

NATIONAL RECOVERY ADMINISTRATION

**AMENDMENT TO
CODE OF FAIR COMPETITION**

FOR THE

**UPHOLSTERY AND DRAPERY
TEXTILE INDUSTRY**

AS APPROVED ON FEBRUARY 6, 1935



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Approved Code No. 125—Amendment No. 1

AMENDMENT TO CODE OF FAIR COMPETITION

FOR THE

UPHOLSTERY AND DRAPERY TEXTILE INDUSTRY

As Approved on February 6, 1935

ORDER

APPROVING AMENDMENT OF CODE OF FAIR COMPETITION FOR THE UPHOLSTERY AND DRAPERY TEXTILE 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 an amendment to a Code of Fair Competition for the Upholstery and Drapery Textile Industry, and hearings having been duly held thereon and the annexed report on said amendment, 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, dated September 27, 1934, and otherwise, does hereby incorporate, by reference, said annexed report and does find that said amendment and the Code as constituted after being amended comply in all respects with the pertinent provisions and will promote the policy and purposes of said Title of said Act, and does hereby order that said amendment be and it is hereby approved, and that the previous approval of said Code is hereby amended to include an approval of said Code in its entirety as amended with the exception that:

The approval and the amendment of Subsections (d), (f), (g), (i), (j), (l) and (n) of Section 1 of Article VIII shall take effect twenty (20) days from the date hereof, unless good cause to the contrary is shown to the National Industrial Recovery Board before that time and the National Industrial Recovery Board issues a subsequent order to that effect.

NATIONAL INDUSTRIAL RECOVERY BOARD,
By W. A. HARRIMAN, *Administrative Officer*.

Approval recommended:

PRENTISS L. COONLEY,
Division Administrator.

WASHINGTON, D. C.,
February 6, 1935.

REPORT TO THE PRESIDENT

The PRESIDENT,
The White House.

SIR: This is a report on a public hearing on an amendment to the Code of Fair Competition for the Upholstery and Drapery Textile Industry held on November 14, 1934 in Room 127 of the Willard Hotel, Washington, D. C. The amendment which is attached was presented by duly authorized representatives of the Industry, complying with statutory requirements and being the same agency that originally submitted the Code.

In accordance with customary procedure every person who had filed a request for appearance was freely heard in public and all statutory and regulatory requirements were complied with.

The following is a résumé of the amendment:

ARTICLE II

Section 5, which defines "member of the Code" is deleted since the present amendment includes a mandatory assessment provision. Section 6 defines the National Industrial Recovery Board.

ARTICLE III

Section 1 establishes maximum hours for certain classes of employees now excepted.

Section 3 enumerates those employees excepted from maximum hours.

The change in Section 5 is merely a verbal alteration, "Board" being substituted for "Administrator."

The new Section 7 of Article IV is the standard provision concerning handicapped workers.

ARTICLE VI

The changes in Section 1 are merely verbal alterations, "Board" being substituted for "Administrator" wherever it occurs.

An addition to Section 1 provides that proposed amendments to the Code shall first be referred to the Industry.

The changes in Sections 2, 3 and 4 are merely verbal alterations, "Board" being substituted for "Administrator" wherever it occurs.

The renumbering of Section 6 as Section 12 is merely an editorial change.

Sections 6 and 7 are deleted since they are in conflict with certain provisions of the present amendment.

A new Section 6 contains the standard provision concerning the keeping of records of transactions in the Industry.

A new Section 7 contains the standard provision concerning submission of statistical information to the National Industrial Recovery Board.

A new Section 8 contains the standard mandatory assessment clause.

A new Section 9 contains the standard provision for the payment of equitable contribution to the expenses of maintenance of the Code Authority.

A new Section 10 contains a standard clause concerning expenses in excess of the amount of an approved budget.

A new Section 11 defines the liability of members of the Code Authority.

The existing Article VII is deleted and a new Article VII is substituted therefor which contains the standard provisions concerning cost finding and destructive price cutting.

The existing Article VIII is deleted and a new Article VIII is substituted therefor which contains provisions to be included in sales contracts and order blanks.

ARTICLE IX

The existing Section 5 is deleted and a new Section 5 substituted therefor concerning the distribution of sample cuttings.

The changes in Section 6 are merely verbal alterations, "Board" being substituted for "Administrator" in the first and second sentences.

Section 7 is deleted since this provision is no longer operative and a new Section 7 is substituted therefor which concerns false invoicing.

ARTICLE X

The changes in Section 6 are merely verbal alterations "his" and "he" being deleted and "the Board's" and "the Board" being substituted therefor.

Section 10 is the standard clause providing for the establishment of standards of safety and health.

FINDINGS

The Deputy Administrator in his final report to the National Industrial Recovery Board on said amendment to said Code having found as hereinafter set forth on the basis of all the proceedings in this matter;

The National Industrial Recovery Board finds that:

(a) The amendment to said Code and the Code as amended are 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 sanction and supervision, by eliminating unfair competitive practices, by promoting the fullest possible utilization of the present pro-

ductive 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 the standards of labor and by otherwise rehabilitating industry;

(b) The Code as amended 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;

(c) The Code empowers the Code Authority to present the aforesaid amendment on behalf of the Industry as a whole.

(d) The amendment and the Code as amended are not designed to and will not permit monopolies or monopolistic practices.

(e) The amendment and the Code as amended are 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 amendment.

For these reasons this amendment has been approved.

For the National Industrial Recovery Board:

W. A. HARRIMAN,
Administrative Officer.

FEBRUARY 6, 1935.

AMENDMENT TO CODE OF FAIR COMPETITION FOR THE UPHOLSTERY AND DRAPERY TEXTILE IN- DUSTRY

ARTICLE II—DEFINITIONS

Delete Section 5.

Section 6. Renumber as Section 5.

Delete Section 7. Substitute therefor Section 6 as follows:

SECTION 6. The term "Board" as used herein means the "National Industrial Recovery Board" appointed by the President under the National Industrial Recovery Act.

Renumber Section 8 as Section 7.

Renumber Section 9 as Section 8.

Renumber Section 10 as Section 9.

ARTICLE III—HOURS

Delete Section 1 and substitute therefor a new Section 1, as follows:

SECTION 1. No engineer, electrician, cleaner, fireman or employee working on a repair shop, shipping or outside crew, shall be permitted to work more than 40 hours per week, with a tolerance of ten percent; provided, however, that in the case of emergency maintenance or emergency repair work, involving breakdowns or protection of life or property, the foregoing maximum hours shall not apply, and provided further that all hours worked in excess of 40 hours per week shall be compensated for at the rate of time and one-third. Emergency hours worked shall be reported monthly to the Code Authority provided for in Section 1 of Article VI.

(a) Watchmen shall not work or be permitted to work more than 56 hours per week, provided, however, that such employees shall have one day off in seven.

Section 3 is amended in its entirety as follows:

SECTION 3. No other employee, except outside sales persons, and those employed in a managerial capacity earning in excess of \$35.00 per week, shall be permitted to work in excess of 40 hours per week.

SECTION 5. Delete "Administrator" in the last line of Section 5 and substitute therefor "Board".

ARTICLE IV—WAGES

Add a new Section 7 as follows:

SECTION 7. A person whose earning capacity is limited because of age or 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 desig-

nated 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.

ARTICLE VI—ADMINISTRATION

SECTION 1. Delete "Administrator" wherever it occurs in this Section and substitute therefor "Board." Substitute a semi-colon for the period at the end of the third sentence of Section 1 and add the following:

provided, however, that proposed amendments to the Code shall not be submitted to the Board until they first have been referred to the Industry at a general meeting or by a mail vote.

The Section as amended is as follows:

SECTION 1. To further effectuate the policies of the National Industrial Recovery Act, a Code Authority is hereby set up to cooperate with the Board in the administration of this Code. Such Code Authority shall consist of not less than 8 nor more than 11 members, 8 of whom shall be representatives of the Industry elected by a fair method of selection to be approved by the Board, and 3 of whom without vote may be appointed by the Board. Such agency may present to the Board recommendations based on conditions in the Industry as they may develop which will tend to effectuate the operation of the provisions of this Code and the policies of the National Industrial Recovery Act; provided, however, that proposed amendments to the Code shall not be submitted to the Board until they first have been referred to the Industry at a general meeting or by a mail vote. Such recommendations, when approved by the Board, shall have the same force and effect as any other provisions of this Code.

Sections 2, 3 and 4. Delete "Administrator" wherever it occurs in these Sections and substitute therefor "Board".

Renumber existing Section 6 as Section 12.

Delete Sections 7, 8 and 9 and substitute the following new sections therefor:

SECTION 6. 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 Board. If the Code Authority or the 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 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.

SECTION 7. 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 Board may deem necessary for the purposes recited in Section 3 (a) of the Act to such Federal and State agencies as the Board 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 Board.

SECTION 8. 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) 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) To submit to the Board for the Board's approval, subject to such notice and opportunity to be heard as the Board 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) After such budget and basis of contribution have been approved by the Board, to determine and obtain equitable contribution as above set forth by all members of the Industry, and to that end, if necessary, to institute legal proceedings therefor in its own name.

SECTION 9. 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 Board. 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 contribution,) 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 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 Board; and no subsequent budget shall contain any deficiency item or expenditures in excess of prior budget estimates except those which the Board shall have so approved.

SECTION 11. Nothing contained in this Code shall constitute the members of the Code Authority partners for any purpose. Nor shall any member of the Code Authority be liable in any manner to anyone for any act of any other member, officer, agent or employee of the Code Authority, nor shall any member of the Code Authority,

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 non-feasance.

ARTICLE VII—UNIFORM COST ACCOUNTING

Delete Article VII and susbtitute therefor a new Article VII as follows:

ARTICLE VII—COST FINDING AND DESTRUCTIVE PRICE CUTTING

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 Board for review. If approved by the 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, or 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.

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

(a) Wilful, 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 quoted 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 days afford an opportunity to the member quoting said price to answer such complaint and shall within fourteen 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 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, sales below the stated minimum price of such product, in violation of Section 3 hereof, is forbidden.

SECTION 3. *Emergency Provisions*.—If the 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 Board a determination of the stated minimum price of the product affected by the emergency and thereupon the Board may proceed to determine such stated minimum price.

(a) When the 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, the Board 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 Board may cause any determinations hereunder to be reviewed or reconsidered and appropriate action taken.

Article VIII is amended in its entirety as follows:

- ARTICLE VIII—UNIFORM SALES CONTRACTS AND ORDER BLANKS

SECTION 1. Every sales contract or order, excepting fabrics sold to automobile manufacturers, shall contain the following provisions:

(a) Prices shall be F. O. B. Mill, which shall be understood as permitting free delivery by the manufacturer to common carriers and purchasers located in the Mill city.

(b) In the event that the style, color, or other specifications necessary to filling the order are not specified therein, and the buyer shall decline to furnish such specifications at least ten days before the respective shipping dates, the seller may, at his option, complete the contract upon reasonable specifications.

(c) All bills shall be payable at the seller's office or place of collection designated by the seller in par exchange or the equivalent legal tender of the United States, on a net basis in seventy (70) days from date of shipment; if paid within ten (10) days from date of shipment, a maximum cash discount of two percent may be allowed. If the ten (10) days have elapsed, the buyer shall pay net, but shall have the privilege of anticipating at the rate of six percent per annum, for the unexpired portion of the seventy (70) day period. On all over-due bills, the buyer shall pay interest at the rate of six percent per annum.

(d) Seller or seller's agent shall have the right, at any time, on any unfilled portion of this contract, to limit any credit to be extended hereunder or to require payment before delivery, provided, always, that proper adjustment of discount or allowance of anticipation for such prepayment, be made.

(e) When agreed delivery period covers more than thirty (30) days, deliveries shall be in substantially equal quantities for each thirty (30) days unless otherwise specified.

(f) Deliveries within ten (10) days after time specified shall constitute a good delivery.

(g) Title shall pass from seller to buyer when invoice has been rendered and the relative goods accepted by a railroad or other common carrier, subject to the right of the buyer to specify such carrier, or stored on premises of the seller for the account of the buyer and subject to his order.

(h) This contract is subject to delays for non-delivery due to strikes, lock-outs, fires, Acts of God or other causes beyond seller's control making delivery impossible. For such non-delivery the buyer shall have the right to cancel, by giving written notice to seller, any part of this contract, past due and undelivered by reason of such cause; seller shall have the same right, provided notice of such curtailment is mailed to buyer not later than five (5) days after any delivery, hereunder, is interrupted thereby.

(i) Upon the resumption of normal production, seller shall declare to buyer new delivery dates for any part hereof, then past due; five days after receipt of such declaration, the rights to cancel, provided above, shall expire and the delivery schedules, thus amended, shall become valid under this contract.

(j) Returns or claims must be made within thirty (30) days of the receipt of the goods, except for defects in material and/or workmanship and then only if the material has not been processed beyond the form in which it was delivered to the buyer.

(k) It is agreed that the seller in accordance with the Code of Fair Competition for the Upholstery and Drapery Textile Industry cannot except the return of merchandise sold and delivered in due accordance and compliance with this contract or accept or permit any cancellation or modification as to price or terms in connection with merchandise not yet delivered, except as provided herein, provided, however, that adjustment may be made as found necessary on account of depreciation of buyer's credit.

(l) Any delivery not in dispute shall be paid for regardless of controversies relating to other delivered or undelivered merchandise

(m) Any controversy or claim arising out of or relating to this contract or the breach thereof, shall be settled by arbitration, in accordance with the Rules, then obtaining, of the American Arbitration Association, and judgment upon the award rendered may be entered in the highest court of the forum, state or federal having jurisdiction; provided this provision for arbitration shall not have been deleted by the purchaser upon, or prior to, the execution of this contract.

(n) The use of this contract shall not be required on orders amounting to less than one thousand dollars (\$1,000.00) or for deliveries made in less than thirty (30) days.

ARTICLE IX—UNFAIR TRADE PRACTICES

Delete existing Section 5 and substitute therefor a new Section 5 as follows:

SECTION 5. *Samples*.—Giving samples of fabrics free of cost except that sample cuttings not larger than 6" x 9" may be sent for selection, free of charge; provided, however, that no more than six of any color or pattern shall be given to any customer in one season; and provided further, that larger bona fide samples may be sent on memorandum to be returned within thirty (30) days and if not so returned, to be billed at the regular price. No allowance or discount other than cash discount for merchandise sold is allowed for samples to be used in sample books.

SECTION 6. Delete "Administrator" in the first and second sentences substituting therefor "Board".

Delete Section 7.

Add a new Section 7 as follows:

SECTION 7. *Invoicing*.—No member of the Industry shall withhold from or insert in any invoice any statement which would make the invoice inaccurate in any material particular or a false record, wholly or in part of the transaction to which it refers; nor make any arrangement which contemplates payment or settlement different from that described on the face of the invoice.

ARTICLE X

SECTION 6. Delete "Administrator" in the second line and substitute therefor "Board". Delete "his" in the fifth line and substitute therefor "the Board's". Delete "he" in the fifth line and substitute therefor "the Board".

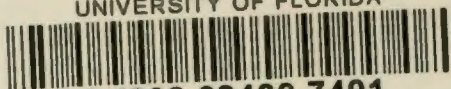
SECTION 10. *Standards of Safety and Health*.—Every employer shall make reasonable provision for the safety and health of his employees at the place and during the hours of their employment. Standards of safety and health shall be submitted by the Code Authority to the Board for approval within six months after the effective date of this amendment. The standards approved shall thereafter be a part of this Code and enforceable as such.

Approved Code No. 125—Amendment No. 1.

Registry No. 280-1-01.



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