

HISTORY OF GENERAL EXEMPTIONS

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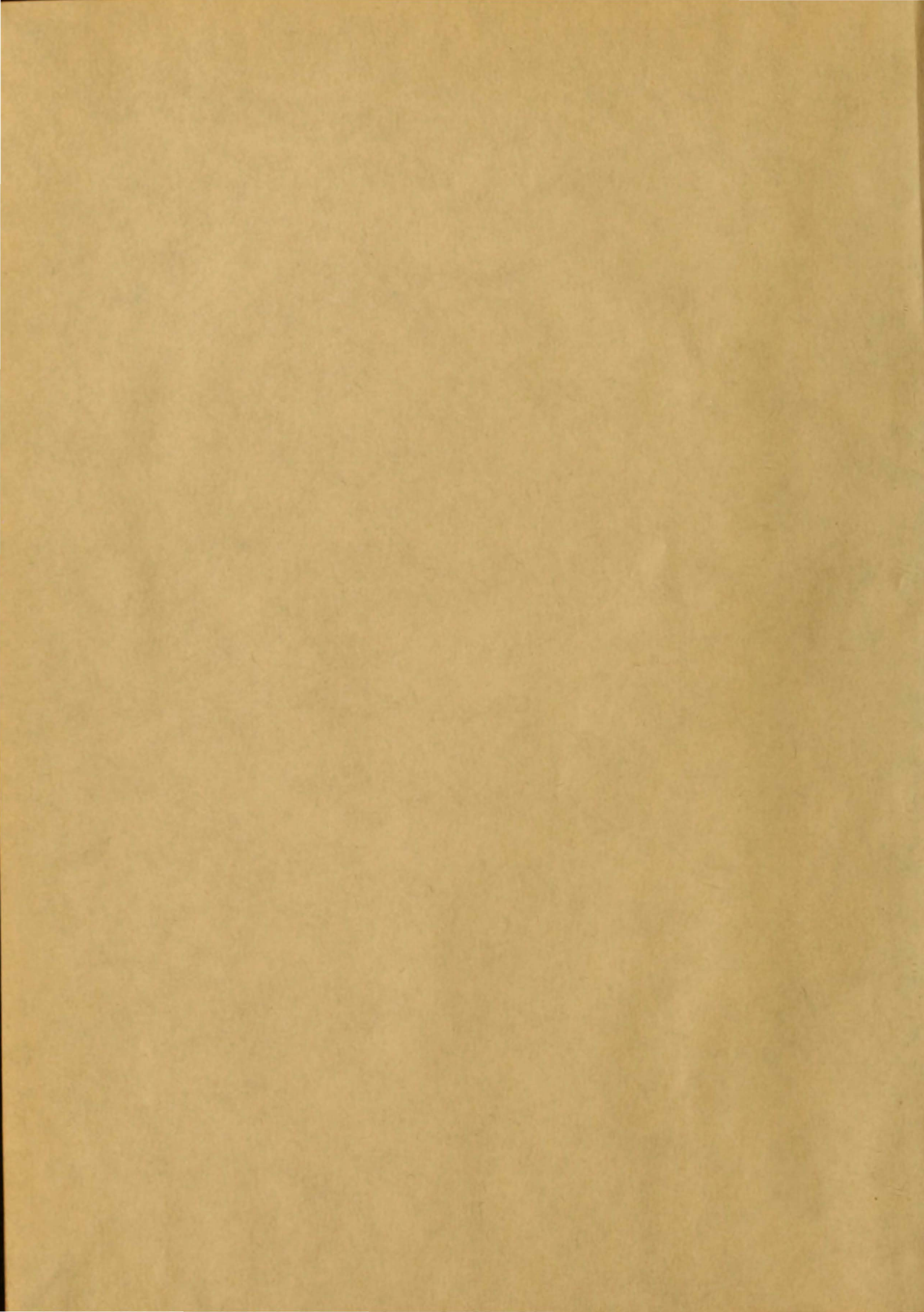
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OFFICE OF NATIONAL RECOVERY ADMINISTRATION

DIVISION OF REVIEW

HISTORY OF GENERAL EXEMPTIONS

By

Lucius Q. C. Lamar

WORK MATERIALS NO. 75

CODE HISTORIES UNIT

MARCH, 1936

OFFICE OF NATIONAL RECOVERY ADMINISTRATION

DIVISION OF REVIEW

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F O R E W O R D

This history of General Exemptions was prepared by Mr. Lucius Q. C. Lamar, Exemption Group Supervisor of the Code Histories Unit, Mr. Robert C. Ayers in charge.

The history, the operation, and the effects of the Executive and Administrative Orders which created general exemptions have been treated in this work. The term "General Exemptions" as here used means those exemptions which were not limited in their application to a particular code. Work Materials No. 74 on "Administrative and Legal Aspects of Stays, Exemptions and Exceptions, Code Amendments, Conditional Orders of Approval" contains allied material.

The exhibits referred to in the text are not here reproduced. They may be found in the NRA files under the title NRA Studies Special Exhibits, Work Materials No. 75.

At the back of this report will be found a brief statement of the studies undertaken by the Division of Review.

L. C. Marshall,
Director, Division of Review

March 25, 1936

no. 75

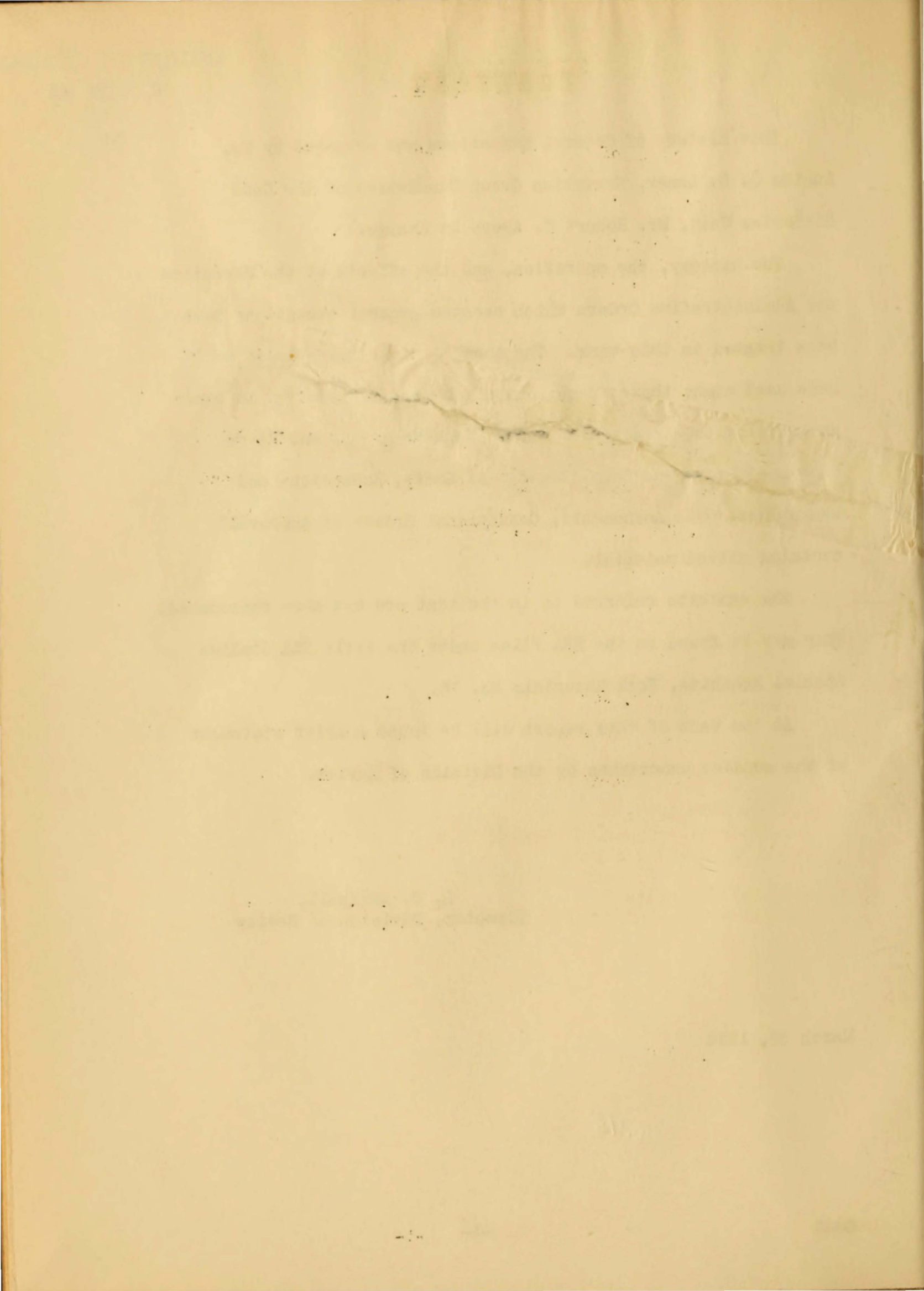


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EXHIBITS

(These exhibits are not reproduced in mimeographed form. They are on file in bound form in NRA Studies Special Exhibits, Work Materials No. 75)

- 1-A Memo from Malcolm Sharp re origin of Executive Order 6205-B
- 1-B Memo from B. Lotwin re origin of Executive Order 6205-B
- 2 Executive Order 6205-B - Granting exemptions to non-participating members
- 3 Memo from L. J. Bernard re Interpretation of Executive Order 6205-B
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- 4-E Reports of Exemptions under Executive Order 6205-B from Industry Section V
- 5 Executive Order 6355 - Exemptions to Cooperative Organizations
- 6 Executive Order 6606-A - Supplement to and Amplification of Executive Order 6355
- 7 Administrative Order X-35 - Definition of Farmers' and Consumers' Cooperatives
- 8 Administrative Order 182-11 and 106-11 - Interpretation of Administrative Order X-35

Exhibits (Continued)

- 9 Administrative Order X-98 - Interpreting Executive Order 6606-A Insofar as it applies to allowance of brokerage commissions to cooperatives
- 10 Bulletin No. 3 - The President's Reemployment Program
- 11 Executive Order 6354 - Exempting towns of less than 2500 population
- 12 Executive Order 6710 - Amendment of Executive Order 6754
- 13 Administrative Order X-72 - Supplementing Executive Order 6710 and designating trades and industries subject to exemptions
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- 16 Administrative Order X-53 - Relating to service trades, the subject of Executive Order 6723
- 17 Letter from Executive Committee of Cleaning and Dyeing Trade to the President attempting to withdraw assent to code
- 18 Reply of Hugh S. Johnson, Administrator, to letter from Executive Committee (Exhibit 17)
- 19 Administrative Order X-4 - Granting exemptions to Hospitals
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- 21 Administrative Order X-8 - Granting permanent stay of Administrative Order X-4 in connection with certain industries
- 22 Executive Order X-24 - Staying provisions of Administrative Order X-4 with respect to the Signalling Apparatus Subdivision of the Electrical Manufacturing Industry
- 23 Administrative Order X-39 - Modifying the Administrative Order X-4 and excepting therefrom certain industries
- 24 Executive Order 6606-F - Granting exemptions to Handicapped Workers
- 25 Instructions from U. S. Labor Department dated November 8, 1934, relative to Handicapped workers
- 26 Report from U. S. Labor Department dated December 9, 1935, covering Handicapped workers

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- 27 Post Code Analysis, Serial No. 78, by Research and Planning Division, of Code Provisions regarding Handicapped Employees
- 28 Executive Order 6711-A - Exemption to Home-workers
- 29 Report from U. S. Department of Labor dated June 1, 1934, regarding Home Work
- 30 Report from U. S. Department of Labor dated December 9, 1935, upon exemption to Home Workers
- 31 Form of Apprentice Contract prepared by the Federal Committee on Apprentice Training
- 32 Bulletin No. 1 of Federal Committee on Apprentice Training
- 33 Excerpt from Report of July 25, 1935 of the Federal Committee on Apprentice Training
- 33-A Report Entitled the Apprentice Training Program Under the N.R.A. by the Federal Committee on Apprentice Training
- 33-B Post Code Analysis, Serial No. 74, of Provisions regarding Learners and Apprentices
- 33-C Post Code Analysis, Serial No. 74-A, Supplementing Analysis of Provisions regarding Learners and Apprentices
- 33-D Executive Order No. 6750-C - Exemption to Apprentices
- 33-E General Regulation No. 1 re Apprentice Training by Secretary of Labor
- 33-F Bulletin No. 2 of the Federal Committee on Apprentice Training
- 34 Administrative Order X-9 - Exemption to Sheltered Workshops
- 35 Administrative Order X-28 - Appointing National Sheltered Workshops Committee, etc.
- 36 Administrative Order X-59 - Authorizing the National Sheltered Workshop Committee to Issue the N.R.A. Insignia
- 37 Administrative Order X-81 - Amending and Supplementing Administrative Order X-59
- 38 Executive Order 6646 - Requiring Certificate of Compliance on Government Contracts
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- 41 Memorandum from Laurence A. Knapp, dated June 6, 1934, regarding assessments
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- 45 Administrative Order X-60 - Exemptions of Trades and Industries in Hawaii and Puerto Rico, etc.
- 46 Administrative Order X-80 - Approving Form of Administrator's Territorial Cooperation Agreement
- 47 Office Memorandum No. 356 - Authorizing the Deputy Administrator for Alaska to decide Applications for Exemptions
- 48 Office Memorandum No. 357 - Prescribing Procedure for Deputy Administrator in the Exercise of the Authority given under O. M. No. 356.

SUMMARY

This is a brief history of general exemptions from code provisions. The term "general exemption" as here used means those exemptions not limited in their application to a particular code but extend either to all codified industries or a group or class of industries. For example, Executive Order 6205-B, applies to any and all codes thereafter approved. Executive Order 6711-A, which grants an exemption to permit home work, applies only to those codes which prohibit home work.

Mainly, the purpose of this work has been to place in a single volume the essential features of all the general exemptions to serve as a handbook or starting point for a more comprehensive study of any of the particular exemptions. Therefore, an endeavor has been made to develop briefly a clear idea of each of the general exemptions. This involved, first the background or conditions which made necessary the issuance of the particular order; second, a summary of the order itself; and third a general treatment of the operations and effect of the order.

The sources of information were obtained primarily from the original Executive and Administrative Orders and the supporting documents pertaining thereto. However, in many cases there was no supporting documents or any documents on file showing the circumstances surrounding the issuance of the particular order. In such cases wherever possible the writers of this history conferred with the NRA officials who had personally handled the particular order or had some personal experience relating to it and obtaining verbally such information as the official had or obtained leads to other documentary evidence.

In the same manner considerable material was obtained in developing the various sub-topics, such as "Operation and Effect" and "Administration of Order", these sub-topics being common to many of the main topics.

Specific instances of information acquired from sources other than the official records are the following:

Executive Order 6205-B:-- The background of this Order from Malcolm Sharp (See Exhibit No. 1A) and B. Lotwin (see Exhibit No. 1B). Report including the number and disposition of exemptions were operative under Executive Order from Robert N. Campbell, Deputy Director, Section I of the Division of Business Cooperation covering codes in the Construction Industries (Exhibits No. 4-A).

Like report from W. P. Ellis, Director, Section I, of exemptions under the Order in codes constituting the Basic Materials and Forest Products Industries. (Exhibit 4-B)

Like report of such exemptions from Industry, Section II, from

codes classified as "Manufacturing" Industries. (Exhibits 4-C).

Like report from Industry Section IV, from codes under the classification "Food" Trades and Industries. (Exhibit 4-D).

Similar report from Industry Section V, of such exemptions from codes in Graphic Arts Industries, Inland Water Carrier Trade, Codes under the Service Trades Section, Puerto Rican and Hawaiian Codes, Finance Codes, Public Transportation, and Amusement Industries.

There are no reports from Industry Section III which includes Textiles and Chemicals.

Co-operatives:- Personal contact with Vernon J. Clarke, formerly Senior Assistant Deputy, Public Agencies Division and also a tentative history of Co-operatives by Mr. Clarke.

Towns under 2500 population:- Personal contact with Allison James formerly Executive Assistant of the Distributive Trades Division.

Service Trades:- Personal contact with Howard E. Colgan, Acting Assistant Deputy for the Distributing Trades Division.

Sales to Hospitals and also Exemptions to Sheltered Workshops:- Effie Lee Moore, formerly Executive Assistant of the Public Agencies Division, and Executive Secretary of the National Sheltered Workshop Committee.

Handicapped Workers and Homeworkers:- Mrs. Clara M. Byers, Assistant Director, Division of Labor Standards, United States Department of Labor and Chairman of Federal Committee on Apprentice Training. (See also report of Labor Department on Handicapped Workers, Exhibit No. 26 and report on Homeworkers, Exhibit No. 30).

Apprentice Training:- H. B. Gunderson, Technical Secretary of Federal Committee on Apprentice Training, and employees of the committee.

Government Contracts:- Tench T. Marye, Former Unit Chief, Interpretation Unit, Review Division, who formerly handled the review of exceptions from Executive Order 6646.

There were many exemptions that do not come within the scope of this work and for useful information regarding exemptions in general the reader is invited to "Administrative and Legal Aspects of Stays, Exemptions and Exceptions, Code Amendments, Conditional Orders of Approval", Work Materials 74.

A. EXEMPTIONS TO PERSONS NOT PARTICIPATING IN ESTABLISHING
CODE

- I. Origin of Order
- II. The Order
- III. Construction of the Order
 - (1) Amendments to codes may be stayed under the Executive Order
 - (2) Participation
 - (3) Representation
 - (4) Whether action is that of an exemption or stay
- IV. Operation and Effect
- V. Conclusion.

I. Origin of Order

The National Industrial Recovery Act was approved June 16, 1933. The first code, that of the Cotton Textile Industry, was approved by the President on July 9, 1933.⁽¹⁾ The Order of Approval contained the conditions that administrative consideration should be given the application of any person directly affected by the code who had not in person or by representative consented thereto and that any such person should be given an opportunity for a hearing before the Administrator or his representative, prior to incurring any liability under the code by any of the means provided in the National Industrial Recovery Act (See condition (11) of the Order of Approval).

The possibility of litigation involving the legality and constitutionality of the code with respect to enforcement of its provisions upon non-assenting members was considered by the legal staff and the question was raised whether such non-assenting members had been given due notice and opportunity for making objections to the proposed code, especially as the penalty provisions of the National Industrial Recovery Act were considered to have been severe. This condition of the Order providing for the opportunity for hearing was accordingly inserted to meet such possible objections. There was however criticism from some of the members of this industry upon the ground that this condition was too broad as allowing more immunity from liability to non-assenting members than was necessary.

After the approval of this code it was deemed necessary to have a general order providing for notice and opportunity for hearing, applicable to all codes. An order was accordingly drafted by the legal

(1) Printed Code Volume I, page 1.

staff of NRA with the view of obviating the principal objection to the condition of the order approving the Cotton Textile Code. (2) On July 15, 1933, the President signed the order, which was designated as Executive Order No. 6205-B.

II. The Order

This Executive Order provided for hearings after the approval of a code to persons who had not either in person or by representative participated in establishing or had not consented to such code, who claimed that in particular instances the code was unjust to them and applied for an exemption therefrom. Persons so applying within ten days after the effective date of the code were given an opportunity for a hearing and determination of the issues raised prior to incurring any liability under the code. The Administrator might also, if justice required, stay the application of the code to all similarly affected pending the determination of the issues raised.

The Order with formal parts omitted is as follows:

"Any code of fair competition approved by me shall be deemed in full force and effect on the effective date as stated in the code; but after the approval of a code and as an incident to the immediate enforcement thereof, hearings may be given by the Administrator or his designated representative to persons (hereby defined to include natural persons, partnerships, associations or corporations) who have not in person or by a representative participated in establishing or consenting to a code, but who are directly affected thereby, and who claim that applications of the code in particular instances are unjust to them and who apply for an exception to, or exemption from, or modification of the code. Such persons so applying, within ten days after the effective date of the code, shall be given an opportunity for a hearing and determination of the issues raised prior to incurring any liability to enforcement of the code, and the Administrator shall, if justice requires, stay the application of the code to all similarly affected pending a determination by me of the issues raised." (3)

As will be observed from the Executive Order, the mere filing of the application within the ten day period had the effect of relieving the applicant from the operation of the code until an opportunity had been given for a hearing. No preliminary showing

(2) See Memorandums from Malcolm Sharp, formerly of the Legal Division, and Bernice Lotwin of the Legal Division, Exhibits 1-a and 1-B respectively.

(3) Copy of Executive Order 6205-B Exhibit 2.

upon the merits was required. This relief was limited, however, only to those who did not participate in establishing the code or had not consented thereto.

III. Construction of the Order

(1) Amendments to codes could be stayed under the Executive Order

It was held that since an amended code became pro tanto a new code that the Executive Order was applicable to amendments; (4) hence members of the particular industry who had not consented to such amendment or participated in its adoption could file their objections within the ten day period, in which event a stay of the amendment became operative as to them.

Who were the persons "who have not in person or by representative participated in establishing or consenting to a code?"

(2) Participation

Under this Order a person who merely appeared at the public hearing on the code but objected to the code could not be said to have "participated in the establishing of or consenting to a code", unless his objection was sustained and the code amended accordingly; (5) hence persons so appearing and objecting to a code were eligible to file application within the ten day period.

(3) Representation

In order to have been eligible as a nonparticipant the applicant must not have participated either in person or by a representative at the hearing. Whether or not a person was represented at the hearing was ordinarily a question of express authorization. However, questions did arise as to whether such representation existed even though no express authority was conferred; for example, whether the persons appearing on behalf of the trade association or other sponsoring organization represented the individual members of such organization to the extent that a member would be deemed to have participated in the establishment of the code. The Retail Jewelry Code provided that the Code Authority might make recommendations

(4) Memorandum from L. J. Bernard, Legal Council for the Review Division, to E. M. Jeffrey, dated September 27, 1934, in re application for exemption of Glick Watch Company, Retail Jewelry Trade (Order No. 142-24), marked Exhibit No. 3.

(5) See memorandum from L. J. Bernard to E. M. Jeffrey, Review Division, dated July 27, 1934, Exhibit 4.

based on conditions in that trade, which upon approval of the Administrator shall become operative as a part of that code. Where the Code Authority had made its recommendations pursuant to such provision which had been approved and therefore become a part of the code, it was held that the Code Authority as to such action represented the entire industry and all members thereof had therefore participated by representation in the establishment of such amendment, hence the stay was inoperative as to a member even though he files his objections within the 10 day period.(6)

(4) Whether action is that of an exemption or stay-

It will be noted that the Order grants relief to persons "who apply for an exception to, or exemption from, or a modification of the code." There seems no doubt that the relief pending such hearing was that of an exemption as distinguished from a stay not only from the express language of the Order but from the express definition of the term "exemption" which applies to rulings which release an individual, group or class within an industry from the full operation of a code provision as distinguished from that of the term "stay" which applies to not less than an entire industry.(6A) Nevertheless the relief provided by the Order was almost universally referred to as a "stay under Executive Order 6205-B". The term "stay" no doubt was adopted because of the phraseology of the last sentence of the Order, i.e. "and the Administrator shall if justice requires, stay the application of the code to all similarly affected." While generally known as a "stay" the relief was however handled as an exemption and orders terminating the "stay" were signed by the Division Administrators.

IV. Operation and Effect

The relief provided by the Order was availed of quite generally by non-assenting members of the industry. Hearings in many cases were delayed with the result that many members of industry enjoyed exemptions for considerable periods of time and in many instances during the entire life of the code. Under the Order the exemptions became operative upon the mere filing of the application without the necessity of making a showing.

While reports from all industries have not been received, reports have been received from 410 industries. They comprise Exhibits 4 A,

(6) Memorandum from L. J. Bernard, Exhibit No. 3

(6A) Definition of "Exemption" - Office Manual III, Sec. 3210 and "Stay" Section 3211 - See also Review Division Precedent No. 87, - Office Manual III, Section 3200.

4 B, 4 C, 4 D, and 4 E. Under ^{the} Executive Order, 517 applications were made. Final disposition was made in 220 cases. In 287 cases no final action had been taken and the stays remained in effect during the life of the code. (7)

The report from Industry Section 1 is quite complete and is therefore susceptible of further analysis. It includes the basic Construction Code and 23 supplementary codes of the Construction Industry. The report also includes 9 other industries in that Section. An analysis of this report shows the following:

No. of codes involved	33
No. of applications	455
No. of cases in which final disposition has been made	185
No. of cases in which no disposition has been made	270

Periods of stays in 185 cases:

Less than one month from the effective date of code	2
From 1 to 2 months	3
From 7 to 8 months	26
From 8 to 9 months	3
From 9 to 10 months	86
From 10 to 11 months	64
From 11 to 12 months	1

V. Conclusion

From the above it will be noted that a large number of concerns obtained complete immunity from liability under codes by the mere filing of an application without the necessity of making even a prima facie showing, many for a long period of time and in the majority of cases during the entire life of the code. Where hearings were held the stays were in most instances terminated, indicating that most of such applicants were not entitled to relief. It would therefore appear that some provision should have been made for a prompt determination of such applications. Possibly a general order requiring supplementary or post-code hearings upon such applications within a

(7) The disposition of 10 applications not shown

stated period from the effective dates of codes would have met the legal and constitutional requirements and at the same time insured prompt disposition. A single hearing might have been allowed for all members objecting to a code. For members who could not attend such hearing, provision could have been made for submission of factual data and briefs to NRA on or before the date of such hearing or within such prescribed period.

B. EXEMPTIONS TO COOPERATIVES

- I. Origin of Order
- II. Executive and Administrative Orders
- III. Administration
- IV. Operation and Effect
- V. Conclusion

I. Origin of Order

There has been in existence for a number of years cooperative organizations. The genuine cooperative is ordinarily the Farmer's Cooperative or the Consumers' Cooperative. They are usually incorporated. The Farmers' Cooperative performs the function of a marketing agency for the farm products of its members and in many cases also acts as a purchasing agency, usually for supplies used in the production of the products marketed by the organization.

As a purchasing agency the organizations secure the quantity discount which is passed on to the members, usually in the form of patronage dividends. These dividends are paid at fixed periods and represent the net income after the deduction of administrative and fixed expenses and are payable to the member in amounts proportionate to their respective purchases. Consumers cooperatives operate on the same principle except that it acts merely as a purchasing agency and does not include the marketing feature. There are other so-called cooperatives which contain some but not all of the features of the above described organizations, as, for example, establishments which allow discounts to purchasers but which do not act solely as agents of the members.

A number of codes contain provisions designed to limit the payment of rebates, refunds and unearned discounts to purchasers. It can, therefore, be readily seen that such provisions prohibit or might be construed to prohibit the operations of cooperatives. In order to permit cooperatives to continue to function the Department of Agriculture recommended an Executive Order excepting cooperatives from such code provisions. As a result of such recommendations, the President on October 23, 1933 signed Executive Order No. 6355. 1/

II. Executive and Administrative Orders

This Executive Order provided that no code or agreement theretofore or thereafter approved should be construed to prohibit the payment of patronage dividends in accordance with law by any bona fide and legitimate cooperative organization, including farmers' cooperatives, provided such patronage dividends were paid out of actual earnings and were not paid at the time the member makes the purchase from the cooperative organizations.

It will be noted that the above Order is not in the form of an exemption. As to codes thereafter formulated it constituted a general policy that no code should contain provisions prohibiting the payment of patronage dividends by cooperatives under the conditions prescribed.

1/ Copy of Executive Order No. 6355, see Exhibit No. 5.

However, as to those codes previously approved containign provisions prohibiting the payment of patronage dividends or susceptible of that construction, the order operated to relieve cooperatives from such provisions and to that extent amounted to a general exemption.

The immunity of cooperatives from code provisions was further enlarged by Executive Order 6606-A, dated February 17, 1934. 1/ This Order declared (1) That no provision in any code or agreement theretofore or thereafter approved should be construed to make it a code violation to sell to or through any bona fide and legitimate cooperative or any intervening agency of such cooperatives; (2) That no code should be construed to prevent such cooperatives from being entitled to receive or distribute to its members as patronage dividends or otherwise the proceeds derived from any discounts, commission, rebate or dividends ordinarily or by code provision, allowed to purchasers of wholesale or middle-man quantities; (3) The Administrator was authorized to determine, after such hearings and proceedings as he may deem necessary, whether in any doubtful case, an organization is or is not a bona fide and legitimate cooperative organization entitled to the benefits of this Order.

Pursuant to the above Executive Order the Administrator by an Order dated May 18, 1934, 2/ entitled "Definition of Farmers, and Consumers Cooperative" No. X-35, prescribed the following conditions to be fulfilled in order that such organizations be entitled to the protection of the Executive Order: (1) Be organized under laws of a state, territory of the District of Columbia; (2) Permit each member owning one paid share of membership one vote only in matters affecting management of the organization, unless otherwise provided by the law under which it is incorporated; provided a central or regional association made up of cooperative associations may permit voting based upon volume of business done by members with regional association, or on the number of members in the member association; (3) Operate on a cooperative basis for the mutual benefit of members, and all income, after providing for reserves and dividends on stock not to exceed 8%, must be distributed to members or shareholders on patronage basis at stated periods not more frequently than semi-annually; (4) Non-member business not to exceed in value the member business during any fiscal year; (5) Permit members access to records to determine compensation of officers and employees, and no salaries or commissions are to be paid except for actual services; (6) Distribute patronage dividends to members according to amount of business with the association; may permit such dividends of a non-member to accumulate until they equal the value of a share of stock when the same may be issued; patronage dividends must not be made in form of refund at time of purchase; no evidence of any such dividends by agreement or representation to distribute a definite amount may be made; (7) Not more than 3% of the Capital raised may be allowed for service or organizers; (8) Conduct its affairs in the interest of the members. The control or management may not be by non-cooperative organizations or persons to whom surplus savings or unreasonable compensation are paid; and may not be required to buy commodities from a specified non-cooperative concern; (9) Comply with codes for industries in which they operate.

1/ . Copy of Executive Order No. 6606-A, See Exhibit No. 6

2/ Copy of Administrative Order, Exhibit No. 7.

On June 12, 1934, a ruling on interpretation was issued (Administration Order Nos. 182-11 and 196-11), (*) to the effect that Administrative Order X-35 applied to any bona fide and legitimate cooperative and was not limited to farmers' and consumers' organizations. This ruling was made necessary because of the doubt created by the caption of X-35, i.e., "Definition of Farmers' and Consumers' Cooperatives."

On October 12, 1934 Administrative Order No. X-98 was issued for the purpose of clarifying the provisions of Executive Order No. 6606-A. Order X-98 deals with brokerage commissions, providing that no code shall be construed or applied to make it a violation thereof for a member to pay a brokerage commission to a bona fide and legitimate cooperative performing the function for which other persons may properly be paid compensation, and that no cognizance shall be taken of the fact that such cooperative will distribute its earnings, including such brokerage commissions, to its members in the form of patronage dividends, or the fact that such members may be the purchasers of the products in connection with which such commissions were realized. (**)

III. Administration

In accordance with Office Memorandum 205, matters relating to cooperative organization were referred to Division 8, of which Mr. Linton M. Collins was the Division Administrator. This division was later named the Public Agencies Division. The further personnel was as follows:

Assistant Deputy Administrator, V. J. Clarke

Legal: Howard E. Wahrenbrock, Sydney R. Prince,
Peter Seitz, William Wise

Research and Planning: James Porter Davis

Labor: Rose Schneidermann, Sydney Sufrin

Consumers: The late Mrs. Mary Rumsey, Mercer G. Johnston

Industrial: Walter White

IV. Operation and Effect

There has been considerable objection on the part of some industries to the protection afforded cooperatives. The controversy was particularly acute in the Salt Manufacturers' Industry, the Code Authority for that industry being opposed to the recognition of certain cooperative organizations as bona fide distributors of their product. It was principally due to this controversy that Administrative Order X-98 (dealing with brokerage commissions) was issued. There was also objection from the Food Industry, the code for this industry having definitely prohibited the payment of brokerage to buyers or to agents of buyers.

(*) Administration Order Nos. 182-11 and 196-11, Exhibit No. 8

(**) Order X-98, See Exhibit No. 9

Particular objection was directed against Administrative Order X-98, the Public Agencies Division having received in the month of May, 1935, over 100 letters requesting a reconsideration of this Order. To meet these protests the matter of possible revision of Orders X-35 and X-98 was referred to a committee consisting of Messrs. Walton Hamilton, member of the National Industrial Recovery Board, Willard L. Thorp, member of the Advisory Council and Mr. Linton M. Collins, Division Administrator.

A tentative draft of a proposed ruling was prepared excluding the so-called commercial cooperatives from the definition of bona fide and legitimate cooperatives as that term was used in the Executive Orders. No formal order was actually issued, however, due to the fact that the decision of the Schechter Case was rendered before final action by the Committee.

V. Conclusion

Cooperative organizations seem to have become firmly established in this country. In the aggregate they carry on a large volume of business. This is especially true in the West. A more comprehensive understanding of the subject would require a special study of cooperatives. While much of the controversy involved the matter of determining what was to be considered the genuine and legitimate cooperative, actually it is believed there was a more basic conflict between the two methods of business. Many of the code provisions were designed to promote the welfare of the particular industry with the resultant advantage to all the members of the particular industry. This is particularly true with regard to the various provisions relating to prices and terms of sale. On the other hand the cooperative cuts squarely through organization by industries to the detriment of the industry but to the corresponding advantage of the producer or the consumer or both. The immediate benefit therefore to the consumer and producer is apparent and appears to have been demonstrated by the growth of large cooperative organizations. Whether the cooperative method is of benefit to business or society generally or whether its ultimate effects might be detrimental even to the producer or consumer is a more debatable question. It is probable that cooperatives have not developed to a point where their effects on general business can be measured and at this stage of development, one's opinion is governed largely by his basic philosophy of social economy.

A preliminary draft of a History of Cooperatives has been proposed by the Public Agencies Division. Considerable information contained herein was obtained from this preliminary draft.

C. EXEMPTIONS TO EMPLOYERS IN TOWNS OF LESS THAN 2500 POPULATION

- I. Relating to President's Reemployment Agreement
- II. Relating to Codes
- III. Operation and Effect

I. Relating to President's Reemployment Agreement

The National Recovery Act, approved June 16, 1933, authorized the President to enter into and approve voluntary agreements with persons engaged in a trade or industry and with labor, trade or industrial associations, relating to any trade or industry.

The President's Reemployment Agreement was issued pursuant thereto, to remain in effect until the approval of a code by the President to which the signatory became subject or until substitutions of any of the provisions of the Agreement (Paragraph I). In paragraph (4) of the Agreement it was provided that the maximum hours fixed in Paragraph (2) and (3) thereof, were not to apply to establishments employing not more than two persons in towns of less than 2500 population which towns were not part of a larger trade area. 1

II. Relating to Codes

In Executive Order No. 6354,² dated October 23, 1933, it was stated that the purpose of the exemption thereby conferred was intended to relieve small business enterprises in small towns from fixed obligations which might impose exceptional hardship but that it was expected that all such enterprises would conform to the fullest extent possible with the requirements which would have been otherwise obligatory upon them. The Order provided that the President's Reemployment Agreement should not be held to apply to employers engaged only locally in retail trade or in local service industries (not in interstate commerce) who do not employ more than five persons and are located in towns of less than 2500 population (according to the 1930 Federal Census) which are not in the immediate trade area of a city of a larger population except that employers who have signed the Agreement and desire to continue to comply therewith may do so. It was further provided that the exemption should also apply to the same extent to those employers signing the PRA but at that time subject to a substituted code from those obligations not voluntarily assumed under such code.

It will be noted that Executive Order 6354 differs principally from the provision in PRA in that: (1) PRA relates to all establishments, the Order effects only retail trade and local service industries; (2) PRA limits the exemption to establishments employing not more than two persons, the Order limits the exemption to those employing not more than five persons; (3) the former releases employers solely from the provisions of PRA whereas the latter releases signatory parties

1 Bulletin No. 3 containing PRA, Exhibit No. 10

2 Executive Order No. 6354, Exhibit No. 11

to PRA not only from the provisions of PRA but to the same extent from code provisions as to obligations not voluntarily assumed by them under codes.

The above order was amended by Executive Order No. 6710, approved May 15, 1933,³ providing that employers engaged only locally in retail trade or local service trades who operate not more than three establishments in towns of less than 2500 population and not in the immediate trade area of a larger town would be exempt from the President's Re-employment Agreement and those provisions of approved codes relating to hours, wages, minimum prices of merchandise or services and collection of assessments, except insofar as employers might signify their intention to be bound.

The effect of the amendment was to extend the exemption to employers who operate not more than three establishments rather than five, as provided by the previous Order and also to exempt employers not only from the provisions of PRA but from hour, wage, minimum price and assessment collection provisions of codes as well.

Administrative Order X-72 dated August 6, 1934,⁴ prescribed rules and regulations relating to the application of Executive Order 6710 and designates the "retail or local service trades" to be: Baking (retail), Motor Vehicle Storage and Parking, Retail Food and Grocery, Retail Jewelry, Retail Tobacco, Retail Trade (including Drug and Booksellers), Barber Shop, Bowling and Billiard Operating Trade, Cleaning and Dyeing Laundry, Real Estate Brokerage, Shoe Rebuilder, Hotel, and Restaurant Industry and the following industries or trades not then codified, Confectioners, Milk at Retail, Beauty Parlors and such other trades or industries as the Administrator would from time to time designate. The term "town" was also defined and the conditions under which "towns of less than 2500 population" were deemed to be "in the immediate trade area" of a larger city. Manufacturing and wholesaling were excluded from the Order. The method of relief was provided for employers not included in the exemption but who claimed to be injured from competition of those exempted. Those engaged both in one of the above designated trades or industries and a business not so included, where such operations were not readily segregable were exempt only where the business covered by that order constituted the employer's principal line and such product constituted more than 50 per cent of the gross sales. Where the business was segregable only the department whose principal business (as above defined) covered by the trades or industries enumerated above were exempted. When part of a business was exempted the employer was not liable for assessments based upon that part. Employers complying with codes to the extent not exempted were entitled to display NRA insignia.

By Administrative Order No. 46-10, dated May 29, 1934, it was ruled that employers engaged in the Motor Vehicle Retailing Trade were bound by the code for that industry regardless of the size of the town in which their place of business was located.

III. Operation and Effect

Other than the above orders there was little further administrative

³ Executive Order 6710, Exhibit No. 12

Administrative Order X-72, Exhibit No. 13

action. The Code Authorities investigated and followed up the matter of what towns were entitled to the exemptions. The United States Census records were ordinarily conclusive upon the question of whether or not the population of a particular town was less than 2500. However Administrative Order X-72-1, dated August 28, 1934, recited that the census of 1930 listed the town of Glasgow, Montana as a town of less than 2500 but that it appearing that the population of that town was then in excess of 2500 it was ordered that for the purposes of the administration of Executive Order 6710 such town should be deemed to have a population in excess of 2500.

Question also arose as to whether a particular community was within the immediate trade area of a larger town. This arose in a number of instances concerning factory communities located outside the boundaries of towns. However these controversies were usually settled without the necessity of official rulings. On the whole the exemption to establishments in towns of less than 2500 population seemed to have become operative with very little complications.

D. EXEMPTIONS TO SERVICE TRADES

- I. Origin of Order
- II. Executive and Administrative Orders
- III. Operation and Effect

I. Origin of Order

Service trades, as that term was used in NRA, consists of those trades or industries which perform personal services such as barber shops, cleaning and dyeing, hotels, etc. At the time of the approval of these codes, considerable doubt was expressed by representatives of these industries whether or not, in view of their purely local or intra-state character, the National Industrial Recovery Act was applicable. The Executive Order approving the Code for the Barber Shop Trade (No. 398) provided that this code should not become effective until certain conditions therein set forth were fulfilled, including the requirement that the Code Authority designate the boundaries of trade areas, establish local administrative Boards for such trade areas and that the Code Authority enter into a price stabilization agreement in such trade area with the President, the Local Administrative Board and not less than 70% of the number of members of the trade in such area. (1) Similar conditions were embodied in the Code for the Laundry Trade. (2)

The Codes for service trades were generally ineffectual, even as to industries in which codes had become effective. These industries consist of numerous small enterprises. There exists in this branch of industry probably a higher percentage of one-man companies or working proprietors and those employing only one man, than in any other branch of industry. As a result, organization in these industries was difficult. The net result was an almost complete breakdown in code compliance. A more detailed description of the conditions prevailing at that time will be found in the Code Histories for industries.

II. Executive and Administrative Orders

In order to meet this situation, Executive Order No. 6723 was issued by the President on May 26, 1934. It provided that all provisions in codes of such service trades or industries as should thereafter be designated by the Administrator were suspended, except those of Child Labor, Minimum Hour, Minimum Pay and the mandatory provisions of Section 7(a) and 10 (b) of the National Industrial Recovery Act, provided that in any locality in which 85% of the members of a designated trade or industry should offer to abide by a local code for that locality, the Administrator, after approval of

(1) Vol. IX, page 331 - Bound Volume of Code
 (2) Vol. VI, page 281 - Bound Volume of Code

such code, was authorized to enter into such agreements. (3)

In the letter of recommendation, written by the Administrator to the President, it was stated that studies of the operation and effect of codes for certain service trades and industries indicated the necessity for relieving the NRA of the excessive administrative burden in securing full support of these codes and to permit of more effective administration of other codes having greater concern with the industrial structure, which had been unduly hampered thereby.

By Executive Order No. 6756-A, (4) dated June 28, 1934, the President offered to enter into an agreement with members of such service trades not theretofore codified, on condition that in any locality eighty-five per cent of the members thereof should agree to abide by a local code of trade practices suggested by them for that locality.

Executive Order 6723, having provided that the Administrator should designate the trades and industries included under the Order the following Administrative Orders were issued:

Order No. X-27, dated May 28, 1934, designating Motor Vehicles; Storage & Packing; Bowling & Billiards; Barber Shop; Cleaning & Dyeing; Advertising Display Installation & Advertising Distributing Trade.

Order No. X-50, dated June 15, 1934, Laundry.

Order No. X-54, dated June 28, 1934, Hotel.

On June 28, 1934, Administrative Order X-53, was issued prescribing rules and regulations with respect to the operation of Executive Order 6723, including the conditions under which members subject to the Order were entitled to display the Blue Eagle. It was also provided that all parts of the designated codes, to the extent necessary, were in effect for the purposes of the operation of Executive Order 6723, except trade practice and code administration provisions. (5)

As previously stated the Barber Shop and the Laundry Trade Codes were not to become operative until the fulfillment of the conditions prescribed in the Order of Approval. At the time of the above Executive Order, those conditions had not been fulfilled, and

(3) Executive Order No. 6723, Exhibit No. 14.

(4) Executive Order No. 6756-A, Exhibit No. 15

(5) Administrative Order X-53, Exhibit No. 16

hence such Orders were not effective. The Administrative Order, therefore, made such provisions effective for the purpose of operation under Executive Order 6723.

III. Operation and Effect

The Executive Order was not favorably received by the trades and industries affected. Considerable effort had previously been made to organize these industries more effectively. Many were endeavoring to establish minimum price provisions. A series of conferences were being held in various parts of the United States with a view of remedying the breakdown in code compliance in the Hotel Industry, and a movement was on foot to establish minimum rates. The Order in question, of course, nullified all such efforts.

Code Authorities in the industries affected were, in effect, abolished by the Order. There was, therefore, considerable resentment from these industries.

On June 20, 1934, the Executive Committee of the Code Authority for the Cleaning and Dyeing Trade wrote the President "that this Code Authority considers that the code for the Industry was no longer in force and effect with respect to any of its provisions and that, so far as it was within their power, the assent to this code is thereby withdrawn." (6)

On June 26, 1934, the Administrator replied that inasmuch as the administrative provisions of the Cleaning and Dyeing Code were suspended by Executive Order 6723, the Code Authority authorized under such provisions was, accordingly, suspended and could not, therefore, at that time, be deemed to be representative of that Trade or have authority to act on its behalf, hence the assent to this code could not be withdrawn by that body. (7)

Pursuant to the Executive Order, local codes were submitted by the following industries and trades -

Cleaning and Dyeing submitted approximately 54 local codes, nearly all of which contained provisions for minimum prices.

Shoe Rebuilding Industry submitted 277 local codes, nearly all of which contained provisions for minimum prices.

Barber Shop Industry submitted 277 local codes, all of which contained requests for minimum prices.

(6) Copy of letter from Code Committee - Exhibit No. 17

(7) Copy of the above letter - Exhibit No. 18

Motor Vehicle and Storage submitted 3.

Laundry Trade submitted 1.

The trades and industries not mentioned submitted no codes.

The policy of NRA was not to approve provisions for establishing minimum prices. Therefore, of local codes submitted, there were approved only four in the Shoe Rebuilding and two in Cleaning and Dyeing Trade. The codes approved did not contain minimum price provisions.
(8)

Since the Code Authority was the enforcement as well as the administrative agency of industry, the elimination of such bodies resulted in still greater disregard for these code provisions remaining in effect, i.e., labor provisions. Code enforcement in those trades or industries were virtually abandoned and non-compliance became general. This situation continued until the date of the Executive Order suspending all codes.

(8) See also Chapter IV of "Agreements under Sections 4 (a) and 7 (b) of N. I. R. A.", by Creston A. Giblin, Administration Studies.

E. LIMITED EXEMPTION FROM PROVISIONS OF CODES IN CONNECTION WITH SALES TO HOSPITALS

- I. Origin of Order
- II. The Order
- III. Operation and Effect
- IV. Conclusion

I. Origin of Order

An application, on behalf of the hospitals of the United States supported by public subscription or endowment and not operated for profit, was made for an exemption from any Code to all industry or trade members when dealing with such hospitals. As a result of such application, Administrative Order X-4¹ was signed by Hugh S. Johnson, Administrator, upon the recommendation of A. D. Whiteside, Division Administrator.

II. The Order

The essence of the order is quoted as follows:

"It is hereby ordered that those members of industries subject to codes of Fair Competition who sell or may sell supplies or materials to hospitals of the United States which are supported by public subscription or endowment, and not operated for profit, within the limitations hereinafter provided, be and they are hereby exempted from compliance with provisions of such codes governing sales, provided, however, that the exemption hereby granted shall be limited to an operative only in connection with such sales made by such members to such institutions."

Further provision was made for it to take effect in ten (10) days, unless otherwise ordered by the Administrator and was dated January 23, 1934.

III. Operation and Effect

No doubt the purpose of this order was to relieve charitable hospitals from sharing in the burden of national recovery and thereby increase the usefulness of the funds at their disposal. However, the order had scarcely been signed when objections to it came pouring into the NRA. Those industries relying largely upon hospital trade and which were operating under codes or the PRA made objection

¹ See Exhibit No. 19.

on the grounds that they could not sell below established prices and comply with the requirements of the codes or PRA as to hours and wages. As a result of these protests, Administrative Order X-5^{2/} was issued February 2, 1934. By the terms of that order, the provisions of Administrative Order X-4 were stayed for a period of thirty (30) days from date of X-5 to give consideration to the objections made. The order reserved the right to the Administrator to suspend the effective date thereof by further order.

In the petition or brief 3/, dated February 26, 1934, and presented on behalf of the X-Ray and Electro-Medical Products Groups of the Electrical Manufacturing Industry, a protest was made to the Staying Order of X-4 and the continuation of X-4. The following excerpts from that document seem to give a picture of conditions during the period of X-5:

"As soon as it became generally known that Order X-4, dated January 23, 1934, had been issued, a very marked decrease in business occurred in the X-Ray and Electro-Medical Groups, due to the fact that the hospitals of this country demanded exemptions from the codes for their purchases; since the issuance of the Staying Order, all orders of customers have been held in abeyance pending the final decision on this matter. This stagnation in business will continue, in our opinion, as long as there is any delay in deciding whether the original Order X-4 will be allowed to stand or will be permanently withdrawn. Based on the anticipation that Order X-4 will be allowed to remain in effect after March 5th, one hospital in Baltimore has already demanded of us a 15% discount on our products which it anticipates purchasing.

"We are no longer interested in a further stay of the original order and herewith submit factual data which we know will furnish sufficient information to warrant the NRA to withdraw Order X-4 permanently, at least insofar as it relates to the X-Ray and Electro-Medical products.

2/ See Exhibit No. 20.

3/ This document is filed in folder marked "Division VIII-Charitable Institutions - X-4 - S. R. Prince, Jr. " and at the time of this writing is in the custody of Effie Lee Moore, formerly Acting Executive Assistant, Division VIII.

"We acknowledge that the intention back of the issuance of Order X-4 is commendable. It will have little effect on most industries, such as those supplying food, coal, furniture, linens, and the large majority of other items purchased by hospitals each year. These latter named industries may find it possible to offer the hospitals special discounts on purchases, because their total sales to hospitals are not more than 5% or 10% of the total sales of such industries. It is more important to note that in the case of the X-Ray and Electro-Medical Groups of the Electrical Manufacturing Industry, our sales to hospitals is 60% of our business and closely allied are our sales to doctors of 36% additional, thus accounting for all but 4% of our sales. Therefore, we present this brief, asking that the manufacturers of X-Ray and Electro-Medical Products be exempted under X-4.

* * * * *

"Under the terms of the original Order X-4 we fail to see how our manufacturers can differentiate between sales made to any class of hospitals, due to the fact that it is almost impossible to define the so-called 'private hospital' or those hospitals which are supported by public subscriptions and endowments and not operated for profit. (As an example, in the City of Baltimore, all hospitals receive a set sum every year from the State of Maryland or from the City; Johns Hopkins Hospital receives a very substantial sum each year from the State. Another instance is the Swedish Hospital in Brooklyn, New York, which is run for profit and, on the other hand, receives free ambulance service from the City of New York, paid for by taxes.)

* * * * *

"Order X-4 makes no statements as to whether exempted hospitals include those hospitals supported by taxes. We believe that they are, and if not, the Order will soon have to be extended to include them.*****

"The question then arises as to whether this order would not soon be further extended to educational institutions, tax-supported and

otherwise, which use X-Ray and Electro-Medical equipment.

"We respectfully call your attention to the fact that Order X-4 does not prevent purchasing by hospitals and their reselling to others. We know that our groups can not maintain sales to doctors on published prices within the Code regulations and at the same time sell to hospitals with a total disregard as to sales of all existing codes. We believe the doctors will naturally purchase through hospitals or demand equal prices and that would bring practically all of our business under exemption from codes on sales."

The document goes on to point out that to permit the application of X-4 to their industry would leave to individual manufacturers and vendors the right to determine whether any hospital was or was not within the scope of the order, that it would foster price-cutting and discrimination and other unfair trade practices.

In response to the vigorous protests made, Administrative Order X-8 4/ was issued, March 3, 1934. This order made permanent the stay created by X-5 insofar as it affected the X-Ray and Electro-Medical Apparatus as covered by the Code for the Electrical Manufacturing Industry, the Scientific Apparatus Industry and all other industries that established to the satisfaction of the Administrator that a substantial part of their supplies or materials were sold to hospitals covered by X-4 and also satisfied the Administrator that justice required the relief granted by Order X-8. This Order was signed by Hugh S. Johnson, Administrator for Industrial Recovery, upon the recommendation of A. D. Whiteside, Division Administrator.

Later it was established to the satisfaction of the Administrator that a substantial part of the supplies and materials of the signalling Apparatus Subdivision of the Electrical Manufacturing Industry were sold to hospitals of the United States supported by public subscription or endowment and not operated for profit, and upon this finding Administrative Order X-24 5/, issued April 21, 1934, stayed permanently the terms of X-4 in so far as it affected this industry.

Administrative Order X-39 6/ was issued May 28, 1934. This order modified X-4 so as to require members of the Bituminous Coal Industry, the Wholesale Coal Industry and the Retail Solid Fuel Industry to fully comply with the requirements of Coal Codes in sell-

4/ See Exhibit No. 21.

5/ See Exhibit No. 22.

6/ See Exhibit No. 23.

ing coal to hospitals. The order stated the reason for the issuance was that objections had been filed to the provisions of X-4 by members of the Coal Industry, and that it had been established to the satisfaction of the Administrator that justice required the modification. It is noticeable that the recitation clause does not say "that a substantial part of their supplies or materials are sold to such hospitals" as set out in the Staying Clause of X-8.

The records show that industry members who had considerable dealings with hospitals and were subject to a code or a PRA made considerable objection to X-4 in so far as it affected their industry, because the order, in effect, prohibited them from dealing with hospitals. Such an effect resulted from hospitals refusing to deal with such members without a substantial reduction in prices. In cases where members of a code refused to reduce prices to hospitals, sales were almost entirely curtailed, pending a determination of the Administrator as to whether or not such industry members should comply with the provisions of their code. This condition brought about considerable confusion concerning the Order X-4 during the early months after its issuance, which was to a great extent corrected by Administrative Orders X-8, X-24 and X-39.

IV. Conclusions

The records indicate that the depression had brought about a condition where the number of people requiring charitable hospitalization in whole or in part had greatly increased over pre-depression times and that likewise the subscriptions and donations to hospitals had reached a much lower level, thus placing upon the shoulders of the institutions a burden which they were financially unable to carry. To make the hospitals purchase supplies at the increased prices caused by the codes and PRA would but reduce their ability to carry the steadily increasing burden. The Administrative Order X-4 had the effect of distributing this burden among industry and because of this result those industries whose major production was utilized by hospitals were given relief from the order. With these last-mentioned industries being excluded from the provisions of X-4, that portion of the extra burden of the hospitals which was shifted to industry was spread among industry members whose great majority of sales were made in conformity to code regulations.

F. HANDICAPPED WORKERS

- I. Origin of Order
- II. Executive Order No. 6606-F
- III. Procedure
- IV. Summary of Administration by Labor Department

I. Origin of Order

The codification of industry presented the problem of the effect upon the continued employment of persons handicapped by physical or mental defect or by reason of age or other infirmities. It can readily be seen that a minimum wage requirement might result in the discharge of those employees who by reason of such disabilities did not meet the standard of efficiency required. This was soon recognized.

Bulletin No. 5, contains interpretation of the President's Reemployment Agreement, Interpretation No. 21, Paragraph 3, being as follows:

"Persons who are limited in their earning power through physical or mental defects, age or other infirmities may be employed on light duty below the minimum wage set by the President's Agreement, and for longer hours than are therein authorized, if the employer obtains from the State Labor commission a certificate authorizing the employment of such defectives in such manner."

As codes superseded the PRA the question was presented as to what disposition should be made of authorizations to employ handicapped workers issued to concerns when they were under PRA and numerous request for advice were received from state authorities designated to issue these certificates. This gave rise to the issuance of Executive Order No. 6606-F.

II. Executive Order No. 6606-F

This Order was signed February 17, 1934, and recited that a question had arisen or might thereafter arise as to whether the minimum wage and maximum hour provisions precluded those handicapped by physical or mental defect, age or other infirmity from their former opportunities of obtaining employment. The Order provided in part as follows: (*)

"A person whose earning capacity is limited because of age, physical or mental handicap, or other deformity, may be employed on light work at a wage below the minimum established by a Code, if the employer obtains from the state authority designated by the United States Department of Labor a certificate authorizing such person's

(*) Executive Order No. 6606-F - Exhibit No. 24

employment at such wages and for such hours as shall be stated in the certificate. Such authority shall be guided by the instructions of the United States Department of Labor in issuing certificates to such persons. Each employer shall file monthly with the Code Authority a list of all such persons employed by him, showing the wages paid to, and the maximum hours of work for, such employees."

III. Procedure

The Administration of the exemption relating to handicapped persons were in the hands of the United States Department of Labor. On November 8, 1954, that Department issued Instructions to guide State Authorities in the issuance of Certificates to Handicapped Workers; (*) etc., which prescribed the method of procedure in such cases substantially as follows:

(1) An application was required to be filed by the employer with the authorized state agency, to contain information concerning the employee, such as his occupation, earnings and the wages and schedule proposed for him as well as the minimum wage and maximum hours applicable to the same occupation under the code. Where the handicap was other than age, a doctor's certificate, stating the exact nature and degree of the disability was to be obtained and where the handicap was mental deficiency, a certificate was required from a psychiatrist or a neurologist. The certificate was required to be from a physician holding public office. Wherever possible, the state authority was to make an investigation at the place of employment.

(2) In determining whether an employee was to be classified as a handicapped worker, it was necessary to distinguish between workers with infirmities and those whom the employer considered slow but who had no specific handicap. It was also necessary to distinguish workers who had physical or mental defects but whose earning power was not impaired by such defects.

The reduction in wages depended upon the extent of the handicap. When a code contained no provision relating to handicapped workers the wage allowed was prescribed at not less than 75 per cent of the code minimum for that industry unless specifically approved by the Department of Labor. However, a differential of as low as 10 per cent was allowed where the handicap warranted such differential. Longer hours than those prescribed by the code for normal workers was not permitted, both because of the tendency to reduce the hour standards for all workers and because the handicapped person, in general, was not physically able to work longer hours than a normal person.

(3) Unless specifically approved by the Labor Department, a certificate to work for less than the minimum wage was not permitted to be granted for more than 5 per cent of the working force in a given establishment, except where a code specifically permitted the employment of a

(*) Instructions issued by Labor Department - Exhibit No. 25

larger percentage. However, one handicapped worker was allowed in each establishment, no matter how small, when, in the judgment of the State Authority issuing certificates, the application was justified by the facts of the case.

(4) Exceptions to the rules of the United States Department of Labor that a handicapped person may not be paid less than 75 per cent of the minimum, or that not more than 5 per cent of the workers in any one plant should be so classified, was provided for in unusual cases of hardship to the workers upon the recommendation of the State Authority.

(5) Night watchmen were not permitted to work longer hours than prescribed by the code. If hours were not limited by a code, a certificate was issued permitting employment for such hours as seemed to the issuing officer to be justified.

(6) A person receiving workmen's compensation on account of injury could be employed at less than the minimum on light work until he was able to resume his job provided the employer reported the particulars of such light work to the State official designated to issue certificates and to the State Supervisor of Vocational Rehabilitation.

IV. Summary of Administration by Labor Department

The Division of Labor Standards, United States Department of Labor, issued a report covering Handicapped Workers. (*) For more detailed study this report will prove illuminating. In general it may be stated that the Labor Department was confronted with the necessity of promulgating a uniform policy with respect to the issuance of certificates to employ handicapped workers. With the view of accomplishing uniformity of local administration, the state issuing officers met in Boston in September, 1934, which meeting was attended by officers from the leading industrial states. Among the problems considered was that of fixing an age of employees which should be considered old for the purpose of the Executive Order. It was determined that disability from this cause varied to such an extent in individual cases and depended so much on the particular work that no arbitrary age limit could be fixed. Another question was what percentage of the number of such workers should be allowed a concern as compared to the total number of employees. This percentage as has been seen was limited to five per cent.

A summary of applications for certificates while not complete show a total of 21,136. Formal applications were granted and certificates issued in 17,203 cases. Applications were refused in 3,933 cases. Certificates were issued in at least 261 different codes and in 44 states and the District of Columbia. The greatest number of exemptions for handicapped workers was from the Cotton Garment Code, there being 6,735 certificates issued from the minimum wage provision of this code or more than one third the total number of certificates issued. The next highest number was in the Canning Industry with 1,653 certificates. 23 codes accounted for not less than 14,245 certificates or approximately 84 per

(*) Report of Labor Department on Handicapped Workers - Exhibit No. 26

cent of the total issued. 276 certificates were revoked for violations of the terms under which they were issued and 590 cancelled for various other reasons.

Many of the codes contained provisions relating to handicapped workers. A summarization of 475 codes prepared by the Research and Planning Division of NRA (*) shows 277 codes, 2 amendments and 9 supplementary codes containing provisions for exemptions of handicapped workers.

Information on this subject is also to be found in "Policy on Wages below the Minimum", Work Materials No. 45.

(*) Report of Research and Planning - Exhibit No. 27

G. HOMEWORKERS

- I. Origin of Order
- II. Executive Order No. 6711-A
- III. Procedure under Order
- IV. Summary of Administration under Order

I. Origin of Order

A practice has prevailed among industrial concerns of offering employment to persons who for various reasons are confined to their homes. The type of work is of such nature that it is not necessary to be performed in the factory but could be done in the homes. While this offers an opportunity for employment to many who would otherwise have no means of earning a livelihood the practice on the whole has tended to create unfair competitive conditions because it is difficult for the competitor of the concern employing homeworkers to maintain fair standards of hours, wages and working conditions for their employees who work in the factories. Previous to NRA some efforts had been made to control this practice and reduce its evils to a minimum. A considerable number of codes prohibited homework. These code provisions, however, brought forth a number of complaints from individual workers who were confined to their homes because of age, infirmity or because their services were needed to care for an invalid.

In March 1934, a consultation was held between the Secretary of Labor and the Administrator of the NRA which resulted in the setting up of a joint committee of NRA and the Department of Labor to study the problem. As a result of the committee's activities an executive order was recommended to the President which resulted in the issuance of Executive Order No. 6711-A.

II. Executive Order No. 6711-A

This Order was signed May 15, 1934. It recited that the question had arisen or might thereafter arise as to whether the abolition of homework had precluded certain persons who were incapacitated for factory work from their former opportunity of obtaining employment and then provided that no code in which homework is prohibited theretofore or thereafter approved should be construed or applied as to violate the regulations thereafter set forth. (*) These regulations provided in part as follows:

- "1. A person could be permitted to engage in homework at the same rate of wages paid for the same type of work performed in the factory or other regular place of business if a certificate was obtained from the State authority or other officer designated by the United States Department of Labor, such certificate was to be granted in accordance with instructions issued by the United States Department of Labor, Provided -----

(*) Executive Order No. 6711-A - Exhibit No. 28.

- (a) Such person was physically incapacitated for work in a factory or other regular place of business and was free from any contagious disease; or
- (b) Such person was unable to leave home because his or her services were absolutely essential for attendance on a person who was bedridden or an invalid and both such persons were free from any contagious disease.

"2. Any employer engaging such a person should keep such certificate on file and file with the Code Authority for the trade or industry or subdivision thereof concerned the name and address of each worker so certificated.

This order should not apply to or affect Codes of Fair Competition theretofore or thereafter approved for food or allied products trades, industries or subdivisions thereof, which contained provisions prohibiting the manufacture and/or processing of food products in homes."

III. Procedure under Order

Pursuant to the order, the U. S. Department of Labor on June 1, 1934, issued instructions relating to the certificates, (*) in which it was recited that the order applied to codes approved or to be thereafter approved, which contained a provision prohibiting home work in the industry or part thereof, excepting the food or allied products industries, and had no effect upon codes which did not contain such a prohibition, and further provided substantially as follows:

(a) A joint application for the certificate was to be made by the home worker and the employer on a form furnished by the Department of Labor, through the State agency, stating the reasons for the worker's confinement to home, the rate of pay per unit of work, the time required to complete a unit, the number of units given out at one time, and the time allowed for completion of the work. The worker was required to certify that he would personally perform the work, and the employer was required to certify that he would pay the same piece-work rate paid in the factory; that all material, etc., would be furnished, delivered, and returned by the employer and at his expense, and that no deductions would be made for spoilage or for imperfect work.

(b) In addition to the reasons given in 1 (a) and (b) of the order, the instructions authorized issuance of a certificate if the home worker was accustomed to this method of work before the code prohibition, and was too old to make an adjustment to factory routine.

(*) "Instructions for Issuance of Certificates Permitting Home Work in Special Cases," etc., Exhibit No. 29.

(c) To maintain the code prohibitions, the State Authority was to investigate the application to determine if the exemption was justified, and the standards set forth were to be strictly applied. The issuing officer could require a medical certificate signed by a public health physician as to physical incapacity, and no able-bodied person under fifty was to be considered too old to make the necessary adjustment to factory work.

(d) The certificate could be issued if justified, specifying the amount of work given to the employee during a specified period, not to exceed that which could be completed during code hours.

(e) The certificate was to be issued in quadruplicate, one copy for the worker, one for the employer, one for the code authority, and one for the file in the issuing office.

(f) More stringent State laws or regulations affecting home-work were not to be superseded by the provisions under which certificates were issued.

(g) No limitation of the number of incapacitated workers to each employee was provided, but caution was to be exercised to prevent fraud if numerous applicants were received from any one firm.

(h) A certificate could be revoked if (1) the reason for granting same ceased to exist; (2) the work was performed by a person other than the employee named; (3) the employer gave out work in violation of authorized conditions.

IV. Summary of Administration under Order

The Division of Labor Standards, United States Department of Labor, issued a report covering exemptions to home-workers, reference to which is made for more detailed study of this subject. (*)

A meeting of the state issuing officers was held in Boston, Massachusetts, in September 1934, to discuss the problems which arose in connection with the administration of exemptions to home-work prohibitions. Among the problems considered were cases of mothers confined to their home by the care of young children, homeworkers who while not incapacitated for factory work, lived at prohibitive distances from factories. It was decided that the Executive Order should not apply in such cases and that certificates should not therefore be issued.

Reports were received from the State issuing officers on the action taken on applications for certificates. While not absolutely complete, figures have been assembled based on these reports. They show the following:

Formal action was taken on 5,065 applications. Of this number 2,608 certificates were issued and certificates were refused in 2,457 cases.

(*) Report of Department of Labor on Homeworkers, Exhibit No. 30.

The number of certificates issued is insignificant as compared to the total number of homeworkers formerly attached to these industries. Applications were granted in 23 States; however the number issued did not reach substantial proportions except in a few states.

The following table shows the number of applications granted and refused for the ten industries in which 100 or more certificates were issued.

Industry	Number of certificates issued	Number of applications refused
Men's Neckwear.....	807	523
Merchant and custom tailoring....	220	73
Infants' and children's wear....	192	131
Artificial flower and feather....	160	151
Undergarment and Negligee.....	153	219
Men's garters, suspenders, etc...	141	141
Pleating, stitching, and bannaz and hand embroidery.....	126	447
Toy and plaything.....	121	150
Tag.....	118	43
Cotton garment.....	116	100

4. See page 7 of Report, Exhibit No. 30.

The greatest number of applications were from concerns located in the State of New York, being 5,065 applications, of which 2,608 were granted and 2,457 rejected. Next in order was that of Pennsylvania, with 391 applications, 247 of which were granted and 144 rejected. Then followed California with 270 applications, of which 220 were granted and 50 rejected. (*)

B. Information on this subject is also to be found in "Policy on Wages below the Minimum", Work Materials No. 45.

(*) For further information on this subject see "N.R.A. and Industrial Homework", by O. W. Rosenzweig - N.R.A. Labor Studies.

H. APPRENTICE TRAINING

- I. Nature of Apprentice Training
- II. Origin of Order
- III. Executive Order 6750-C
- IV. Organization
- V. Administration
- VI. Conclusion

I. Nature of Apprentice Training

The term "apprentice" is defined as "one who is bound by indenture or by legal agreement to serve another person for a certain time with a view to learn an art or trade in consideration of instruction therein and formerly usually of maintenance by the master." 1/

While the above is no doubt an ancient definition, it is still generally speaking an adequate term for present day wage.

Thus, the distinction between "apprentice" and "learner" or "beginner" becomes manifest, the former usually applied to the youth and the training is fundamentally an education process, which the employer is obligated to perform by the terms of the apprentice agreement. 2/

"Under apprentice training young men and women are given broad and comprehensive training in all branches of skilled occupations.

"It is of primary importance that everyone understand that apprentice training is fundamentally an educational process. It is first and foremost training for a vocation. This program cannot and should not be regarded merely as a means for furnishing employment to young persons.

"Apprentice training stands out in sharp contrast to the employment of helpers, to the trade school course in which the student receives no experience in work under normal real conditions, and to the minute specialization of operators." 3/

II. Origin of Order

The need for special training in trades and industries has long been recognized. In 1917, a Federal Board for Vocational Education was established by an act of Congress. Subsequently this work was placed

1/ Webster's New International Dictionary

2/ Form of apprentice agreement issued by Federal Committee on Apprentice Training, Exhibit No. 31.

3/ Bulletin No. 1, page 2 of Federal Committee on Apprentice Training - Exhibit No. 32.

under the Office of Education, Interior Department and a new division of that office created named the Division of Vocational Training. However, during the depression the training of new workers fell to a point where it was practically negligible. "Skilled help was abundant and employers found reduction of costs imperative; training programs inaugurated during prosperous times were largely abandoned." 4/

Although the National Industrial Recovery Act was approved June 16, 1933, no general provision was made for apprentice training and no action was taken until February 1, 1934, when Mr. Leon Henderson, Director, Research and Planning Division, appointed a committee to investigate this problem and made recommendations.

Meanwhile, many codes had been approved, most of which, failed to include any provision for apprentice training and the few codes that had such provisions were generally inadequate for systematic training. On the other hand the codes were blocking apprentice agreements since wages under codes were higher than that usually paid apprentices at the beginning of their training period. 5/

The membership of the Committee appointed by Mr. Henderson, consisted of sixteen authorities on the problem, representing the NRA, Department of Labor, the Office of Education, employers, organized labor and State Departments of Education. The Committee was composed of the following personnel: 6/

Dr. A. J. Altemeyer,
Chief, Labor Branch,
Compliance Division

Dr. Carl Ruasbenbush,
Technical Adviser,
Labor Advisory Board NRA

Mrs. Clara H. Beyer,
Director, Industrial Division
Children's Bureau
Department of Labor

Mr. Stanley I. Posner
Economic Adviser,
Research and Planning
Division NRA

Mr. W. A. Calvin, Ass't. to
Sec'y.-Treas., John P. Frey,
Metal Trades Department,
American Federation of Labor.

Mr. Walter F. Simon,
Supervisor of Apprenticeship
Industrial Commission of
Wisconsin

Mr. Frank Cushman,
Chief, Industrial Education Service
Office of Education

Dr. William H. Stead,
Associate Director
U. S. Employment Service

Mr. J. W. Dietz,
Supt. of Public Relations,
Western Electric Company.

Mr. F. J. Trinder,
Saco-Lowell Textile Machine
Company.

4/ Page 1 of Exhibit No. 32

5/ Page 1 - Excerpt from Report of July 5, 1935 by Federal Committee on Apprentice Training - Exhibit No. 33

6/ Personnel of the Committee - page 2 of report on Apprentice Training Program under NRA. Exhibit No. 33-A.

Mr. C. R. Dooley, Manager,
Industrial Relations,
Secony-Vacuum Oil Company

Dr. J. C. Wright,
Assist. U. S. Commissioner for
Vocational Education

Mrs. Betty Hawley, Ex., Sect.,
Advisory Board on Industrial Education,
Board of Education, New York City

Mr. Guy G. Via,
Newport News Shipbuilding
Company.

Mr. John J. Seidel, Director,
Vocational Education for Maryland,
Mr. Seidel was Executive Secretary of
the Committee.

The study of the Committee shows:

"1. That the terms 'beginner', 'learner' and
'apprentice' had been used interchangeably in the codes.

"2. That most so-called 'apprentice provisions'
were for short 'breaking in' periods of from one to
nine months.

"3. That only 4.3 per cent of the codes contained
provisions for genuine apprentice training." 7/

III. Executive Order 6750-C

As a result of this investigation and the recommendation of the
Committee the President on June 27, 1934, issued Executive Order No.
6750-C.

This Order provided that no provision in any Code or agreement which
had theretofore been or would thereafter be approved should be so construed
or applied as to violate the rules and regulations therein after promul-
gated. These rules in substance were:

1. A person was permitted to be employed as an
apprentice at less than the minimum wage or in excess
of maximum hours of labor if a member of an industry
should obtain from an Agency established by the Secre-
tary of Labor a certificate permitting such employment
in conformity with a training program offered by such
Agency, such employment to continue until the certifi-
cate should be revoked.

7/ Page 2 - Excerpt of Report of July 5, 1935 - Exhibit No. 33.
See also summarization of apprentices and learners provisions
in codes by Research and Planning, Exhibit No. 33-B and 33-C.

2. The term "apprentice" should mean a person of at least 16 years of age who had entered into a written contract with the employer or an association of employers which provided for at least 2000 hours of reasonably continuous employment and his participation in an approved program of training as therein provided.

3. A Committee should be established by the Secretary of Labor to advise the Secretary in the exercise of the powers therein conferred and to perform such other functions as the Secretary might direct. This Committee should be composed of one or more representatives of the Office of Education, the National Recovery Administration and the United States Department of Labor.

The Order further authorized the Secretary of Labor to prescribe further rules and regulations and take such other steps as he might deem necessary to effectuate the Order. Orders approving codes or agreements inconsistent with this Order were modified accordingly, provided the employer elected to become subject to the Order. The Order became effective July 15, 1934. 8/

IV. Organization

Pursuant to the authority conferred by the Executive Order, the Secretary of Labor appointed the following members to constitute the Federal Committee on Apprentice Training:

Mrs. Clara M. Beyer, Chairman, Assistant Director, Division of Labor Standards, U. S. Department of Labor, representing the Department of Labor.

Alternate - Dr. William H. Stead, Associate Director, U. S. Employment Service.

Mr. Frank Cushman, Chief of Industrial Education Service, Division of Vocational Education, Office of Education, representing the Office of Education.

Alternate - Mr. R. V. Billington, Agent, Industrial Education Service, Division Vocational Education, Office of Education.

Mr. Stanley I. Posner, Research and Planning Division, National Recovery Administration, representing the National Recovery Administration.

Alternate - Dr. Harry Weiss, Assistant to the Executive Secretary, National Recovery Administration. 9/

On August 14, 1934, pursuant to the authorization contained in the Executive Order, the Secretary of Labor issued "General Regulation No. 1"

8/ Executive Order No. 6750-C - Exhibit No. 33-D

9/ Page 3 of the Apprentice Training Program under the NRA Exhibit No. 33-A.

prescribing further rules and regulations for the carrying out of the apprentice training program. 10/ This Administrative Order directed the Committee to prepare and recommend to the Secretary basic standards for use in the training program. Such standards might be varied according to the occupation but the training period should not be less than 2000 hours nor more than 10,000 hours of reasonable continuity. Not less than 144 hours per year should be devoted to group instructions in general and technical subjects under the direction of public authorities but the combined hours of work and instruction should not exceed 44 hours per week. The beginning wage must not be less than 25% of the basic rate for journeymen prevailing in the occupation and locality and the wage must be increased periodically during the life of the contract, the average wage for the entire apprentice training period being not less than 50 per cent of the basic wage rate. The Committee was also directed to review the activities of all state agencies and report to the Secretary whether any such agency should be designated. The Committee should also recommend to the Secretary such other regional, local, general or special agencies as might be necessary to supervise the training of apprentices. The Committee should transmit to the Secretary nominations for membership in any such agencies made by (1) H.R.A.; (2) U. S. Employment Service or employment service in the State where such agency was created; (3) State Board of Vocational Training; (4) State Labor Department; (5) Organization of Employees in the particular state; and (6) Organization of Employers in the particular state. Every such agency should (1) adopt as the paramount guiding principle the education and training of apprentices; (2) adopt basic standards at least equal to those prescribed by the territory; (3) be authorized to issue certificates permitting employment of apprentice; (4) prepare and execute a general plan for supervision of apprentice training which should include the appraising and approving of specific programs, approving contracts of apprenticeship, registering apprentices, supervising the training, cancelling contracts and issuing diplomas.

Pursuant to the above Administrative Order the work of organizing the state committee was begun. A series of regional meetings conducted by Mr. William F. Patterson, Executive Secretary of the Committee on Apprentice Training, was begun August 26, 1934, and continued until October 9, 1934. As a result of these meeting State Committees were organized and their appointments officially made by the Secretary of Labor.

The Federal Committee on Apprentice Training sent out to the State Committees written instructions released under date of October 20, 1934, relating to the organization of the State Committees and of Trade Advisory Committees and specifying the functions of both and also standards in the administration of the apprentice training program by the State Committee. 11/ Generally these instructions follow Instructions No. I, issued by the Secretary of Labor previously referred to. The instructions issued by the Committee were, however, more elaborate and specific. The State Committees, being agencies set up pursuant to the authorization contained in Instructions No. I, the Instructions from the Federal

10/ General Regulation No. 1 - Exhibit No. 33-E

11/ Instructions issued by Federal Committee - see page 4 to 8, inclusive, of Report of Committee - Exhibit No. 33-A.

Committee relating to representation of groups and agencies on the State Committees followed the requirements of the Instructions from the Secretary of Labor, except that the Committee's Instructions more specifically designated NRA State Compliance Division, instead of NRA and the State Federation of Labor instead of an organization of employees in the particular State. The other bodies represented were the same as in the Instructions from the Secretary, i.e., State Department of Labor, State Board for Vocational Education, Employment Service and Organization of Employers. The functions of the State Committee were to supervise the training of apprentices in accordance with the standards approved by the Secretary of Labor which included approval of apprentice contracts, issuing certificates, registering apprentices, supervising the training of apprentices, cooperating with educational authorities in the school program, cancelling contracts and issuing diplomas. The instructions also urged but did not require the establishment of Trade Advisory Committee for each trade to be composed of representatives of employees and employers. Such Committees would act in an advisory capacity on such matters as the determination of a uniform contract form, the prevailing average rate for journeymen, cooperation with school authorities, the selection of apprentices, matters of grievance either of the apprentice or the employer and other matters.

By May 16, 1935, forth-three state committees and forty-one plans had been approved by the Secretary of Labor. The ground work of the organizations, plans and policies was completed.

The Federal Committee on Apprentice Training, did not cease to function upon the invalidation of the National Industrial Recovery Act. Executive Order 6750-C, as well as the agencies created thereunder, were extended by Executive Order 7076, issued June 15, 1935. Sanction was further given this Committee by Executive Order No. 7086, creating the National Youth Administration one of the objectives of which was the employment and apprentice training of the youths of the nation. 12/ The National Youth Administration has designated the Committee as the agency for carrying on the apprentice phase of its program and a representation of the National Youth Organization has been appointed to the Federal Committee. In December, 1935, this Committee consisted of the following personnel: 13/

Mrs. Clara M. Beyer, (Chairman)
Assistant Director, Division of Labor Standards,
U. S. Department of Labor,
Alternate - Dr. William H. Stead, Associate Director,
U. S. Employment Service.

Dr. Frank Cushman, Chief of Industrial Education
Service, Division Vocation Education, Office of Education,
Alternate - Mr. R. V. Gillington, Agent, Industrial
Education Service, Division Vocational Education,
Office of Education.

12/ Page 1, Bulletin No. 2 of Federal Committee on Apprentice Training - Exhibit 33-F

13/ Page 4, Bulletin No. 2 of Federal Committee on Apprentice Training - Exhibit 35-F.

Mr. C. R. Dooley, Manager of Industrial Relations,
Secony-Vacuum Oil Company, Inc.

Mr. John P. Frey, President of the Metal Trades
Department, American Federation of Labor.

Dr. Mary H. S. Mayes, Director of Guidance and
Placement, National Youth Administration.

Dr. L. C. Marshall, Director, Division of Review,
NRA, Alternate - Dr. Harry Weiss, Chief,
Code Authority Administration Unit, NRA.

Mr. William F. Patterson, Executive Secretary.

VI. Administration

While the organization had been largely completed the actual number of apprenticeship contracts effected at the time of invalidation of codes was not great. A report of contracts classified by trades and industries and by states is contained in the Committees' Report. (Exhibit No. 33-A) This report shows that on June 16, 1935, the number of apprentices under contract was 355; number of employees 140; number of occupations 62. The occupations containing the largest number of apprentices were that of Plumber, in which there were 62 apprentices; Machinist, containing 52; Fibre Weaver 42, and Tool Maker 30. The states containing the largest number of apprentices in the order named were Wisconsin, 220; Texas, 50 and Michigan, 44.

VI. Conclusion

The method of supervision by the Federal Government of apprentice trainings differs in several respects from that employed in the regulation of industry through the NRA. The following will be noted:

1. NRA functioned purely as a Federal agency. The apprentice training program, however, proceeded more nearly upon state lines. The active administration of apprentice training is by the State Committee subject to the General Supervision of the Federal Committee. An officer of the State Government (a representative of the State Labor Department) is a member of the State Committee. The State of Wisconsin has its own apprentice training law, which is administered by a State Commission. In dealing with this situation, the Federal Committee simply designated this state agency as the State Committee. In fact, the administration of Federal Training has proceeded upon the idea of a cooperative movement with the states rather than upon the assumption of exclusive jurisdiction in the Federal Government.

2. The Administration of National Industrial Recovery Act was centralized largely in Washington, D. C.; the Administration of apprentice training was localized in the areas of operation. This is closely related to the previous observation. However, the first refers

to questions of conflict of Federal and State Sovereignties whereas this suggests the relative differences in centralized and decentralized authority. Of course, even the apprentice training program was not entirely decentralized as general supervision was reserved in the Committee.

3. In the administration of apprentice training there has been considerably less power and influence by industry than under NRA.

One of the prime principles of NRA was self-government of industry; hence, organization by the individual industries regardless of locality and the election of code authorities. While final action in most matters was reserved in NRA, actually the recommendation of the code authorities prevailed unless such recommendations contravened some basic policy. For example, in orders granting or denying exemptions the recommendations of the code authorities were followed in probably not less than ninety (90) per cent of such orders. 14/ Industry is also represented in the administration of apprentice training, but not to the same extent. On the Federal Committee there is one representative of industry, four representatives of agencies of the Federal Government and one of organized labor. Proportionate representation on the State Committee is about the same, there being three representatives of the National Government, one of the State Labor Department, one of organized labor and one of industry. It will further be noted that the representation of industry and labor is equal. As a result of the above set-up, there is less power in any particular interest or class and stronger governmental control.

However, it should be recognized that the organization and administration of the Federal Apprentice Training program is not in all respects comparable to the work performed by NRA. The former deals with a single problem, the latter with a vast and complex variety of problems. Nevertheless, it is believed a study of some of the features above referred to as well as a study of the administration of exemptions to homeworkers and handicapped workers may develop valuable suggestions in the preparation of any future federal legislation to regulate industry, should such future legislation be considered. 14a/

There is still an almost limitless field for the training of employees in industrial occupations. A large percentage of exemptions were based upon the ground that skilled workers were not available, especially exemptions to permit employees to work in excess of the maximum hours. Exemptions from maximum hour provisions constituted more than 50 per cent of the total exemptions. 15/ The fact that employers generally were

14/ All exemptions were reviewed by the Review Division -- Several of the writers of this History were in the Exemption Unit.

14a/ See also "State Recovery Legislation in Aid of Federal Recovery Legislation" Legal Studies.

15/ For authority for the above statements, see note 14. This Unit has also compiled a digest of Orders granting and denying exemptions classified by grounds.

willing to pay more than the normal rate of pay for overtime would indicate the sincerity of their statements in this respect and that it was not in fact profitable to hire the unemployed labor that was available. The situation existed in innumerable instances where in a community in which there was large unemployment there was also acute shortage of available skilled labor. This could be largely alleviated by the extensive program of apprentice training.

Information on this subject is also to be found in "Policy on Wages below the Minimum", Work Materials No. 45.

I. SHELTERED WORKSHOPS

- I. Origin of Exemption
- II. Administrative Orders
- III. Conclusion

I. Origin of Exemption

Sheltered workshops are charitable institutions which provide employment to handicapped persons. Handicapped persons are those unable to secure employment in business because of physical, mental or other disabilities. There are some three hundred of these institutions in the United States. It was soon realized that these institutions could not comply with many of the code provisions. On the other hand there was considerable objection from industry because of the competition from such institutions.

On February 18, 1934, a commission was appointed by Hugh S. Johnson, the Administrator of NRA, for the purpose of investigating the problem of sheltered workshops and to make recommendations for necessary action. The commission was made up of the following:

Dr. Frederick Woodward, University of Chicago
Mr. Oscar N. Sullivan, National Rehabilitation Association, St. Paul, Minnesota
Mr. Stanley P. Davis, Charity Organization Society, New York City.

II. Administrative Orders

As a result of the efforts of the Commission, Administrative Order No. X-8¹, dated March 3, 1934, was issued which created a general exemption to all sheltered workshops upon certain conditions. This Order defined sheltered workshops to be charitable institutions or activities thereof conducted not for profit, but for the purpose of providing remunerative employment for physically, mentally and socially handicapped workers and provided that any sheltered workshop to be entitled to the exemption should sign a pledge to the following effect:

1. Not to employ minors under sixteen years of age except such as are there for instructional purposes as approved by a Regional Committee subsequently provided for;
2. Not to engage in destructive price-cutting or any other unfair method of competition;
3. Not to wilfully hamper or retard the purposes of Title I of the National Industrial Recovery Act;
4. To cooperate so far as possible with the National Recovery Administration; and

9845 ¹ See Exhibit No. 34

5. To carry out so far as possible the intent and spirit of the National Industrial Recovery Act.

Administrative Order No. X-28² which was signed May 11, 1934, appointed the National Sheltered Workshop Committee and provided for the design and use of an appropriate insignia and specified the form of pledge to be signed by National Sheltered Workshops and further required the said Committee to designate the several geographical regions of the United States which were referred to in Administrative Order No. X-9. The personnel of the Committee appointed under this Order was:

Mr. Oscar N. Sullivan, President, National Rehabilitation Association, St. Paul, Minnesota.

Mr. Oliver A. Friedman, Milwaukee Good Will Industries, Milwaukee, Wisconsin

Mr. Peter J. Salmon, Secretary, Brooklyn Industrial Home for the Blind, Brooklyn, New York

Mr. Edward Hochhauser, President, Altro Workshops, The Bronx, New York City

Mr. John N. Smith, Jr., Director, Institute for the Crippled and Disabled, New York City

Rev. John O'Grady, National Conference of Catholic Charities, Washington, D. C.

Administrative Order No. X-59³ was issued July 2, 1934, and prescribed rules and regulations for the issuance of labels to sheltered workshops and the use thereof. This Order was amended by Administrative Order No. X-81 which supplemented all of the provisions of Order No. X-59.

Administrative Order No. X-81⁴ provided that the committee should issue labels bearing the NRA insignia to sheltered workshops and collect the actual and reasonable cost thereof, to pass on the qualifications of applicants, and to determine whether or not they came within the scope of the sheltered workshop exemption, subject to the disapproval of the Administrator, and in general provided for the supervision of sheltered workshop exemptions as provided for in the Act.

III. Conclusion

A complete history of Sheltered Workshops has been written by Miss Effie Lee Moore, Executive Assistant of the Public Agencies Division, and also Executive Secretary of the National Sheltered Workshop Committee. It is therefore unnecessary to treat here the administration of the committee. Generally it may be stated, however, that the conflict between industry and sheltered workshops was largely eliminated and general working conditions within the sheltered workshops were greatly improved.⁵

² See Exhibit No. 35

³ See Exhibit No. 36

⁴ See Exhibit No. 37

⁵ See also, "Sheltered Workshops under N.R.A.," by V. J. Clarke, and Leo. G. Cyr, Administration Studies

J. EXEMPTION TO BIDDERS ON GOVERNMENT CONTRACTS

- I. Certificate of Compliance Required of Bidders
- II. Origin of Exemption to Bidders on Government Contracts
- III. Administrative Order X-48
- IV. Executive Order No. 6767
- V. Interpretation of Executive Order No. 6767
- VI. Conclusion

I. Certificate of Compliance Required of Bidders

By Executive Order No. 6646¹ dated March 14, 1934, it was provided that all invitations made on behalf of the United States Government to bidders should provide that no bid should be considered unless the bidders certified that he was complying with the code to which he was subject or if the bidder was not subject to a code that he would comply with the President's Reemployment Agreement. It was further provided that all government contracts should contain a provision requiring such compliance but that the Administrator was authorized to make exceptions in specific cases.

II. Origin of Exemption to Bidders on Government Contracts

One of the effects of code operation was that in numerous cases competing bids were identical in price though in most instances the Government was by law required to contract with the lowest bidder.

This was claimed to have resulted from the price filing provisions of the codes and the further requirement of a certificate of compliance under Executive Order No. 6646.

Assuming that variations existed between prices filed by the members of a particular industry, it is not entirely clear how such price filing provisions resulted in identical bids although necessarily the bidders freedom of action was restricted to the extent that he could not bid below his own price list. A further study of the effect of price filing provisions, especially with respect to identical bids should produce valuable information. It has often been asserted that such price filing provisions tended to create a uniform price structure. The submission of identical bids would seem to substantiate this view.

This opinion is further supported by a Government publication entitled, "Regulations Governing Bids Modified to Offer Government Agencies Prices 15% Below Published Quotations", being the subject matter of the Executive and Administrative Orders hereinafter referred to. The portion of the publication applicable is the following:

"To take care of cases in which the full
15 per cent variation may cause damage to an

¹ Executive Order No. 6646, Exhibit No. 38

industry's price structure, the order provides that if complaint is filed, the Administrator for Industrial Recovery may after due investigation and finding of the facts reduce the allowable percentage, but in no case to less than 5 per cent below the posted prices."

III. Administrative Order X-48

On June 12, 1934, Administrative Order X-48 was issued, which exempted industry members who should thereafter bid on government contracts, from compliance with code provisions which prohibited any of the following practices, and such members, notwithstanding such prohibitions, could: (a) Quote prices and terms to such agencies as favorable as those permitted to commercial buyers for like quantities; (b) Quote definite prices or terms, but subject to adjustment relating to increased costs, for definite quantities and for definite periods not to exceed three months (unless code provided longer period); (c) Same as (b) except for indefinite quantities for definite periods not to exceed six months; (d) Quote prices and terms to apply to contracts to become effective not more than 60 days after the opening bid date. (e) Quote prices f.o.b. point of origin and/or destination. The order contained a proviso that it should not permit deviation from or abandonment of code, open price and cost protection provisions.²

IV. Executive Order No. 6767

Executive Order No. 6646 was modified by Executive Order No. 6767, approved June 29, 1934, which authorized any person submitting a bid to the government, at prices which, under an approved code, should have been filed with the code authority prior to their quotation, to quote a price not more than 15 per cent below his filed price, which action would be deemed an adequate compliance with the Code requirements, if, after the bids were opened, each bidder who quoted below his filed price, immediately filed a copy of his bid with the code authority or designated agency. If complaint was made to the Administrator, and he found, after investigation, that the tolerance of 15 per cent resulted in destructive price cutting, he was authorized to issue an administrative order reducing the tolerance to an extent necessary to prevent price cutting, but in no event to a tolerance of less than 5 per cent. The Administrator was directed to cause a study to be made of the effects of the Order upon standards of fair competition in sales to public and private customers, and to report within six months.³

V. Interpretation of Executive Order No. 6767

On July 14, 1934, Legal Memorandum No. 49 was sent by Mr. Blackwell Smith to the Legal Staff, interpreting Executive Order No. 6767, so far as the price tolerance exemption is concerned, substantively as follows: "

²Administrative Order X-48, Exhibit No. 39

³Executive Order No. 6767, Exhibit No. 40.

(a) The general terms of the Order permit of no exceptions and bids 15 per cent below filed prices could be made to government agencies without code violation even though resulting in prices below cost or below stated minimum prices, provided, that the price filed, from which tolerance was allowed, was a valid price under the code provisions. (b) Any legal interpretation of the clause which required that a copy of each tolerance bid to be filed with the Code Authority or agency, should be based upon its wording, which was believed not to justify an interpretation that filing such a copy constituted filing a revised price which then became available as such, to all purchasers. (c) If the Administrator found that the 15 per cent tolerance was resulting in destructive price cutting, he could reduce same to prevent such result, but the tolerance reduction could not exceed 10 per cent.

VI. Conclusion

NRA Office Manual, Part III, Section 4600, stated that Executive Order No. 6767 "has not been very extensively applied, consequently the problems now involved in Government Contracts relate almost exclusively to No. 6646, on which the following sections are based."

Since Executive Order No. 6767 operated without the necessity of further specific orders the NRA would in all probability have no official record of the extent to which the privilege conferred by this order was availed of. However, as members bidding below their filed prices were required to submit such price quotations to code authorities or other confidential agencies the code authorities should have this information. Further study from this source might be of value.⁴

³Executive Order No. 6767, Exhibit No. 40

⁴See also "Relationship of N.R.A. to Government Contracts and Contracts Involving the Use of Government Funds," by Jordan D. Hill, Administration Studies; Chapter V of "Agreements Under Section 4(a) and 7(b) of N.I.R.A.", by C. A. Giblin, Administration Studies.

K. ASSESSMENT EXEMPTION

- I. Origin of Order
- II. The Order
- III. Operation and Effect
- IV. Conclusion

I. Origin of Order

Prior to Executive Order No. 6678, contributions to code administration's expenses had been on a voluntary basis, under a standard provision which was contained in approved codes and provided that members were to be entitled to participate in and share the benefits of the activities of the Code Authority, and participate in the selection of the members thereof by assenting to and complying with Code requirements and sustaining their reasonable share of administration expense, same to be determined by the Code Authority, subject to review by the Administrator, on the basis of volume of business, or other equitable factors. Under such a provision contribution to the expenses could not be legally enforced.

In memorandum from Laurence A. Knapp, Review Division Counsel, to E. M. Jeffrey, dated June 6, 1934¹, as to the purposes and effect of Executive Order No. 6678, and Administrative Order X-36, it was stated that the President issued the executive order to meet the vociferously expressed desires of many industries to make failure to pay assessments for expenses of code administration a violation of the code.

The Executive Order was approved on April 14, 1934².

II. The Order

The essential part of the order was as follows:

It was ordered "that the following clause or any appropriate modification thereof shall become effective as a part of any code of fair competition approved under said Title (Title I of National Industrial Recovery Act of June 16, 1933), upon application therefor (1) pursuant to the provisions of the Code relating to amendments thereto or (2) by one or more trade or industrial associations or groups truly representative of the trade or industry or subdivision thereof covered by the Code, if the Administrator for Industrial Recovery shall find that approval by him of such clauses is necessary in order to effectuate the policy of Title I of said Act:

"1. It being found necessary, in order to

¹Exhibit No. 41.

²Executive Order No. 6678, Office Manual, Part V, V-C-29, Exhibit 42.

support the administration of this code and to maintain the standards of fair competition established by this Code and to effectuate the policy of the Act, the Code Authority is authorized, subject to the approval of the Administrator:

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

"(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 the members of the Industry;

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

"2 Only members of the Industry complying with the Code and contributing to the expenses of its administration as provided in Section 1 hereof shall be entitled to participate in the selection of the members of the Code Authority or to receive the benefit of its voluntary activities or to make use of any emblem or insignia of the National Recovery Administration."

III. Operation and Effect

On April 14, 1934, Administrative Order X-20³ was issued, which provided for the collection of expenses of code administration, non-payment of which constituted a violation of the code only if an itemized budget had been approved, and the code authority certified that the member had been given notice of the approved basis of contribution, that non-payment within 30 days after such notice was a code violation, that the member had a right to protest, but had failed to pay or file a protest. It was further provided that no members should be in violation of the code for failure to contribute to any industry other than that which embraced his principal line of business, but any code authority could show cause to NRA why a member subject to its code, should contribute to the expenses of same, in addition to a contribution by him to another code or codes.

³Administrative Order X-20, Office Manual, Part V, V-D-11 Exhibit 43.

On May 26, Administrative Order X-36⁴, was issued, supplementing the Executive Order and rescinding Administrative Order X-20. It prescribed rules, regulations and procedure governing the collection of contributions, and provided as follows:

"Pending determinations by N.R.A. with respect to specific Codes upon cause shown by a Code Authority or otherwise, every member of a trade or industry is hereby exempted from any obligation to contribute to the expenses of administration of any Code or Codes other than the Code for the trade or industry which embraces his principal line of business, provided that he shall submit such information and comply with such regulations with respect to such exemption as N.R.A. may require or prescribe."

It was not a policy requirement that a code contain the mandatory assessment provisions contemplated by administrative Order X-36, but unless the requirements of the Order were met, contributions of a compulsory nature could not be collected (Office Manual II - 1670).

Subsequent administrative orders of interpretations, and granting exemptions pursuant to the order were as follows:

Administrative Order No. X-36-1, dated October 11, 1934, held that an establishment which operated under more than one divisional or sub-divisional code, each having an approved budget, was exempted by paragraph III of Administrative Order X-36 from contributing to other than the division or sub-division which constituted its principal line of business. (See Review Division Precedent No. 63, paragraph III).

Administrative Order X-36-2, dated March 30, 1935 held that the exemption conferred by X-36, did not extend to the purchase of labels, and all members of the industry were obligated to pay for labels at the approved rates. (See Review Division Precedent No. 63, Paragraph III).

Administrative Order X-78 was issued August 21, 1934, providing that, pending further order clarifying the problem of multiple assessments in the Distributing Trades, no order of termination of exemption under X-36 should be construed to:

(1) Require any member to contribute to any code covering wholesale distribution by him, except the code covering his principal line of wholesale distribution, provided, however, the termination should apply to any of his business other than wholesaling.

(2) (Consists of a similar provision as applied to Retail Trade members).

In construing (1) above, the Legal Division, on February 21, 1935, held that a wholesaler was required to pay the code Authority for his principal line of business only on the basis of business done under that one code, and was not required to pay such principal line wholesaling code authority on the basis of his entire wholesaling business (See Review Division Precedent No. 63, Paragraph IV).

(4) Administrative Order X-36, Office Manual, Part V, V-D-21, Exhibit 44.
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Administrative Order X-122, approved December 14, 1934, provided that because of conflict of the Graphic Arts Industries Code with certain other codes, any establishment operating under one or more codes other than the Graphic Arts Industries Code, which did not sell printed matter in competition with producers under that Code, and which employed on graphic arts processes not more than nine mechanical employees was exempt from the provisions of said code governing the collection of assessments for code administration expenses. This order was rescinded by Administrative Order X-133, approved January 22, 1935, but the exemption was substantially re-adopted.

Administrative Order X-131, approved January 7, 1935, established a Single Assessment Principle for members engaged in retail distribution. It terminated exemptions granted by X-36 or X-78, effective January 1, 1935, which applied to the retail business of retail establishments, after which, a retail establishment, to the extent it engaged in retail distribution, was required to pay a single assessment upon its total retail business to the expense of its principal line code (1) at the rate of assessment approved for that code, or (2) upon its principal line at the rate approved for that code, and upon each minor line at the rate approved for each minor line code. If contribution was made to the expense of another code, based upon the business covered by that code, credit and deduction therefor was to be taken in computing payment to the principal line code. (See Review Division Precedent No. 63, Paragraph V).

Administrative Order X-139, approved April 10, 1935, provided that applications for approval of budgets and bases of contribution should contain recommendations to eliminate (1) nuisance contributions and (2) for exemptions designed to avoid inequitable contributions or articles which were not marketed per se. (See Review Division Precedent No. 63, Paragraph VII).

Administrative Order X-140, approved April 11, 1935, granted a qualified exemption of members engaged in a Principal Line Retail by providing that separate establishments whose principal line measured by dollar volume, was retail distribution, were exempted from contribution to any minor line non-retail code governing a portion of the business, provided (1) non-retail business did not require full time services of 2 or more employees, and (2) the obligations of such establishments to affix labels, and pay the approved label rates, was not affected. (See Review Division Precedent No. 64, Paragraph VI).

IV. Conclusion

This problem is one of the results of multiple coverage. A concern even though with respect to its own organization an intergrated unit might be subject to several codes. Each code may be totally different with respect to contributions to the code authorities. One code may contain a mandatory provision for assessment; another code may contain a provision for voluntary contributions. The bases of assessment or contribution differed. For example, one code would be based upon dollar volume of business, another upon production volume, by dollar volume of payroll, or by the number of employees and many other different bases of assessment. Finally, the rate of assessment varied with the individual

industry. When the basis of assessment differed, it was difficult to ascertain whether or not a particular member was paying double assessment or less than his proportionate share.

The difficulties were in all probability not anticipated in the early days of code formulations and these complications were met in individual cases as they arose during the course of administration. The fact that policy changed from time to time as embodied in the numerous orders on the subject indicates that the difficulties were not entirely solved. For example, under Administrative Order X-36 a concern with 51 per cent of its business in one code and 49 per cent in another might be exempted from assessment on the 49 per cent of its business. The result was the flood of orders from a great number of industries terminating this exemption.

With the experience of the past no doubt some broad policy initiated at the beginning of the code making could be evolved. This would involve as far as possible uniformity in the assessment provisions of each code. If mandatory provisions are legal then all codes might contain a similar mandatory provision.

The same uniform policy could be continued in the organization and administration of the code authorities in respect to assessments. Thus, a uniform bases of assessments could be adopted. For example, assessments might be based upon the dollar volume of business. This would eliminate many of the complications and uncertainties. There will still, however, be the question of differences in rates of assessments. Considered as a tax, there is considerable merit in the position that the rate be uniform in all industries. On the other hand this is opposed to the idea of organization by individual industries and the belief that each industry should be responsible for financing its own administration. Whether the latter was adopted or not, it would seem well that a member receive a single questionnaire and a single notice of assessment, and that the apportionment of that assessment be worked out through a clearing house or a system of credits of the code authorities involved. As a matter of fact this principle was adopted in Administrative Order X-131 with respect to establishments engaged in Retail Distribution.⁵

⁵ See also Part D, entitled "Code Authority Finances", by H. P. Vose, of "Code Authorities and Their Part in the Administration of the N.I.R.A.", N.R.A. Administration Studies.

L. TERRITORIAL POSSESSIONS

- I. Administrative Order No. X-60
- II. Territorial Cooperation Agreement
- III. Exemption from Mainland Code
- IV. Conclusion

I. Administrative Order No. X-60

Administrative Order No. X-60, dated February 8, 1934, exempted trades and industries in the territories of Puerto Rico and Hawaii from codes theretofore approved until September 1, 1934, and from codes thereafter approved for a period of six weeks following the dates of such approvals. It was further provided, however, that the order should not affect any exemption or exception of any industry or person in such territories and that the Order should not affect any code for a trade or industry in Puerto Rico or Hawaii (presumably meaning local codes or trades and industries peculiar to such territories.). At any time before the expiration of the exemption thereby granted qualified associations in either of the territories could apply for a modification of a code or the approval of a separate code. Provision was also made for labels. (*)

II. Territorial Cooperation Agreement

By Administrative Order No. X-80, dated August 27, 1934, the Administrator approved the form of the Territorial Cooperation Agreement for Puerto Rico, Hawaii and Alaska which was attached thereto. (**)

The Agreement provided that it would remain in effect until (a) a separate code had been approved; (b) the deputy for the territory ordered its termination; (c) not later than June 15, 1935. The Agreement further included provisions relating to maximum hours, additional compensation for overtime, exemption from maximum hours in codes of emergency maintenance and repair work, minimum wages, equitable adjustment, child labor, learners and apprentices, handicapped workers, collective bargaining and provisions which prohibited monopolies and oppression of small enterprises.

III. Exemption from Mainland Codes

A mainland code was one that included not only Continental United States but Hawaii, Puerto Rico and Alaska as well. A code was construed as a mainland code if its terms, (a) included no statement as to the extent of its application, or, (b) did not define the area of its application to exclude any or all of the territories and possessions. (***)

(*) Administrative Order No. X-60, Exhibit No. 45.

(**) Administrative Order No. X-80 and Territorial Cooperation Agreement, Exhibit No. 46.

(***) See N.R.A. Office Manual II-4000-4009.

Office Memorandum No. 356, issued May 3, 1934, authorized the Deputy Administrator for the Territory of Alaska, subject to the supervision of and review by the National Industrial Recovery Board, to grant or deny exemptions from code provisions to the extent that a code applied to transaction within that territory, except that such authorization was not to apply to the following codes:

Canning Industry
Canned Salmon Industry
Lumber and Timber Products Industry
Fishery Industry (Including supplementary Codes (*)

Office Memorandum No. 357, (**) issued May 3, 1935, provided that certain provisions, i.e., Part III, Section 3231 and 3234.2 should not apply to the Deputy for Alaska in the exercise of the authority given him under Office Memorandum No. 356.

IV. Conclusion

This topic includes only the administrative Order granting an exemption from mainland codes in the territories and the related Office Memoranda on the subject. No attempt is made to treat the administration of codes in these territories. Special studies and histories have been prepared and written covering this subject, both generally and with reference to particular trades and industries. (***)

(*) Office Memorandum No. 356, Exhibit No. 47.

(**) Office Memorandum 357, Exhibit No. 38.

(***) Generally: "The Code Making Program of N.R.A. in Territories" by F. J. Dufficy, Administration Studies. "Chapter IV of "Agreements under Section 4(a) and 7(b) of N. I. R. A.", by C. A. Giblin, Administration Studies.

Alaska: - History of NRA Administration in the Territory of Alaska, by M. W. Stead.

Puerto Rico: Report entitled "High Spots of NRA in Puerto Rico" by Boaz Long. See also the following code histories applicable solely to Puerto Rico: Baking, Motion Picture, and Banking by Frederick Sartorius; Men's Clothing by Walter M. Barrow; Cigar and Tobacco, and Survey of Needle-work Homeworkers by J. P. S. Minnet; and the Study of Needle-work in Puerto Rico by J. P. S. Minnet and Boaz Long.

Hawaii: - The following histories and studies by Frederick Simpick: "A Survey of Labor Conditions in the Principal Industries of the Territory of Hawaii"; "High Spot Memorandum" of NRA in Hawaii; "History of Graphic Arts in Hawaii and Retail Trade in Hawaii."

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OFFICE OF THE NATIONAL RECOVERY ADMINISTRATION

THE DIVISION OF REVIEW

THE WORK OF THE DIVISION OF REVIEW

Executive Order No. 7075, dated June 15, 1935, established the Division of Review of the National Recovery Administration. The pertinent part of the Executive Order reads thus:

The Division of Review shall assemble, analyze, and report upon the statistical information and records of experience of the operations of the various trades and industries heretofore subject to codes of fair competition, shall study the effects of such codes upon trade, industrial and labor conditions in general, and other related matters, shall make available for the protection and promotion of the public interest an adequate review of the effects of the Administration of Title I of the National Industrial Recovery Act, and the principles and policies put into effect thereunder, and shall otherwise aid the President in carrying out his functions under the said Title. I hereby appoint Leon C. Marshall, Director of the Division of Review.

The study sections set up in the Division of Review covered these areas: industry studies, foreign trade studies, labor studies, trade practice studies, statistical studies, legal studies, administration studies, miscellaneous studies, and the writing of code histories. The materials which were produced by these sections are indicated below.

Except for the Code Histories, all items mentioned below are scheduled to be in mimeographed form by April 1, 1936.

THE CODE HISTORIES

The Code Histories are documented accounts of the formation and administration of the codes. They contain the definition of the industry and the principal products thereof; the classes of members in the industry; the history of code formation including an account of the sponsoring organizations, the conferences, negotiations and hearings which were held, and the activities in connection with obtaining approval of the code; the history of the administration of the code, covering the organization and operation of the code authority, the difficulties encountered in administration, the extent of compliance or non-compliance, and the general success or lack of success of the code; and an analysis of the operation of code provisions dealing with wages, hours, trade practices, and other provisions. These and other matters are canvassed not only in terms of the materials to be found in the files, but also in terms of the experiences of the deputies and others concerned with code formation and administration.

The Code Histories, (including histories of certain NRA units or agencies) are not mimeographed. They are to be turned over to the Department of Commerce in typewritten form. All told, approximately eight hundred and fifty (850) histories will be completed. This number includes all of the approved codes and some of the unapproved codes. (In Work Materials No. 18, Contents of Code Histories, will be found the outline which governed the preparation of Code Histories.)

(In the case of all approved codes and also in the case of some codes not carried to final approval, there are in NRA files further materials on industries. Particularly worthy of mention are the Volumes I, II and III which constitute the material officially submitted to the President in support of the recommendation for approval of each code. These volumes 9768--1.

THE DIVISION OF REVIEW

THE WORK OF THE DIVISION OF REVIEW

Executive Order No. 7075, dated June 18, 1933, established the Division of Review of the National Recovery Administration. The pertinent part of the Executive Order reads:

The Division of Review shall examine, analyze, and report upon the statistics, information and records of operations of the various trades and industries heretofore subject to codes of fair competition, shall study the effects of such codes upon trade, industrial and labor conditions in general, and other related matters, shall make available for the production and promotion of the public interest an adequate record of the effects of the administration of Title I of the National Industrial Recovery Act, and the principles and policies put into effect thereunder, and shall otherwise aid the President in carrying out his functions under the said Title. I hereby appoint Leon S. Marshall, Director of the Division of Review.

The study sections set up in the Division of Review covered these areas: industrial, foreign trade studies, labor studies, trade practice studies, statistical studies, legal studies, administration studies, miscellaneous studies, and the filing of code books. The materials which were produced by these sections are indicated below.

Except for the Code Histories, all items mentioned below are scheduled to be in shape by April 1, 1934.

THE CODE HISTORIES

The Code Histories are documented accounts of the formation and administration of the codes. They contain the definition of the industry and the principal products thereof; the classes of members in the industry; the history of code formation including an account of the sponsoring organizations, the conferences, negotiations and hearings which were held, and the activities in connection with obtaining approval of the code; the history of the administration of the code, covering the organization and operation of the code authority; the difficulties encountered in administration, the extent of compliance or non-compliance, and the general success or lack of success of the code; and an analysis of the operation of the code provisions dealing with wages, hours, trade practices, and other provisions. These and other matters are covered not only in terms of the statute in the form in which it was first in force but also in terms of the experience and other matters connected with code formation and administration.

The Code Histories, including histories of certain NRA units or agencies, are being mimeographed. They are to be turned over to the Department of Commerce in separate form. All code authorities will be completed by the end of the year. The code number included all of the approved codes and books of the approved codes. (In the case of the Code Histories, the code number will be found in the volume which covers the preparation of Code Histories.)

In the case of all approved codes and also in the case of code books not carried in final approval, there are in NRA files further materials of industrial, particularly with reference to the volumes I, II and III which contain the material officially submitted to the President in support of the recommendation for approval of each code. These volumes

set forth the origination of the codes, the sponsoring group, the evidence advanced to support the proposal, the report of the Division of Research and Planning on the industry, the recommendations of the various Advisory Boards, certain types of official correspondence, the transcript of the formal hearing, and other pertinent matter. There is also much official information relating to amendments, interpretations, exemptions, and other rulings. The materials mentioned in this paragraph were of course not a part of the work of the Division of Review.)

THE WORK MATERIALS SERIES

In the work of the Division of Review a considerable number of studies and compilations of data (other than those noted below in the Evidence Studies Series and the Statistical Material Series) have been made. These are listed below, grouped according to the character of the material. (In Work Materials No. 17, Tentative Outlines and Summaries of Studies in Process, the materials are fully described).

Industry Studies

Automobile Industry, An Economic Survey of
Bituminous Coal Industry under Free Competition and Code Regulation, Economic Survey of
Electrical Manufacturing Industry, The
Fertilizer Industry, The
Fishery Industry and the Fishery Codes
Fishermen and Fishing Craft, Earnings of
Foreign Trade under the National Industrial Recovery Act
Part A - Competitive Position of the United States in International Trade 1927-29 through 1934.
Part B - Section 3 (e) of NIRA and its administration.
Part C - Imports and Importing under NRA Codes.
Part D - Exports and Exporting under NRA Codes.
Forest Products Industries, Foreign Trade Study of the
Iron and Steel Industry, The
Knitting Industries, The
Leather and Shoe Industries, The
Lumber and Timber Products Industry, Economic Problems of the
Men's Clothing Industry, The
Millinery Industry, The
Motion Picture Industry, The
Migration of Industry, The: The Shift of Twenty-Five Needle Trades From New York State, 1926 to 1934
National Labor Income by Months, 1929-35
Paper Industry, The
Production, Prices, Employment and Payrolls in Industry, Agriculture and Railway Transportation, January 1923, to date
Retail Trades Study, The
Rubber Industry Study, The
Textile Industry in the United Kingdom, France, Germany, Italy, and Japan
Textile Yarns and Fabrics
Tobacco Industry, The
Wholesale Trades Study, The
Women's Neckwear and Scarf Industry, Financial and Labor Data on
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and forth the organization of the report, the evidence advanced in support of the proposal, the report of the Division of Research and Planning on the industry, the recommendations of the various Advisory Boards, certain types of official correspondence, the transcript of the formal hearing, and other pertinent matter. There is also much official information relating to amendments, interpretations, exceptions, and other matters. The materials mentioned in this paragraph were of course not a part of the work of the Division of Review.

THE WORK MATERIALS SERIES

In the work of the Division of Review a considerable number of studies and compilations of data (other than those noted below in the Evidence Studies Series and the Statistical Material Series) have been made. These are listed below, grouped according to the character of the material. (The Work Materials No. 17, Industrial Relations and Statistics of Studies in Progress, the materials are fully described.)

Industry Studies

- Automobile Industry, An Economic Survey of
- Bituminous Coal Industry under Free Competition and Coal Regulation, Economic Survey of
- Electrical Manufacturing Industry, The
- Fertilizer Industry, The
- Fishery Industry and the Fishery Codes
- Fishermen and Fishing Quota, Statistics of
- Foreign Trade under the National Industrial Recovery Act
- Part A - Competitive Position of the United States in International Trade 1927-29 through 1934
- Part B - Section 3 (a) of NIRA and its administration
- Part C - Imports and Exporting under NIRA Codes
- Part D - Exports and Exporting under NIRA Codes
- Foreign Trade Statistics, Foreign Trade Study of the
- Iron and Steel Industry, The
- Knitting Industries, The
- Leather and Shoe Industries, The
- Leather and Timber Products Industry, Economic Problems of the
- Men's Clothing Industry, The
- Millinery Industry, The
- Motion Picture Industry, The
- Nitration of Industry, The: The Shift of Twenty-Five Needle Trades from New York State, 1928 to 1934
- National Labor Income by Month, 1929-35
- Paper Industry, The
- Production, Prices, Equipment and Payroll in Industry, Agriculture and Railway Transportation, January 1933, to date
- Retail Trade Study, The
- Rubber Industry Study, The
- Textile Industry in the United Kingdom, France, Germany, Italy, and Japan
- Textile Yarns and Fabrics
- Tobacco Industry, The
- Wholesale Trade Study, The
- Women's Workwear and Sport Industry, Financial and Labor Data on

Women's Apparel Industry, Some Aspects of the

Trade Practice Studies

Commodities, Information Concerning: A Study of NRA and Related Experiences in Control
Distribution, Manufacturers' Control of: Trade Practice Provisions in Selected NRA Codes
Distributive Relations in the Asbestos Industry
Design Piracy: The Problem and Its Treatment Under NRA Codes
Electrical Mfg. Industry: Price Filing Study
Fertilizer Industry: Price Filing Study
Geographical Price Relations Under Codes of Fair Competition, Control of
Minimum Price Regulation Under Codes of Fair Competition
Multiple Basing Point System in the Lime Industry: Operation of the
Price Control in the Coffee Industry
Price Filing Under NRA Codes
Production Control in the Ice Industry
Production Control, Case Studies in
Resale Price Maintenance Legislation in the United States
Retail Price Cutting, Restriction of, with special Emphasis on The Drug Industry.
Trade Practice Rules of The Federal Trade Commission (1914-1936): A classification for
comparison with Trade Practice Provisions of NRA Codes.

Labor Studies

Cap and Cloth Hat Industry, Commission Report on Wage Differentials in
Earnings in Selected Manufacturing Industries, by States, 1933-35
Employment, Payrolls, Hours, and Wages in 115 Selected Code Industries 1933-35
Fur Manufacturing, Commission Report on Wages and Hours in
Hours and Wages in American Industry
Labor Program Under the National Industrial Recovery Act, The
Part A. Introduction
Part B. Control of Hours and Reemployment
Part C. Control of Wages
Part D. Control of Other Conditions of Employment
Part E. Section 7(a) of the Recovery Act
Materials in the Field of Industrial Relations
PRA Census of Employment, June, October, 1933
Puerto Rico Needlework, Homeworkers Survey

Administrative Studies

Administrative and Legal Aspects of Stays, Exemptions and Exceptions, Code Amendments, Con-
ditional Orders of Approval
Administrative Interpretations of NRA Codes
Administrative Law and Procedure under the NIRA
Agreements Under Sections 4(a) and 7(b) of the NIRA
Approved Codes in Industry Groups, Classification of
Basic Code, the -- (Administrative Order X-61)
Code Authorities and Their part in the Administration of the NIRA
Part A. Introduction
Part B. Nature, Composition and Organization of Code Authorities

Woman's Physical Industry, Home Reports of the

Trade Practice Studies

Commodity, Information Concerning: A Study of NRA and Related Experiences in Control
 Distribution, Manufacturers' Control of Trade Practice Provisions in Selected NRA Codes
 Distribution Relations in the Automobile Industry
 Design Pattern: The Problem and Its Treatment Under NRA Codes
 Electrical Mfg. Industry: Price Fixing Study
 Furniture Industry: Price Fixing Study
 Geographic Price Relations Under Code of Fair Competition, Control of
 Minimum Price Regulation Under Code of Fair Competition
 Multiple Trading Point System in the Lumber Industry: Operation of the
 Price Control in the Cotton Industry
 Price Fixing Under NRA Codes
 Production Control in the Ice Industry
 Production Control, Case Studies in
 Retail Price Maintenance Legislation in the United States
 Retail Price Control, Restriction of, with special emphasis on the Drug Industry.
 Trade Practice Rules of the Federal Trade Commission (1914-1935): A classification for
 comparison with Trade Practice Provisions of NRA Codes.

Labor Studies

Gap and Cigar Hat Industry, Commission Report on Wage Differentials in
 Industry in Selected Manufacturing Industries, by State, 1933-35
 Employment, Payroll, Hours, and Wages in 115 Selected Code Industries 1933-35
 For Manufacturing, Commission Report on Hours and Wages in
 Hours and Wages in American Industry
 Labor Program Under the National Industrial Recovery Act, The
 Part A. Introduction
 Part B. Control of Hours and Manpower
 Part C. Control of Wages
 Part D. Control of Other Conditions of Employment
 Part E. Section 7(a) of the Recovery Act
 Materials in the Field of Industrial Relations
 NRA Canon of Employment, Issued, October, 1933
 Points Also Handled, Manufacturers Survey

Administrative Studies

Administrative and legal reports of State, Executive and Exceptional Code provisions, Con-
 trol Orders of Approval
 Administrative Interpretations of NRA Codes
 Administrative Law and Procedure under the NRA
 Agreements Under Section 7(a) and 7(b) of the NRA
 Approved Codes in Industry Groups, Classification of
 Code Code, Part I - Administrative Order X-51
 Code Administration and Their Part in the Administration of the NRA
 Part A. Introduction
 Part B. Review, Organization and Operation of Code Administration

- Part C. Activities of the Code Authorities
- Part D. Code Authority Finances
- Part E. Summary and Evaluation
- Code Compliance Activities of the NRA
- Code Making Program of the NRA in the Territories, The
- Code Provisions and Related Subjects, Policy Statements Concerning
Content of NIRA Administrative Legislation
 - Part A. Executive and Administrative Orders
 - Part B. Labor Provisions in the Codes
 - Part C. Trade Practice Provisions in the Codes
 - Part D. Administrative Provisions in the Codes
 - Part E. Agreements under Sections 4(a) and 7(b)
 - Part F. A Type Case: The Cotton Textile Code
- Labels Under NRA, A Study of
- Model Code and Model Provisions for Codes, Development of
- National Recovery Administration, The: A Review of its Organization and Activities
- NRA Insignia
- President's Reemployment Agreement, The
- President's Reemployment Agreement, Substitutions in Connection with the
- Prison Labor Problem under NRA and the Prison Compact, The
- Problems of Administration in the Overlapping of Code Definitions of Industries and Trades,
Multiple Code Coverage, Classifying Individual Members of Industries and Trades
- Relationship of NRA to Government Contracts and Contracts Involving the Use of Government
Funds
- Relationship of NRA with States and Municipalities
- Sheltered Workshops Under NRA
- Uncodified Industries: A Study of Factors Limiting the Code Making Program

Legal Studies

- Anti-Trust Laws and Unfair Competition
- Collective Bargaining Agreements, the Right of Individual Employees to Enforce
- Commerce Clause, Federal Regulation of the Employer-Employee Relationship Under the
- Delegation of Power, Certain Phases of the Principle of, with Reference to Federal Industrial
Regulatory Legislation
- Enforcement, Extra-Judicial Methods of
- Federal Regulation through the Joint Employment of the Power of Taxation and the Spending
Power
- Government Contract Provisions as a Means of Establishing Proper Economic Standards, Legal
Memorandum on Possibility of
- Industrial Relations in Australia, Regulation of
- Intrastate Activities Which so Affect Interstate Commerce as to Bring them Under the Com-
merce Clause, Cases on
- Legislative Possibilities of the State Constitutions
- Post Office and Post Road Power -- Can it be Used as a Means of Federal Industrial Regula-
tion?
- State Recovery Legislation in Aid of Federal Recovery Legislation History and Analysis
- Tariff Rates to Secure Proper Standards of Wages and Hours, the Possibility of Variation in
- Trade Practices and the Anti-Trust Laws
- Treaty Making Power of the United States
- War Power, Can it be Used as a Means of Federal Regulation of Child Labor?

Part C. Activities of the Code Authorities
 Part D. Code Authority Functions
 Part E. Summary and Evaluation
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 NWA Legislation
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 Unmodified Industries: A Study of Factors Limiting the Code Making Program

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 tion?
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 Tariff Rates to Secure Proper Standards of Wages and Hours, the Possibility of Variation in
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 War Power, Can it be Used as a Means of Federal Regulation of Child Labor?

THE EVIDENCE STUDIES SERIES

The Evidence Studies were originally undertaken to gather material for pending court cases. After the Schechter decision the project was continued in order to assemble data for use in connection with the studies of the Division of Review. The data are particularly concerned with the nature, size and operations of the industry; and with the relation of the industry to interstate commerce. The industries covered by the Evidence Studies account for more than one-half of the total number of workers under codes. The list of those studies follows:

Automobile Manufacturing Industry	Leather Industry
Automotive Parts and Equipment Industry	Lumber and Timber Products Industry
Baking Industry	Mason Contractors Industry
Boot and Shoe Manufacturing Industry	Men's Clothing Industry
Bottled Soft Drink Industry	Motion Picture Industry
Builders' Supplies Industry	Motor Vehicle Retailing Trade
Canning Industry	Needlework Industry of Puerto Rico
Chemical Manufacturing Industry	Painting and Paperhanging Industry
Cigar Manufacturing Industry	Photo Engraving Industry
Coat and Suit Industry	Plumbing Contracting Industry
Construction Industry	Retail Lumber Industry
Cotton Garment Industry	Retail Trade Industry
Dress Manufacturing Industry	Retail Tire and Battery Trade Industry
Electrical Contracting Industry	Rubber Manufacturing Industry
Electrical Manufacturing Industry	Rubber Tire Manufacturing Industry
Fabricated Metal Products Mfg. and Metal Fin- ishing and Metal Coating Industry	Shipbuilding Industry
Fishery Industry	Silk Textile Industry
Furniture Manufacturing Industry	Structural Clay Products Industry
General Contractors Industry	Throwing Industry
Graphic Arts Industry	Trucking Industry
Gray Iron Foundry Industry	Waste Materials Industry
Hosiery Industry	Wholesale and Retail Food Industry
Infant's and Children's Wear Industry	Wholesale Fresh Fruit and Vegetable Indus- try
Iron and Steel Industry	Wool Textile Industry

THE STATISTICAL MATERIALS SERIES

This series is supplementary to the Evidence Studies Series. The reports include data on establishments, firms, employment, payrolls, wages, hours, production capacities, shipments, sales, consumption, stocks, prices, material costs, failures, exports and imports. They also include notes on the principal qualifications that should be observed in using the data, the technical methods employed, and the applicability of the material to the study of the industries concerned. The following numbers appear in the series:

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Bottlers' Supplies Industry	Motor Vehicle Retailing Trade
Canning Industry	Needlework Industry of Puerto Rico
Chemical Manufacturing Industry	Painting and Paperhanging Industry
Cigar Manufacturing Industry	Photo Engraving Industry
Coal and Salt Industry	Printing Contracting Industry
Construction Industry	Retail Lumber Industry
Cotton Ginning Industry	Retail Trade Industry
Crane Manufacturing Industry	Retail Tire and Battery Trade Industry
Electrical Contracting Industry	Rubber Manufacturing Industry
Electrical Manufacturing Industry	Rubber Tire Manufacturing Industry
Fabricated Metal Products Mfg. and Metal Finishing and Metal Coating Industry	Shipbuilding Industry
Fabrics and Metal Coating Industry	Silk Textile Industry
Fiber Industry	Structural Clay Products Industry
Furniture Manufacturing Industry	Throwing Industry
General Contractors Industry	Trucking Industry
Graphic Arts Industry	Waste Materials Industry
Gray Iron Foundry Industry	Wholesale and Retail Food Industry
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Asphalt Shingle and Roofing Industry
Business Furniture
Candy Manufacturing Industry
Carpet and Rug Industry
Cement Industry
Cleaning and Dyeing Trade
Coffee Industry
Copper and Brass Mill Products Industry
Cotton Textile Industry
Electrical Manufacturing Industry

Fertilizer Industry
Funeral Supply Industry
Glass Container Industry
Ice Manufacturing Industry
Knitted Outerwear Industry
Paint, Varnish, and Lacquer, Mfg. Industry
Plumbing Fixtures Industry
Rayon and Synthetic Yarn Producing Industry
Salt Producing Industry

THE COVERAGE

The original, and approved, plan of the Division of Review contemplated resources sufficient (a) to prepare some 1200 histories of codes and NRA units or agencies, (b) to consolidate and index the NRA files containing some 40,000,000 pieces, (c) to engage in extensive field work, (d) to secure much aid from established statistical agencies of government, (e) to assemble a considerable number of experts in various fields, (f) to conduct approximately 25% more studies than are listed above, and (g) to prepare a comprehensive summary report.

Because of reductions made in personnel and in use of outside experts, limitation of access to field work and research agencies, and lack of jurisdiction over files, the projected plan was necessarily curtailed. The most serious curtailments were the omission of the comprehensive summary report; the dropping of certain studies and the reduction in the coverage of other studies; and the abandonment of the consolidation and indexing of the files. Fortunately, there is reason to hope that the files may yet be cared for under other auspices.

Notwithstanding these limitations, if the files are ultimately consolidated and indexed the exploration of the NRA materials will have been sufficient to make them accessible and highly useful. They constitute the largest and richest single body of information concerning the problems and operations of industry ever assembled in any nation.

L. C. Marshall,
Director, Division of Review.

- Asphalt Shingles and Roofing Industry
- Business Furniture
- Candy Manufacturing Industry
- Carpet and Rug Industry
- Cement Industry
- Cleaning and Dyeing Trade
- College Industry
- Copper and Brass Mill Products Industry
- Cotton Textile Industry
- Electrical Manufacturing Industry
- Fertilizer Industry
- General Supply Industry
- Glass Container Industry
- Ice Manufacturing Industry
- Knitted Outerwear Industry
- Paint, Varnish, and Lacquer Mfg. Industry
- Plumbing Fixtures Industry
- Rubber and Synthetic Tire Producing Industry
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THE COVERAGE

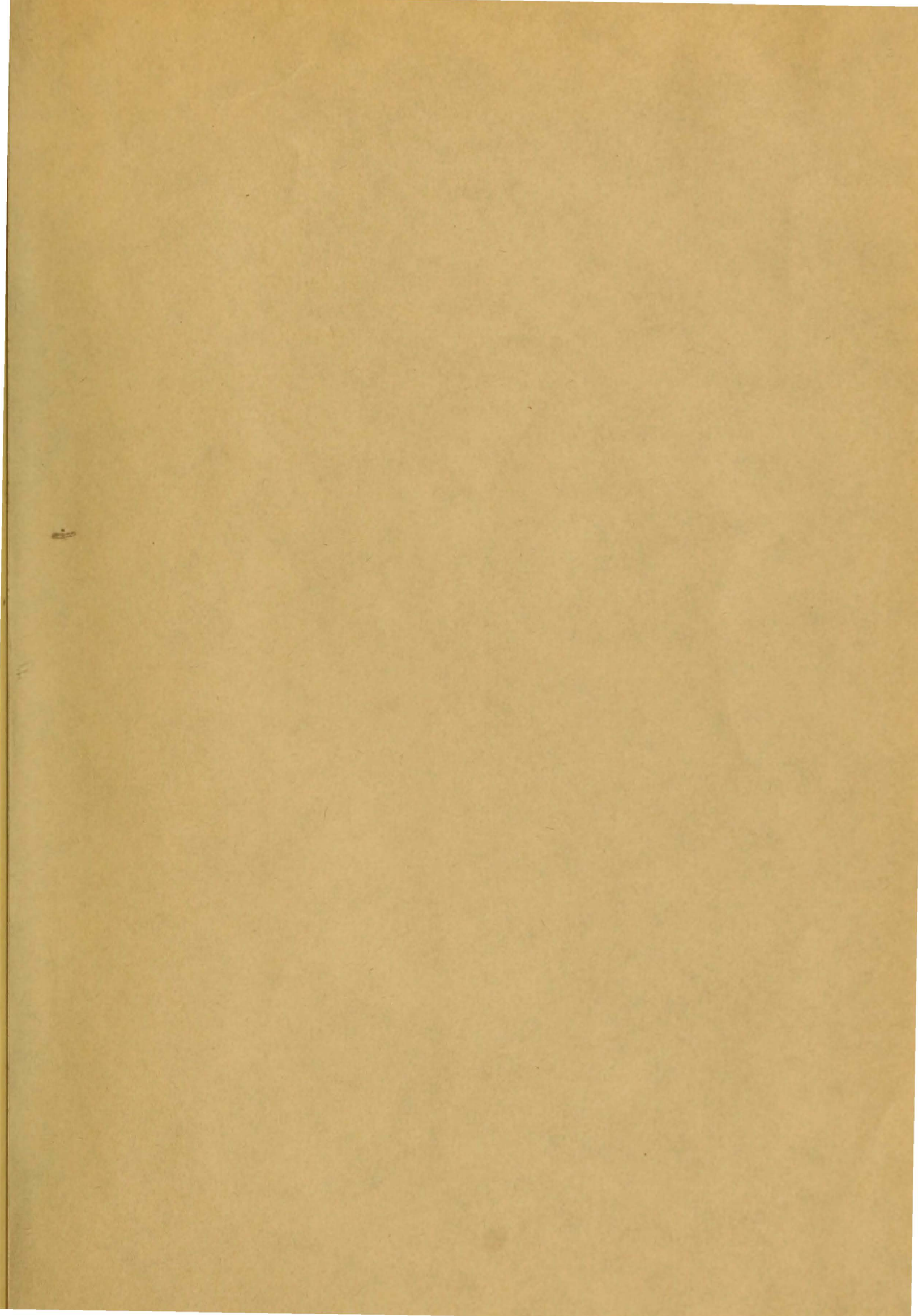
The original, and approved, plan of the Division of Review contemplated resources and effort to prepare some 1200 histories of codes and NRA units or agencies, (b) to consolidate and index the NRA files containing some 40,000,000 pieces, (c) to engage in extensive field work, (d) to secure such aid from established statistical agencies of government, (e) to assemble a considerable number of experts in various fields, (f) to conduct approximately 200 more studies than are listed above, and (g) to prepare a comprehensive summary report.

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U. S. National recovery ad-
ministration.

no.75 Work materials.

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