

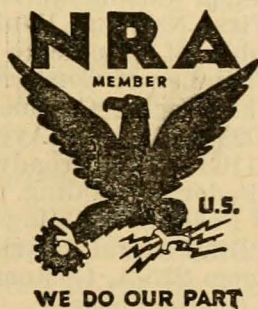
NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION

FOR THE

CHINA CLAY
PRODUCING INDUSTRY

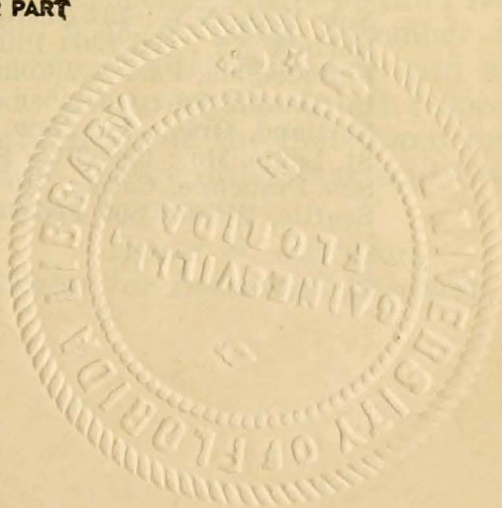
AS APPROVED ON SEPTEMBER 18, 1934



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Approved Code No. 520

CODE OF FAIR COMPETITION

FOR THE

CHINA CLAY PRODUCING INDUSTRY

As Approved on September 18, 1934

ORDER

APPROVING CODE OF FAIR COMPETITION FOR THE CHINA CLAY
PRODUCING INDUSTRY

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

NOW, THEREFORE, on behalf of the President of the United States, I, Hugh S. Johnson, Administrator for Industrial Recovery, pursuant to authority vested in me by Executive Orders of the President, including Executive Order No. 6543-A, dated December 30, 1933, and otherwise; do hereby incorporate by reference said annexed report and do find that said Code complies in all respects with the pertinent provisions and will promote the policy and purposes of said Title of said Act; and do hereby order that said Code of Fair Competition be and it is hereby approved.

HUGH S. JOHNSON,
Administrator for Industrial Recovery.

Approval recommended:

C. E. ADAMS,
Division Administrator.

WASHINGTON, D.C.,
September 18, 1934.

REPORT TO THE PRESIDENT

The PRESIDENT,
The White House.

SIR: The original Code of Fair Competition for the China Clay Producing Industry was submitted by the Southern China Clay Producers Association, the name of which was subsequently changed to China Clay Producers Association, on September 29th, 1933. The China Clay Producers Association is an unincorporated membership society organized in 1933 representing in excess of 90% of the known members of Industry and in volume of production.

Several revisions of the Code were made prior to the public hearing which was held on December 13th, 1933. The Code was revised during the recess of this hearing and was submitted in its final form for approval. Every person who requested an appearance was properly heard in accordance with statutory and regulatory requirements.

The China Clay Industry as outlined in this Code embraces the mining and/or producing of China Clay and the original sale, including sales on consignment, where permitted in the United States, of China Clay by the Member of Industry producing the same directly or indirectly either by himself or his agent, which includes without limitation any person or corporation occupying a subsidiary or controlling relationship or one of common, mutual or joint ownership, or control to a Member of Industry.

The term "China Clay" means a kaolinitic clay (a type of clay composed essentially of hydrous silicates and alumina containing a very low percentage of fluxing impurities) which is suitable for use in the manufacture of pottery, porcelain, and other ceramic products and as a filler or coater in the paper, rubber, paint and other industries.

The China Clay Industry in the United States is of relatively recent development. Prior to 1900 approximately 90% of the China Clay used in the United States was imported from England. During the period 1900 to 1914 there was a marked development of the Industry in the United States—1,500 tons were produced in 1914. On account of the difficulty of securing China Clay from England during the War the development was most marked. Today approximately 70% of the China Clay used in this country is of domestic origin, the remaining 30% is imported from England. Seven hundred and fourteen thousand tons representing 90% of the productive capacity of the United States is produced by fourteen members of the China Clay Producers Association. At the present time their output has decreased to about 42% of capacity. In 1932 three hundred and sixty-five thousand tons were produced valued at \$2,243,000, representing about 40% of all types of clay produced in the United States both as to tonnage and value.

The productive capacity of this Industry, which has a capital investment of \$4,100,000, is very narrowly confined in a few Southern

States. Approximately 55% of such capacity is located in Georgia, 27% in South Carolina, 9% in Florida and most of the remaining 9% in North Carolina and Virginia. Pits are also worked in California, Missouri, Pennsylvania and Vermont.

The uses to which domestic China Clay is now put have been greatly increased over the past few years through the research efforts of the various producers. Its principal use is as a filler for paper, followed by its use in the manufacture of white-bodied ware, cement, rubber, paper coating, fire-brick and block, high grade tile, oilcloth or linoleum and paint filler or extender. China Clay is also employed in the manufacture of artificial abrasives, crayons, chemicals, glasshouse supplies, clay crucibles, art pottery, etc.

While there are domestic products which compete with china clay, such as calcium sulphate (gypsum), calcium carbonate (whiting), talc and other white pigments, the Industry's chief concern is with the competition of imported china clay.

Aside from the more legitimate competitive problems of the Industry are those specifically related to unfair trade practices within the Industry, such as "bid peddling", "bid chiseling", defamation of a competitor and false representations, all of which have debilitated the Industry with their viciousness to a degree where ruthless amputation from the industry is advised.

As previously indicated, there is a productive capacity of more than 714,000 tons per annum in this Industry, fully sufficient to care for the entire American consumption under prosperous conditions. Today the Industry is working at 42% of capacity.

The immediate future of this Industry is largely predicated upon the potential increase in demand for its products; its ability to absorb the increased labor costs incident to the proposed Code, and the possible further encroachment of the foreign producer upon the domestic producer's present market, as well as increasing competition from other domestic products.

There are two important limitations on the extent to which the price of china clay may be raised. In the first place the price of the clay for one of its major uses, paper filler, is limited by the cost of recovery of what is at present a by-product of the Fertilizer Industry, namely calcium sulphate (gypsum), which is largely a waste product but which can be, and sometimes is, used as a substitute for china clay when the price of the latter goes too high. In the second place, competition with foreign china clay, even under present conditions, is still keen and would doubtless be increased by any appreciable rise in the price of china clay.

Under the present Code hours employment should be afforded to about 250 additional employees. The minimum hourly rate has been increased substantially from the previously low rate in 1933 of 10¢ per hour extant prior to August 15, 1933, or \$4.80 per week of 48 hours. In September the rate was increased to 15¢. Under the proposed Code the minimum rate for the South is 24¢ per hour, or \$9.60 for a 40 hour week. All of this is in comparison with a 65 hour week at 20¢ per hour in 1929.

The Code rate for the South is representative of an average condition in the Industry inasmuch as approximately 90% of the Industry is located in the South. The higher Code rate for the North would

only apply to a relatively small section of the Industry scattered through a number of widely separated states, but would, of course, somewhat increase the total wage rate in the Code.

ARTICLE I. States the purpose of the Code.

ARTICLE II. Accurately defines specific terms applicable to the China Clay Producing Industry.

ARTICLE III. The maximum hours are limited to 40 hours per week, or eight hours per day in any 24 hour period except as otherwise provided for. In order to meet adverse conditions of production due to seasonal inclement weather, employees engaged in open pit (mining) shall be permitted to work an average of 40 hours per week in any four or five week period that shall correspond as near as may be to the calendar month, with a maximum of 48 hours in any seven-day period; provided, however, that at least one and one-half times his regular wage rate for any employee so employed shall be paid for all hours worked in excess of 40 hours in any seven-day period. Watchmen may be permitted to work 56 hours in any seven-day period; provided, that such employees shall have at least one day's rest in each seven-day period. No clerical or office employee shall be permitted to work in excess of 40 hours per week averaged over a five-week period nor more than 48 hours in any one week. Executives or those employed in supervisory capacities or in technical work who are paid not less than at the rate of \$30.00 per week in the Southern Zone or \$35.00 per week in the Northern Zone, are not subject to hourly limitations. The maximum hours shall not apply to employees engaged in emergency maintenance or emergency repair work.

ARTICLE IV. The minimum wage for employees in the processing of products or any labor incident thereto shall be 24¢ per hour in the Southern Zone and 35¢ per hour in the Northern Zone. No person employed in clerical or office work shall be paid less than at the rate of \$15.00 per week except that office boys and girls and messengers may be paid at a rate of not less than 80% of the minimum paid to office employees. The established minimum rate of pay for work performed in any pay period shall apply irrespective of whether an employee is actually compensated on a time-rate, piece-work or other basis. Provision is also made for the employing of handicapped persons.

ARTICLE V. This Article provides that no person under 18 years of age shall be employed in the Industry except in specific operations and no person under 16 years of age shall be employed in any capacity. This Article also sets forth mandatory provisions respecting the rights of employees to organize and bargain collectively. This Article also provides for matters having to do with reclassification of employees, standards for safety and health, the observance of state laws, the posting of complete copies of this Code, company towns and stores and dismissal for complaint.

ARTICLE VI. Establishes a Code Authority consisting of seven voting members together with Administrator members to administer the provisions of this Code. This Article also provides for powers and duties of the Code Authority.

ARTICLE VII. Sets forth the marketing and trade practice rules for the Industry.

ARTICLE VIII. Makes provision for recommendation to the Administrator by the Code Authority of matters having to do with new capacity.

ARTICLE IX. Makes provision for Export Trade.

ARTICLE X. Makes provision for modification of the Code.

ARTICLE XI. Makes provision for registration of Members of the Industry.

ARTICLE XII. No provision of this Code shall be so applied as to promote monopolies or monopolistic practices or to eliminate, oppress or discriminate against small enterprises.

ARTICLE XIII. Makes provision for the termination of the Code.

ARTICLE XIV. Covers the effective date.

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

I find that:

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

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

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

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

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

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

For these reasons, therefore, this Code has been approved.

Respectfully,

HUGH S. JOHNSON,
Administrator.

SEPT. 18, 1934.

CODE OF FAIR COMPETITION FOR THE CHINA CLAY PRODUCING INDUSTRY

ARTICLE I—PURPOSES

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

ARTICLE II—DEFINITIONS

Wherever used in this Code or any supplement appertaining thereto, the terms enumerated in this Article shall have the meanings herein defined, unless the context shall otherwise clearly indicate.

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

SECTION 2. The term "Act" means Title I of the National Industrial Recovery Act.

SECTION 3. The term "Administrator" means the Administrator for Industrial Recovery.

SECTION 4. The term "China Clay Producing Industry" or "Industry" as used herein includes the mining and/or producing of China Clay and the original sale (including sales on consignment where permitted) in the United States, of China Clay by the Member of Industry producing the same directly or indirectly either by himself or his agent, which includes without limitation any person or corporation occupying a subsidiary or controlling relationship or one of common, mutual, or joint ownership, or control to a Member of Industry.

SECTION 5. The term "China Clay" as used herein means a kaolinic clay (a type of clay composed essentially of hydrous silicates and alumina containing a very low percentage of fluxing impurities) which is suitable for use in the manufacture of pottery, porcelain, and other ceramic products and as a filler or coater in the paper, rubber, paint and other industries.

SECTION 6. The term "Member of Industry" includes, but without limitation, any individual, partnership, association, corporation or other form of enterprise engaged in the Industry, either as an employer or on his or its own behalf.

SECTION 7. The term "Employee" means and includes anyone engaged in the Industry in any capacity receiving compensation for his services irrespective of the nature or method of payment of such compensation, except a Member of the Industry.

SECTION 8. The term "Employer" means anyone by whom any such employee is employed or compensated.

SECTION 9. The term "Southern Zone" as used herein shall include the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, South Carolina, North Carolina and Virginia.

SECTION 10. The term "Northern Zone" as used herein shall include all other territory of the United States, except as defined in "Southern Zone."

SECTION 11. The term "Association" shall mean the China Clay Producers Association, a voluntary unincorporated association.

SECTION 12. The term "Executive Committee" shall mean the Executive Committee of the Association.

SECTION 13. The term "Secretary" shall mean the Secretary of the Code Authority, who shall also be the Secretary of the Association.

ARTICLE III—HOURS OF LABOR

SECTION 1. *Maximum Hours.*—No employee shall be permitted to work in excess of forty (40) hours per week or eight (8) hours in any twenty-four (24) hour period, except as herein otherwise provided.

(a) Employees engaged in open pit (mining) shall be permitted to work an average of forty (40) hours per week in any four or five-week period that shall correspond as near as may be to the calendar month, with a maximum of forty-eight (48) hours in any seven-day period; provided, however, that at least one and one-half times his regular wage rate for any employee so employed shall be paid for all hours worked in excess of forty (40) hours in any seven-day period.

(b) Employees engaged as watchmen may be permitted to work not more than fifty-six (56) hours in any one seven-day period, nor more than six (6) days in any seven-day period.

SECTION 2. *Hours for Clerical and Office Employees.*—No clerical or office employee shall be permitted to work in excess of forty (40) hours per week, provided that in one (1) week of each five (5) week period any such employee may be permitted to work not in excess of forty-eight (48) hours; provided further, that in no such five (5) week period shall any employee be permitted to work in excess of an average of forty (40) hours per week.

SECTION 3. *Exceptions as to Hours.*—The provisions of this Article shall not apply to outside salesmen, or to employees engaged in emergency maintenance or emergency repair work; provided, however, that at least one and one-half times the regular wage rate for any employee so employed shall be paid in such emergency maintenance or emergency repair work for all hours worked in excess of the maximum hours hereinbefore provided; nor to executives or those employed in supervisory capacities or in technical work who are paid not less than at the rate of Thirty Dollars (\$30.00) per week in the Southern Zone or Thirty-Five Dollars (\$35.00) per week in the Northern Zone.

SECTION 4. *Standard Week.*—No employee shall be permitted to work more than six (6) days in any seven (7) day period.

SECTION 5. *Employment by Several Employers.*—No employer shall knowingly permit any employee to work for any time which, when totalled with that already performed with another employer or employers in this Industry or other trades or industries, exceeds the maximum permitted herein.

ARTICLE IV—WAGES

SECTION 1. *Minimum Wages.*—Except as otherwise herein provided no employee shall be paid in any pay period less than at the rate of Twenty-four (24) cents per hour in the Southern Zone, nor less than at the rate of Thirty-five (35) cents per hour in the Northern Zone.

SECTION 2. *Clerical and Office Employees.*—No clerical or office employee shall be paid less than at the rate of Fifteen Dollars (\$15.00) per week; provided, however, that office boys and girls and messengers may be paid not less than at a rate of 80% of the minimum hereinabove specified, and provided further that the number of such boys and girls and messengers so paid shall constitute not more than 5% of the total number of such employees of any one office of any one employer, but in any case each employer shall be entitled to employ one such employee.

SECTION 3. *Piecework Compensation—Minimum Wages.*—This Article establishes a minimum rate of pay for any pay period which shall apply, irrespective of whether an employee is actually compensated on a time-rate, piecework, or other basis.

SECTION 4. *Wages Above the Minimum.*—Adjustment of wages, with respect to wages above the minimum, shall be made within thirty (30) days after the effective date of this Code by each employer who has not heretofore made such adjustment. Such adjustment shall mean the maintenance of a differential at least as great in amount as that existing on June 16, 1933, between the wage rates for such employment and the then minima. In no event, however, shall hourly rates be reduced in making such adjustments. Within sixty (60) days after the effective date of this Code each Member of the Industry shall make a report of such adjustment whether made prior to or subsequent to the date of approval of this Code to the Code Authority.

SECTION 5. *Payment of Wages.*—Each employer shall make payment of all wages in lawful currency, or by negotiable check therefor, payable on demand. These wages shall be exempt from any deductions other than those expressly authorized by an employee or required by law. Pay periods for wages shall be at no greater interval than every semimonth, and salaries at no greater interval than every month. No employer shall withhold wages except as otherwise provided by law.

SECTION 6. *Handicapped Persons.*—A person whose earning capacity is limited because of age, physical or mental handicap, or other infirmity, may be employed on light work at a wage below the minimum established by this Code if the employer obtains from the State Authority, designated by the United States Department of Labor, a certificate authorizing such person's employment at such wages and for such hours as shall be stated in the certificate. Such

Authority shall be guided by the instructions of the United States Department of Labor in issuing certificates to such persons. Each employer shall file with the Code Authority, and keep current, a list of all such persons employed by him, showing the wages paid to and the maximum hours of work for such employee.

SECTION 7. *Contracts for Performance of Work.*—No employer shall contract work to be done except when the person performing the contract agrees to be bound by the provisions of this Code or the Code adopted for the Industry covering such work; and in no case shall an employer avoid or evade the labor provisions of this Code by contracting his work to any person subject to labor regulations less stringent than those provided in this Code.

ARTICLE V—GENERAL LABOR PROVISIONS

SECTION 1. *Child Labor.*—No person under eighteen (18) years of age shall be employed in the Industry, except in clerical, office, sales, service, technical and engineering department office duties, and no person under sixteen (16) years of age shall be employed in any capacity. In any State an employer shall be deemed to have complied with this provision as to age if he shall have on file a certificate duly signed by the Authority of such State empowered to issue employment or age certificates or permits, showing that the employee is of the required age.

SECTION 2. *Provisions of the Act.*—(a) Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

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

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

SECTION 3. *Reclassification of Employees.*—No employer shall reclassify employees or duties of occupations performed, or engage in any other subterfuge for the purpose of defeating the purposes or provisions of the Act or of this Code.

SECTION 4. *Standards of Safety and Health.*—Every employer shall provide for the safety and health of his employees at the place and during the hours of their employment. Standards of safety and health for each division of the Industry shall be submitted to the Administrator by the Code Authority within three (3) months after approval of this Code.

SECTION 5. *State Laws.*—No provision in this Code shall supersede any State or Federal law which imposes on employers more stringent requirements as to age of employees, wages, hours of work, or as to safety, health, sanitary or general working conditions, or insurance or fire protection, than are imposed by this Code.

SECTION 6. *Posting*.—All employers shall post and keep posted complete copies of this Code and all amendments thereto in conspicuous places accessible to employees, and shall comply with all rules and regulations relative to posting which may from time to time be prescribed by the Administrator.

SECTION 7. *Company Towns and Stores*.—Employees other than maintenance or supervisory men, or those necessary to protect property, shall not be required as a condition of employment, to live in houses rented from or specified by the employer. No employee shall be required, as a condition of employment, to trade at a store owned or specified by an employer.

SECTION 8. *Dismissal for Complaint*.—No employer shall dismiss or demote any employee for making a complaint or giving evidence with respect to an alleged violation of this Code.

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

SECTION 1. *Organization and Constitution*.—A Code Authority to administer this Code is hereby constituted, and shall consist of six (6) voting members who shall be selected by and who may be members of the Executive Committee of the Association, and one (1) other voting member who shall be a Member of Industry and shall be selected by the Members of Industry who are not members of the Association. The selection of all members to the Code Authority shall be by a fair and equitable method of election to be approved by the Administrator. In the event that the selection of the Association's non-member representative on the Code Authority is not made within thirty (30) days after the effective date of this Code such member may be selected by the Administrator.

SECTION 2. In addition to the above membership there may be not more than three (3) members without vote and without compensation by the Industry, appointed by the Administrator to serve for such terms as he may specify.

SECTION 3. Each trade or industrial association directly or indirectly participating in the selection or activities of the Code Authority shall: (1) impose no inequitable restrictions on membership, and (2) submit to the Administrator true copies of its Articles of Association, By-Laws, Rules and Regulations and any amendments when made thereto, together with such other information as to membership, organization, and activities as the Administrator may deem necessary to effectuate the purposes of the Act.

SECTION 4. In order that the Code Authority shall at all times be truly representative of the Industry and in other respects comply with the provisions of the Act, the Administrator may prescribe such hearings as he may deem proper; and thereafter if he shall find that any Code Authority or sub-Code Authority is not truly representative or does not in other respects comply with the provisions of the Act, may require an appropriate modification in the method of selection of such Code Authority.

SECTION 5. Nothing contained in this Code shall constitute the members of the Code Authority partners for any purpose; nor shall any member of the Code Authority be liable in any manner to any-

one for any act of any other member, officer, agent or employee of the Code Authority; nor shall any member of the Code Authority exercising reasonable diligence in the conduct of his duties hereunder, be liable to anyone for any action or omission to act under this Code, except for his own wilful malfeasance or nonfeasance.

SECTION 6. *Powers and Duties.*—Subject to such rules and regulations as may be issued by the Administrator, and to the extent permitted by the Act, the Code Authority shall have the following further powers and duties:

(a) To make investigations as to the functioning and observance of any provisions of this Code at its own instance or upon complaint of any person affected and to report thereon to the Administrator.

(b) To insure the execution of the provisions of this Code and to provide for the compliance of the Industry with the provisions of the Act.

(c) To adopt By-Laws and Rules and Regulations for its procedure and for the administration of this Code. The Code Authority shall promptly furnish to the Administrator for his approval true copies of the By-Laws, Rules and Regulations, and all amendments thereto, adopted pursuant to this paragraph.

(d) To obtain from Members of the Industry, through a confidential agent, such information and reports as are required for the administration of this Code. In addition to information required to be submitted to the Code Authority, Members of the Industry subject to this Code shall furnish such statistical information as the Administrator may deem necessary for the purposes recited in Section 3 (a) of the Act to such Federal and State agencies as he may designate; provided, that nothing in this Code shall relieve any Member of the Industry of any existing obligations to furnish reports to any Government agency. No individual report shall be disclosed to any other Member of the Industry or any other party except to such other governmental agencies as may be directed by the Administrator.

(e) To use such trade associations and other agencies as it deems proper for the carrying out of any of its activities provided for herein; provided, that nothing herein shall relieve the Code Authority of its duties or responsibilities under this Code and that such trade associations and agencies shall at all times be subject to and comply with the provisions hereof.

(f) To make recommendations to the Administrator for the coordination of the administration of this Code with such other Codes, if any, as may be related to the Industry.

(g) To make recommendations to the Administrator for the amendment or modification of this Code on the basis of experience and changes in circumstances, and to make recommendations (but without limitation) relative to (1) further fair trade practice provisions to govern Members of the Industry in their relations with each other or with other Industries, and (2) measures for industrial planning, including calling of meetings of Members of the Industry to consider control of production through voluntary agreement, stabilization of employment and conservation of natural resources, and (3) prevention of the elimination or oppression of and discrimination against small enterprises, and (4) prevention of unfair,

or destructive practices, and (5) rehabilitation of industry, which recommendations, upon approval by the Administrator after such notice and hearing as he may prescribe shall become part of this Code and have full force and effect as provisions hereof as outlined in Article X, Section 4.

(h) To investigate and inform the Administrator on behalf of the Industry as to importation of competitive articles into the United States in substantial quantities or increasing ratio to domestic production on such terms or under such conditions as to render ineffective or seriously endanger the maintenance of this Code, and to make complaint to the President on behalf of the Industry under the provisions of Section 3 (e) of the National Industrial Recovery Act with respect thereto.

(i) To engage the services of a confidential and disinterested agent to inspect the books and records of any Member of Industry against whom complaint for an alleged violation of this Code has been made and accepted by the Code Authority. In case such an inspection is ordered, such Member of Industry shall open his books and records to inspection by such agent as to all matters which may be pertinent to the allegation, upon the express condition that such inspection be made only by such agent.

In case such inspection indicates a violation of this Code has not been committed the agent shall report that fact to the Code Authority without further details.

In case such inspection indicates a violation of this Code has been committed the agent shall make a full report of such violation only to the Code Authority and to the Administrator.

SECTION 7. It being found necessary to support the administration of this Code in order to maintain the standards of fair competition established by this Code and to effectuate the policy of the Act, the Code Authority is authorized: (1) To incur such reasonable obligations as are necessary and proper for the foregoing purposes and to meet such obligations out of funds which may be raised as hereinafter provided and which shall be held in trust for the purposes of this Code: (2) To submit to the Administrator for his approval, subject to such notice and opportunity to be heard as he may deem necessary, (a) an itemized budget of its estimated expenses for the foregoing purposes, and (b) an equitable basis upon which the funds necessary to support such budget shall be contributed by Members of the Industry: (3) After such budget and basis of contribution have been approved by the Administrator, to determine and secure equitable contribution as above set forth by all such Members of the Industry, and to that end, if necessary, to institute legal proceedings therefor in its own name.

SECTION 8. Each Member of the Industry shall pay his or its equitable contribution to the expenses of the maintenance of the Code Authority, determined as hereinabove provided, and subject to rules and regulations pertaining thereto issued by the Administrator. Only Members of the Industry complying with the Code and contributing to the expenses of its administration as hereinabove provided, (unless duly exempted from making such contributions,) shall be entitled to participate in the selection of members of the Code

Authority or to receive the benefits of any of its voluntary activities or to make use of any emblem or insignia of the National Recovery Administration.

SECTION 9. The Code Authority shall neither incur nor pay any obligation substantially in excess of the amount thereof as estimated in its approved budget, and shall in no event exceed the total amount contained in the approved budget, except upon approval of the Administrator; and no subsequent budget shall contain any deficiency item for expenditures in excess of prior budget estimates except those which the Administrator shall have so approved.

SECTION 10. If the Administrator shall determine that any action of the Code Authority or any agency thereof may be unfair or unjust or contrary to the public interest, the Administrator may require that such action be suspended to afford an opportunity for investigation of the merits of such action and further consideration by such Code Authority or agency pending final action which shall not be effective unless the Administrator approves, or unless he shall fail to disapprove after thirty (30) days notice to him of intention to proceed with such action in its original or modified form.

SECTION 11. The Code Authority shall cause to be formulated methods of cost finding and accounting capable of use by all Members of the Industry, and shall submit such methods to the Administrator for review. If approved by the Administrator full information concerning such methods shall be made available to all Members of the Industry. Thereafter, each Member of the Industry shall utilize such methods to the extent found practicable. Nothing herein contained shall be construed to permit the Code Authority, any agent thereof, or any Member of the Industry to suggest uniform additions, percentages or differentials or other uniform items of cost which are designed to bring about arbitrary uniformity of costs or prices.

ARTICLE VII—MARKETING AND TRADE PRACTICE RULES

SECTION 1. Each Member of the Industry shall file with a confidential and disinterested agent of the Code Authority or, if none, then with such an agent designated by the Administrator, identified lists of all of his prices, discounts, rebates, allowances, and all other terms or conditions of sale, hereinafter in this Article referred to as "price terms", which lists shall completely and accurately conform to and represent the individual pricing practices of said member. Such lists shall contain the price terms for all such standard products of the Industry as are sold or offered for sale by said member and for such non-standard products of said member as shall be designated by the Code Authority. Said price terms shall in the first instance be filed within ten (10) days after the effective date of this Code. Price terms and revised price terms shall become effective immediately upon receipt thereof by said agent. Immediately upon receipt thereof, said agent shall by telegraph or other equally prompt means notify said member of the time of such receipt. Such lists and revisions, together with the effective time thereof, shall upon receipt be immediately and simultaneously dis-

tributed to all Members of the Industry and to all of their customers who have applied therefor and have offered to defray the cost actually incurred by the Code Authority in the preparation and distribution thereof and be available for inspection by any of their customers at the office of such agent. Said lists or revisions or any part thereof shall not be made available to any person until released to all Members of the Industry and their customers, as aforesaid; provided, that prices filed in the first instance shall not be released until the expiration of the aforesaid ten (10) day period after the approval of this Code. The Code Authority shall maintain a permanent file of all price terms filed as herein provided, and shall not destroy any part of such records except upon written consent of the Administrator. Upon request the Code Authority shall furnish to the Administrator or any duly designated agent of the Administrator copies of any such lists or revisions of price terms.

(a) When any Member of the Industry has filed any revision, such member shall not file a higher price within forty-eight (48) hours.

(b) No Member of the Industry shall sell or offer to sell any products of the Industry, for which price terms have been filed pursuant to the provisions of this Article, except in accordance with such price terms.

(c) No Member of the Industry shall enter into any agreement, understanding, combination or conspiracy to fix or maintain price terms, nor cause or attempt to cause any Member of the Industry to change his price terms by the use of intimidation, coercion, or any other influence inconsistent with the maintenance of the free and open market which it is the purpose of this Article to create.

(d) The Code Authority may prescribe rules and regulations providing for the sale of by-products or distress merchandise, surplus inventories, products not up to specification, and to meet the competition of other materials competitive with the products of this Industry, which shall become effective upon approval by the Administrator. No Member of the Industry shall sell any goods of any of the classes above described for the purpose of violating the provisions of this Code or of defeating the purposes of the Act, except in full compliance with such rules and regulations.

SECTION 2. The standards of fair competition for the Industry with reference to prices and practices are declared to be as follows:

(a) Wilfully destructive price cutting is an unfair method of competition and is forbidden. Any Member of the Industry or of any other industry, or the customers of either, may at any time complain to the Code Authority that any filed price constitutes unfair competition as destructive price cutting, imperiling small enterprises or tending toward monopoly or the impairment of code wages and working conditions. The Code Authority shall within five (5) days afford an opportunity to the member filing the price to answer such complaint and shall within fourteen (14) days make a ruling or adjustment thereon. If such ruling is not concurred in by either party to the complaint, all papers shall be referred to the Research and Planning Division of the National Recovery Administration, which shall render a report and recommendation thereon to the Administrator.

(b) When no declared emergency exists as to any given product, there is to be no fixed minimum basis for prices. It is intended that sound cost estimating methods should be used and that consideration should be given to costs in the determination of pricing policies.

(c) When an emergency exists as to any given product, sale below the stated minimum price of such product, in violation of Section 3 hereof, is forbidden.

SECTION 3. When the Administrator determines upon the petition of the Code Authority, or otherwise, that an emergency exists in this Industry because of destructive price cutting which is such as to render ineffective or seriously endangers the maintenance of the provisions of this Code, the Administrator may cause to be determined, after investigation of costs by the Code Authority through an impartial agency, the minimum price for any product of this Industry necessary to mitigate the conditions constituting such emergency and to effectuate the purposes of the Act, and below which price such product of the Industry shall not be sold. Such determination shall be subject to such notice and hearing as the Administrator may require. From time to time the Code Authority, upon its own initiative, or upon the request of any interested party, may recommend that the determination be reviewed, or the Administrator may cause such determination to be reviewed and appropriate action taken.

SECTION 4. *Trade Practice Rules.*—The following trade practices are declared to constitute unfair methods of competition between Member of the Industry, and no Member of the Industry shall use or engage in any of them, either directly or indirectly, through any officer, agent or employee. Engaging in any one or more of these or any further trade practice provisions which hereafter may be established on recommendation by the Code Authority, approved by the Administrator, after such hearings as he may prescribe, shall be deemed a violation of this Code.

(a) Selling of any industry product by a Member of the Industry at a price below the open, filed or publicly announced price schedules of such member, or to deviate from the conditions of sale contained in such schedules filed pursuant to Section 1 of this Article.

(b) Secretly paying or allowing rebates, refunds, commissions, credits or unearned discounts, whether in the form of money or otherwise, or the extension of special services or privileges to certain purchasers which are not extended to all purchasers under similar circumstances, for the purpose or with the effect of violating the provisions of this Code.

(c) Cancelling in whole or in part, or permitting the cancellation in whole or in part, of any contract of sale of any product, or except for a fair consideration or just cause or for the purpose of effectuating a new contract with the buyer when the purpose of such cancellation is to create an unfair price advantage for a Member of Industry.

(d) Knowingly inducing or attempting to induce the breach of an existing contract between a competitor and his customer or source of supply; or interfering with or obstructing in any manner the performance of the contractual duties between a Member of Industry and his customer.

(e) Securing or attempting to secure confidential information concerning the business of a competitor by a false or misleading state-

ment or representation, by a false impersonation of one in authority, by bribery, or by any other unfair method.

(f) Selling on consignment except where peculiar circumstances of the Industry require the practice. Such exceptions shall be defined by the Code Authority with the approval of the Administrator, and shall apply alike to all Members of the Industry.

(g) Knowingly publishing advertising, whether printed, radio, display or otherwise, which is misleading or inaccurate in any material particular; or misrepresenting any goods or products of the Industry as to use, trade-mark, grade, quality, quantity, size, substance, character, nature, finish, material, content, preparation, or making any misrepresentation as to credit terms, values, policies, services or the nature or form of the business conducted.

(h) Branding, marking or packing any goods or products in any manner, which is intended to deceive or mislead purchasers with respect to grade, quality, quantity, size, substance, character, nature, finish, material, or content of such goods or products.

(i) Knowingly publishing advertising which refers inaccurately in any material particular to any competitors or their goods, prices, values, credit terms, policies or services.

(j) Requiring that the purchase or lease of any products or equipment be a prerequisite to the purchase or lease of any other products or equipment.

(k) Giving or permitting to be given, or directly offering to give anything of value for the purpose of influencing or rewarding the action of any employee, agent or representative of another in relation to the business of the employer of such employee, the principal of such agent or the represented party, without the knowledge of such employer, principal, or party. This commercial bribery provision shall not be construed to prohibit free and general distribution of articles commonly used for advertising except so far as such articles are actually used for commercial bribery as hereinabove defined.

ARTICLE VIII—NEW CAPACITY

In the event that the Code Authority shall determine that then existing capacities and capacities then under construction for the production of products of the Industry are in excess of the capacities required to meet the demand for such products, and the Administrator shall approve such determination upon the recommendation of the Code Authority, then such capacities shall not be increased (except for the supplying of foreign demand) until such time as the Code Authority and the Administrator, or the Administrator acting on his own behalf, shall determine that the demand for such products cannot be met by the fullest possible use of such capacities.

ARTICLE IX—EXPORT TRADE

No provision of this Code relating to prices or terms of selling, shipping or marketing, shall apply to export trade or sales or shipments for export trade. "Export Trade" shall be as defined in the Export Trade Act adopted April 10, 1918.

ARTICLE X—MODIFICATION

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

SECTION 2. Such of the provisions of this Code as are not required to be included therein by the Act may, with the approval of the Administrator be amended as provided in Section 3 hereof, in such manner as may be indicated by the needs of the public, by changes in circumstances, or by experience; all the provisions of this Code, unless so modified or eliminated, shall remain in effect until the expiration date of Title I of the Act.

SECTION 3. An amendment may be proposed by any interested party either to the Code Authority or directly by or to the Administrator. All proposed amendments shall be referred to the Code Authority, who shall give Members of the Industry an opportunity to be heard thereon, and thereafter the Code Authority may make such recommendations thereon as is deemed proper; provided, however, that when approved by the Administrator as necessary to effectuate the policies of the Act, after such notice and hearing as he may prescribe, any proposed amendment shall thereupon become effective as a part of this Code.

SECTION 4. If the Code Authority shall desire to propose an amendment, after having approved the same, it shall submit the same to the Members of the Industry who shall thereupon vote upon said proposed amendment either at a special meeting called for that purpose or by mail ballot, at the discretion of the Code Authority. In such voting there shall be two (2) separate ballots on each amendment so proposed:

(a) Each Member of the Industry voting shall be entitled to cast one (1) vote upon said amendment, which vote shall be known as the "Member Vote".

(b) Each Member of the Industry voting upon said proposed amendment shall be entitled to cast one (1) vote for each thousand tons shipped during the preceding calendar year by such member. This vote shall be known as the "Capacity Vote".

In order to receive approval of the Industry, any such proposed amendment shall receive the affirmative vote of:

(a) At least sixty-six and two-thirds ($66\frac{2}{3}$) per cent of the Member Votes cast and in addition thereto,

(b) At least sixty-six and two-thirds ($66\frac{2}{3}$) per cent of the Capacity Votes cast, both separately considered. If such proposed amendment shall be approved in the manner above set forth, the Code Authority shall submit such proposed amendment to the Administrator. Such amendment shall become effective as a part of this Code upon approval by the Administrator after such notice and hearing as he may prescribe.



ARTICLE XI—REGISTRATION OF MEMBERS OF THE INDUSTRY

SECTION 1. Each Member of the Industry shall within thirty (30) days after the effective date of this Code register with the Code Authority. All Members of the Industry who may engage in the Industry thereafter shall likewise register with the Code Authority.

SECTION 2. Every Member of the Industry shall, within thirty (30) days after the effective date of this Code, or the date upon which such member becomes subject thereto, whichever is latest, register the full name of its enterprise together with a statement of the number of shops, establishments or separate units thereof and their location, with the Code Authority. Every such Member of the Industry which may open for business an additional shop, establishment or separate unit after such registration shall, within thirty (30) days after such opening, register the same in like manner.

ARTICLE XII—MONOPOLIES

No provision of this Code shall be so applied as to promote monopolies or monopolistic practices, or to eliminate, oppress, or discriminate against small enterprises.

ARTICLE XIII—TERMINATION

This Code and all supplementary provisions thereto shall expire on June 16, 1935, or on the earliest date prior thereto on which the President shall, by proclamation, or the Congress shall, by joint resolution, declare that the emergency recognized by Title I of the Act has ended.

ARTICLE XIV—EFFECTIVE DATE

This Code shall become effective beginning two weeks after its approval by the Administrator.

Approved Code No. 520.

Registry 1013-11.

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