

NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION

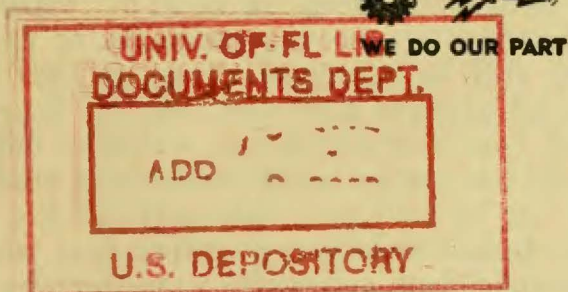
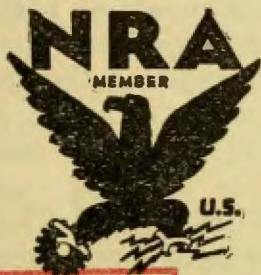
FOR THE

TRANSIT INDUSTRY

AS APPROVED ON SEPTEMBER 18, 1933

BY

PRESIDENT ROOSEVELT



1. Executive Order of President Roosevelt
2. Report of Administrator
3. Report of Deputy Administrator
4. Text of Code

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1933

CODE OF FAIR COMPETITION
TRANSIT INDUSTRY

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EXECUTIVE ORDER

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

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

(1) In approving the Code of Fair Competition for the Transit Industry, it is to be understood that paragraph 2 of Article VII, refers to all labor agreements arrived at by collective bargaining and that as to the language of this paragraph, the approval shall be construed to mean that existing labor contracts between members of the industry and employees may be continued in effect to their various expiration dates, unless modified by mutual agreement, but are not incorporated as a part of the Code. Where the provisions of any such expiring contracts include extensions or renewals thereof by arbitration or otherwise, such provisions may have the same force and effect as other provisions of such contracts, but in the process of extension or renewal of any such contracts, as provided by their terms and conditions, no working hours shall be set up which are in excess of the maximum allowed in this Code, and the minimum wage provisions shall not be less than those provided in this Code.

(2) The American Transit Association shall as soon as possible after the effective date of this Code amend its Constitution and By-laws wherever it may be necessary so that in the judgment of the Administrator there will be no inequitable restrictions imposed on membership in the Association.

FRANKLIN D. ROOSEVELT.

Approval recommended:

HUGH S. JOHNSON,
Administrator.

THE WHITE HOUSE,
September 18, 1933.

EXECUTIVE ORDER

SEPTEMBER 15, 1933.

The PRESIDENT,
The White House.

MY DEAR MR. PRESIDENT: I have the honor to submit and recommend for your approval the Code of Fair Competition for the Transit Industry.

The following exhibits are included or attached:

- (1) Final Code Submitted.
- (2) Notice of Hearing.
- (3) Statement of Procedure.
- (4) Transcript of the Records.
- (5) Statistical Analysis of the Division of Economic Research and Planning.
- (6) Report of Deputy.

An analysis of the provisions of the Code has been made by the Administration. I find that the Code complies with the requirements of Clauses 1 and 2, Subsection (a) of Section 3 of the National Industrial Act.

I am, my dear Mr. President,
Very sincerely yours,

(Signed) HUGH S. JOHNSON,
Administrator.

(iv)

SEPTEMBER 15, 1933.

To: General Hugh S. Johnson, Administrator.

From: Malcolm Muir, Deputy Administrator.

Subject: Report on Code of Fair Competition for Transit Industry.

This is a report of the hearing on the Code of Fair Competition for the Transit Industry of the United States, conducted in Washington on the 29th of August 1933 in accordance with the provisions of the National Industrial Recovery Act.

Reports by the following are included or attached:

1. Industrial Advisory Board.
2. Consumer's Advisory Board.
3. Labor Advisory Board.
4. Legal Division.
5. Division of Economic Research and Planning.

This Code has the approval of the Industrial, Consumers, and Labor Advisory Boards, and of the Legal Division and the Division of Economic Planning.

Approval of the Code by the Legal Division is based on the condition that *Paragraph 2 of Article VII be called specifically to the Administrator's attention*, and that the proposed Executive Order include, as it does, a condition that existing labor contracts are not incorporated as part of the Code. This paragraph (Article II-2) states in substance that companies under the Code and representatives of labor agree to adhere to existing labor contracts. Inasmuch as both labor and industry have approved the provision, the Deputy Administrator joins with the Labor Advisor in strongly recommending that it be retained.

LABOR PROVISIONS

Maximum working hours are established according to classes of employees, ranging from 40 hours per week for general office employees up to 48 hours per week for the workers directly engaged in the servicing and operation of transportation vehicles. To care for requirements peculiar to the Transit Industry, the Code permits the maximum hours to be averaged over a six-month period, also for an allowance (above the 48-hour maximum) of not more than six hours per week in the time worked by the operating class of employees.

The minimum wage is to be not less than 40 cents per hour for workers on an hourly rate. If the hourly rate was less than 40 cents an hour on July 15, 1929, the rate under the Code may be lower, but not less than 30 cents an hour. For salaried office workers a minimum is provided of from \$15.00 to \$12.00 per week, varying with population. Employment of persons under 16 years of age is prohibited.

ECONOMIC EFFECT OF CODE

Under the recommended Code, the Transit Industry will reemploy 7,250 additional workers, according to an estimate made by the Division of Economic Research and Planning. This will increase the annual pay roll of the industry by some \$11,000,000, or about 31½%. The actual number of additional workers may be somewhat less than the 7,250 mentioned, in proportion to the number of workers coming under existing labor contracts that permit a work week in excess of the maximum presented in the Code.

The income account of the transit industry, representing an investment of more than four billion dollars, with an additional billion dollars invested in the manufacturing and distribution of electrical energy, shows a net loss of about \$6,110,000 in 1932, as against a net income of about \$81,570,000 in 1929. Because of this financial situation it is believed that the burden of increased wages, which the industry seemed willing to assume under the Code, is all that can be fairly expected at the present time.

FINDINGS

The Deputy Administrator finds that:

(a) The Code as recommended complies in all respects with the pertinent provisions of Title I of the Act, including without limitation, subsection (a) of Section 7, and subsection (b) of Section 10 thereof, and that

(b) The American Transit Association, the applicant group, is truly representative of the Transit Industry, although its Constitution and bylaws might possibly be used to prevent members of the Industry from becoming members of the Association. Because of this situation it is believed that the approval of the Code should be subject to the condition, as incorporated in the proposed Executive Order, that the American Transit Association amend its bylaws so that any inequitable conditions will be eliminated.

(c) The Code as recommended is not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of Title I of the National Industrial Recovery Act.

It is recommended, therefore, that this Code be immediately approved.

Respectfully submitted.

MALCOLM MUIR,
Deputy Administrator.

CODE OF FAIR COMPETITION FOR THE TRANSIT INDUSTRY

ARTICLE I—PURPOSES

To effectuate the policies of Title I of the National Industrial Recovery Act, the following provisions are submitted by the American Transit Association on behalf of and for the Transit Industry, and upon approval by the President shall be the standard of fair competition for this Industry.

To the end that the Transit Industry may do its part in national economic recovery and carry out the purposes set forth above, the proponents of this Code represent that it is necessary that this Code reflect some of the fundamental natural differences between this Industry and production and distribution industries, which are as follows:

1. The Transit Industry generally is unable to pass on to the consumer increased costs resulting from its effort to carry out the purposes of the National Industrial Recovery Act, because (a) its rates are controlled by State regulatory authority or municipal franchise and (b) even if increased fares were permitted, they are now, with few exceptions, at the upper economic limit and further increases would not produce increased revenue.

2. Wage rates of transit labor have been reduced less than in most other industries, having been decreased an average of less than 10 percent from the peak levels of 1929-30. Freedom from seasonal fluctuation in employment sustains annual employee earnings, and voluntary spreading of work has kept unemployment to a minimum.

3. The operating units within this Industry in general are not in competition with each other, and when such competition exists it is, with very few exceptions, subject to full regulation by state authority or municipal franchise. But though regulated as to competition within the Industry, mass transportation is subject to keen competition from automobiles operating for hire as taxicabs, service cars, or on a share-expense basis with little or no control by public regulatory bodies.

ARTICLE II—DEFINITIONS

(A) The term "Transit Industry", as used herein, shall mean and include:

1. Electric railways and trolley bus lines transporting passengers by electric car or trolley bus; provided that electric railways engaged in both intrastate and interstate commerce may operate either the intrastate or interstate portions of their business, or both, under this Code unless prevented by Federal law.

2. Automotive buses transporting passengers solely within State lines, except when engaged in interstate commerce.

3. Automotive buses transporting passengers in interstate commerce or in both intrastate and interstate commerce where such operations are conducted entirely within a single metropolitan area or within a group of municipalities when the transportation service is essentially urban or suburban in character.

4. The performance of all service and the transaction of all business incident to the operation of the foregoing facilities.

(a) No new bus route or bus line or extensions to existing bus routes or lines shall be established in interstate commerce without also complying with the licensing and rate provisions of any Code of Fair Competition adopted for the Motor Bus Industry relating thereto;

(b) The agency set up by the provisions of Article VI, A-4 hereof, shall have jurisdiction to hear and finally decide all disputes in regard to a specific route or line being or not being engaged in interstate commerce beyond the limitations provided for in paragraph 3 of this Article.

(B) The term "employee", as used herein, includes any person engaged in any phase of the Transit Industry, irrespective of the method of payment of his compensation or of the nature of his interest otherwise, in said Industry.

(C) The term "person", as used herein, includes, but shall not be limited to, natural persons, trusts, trustees, receivers, trustees in bankruptcy, partnerships, associations, private corporations, and municipal corporations and other governmental agencies to the full extent permitted by law.

(D) The term "member of the Industry", as used herein, includes all employers of the aforesaid employees and any person operating a vehicle in the Transit Industry on his own behalf, irrespective of whether he be an employer.

(E) The term "effective date", as used herein, means the fourteenth day after this Code shall have been approved by the President of the United States.

(F) Population for the purposes of this Code shall be determined by reference to the 1930 Federal Census.

ARTICLE III—MAXIMUM WORKING HOURS

On and after the effective date the following employees in the Transit Industry shall not work or be permitted to work in excess of the following hours in any one week except as hereinafter set forth, or as otherwise provided in existing labor agreements:

	<i>Hours per week</i>
A. General office employees-----	40
B. General shop employees-----	44
C. Car house and garage service employees, maintenance, track, line, power house, and substation department employees-----	48
D. Trainmen, bus operators, ticket agents, and related trans- portation groups-----	48

With an allowance not to exceed 6 hours per week, as hereinafter set forth. The Transit Industry recognizes the desirability of an eight-hour day and 48-hour week, but many of the companies cannot now ask their men to accept the reduction in their wages resulting from such a reduction in hours and it is impossible for the Industry to assume the burden of an increase

in the hourly rates of pay to offset such reduction. The Industry is required to provide practically continuous service, and a greater part of it for an 18-hour period or more each day; its vehicles must be dispatched from car houses or garages singly and not in groups leaving at the same instant, and their return is made in a similarly irregular fashion, according to the varying demands for service. In dividing the work among this class of employees, notwithstanding the fact that every effort may be made to equalize the number of hours worked, substantial variations in length of runs (day's work for this class of employees) cannot be avoided. Therefore employees in this class may work on a graduated schedule of hours, provided that no such employee shall be allowed to work in excess of said 48 hours by more than 6 hours per week. This provision of maximum hours shall be considered as fully complied with if the average number of hours per week for any individual measured over a six-months' period shall fall within the prescribed maximum. This maximum shall be reached by not more than 10 percent of the total number of such employees. Members of the Industry shall not increase the present hours of labor for trainmen and bus operators now prevailing except as may be agreed upon in connection with existing or new agreements; provided, however, that this shall not prevent increasing hours for such trainmen and bus operators as are not receiving a reasonable amount of work, but in no event shall the hours of labor be increased beyond those prescribed in this Code.

The maximum-hour provisions of this Code shall not apply to emergency crews or during the period of emergencies such as snow-storms, floods, fires, or other causes beyond the control of the member of the Industry.

The following classes of employees shall be exempt from the provisions of this Article and of Article IV of this Code:

(a) Management, executive, and supervisory employees receiving \$35.00 or more per week;

(b) Janitors, watchmen, crossing flagmen and gatemen, and those employees who are commonly termed "worker-pension" employees. This class shall not exceed 5 percent of the total number of employees of the member of the Industry.

ARTICLE IV—MINIMUM COMPENSATION

The minimum-wage rates except as otherwise provided in existing labor agreements, shall be as follows:

For employees paid on a weekly or a monthly basis, not less than \$15.00 per week in any city of over 500,000 population, or in the immediate trade area of such city; nor less than \$14.50 per week in any city of between 250,000 and 500,000 population, or in the immediate trade area of such city; nor less than \$14.00 per week in any city of between 2,500 and 250,000 population, or in the immediate trade area of such city; and in towns of less than 2,500 population not less than \$12.00 per week.

The minimum wage for employees compensated on a weekly or monthly basis who work less than full time shall be the pro rata amount of the minima specified above.

For employees paid on an hourly rate, not less than 40 cents per hour unless the hourly rate for the same class of work on July 15, 1929, was less than 40 cents per hour, in which latter case not less than the hourly rate on July 15, 1929, and in no event less than 30 cents per hour.

Where piecework, cooperative or profit-sharing rates exist, the total wages paid per week to any employee so working, divided by the number of hours actually worked per week by such employee, shall be equal to at least the minimum hourly wages prescribed in this Article.

Office boys and girls and messengers, under 21 years of age, and apprentices shall be paid not less than 80 percent of the minimum wages prescribed in this Code; provided, however, that the number of such employees shall not exceed 5 percent of the total number of employees of the member of the Industry.

ARTICLE V—CHILD LABOR

No person under 16 years of age shall be employed in the Transit Industry.

ARTICLE VI—ADMINISTRATION

To further effectuate the policies of the Act, a Code Authority is hereby set up to cooperate with the Administrator in the administration of this Code.

(A) 1. The Code Authority shall consist of seven (7) voting members. Not more than three (3) nonvoting additional representatives may be appointed by the Administrator. One of such voting members shall at all times be the President of the American Transit Association, and one shall be the Managing-Director of said Association.

2. The remaining five members shall be elected by a vote of members of the Industry and shall represent the various interests in the Industry.

The selection of such candidates and the method of electing such members shall be subject to approval by the Administrator. At least two (2) of said voting members shall be representatives of labor, and at least one (1) may be a representative of a member of the Industry not holding membership in the American Transit Association.

3. Any trade or industrial association participating in the selection or activities of the Code Authority shall impose no inequitable restrictions on admission to membership therein, and shall evidence compliance with this provision in any manner required by the Administrator.

4. The Code Authority shall, as soon as possible after the approval of this Code, appoint two (2) individuals who shall jointly with two (2) individuals appointed by the Motor Bus Code Authority hear and finally determine any question that may be referred to it by the Transit Code Authority as to whether any individual bus operation defined in Article II, paragraph A-3, of this Code shall be included under this Code. In case the joint board fails or refuses to

decide within ten (10) days any question submitted, the matter shall be referred to the Administrator for final disposition.

5. An appeal from any action by the Code Authority affecting the rights of any person subject to this Code may be taken to the Administrator.

(B) The Code Authority shall have the following duties and powers to the extent permitted by the National Industrial Recovery Act and subject to review by the Administrator:

1. To administer the provisions of this Code, secure adherence thereto, hear complaints, and otherwise carry out for the Transit Industry the purposes of the Act as herein set forth.

2. To require reports from the members of the Industry with respect to wages, hours of labor, conditions of employment, number of employees, and other matters pertinent to the purposes of this Code, in order that the President may be kept informed with respect to the observance thereof.

3. Equitably to proportion and collect from time to time the cost of establishing and maintaining the Code Authority from such members of the Industry who fully participate in the Code by exercising the right to vote and/or to use the N.R.A. insignia. Only such members who participate in the expense of establishing and maintaining the Code Authority shall be permitted publicly to evidence their participation by displaying the N.R.A. insignia.

The Code Authority, subject to review by the Administrator, shall authorize the use of the N.R.A. insignia to members of the Industry according to the provisions of this paragraph.

4. After consulting the Industry, to make recommendations to the Administrator for the revision, modification, or alteration of this Code from time to time.

(C) Whereas it is deemed unfair competition by the Transit Industry for any type of transportation carrying passengers for hire in areas served by members of this Industry to pay substantially lower wages or to permit substantially longer working hours than those established by this Industry in this Code, the Code Authority is hereby empowered to assist in the securing of stay orders and exemptions from the Administrator in respect of any area affected by unfair competition of a competing industry, to confer with Code Authorities of competing industries, to file petitions for the modification of or complaints under the Codes of competing industries, and otherwise to take such steps as may be necessary or proper to place the Transit Industry on a basis of fair competition.

ARTICLE VII—GENERAL

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

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



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

2. Many of the street railway and bus companies which come under the provisions of this Code have working agreements with their employees through American Federation of Labor Unions, which provide the wages, hours of labor and working conditions, and further provide for arbitration in all disputes of any kind that cannot be mutually adjusted, practically all of which agreements also provide for renewals through mediation and arbitration. It is understood and agreed to by the companies under this Code that all labor agreements will be lived up to and carried out, and this provision is agreed to by representatives of the employees. The employees of some of the companies that come under this Code have local associations, organizations, or other plans of collective bargaining. However, it is clearly understood that if either the employees under the American Federation of Labor Unions or under the aforesaid local associations, organizations, or other plans want to change their form of organization under the provisions of section 7 (a) of the National Industrial Recovery Act, they are at liberty to do so as that section provides.

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

4. Within each state, members of the Industry shall comply with any laws of such state imposing more stringent requirements, regulating the age of employees, wages, hours of work or health, fire, or general working conditions, than under this Code.

5. If this Code or any provision thereof, because of peculiar circumstances, will create great and unavoidable hardship to any member of the Industry, such member in a petition approved by the Code Authority may apply for a stay of this Code or such provision thereof, pending a summary investigation by the National Recovery Administration, if such member of the Industry agrees in such petition to abide by the decision of such investigation. The refusal of any such approval shall be subject to review by the Administrator.

6. In the case of any member of the Industry also employing labor in any other industry, the provisions of this Code shall apply to and affect only that part of such member's business which is included in the Transit Industry.

7. This Code shall terminate whenever Title I of the National Industrial Recovery Act ceases to be in effect, but not later than June 15th, 1935.