein provided, whether the seller shall be located within or without such state.

SECTION 3. Notwithstanding the provisions of this merchandising plan, any tobacco retailer may sell at less than the prices therein prescribed merchandise sold as bona fide clearance or bona fide discontinued lines of merchandise or imperfect or actually damaged merchandise or merchandise sold upon the complete final liquidation of any business or merchandise donated for charitable purposes or to unemployment relief agencies, provided that all such merchandise shall be advertised, marked and sold as such and that a strip label shall be placed across the inside lid label of box goods to be disposed of, stating the reason the said merchandise is being sold below the prescribed prices therefor and provided further that such merchandise shall be disposed of pursuant to any regulation as to the manner of such disposal as shall be issued by the Code Authority subject to the approval of the Administrator.

SECTION 4. Except as in this merchandising plan otherwise expressly provided wherever under any of the provisions of this merchandising plan any cigar is required to be sold at retail at a minimum price, such minimum retail price shall not be reduced directly or indirectly or by any device or subterfuge such as the giving of any trading or merchandise coupons, prizes or premiums or any other thing of value or discount, rebate, refund, commission, credits or allowances whether in the form of money or otherwise; nor shall any retailer offer or extend special service or privilege to any customer which is not available to all customers.

D. MINIMUM DISCOUNTS

Upon the recommendation of the Code Authority established by the Code for the Cigar Manufacturing Industry or the Code for the Wholesale Tobacco Trade or the Code for the Retail Tobacco Trade or upon application of any member of the Cigar Manufacturing Industry or of the Wholesale Tobacco Trade or of the Retail Tobacco Trade and the approval of such recommendation or application by the Administrator, the Code Authorities established by the said several codes, shall, upon such notice and opportunity to be heard, if any, as the Administrator may require determine by joint motion minimum discounts to be prescribed in connection with sales of cigars by any member of said Industry or Trades and such determination shall be effective only upon the

concurrence of all three (3) Code Authorities and, subject to the further approval of the Administrator, such minimum discounts shall be binding upon all such members.

E. PROVISIONS APPLICABLE TO ALL SALES OF CIGARS

SECTION 1. Wherever any of the provisions of this merchandising plan provide for two (2) or more discounts from the retail price, such discounts shall be computed separately and successively so that each succeeding discount shall be computed upon the balance of the retail price remaining after the deduction of the next preceding discount provided for.

SECTION 2. Any change in the retail price shall be applicable as at the effective date of such change to all merchandise thereafter sold by wholesale distributors, or retailers, but wholesale distributors may, notwithstanding any reduction of the retail price, dispose of existing stocks on the basis of the retail price prevailing when such stocks were acquired.

SECTION 3. Nothing in this merchandising plan shall be construed to prevent the free and general distribution of articles commonly used for advertising purposes and premiums, except insofar as such distribution or use of premiums would constitute, in effect, an additional discount or a reduction in price below the minima established hereby.

SECTION 4. All prices and discounts filed with the Council by manufacturers, jobbers or sub-jobbers, as hereinbefore provided shall immediately be reported by the Council to the respective Code Authorities for the Cigar Manufacturing Industry, the Wholesale Tobacco Trade and the Retail Tobacco Trade. Each such Code Authority shall cause such prices and discounts to be made available to all members of its respective industry or trade and shall comply with any regulations which may be issued by such Code Authority with the approval of the Administrator as to the publication and dissemination thereof.



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