

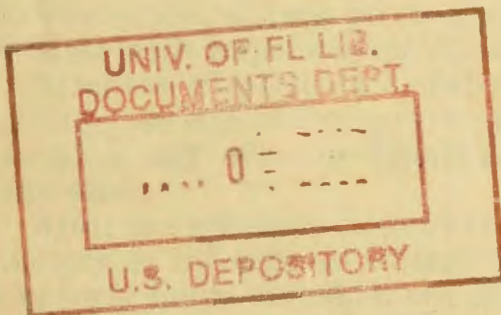
NATIONAL RECOVERY ADMINISTRATION

PROPOSED CODE OF FAIR COMPETITION

FOR THE

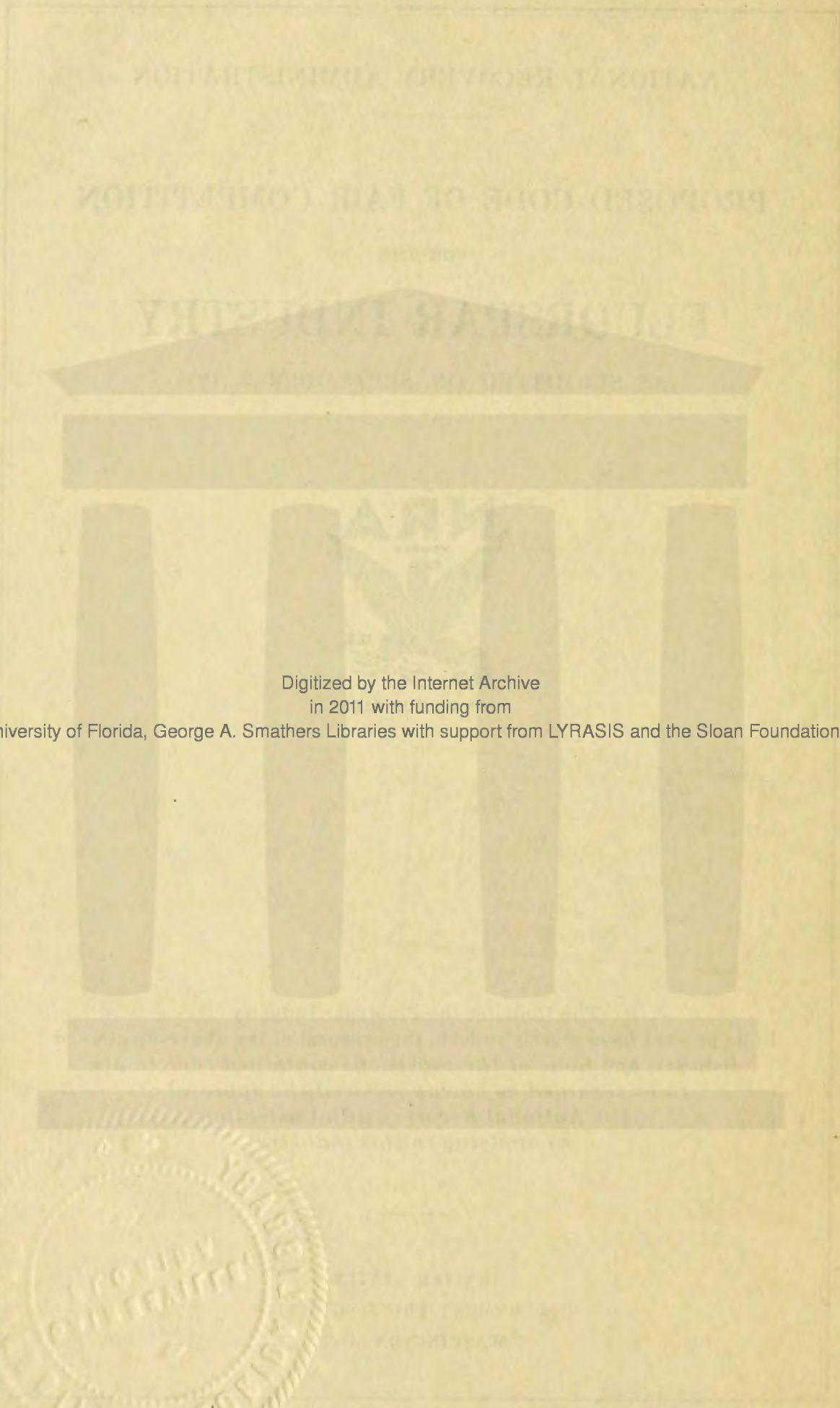
FLUORSPAR INDUSTRY

AS SUBMITTED ON SEPTEMBER 2, 1933



The Code for the Fluorspar Industry
in its present form merely reflects the proposal of the above-mentioned
industry, and *none of the provisions contained therein are*
to be regarded as having received the approval of
the National Recovery Administration
as applying to this industry

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1933



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TENTATIVE DRAFT OF CODE FOR THE FLUORSPAR INDUSTRY, AUGUST 25, 1933

This code is submitted by producers of fluorspar in Illinois and Kentucky, these two States heretofore having produced more than 90% of all the fluorspar mined in the United States.

ARTICLE I—PURPOSE

This code is offered pursuant to Title I of the National Industrial Recovery Act, and the purpose of the code is to effectuate the policy thereof.

ARTICLE II—DEFINITIONS

"Industry."—The mining, milling, and sale of fluorspar throughout the United States.

"Person."—An individual, partnership, association, or corporation.

"Products."—Fluorspar in any form.

"Producer."—Any person engaged in mining, milling, or selling the products of the industry.

ARTICLE III—MAXIMUM HOURS AND MINIMUM WAGES

(1) After the effective date of this code, no producer shall employ any worker under sixteen years of age and shall comply with all laws of his State with respect to child labor.

(2) After the effective date of this code, no producer shall work any accounting, clerical, office, service, or sales employees (except outside salesmen) in any office or department for more than forty hours in any one week.

(3) After the effective date of this code, no producer shall employ any factory or mechanical worker or artisan more than a maximum week of forty hours and shall not employ any worker more than eight hours in any one day.

(4) The maximum hours fixed in the foregoing paragraphs (2) and (3) shall not apply to employees in a managerial, executive, advisory, or technical capacity, who now receive more than \$35 per week; nor to employees on emergency, maintenance, and repair work; nor to very special cases where underground mining crews are working in difficult or unusual mining conditions where knowledge of these conditions and of the peculiarities of the ground is highly desirable and where employment of substitute crews is not practical and where a limitation on the hours of work would unavoidably reduce production and employment; provided that no such underground mining crew shall be worked more than a maximum of eight hours in any one day or forty-eight hours in any one week.

(5) It is agreed not to pay any of the classes of employees mentioned in paragraph (2) less than \$15 per week in any city of over 500,000

population, or in the immediate trade area of such city; not less than \$14 per week in any city of between 2,500 and 250,000 population, or in the immediate trade area of such city; and in towns of less than 2,500 population, to increase all such wages by not less than 20%, provided that this shall not require wages in excess of \$12 per week.

(6) It is agreed not to pay any employee of the classes mentioned in paragraph (3) less than 35¢ per hour, unless the hourly rate for the same class of work on July 15, 1929 was less than 35¢ per hour, in which case, to pay not less than the hourly rate on July 15, 1929, and in no event less than 25¢ per hour. It is agreed that this paragraph establishes a guaranteed minimum rate of pay, regardless of whether the employee is compensated on the basis of a time rate or a piece-work performance.

ARTICLE IV—LABOR RELATIONS

(a) Employees in the industry 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 employees, and no one seeking employment in the industry, 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.

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

(d) It is the interpretation of the foregoing provisions that the employees in the industry shall be protected from interference, restraint, or coercion from their employer and from any other person, in the determination of their relations with their employers, and that neither employers nor employees are required thereby to waive, surrender, or impair any of their constitutional rights.

(e) It is the interpretation of the foregoing paragraphs that nothing therein impairs the joint right of employer and employee to mutually maintain operating conditions "where any man who is competent and whose services are desired will be employed regardless of" all other questions.

ARTICLE V—OPEN PRICE POLICY

The Joint Recovery Committee of the fluorspar industry shall have authority to establish and operate an open price policy.

ARTICLE VI—ADMINISTRATION

(a) A Joint Recovery Committee has been set up, which consists of four representatives, two of whom have been chosen by producers in Illinois, and two by producers in Kentucky. The President, or anyone with authority from him, may name two additional members of the Committee, such members to have no vote but in all other respects to be members of the Joint Recovery Committee.

(b) The two representatives of the producers in Illinois shall be named by a majority vote of the Illinois producers and, in case of a vacancy, a successor to either may be elected by a similar vote. The two representatives of the producers in Kentucky shall be named by a majority vote of the Kentucky producers and, in case of a vacancy, a successor to either may be elected by a similar vote.

(c) The right to vote for representatives from Illinois shall be confined to those producers who have operations in Illinois, and who shipped in the period from January 1, 1930, to June 30, 1933, not less than 100 net tons in a single calendar year, or who had in stock on June 30, 1933, not less than 100 net tons. The right to vote for representatives from Kentucky shall be confined to those producers who have operations in Kentucky and who shipped in the period from January 1, 1930, to June 30, 1933, not less than 100 net tons in a single calendar year, or who had in stock on June 30, 1933, not less than 100 net tons.

(d) Each producer entitled to vote may cast one vote, and, in addition, as many votes as equal his total shipments for such period and his stock on June 30, 1933, divided by 500, ignoring any fraction; provided, however, no producer who shipped during such period in excess of 26,000 tons shall be entitled to include such tonnage on hand on June 30, 1933, in determining the amount of votes to be cast. If any question is raised as to the right of any producer to vote or as to the number of votes which may be cast, such producer shall file a certificate with his vote, signed by him, setting forth the number of net tons shipped by him in each calendar year in said period and his stocks, as above defined. Any false statement in such certificate shall constitute a violation of this code. Any producer may cast all his votes for one representative, or divide such votes between two representatives in such proportions as he determines. Any such election may be evidenced by a written instrument, signed by a majority vote of the producers in the particular state, determined as above indicated.

(e) The Joint Recovery Committee shall have the powers listed below:

- (1) To administer the provisions of this code;
- (2) To adopt rules and regulations for the enforcement thereof;
- (3) To entertain and hear complaints against any producer arising out of alleged violation of this code or of the National Industrial Recovery Act;
- (4) To initiate proceedings before the appropriate governmental agencies to prevent and/or punish violations of this code;
- (5) To obtain from time to time from each producer reports in such form and containing such information as the Joint Recovery Committee may prescribe, in order that the President may be kept informed with respect to the observance or nonobservance of this code, and as regards the compliance by the industry with the policy and provisions of the National Industrial Recovery Act. To this end the Joint Recovery Committee shall be empowered to appoint a Confidential Agency, outside the industry, which Agency shall have access to all places of business maintained by any producer, and may examine any pertinent records. Producers shall furnish such statistics as are requested by the Joint Recovery Committee for the purposes stated above.

(6) To prepare a uniform sales contract for the use of producers. The deletion or changing of any of the provisions thereof shall be an unfair trade practice, and a violation of this code.

(7) To make such surveys, compile such reports and make such recommendations as they may deem proper and for the best interests of the industry and the purchasers of its products.

(8) To require all producers to furnish a weekly certified report that he has complied with the provisions of this code, together with a statement of tonnage sold except captive tonnage, delivery date, and average price of each grade as classified by this Committee, shipments, orders, and stocks on hand. Provided, however, that any producer customarily producing and shipping any particular grade of fluorspar, and who has complied with the provisions of this code, shall be entitled to receive from the Joint Recovery Committee copies of all information collected by the Committee pertaining to such grade. Any failure of a producer to furnish the information or file the reports, provided by this paragraph, and by paragraph (5), shall be a violation of this code.

(9) To consider proposals for amendments to this code, and to submit such proposals to the proper Federal agency.

(10) The Joint Recovery Committee shall keep records of its meetings, and may employ the necessary assistants to collect and distribute information and reports, and to perform any of the duties herein provided. Such Committee may act by a vote of at least three voting members, either at a meeting, or evidenced by a written document properly signed. Such Committee may elect officers and adopt rules for its own procedure.

ARTICLE VII—ADMINISTRATION EXPENSE

The cost of administration of this code shall be borne on a pro rata basis by all producers of fluorspar, whether they have expressly assented to the provisions of this code or not. The amount of assessment from time to time shall be established by the Joint Recovery Committee. It shall not, however, exceed a reasonable amount for the purpose of collecting and disseminating the information provided in the preceding Article and in the performance of its duties as specified therein. In no event, however, shall the members of the Joint Recovery Committee be paid any compensation for their services, but they shall be entitled to be reimbursed any expenses incurred. Any such assessment shall be distributed among the various producers in the same proportions as their respective total shipments for the twelve months' period preceding the month in which notice of such assessment is issued, and each producer, on request by the Committee, shall furnish a statement of his shipments for such period; provided no assessment shall be levied on any producer who has shipped less than 500 net tons during said period. Failure to pay any such assessment within twenty days after notice thereof shall be a violation of the code. At least once each six months the Committee shall account to the producers for all money collected and expended.

ARTICLE VIII—TRADE PRACTICE RULES

The following paragraphs (1) to (11), inclusive, are a statement of unfair trade practices which are condemned. These, together with other practices which may be declared unfair by the Joint Recovery Committee, shall be deemed to be unfair methods of competition, and the employment of any such practice shall be a violation of the code.

(1) Consciously shipping a lower grade of material than as permitted in the contract or order.

(2) Cancelling in whole or in part, or permitting the cancellation of any contract for the sale of any product, except for a fair consideration, or paying or allowing to any purchaser in connection with the sale of any product, any rebate, commission, credit, discount, adjustment, or similar concession, or other than is permitted by the Code and specifically included in the contract of sale.

(3) Inducing or attempting to induce the breach of a contract, oral or written, between a competitor and his customer, or the solicitation of business from a customer with knowledge that acquiescence therein by the customer would violate a contract with a competitor.

(4) The use of any corporate or other name which is not the recognized name in which the producer openly operates in the district in which he is operating, or the attempt to sell fluorspar from the same operation under several different names.

(5) To quote on the same inquiry to the same customer under different names, or through more than one agent; or to quote on the same inquiry to the same customer directly under any name, and also through an agent.

(6) While there is in existence an exclusive sales arrangement between a producer and a sales agent, for such producer to sell through any other agent without the consent of such exclusive agent.

(7) Attacking a competitor by making false or misleading charges as to his reputation, financial standing, or ability to serve the trade.

(8) To make any contract with any purchaser whereby the purchaser is to be protected against a decline in price, except so far as such protection may be limited to prices quoted on imported fluorspar.

(9) To sell, or attempt to sell, through more than one agent, except with the full knowledge of each agent.

(10) Making or promising to any purchaser or prospective purchaser of any product, or to any officer, employee, agent, or representative of any such purchaser, any bribe, gratuity, gift, or other payment or remuneration, directly or indirectly.

(11) Procuring, otherwise than with the consent of any member of the Code, any information concerning the business of such member, which is properly regarded as a trade secret or as confidential within its organization, other than relating to a violation of any provision of the code.

ARTICLE IX—FOREIGN COMPETITION

For the past fifteen years the importations of foreign fluorspar have been gradually increasing, and for seven years have averaged more than one third of the total domestic consumption. In certain grades, the percentage has recently been higher, and in one grade in 1932 the importations amounted to 82% of the domestic consumption although



the domestic producers were able to supply all domestic requirements. In this competition the domestic producers are compelled to compete with the cheap labor and long hours in vogue in Germany, France, Italy, Spain, South Africa, and China. Furthermore, in the principal competing country, fluorspar is being sold for exportation to the United States at lower prices than is charged for the same grade of fluorspar for consumption in such competing country.

About April 1, 1933, representatives of the United States Tariff Commission completed an exhaustive investigation of the cost of production and conditions in the United States and in the principal foreign competing countries, and it is understood that the report is ready for submission to the Tariff Commission.

In accordance with the provisions of Section 3 (e) of the National Industrial Recovery Act, the producers request that the President cause an immediate investigation and report by the Tariff Commission, and that the President take such action as he may be advised under the provisions of said Section for the relief of the domestic fluorspar industry; and that such action be taken, if possible, before final action on this code.

ARTICLE X—GENERAL

(a) No provision in this code shall be interpreted in such a manner as to promote monopolies, permit or encourage unfair competition, eliminate or oppress or discriminate against small enterprises.

(b) This code or any of its provisions may be cancelled or modified and any approved rule issued thereunder shall be ineffective to the extent necessary to conform to any action by the President under Section 10 (b) of the National Industrial Recovery Act.

(c) Violation on the part of any producer of any of the provisions of this code is an unfair method of competition and shall constitute a violation of the code and be subject to all the penalties provided in the National Industrial Recovery Act.

(d) To the extent required or permitted by law and by the provisions of the National Industrial Recovery Act, this code shall apply to and be binding upon every producer, whether or not such producer has actually agreed thereto. Nothing, however, shall require the waiver by any producer of any constitutional right.

(e) This code shall be in effect beginning ten days after its approval by the President.

