

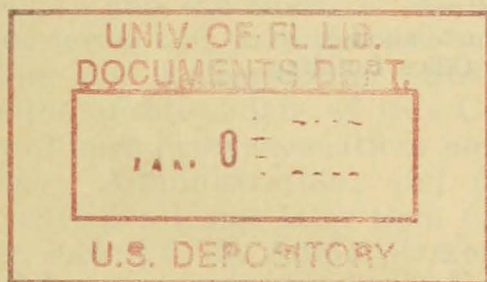
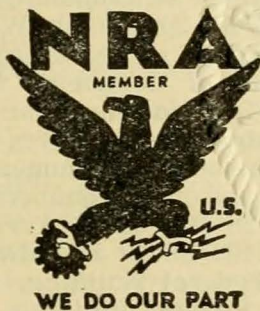
NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION

FOR THE

GYPSUM INDUSTRY

AS APPROVED ON MAY 7, 1934



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Approved Code No. 420

CODE OF FAIR COMPETITION

FOR THE

GYPSUM INDUSTRY

As Approved on May 7, 1934

ORDER

APPROVING CODE OF FAIR COMPETITION FOR THE GYPSUM INDUSTRY

An application having been duly made pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for approval of a Code of Fair Competition for the Gypsum Industry, and hearings having been duly held thereon and the annexed report on said Code, containing findings with respect thereto, having been made and directed to the President:

NOW, THEREFORE, on behalf of the President of the United States, I, Hugh S. Johnson, Administrator for Industrial Recovery, pursuant to authority vested in me by Executive Orders of the President, including Executive Order number 6543-A, dated December 30, 1933, and otherwise, do hereby incorporate by reference said annexed report and do find that said Code complies in all respects with the pertinent provisions and will promote the policy and purposes of said Title of said Act; and do hereby order that said Code of Fair Competition be and it is hereby approved; provided, however, that the provisions of Article VI, Sections 1 and 2, insofar as they prescribe a waiting period between the filing with the Code Authority and the effective date of revised price lists or schedules and/or terms and conditions of sale, be and they are hereby stayed pending my further Order either within a period of sixty days from the effective date of this Code or after the completion of a study of open price associations now being conducted by the National Recovery Administration; and provided further, that the Code Authority shall, not later than ninety days after the date of this Order, submit to the Administrator further evidence that the averaging of hours as provided in Section 1 of Article III is necessary in this Industry.

HUGH S. JOHNSON,
Administrator for Industrial Recovery.

Approval recommended:

A. R. GLANCY,
Division Administrator.

WASHINGTON, D.C.,
May 7, 1934.

REPORT TO THE PRESIDENT

The PRESIDENT,
The White House.

SIR: This is a report on the Code of Fair Competition for the Gypsum Industry, a hearing on which was conducted in Washington on the ninth of January, 1934, in accordance with the provisions of the National Industrial Recovery Act.

HOURS

This Code provides for a maximum work week of forty (40) hours, except that, during peak production periods and emergencies, employees may be permitted to work forty-eight (48) hours in any week provided that their hours of work do not average more than forty (40) hours per week during a six month period. It provides for the payment of one and one-half ($1\frac{1}{2}$) times the normal rate for time worked in excess of eight (8) hours in any day. The following are excepted:

(a) Clerical, office, sales service and sales employees, who may be permitted to work not more than an average of forty (40) hours per week in any thirty (30) day period, nor more than forty-eight (48) hours in any week;

(b) Employees in technical, professional, supervisory, managerial or executive capacities, receiving more than thirty-five dollars (\$35.00) per week, and outside sales and sales service employees;

(c) Employees on emergency maintenance or emergency repair work who, however, must be paid one and one-half ($1\frac{1}{2}$) times the normal rate for time worked in excess of forty (40) hours in any week or eight (8) hours in any day;

(d) Watchmen, who may be permitted to work a maximum of fifty-six (56) hours in any week;

(e) Engineers, firemen and pumpmen, who may be permitted to work a maximum of forty-eight (48) hours in any week.

WAGES

The Code provides for minimum wage rates for clerical, office, sales service and sales employees of from fourteen dollars (\$14.00) to fifteen dollars (\$15.00) per week (depending upon the size of the city within the trade area of which they are employed), and for minimum wage rates for other employees as follows:

(a) Forty cents (40¢) per hour in any city, wherever located, of 100,000 population or over or in the immediate trade area of such city;

(b) Forty cents (40¢) per hour in the Pacific Coast Territory;

(c) Thirty cents (30¢) per hour in the South;

(d) Thirty-seven and one-half cents ($37\frac{1}{2}$ ¢) per hour in the remainder of the United States.

The rates of wages of employees, receiving more than the minimum but not more than thirty-five dollars (\$35.00) per week, may not be reduced, and must be increased by an equitable readjustment, provided this has not already been done prior to the effective date of the Code.

OTHER LABOR PROVISIONS

The Code contains provisions, similar to those usually included in Codes, governing Child Labor, Infirm and Aged Employees, Reclassification of Employees, Posting of Code, Payment of Wages, Safety and Health, and Company Houses and Stores.

ECONOMIC EFFECTS OF THE CODE

The volume of sales in this industry has decreased about 75% since 1929. During the same period, the number of employees has decreased from 7,016 to 3,251, a decrease of about 54%.

Practically the entire industry is now operating under the President's Reemployment Agreement and it is not thought that the approval of the Code will increase employment or payrolls further, until volume of business increases. The increase in payrolls under the President's Reemployment Agreement has apparently been about 20% and the increase in employment probably at least 8%.

FINDINGS

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

I find that:

(a) Said Code is well designed to promote the policies and purposes of Title I of the National Industrial Recovery Act, including removal of obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof and will provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among the trade groups, by inducing and maintaining united action of labor and management under adequate governmental sanctions and supervision, by eliminating unfair competitive practices, by promoting the fullest possible utilization of the present productive capacity of industries, by avoiding undue restriction of production (except as may be temporarily required), by increasing the consumption of industrial and agricultural products through increasing purchasing power, by reducing and relieving unemployment, by improving standards of labor, and by otherwise rehabilitating industry.

(b) Said industry normally employs not more than 50,000 employees; and is not classified by me as a major industry.

(c) The Code as approved complies in all respects with the pertinent provisions of said Title of said Act, including without limitation Subsection (a) of Section 3, Subsection (a) of Section 7, and Subsection (b) of Section 10 thereof; and that the applicant group is an industrial group truly representative of the aforesaid

industry, and that said group imposes no inequitable restrictions on admission to membership therein.

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

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

(f) Those engaged in other steps of the economic process have not been deprived of the right to be heard prior to approval of said Code.

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

Respectfully,

HUGH S. JOHNSON,
Administrator.

MAY 7, 1934.

CODE OF FAIR COMPETITION FOR THE GYPSUM INDUSTRY

ARTICLE I—PURPOSES

To effectuate the policies of Title I of the National Industrial Recovery Act, the following provisions are established as a Code of Fair Competition for the gypsum industry and shall be the standards of fair competition for this industry, and shall be binding upon every member thereof.

ARTICLE II—DEFINITIONS

SECTION 1. The terms "gypsum industry" and "industry" as used herein mean and include the mining and calcining or calcining of gypsum, mining, quarrying or recovering natural or synthetic gypsum or gypsite and/or crushing gypsum rock or gypsite and/or manufacturing natural or synthetic gypsum and gypsite products, within the United States and its territories and possessions.

SECTION 2. The term "employee" as used herein includes any person, except a member of the industry, engaged in any phase of the industry in any capacity in the nature of employee irrespective of the method of payment of his compensation.

SECTION 3. The term "employer" as used herein includes any one by whom an employee is compensated or employed.

SECTION 4. The term "member of the industry" includes, but without limitation, any individual, partnership, association, corporation or other form of enterprise engaged in the industry, either as an employer or on his or its own behalf.

SECTION 5. The term "Pacific Coast Territory" as used herein shall mean that part of the continental United States west of the 108th longitudinal meridian.

SECTION 6. The term "Association" as used herein shall mean the Gypsum Association, a trade association having its office at 211 West Wacker Drive, Chicago, Illinois.

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

SECTION 8. The term "population" as used herein shall mean population as determined by the latest Federal Census.

ARTICLE III—LABOR

SECTION 1. *Hours*.—No employee not elsewhere in this section otherwise specifically provided for or excepted shall be permitted to work in excess of forty (40) hours in any week except that, during peak production periods and emergencies, any such employee may

be permitted to work in excess of such hours but not to exceed forty-eight (48) hours in any week; provided, however, that the hours of labor for any such employee shall not average more than forty (40) hours per week during each six month period from January 1 to June 30, and from July 1 to December 31 in any year. Employees covered by this paragraph shall be paid one and one-half ($1\frac{1}{2}$) times their normal rate for all hours worked in excess of eight (8) hours in any day.

No clerical, office, sales service or sales employee shall be permitted to work an average of more than forty (40) hours per week in any thirty (30) day period, provided that no such employee shall be permitted to work more than forty-eight (48) hours in any one week.

The above limitations shall not apply to:

(a) Employees in a technical, professional, supervisory, managerial, or executive capacity who are compensated on a basis of more than \$35.00 per week;

(b) Employees on emergency maintenance or emergency repair work involving breakdowns or the protection of life or property but in any such case at least one and one-half ($1\frac{1}{2}$) times the normal rate shall be paid for hours worked in excess of forty (40) hours in any week, or eight (8) hours in any day;

(c) Outside sales and/or sales service men;

(d) Watchmen who may be permitted to work a maximum of fifty-six (56) hours in any week;

(e) Engineers, firemen and pumpmen who may be permitted to work a maximum of forty-eight (48) hours in any week.

No employer shall knowingly permit any employee to work for any time which, when totaled with that already performed with another employer or employers, exceeds the maximum permitted herein.¹

SECTION 2. *Wages.*—

A. No employee not elsewhere in this section otherwise specifically provided for or excepted, shall be paid at less than the rate of

(a) 40¢ per hour in any city, wherever located, of 100,000 population or over, or in the immediate trade area of such city;

(b) 40¢ per hour in that part of the continental United States west of the 108th longitudinal meridian (defined in this Code as the Pacific Coast Territory);

(c) 37½¢ per hour in that part of the continental United States north of the 38th parallel of latitude and east of the 108th longitudinal meridian, including the entire States of Kansas and Oklahoma;

(d) 30¢ per hour in all other parts of the United States with the exception of the States of Kansas and Oklahoma.

B. No clerical, office, sales service or sales employees (except outside sales and/or sales service men) shall be paid at less than the rate of:

(a) \$15.00 per week in any city of over 500,000 population or in the immediate trade area of such city;

(b) \$14.50 per week in any city between 250,000 and 500,000 population, or in the immediate trade area of such city;

(c) \$14.00 per week in any other place.

¹ See paragraph 2 of order approving this Code.

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

SECTION 3. *Wages Above the Minimum.*—Employers shall not reduce the rates of wages for employees compensated at rates above the minimum (notwithstanding that the number of hours worked in such employment may be hereby decreased) and where in any case an employer has not increased the rates of wages for such employees prior to the effective date of this Code by an equitable readjustment of all such wage rates, such employer shall readjust all such wage rates. This provision shall be interpreted in the same manner that Paragraph 7 of the President's Reemployment Agreement has been interpreted by the Administrator in Interpretations Nos. 1 and 20. This section shall not apply to employees compensated at rates above \$35.00 per week.

SECTION 4. *Child Labor.*—No person under sixteen (16) years of age shall be employed in the industry. No person under eighteen (18) years of age shall be employed on mining, quarrying or milling operations.

SECTION 5. *Collective Bargaining, Etc.*—In compliance with Section 7 (a) of the Act, it is provided:

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

(b) That no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing or assisting a labor organization of his own choosing; and

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

SECTION 6. *Reclassification of Employees.*—No employer shall reclassify employees or duties of occupations performed or engage in any other subterfuge for the purpose of defeating the purposes or provisions of the Act or of this Code.

SECTION 7. *State Laws.*—No provision in this Code shall supersede any State or Federal law which imposes on employers more stringent requirements as to age of employees, wages, hours of work, or as to safety, health, sanitary or general working conditions, or insurance or fire protection, than are imposed by this Code.

SECTION 8. *Posting.*—Each employer shall post copies of the Code in accordance with such rules and regulations as the Administrator may prescribe.

SECTION 9. *Infirm and Aged Employees.*—A person whose earning capacity is limited because of age or physical or mental handicap may be employed on light work at a wage below the minimum established by this Code, if the employer obtains from the State authority designated by the United States Department of Labor, a certificate authorizing his employment at such wages and 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 of such employee.

SECTION 10. *Company Houses and Stores.*—Employees other than maintenance or supervisory men, or those necessary to protect property, shall not be required as a condition of employment to live in homes rented from or specified by the employer.

No employee shall be required as a condition of employment to trade at a store owned or specified by an employer.

SECTION 11. *Payment of Wages.*—Every employer shall (except under circumstances defined by the Code Authority and approved by the Administrator) make payment of all wages due in lawful currency or by negotiable check therefor payable on demand. These wages shall be exempt from any deduction for pensions, insurance, or sick benefits, other than those voluntarily agreed to by the wage earner, or required by law. Wages shall be payable at least semi-monthly, and salaries at least monthly. No employer (except when specifically authorized by the employee or except in compliance with garnishment or other legal process) shall withhold wages.

SECTION 12. *Safety and Health.*—The Code Authority shall study conditions relating to safety and health of employees and submit to the Administrator standards therefor within a reasonable time after having been called for by him.

ARTICLE IV—ADMINISTRATION

SECTION 1. *Code Authority.*—

(a) There shall forthwith be constituted a Code Authority consisting of thirteen (13) persons, twelve (12) of whom shall be the Board of Directors of the Association, as such board shall be constituted from time to time, and one (1) of whom shall not be a director or member of the Association but shall be a member of the industry selected by the non-association members of the industry by a method of selection approved by the Administrator; provided, however, that if at any time any member of the industry entitled to be upon the Code Authority under the provisions of paragraph (c) of this Article, shall not be a member of the Association and its Board of Directors or selected as the non-association member of the Code Authority, then the membership of the Code Authority is automatically increased to include any such member of the industry. Until the non-association member has been selected and qualified the Code Authority shall consist of the twelve directors of the association and such of those members of the industry covered by paragraph (c) as are not members of the Association and its Board of Directors: Provided, however, that the Administrator may appoint a non-association member to act until the permanent non-association member has been selected and qualified. Each such member of the Code Authority shall be entitled to one (1) vote.

(b) In addition to membership as above provided, there may be not to exceed three (3) members without vote, to be appointed by the Administrator to serve without cost to the industry.

(c) The Code Authority and any committee thereof must have thereon a representative of each member of the industry producing twenty-five per cent (25%) or more of annual industry tonnage, and a representative of one of the members of the industry having its entire plant facilities in the Pacific Coast Territory, each such representative to be a person actively connected with the business of such member. Any member of the Code Authority and of any committee thereof may appoint as his alternate any other person actively connected with the business of any member of the industry.

No member of the industry shall have more than one representative on the Code Authority or any committee thereof, and no alternate shall be connected with any company already represented on the Code Authority or any committee thereof, provided that any member of the Code Authority may appoint an alternate from his own company.

(d) In order that the Code Authority shall at all times be truly representative of the industry and in other respects comply with the provisions of the Act, the Administrator may prescribe such hearings as he may deem proper; and if he shall find that the Code Authority is not truly representative or does not in other respects comply with the provisions of the Act, he may require an appropriate modification in the method of selection of the Code Authority.

(e) At any duly called meeting of the Code Authority or of any committee thereof a three-quarters affirmative vote of the members present shall be required to make effective any action of such Code Authority or committee; provided, however, that after the Code Authority or any committee thereof shall have taken any action, if any three members of the Code Authority or any member or members of the industry having twenty-five per cent (25%) or more of the industry tonnage, shall, at the meeting at which the action was taken, request it, the action of the Code Authority shall be suspended for a term of ten (10) days; if, within said ten-day term, any member or members of the industry having twenty-five per cent (25%) or more of said industry tonnage (including the tonnage of the member or members first requesting the suspension) shall in writing call for a vote by tonnage, then such action of the Code Authority or of any such Committee shall be and remain suspended for a term of thirty (30) days from the date such action by the Code Authority or by any such Committee was adopted. If, within said period of suspension, any member or members of the industry having seventy per cent (70%) of the industry tonnage (including the tonnage of the member or members having requested or joined in the suspension) shall object in writing to the Code Authority to such action of the Code Authority or of any such Committee, then the same shall become inoperative, otherwise the same shall stand as the action of the Code Authority or of such Committee from the date of original adoption of such action. At any meeting of the Code Authority at which any action is taken, any member of the Code Authority may vote the tonnage of any member of the industry who is not a member of the Code Authority and for whom he holds and presents a duly executed power of attorney in form prescribed by the Code Authority. In case at any time the Administrator shall find after consultation with the Code Authority that

the above proviso operates in such manner that the Code Authority can not effectuate the purposes of the Code or of the Act, then after such notice and hearing as he may specify, he may require such modification in the proviso as he may deem necessary to enable the Code Authority to function properly in the administration of the Code but such modification shall give effect to a vote by tonnage on a basis that the vote of seventy per cent (70%) of industry tonnage will render any action or proposed action of the Code Authority inoperative.

(f) Within fifteen (15) days after the effective date hereof, each member of the industry shall file with the agency designated by the Code Authority in accordance with Section 5 (a) of this Article IV, a certified statement of his actual tonnage of calcined gypsum including that contained in manufactured products plus eighty-five per cent (85%) of the actual tonnage of rock and other forms of raw gypsum sold by each member during the calendar year 1933. The total of such tonnage so filed shall, for the purposes of this section, be the industry tonnage, and the tonnage filed by each member shall be the tonnage which such member is entitled to vote hereunder or use for the purposes aforesaid during the term of this Code, as defined in Article IX, Section 8.

(g) A majority of the voting members of the Code Authority or any Committee thereof shall constitute a quorum.

SECTION 2. Each trade or industrial association directly or indirectly participating in the selection or activities of the Code Authority shall (1) impose no inequitable restrictions on membership, and (2) submit to the Administrator true copies of its articles of association, by-laws, regulations, and any amendments when made thereto, together with such other information as to membership, organization and activities as the Administrator may deem necessary to effectuate the purposes of the Act.

SECTION 3. Members of the industry shall be entitled to participate in and share the benefits of the activities of the Code Authority by assenting to and complying with the requirements of this Code and sustaining their reasonable share of the expenses of its administration. Such reasonable share of the expense of administration shall be determined by the Code Authority, subject to review by the Administrator, on the basis of volume of business and/or such other factors as may be deemed equitable.

SECTION 4. Nothing contained in this Code shall constitute the members of the Code Authority partners for any purpose. Nor shall any member of the Code Authority be liable in any manner to anyone for any act of any other member, officer, agent, or employee of the Code Authority. Nor shall any member of the Code Authority, in the conduct of his duties hereunder, be liable to anyone for any action or omission to act under this Code, except for his own wilful misfeasance.

SECTION 5. *Powers and Duties.*—The Code Authority shall have the following further powers and duties and in the exercise thereof may appoint from time to time agents or committees, every such committee to have not less than five (5) members, provided that such agents and committees shall comply with the provisions hereof.

(a) To collect from the members of the industry all data and statistics which may be properly called for under this Code. Any data and/or statistics of a confidential nature shall be collected by a firm of accountants or other suitable agency selected by the Code Authority and not a member or connected with a member of the industry, and shall be kept confidential; provided that any violation found to exist shall be reported to the Code Authority, and all such data and statistics shall be fully available at all times to the proper governmental officials.

(b) To represent the industry in conferring with the Administrator with respect to the application of this Code and of said Act and any regulations issued thereunder, and, subject to such rules as the Administrator may prescribe, hear complaints and, if possible, adjust the same in accordance with the provisions hereof, and to coordinate the administration of this Code with any Code or Codes adopted and approved by any other industry which may affect this industry, with a view to providing joint and harmonious action upon all matters of common interest, and to receive and initiate any proposals for supplementary provisions or amendments of this Code, or additional Codes, applicable to the industry.

(c) To make rules and regulations for its conduct in the administration of this Code within the scope of its powers and duties thereunder; and to cooperate with the Administrator and other proper governmental officials in the enforcement of this Code.

(d) To cooperate with the Administrator in restricting the use of the N.R.A. Code Insignia solely to those members of the industry who are complying with this Code.

SECTION 6. *Pacific Coast Committee*.—Anything in this Code to the contrary notwithstanding, any matters at any time pending before the Code Authority concerning the administration or enforcement of this Code, affecting solely the interests of the members of the industry in the Pacific Coast Territory, shall be referred for decision to a committee of five (5) selected by the members of the industry having one or more plants for the manufacture of industry products located in such territory, and the Code Authority shall be bound by the decision of such committee and shall take such action thereon as may be recommended by such committee, when same shall have been approved by at least three-fourths ($\frac{3}{4}$) of the members having one or more plants in the Pacific Coast Territory. The representatives of the Administrator appointed to the Code Authority may serve in like capacity with respect to the Pacific Coast Committee. The decisions of this Committee shall be subject to the provisions of Section 7 of this Article IV.

SECTION 7. *Appeal*.—Any interested party shall have the right of complaint to the Code Authority with respect to any act of any agent or committee designated by the Code Authority to act for or in its behalf, and a prompt hearing and decision shall be had thereon. Any interested party shall have the right of appeal to the Administrator, under such rules and regulations as he shall prescribe, with respect to any decision, rule, regulation, order, or finding made by the Code Authority.

Whenever any appeal is taken to the Administrator from any action of the Code Authority, the Administrator may require that

such action be suspended for a period of not to exceed thirty (30) days to afford an opportunity for investigation of the merits of such action, and further consideration by such Code Authority or agency pending final action.

If the Administrator shall determine that any action of the Code Authority or any agency thereof be unfair or unjust or contrary to the public interest, the Administrator may require that such action be suspended to afford an opportunity for investigation of the merits of such action and further consideration by such Code Authority or agency pending final action which shall not be effective unless the Administrator approves or unless he shall fail to disapprove after thirty (30) days' notice to him of intention to proceed with such action in its original or modified form.

ARTICLE V—COSTS

SECTION 1. *Sales Below Cost.*—After a definition and schedule of cost has been adopted by the Code Authority and approved by the Administrator as provided in Section 2 of this Article V, no member of the Industry shall price or sell any Industry product below such member's cost, as so defined, except to meet a competitive price on the same product or except in the introduction of a new industry product or except when the necessity of meeting the competition of a non-industry product is recognized by the Code Authority and approved by the Administrator. The Code Authority may consider and describe other conditions and circumstances, if any, under which members of the industry may sell below such member's cost which shall first be submitted to the Administrator for approval. Any exceptions permitted by or under this section shall be disclosed to and shall apply to all members of the industry.

SECTION 2. *Determination of Cost.*—Within ninety (90) days after the effective date of this Code, the Code Authority shall prepare a definition and schedule of costs for the purposes of this Article V. After the same shall have been submitted to the Industry for criticism and suggestions, the same shall be submitted to the Administrator for his approval.

Each member of the Industry shall have available records and information necessary for determining costs in accordance with such definition and schedule irrespective of the member's system or method of keeping records.

For the purposes of this Code, cost of each Industry product shall be determined by each member of the Industry by computing according to such definition and schedule the weighted average cost of the total production of such product of such member for the twelve (12) calendar months preceding the date of sale of such product.

The provisions of this Article V shall not apply to those products excepted from the provisions of Article VI of this Code.

ARTICLE VI²—PUBLICATION OF PRICES

SECTION 1. *Price Publication.*—(a) Each member of the industry shall, within ten (10) days after the effective date of this Code, file

² See paragraph 2 of order approving this Code.

with the Code Authority or such agency or agencies as the Code Authority may designate, complete lists or schedules of prices and terms and conditions of sale of all industry products offered for sale by such member which shall become effective at the expiration of such ten-day period; and shall so file all subsequent changes therein or revisions thereof which shall become effective at the times hereinafter provided in Section 2 of this Article VI.

(b) Such price lists or schedules and terms and conditions of sale and changes or revisions thereof, so filed as aforesaid, shall, from and after the effective date thereof, for the purposes of this Code, be treated as the published price lists or schedules and terms and conditions of sale of the member filing the same.

(c) Whenever any price list, schedules, or terms or conditions of sale, and change in or revision thereof, has been filed by any member in accordance with the provisions of the preceding paragraphs, the Code Authority shall forthwith cause a copy of the same to be sent to each member of the industry who produces or sells or desires to sell any industry product in the territory as to which the prices therein mentioned may apply; and such price lists or schedules and terms and conditions of sale and changes in or revisions thereof, shall be available after the effective date thereof to the trade and to other prospective buyers.

(d) The Code Authority shall designate the Pacific Coast Committee (established under the provisions of Section 6 of Article IV), or such agency as said Committee may select, as its agency for receiving and distributing price lists and schedules and terms and conditions of sale and changes in or revisions thereof applicable to sales or quotations for sale, for delivery within the Pacific Coast Territory. Such committee or agency shall, immediately upon receipt of any price lists or schedules and terms and conditions of sale or changes in or revisions thereof, send a copy thereof to the Code Authority or such agency as the Code Authority shall appoint for that purpose.

(e) Price lists and schedules and terms and conditions of sale need not be filed covering sales of industry products by members of the industry to other members, except stucco for dry mixing. Price lists of special products manufactured by not more than three (3) members of the industry, when such special products are not used in, or sold to persons connected with, the building industry and price lists on precast structural gypsum products not sold to dealers (except standard partition tile), need not be filed.

SECTION 2. *Waiting Period.*—All changes in or revisions of any member's price lists or schedules and terms and conditions of sale shall be so filed five (5) days prior to the effective date thereof, and shall become effective at the end of said five (5) days unless the member filing shall cancel the same in writing at any time before such effective date;

Provided, however, that if any member shall receive notice of the filing of changes in or revisions of another member's price lists or schedules and terms and conditions of sale too late to file and make effective on the same date such changes or revisions in his own price lists or schedules and terms and conditions of sale as he desires to meet the changes and revisions already filed, then if such member

shall file his changes or revisions at least twenty-four (24) hours before the effective date, the same shall become effective on the effective date of such other member's changes or revisions;

Provided, further, that during such period of time as the Administrator shall wholly suspend or eliminate the waiting period in this Article, all changes in or revisions of such price lists or schedules and terms and conditions of sale shall become effective immediately upon the filing thereof; or if the Administrator at any time shall limit such waiting period to some period of time less than five (5) days, then the maximum time permissible under such limitation shall stand, in lieu of the five (5) days above mentioned, as such waiting period, and this section, so modified, shall be and remain in full force and effect.

SECTION 3. *Sales at Published Prices.*—No member of the industry shall sell any industry product at a price or prices below, or upon terms and conditions more favorable to the buyer than those stated in such member's published price lists or schedules and terms and conditions of sale then in effect.

ARTICLE VII—MERCHANDISING PLAN

The Code Authority shall study marketing conditions and make recommendations to the industry for a merchandising plan for the sale and distribution of industry products by all members of the industry containing such provisions as may be necessary or proper to insure fair selling methods by the industry, and to prevent unfair competitive practices; which plan after approval by the Administrator may be adopted by any member of the Industry at his voluntary election, and included in the member's terms and conditions of sale fixed with the Code Authority; but nothing contained in this Article VII or any approval or disapproval by the Administrator of any such plan shall either be construed to prevent any member of the industry from adopting and using any plan of merchandising such member desires and changing and altering the same from time to time, or as an approval of any member's plan of merchandising except when expressly approved as part of a plan adopted by the Code Authority.

ARTICLE VIII—TRADE PRACTICE RULES

RULE 1. *Rebates, Subsidies, etc.*—No member of the industry shall make payment or allowances of rebates, refunds, credits, unearned discounts, or other allowances, whether in the form of money or gifts or otherwise, as a means of effecting or concealing price discrimination or the extending to certain purchasers of special privileges, including discriminatory allowances for services or other things not extended to all purchasers under like terms and conditions.

Included within the practices prohibited, but not by way of limitation, are price concessions in the furnishing of materials without charge, giving of allowances for advertising not actually placed, the making of allowances on damaged sacks in excess of their actual value, the making of allowances for unsupported claims for damage

or shortage of goods in transit, the making of allowances on unverified complaint of the quality of goods, the rental of warehouse space owned or leased by manufacturers to dealers at a rental less than what the fair value would be for other similar property in adjacent territory. No member shall hereafter rent or lease or extend any existing lease for warehouse space for industry products from lumber or building material dealers.

RULE 2. *Defamation of Competitors.*—No member of the industry shall circulate or disseminate false or misleading information by words or acts relative to the prices, credit standing, business integrity, or ability to perform contracts, of any competitor.

RULE 3. *False Branding.*—No member of the industry shall mark, brand or fail to brand products for the purpose or with the effect of misleading or deceiving the purchasers with respect to the quantity, quality, grade or substance of the goods purchased.

RULE 4. *Imitation of Trade Mark.*—No member of the industry shall knowingly imitate or simulate any trade-mark, trade name, package, brand or label of a competitor in such degree as to deceive or have the tendency to deceive customers.

RULE 5. *Consignment.*—No member of the industry shall ship goods on consignment except under circumstances to be defined by the Code Authority, where peculiar circumstances of the industry require the practice. Where such exception is made it shall be applicable to all members of the industry under like circumstances and conditions.

RULE 6. *Shipments without Orders.*—No member of the industry shall make shipments, other than those involving mere transfer of materials to manufacturer's warehouses or plants, without in each case having an order from a customer for shipment at the time of making shipment.

RULE 7. *Failure to State Unit Price.*—No member of the industry shall submit bids for two or more commodities, one or more of which is an industry product, in which the unit price of each commodity is not clearly stated, except in the case of erected jobs including labor and/or lump sum bids on fireproofing, acoustical materials or special products.

RULE 8. *Combination Sales.*—No member of the industry for the purpose or with the effect of influencing the sale of industry products shall sell or offer for sale other commodities at prices below the member's current price for such other commodities.

RULE 9. *Substitution.*—No member of the industry shall market or sell a superior product in packages of a lower priced and inferior product at prices lower than the published price of such superior product.

RULE 10. *Splitting of Compensation.*—No member of the industry shall permit splitting of commissions or other compensation received by an employee or agent of the member with a buyer or with others to influence a sale.

RULE 11. *Commissions.*—No member of the industry shall pay commissions to one buyer because of purchases made by another buyer in the same buyer classification.

RULE 12. *Quantity Sales.*—No member of the industry shall make a price for quantities in excess of single carloads lower than the single carload price, provided however that this rule shall not apply

to sales by one member of the industry to another member, except sales of stucco for dry mixing.

RULE 13. *Payments.*—No member of the industry shall agree at the time of sale to accept anything other than cash, negotiable check, or customers own interest bearing paper, except at current market value, in payment for materials purchased.

RULE 14. *Financing Dealers and Contractors.*—No member of the industry, for the purpose of influencing a sale, shall offer, or promise to finance or to aid in financing any contractor or any dealer, whether directly or indirectly.

No member of the industry shall assume the cost of or endorse or guarantee other bidders' bonds, or in any way relieve other bidders of the responsibility for or of the expense of providing such bonds.

RULE 15. *False Classification.*—No member of the industry shall falsely classify commodities for freight purposes different from the classification adopted by the carriers, to secure lower freight rates.

RULE 16. *Protected Contracts.*—All contracts and orders for shipment taken before or after the effective date of this Code may be protected at the price at which the contract and/or order was taken; and material sold under such protection shall be applied only on the contract and/or order for which the protection was given; provided, however, that contracts or orders for dealers stock (except gypsum sold for agricultural purposes) shall not be made or accepted for shipment beyond thirty days from date of contract or order.

RULE 17. *Duration of Quotations.*—All quotations shall be subject to change without notice except for specific building jobs where quotations may be protected against a price increase for not more than thirty days, except for Federal Government jobs, for which protection may be given for sixty days.

RULE 18. *Specific Job Protection.*—Each member shall list with the Code Authority or its agency within fifteen days after the effective date of any price increase all outstanding quotations or commitments on specific jobs, made prior to the price increase, naming the job, its location, the dealer, the contractor, approximate tonnage, and the price quoted. All quotations for specific jobs shall expire thirty days (except quotations on Federal Government jobs, which shall expire sixty days) after the effective date of any price increase unless during that period a firm contract has been made to cover said job. During such periods above referred to, any specific job not covered with a firm contract shall be open to all members of the industry at the same price and under the same terms and conditions as listed with the Code Authority by any other member. Within ten days after closing of a firm contract on any such specific job, the member of the industry shall list with the Code Authority or its agency his contract, supported, when requested by the Code Authority, by definite information concerning the contract between the dealer and contractor or owner as the case may be. All quotations on specific jobs shall provide that the quotation shall expire upon the making of a contract covering that job.

RULE 19. *Listing Protected Jobs.*—Each member of the industry shall list with the Code Authority or its agency, within fifteen days after the effective date of this Code, all contracts for specific jobs in effect on the effective date of this Code and within fifteen

days after his price increase all contracts for specific jobs in effect on the date of his price increase, indicating in each case the amount, if any, of tonnage shipped prior to the date of listing, showing the location of the job, name of the dealer, name of the contractor, total unshipped tonnage, with such supporting data as the Code Authority may request to show the nature of the transaction between dealer and contractor and/or owner.

RULE 20. *Specific Job Reports.*—Any member of the industry listing any specific job contracts shall report to the Code Authority or its agency all shipments made thereon as and when the same are made and also shall report completion, cancellation or modification of any of his such contracts, and may report information concerning any member's listed jobs. The Code Authority shall promptly disseminate to the members of the industry concerned, all such information pertaining to protected jobs.

Rules 16, 17, 18, 19 and 20 shall not apply to precast structural gypsum products not sold to dealers (except standard partition tile).

ARTICLE IX—MISCELLANEOUS

SECTION 1. *Monopolies or Monopolistic Practices.*—No provisions of this Code shall be interpreted or applied in such manner as to permit monopolies or monopolistic practices; permit or encourage unfair competition; eliminate or oppress small enterprises, or discriminate against them.

SECTION 2. *Exports.*—Articles V, VI, VII and VIII hereof shall not apply to products sold for export outside continental United States or for shipment to Panama Canal Zone and Alaska.

SECTION 3. *Patents.*—Nothing contained in this Code shall be construed as prohibiting any member of the industry from exercising all its and/or their lawful patent rights, or as requiring any member of the industry to do any act in conflict with the terms of a patent licensing agreement legally binding upon such member.

SECTION 4. *Cancellation or Modification.*—The President may from time to time cancel or modify any order, approval, license, rule or regulation issued under the Act.

SECTION 5. *Amendments.*—It is contemplated that from time to time amendments and modifications or supplementary provisions to this Code or additional Codes may be submitted for the approval of the President to prevent unfair competition in price or other unfair or destructive competitive practices, and to effectuate the other purposes and policies of the Act. Such amendments and modifications, supplementary provisions or additional codes, after the same shall have been submitted to the industry and shall have been approved by a fair representation of the industry, may be presented to the President by the Code Authority; and upon the approval of the President of any such amendment, supplementary provisions or additional code, after such notice and hearing as he shall specify, the same shall become a part of this Code and effective as such.

SECTION 6. *Violation.*—Violation by any member of this industry of any of the provisions of this code or of any approved amendments hereof, is an unfair method of competition and shall be subject to the penalties prescribed by the Act; but nothing herein con-



tained shall be construed to create any liability or penalty for violation of this Code beyond the penalties prescribed by the Act.

SECTION 7. *Approval and Termination.*—This Code shall be in effect beginning the second Monday after its approval by the President pursuant to the Act, and shall in any event terminate on June 16, 1935, or the earliest date prior thereto on which the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by Section 1 of the Act has ended.

Approved Code No. 420.

Registry No. 1024-05.

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