

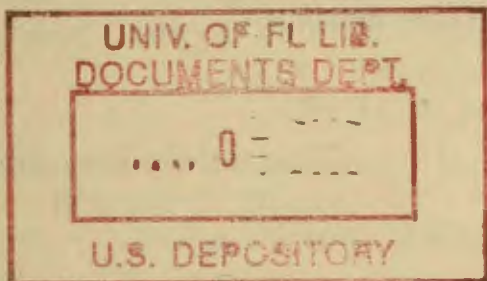
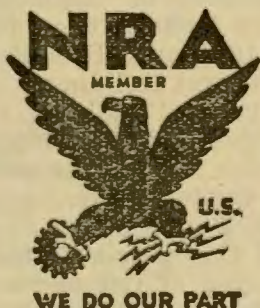
NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION

FOR THE

**BITUMINOUS ROAD MATERIAL
DISTRIBUTING INDUSTRY**

AS APPROVED ON OCTOBER 26, 1934

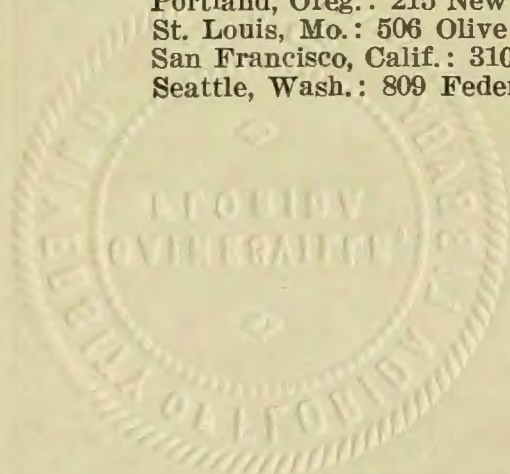


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Approved Code No. 530

CODE OF FAIR COMPETITION

FOR THE

**BITUMINOUS ROAD MATERIAL DISTRIBUTING
INDUSTRY**

As Approved on October 26, 1934

ORDER

**CODE OF FAIR COMPETITION FOR THE BITUMINOUS ROAD MATERIAL
DISTRIBUTING 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 Bituminous Road Material Distributing 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, the National Industrial Recovery Board, pursuant to authority vested in it by Executive Orders of the President, including Executive Order No. 6859, and otherwise, does hereby incorporate by reference said annexed report and does find that said code complies in all respects with the pertinent provisions and will promote the policies and purposes of said Title of said Act; and does hereby order that said Code of Fair Competition be and it is hereby approved.

NATIONAL INDUSTRIAL RECOVERY BOARD,
By G. A. LYNCH, *Administrative Officer*.

Approval recommended:

WALTER G. HOOKE,
Acting Division Administrator.

WASHINGTON, D. C.,
October 26, 1934.

(87)

REPORT TO THE PRESIDENT

The PRESIDENT,
The White House.

SIR: This is a report on the Code of Fair Competition for the Bituminous Road Material Distributing Industry, revised after a public hearing conducted in Washington on June 28, 1934, in accordance with the provisions of the National Industrial Recovery Act.

THE INDUSTRY

Included in this Industry are the resale and reprocessing for sale and/or either one or both and/or the merchandising of liquid bituminous road materials and/or the preparation of such materials for application, including the services of all preparatory and necessary work incidental thereto, from railroad tank cars, service plants, producers, or refinery plants, or members own plant or otherwise, by the use of mechanical distributing apparatus or by supply trucks, and including services such as the heating and/or transportation with equipment owned and operated by the bituminous road material distributor.

PROVISIONS FOR HOURS AND WAGES

The Code provides for a maximum week of thirty-two hours with the following exceptions:

(a) Employees engaged in managerial or supervisory capacity receiving regularly more than thirty-five (\$35.00) dollars per week. Employees engaged in a supervisory capacity are defined as those persons who perform no manual labor.

(b) Regular employees who are distributor operators or distributor operator assistants receiving a minimum wage of not less than thirty-five (\$35.00) dollars per week shall be permitted to work in excess of thirty-two (32) hours in any one week and shall be paid at the rate of one and one-half ($1\frac{1}{2}$) times their prorated hourly rate for all time actually worked in excess of forty-eight (48) hours in any one week period. Distributor laborers receiving a minimum wage of not less than twenty-four (\$24.00) dollars per week shall be permitted to work in excess of thirty-two (32) hours per week. Rates for overtime for distributor laborers shall be calculated on the same basis as for distributor operators. For the purpose of calculating the above maximum hours and overtime, "hours of work" and "time actually worked" mean time of actual transportation and/or application of liquid bituminous materials and/or any other services performed by such employees, excluding inoperative or standing time lost for any cause not within the normal control of the employer.

(c) Distributor operators paid on a daily basis and paid for all time spent consecutively on or in connection with a job, irrespective of time actually worked, and who shall receive not less than six dollars (\$6.00) for a basic eight (8) hour day, which rate is received irrespective of hours worked if hired for any time during a day, and receiving an overtime rate of at least one and one-half ($1\frac{1}{2}$) their prorated hourly rate for all hours in excess of eight (8) in any one day, may be permitted to work in excess of thirty-two (32) hours in any one week. Distributor laborers paid on a daily basis shall receive a minimum wage of not less than four dollars and fifty cents (\$4.50) per day for a basic eight (8) hour day and shall be permitted to work in excess of thirty-two (32) hours in any one week. The method of payments and rate for overtime hours for distributor laborers shall be calculated on the same basis as the distributor operators.

(d) Accounting, clerical, or office employees, who shall not be permitted to work in excess of forty (40) hours per week.

(e) Watchmen, who shall not be permitted to work in excess of fifty-six (56) hours in any one (1) week nor more than six (6) days in any seven (7) day period.

(f) Firemen and plant men when working away from the plant, who shall not be permitted to work in excess of forty-eight (48) hours in any one (1) week nor more than six (6) days in any seven (7) day period.

(g) Employees engaged in emergency work or in emergency repair work involving breakdowns or the protection of life or property; provided, however, that such employees shall be paid at the rate of one and one-half ($1\frac{1}{2}$) times their normal hourly rate for all time in excess of the maximum set forth hereinabove.

The exemptions in paragraphs (b) and (c) of Section 1 of Article IV are granted on account of the peculiar nature of the work done by distributor operators, distributor operator assistants and distributor laborers. Hot or cold liquid bituminous material can be placed only when the surfaces to which it is to be applied are in the proper condition. After a rain time can be lost for surfaces to dry, as the material cannot be placed on a wet surface. The distributor operator, after he has arrived at the site with the bituminous material, often has to wait for other parties to build or properly prepare surfaces. Oftentimes, this delay is not the fault of the other parties; they too, have been delayed owing to causes beyond their control. Operators paid by the week, are frequently paid for a week or more without doing any work whatever. Frequently, the material is distributed many miles from the loading point, making it entirely impracticable to switch operators and assistants and operator laborers at such remote locations. It is on account of these facts that the exempting provisions for maximum hours and overtime have been incorporated in the Code. Again, safety, too, enters largely into the methods which have to be followed in this industry—as when applying liquid bituminous materials to parts of or to the entire surface of a highway, often requiring alternate flows of traffic, making driving conditions extremely dangerous. The time element is a primary consideration and working time has to be so arranged as to provide for it. Highway officials often declare an emergency on such occa-

sions, and regular working hours, of necessity, have to be disregarded. Thus, the distribution of liquid bituminous materials to surfaces is largely out of the control of the distributor operator. A great deal of idle waiting time is unavoidable and it is essential, in calculating maximum hours worked, that some provisions be made for it.

The Code establishes a minimum rate of forty (40) cents per hour in the states of Kentucky, Tennessee, Alabama, Mississippi, Virginia, North Carolina, South Carolina, Georgia, Florida, Arkansas and Louisiana; and fifty (50) cents per hour in the other states of the Union. Office and clerical employees will be paid minimum rates of from fourteen dollars (\$14.00) to fifteen dollars (\$15.00) per week, based on population differentials.

No person under eighteen (18) years of age shall be employed in the industry; provided, however, that persons sixteen (16) years or over may be employed as office boys, mess boys or water boys; provided, further, that no person under twenty-one (21) years of age shall be employed as a distributor operator or as a distributor operator assistant.

The Code provides that no employer shall reclassify employees for the purpose of defeating the purposes or provisions of the Act or of the Code. It also contains provisions for the adjustment of wages above the minimum, the posting of labor provisions, and for payment of wages at regular stated intervals.

ECONOMIC EFFECT OF THE CODE

Owing to the scarcity and incompleteness of statistics for the Bituminous Road Material Distributing Industry, it has not been possible to compile a really authentic statistical analysis. The fact that bituminous materials have such a wide and varied use greatly increased this difficulty. The Code Committee stated in the Application for Presentation of a Code of Fair Competition that there were five hundred and eighty-four (584) members of the industry in 1933, that the industry employed 11,000 persons during that year, and that the invested capital was \$35,000,000 and the volume of business was \$27,000,000. Even in view of the approximate accuracy of the statistical report, with the unusual reduction in working hours as provided for by the thirty-two (32) hour week, there can be no doubt but that employment in this industry will be greatly spread and increased.

Again, owing to the difficulty in getting accurate statistics, there was some difficulty in getting a representative Code Committee. It is believed that the committee finally selected is as truly representative of the industry as any other similarly sized group from the industry would be.

FINDINGS

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

This board finds 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 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 this board 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 board has approved said Code of Fair Competition for the Bituminous Road Material Distributing Industry.

For the National Industrial Recovery Board:

G. A. LYNCH,
Administrative Officer.

OCTOBER 26, 1934.

CODE OF FAIR COMPETITION FOR THE BITUMINOUS ROAD MATERIAL DISTRIBUTING INDUSTRY

PURPOSES

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

ARTICLE I—APPLICATION

The provisions of this Code shall apply to the entire industry as hereinafter defined, excluding operations therein undertaken in accordance with bona fide bids made not more than sixty (60) days prior to the effective date, or contracts entered into prior to the effective date. If any other code of fair competition or a provision thereof, heretofore or hereafter approved by the President, shall conflict with this Code or with any provisions thereof, the National Industrial Recovery Board may hold such hearings as it may deem necessary and thereafter may, if in its judgment justice requires, grant such stay, exception, or exemption or make such other determination as it may deem advisable to effectuate the policies of the Act.

ARTICLE II—DEFINITIONS

SECTION 1. The term "Bituminous Road Material Distributing Industry", or "the industry" as used herein is defined to mean the resale and reprocessing for sale and/or either one or both and/or the merchandizing of liquid bituminous road materials and/or the preparation of such materials for application, including the services of all preparatory and necessary work incidental thereto, from railroad tank cars, service plants, producers, or refinery plants, or member's own plant or otherwise, by the use of mechanical distributing apparatus or by supply trucks, and including services such as the heating and/or transportation with equipment owned and operated by the bituminous road material distributor, except when the principal purpose and effect of such sale or disposal is to obtain revenue for transportation; provided, however, that this definition of the Bituminous Road Material Distributing Industry shall not include the production and refining of bituminous materials, and the marketing thereof by such producers and refiners; provided, further, that this definition shall not include the application of the above materials at the site of construction.

SECTION 2. The term "employee" as used herein includes any person engaged in the industry, however compensated, except a member of the industry.

SECTION 3. The term "employer" as used herein includes anyone by whom any such employee is so compensated or employed.

SECTION 4. The term "Distributor Operator" as used herein means portable tank car heater operators and trained employees who are responsible for mechanical distributing apparatus, and for the distribution of liquid bituminous materials from such distributing apparatus to designated surfaces in such a manner as to meet specific requirements and specifications.

SECTION. The term "Distributor Operator Assistant" as used herein means employees who assist distributor operators in their functions as described in Section 4 of this Article.

SECTION 6. The term "Distributor Laborer" as used herein means employees who are attached to a distributing truck who at no time drive such vehicle and at no time operate such mechanism; and at most handle the hand hose.

SECTION 7. The term "Regular Employee" as used herein means an employee who is normally employed by a member of the industry when there is work available.

SECTION 8. The term "member of the industry" includes, but without limitation, any individual, partnership, association, corporation or other agency or form of enterprise which undertakes, whether by formal contract or otherwise, to direct, superintend, coordinate or execute, any of the operations of the industry.

SECTION 9. The term "Association" means the National Bituminous Road Material Distributing Associates.

SECTION 10. The term "Executive Committee" means the Executive Committee of the Association.

SECTION 11. The terms "President" and "Act" shall mean, respectively, the President of the United States and Title I of the National Industrial Recovery Act.

SECTION 12. The term "Region" as used herein includes any one of several parts of the United States established as hereinafter set forth in Article III of this Code or as may be otherwise specifically provided.

SECTION 13. "Population" for the purposes of this Code shall be determined by reference to the latest Federal Census.

ARTICLE III—ADMINISTRATION

SECTION 1. Code Authority.—Further to effectuate the policies of the Act and subject to such rules and regulations as may be issued by the National Industrial Recovery Board 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, there shall be established a "Code Authority for the Bituminous Road Material Distributing Industry" (hereafter referred to as the "Code Authority") composed of nine (9) individuals eligible under the provisions of Section 9 of this Article, to be elected as follows:

(a) *Association Members.*—Six (6) individuals shall be appointed from members of the Industry who are members of the Association

by the Executive Committee of the Association, to serve for a term of one (1) year.

(b) *Non-Association Members.*—Three (3) individuals shall be appointed by the National Industrial Recovery Board from members of the Industry who are not members of the Association to represent non-Association members, to serve for a term of one (1) year and/or until their respective successors have been selected.

(c) *Filling Vacancies.*—The successors of all members of the Code Authority (including the successors of any member whose membership becomes vacant) shall be selected in the same manner as their predecessors, except that the successors to the members appointed under paragraph (b) hereof may be elected by the members of the Industry who are not members of the Association, at an election, the manner and method of conducting which are satisfactory to and approved by the National Industrial Recovery Board.

(d) *Administration Members.*—In addition to the membership as above provided, there may be three (3) members without vote to be known as Administration Members, to be appointed by the National Industrial Recovery Board, to serve for such terms as it may specify.

(e) *Voting.*—Each member of the Code Authority shall have one (1) vote, and the vote of a majority of said members shall prevail in determining the actions of the Code Authority.

SECTION 2. *Regions.*—For the purpose of administration of this Code, the United States shall be divided into nine (9) regions as indicated in the following tabulation. The Code Authority may from time to time revise such region or regions subject to the approval of the National Industrial Recovery Board.

Region No. 1.—Maine, New Hampshire, Vermont, Massachusetts, Connecticut and Rhode Island.

Region No. 2.—New York and New Jersey.

Region No. 3.—Pennsylvania and Ohio and West Virginia.

Region No. 4.—Maryland, Delaware, District of Columbia, Virginia, North Carolina, South Carolina, Georgia and Florida.

Region No. 5.—Texas, Arkansas, Louisiana, Mississippi, Alabama, Tennessee and Kentucky.

Region No. 6.—Illinois, Wisconsin, Indiana, Minnesota and Michigan.

Region No. 7.—Missouri, Kansas, Iowa, Nebraska and Oklahoma.

Region No. 8.—Washington, Oregon, Idaho, Montana, North Dakota and South Dakota.

Region No. 9.—Colorado, Nevada, California, Wyoming, Utah, Arizona and New Mexico.

SECTION 3. *Regional Code Authorities.*—In any one of the nine regions, as defined in Section 2 of this Article, a regional code authority may be formed by the members of the industry in such region, for the purpose of supervising and administering this Code in such region under such powers and duties as may be delegated to it by the Code Authority.

SECTION 4. *Hearings by National Industrial Recovery Board.*—In order that the Code Authority and the regional code authorities shall at all times be truly representative of the industry and in other

respects comply with the provisions of the Act, the National Industrial Recovery Board may prescribe such hearings as it may deem proper; and thereafter, if it shall find that the Code Authority or any regional code authority is not truly representative or does not in other respects comply with the provisions of the Act, may require an appropriate modification of the Code Authority or any regional code authority.

SECTION 5. *Amendments to Constitution and By-Laws.*—The Association shall impose no inequitable restriction on membership and shall adopt no future amendment of the Constitution and By-Laws of the Association which will tend to make the organization not truly representative of the Industry as herein defined. The Association shall submit to the National Industrial Recovery Board true copies of its articles of association, by-laws, regulations, and any amendments when made thereto, together with such other information as to membership, organization and activities as the National Industrial Recovery Board may deem necessary to effectuate the provisions of the Act.

SECTION 6. *Liability of Code Authority Members.*—Nothing contained in this Code shall constitute the members of the Code Authority, or of any regional code authorities, partners for any purpose. Nor shall any member of the Code Authority or of any regional code authority be liable in any manner to anyone for any act of any other member, officer, agent, or employee of the Code Authority or of any regional code authority. Nor shall any member of the Code Authority or of any regional 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 7. *Powers and Duties.*—Subject to such rules and regulations as may be issued by the National Industrial Recovery Board, the Code Authority shall have the following powers and duties in addition to those of insuring the execution of the provisions of this Code, and providing for the compliance of the industry with the provisions of the Act, subject to such rules and regulations, and in addition to those authorized by other provisions of this Code:

(a) It may establish by-laws or rules and regulations for the conduct of its affairs and may appoint such committees, agencies and representatives and delegate to them such of its powers and duties as it may deem necessary for the proper discharge of its functions hereunder, provided that nothing herein shall relieve the Code Authority of its duties or responsibilities under this Code and that such committees, agencies and representatives shall be subject to and comply with the provisions hereof.

(b) *Recommendations.*—To make to the National Industrial Recovery Board from time to time any recommendations which it deems desirable for modifications of or additions to the Code, which recommendations upon the National Industrial Recovery Board's approval and after such hearing as it may prescribe, shall become a part of this Code and have full force and effect as provisions thereof.

(c) *Investigations and Surveys.*—Subject to such rules and regulations as the National Industrial Recovery Board may issue, to

make investigations and surveys concerning the functioning of and compliance with this Code, the observance of its provisions, including the collection of reports on hours of work and rates of compensation and other pertinent matters, whether at the request of the National Industrial Recovery Board or otherwise, and to report its findings and recommendations to the National Industrial Recovery Board whenever necessary or required.

(d) *Coordination*.—To make recommendations to the National Industrial Recovery Board for the coordination of provisions of this Code, and of the administration of this Code with such other Codes as may be related to this Industry or affect its members.

(e) *Trade Practice Committees*.—To appoint a Trade Practice Committee which shall meet with the Trade Practice Committees appointed under such other Codes as may be related to this industry for the purpose of formulating fair trade practices to govern the relationships between members of this industry and members of such other codes to the end that such fair trade practices may be proposed to the National Industrial Recovery Board as Amendments to this Code or such other Codes.

(f) *Using the Association*.—To use the Association or other agencies as it deems proper for the performing 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 the Association and such other agencies shall at all times be subject to and comply with the provisions hereof.

SECTION 8. *The Budget*.—It being found necessary in order to support the administration of this Code and to maintain the standards of fair competition established hereunder and to effectuate the policy of the Act, the Code Authority is authorized:

(a) *Incurring Obligations*.—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 the Code;

(b) *Submittal of Budget and Method of Assessment*.—To submit to the National Industrial Recovery Board for its approval, subject to such notice and opportunity to be heard as it may deem necessary, (1) an itemized budget of its estimated expenses for the foregoing purposes, and (2) an equitable basis upon which the funds necessary to support such budget shall be contributed by members of the industry;

(c) *Procuring Contributions*.—After such budget and basis of contribution have been approved by the National Industrial Recovery Board, to determine and obtain equitable contribution as above set forth by all members of this industry, and to that end, if necessary, to institute legal proceedings therefor in its own name.

SECTION 9. *Code Compliance and NRA Insignia*.—Each member of this 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 National Industrial Recovery Board. Only members of this industry complying with the Code and contributing to the expenses of its administration as provided in Section 8 of this

Article, (unless duly exempted from making such contributions) shall be entitled to participate in the selection of the members of the Code Authority or to receive the benefits of its voluntary activities or to use any emblem or insignia of the National Recovery Administration.

SECTION 10. 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 National Industrial Recovery Board; and no subsequent budget shall contain any deficiency item for expenditures in excess of prior budget estimates except those which the National Industrial Recovery Board shall have so approved.

SECTION 11. *Code Authority and Administration Members.*—The Code Authority or its authorized representative or representatives and the Administration Members of the Code Authority, or their proxies appointed by the National Industrial Recovery Board, may attend meetings of any administrative agency established for any region provided in this Article.

SECTION 12. *Reports.*—In addition to information required to be submitted to the Code Authority, all or any of the persons subject to this Code shall furnish such statistical information as the National Industrial Recovery Board may deem necessary for the purposes recited in Section 3 (a) of the Act to such Federal and State agencies as the National Industrial Recovery Board may designate; and nothing in this Code shall relieve any person of any existing obligation to furnish reports to governmental agencies.

ARTICLE IV—HOURS, WAGES, AND GENERAL LABOR PROVISIONS

SECTION 1. *Hours.*—No employee shall be permitted to work in excess of thirty-two (32) hours in any one week or more than eight (8) hours in any twenty-four (24) hour period, nor more than five (5) days in any seven (7) day period, with the following exceptions:

(a) Employees engaged in managerial or supervisory capacity receiving regularly more than thirty-five (\$35.00) dollars per week. Employees engaged in a supervisory capacity are defined as those persons who perform no manual labor.

(b) Regular employees who are distributor operators or distributor operator assistants receiving a minimum wage of not less than thirty-five (\$35.00) dollars per week shall be permitted to work in excess of thirty-two (32) hours in any one week and shall be paid at the rate of one and one-half ($1\frac{1}{2}$) times their prorated hourly rate for all time actually worked in excess of forty-eight (48) hours in any one week period. Distributor laborers receiving a minimum wage of not less than twenty-four (\$24.00) dollars per week shall be permitted to work in excess of thirty-two (32) hours per week. Rates for overtime for distributor laborers shall be calculated on the same basis as for distributor operators. For the purpose of calculating the above maximum hours and overtime, "hours of work" and "time actually worked" mean time of actual transportation of liquid bituminous materials and/or any other services per-

formed by such employees, excluding inoperative or standing time lost for any cause not within the normal control of the employer.

(c) Distributor operators paid on a daily basis and paid for all time spent consecutively on or in connection with a job, irrespective of time actually worked, and who shall receive not less than six dollars (\$6.00) for a basic eight (8) hour day, which rate is received irrespective of hours worked if hired for any time during a day, and receiving an overtime rate of at least one and one-half ($1\frac{1}{2}$) their prorated hourly rate for all hours in excess of eight (8) in any one day, may be permitted to work in excess of thirty-two (32) hours in any one week. Distributor laborers paid on a daily basis shall receive a minimum wage of not less than four dollars and fifty cents (\$4.50) per day for a basic eight (8) hour day and shall be permitted to work in excess of thirty-two (32) hours in any one week. The method of payments and rate for overtime hours for distributor laborers shall be calculated on the same basis as for distributor operators.

(a) Accounting, clerical, or office employees, who shall not be permitted to work in excess of forty (40) hours per week.

(e) Watchmen, who shall not be permitted to work in excess of fifty-six (56) hours in any one (1) week nor more than six (6) days in any seven (7) day period.

(f) Firemen and plant men when working away from the home plant, who shall not be permitted to work in excess of forty-eight (48) hours in any one (1) week nor more than six (6) days in any seven (7) day period.

(g) Employees engaged in emergency work or in emergency repair work involving breakdowns or the protection of life or property; provided, however, that such employees shall be paid at the rate of one and one-half ($1\frac{1}{2}$) times their normal hourly rate for all time in excess of the maximum set forth hereinabove.

SECTION 2. *Employment by Several Employers.*—No employer shall knowingly permit any employee to work any number of hours which, when totaled with that already performed for another employer or employers in this industry, exceeds the maximum permitted herein.

SECTION 3. *Employers who Perform Manual Work.*—Members of this industry who personally perform manual work or who are personally engaged in mechanical operations shall not exceed the maximum as to hours and days prescribed herein, for the work performed by them, but they shall be granted the exemptions under similar conditions provided for in paragraphs (b), (c) and (f) of Section 1 of this Article.

SECTION 4. *Wages.*—(a) No employee, excluding accounting, office and clerical employees, shall be paid at less than the rate of forty (40¢) cents per hour in the states of Kentucky, Tennessee, Alabama, Mississippi, Virginia, North Carolina, South Carolina, Georgia, and Florida, Arkansas and Louisiana; and fifty (50¢) cents in the other States of the Union and the District of Columbia.

(b) *Minimum Salaries for Clerical and Office Employees.*—No accounting, office or clerical employee shall be paid less than at the rate of fifteen dollars (\$15.00) per week in any city of over 500,000 population or the immediate trade area of such city, nor less than

fourteen and a half dollars (\$14.50) per week in any city of between 250,000 and 500,000 population, or in the immediate trade area of such city, nor less than fourteen dollars (\$14.00) per week in any other place.

(c) *Payment of Wages.*—All members of this industry shall make payment of all wages due in lawful currency of the United States or by negotiable check therefor, payable on demand at par. If wages are paid by check, the employer shall provide reasonably accessible facilities for cashing such checks at face value without expense to the employee. Employers shall also provide such identification as is necessary to utilize such facilities.

Wage shall be payable at the end of each weekly or bi-weekly period, and shall be exempt from any payment or deduction for pensions, insurance or sick benefits or other items except such as are voluntarily paid, required by law or authorized to be deducted by employees. Employers or their agents shall not accept, directly or indirectly, rebates on such wages nor give anything of value nor extend any favors to any person for the purpose of influencing rates of wages or working conditions of their employees.

The provisions of this sub-section regarding payment of wages at the end of each weekly or bi-weekly period shall not apply to persons employed in executive, administrative or supervisory capacity who earn in excess of thirty-five (\$35.00) dollars per week, nor to persons employed in clerical or office work. The wages for persons employed in clerical or office work shall be payable at least semi-monthly.

SECTION 5. *Piecework Compensation.*—This Article establishes a minimum rate of pay regardless of whether an employee is compensated on a time rate, piecework rate or other basis.

SECTION 6. *Adjustment of Wage Rates.*—All wages shall be adjusted so as to maintain a differential at least as great in amount as that existing on June 16, 1933, between wages for such employment and the then minima. In no case shall there be any reduction in hourly rates; nor in weekly earnings for any reduction in hours of less than thirty per cent.

SECTION 7. *Provisions of the Act.*—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; 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; 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 8. *State Laws.*—This Code shall not supersede any State, Federal or local laws imposing more stringent requirements on employers regulating the age of employees, wages, hours of work, or health, fire or general working conditions than under this Code.

SECTION 9. *Reclassification.*—Employers shall not reclassify employees or duties of occupations performed by employees or engage

in any other subterfuge for the intent or purpose of defeating the purposes or provisions of the Act or of this Code.

SECTION 10. *Posting*.—All employers shall post and keep posted the labor provisions of this Code in conspicuous places accessible to all employees. Every member of the industry shall comply with all rules and regulations relative to the posting of provisions of codes of fair competition which may from time to time be prescribed by the National Industrial Recovery Board.

SECTION 11. *Standards for Safety and Health*.—Each member of this industry shall provide for the safety and health of his employees at the place and during the hours of their employment. Standards for safety and health shall be submitted by the Code Authority to the National Industrial Recovery Board within three (3) months after the effective date of this Code. After approval, such standards shall become the minimum standards of safety and health for all members of this industry.

SECTION 12. *Minimum Age*.—No person under eighteen (18) years of age shall be employed in the industry; provided, however, that persons sixteen (16) years or over may be employed as office boys, mess boys or water boys; provided, further, that no person under twenty-one (21) years of age shall be employed as a distributor operator or as a distributor operator assistant.

SECTION 13. *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 or employee obtains from the State Authority designated by the United States Department of Labor a certificate authorizing his employment at such wages and for such hours as shall be stated in the certificate. Each employer shall file monthly with the Code Authority, a list of all such persons employed by him, showing the wages paid to, and the maximum hours of work for, such employees.

SECTION 14. *Dismissal or Demotion*.—No employee shall be dismissed or demoted by reason of making a complaint or giving evidence with respect to an alleged violation of this Code.

SECTION 15. *Evasion through Reemployment*.—No employee now employed at a wage rate in excess of the minimum shall be discharged and reemployed at a lower rate for the purpose of evading the provisions of this Code.

SECTION 16. *Contracting Labor Services*.—No member of this industry shall, directly, or indirectly, sublet solely the labor services required by any contract secured by such member.

SECTION 17. *Continuity of Employment*.—Employers shall administer work in their charge so as to procure the maximum practicable continuity of employment for their employees.

SECTION 18. *Traveling Expense*.—Members of this industry shall make payment of all legitimate expenses incident to transportation, board and room, incurred by an employee while traveling to and from or away from the home site, when place of employment is outside of the recognized working area of the home site.

ARTICLE V—FAIR TRADE PRACTICE REGULATIONS

The provisions of this Article are established as rules of fair trade practice, and any violation of said rules shall constitute an unfair method of competition and a violation of this Code.

RULE 1. *Secret Rebates.*—No member of this industry shall secretly offer or make any payment or allowance of a rebate, refund, commission credit, unearned discount or excess allowance, whether in the form of money or otherwise, nor shall a member of this industry secretly offer or extend to any customer any special service or privilege not extended to all customers of the same class, for the purpose of influencing a sale.

RULE 2. *Defamation.*—No member of this industry shall defame a competitor by falsely imputing to him dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representation, or by falsely disparaging the grade or quality of his goods or work.

RULE 3. *Misrepresentation.*—No member of this industry shall publish advertising or make any offer of sale which is misleading or inaccurate in any material particular, nor shall any member in any way misrepresent any product of this industry (including, but without limitation, its quality, quantity, size, grade or substance) or credit terms, values, policies or services.

RULE 4. *Misbranding.*—No member of this industry shall brand or mark any product of the industry in any manner which is intended to or does deceive or mislead purchasers with respect to the quality, quantity, size, grade or substance of such products.

RULE 5. *Commercial Bribery.*—No member of this industry shall give, permit to be given, or offer 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 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.

RULE 6. *Lump-Sum Bidding.*—No member of this industry shall sell any industry product except on a unit-price basis.

RULE 7. *Contingent Selling.*—No member of this industry shall enter into any agreement for furnishing any industry product contingent upon the sale or purchase of any other product or service, or other contingency not appearing in the contract.

RULE 8. *Jobbers and Distributors.*—No member of this industry shall dispose of the products of his industry through a middleman, whom he controls by stock ownership or otherwise, for the purpose of evading the standards of fair competition established in this Code.

RULE 9. *Confidential Information.*—No member of this industry shall seek or get confidential information concerning the business of a competitor by a false or misleading statement or representation, by a false impersonation of one in authority, by bribery or by any other unfair method.

RULE 10. *Withdrawal of Bids.*—No member of this industry shall obtain or attempt to obtain any consideration other than the permission to withdraw a bid where a bona fide error can be established after the opening of bids.

RULE 11. *Payments to Subcontractors.*—Funds received by members of this industry for work performed as defined in Section 1 of Article II of this Code, or to be performed by him shall be accepted and applied, first, to the purpose of paying amounts due from him to others in respect of any portion of such work, including amounts due to employees, material men, subcontractors and others. These provisions shall not be construed to require said member to keep in separate bank accounts or deposits, funds received under separate contract provided he maintains books of account clearly showing the allocation to each and every contract of the funds deposited, and he shall devote the final payments due him within ten (10) days after the receipt thereof to the payment of balances due from him to such employees, material men, sub-contractors and others provided satisfactory evidence is furnished to the member of the industry showing that all outstanding claims against said parties, for which said member would otherwise be liable, have been fully satisfied or provided for. Earlier payments and/or greater amounts may be mutually agreed upon. Nothing in this rule shall be construed to supersede any Federal, State or local laws imposing more stringent requirements with respect to matters referred to herein.

RULE 12. *Waiving Legal Rights.*—No member of this industry shall give any waiver of lien rights without informing sub-contractors with whom he is contracting of such a waiver.

RULE 13. *Financing Accounts.*—No member of this industry shall permit a sub-contractor or vendor on a specific contract to finance or guarantee a member's accounts, unless such arrangement is expressly provided for in the original contract between the parties.

RULE 14. *Interference with Employees.*—No member of this industry shall entice away the employees of competitors with the purpose and effect of unduly hampering, injuring or embarrassing competitors in their business.

RULE 15. *Written Contracts.*—Each member of the industry shall keep accurate and complete records of its transactions in the industry whenever such records may be required under any of the provisions of this Code, and shall furnish accurate reports based upon such records concerning any of such activities when required by the Code Authority or the National Industrial Recovery Board. If the Code Authority or the National Industrial Recovery Board shall determine that substantial doubt exists as to the accuracy of any such report, so much of the pertinent books, records, and papers of such member as may be required for the verification of such report, may be examined by an impartial agency agreed upon between the Code Authority and such member, or, in the absence of agreement, appointed by the National Industrial Recovery Board. In no case shall the facts disclosed by such examination be made available in identifiable form to any competitor whether on the Code Authority or otherwise, or be given any other publication except such as may be required for the proper administration or enforcement of the provisions of this Code.

RULE 16. *Investigating Bids.*—Upon the complaint of any bidder the Code Authority or any regional administrative committee appointed by it shall select a committee of review, composed of not more than three (3) qualified persons who were not bidders on the particular job to be reviewed, one of whom, if possible, shall not be a member of the Association. This Committee shall be directed to make such investigation of the bid as will enable it to determine whether this Code of Fair Competition has been violated in the bidding on the job in question. In the event the committee of review shall find that any such violation has occurred, their findings on the violation, together with a summary of the facts upon which they are based, shall be reported to the regional administrative committee or the Code Authority for such action as it may deem proper, including in appropriate cases, with the approval of the National Industrial Recovery Board, report to the Federal District Attorney or the Federal Trade Commission.

ARTICLE VI—OPEN PRICE FILING, COSTS AND PRICE CUTTING AND COST FINDING AND ACCOUNTING

A. OPEN PRICE FILING

SECTION 1. Each member of the industry, selling within any region or subdivision designated by the Code Authority and approved by the National Industrial Recovery Board, shall file with a confidential and disinterested agent of the Code Authority, or, if no region or subdivision shall have been so designated, or, if no agent or agents shall have been designated by the Code Authority, then within such region or subdivision and/or with such agent or agents as may be designated by the National Industrial Recovery Board, 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 and services of the industry as are sold or offered for sale by said member and for such nonstandard products of said member as shall be designated by the Code Authority. Said price terms shall in the first instance be filed within thirty (30) days after the date of approval of this provision. Price terms and revised price terms shall become effective within any region or subdivision 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 distributed to all members of the industry selling within the region or subdivision 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 list 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 afore-

said; provided, that prices filed in the first instance shall not be released until the expiration of the aforesaid thirty (30) 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 National Industrial Recovery Board. Upon request, the Code Authority shall furnish to the National Industrial Recovery Board or any duly designated agent of the National Industrial Recovery Board copies of any such lists or revisions of price terms.

For the purpose of this Article, the entire United States may be defined as a region.

SECTION 2. When any member of the industry has filed any revision, such member shall not file a higher price within forty-eight (48) hours.

SECTION 3. When the Code Authority or National Industrial Recovery Board shall, in accordance with the provisions of Section 1, of this Article, have designated a Regional Agency in any Region as the agency with which price terms for that Region shall be filed, each member of the industry selling within the Region shall file with the designated agency identified lists of all of his prices, discounts, rebates, allowances, and all other terms and conditions of sale in accordance with the provisions of this Article. Copies of all such price lists filed with any regional or subdivisional agency established pursuant to the provisions of Section 1 of this Article shall be supplied by each member of the industry to and kept on file by a central confidential and disinterested agent to be designated by the Code Authority subject to the approval of the National Industrial Recovery Board. The supplying of such copies shall be for the purpose of record only and not for the giving of further effect to price terms operative within the region or subdivision or for distribution to members of the industry.

SECTION 4. No member of the industry shall sell or offer to sell any products and/or services of the industry within the region or subdivision, for which price terms have been filed therein pursuant to the provisions of this article, except in accordance with such price terms.

SECTION 5. 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.

B. COSTS AND PRICE CUTTING

SECTION 1. The standards of fair competition for the industry with reference to pricing 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 enterprise 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 N. R. A. which shall render a report and recommendation thereon to the National Industrial Recovery Board.

(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 2 hereof, is forbidden.

SECTION 2. *Emergency Provision.*—(a) If the National Industrial Recovery Board, after investigation shall at any time find both (1) that an emergency has arisen within the industry adversely affecting small enterprises or wages or labor conditions, or tending toward monopoly or other acute conditions which tend to defeat the purposes of the Act; and (2) that the determination of the stated minimum price for a specified product within the industry for a limited period is necessary to mitigate the conditions constituting such emergency and to effectuate the purposes of the Act, the Code Authority may cause an impartial agency to investigate costs and to recommend to the National Industrial Recovery Board a determination of the stated minimum price of the product affected by the emergency and thereupon the National Industrial Recovery Board may proceed to determine such stated minimum price.

(b) When the National Industrial Recovery Board shall have determined such stated minimum price for a specified product for a stated period, which price shall be reasonably calculated to mitigate the conditions of such emergency and to effectuate the purposes of the National Industrial Recovery Act, it shall publish such price. Thereafter, during such stated period, no member of the industry shall sell such specified products at a net realized price below said stated minimum price and any such sale shall be deemed destructive price cutting. From time to time, the Code Authority may recommend review or reconsideration, or the National Industrial Recovery Board may cause any determinations hereunder to be reviewed or reconsidered and appropriate action taken.

C. COST FINDING AND ACCOUNTING

SECTION 1. *Cost Finding.*—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 National Industrial Recovery Board for review. If approved by the National Industrial Recovery Board, 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—APPEALS

SECTION 1. Any directly interested party shall have the right of complaint to the appropriate regional code authority, and of a prompt hearing and decision in respect of any decision, rule, regulation, order or finding made by such authority, under such reasonable rules or regulations as may be prescribed by such authority.

SECTION 2. In respect of any decision, rule, regulation, order or finding made by any regional code authority, any directly interested party shall have the right of complaint to the Code Authority and of a prompt hearing and decision under such rules of procedure as it may prescribe.

SECTION 3. Any directly interested party shall have the right of appeal to the National Industrial Recovery Board, subject to such rules and regulations as it may prescribe, in respect to any decisions, rule, regulation, order or finding made by the Code Authority.

SECTION 4. The Code Authority shall be empowered to hear disputes between regional code authorities, committees, or agencies.

ARTICLE VIII—REGISTRATION OF MEMBERS OF THE INDUSTRY

Each member of this industry within thirty (30) days after the effective date of this Code, shall register with the Code Authority. All members of this industry who may engage in the Bituminous Road Material Distributing Industry thereafter shall likewise register with the Code Authority. Registration of a member of this industry shall include the full name and mailing address of the member. An application may be made by the Code Authority to the National Industrial Recovery Board for an extension of the time limit for the registration by any member of this industry if it appears that the time limit as provided herein might cause injustice or undue hardship to any member of this industry.

ARTICLE IX—MONOPOLIES

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

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 Sub-section (b) of Section 10 of the Act, from time to time to cancel or modify any order, approval, license, rule or regulation issued under Title I of the said Act and specifically, but without limitation, to the right of the President to cancel or modify his approval of any provisions of this Code or any conditions imposed by him in his approval thereof.

SECTION 2. This Code, except as to provisions required by the Act, may be modified on the basis of experience or changes in circumstances, such modifications to be based upon application to the National Industrial Recovery Board and such notice and hearing as it shall specify, and to become effective upon its approval.

ARTICLE XI—REVIEW OF ACTS OF CODE AUTHORITIES

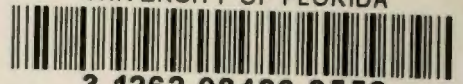
If the National Industrial Recovery Board shall determine that any action of the Code Authority or of any regional code authority or any agency thereof may be unfair or unjust or contrary to the public interest, the National Industrial Recovery Board may require that such action be suspended to afford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

ARTICLE XII—EFFECTIVE DATE

This Code shall become effective on the beginning of the thirtieth (30th) day after its approval by the President.

Approved Code No. 530.
Registry No. 1003-05.





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