ADMINISTRATIVE AND LEGAL ASPECTS OF STAYS EXEMPTIONS AND EXCEPTIONS CODE AMENDMENTS CONDITIONAL ORDERS OF APPROVAL

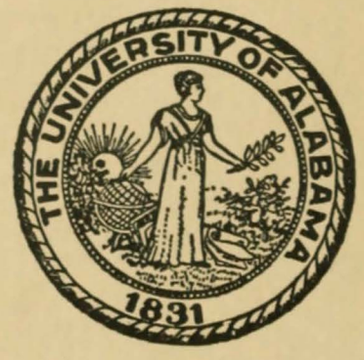
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DIVISION OF REVIEW

ADMINISTRATIVE AND LEGAL ASPECTS OF STAYS EXEMPTIONS AND EXCEPTIONS CODE AMENDMENTS CONDITIONAL ORDERS OF APPROVAL

By

Ely C. Hutchinson
D. L. Boland
W. M. Chubb

WORK MATERIALS NO. 74

NRA ORGANIZATION STUDIES SECTION
MARCH, 1936

OFFICE OF NATIONAL RECOVERY ADMINISTRATION

DIVISION OF REVIEW

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MARCH, 1936

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F O R E W O R D

This study is in effect a series of preliminary reports on Exemptions and Exceptions, Stays, and Amendments by Mr. D. L. Boland and on Conditional Orders of Approval by Mr. W. M. Chubb. An additional section, Part ONE, on Administration, by Mr. Ely C. Hutchinson has been added. The report was prepared by the NRA Organization Studies Section, Mr. William W. Bardsley in charge.

All of the devices here examined, i.e., "Stays", "Exemptions", "Amendments" and "Conditional Orders of Approval", were widely used by the National Recovery Administration in meeting and attempting to solve problems arising either during negotiations on proposed codes or under codes after their approval. The report deals with the legal and substantive aspects of the subjects, but because of limitations of time and personnel some administrative aspects of the subjects are not covered. Appendix No. I, in each of Parts TWO to FIVE inclusive, points out areas for further study. Appendix No. II, in each of Parts TWO to FIVE inclusive, gives a comprehensive outline for further study of its particular subject.

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

No. 74

March 24, 1936

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SUMMARY

This work is composed of five "Parts" and is an assembly of so-called "preliminary drafts" of reports prepared by staff members of the Administrative Problems Review Unit of the NRA Organization Studies Section, Division of Review.

The reports treat "Administrative Aspects", "Stays", "Exemptions", "Amendments" and "Conditional Orders of Approval". With the exception of "Part One", each "Part" contains an appendix, thus eliminating a general appendix.

PART ONE

ADMINISTRATIVE ASPECTS. Part One sets forth the high spots of the procedure which used the powers of stay, exemption, and code amendment. Since conditional orders of approval were in themselves a means, incident to code approval, of staying or amending certain code provisions or of creating exemptions thereunder, they also are discussed.

"Flow diagrams" showing the progressive steps followed by the organization in each type of action are shown and described. Actual records of elapsed times for putting cases through the procedure are given.

A recapitulation presents the factors as to conditional orders of approval favorable and unfavorable to administration and procedure, points to the influence of numerous opposed forces, all of which were present in the administrative problems of the NRA at one time or another, and records certain other of the author's opinions.

PART TWO

STAYS. The stay as an instrumentality for the administration of the National Industrial Recovery Act played an important part wherever it was put into effect. It was used both as a permanent and a temporary means of meeting, reconciling and at times mandatorily settling the myriad, newly-experienced problems that developed with the experience of administering the Act.

It was one of several instrumentalities used in the same general way and each of these is a separate part of this report. This part deals particularly with the legal and substantive aspects of the adoption and exercise of the power of stay.

Chapter I treats the bases of this power. Its delegation is outlined in Chapter II. Chapters III and IV define the stay and the methods of its exercise. Chapter V brings together the causes for the use of stays and the types of problems to which they were applied, while Chapter VI evaluates the facts found and draws conclusions therefrom.

PART THREE

EXEMPTIONS. In this Part the granting by NRA of exemptions from the provisions of codes is treated, especially as to the legal and substantive aspects of such grants. An explanation and analysis of various types of exemptions is presented and the confusion in terminology between stays and exemptions is discussed.

Chapters I, II and III deal with the basis of the power of Exemption, define the scope of the terms Exemption and Exception and discuss the delegations of the power to grant or deny exemptions and exceptions. Chapter IV analyzes the types of application for exemptions, their effects upon codes and the types of exemptions, such as retroactive and conditional. Chapter V is the evaluation of the factors developed by the study and the conclusions drawn therefrom.

The reader is referred to "History of General Exemptions", Work Materials No. 75, for a discussion of Executive and Administrative Orders pertaining to general exemptions.

PART FOUR

AMENDMENTS. Although the power to amend codes was not definitely set forth in the Act, it was frequently and effectively used during the code period. Part IV of the study discusses the use of such power. Chapters I, II and III deal with the bases in the Act for the power of Amendment and its delegation. Chapter IV treats of the methods by which the power of amendment was exercised. Chapter V analyzes amendments and gives the types of code provisions affected by them, and Chapter VI sets forth the author's conclusions.

PART FIVE

CONDITIONAL ORDER OF APPROVAL. The first executive order issued by the President approving a code under the National Industrial Recovery Act -- that for the Cotton Textile Code -- was a "Conditional Order of Approval." It contained thirteen conditions which had to be satisfied before complete approval could be granted. Final approval was granted subsequently by a second order.

Following that first order, a great many codes were approved by the "conditional" method. The phrasing generally was such as to create doubt as to whether the codes so approved were actually effective as to those provisions which the NRA fully approved, until the conditions in the order had actually been met. This question is one on which there was no adjudication.

This part of the study discusses the various aspects of conditional orders of approval and includes a list of such orders and the conditions they contained.

Chapters I and II are on the powers of code approval as conferred by the Act and their delegation. Chapter III discusses the circumstances which attended the earliest uses of Conditional Orders of

Approval. Chapters IV and V deal with such matters as proper representation of industry, assent of proponents and prevalent types of conditions. Chapter VI is upon the value of the Conditional Order, administratively. Chapter VII deals with industries' compliance with the conditions and the legal effects of non-compliance, while Chapter VIII endeavors to answer the question whether codes could have been so written as to avoid the use of conditional approvals. Chapter IX is an evaluation and conclusions are drawn therefrom.

It is questionable whether the Act contemplated or permitted the effective approval of voluntary codes when the order of approval contained conditions not specifically assented to.

If, as appears, codes approved in this manner were really prescribed, as provided for in Section 3 (d) of the Act, there is reason to question the authority of the Administrator to sign the orders of approval. The reason for this is that the delegation of power to the Administrator to approve codes specifically excepted prescribed codes under Section 3 (d)

In general, little or no attempt was made, as a controlled procedure, to obtain assent to the conditions contained in the orders of approval before the announced effective dates. As a rule, compliance with the conditions was tardy.

PART ONE: ADMINISTRATION

By

Ely C. Hutchinson

9844

PART ONE

ADMINISTRATION

I. Procedural Aspects.

All four of the title subjects of this study were instruments widely used by the National Recovery Administration to meet or attempt to solve problems arising in the negotiations over proposed codes or under the administration of approved codes. The authors of the parts of the study dealing with the particular subjects have treated especially their legal and substantive aspects. Yet, their administrative use and the procedural aspects of such use are obviously important parts of the subjects.

Stays, Admendments and Exemptions and Exceptions were handled administratively in fairly uniform fashion by all the industry divisions of NRA and generally in accordance with the requirements of the NRA Office Manual (*), after it was issued in August, 1934. Prior to the issuance of the manual, procedure for the various administrative functions was established by office orders or memoranda and this same practice was followed when it became necessary to modify the manual instructions more quickly than the new manual sheets could be issued. Thus, the manual was never quite up to date but served rather to record the changes already put into effect.

Using the data obtained from the manual, modified by later memoranda and supplemented by personal inquiry of qualified personnel, the author prepared a series of "flow charts" showing the procedure for the different types of actions (**). These charts are reproduced on the next three pages in illustration of the manner as of April 10, 1935, in which Stays, Exemptions and Amendments were handled, according to the general practice. There were exceptions in some divisions, but none were serious.

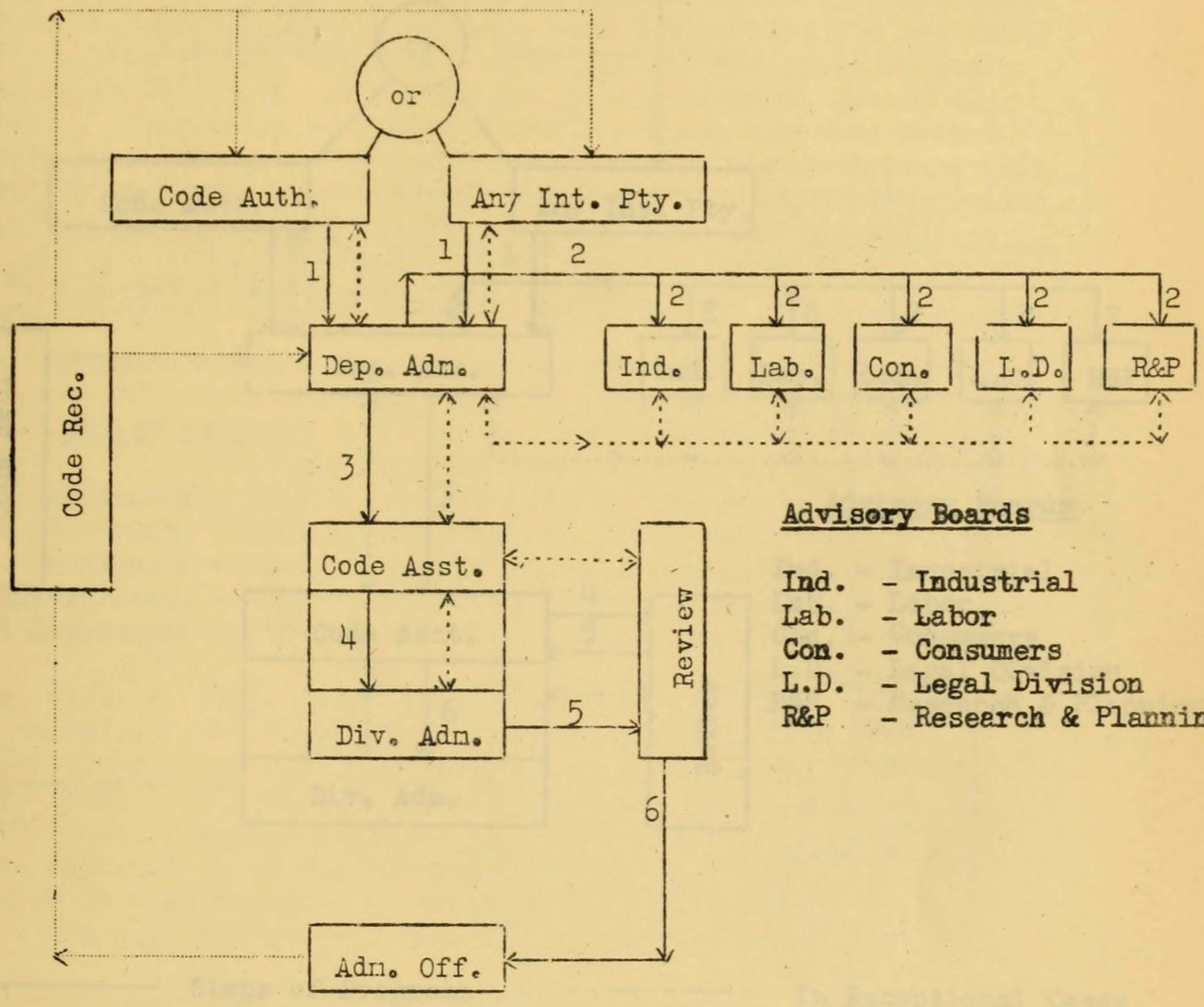
The broken lines used in the diagrams to denote intermediate movements, conferences, etc. between the numerous administrative units should not be thought of as representing a simple and direct exchange. On the contrary, these exchanges and conferences were highly complex. They arose from a continuous and frequently prolonged effort of the deputy administrator in charge of an action, to contact the people he

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(*) See NRA Office Manual - Central Record Section - NRA Files.

(**) Report of the Committee for the Study of Administrative Procedure, May 21, 1935. Central Record Section - NRA Files.

STAYS

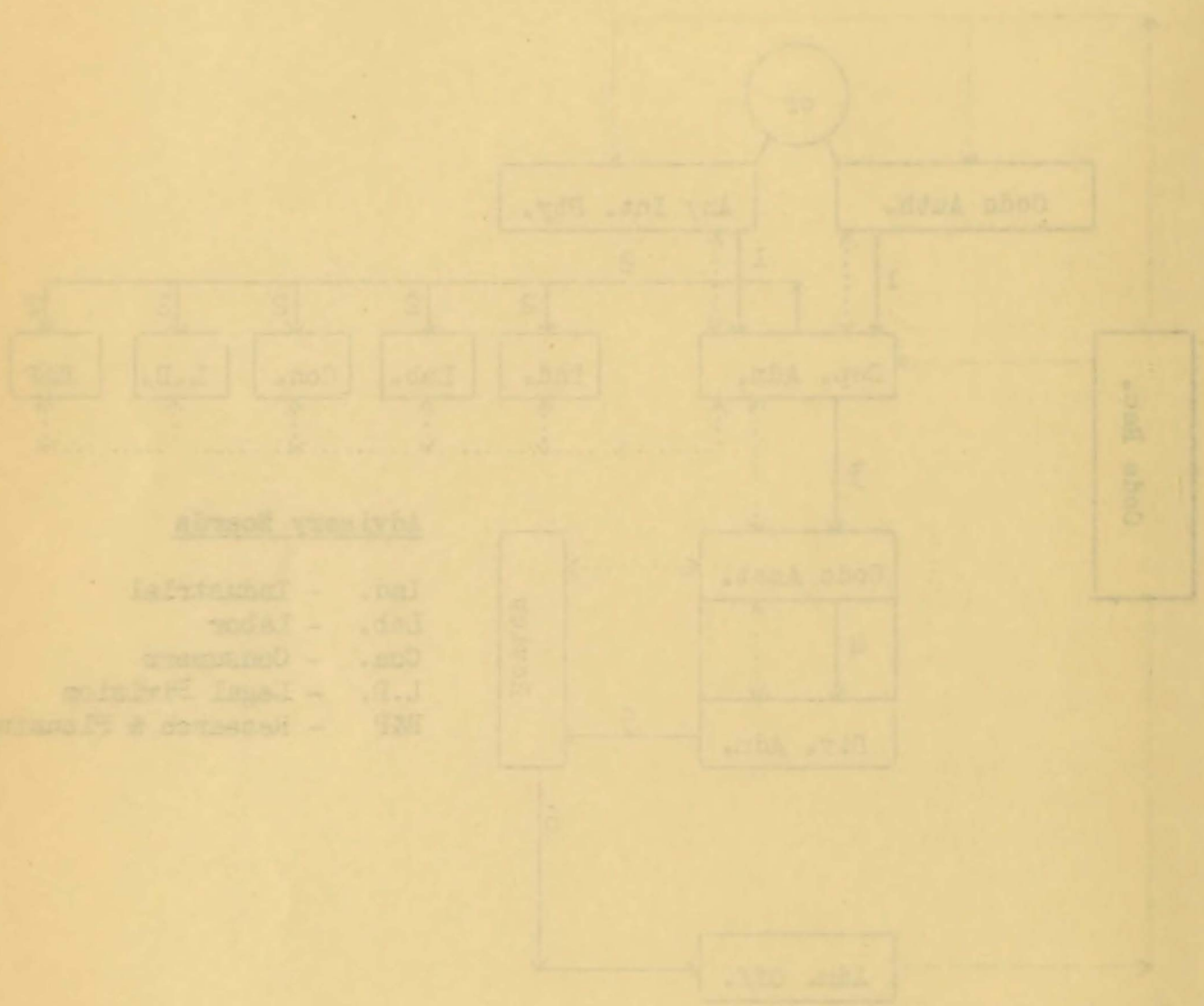


——————— Steps of Progress — - — - — - In Exceptional Cases

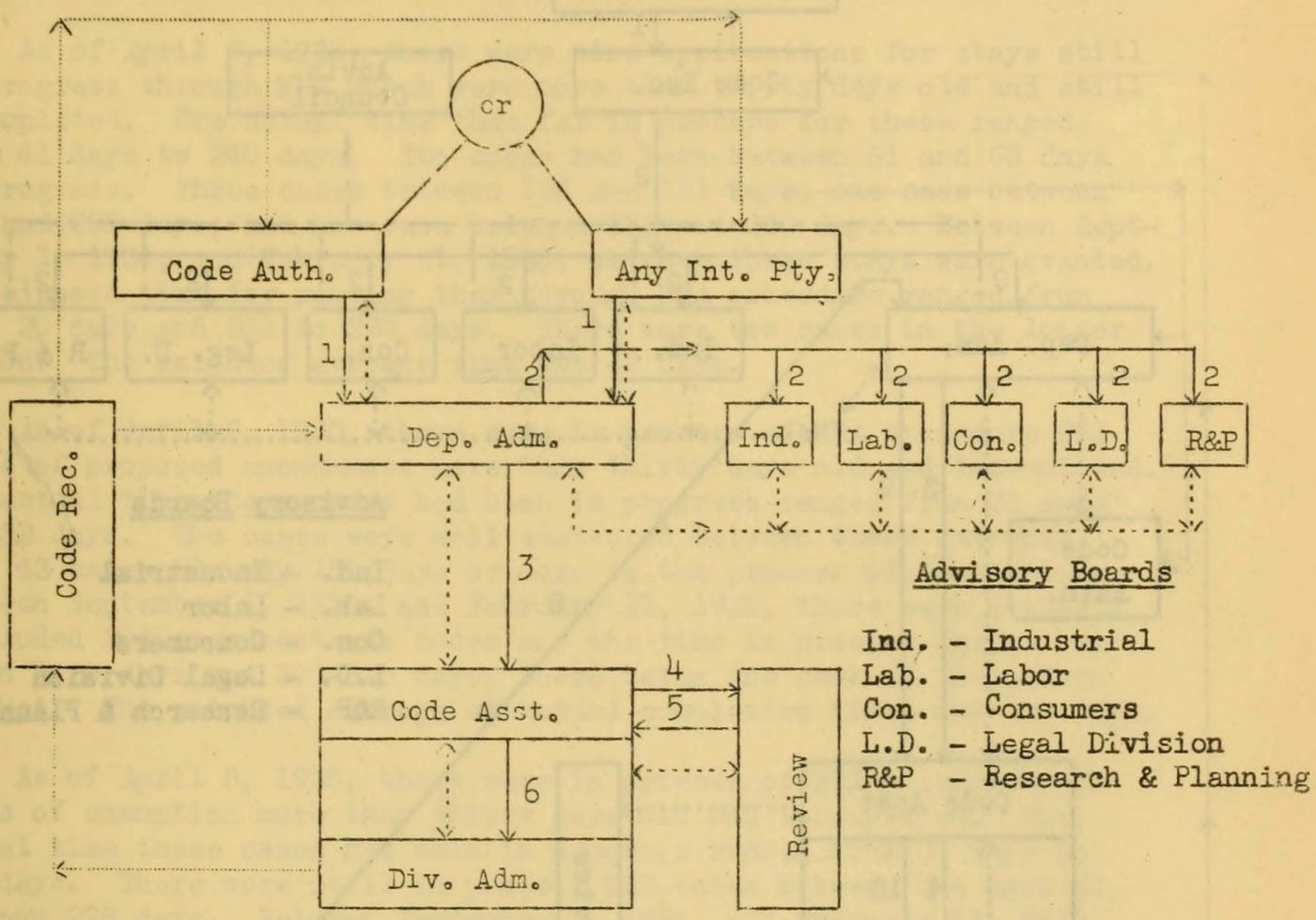
..... Intermediate Movements, Conferences, etc, ... After Signature

---

1. Emergency Stay may be signed "Pro tempore" by Division Administrator.
2. Division Administrator may call public hearing.
3. Field investigation by Compliance,

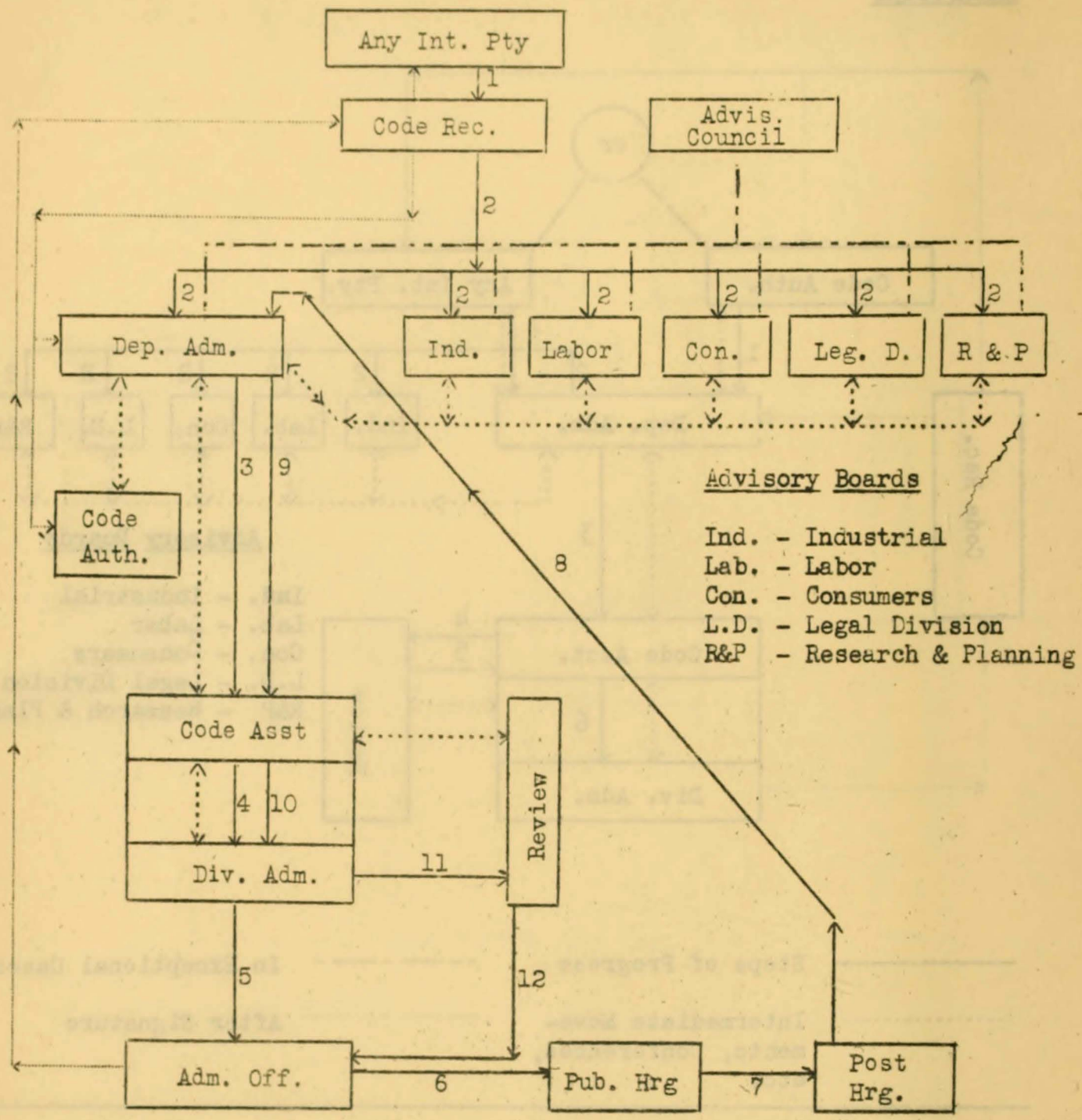


EXEMPTIONS



Delays

1. Communicate with U. S. Employment Service.
2. Field investigations by Compliance.
3. Possibility of referring cases to Advisory Council.
4. " " appeal.
5. Emergency exemptions may be signed "Pro tempore" by Division Administrator.
6. Division Administrator may call public hearings.
7. May be refferred to Administrative Officer in special circumstances.
8. Compliance Officer has authority to grant exemptions if Division Administrator fails to act within 36 hours.


Any Int. Pty
1
Code Rec.
Advis. Council
2
Dep. Adm.
Ind.
Labor
Con.
Leg. D.
R & P
Code Auth.
3
9
8
Code Asst
4
10
Div. Adm.
11
Review
5
12
Adm. Off.
6
Pub. Hrg
7
Post Hrg.
Advisory Boards
Ind. - Industrial
Lab. - Labor
Con. - Consumers
L.D. - Legal Division
R&P - Research & Planning
Steps of Progress
In Exceptional Cases
Intermediate Movements, Conferences, etc.
After Signature

was supposed to, within NRA, in order to get the views of some, recommendations of others and instructions of still others and to endeavor from all to effect a reconciliation between the views, often opposed, of members of the industry and NRA.

As of April 6, 1935, there were nine applications for stays still in progress through NRA which were more than thirty days old and still incompleted. The actual time thus far in process for these ranged from 41 days to 240 days. Two cases had been between 61 and 65 days in progress. Three cases between 126 and 131 days; one case between 201 and 205 days; and one case between 236 and 240 days. Between September 1, 1934, and February 1, 1935, seventy three stays were granted. The elapsed time for putting them through NRA procedure ranged from 1 to 20 days and 201 to 220 days. There were two cases in the longer period. The weighted average time was 42 days.

As of April 6, 1935, there were in process of NRA procedure 293 cases of proposed amendments more than thirty days old and incompleted. The actual time these cases had been in progress ranged from 31 days to 332 days. The cases were well scattered between these extremes, with 43 cases already 150 days or more in the process of completion. Between September 1, 1934, and February 21, 1935, there were actually concluded 204 amendments to codes and the time in process varied between 1-20 days and 301-320 days, there being one case in the latter bracket. The weighted average of actual completion times was 100 days.

As of April 6, 1935, there were in process of NRA procedure 300 cases of exemption more than thirty days old and incompleted. The actual time these cases had been in progress ranged from 31 days to 278 days. There were still in process 213 cases between the ages of 175 and 278 days. Between September 1, 1934, and February 21, 1935, there were actually concluded 580 exemptions. The time periods for these varied between brackets of eight in 1-20 days and one in 201-220 days. The weighted average time for completion was 60 days. (*)

A. Conditional Orders of Approval.

Conditional Orders of Approval of codes were the first evidence of the emergency pressure method of codification. Each industry was invited to prepare its own code of fair cpmpetition. Those industries commanding the greatest man-power were concentrated upon first by NRA in code negotiations, since their codification should get the greatest number of men back to work. Many provisions included in the earlier codes were copied into the ones that followed. This was the quickest way to get something together and since there was no NRA model code with official sanction until November 6, 1933, (almost five months after approval of the Recovery Act) and but few policy announcements, the method was open to cumulative error.

(*) These figures are from the Report of the Committee for Study of Administration Procedure, May 21, 1935, Central Record Files -- (NRA files)

At an early date doubts arose as to the truly representative character of some code sponsors. Protests and opposition to the ideas of committees acting for the sponsors developed at the public hearings, sometimes after weeks of preparatory negotiation between NRA and the committees.

Meanwhile, the declared policy of NRA was that an emergency existed and no stone should be left unturned to get industries under codes and men back to work. Time was of the essence in all procedure.

Industries for the most part responded cooperatively. But despite this, differences arose between NRA and industry and between representatives of the same or related industries. Although most of them were amicably settled, times came when a few conflicting views were deadlocked and were, in the opinion of NRA, causing unwarranted delay.

The prospect of continued disagreement in these and other circumstances which tended to slow down industry codification, was met by accepting those parts of the codes as to which there was accord and issuing an order for their approval, conditional upon the acceptance by industry of certain limitations proposed by the NRA to adjust the deadlocked issues. An executive or administrative order of this type was a Conditional Order of Approval.

Sometimes the conditions had the effect of modifying certain code provisions. Sometimes they nullified them. Sometimes the effect upon the code was permanent and at others, temporary.

Usually the order approved the code conditionally upon the stay or amendment of certain provisions, the providing of exception therefrom or the addition of other provisions. This procedure was generally successful in getting the acceptable parts of a code into operation without the delays which would most certainly have followed refusal of the NRA to act at all until the code was acceptable in all details. The method, nevertheless, frequently changed the status of a code from one voluntarily entered into, to one in which certain conditions were <u>imposed</u> by NRA.

Provided that the industry to which a conditional order of approval had been issued had a code committee which was representative of the industry, the procedure generally resulted in the acceptance of the conditions by industry and the full effectiveness of the code as thus modified. But where the representation was in doubt, or where someone made claim that the application of the conditions was unjust, or where a claim was made that the conditions had not been submitted to the same procedure as that followed for the regularly accepted provisions of the code, effectiveness might be in doubt.

It is not entended to create the impression that all conditional orders of approval were written with the intention of imposing conditions upon industry. Yet there is only one case of record in which, on acceptance of the conditions, a second, clear-cut order of approval was issued. This was in Code No. 1, Cotton Textile Industry. The first order of approval was conditional. The second was final and

unconditional.

It appears clearly that as a matter of procedure there was no administrative provision by NRA by which an entire industry could be heard on the conditions of approval made by NRA.

An approved code, apart from conditions in the order of approval, had been subjected to the full process of public notice and hearing and opportunity for all who were interested to participate in its formulation or, at least, to offer objections. The codes which were subjected to conditional orders of approval, on the other hand, contained conditions inserted by NRA without public notice or hearing.

B. Stays, Exemptions and Exceptions, Code Amendments.

A procedural application of the Stay was established by Executive Order No. 6205-B, dated July 15, 1933, which provided that those who had not in person or by representative participated in establishing or consenting to a code and who claimed that applications of the code were unjust, should by applying within ten days after the effective date of the code, be given an opportunity for a hearing and that no liability to enforcement of the code would be incurred by the applicant pending the determination of the issues raised. This provided a second line of protection for those who had not objected to provisions of a proposed code in the course of the procedure through which codes passed before receiving approval.

The Administrator was not given the power to stay code provisions after a code had been approved, until February 8, 1934, although he was given the power of approval of the "elimination" of code provisions on December 30, 1933.

A request for a stay could originate with the code authority or any interested party. It was referred to the deputy administrator in charge of the code involved. The deputy then sent notification of the request to the three advisory boards, Industrial, Labor and Consumer, and to the Legal Division and Research and Planning Division, all of which discussed the proposal among themselves, and sometimes with each other, and wrote their views to the deputy. Upon conclusion by the deputy, sometimes following innumerable conferences and adjustments as to the proper action for NRA to take, he would have the order drawn with the assistance of the Legal Division, and would forward it to the division administrator's code assistant. Then, for the first time, the Review Division was contacted to pass upon the conclusions of the deputy and to review them for policy and consistency. The Review Division had its own legal staff and it was not unusual for it to differ materially with the members of the Legal Division. When, in the opinion of the Review Division, the deputy's conclusion or its presentation was not as it should be, the file was returned to the code assistant with appropriate comment. Thence it was returned to the deputy whose duty it then was to satisfy the requirements pointed out by the Review Division, provided its recommendations were accepted as being correct.

The original action of the deputy sometimes required weeks to consummate. The second action, at the instance of the Review Division, frequently took as long or longer if the corrections were in controversial matters. Sometimes this process was repeated a third time before every view was satisfied or otherwise disposed of.

As the procedure was organized, there was no provision requiring tact between the deputy and the Review Division while the deputy was first preparing his case, so that there could be no assurance that his action would be approved until it had been completely prepared and submitted.

When finally all the interested units were either overruled or satisfied, the order went to the division administrator for approval, thence again to the Review Division, thence to the Administrative Officer for signature and thence to the Code Record Section for recording.

Except as to the number of steps required and the number of units of NRA to be referred tom as shown by the "flow" charts above the procedure for handling exemptions and code amendments was similar.

II. Administrative Aspects.

Stays, exemptions and code amendments were indispensable instruments in the reconciliation of the manifold conflicts, controversies, overlaps of code jurisdiction, code authority aggressions, geographical labor provision disputes and other problems constantly appearing before the administrative staff of the NRA from almost as many directions as there were industries and trades.

The primary business of NRA was of course the making and the administration of codes for industries and trades. Each code had certain basic provisions, and rules as to their acceptability (*) were gradually developed from the days when codes were assembled largely on the basis of provisions in or experiences gained from those already approved. Elsewhere there have been discussed the circumstances under which the code definitions of industries and trades were written, why they frequently overlapped and how problems of overlapping definitions, multiple code coverage and classification arose (**).

(*) National Recovery Administration Bulletin No. 2, Basic Codes of Fair Competition, June 19, 1933; also, Office Manual, Index II-1000-1999, Code Making and Amendment, September, 1934.

(**) "Problems of Administration in the Overlapping of Code Definitions of Industries and Trades, Multiple Code Coverage, Classifying Individual Members of Industries and Trade - A report of the Division of Review. NRA files.

Adjustments were made frequently in these types of cases by the use of stays and exemptions and amendments. The types of cases for which adjustment had to be made were many more than had been anticipated. Then too, a great deal of ingenuity was used in their presentation to NRA by industry. The NRA in turn undoubtedly suffered from shortcomings of its own administrative concepts, organization, personnel and procedure.

The wide discretion among deputy administrators in some respects and the lack of divisional coordination resulted in closely similar problems being settled in different divisions, and even in the same division, through widely differing administrative approaches. This situation was aggravated by the lack of a clear definition, administratively, between, for example, exemptions, stays and exceptions; amendment and modifications; interpretations and explanations. (*)

At first the term "Exemption" included "Exceptions" and "Stays" as well (**).

Later the term "Exemption" was described as any ruling whereby an individual group or class "within an industry" is released from the full operation of "a code provision" (***)

Still later the NRA personnel was instructed that "To preserve uniformity of usage, the term 'Exceptions' will not be used as a synonym for 'Exemptions'" (****)

The terms "amendment" and "modification" were used interchangeably until September, 1934, (*****) after which the Office Manual permanently established the term "amendment" and discontinued the hitherto more or less synonymously used terms of "modification", "supplement", "revision", "addition" and "adjustment."

(*) See Administrative Interpretations of NRA Codes - A Division of Review report.

(**) Administrative Order X-27, May 5, 1934. NRA files.

(***) Part III, par. 3210, Office Manual, Sept. 1, 1934.

(****) Ibid.

(*****) NRA Office Manual, Part II, Index 5010.

The records show no noticeable uniformity in selecting any one instrumentality as the proper means for reconciling problems in the same category. They do, however, reflect an effort to keep the codes in order as far as possible by a consistent process of amendment when opportunity offered. On the other hand, code authorities were very cautious about requesting amendment of their codes, since they were aware that an opening of a code for amendment might lead to the proposal by NRA that more changes than those requested by the industry be made.

Pending the working out of amendments, stays were used as a pro tempore solution of some difficulties and sometimes such temporary stays were so maintained as to have practically permanent effect. The service codes were virtually placed in suspension as to all provisions other than those pertaining to labor, by the exercise of the stay. At other times the provisions of one code were summarily stayed by NRA to avoid hardship in cases of overlapping codes. Stays were used frequently to eliminate code provisions which NRA studies or revised policy determined were objectionable.

III. Recapitulation:

Conditional orders of approval as used by NRA were subject to two interpretations in administration:

A. Favorable Factors

1. They were effective in short-circuiting the regular methods of code formulation, thus aiding the purpose of immediately getting industries under codes.
2. They avoided delays in putting the immediate desiderata of codification (minimum wages, maximum hours for labor, reemployment, etc.) into effect.
3. They effectively closed arguments between NRA personnel and industry representatives, featured by unwillingness of industry to modify its position to conform to policies of NRA.

B. Unfavorable Factors:

1. The conditions in the orders were frequently of such nature as to practically change the code's status from voluntary to imposed.

2. If the conditions in the order were not met, there was question whether or not the code was legally in effect. (Flat Glass Mfg. Industry, Code No. 541) and enforceable.

3. The method of inserting some conditions into an order of approval evaded (intentionally or not) the processes of procedure adopted for voluntary code formulation.

4. The use of conditional orders of approval involved the question of whether they were proper procedure and, therefore, good administration.

Stays, Exemptions and Code Amendments:

These instruments of administration were used widely to adjust and reconcile problems resulting from the policy and procedure of code making. In the earlier days each was applied largely according to the personal ideas of the NRA official having the case in charge. There were no general rules rigidly regulating the use of each. To the end of the code period some deputy administrators differed in their opinions as to the proper application of stays, exemptions and amendments to certain problems of administration and frequently each could point to existing examples in support of his opinion. Expediency frequently dictated the selection of the instrument for accomplishing a desired end. Procedure for applying the instruments was complicated by the administrative practice of interposing additional checks wherever and whenever a new weakness or failure of organization appeared.

The author's study of the administration of NRA in connection with this and other reports, has engendered some ideas which are here recorded:

1. Wrapped in the problem of administering the NIRA were definite elements which were opposed socially, economically and industrially, and few indeed of those responsible for the administration knew how to relate them, or what to expect from them, well enough to make the fundamentals plain to the men who were to make the NIRA a success. A few of these opposed forces were:

Capital and labor
Monopoly and competition
Controlled economy and laissez faire
Agriculture and industry
Big business and little business
Mechanization and unemployment
Fair competition and destructive competition
New industrial products and old
Seller and buyer

2. Some of these forces were present in practically every situation with which administration had to deal.

3. The objectives of NIRA future as well as present, permanent as well as emergency, were never sufficiently known to or understood by many of those entrusted with the execution of its policies and procedure, to procure the optimum efficiency in administration.

4. For the most part, personnel was faithful and energetic and gave all it had in the effort to do what was immediately in front of it, but many officials had little idea what it was all about or the time to find out.

5. In any large and growing organization it is necessary to depend to a great extent upon the judgment and initiative of individuals to maintain the policies and carry out objectives. How could this be done to best advantage when the philosophy and many objectives of administration were obscure and little understood?

6. The logical thing happened, namely, administration rules were built to correct errors which occurred because there had been no rules. Thus, while this tended to correct previous troubles it did not prevent the occurrence of new ones.

To conclude, it is believed that this chapter upon the administrative aspects of stays, exemptions and code amendments and conditional orders of approval, taken together with the individual reports (*) contain sufficient proof to confirm the statements that:

1. There was no comprehensive plan of classification of industries and trades upon which to found a general administrative policy and coordinate the procedure for industry codification.

2. There was no authoritative unit within NRA whose sole purpose it was to correlate administrative experiences and engage itself energetically in advance planning of the procedure necessary to keep the organization ahead of its problems.

It is not claimed that the removal of these two deficiencies would have corrected all the troubles. It would, however, have been effective in reducing the number of problems and improving the procedure and, consequently, the dispatch with which the problems remaining were handled. The cumulative effect would have been greater administrative efficiency.

(*) Parts II, III, IV and V hereof.

PART TWO: STAYS

By

D.L. Boland

9844

INTRODUCTION

The NRA Organization Studies Section of the Division of Review has designated the subject of stays as a matter for separate study. The subject treats with the exercise of this particular form of administrative power by the National Recovery Administration. The various problems, questions, and difficulties attendant upon the administration of the National Industrial Recovery Act (*) were in many instances met and in some cases postponed by the use of the "stay". Its use was widespread. Its purposes and intents covered all phases of NRA from the viewpoint of legality, policy, and administration.

The evidences of the use of the stay are found in the NRA files and records, from which the bases of this report were derived. Investigation of the files for information relating to the various subject headings set forth in the table of contents were made. Compilation of the material obtained and the digesting thereof were conducted for the main purpose of presenting in this preliminary report various problems, which, to the author of the report, seemed primary and important. The investigations and the report thereof embodied herein concerns the issues presented by the exercise of the power of stay as a legislative problem. The bases of power set forth in the Act, the reasonable implications therein and deficiencies thereof, both real and apparent, have been the background of this investigation and preliminary report.

This report tells of administrative action legislatively conferred and legally delegated. The latter phase has been a further subject of study and the report sets forth the various administrative delegations of power and references to unauthorized uses thereof. The phases of administrative delegation of power which are considered herein refer more to the actual exercise of the power in a substantive manner rather than administrative details and procedure. Investigations and appraisals of the various administrative mechanics as to the handling of applications, routing of papers and other procedural phases have not been considered.

A study in its entirety of the files, orders of approval of codes and of amendments,, and other official pronouncements of the NRA relating to codes which were in some way subjected to the exercise of the power of stay was impossible, at least for the purpose of this report. The study concerns itself with the orders of approvals of five hundred and twenty (520) codes, (Codes Nos. 1 to 520, inclusive). In addition a selected number of codes were investigated as to the use of the stay where this administrative power was used in specific cases other than in the order of approval of a code or amendment thereto. The list of such codes is as follows:

LIST OF CODES EXAMINED

Cotton Textile
Shipbuilding and Shiprepairing

(*) 48 Stats. 195 (hereinafter referred to as the Act)

Wool Textile
Electrical Manufacturing
Coat and Suit
Lace Manufacturing
Corset and Brassiere
Legitmate Full Length Dramatic and Musical Theatrical
Lumber and Timber Products
Iron and Steel
Photographic Manufacturing
Fishing Tackle
Rayon and Synthetic Yarn Producing
Men's Clothing
Hosiery
Automobile Manufacturing
Cast Iron Soil Pipe
Wall Paper Manufacturing
Salt Producing
Leather
Motion Picture Laboratory
Underwear and Allied Products Manufacturing
Bituminous Coal
Oil Burner
Gasoline Pump Manufacturing
Textile Bag
Transit
Artificial Flower and Feather
Linoleum and Felt Base Manufacturing
Lime
Knitting, Braiding and Wire Covering Machine
Retail Lumber, Lumber Products, Building Materials and Building Specialties
Laundry and Dry Cleaning Machinery Manufacturing
Textile Machinery Manufacturing
Glass Container
Builders Supplies Trade
Boiler Manufacturing
Farm Equipment
Electric Storage and Wet Primary Battery
Women's Belt
Luggage and Fancy Leather Goods
Ice
Boot and Shoe Manufacturing
Saddlery Manufacturing
Motor Vehicle Retailing Trade
Bankers
Silk Textile
Optical Manufacturing
Automatic Sprinkler
Umbrella Manufacturing
Mutual Savings Banks
Handkerchief
Throwing
Compressed Air
Heat Exchange

Pump Manufacturing
Cap and Closure
Marking Devices
Retail Trade
Paint, Varnish and Lacquer Manufacturing
Business Furniture, Storage Equipment and Filing Supply
Asphalt Shingle and Roofing Manufacturing
Dress Manufacturing
Paper and Pulp
Millinery
Can Manufacturers
Wholesaling or Distributing Trade
Schiffli, the Hand Machine Embroidery and the Embroidery Thread and Scallop Cutting
Men's Neckwear
Aluminum
Cigar Manufacturing

The investigation primarily sought the general causes for the administrative exercise of the power of stay and from the material noted above this report attempts to set forth some of the reasons why the National Recovery Administration, either upon its own initiative or upon the application of some interested party, deemed it necessary to either grant or deny a stay of the provisions of a code of fair competition. An analysis of code provisions subjected to stays has been made, with particular stress being laid upon maximum hours and minimum wage provisions, code authority provisions and trade practice rules. The author stresses the preliminary nature of this report and the inability to exhaust all records, but intends to set forth as a result of the study already made, some answer to the question - "What did NRA do with regard to the use of the power to stay code provisions?" and from the answers thereto, to submit suggestions and conclusions for legislative purposes and consideration.

CHAPTER I

BASES OF POWER

The Act was approved by the President of the United States on June 16, 1933. An examination of the provisions of the Act discloses no use of or reference to the word "stay", but throughout the Act there are sufficient legislative declarations which warrant and justify the use of the power of stay. The theory of the Act was a delegation of power to the President with certain limitations upon the exercise thereof, which delegation required an exercise of administrative discretion as a means of proper administration of the Act. Section 3 (a) of the Act contains pertinent language regarding the exercise of the power of the stay. Certain standards and requirements were imposed upon the President as to the approval of codes and the section further provided that where the codes affected persons, the President could, as a condition of his approval of a code provide "exceptions to and exemptions from the provisions of such code." This thought of a power of discretion in the President obtains throughout the Act. It is found in Section 10(a) in which the President was authorized to prescribe rules and regulations and in Section 10(b), which authorized the President to

> "cancel and modify any order of approval, license, rule or regulation issued * * *."

In view of these specific references in the Act to the power of the President to make exemptions and to cancel or modify his orders of approval, it is unquestioned that the President in the exercise of this power and the discretion granted to him was permitted to stay the provisions of the code if he found that such action would effectuate the declared purposes of the Act.

The Act provides for various kinds of codes other than those specifically mentioned in Section 3(a) (*) but attention is directed to the statements in these particular sections that the approval of these various types of codes or agreements would have the same effect as a code of fair competition approved by the President under the provisions of Section 3(a). The power conferred by Section 3(a), when coupled with the general grant contained in Section 10(b), is of sufficient latitude to apply to all forms of codes and agreements authorized by the Act.

The power conferred upon the President to grant or deny stays was by the terms of the Act rather general. Limitations were imposed, but the ambit of administrative discretion was of wide range. Section 1 of the Act set forth the declared policies and purposes of the Act and the President was empowered to exercise this right of stay when "necessary to carry out the purposed of this title". Section 10(a) states:-

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(*) See Sections 3(d), and 7(c)

"as the President in his discretion deems necessary to effectuate the policy herein declared"

Section 3(a) prescribes:-

"for the protection of consumers, competitors, employees and others"

and:-

"in furtherance of the public interest"

The operation and effect of a stay is similar to that of an exemption. The author has prepared a report on the latter subject and has considered in detail the bases of power for the use of this latter mentioned form of administrative relief. It is suggested that reference to the report on Exemptions (Chapter I - Bases of Power) will show authority for the statement contained in the foregoing paragraphs. For purposes of brevity and avoidance of duplication the content of such chapter has not been set forth herein.

The reasonable implications in the Act convey the existence of the power in the President to approve a code or not or to approve part of a code, to impose limitations or exceptions or modifications upon the operation of that code. This power connotes the meaning, purpose and effect of a stay and as such the use thereof by the President or any official to whom this power has been properly delegated is within the scope and extent of the legislative declarations contained in the Act.

CHAPTER II

DELEGATION OF POWER TO GRANT STAYS

On June 16, 1933, the date upon which the Act was signed by the President, General Hugh S. Johnson was appointed by the President to be Administrator for Industrial Recovery. This Presidential Order authorized the Administrator for the ensuing thirty days to do such "other and necessary work as authorized under Title I of the said Act". The Executive Order of appointment also appointed a Special Industrial Recovery Board composed of the Secretary of Commerce as Chairman, the Attorney General, the Secretary of Interior, the Secretary of Agriculture, the Secretary of Labor, the Director of the Budget, the Administrator for Industrial Recovery and the Chairman of the Federal Trade Commission. The authority conferred upon General Johnson was made subject to the general approval of this Board (*). On July 15, 1933, the power originally granted under Executive Order No. 6173 was continued with certain limitations (**). On the same date (July 15, 1933) the President set up a regulation and modified any previous Executive Order inconsistent with its terms. This regulation 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

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(*) See Executive Order No. 6173

(**) See Executive Order No. 6205-A.

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." (*)

The substance of the above quoted Executive Order specifically conferred upon the Administrator the power to stay the application of a code upon the receipt of an application for an exception therefrom, not only as to the person who made the application, but also persons who were similarly affected. This Executive Order makes the first reference to the use of the term "stay" and is the first specific delegation of power from the President. On December 30, 1933, the President delegated to the Administrator for Industrial Recovery the power of approval of the "elimination" of any one or more provisions of any code of fair competition. This order also permitted the Administrator for Industrial Recovery to approve exceptions from the provisions of a code (**).

The power granted to the Administrator to act on applications received within the time period set in Executive Order No. 6205-B restricted the proper and efficient use of the stay. On February 8, 1934, the President, by Executive Order No. 6590-A, authorized the Administrator for Industrial Recovery to prescribe rules and regulations covering stays and other forms of relief from codes of fair competition approved under Title I of the said Act. This order extended the power of the Administrator in such a manner as to permit the use of the stay after a code had become effective and did not restrict the use of the power to orders of approvals of codes.

These powers which had been conferred upon the Administrator were by the terms of Executive Order No. 6859 - September 27, 1934, transferred to the National Industrial Recovery Board, which Board, by its Administrative Orders, authorized the issuance of orders of approval which necessarily included orders of stay by the Administrative Officer (***).

No further delegations of power to use the stay were specifically made. The power to stay provisions of codes as such was peculiarly confined to the Administrator and the National Industrial Recovery Board,

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(*) See Executive Order No. 6205-B
(**) Executive Order 6543-A
(***) See Administrative Order X-93, September 28, 1934

However, this method of administrative action was used in some instances by lesser officials of the National Recovery Administration. The power of approval of code exemptions, exceptions, and such forms of administrative relief were from time to time delegated to lesser officials, the exercise of which required administrative discretion. Often findings, protests, policies, and other considerations resulted in an administrative stay of the intended relief. No form of written delegation of this power was made as the use thereof was considered implied and contained in the power of exemption granted by the Administrator or the National Industrial Recovery Board to the particular officer.

Administrative action has always presented the question of due process. For purposes of time-saving and expediency, it being practically impossible to conduct hearings upon all matters submitted to the Administration, the Administrator set up the procedure known as "notice or opportunity to be heard". The operation of this procedure resulted in the administrative approval of a particular matter with a ten, fifteen, twenty, thirty, or sicty-day stay of the operations of the provisions of that particular matter in order that interested persons might, if they so wished, object. This power, when used by the Administrator or the National Industrial Recovery Board, was in accordance with the Presidential delegations hereinbefore mentioned, but when used by lesser officials of the National Recovery Administration was in accordance with implied power which accompanied the particular delegated power rather than according to specifically delegated authority.

The President's Reemployment Agreement provided in Paragraph 14 thereof for a stay of the provisions thereof pending a summary investigation by the National Recovery Administration (*). The official explanation of the PRA (**) makes reference to Paragraph 14 and in the explanation thereof states that an individual employer may make application for a stay in accordance with the provisions of Paragraph 14. Interpretation No. 2, concerning Paragraph 14 (***) sets forth the procedure and its effect as a temporary stay without further investigation pending decision by NRA. The interpretation states that Paragraph 14 is not intended to provide for group exceptions, but only to meet cases of individual hardships. This report does not concern itself with applications submitted to NRA in accordance with the provisions of Paragraph 14 of the PRA. It is true the word "stay" is used in this paragraph, but in view of the fact that the paragraph is limited to cases of individual application the consideration of these applications are found in the NRA Organization Sections Study on Exemptions. No other Presidential delegation of power to stay the operation of the PRA is found.

(*) See NRA Bulletin No. 3, July 20, 1933.

(**) See NRA Bulletin No. 4

(***) See NRA Bulletin No. 4

CHAPTER III

DEFINITION OF THE TERM "STAY"

The word "stay" in its ordinary meaning is a "staying or stopping, or state of being stayed; suspension of motion or progression, a halt, stand, stop, a stopping, or more usually a suspension of procedure or execution by judicial proceedings or executive mandate". (*)

The term "stay" in its legal sense has many connotations. It relates to such things as a stay of foreclosure, a stay of court proceedings, a stay of an action of law, and Acts of a Legislature prescribing a stay in certain cases set forth in the legislation, a stay of execution (**).

As stated above, there is no reference to the term "stay" in the National Industrial Recovery Act and at the beginning of the Administration of the Act no administrative definitions or explanations of the term were issued. Chapter II refers to the use of the term "stay" in Paragraph 14 of the PRA. This reference was one of the first occasions upon which the term "stay" was used by the Administration. The fact that the interpretation of this paragraph made it apply to individual cases showed a disposition upon the part of the Administration to make the term apply to individual applications for relief. As the Administration of codes and of the PRA continued, reference to individual applications was made by the term "exemption" rather than the term "stay".

Early in the process of code formulation, the Administration found that for purposes of enforcement of policy or recognition of protests it became necessary to stay, in the order of approval of a code, the actual operation of part of the provisions of that code, either permanently or for a limited period of time. The use of this method of aministrative power resulted in the reference to the term "stay", which reference was actually confined to orders of approval or modifications thereof. Later, experience in the administration of codes disclosed the necessity of exercise of the power to stay provisions of codes already approved, either upon application to or initiation by the NRA. Consequently, the use of the term "stay" was enlarged to include modifications of orders of approvals of codes. The meaning of the term "stay" was that the stay affected all members of an industry or recognized divisions, either geographical or industrial, and that an exemption applied to a single individual or group of individuals.

No administrative definition of the term "stay" was made until May 5, 1934, when the Administrator for Industrial Recovery, by Administrative Order X-27, issued rules and regulations concerning the modification of and exemptions from approved codes of fair competition. In Paragraph 1 of such Administrative Order it was stated that the term "exemptions" shall include exceptions and stays and all rulings whereby an individual,

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(*) Webster's New International Dictionary, Merriam Edition, 1934, P.2037

(**) Volume 3, Bouvier's Law Dictionary, Rawle's Third Revision P. 31-35

group, or class is released from the full operation of a provision of a code. This definition partially confirmed the already existing unofficial definition mentioned above and no change thereof was made in definition until the issuance of the NRA Office Manual in September 1934. The Office Manual states, in Part III, p. 3210:-

> "The term 'stay' includes any ruling whereby an entire industry is released from the full operation of a code provision, (i.e., whereby a code provision is temporarily suspended)."

This subsequent definition restricts the scope of the term "stay" to an entire industry, but stays issued after this official definition applied both to an entire industry and subdivisions of an industry, so that the original unofficial intention of the application of a stay actually persisted. In other words, the use of the stay would be invoked for the Construction Industry and the Painting and Paperhanging Division of the Construction Industry, whereas an "exemption" applied to a single individual or group or class of individuals. The meaning of the term and the above mentioned limitation as to its application has been taken as a basis for the research conducted for purposes of this report and the results obtained from an analysis of various stays will apply only to those stays which were issued against entire industries or recognized divisions thereof.

An examination of the records of the various stays issued by the Administration discloses widespread interchangeable use of the term "exemption" and the term "stay". The provisions of a code would be stayed as to a single individual and an entire industry would be exempted from the provisions of the code. (*) The interchangeable use of these terms resulted in great confusion as to the nature of the administrative action taken. It is true that the result of the action was the same, but this administrative division had been set up and, of necessity, required separate treatment. Delegations of power differed as to these forms of administrative action. This fact requires more strict adherence to the defined classes of action. As a matter of record, exemptions were found which were in fact stays with the reverse situation equally existent. The files were equally disorganized. Proper classification of the records has been attempted, so that this report will be based upon evidences of "stays" as defined in the foregoing paragraph.

TYPES OF STAYS

The scope of the use of the stay varies as to its extent and application. The first type is known as a General Stay - one which stayed all of the provisions of a code and applied to all members of an industry. This form of General Stay was utilized very rarely at the time of the original code making. (**)

(*) See NRA Orders 72-13, and Order 259-37

(**) See order of approval of the Millinery Industry Code (Code No. 151, December 15, 1933) and order of approval of Spice Grinding Industry Code (Code No. 424, May 11, 1934)

The use of the General Stay became more widespread during the period of administration of codes, particularly with respect to the orders of approvals of amendments. Any number of amendments of codes were approved with a stay of the operation of the amendment provisions for a specified period of time. The stay applied to all members of the industry and applied to all of the terms of the amendment. This form of stay was used particularly in connection with satisfication of due process requirements. (*)

Another form of stay was one which was general in its extent as to code provisions covered, but limited in its application to members of the particular industry affected. This type of stay was used on many occasions in the order of approval of a code and was also used at the time of the order of approval of an amendment to a code.(**)

A type of stay issued by the Administration was specific as to the extent of the code provisions covered and general as to the application to members of the industry or trade affected. These types of stays were found, both in orders of approvals of codes and amendments. (***)

(*) See the Ice Industry Code, Amendment 1, Order 43-1, April 24, 1934; Metal Tank Industry Code, Amendment 1, Order 154-1, August 2, 1934

(**) The order of approval of the Dress Manufacturing Code (Code No.64- October 31, 1933) stayed all of the provisions of the code as to manufacture of dresses whose chief content was cotton, both house and wash, pending further hearing. The order of approval of the Knitted Outerwear Industry Code (Code No. 164 - December 18, 1933) stayed all of the provisions of the code as to manufacturers of knitted outerwear for infants and children, sized from infancy to age 15, until determination of their inclusion in the code.

(***) In the order of the approval of the Medium and Low Priced Jewelry Manufacturing Code (Code No. 75 - December 23, 1933) the provision of payment of time and one-third for all hours over forty (40) hours per week to all employees was stayed until March 1, 1934. In the order of approval of the Flag Manufacturing Industry Code (Code No. 352 - March 31, 1934) the homework provisions in that code were stayed for a period of thirty days, the effective date of the code. In the order of approval of the labor provisions of the Brewing Industry Code, the said provisions were stayed for a period of ten days.

Another form of stay is found - one which was specific as to its extent in connection with code provisions and also as to its application to members of industry. (*)

CHAPTER IV

METHODS OF EXERCISE OF STAYS

The use of the power of stay was evidenced in various forms of administrative action by the NRA. The President, on May 26, 1934, by Executive Order No. 6723, stayed all of the provisions of the codes of the service trades and industries except certain labor provisions. This is an example of the exercise of the power of general stay by the President. Likewise, the power of general stay was exercised by the Administrator in Administrative Order X-5, of February 2, 1934. The operation of a prior administrative order (Administrative Order X-4) was stayed for a period of thirty days and later this same order was permanently stayed by Administrative Order X-8, dated March 3, 1934. In addition, the National Industrial Recovery Board, in Administrative Order X-136-2 stayed the operation of Paragraph 2 of Administratives Order X-136 insofar as it related to the code authorities or agencies thereof which were specifically set forth in the said Administrative Order X-136-2.

The Administrator exercised the power of the stay in orders of approvals of codes, amendments, and other miscellaneous matters. The administrative use of the stay also is evidenced in separate orders issued to extend, terminate, or modify a stay theretofore issued. On some occasions a separate order was issued to stay some or all of the provisions of a code which order, was not linked with an order of approval of a code or an amendment, but a separate and distinct exercise of the power to grant stays.

CHAPTER V

CAUSES OF THE EXERCISE OF POWER OF STAY - TYPES OF CODE PROVISIONS AFFECTED

Administrative action, such as a stay, may be made for one or various reasons. Primarily, its purpose is to afford relief from the equal application of code provisions; to enable the administrative agency to maintain control of and adherence to its rules and regulations; and also to prevent the approval of code provisions which are not in conformity

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(*) In the order of approval of the Insulation Board Manufacturing Code, (Code No. 353 - March 22, 1934) the application of the wage and hour provisions was stayed as to the territory of Hawaii. In the order of approval of the Cotton Textile Industry Code (Code No. 1 - July 9, 1933) the provisions relating to limitation of machine hours were stayed insofar as they applied to the production of tire yarns and fabric for rubber tires.

with legal requirements or declared policy. The National Recovery Administration was presented with problems necessitating this form of administrative action. Some sponsoring groups submitted codes containing illegal provisions. Attempts of the Administration to cause a deletion of these objectionable provisions often were of no avail and in such cases the use of the power of stay was necessary, in order to properly approve the code. In addition, the Administration, being presented with the problem of codification of industry and the necessity of administration thereof, naturally announced various policies which were designed to carry out the purpose of the Act under which the program was progressing. Oftentimes code provisions as submitted did not conform to the announced policy and for purposes of consistency and adherence to this policy it became necessary, upon the part of the Administration, to exercise its power of stay.

The NRA, in its administration of the Act, which involved the issuance of rules and regulations having the force and effect of law, necessarily was presented with and obliged to follow due process requirements. In the early stages of the codification of industry, all of the proposed codes were submitted and considered at a public hearing. As the details of administration increased with respect to amendment of codes, interpretations, exemptions, classifications, Code Authority rights and obligations, and other matters, it was found to be a practical impossibility to submit all of these matters, many of them routine, to the formality of a public hearing. The recognition of this practical impossibility resulted in the set-up of the procedure commonly referred to as "Notice of Opportunity to be heard". This particular form of notice involved the use of the power of stay. An order was signed relating to the particular matter, but the operation thereof was stayed for a specified period during which interested parties could object to the effective operation of the particular matter approved. This form of stay was extensively used by the administration.

The investigation of the records of NRA relating to stays was conducted along two lines. First, the orders of approvals of codes (1 to 520 inclusive) were examined and the orders of approvals of amendments of such codes were also examined. Second, the records of the following codes:-

Aluminum
Asphalt Shingle and Roofing
Automatic Sprinkler
Automobile Manufacturing
Automotive Parts and Equipment
Bituminous Coal
Boot and Shoe
Builders Supply Trade
Business Furniture
California Sardine Processing
Can Manufacturers
Canned Salmon
Carpet and Rug
Cast Iron Soil Pipe
Graphic Arts
Ice
Ladder
Lime
Lumber and Timber
Men's Clothing
Men's Neckwear
Millinery
Motion Picture
Motor Vehicle Retailing
Oil Burner
Paint, Varnish & Lacquer
Paperboard
Paper and Pulp

Cement	Plumbing Fixtures
Cigar Manufacturing	Pump Manufacturing
Coat and Suit	Rayon and Synthetic Yarn
Construction	Retail Drug
Cotton Garment	Retail Trade
Cotton Textile	Rubber Manufacturing
Daily Newspaper Publishing	Rubber Tire Manufacturing
Dress Manufacturing	Salt
Electrical Manufacturing	Schiffli
Fertilizer	Set Up Paper Box
Fire Extinguisher	Shipbuilding and Shiprepairing
Fishery (Basic Code)	Steel Casting
Floor & Wall Clay Tile	Trucking
Funeral Supply	Wholesale Tobacco
Furniture	Wholesale Trade
Gas Appliance and Apparatus	Wool Textile
Glass Container	Canning
Silk Textile	Iron and Steel

were examined for the purpose of determining whether or not a stay had been issued at a time other than the time of the order of approval of a code or amendment. The codes examined disclosed six hundred and fifty-four (654) orders which contained a stay; five hundred and ninety-eight (598) of such stays were a part of orders of approvals of codes or amendments and fifty-six (56) orders of stays were issued at a time other than at the time of the code or amendment approval.

The orders were examined as to the particular code involved, provisions stayed, and the reasons for the issuance of these orders. A classification of the problems presented shows the general causes for the issuance of stays hereinbelow set forth:

1. Geographical problems
2. Recognition of protests
3. Legality
4. Necessity of further study
   (a) by NRA
   (b) by industry or trade
5. NRA policy
6. Pending amendment
7. Industrial subdivisional problems
8. Due process

Sixteen orders of approvals of codes stayed the operation of the codes in entirety for various periods of time. (*) A few of these stays applied to certain types of manufacturers; e.g., the order of

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(*) See order of approval of the Coffee Industry Code (Code No. 265), the Fisheries Code (Code No. 308), Mayonnaise Code (Code No. 349), Peanut Butter Code (Code No. 378), Spice Grinding Code (Code No. 424).

approval of the Dress Manufacturing Code (Code No. 64) stayed all of the provisions of the code as to the manufacture of dresses whose chief content was cotton pending further hearing. The order of approval of the Knitted Outerwear Industry Code stayed all of the provisions as to manufacturers of knitted outerwear for infants and children. In some cases the code was approved for a trial period and stayed in its entirety after a certain specified date for purposes of further study or amendment, as in the order of approval of the Millinery Industry Code (Code No. 151) which stayed all of the provisions of the code six months after the date of the order pending submission of recommendations regarding continuance or amendment of the code. Stays of all provisions of codes were issued, either at the time of the order of approval or subsequently, when objections and protests to such provisions were recognized". (*)

The Administration issued a number of orders of stays of amendments and the records investigated for the purposes of this preliminary report show the following:

Stays of amendments ----- labor ---------- 13
Stays of amendments ----- code authority --- 85
Stays of amendments ----- trade practices -- 34

The entire operation of an amendment was usually stayed to meet due process requirements. (**) In some cases amendments were stayed for reasons other than due process requirements. (***)

On some occasions the application of a code was stayed for the purposes of effecting a consolidation of that particular code with some other code. (****)

From time to time classification problems arose which were caused either by multiple code coverage or overlapping definitions. The problems created often resulted in a stay of a code provision insofar as certain operations under that code were concerned, or insofar as certain members of the industry subject to that code were concerned. In the

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(*) See Administrative Order No. 480-4 which stayed the operation of the Structural Steel and Iron Fabricating Code indefinitely and without the assent of the industry." See also order of approval Macaroni Code (Code No. 234).

(**) See Fabricated Metal Products Code No. 84, Amendment No.1; Retail Farm Equipment Code No. 197, Amendment No. 1; Printing Equipment Code No. 257, Amendment No. 1.

(***) See Cotton Garment Industry Code No. 118, Amendment No. 15

(****) See Wire Reinforcement Code, the provisions of which were stayed for the purposes of considering consolidation of the Iron and Steel Code; the Cleanser Manufacturing Code was stayed for purposes of consolidation with the Soap and Cleansing Manufacturing Code; and the Manganese Steel Casting Code for the purposes of consolidation with the Steel Casting Code.

Oriental Rug Importing Code No. 487, Supplement No. 1, the order stayed the provisions of the Wholesale and Distributing Trade as to Wholesalers of oriental rugs in order to permit operation under the Importing Trade Code. These classification problems often arose in connection with territorial problems, especially where separate territorial codes were being considered. (*) Likewise stays were issued because of overlapping code definitions. (**)

A number of orders of approvals of codes embodied administrative action, which was in the nature of a stay, but were more sweeping and decisive than the ordinary form of stay. These orders by their terms "eliminated" provisions from codes and usually were invoked in cases where the particular provision ran counter to legal objections or were not in conformity with the announced policy of the Administration. The effect of these orders not only stayed the operation, but rendered the particular provision null and void and deleted it from the code. Administrative policy announced that the so-called "merit clause" relating to the promotion of employees and increase of wages on a merit basis was against policy and in several cases the merit clause set forth in the code was eliminated. (***)

Provisions affecting the rights and obligations of code authorities also felt the effect of "elimination."

Administrative objection to Administration members of a code authority being appointed without expense to the industry was found to be objectionable in the Foundry Equipment Industry Code No. 264, so the order of approval "eliminated" the words "without expense to the industry". In the same code labor policy objected to an exception from maximum hour provisions which included members of the staffs of executives, executives, and other specified employees. The recognition of this objection resulted in elimination of the terms "members of their respective staffs". (****)

(*) See Order No. 446-4 relating to persons engaged in canning pineapple and can manufacturing in Hawaii. NRA files

(**) See Orders Nos. 287-2-A and 288-2-A relating to conflict between the Newspaper Publishing Code and the Graphic Arts Code. NRA files

(***) See Orders of approvals of the Boiler Manufacturing Code No. 38; Boot and Shoe Industry, Code No. 44; Hotel Industry Code No. 121; Oxyacetylene Industry Code No. 155, and the order of approval of the Bituminous Coal Code No. 24, where a "weighing" clause was eliminated. NRA files

(****) It should be noted that this order eliminated parts of a code provision rather than the entire provision itself. For a recognition of objections to labor provisions, see also the order of approval of the Steel Joist Industry Code No. 495. NRA files

Trade practice policy often required the exercise of the power of elimination with respect to trade practice provisions. (*) All of the above examples contained clauses or portions of clauses which if permitted to remain in the code would have conflicted with legality or the policy of the Administration relating to labor and trade practice provisions, NRA insignia, and the like, and as a result, this power of "elimination", which was in the nature of a stay, was exercised by NRA.

TYPES OF CODE PROVISIONS SUBJECTED TO STAYS

The use of the power of stay covered practically every type of code provision submitted to NRA - labor, code authority, trade practice and general provisions.

LABOR PROVISIONS

An examination of the code provisions stayed, discloses some rather interesting information. The use of the power of stay by the Administration was most usually applied to trade practice provisions, and in a lesser degree to labor provisions of codes. Of the latter, the maximum hour and minimum wage provision of codes were the ones most usually stayed, but the various general labor provisions likewise met with the exercise of this administrative power. Tabulation of the records investigated relating to labor provisions shows the following:

(*) See order of approval of the Horseshow and Allied Products Code No. 325 (price list provisions); Bulk Drinking Straw Industry Code No. 331 (underselling clause); Beverage Dispenser and Equipment Code No. 334 (sales contrary to published price list clause); Optical Wholesale Code No. 448 (uniform discounts); Metal Hat Die and Wood Hat Block Industry Code No. 221 (clauses regulating the use of NRA insignia); Cigar Container Industry Code No. 135, Amendment No. 1 (Code Authority contributions clause). NRA files

STAYS OF LABOR PROVISIONS OF CODES (*)

TYPE OF CODE PROVISION	NO. OF STAYS
Minimum wages	22
Minimum wages (Geographical area)	4
Minimum wages (Industrial subdivision)	4
Maximum hours	23
Maximum hours (Geographical area)	1
Maximum hours (Industrial subdivision)	3
Definitions of types of employees	2
Home work provisions	8
Child labor provisions	1
Piece rate	1
Method of payment of wages	1
Handicapped workers	1
Equitable adjustment of wages	1

Most of the stays of the maximum hour and minimum wage provisions were made as a result of protests by interested parties, either the wages were too high or too low. This fact is more strongly borne out by the above table showing administrative recognition of difficulties as to geographical sections of an industry and also industrial divisions thereof. The stays of home work provisions were the result of labor policy as announced by NRA, as were the "eliminations" which were mostly deletions of the so-called "merit clause". All other stays of labor provisions were granted because of exceptional conditions existing in the industry and the need for particular relief from the operation of the particular provisions.

CODE AUTHORITY PROVISIONS

When the President issued enforcement of an order of approval of a code, problems in its administration were expected and, as the codification of industries progressed, various policies were announced to meet the difficulties seen at that time. In addition, the National Industrial Recovery Act imposed certain requirements upon the Administration as to the truly representative nature within the industry of persons or groups participating in the formulation of the code. (**) The enforcement of these legislative requirements and policy announcements were sometimes evidenced by stays of code authority provisions; i.e., the code provisions which created the code authority as an industrial administering body with certain rights thereto and obligations thereon. The types of code authority provisions subjected to stays, insofar as the investigation for purposes of this report is concerned, were:

(*) In addition, it should be noted that thirteen (13) amendments of labor provisions were stayed and seven (7) "eliminations" of labor provisions or parts thereof were issued.

(**) Section 6 of the Act

TYPES OF CODE PROVISIONS	NUMBER
Election of Code Authority - participation of trade association	3
Insignia	1
Reports and schedules	3
Code authority finances	81
Liability of code authority	1
Incorporation of code authority	1
Label provisions	1
Adjustment of wages above the minimum - code authority proposal	1
Code authority powers of classification	
(a) Industrial or trade	1
(*) (b) Geographical	2

Legal objections (the requirements of Section 6 of the Act) caused the stays of the code authority election provisions in the three cases tabulated above. The stays of the label, incorporation, liability and insignia provisions above noted, prevented the conferring of excess power upon the code authorities involved. All of the code authority finance provisions, with the exception of nine (9), were stayed in order to meet due process requirements; the remaining nine (9) provisions were stayed insofar as Paragraph 3 of Administrative Order X-36 (relating to assessments upon the major line of business of a member of industry) was concerned. The stays of code authority provisions relating to classifications were the result of protests by the several Advisory Boards of the Administration.

TRADE PRACTICE PROVISIONS

Trade practice provisions of a code involved various types of trade regulations. Trade practice rules can be classified as follows:-

(a) rules generally accepted in law
(b) rules desirable to industry or trade, but not fully accepted in law
(c) rules desirable, but no basis in law
(d) undesirable rules
(e) unenforceable rules

The hopes of industries and trades in the sponsorship of codes were high. It was expected by many members that the approval of the code would result in the solution of all their industrial or trade troubles. Consequently, trade practice rules in all of the above classifications were submitted and strenuously urged by code sponsors. The early promulgation of codes for acknowledged reasons of expediency and the sincere attempt to effectuate the immediate reemployment of American labor resulted in the inclusion of undesirable and unenforceable provisions in codes. As Administrative experience increased, various

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(*) These were two eliminations of code authority provisions, both of which related to objectionable features of the code authority finance phase of administration.

policies were enunciated, restricting the scope of acceptable trade practice provisions, which policies ran contrary to the form of the provisions contained in the above mentioned early codes. This situation caused code sponsors to stress their position more strongly and to refuse consent to withdraw or delete the particular objectionable trade practice provisions. In addition, the development of Administrative experience required the initiation of various studies and investigations to determine the value of particular trade practice rules, their effect upon small enterprise, consumers, labor and other interested groups, the tendencies thereof towards monopoly, price fixing and other evils and also the administrative problems presented. In short, the use of a stay in connection with trade practice provisions carried out the Administration's determination to adhere to announced policies as far as possible, thereby overriding objections of industry or groups thereof, and at the same time enforced the ordinary requirements of administrative law. This exercise of foresight did not obtain in the cases of all codes and, as a result, the power of stay was exercised at a time subsequent to the approval of a code upon a showing to or finding by NRA that the particular approved code or provision thereof was resulting in unreasonable and unfair application.

Perhaps a correct approach to a study of stays of trade practice provisions would be an examination of the particular code provisions affected, bearing in mind the classification of trade practice rules set forth in the opening paragraph of this subsection. (*) No attempt has been made at this time to classify the various trade practice rules, but the results of the investigation shows certain types of trade practice provisions which had been subjected to stays, all of which are tabulated as follows:-

TYPES OF TRADE PRACTICE PROVISIONS	NO. OF STAYS
Resale price maintenance	10
Requirement of charging transportation costs to merchant	3
Prohibition of sale of existing stock (Distress merchandise)	1
Method of determining price differentials	1
Definition of "transportation charges from wholesaler to customer"	1
Provision for payment of volume allowances to retail stores	1
Establishment of differential discounts between wholesalers and other classes of purchasers	2
Open price filing systems	19
Waiting period - open price systems	183
Merchandising plans	5
Prohibition of adulteration and misbranding	1
Provision prohibiting contractor to cut material for manufacture of garment	1
Percentage limitation upon retail price	2
Provision incorporating Federal Food and Drug Act	1
Provision fixing maximum discounts and terms of sale	15
Provision including employees' contract in "interference with competitors' contracts" clause	1
Provisions permitting manufacturer to suggest resale minimum prices	3

(*) See Chapter V

TYPES OF TRADE PRACTICE PROVISIONS (CONTINUED)	NO. OF STAYS
Prohibition of receipt of scrip for payment of merchandise-	2
Prohibition against distributors underselling jobbers------	1
Prohibition of sales contrary to published price lists-----	2
Prohibition of production of custom-made goods comparable to standard points----------	1
Uniform conditions of sale and methods of estimates and quotations----------	1
Definition of "contractor"----------	1
Fixed minimum terms of sale----------	8
Limitation of credit period on government purchases--------	1
Fixed estimate formula----------	1
Prohibition of future sales and deliveries (requirement of report)----------	1
Requirement of agreement between jobbers and distributors to file price schedules in accordance with code--------	1
Requirement of agreement to resell in accordance with code provisions----------	6
Prohibition of quotation of prices other than f.o.b.factory	2
Special rules regarding bids to governmental agencies------	15
Prohibition of coupons and premium----------	8
Prohibition of "break and take" merchandise distribution---	3
Prohibition of assumption of consequental damages----------	2
Prohibition of furnishing detailed shop drawings of products	9
Prohibition of furnishing shop drawings without charge-----	3
Prohibition of destructive price cutting----------	9
Prohibition of "pooled buying"----------	5
Prohibition of "trade-in" allowances----------	11
Provisions setting forth proper trade mark rules----------	8
Prohibition of dissemination of false information regarding products----------	6
Prohibition of consignment sales----------	1
Prohibition of inducement of breach of contract----------	5
Provision prohibiting sales in evasion of code----------	4
Mandatory requirement of registration of agents, distributors, etc.----------	1
Provision permitting free advice and consultation services to purchasers----------	1
Prohibition of absorption of inspection charges----------	1
Provision exempting sales to export trade----------	1
Uniform accounting and cost-finding system----------	7
Prohibition of guarantees----------	1
Prohibition of rental of products----------	1
Prohibition of discounts except cash discounts----------	1
Establishment of the uniform agency contract----------	1
Provision requiring publication of prices covering installation of products----------	1
Prohibition of allowances for advertising----------	1
Prohibition of attachment of NRA label to a garment not made under the code----------	1
TOTAL	403

Ten of the above list of trade practice provisions were stayed through the process of "elimination." Those provisions which were so eliminated are as follows:

TYPE OF CODE PROVISION	NO. OF ELIMINATIONS
Resale price maintenance	1
Establishment of maximum discounts	1
Prohibition of future sales and future deliveries	1
Prohibition of sales contrary to published price list	1
Prohibition of underselling jobbers by distributors	1
Provision permitting suggestion of minimum resale price	1
Inclusion of employees' contracts in "interference with competitors' contract" clause	1
Inclusion of Federal Food and Drug Act	1
Provision prohibiting adulteration and misbranding	1

It should be noted from the above tabulations that most of the trade practice provisions stayed related to price provisions, either with respect to minimum prices, resale price maintenance, maximum discounts and terms of sale or open price filing systems. The tabulation shows stays of provisions which ordinarily would be classified as desirable and enforceable; e.g., adulteration and misbranding clauses - interference with anothers' contract. Examination of the stays of these particular provisions discloses that the stay was issued not because of the purposes of the particular provision but rather that the provision was improperly drafted or too stringent or extensive in its scope and application. Methods of obtaining uniform prices, or at least information as to the cost, equally fell under this gavel of administrative action. Uniform cost systems, methods of estimating and quotations were submitted by various code-sponsoring groups, but such contemplated provisions ran afoul of either the legal or policy requirements of NRA resulting in a stay of the provision.

The examination of the records of the trade practice provisions subjected to stays did not in all cases disclose reasons why the particular stays had been applied. In addition, the author has not had an opportunity to fully explore all of the records relating to these various stays, however, some of the files and orders examined did disclose some reasons and, for purposes of this report, certain classifications of reasons have been made and a tabulation thereof set forth, which gives some picture of why NRA exercised this administrative remedy. The tabulation is as follows:

REASONS FOR STAYS OF TRADE PRACTICE PROVISIONS	NUMBER
For further investigation	7
For determination of advisability of approval of code provisions	2
Consideration and determination by NRA	2
Consideration of objections to provisions	8
Stays resulting from general studies initiated by NRA	188
Further investigation and hearing	5
Pending recognition of code authority	1
Due process requirements	75
Pending future compact	1
Industry request for additional time for study	1
Pending submission of evidence by industry	14
Pending satisfactory arrangement for confidential treatment of price information	2
TOTAL	306

It is realized that the above general classifications of reasons do not show the purposes of the "further investigations and hearing", the "studies initiated by NRA or the objections being considered. In some cases particular circumstances may have existed in particular industries which required further study or investigation.(*) To delve into these reasons, a further and more exhaustive study must be conducted.

The above tabulation shows some one hundred and eighty-eight (188) trade practice provisions stayed because of studies being conducted by NRA. The majority of these stays related to the waiting period between the time of filing of price lists with a code authority and the effective date of such price lists. Office Order No.63, issued by the direction of the Administrator on January 25, 1934, announced that a study as to price changes was being made and that code provisions relating to open price associations would be stayed in the order of approval of the code. The scope of this order was later modified, (**) but its result was a great number of stays of the waiting period provision of open price systems.

It is of interest to note that eighteen (18) stays of trade practice provisions were issued, which postponed the effective dates of fair trade practice provisions.(***)

The investigation of the records of stays of trade practice provisions discloses that most of the stays were issued at the time of the order of approval of the code and that in such orders either one or several provisions of the code were affected thereby. It is further disclosed that two hundred and eight (208) codes, practically half of the codes examined, contained a stay of trade practice provisions in the order if approval of the code. A list of such codes is set forth in Appendix No. 2, hereto attached.

TIME OF ISSUANCE OF STAY

As stated in Chapter IV, ante, the power of stay was exercised by the Administration at times other than the time of the order of approval of the code and investigation was directed to certain codes to study orders of stays issued at a time subsequent to an order of approval of the code. The examination discloses that most of such stays had been issued as a result of application by a particular industry or trade and that the code provisions from which relief was sought referred to maximum hours or minimum wages, although a few such orders of stay related to relief from trade practice provisions. The schedule set forth

(*) The order of approval of the Motion Picture Code, Code No.124, stayed certain trade practice provisions relating to the payment of excessive salaries to executives and other employees. This provision affected the salaries of motion picture stars and the effect of the limitation upon these salaries was unknown at the time of the order of approval of the code. As a result, the provision was stayed until NRA had an opportunity to investigate the effects of the provision.

(**) See Office Orders Nos. 63-A and 63-B - January 27,1934.NRA Files.

(***) See Order No. 47-3, Bankers Code - Order No. 454-2, Optical Retail Trade Code. NRA Files.

in Appendix No. 3, attached hereto, is helpful in determining the codes and code provisions affected and the reasons advanced for the grant of a stay subsequent to code approval.(*)

Appendices Nos. 3 and 4 and the comment relating thereto discloses that codes were likely to be subjected to stays at any time during the period of its approval of administration. Some codes had no stays for any purposes whatsoever, others only one and still others a number of stays. The following schedule lists the various codes examined which had more than one stay:

	CODES HAVING MORE THAN ONE STAY	NO. OF STAYS
1.	Cotton Textile	19
2.	Shipbuilding and Shiprepairing	2
3.	Wool Textile	4
4.	Electrical Manufacturing	2
9.	Lumber and Timber	5
18.	Cast Iron Soil Pipe	2
21.	Leather	4
23.	Underwear and Allied Products	4
24.	Bituminous Coal	3
25.	Oil Burner	2
33.	Retail Lumber	3
38.	Boiler Manufacturing	3
39.	Farm Equipment	3
46.	Motor Vehicle Retailing	3
48.	Silk Textile	3
54.	Throwing	3
60.	Retail Trade	9
64.	Dress Manufacturing	4
68.	Road Machinery	2
69.	Millinery and Dress Trimming	2
82.	Steel Casting	4
84.	Fabricated Metal Products	4
88.	Business Furniture, etc.	5
93.	Washing and Ironing Machine	4
96.	Buff and Polishing Wheel	2
102.	Shovel, Dragline and Crane	2
118.	Cotton Garment	9
121.	Hotel	3
124.	Motion Picture	3
125.	Upholstery and Drapery	2
128.	Cement	2
142.	Retail Jewelry	3
151.	Millinery	4
155.	Oxy-Acetylene	3
157.	Hair Cloth Manufacturing	2
176.	Paper Distributing	2
182.	Retail Food and Grocery	4

(*) The information set forth in the tabulation was obtained partially from the author's examination of the NRA records relating to exemptions and also the records relating to stays. The interchangeable use of the term "stay" and "exemption" resulted in the interchangeable filing of stays and exemptions, however, for purposes of the tabulation, the records relate only to exemptions or stays which were granted to an entire industry or a recognized subdivision thereof.

CODES HAVING MORE THAN ONE STAY (CONTINUED)	NO. OF STAYS
196. Wholesale Food and Grocery	3
201. Wholesale or Distributing	5
204. Plumbing Fixtures	3
234. Macaroni	5
237. Alloy Casting	5
249. Tag	2
250. Wire Rod and Tube	2
257. Printing Equipment	2
260. Ornamental Moulding	2
264. Foundry Equipment	3
266. Inland Water Carrier	2
267. Used Textile Bag	2
274. Saw and Steel	3
282. Restaurant	4
286. Beauty and Barber Shop	2
287. Graphic Arts	5
298. Wiping Cloth	3
313. Steel Wool	2
206. Mica	4
308. Fishery	5
311. Ready Mixed Concrete	2
319. Newspaper Printing Press	2
327. Machine-Applied Staple, etc.	2
329. Upholstery Spring	3
332. Ladies Handbag	2
334. Beverage Dispensing	3
341. Fiber and Metal Work Button	2
347. Machinery and Allied Products	9
354. Small Arms, etc.	3
363. Men's Neckwear	2
365. Sand Lime	2
367. Metal Treating	2
378. Peanut Butter	3
386. Umbrella Frame	4
393. Soft Fibre	2
397. Spray Painting Equipment	2
399. Household Goods Storage	3
410. Retail Rubber Tire	3
414. Bobbin and Spool	2
416. Leather Cloth Fabrics	2
421. Marble Quarrying	2
423. Drop Forging	2
445. Baking	5
451. Candlewick Bedspread	2
454. Optical Retail	2
458. Wholesale Confectioners	4
460. Preserve, Maraschino Cherry	2
462. Wholesale Tobacco	3
463. Candy Manufacturing	4
466. Retail Tobacco	3
467. Cigar Manufacturing	2
471. Trailer Manufacturing	2
474. Needlework - Puerto Rico	2

CODES HAVING MORE THAN ONE STAY (CONTINUED)	NO.OF STAYS
478. Secondary Steel	2
480. Structural Steel	3
485. Cotton Ginning Machinery	2
490. Imported Date Packing	3
508. Wholesale Plumbing, etc.	2
509. Marine Equipment	2
97	

CODES SUPPLEMENTARY TO BASIC CODES

84. Fabricated Metal Products	44
88. Business Furniture, etc.	2
105. Automotive Parts and Equipment	3
201. Wholesale and Distributing	6
275. Chemical Manufacturing	3
347. Machinery and Allied Products	33

RETROACTIVE STAYS

No examples of retroactive stays were found.

CONDITIONAL STAYS

A few stays were found to which were attached conditions imposed upon the persons seeking the relief in the stay. Stays of labor provisions often contained a condition as to the payment of an overtime rate for hours worked in excess of the maximum hours.(*) Stays of trade practice provisions in some cases contained conditions. (**) The above examples of conditional stays were ones issued after the time of the approval of the code. In some cases a stay in an order of approval of a code contained a condition by which certain parties afforded the relief of the stay would be required to do something with respecy to the continuance or termination thereof. (***) The author of this preliminary report has considered the subject of conditional exemptions. (****)

(*) See Order 151-25, in which a stay from the provisions of a code requiring payment of time and one-half for overtime was granted on condition that an overtime rate of time and one-third be paid. In this order a further condition was imposed - that the industry work its employees the first five (5) days of the week. See also Order 467-2. NRA Files.

(**) See Order 60-105, stay of loss limitation provisions on condition that no sales be made to members of the industry at less than six per cent (6%) above cost. (NRA Files)

(***) See Order 41 - Order 347-15. NRA Files.

(****) See Preliminary Report on Exemptions and Exceptions. NRA Organization Studies Section, Division of Review, NRA Files - Chapter IV, Page 40. The legal phases of exemptions have been discussed therein and since it is the opinion of the author that a stay and an exemption are to all practical extents the same, it is suggested that reference be made to the treatment of conditional exemptions hereinbefore mentioned.

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DENIAL OF STAYS

The records of the orders of approvals of codes and amendments disclose no denials of stays as they all referred to grants of stays or else were silent on the subject. The author has had no opportunity to examine the records of the various codes in which applications for stays or considerations by NRA of protests, had caused contemplation of a stay, which stay did not materialize at the time of the order of approval of the code. In addition, there has been no opportunity to examine the records of various codes with respect to applications for stays received by [illegible] in accordance with the rule and regulation set forth in Executive Order No. 6205-B, supra, however, examination of the records of stays issued after approval of a code shows that one stay was denied. (*)

PERIOD OF STAY

Administrative discretion with respect to the grant of stays includes determination as to duration thereof. Of necessity, and properly so, this phase of discretion is reposed in the administrative agency. The NRA exercised this right by granting stays for various periods of time, ranging from one day to an unlimited period. On some occasions, it became necessary to extend the period of stay and in some cases when the need of a stay was no longer evident, either upon application by particular interested parties or initiation by NRA, the duration of the stay was terminated. (**)

The following tabulation discloses the periods of time for which stays were granted:

PERIOD OF STAY	NO. OF STAYS
Unlimited	70
To June 16, 1935	8
One year	1
Six months to one year	8
Ninety days to six months	20
Sixty to ninety days	26
Thirty to sixty days	30
Fifteen to thirty days	73
Ten to fifteen days	120
Two to ten days	14
One day	4
Pending study	17
Pending further order	220
Pending amendment or hearing	13
Pending submission of evidence by industry or trade	16
Pending election of code authority	2

(*) See Order No. 88-18 NRA Files by which the Steel Shelving Division of the Business Furniture, Storage Equipment and Filing Supply Code was denied a stay of the trade practice provisions relating to marketing.

(**) See Order No. 445-13, Baking Code - Extension of a stay; also Orders Nos. 467-33, 467-40, 467-46, 467-48; see Administrative Order X-8, termination of stay. NRA Files.

A number of orders of stay did not disclose the particular period for which the stay was granted. In addition, some orders of stays related to several provisions of the code - one provision would be stayed for a period of sixty (60) days and another provision stayed for a period of thirty (30) days - although one order is involved, the various periods of time have been included in the above tabulation.

As stated above, due process requirements were met with an order of stay which was known as a "notice of opportunity to object." The majority of such stays involving due process requirements were either for a period of ten (10) days or fifteen (15) days. A great number of stays which were issued "pending further order" were the result of (1) show cause order (somewhat in the nature of a "notice of opportunity to be heard" and involving due process requirements) (2) Office Order No. 63, supra, which referred to the completion of a study of open price filing systems.

Other orders of stay varied as to duration. The stays for longer periods of time were for the purposes of study of particular industrial evils which were attempted to be removed through the vehicle of code provisions which NRA was hesitant to approve. The shorter periods of stays were to meet temporary situations existing in industries; e.g., necessities of overtime for inventory taking - time lost through holidays and other emergency requirements.

CHAPTER VI

EVALUATIONS AND CONCLUSIONS

The purposes of a stay are similar to those of an exemption (*). Its use and exercise depend upon legislative grant and administrative law dictates that the exercise of this power should be fair and reasonable. No mention of the term "stay" or any power thereof is found in the Act. Any such power is based purely upon a construction of the Act, the wording of which is sufficient for an implication of a grant of power. In view of this lack of specific mention of the term and statement of power, it is suggested that contemplated legislation, if any, make special reference to the power of stay and that full and adequate provision be made whereby the agency charged with the administration of the Act be permitted to exercise this power at any or all times, either generally or specifically.

It is the author's opinion that the safest reliance upon the basis of power to grant a stay is found in Section 10(b) supra, The chronicle of the delegation of power to grant stays as set forth in Chapter II, supra, discloses that general power had been conferred upon the Administrator but that the powers conferred by Section 10, were expressly reserved to the President. It is true that specific mention of power to

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(*) See Preliminary Report on Exemptions and Exceptions, NRA. Organization Studies Section, Division of Review - Chapter V, page 48, NRA Files.

grant stays is found in Executive Order 6205-B, but this delegation is limited to certain applications received from specified individuals within a definite period of time. On December 30, 1933, Presidential delegation of power referred to "exemptions and eliminations", but still no power of stay was mentioned. It may be argued that the powers of stay were so similar to those of elimination and exemption that there was no need of specific mention. It is submitted that the actual exercise of the power of stay should be based upon delegations specifically mentioning the power and that, in view of the fact that a stay relates to an entire industry or a recognized subdivision thereof, either geographical or industrial, the delegations should be limited to the Administrator or Administrative Board, with a possible delegation, if necessary, to an officer authorized to handle grants or denials of stays and exemptions (*).

Chapter III hereof sets forth the various attempts to define the term "stay". No legislative definition left a charted course for NRA in this respect. Various definitions of the power differed from its actual use. The line of demarcation was arbitrary and many times it was disregarded. Interchangeable use of such terms as "exemption","stay"and"exception" caused administr tive confusion. The term "elimination" likewise finds no legislative guide. No limitations were imposed as to when a "stay" or an elimiation" should be invoked. Words as such are mere vehicles but when used administratively, substance and procedure demand definitions and clarity. It is therefore suggested that legislative definitions of the terms "stay" and "elimination" should have been made.

A suggested definition of the term "stay" is - administrative action whereby an individual, group of individuals, either geographical or industrial, or an entire industry is relieved from the operation of the provisions of a code, in whole or in part, by the order of approval of the code. (**)

No suggested definition of the term "elimination"is made. Its use depends upon the policy of and approach to code-making. Approval of a code can be withheld until all objectionable features thereof are deleted, thereby eliminating need of this form of administrative action.

(*) See Preliminary Report on Exemptions and Exceptions, NRA Organization Studies Section, Division of Review - Chapter V, Page 53.

(**) See Preliminary Report on Exemptions and Exceptions, NRA Organization Studies Section, Division of Review - Chapter V, Page 52

If the opposite procedure is adopted, a full legislative definition of the term should be set forth.

The grant or denial of a stay involves the exercise of administrative discretion subject to certain limitations set forth in the law. Limitations imposed by Congress in the Act were in effect "to effectuate the policies of the Act", which policies were set forth in Section 1 thereof. It is admitted that these limitations permitted an ambit of wide administrative action. The necessities of fair and reasonable use of the power of stay within administrative discretion are apparent and some criteria therefor should be set forth. The criteria should take the form of standards set forth legislatively whereby power could be invoked upon proof and finding that the particular situation is one which comes within the limits of the standards. It is suggested that the creation of these standards be based upon the experiences of NRA in its use of this power. The sources of these experiences could be found in the various reasons why codes or code provisions were stayed. Some treatment thereof is set forth in Chapter V of this report.

This report has been concerned with stays and has limited itself to those which affected entire industries or a recognized subdivision thereof. All types of stays were found as a result of the investigation - some applying to entire industries; other applying to separate individuals. In actual administrative practice, the term "stay" was synonymous with that of "exemption". The files and records were treated in the same manner and the author finds that the problems of and reasons for the use thereof were alike.

The use of conditional stays often amended code provisions. The practice of attaching conditions to orders of stay or exemption may result in invalidity of the condition, depending upon its relation to the purposes of the Act and the exemption (*).

(*) See Part Three hereof, Chapter IV.

Part Two
Appendix No. 1

FURTHER RESEARCH - UNFINISHED PHASES OF THE STUDY

This report has been primarily concerned with information which would be on benefit to legislative committees or conferences. A copy of the outline (*) suggests a more detailed review of the subject. A number of sections of such outline have not been considered in this report. Questions of procedure, administrative details, routing of applications, considerations had by various Advisory Boards and the method of final administrative determination are not considered herein. The analysis of the types of code provisions subjected to stays discloses that this administrative power was utilized to meet due process requirements. The form of such a stay, its effectiveness as a form of notice to interested parties and also the question whether or not its use met with the legal requirements of due process are all subjects which are important to a rounded and complete report of the subject.

The advisability of the use of "elimination" as an administrative weapon in the process of code-making is dependent upon the questions of procedure and policy relating to the sponsoring and requirements of code approvals, therefore, the soundness of administrative policy as to the use of "elimination" is a subject worthy of consideration.

The use of the power of stay for substantive reasons often was without notice to industry, labor or other interested groups. The questions as to whether or not the intended use of the power of stay should be made the subject of prior notice and, if necessary subjected to public hearing; also considerations of due process have not been touched in this report.

Administrative use of the stay was evidenced in approvals of a number of code administration matters; e.g., code authority by-laws, trade practice complaint plans, budgets and other matters. What NRA did with respect to these phases of its activities insofar as the subject of stay in concerned is not covered by this report.

A complete analysis of the types of code provisions subjected to stays and the reasons for such stays should benefit the study. It is true that this phase of the subject is covered in this report in a preliminary form. There could be further development of this section of the study.

The author has not been able to explore the records of those situations which resulted in the denial of stays and the reasons for such denials would be a contribution to the further study of the subject.

(*) Appendix No. 2

STAYS
(Outline)

1. Introduction.

   1.1 Objective and scrope of study.

2. Bases in the Act.

   2.1 Section 3 (a).

   2.2 Application of Sec. 3(a) to Sec. 4, Sec. 7(b), and Sec. 7(c).

   2.3 Sec. 6(a) and 6(b).

   2.4 Sec. 10(a) and Sec. 10(b).

   2.5 Limitations, if any, upon the President.

   2.6 Reasonable implications.

3. Definition.

   3.1 Ordinary definition.

   3.2 Legal definition.

   3.3 Administrative definition - changes thereof.

   3.4 Discussion of relation to terms "exemption" and "exception".

4. Delegation of power to grant stays.

   4.1 Necessity of delegation and extent thereof.

      4.11 To the Administrator.

         4.111 P.R.A.

         4.112 Codes.

         4.113 Form of delegation

         4.114 Limitations on delegation.

   4.2 Retentions of power by President.

   4.3 Transfer of power to N.I.R.B.

      4.31 Rules and regulations of N.I.R.B. regarding executive grants or refusals of stays.

4.311 Form of approval.

4.312 Formalities of issuance.

4.313 Changes.

4.4 Additional delegations of, limitations or conditions on power granted to N.I.R.B.

Note: For purposes of study of subsequent delegations of power to lesser boards and officers the Administrator and N.I.R.B. will be considered together.

4.5 Delegations to lesser boards and officials.

4.51 Necessity

4.52 Early phases of N.R.A. administration.

4.53 Delegation to Division Administrator permitting temporary and emergency stays.

4.54 Limitations upon delegation.

4.55 Delegation to territorial administrators.

4.56 Legal aspects of such delegations.

4.6 Delegation of power for purposes of appeal.

4.61 Industrial Appeals Board.

5. Kinds of stays.

5.1 General - stay of all provisions of a Code.

5.2 Partial - stay of some provisions of a Code.

5.3 Group - stay of all or some provisions of a Code affecting a group.

5.4 Typical cases.

6. Time of issuance of order of stay.

6.1 Approval of Code.

6.2 After approval of Code.

6.3 Approval of amendment.

6.4 After approval of amendment.

6.5 Approval of Code administration matters.

6.6 After approval of Code administration matters.

7. General causes of stays of codes or amendments.

7.1 At time of Code approval or Code amendment.

7.11 Legality.

7.12 Legislative clariy and draftsmanship.

7.13 For purposes of study.

7.14 Conflict with other Codes.

7.141 Approved Codes.

7.142 Codes pending approval.

7.15 Enforcement of policy.

7.16 Recognition of protests.

7.17 Coordination or conflict with other governmental agencies.

7.171 Federal.

7.172 State or municipal.

7.18 Sec. 6 and Sec. 6(a).

7.19 True representation.

7.1$\underline{1}$ Difficulties of administration, compliance and enforcement.

7.1$\underline{2}$ Refusal of industry to accept administrative changes.

7.1$\underline{3}$ Other causes.

7.2 After time of Code approval or Code amendment.

7.21 Legality.

7.22 Changes in policy.

7.23 Difficulties of administration, compliance and enforcement.

7.24 Non-cooperation of industry.

7.25 Geographical problems.

7.26 Multiple code coverage.

7.27 Increase of exemptions.

7.28 Foreign competition.

7.29 Pending amendment.

7.21 Other causes.

Types of code provisions subjected to stays.

8.1 Code definitions.

8.11 Industry or subdivisions thereof.

8.12 Members of industry and classifications thereof.

8.13 Distribution agencies.

8.14 Commodities.

8.15 Analysis of bases of applications and industries affected.

8.2 Labor provisions.

8.21 Maximum hours.

8.211 Normal week period.

8.212 Normal day period.

8.213 Overtime tolerances.

8.214 Peak period.

8.22 Minimum wages.

8.221 Normal rate.

8.2211 Hourly rate.

8.2212 Piece rate.

8.2213 Weekly rate.

8.222 Overtime rate.

8.223 Apprentice rate.

8.224 Skilled rate.

8.225 Union contract rate.

8.23 Child labor.

8.24 Apprentice limitations.

8.25 Handicapped workers.

8.26 Standards of safety and health.

8.27 Home work.

8.28 Stretch-out.

8.29 Scrip payments.

8.21 Equitable readjustment of wages above the minimum.

8.22 Posting.

8.23 Collective bargaining.

8.24 Miscellaneous.

8.25 Bases of applications for stays of labor provisions.

8.26 Analysis of industries which were subject to stays of labor provisions.

8.27 Development of labor policy with respect to stays.

8.28 Legal aspects of labor provision stays.

8.29 Evaluation of experiences.

8.3 Trade practice provisions.

8.31 General analysis and discussion of trade practice provisions with respect to stays thereof, the provisions being grouped as follows:

8.311 Generally accepted in law.

8.312 Desirable but not fully accepted in law.

8.313 Desirable but no basis in law.

8.314 Undesirable.

8.315 Unenforceable.

8.32 Code Authority rules and regulations having force and effect of trade practice rules.

8.33 Price policy.

8.331 Price fixing.

8.3311 Fixed prices.

8.3312 Lowest reasonable price.

8.3313 Modal mark-up.

8.332 Price control.

8.3321 Loss leaders.

8.3322 Loss limitations.

8.333 Open price systems.

8.3331 Institution of system.

8.3332 Particular contracts.

8.3333 Method of operation.

Note: For purposes of discussion bid depository systems are included under this sub-division.

8.334 Cost provisions: -

8.3341 Sales below cost.

8.3342 Obsolete goods.

8.3343 Emergency disposals.

8.3344 Competition.

8.335 Accounting systems.

8.3351 Necessity of approval of Administrator.

8.3352 Complexity of system.

8.3353 Difficulties of installation.

8.336 Sales reporting systems.

9. Code Authority provisions.

9.1 Rights of Code Authority.

9.2 Obligations and duties of Code Authority.

9.21 Optional.

9.22 Mandatory.

9.3 Use of stay to enforce.

9.31 Representative elections.

9.32 Prevention of undue association participation.

9.33 Legality.

9.34 Policy.

10. Code Authority finances.

11. Labels

11.1 Bases of applications.

11.2 Use of stay for

11.21 Control.

11.22 Withdrawal.

11.23 Policy.

11.3 Effect of stays granted.

12. Statistical reports.

12.1 Executive orders of general application.

12.2 Bases of applications.

13. Conditional orders of approval.

13.1 Nature of stay granted.

13.2 Effect upon conditional orders.

13.3 Effect upon policy and general code structure.

14. Miscellaneous code provisions subjected to stays.

15. Government contracts.

15.1 Executive Orders 6337 and 6646.

15.2 Stays of codes provisions caused by Government contracts.

15.3 Nature and effect of stays for government contract purposes.

16. Period of stay.

16.1 Duration of Act.

16.2 Duration of code.

16.3 Temporary.

16.4 Emergency.

17. Types of orders, etc., other than code provisions which were subjected to stays.

17.1 Executive orders.

17.2 Administrative orders.

17.3 General rules and regulations.

18. Procedure.

18.1 Source of application.

18.11 Industry.

18.12 Labor.

18.13 Governmental agencies other than N.R.A.

18.14 Consumers.

18.15 Others.

18.2 Application directed to

18.21 Washington:

18.22 Field offices.

18.23 Code Authority.

18.24 Other governmental agencies.

18.3 Consideration by N.R.A. of application.

18.31 Interoffice.

18.32 Extra-office.

18.33 Due process.

18.4 Final action on application.

18.41 Form.

18.42 Notice.

19. Stays instituted by N.R.A.

19.1 Bases of action.

19.11 Policy.

19.12 Legality.

19.13 Protests.

19.131 Industry.

19.132 Labor.

19.133 Consumer.

19.14 Recognition of recommendations of advisory boards.

19.2 Analysis of industries and provisions stayed by N.R.A. on its own motion.

19.3 Effect of stays instituted by N.R.A.

19.31 Industry.

19.32 Labor.

19.33 Consumers.

20. Power of subsequent modification or termination.

20.1 N.R.A. initiation.

20.2 Application by industry.

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20.3 Application by labor.

20.4 Application by consumers.

20.5 Application by Code Authorities.

20.6 Bases of application.

20.7 Effects of modification or termination.

21. Evaluations.

22. Conclusions.

23. Bibliography.

Part Two
Appendix No. 3

I.

LIST OF CODES WHICH WERE SUBJECTED TO A STAY OF SOME OR ALL OF THE TRADE PRACTICE PROVISIONS THEREOF IN THE ORDERS OF APPROVAL OF SUCH CODES

CODE. NO.		NAME OF CODE
96	-	Buff and Polishing Wheel
124	-	Motion Picture
182	-	Retail Food & Grocery
196	-	Wholesale Food & Grocery
202	-	Carpet & Rug Manufacturing
204	-	Plumbing Fixtures
234	-	Macaroni
236	-	Cooking & Heating
237	-	Alloy Casting
239	-	Porcelain Breakfast Furniture Assembling
240	-	Advertising Display Installation Trade
241	-	Chewing Gum Manufacturing
243	-	Slide Fastener
84-2	-	Hand Chain Hoist
84-3	-	Chain Manufacturing
84-4	-	Electrical Industrial Truck Manufacturing
245	-	Corrugated & Solid Fibre Shipping Container
246	-	Paper Disc Milk Bottle Cap.
247	-	Food Dish & Pulp & Paper Plate
248	-	Glazed and Fancy Paper
249	-	Tag Industry
250	-	Wire, Rod & Tube Die
252	-	Cylindrical Liquid Light Paper Container
257	-	Printing Equipment
259	-	Hat Manufacturing
260	-	Ornamental Moulding, Carving & Turning
261	-	Foundry Supply
263	-	Machine Knife & Allied Steel Products
268	-	Secondary Aluminum
269	-	Carbon Black
270	-	Wood Heel
272	-	Unit Heater and/or Unit Ventilator
274	-	Saw & Steel Products
282	-	Restaurant
286	-	Beauty and Barber Shop
287	-	Graphic Arts
289	-	Cloth Reel
290	-	Photographic Mount
291	-	Wood Cased Lead Pencil
293	-	Gumming Industry
294	-	Gummed Label & Embossed Seal
295	-	Waterproof Paper

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CODE NO.		II NAME OF CODE
296	-	Fluted Cup, Pan Liner & Lace Paper
300	-	Lye
301	-	Sample Card
304	-	Outdoor Advertising
305	-	Fibre Can & Tube
306	-	Mica
307	-	Stay Manufacturing
311	-	Ready Mixed Concrete
313	-	Steel Wool Industry
315	-	Industrial Safety Equipment
325	-	Horseshoe & Allied Products
327	-	Machine Applied Staples & Stapling Machine
329	-	Upholstery Spring & Concessions Mfg.
331	-	Bulk Drinking Straw, Etc.
333	-	Canvas Goods
334	-	Beverage Dispensing Equip.
341	-	Fibre & Metal Work Clothing Button
349	-	Mayonnaise
356	-	Fullers Earth Producing
359	-	Preformed Plastic Products
362	-	Photographic & Photo Finishing
364	-	Clay Drain Tile Manufacturing
365	-	Sand Lime Brick
366	-	Retail Monument
367	-	Metal Treating
369	-	Expanding & Specialty Paper Products
370	-	Open Paper Drink, Cup & Round Nesting Paper Food Container
371	-	Sanitary Milk Bottle Closure
84-7	-	Tool & Implement
84-8	-	Hack Saw Blade Manufacturing
84-9	-	Forged Tool Manufacturing
84-10	-	Cutlery, Manicure Implement & Papers & Paper Hangers, Tool Mfg., etc.
84-12	-	Power & Gang Lawn Mower
84-11	-	Tackle Block Mfg.
377	-	Reclaimed Rubber Manufacturing
378	-	Peanut Butter
382	-	Transparent Materials Converters
385	-	Railroad Special Track Equipment
386	-	Umbrella Frame, etc.
388	-	Sandstone
391	-	Insecticide & Disenfectant
394	-	Lightning Rod Mfg.
397	-	Spray Painting & Finishing
399	-	Household Goods Storage & Moving
403	-	Bleached Shellac Manufacturing
406	-	Boatbuilding & Boat Repairing
409	-	Flexible Insulation
410	-	Retail Rubber Tire & Battery Trade
412	-	Loose Leaf & Blank Book

CODE NO.	III.	NAME OF CODE
414	-	Bobbin & Spool
416	-	Leather Cloth & Lacquered Fabrics
84-13	-	Porcelain Enameling Mfg.
84-14	-	Non-Ferrous Hot Water Tank
84-15	-	Wrench Manufacturing
201- 4	-	Beauty & Barber Equipment
84-16	-	Snap Fastener Mfg.
308- 2	-	Wholesale Lobster
419	-	Soft Lime Rock
420	-	Gypsum
421	-	Marble Quarrying & Furnishing
423	-	Drop Forging
426	-	Paper Makers Felt
432	-	Specialty Acct. Supply
436	-	Fur Manufacturing
444	-	Shoe Pattern Mfg.
84-18	-	Screw Machine Products
275- 1	-	Agricultural Insecticide & Fungicide
84-19	-	Cap Screw Mfg.
275- 2	-	Carbon Dioxide
84-20	-	Machine Screw Nut
308- 5	-	Blue Crab
84-21	-	Bright Wire Goods Mfg.
84-22	-	Drapery & Carpet Hardware
84-23	-	Machine Screw Mfg.
84-24	-	Wood Screw Mfg.
347- 6	-	Woodworking Machinery
347- 7	-	Beates & Jordan & Allied Products
201- 8	-	Wholesale Dry Goods
84-25	-	Steel Package Mfg.
84-26	-	Standard Steel Barrel & Drum
347- 8	-	Water Meter Mfg.
445	-	Baking
448	-	Optical Wholesale
450	-	Dog Food
455	-	Metal Etching
456	-	Ice Cream Cone
458	-	Wholesale Confectioners
460	-	Preserve, Maraschino Cherry & Glace Fruit
462	-	Wholesale Tobacco Trade
463	-	Candy Manufacturing
84-27	-	Galvanized Ware Mfg.
84-28	-	Job Galvanizing Metal Coating
84-29	-	Washing Machine Parts
84-30	-	Milk & Ice Cream Can Mfg.
84-31	-	Warm Air Furnace Mfg.
84-32	-	Hog Ring & Ringer Mfg.
84-33	-	Flexible Metal Hose & Tubing
84-34	-	Wire Rope & Strand

CODE NO.		IV. NAME OF CODE
347- 9	-	Diamond Core Drill
347-10	-	Mechanical Lubricator
347-11	-	Contractors Pump
347-13	-	Waterpower Equipment Industry
347-14	-	Rolling Mill Machinery
84-35	-	Cutting Die Mfg.
4- 1	-	Refrigeration
347-15	-	Pulverizing Machinery
201-11	-	Fur Wholesaling & Distributing
347-16	-	Steam Engine Mfg.
347-17	-	Rock & Ore Crushing
347-18	-	Reduction Machinery
464	-	Coca & Chocolate Mfg.
466	-	Retail Tobacco
467	-	Cigar Manufacturing
469	-	Sulphonated Oil Mfg.
471	-	Trailer Mfg.
472	-	Warm Air Register
347-20	-	Hoist Builders
347-19	-	Hoisting Engine Mfg.
347-21	-	Kiln Cooler & Dryer Mfg.
347-22	-	Conveyor & Material Preparation Material
84-35	-	Lift Truck & Portable Elevator
105- 1	-	Automobile Hot Water Heater
84-37	-	Artistic Lighting Equipment
105- 2	-	Replacement Axle Shaft
84-38	-	Complete Wire & Iron Fence
347-24	-	Roller & Silent Chain
201-12	-	School Supplies & Equipment
477	-	Public Seating
479	-	Cold Storage Door Mfg.
485	-	Cotton Ginning Machinery
489	-	Safety Razor & Safety Razor Blade Mfg.
490	-	Imported Date Packing
84-40	-	Cut Tack, Wire Tack & Small Staple Mfg.
347-25	-	Power Transmission
347-26	-	Caster & Truck Floor Mfg.
347-28	-	Water Softener & Filter
84-41	-	Open Steel Flooring
347-30	-	Multiple V-Belt Drive
201-13	-	Athletic Goods Mfg.
105- 3	-	Leaf Spring Mfg.
347-31	-	Envelope Machine Mfg.
347-32	-	Air Filter
347-33	-	Gas Powered Industrial Truck
347-34	-	Sprocket Chain
84-43	-	Vitreous Enameled Ware
492	-	Stereotype Dry Mat

CODE NO.	V.	NAME OF CODE
201-14	-	Woolens & Trimmings Distributing
347-35	-	Oil Field Pumping Engine Mfg.
88- 2	-	Filing Supply
88- 1	-	Fire Resistive Safe
347-36	-	Refrigerating Machinery
347-37	-	Concrete Mixer
347-40	-	Diesel Engine Mfg.
347-38	-	Jack Mfg.
347-39	-	Railway Appliance Mfg.
347-41	-	Hydraulic Machinery
507	-	Surgical Distributors
508	-	Wholesale Plumbing Products, Heating Products, etc.
275- 3	-	Industrial Alcohol
509	-	Marine Equipment Mfg.
511	-	Corrugated Rolled Metal Culvert Pipe
84-App.- 1		Fly Swatter Mfg.
84-48	-	Perforating Mfg.
84-52	-	Tubular Split & Outside Pronged Rivet Mfg.
84-53	-	Liquid Fuel Appliance
84-54	-	File Mfg.

- I -

LIST OF STAYS ISSUED SUBSEQUENT TO CODE APPROVAL - CODE PROVISIONS AFFECTED - REASONS THEREFOR

ORDER NO.	CODE	CODE PROVISION	REASON
1-101	Cotton Textile	Machine Hours	Limited equipment
1A-5	Cotton Textile	Hours (Sat. closing)	Impending strike.
2-3	Shipbuilding and Shiprepairing	Hours (for certain employees)	To start production.
2-14	Shipbuilding and Shiprepairing	Normal hours and overtime tolerance	Additional men unsatisfactory for testing installations.
2-31	Shipbuilding and Shiprepairing	Normal hours and overtime tolerance	Emergency work.
6-11	Lace Manufacturing	Machine hours (Barmens Machine)	Discriminate against small companies.
15-61	Men's Clothing	Normal hours	Peak demands.
16-22	Hosiery	Learning period	To enable employees to learn other skilled operations and assure steady employment.
18-18	Cast Iron Soil Pipe	Normal hours Machine hours	Discriminates against small enterprises.
19-14	Wall Paper	Normal week period	Scarcity of skilled help and peak demands.
41-18	Women's Belt	Normal week period	Scarcity of skilled help and peak demands.
42-8	Luggage & Fancy Leather	Normal Week Period	Scarcity of skilled help and peak demands.
60-5	Retail Drug	Minimum wage outside salesmen and drug store delivery boys.	Until Hearing.

- I - (Continued)

LIST OF STAYS ISSUED SUBSEQUENT TO CODE APPROVAL - CODE PROVISIONS AFFECTED - REASONS THEREFOR

ORDER NO.	CODE	CODE PROVISION	REASON
60-6	Retail Drug	Normal Day period.	More than one hou lunch period.
60-2	Retail Drug	All provisions	Relief for small enterprises in towns of 2500 or less.
60-16	Retail Drug	Consecutive hours for specially skilled employees.	Inventory.
		- II -	
5-16	Coat and Suit	1 member of Code Authority selected from Infants and Coats Assn.	Pending amendment.
3-17	Wool Textile	Rules of Practice (Moisture Basis)	Disclose information to competito and no useful purpose.
3-22	Wool Textile	Rules of Practice (for piece goods)	Export sales.
50-20	Automatic Sprinkler	Unfair methods of competition.	Pending amendment Difficulty of enforcement.
5-22	Coat and Suit	Quotations or sales on invitation to bid.	Demoralized condition of industr
25-6	Semi-Automatic Sprinkler	Method of Assessment	Non-representativ character of Code Authority
71-58	Paint, Varnish, and Lacquer	Manufacture and sale of shellac and varnish below cost.	Code conflict.
71-66	Paint, Varnish, and Lacquer	Sales below cost.	Processing schedules not extende
88-6	Business Furniture, Storage Equipment, etc.	Prohibiting price guarantee and sale below published price.	Relief to U.S. Government

ORDER NO.	CODE	CODE PROVISION	REASON
88-7	Business Furniture, Storage Equipment, etc.	Quantity discounts	Relief to U.S. Government
88-18	Business Furniture, Storage Equipment, etc.	Marketing Provisions	Impractical to determine whether prices conform to code.
88-25	Business Furniture, Storage Equipment, etc.	Sales below published prices to U.S. Government.	Relief to U.S. Government.
151-5	Millinery	Area Rates	File incomplete.
151-7	Millinery	Area Rates	Unfair Competitive condition.
151-16	Millinery	Days per week as applied to shipping crews.	Pending amendment
151-12	Millinery	Days per week as applied to shipping crews.	File incomplete
151-25	M illinery	Time and one-half payment	Unfair and disavantageous.
151-30	Millinery	Daily hours and overtime pay	Make up time lost Christmas Day.
151-71	Millinery	Hours	None given.
363-11	Men's Neckwear	F.O.B. deliveries	Provision creates confusion and inequalties
467-2	Cigar Mfg.	Hours, Merchandising Plan, Wages.	Continuation of stay in Executive Order of Approval
467-7	Cigar Mfg.	Wage exemption for slow workers	Operating at a loss
467-27	Cigar Mfg.	Overtime payment	Work on Armistice Day.
467-33	Cigar Mfg.	Wages	Unable to pay code wages and remain in business

ORDER NO.	CODE	CODE PROVISION	REASON
467-45	Cigar Mfg.	Overtime	Lincoln's Birthday
60-5	Retail Drug	Minimum wages for drug store delivery employees.	None given
60-105	Retail Drug	Loss limitations	Confusion in application of provision.

PART THREE

EXEMPTIONS AND EXCEPTIONS

By

D. L. Boland

INTRODUCTION

The purposes of this study are to disclose the question, problems, limitations and deficiencies relating to exemption and exceptions which were presented to or imposed upon the National Recovery Administration in its capacity as a governmental agency charged with the formulation, promulgation and administration of codes of fair competition under the terms of the National Industrial Recovery Act. (*) The report endeavors to treat certain phases of the above matters, which, in the opinion of the author of the report, are of primary importance. These phases are concerned with the National Industrial Recovery Act and the bases of power therein contained with respect to the subject of exemptions and exceptions; the delegation of such power; the necessity of such delegatio and a recapitulation of the exercise of such powers, both administrative and delegative.

The report attempts to present an explanation and analysis of the various kinds of exemptions and exceptions. The extent of the analysis covers the causes of the application or applications or initiations thereof, the considerations had thereon by the National Recovery Administration and the nature of its decision.

The bases of the findings set forth in this report result from an investigation of the files and records of the National Recovery Administration and its official orders which relate to exemptions and exception Lack of time and personnel prevented an investigation of all the records of the administration relating to this subject, so for purposes of this preliminary report a selected list of codes was drawn up, such list being made upon the basis that an examination thereof would disclose in the main a cross-section of American industry and also a fairly representative and reasonable picture of the problems and questions presented to the Administration in connection with the subject of exemptions and exceptions. The list of codes is as follows:

LIST OF CODES EXAMINED.

Cotton Textile
Shipbuilding and Shiprepairing
Wool Textile
Electrical Manufacturing
Coat and Suit
Lace Manufacturing
Corset and Brassiere
Legitimate Full Length Dramatic and Musical Theatrical
Lumber and Timber Products
Iron and Steel
Photographic Manufacturing
Fishing Tackle
Rayon and Synthetic Yarn Producing

(*) 48 Stats. 195

LIST OF CODES EXAMINED (Continued)

Men's Clothing
Hosiery
Automobile Manufacturing
Cast Iron Soil Pipe
Wall Paper Manufacturing
Salt Producing
Leather
Motion Picture Laboratory
Underwear and Allied Products Manufacturing
Bituminous Coal
Oil Burner
Gasoline Pump Manufacturing
Textile Bag
Transit
Artificial Flower and Feather
Linoleum and Felt Base Manufacturing
Lime
Knitting, Braiding and Wire Covering Machine
Retail Lumber, Lumber Products, Building Materials and Building Specialties
Laundry and Dry Cleaning Machinery Manufacturing
Textile Machinery Manufacturing
Glass Container
Builders Supplies Trade
Boiler Manufacturing
Farm Equipment
Electric Storage and Wet Primary Battery
Women's Belt
Luggage and Fancy Leather Goods
Ice
Boot and Shoe Manufacturing
Saddlery Manufacturing
Motor Vehicle Retailing Trade
Bankers
Silk Textile
Optical Manufacturing
Automatic Sprinkler
Umbrella Manufacturing
Mutual Savings Banks
Handkerchief
Throwing
Compressed Air
Heat Exchange
Pump Manufacturing
Cap and Closure
Marking Devices
Retail Trade
Paint, Varnish and Lacquer Manufacturing
Business Furniture, Storage Equipment and Filing Supply
Asphalt Shingle and Roofing Manufacturing

LIST OF CODES EXAMINED (Continued)

Dress Manufacturing
Paper and Pulp
Millinery
Can Manufacturers
Wholesaling or Distributing Trade
Schiffli, the Hand Machine Embroidery, and the Embroidery Thread and Scallop Cutting
Men's Neckwear
Aluminum
Cigar Manufacturing

The objectives of this study have been mainly concerned with the problem of legislation, keeping in mind at all times the content of the President's letters to the chairmen of certain committees of the Congress with respect to suggestions for future legislation embodying the principles of the NRA. As a result, the author of the study has concerned himself with the experiences of the National Recovery Administration with exemptions and exceptions as a legislative question, the extent of the power to grant exemptions and exceptions, the limitations upon such power, the methods of use and exercise of that power, the methods of the delegation of such power, and constructive suggestions as to the subject in general. The outline of the study which is attached hereto is much more comprehensive and includes phases of the study which are not made part of this preliminary report, some of which are problems of procedure, administrative detail, relationships with other governmental agencies, more critical analyses of the subjects of this report and evaluations of experiences relative thereto. This preliminary report is rather concerned with the more important and substantive subjects hereinabove mentioned.

No attempt has been made to extend the scope of the study or the sources of material thereof beyond the actual files and records of the National Recovery Administration. These records do not include those of code authorities, other governmental agencies, or private individuals. No conferences have been had with any such agencies or individuals. In short, it is the intention of this report to present in preliminary form some answer to the question - What did the National Recovery Administration do in the exercise of its power to grant or deny exemptions from and exceptions to code provisions? Again, it is the intention of this study to present in likewise preliminary form some answer to the question- What should any future governmental agency embodying the principles of NRA be empowered to do with respect to exemptions from and exceptions to code provisions?

CHAPTER I

BASES OF POWER

The National Industrial Recovery Act (*) became law on June 16, 1933. Title I of such Act related to industrial recovery, and provided in general for the set-up of various codes of fair competition. Section 3(a) of the Act states as follows:

> "Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are 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 this title: Provided, That such code or codes shall not permit monopolies or monopolistic practices: Provided further, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared."

It is to be noted that under the terms of this particular section the President was delegated certain power to

> "* * * impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in the furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared."

(*) Public Resolution No. 67, House Resolution No. 5755, 73d Congress, 48 Stats. 195

It is apparent from this particular section that Congressional delegation of power had been made up to the President to grant exemptions and exceptions from the provisions of codes approved under the provisions of the said Section 3(a). This sentence gives the President power to do two things:

(1) To impose certain conditions: and

(2) To provide exceptions and exemptions.

As to the first, it says he "may, as a condition of his approval of any such code, impose such conditions".

As to the second, it is said he "may provide such exceptions to and exemptions from the provisions of such code, etc."

A careful reading of the grant of power reveals that the clause "as a condition of his approval of any such code" surrounded by commas, is interposed between "may" and "impose", whereas later "may" is again repeated and placed just before "provide" without any such interposition. It must follow, therefore, that the very language of the act is such that no time condition is expressed, limiting the power to grant exceptions and exemptions.

Section 4(a) of the National Industrial Recovery Act provides as follows:

> "The President is authorized to enter into agreements with, and to approve voluntary agreements between and among, persons engaged in a trade or industry, labor organization, and trade or industrial organizations, associations, or groups, relating to any trade or industry, if in his judgment such agreements will aid in effectuating the policy of this title with respect to transactions in or affecting interstate or foreign commerce, and will be consistent with the requirements of clause (2) of subsection (a) of section 3 for a code of fair competition."

This section contemplates the creation of voluntary agreements between the President and various groups, but exercise of the authority is subsequently conditioned upon the requirement that the agreement is consistent with the provisions of the second clause of Section 3(a) herein-above set forth. This clause refers to monopolies and it may be argued that the authority conferred upon the President by Section 3(a) to grant exemptions and exceptions from the provisions of codes applies to Section 4(a) agreements insofar as monopolies and oppression of small enterprises are concerned.

Section 7(b) of the Act is as follows:

> "The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions referred to in clauses (1) and (2) of subsection (a) prevail,

to establish by mutual agreement, the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title, and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition, approved by the President under subsection (a) of section 3."

Section 7(c) of the Act provides:

"Where no such mutual agreement has been approved by the President he may investigate the labor practices, policies, wages, hours of labor, and conditions of employment in such trade or industry or subdivision thereof; and upon the basis of such investigations, and after such hearings as the President finds advisable, he is authorized to prescribe a limited code of fair competition fixing such maximum hours of labor, minimum rates of pay, and other conditions of employment in the trade or industry or subdivision thereof investigated as he finds to be necessary to effectuate the policy of this title, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of section 3. The President may differentiate according to experience and skill of the employees affected and according to the locality of employment; but no attempt shall be made to introduce any classification according to the nature of the work involved which might tend to set a maximum as well as a minimum wage."

The above two sections contemplate circumstances under which maximum hours of labor and minimum rates of pay and other conditions of employment might be made the subject of an agreement between the President, employers and employees of any trade or industry or subdivision thereof or the occasion of the exercise of the power by the President to prescribe a limited code of fair competition as to maximum hours of labor, minimum rates of pay and other conditions of employment. The agreements so contemplated under the terms of Sections 7(b) and 7(c) necessarily were to be considered as having the same effect as a code of fair competition approved under the provisions of Section 3(a). The effect of this declaration carried the full authority conferred in Section 3(a), which, as hereinabove mentioned, conferred upon the President the power to grant "* * * exceptions to * * and exemptions from * * * the provisions of such codes * *".

The administration of the Act necessarily required some latitude of administrative discretion. The provision made therefor was Section 10(a) of the Act, which is:-

"The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and fees for licenses and for filing codes of fair competition and agreements, and any violation of any such rule or regulation shall be punishable by fine of not to exceed $500, or imprisonment for not to exceed six months, or both."

Section 10(b) provides:-

"The President may from time to time cancel or modify any order, approval, license, rule or regulation issued under this title; and each agreement, code of fair competition, or license approved, prescribed, or issued under this title shall contain an express provision to that effect."

The power conferred upon the President by these two sections permitted discretion in the grant or denial of exemptions or exceptions, authorized the creation of rules and regulations relating thereto and the cancellation and modification of any order, rule or regulation. These sections enlarge upon the power conferred to grant exemptions and exceptions with the further additional requirement that each code contain the express provisions of Section 10(b), which seems to be the safest to rest the power to grant exemptions and exceptions.

The power conferred upon the President as set forth above is broad and subject to few limitations. These limitations are expressly set forth as follows:

In Section 3(a) -

"for the protection of consumers, competitors, employees and others and in the furtherance of the public interest * * * as the President in his discretion deems necessary to effectuate the policy herein declared."

Section 7(b) provides -

"as may be necessary * * * to effectuate the policy of this title; * *."

Section 7(c) provides -

"* * as he finds to be necessary to effectuate the policy of this title."

Likewise Section 10(a) contains a limitation upon the exercise of administrative discretion -

"as may be necessary to carry out the purposes of this title".

An examination of Section 1, Title I, of the National Industrial Recovery Act discloses a legislative declaration of the existence of a great national emergency and also various widespread problems and conditions in American industry and labor which, through the extent of their seriousness and effect necessarily required the exercise of great administrative discretion on the part of the person charged with the administration of the law. These legislative declarations set forth the policy and purposes of the Act and as such constitute the standards to which the President was required to adhere and act as limitations upon the grant of power hereinbefore mentioned.

The legislative history of the NIRA is particularly meager upon the question of exemptions and exceptions to codes. An examination of the committee reports in both Houses, the hearings before those committees, and the debates in Congress upon the submission of the Recovery Bill itself furnishes only slight support to any policy of making exemptions to the operation of codes. However, such material as may possibly be regarded as bearing upon the point is herewith set forth.

Regarding Section 7(c) of the Act, Mr. Richberg had this to say before the Committee on Ways and Means of the House:

> ". . . I will just refer you to the next section on page 8, where the President is authorized, where no mutual agreement has been approved, to investigate the conditions and to establish a limited code of fair competition which fixes maximum hours of labor, minimum rates of pay, and other working conditions; and on page 9 the specific provision is made that 'the President may differentiate according to experience and skill of the employees affected and according to the locality of employment'. And that is the thought which runs throughout the bill, as I understand it." (Page 71, May 18, 1933).

Concerning the same section of the Act, Senator Wagner had this to say before a hearing of the same committee:

> ". . . Where no agreement can be reached or has been approved, the President is authorized to investigate and to prescribe by way of a limited code or as a part of a general code the standards of hours, wages and conditions.
>
> "Of course, in those cases, in his investigation he must take into consideration the locality, difference in the cost of living in certain localities, and other matters which enter into a determination of hours and wages and conditions, with which we are all familiar." (May 19, 1933).

As finally passed, Section 7(c) of the Act gives definite sanction to a differentiation -

> "according to experience and skill of the employees affected and according to the locality of the employment."

Therefore, the meaning of the Act upon this point seems to have been well presented at the foregoing committee hearing.

Concerning Section 4(a) of the Act, Senator Wagner said at the hearing before the Committee on Finance of the United States Senate:

> ".... In addition to the voluntary code, and the compulsory code, there is also provision that a portion of an industry may enter into some agreement that is different from the codes, because the government takes it out of the code for some specific purpose. For instance, in some locality conditions exist that do not exist within the trade generally, and that may require, rather than an exception in the code, a definite agreement between the Government and the individual industry." (Page 3, May 22, 1933).

This recognition of differentiation by locality applies only to the agreement features, and does not by its terms apply to voluntary codes and compulsory codes.

The following brief colloquy between Senators La Follette and Wagner at another hearing before the same committee relates to Section 10(b) of the Act:

> Senator La Follette. "Senator Wagner, did you and your associates consider the advisability of conferring power upon the President to amend or revoke these codes of fair competition in cases where it was demonstrable that the public interest was being injured by their continuance?"
> Senator Wagner. "That is right in the act. He may modify, cancel, or do anything to the order.
>
> Section 10(b) of the Act seems to be the safest reliance in justifying exemptions and exceptions to codes. The wording of the Section is so broad that the President seems clearly to have the power of granting exemptions and exceptions.(*)

The report of the House Committee on Ways and Means upon the Recovery Bill has little to say which bears upon the subject of exemptions and exceptions. The following are the only excerpts from the report which are in point:

(*) It is interesting to note that the Administrator assumed he had power to grant exemptions - See Office Order, December 7, 1933 - although the powers conferred by Section 10 had been reversed by the President (See Executive Order 6205-A) NRA files.

". . . If codes, agreements, or licenses prove faulty, the power is reserved to the President, under section 9(b), to cancel or modify any order, approval, license, rule or regulation issued under this title."

Section 9(b) later became Section 10(b) as finally enacted:

". . . Whereas a code of fair competition will be made for an entire trade or industry and must be made by those truly representative of the trade or industry, these voluntary agreements can be entered into by parties in an industry or in more than one industry. The code binds all persons engaged in a trade or industry, but an agreement binds only those entering into it. Thus the provisions for codes and agreement supplement each other and provide a thoroughly flexible machinery of industrial operation." (Pages 3 and 4 of House Report No. 159, supra).

Of course, the last of the foregoing excerpts merely explains the difference between a code and a voluntary agreement. If anything is to be gained from this portion of the report it would seem to be that codes are presumed to be binding upon all members of an industry alike.

In the report of the Senate Committee on Finance upon the National Industrial Recovery Bill there is nothing which relates to the subject of exceptions and exemptions. (*)

From the debates in Congress we likewise find little material. The following excerpts from the Congressional Record are substantially all of the material which is relevant:

The Presiding Officer. (Mr. Neely in the chair.) ". . . The next amendment was, on page 7, line 21, after the name 'President,' to insert 'shall find that destructive wage or price cutting or other activities contrary to the policy of this title are being practiced in any geographical area or in any subdivision of any trade or industry, and . . .'" (Page 5255, Senate, June 8, 1933)

Mr. Black. "Mr. President, there was an amendment pending to that particular amendment. That was the pending question, as I understood. The amendment was to strike from the amendment the words 'in any geographical area'." (Page 5255, Senate, June 8, 1933)

Mr. George. ". . . If the Senator from Mississippi is going to insist upon it, I shall move to strike out 'in any geographical area or' on page 7, and the same language on page 8 of the bill."

See footnote on next page.

> Mr. Harrison. "May I say to the Senator from Georgia that I am not insisting particularly on my proposition in that regard, because this amendment was offered in the comittee, and, of course, I feel that I ought to stand by the action of the committee; but General Johnson, when he appeared before the committee, said he did not think it was necessary as to this matter. I asked unanimous consent for the reconsideration of the vote by which it was adopted in order to get the matter before the Senate, so that we could dispose of it."
>
> Mr. George. "I make that motion, Mr. President, and suggest the absence of a quorum unless it is accepted."
>
> Mr. Presiding Officer. "The absence of a quorum is suggested. The clerk will call the roll." (Page 5259, June 8th, 1933.)

After a roll call with 92 members answering, the foregoing discussion of licenses under Section 4(b) of the Act was continued. Section 4(b) was finally passed without the provision as to geographical areas.

The following remarks of Mr. Black illustrate the opposition to the unsuccessful attempt to make the license features have a geographical aspect:

> ". . . I strenuously object to having any one state marked off with lines around it, and the statement made to the public that there is an infection in that State in a particular industry. It seems to me that we should either have the rules applied to an entire industry or that they should not apply to it at all. I can see nothing fair, when there might be an investigation of some complaint made about one State, saying that we will require every person engaged in the business in that State, drawing a line around it, to be licensed, but that we will make no such requirement of those engaged in the same industry in any other State. . ." (Page 5260, June 8, 1933)

This portion of the legislative history seems of doubtful value to us because the license features of the Act were not exercised by the President, and his power to license expired by the terms of the Act a year earlier than the other provisions of the Act.

(*) See Report No. 114 of the Senate, 73d Congress, 1st Session.

CHAPTER II

DEFINITION AND SCOPE OF TERMS "EXEMPTION" AND "EXCEPTION"

An "exemption" in the ordinary meaning of the word is "the act of exempting or state of being exempted; freedom from any charge, burden, evil, etc., to which others are subject; immunity; privilege; * * *". (*)

According to the strict legal definition the term "exemption" relates "to the right given by law to a debtor to retain a portion of his property without its being liable to execution at the suit of a creditor, or to a distress for rent." (**)

The ordinary meaning of the term "exception" is "the act of excepting or executing; exclusion; restriction by taking out something which otherwise would be included; as in a class, statement, or rule. -

> "That which is excepted or taken out from others; person, thing, or case specified as distinct, or not included; as, almost every general rule has its exception." (***)

The legal meaning of the term "exception" has several applications, but for the purposes of this study refers to an exclusion from the general rules and operations of the law. (****)

The National Recovery Administration from the outset recognized its power to grant exemptions and exceptions. Paragraph 14 of the original President's Reemployment Agreement (5) Bulletin No. 3, National Recovery Administration, of the President's Reemployment Program, July 20, 1933, specifically provided for petitions for stays of the particular provisions pending a summary investigation by NRA. The order of approval of the first NRA Code (Cotton Textile) which

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(*) Webster's New International Dictionary of the English Language, G. & C. Merriam Co., 1934, at p. 767.

(**) Bouvier's Law Dictionary, Rawle's Third Revision, Vol. 1, p. 1152.

(***) Webster's New International Dictionary of the English Language, G. & C. Merriam Co., 1934, at p. 763.

(****) Bouvier's Law Dictionary, Rawle's Third Revision, Vol. 1, p. 1108.

contained an exception as to certain members of the industry from the provisions requiring machine hour limitations. The use of this power continued, but no administrative attempt to define the terms "stay" "exemption" and "exception" were used synonymously and without regard to any orderly definition and statement of the scope of the meanings of the various terms. This interchange of the use of the terms necessarily required clarification and on May 5, 1934, Hugh S. Johnson, Administrator for Industrial Recovery, by Administrative Order No. X-27, prescribed rules and regulations concerning exceptions to and exemptions from approved codes of fair competition. The order defined the term "exemption" as follows:

> "The term 'exemption' shall include 'exceptions' and 'stays' and all rulings whereby an individual, group or class is released from the full operation of a provision of a code."

It will be seen from this administrative definition that the term "exemption" and "exception" related to a release from an approved code and that the intention of the Administration was to consider them in the same meaning and sense. This administrative definition continued to be operative until approximately September 1, 1934, when the Administration issued an Office Manual. Part III, par. 3210, of the Office Manual, described the term "exemption" as follows:

> "The term '<u>Exemption</u>' includes any ruling whereby an individual, group, or class within an industry is released from the full operation of a code provision."

Paragraph 3210 further states -

> "To preserve uniformity of usage the term 'Exceptions' will not be used as a synonym for 'Exemptions'.
>
> Such Office Manual contains the following statement:
>
> "Superseding all previous Office Orders and Memoranda, including all Administrative Orders and all Executive Orders with general application of NRA."

and further declares:-

> "It is the purpose of the Office Manual to:-
>
> > "To eliminate all conflicts and obscurities in existing Office Orders, Office Memoranda, and Administrative Orders."
> >
> > "Upon completion of the first edition all previous Office Orders and Memoranda will be revoked."

This Office Manual was ordered by the direction of the Administrator and the order of issuance thereof was signed by G. A. Lynch, the Administrative Officer.

It will be noted from the above that the Office Manual varies from the definition set forth in Administrative Order X-27. According to the statement of the explanation of the Office Manual the terms of Administrative Order X-27 were superseded and accordingly would be affected, but the author of the report, during the course of his investigation, conferred with Mr. Melvin Sims, Assistant Counsel of the Legal Division of the NRA, regarding the definitions of the terms "exemptions" and "explanations" contained in the Office Manual. Mr. Sims was a member of the committee appointed by the Administrator to prepare the Office Manual and was well acquainted with the circumstances surround the inclusion of Part III, Par. 3210. Mr. Sims explains the variance in that the reference to the term "exception" related only to the situation created by the Presidential use of the term "exception" in Executive Order 6646 relating to Government contracts and that it was the intention of the drafters of the Office Manual to treat the both terms as synonomous with the one different instance mentioned. No other official administrative definitions of the terms have been made and for the purposes of this report the original intention of the Administration shall be followed and the terms "exemptions" and "exceptions" shall be used synonomously.

CHAPTER III

DELEGATION OF POWER TO GRANT OR DENY EXEMPTIONS AND EXCEPTIONS

Under the terms of Section 2(a) and 2(b) of the NIRA, the President was authorized to establish such agencies, accept the services of and to utilize Federal officers and employees, prescribe their authorities, and to delegate any of his functions and powers under the title of the Act to such officers, agents, and employees. The particular sections in question are as follows:

> " To effectuate the policy of this title, the President is hereby authorized to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the provisions of the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed.
>
> "The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint, and may establish an industrial planning and research agency to aid in carrying out his functions under this title."

Pursuant to this authority, the President on June 16, 1933, by Executive Order No. 6173, appointed Hugh S. Johnson, as Administrator for Industrial Recovery under Title I of the Act. Under the terms of the said order the President further appointed a special Industrial Recovery Board to be composed of the Secretary of Commerce as Chairman, the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Labor, the Director of the Budget, the Administrator for Industrial Recovery, and the Chairman of the Federal Trade Commission. General Johnson, Administrator for Industrial Recovery, was granted authority for thirty days subject to the approval of the special Industrial Recovery Board, to appoint the necessary personnel on a temporary basis and to conduct the work authorized under Title I of the Act. On July 15, 1933, the President, be Executive Order No. 6205-A, continued the appointment of Hugh S. Johnson as Administrator for Industrial Recovery and authorized him, subject to the general approval of the aforementioned Special Industrial Recovery Board, to appoint the necessary personnel on a permanent basis, and among other things to exercise functions invested in the President by Title I of the Act, except the approval of codes, making of agreements, issuance of licenses, or exercise of power conferred in Sections 3(e), 6(c) 8(b), 9 and10. The first specific reference to exemptions in the various delegations of power by the President to the Administrator is found in Executive Order No. 6205-B of July 15, 1933, in which the President granted the Administrator power to stay the provisions of a code upon the receipt of an application for an exception to or an exemption from a code from persons who allege d that the operation of a code would result in undue hardship.

PRESIDENT'S REEMPLOYMENT AGREEMENT

Early in the administration of Title I of the National Industrial Recovery Act the President invoked the powers contained in Section 4(a) of the Act to institute the program of agreements knows as the President's Reemployment Agreement. This program was announced by Bulletin No. 3, issued July 20, 1933, and on September 13, 1933, Bulletin No. 5 of the National Recovery Administration, as approved by the Administrator and the Chairman of the National Industrial Recovery Board, (apparently a misnomer for the Special Industrial Recovery Board), set forth regulations and procedure for local NRA Compliance Boards. These boards were set up for the handling of complaints of non-compliance and petitions for exceptions from the terms of the PRA and were composed of members who volunteered their services in the particular districts in which they lived. The boards were empowered under Section 2 of the Bulletin to receive all petitions for exceptions from the provisions of the PRA and to grant exceptions in cases of peculiar circumstances or great and unavoidable hardship. Certain exceptions from the delegation of this power were set forth in Section 2 of the bulletin. It was confined to consideration of individual cases of individual hardship and in general these boards were permitted to grant exceptions from the wage and hour provisions of the PRA. No specific delegation of power to grant exceptions to and exemptions from the PRA was made by the President at the time of the issuance of Bulletin No. 5, but on November 22, 1933, the President, by Executive Order No. 6443, authorized the Administrator to grant exceptions to and exemptions from agreements. (Referring to the President's Reemployment Agreement).

The local NRA Compliance Boards operated on a voluntary basis and consisted mainly of members of local committees which had been set up by civic groups at the time of the institution of the PRA campaign. These boards were created in practically every city and town in the United States and e xercised the power granted from the time of the issuance of Bulletin No. 5.

In the meantime, the Administrator retained the final power to grant PRA exemptions. Office Order No. 40, issued by the Administration over the signature of Alvin Brown, Assistant Administrator and Executive Officer, created a National Compliance Board, which Board was empowered to recommend exceptions and the Eagle Branch of the Compliance Division of the Administration was designated as the body to grant exemptions from the PRA . No other specific administrative delegations of the power to grant PRA exemptions and exceptions has been found in the records of NRA.

CODES UNDER SECTION 3(a)

Immediately after June 16, 1933, the NRA began the codification of industry and trade and the approval of various codes submitted necessarily required exercise of power to grant exemptions therefrom. The iriginal delegation by the President was of general description, but the Administrator acted thereunder until December 30, 1933 , when the President, by Executive Order No. 6543-A delegated to the Administrator the following functions and powers;

"(2) The approval of any *** exception or exemption from *** any one or more provisions of any code of fair competition."

This delegation specifically related to codes and incorporated power theretofore generally granted. It specifically shows that no limitations were placed upon the Administrator other than those contained in the Act in the exercise of the power conferred.

A further Presidential delegation of power to grant exemptions occurred on March 14, 1934, when the President, in the exercise of the executive and governmental discretion to impose such conditions as may be necessary in the governmental purchasing activities, set forth in Executive Order No. 6646 certain requirements with regard to bids submitted to governmental agencies and at the same time in paragraph 5 of the order empowered the Administrator for Industrial Recovery to make exceptions in specific cases and otherwise under the order when in the judgment of the Administrator justice to the public interest would be best served thereby.

JOINT A.A.A. AND N.R.A. CODES

The National Recovery Administration was primarily concerned with the codification of industry for the purposes of industrial recovery. The Presidential program also included the rehabilitation of agriculture through the vehicle of the Agricultural Adjustment Administration and in the terms of the Agricultural Adjustment Act (*), the Secretary of Agriculture was appointed as Administrator of the Act.

On June 26, 1933, the President, by Executive Order No. 6182, delegated to the Secretary of Agriculture all of the functions and powers (other than the determination and administration of provisions relating to hours of labor, rates of pay, and other conditions of employment) as referred to in Title I of the Act with respect to the industries and trad engaged partly in the handling of milk and its products, tobacco and its products, and all foods and foodstuffs. This delegation was subject to the reservation of power in the President to approve or disapprove provisions of any code. This delegation was re-affirmed in Executive Order No. 6207 dated July 21, 1933, and on January 8, 1934, the President, by Executive Order No. 6551, transferred all of the functions and powers theretofore delegated to the Secretary of Agriculture to the Administrator for National Recovery insofar as these functions and powers related to certain industries which were set forth in the order and which were also the subject of subsequent agreement between the Secretary of Agriculture and the Administrator for Industrial Recovery. The result of this Executive Order placed codes covering industries and trades which were closely allied to the regulations of the Agricultural Adjustment Administration under the power of the Administrator for Industrial Recovery who had theretofore been delegated power to grant or deny exemptions and exceptions.

(*) Public Resolution No. 10, 73d Congress.

CREATION OF NATIONAL INDUSTRIAL RECOVERY BOARD

In September 1934, the President decided upon a change in the form of the administering body of the National Industrial Recovery Act. General Johnson had resigned as Administrator for Industrial Recovery and on September 27, 1934, the President, by Executive Order No. 6859, created the National Industrial Recovery Board, consisting of seven members. The order appointed Clay Williams, A. D. Whiteside, Sidney Hillman, Leon C. Marshall, and Walton Hamilton as members of the Board, and appointed Blackwell Smith Legal Adviser and Leon Henderson, Economic Adviser to the Board. These two advisers served as ex-officio members of the Board. The five members appointed (other than ex-officio members) were empowered to administer, under the direction of the President, Title I of the Act, and the Board was authorized to exercise all powers theretofore conferred by executive orders upon the Administrator for Industrial Recovery. This creation of the Board and transfer of power from the Administrator to the Board necessarily carried the power to grant or deny exemptions or exceptions, theretofore granted to the Administrator.

DELEGATION OF POWER TO LESSER OFFICIALS

Applications for exceptions and exemptions from the provisions of the codes increased as the number of approved codes increased. At the outset of the Administration, individual applications for exemptions were granted or denied by Presidential orders (*). Later such others were signed by General Johnson, but the volume of applications so increased that the delegation of power to lesser officials of the NRA became necessary.

On March 26, 1934, General Johnson, through the vehicle of Office Order No. 75, set up a procedure to be followed in rulings on code administration problems. Part of this procedure related to exceptions and exemptions and provided that each Division Administrator was empowered to make rulings on applications for exemptions and exceptions and that the Division Administrator's decision would be final, subject only to the ultimate disapproval of the Administrator himself. This power of the Division Administrator was continued throughout the code administration period of NRA. (**) No further delegations were made to officials under the supervision of Division Administrators, although Deputy Administrators were given power of recommendation.

TERRITORIAL ADMINISTRATORS

During the course of code administration, territorial problems arose and many applications were received for exemptions from territorial codes

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(*) See Executive Orders Nos. 6274-6296 NRA files.

(**) See Office Orders Nos. 87 and 89, Office Memorandum No. 248, and Part III, Section 3225 NRA Office Manual - 3235. 1.

or the application of national codes to the territory. These problems were recognized by the Administration (*). Shortly after the issuance of these orders, the NRA established a Territorial Division, which was charged with matters relating to the territorial administration of codes, particularly in Hawaii and Puerto Rico (**). After consideration as to the problems presented and the most effective method of handling territorial exemptions, the National Industrial Recovery Board delegated to the Deputy Administrator for the Territory of Hawaii the authority to grant exemptions from codes of fair competition approved exclusively for the Territory of Hawaii. (***) This delegation was subject to the conditions of the action thane being in accordance with the rules and regulations and policy of the National Industrial Recovery Board and that all action taken by the Deputy Administrator for the Territory of Hawaii be reported to and be subject to review and disapproval by such Board.

Shortly after the above delegation regarding Hawaiian codes the Deputy Administrator for the Territory of Alaska was authorized "to exempt or refuse to exempt from any provision of any code of fair competition to the extent that such code applies to any transaction within the Territory of Alaska". This authority did not apply to exemptions from the following specified codes:

Canning Industry
Canned Salmon Industry
Lumber and Timber Products Industries
Fisheries Industry

This authority was granted by the National Industrial Recovery Board on May 3, 1935 (****).

No official delegation was made to the Deputy Administrator for Puerto Rico and the Virgin Islands, although the National Industrial Recovery Board had planned a similar grant of authority as had been made to the Deputy Administrator for Hawaii.

MISCELLANEOUS DELEGATIONS

A further delegation of power was made with respect to the issuance of exemptions on April 9, 1934, when General Johnson created the office of Administrative Officer and designated such Officer "to act on all matters not otherwise assigned which do not require the Administrator's personal attention, including final approval in the name of the Administrator of codes and other documents requiring the Administrator's act ****". The National Industrial Recovery Board continued this office a

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(*) See Administrative Order X-60 - Office Order No. 104 - NRA file

(**) See NRA Office Memorandum of December 29, 1933.

(***) Office Memorandum No. 348 - March 19, 1935.

(****) Office Memorandum No. 356 - NRA files.

its order conferring the authority states "to execute any or all papers, documents, or other instruments in writing required in the performance of the functions and powers delegated to said Board by said Executive Order and otherwise, including, but without limitation, the power to issue orders, approvals, rules or regulations". (*)

A few miscellaneous delegations of authority to grant or deny exemptions were made in connection with various phases of code administration. Executive Order No. 6646 related to compliance with codes for purposes of bidding on Government contracts. This was primarily a matter of compliance and on December 15, 1934, the Director of Compliance and Enforcement was authorized by the Administrator to grant exceptions from the provisions of this Executive Order (**).

The necessity of efficient handling of applications for exemptions motivated the authorization of the Chief of the Compliance Division to grant or deny an application for an exemption which had been referred by any of the State Compliance Directors (***), when the ordinary procedure resulting in a decision by a Division Administrator had caused undue delay.

REGIONAL OFFICES

No evidence other than the territorial delegation has been found showing any decentralization of the authority to grant or deny exemptions. The NRA maintained offices in each state under the direction of a state director and on January 1, 1935, created a regional organization which divided continental United States into eight regions, each under the direction of a regional director. It was contemplated that the authority to grant or deny exemptions would be delegated to these regional directors, but the plans for this decentralization of the authority never materialized (****). In addition, the Code Administration Division of NRA was decentralized by the appointment of regional directors of code administration. Offices were authorized in New York, Chicago and San Francisco, but there was no delegation of authority relating to exemptions to these officials.

CODE AUTHORITIES

Certain codes by their terms authorized code authorities to grant exemptions from the provisions of the particular codes which they were administering. The approval of these provisions necessarily constituted a further delegation of the governmental authority, but this report does not consider this phase of the question, as it will be treated by the Review Studies Group reporting upon the activities of code authorities, as such.

(*) Administrative Order X-107, November 1, 1934 - Administrative Order X-93, September 28, 1934 - NRA files.

(**) See Executive Order No. 6646 - Administrative Order X-123 - NRA files.

(***) Office Order No. 108 - August 16, 1934, in NRA file

(****) See NRA Compliance Division Field Letter No. 190.

CHAPTER IV

ANALYSIS OF APPLICATIONS FOR AND ORDERS OF EXEMPTIONS AND EXCEPTIONS - CAUSES - TYPES - CODE PROVISIONS AFFECTED

The nature of the terms "exemption" and "exception" and the basis of the administrative grant thereof is to bring relief to a particular individual or group of individuals from hardship, unfair situations and other conditions which are caused by uniform application of code provisions. The study of the subject of exemptions and exceptions has been based upon an analysis of the reasons why applications for exemptions were made, the considerations had by the National Recovery Administration on such applications and the bases for the grant, denial, or modification of the relief requested. The author of the report was aided by a former representative of the Labor Advisory Board, who had, during the course of the code administration, maintained a record of exemptions from labor provisions. The files of this individual were made available and the index which she had prepared was used as a guide in the examination of the actual records and portfolios of the official orders of grants and denials of exemptions. The investigation caused the examination of the entire records of the official orders of exemptions or denials thereof as to the codes which are listed in the Introduction to part Three, supra.

Five hundred and fifty-four (554) orders of exemption or denial thereof were examined, of which four hundred and eight (408) orders granted exemptions from codes and one hundred and forty-six (146) orders denied the relief requested in the application. All of such orders related to the above memtioned codes, and applied to both labor and trade practice provisions.

LABOR PROVISIONS

The orders of exemptions or denials thereof and the supporting data found in portfolios which were studied disclose that most of the exemptions granted related to labor provisions and that in very few cases were exemptions granted to members of industry from trade practice provisions. A tabulation of the type of labor provisions to which the applications for exemptions were directed and which the NRA officially either granted or denied discloses the following:-

Type of Labor Provision	Number of Orders
Normal minimum wage provisions	170
Skilled minimum wage provisions	8
Overtime wage provisions	12
Apprentice minimum wages	5
Equitable readjustment of wages above the minimum	4
Normal maximum hours	295
Peak period hours	2
Watchmen - maximum hours	8
Overtime tolerance - maximum hours	29
Child labor provisions	3
Limitation of number of apprentices or learners	14

Type of Labor Provision	Number of Orders
Slow worker tolerances	21
Prohibition of home work	2
Specified piece rates	1
Machine hour limitations	65
Production control	7
All labor provisions	20

The total of the above tabulation does not coincide with the number of orders issued because in many cases an order of exemption was issued which referred to several provisions of a code, however, the tabulation has listed each provision affected.

The records of the orders of the grants or denials of exemptions in most cases contained the application for the exemption, which application usually contained the reasons for the application. Examination of these applications found that most of the exemptions sought were based upon scarcity of skilled help, seasonal peak demands, or rush of orders, as distinguished from rush of orders in a peak season. It was likewise found that financial difficulties of members of industry or trade and unfair advantages because of geographical differentials prompted the filing of applications with NRA. In addition, most of the applications relating to machine hour limitations acted upon set forth necessities of production adjustment or seasonal peak demands as the causes therefor. A complete tabulation of the reasons set forth in the applications for labor exemptions, which applications were acted upon either in the form of a grant or denial thereof shows the following:

Reason	No. of Applications
Departmental difficulties	65
Peak demands	68
Rush of orders	56
Hardship	44
Foreign competition	2
Oppression of small enterprises	11
Strikes	6
Emergency (breakdown)	10
Inventory	11
Scarcity of skilled help	109
Production adjustment	29
Introduction new articles or process	6
Poor Equipment	3
Lack of equipment	14
Lack of space	7
Fire	4
To start production	2
To make career (child labor)	2
Financial difficulties	40
Geographical differentials	30
Handicapped or inefficient workers	19
Multiple codes	10

Reason	No. of Applications
Competition with exempt firms----------	2
Inconvenient location----------	4
Pending investigation----------	4
Time lost due to holidays----------	7
Change of plant operation----------	13
Charitable institution----------	1
Shipment delays----------	2
Non-compliance of competitors----------	8

The above tabulation, as in the case of the tabulation of code provisions, does not represent each individual application. Most of the applications set forth only one ground for relief, but in some cases various reasons were specified in seeking one exception. It was found, as a result of the investigation that the reasons, scarcity of skilled help and peak demands were linked together, and that the relief requested related to maximum hour provisions and overtime minimum wage rates.

WAGE DIFFERENTIALS

No cases were found which involved an application for an exemption from wage differentials as to sex, but as stated above, a number of applications from the minimum wage provisions were submitted, giving as reason for relief requested the fact that geographical differentials of wages would impose hardships. A number of these applications originated with southern manufacturers or in states bordering those sections in which a lower geographical differential had been set up. (*) Likewise various codes set up rates of pay for specified areas, the application of which resulted in some cases of hardship. The application for exemptions from these area rates alleged competitive disadvantages that made it impossible to continue the operation of these wages. This situation among the codes examined was particularly evident in the administration of the Millinery Code (**).

CHILD LABOR-APPRENTICES

The records disclose that only three applications for exemptions from the child labor provisions of the codes examined were made. These cases involved boys of 14 and 15 years of age, and in two cases, the reason given was to embark the boy upon a career. The reason given in the third case was that the father wished his son to work for him in his plant. Some applications for permission to employ more learners than specified in the code occurred in the Handkerchief Code (***), the Millinery Code (****). The reason for such applications was the opening

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(*) See Order No. 49-6 and Order No. 57-19 in NRA files.

(**) See Order No. 151-9, Order No. 151-24 and Order No. 151-50, in NRA files.

(***) See Order No. 53-5;
(****) See Order No. 151-69 in NRA files.

of new departments. Relief from the application of percentages as to employment of apprentices was also sought; also a number of applications for exemptions from a wage tolerance as to slow workers which was set forth in the Cigar Manufacturing Code. The usual reason given for the exemptions from the percentage of apprentices employed was that there was a scarcity of skilled help and it was necessary to employ additional apprentices to carry on production. In some cases, relief from the payment of apprentice wage was requested, but in all these cases the relief asked related to overtime rates rather than relief from the payment of minimum wages. Only one case was found in which the applicant asked for permission to pay learners below the minimum wages, which application was denied (*).

A number of applications requested exemption from the overtime tolerance provisions of codes. These applications were very numerous in the administration of the Paper and Pulp Code, Code No. 120, and the reasons given therefor were necessities of bolstering inventory and inability to meet orders on time (**). A particular industrial reason was also given in these particular applications, which was lack of sufficient water power.

TRADE PRACTICE PROVISIONS

As stated above, the orders of exemption examined, disclosed few which affected trade practice provisions of codes. A tabulation of the types of trade practice provisions is as follows:

TYPES OF TRADE PRACTICE PROVISIONS	NUMBER
All trade practice provisions	2
Productions control	7
Consignment sales	1
Price Filing	1
Loss limitation	1
Sales below cost	2
Mislabeling	1
Uniform terms of sale	1
Container specifications	1
Merchandising plans	2

The main reason set forth in the applications relating to trade practice provisions was that the particular applicant was losing business and that his continuance therein was dependent upon the relief requested. Another main reason which was set forth with respect to applications for exemptions from production control provisions, sales below cost and loss limitation, was that the competitors of the applicant were not complying with the particular provision. Relief from the

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(*) See Order No. 120-105 in NRA files.

(**) See Orders Nos. 120-11, 120-12, 120-29 and 120-37 - NRA files.

code provisions relating to container specifications and mislabeling provisions was requested upon the basis that the applicant had a stock of cans and containers on hand and that the non-use of those containers would result in great loss to him. It is interesting to note the Administration denied all of the applications for exemptions from trade practice provisions, with the exception of two.

No orders of exemption were found among the codes examined, affecting code authority provisions or the rights and obligations of the code authorities created under the provisions of any such code.

GEOGRAPHICAL ORIGIN OF APPLICATIONS

The origin of applications for exemption as to geographical considerations was widespread. Of course, it is realized that the codes selected for examination for the purposes of this preliminary report would have a very marked effect upon the geographical locations of the applicants. In many cases the members of the industry or trade were concentrated in a particular section of the country which would neccesarily affect the geographical picture, however, the tabulation set forth below will give some idea as to the origin of applications for exemption which were officially acted upon.

Districts	No. of Applicants
New England (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut)-----	82
Middle Atlantic States (New York, New Jersey, Pennsylvania, Delaware, Maryland, District of Columbia)----------	157
Southeastern States (Kentucky, Tennessee, North Carolina South Carolina, Georgia, West Virginia, Virginia)	63
Gulf States (Florida, Alabama, Mississippi, Louisiana--	16
Middle West (Ohio, Michigan, Indiana, Illinois, Missouri, Nebraska, Iowa)----------	121
Southwestern States (Texas, Oklahoma, New Mexico, Arizona, Arkansas, Kansas)----------	19
Northwestern States (Wisconsin, Minnesota, North Dakota, South Dakota)----------	20
Rocky Mountain States (Colorado, Wyoming, Utah, Nevada)----------	11
Pacific Coast States (California, Oregon)----------	11
Pacific Northwest States (Washington, Idaho, Montana)-	6

Districts	No. of Applications
Puerto Rico	2
Hawaii	0
Alaska	0

As stated above, an examination of the records of the orders of exemption included the location of the particular applicant or applicants therefor. For the purposes of information as to the origin of applications with respect to populated districts of the country, the author has caused a tabulation to be made, showing the distribution of the origin of applications for exemptions upon which some official action was taken with respect to the size of the towns or cities in which the particular applicant was located.

	No. of Orders	
Cities of a million population or over	125	
Cities with population of 500,000 to 1,000,000	43	
Cities with population of 100,000 to 500,000	114	(*)
Cities with population of 50,000 to 100,000	53	
Cities and towns with population under 50,000	155	

In some cases the work sheets on which the above tabulation was made did not give exact information as to the location of the applicants - some cases such as, "Seventeen members of the industry on the Pacific Coast", "Members of the industry operating in competition with the Dress Manufacturers" and other like designations were unable to be charted as to location. It is submitted that the above tabulation represents practically 95% of all of the orders studied and accordingly presents a picture of the population situation to that extent.

PERIOD OF EXEMPTION

The power conferred upon the President in the Act permitted the granting of exemptions and exceptions within the discretion of the President, provided the policies of the Act were effectuated. The exercise of this discretion was evidenced in the period for which exemptions were granted. Some applications were received in which relief was requested for a limited period; e.g., one day, one week, one month. Other applications made no mention of the period of time of relief requested. Considerations upon the applications had by NRA often resulted in a limitation or an extension of the time of the exemption granted. In addition, some applications requested exemptions for a limited period and subsequently asked for an extension of the exemption for either a further limited period or an unlimited period. All phases of the period of exemptions appearing in the orders of exemptions were studied for this preliminary report. The tabulation is as follows:

(*) Note: Records of population charts set forth in the World Almanac, 1935 Edition, were consulted for purposes of this tabulation.

PERIOD	NO. OF EXEMPTIONS
Unlimited	121
To June 15 or 16, 1935	6
Pending Hearing or Study	6
To the Expiration of the Code	1
Until Terminated	3
Pending Amendment	2
Sixty Days or Over	62
Thirty to Sixty Days	44
Fifteen to Thirty Days	53
One week to two weeks	50
Two days to one week	20
One day	16

No general analysis of the reasons for these various periods of exemptions can be made, with the exception of a few. It was found that the exemptions for various periods of time were asked because of various conditions. An examination finds that the exemptions granted for one day or for the period of from two days to one week were requested for the purpose of taking inventory, to repair broken-down machinery or to meet some emergency situation. The unlimited exemptions were granted during the early part of NRA administration of codes and being coextensive with the Act, terminated on June 16, 1935. On or about February 1, 1935, the Administration became increasingly mindful of the date of the termination of the Act, and, as a matter of policy, the source of which the author has not explored at this time, orders of exemption were specifically not permitted to continue beyond June 16, 1935. Some orders stated June 15, 1935 - others - June 16, 1935. This difference most probably arose from a misapprehension as to the actual date of termination of the Act.

The exemptions granted for the period pending a hearing, study or amendment are self-explanatory.

RETROACTIVE EXEMPTIONS

Not all applications for exemption were the result of foresight. Some members of industry or trade being presented with an emergency situation, violated the code provisions and later made application to the Administration for exemption from the code to cover the violation theretofore committed. In addition, applications for exemptions were directed to the Administration before the date upon which the requested relief would take effect, but due to difficulties in routing, reference to to Advisory Boards and other procedural requirements, the actual decisions as to the exemption was not made and the order of exemption issued until after the time noted in the application had partially or totally elapsed. For example - Order No.3-51 (Wool Textile Code) granted an exemption from the normal hour provisions of that code from March 4, 1935 to May 1, 1935 - the order was signed on March 8, 1935; in Order No. 59-19 (Marking Devices Code) the order of exemption was signed on January 10, 1935 exempting the applicant from the normal hour provisions of the code from December 31, 1934 to January 10, 1935, the date upon which the order was signed. These cases are known as retroactive exemptions.

The power of the President to grant exemptions was of wide latitude, subject only to the limitations that the action should effectuate the policies of the Act, but the Act does not contain any specific legislative declaration exempting certain classes or groups of individuals from the provisions of codes which related to members of industry or trade. The absence of this statutory assumption required administrative exercise of dispensing powers which necessarily operate upon a foresight basis. The power to exempt with respect to future acts is admitted and in cases where applications for exemptions were received by the administrative agency prior to the time to which the exemption related can equally be justified because administrative remedies had been sought. It is true that some penalties accrued as a result of the tardy order of exemption, but these considerations are offset by the activities of the seeker of the remedy. The Constitution does not deter an interested party from seeking administrative remedies and for so doing, violations prior to the adjudication upon the application will not be imposed. (*) However, in cases where the applicant chooses to await proceedings and violates the code, the penalties may be imposed. The grant of an exemption in the last mentioned case or on a retroactive basis, is not a grant of relief from code provisions which have already been violated but is more in the nature of a nolle prosequi exercised by prosecutors in the administration of criminal justice. The failure to prosecute cases is in reality largely an administrative matter controlling a desired effort to accomplish the general purposes of a criminal law, even though in many cases some wrong-doers are allowed exemptions from the strict terms of the statute. It is true that in certain statutory enactments, the effects of which are retroactive, certain exemptions are set forth. These types of statutes do not apply here in these cases because of the absence of any statutory declaration in the Act. It is the author's opinion that retroactive exemptions, as such, were not in fact exemptions from provisions of codes but condonations of violations already committed and administrative declarations of intentions not to prosecute, which declarations are similar to the practice in the criminal law known as nolle prosequi.

CONDITIONAL EXEMPTIONS

A number of orders of exemptions issued by the Administration exempted the particular applicant or groups of applicants from the provisions of the code on condition that certain things be done or that certain requirements be satisfied. (**) The conditional form of exemption did not occur in each case.

(*) Wadley Southern R. Co. v. Georgia, 235 U.S. 651, 662, 669. See also New York Public Service Commission Law, Section 24.

(**) See Order 64-55, Order No. 120-10- NRA Files.

TYPES OF CONDITIONS IMPOSED BY NRA	NUMBER
Payment of Wage rates specified in the order of exemption-----	9
Requirement of abiding by the minimum wage rates in the code--	1
Adherence to rules and regulations of the Administration------	1
Requirement that new emoloyees be hired at code rate----------	1
Requirement that no work be done on a holiday----------	1
Requirement that Administrative permission to increase percentage of estimated volume be obtained----------	1
Compliance with code----------	4
Requirement that overtime be paid during certain specified months	1
Requirement that no excessive maximum hours be worked---------	1
Limitation of period of apprenticeship----------	1
Limitation of number of apprentices and payment of time and one-half for overtime----------	12
Requirement of no pay-cut----------	1
Limitation on reduction of personnel----------	2
Limitation on working 96 hours in two weeks----------	1
Limitation of maximum daily hours and maximum weekly hours with requirement of deduction from peak season tolerance-	2
Requirement that overtime be averaged over 13-week period-----	1
Limitation of 48 hours a week----------	1
Requirement of payment of time and one-half for overtime------	12
Requirement of payment of time and one-third for overtime-----	11
Limitation upon number of hours of overtime----------	11
Requirement of report of additional hours worked----------	1

The majority of these imposed conditions related to the payment of minimum wages or adherence to certain maximum hour requirements. There is no doubt of the power of the Administration to exempt the particular applicant or apolicants from the provisions of the code either upon a partial or complete basis as to both extent and time, however, the imposition of a condition must bear a relationship to the general purposes of the statute in order to have a valid condition. (*)

The declared policy of the Act, among other things, relates to the promoting of the organization of industry, the reduction and relief of unemployment and the improvement of the standards of labor. An examination of some of the types of conditions tabulated above might show a relation to the declared purposes of the Act, however, some of them may be open to question. In addition, it is subject to question whether or not the Administration should affix a condition to an exemption order which is not a part of the code and which a member is not already bound to comply with. These various phases of the question resulted, in the opinion of the author, in many invalid conditions which were attached to orders of exemption.

The invalidity of these conditions raises two points, one, the effect upon the minimum wage provision, two, the effect upon the applicant. It would appear that the grant of an exemption to which an

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(*) See Smith v. Cahoon, 283 U. S. 553 (1930)

invalid condition was attached would be a valid exemption but that the condition would be inoperative. In U. S. v. Chicago, etc., Railway Co., 282 U. S. 311 (1931) the Interstate Commerce Commission attached invalid conditions to its grant of a permit to issue securities and after the securities were issued the court held that even though the condition was not severable from the basis of the permit, the condition could be ignored. (*)

It would seem that an investigation of the conditions attached to orders of exemptions would be necessary in order to determine, with the background of the legal principles hereinabove stated, whether or not the conditions imposed were valid in fact and in law.

There is also the larger field of investigation that, assuming the conditions attached to orders of exemptions were valid, would they in fact modify the provisions of the code or cause ambiguity to arise therefrom?

REASONS - DENIAL OF EXEMPTIONS

An investigation discloses that of the orders examined one hundred and forty-six (146) thereof denied the application for exemption and in some cases the Administration took occasion to express its reasons therefor. A tabulation shows the following:

REASONS FOR DENIAL OF EXEMPTION	NUMBER OF ORDERS
Grant of Exemption would be unfair to competitors	14
Grant of exemption would result in code collapse	1
Applicants are code violators	3
Absence of Proof of hardship	9
Code authority and the Administration considered grant a particular precedent	3
Market over-supplied (Machine hour limitation exemption)	1
Skilled help available	4
Conditions of applicant not dissimilar from those of other members of the industry	3
Minimum wages too low to justify exemption	1

The few reasons above tabulated are not of much help in determining the factors in the actual decision of denial. The orders of exemption are rather general in their statements of reasons and no findings of fact were contained therein. The power of exemption, as granted by the National Industrial Recovery Act, is limited to the finding that the action is "necessary to effectuate the policy of the Act".

(*) See NRA Legal research memorandum 883, May 16, 1935, memorandum on the effect of the conditional exemption order.

The power to grant exemptions is executive in character and it is presumed that the exercise of power was in accordance with the limitations laid down by Congress. (*) All of the orders of exemption examined contained a statement that the particular administrative action set forth in the order was "necessary to effectuate the policy of the Act." This finding, coupled with the authority of a line of decisions holding that an order of exemption is valid even though made without any formal findings (**), rendered the action of the Administration valid within the terms and limitations of the National Industrial Recovery Act.

CODE ACTIVITY AS TO EXEMPTIONS

The activity of the particular codes studied for purposes of this report in the realm of exemptions may be of interest and the following tabulation has been made, which shows the name of the code studied and the number of orders of exemption found therein. The tabulation also shows the particular code provision to which most applications for exemption referred:

NAME OF CODE	NO. OF ORDERS	CODE PROVISION MOST OFTEN AFFECTED
Cotton Textile	30	Machine hour provisions
Shipbuilding & Shiprepairing	9	Overtime wages
Wool Textile	38	Machine hours & normal maximum hours
Electrical Manufacturing	67	Normal hours and wages
Coat & Suit	7	Wage area rates
Lace Manufacturing	--	
Corset & Brassier	20	Maximum hours
Legitimate Full Length Dramatic & Musical Theatrical	--	
Lumber & Timber Products (incomplete)	28	Normal wages
Photographic Manufacturing	1	Normal maximum hours
Fishing Tackle	29	Normal maximum hours
Rayon Synthetic Yarn Producing	--	
Men's Clothing	18	Normal maximum hours
Hosiery	9	Machine hours
Automobile Manufacturing	5	Overtime tolerance
Cast Iron Soil Pipe	--	
Wall Paper Manufacturing	7	Normal maximum hours
Salt Producing	2	Overtime tolerance
Leather	1	Normal hours
Motion Picture Laboratory	--	
Underwear & Allied Products	14	Machine hours
Oil Burner	2	All provisions

(*) See Panama Refining Co. v. Ryan, 55 Sup. Ct. 242 (1935), page 283

(**) See NRA Legal research memorandum 680, March 2, 1935, memorandum of law on the administrative law governing exemptions.

NAME OF CODE	NO. OF ORDERS	CODE PROVISION MOST OFTEN AFFECTED
Gasoline Pump	3	Normal hours
Textile Bag	4	Normal minimum wages
Transit	28	Wages and hours
Artificial Flower & Feather	8	Normal maximum hours
Linoleum & Felt Base	---	
Lime	4	Normal maximum hours
Knitting, Braiding & Wire Covering Machine	--	
Retail Lumber	--	
Laundry & Dry Cleaning	2	
Textile Machinery	2	Normal maximum hours
Glass Container	2	Overtime tolerance
Builders' Supplies	--	
Boiler Manufacturing	--	
Farm Equipment	6	Wages and hours
Electrical Storage & Wet Primary Battery	--	
Women's Belt	--	
Luggage & Fancy Leather Goods	--	
Ice	--	
Boot & Shoe Manufacturing	1	Minimum wages
Saddlery Manufacturing	2	Overtime tolerance
Motor Vehicle Retail Trade	12	Maximum hours
Bankers	4	Child labor
Silk Textile	9	Machine hours
Optical Manufacturing	2	Hours
Automatic Sprinkler	--	
Umbrella Manufacturing	1	Hours
Mutual Savings Banks	--	
Handkerchief	7	Learners
Throwing	4	Minimum wages
Compressed Air	1	Minimum wages
Heat Exchange	2	Wages and hours
Pump Manufacturing	4	Minimum wages
Cap & Closure	2	Overtime tolerance
Marking Devices	1	Maximum hours
Retail Trade	15	Maximum hours
Dress Manufacturing	29	Skilled wages
Paint, Varnish & Lacquer	9	Wages and hours
Paper & Pulp	70	Overtime tolerance
Millinery	41	Area wage rates and percentage of apprentices
Can Manufacturers	2	Hours
Wholesale & Distributing Trade	14	Maximum hours
Schiffli, Hand Embroidery, etc.	6	Normal maximum hours
Men's Neckwear	2	Minimum wages
Aluminum	1	Hours and wages
Cigar Manufacturing	25	Slow worker wage tolerance

GENERAL EXECUTIVE AND ADMINISTRATIVE EXEMPTIONS

This chapter has so far concerned itself with the treatment of Administrative orders of grant or denial of exemptions which were issued after the approval of a code, that is, during the course of code administration. The content of the study has been based upon orders affecting or a few particular codes. As the administration of codes progressed, various problems arose which required drastic and widespread action, either Executive or Administrative, which would find some expression in the issuance of general exemptions.

An order of general exemption was one issued either by the President or the Administrator and applied to all codes, or to all codes which were affected by the particular situation covered. A few samples suffice. (*) Experience taught the Administration that the operation of the PRA in small towns and hamlets resulted in many cases of hardship in local retail trade and service trade establishments. The solution of the problem lay in exemptions of those affected, so on October 23, 1933 the President, by Executive Order No. 6354 issued a general exemption from certain provisions of the PRA to employers engaged locally in retail trade and local service trades, whose place or places of business were located in towns of less than 2500 population. This form of general exemption was not exercised by the President on many occasions, but was utilized by the Administrator to meet problems relating to policy, hardship and other situations. Charitable and publicly endowed hospitals found undue hardship with respect to purchase of materials from members of industries subject to codes. This condition resulted in the issuance of Administrative Order No. X-4 (January 23, 1934) whereby those members of codified industries who sold materials to charitable and publicly endowed hospitals were exempted from the provisions of the codes relating to sales. Difficulties of assessment of members of industry for code administration necessitated the use of this power of exemption, as evidenced by Administrative Order X-36 (**) NRA policy required some consideration insofar as codes applied to sheltered workshops, and in the execution of this policy a general exemption was granted whereby sheltered workshops were exempted from the operations of codes on certain conditions. (***) This power of general exemption was used on very few occasions by the Administration and it is mentioned here for the purpose of showing one particular type of exemption and

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(*) See also Administrative Order No. X-140 - NRA files

(**) For more detailed treatment of general exemptions created by Executive and Administrative Orders see "History of General Exemptions", Work Materials No. 75.

(***) Administrative Order X-9, March 3, 1934, in NRA files.

the method of execution thereof. On some occasions a general exemption was issued upon the application of the interested parties, as in the case of Administrative Order No. X-9.

EXEMPTION - BY CODE PROVISION

Various codes as submitted for approval, and some as agreed upon between the sponsors thereof and the Administration, contained provisions setting up exemptions from the provisions of the code. A usual exemption found in codes related to sales for export whereby the provisions of the code did not apply to export sales (*). Other types of exemptions were written into codes and operated to relieve members of the industry from the operation of some or all of the provisions of a code. Various questions arise in connection with these types of exemptions, but the author has not had an opportunity to fully consider them. One of these problems relates to the above mentioned type of exemption by which code definitions of export trade varied from the definition of interstate and foreign commerce found in 7 (d) of the Act.

(*) For example, Article X, Oil Field Pumping Engine Manufacturing Code, No. 347, Supp. 35, Codes of Fair Competition, Vol. XIV, p.357.

CHAPTER V

EVALUATIONS AND CONCLUSIONS

The power to grant exemptions is one easily susceptible of abuse and the exercise of which, can result in complete defeat of the purposes of le lation from which the exemption is granted. The reasons for the power of exemptions or dispensing powers, as they are sometimes called, can be brok down as follows:

1. Definite ascertainment of general legislative language without the necessity of specific penalties or law suits.

2. Recognition of special cases which cannot fit into a general rule.

3. Relaxation in cases of an emergency nature where humanitarian considerations are concerned.

4. Relaxation of questionable policies, especially those of an economic nature (*).

The above classifications show reasons for the allowance of exemptions an each one of them enables a just enforcement of the Act and as such are ne to effectuate the policy of the Act.

Chapter I refers to various sections of the Act upon which the power grant exemptions can be predicated. Specific mention of the phrase "ex- ceptions to and exemptions from" in Section 3(a) leads to the conclusion this section was intended to grant this power. This section however, in main specifies procedure for the submission of codes and for the conditio approval thereof. Some doubt might arise that the power, to exempt or ex related to the time of the order of approval, but a careful reading of t grant of power reveals that it is not linked up with the order of approva rather is repeated so that there is no such limitation upon the power to This conclusion is based on the construction of the Act. Chapter I also t that a grant of power to exempt was conferred by Section 10(b). Some dout may arise as to whether exemptions and exceptions are included within the phrase "cancel or modify", however, it is suggested that the specific sta be set forth in new legislation, if any, as to power of exemption. Such t ments should make it clear that the power to grant exemptions may be made a the time of the order of approval of the code or afterwards; that the exe may be modified or terminated; and that power to exempt may apply to an i- dividual, group of individuals, industrial subdivision, an entire industr American industry in general.

Chapter I mentions the administrative discretion conferred upon the dent in the exercise of the power of exemption. An arbitrary action with pect to exemptions is not proper and substantive guides as to the subject exemptions denote general principles of fair classification. These princ

(*) Freund, Administrative Powers Over Persons and Property (1928), Page 9844 to 139, inclusiv

fall into one of two categories - (1) classifications must be fair and reasonable and not arbitrary, (2) all persons within the class must be treated alike so that others not at the moment applying for exemption may make application at a later time upon a showing that they are within the class so defined (*). It is true there is no guarantee in the Fifth Amendment of the Federal Constitution of equal protection of the laws, but in cases arising under the Fourteenth Amendment of the Federal Constitution it does prescribe equal protection of laws, which will serve as a precedent for determining valid classifications in the exercise of the power of exemptions. (**)

The necessity of exemptions being fair and reasonable and that the application thereof be equally uniform would indicate that the power to exempt should be granted legislatively in accordance with a declaration of standards upon which the exercise of administrative discretion could be predicated and limited. This form of grant of power could specifically set forth the various requirements for the grant of an exemption and require that upon sufficient showing and a finding thereof by the administrative agency that the applicant came within the limitation of such standards, the exemption could be issued.

The issuance of such an exemption could, under the terms of the statute be declared a precedent for all other persons equally situated, thereby meeting the requirements of a fair and reasonable exemption applying to all persons in the same category. For the purposes of information, it could be required that notice and proof of condition similar to that of the precedent should be submitted to the administrative agency by the particular person or group of persons so similarly situated. This requirement of report and proof would enable the administrative agency to take action with respect to any particular problem which would arise by virtue of the precedent created.

The above mentioned standards for rules and classifications find a basis for a statement thereon in Section 1 of the present Act. Elaborations upon these standards can be obtained in some degree from the information set forth in the Chapter entitled "Causes of Exemptions". The reasons set forth in the applications will serve as some criteria for the standards suggested. It is

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(*) See NRA Legal research memorandum No. 406, November 16, 1934, memorandum of law concerning substantive guides in granting exemptions.

(**) See Connoly v. Union Sewer Pipe Co., 184 U.S.540, 22 S. Ct. 431, 46 L. ed. 679 (1902)
Central Lumber Co. v. South Dakota, 226 U.S.157, 33 S.Ct. 66, 57 L. ed. 164 (1912)
Gulf, Colorado & Santa Fe Rwy.Co. v. Ellis, 165 U.S. 150, 17 S.Ct. 260 61 L. ed. 685 (1897)
Jones v. Brim, 165 U.S. 180, 17 S. Ct. 282, 41 L. ed. 677 (1897
Seaboard Air Line Rwy. v. Seegers, et al, 207 U.S. 73, 28 S. Ct. 28 52 L. ed. 108 (1907)
German Alliance Insurance Co. v. Hale, 219 U.S. 307, 31 S. Ct. 246, 55 L. ed. 229 (1911)
Radice v. New York, 264 U.S. 292, 44 S. Ct. 325, 68 L. ed. 690 (1924)

realized that very little information is contained in this report as to the reasons for exemptions from trade practice provisions and also code authori provisions, but some information must be available in some of the studiies being conducted by the Trade Practice Studies Section of the Division of Review and a further study of this subject will discover them.

Examination of records of NRA in respect to the use of the terms "exemption", "exception" and "stay" shows attempts on the part of the Admin tration to differentiate the meanings thereof, followed by attempts to trea the terms synonymously, resulting in interchangeable use of the terms. Utt confusion resulted as to the exact meaning of the administrative use of the various terms. Administrative orders covering identical situations in one case would exempt the particular applicant from the provisions of the code and in the other, stay the provisions of the code as to the particular appl cant. It is true that the effect of the administrative action does not dep upon mere terminology, but for purposes of administrative clarity, the pro-cedure and the like, it is recommended that legislative definitions of the terms "exemption" and "exception" be made to act as guides to administrator of any new Act. It is suggested that the term "exemption" refer to adminis trative action by which the particular member of an industry or trade or several members thereof, including geographical or industrial subdivisions or the entire industry, are relieved from full or partial operation of a co and that an exemption cannot operate unless there has been a prior obligati to abide by the code.

The term "exception" should refer to administrative action whereby an individual, group of individuals, either in geographical or industrial sub-divisions, or an entire industry or trade is relieved from the operations a code, or portion thereof, by the terms of the code itself.

The term "stay" should refer to administrative action whereby an in-dividual, group of individuals, either geographical or industrial, or an entire industry would be relieved from the operation of the provisions of a code, in whole or in part, by the order of approval of the code. The stay operates from the time of the promulgation of the code and recognizes the existence of the particular provision but relieves persons from the operat thereof from the time of the order of approval. The effect of an order of stay issued after the approval of the code would, under the suggested def nition, be an exemption and not a stay. The suggested definitions may ser some guide and it is most strongly urged that some clarification of the te be made.

This report lists the actual official record of the delegation of pow to grant exemptions. The record of itself is in the main sufficient. An examination of the files discloses various deviations in the authority gra It is true, consideration of speed and emergency confronted the Administra in 1933 and the early part of 1934. Such matters as delegation and the pr expression thereof seemed of secondary importance. In addition, the exces of authority found in the records were not attributed to the Administrator the National Industrial Recovery Board, but rather to the lesser officials NRA. Lack of coordination of activities and precedents upon which their actions could be based were very strong contributing causes of these exces of authority. If the suggestion relating to standards and classifications to exemptions is followed, the necessity of gross delegation would not be real. The variances may in some cases have been due to problems of proced

and interoffice operation. The situation is not of such importance as to require legislative action, however, it is suggested that the power to grant exemptions should remain in the administrative agency with the possibility of some delegation to an exemption officer, who should be the only one permitted, other than the head of the administrative agency, to exercise this power. Since this report has not considered questions of delay and inefficiency with respect to geographical considerations, the question of the regional decentralization of authority is left open as to suggestion, however, the plan initiated by the National Industrial Recovery Board with respect to exemptions in territorial codes as evidenced by Office Memorandum No. 348, March 19, 1935, should be continued. It is the opinion of the author that the wholesale delegation of the power to exempt resulted in lack of coordination and little knowledge of the extent and number of the applications being submitted, thereby resulting in inequities, code break-downs and arbitrary rulings. A tighter, closer and more carefully guarded control of this power would result in better administrative use thereof.

The elimination of the causes of exemptions depends upon the types of code provisions to which exemptions would be addressed. The analysis of exemptions and codes in Chapter IV, is more a matter of history than a basis for concrete suggestion as to particular codes. The experience had with certain industries as to certain provisions, of course, is helpful, provided the same type of provisions would be submitted by the same industry. A knowledge of the conditions in the industry often is the controlling factor as economic and industrial conditions may change, but it is suggested that, in consideration of any new codes, particular attention be paid to the following: Multiple codes, overlapping definitions, peak seasons in the industry, adequate provisions for rush of orders, availability of skilled help, financial condition of the members of the industry, the departmentalization of the industry, labor unrest in the industry, geographical differentials, all of which result in applications for exemptions.

The author does not feel qualified, upon the basis of this report, to submit any recommendations regarding trade practice provisions.

It is suggested that with respect to the period of an exemption, great latitude and discretion be reposed in the administrative agency.

It is suggested that retroactive exemptions, as such, be eliminated and that if situations arise whereby power of condonation should be utilized, that it be used in that manner rather than in the form of a retroactive exemption.

It is the opinion of the author that a number of administrative orders of exemptions contained conditions which, under the ordinary rules of law of conditional exemptions, were invalid. The necessity of conditions in exemptions is recognized, but the administrative exercise of the imposition of these conditions should be limited by statutory declarations as to the types of conditions which could be imposed, bearing in mind the legal requirement that the condition must bear relationship to the matter upon which the order of exemption is issued.

PART THREE
Appendix No. 1

FURTHER RESEARCH - UNFINISHED PHASES OF THE STUDY

The outline of the study of this subject (Appendix No. 2) lists code authority finances as a general topic for study of exemptions, but no record of this form of exemptions, other than Administrative Order No. X-36, have been mentioned herein. In addition, the subject of termination of exemption contained in Administrative Order No. X-36 has not been covered.

The substantive phases of exemptions and exceptions are the basis of this report. However, there are many other parts of the subject that are important and have a direct relation to the substantive side. The administrative procedure set up to handle applications for exemptions, the origin thereof as to the type of applicant, matters of routing, communications, either from field or as an interoffice matter in Washington, the participation of the Advisory Boards and the decisions upon applications of exemptions, the requirements as to legality and policy, the amount of consideration of applications both pro and con, the part played by field offices in this consideration and other general questions relating to procedure have not been covered by this report. Coupled with considerations of procedure are also questions of the efficient handling of applications and operation under the procedural set-up. Investigations into a critical analysis of the procedure and the various conditions causing or aiding delay in the efficient handling of applications are matters of importance in the study of an administrative agency. The effects of inefficient handling and delay thereon, if any, upon the general purposes and policies of the Act, code structure, code compliance and code enforcement are questions of consideration. It has not been possible in this report to consider these phases.

Reference to the outline of the study (Appendix No. 2) will reveal the scope of the possibilities of further review.

"History of General Exemptions", Work Materials No. 75, treats Executive and Administrative Orders pertaining to general exemptions.

PART THREE
Appendix No. 2.

EXEMPTIONS AND EXCEPTIONS
(Outline)

1. Introduction
   1.1 Objective and scope of the study
2. Basis in the Act
   2.1 Section 3(a)
   2.2 Application of Section 3(a) to Section 4, Section 7(b) and Section 7(c)
   2.3 Application of Section 10(a) and Section 10(b)
   2.4 Limitations, if any, upon the President
3. Definitions.
   3.1 Reference in Act to terms "exemption" and "exceptions"
   3.2 Ordinary definition
   3.3 Legal definition
   3.4 Administrative definition - changes
      3.41 Administrative reference and use of term "exception"
   3.5 Statement of synonomous use of both terms and application thereof for purposes of study
4. Delegation of power to grant exemptions and exceptions
   4.1 Necessity of delegation and extent thereof
      4.11 To the Administrator
         4.111 P. R. A. exemptions and exceptions
         4.112 Code exemptions and exceptions
         4.113 Form of delegation
         4.114 Limitations on delegation
   4.2 Retentions of power by President
      4.21 Requirements of concurrence of conference with other U. S. agencies
   4.3 Transfer of power to National Industrial Recovery Board
   4.4 Additional delegations of, limitations or conditions on power granted to National Industrial Recovery Board.

Note: For purposes of study of subsequent delegations of power to lesser boards and officers the Administrator and National Industrial Recovery Board will be considered together.

   4.5 Necessity of delegation to lesser boards and officials
      4.51 P.R.A. exemptions and exceptions
         4.511 P.R.A. policy board
         4.512 P.R.A. exemption board
         4.513 State and Regional Directors
         4.514 Local P.R.A. committees
      4.52 Code exemptions and exceptions
         4.521 Deputy Administrators
         4.522 Limitations and requirements
         4.523 Division Administrators
            4.5231 Original power in deputies
            4.5232 Necessity of enlarged setup - coordination
            4.5233 Limitations and requirements

4.524 Regional and State Directors
4.5241 Extent of delegation.
4.52411 Service Codes.
4.52412 Codes in General.
4.525 Territorial administrators.
4.5251 Limitations and requirements.
4.526 Delegation to Code Authorities by
4.5261 Code provision.
4.5262 Administrative order.
4.5263 By-laws of Code Authorities.
4.5264 General administration policy.
4.5265 Legal aspects of delegation to Code Authorities.

4.6 Delegation of power for purposes of appeal.
4.61 Industrial Appeals Board.
4.62 Advisory Council.
4.63 Administrator and National Industrial Recovery Board.

5. Kinds of exemptions and exceptions.
5.1 Exemption from provisions of all codes.
5.11 General - exempts certain persons from all codes.
5.111 Exclusion of individual manual labor - selling - marketing of produce of farm in Act.
5.112 Causes of general exemptions.
5.1121 Prisons.
5.1122 Federal or State competition.
5.1123 Sheltered workshops.
5.1124 Territorial problems.
5.1125 Farm cooperatives.
5.1126 Trade or industry in towns of 2500 or less.
5.1127 Geographical problems.
5.1128 Multiple codes.
5.1129 Other causes.
5.1121 Typical cases.
5.113 Method of exemption.

5.2 Complete individual exemption.
5.21 Exempts one or more industry or trade members from all provisions of a code.
5.211 Causes.
5.2111 Small amount of business under code.
5.2112 Multiple codes.
5.2113 Geographical problems.
5.2114 Bankruptcies and business failures.
5.2115 Receivorships.
5.2116 Foreign competition.
5.2117 Subject to other government agencies.

5.3 Partial individual exemption.
5.31 Exempts one or more industry or trade members from part of the provisions of a code.

6. Exemptions and exceptions from code provisions relating to labor:
   - 6.1 Types of hour and wages exemptions.
     - 6.11 Unlimited.
     - 6.12 Conditional.
     - 6.13 Typical cases.
   - 6.2 Maximum hours.
     - 6.21 Normal periods.
     - 6.22 Peak periods.
     - 6.23 Overtime tolerances.
   - 6.3 Minimum wages.
     - 6.31 Normal rate.
     - 6.32 Overtime rate.
     - 6.33 Apprentice rate.
     - 6.34 Skilled rate.
     - 6.35 Union contract rate.
   - 6.4 Reasons for maximum hour and minimum wage exemptions.
     - 6.41 Geographical differentials.
     - 6.42 Inability to operate under code provisions.
       - 6.421 Scarcity of labor.
         - 6.4211 Common.
         - 6.4212 Apprentice.
         - 6.4213 Skilled.
       - 6.422 Peak demands.
       - 6.423 Rush of orders.
       - 6.424 Inventory bolstering.
       - 6.425 Emergency work.
         - 6.4251 Protection of property.
         - 6.4252 Maintenance.
         - 6.4253 Weather, fire, acts of God.
       - 6.426 Competition with uncodified industries.
       - 6.427 Federal and state competition.
       - 6.428 Financial difficulties.
       - 6.429 Departmental difficulties.
   - 6.5 General labor provisions.
     - 6.51 Child labor
     - 6.52 Apprentices.
     - 6.53 Handicapped workers.
     - 6.54 Standards of safety and health.
     - 6.55 Home work.
     - 6.56 Stretch out.
     - 6.57 Scrip payments.
     - 6.58 Equitable readjustment of wages above the minimum.
     - 6.59 Posting.
     - 6.51 Collective bargaining.
     - 6.52 Miscellaneous.
   - 6.6 Typical cases and discussion thereof as to
     - 6.61 Bases of exemptions.
     - 6.62 Development of policy.
     - 6.63 Evaluation of experiences.

7. Exemptions and exceptions from trade practice provisions.
   7.1 P.R.A.
   7.2 Codes.
   7.3 Kinds of provisions.
      7.31 General trade practice rules.
         7.311 Codes.
            7.3111 Generally accepted in law.
            7.3112 Desirable but not fully accepted in law.
            7.3113 Desirable but no basis in law.
            7.3114 Undesirable.
            7.3115 Unenforceable.

General analysis and discussion of trade practice rules from viewpoint of exemptions and exceptions.

      7.32 Code Authority rules and regulations having force and effect of trade practice rules.
      7.33 Price policy.
         7.331 Price fixing.
            7.3311 Fixed prices.
            7.3312 Lowest reasonable price.
            7.3313 Modal mark-up.
         7.332 Price control.
            7.3321 Loss leaders.
            7.3322 Loss limitations.
         7.333 Open price systems.
            7.3331 Institution of system.
            7.3332 Particular contracts.
            7.3333 Method of operation.

Note: For purpose of discussions bid depository systems are included under this sub-division.

         7.334 Cost provisions:-
            7.3341 Sales below cost.
            7.3342 Obsolete goods.
            7.3343 Emergency disposals.
            7.3344 Competition.
         7.335 Accounting systems.
            7.3351 Necessity of approval of Administrator.
            7.3352 Complexity of system.
            7.3353 Difficulties of installation.
         7.336 Sales reporting systems.

8. Exemptions and exceptions from Code Authority provisions.
   8.1 Duties required by code provisions.
      8.11 Organization of Code Authority.
      8.12 Reports by Code Authorities.
      8.13 Compliance activities.
      8.14 General code administration.
   8.2 N.R.A. rules and regulations regarding activities of Code Authorities.
   8.3 General executive and administrative order regarding Code Authorities.
      8.31 Organization.
      8.32 Mandatory requirements.
      8.33 Code administration.
      8.34 Compliance.

9. Code Authority finances.
   9.1 Necessity of exemption.
      9.11 Administrative Order X-19 and subsequent orders relating thereto.
   9.2 Development of termination of exemption.
      9.21 Necessity.
      9.22 Bases of applications therefor.
      9.23 Considerations by N.R.A.
      9.24 Determinations.
         9.241 Complete termination.
         9.242 Partial termination.
      9.25 Effects.
         9.251 N.R.A. policy.
         9.252 Code Authority finances.
         9.253 Compliance and enforcement.
10. Labels.
   10.1 Bases of exemptions from label provisions.
   10.2 Effect of exemptions granted
      10.21 Upon industry members.
      10.22 Compliance
11. Exemptions from requirements of reporting data.
   11.1 Where Code Authority is reporting agency.
   11.2 Where reports are required from individual members of industry.
   11.3 Usual governmental reports
   11.4 General executive or administrative orders as exemptions from report-making.
   11.5 Rules and regulations re exemptions from report-making.
12. Government contracts.
   12.1 Discussion of Executive Orders 6337 and 6646 as to exemptions.
   12.2 Bases of application for exemptions from executive orders.
   12.3 Nature and extent of exemptions granted.
   12.4 Effect of exemptions upon purpose of executive orders.
13. Conditional orders of approval.
   13.1 Nature of exemptions requested.
   13.2 Considerations by N.R.A.
   13.3 Determinations.
   13.4 Effect upon conditions and general code structure.
14. Miscellaneous exemptions.
   14.1 Code Provisions.
   14.2 Executive and administrative orders.
   14.3 Policy.
   14.4 N.R.A. rules and regulations.
15. Time of exemption.
   15.1 Duration of Act.
   15.2 Temporary period.
   15.3 Retroactive.
   15.4 Conditional
   15.5 Emergency.

16. Procedure as to exemptions.
  16.1 Application by
    16.11 Industry member.
    16.12 Industry group.
    16.13 Code Authority.
      16.131 National.
      16.132 Local.
    16.14 Instituted by N.R.A.
      16.141 Industry Division.
      16.142 Legal Division.
      16.143 Advisory boards.
      16.144 Field offices.
      16.145 Other departments of N.R.A.
    16.15 Government agencies other than N.R.A.
    16.16 Labor.
      16.161 Individual.
      16.162 Group of employees.
        16.1621 Unorganized.
        16.1622 Union.
  16.2 To whom was application directed.
    16.21 Washington.
    16.22 Field offices.
    16.23 Code Authorities.
    16.24 Other governmental agencies.
  16.3 Consideration of application.
    16.31 By deputy.
    16.32 Advisory Boards.
    16.33 Research and Planning Division
    16.34 Legal Division.
    16.35 Administration members and Code Authority.
    16.36 Review Division
    16.37 Extent of consideration by boards, etc., and limitations thereon.
    16.38 Division administrators.
    16.39 Higher officials and President.
    16.31 Extent of consideration of briefs pro and con.
    16.32 Field offices - N.R.A.
  16.4 Due process requirement.
    16.41 Applications submitted to hearing.
      16.411 Type, form and extent of notice.
      16.412 Place of hearing.
      16.413 Record of hearing.
    16.42 Applications submitted to an opportunity to be heard.
      16.421 Type, form and extent of notice.
    16.43 Application receiving no public consideration.
    16.44 Discussion of treatment of applications with regard to due process requirements.
  16.5 Final action on application.
    16.51 Form.
    16.52 Notice.
  16.6 Time of submission of application.
    16.61 Before effective date of Code.
    16.62 Code administration.
    16.63 During compliance complaint.
    16.64 During litigation.

16.7 Time of handling applications.
16.71 Applications received in field.
16.711 Geographical considerations.
16.712 Delays caused by reference to Washington.
16.713 Typical cases.
16.72 Applications received by or referred to Washington.
16.721 Routing of applications.
16.722 Necessity of reference to boards.
16.723 Causes of delay.
16.724 Effects of delay on
16.7241 Code structure.
16.7242 Compliance.
16.7243 Enforcement.

17. Power of subsequent modification or termination of exemption.
17.1 N.R.A. initiation.
17.2 Application by industry.
17.3 Application by labor.
17.4 Application by Code Authorities.
17.5 Application by other parties.
17.6 Bases of application.
17.7 Effects of modification or termination.

18. Substantive problems.
18.1 Should N.R.A. permit Code Authorities to grant exemptions and exceptions.
18.2 Should N.R.A. permit field offices to grant exemptions.
18.21 Temporary.
18.22 Emergency.
18.23 Permanent.
18.24 If review should be had by Washington.
18.3 What requirements of due process should be considered by N.R.A.
18.31 Notice.
18.32 With or without hearing.
18.4 Should applications for exemptions and exceptions be referred to:
18.41 Code Authorities.
18.42 Other governmental agencies.
18.43 Administration members.
18.5 General legal effect of amendments, stays and interpretations upon exemptions and exceptions.
18.6 Should the exemption or exception ruling be a precedent for all parties similarly situated.
18.7 General legal aspects of
18.71 Retroactive exemptions.
18.72 Temporary exemptions.
18.73 Conditional exemptions.

19. Effect of exemptions.
19.1 Industry
19.2 Labor.
19.3 General code structure.
19.4 Initiation of amendments - stays.
19.5 Oppression of small enterprises.
19.6 Monopoly.
19.7 Development of policy.

20. Discussion of procedure and constructive suggestions relating thereto.
21. Evaluations.
22. Conclusions.
23. Bibliography.

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PART FOUR: CODE AMENDMENTS

By

D. L. Boland

INTRODUCTION

Under the authority of Executive Order No. 7075, June 15, 1935, the Organization Studies Section of the Division of Review has designated the subject - Amendments - for study and report. The subject applies to those phases of the activities of NRA as a governmental agency in its treatment of amendments to codes. The problems, questions, and attendant matters relative to the subject are presented in this report. The content of the report is primarily concerned with the bases of power, delegations of such power, the necessities of such power and of the extent of the delegation thereof. The report also considers the types of code provisions amended, the industries affected by such amendments, and the effects of such amendments.

An analysis of the types of code provisions amended and new code provisions inserted in codes by way of amendment is set forth. Some treatment of the benefits and detriments of amendments to the particular industries concerned is included in the report - such treatment being limited to amendments of labor provisions.

As a basis for this report, the author has compiled a list of all amendments approved from June 16, 1933 to May 2, 1935, inclusive, (approximately eight hundred). The list also sets forth the nature of the amendments as to the type of code provision affected. No attempt has been made to explore the causes for such amendments and the considerations had by NRA prior to approval. Time, for the purposes of this report, did not permit, although some amendments which resulted from applications of policy have been noted.

The sources of this report and the findings set forth therein are the files and records of the National Recovery Administration. No outside sources of information have been investigated and no conferences or conversations have been had with any other governmental agencies or any private individuals. The records of code authorities and trade associations have not been examined, as the intention of this report is to present in preliminary form from NRA sources some answer to the questions:- (1) Was the power to amend codes properly conferred upon NRA? (2) What did NRA do in the exercice of this power? (3) What should any furture governmental agency, embodying the principles of NRA, be empowered to do with respect to amendments of codes?

CHAPTER I

BASIS OF POWER

On June 16, 1933, the President signed the National Industrial Recovery Act. (*) Title I thereof related to industrial recovery and among other things provides for the formulation of promulgation of codes of fair competition. Section 3 (a) of the Act states:

> "Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are 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 this title: Provided, That such code or codes shall not permit monopolies or monopolistic practices: Provided further, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared."

Section 3 (d) of the Act states:

> "Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section."

(*) Public Resolution No. 67, H.R. 5755, 73rd Congress, 48 Stats. 195, hereinafter called the "Act."

Section 4(a) of the Act states:

> "The President is authorized to enter into agreements with, and to approve voluntary agreements between and among, persons engaged in a trade or industry, labor organizations, and trade or industrial organizations, associations, or groups, relating to any trade or industry, if in his judgment such agreements will aid in effectuating the policy of this title with respect to transactions in or affecting interstate or foreign commerce, and will be consistent with the requirements of clause (2) of subsection (a) of section 3 for a code of fair competition."

Section 7(b) of the Act states:

> "The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions referred to in clauses (1) and (2) of subsection (a) prevail, to establish by mutual agreement, the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition, approved, by the President under subsection (a) of section 3."

Section 7(c) of the Act states:

> "Where no such mutual agreement has been approved by the President he may investigate the labor practices, policies, wages, hours of labor, and conditions of employment in such trade or industry or subdivision thereof; and upon the basis of such investigations, and after such hearings as the President finds advisable, he is authorized to prescribe a limited code of fair competition fixing such maximum hours of labor, minimum rates of pay, and other conditions of employment in the trade or industry or subdivision thereof investigated as he finds to be necessary to effectuate the policy of this title, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of section 3. The President may differentiate according to experience and skill of the employees affected and according to the locality of employment; but no attempt shall be made to introduce any classification according to the nature of the work involved which might tend to set a maximum as well as a minimum wage."

The above quoted sections all refer to various types of codes or agreements which would serve as bases for amendments thereof, but it is to be noted that in none of the quoted sections of the Act is found any reference or specific mention of the term "amendment" or the power to amend.

Examination of Sections 10 (a) and 10 (b), which provide as follows:

"Section 10 (a) - The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and fees for licenses and for filing codes of fair competition and agreements, and any violation of any such rule or regulation shall be punishable by fine of not to exceed $500, or imprisonment for not to exceed six months, or both.

"Section 10 (b) - The President may from time to time cancel or modify any order, approval, license, rule, or regulation issued under this title; and each agreement, code of fair competition, or license approved, prescribed, or issued under this title shall contain an express provision to that effect."

likewise shows no specific mention of such term or power. This lack of legislative declaration requires a construction of the Act upon which to predicate the power to amend codes.

A usual method of statutory construction is:-

> "to have recourse to the legislative history of the Act and Statements by those in charge of it during its consideration by the Congress." U.S. v. Great Northern Railway Co., 287 U.S. 144, 154, 155
> See also U.S. v Missouri Pacific Railway Co., 278 U.S. 269, 278

The legislative history of the NIRA reveals that the sponsorship thereof intended to give the President broad powers. An examination of the record of the hearings before the House and Senate on the Act, of the reports of the Senate Committee on Finance and the House Committee on Ways and Means and of the Conference Report discloses some helpful information. The language used by Senator Wagner of New York, when addressing the Senate on June 7, 1933, lends some aid to construction of the Act. The Senator said:-

> "But if any trade or industry cannot or will not cooperate in the formulation of a voluntary code, the President is authorized, after proper investigations and hearings, to prescribe a code including all the salutary and protective features of the voluntary codes. Or if any trade or industry voluntarily arrives at some of the requirements of a code and neglects others, the President may in a proper manner prescribe these others and include all in a general code." (*)

(*) 77 Cong. rec. No. 70, p. 5256

It will be observed that the Senator spoke of voluntary codes and of the protective features of such codes. In these respects he also clearly spoke of codes formed under Section 3 (a) on application of the industry. Section 3 (a) contains provisions which are "salutary and protective," however, the Senator's use of the word "prescribe" finds no basis therefor in Section 3 (a). The word does appear in Sections 3 (d) and 7 (c). It would therefore appear that when Senator Wagner used the words quoted above, he was referring to Section 3 (a) when speaking of voluntary codes and to Section 3 (d) when speaking of prescribed codes.

The legislative comment regarding Section 10 (b) gives more light upon the power of amendment:

(a) The President had power to modify or cancel any action taken by him:

"Section 9 (b) (*) authorized the President to modify or cancel any action taken by him under the title." (Senator Wagner, H.R. 5665, page 95.)

(b) The President under Section 10 (b) had the power to modify faulty agreements:

"If codes, agreements, or licenses prove faulty, the power is reserved to the President under Section 9 (b) to cancel or modify any order, approval, license, rule or regulation issued under this title." (H. R. 159. (Report of the House Committee on Ways and Means.) (page 3.)

"Section 9 (a) provides as heretofore stated, for the cancellation or modification of any order, approval, license, rule, or regulation issued under this title."(**) (Ibid.4)

(c) The Presidential powers conferred were largely unrestricted in order to meet emergencies:

"The question that was raised a few minutes ago by Mr. Lewis --that is, about this delegation of authority and about the administrator -- is so important that I wondered if you thought that the bill itself, in its present form, covers everything that would be necessary or whether any further restrictions should be offered as to the administrator, or whether anything would be suggested by you along that line." (Mr. Frear, Ibid.111.)

(*) Section 9 (b) later became Section 10 (b)

(**) Sections 9 (a) and 9 (b) later became Sections 10(a) and 10 (b).

"Of course I can well understand your concern, Congressman; but I think that that was purposely done to make the power as unrestricted as possible during these emergency days, because things change from day to day." (Senator Wagner. Ibid.111)

(d) A reference to the Finance Committee hearings in the Senate seems to disclose a rather pointed question on the power of the President to amend codes and indicated that it was the intention to permit the President to amend codes where the public interest was being injured by the continuance of the particular code.

"Senator La Follete: Senator Wagner, did you and your associates consider the advisability of conferring power upon the President to amend or revoke these codes of fair competition in cases where it was demonstrable that the public interest was being injured by their continuance?

"Senator Wagner: That is right in the act. He may modify, cancel, or do anything to the order." (Hearings before the Committee on Finance, United States Senate, 73rd Congress 1 Session, S. 1712 and H. R. 5755; 20, 21.)

An analysis of the abovementioned references discloses that one of the authors of this Act, while not giving a positive answer, replied in a vein to suggest that under Section 10 (b), the president does have power to amend codes when they are detrimental to the public interest. There are other statements in the legislative history which show that the President has power to correct faulty codes and, likewise, a statement referring to Section 10 (b) that any action could be taken.

It may be argued that the power conferred upon the President by Section 3 (a):-

"The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared."

is sufficient to give a power of amendment. The repetition of the word "may" before the word "provide" shows an intention that no time condition should attach to or limit the power to amend codes. Likewise, there is no statement that the imposed provisions must be ratified by the industry, although the original application for a code must be voluntarily submitted. It would seem that the use of the word "impose" indicates that the power to amend, as conferred by Section 3 (a), was not tied to the voluntary features of the first part of that Section.

Section 10(b) is the safest part of the Act upon which to base the power of amendment (*).

It may be reasoned that the powers contained in Section 10(a) with respect to the prescription of rules and regulations may be invoked for use as a power of amendment. The reliance upon this section should be predicated upon the contention that code provisions are rules and regulations (**). If this argument is proper, then strength would be given to the applicability of Section 10(b) in that this section expressly refers to the terms "rule and regulation".

The voluntary nature of codes submitted under Section 3 (a) caused discussion by some NRA officials as to the power to amend codes without adherence to this theory and policy of industrial or trade volition. Some believed that no power existed whereby such codes could be modified without the assent of the industry affected.(***) Section 10(b) in part requires -

> "Each agreement, code of fair competition . . shall contain an expressed provision to that effect".

In other words, a mandatory expression of the power set forth in Section 10(b) was required in each code of fair competition. All codes contained such a provision, a typical one being:

> "1. 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,

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(*) One legal periodical takes it for granted that the President may modify or amend code provisions at will, irrespective of whether or not the members of industry assent. "Except in the Iron and Steel Industry, the codes do not purport to be agreements between their members and in no case between members and government . . . the fact that the President can amend codes both before and after approval (citing Section 10(b)) reenforces this conclusion." 47 Harvard Law Review, 100, November 1933.)

(**) See NRA Legal Research Memorandum No. 68, June 29, 1934 - Power of President to Amend AAA Codes Without Assent of the Industry Affected.

(***) See NRA Legal Research Memorandum No. 68, supra - Also NRA Legal Research Memorandum No. X-297.

> approval, license, rule, or regulation issued under Title I of said Act and specifically, but without limitation, to the right of the President to cancel or modify his approval of this Code or any conditions imposed by him upon his approval thereof." (*)

The voluntary inclusion of such a provision by the sponsors of a code under Section 3(a) would infer an assent to subsequent exercises of the general powers set forth in Section 10(b).

Section 3(a) permits the President to

> "impose such conditions . . . for the protection of consumers, competitors, employees and others . . ."

This form of exercise of the power of amendment was the imposition of a condition upon the order of approval of a code, either previously granted or to be issued in the future. The theory of this exercise of power seems to be in the nature of a "continuing condition", which attached to the order of approval and could be exercised by the President at any time (**). An example of this form of amendment is found in Executive Order 6711-A (May 15, 1934) which states in the last paragraph thereof -

> "This order . . . shall operate as a condition upon any previous orders approving any code of fair competition under Title I of the National Industrial Recovery Act".

It is interesting to note that this Executive Order also sets up rules and regulations and a requirement that no provision of the code shall be construed or applied as to violate the rules and regulations prescribed by the order.

The various theories of construing the existence in the Act of the power of amendment have been set forth above and it is the author's conclusion that the powers contained in Section 10(b) are sufficient to include the power of amendment of codes.

LIMITATIONS UPON POWER OF AMENDMENT

The power conferred by the Act was subject to few limitations. The purposes of this legislation necessarily required an ambit of wide administrative discretion. This discretion with respect to the power of amendment was expressed in various ways in the Act, but all referred to the same limitation. Section 10(a) in part says -

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(*) Article VIII, Code of Fair Competition for the Pleating, Stitching and Bonnaz and Hand Embroidery Industry.

(**) See NRA Legal Research Memorandum No. 68, supra.

> ". . necessary to carry out the purposes of this title . . ."

Section 3(a) in part states -

> ". . for the protection of competitors, consumers, employees and others and in furtherance of the public interest . . . as the President in his discretion deems necessary to effectuate the policy herein declared."

These limitations show that the power of the President to amend codes, with two exceptions, was subject only to the requirement that the action effectuate the policies of the Act, which were stated in Section 1 of the Act.

It would seem that a limitation of a mandatory nature upon this modifying power of the President results from the provisions of Section 7(a) of the Act, which, among other things, provides -

> "Every code of fair competition, agreement, and license approved, prescribed, or issued under this Title shall contain the following conditions . . ."

This language would appear to deny the right of the President to substantially modify any code provisions required to be incorporated by Section 7(a). A similar denial appears to have been imposed by Section 10(b) insofar as amendments of code provisions incorporate the substance of Section 10(b).

CHAPTER II

DEFINITION AND SCOPE OF THE TERM AMENDMENT

An amendment, in the ordinary application of the term is -

> "An alteration or change for the better; correction of a fault or of faults; reformation of life by quitting vices.
>
> "In public bodies; Any alteration made or proposed to be made in a bill or motion by adding, changing, substituting or omitting.
>
> "Law: Correction of an error in a writ or process." (*)

The legal definition of the term "amendment" is as follows:-

> "Amendment in Legislation - An alteration or change of something proposed in a bill or established as law. Thus the Senate of the United States may amend money-bills passed by the House of Representatives, but cannot originate such bills. The Constitution of the United States contains a provision for its amendment. (U. S. Constitution, Article 5)
>
> "In practice - The correction, by allowance of the court of an error committed in the progress of a cause.
>
> "Amendments at common law, independently of any statutory provision on the subject, are in all cases in the discretion of the court, for the furtherance of justice. Under statutes in modern practice, they are very liberally allowed in all formal and most substantial matters, either without cost to the party amending, or upon such terms as the court thinks proper to order. (See Jeofaille)
>
> "An amendment, where there is something to amend by, may be made in a criminal as in a civil case. 12 Ad. & E. 217; Com. v. Parker, 2 Pick. (Mass.) 550." (**)

No mention of the term "amendment" or "amend" is found in the Act, but Section 10(b) uses the term "modify". The ordinary meaning of this term is to alter or qualify. The word is synonymous with the term "amend" (***).

(*) Webster's New International Dictionary of the English Language, Quarto Edition of the Merriam Series, 1934; p. 69.

(**) Bouvier's Law Dictionary, Rawle's Third Revision, Vol. 1, p. 187

(***) Roget's Thesaurus of English Words and Phrases - Mawson, International Edition.

The Administration recognized its power to amend code provisions, but because of its immediate and pressing concern over the codification of industry, no attempt was made to define the term "amendment" (*). The use of the term "modification" finds its origin for NRA use in Section 10(b), such use referring to the power of amendment (**). The terms "modification" and "amendment" were used interchangeably by NRA until May 5, 1934, at which time General Johnson, Administrator for Industrial Recovery, by Administrative Order X-27, prescribed -

> ".. rules and regulations concerning amendments to, modifications .. of, .. approved codes .."

The order defined the term "modification" as follows:-

> "The term 'modification' shall include 'amendments' and all rulings whereby a code is amended by adding a provision thereto or changing or omitting any provision thereof".

The effect of this Administrative definition placed both the term "modification" and "amendment" on the same basis and incorporated the unofficial accepted meaning, at that time, of both terms; viz., changing of addition to, or omission of code provisions (***). This administrative definition continued, but after the period of codification of industry drew to a close and the requirements of code administration became more apparent, the popular use of the term "modification" gradually gave way to the use of the term "amendment" and, on or about September 1, 1934, (the date of the issuance of the Office Manual) administrative recognition of this change in the reference to the power of amendment was made. Part II, Paragraph 5000 of such Office Manual defines the term "amendment" as follows:-

> "'Amendment', as applied to NRA codes, means any addition, deletion, or other change in any language thereof".

Paragraph 5010 of such Part of the Office Manual states:-

> "To preserve uniformity of usage, the terms 'modification', 'supplement', 'revision', 'addition' and 'adjustment' will not be used to describe 'amendments'".

(*) It is to be noted that the term "amended" is used in the order of approval of the code for the Shipbuilding and Shiprepairing Industry, Code No. 2, July 26, 1933; Paragraph 12 of the order of approval of the Cotton Textile Industry Code No. 1, July 9, 1933 states "this approval is limited to the four months period with the right to ask for modification at any time . . .".

(**) See Office Order No. 44 - November 21, 1933, NRA files.

(***) See also NRA Office Order No. 75 - March 26, 1934.

This announcement effected a uniformity of expression with respect to the term "amendment" and superseded - "all previous Office Orders and Memoranda, including Administrative Orders and Executive Orders of general application to NRA". (*)

Examination of the definition set forth in Administrative Order X-27 and the Office Manual shows a similarity in the scope of the term "amendment" in that it refers to additions, deletions and changes of a code "provision" (as stated in Administrative Order X-27) or code "language" (as stated in the Office Manual.)

No other official administrative definitions of the term have been found and for purposes of this report the definition of the term "amendment" as set forth in the Office Manual, together with the explanation with respect to the terms "modification", "supplement", "revision", "addition" and "adjustment" will apply.

(*) This Office Manual was ordered by the direction of the Administrator and the order of issuance thereof was signed by G. A. Lynch, the Administrative Officer.

CHAPTER III

DELEGATION OF POWER TO APPROVE OR DISAPPROVE AMENDMENTS

The terms of the Act authorized the President to establish such agencies, to accept the services of and to utilize Federal officers and employees, to prescribe their authorities, to delegate any of his functions and powers under the Title of the Act and to fix the compensation of such officers, agents and employees. It also authorized the appointment of officers and employees (*). In accordance with this authority, the President, on June 16, 1933, appointed Hugh S. Johnson as Administrator for Industrial Recovery under Title I of the Act and further appointed a Special Industrial Recovery Board, the membership of which was the Secretary of Commerce, as Chairman, the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Labor, the Director of the Budget, the Administrator for Industrial Recovery and the Chairman of the Federal Trade Commission. The order of appointment authorized General Johnson to appoint the necessary personnel for the period of thirty (30) days and to conduct the work authorized under Title I of the Act (**). One month later, the President continued the appointment of Hugh S. Johnson as Administrator for Industrial Recovery and authorized him, subject to the general approval of the Special Industrial Recovery Board, to exercise the functions invested in the President under Title I of the Act, except the approval of codes, making of agreements, issuance of licenses or exercise of the power conferred by Sections 3(e), 6(c), 8(b), 9 and 10. The limitations of this order reserved the power of amendment to the President. Subsequent delegations of power of amendment were made relating to various phases of NRA codes and for purposes of orderly treatment they will be separately set forth (***).

PRESIDENT'S REEMPLOYMENT AGREEMENT

The difficulties of immediate codification of industry resulted in the initiation of the President's Reemployment Agreement, which was a general offer to employers to cooperate with the President in the purposes of the Act (****).

(*) Sections 2(a) and 2(b).

(**) See Executive Order 6173 - June 16, 1933, NRA files.

(***) It should be noted that the powers and the membership of the Special Industrial Recovery Board were transferred to the National Emergency Council, See Executive Order No. 6513, NRA files.

(****) See National Recovery Administration Bulletins No. 1, 3 and 4 - 1933.

The PRA makes no mention of amendments or modifications thereof but Paragraph 14 permits applications for stays pending investigation of individual cases resulting in hardship. The administration of the PRA and the applications received under Paragraph 14 showed need for certain amendments of particular provisions of the PRA with respect to certain employers or groups subject thereto. Accordingly, on November 22, 1933, the President authorized the Administrator for Industrial Recovery -

> "to make modifications of .. said agreements, or any similar agreements hereafter entered into or approved by me by Executive Order, as he may, after investigation, find necessary in particular instances in order to avoid undue hardship". (*)

This grant of authority to amend agreements related only to the PRA and the Executive Order expressly excepted the power of amendment of codes of fair competition.

One phase of PRA which in some ways constituted amendments thereof, should be mentioned at this point. Paragraph 13 provides: -

> "This agreement shall cease upon approval by the President of a code to which the undersigned is subject; or, if the NRA so elects, upon submission of a code to which the undersigned is subject, and substitution of any of its provisions for any of the terms of this agreement."

This section caused a number of substituted wage and hour provisions of the PRA, which were issued by permission of the NRA, the effect of which was to substitute certain provisions of proposed codes of a number of trades and industries for certain provisions of the PRA. The actual result of these substitutions was amendments of the PRA insofar as it affected and applied to various members of industries and trades who had submitted proposed codes and also obtained substituted provisions. The Administrative detail relative to the issuance of these substituted provisions was delegated to the PRA Policy Board, although prior to that time petitions for substitutions had been handled by the particular deputy administrator (**). No specific delegation of this power was made by the President, although the terms of Paragraph 13 of the PRA indicate the delegation of power to the NRA to determine whether or not a substitution should be made. These substituted provisions were issued on October 14, 1933 by the Administrator with the approval of the chairman of the Special Industrial Recovery Board. (***) These acts of amendment of the PRA, even if not specifically authorized by the President, were subsequently ratified by him (****).

(*) Executive Order No. 6443, November 22, 1933, NRA files. -

(**) See Office Order No. 18, August 7, 1933, NRA files.

(***) See National Recovery Administration Bulletin No. 6.

(****) See Executive Order No. 6515, December 19, 1933, NRA files.

The Administrator retained the power to amend the PRA and the investigation has disclosed no other specific administrative delegations of such power or any other enlargements thereon by Presidential order.

CODES UNDER SECTION 3(a)

As stated above, the President retained the power of amendment of codes at the time of his original delegations of power to the Administrator however, specific delegation of the power of amendment was made to the Administrator for Industrial Recovery on December 30, 1933 (*), This authority was enlarged upon by the terms of Executive Order No. 6590-A, February 8, 1934, in which the President authorized the Administrator for Industrial Recovery to prescribe rules and regulations governing amendments to or modifications of codes of fair competition.

A specific delegation of power relating to codes is found in Executive Order No. 6756-A, June 28, 1934, in which the President offered to enter into an agreement with members of certain service trades to be specified by the Administrator upon certain conditions. The order authorized the Administrator to supplement the provisions of the Executive Order by such rules and regulations and amendments, as the Administrator in his opinion determined would effectuate the purposes of the Order and the Act.

JOINT AAA AND NRA CODES

The purposes of the NIRA were industrial recovery and reemployment of labor engaged therein. The Agricultural Adjustment Administration was concerned with the rehabilitation of agriculture and under the terms of the Agricultural Adjustment Act (**), the Secretary of Agriculture was appointed as Administrator of that Act.

Some industries and trades are closely allied with agriculture and on June 26, 1933, the President delegated to the Secretary of Agriculture all of the functions and powers, with certain limitations, conferred by Title I of the Act with respect to industries and trades engaged particularly in the handling of milk and its products and all foods and foodstuffs. The delegation was subject to the reservation of the power in the President to approve or disapprove provisions of any such code (***). Difficulties of this joint administration required some segregation of the power and on January 8, 1934, the President transferred the powers theretofore delegated to the Secretary of Agriculture to the Administrator for Industrial Recovery insofar as the exercise of these powers affected certain industries which were stated in the order and which were to be the subject of subsequent agreement between the Secretary of Agriculture and the Administrator for Industrial Recovery. Enlargement of these powers theretofore delegated to the Secretary of Agriculture and the Administrator for Industrial Re-

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(*) See Executive Order No. 6543-A, December 30, 1933, NRA files.

(**) Public Resolution No. 10, 73d Congress.

(***) See Executive Order No. 6182, June 26, 1933; Executive Order No. 6207, July 21, 1933 reaffirmed this delegation, NRA files.

covery was made by the President in Executive Order No. 6764, June 29, 1934, by which the approval of any amendment or modification of any provision or provisions of any code of fair competition was to be exercised by the particular officer with respect to those code provisions which such particular officer was authorized to administer. No record of any further Presidential delegations of authority with respect to AAA-NRA codes has been found.

CREATION OF NATIONAL INDUSTRIAL RECOVERY BOARD

A change in the form of the Administrative Agency was made by the President when he created the National Industrial Recovery Board, subsequent to the resignation of General Johnson as Administrator for Industrial Recovery (*). The provisions of this Executive Order authorized the Board to exercise all of the powers theretofore conferred by Executive Orders upon the Administrator for Industrial Recovery. This transfer of power necessarily carried the power of amendment, the record of delegation of which is set forth above.

DELEGATION OF POWER TO LESSER OFFICIALS

The power of approval of amendments of codes was exercised by the President until the time of delegation set forth in Executive Order No. 6543-A. This power was then exercised by the Administrator as affirmed by Paragraph III, Section 3 of Administrative Order No. X-27, May 5, 1934. During the early part of 1934 the number of amendments submitted to NRA began to increase and further delegation of the power to amend seemed necessary, but the power of final ruling on these matters was retained by the Administrator (**). On April 9, 1934, the Administrator created the office of Administrative Officer and designated him to exercise the duties which would not require the Administrator's personal attention, including final approval in the name of the Administrator of -

> ".. codes and other documents requiring the Administrator's action .." (***)

The National Industrial Recovery Board, after its organization, authorized the Administrative Officer, subject to its general direction, to execute papers and documents and to exercise the power of issuance of orders of approval, or rules and regulations (****).

TERRITORIAL ADMINISTRATORS

The formulation, promulgation and administration of codes in the territories of the United States presented specific problems as to the method of exercise of the power of amendment. No delegation of this

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(*) Executive Order No. 6859, September 27, 1934, NRA files.

(**) See Office Order No. 75, NRA files.

(***) Office Order No. 83, NRA files.

(****) See Administrative Order X-93, September 28, 1934 and Administrative Order No. X-107, November 1, 1934, NRA files.

power was made to Territorial Administrators, although certain rules and regulations were set up whereby these territorial administrators were required to do certain acts, mostly procedural, prior to the actual approval of an amendment of a territorial code (*).

REGIONAL OFFICES

During the latter part of the year 1934, the Administration instituted a decentralization of the administrative power with an attendant delegation of various phases of the authority conferred by the Act. Regional offices were established under the direction of a Regional Director and some delegation to these Regional Directors of the power to amend codes was contemplated, but never actually was made (**).

LIMITATIONS UPON EXERCISE OF POWER TO AMEND

Through the vehicle of codes, the Administration from time to time delegated various powers to code authorities; e.g., collection of reports, investigation of complaints, etc. No example of unqualified delegation to code authorities of the power to amend has been found, but various types of limitations upon the exercise of the power by NRA were set forth in certain codes. Some code provisions required the prior approval of an amendment by a majority or fixed percentage of an industry or trade; other codes required the approval of the proposed amendment by the code authority (***). Other types of limitations were included in the codes; e.g., the presentation of the codes was not an assent to any future amendments. The extent of the investigation in connection with these types of code provisions has been very limited, although questions do arise as to the propriety of such delegation or limitation upon the exercise of governmental power and also the legal question of the effect of such a limitation upon the broad power set forth in the Act.

(*) See Administrative Order No. X-60, July 2, 1934; Office Order No. 104, July 14, 1934, NRA files.

(**) See NRA Compliance Division Field Letter No. 190, NRA files.

(***) See the Iron and Steel Code No. 11, Article XII, Section 1, Codes of Fair Competition.

CHAPTER IV

METHODS OF EXERCISE OF POWER OR AMENDMENT

The power of amendment is evidenced in several ways - (1) general Executive or Administrative Order, (2) order of approval of specific amendment, (3) conditional order of approval. (Strictly speaking this was not "amendment" since the code was only approved in consideration of the modification.)

From time to time, legal and policy requirements necessitated the issuance of an Executive or Administrative Order whereby all codes approved or to be approved were amended to conform to the provisions and requirements of the particular Executive Order (*). Likewise, Executive and Administrative Orders were issued, which, although in the form of an administrative interpretation, may in some cases have had the effect of a general amendment (**). The usual form of these orders, which were in the nature of interpretations, is as follows:

> ".. no provision of any Code of Fair Competition, agreement, or license, which has heretofore been or may hereafter be approved, prescribed or issued pursuant to said Title of said Act shall be so construed or applied as to violate the following rules and regulations ..." (***)

No further consideration of the method of general amendment has been made for the purposes of this report because this method of administrative action is more of an exercise of powers of interpretation, and as such, will be treated in the study on interpretations.

(*) Executive Order No. 6464, November 27, 1933, prescribed rules and regulations which had the effect of amendments of any inconsistent provisions relating to commercial bribery provisions. Executive Order No. 6479, December 7, 1933, providing for the submission of statistical information by persons subject to codes amended every code of fair competition theretofore approved and imposed a condition in the order of approval of a code thereafter approved. See Administrative Order No. X-51, June 15, 1934 for an example of an Administrative Order of general amendment, NRA files.

(**) Executive Order No. 6606-A, February 17, 1934; Executive Order No. 6606-F, February 17, 1934; Executive Order No. 6711-A, May 15, 1934, NRA files.

(***) Executive Order No. 6606-F, supra.

An order of approval of a specific amendment was the most common method of exercise of this administrative power. Usually an amendment was proposed by an industry group and after hearing and consideration by NRA, it was approved by an Administrative Order relating to the particular amendment (*). A method of modification (erroneously called amendment) of proposed codes used frequently by NRA was the conditional order of approval. This form of administrative action is evidenced in the order of approval of a code. Such order of approval sets forth the adoption and approval of the code, but conditions approval upon the inclusion of a new section in the code not originally submitted by the sponsors thereof, or a modification of certain language of the provision contained in the code as submitted or the elimination of a particular provision (**).

(*) See Code No. 319, Amendment No. 1; Code No. 84, Amendment No. 1; Code No. 181, Amendment No. 1.

(**) See order of approval of the Boot and Shoe Manufacturing Industry Code, No. 44, October 3, 1933 for an example of an elimination of a portion of the Code; See order of approval of the Umbrella Manufacturing Code No. 51, October 9, 1933, for an example of an addition of a provision; See order of approval of the Artifical Limb Manufacturing Industry Code No. 514, August 28, 1934, for example of a change in the provisions of a code.

CHAPTER V

ANALYSIS OF AMENDMENTS OF CODES - TYPES OF CODE PROVISIONS AFFECTED

Investigation of the records relative to amendments has resulted in a compilation of all of the amendments approved from June 16, 1933 to May 2, 1935. The bulk of the compilation refers to specific amendments of particular codes and an attempt has been made to determine what amendments were approved, what types of code provisions were amended, what types of code provisions were added to or deleted from codes. Some effort has been made to study the effects of such amendments upon the code structure and what purposes were sought or accomplished by particular amendments. The author was able to examine only labor and code authority amendments in the last mentioned phase of the study. The writer has had no opportunity to analyze the purposes and effects of amendments of trade practice provisions.

AMENDMENTS AFFECTING APPLICATION OF THE CODE

One of the first problems confronting NRA in the codification of industry was the correct definition of industry and the elimination of the troublesome matters of multiple coverage, overlapping industry definition, classification and other questions relative to the jurisdiction of the code insofar as the industry products or activities thereto were concerned. One method of solution was amendment of the definition of the particular industry or trade, or member thereof, In some cases, the scope of the code was enlarged and in others it was limited. The investigation disclosed that sixty-seven (67) codes had been amended, either as to the definition of the industry or trade, or definition of the member of the industry or trade, or products of the industry or trade. The following tabulation lists the names of the various codes so amended and the type of amendment:

	NAME OF INDUSTRY	AMENDMENT NUMBER	PROVISION AMENDED
1.	Advertising Specialty	65-1	Definition of Industry
2.	Air Transport	111-3	Hawaii included in definition
3.	Baking	445-2	Definition of chain store baker
4.	Bank Instrument Mfg.	273	Change in definition
5.	Beauty & Barber Shop Mechanical Equipment	286-2	Definition of Industry
6.	Bedding Mfg.	219-2	Definition
7.	Beverage Dispensing Equip.	334-3	Definition
8.	Boiler Mfg.	38-1	Definition
9.	Builder's Supplies	37-2	Definition
10.	Candle Mfg.	302-1	Definitions
11.	Canning & Packing Machinery	75-1	Definition
12.	Canvas Stitched Belt	422-1	Definition
13.	Cast Iron Soil Pipe	18-3	Definition
14.	Chinaware & Porcelain Mfg.	126-3	Definition
15.	Commercial Refrigerator	181-1	Definition

16.	Concrete Masonry	133-2	Definition
17.	Construction Machinery	223-1	Definition
18.	Cork	199-1	Definition
19.	Cotton Garment	118-1	Definition
		118-4	Addition to definition
		118-8	Definition (cotton wash dress
20.	Cotton Textile	1-1	Definitions
		1-2	Definitions
21.	Dress Mfg.	64-8	Definition
22.	Earthenware Mfg.	322-2	Definition
23.	Farm Equipment	39-2	Definition
24.	Fuller's Earth Producing & Marketing	356-1	Definition
25.	Funeral Supply	90-3	Definitions
26.	Fur Dealing Trade	381-2	Definition
27.	Furniture & Floor Wax & Polish	224-1	Definition
28.	Hosiery	16-3	Definition
29.	Industrial Supplies & Distributors Trade	61-3	New definition
30.	Knitted Outerwear	164-2	Definition
31.	Knitting, Braiding	32-1	Definition
32.	Legitimate Theater	8-1	Definition
33.	Lime Industry	31-2	Definitions (New Code)
34.	Luggage & Fancy Leather Goods	42-1	Definition
35.	Lumber & Timber Products	9-8	Definition
		9-13	Definition
		9-19	Definition
		9-32	Definition
36.	Metallic Wall Structure	84-A-1	Definition
37.	Millinery	151-2	Definition
38.	Millinery & Dress Trimming Braid & Textile	69-2	Definition
39.	Musical Merchandise	209-1	Additions to definitions of industry
40.	Needlework Ind. Puerto Rico	474-2	Definition (exports)
41.	Nonferrous Hot Water Tank Mfg.	84-N-1	Change in definition of industry
42.	Novelty Curtain, Draperies, etc.	79-1	Definition
43.	Oxy-Acetylene	155-1	Definitions
44.	Packaging Machinery	72-2	Definition
45.	Paint, Varnish & Lacquer	71-1	Definition
46.	Plumbing Fixtures	204-3	Definition
47.	Print Roller & Print Block	368-2	Definition
48.	Prison Equipment	84-M1-1	New definition
49.	Railway Car Building	285-1	Definition
50.	Rayon & Synthetic Yarn Producing	14-1	Definitions
51.	Retail Trade	60-3	Definition
52.	River & Harbor Improvement	434-1	Definition
53.	Road Machinery	68-1	Definition
54.	Salt Producing	20-2	Definition
55.	Shipbuilding	2-2	Changing definition to exclude boatbuilding
56.	Shoe & Leather Finish	184-1	Definition

57. Shovel, Dragline & Crane	102-3	Definition
58. Soap & Glycerine Mfg.	83-1	Definition
59. Steel Tubular & Firebox	62-1	Change in definition of products
60. Tag Industry	249-1	Definition of member
61. Tanning Extract	374-1	Definition
62. Textile Processing	235-4	Definition
63. Upholstery & Drapery Textile	125-1	Definition of member of industry deleted
64. Warm Air Register	472-1	Definition
65. Wholesale Food & Grocery Trade	196-3	Definition
66. Wood Plug	115-2	Definition
67. Wool Textile	3-1	Definitions

Other types of the definitions set forth in the code were made subjects of amendments. Such matters as definitions of subdivisions of industries or trades, products, types of employers and employees, geographical sections were submitted for amendment. The following tabulation shows the types of definitions amended and the number thereof:

DEFINITION	NO. OF AMENDMENTS
Industry	64
Member of industry	17
Subdivisions of industry	30
Products	14
Employer	10
Employee	6
Skilled employee	1
Territorial subdivisions of industry	5
Customer	1
Geographical area	11

LABOR PROVISIONS

All types of labor provisions were submitted to amendment. In addition, the attempts of N.R.A. to revise codes so as to bring them under the then existent policy resulted in additions of a number of labor provisions which incorporated such labor policy. The codes approved in the early days of N.R.A. were, in many cases, sketchy. Administrative experience with the enforcement of such labor provisions prompted revisions and additions of various types of labor provisions. In some cases conditions in the particular industry resulted in inequitable situations, causing either an increase or decrease of the maximum hour provisions with an occasional attendant change in the minimum wage provisions. The following tabulations disclose the labor provisions amended and the number of amendments relating to such provisions:

HOUR PROVISIONS

Normal maximum hours	54
Overtime hours	13
Normal day period	5
Normal week period	8
Maximum hours for watchmen & firemen	14
Maximum hour exception for emergencies	2

Maximum hours - Skilled help	11
Exemptions	1
Salesmen and Executives	1
Female	1

WAGE PROVISIONS

Normal minimum wages	35
Overtime wages	5
Skilled wages	11
Apprentice wages	5
Learners wages	6
Handicapped persons	4
Piece rate	9
Wage adjustment above minimum	12
Sex wage differentials	8
Geographical wage differentials	20

GENERAL LABOR PROVISIONS

Child labor	9
Home work	7
Safety & health standards	26
Posting labor provisions	19
Handicapped workers	18
Method of payment of wages	4
Dismissal clause	1
Hazardous occupations	7

All of the various types of labor amendments set forth in the above tabulation were not changes in the wording of existing provisions. All codes contained normal minimum wage and maximum hour provisions, and an amendment of these provisions represented a change in the wording thereof. In a few cases deletions of existing provisions were made while a number of amendments were additions to the existing provisions. Most such additions were general labor provisions relating to safety and health standards, requirement of posting of labor provisions and provisions for handicapped workers. In some cases, maximum hour and minimum wage provisions were added for apprentice or skilled help.

HOUR AND WAGE PROVISIONS

The investigation of labor provisions has resulted in a compilation of the codes, the minimum wage provisions of which were amended up to May 2, 1935. An analysis of the original code provision and the amended provision was made to determine the effect of the amendment upon the original provision of the code as to all phases of minimum wage provisions. A similar analysis was made with respect to maximum hour provisions and the various compilations hereinbelow set forth are the result of such analysis and represent all changes, deletions and additions to minimum wage and maximum hour code provisions as approved up to May 2, 1935.

The following list shows the various codes which were amended as to minimum wage provisions and likewise, sets forth the type of provision amended:

NAME OF CODE	AMENDMENT NUMBER	PROVISION AMENDED
1. Artificial Flower & Feather	29-1	Wages
2. Artificial Limb	514-1	Wages for apprentices
3. Baking	445-3 and 5	Wages, special employees, adjustment
4. Bituminous Coal	24-1	Minimum wage scale
	24-2	New basic wage scale
	24-3	Wage rates for District "G"
5. Blouse & Skirt Mfg.	194-2	Exemptions from minimum wage
6. Builders Supplies	37-2	Wages
7. Can Mfg.	152-1	Territories & possessions wage district
8. Canning	446-4	Exceptions to deductions of wages, minimum wage for Hawaii District.
9. Cast Iron Soil Pipe	18-1	Geographic wage differentials
	18-3	Wage adjustment above minimum
10. Chinaware & Porcelain Mfg.	126-5	Equal pay for women
11. Coat & Suit	5-1	Wages (Geographical district)
	5-2	New Geographical wage district, wage provision for all classes of employees, female wage differential
12. Concrete Masonry	133-2	Wages, minimum wage.
13. Cotton Garment	118-1 and 3	Wages on certain types of garments
	118-7	Minimum wage differentials; wages for employees.
14. Cotton Textile	1-1	Wages; above minimum
15. Dress Mfg.	64-5	Wage district
16. Floor & Wall Clay Tile Mfg.	92-2	Wage district
17. Fresh Water Pearl Button	310-1	Wage adjustments
18. Funeral Service	384-3	Wage (general provisions)
19. Fur Dressing & Fur Dyeing	161-5	Wages
20. Graphic Arts	287-5 and 8	Wages
21. Knitting, Braiding, etc.	32-1	Wages
22. Leather	21-2	Wage adjustment above minimum
23. Legitimate Theater	8-1	Wages
24. Light Sewing, Except Garments	226-3	Wages of learners
25. Lime Industry	31-2	Wages, adjustment
26. Lumber and Timber	9-1,3,7, 9,10,17,21	Wages
27. Macaroni	234-3	Wage differentials
28. Men's Clothing	15-2	Wages on certain types of garments.
29. Garter, Suspender & Belt	94-2	Wages of apprentices
30. Millinery	151-2	Wages
31. Paper & Pulp	120-3	Wage provisions
32. Peanut Butter	378-1	Wage adjustments above minimum
33. Railway Car Building	285-2	Wage adjustments
34. Refractories	168-1	Wage provisions; adjustment above minimum.
35. Retail Food & Grocery	182-3	Wages

NAME OF CODE	AMENDMENT NUMBER	PROVISION AMENDED
36. Ring Traveler Mfg.	517-1	Minimum wage
37. Saddlery Mfg.	45-1	Geographical wage differentials; wages for women.
38. Shipbuilding	2-3	Wage adjustment
39. Structural Clay Products	123-1	Mod. of Geographical wage District
40. Transparent Materials Converting	382-2	New wage provisions
41. Wall Paper Mfg.	19-1	Equal pay for women
42. Wholesale Food & Grocery	196-7	Payment of wages
43. Wholesale Tobacco	462-1	Wage rates
44. Wrecking & Salvage	318-1	Wages

A list relating to hours, similar to the foregoing list as to amendments of minimum wage provisions, is as follows:

NAME OF CODE	AMENDMENT NUMBER	TYPES OF PROVISIONS
1. Advertising Specialty	65-1	Hours
2. Art Needlework	375-2	Hours
3. Artificial Flower & Feather	29-1	Hours
4. Artificial Limb	514-1	Hours
5. Automobile Mfg.	17-2	Hours
6. Automotive Parts & Equipment Mfg.	100-1	Hours - processing & Maintenance employees, office & salaried receiving less than $35. a week.
7. Baking Industry	445-3	Hours for semi-handicapped employees
8. Beverage Dispensing Equip.	334-2	Hour-exemptions for salesmen & executives; emergency crews
9. Bituminous Coal	24-1	Hours-7 hour-5 day week
10. Builders Supplies	37-2	Hours
11. Cast Iron Soil Pipe	18-1	Hours
12. Coat & Suit	5-1	Hours
13. Concrete Masonry	133-2	Hours for watchmen
14. Cotton Garment	118-7	Hours - mfg. employees
15. Cotton Textile	1-1	Hours of labor, machine hr.
	1-2	Hours of outside employees & cleaners
	1-3	Limiting finishing machines to two 40 hr. shifts
16. Earthenware Mfg.	322-3	Hours
17. Electrotyping & Stereotyping	179-1	Maximum hours not to be considered minimum
18. Farm Equipment	39-2	Hours for watchmen & firemen; exception to maximum hrs

NAME OF CODE	AMENDMENT NUMBER	TYPES OF PROVISIONS
19. Funeral Supply	90-1	Hours for engineers, firemen, outside delivery men, emergency repair crews
20. Fur Dressing & Dyeing	161-1	Hours for working in fancy dressing and rabbit divisions. Deleted in amendment no. 6.
21. Glass Container	36-1	Hours, basic & for watchmen
22. Graphic Arts	287-2 & 8	Hours; maximum hr. exceptions
23. Hair & Jute Felt	73-1	Hours
24. Hosiery	16-1 & 2	Machine hours
	16-3	Hours (productive), basic hours and exceptions
25. Household Ice Refrigerator	183-2	Hours
26. Knitted Outerwear	164-2	Hours; basic, of engineers, watchmen; exemptions; limitations of
27. Knitting, Braiding, etc.	33-1	Hours
28. Lace Mfg.	6-3	Hours; Maximum & machine
29. Leather	21-1	Hours for special groups of workers
30. Legitimate Theater	8-1	Hours
31. Lime Industry	31-2	Hours (general & exemptions)
32. Lumber & Timber	9-11	Allowable hours of operation
33. Manganese Industry	425-1	Hours, hoist men, pump men
34. Millinery	151-2	Hours (general)
35. Motion Picture	124-4	Hours
36. Mutual Savings Banks	53-1	Old hours deleted for new
37. Oyster Shell Crushers	452-1	Hours
38. Oxy-Acetylene	135-1	Hours
39. Paint, Varnish & lacquer	71-1	Hours
40. Photographic & Photo Finishing	362-2	Hours
41. Refractories	168-1	Basic hours
42. Retail Food & Grocery	182-3	Hours, salesmen, watchmen, service & maintenance employees; executives.
43. Retail Trade	60-3	Reduction of store hours; hour exemptions
	60-8	Hour exemptions for classes of labor; hours for watchmen & guards
44. Ring Traveler	517-1	Hours; exceptions for repair crews; executives; maximum hours for salesmen
45. Robe & Allied Products	211-1	Hours
46. Saddlery Mfg.	45-1	Hours, basic
47. Shipbuilding	2-3	Hours, basic
48. Silk Textile	48-1	Hours for outside crews
49. Textile Bag	27-1	Hours, basic
50. Textile Print Roller Engraving	324-2	Hours

NAME OF CODE	AMENDMENT NUMBER	TYPES OF PROVISIONS
51. Textile Processing	235-3	Hours, opening & Closing
52. Underwear & Allied Products Mfg.	23-2 & 3	Hours, machine
53. Upholstery & Drapery Textile	135-1	Hours, general & exception
54. Used Textile Bag	367-1	Hours, for peak periods
55. Wholesale Confectioners	458-1	Hour provision
56. Wholesale Food & Grocery Trade	196-3	Hours
57. Wool Textile	3-1	Hours, basic

Examination of the original hour and wage provisions and the amendments thereof of the above listed codes discloses the following information:

TYPES OF CODE PROVISION AMENDED	NO. OF AMENDMENTS
1. Maximum hours	
(a) Amendment resulting in no change in the normal maximum hour provisions	20
(b) Amendment resulting in increase in normal maximum hours	48
(c) Amendment resulting in decrease of normal maximum hours	9
2. Normal Minimum Wages	
(a) Amendment resulting in no change in the normal minimum wage provisions	5
(b) Amendment resulting in increase of normal minimum wages	22
(c) Amendment resulting in decrease of normal minimum wages	14
3. Overtime Wages	
(a) Amendment resulting in addition of or revision of minimum overtime wages	13
(b) Amendment providing for maximum hours for overtime work	28
4. Watchmen	
(a) Amendment providing maximum hours for watchmen	19
(b) Amendment providing minimum wages for watchmen	4

TYPES OF CODE PROVISION AMENDED	NO. OF AMENDMENTS
5. Office and Sales Employees	
(a) Amendment providing minimum wages and maximum hours for this type of employee	2
(b) Amendment excepting office and sales employees from minimum wage provisions	16
6. Skilled Employees	
(a) Amendment as to minimum wages	7
(b) Amendment as to maximum hours	6
7. Non-skilled Employees	
(a) Amendment as to minimum wages	5
(b) Amendment as to maximum hours	18
8. Apprentices	
(a) Amendment defining "apprentice"	1
(b) Amendment as to maximum hours	3
(c) Amendment as to minimum wages	7
(d) Amendment as to employment of percentage of apprentices	3
9. Industry Subdivisions	
(a) Amendment as to minimum wages	6
(b) Amendment as to maximum hours	6
10. Area and Geographical Rates of Pay	
(a) Area rates of pay	19
(b) Definition of areas	1
(c) Geographical rates for northern district	2
(d) Geographical rates for southern district	4
(e) Geographical rates for territories	2
11. Amendment providing sex wage differentials	3
12. Hours of opening and closing	4
13. Amendment providing for equal rates of pay for male and female employees	5
14. Provision as to handicapped persons (percentage)	8
15. Exception of employees earning $35 or more from wage and hour provisions	13
16. Rules for payment of wages	4

The above tabulation shows the types of amendments of labor provisions and with respect to the maximum hour and minimum wage provisions, discloses whether or not an increase or decrease thereof was effected by the particular amendment. The author has had no opportunity to investigate the causes for these amendments of labor provisions in order to determine whether or not such amendments were initiated by NRA or were the result of application therefor by the code authority or industry involved. The tabulations present some picture of what occurred generally in connection with amendments of labor provisions.

CODE AUTHORITY

NRA codes provided for the creation and establishment of a body composed of industry members for the purpose of administering the code. This organization was usually called a "code authority", although other terms were used to designate it. The makers of the early codes paid little attention to the rights and obligations of a code authority, but as code administration proceeded, experience taught NRA that various powers theretofore granted were too broad or too limited. Requirements of Section 3 (a) and Section 6 with respect to representation of industry attached to the establishment and maintenance of a code authority so that provisions relating to the election of membership of these boards oftentimes, because of legal requirements, policy and for the purpose of prevention of oppression of small enterprises, necessarily had to be amended. The administration of a code by a code authority and its efforts to effect compliance and enforcement required funds, the collection of which depended upon a statement of power in the code. These requirements resulted in additions of provisions to codes permitting the collection of contributions for the maintenance of the code authority and issuance of NRA insignia and labels. Compliance activities with respect to codes were handled jointly by code authorities and the Administration. Statements of power relating to the handling, adjudication and disposition of labor and trade practice complaints necessitated amendments to codes conferring power upon the code authorities to conduct these activities. The administration of codes by code authorities often disclosed the top-heaviness and inefficiencies of national code authorities. Decentralization of this phase of code administration resulted in amendments of code authority provisions whereby divisional and local code authorities were permitted to be established. In addition, other matters prompted other amendments of code authority provisions, as the following tabulation shows:-

TYPE OF CODE PROVISION	NO. OF AMENDMENTS
Election, membership and constitution of code authority	126
Code authority contributions and finances	331
NRA insignia and label provisions	32
Creation of labor complaints committees	6
Creation of trade practice complaints committees	19
Permission to collect statistics and reports	62
Creation, membership and constitution of divisional or local code authorities	37
Additional general powers and obligations	18

The following list shows the number of codes and the name thereof which were amended with respect to the constitution of the code authority. The term "constitution" as used in this report refers to the code provisions which were in the nature of a statement of the rights and obligations of the code authority and of the members thereof. These provisions usually related to the liability of the members of the code authority, Administrative power of suspension of their activities, rights of arbitration, power to submit recommendations to the Administration, power to set up regional committees and the other usual code authority provisions found in the Model Code. These industries are listed and set forth as an example of the efforts of NRA to standardize code provisions relating to code authorities and to describe the rights and obligations of code authority members as such:

NAME OF CODE	AMENDMENT NUMBER	DATE
1. Advertising Specialty	65-1	January 1[illegible], 1[illegible]
2. Air Filter	347-Fl-1	November 22, 1934
3. Alloys Industry	5-15-1	December 18, 1934
4. Artificial Flower & Feather	29-1	August 14, 1934
5. Asbestos	80-1	April 27, 1934
6. Boiler Mfg.	38-2	August 28, 1934
7. Brattice Cloth Mfg.	5-35-1	April 22, 1935
8. Cast Iron Soil Pipe	18-3	August 31, 1934
9. Clay and Shale Roofing	389-2	December 7, 1934
10. Concrete Masonry	133-2	October 10, 1934
11. Construction Machinery	223-1	June 23, 1934
12. Corset & Brassiere	7-2	December 31, 1934
13. Cotton Textile	1-1	November 8, 1933
	1-3	December 29, 1933
	1-8	July 17, 1934
14. Electric Hoist & Monorail	483-1	October 12, 1934
15. Fibre Can and Tube	305-1	July 6, 1934
16. Fur Manufacturing	436-3	February 1[illegible], 1935
17. Furniture & Floor Wax & Polish	224-1	July 12, 1934
18. Graphic Arts	287-6	July 3, 1934
	287-8	August, 16, 1934
19. Industrial Furnace Mfg.	357-2	April 30, 1935
20. Investment Bankers	141-1	February 1, 1934
21. Legitimate Theater	8-1	October 22, 1934
22. Lime Industry	31-1	February 10, 1934
	31-2	April 1, 1935
23. Machinery & Allied Products	347-1	May 18, 1934
24. Marble Quarrying & Finishing	421-1	October 24, 1934
25. Men's Clothing	15-2	December 18, 1933
26. Metallic Wall Structure	84-A-1	October 30, 1934
27. Millinery	151-2	November 9, 1934
28. Needlework Ind. in Puerto Rico	474-1	July 20, 1934
29. Novelty Curtain, Draperies, Bedspreads & Novelty Pillow	79-2	August 24, 1934
30. Oil Burner	25-2	September 17, 1934
31. Ornamental Moulding	260-1	April 28, 1934

NAME OF CODE	AMENDMENT NUMBER	DATE
32. Paint, Varnish & Lacquer	71-1	March 2, 1934
33. Photographic & Photo Finishing	362-2	March 4, 1935
34. Plumbing Fixtures	204-2	April 23, 1934
35. Printer's Rollers	106-2	November 27, 1934
36. Rayon & Silk Dyeing	172-4	March 19, 1935
37. Restaurant	282-2	December 19, 1934
38. Ring Traveler	517-1	December 13, 1934
39. Robe & Allied Products	211-1	April 26, 1934
40. Shipbuilding	2-1	October 10, 1933
41. Shoe & Leather Finish	184-1	August 2, 1934
42. Soft Fibre Mfg.	393-2	October 25, 1934
43. Textile Bag	27-1	December 30, 1933
44. Textile Processing	235-3	August 6, 1934
45. Throwing	54-2	April 19, 1934
46. Umbrella	51-2	July 27, 1934
47. Underwear & Allied Products	23-2	May 10, 1934
48. Upholstery & Drapery Textile	125-1	February 6, 1935
49. Wall Paper Mfg.	19-1	December 30, 1933
50. Warm Air Furnace Mfg.	-2	June 27, 1934
51. Wholesale Millinery	201-3-1	August 30, 1934
52. Wool Felt Mfg.	143-1	November 30, 1934

TRADE PRACTICE PROVISIONS

The majority of amendments referred either to code authority or trade practice provisions, but the number of actual provisions affected related to trade practice rules. The types of trade practice rules set forth in various codes covered a number of subjects and no attempt has been made, for the purposes of this preliminary report, to set out each particular trade practice rule. The variety of such rules makes such a tabulation too much of a task at this time, however, the author has attempted to compile certain information regarding amendments of trade practice rules. The following classification is used as a basis:-

(a) Trade practice rules having basis in law.
(b) Trade practice rules having some basis in law.
(c) Desirable trade practice rules from an industrial viewpoint but having no basis in law.

The author has set out in the Outline of this subject, which is attached hereto and marked Appendix No. 1, two other classifications of these rules; viz., undesirable trade practice rules and unenforceable trade practice rules. This report cannot concern itself with these two last mentioned classifications at this time, because of the need of reference to the Trade Practice Studies and the Legal Enforcement Studies, which the author has not been able to fill for this report. The number of trade practice provisions (according to the above mentioned classifications) which were subjected to amendment are as follows:

Trade practice rules having basis in law ------- 119
Trade practice rules having some basis in law -- 106

Desirable to industry but having no basis in law -- 205 (*)

The following specific amendments relating to certain phases of trade practice rules and in addition to those listed above are:-

Price fixing	33
Prohibition of sales below cost	34
Open price systems	45
Uniform cost accounting	20
Production control	7
Machine hour limitations	7
Prohibition of new installations of machinery	4

The author of this report has had no opportunity to examine the reasons why these various trade practice rules were amended, whether or not the amendments were sponsored by industry or NRA and what effect these amendments had upon the code structure. It is hoped that this preliminary report will give some idea of the questions presented.

MISCELLANEOUS CODE PROVISIONS

The formation of codes resulted in some instances of improper wording which, because of the tremendous administrative job presented were not noted at that time. Legislative draftsmanship required a correction of these mistakes (**)

The change of the form of administration from that of an individual administrator to a board resulted in a number of amendments substituting the words "National Industrial Recovery Board" for the word "Administrator" (***).

(*) A few examples of the classification hereinabove set forth may be helpful. Types of code provisions which have been included in Class (a) are - commercial bribery, false advertising, liquidated damage agreements, false invoicing, defamation of competitors, and secret rebates. Class (b) includes provisions such as - design piracy, imitation of trade marks, style piracy, splitting of commissions, prohibitions against advertising allowances and optional standards clauses. Class (c) includes provisions such as - uniform discount and credit terms, loss limitation, prohibition of consignment sales, prohibition of future contracts, requirement of inclusion of transportation cost in purchasing price, etc.

(**) See Amendment No. 30, Lumber and Timber Products Code - January 31, 1935 (the word "industry" changed to "industries"). See Amendment No. 2, Metallic Wall Structure Code - March 7, 1935 (the words "and/or offer for sale" were added after the word "sell". The original intent being that offers of sale were included in the word "sell"). See also Amendment No. 4, Electrical Manufacturing Code - April 25, 1935.

(***) See Amendment No. 1, The Curled Hair Manufacturing Code - February 6, 1935.

On a number of occasions code provisions, because of poor draftsmanship, improper expression of the intent of the sponsors, ambiguity or other reasons, resulted in situations where the wording was not subject to interpretation sufficient to cover the original intent or remove the ambiguity. Some provisions were susceptible to interpretation, but such interpretation might result in a distortion of the language (*). On some occasions actual interpretations were in effect beyond the interpretative scope of the code provision and of necessity required amendment. The author of this report has had little opportunity to examine such situations, which actually led to amendment of the code, but this cause of amendment is mentioned and is suggested as a phase of the study fit for further investigation.

Investigation discloses that seven (7) amendments related to the effective date of the code, all of which extended the expiration date (**).

(*) See Amendment No. 1, Prison Equipment Manufacturing Code - November 6, 1934.

(**) See Amendments Nos. 1, 3, 4 and 5 of the Automobile Manufacturing Code.

CHAPTER VI

EVALUATIONS AND CONCLUSIONS

It was required that the policies of the Act be given expression in codes of fair competition. The power of code-making embraced the full purpose of the Act and was the fundamental reason for the exercise of power. A companion power was that of amendment of codes. Guarantees of this power and its proper use meet the most fundamental rules of administrative law. Therefore, a complete evaluation of and well considered suggestions regarding NRA amendments insofar as the power to amend was exercised is a requisite of this report.

Chapter I discusses the various legislative sources of the power to amend codes. No mention of the power is definitely stated except in Section 10(b). Construction of the provisions of some sections of the Act at least gives some basis upon which this administrative power may be predicated. The legislative history refers to an intention to confer such power but the bases found and inferred are not as perfectly set forth as was possible so to do. The idea of voluntary and imposed codes caused doubt as to the existence of the power to amend voluntary code provisions. It is therefore suggested that new legislation, if any, contain adequate and specific reference to the power of amendment of codes; that either a distinction as to exercise of the power be made between amendments of voluntary codes and revisions of imposed codes or that no such distinction be made; that full power be conferred with respect to the time of exercise thereof; viz., at time of code approval or any time thereafter.

The limitations of administrative discretion are few, as discussed in Chapter I. The power of amendment, being such a far-reaching weapon, should be subject to well defined standards of discretion. The policies of the Act are a basis, but it is suggested that standards, generally incorporating the reasons for amendments, particularly those offered by industry and trade and conceded beneficial policy requirements of NRA, be legislatively established as a guide to and limitation on the administrative agency.

A complete definition of the term "amendment" so far as the use of the power and the scope of its application are concerned, is suggested. The discussion of this part of the subject in Chapter II is sufficient to warrant the suggestion.

Chapter III presents a record of the delegation of the power of amendment. No serious deficiencies appear, although the reference to and use of the power to "substitute" PRA provisions could be clarified and specifically brought under the power to "amend".

The retention of the power to amend by the Administrator and the National Industrial Recovery Board is deemed good policy and legislative limitations upon delegations to lesser officials are suggested.

There appears to be no criticism of suggestion as to the use of an order of approval of a specific amendment. Use of a general order of amendment and a conditional order of approval is dependent upon the extent of the legislative statement of the power.(*) If broad discretionary powers are to be set forth, it is suggested that the power to generally amend be included therein. In addition, the use of conditions should be limited so that this exercise of the power of amendment will be done only when the amendment bears a relation to the policy of the Act.(**)

The analysis of labor amendments discloses the results of NRA'S leadership and policy of improvement of labor provisions and the additions of provisions incorporating labor policy. It appears from the tabulations that most amendments of labor provisions related to special types of employees; e.g., watchmen, apprentices, etc. The number of changes of area and geographical rates of pay discloses the trouble encountered by this form of wage and hour-fixing but also shows the advantage of a flexible code provision. It should be noted that the majority of revisions of maximum hours permitted an increase thereof and that most of the changes of normal minimum wages resulted in increases.

The amendments of code authority provisions covered all features of code administration. Many were brought about by the policy and regulations regarding code authorities. Amendments relating to contributions, assessments, labels, collection of statistics, labor and trade practice complaints committees conformed to the Administration's suggestions.(***) The conferring of additional general powers in most cases represented industrial subscription to model code provisions relating to code authorities.

The amendments whereby the election and membership of code authorities were affected usually affected industry or trade representation; e.g., subdivisions of industry or trade, non-association groups, and trade associations. Methods of notice, balloting and

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(*) See comment in this Chapter, supra.

(**) See Part three hereof, Chapter IV, for discussion re. conditions.

(***) NRA Bulletin No. 7: Executive Order No. 6479; Executive Order No. 6678, NRA files.

other matters incident to meetings likewise were incorporated in such amendments.

The content of this report with regard to amendments of trade practice rules does not justify an evaluation and conclusion. The purpose of this report is to present in preliminary form, the problems of amendments of codes. The treatment of such problems is not adequate, but serves as a basis for further study, investigation and report.

FURTHER RESEARCH - UNEXPLORED PHASES OF THE STUDY.

PART FOUR
APPENDIX NO. 1.

The outline of the study (Appendix No. 2) sets forth in detail the various aspects of the subject of code amendments. This report does not attempt to cover all of the sections of the outline.

The administrative details of procedure relative to the receipt of applications for amendments, the handling and routing thereof and all matters concerning efficient administration of the Act for speedy procedural treatment of amendments to codes; the method of reference of amendments to code authorities, considerations thereon had by various Advisory Boards and other details precedent to the actual approval or denial of applications for amendment all might receive further consideration.

As stated in Chapter III, various limitations upon the power of amendment were set forth in codes, such limitations conferring upon code authorities and industries the right of origin and/or approval of the amendment prior to administrative approval. This report has concerned itself with the bases of power of amendment. It is the author's opinion that the approval of codes with provisions limiting the administrative power of amendment may have been contrary to the provisions of the Act, so it is suggested that study be made to determine whether or not any legislative limitation upon such code provisions would be desirable.

Questions of due process, always a part of administrative consideration of amendments, have not been considered herein. Hearings, notices thereof, the record and the sufficiency of all such matters are of primary concern to an administrative agency. It is suggested that this phase of the subject be considered to determine whether or not specific rules and regulations relating to this matter should be legislatively set forth (*).

Various problems were encountered in regard to the right of sponsorship of amendments. The Act said "truly representative" with respect to codes, but said nothing about sponsors of amendments. The author has conducted some investigation in regard to this fundamental question, but suggests further study so that concrete evaluations and conclusions can be made. Some administrative rules and regulations were announced (**) which looked to a code authority as the proper sponsor.

(*) See report on Administrative Law and Procedure under the NIRA A report of the Division of Review NRA files.

(**) See Administrative Order No. X-27, NRA files.

The status of applications by individuals or groups and the right and advisability of administrative consideration thereof, with or without reference or approval by a code authority or an industry, are matters of importance to the subject of amendments. These questions are linked with the problems caused by code limitation of the power of amendment hereinabove mentioned.

Procedure was adopted whereby an application for an amendment subjected a code to reconsideration and general revision (*). This method of review resulted in (1) issuance of better codes, (2) hesitancy by industry in the submission of necessary and beneficial amendments, (3) breakdowns of code structure and enforcement because of industrial or labor refusal to accept suggested amendments, (4) practical imposition of amendments. The advisability of such a policy and the causes and effects thereof are suggested for further study.

Many amendments related to the jurisdiction of the code. Reasons for such amendments might be investigated in order (1) to determine means of presenting problems of jurisdiction, (2) to formulate methods and policies of codification, (3) to arrange a proper classification of industry, trade, products and services and (4) to prepare suitable definitions for future use. Further study should reveal important information bearing on these objectives.

The causes underlying the amendment of labor provisions, particularly, their sponsors and the objections to them and the effects of the amendments are matters of interest and are suggested for further study.

(*) Office Orders Nos. 73 and 86, NRA files.

APPENDIX NO. 2

ADMINISTRATIVE PROBLEMS REVIEW

OUTLINE
FOR
AMENDMENTS

1. Introduction
   1.1 Objective and scope of the study
2. Bases in the Act
   2.1 Section 3(a)
   2.2 Sections 10 (a) and 10 (b)
   2.3 Application of Secs. 3(a), 10(a) and 10(b) to Secs. 4, 7(b) and 7(c)
   2.4 Legal aspects of power conferred
   2.5 Limitations, if any, upon President
3. Definitions
   3.1 Ordinary definition
   3.2 Administrative definition - changes thereof
   3.3 Discussion of relation to term "modification"
4. Delegation of power to approve amendments
   4.1 To the Administrator
   4.2 To N.I.R.B.
   4.3 Retentions of power by the President
   4.4 Delegation of joint power
      4.41 A.A.A.
      4.42 F.A.C.A.
   4.5 Delegation of power by Administrator or N.I.R.B. to
      4.51 Division Administrators
      4.52 Territorial Administrators
      4.53 Limitation and requirements
5. Methods of amendments of codes
   5.1 General executive or administrative order
      5.11 Amendments of all codes
      5.12 Amendments of more than one code
   5.2 Approval of specific amendment
      5.21 Industry application
      5.22 Labor application
      5.23 Governmental action
   5.3 Legal discussion of methods employed
   5.4 Code limitations on exercise of method of amendment
      5.41 Necessity of assent of industry
      5.42 Non-waiver of constitutional rights
6. Types of codes subject to amendment
   6.1 P.R.A.
      6.11 General - necessity of assent
      6.12 Substituted provisions
   6.2 Codes under Sec. 3(a) and Sec. 3(d)
   6.3 Labor agreements under Sec. 7(b)
   6.4 Rules and regulations having effect of a code

7. General amendments of all codes by executive or administrative orders
   - 7.1 Purposes
     - 7.11 Policy
     - 7.12 Legality
     - 7.13 Clarity
     - 7.14 Removal of conflicts with other laws or governmental agencies
     - 7.15 Other purposes
   - 7.2 Effects
     - 7.21 On general code structure
     - 7.22 Industry
     - 7.23 Labor
     - 7.24 Consumers

8. NRA initiation of amendments
   - 8.1 Causes
     - 8.11 Adjustment to policy
     - 8.12 Legality
     - 8.13 Code administration difficulties
     - 8.14 Compliance
     - 8.15 Enforcement
     - 8.16 Recognition of protesting groups
     - 8.17 Overlapping definitions
     - 8.18 Clarity and draftsmanship
     - 8.19 Increase of exemptions
     - 8.11 Non-susceptibility of interpretation of code provision
     - 8.12 Geographical reasons
     - 8.13 Simplification of code structure
       - 8.131 Consolidation of codes
       - 8.132 Consolidation of industry divisions
       - 8.133 Model Code
       - 8.134 Enlargement of scope of Industry Basic Codes (as distinguished from NRA Basic Code.)
     - 8.14 Modification of Code Authority set-up
     - 8.15 Limitation or enlargement of powers of Code Authority
     - 8.16 Other purposes
   - 8.2 General discussion of N.R.A. requirement that application for amendment opened the entire Code for administrative study and revision
     - 8.21 Purposes
     - 8.22 Effects

9. Analysis of applications for amendments and amendments of code provisions with respect to
   - 9.1 Code definitions
     - 9.11 Industry or subdivisions thereof
     - 9.12 Members of industry and classification thereof
     - 9.13 Distribution agencies
     - 9.14 Commodities
   - 9.2 Labor provisions
     - 9.21 Maximum hours
       - 9.211 Normal week period
       - 9.212 Normal day period
       - 9.213 Overtime tolerance
       - 9.214 Peak period

9.22 Minimum wages
9.221 Normal trade
9.2211 Hourly rate
9.2212 Piece rate
9.2213 Weekly rate
9.222 Overtime rate
9.223 Apprentice rate
9.224 Skilled rate
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9.25 Handicapped workers
9.26 Standards of safety and health
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9.28 Stretch-out
9.29 Scrip payments
9.21 Equitable readjustment of wages above the minimum
9.22 Posting
9.23 Collective bargaining
9.24 Miscellaneous
9.25 Development of labor policy with respect to amendments
9.26 Legal aspects of labor provision amendments
9.27 Evaluation of experiences
9.3 Trade practice provisions
9.31 General analysis and discussion of trade practice provisions being grouped as follows:
9.311 Generally accepted in law
9.312 Desirable but not fully accepted in law
9.313 Desirable but no basis in law
9.314 Undesirable
9.315 Unenforcible
9.32 Price policy
9.321 Price fixing
9.3211 Fixed prices
9.3212 Lowest reasonable price
9.3213 Model mark-up
9.322 Price control
9.3221 Loss leaders
9.3222 Loss limitations
9.323 Open price systems
9.3231 Institution of system
9.3232 Particular contracts
9.3233 Method of operation

Note: For purposes of discussion bid depository systems are included under this sub-division

9.324 Cost provisions:-
9.3241 Sales below cost
9.3242 Obsolete goods
9.3243 Emergency disposals
9.3244 Competition

9.325 Accounting systems
9.3251 Necessity of approval of Administrator
9.3252 Complexity of system
9.3253 Difficulties of installation
9.326 Sales reporting systems
9.4 Amendments of Code Authority provisions
9.41 Necessities of amendments
9.42 Amendments affecting rights of Code Authority
9.43 Amendments affecting obligations of Code Authority
9.44 Amendments incorporating suggestions and regulations of N.R.A.
9.45 Legality
9.46 Policy
9.47 Finances
9.48 Incorporation
9.49 Trade association participation
9.5 Labels
9.51 Necessity for use of labels
9.52 Types of amendments submitted as to
9.521 Control
9.522 Policy
9.523 Finances
9.53 Types of industries submitting label amendments
9.6 Statistical Reports
9.61 Executive order of December 7, 1933
9.62 Types of amendments submitted as to
9.621 Governmental reports
9.622 Code Authority reports
9.7 Conditional orders of approval
9.71 Amendments submitted incorporating conditions
9.72 Amendments changing conditions
9.8 Miscellaneous code amendments
10. Period of amendment
10.1 Duration of Act
10.2 Duration of Code
10.3 Temporary
10.4 Emergency
11. Amendments of orders
11.1 Executive and administrative orders of general application
11.2 Orders of approval
11.21 Codes
11.22 Amendments
12. Procedure as to amendments
12.1 Application by
12.11 Industry member
12.12 Industry group
12.13 Code Authority
12.131 National
12.132 Local
12.14 Instituted by N.R.A.
12.141 Industry Division
12.142 Legal Division
12.143 Advisory boards

12.144 Field offices
12.145 Other departments of N.R.A.
12.15 Government agencies other than N.R.A.
12.16 Labor
12.161 Individual
12.162 Group of employees
12.1621 Unorganized
12.1622 Union
12.2 Consideration of application
12.21 By deputy
12.22 Advisory Boards
12.23 Research and Planning Division
12.24 Legal Division
12.25 Administration members and Code Authority
12.26 Review Division
12.27 Extent of consideration by boards, etc., and limitations thereon
12.28 Division administrators
12.29 Higher officials and President
12.21 Extent of consideration of briefs pro and con
12.22 Field offices - N.R.A.
12.3 Due process requirement
12.31 Applications submitted to hearing
12.311 Type, form and extent of notice
12.312 Place of hearing
12.313 Record of hearing
12.32 Applications submitted to an opportunity to be heard
12.321 Type, form and extent of notice
12.33 Application receiving no public consideration
12.34 General legal aspects
13. Final action
13.1 Form
13.2 Notice
14. Analysis of procedure and time consumed in the handling of applications for amendments
14.1 Interoffice
14.2 Intraoffice
14.3 Field offices
14.4 Due process
14.5 Extra - N.R.A. reference
14.6 Effect of policy rulings
14.7 Protests
14.8 Comparison with procedure of other government agencies
14.9 Causes of delay
14.1 Effects of delay
15. Analysis of amendments
15.1 Amendments submitted by private groups
15.11 Effects upon code
15.12 Effects upon industry
15.13 Effects upon labor
15.14 Effects upon consumers
15.2 Amendments instituted by N.R.A.
15.21 Effects upon industry
15.22 Effects upon labor
15.23 Effects upon N.R.A.
15.24 Effects upon consumers

16. Substantive problems
    16.1 What rights of sponsorship of amendments should be granted?
    16.2 What consideration of amendments should be afforded industry and labor by N.R.A.
    16.3 Should the power of general amendment of all codes be utilized?
    16.4 What participation should industry and labor have in the issuance of orders of general amendments?
    16.5 What requirements of due process should be adhered to by NRA?
    16.6 Should NRA institute amendments on its own motion?
    16.7 Effect of amendments on priorly granted exemptions (See Outline on Exemptions and Exceptions)
    16.8 Should field offices be granted power to amend codes?
    16.9 Should N.R.A. open a code for general revision upon the submission of an application for a specific amendment?
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    17.1 Code structure
    17.2 Declared purposes of the Act
    17.3 Large business units
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    17.6 N.R.A. policy
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    17.8 Industry
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18. Evaluation
19. Conclusions
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PART FIVE : CONDITIONAL ORDERS OF APPROVAL

By

W. M. Chubb

9844

INTRODUCTION

The "Administrative Problems Review" was set up to make a review of certain key problems which presented administrative difficulties during the periods of code formulation and administration and to examine some of the methods developed for handling them.

Such problems had, on one hand, to do with Classification, Overlapping Definitions and Multiple Code Coverage which were fundamentally inherent in any attempt to codify industry and, on the other hand, to do with problems of adjustment to developed policies, and of methods and machinery for reconciling and adapting the administration of codes under the various difficulties met due to practical conditions. This latter type of problems gave rise to the use of such devices as Conditional Orders of Approval, Amendments, Exemptions, Stays and Interpretations.

All of the above problems and also a collateral study of the subject of Uncodified Industries are being reviewed and discussed in separate reports.

The accompanying study covers only conditional orders of approval and because of its nature, does not, to any great degree, tie in with the other studies, but in common with the general objects of all of these studies, emphasis has been put upon an analysis of the experiences during the code period pointing toward substantial guides for the drafting of new legislation and plans for its successful administration.

All codes have been examined for conditions imposed in the order of approval and the various types of conditions classified in Appendix "3" herein. A representative number of typical cases have been analyzed as to, the function performed or attempted by the use of this device, its successes and failures, and the legal problems generated by its application.

In Appendix "2" hereto will be found a detailed outline which was originally prepared with great care for an exhaustive treatment of the subject. Lack of time and the difficulty of locating records under present conditions prevented this exhaustive analysis of all cases, but anyone desiring to make a more complete examination of the subject will find that outline and the references given to be very useful.

The principal phases of the subject that have important bearing as guides in the preparation of new legislation and subsequent administration thereunder, have been prepared in the form of questions and this review has only attempted to collect data adequate to answer these questions.

The present sub-title embraces a review principally of conditional orders of approval of codes, agreements and amendments as issued by the President, the Administrator and the NIRB, but also to a limited extent, conditional orders of approval of minor administrative actions by the Administrator and by division administrators in such cases as code authority elections, by-laws, trade practice complaints committees, etc.

CHAPTER I.

PART FIVE.

WHAT POWERS OF APPROVAL OF CODES, AGREEMENTS AND AMENDMENTS WERE CONFERRED BY THE ACT?

In order to obtain a proper orientation for this review, it is first necessary to examine just what specific powers of approval were conferred by the Act and if the language be not clear, to go back to such evidence of intent as may be shown by hearings before the Congressional Committees prior to the passage of the Act. (*)

(a) VOLUNTARY CODES

Section 3 (a) of the Act conferred powers upon the President to approve codes voluntarily applied for, as follows:

> "Section 3 (a). Upon application to the President by * * * associations or groups, the President may approve a code or codes * * * if the President finds * * * (1) * * * no inequitable restrictions or admission to membership * * *truly representative * * * * and (2) * * *code or codes * * * not * * * promote monopolies or eliminate or oppress small industries * * * Provided * * * shall not permit monopolies * * *; Provided further * * * nothing * * * shall deprive (certain) persons of right to be heard prior to approval * * *. The President may, as a condition of his approval of any such code, impose such conditions * * * for the protection of consumers, competitors, employees and others in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared."

(b) PRESCRIBED CODES

Section 3 (d) of the Act conferred power upon the President to prescribe and approve a code under the following conditions:

> "Section 3 (d) Upon his own motion, or if complaint is made to the President that abuses * * * are prevalent in any trade or industry * * * and no code * * * has been approved *** the President after * * * public notice and hearing * * * may prescribe and approve a code * * * which shall have the same effect as a code * * * approved by the President under subsection (a) of this section."

(*) In the quotations following the underscoring of certain parts has been added by the author and does not appear in the Act itself.

(c) AGREEMENTS

Section 4 (a) of the Act conferred power upon the President to enter in agreements with, and approve voluntary agreements between persons as follows:

"Section 4 (a) The President is authorized to enter into agreements with, and to approve agreements between and among, persons engaged in a trade or industry, labor organizations, and trade or industrial organizations, associations or groups * * * if in his judgment such agreements will aid in effectuating the policy of this title with respect to transactions in or affecting interstate or foreign commerce, and will be consistent with the requirements of clause (2) of subsection (a) of section 3 for the code of fair competition."

(d) LABOR AGREEMENTS

Section 7 (b) of the Act required the President to afford every opportunity to employers and employees to establish by mutual agreement standards as to maximum hours, minimum rates of pay and other conditions of employment and such agreements when approved by the President "shall have the same effect as a code * * * approved by the President under subsection (a) of Section 3". This implied the power to approve.

Section 7 (c) of the Act conferred power upon the President to investigate labor conditions in a trade or industry where no mutual agreement concerning labor conditions had been approved under Section 7 (b), and to prescribe a limited code fixing certain labor conditions, which "shall have the same effect as a code * * * approved by the President under subsection (a) of section 3."

(e) AMENDMENTS

Section 10 (b) of the Act conferred power upon the President to modify any order, or approval issued under the Act. This established the power to approve or prescribe amendments.

(f) LICENSING FEATURE

Section 4 (b) of the Act conferred power upon the President under certain conditions to license business enterprises. This power expired June 16, 1934 and was never used, hence no conditional orders were involved under it.

Inasmuch as orders of approval in their intended effect and in many cases their legal effectiveness departed far from the provisions of the Act, it is deemed important to analyze the sections outlined above carefully to determine just what was provided in the Act, particularly in Section 3 (a) and Section 3 (d) authorizing "conditions".

Considering Sections 3 (a) and 3 (d) of the Act together, it is apparent that the former was intended to provide the machinery for voluntary codes alone and the latter was intended to provide the machinery for prescribed codes alone (often termed imposed or compulsory codes.)

Section 3 (a) provided that "The President may, as a condition of his approval of any such code, impose such conditions * * * as the President in his discretion deems necessary * * *". (Underscoring added)

It is very evident that this wording in connection with a code voluntarily applied for, contemplated that conditions imposed by the President were conditions of and antecedant to the granting of his final approval, leaving the voluntary code in a suspended state of effectiveness prior to inclusion of or assent to the conditions imposed, and did not contemplate the authorizing of arbitrary conditions in his final approval of any code voluntarily applied for without thereby rendering the code in fact a prescribed code. To preserve the voluntary nature of codes under Section 3 (a), any such imposed conditions must necessarily have been assented to or included by duly authorized sponsors of the voluntary code prior to its becoming effective or the code was a prescribed code.

It is evident that no matter what might be the importance of an imposed condition, the principle is the same, for it clearly would be impossible to draw any line of demarcation based upon importance of the imposed condition. It has been generally considered that there were no codes prescribed under the provisions of Section 3 (d), but codes voluntarily applied for and approved with conditions in the order of approval unassented to by the duly authorized sponsors must be considered as falling under Section 3 (d) "upon the motion" of the President.

If such codes were approved by either the Administrator or the National Industrial Recovery Board with conditions in the order of approval unassented to, the codes would appear to be legally non-effective because of lack of delegated power of approval under Section 3 (d). (See Chapter II)

The only code containing imposed conditions in the order of approval which appears to have had the conditions assented to and a further clear order of final approval issued, was Code No. 1, Cotton Textile Industry (discussed more fully later herein).

Thereafter conditions, some of a vital nature, others unimportant, were imposed in many orders of approval and the codes considered effective by the NRA as voluntary codes without the issuance of subsequent orders of final approval after the conditions were satisfied by assent or otherwise. In many such cases (probably a large majority) the sponsoring bodies proceeded upon the basis of the conditional approvals and organized for administration of the conditionally approved codes and thereby tacitly assented to the conditions imposed. This probably legalized the approvals as voluntary codes although the

effectiveness as respecting individual industry members might still depend upon the form of authorization given to the sponsoring body.

Under Section 3 (d) for codes definitely prescribed by the President, it would be unlikely that any conditions would ever be required in the order of approval since the President necessarily could control every provision prescribed therein.

Under Section 4 (a) for voluntary agreements entered into, or approved by the President, no power to impose conditions was granted by the Act since the reference in Section 4 (a) to clause (2) of Section 3 (a) was only to the requirements thereof.

Under Sections 7 (b) and 7 (c) for mutual agreements and for prescribed limited codes covering labor conditions, no specific power to impose conditions was granted by the Act. Such agreements or codes upon approval had the same effect as codes approved under Section 3 (a). Conditions in the approval order would therefore serve to render such agreements noneffective until assented to, unless specifically prescribed by the President himself. In the case of prescribed limited codes under Section 7 (c) it would be unlikely that any conditions would ever be required in the order of approval since the President could control every provision prescribed therein.

In support, if necessary, of the conclusion that Section 3 (a) covered voluntary codes only and Section 3 (d) covered prescribed codes only, rendering codes approved conditionally by the President, in fact, prescribed codes, attention may well be directed to the intent shown by the statements of Senator Wagner in explaining the original National Industrial Recovery Act on May 22, 1933 before the Senate Committee on Finance as follows:

> "Senator Wagner. * * * The national industrial recovery bill has as its single objective * * * reemployment * * * at wages sufficient to secure comfort and decent living. This * * * end is to be reached by * * * cooperative action within industry, encouraged by law and supervised by the President for the protection of the public, and * * * expenditures for public works, * * * the bill centralizes authority in the President * * *. Despite this centralized power, the emphasis is upon voluntary action. * * * trade and industrial association or group to prepare * * * for approval a voluntary code * * *. When such a voluntary code is approved by the President * * * binding upon the entire trade or industry * * *. * * * no code shall be approved unless * * * (certain conditions are met as to true representation, no monopoly, no discrimination --embodies labor provisions of Section 7 (a)
>
> "Thus far I have discussed codes which are voluntary * * * and it is primarily upon such spontaneous action that the bill relies. * * * But if any trade or industry cannot or will not cooperate in the formation of voluntary codes, the President is authorized, after proper investigations and

hearings, to prescribe * * * codes * * * or if any trade or industry voluntarily arrives at some of the requirements of a code, and neglects others, the President may in a proper manner prescribe these others and combine all in a general code. * * * in absence of need of general code * * * prescribe a limited code dealing only with (labor conditions) * * *

"Senator Gore. The three categories, what are they?

"Senator Wagner. The voluntary code, the compulsory code, the licensing feature, which I will come to, and then there is the agreement provision."

CHAPTER II

WHAT DELEGATIONS OF POWER OF APPROVAL WERE MADE AND WHAT POWERS RETAINED?

The first delegation of approval powers by the President was made to the Administrator by Executive Order No. 6543-A, December 30, 1933, as follows:

"(1) The approval of codes of fair competition, with the exception of codes for major industries (being in general those industries normally employing in excess of 50,000 employees) as so classified by the Administrator for Industrial Recovery and with the exception also of any code of fair competition imposed under section 3 (d) of said title of the act.

"(2) The approval of any amendment or modification to, exception or exemption from, or elimination of any one or more provisions of any code of fair competition.

"(3) Nothing herein contained shall be construed as amending any previous delegations of power to any other Department of the Government."

Executive Order No. 6443, November 22, 1933 delegated power to the Administrator to modify, or grant exceptions to or exemptions from, agreements under Title I, then or thereafter entered into or approved by the President.

Executive Order No. 6590-A, February 8, 1934, delegated power to the Administrator to prescribe rules and regulations governing amendments, modifications, exemptions, exceptions and stays and other forms of relief from approved codes.

Executive Order No. 6750-A, June 27, 1934, delegated power to the Administrator to enter into agreements under Section 4 (a) with persons engaged in trade or industry in Puerto Rico, Hawaii and Alaska.

Executive Order No. 6764, June 29, 1934, delegated power of approval of codes covering in general food industries jointly to the Secretary of Agriculture and the Administrator except major industries and codes imposed under Section 3 (d) and also delegated power of approval of amendments, etc. to each for the codes admin-

istered by each respectively. This order clarified the broad delegation given to the Administrator under Executive Order No. 6543-A.

Executive Order No. 6859, September 27, 1934, redelegated, among others, all powers of approval theretofore delegated to the Administrator, to the National Industrial Recovery Board.

Executive Order No. 6999, March 30, 1935, redelegated all of the functions and powers with certain specified exceptions, from the Secretary of Agriculture to the National Industrial Recovery Board with respect to five specified food industry codes.

CHAPTER III

WHAT CIRCUMSTANCES ATTENDED THE USES OF THE DEVICE OF CONDITION APPROVAL OF (a) CODES, (b) AGREEMENTS, (c) AMENDMENTS AND (d) OTHER MINOR ADMINISTRATIVE ACTIONS?

(a) CODES

Code No. 1, Cotton Textile Industry was approved by the President July 9, 1933 on thirteen conditions which were immediately referred to the Industry, assented to, or satisfactorily adjusted and the conditionally approved code amended accordingly. Prior to the designated effective date, the President issued July 16, 1933 a further Executive Order in which:

> "It is ordered that the condition heretofore imposed as to the termination of approval of the Code is now withdrawn and that the Code of Fair Competition for the Cotton Textile Industry is finally approved with the conditions so proposed, as set forth in Schedule A attached hereto."

This action conformed literally to the clause in the Act, Section 3 (a), "The President may, as a condition of his approval of any such code, impose such conditions *** as the President in his discretion deems necessary to effectuate the policy herein declared." Code No. 1 thereby retained a purely voluntary status and was effectively approved under Section 3 (a) of the Act.

Code No. 3, Wool Textile Industry, was the next code approved conditionally. It was approved July 26, 1933 by the President on condition that "a Wool Textile Industry Committee be created ***". In this case (as early as July 26, 1933) apparently the literal meaning of the clause of the Act, of Section 3(a) quoted above, was lost sight of, and this Code was by the terms of the Order in a state of suspended approval until the condition was complied with.

Code No. 6, Lace Manufacturing Industry, approved August 14, 1933 by the President on condition that a Lace Manufacturing Industry (Code Authority) be elected. Code History states (p. 27) that three days later the industry with 90% present held a meeting to elect such committee, thus satisfying the condition.

Code No. 12, Photographic Manufacturing Industry, approved August 19, 1933 by the President on condition that a Photographic Manufacturing Committee be created. This condition was not met until October 30, 1934, over a year later, apparently through misunderstanding that the required committee necessitated an election and was not satisfied by the group of seven appointed as the code committee. The legality of considering the code effective as a

voluntary code in the meantime might have successfully been challenged had important cases depended thereon.

Code No. 13, Fishing Tackle Industry, was approved August 19, 1933 by the President subject to a condition requiring amendment "as soon as practicable" of the Association by-laws, which were in conflict with Section 3 (a) (1) of the Act. Manifestly, this code could not have been legally approved and effective until this was done without violating a specific requirements of the Act.

Code No. 14, Rayon and Synthetic Yarn Manufacturing Industry, "approved August 26, 1933 by the President of the condition, compliance with which is hereby required, that reports shall be furnished from time to time to the Administrator by each employer" concerning labor information. Manifestly, failure of any employer to comply with this condition at any time made the code legally revert to a state of suspended approval.

There is no evidence that this condition was met at any time more than by mere accident of transmitting a copy of information exchanged monthly among only four of the principal manufacturers showing wage rates. This was in no sense a report. (See Code History pp. 161-162.) The legal effectiveness of the code could have been challenged until reports were submitted by each employer in accordance with the order of approval.

Code No. 31, Lime Industry, was approved Octover 3, 1933 by the President on condition that the Association amend its by-laws. This is reported to have been satisfied. Six months later an amendment was approved April 1, 1935, with extensive conditions in its order of approval partially agreed to by the industry and partially regarded by the industry as eliminating the desired inclusion of provisions absolutely necessary for proper administration of the code. No assent to the conditions in the order of approval of the amendment appears from the record.

Code No. 9, amendment to Lumber & Timber Products. Action October 9, 1933 by the President. This is not a conditional order of approval, but is cited as an instance of an ineffective approval. (See bound Volume I, page 705, Codes of Fair Competition). The President has here merely signed a recommendation addressed to him by the Administrator.

Code No. 96, Buff and Polishing Wheel Industry, was approved November 4, 1933 by the President on condition that one of the unfair trade practice rules be deleted which called for resale price maintenance. There appears to be no evidence of assent to this deletion other than tacit assent in the organization and functioning of the code authority, which was the group sponsoring the code.

Code No, 125, Unholstery and Drapery Textile Industry was approved November 27, 1933 by the President on condition that certain classes of manufacturers could elect not to be bound upon notice given with a given time limit (later extended to December 23, 1933.) Industry

apparently desired this condition which made it possible for them to get a code, and although the conditions appear not to have been specifically assented to, the organization and operation of the code authority implied tacit assent.

Code No. 152, Can Manufacturing Industry, was approved December 15, 1933 by the President with two conditions, the second requiring submission of statistical information to NRA. There appears to be no record of assent to the conditions imposed but likewise there is no record of objection and the code authority election and operation lent tacit assent to the conditions, in the order of approval.

Code No. 202, Carpet and Rug Manufacturing Industry, was approved January 12, 1934 by the President on condition that a provision concerning "volume allowance" be stayed pending further investigation. This was done on account of opposition raised by buying syndicates and wholesale distributing organizations. No information is available showing industry reaction or any assent to the stay.

Code No. 236, Cooking and Heating Appliance Manufacturing Industry, was approved January 30, 1934 by the Administrator on condition that the waiting period between filing of prices and their effective date be stayed. No record was found of industry assent to this prescribed condition. The Administrator's delegated power specifically excluded approval of prescribed codes. The effectiveness of the approval of this code, with a condition, was therefore subject to challenge until the condition was assented to.

Code No. 258, Cast- Iron Boiler and Radiator Industry, was approved February 3, 1934 by the Administrator on condition that the provision covering resale price maintenance be deleted. This was stated to be "a very serious blow to the hope of the industry that cut-throat competition would be retarded or arrested." (Code History, Part II, p. 17). No assent to this deletion from the code as approved by the industry appears to be of record.

Code No. 330, Scrap Iron, Non-Ferrous Scrap Metals and Waste Materials Trade, was approved by the President March 12, 1934 on condition that a report be made not later than 60 days after effective date whether supplementary code was necessary for the "Waste Paper Trade." This report was received from the code authority on April 17, 1934 requesting a hearing on a proposed supplemental code. Hence, assent to the condition was implied by compliance therewith. (Code History p. 19).

Code No. 354, Small Arms and Ammunition Manufacturing Industry was approved by the Administrator subject to conditions (among others) that the "hedge" clause dealing with non-waiver of constitutional rights and non-consent to modifications be eliminated. Until these conditions were assented to by the Industry, the code was in a suspended state of effectiveness as a voluntary code unter Section 3 (a) being approved only by the Administrator with conditions, and whose delegated authority by Executive Order specifically excepted the power to prescribe codes.

Code No. 359, Preformed Plastic Products Industry, was approved by the Administrator March 23, 1934 with a condition that the provisions be stayed concerning a waiting period between the filing and effective date of price terms. So far as known, industry members did not object to this stay, and organization and operations of the code authority lent tacit assent to the code as approved with the conditions.

Code No. 362, Photographic and Photo Finishing Industry, approved March 23, 1934, but by the President with an identical condition and similar reaction of industry as under code No. 359.

Code No. 366, Retail Monument Industry, approved by the Administrator March 26, 1934 with an identical condition to that for Code No. 359. The stay was never lifted. No record of assent or objection appears.

Code No. 401, Copper Industry, was approved April 21, 1934 and in the order very extensive conditions were placed.

Assent was given by members of the Industry, but under protest that new Article VII (Marketing Provisions) was "imposed" on the Industry, in letters as follows:

American Metal Company	May 10, 1934
Anaconda Copper Mining Company	April 24, 1934
Kennecott Copper Corporation	May 4, 1934
Phelps Dodge Corporation	April 24, 1934
Five others on dates	April 24 to May 7, 1934

Notwithstanding these protests, the members of the Industry proceeded with the organization of their code authority and adhered to all of the provisions of the Code, thus the conditions in the order of approval may be considered to have received later implied assent.

Code No. 408, Undergarment and Negligee Industry, was approved April 27, 1934 by the Administrator on five conditions. The code History gives no record of assent or opposition. The code authority was not recognized until July 9, 1934 due to difficulty of organization due to rivalry to two sponsoring groups. Effectiveness of the approval on condition was doubtful.

Code No. 420, Gypsum Industry, approved May 7, 1934 by the Administrator on condition that the waiting period be deleted under price filing and evidence be submitted to averaging of hours was necessary.

No record of assent. Industry was somewhat disappointed in not being permitted to use a waiting period in connection with price filing, but no strenuous objection in view of study being made by NRA. The code authority appointed a committee to report on averaging of hours, and upon their report the averaging of hours was permitted to remain in the code.

Code No. 463, Candy Manufacturing Industry, was approved June 11, 1934 by the President on four conditions to which there appears no specific assent by the Industry. Only one "condition," that staying

the waiting period, is reported to have caused appreciable industry reaction. Here many members foresaw that the absence of the waiting period would keep prices churning, a phenomenon which actually occurred (Code History, p. 30).

Code No. 467, Cigar Manufacturing Industry, was approved June 19, 1934 by the President on four conditions. There is no record of assent to the conditions nor of objection thereto. A code authority was elected July 2, 1934 which lent tacit assent to the code conditionally approved as being voluntary.

Code No. 469, Sulphonated Oil Manufacturing Industry, was approved June 26, 1934 by the Administrator on the condition that certain provisions covering price filing and a waiting period be stayed. Industry did not desire to stay and by resolution of the code authority on November 7, 1934 stated that the stay operated to prevent efficient operation under the code and made it impossible to carry out the purpose of the Act and requested that the stay be terminated. This was not done because approval of waiting periods was contrary to the policy of NRA. The election and functioning of the code authority probably constituted tacit assent to the code with the condition but the effectiveness of the code, against any individual member of the industry who might have challenged it as a prescribed code, was doubtful.

Code No. 498, Corn Cob Pipe Industry, was approved August 7, 1934 by the Administrator on condition that a report be submitted within 60 days on a study of minimum rates of pay. This was not done within the 60 days limit and apparently never complied with. The code, therefore, became non-effective 60 days after its stated effective date by the terms of the order of approval, and probably might have been ruled in court as never effective because of lack of delegated authority in the Administrator to approve a voluntary code changed by a prescribed condition.

Code No. 541, Flat Glass Manufacturing Industry, was approved by the NIRB, subject to the condition that Section 2 (b) of Article III be stayed. This section provided for tolerance in hours during a peak period and was considered a vital part of the code by certain manufacturers. The approval with this condition unassented to, rendered the code and as such the NIRB was without delegated authority to effectively approve. Two members of the Industry protested. The code committee refused to organize the code authority under the provisions of the code until the condition was later removed by an order terminating the "stay", (which stay had not been specifically ordered). In the meantime, the code committee claimed the code was not legally effective. Serious compliance cases hinged upon the effective date of this code, which had not been settled at the time of the Schechter Decision.

(b) AGREEMENTS

A representative number of miscellaneous orders of approval, or agreements, have been reviewed as follows:

(a) Agreements by the President approving labor provisions of AAA codes.

(b) Agreements on partially completed codes, allied to the Cotton Textile Industry. These were for certain provisions which received the President's formal approval in advance of agreement upon the whole codes. Such partial agreements were made subject to the same conditions as applied to the Cotton Textile Code. With the final approval of the Cotton Textile Code these conditions were automatically satisfied.

No administrative difficulties or other interruptions to the regular procedure in handling these cases, due to the added conditions of approval, are recorded.

(c) AMENDMENTS

A large number of orders of approval of amendments to codes were reviewed, and very few conditions in the orders of approval found. In general, amendments were not subject to pressure for approval. They were so carefully and calmly considered that changes as required were made and assented to prior to presentation for approval.

Such conditions as appeared were in the main simple (example shown below).(*) and not vital to the Industry, and moreover, could be prescribed with full legal effectiveness by reason of the provisions of Section 10 (b) of the Act, and the delegation of those powers of modification to the Administrator and later to the NIRB specifically by Executive orders No. 6543-A and No. 6859 respectively.

(d) OTHER MINOR ADMINISTRATIVE ACTIONS

A vast number of minor administrative actions were accomplished by approvals of the Administrator, the National Industrial Recovery Board, the Division Administrators, and the Assistant Administrative Officer for Code Authority Budgets, for such matters as approval of methods of code authority selections, code authority elections, by-laws, trade practice complaints' committees and plans, budgets, etc.

A large proportion of these approvals were subject to conditions in order to adjust the documents to NRA policy. The form and requirements for these documents were promulgated in administrative orders from time to time, and the authority to impose conditions was inherent. The imposition of conditions was, in the vast majority of cases, to promptly permit the functioning of the administrative agency involved, where only minor adjustments to policy were deemed necessary which would

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(*) Example: Cement Industry Amendment No. 1 approved May 11, 1935 by N.I.R.B. subject to conditions:

(1) That a trade practice selling rule applicable to shipment to U.S. Government at land grant rates be stayed to afford time for further study.
(2) That Article covering non-consent to modification be deleted.

not prevent proper functioning.

These conditional orders of approval presented no difficulties in general, except in obtaining evidence of satisfactory compliance with their terms where further action was required.

CHAPTER IV

WHAT ATTEMPTS WERE MADE TO OBTAIN ASSENT OF CODE PROPONENTS TO CONDITIONAL ORDERS OF APPROVAL?

Prior to the conditional approvals there appears to have been, in general, considerable effort in most codes to bring them into conformity with policy, but due to the pressure to get codes approved, impatience with the last adjustments after prior extended delays resulted in abandonment of efforts to obtain assent to these last changes, deletions and additions and the practice of taking care of them by conditions imposed in the orders of approval.

In code No. 1, Cotton Textile Industry, and code No. 6, Lace Manufacturing Industry, effort was made and assent to adjustments received before the effective dates of the codes. In the other codes conditionally approved, which have been reviewed, there seems to have been little or no attempt to obtain prompt assent of the proponents to the conditions, in many cases months elapsed, and in some cases no attempt was made to obtain assent.

CHAPTER V

WHAT WERE THE MOST FREQUENT TYPES OF CONDITIONS IN ORDERS OF APPROVAL?

The Orders of Approval of 557 Codes were examined for conditions. Of these codes, 261 were found to contain from one to four or five conditions, some more. A rough examination of many more supplementary codes appears to show an even greater proportion approved conditionally. Most conditions were of only routine import in their effect upon the conduct of their business by members of the industry concerned, but a number were of vital import and amounted to forcing a code upon the industry. (A tabulation of details of various types of conditional orders is given in Appendix "3" hereto.)

The most frequent types of conditions were:

(a) In early codes, the condition that an administrative body be created. This led to the code authority.

(b) Condition that the by-laws of the participating association be changed to correct discriminatory provisions.

(c) Condition that reports on labor statistics be submitted.

(d) Condition that attempt to interpret or modify Section 7 (a) of the Act be eliminated.

(e) Condition that provisions for classification of customers be stayed pending investigation.

(f) Beginning about February 1, 1934. Condition that waiting period between filing of prices and effective date thereof be stayed and hearing held thereon.

(g) Condition that homework be prohibited and a study of same made.

(h) Condition that hearing may be held at option of Administrator on any provision and subsequent orders have effect of condition of approval.

(i) Condition that a "hedge" clause reserving constitutional rights if the code be modified was to be deleted.

(j) Condition that provision prohibiting coupons or premiums be stayed.

(k) Condition that code authority submit recommendations to adjust hour and wage provisions to conform with other codes.

CHAPTER VI

WHAT NECESSITIES OF ADMINISTRATION WERE SERVED BY CONDITIONAL ORDERS OF APPROVAL?

The principal necessities of conditional orders of approval as used were to expedite the approval of codes where sponsors were tardy or difficult to reach in assenting to changes, or adverse to the changes which established policy required.

Many codes were subjected to procrastination so marked as to make it appear they were being purposely delayed by the sponsors by the device of including provisions repugnant to administration policy. The Administration was loath to specifically utilize Section 3 (d) of the Act and the alternative selected was the conditional order of approval as a supposed means of preserving a voluntary status under Section 3 (a) and force a code on the stalling industry.

There is verbal evidence that some conditions of approval were inserted at the instance of sponsoring committees to take from those committees the onus of failure to include or exclude provisions conforming to the desires of certain members of their industry, but which the NRA would not permit. In other words to "save the face" of the committee.

CHAPTER VII

WHAT EVIDENCE OF COMPLIANCE OR NON-COMPLIANCE WITH CONDITIONS OF APPROVAL ARE TO BE FOUND? WHAT WAS THE LEGAL EFFECT OF NON-COMPLIANCE?

In the cases of code No. 1, and code No. 6, heretofore discussed, the conditions were incorporated in the code or fully satisfied and complied with.

In other cases the compliance was usually very tardy where action by industry agencies was required and even though a time limit was set, compliance was often not complete before that date. (As instances see codes No. 12; No 14 and No 498.)

In numerous cases a condition of approval required reports on hours and wages from all members of the industry which was not complied with generally or fully without strenous effort on the part of the deputies, once the code was approved.

In the cases of conditions in the orders of approval for minor actions compliance was usually prompt or satisfactory adjustments made and very little difficulty experienced.

The legal effect of non-compliance with conditions in the approval order for code was in general to render those codes non-effective in many instances by the very wording of the order and in many instances where approval by the President was to render such codes in fact prescribed codes. Many conditions of approval carried time limits for the carrying out of the condition and the codes were legally effective up to that limiting date, but thereupon because ineffective until the condition was satisfied. Still other codes were approved subject to the condition that all members of the industry make reports from time to time. Such codes effective at the start legally lapsed into a non-effective status whenever one member of the industry failed to render a required report.

Many codes after January 1, 1934 were approved by the Administrator or by the NIRA with conditions vitally adverse to some or all the members of the industry, without industry assent. The effect was that these codes were, in fact prescribed, and as such the Administrator and the NIRA were without delegated authority to approve. Such codes were non-effective legally.

CHAPTER VIII

COULD THE DESIRED CONDITIONS HAVE BEEN INCORPORATED IN THE CODES THEMSELVES WITHOUT UNDUE DIFFICULTY?

In a very large majority of cases the conditions imposed by the orders of approval of codes were of a minor nature and with very little further effort assent to incorporation within the code itself could have been readily obtained, definitely preserving the voluntary nature of such codes and obviating the danger of legal non-effectiveness through failure of compliance.

In many other cases where the conditions required were of an important nature and assent not obtainable, or the industry was using those required provisions to stall off approval, there was still the avenue of the prescribed code under Section 3 (d) of the Act. There is no doubt but that Section 3(d) should have been specifically used frequently. Such action would have greatly speeded codification and removed the tendencies of many industries to stall off approval. It would also have brought better codes in the later stages of codification.

CHAPTER IX

FROM AN EVALUATION OF THE EXPERIENCE RELATED ABOVE WHAT CONSTRUCTIVE SUGGESTIONS CAN BE MADE TO GUIDE NEW LEGISLATION AND PROPER PLANS FOR ADMINISTRATION TOUCHING UPON THE USE OF CONDITIONAL ORDERS OF APPROVAL?

The principle as set forth in Section 3(a) of the Act for voluntary codes is believed to be sound, namely that the President should have the power to impose conditions that must be met in a voluntary code as a requisite precedent to his approval but the wording should have been so clarified as to indicate that every code approved as a voluntary code was definitely that, and that it should contain nothing not actually assented to, so that in every such case necessarily a clean order of approval could have been issued. Failing assent the required eliminations, additions or alterations should have been made in the code itself, industry invited to assent thereto, and failing to do so, the code should have been promptly prescribed under Section 3(d) of the Act.

Much confusion as to legal effectiveness would thereby have been avoided at the time of approval or subsequent thereto.

The provision under 3(a) of the Act should be reworded somewhat as follows:

> "The President, as a requisite precedent to approval of any code voluntarily applied for, may require the elimination, addition or alteration of such provisions therein as he deems necessary for the protection of consumers competitors, employees and others in furtherance of the public interest, and any such code voluntarily applied for shall, upon full assent when altered as so required, be approved as a voluntary code. In the absence of such full assent of the proponents, the provisions of Section 3(d) shall apply. The President subsequent to his approval of any voluntary code may grant such exceptions to, or exemptions from any provisions thereof which may be applied for, and as in his discretion he deems just and necessary to effectuate the policy herein declared."

PART FIVE

A P P E N D I C E S

APPENDIX No. 1

UNEXPLORED SOURCES OF MATERIAL FOR FURTHER STUDY.

The Code Histories should contain much valuable information on conditions in the orders of approval. Chapter II, Section D-4, is allocated to this subject by the standard Code History Outline.

Administrative Orders, including the series under the different codes, should show conditions that were included in any orders issued as code administration acts in conjunction with the approval of stays, amendments, exemptions and exceptions, classifications, rulings, etc.

Appendix No. 2 outlines the subject of this part of the study in detail and will be found to suggest areas for further research.

APPENDIX NO. 2

CONDITIONAL ORDERS OF APPROVAL
(Outline)

Appendix No. 2.

PART I

Conditional Orders of Approval of Codes, Agreements and Amendments.

1.0 Introductory
  1.1 Statement defining subject and field embraced
2.0 Basic sources covering subject
  2.1 Provisions in NIRA
    2.11 Powers conferred upon the President
      2.111 Concerning codes voluntarily applied for
      2.112 Concerning codes imposed
  2.2 Delegations of power of approval made to Administrator and the NIRB
    2.21 Authority for delegation
    2.22 Reasons leading to delegation
    2.23 Executive Orders making delegation
    2.24 Reservations in delegation
3.0 Use of conditional approval
  3.1 By the President
    3.11 First code for which used
      3.111 Purposes of conditions
      3.112 Notification to proponents
      3.113 Portion of industry actually affected
      3.114 Evidence of industry assent
      3.115 Reaction of industry and labor
    3.12 Other codes for which used that presented unusual circumstances (3.12, 3.13, 3.14, etc.)
  3.2 By the Administrator and NIRB
    3.21 First Code for which used
      3.211 Purposes of conditions
      3.212 Notification to proponents
      3.213 Portion of industry actually affected
      3.214 Evidence of industry assent
      3.215 Reaction of industry and labor
    3.22 Other codes for which used that presented unusual circumstances. (3.22, 3.23, 3.24, etc.)
4.0 Development of Policy
  4.1 Policies announced in Executive Orders, if any
  4.2 Policies announced by the Administrator and NIRB
    4.21 Use of provisions of Office Orders Nos 63,63A and 63B, January 27, 1934
  4.3 Circumstances attending first use of conditional order of approval
    4.31 Facts presented and recommendations
      4.311 By Division Administrator
      4.312 By Deputy
      4.313 Reports of Advisory Boards
      4.314 Legal comment

4.32 Considered by whom and analysis made
4.33 Statement of policy, if made
4.4 Policies, if any, announced on subject by policy groups, viz:
4.41 Policy Board created by O.O. #35, Sept. 16, 1933
4.42 Policy Board reorganized by O.O. #55, Jan. 6, 1934
4.43 Policy Committee created by O.O. #58, Jan. 12, 1934
4.44 Policy Boards created by O.O. #74, Mar. 26, 1934
4.45 Assistant Administrator for Policy under O.O. #83, April 9, 1934
4.46 Advisory Council created by O.O. #89, May 21, 1934
5.0 Discussion of legal requirements dictating necessity in orders of approval for certain conditions
6.0 Substantive analysis of all conditional orders of approval (Codes - Amendments)
6.1 Frequency of use

	Codes	Amendments
Total orders of approval to May 27, 1935.....	_____	_____
Without condition	_____	_____
Containing conditions	_____	_____

6.2 Classification of codes as to groups where conditional orders of approval were most frequently used
6.3 Most usual forms of conditional orders of approval in successive stages of code making.
6.4 Conditional orders of approval in specific cases which industry or labor regarded as altering code vitally
6.5 Evidence of degree of industry assent
6.51 Specific assent
6.52 Tacit assent
6.53 Opposition
6.6 Types of conditions imposed
6.61 Hours, wages, tolerances, other labor provisions
6.62 Administration
6.63 Classification
6.64 Trade Practice
6.65 Reports required
6.66 Control of production and allocation of business
6.67 Price or cost accounting
6.68 Other
7.0 Substantive Analysis Agreements under Section 7 (b) of the NIRA (Breakdown to be developed upon examination of data.)
8.0 Evaluation
8.1 Justification for use
8.11 To avoid approval delays
8.12 To override opposition to established policy
8.13 To protect labor interests
8.14 To protect consumer interests
8.15 To protect industry interests
8.151 Small companies
8.152 Large companies
8.153 Overlapping industry interests
8.16 To avoid illegality
8.17 General discussion of other reasons

8.2 Reaction of industry or labor
- 8.21 Compliance
- 8.22 Non-compliance
  - 8.221 Neglect
  - 8.222 Opposition
  - 8.223 Challenge of authority under voluntary code application
- 8.23 Enforcement, if any required

8.3 Discussion of compliance or non-compliance with the conditions imposed
- 8.31 Stays, modifications or terminations of conditions imposed.
- 8.32 Subsequent extension of time limits specified
- 8.33 Efforts of N.R.A. to enforce compliance
- 8.34 Effects of non-compliance
  - 8.341 Legal effect upon code itself
  - 8.342 Effect upon industry
  - 8.343 Effect upon labor
  - 8.344 Effect upon consumer
- 8.35 Effects of compliance

9.0 General conclusions and constructive suggestions

10.0 Bibliography

(Partial suggestions)

NIRA
Exec. Order #6175
Exec. Order #6543-A
Exec. Order #6859
Exec. Order #6205-B
Exec. Order #6750-C
Exec. Order #6949
Administrative Orders in Code Record Section
Minutes of meetings of Policy Groups
Vols. II, A and B of codes involved

PART II. Appendix No. 2.

Conditional Orders of Approval - Minor Administrative Acts.

1.0 Introductory
1.1. Statement defining subject and the field embraced
2.0 Basic Sources covering subject
2.1 Administrative actions setting up code authority concept
2.2 Provision for administrative approvals and delegations of power to approve indicating any limitations of powers
2.21 Method of election of Code Authority
2.22 Election of Code Authority
2.23 By-Laws
2.24 Trade practice complaints plan and committee
2.25 Labor complaints and disputes plan and committees
2.26 Stays and exemptions or terminations thereof
2.27 Budgets (treated by Code Authority Finance Unit)
2.28 Price systems
2.29 Cost Systems
2.21 Time extensions for required actions
2.22 Other code authority agencies
2.23 Standards of safety and health
2.24 Lists of hazardous occupations
2.25 Applications for increased capacity
2.26 Plans of allocation of production
2.27 Classification of customers
2.28 Lowest reasonable cost
2.29 Modal markup
Etc. Etc.
3.0 Use of conditional approvals (excluding all instances involving correction of unimportant clerical errors)
3.1 By the Administrator
3.12 First important administrative order for which used
3.121 Purposes for which used
3.1211 Legal requirements
3.1212 Administrative requirements
3.1213 To conform to established policy
3.1214 To avoid delays
3.1215 To provide for further study of conditions imposed
3.122 Notification to applicants
3.123 Units affected
3.124 Evidence of compliance
3.125 Reaction of units affected
3.126 Discussion of effect of conditions
3.1261 On industry units affected
3.1262 On labor
3.2 Discussion of other typical cases of use of conditional approvals by the Administrator, by the NIRB, or by Division Administrators segregated into the following headings: viz:
3.21 Method of election of code authorities
3.22 Election of Code Authority
3.23 By-Laws

3.24 Trade practice complaints plan and committee
3.25 Labor complaints and disputes plan and committees
3.26 Stays and exemptions or termination thereof
3.27 Budgets (treated by Code Authority Finance Unit)
3.28 Price systems
3.29 Cost systems
3.21 Time extensions for required actions
3.22 Other code authority agencies
3.23 Standards of safety and health
3.24 Lists of hazardous occupations
3.25 Applications for increased capacity
3.26 Plans of allocation of production
3.27 Classification of customers
3.28 Lowest Reasonable cost
3.29 Modal markup
Etc. Etc.

4.0 Development of Policy
4.1 Policies announced by Administrative Orders
4.2 Discussion of policies, if any, announced by the various policy groups
4.21 Policy Board created by O.O.#35, Sept. 18, 1933
4.22 Policy Board reorganized by O.O. #55, Jan. 6, 1934
4.23 Policy Committee created by O.O. #58, Jan. 12, 1934
4.24 Policy Boards created by O.O. #74, Mar. 26, 1934
4.25 Assistant Administrator for Policy under O.O.#83, April 9, 1934.
4.26 Advisory Council created by O.O. #89, May 21, 1934

5.0 Discussion of legal requirements dictating necessity for conditions in various orders of approval

6.0 Substantive analysis of all orders of approval of 25 selected codes
6.1 Frequency of use of conditional approvals
Total orders of approval considered _____
Without conditions (*) _____
Containing conditions (*) _____
6.2 Classification of administrative actions where conditional orders of approval were most frequently used.
6.3 Most usual types of conditions imposed in successive stages of NRA development of Code Administration
6.31 Requiring deletions
6.32 Requiring material amendment
6.33 Requiring future actions (Other than documentary alternations)
6.4 Evidences of compliance with conditions of approval
6.5 Evidences of opposition by industry to conditions imposed

7.0 Evaluation
7.1 Justification for use
7.11 To avoid delays in beginning operation

(*) Required typographical corrections not to be considered as conditions.

7.12 To override opposition to established policy
7.13 To protect labor interests
7.14 To protect consumer interests
7.15 To protect industry interests
7.151 Small companies
7.152 Large companies
7.153 Overlapping industry interests
7.16 To avoid illegality
7.17 General discussion of other reasons
7.2 Reaction of industry or labor
7.21 General discussion
7.22 Compliance
7.23 Non-compliance
7.231 Neglect
7.232 Opposition
7.24 Enforcement (if any) required
7.3 Discussion of compliance or non-compliance with the conditions imposed
7.31 Stays, modification or termination of conditions imposed
7.32 Extension of time limits specified
7.33 Efforts of N.R.A. to enforce compliance
7.34 Effect of non-compliance
7.341 Legal effect upon code administration
7.342 Effect upon industry or industry members
7.343 Effect upon labor
7.344 Effect upon consumer
7.35 Effects of compliance
8.0 General conclusions and constructive suggestions
9.0 Bibliography
Executive Orders
Administrative Orders (X series)
Code Administrative Orders in Code Record Section
Deputy Files

APPENDIX NO. 3

Details of Various Types of Conditions in

ORDERS OF APPROVAL

Covering all Basic Codes of Fair Competition

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
1	Cotton Textile Industry* (Conditionally approved by the President 7/9/33)	(1) Limitations on use of productive machinery not to apply to tire yarns or fabrics for rubber tires for 3 weeks (2) Planning Committee of Industry will submit question of employee purchase of homes in mill-villages, especially in the South, to Administration before Jan. 1, 1934 looking toward eventual employee home-ownership (3) Approval of minimum wages--subject may be reopened if and as conditions improve. (4) Office employees be included in the benefits of the Code (5) The existing amounts by which wages in the higher-paid classes, up to workers receiving $30 per week, exceed wages in the lowest paid class, shall be maintained. (6) Time and one half to be paid in case of overtime for repair shop crews, engineers, electricians and watching crews (7) Cleaners and outside workers excepted until Planning and Supervisory Committee submit schedule of minimum and maximum hours Jan. 1, 1934 (8) It is interpreted that maximum hours include every employee, whether working for one or more employers. (9) Minimum wage means minimum rate of pay whether compensated on a time rate, piece work, or other basis (10) Amount of work of employees after July 1, 1933 shall not be increased because of minimum wages (11) Any person not consenting to Code shall be given hearing and a temporary stay of liability pending such hearing (12) Approval limited to 4 months with right to ask for modification or renewal (13) Administration to be given right to appoint 3 members on Planning and Supervisory Committee of Industry, without vote

*NOTE: Executive Order of July 16, 1933, gave final approval to the Code, as amended with the assent of the Industry, and satisfaction of such of the conditions as were finally required by the President.

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
3	Wool Textile Industry (approved 7/26/33 by the President)	Industry committee to be created as a Planning and Fair Practice agency; 5 representatives of industry and 3 without vote for Administration
6	Lace Mfg. Industry (approved 8/14/33 by the President)	One condition. Same type as Code No. 3 above.
12	Photographic Mfg. Ind. (approved 8/19/33 by the President)	One condition. Same type as Code No. 3 above.
13	Fishing Tackle Industry (approved 8/19/33 by the President)	Association By-Laws to be amended to contain no restrictions as to Association membership.
14	Rayon and Synthetic Yarn Producing Industry (approved 8/26/33 by the President)	Reports required to be submitted by each employer as to wages, hours, and otherwise as the Administrator may require
19	Wall Paper Mfg. Ind. (approved 9/7/33 by the President)	One condition. Same type as Code No. 3 above.
20	Salt Producing Industry (approved 9/7/33 by the President)	One condition. Same type as Code No. 3 above.
23	Underwear and Allied Products Mfg. Industry (approved 9/18/33 by the President)	Stay of 14 days for manufacturers to show cause why they should not be included under the Code (Sec. 1(c) of definition)
24	Bituminous Coal Industry (approved 9/18/33 by the President)	(1) Same type as Code No. 14 above (2) Same type as Code No. 3 above (3) Minimum rates not fixed in Schedule A may be approved or prescribed prior to effective date of Code by a supplementary Order. (4) Attempt to interpret Section 7 (a) of the Act in Schedule B (Code Sec. (b) of Art. V) stricken out (5) Clerical rearrangement of limitation of definition of employee placed in Art. III instead of Art. II

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
25	Oil Burner Industry (approved 9/18/33 by the President)	One condition. Same type as Code No. 3 above.
26	Gasoline Pump Mfg. Ind. (approved 9/18/33 by the President)	One condition. Same type as Code No. 3 above.
28	Transit Industry (approved 9/18/33 by the President)	(1) Working hours in contracts which may be renewed shall not be in excess of the minimum required by the code (2) Same type as Code No. 13 above
31	Line Industry (approved 10/3/33 by the President)	Same type as Code No. 13 above.
38	Boiler Mfg. Industry (approved 10/3/33 by the President)	One condition. Same type as Code No. 24 (4) above.
39	Farm Equipment Industry (approved 10/3/33 by the President)	One condition. Same type as Code No. 24 (4) above.
41	Women's Belt Industry (approved 10/3/33 by the President)	One condition. Same type as Code No. 13 above.
43	Ice Industry (approved 10/3/33 by the President)	One condition. Same type as Code No. 3 above.
44	Boot and Shoe Mfg. Ind. (approved 10/3/33 by the President)	One condition. Same type as Code No. 24 (4) above
48	Silk Textile Industry (approved 10/7/33 by the President)	Minimum wage to apply to lowest class of workers only, exempting skilled and semi-skilled workers.

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
49	Optical Mfg. Industry (approved 10/9/33 by the President)	One condition. Same type as Code No. 3 above.
51	Umbrella Mfg. Industry (approved 10/9/33 by the President)	One condition. Same type as Code No. 3 above.
59	Marking Devices Industry (approved 10/20/33 by the President)	One condition. Same type as Code No. 3 above.
64	Dress Mfg. Industry (approved 10/31/33 by the President)	(1) Wage scale in Western area (Art. VI, Sec. 6) stayed until further hearing (2) Pending such stay minimum rate shall be $14.00 (Art. IV, sec. 7) (3) Application of code stayed as to manufacture of dresses in chief of cotton content until such hearing
65	Advertising Specialty Industry (approved 10/31/33 by the President)	(1) Wage and hour provisions shall be superseded by those of the Printing Industry when approved (2) Same type as Code No. 3 above
86	Toy and Playthings Industry (approved 11/4/33 by the President)	One condition. Provisions for time and one-third for overtime stayed until January 1, 1934.
96	Buff and Polishing Wheel Industry (approved 11/4/33 by the President)	One condition. Stay of (Art. VII, Sec. n) provision attempting to fix prices.
103	Machine Tool and Forging Machinery Industry (approved 11/8/33 by the President)	One condition. Reservation of right on review to disapprove or modify any action taken by the supervisory agency
118	Cotton Garment Industry (approved 11/17/33 by the President)	(1) Sets up requirements for acceptable State prison labor Codes (2) Same type as Code No. 64 (1) above

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
119	Newsprint Industry (approved 11/17/33 by the President)	Provision made for hearing for determining adequacy of minimum wages established by the code.
120	Paper and Pulp Industry (approved 11/17/33 by the President)	One condition. Same type as Code No. 119 above.
121	Hotel Industry (approved 11/17/33 by the President)	(1) Same type as Code No. 24 (4) above (2) Same type as Code No. 119 above (3) Further order shall constitute a modification of the Code.
124	Motion Picture Industry (approved 11/27/33 by the President)	(1) Same type as Code No. 103 above (2) Right of removal of any member on the Code Authority and substitution therefor. (3) Right to insure proper representation of the employers on the code authority (4) Suspends provision regarding excessive compensation to executives pending further investigation (5) Writers, authors and dramatists exempted from certain code provisions, being considered in "creative work" (6) Same type as Code No. 48 above.
125	Upholstery and Drapery Textile Industry (approved 11/27/33 by the President)	(1) Grants exemption from this Code to manufacturer who has been operating under another code if he so elects and files intention (2) Provision that loom may not operate two 40 hour shifts per week stayed for 14 days.
127	Reinforcing Materials Fabricating Industry (approved 11/27/33 by the President)	One condition. Same type as Code No. 103 above.
130	Precious Jewelry Producing Industry (approved 11/27/33 by the President)	One condition. Same type as Code No. 86 above.

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
151	Millinery Industry (approved 12/15/33 by the President)	(1) Code stayed after May 15, 1934 until favorable report of Code Authority for continuance (2) Same type as Code No. 64 (1) above (3) Persons suffering undue hardships granted opportunity for relief.
152	Can Manufacturers Ind. (approved 12/15/33 by the President)	(1) All other territories and possessions of U. S. shall be subject to Hawaiian Wage District herein. (2) Same type as Code No. 14 above
153	Valve and Fittings Mfg. Industry (approved 12/15/33 by the President)	One condition. Price lists filed shall be available for inspection of all the trade parties concerned.
155	Oxy-Acetylene Ind. (approved 12/15/33 by the President)	Ond condition. Same type as Code No. 24 (4) above.
164	Knitted Outerwear Ind. (approved 12/18/33 by the President)	One condition. Same type as Code No. 23 above
174	Rubber Tire Mfg. Ind. (approved 12/21/33 by the President)	One condition. Reservation to modify code provisions after investigation by Administrator and F.T.C. within 90 days
175	Medium and Low Priced Jewelry Mfg. Industry (approved 12/23/33 by the President)	One condition. Same type as Code No. 86 above.
179	Electrotyping and Stereotyping Industry (approved 12/23/33 by the President)	(1) Employees may share work with local mechanics in their trade when such hours adjusted by mutual agreement with their employers, and such request may be appealed to local labor boards (2) Administrator may within 3 months, require this industry to become part of Graphic Arts Industries after hearing and without change of definitions or administrative provisions.

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
180	Photo-Engraving Ind. (approved 12/23/33 by	(1) Same type as Code No. 179 above (1) (2) Same type as Code No. 179 above (2)
182	Retail Food and Grocery Trade (approved 12/30/33 by the President)	(1) Provision purporting to set minimum transportation charges to merchant stayed 30 days pending hearing (2) Provision previously covered by Federal statute eliminated (3) Same type as Code No. 103 above.
194	Blouse and Shirt Mfg. Industries (approved 12/30/33 by the President)	One condition. Manufacture and sale of specific articles stayed as coming under code until hearing to determine whether or not such properly comes under the code.
196	Wholesale Food and Grocery Trade (approved 1/4/34 by the President)	(1) Stay of 30 days on setting up classification of customers (2) Same type as Code 182 (1) above (3) Right of U. S. Wholesale Grocer's Ass'n to representation on code authority to be considered (4) Same type as Code 182 (2) above (5) Same type as Code 103 above
202	Carpet and Rug Manufacturing Industry (approved 1/12/34 by the President)	One condition. Volume discount provision stayed. (Art. VII, Sec. 19 (a)
204	Plumbing Fixtures Ind. (approved 1/13/34 by the Administrator)	One condition. Same type as Code No. 196 (1) above
217	Dental Laboratory Ind. (approved 1/22/34 by the Administrator)	One condition. Limitation of hours shall be 40 except where there is only one employee in the laboratory when it shall be 44
231	Surgical Dressing Ind. (approved 1/27/34 by the Administrator)	One condition. Same type as Code No. 13 above.

No.	APPROVED CODE Industry	CONDITIONS IN ORDER OF APPROVAL
232	Merchandise Warehousing Trade (approved 1/27/34 by the Administrator)	One condition. Same type as Code No. 13 above.
233	Railway Brass Car and Locomotive Journal Bearings and Castings Mfg. Industry (approved 1/29/34 by the Administrator)	One condition. Same type as Code No. 13 above.
234	Macaroni Industry (approved 1/29/34 by the Administrator)	(1) Same type as Code No. 151 (3) above (2) Open price filing stayed for 60 days.
236	Cooking and Heating Appliance Mfg. Industry (approved 1/30/34 by the Administrator)	One condition. Stay of waiting period between filing of prices and effective date of revised price list for 60 days
237	Alley Casting Industry (approved 1/30/34 by the Administrator)	(1) Same type as Code No. 13 above (2) Same type as Code No. 236 above
239	Porcelain, Breakfast Furniture Assembling Ind. (approved 1/30/34 by the Administrator)	One condition. Same type as Code No. 236 above.
240	Advertising Display Installation Trade (approved 1/30/34 by the Administrator)	One condition. Same type as Code No. 236 above.
241	Chewing Gum Mfg. Ind. (approved 1/30/34 by the Administrator)	One condition. Same type as Code No. 236 above.
243	Slide Fastener Ind. (approved 1/31/34 by the Administrator)	(1) Same type as Code No. 13 above. (2) Same type as Code No. 236 above.

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
245	Corrugated and Solid Fibre Shipping Container Industry (approved 2/1/34 by the Administrator)	One condition. Same type as Code No. 236 above.
246	Paper Disc Milk Bottle Cap Industry (approved 2/1/34 by the Administrator)	One condition. Same type as Code No. 236 above, coupled with provision for hearing within 90 days if so desired by the Administrator.
247	Food Dish and Pulp and Paper Plate Industry (approved 2/1/34 by the Administrator)	One condition. Same type as Code No. 246 above.
248	Glazed and Fancy Paper Industry (approved 2/1/34 by the Administrator)	One condition. Same type as Code No. 246 above.
249	Tag Industry (approved 2/1/34 by the Administrator)	One condition. Same type as Code No. 246 above.
250	Wire, Rod, and Tube Die Industry (approved 2/1/34 by the Administrator)	One condition. Same type as Code No. 236 above.
252	Cylindrical Liquid Tight Paper Container Industry (approved 2/1/24 by the Administrator)	One condition. Same type as Code No. 246 above.
254	Athletic Goods Mfg. Ind. (approved 2/2/34 by the Administrator)	One condition. Same type as Code No. 13 above, coupled with provision for hearing within 90 days if so desired by the Administrator.
257	Printing Equipment Industry and Trade (approved 2/2/34 by the Administrator)	One condition. Same type as Code No. 236 above.

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
258	Cast-Iron Boiler and Cast-Iron Radiator Industry (approved 2/3/34 by the Administrator)	One condition. Provision restricting sale to wholesaler who sells to dealer at prices below listed price of such member stricken out.
259	Hat Mfg. Industry (approved 2/5/34 by the Administrator)	One condition. Same type as Code No. 236 above.
260	Ornamental Molding, Carving and Turning Ind. (approved 2/5/34 by the Administrator)	One condition. Same type as Code No. 236 above.
261	Foundry Supply Industry (approved 2/5/34 by the Administrator)	One condition. Same type as Code No. 236 above.
263	Machine Knife and Allied Steel Products Mfg. Industry (approved 2/6/34 by the Administrator)	One condition. Same type as Code No. 236 above.
264	Foundry Equipment Ind. (approved 2/6/34 by the Administrator)	(1) Limiting exemption from hour provisions. (2) Relative to Administration Members
265	Coffee Industry (approved 2/6/34 by the Administrator)	(1) Same type as Code No. 151 (3) above (2) Same type as Code No. 264 (1) above
267	Used Textile Bag Ind. (approved 2/8/34 by the Administrator)	One condition. Same type as Code No. 119 above.
268	Secondary Aluminum Ind. (approved 2/8/34 by the Administrator)	One condition. Same type as Code No. 236 above.
269	Carbon Black Mfg. Ind. (approved 2/8/34 by the Administrator)	One condition. Same type as Code No. 236.

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
270	Wood Heel Industry (approved 2/9/34 by the Administrator)	One condition. Same type as Code No. 230 above.
272	Unit Heater and/or Unit Ventilator Mfg. Ind. (approved 2/10/34 by the Administrator)	One condition. Same type as Code No. 236 above.
274	Saw and Steel Products Mfg. Industry (approved 2/10/34 by the Administrator)	One condition. Stays filing of prices for period of 60 days or until a completion of a study of open price associations by NRA.
276	Pleating, Stitching and Bonnaz and Hand Embroidery Industry (approved 2/10/34 by the President)	One condition. Same as Code No. 119 above.
278	Trucking Industry (approved 2/10/34 by the President)	One condition. Vehicles engaged in warehousing of furniture shall register with Code Committee of proposed Code for Household Goods Storage and Moving Trade and if approved, thereafter with the Code Authority.
280	Retail Solid Fuel Ind. (approved 2/14/34 by the President)	One condition. Same type as Code No. 174 above.
281	Laundry Trade (approved 2/16/34 by the President)	(1) 5 conditions setting up trade areas and control boards therefor.
282	Restaurant Industry (approved 2/16/34 by the President)	(1) Provisions regarding spread of working hours and number of shifts per day stayed. (2) Work week shall not be increased prior to date of order. (3) Further investigation of stop loss provision ordered. (4) Same type as Code No. 119 above.

No.	APPROVED CODE Industry	CONDITIONS IN ORDER OF APPROVAL
285	Railway Car Building Ind. (approved 2/16/34 by the Administrator)	(1) Definitions of Industry and of members of the Industry varied. (2) Maximum hours of power plant employees decreased. (3) Same type as Code No. 13 above.
286	Beauty and Barber Shop Mechanical Equipment Mfg. Industry (approved 2/16/34 by the Administrator)	One condition. Same as type in Code No. 236 above.
287	Graphic Arts Industries (approved 2/17/34 by the President)	(1) Power given to Labor Board in Sec. 24, part I given to code authority and compliance boards, and Section setting up board deleted. Labor Board set up by Administrator with powers and duties. (2) Maximum hours set up not to be construed as minimum. (3) Provision for hearing on definitions and other provisions in code. (4) Provisions for posting code provisions as to hours, wages and employment as well as the Order. (5) Same type as Code No. 13 above. (6) Same type as Code No. 118 (1)
288	Daily Newspaper Publishing Business (approved 2/17/34 by the President)	(1) Determination of hours and wages for news department workers shall be made not later than 60 days hence. (2) Administration members shall give particular attention to minors delivering and selling newspapers. (3) This was inserted to give notice that regardless of the hedge against modifications under Sec. 10 (b), the President could utilize the provisions of Sec. 3 (d) of the Act.
289	Cloth Reel Industry (approved 2/17/34 by the Administrator)	One condition. Same type as Code 236 above.
290	Photographic Mount Ind. (approved 2/17/34 by the Administrator)	One condition. Same type as Code No. 246 above.

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
291	Wood Cased Lead Pencil Mfg. Industry (approved 2/17/34 by the Administrator)	One condition. Same type as Code No. 13 above. Price structure stayed pending further investigation.
292	Chilled Car Wheel Ind. (approved 2/17/34 by the Administrator)	One condition. Same type as Code No. 13 above.
293	Gumming Industry (approved 2/17/34 by the Administrator)	One condition. Same type as Code No. 246 above.
294	Gummed Label and Embossed Seal Industry (approved 2/17/34 by the Administrator)	One condition. Same type as Code No. 246 above.
295	Waterproof Paper Industry (approved 2/17/34 by the Administrator)	One condition. Same type as Code No. 246 above.
296	Fluted Cup, Pan Liner and Lace Paper Industry (approved 2/17/34 by the Administrator)	One condition. Same type as Code No. 246 above.
297	Advertising Distributing Trade (approved 2/17/34 by the President)	(1) Boys 14 and 15 may be employed not to exceed 3 hrs per day between 7 a.m. and 7 p.m. (2) Same type as Code No. 287 (3) above (3) Effects of hours and rates of pay of office workers to be reported in 90 days.
298	Wiping Cloth Industry (approved 2/17/34 by the Administrator)	One condition. Same type as Code No. 119 above.
300	Lye Industry (approved 2/19/34 by the Administrator)	One condition. Same type as Code No. 246 above.
301	Sample Card Industry	One condition. Same type as Code No. 246 above.

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
304	Outdoor Advertising Trade (approved 2/24/34 by the Administrator)	One condition. Same type as Code No. 236 above.
305	Fibre Can and Tube Ind. (approved 2/24/34 by the Administrator)	One condition. Same type as Code No. 246 above.
306	Mica Industry (approved 2/24/34 by the Administrator)	(1) Importers must be shown to be a representative group before inclusion. (2) Same type as Code No.246 above.
307	Stay Mfg. Industry (approved 2/26/34 by the Administrator)	(1) Same type as Code No.287 (3) above (2) Same type as Code No.24 (5) above
308	Fishery Industry (approved 2/26/34 by the President)	One condition. Same type as Code No. 151 (3) above.
311	Ready Mixed Concrete Ind. (approved 2/27/34 by the Administrator)	One condition. Same type as Code No. 236 above.
312	Narrow Fabrics Ind. (approved 2/27/34 by the Administrator)	One condition. Stay of homework in the Industry and provision for a study of situations relative thereto.
313	Steel Wool Industry (approved 2/28/34 by the Administrator)	One condition. Same type as Code No. 236 above.
315	Industrial Safety Equipment Industry and Industrial Safety Equipment Trade (approved by the Administrator 3/1/34)	One condition. Same type as Code No. 236 above.
319	Newspaper Printing Press Industry (approved 3/5/34 by the Administrator)	One condition. Firemen limited to 45 hours rather than 48 per week.
323	Die Casting Mfg.Industry (approved 3/8/34 by the Administrator)	One condition. Same type as Code No. 13 above.

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
325	Horseshoe and Allied Products Mfg. Ind. (approved 3/8/34 by the Administrator)	(1) Same type as Code No.236 above (2) Same type as Code No. 96 above
327	Machine Applied Staple and Stapling Machine Ind. (approved 3/10/34 by the Administrator)	(1) Same type as Code No. 236 above (2) Same type as Code No. 13 above
329	Upholstery Spring and Accessories Mfg. Ind. (approved 3/10/34 by the Administrator)	(1) Same type as Code No. 236 above
330	Scrap Iron, Nonferros Scrap Metals and Waste Materials Trade. (approved 3/12/34 by the President)	One condition. Code Authority and/or Administration Member shall report whether supplemental code necessary or desirable.
331	Bulk Drinking Straw, Wrapped Drinking Straw, Wrapped Toothpick and Wrapped Manicure Stick (approved 3/14/34 by the Administrator)	(1) Same type as Code No. 236 above (2) Minimum and maximum hours made to apply to peak periods only not exceeding 12 weeks per year (3) Same type as Code No. 96 above (4) Same type as Code No. 153 above.
332	Ladies' Handbag Ind. (approved 3/14/34 by the Administrator)	(1) Definition of "semi-skilled" employee stayed until suitable one presented to Administrator. (2) Same type as Code No. 3 above.
333	Canvas Goods Ind. (approved 3/16/34 by the Administrator)	(1) Same type as Code No. 246 above (2) Provision for a general labor study.
334	Beverage Dispensing Equipment Industry (approved 3/16/34 by the Administrator)	(1) Same type as Code No. 236 above (2) Same type as Code No. 96 above
341	Fibre and Metal Work Clothing Button Mfg.Ind. (approved 3/17/34 by the Administrator)	One condition. Same type as Code No. 246 above. One condition. Same type as Code No. 312 above.
345	Collapsible Tube Ind. (approved 3/17/34 by the Administrator)	One condition. Same type as Code No. 13 above.

No.	Industry	CONDITIONS IN ORDER OF APPROVAL
	APPROVED CODE	
347	Machinery and Allied Products Industry (approved by 3/17/34 the President)	(1) Same type as Code No. 13 above (2) Same type as Code No. 287 (3) above
349	Mayonnaise Industry (approved 3/21/34 by the Administrator)	(1) Same type as Code No. 151 (3) above (2) Same type as Code No. 246 above (3) Hours of watchmen limited to 56 rather than 63
352	Flag Mfg. Industry (approved 3/21/34 by the Administrator)	One condition. Same type as Code 312 above.
353	Insulation Board Industry (approved 3/22/34 by the Administrator)	One condition. Hours and wages to Hawaii shall be stayed pending further order.
354	Small Arms and Ammunition Mfg. Industry (approved 3/22/34 by the Administrator)	(1) General amendment to the hour provisions (2) Relative to resale prices (3) Same type as Code No.288 (3) above
356	Fuller's Earth Producing and Marketing Industry (approved 3/23/34 by the Administrator)	One condition. Same type as Code No. 246 above.
359	Preformed Plastic Products Industry (approved 3/23/34 by the Administrator)	One condition. Same type as Code No. 246 above
360	Brush Mfg. Industry (approved 3/23/34 by the Administrator)	One condition. Same type as Code No. 288 (3) above.
362	Photographic and Photo Finishing Industry (approved 3/23/34 by the President)	One condition. Same type as Code No. 236 above.
363	Men's Neckwear Industry (approved 3/24/34 by the President)	One condition. Provision made for study and report on the schedule of minimum piece rate wages.
364	Clay Drain Tile Mfg. Industry (approved 3/24/34 by the Administrator)	One condition. Same type as Code No. 246 above.

No.	APPROVED CODE Industry	CONDITIONS IN ORDER OF APPROVAL
365	Sand-Lime Brick Ind. (approved 3/26/34 by the Administrator)	One condition. Same type as Code No. 246 above
366	Retail Monument Industry (approved 3/26/34 by the Administrator)	One condition. Same type as Code No. 246 above
367	Metal Treating Industry (approved 3/26/34 by the Administrator)	One condition. Same type as Code No. 246 above
369	Expanding and Specialty Paper Products Industry (approved 3/26/34 by the Administrator)	(1) Same type as Code No.246 above (2) Hearing may be had at option of Administrator on any provision, and subsequent orders have the effect of conditions in approving the code.
370	Open Paper Drinking Cup and Round Nesting Paper Food Container Industry (approved 3/26/34 by the Administrator)	(1) Same type as Code No. 246 above (2) Same type as Code No. 369 (2) above
371	Sanitary Milk Bottle Closure Industry (approved 3/26/34 by the Administrator)	(1) Same type as Code No. 246 above (2) Same type as Code No. 369 (2) above
372	Shoe Rebuilding Trade (approved 3/27/34 by the President)	One condition. Same type as Code No. 96 above
373	Infants' and Children's Wear Industry (approved 3/27/34 by the President)	Three conditions prescribed to avoid overlapping definitions with other codes.
374	Tanning Extract Industry (approved 3/29/34 by the Administrator)	One condition. Same type as Code No. 369 (2) above
377	Reclaimed Rubber Mfg.Ind. (approved 4/2/34 by the Administrator)	One condition. Same type as Code No. 246 above.
378	Peanut Butter Industry (approved 4/4/34 by the Administrator)	(1) Same type as Code No.151 (3) above (2) Same type as Code No. 246 above

No.	Industry	APPROVED CODE — CONDITIONS IN ORDER OF APPROVAL
382	Transparent Materials Converters Industry (approved 4/4/34 by the Administrator)	(1) Same type as Code No. 246 above (2) Same type as Code No. 369 (2) above
384	Funeral Service Industry (approved 4/4/34 by the Administrator)	One condition. Provides that a certain trade practice shall not supersede any State Law.
385	Railroad Special Track Equipment Mfg. Industry (approved 4/6/34 by the Administrator)	One condition. Same type as Code No. 246 above
386	Umbrella Frame and Umbrella Hardware Mfg. Ind. (approved 4/6/34 by the Administrator)	(1) Same type as Code No. 246 above (2) Same type as Code No. 312 above (3) Insignia provisions stayed until further study be made by NRA. (4) Code Authority reorganized to be more representative. (5) Same type as Code No. 13 above.
388	Sandstone Industry (approved 4/6/34 by the Administrator)	(1) Same type as Code No. 246 above (2) Not a true condition but a rationalization containing a disclaimer of precedent by NRA for other codes. (3) In event of revision of labor provisions of Limestone Code, Sandstone Industry shall submit like revisions.
390	Steel Plate Fabricating Industry (approved 4/6/34 by the Administrator)	One condition. Same type as Code No. 369 (2) above
391	Insecticide and Disinfectant Mfg. Industry. (approved 4/6/34 by the Administrator)	One condition. Same type as Code No. 236 above.
393	Soft Fibre Mfg. Industry (approved 4/9/34 by the Administrator)	One condition. Certain provisions regarding price filing stricken out.
394	Lightning Rod Mfg. Ind. (Approved 4/19/34 by the Administrator)	(1) Same type as Code No. 246 above (2) Same type as Code No. 13 above
397	Spray Painting and Finishing Equipment Mfg. Ind. (approved 4/19/34 by the Administrator)	(1) Same type as Code No. 236 above

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
398	Barber Shop Trade (approved 4/19/34 by the President)	(1) 5 conditions as to designating trade areas, local administrative Boards and assents from representative Trade members before code effective.
401	Copper Industry (approved 4/21/34 by the Administrator)	(1) Substitutes an entire new Article VII on Marketing provisions.
402	Sewing Machine Industry (approved 4/21/34 by the Administrator)	One condition. Same type as Code No. 13 above.
403	Bleached Shellac Mfg.Ind. (approved 4/21/34 by the Administrator)	One condition. Same type as Code No. 236 above.
406	Boatbuilding and Boat-repairing Industry (approved 4/24/34 by the Administrator)	One condition. Same type as Code No. 236 above.
407	Dry Color Industry (approved 4/25/34 by the Administrator)	One condition. Same type as Code No. 288 (3) above.
408	Undergarment and Negligee Industry (approved 4/27/34 by the Administrator)	(1) Study and hearing prescribed to determine whether code authority is representative. (2) Same type as Code No. 333 above (3) No reduction of wages to be made pending above study. (4) Sets up Industrial Relations Board (5) Watchmen and non-manufacturing employees prescribed a maximum hour rate.
409	Flexible Insulation Ind. (approved 4/30/34 by the Administrator)	One condition. Same type as Code No. 236 above.
410	Retail Rubber Tire and Battery Trade (approved 5/1/34 by the President)	(1) If Administrator determines that an emergency exists, he may determine a lowest reasonable cost. (2) Same type as Code No. 236 above. (3) Code Authority to submit recommendations to render hour and wage provisions similar to other codes.

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
412	Loose Leaf and Blank Book Industry (approved 5/1/34 by the Administrator)	(1) Same type as Code No. 236 above (2) Same type as Code No. 369 (2) above
413	Pasted Shoe Stock Ind. (approved 5/3/34 by the Administrator)	(1) Same type as Code No. 369 (2) above
414	Bobbin and Spool Ind. (approved 5/3/34 by the Administrator)	(1) Hours cut from 48 to 45 as maximum for maintenance crews, engineers, firemen, etc. (2) Same type as Code No. 236 above.
415	Commercial Fixtures Ind. (approved 5/3/34 by the Administrator)	One condition. Same type as Code No. 13 above.
416	Leather Cloth and Lacquered Fabrics, Window Shade Cloth and Roller and Book Cloth and Impregnated Fabrics Ind. (approved 5/3/34 by the Administrator)	(1) Same type as Code No. 236 above (2) Same type as Code No. 96 (3) Same type as Code No. 288 (3) above
419	Soft Lime Rock Ind. (approved 5/7/34 by the Administrator)	(1) Same type as Code No. 236 above (2) Code Authority to submit evidence that averaging hours is necessary in the Industry
420	Gypsum Industry (approved 5/7/34 by the Administrator)	(1) Same type as Code No. 236 above (2) Same type as Code No. 419 (2) above
421	Marble Quarrying and Finishing Industry (approved 5/9/34 by the Administrator)	(1) Same type as Code No. 236 above (2) Same type as Code No. 410 (3) above (3) Same type as Code No. 419 (2) above
423	Drop Forging Ind. (approved 5/10/34 by the Administrator)	(1) Maximum hours lowered for peak periods, seasonal demands, continuous processes, etc. (2) Same type as Code No. 288 (3) above (3) Same type as Code No. 236 above (4) Same type as Code No. 13 above.
424	Spice Grinding Industry (approved 5/11/34 by the Administrator)	One condition. Same type as Code No. 151 (3) above.

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
426	Paper Makers' Felt Ind. (approved 5/11/34 by the Administrator)	One condition. Same type as Code No. 236 above.
430	Package Medicine Ind. (approved 5/15/34 by the Administrator)	One condition. Same type as Code No. 373 above.
431	Toll Bridge Industry (approved 5/17/34 by the Administrator)	(1) Same type as Code No. 373 above (2) Same type as Code No. 13 above (3) Provision made for publicly owned toll bridges to become members of the industry.
432	Specialty Accounting Supply Mfg. Industry (approved 5/17/34 by the Administrator)	One condition. Same type as Code No. 236 above.
433	Cotton Pickery Industry (approved 5/17/34 by the Administrator)	(1) Provision that nothing in the Code shall apply to export trade stayed pending filing of objections for 10 days. (2) Same type as Code No. 410 (3) above.
436	Fur Mfg. Industry (approved 5/19/34 by the Administrator)	(1) Same type as Code No. 151 (3) above (2) Same type as Code No. 274 above.
437	Bicycle Mfg. Industry (approved 5/21/34 by the Administrator)	(1) Same type as Code No. 14 above
444	Shoe Pattern Mfg. Ind. (approved 5/26/34 by the Administrator)	(1) Same type as Code No. 236 above
445	Baking Industry (approved 5/28/34 by the President)	(1) Same type as Code No. 236 above (2) Stay of provision prohibiting the giving of premiums and coupons (3) Same type as Code No. 14 above.
446	Canning Industry (approved 5/29/34 by the President)	(1) Committee appointed for standards of quality and labelling requirements, to make report in 90 days. (2) Same type as Code No. 14 above.

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
448	Optical Wholesale Industry and Trade Approved 5/31/34 by the Administrator	(1) Maximum number of hours made identical regardless of population. (2) Code Authority not given power to arbitrate labor disputes. (3) Same type as Code No. 196 (1) above. (4) Same type as Code No. 354 (2) above.
450	Dog Food Industry (approved 5/31/34 by the Administrator	One condition. Same type as Code No. 236 above.
451	Candlewick Bedspread Ind. (approved 6/1/34 by the Administrator)	(1) Minumum prescribed for homework and a study and hearing provided therefor.
455	Metal Etching Industry (approved 6/4/34 by the Administrator)	One condition. Same type as Code No. 236 above.
456	Ice Cream Cone Industry (approved 6/4/34 by the Administrator)	(1) Same type as Code No. 234 above (2) Same type as Code No. 445 (2) above
458	Wholesale Confectioners' Industry (approved 6/6/34 by Administrator)	(1) Same type as Code No. 236 above (2) Same type as Code No. 445 (2) above (3) Same type as Code No. 151 (3) above (4) Functions of wagon jobbers as to maximum hours stayed.
459	Bottled Soft Drink Ind. (approved 6/7/34 by the President)	One condition. Same type as Code No. 14 above.
460	Preserve, Maraschino Cherry and Glace Fruit Industry (approved 6/8/34 by the Administrator)	(1) Same type as Code No. 236 above (2) Same type as Code No. 64 (1) above (female rates and audit system)
462	Wholesale Tobacco Trade (approved 6/9/34 by the Administrator)	(1) Merchandising plan stayed until agreement reached with Cigar Industry and Retail Tobacco Trade. (2) Same type as Code No. 236 above. (3) Same type as Code No. 274 above. (4) New section substituted for price cutting and declaration of an emergency. (5) Hour and wage provision not to become effective for two weeks.

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
463	Candy Mfg. Industry (approved 6/11/34 by the President)	(1) Same type as Code No. 236 above (2) Same type as Code No. 445 (2) above (3) Same type as Code No. 151 (3) above (4) Same type as Code No. 119 above.
464	Cocoa and Chocolate Mfg. Industry (approved 6/15/34 by the Administrator)	One condition. Same type as Code No. 445 (2) above.
466	Retail Tobacco Trade (approved 6/19/34 by the President)	(1) Same type as Code No. 462 (1) above (2) Same type as Code No. 236 above (3) Same type as Code No. 274 above (4) Same type as Code No. 462 (4) above (5) Same type as Code No. 462 (5) above
467	Cigar Mfg. Industry (approved 6/19/34 by the President)	(1) Same type as Code No. 462 (1) above (2) Same type as Code No. 236 above (3) Same type as Code No. 274 above (4) Same type as Code No. 462 (5) above
469	Sulphonated Oil Mfg. Industry (approved 6/26/34 by the Administrator)	(1) Same type as Code No 274 above
470	Aluminum Industry (6/26/34 by the Administrator)	(1) Code approved for trial period of 90 days. (2) Same type as Code No. 174 above.
471	Trailer Mfg. Industry (approved 6/26/34 by the Administrator)	(1) Same type as Code No. 236 above Stay of provision saying members shall not sell below their individual cost until good cause to the contrary shown. (3) Same type as Code No. 13 above.
472	Warm Air Register Ind. (approved 6/28/34 by the Administrator)	(1) Differential discount to large purchasers deleted. (2) Same type as Code No. 471 (2) above.
474	Needlework Industry In Puerto Rico (approved 6/28/34 by the President)	(1) Members given exemption from certain enumerated related codes. (2) Code Authority to submit plan to issue uniform lables with U.S. Industries. (3) Homeworkers to be paid defficiency they would receive if working at the factory under the Code.

APPROVED CODE No.	Industry.	CONDITIONS IN ORDER OF APPROVAL
474	(continued)	(4) Commission set up to make recommendations for possible code modifications. (5) Study of wage scale and piece work basis prescribed.
475	Yeast Industry (approved 7/2/34 by the Administrator)	One condition. Minimum wage rate increased from 40 to 45 cents per hour.
476	Hatters' Fur Cutting Ind. (approved 7/3/34 by the Administrator)	One condition. Same type as Code No. 151 above.
477	Public Seating Industry (approved 7/10/34 by the Administrator)	One condition. Same type as Code No. 236 above. One condition--Code only approved for 90 days.
478	Secondary Steel Products Warehousing Trade (approved 7/10/34 by the Administrator)	(1) Hours and wages stayed temporarily until cause shown why they should not become effective. (2) Members to comply with provisions pending above stay.
479	Cold Storage Door Mfg. Industry (approved 7/11/34 by the Administrator)	(1) Same type as Code No. 236 above. (2) Same type as Code No. 13 above.
480	Structural Steel and Iron Fabricating Industry (approved 7/11/34 by the Administrator)	(1) Erection work to be governed by Construction Industry. (2) New wage rate substituted with exception as to hours for watchmen, etc. (3) No employee to be dismissed for reporting alleged violation. (4) Same type as Code 408 (1) above. (5) New "selling below cost" provision added. (6) Firm of public accountants to make within two months a report of direct and indirect charges. (7) Same type as Code 288 (3) above. (8) Minimum rates of pay set up by districts. (9) New trade practices added: purchasing below advertised price; shipping in transit privilege to other points than specified in order. (10) Same type as Code No. 369 (2) above.

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
482	Dental Goods and Equipment Trade (approved 7/13/34 by the Administrator)	(1) Same type as Code 369 (2) above (2) Same type as Code 480 (2) above (3) Same type as Code 408 (4) above (4) Model provision substituted as failure to pay assessments under budget. (5) Compliance with code and payment of assessments to entitle member to participate in selection of Code Authority and enjoy benefits. (6) Prohibition of consignment of equipment except on contract approved by Code Authority. (7) Payment of rebates revised by new section.
483	Electric Hoist and Monorail Mfg. Industry (approved 7/13/34 by the Administrator)	One condition. Same type as Code No. 13 above.
484	Wholesale Monumental Marble Industry (approved 7/14/34 by the Administrator)	(1) Wage rates and overtime provisions approved pending 90 day study (2) Provision re method of payment of wages stayed until stay in Retail Trade Code be determined.
485	Cotton Ginning Machinery Mfg. Industry (approved 7/16/34 by the Administrator)	(1) Same type as Code 236 above. (2) Maximum hours of heat firemen stayed 60 days. (3) Southern wage rate to be reconsidered after peak period in industry.
486	Commercial Vehicle Body Industry (approved 7/16/34 by the Administrator)	(1) Same type as Code 373 above (2) Same type as Code No. 119 above (3) Same type as Code No. 3 above.
488	Welt Mfg. Industry (approved 7/20/34 by the Administrator)	One condition. Maximum hours of watchmen revised.
489	Safety Razor and Safety Razor Blade Mfg. Ind. (approved 7/21/34 by the Administrator)	(1) Same type as Code No. 13 above. (2) Provision for sale only thru recognized wholesalers stayed. (3) Penalty for imitation of labels, etc. stayed.

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
490	Imported Date Packing Ind. (approved 7/22/34 by the Administrator)	One condition. Same type as Code No. 236 above.
492	Stereotype Dry Mat Ind. (approved 7/27/34 by the Administrator)	(1) Same type as Code No. 236 above (2) Study provided for possibility of upward revision of female employees.
493	Industrial Oil Burning Equipment Mfg. Industry (approved 7/30/34 by the Administrator)	One condition. Members of this industry given blanket exemption from Oil Burner Industry Code
495	Steel Joist Industry (approved 8/1/34 by the Administrator)	(1) All wage rates and districts set up in Schedule A eliminated and a basic wage with a Southern differential substituted therefor. (2) Upon termination of code, only liabilities shall be liquidated damages or unpaid assessments. (3) Same type as Code No. 369 (2)above
497	Textile Examining, Shrinking and Refinishing Ind. (approved 8/6/34 by the Administrator)	(1) Same type as Code No.373 above. (2) Same type as Code No. 13 above.
498	Corn Cob Pipe Industry (approved 8/7/34 by the Administrator)	One condition. Same type as Code No. 119 above.
499	Refrigerated Warehousing Industry (approved 8/8/34 by the Administrator)	One condition. Same type as Code No. 369 (2) above.
501	Manufacturing and Wholesale Surgical Industry (approved 8/9/34 by the Administrator)	(1) Same type as Code No.369 (2) above (2) Same type as Code 288 (3) above
502	Upward-Acting Door Ind. (approved 8/11/34 by the Administrator	(1) Same type as Code No. 13 above.

No.	Industry	CONDITIONS IN ORDER OF APPROVAL
503	Pretzel Industry (approved 8/11/34 by the Administrator)	One condition. Code Authority to investigate within 60 days and report on the effect of machine operators and oven men and general male labor as to wages.
504	Animal Glue Industry (approved 8/23/34 by the Administrator)	(1) Present hour and wage provisions, with exceptions thereto, to be approved for 60 days, and then either those provisions or new provisions therein prescribed shall be effective, according to the pleasure of the Administrator.
507	Surgical Distributors Trade. (approved 8/24/34 by the Administrator)	(1) Same type as Code No. 369 (2) above (2) Definitions of outside salesmen and collectors revised. (3) New wage rates and hours prescribed with exceptions thereto provided. (4) Provision for handicapped persons inserted (5) Wages above minimum not to be reduced. (6) Provisions made for safety and health of employees (7) Model provision for collecting information from industry (8) New provision prescribed for imitation of design, etc. (9) Same type as Code No.354 (2) above
508	Industry of Wholesaling Plumbing Products, Heating Products and/or Distributing Pipe, Fittings and Valves. (approved 8/25/34 by the Administrator)	(1) Same type as Code No. 373 above. (2) Same type as Code No. 236 above.
509	Marine Equipment Mfg. Industry (approved 8/27/34 by the Administrator)	(1) Same type as Code No. 236 above. (2) Provision deleted attempting to tack on freight and other charges as cost. (3) Same type as Code No. 373 above.
510	Assembled Watch Industry (approved 8/27/34 by the Administrator)	(1) Substitution of provision for return of defective products. (2) Amended provision re breaching of contracts with competitor. (3) Model hours for office employees/ (4) Same type as Code No. 369 (2) above/

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
511	Corrugated Rolled-Metal Culvert Pipe Industry (approved 8/27/34 by the Administrator)	(1) Same type as Code No. 369 (2) above (2) Same type as Code No. 236 above
514	Artificial Limb Mfg. Ind. (approved 8/28/34 by the Administrator)	(1) Same type as Code No. 369 (2) above (2) Same type as Code No. 507 (3) above (3) No member shall file revision upward of filed price within 48 hours.
517	Ring Traveler Mfg. Ind. (approved 9/7/34 by the Administrator)	(1) Order to become effective within 10 days unless good cause shown to contrary
518	Shuttle Mfg. Industry (approved 9/7/34 by the Administrator	One condition. Same type as Code No. 517 above.
519	Natural Cleft Stone Ind. (approved 9/11/34 by the Administrator)	One condition. Same type as Code No. 419 (2) above.
521	Adhesive and Ink Industry (approved 9/19/34 by the Administrator)	One condition. Same type as Code No. 410 (3) above.
522	Automotive Chemical Specialties Mfg. Industry (approved 9/27/34 by the Administrator)	One condition. Same type as Code No. 410 (3) above.
524	Pickle Packing Industry (approved 10/4/34 by NIRB, G.A.Lynch)	One condition. Same type as Code No. 410 (3) above.
525	Retail Trade in the Territory of Hawaii (approved 10/ 15/34 by NIRB, G. A. Lynch)	(1) Same type as Code No. 373 above (2) Minimum wages as to outside salesmen stayed (3) Minimum wages as to employees engaged at least 60% of time outside stayed (4) Same type as Code No. 517 above
528	Pecan Shelling Industry (approved 10/23/34 by NIRB, G.A.Lynch)	One condition. Same type as Code No. 410 (3) above.

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
529	Pharmaceutical and Biological Industry (approved 10/25/34 by NIRB, G. A. Lynch)	One condition. Statistics to be gathered by Code Authority in 4 months with the view of amending or otherwise, the hours and wages provisions in the code.
531	Stained and Leaded Glass Industry (approved 11/2/34 by NIRB, W. A. Harriman)	One condition. Providing for submission of evidence to support wage differentials based upon classes of products.
534	Horse Hair Dressing Ind. (approved 11/24/34 by NIRB, W. A. Harriman)	One condition. Same type as Code No. 517 above.
535	Brattice Cloth Mfg. Ind. (approved 12/26/34 by NIRB, W. A. Harriman)	One condition. Same type as Code No. 517 above.
536	Chlorine Control Apparatus Industry and Trade (approved 12/18/34 by NIRB, W. A. Harriman)	One condition. Same type as Code No. 517 above.
538	Women's Neckwear and Scarf Mfg. Industry (approved 12/19/34 by NIRB, W. A. Harriman)	(1) Exemption given to manufacturers of dresses where such neckwear made in conjunction with the dress in the same shop (2) Same type as Code No. 64 (1) above (3) Maximum cash discount provision stayed pending study, and a maximum provided during that period.
540	Retail Meat Trade (approved 12/21/34 by the President)	(1) Definition of industry amended, as well as that of "establishment". (2) Same type as Code No. 386 (4) above (3) Following provisions stayed until suitable substitutes may be found: Misrepresentation of non-conforming articles; misbranding or labeling; pricing provisions, during emergency and otherwise.
541	Flat Glass Mfg. Industry (approved 12/22/34 by NIRB, W. A. Harriman)	One condition. Stay of exceptions to maximum hours during peak periods set up by Industry.
543	Motor Vehicle Maintenance Trade (approved 1/18/35 by the President)	(1) Same type as Code No. 373 above. (2) Price cutting, emergency and recall of bid provisions stayed until further order.

APPROVED CODE		CONDITIONS IN ORDER OF APPROVAL
No.	Industry	
		(3) Penalty of not participating in election for not paying assessments, etc. stayed until after the code authority is initially set up.
544	Auto Rebuilding and Refinishing Trade (approved 1/24/35 by the President)	(1) Same type as Code No. 543 (2) above.
545	Natural Organic Products Industry (approved 1/25/35 by NIRB, W. A. Harriman)	(1) Same type as Code No. 333 above.
547	Seed Trade (approved 2/2/35 by NIRB, W. A. Harriman)	One condition. Provisions guaranteeing against decline of price either before or after delivery, or canceling of contracts to avoid market loss stayed pending further order.
549	Cigarette, Snuff, Chewing and Smoking Tobacco Mfg. Industry (approved 2/9/35 by the President)	(1) Study by Research and Planning on wages and hours provided for with reservation to Board to take action after due notice as it deems necessary.
551	Clock Mfg. Industry (approved 2/26/35 by NIRB, W. A. Harriman)	One condition. Same type as Code No. 369 (2) above.
552	Music Publishing Industry Approved 3/4/35 by NIRB, W. A. Harriman)	One condition. Approval of code shall not condone or sanction any acts alleged in the petition filed in case now pending in U. S. District Court, or any decrees which may be entered therein.
553	Restaurant Trade in the Territory of Hawaii (approved 3/3/35 by NIRB, W. A. Harriman)	(1) Same type as Code No. 474 (1) above (2) Same type as Code No. 517 above.
554	Graphic Arts Industry in the Territory of Hawaii (approved 3/7/35 by NIRB, W. A. Harriman)	(1) Same type as Code No. 474 (1) above (2) Same type as Code No. 517 above
555	Zinc Industry (approved 3/26/35 by NIRB, W. A. Harriman)	(1) Same type as Code No. 419 (2) above (2) Impartial investigator to review conditions in South as to code wages with possibility of revision in 90 days
556	Wholesale and Retail Automobile Sales, Supply Repair, Maintenance and Service Industry in the Territory of Hawaii (approved 3/26/35 by NIRB, W. A. Harriman)	(1) Same type as Code No. 474 (1) above (2) Same type as Code No. 517 above. (3) Entire price structure (open price filing, emergency and accounting provisions) stayed pending showing of need therefor.

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

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, Ecnomic 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

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 comparision 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, Conditional 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

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 Commerce 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 Regulation?
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?

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

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STORE ROOM

U. S. National recovery administration.

no.74 Work materials.

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