



NATIONAL RECOVERY ADMINISTRATION

AMENDMENT TO
CODE OF FAIR COMPETITION
FOR THE
CEMENT INDUSTRY

AS APPROVED ON MAY 11, 1935



UNITED STATES
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Approved Code No. 128—Amendment No. 1

AMENDMENT TO CODE OF FAIR COMPETITION

FOR THE

CEMENT INDUSTRY

As Approved on May 11, 1935

ORDER

APPROVING AMENDED CODE OF FAIR COMPETITION FOR THE CEMENT 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 the approval of an amended Code of Fair Competition for the Cement Industry, and hearings having been duly held thereon and the annexed report on the said amended 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 the 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 as constituted after being amended complies with the pertinent provisions and will promote the policy and purposes of said Title of said Act, and does hereby order that the Code as amended be and it is hereby approved, subject, however, to the following conditions:

(1) That the operation of Section 8 of Article X of said amended Code be and it is hereby stayed as to all parties subject thereto pending the further Order of the National Industrial Recovery Board, and to afford the Industry, in conjunction with the National Recovery Administration, an opportunity to make a further study of said provision:

(2) That Article XVII shall be deleted.

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

Approval recommended:

W. P. ELLIS,
Division Administrator.

WASHINGTON, D. C.,
May 11, 1935.

REPORT TO THE PRESIDENT

The PRESIDENT,
The White House.

SIR: The original Code of Fair Competition for the Cement Industry was approved on November 27, 1933. The Cement Industry as represented by the Code Authority for the Cement Industry subsequently submitted an application for modification of the Code of Fair Competition for the Cement Industry approved on November 27, 1933, by amending such Code as set forth and submitted in the application for amendment.

The Labor and Consumers' Advisory Boards and the Legal Division of the National Recovery Administration, and the National Recovery Administration also submitted proposals for amendment. To that end a public hearing was held on July 11, 1934. Every person who requested an appearance was properly heard in accordance with statutory and regulatory requirements. The Code was revised during the recess of this hearing and was submitted in its final form for approval by a duly authorized committee of the Code Authority acting upon resolution adopted by the Board of Trustees of the Cement Institute on December 29, 1934, and who represent 98.4% of the Portland Cement productive capacity of the United States.

The Portland Cement Industry includes the mining or quarrying of raw materials for use in the manufacture of products of the Industry and the manufacturing of products of the Industry, or the manufacturing of products of the Industry, or the original sale directly or indirectly of products of the Industry by Members of the Industry.

In general it may be said that production of Portland Cement in the years 1928 to 1932 shows a decline of 54%. A comparison with the number of persons employed in the Industry shows a decrease from 34,000 employees in 1928 to 11,941 in 1933, or a decline in employment of 68%.

The rated capacity of the Cement Industry is about 272,000,000 barrels per year. In 1932 Portland Cement in the amount of 80,843,187 barrels was shipped from 160 plants, and there were six plants listed as inactive. The total rated production capacity was 272,000,000 barrels and the rated capacity utilized was 28.3%—152 plants shipped 64,086,000 barrels in 1933. The rated capacity utilized being 23.9%; the smallest in the present century. The lack of consumption caused serious financial losses in many companies and led to major operating economies such as part-time operation with low personnel, contraction of sales organizations, reduction in administrative personnel, etc.

Due to the widespread location of plants which, in the main, are in small communities, the Industry is one that can show marked improvement in reemployment and in operating ratios when the public works program gets in full swing. For the first quarter of 1934 there was a marked increase in shipments.

In the Code as approved November 27, 1933, a provision was made that no employee shall work or be permitted to work in excess of 42 hours in any one week or 8 hours in any one day, nor more than 36 hours per week averaged over any half calendar year, except that employees engaged in emergency maintenance and repair work involving breakdowns or protection of life or property, and employees in packing and shipping departments, who shall not, however, work more than 10 hours in any one day or 36 hours per week averaged over any half calendar year. In keeping with the policy of the National Recovery Administration all reference to the averaging provision has been deleted in the amended Code, and in lieu thereof has been substituted a provision that no employee shall be permitted to work in excess of 40 hours in any one week or 8 hours in any 24 hour period or for more than 6 days in any 7 day period, except as otherwise provided for specific employees.

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

We find 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 the 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 of labor and management under adequate governmental sanction 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) 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 Cement Institute was and is an industrial group truly representative of the aforesaid Industry and that said group imposed and imposes no inequitable restrictions on admission to membership therein and consents to this amendment.

(d) The amendment and the Code as amended are not designed to and will not permit or promote 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, therefore, this amendment, subject to the deletion of the specific provisions as set forth in the Order of Approval, has been approved.

For the National Industrial Recovery Board:

W. A. HARRIMAN,
Administrative Officer.

MAY 11, 1935.

AMENDED CODE OF FAIR COMPETITION FOR THE CEMENT INDUSTRY

ARTICLE I—PURPOSES

To effect the policies of Title I of the National Industrial Recovery Act, the following provisions are established as a Code of Fair Competition for the Portland Cement Industry, and shall be the standards of fair competition for such Industry, and shall be binding upon every Member thereof.

ARTICLE II—DEFINITIONS

SECTION 1. Wherever used in this Code or any supplement appertaining thereto, the terms enumerated in this Article II shall have the meanings herein defined, unless the context shall otherwise clearly indicate.

SECTION 2. The terms "President", "Act" and "N. I. R. Board" shall mean respectively the President of the United States, Title I of the National Industrial Recovery Act, and the National Industrial Recovery Board as created by Executive Order 6859 of September 27, 1934.

(a) The term "Code" shall mean the Code of Fair Competition for the Cement Industry as approved on November 27, 1933, as amended.

SECTION 3. The term "Portland Cement Industry" or "Industry" includes:

(a) The mining or quarrying of raw materials for use in the manufacture of products of the Industry and the manufacturing of products of the Industry; or

(b) The manufacturing of products of the Industry; or

(c) The original sale directly or indirectly of products of the Industry by Members of the Industry.

SECTION 4. The term "original sale" shall include, but without limitation, the sale by a Member of the Industry of products of the Industry purchased from another Member of the Industry.

SECTION 5. The term "products of the Industry" includes the following:

(a) Portland cements which comply with standard specifications or tentative standards of the American Society for Testing Materials.

(b) Modified and/or treated Portland cements.

(c) Cementitious products in which Portland cement or Portland cement clinker is an essential constituent and which are sold in competition with and used in lieu of Portland cement, excluding, however, masonry and/or bricklayers' cements marketed and/or used as such.

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

SECTION 7. The term "affiliate" means any individual, partnership, association, corporation, or other form of enterprise whose relations to a Member of the Industry are such that either one has directly or indirectly a substantial interest in the other or that a third entity or a group of stockholders has directly or indirectly a substantial interest in both or substantial control of both.

SECTION 8. The term "employee" includes anyone engaged in the Industry, in any capacity, receiving compensation for his services, irrespective of the nature or method of payment of such compensation, except a Member of the Industry.

SECTION 9. The term "employer" includes anyone engaged in the Industry by whom any such employee is compensated or employed.

SECTION 10. The term "district" means each of the geographical producing districts of products of the Industry as now or hereafter designated by the United States Bureau of Mines or other governmental agency.

SECTION 11. The term "productive capacity" shall mean the productive capacity of the Industry as determined by the United States Bureau of Mines.

SECTION 12. The term "Institute" shall mean The Cement Institute.

SECTION 13. The term "Board" shall mean the Board of Trustees of The Cement Institute.

SECTION 14. The term "plant" shall mean a Portland Cement Manufacturing Plant.

ARTICLE III—HOURS OF LABOR

MAXIMUM HOURS

SECTION 1. No employee shall be permitted to work in excess of forty (40) hours in any one (1) week or over eight (8) hours in any twenty-four (24) hour period or more than six (6) days in any seven (7) day period except as herein otherwise provided.

HOURS FOR CLERICAL AND OFFICE EMPLOYEES

SECTION 2. No person employed in clerical or office work shall be permitted to work in excess of an average of forty (40) hours per week during any five (5) week period, or more than forty-eight (48) hours in any one (1) week period.

EXCEPTIONS TO HOURS

SECTION 3. The limitations specified in Sections 1 and 2 of this Article III shall not apply to the following:

(a) Employees engaged in emergency maintenance or emergency repair work involving breakdown or protection of life or property; provided, that not less than one and one-half (1½) times the regu-

lar wage rate for any employee so employed shall be paid for all hours worked in excess of the maximum hours hereinbefore provided.

(b) Employees in packing and shipping departments; provided such employees shall not be permitted to work in excess of forty-eight (48) hours in any one (1) week; and provided further, that not less than one and one-half ($1\frac{1}{2}$) times the regular wage rate for any employee so employed shall be paid for all hours worked in excess of forty (40) hours in any one (1) week.

(c) Persons in a managerial, executive, supervisory or technical capacity and their immediate assistants (excluding skilled production workers), provided that this exception shall apply to no such employee who is paid less than at a rate of Thirty-Five Dollars (\$35.00) per week; and sales and sales service employees.

(d) Watchmen; provided such employees shall not be permitted to work in excess of fifty-six (56) hours in any seven (7) day period, or more than six (6) days in any seven (7) day period.

EMPLOYMENT BY SEVERAL EMPLOYERS

SECTION 4. No employer shall knowingly permit any employee to work for any time, which, when totaled with that already performed with another employer or employers in this Industry or any other Industry, or in any Trade, exceeds the maximum permitted herein.

ARTICLE IV—WAGES

MINIMUM WAGES

SECTION 1. Except as hereinafter provided, no employee shall be paid at less than the hourly rates specified for each of the twelve (12) geographical districts, which as now designated are set forth in Exhibit A of this Code, as follows:

| District: | <i>Minimum wage per hour (cents)</i> |
|--|--|
| No. 1. Eastern Pennsylvania, New Jersey, Maryland..... | 40 |
| No. 2. New York, Maine..... | 40 |
| No. 3. Western Pennsylvania, Ohio, West Virginia..... | 40 |
| No. 4. Michigan..... | 40 |
| No. 5. Wisconsin, Illinois, Indiana, Kentucky..... | 40 |
| (Except Jefferson and Meade Counties, Kentucky)..... | 38 |
| No. 6. Virginia, Tennessee, Alabama, Georgia, Florida, Louisiana.... | 30 |
| No. 7. Eastern Missouri, Iowa, Minnesota; South Dakota..... | 40 |
| (Except St. Louis County, Minnesota, and Ralls County, Missouri)..... | 37 |
| No. 8. Western Missouri, Nebraska, Kansas, Oklahoma, Arkansas.... | 40 |
| No. 9. Texas..... | 30 |
| No. 10. Colorado, Montana, Utah, Wyoming, Idaho..... | 40 |
| No. 11. California..... | 40 |
| No. 12. Oregon, Washington..... | 40 |

The rates of pay hereinbefore provided shall not be understood to be the maximum rates of pay for the respective districts.

HANDICAPPED PERSONS

SECTION 2. A person whose earning capacity is limited because of age, physical or mental handicap, or other infirmity, may be employed on light work at a wage below the minimum established by this

Code if the employer obtains from the state authority, designated by the United States Department of Labor, a certificate authorizing such person's employment at such wages and for such hours as shall be stated in the certificate. Such authority shall be guided by the instructions of the United States Department of Labor in issuing certificates to such persons. Each employer shall file monthly with the Code Authority a list of such persons employed by him, showing the wages paid to, and the maximum hours worked by such employees.

PIECEWORK COMPENSATION

SECTION 3. The foregoing provisions of this Article establish a minimum rate of pay regardless of whether an employee is compensated on a time rate, piece rate, or other basis.

WAGES ABOVE THE MINIMUM

SECTION 4. Adjustments of wages with respect to wages above the minimum shall be made within thirty (30) days after the effective date of this Code by each employer who has not heretofore made such adjustments since the enactment of the National Industrial Recovery Act. Such adjustments shall mean the maintenance of a differential at least as great in amount as that existing between the wage rates for such employment and the then existing minima subsequent to the date of the last adjustment made prior to this Code's approval on November 27, 1933. In no event, however, shall hourly rates of wages be reduced in making such adjustments. Within sixty (60) days after the effective date of this Code each Member of the Industry shall make a report of such adjustment, whether made prior to or subsequent to the date of approval of this Code, to the Code Authority.

PAYMENT OF WAGES

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

ARTICLE V—GENERAL LABOR PROVISIONS

CHILD LABOR

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

PROVISIONS OF THE ACT

SECTION 2. Pursuant to Subsection (a) of Section 7 of the Act, and so long as this Code shall be in effect:

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

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

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

STATE LAWS

SECTION 3. No provision in this Code shall supersede any State or Federal law which imposes on employers more stringent requirements as to age of employees, wages, hours of work, or as to safety, health, sanitary or general working conditions, or insurance, or fire protection, than are imposed by this Code. Standards for safety and for the protection of health shall be submitted by the Code Authority to the N. I. R. Board within three (3) months after the effective date of this amendment and when approved by the N. I. R. Board shall have the same effect as other provisions of this Code.

RECLASSIFICATION OF EMPLOYEES

SECTION 4. No employer shall reclassify employees or duties of occupations performed or engage in any other subterfuge so as to defeat the purposes or provisions of the Act or of this Code.

DISMISSAL FOR COMPLAINT

SECTION 5. No employer shall dismiss or demote any employee for making a complaint or giving evidence with respect to an alleged violation of the provisions of any Code of Fair Competition approved under Title I of the Act.

POSTING

SECTION 6. All employers shall post and keep posted copies 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 N. I. R. Board.

COMPANY TOWNS AND STORES

SECTION 7. Employees other than maintenance or supervisory men, or packers, or those necessary to protect property, may not be required

as a condition of employment to live in houses rented from or specified by the employer. No employee shall be required as a condition of employment to trade at a store owned or specified by an employer.

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

ADMINISTRATION

SECTION 1. A Code Authority is hereby constituted to cooperate with the N. I. R. Board in the administration of this Code, 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.

SECTION 2. The Code Authority shall be the general planning, coordinating, and administering agency of this Code and shall operate in accordance with the provisions of this Code and pursuant to by-laws adopted thereunder.

ORGANIZATION AND CONSTITUTION

SECTION 3. The Code Authority shall consist of not more than ten (10) members to be selected as follows:

(a) Seven (7) members, with one (1) vote each, shall be elected by the Board, one (1) of whom shall be designated to serve as the chairman.

(b) Not more than three (3) members without vote and without compensation from the Industry may be appointed by the N. I. R. Board.

SECTION 4. The Institute shall:

(a) Impose no inequitable restrictions on membership.

(b) Submit to the N. I. R. Board true copies of its articles of association, by-laws, rules and regulations any amendments when made thereto, together with any other information relating to membership, organization and activities as the N. I. R. Board may deem necessary to effectuate the purposes of the Act.

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

SECTION 6. In order that the Code Authority shall at all times be truly representative of the Industry and in other respects comply with the provisions of the Act, the N. I. R. Board may prescribe such hearings as it may deem proper, and thereafter if it shall find that the Code Authority is not truly representative or does not in other respects comply with the provisions of the Act, it may require an appropriate modification of the Code Authority.

SECTION 7. If the N. I. R. Board shall at any time determine that any action of the Code Authority or any agency thereof may be unfair or unjust or contrary to the public interest, the N. I. R. Board may require that such action be suspended to afford an opportunity

for investigation of the merits of such action and further consideration by such Code Authority or agency pending final action which shall not be effective unless the N. I. R. Board approves or unless it shall fail to disapprove after thirty (30) days notice to it of intention to proceed with such action in its original or modified form.

SECTION 8. Any Member of the Industry shall be entitled to participate in and share the benefits of the activities of the Code Authority, and to participate in the selection of the members thereof by complying with the requirements of this Code and by paying his reasonable share of the expenses of its administration. The reasonable share of expenses of administration shall be determined by the Code Authority subject to review by the N. I. R. Board on the basis of volume of business and/or such other factors as may be deemed equitable to be taken into consideration.

SECTION 9. No member of the Code Authority or of any committee designated by it shall participate in a proceeding in which he or it is interested, either as complainant or as respondent, or in which he or it is in any other manner directly interested.

POWERS AND DUTIES

SECTION 10. Subject to such rules and regulations as may be issued by the N. I. R. Board to the extent permitted by the Act, the Code Authority shall have the following powers and duties, in addition to those authorized by other provisions of this Code:

(a) To obtain from Members of the Industry, through a disinterested agency, such information and reports as are required for the administration of this Code. In addition to information required to be submitted to the Code Authority, Members of the Industry subject to this Code shall furnish such statistical information as the N. I. R. Board may deem necessary for the purposes recited in Section 3 (a) of the Act to such Federal and State agencies as it 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 Member of the Industry or any other party except to such other governmental agencies as may be directed by the N. I. R. Board, and except as may be required by any provision of this Code.

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

(c) Upon complaint of interested parties, upon request of the N. I. R. Board, or upon its own initiative, to make such inquiry and investigation as to the operation and observance of this Code as may be necessary and report the results thereof to the N. I. R. Board for such action by it as may be in accordance with law.

(d) To provide appropriate facilities for arbitration, and subject to the approval of the N. I. R. Board, to prescribe rules of procedure and rules to effect compliance with awards and determinations.

(e) To call meetings of Members of the Industry to consider further trade practice provisions to govern Members of the Industry in their relations with each other or with other industries, measures for industrial planning, measures for control of production, measures for stabilization of employment and conservation of natural resources, as the Code Authority shall consider to be for the best interests of the Industry, and to recommend to the N. I. R. Board such measures as have been voluntarily agreed upon, such recommended measures, upon approval by the N. I. R. Board, after such notice and hearing as it may prescribe, to have the same effect as other provisions of this Code.

(f) To prepare and submit to the N. I. R. Board for approval a standard method or system of uniform cost accounting which shall specify all items and include all elements of manufacturers' cost. Nothing contained herein 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. Thereafter, each Member of the Industry shall utilize such methods to the extent found practicable.

(g) Any interested party shall have the right to complain to the Code Authority under such rules and regulations as it may prescribe in respect of any rule, regulation, order or finding made or course of action pursued by the Code Authority, and any interested party shall have the right to appeal to the N. I. R. Board under such rules and regulations as it may prescribe in respect to any decision, rule, regulation or course of action of the Code Authority, pursuant to any provision of this Code.

SECTION 11. Each Member of the Industry shall keep such accurate and complete records of its transactions in the Industry as may be necessary to show compliance with the provisions of this Code, and shall furnish accurate reports based upon such records concerning any of its activities when required by the Code Authority or the N. I. R. Board. If the Code Authority or the N. I. R. 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 N. I. R. 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 12. No Member shall furnish any information required by any provision of this Code which is inaccurate or misleading in any material particular.

ARTICLE VII—LIQUIDATED DAMAGE AGREEMENT

SECTION 1. Recognizing that violation of any provision of this Code by a Member of the Industry will disrupt the normal course of fair competition in the Industry and cause serious damage to other Members of the Industry, and that it will be impossible to determine ac-

curately the amount of such damage to any Member or Members of the Industry, it is hereby provided that any Member of the Industry may enter into an agreement with any other Member or Members of the Industry providing for the payment of liquidated damages by any party thereto upon violation by him of any provision of the Code; provided, however, that such agreement shall become effective and binding upon the parties thereto only after the execution thereof shall have received the consent of the National Recovery Administration. It is further provided that Members of the Industry desiring to do so may enter into a contract substantially in the form of Exhibit "D" appended to this Code.

SECTION 2. Violation of such a contract shall not in any sense be deemed a violation of this Code within the purview of Sections 3 (b), 3 (c), and 3 (f) or other provisions of the Act. Rather, it is intended in this Article that the force and effect of said contract will be derived from the individual and private action of the parties and not from any provision of this Code or of the Act, or of any rules and regulations prescribed pursuant thereto.

ARTICLE VIII—OPEN PRICE FILING

SECTION 1. Each Member of the Industry shall file with a confidential and disinterested agent of the Code Authority identified lists of all of his prices, discounts, 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 products of the Industry as are sold or offered for sale by said Member. Said price terms shall in the first instance be filed within five (5) days after the date of approval of this Code, and Members of the Industry shall make the same public by broadcast quotations to the trade, so that competitors, the trade, and the buying public may at all times have accurate information relative thereto. Any Member of the Industry may from time to time change or revise his price terms by filing such revised price terms with the agent of the Code Authority. Immediately upon receipt thereof, said agent shall, by telegraph or other means which is equally as prompt as the method used by the filer, acknowledge receipt thereof. The agent of the Code Authority shall with equal promptness notify all interested Members of the Industry of such revisions and the operative dates thereof by such means as the Code Authority deems necessary. Said lists or revisions or any part thereof shall not be made available to any Member of the Industry or customers until released to all interested Members of the Industry.

SECTION 2. No Member of the Industry shall anticipate by quotation, sale, contract, or otherwise, any change or revision of price terms until the same shall have been on file five (5) days at the office of the confidential, disinterested agent of the Code Authority. At the expiration of such five (5) day filing period the said changes or revisions shall become operative and such fifth day from the date the filing is received at the office of the Code Authority's agent shall be known as the "operative date." Such changes or revisions shall be made public by broadcast quotations to the trade in the manner provided in Section 1 hereof but not prior to the operative

date. When any Member of the Industry has filed any revision such Member shall not file a higher price within five (5) days. Prices on file with the confidential, disinterested agent of the Code Authority shall be made available for inspection by any customers of Members of this Industry at the office of the Code Authority's agent and shall be disseminated to customers who have applied therefor and have offered to defray the cost actually incurred by the Code Authority in the preparation and distribution thereof. The Code Authority's agent 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 N. I. R. Board. Upon request the Code Authority's agent shall furnish the N. I. R. Board or any duly designated agent copies of any such lists or revisions of price terms.

SECTION 3. No Member of the Industry shall sell or offer to sell any products of the Industry, for which price terms have been filed pursuant to the provisions of this Article, except in accordance with such price terms; provided, however, that any Member of the Industry may meet the revised price terms of another Member, established by the above method, as of their operative date and period, and all Members meeting such revised price terms shall make the same public by broadcast quotations to the trade and shall notify the Code Authority's agent that they are meeting such price terms.

SECTION 4. 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.

SECTION 5. Manner of Procedure on Price Changes:

DECLINES IN PRICE

(a) Filed revised prices resulting in price declines shall be retroactive on all shipments made within five (5) calendar days before the operative date thereof, and for such shipments a Member of the Industry shall issue new invoices on the basis of the new filed price as soon as such revisions become operative.

ADVANCES IN PRICE

(b) Filed revised prices resulting in price advances shall be made effective to the trade five (5) calendar days after the operative date. During the five (5) days prior to the effective date of an advance, current market orders may be booked at the prior price for shipment not more than fifteen (15) days from the date the advance becomes effective.

(c) Each specific work quotation shall contain a provision permitting withdrawal on five (5) days' notice.

(d) After an advance in price all outstanding quotations on work for which bids have been opened, which quotations extend longer than fifteen (15) days from the effective date of the new price, shall be withdrawn or revised to expire on such fifteenth day.

(e) All quotations at the prior price, made during the five (5) day notice period shall be confined to jobs on which bids are to be opened prior to ten (10) days from the effective date of the new price. Such quotations may be closed by contract not later than fifteen (15) days from the effective date of the new price.

(f) All quotations outstanding on jobs on which bids are to be opened later than ten (10) days from the effective date of the new price shall be withdrawn, and any quotations made on such jobs during the five (5) day notice period shall be at the new price.

CONTRACTS

SECTION 6. Nothing in this Code shall prevent a Member of the Industry from selling products of the Industry in accordance with the terms of a legally binding contract provided the conditions of this Article VIII are complied with. The provisions of Sections 6, 7, 8 and 9 of this Article VIII shall apply only to specific sales orders and specific sales contracts.

(a) No Member of the Industry may make a contract or order to sell products of the Industry or sell pursuant to such a contract or order unless such contract or order contains a definite and accurate statement of all items necessary to form a complete legally binding contract or order, such as price, terms of payment, quantity, place of delivery, effective period of contract or order, name of purchaser, name of user and a complete description of the work.

(b) No contract or order for sale of products of the Industry shall contain any provision which would require a Member of the Industry to do any act in violation of this Code.

FILING OF CONTRACTS

SECTION 7. Every Member of the Industry shall file with an agent of the Code Authority a copy of every contract or order by which he sells or undertakes to sell products of the Industry. The agent of the Code Authority shall maintain a file of such contracts or orders which shall be open to the inspection of interested Members of the Industry in accordance with such rules and regulations as may from time to time be provided by the Code Authority with the approval of the N. I. R. Board. Each contract or order so filed shall contain or be accompanied by a statement of the nature and quantity of products involved and a complete statement of all price terms included therein, as provided in Section 6, Subsection (a) of this Article VIII. Each such contract or order which is made on or after the effective date of this amended Code shall be so filed within five (5) days from the date of execution thereof. Each outstanding contract or order which is in effect on the effective date of this amended Code shall be so filed within ten (10) days from the effective date of this amended Code, and shall be accompanied by a statement indicating the quantity of products specified therein which remains undelivered. The filing of other than bona fide contracts or orders will constitute a violation of this Code. Upon receipt of such filed orders or contracts the agent of the Code Authority shall send digests thereof to all interested Members of the Industry.

NOTICE OF COMPLETION

SECTION 8. Each Member of the Industry shall notify the agent of the Code Authority of the completion of each such contract or order within ten (10) days after the date of such completion.

EXTENSION

SECTION 9. No contract or order shall constitute a defense to any charge alleging violation of this Code if the effective period thereof is extended or if there is any substantial overshipment thereunder. Nothing in this Article shall prevent any Member from making a new contract or order with any person provided the terms thereof are not in violation of the terms of this Code or amendments hereto which are in effect at the time of making such contract or order, and provided further that a copy of such new contract or order is filed as provided in this Article. For the purpose of this Article every revision, modification, renewal or extension of any contract or order shall constitute a "new contract".

ARTICLE IX—TRADE PRACTICES

SECTION 1. The following trade practices are specifically declared to constitute unfair methods of competition between Members of the Industry, and no Member of the Industry shall use or engage in any of them, either directly or indirectly, through any officer, agent, affiliate or employee. Engaging in any one or more of these or any further trade practice provisions which hereafter may be established as unfair, on recommendation by the Code Authority approved by the N. I. R. Board after such hearings as it may prescribe, shall be deemed to be in violation of this Code.

SECTION 2. No Member of the Industry shall give, permit to be given, or directly 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 commercial bribery provision shall not be construed to prohibit free and general distribution of articles commonly used for advertising except so far as such articles are actually used for commercial bribery as hereinabove defined.

SECTION 3. Imitating or simulating any design, style, mark or brand owned by any other Member of the Industry, provided that nothing herein shall prevent any Member from using any design, style, mark or brand with the consent of the owner.

SECTION 4. Modifying or cancelling in whole or in part, or permitting the modification or cancellation in whole or in part, of any contract of sale of any product for the purpose or having the effect of effectuating a new contract with the buyer when the effect of such modification or cancellation is to create an advantage in price terms for a Member of the Industry or to violate any provision of this Code.

SECTION 5. Knowingly inducing or attempting to induce the breach of any existing contract (including specific sales orders) between any other Member of the Industry and his customer or his source of supply; or interfering with or obstructing in any manner the per-

formance of contractual duties or services between a Member of the Industry and his customer.

SECTION 6. Knowingly selling or offering to sell products of Industry for specific projects or period requirements to a purchaser with whom another Member of the Industry has a contract to furnish products of the Industry for the same requirements without first having taken the following steps: (a) Filing with the Code Authority proof that he has been requested by the customer to furnish such products for such requirements, and (b) notifying said other Member of the Industry of his intention to sell products to such purchaser.

SECTION 7. Disseminating, publishing or circulating any false or misleading information relative to any product or price for any product of any Member of the Industry, or the credit standing or ability of any Member of the Industry to mine or quarry raw materials, or manufacture or sell or deliver products of the Industry.

SECTION 8. No Member of the Industry shall knowingly withhold from or insert in any quotation, contract, or invoice, any statement, the withholding or insertion of which makes such quotation, contract or invoice inaccurate in any material particular.

SECTION 9. Making any sale or contract of sale of any product of the Industry under any description which does not fully describe such product in the nomenclature customarily used in the Industry.

SECTION 10. Secretly paying or allowing rebates, refunds, commissions, credits, unearned discounts, excess allowances, special services or privileges, whether in the form of money or otherwise, to certain purchasers which are not extended to all purchasers under similar circumstances for the purposes of influencing a sale.

SECTION 11. Permitting, directly, or indirectly, the consummation of any sale made with the intent, or having the effect, of violating the provisions of the Act and of this Code.

SECTION 12. Aiding or abetting any person, firm, association or corporation, directly or indirectly, in any practice which would tend to defeat the provisions of the Act and of this Code.

SECTION 13. To compensate salesmen in any manner other than upon a fixed salary and full-time basis. To pay or offer to pay directly or indirectly any commissions or other remunerations for the sale of cement except as provided herein.

SECTION 14. To divert or permit the diversion of shipments of cement, the effect of which will be to enable a purchaser or user to secure cement at variance from the Member of Industry's filed price terms for the point of final destination.

SECTION 15. The prepayment of transportation charges on shipments consigned to other than the Member of the Industry itself (except in the case of railroad freight charges to stations to which regulations require prepayment from any shipping point) or the payment of demurrage charges by any Member of the Industry on such shipments; provided, however, that the foregoing provision, except as to demurrage charges, shall not apply to shipments purchased directly by and consigned to departments of the United States or State Governments.

SECTION 16. Knowingly diverting or permitting to be diverted to other uses, cement shipped for a specific work project or knowingly shipping on a specific sales order or contract an amount of cement in excess of the actual needs of such work.

SECTION 17. To entice the employees of a competitor with the intent or effect of interfering with the conduct of the business of such competitor; provided that nothing herein shall be construed to prevent any employee from voluntarily changing his employment in order to better his condition.

SECTION 18. Knowingly to ship cement by any transportation agency which makes payments or concessions by rebates or otherwise for the purpose or with the effect of inducing or influencing the sale or purchase of cement.

SECTION 19. The payment, or offer to make payment, directly or indirectly, of any advertising expenses of purchasers or users of cement.

SECTION 20. Lavish, excessive, or undignified entertainment of purchasers or users of cement, or others connected therewith; donating funds, or providing banquets or other similar lavish entertainment for purchasers or users, or associations thereof; giving or offering to give premiums, personal gifts, gifts of cement, or gifts of any other commodity of value to purchasers or users of cement.

SECTION 21. Selling or offering to sell a non-Industry product together with an Industry product when the combined price for the two products is less than the applicable filed price for the Industry product, plus invoice cost (including transportation costs) for the non-Industry product, or the filed price for this non-Industry product by a Member of this Industry who is also a Member of the Industry of which this non-Industry product is an Industry product, for the purpose or having the effect of influencing or inducing the sale of products of the Industry and thereby creating an unfair price advantage for a Member of the Industry.

SECTION 22. The furnishing of articles or facilities of a definite physical nature, whether by way of loan, lease, gift, or otherwise, without commensurate consideration therefor. (Services to purchasers or users are proper under fair competition, if confined within the limits of advice and consultation.)

SECTION 23. Maliciously refusing to sell to, or maliciously interfering with the business of, dealers or users of products of the Industry purchased from a competitor, for the purpose of interfering with the conduct of the business of such competitor.

SECTION 24. Filing or agreeing to file new price terms or making or agreeing to make any new or special price, or prices, or terms, on Industry or other products, as a condition or in consideration of the receipt or placement of an order for any product of the Industry.

SECTION 25. Using any subterfuge, either in collusion with an affiliate or otherwise, for the purpose or with the effect of evading or violating the provisions of the Act or of this Code; or engaging in a transaction involving, or being a party to a sale influenced by any act performed by an affiliate or otherwise, which act if performed by such Member of the Industry would be a violation of this Code.

SECTION 26. The direct or indirect giving, permitting to be given, or offering of money or anything of value by a Member of Industry, or his agents, employees, salesmen, or representatives, to the agents, employees, buyers or representatives of customers or prospective customers, or to the customers themselves, for the purpose of inducing such customers, or their agents, employees, buyers or representatives,

to purchase or contract to purchase products from the Member of Industry making such gift, or suffering the same to be made, or to refrain from dealing or contracting to deal with competing Members of Industry.

SECTION 27. The following practices, undertaken for the purpose or with the effect, directly or indirectly, of furthering the sale or use of a particular brand of cement shall constitute unfair trade practices and a violation of this Code:

(a) Except with the approval of the N. I. R. Board (which, when given, shall apply to all Members of the Industry in the marketing area affected) the purchase by any Member of the Industry of bonds or other securities, issued for the financing of construction work, either in the name of the Member of the Industry, its subsidiaries, or of individuals, or officers connected therewith, or the acceptance of such bonds, or other securities, in payment, wholly or in part, for cement, or the advance, loan, or payment of any monies by a Member of the Industry for the purpose of inducing the purchase of cement, or to assume cost of bidders' bonds or to endorse or guarantee or in any way relieve a bidder of the responsibility for or the expense of providing such bonds.

(b) For a Member of Industry to maintain or utilize any business relationship with any purchaser or user of the products of this Industry, whether or not such purchaser or user is an affiliate, a member of another Industry, or any individual, partnership, corporation, association or other form of enterprise for the purpose or with the effect of violating any provisions of the Act or of this Code.

(c) For the purpose or with the effect of evading the provisions of this Code, the purchase of fuel or supplies, either directly or indirectly, or in the name of the company, or its subsidiaries, or of individuals, or officers connected therewith at prices above the market price thereof at the time of purchase.

ARTICLE X—METHOD OF SELLING AND MARKETING CEMENT

SECTION 1. Because of inherent varying conditions in the several widely separated marketing areas throughout the United States, the Code Authority may submit recommendations to the N. I. R. Board for such exceptions to any of the provisions hereof, for all Members of the Industry in the marketing areas affected, as to it may seem appropriate or necessary to better effectuate the purposes and provisions of this Code.

SECTION 2. No Member of the Industry shall discriminate in prices, terms and conditions of sale at the same time and place of delivery between purchasers or users of cement in the same class and similarly situated.

SECTION 3. The products of this Industry shall be marketed on the basis of a barrel weighing three hundred and seventy-six (376) pounds net; unless a different weight shall have been filed with the Code Authority, and shall be delivered in the following manner:

(a) In cloth or paper sacks; four (4) sacks of ninety-four (94) pounds net each constitute a barrel, unless a different weight shall have been filed with the Code Authority's agent and printed on the container.

(b) In bulk invoiced on the basis of scale weights at point of origin or enroute or nearest track scales enroute from point of origin.

(1) Settlement on carload shipments of bulk cement shall be on track scale weights of carriers unless the consignee proves by notation on freight bill by railroad agent as to fact and extent of shortage occurring on some particular car and only in that case providing that claim for shortage is made within fifteen (15) days after the arrival of such car at destination.

(2) When grain doors, bulkheads or boards are used to protect shipments of bulk cement, the weight of such dunnage shall be considered as a part of the tare weight of the car.

SECTION 4. Cement shall be sold either on current or market orders for delivery within fifteen (15) days, or on orders or contracts for future delivery beyond fifteen (15) days. Quotations on current orders shall be for immediate acceptance, and orders for delivery within fifteen (15) days shall be subject to shipment on the fifteenth day without notice to the buyer.

SECTION 5. Orders or contracts for future delivery beyond fifteen (15) days from date of purchase shall be sold either to cover period requirements or specific work.

SECTION 6. Exhibits B and C attached to this Code are designed and suggested for use in closing commitments for the delivery of cement beyond fifteen (15) days from date of purchase for specific work or period requirements. Exhibit B (specific sales *order*) should be executed where a sale is made by a Member of this Industry to a dealer, and Exhibit C (specific sales *contract*) should be executed:

(a) To cover unfinished commitments with dealers under Exhibit B in event of an increase in the market price.

(b) To cover new commitments with dealers at prices prior to an advance, but closed during the period immediately following the advance. Such contracts shall be supported by dealer's record of prior deliveries and contractor's written estimate of requirements.

(c) To cover initially all direct sales by Members of this Industry for delivery beyond fifteen (15) days.

SECTION 7. *Time of Closing Calendar Requirement Contracts.*—Contracts for any quarter shall be quoted or closed not earlier than the first day of the last month of the preceding quarter.

SECTION 8. Where land grant or other special freight rates are applicable to shipments to the United States Government, a Member of the Industry may file with the Code Authority in the manner prescribed for prices under Article VIII, destination costs to the United States Government computed on such rates. Any Member of the Industry may meet destination costs thus established, as of their operative date.¹

SECTION 9. To prevent diversions of cement prohibited by this Code and to insure the broadest field of active competition for all cement business offered, cement shall not be quoted or sold in quantities or for points of delivery which are not definitely specified.

SECTION 10. The provisions of this Article are designed to meet present industrial and social conditions as they relate to the Portland Cement Industry; but the N. I. R. Board reserves the right, from time

¹ See paragraph 2 (1) of order approving this Amendment.

to time and after such hearing as may be deemed necessary, to modify the provisions hereof, as conditions and circumstances may indicate to be necessary to effectuate the policy and provisions of the Act.

ARTICLE XI—TERMS AND CONDITIONS OF SALE

SECTION 1. All future sales orders and future sales contracts for the sale of products of the Industry shall contain a definite statement of price, quantities, terms of payment, time and place of delivery, and all other terms of sale necessary to form a complete and unambiguous contract.

SECTION 2. Attached hereto and marked Exhibits B and C are forms of future specific sales orders, and contracts, the provisions, terms and conditions of which have been agreed to by Members of the Industry as representing in substance the best practices within the Industry.

SECTION 3. Terms of payment shall be as follows: A cash discount of not in excess of ten cents (10¢) per barrel may be deducted from invoices paid in full within fifteen (15) days from date of issue. A cash discount of not in excess of twenty cents (20¢) per barrel may be deducted from invoices for White Portland cement paid in full within fifteen (15) days from date of issue. Invoices not discounted are payable net thirty (30) days from date of issue.

(a) Where purchases involve frequent shipments, a plan of semi-monthly remittance, based on a fifteen (15) day average, may be used as follows:

All invoices dated from first day of month to fifteenth day of month, inclusive, to be paid by the 22nd of that month; and all invoices dated 16th to 31st, inclusive, to be paid by the 7th day of the following month.

(b) Cash discount shall not be allowed if remittance is forwarded after the expiration of the fifteen (15) day period, or semimonthly period; or if deduction is made in the remittance for cloth sacks to be returned or in transit and not yet credited; or if the remittance consists in whole or in part of notes, trade acceptances, scrip, warrants (whether interest bearing or not) or any medium other than cash or bankable check for the full amount of the invoices upon which cash discount is deducted.

(c) The postmark date at point of mailing shall determine the date of remittance.

(d) No unearned discounts shall be allowed.

SECTION 4. Package Charges and Allowances

(a) When cement is shipped in cloth or paper sacks the price shall include the Member of the Industry's published deposit or leasing charges for cloth sacks or the selling charge for paper sacks and payment of such charges shall be required at the same time as the cement.

(b) When used cloth sacks are returned empty to the Member of the Industry the credit or allowance shall at all times be in accordance with the Member's published terms and conditions of sale.

INVOICES

SECTION 5. Invoices shall be dated as of the date of shipment (provided where special and unusual conditions prevail, the Members of the Industry in the district or districts concerned, may, subject to the

approval of the Code Authority and the N. I. R. Board, change this provision to conform to such special and unusual conditions) and shall contain full information as to price, quantity, kind of package, terms of payment, place of deliveries, routing, amount of freight allowed, and any other data necessary to show fully all conditions entering into the sale. Any deviation or concession from these conditions is an unfair practice.

ARTICLE XII—STANDARDIZATION OF PRODUCTS

SECTION 1. All Portland cement marketed by Members of the Industry shall comply with the standard specifications and/or tentative standards for Portland cement of the American Society for Testing Materials, and/or the American Standards Association, and/or the Federal Specification Board. Members of the Industry may sell "Products of the Industry" other than Portland cement under specifications that are designed to meet special or unusual conditions not adequately or properly covered by the specifications hereinabove referred to; provided, however, that the price at which such "Products of the Industry" are sold shall be filed with the Code Authority in accordance with Article VIII.

SECTION 2. Every Member of the Industry shall guarantee his products to comply with all of the conditions of the specifications under which they are sold, but shall not be responsible for the improper use of cements and therefore shall not guarantee finished work, nor shall the Member of the Industry be responsible for conditions of product after delivery.

SECTION 3. No Member of the Industry shall pay or absorb, directly or indirectly, any charges for inspection or tests made by or on behalf of the purchaser to determine compliance with specifications therefor.

ARTICLE XIII—EXPORT TRADE

Nothing in this Code contained, excepting, however, the wage, hour and general labor provisions, shall be deemed to apply to or affect the sale by any Member of the Industry of any products of the Industry for direct shipment in export trade.

ARTICLE XIV—MODIFICATIONS

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

SECTION 2. Except as to the provisions required by the Act, this Code may be modified on the basis of experience or changes in circumstances, such modifications to be based upon application to the N. I. R. Board, on such notice and hearing as it shall specify and to become effective on approval by the President.

ARTICLE XV

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

ARTICLE XVI

This Code as amended shall become effective on the tenth (10th) day after the date of its approval by the N. I. R. Board and shall then supersede the Code of Fair Competition for the Cement Industry approved by the President November 27, 1933.

ARTICLE XVII

By presenting this Code, The Cement Institute and others assenting hereto do not thereby consent to any modification thereof and they reserve the right to object individually or jointly to any such modifications except as may be made in Article X pursuant to Section 10 thereof.²

Approved Code No. 128—Amendment No. 1.
Registry No. 1010-1-02.

² Deleted—See paragraph 2 (2) of order approving this Amendment.

EXHIBIT A

Districts

The twelve (12) geographical districts as described by the United States Bureau of Mines are as follows:

- District No. 1—Eastern Pennsylvania, New Jersey, Maryland.
- No. 2—New York, Maine.
- No. 3—Western Pennsylvania, Ohio, West Virginia.
- No. 4—Michigan.
- No. 5—Wisconsin, Illinois, Indiana, Kentucky.
- No. 6—Virginia, Tennessee, Alabama, Georgia, Florida, Louisiana.
- No. 7—Eastern Missouri, Iowa, Minnesota, South Dakota.
- No. 8—Western Missouri, Nebraska, Kansas, Oklahoma, Arkansas.
- No. 9—Texas.
- No. 10—Colorado, Montana, Utah, Wyoming, Idaho.
- No. 11—California.
- No. 12—Oregon, Washington.

EXHIBIT B

(Specific Sales Order)

To -----
Name and Address of Cement Company -----
We have sold to ----- Contractor -----
Barrels of (Brand) ----- Portland Cement for -----
(Fraction or all)

of his requirements on the following specific work awarded him:

(Character, description and location of work, and name of owner)

We hereby place with you our order for the above quantity of (Brand) -----
Portland cement, to be packed in -----
sacks, for use on the above work, at your prevailing market price at time of
shipment, subject to the conditions stated on both sides hereof.

We will desire delivery made, as the work requires, upon our instructions
in carload lots, F. O. B. cars -----, deliveries to be complete
prior to -----.

It is expressly understood and agreed:

1. That if you advance your market price prior to the completion of ship-
ments on this order, you will, within ten (10) days of the effective date of
such advance, enter into your standard form of specific work contract with
us, at the price prior to such advance, for the quantity of cement that may at
that date be required for the completion of the work covered by this order.

2. That as a basis for such specific work contract, we will supply you with
our record of cement delivered to the contractor prior to the time of your
advance in price, together with a written estimate from the contractor, or a
responsible employee of the contractor, of the quantity of cement then required
to complete the work.

Signed: -----
Date: -----

Accepted: -----
----- Cement Company.

(Officer)

Date: -----

Terms of Payment. On approved credit net cash thirty (30) days, from
date of invoice, or ten cents (10¢) per barrel discount for cash in fifteen (15)
days from date of invoice.

If at any time the financial responsibility of Buyer becomes impaired or
unsatisfactory to Seller, it reserves the right to require payments in advance
or satisfactory security or guarantee that invoices will be promptly paid when
due.

If Buyer fails to comply with terms of payment, or with any of the other
terms of sale, Seller reserves the right to cancel unfilled portion of this order,
without notice, Buyer remaining liable for all unpaid accounts. No waiver of
such right shall be implied from any failure by Seller to exercise the same.

Package.—Cloth sacks bearing Seller's brands, in which cement herein con-
tracted for is packed, are the property of Seller and are for a period of ninety
(90) days from the delivery by Seller of the said cement, leased by it to Buyer
at a charge of ten cents (10¢) each, which charge is included in price for cement
packed in cloth sacks and which charge Buyer agrees to pay at same time and
on same terms as payment for cement is made.

Buyer agrees within ninety (90) days of delivery of the cement to return to
Seller, the owner, at its nearest plant, freight charges collect, as provided by
railroad classifications and tariffs, properly bundled and so marked as to insure
complete identification, the cloth sacks bearing Seller's brands, in which the said
cement is packed, and Seller agrees to refund to Buyer ten cents (10¢) for each
said cloth sack so delivered in good condition, subject to Seller's count and in-

spection, and to assume freight charges thereon. If for any reason freight charges (per railroad tariffs) are prepaid, they will be refunded by Seller upon presentation of Railroad Company's receipted freight bill or bill of lading.

For useless cloth sacks which have been wet, no refund will be made. Cloth sacks bearing other than Seller's brands will be held by Seller for thirty (30) days subject to Buyer's order.

In the event that any of the said empty cloth sacks bearing Seller's brands are sold or otherwise disposed of by Buyer to any person other than Seller, the owner, Buyer agrees to pay Seller, as liquidated damages, ten cents (10¢) for each sack so sold or disposed of.

If during the life of this order, Seller shall change its present charge for the lease of cloth sacks, or the liquidated damages, or both, it is expressly agreed that the said amount or amounts in the preceding paragraphs shall be changed accordingly, and the gross price specified herein for cement packed in cloth sacks shall be changed in accordance with the change in charge for lease of cloth sacks.

Price on cement packed in paper bags includes the paper bags, which are not returnable. Shipments in paper bags are made at Buyer's risk of breakage and resultant loss of cement.

(If cement company requires a deposit for cloth sacks, instead of leasing them, then the following clauses are suggested) :

Package.—The cloth sacks, bearing Seller's brand, containing the cement are not sold, but remain the property of Seller. Buyer agrees to return said cloth sacks, properly bundled and marked so as to insure complete identification, to Seller's nearest mill, within ninety (90) days from the date of the delivery of the cement to Buyer.

Seller agrees to refund to Buyer the deposit of ten cents (10¢) for each cloth sack so returned. This deposit has been included in the price herein stated and Buyer agrees to include it when payment for the cement is made.

It is, however, expressly understood that such cloth sacks must be delivered to Seller's mill in good condition and will be subject to mill count and inspection, and that no refund will be made for useless cloth sacks, nor for cloth sacks not of Seller's brand. Such cloth sacks, if received, will be held by Seller for thirty (30) days subject to Buyer's order and risk.

Seller agrees to pay carrier's freight charges on returned empty cloth sacks of Seller's brand after delivery to its nearest mill or to refund Buyer for freight charges prepaid on such shipments upon presentation of original bill of lading properly executed or original receipted freight bill.

If Seller shall change its present deposit required for cloth sacks, it is expressly agreed that the said amounts in the preceding paragraphs shall be changed accordingly and the gross price specified herein for cement packed in cloth sacks shall be changed in accordance with the change of deposit required.

Price on cement packed in paper bags includes the paper bags which are not returnable. Shipments in paper bags are made at Buyer's risk of breakage and resultant loss of cement.

Bulk cement.—Bulk cement shall be invoiced and paid for on basis of scale weights at point of origin or on railroad track scales, nearest point of origin, while enroute. Original weights shall be final basis of settlement unless buyer proves by notation on freight bill by railroad agent the fact and extent of such shortage occurring in any particular car and only in that case providing that claim for such shortage is made within fifteen (15) days after arrival of such car at destination.

When grain doors, bulkheads or boards are used to protect shipments of bulk cement, the weight of such dunnage shall be considered as part of the tare weight of the car.

Claims.—Claims for loss or damage will not be considered unless supported by seal record and railroad agent's acknowledgment on freight bill. Freight overcharge claims must be accompanied by original receipted freight bill.

Time of delivery.—Buyer shall give Seller shipping instructions in writing a reasonable time before shipments are to be made. If Buyer fails to order shipment within the time specified Seller shall have the right to extend the time for delivery of such cement, but shall not be obligated to do so, except at its option.

The Seller reserves the right to select the route and method by which shipments shall be forwarded, but no Seller can be required to favor any one route or method of transportation as against another by any joint action of the Members of the Industry or the Code Authority. Transportation charges

per tariff applying from shipping point to place of delivery for route and method of shipment used, will be paid by the Buyer for the account of the Seller.

Seller shall not be liable to Buyer for any delays in manufacturing, shipping, or delivering said cement, caused by fire, strikes, lockouts, differences with workmen, accidents, war, insurrection, inability to secure cars, coal, or other material, governmental interference or regulation, delays in transportation or contingencies beyond Seller's control; and during the time of such delays Seller shall have the right to prorate among its various customers such cement as it may be able to manufacture and ship.

Seller shall have the right, but shall not be obligated to ship from any plant other than the one normally supplying the delivery point specified herein.

Specifications.—The cement shipped under this order shall conform to the present standard specifications for Portland cement of the American Society for Testing Materials and the American Standards Association and/or the Federal Specification Board, and no other warranty is made in respect thereof. Seller having no control over the use of cement will not, therefore, guarantee finished work in which it is used, nor shall the Seller be responsible for the condition of cement after delivery to Buyer. Any charges incident to inspection or tests made by or on behalf of Buyer to determine compliance with specifications shall be paid by Buyer.

EXHIBIT C

(Specific Sales Contract)

Agreement made this _____ day of _____ 193____ between
 _____ Cement Company, hereinafter called
 Seller and _____ of _____,
 hereinafter called Buyer :

Seller hereby sells and agrees to furnish and deliver and Buyer hereby buys
 and agrees to receive and pay for Portland Cement in the quantity and on the
 terms and conditions hereinafter and on the back hereof set forth.

QUANTITY: (Brand) _____ Barrels

DESCRIPTION:

| | |
|-------------------------|--------------------------------|
| _____ | _____ |
| Name and Nature of Work | Name and Address of Owner |
| _____ | _____ |
| Location of Work | Name and Address of Contractor |

The purpose of this contract is to cover the purchase and sale of _____
 _____ the Portland Cement required to complete the work
 (Fraction or all)

hereinbefore described, whether more or less than the quantity stated herein.

Buyer represents that the aforesaid number of barrels of cement will be
 used in the construction of the above-described work and agrees that no portion
 of such cement will be used for any other purpose without the written con-
 sent of Seller. If any of the cement shipped hereunder is reconsigned or
 diverted by Buyer from the place of delivery specified herein or used for any
 other purpose, Seller may cancel this contract and refuse to ship any more
 cement and Buyer agrees to pay Seller's market price at the place of final destina-
 tion for such cement as has been diverted by Buyer from the place of delivery
 specified herein or has been used by Buyer for any other purpose than the
 purpose above specified ; Buyer remaining liable for all unpaid accounts.

Place of delivery.—F. O. B. _____

Time of delivery.—Prior to _____

as required by the progress of the work. Buyer shall give Seller shipping instruc-
 tions in writing a reasonable time before shipments are to be made. If Buyer
 fails to order shipment within the time specified Seller shall have the right
 to extend the time for delivery of such cement, but shall not be obligated to
 do so, except at its option.

Price.—

| | |
|--|---------|
| Per standard barrel, in cloth sacks_____ | \$_____ |
| Per standard barrel, in paper bags_____ | \$_____ |
| Per standard barrel, in bulk_____ | \$_____ |

All shipments made on this contract will be at the current destination price
 of Seller on the date of shipment, if this price is below the contract destination
 price mentioned herein.

Terms of payment.—On approved credit net cash thirty (30) days from
 date of invoice, or ten cents (10¢) per barrel discount for cash in fifteen (15)
 days from date of invoice.

If at any time the financial responsibility of Buyer becomes impaired or un-
 satisfactory to Seller, it reserves the right to require payments in advance or
 satisfactory security or guarantee that invoices will be promptly paid when due.

If Buyer fails to comply with terms of payment, or with any of the other
 terms of sale, Seller reserves the right to cancel unfilled portion of this con-
 tract, without notice, Buyer remaining liable for all unpaid accounts. No
 waiver of such right shall be implied from any failure by Seller to exercise the
 same.

This contract is not assignable by Buyer without the consent of Seller in
 writing.

| | |
|----------|----------------|
| _____ | Cement Company |
| By _____ | _____ |
| (Buyer) | (Seller) |

Package.—Cloth sacks bearing Seller's brands, in which cement herein contracted for is packed, are the property of Seller and are for a period of ninety (90) days from the delivery by Seller of the said cement, leased by it to Buyer at a charge of ten cents (10¢) each, which charge is included in price for cement packed in cloth sacks and which charge Buyer agrees to pay at same time and on same terms as payment for cement is made.

Buyer agrees within ninety (90) days of delivery of the cement to return to Seller, the owner, at its nearest plant, freight charges collect, as provided by railroad classifications and tariffs, properly bundled and so marked as to insure complete identification, the cloth sacks bearing Seller's brands, in which the said cement is packed, and Seller agrees to refund to Buyer ten cents (10¢) for each said cloth sack so delivered in good condition, subject to Seller's count and inspection, and to assume freight charges thereon. If for any reason freight charges (per railroad tariffs) are prepaid, they will be refunded by Seller upon presentation of Railroad Company's receipted freight bill or bill of lading.

For useless cloth sacks which have been wet, no refund will be made. Cloth sacks bearing other than Seller's brands will be held by Seller for thirty (30) days subject to Buyer's order.

In the event that any of the said empty cloth sacks bearing Seller's brands are sold or otherwise disposed of by Buyer to any person other than Seller, the owner, Buyer agrees to pay Seller, as liquidated damages, ten cents (10¢) for each sack so sold or disposed of.

If during the life of this contract, Seller shall change its present charge for the lease of cloth sacks, or the liquidated damages, or both, it is expressly agreed that the said amount or amounts in the preceding paragraphs shall be changed accordingly, and the gross price specified herein for cement packed in cloth sacks shall be changed in accordance with the change in charge for lease of cloth sacks.

Price on cement packed in paper bags includes the paper bags, which are not returnable. Shipments in paper bags are made at Buyer's risk of breakage and resultant loss of cement.

(If cement company requires a deposit for cloth sacks, instead of leasing them, then the following clauses are suggested) :

Package.—The cloth sacks, bearing Seller's brand, containing the cement are not sold, but remain the property of Seller. Buyer agrees to return said cloth sacks, properly bundled and marked so as to insure complete identification, to Seller's nearest mill, within ninety (90) days from the date of delivery of the cement to Buyer.

Seller agrees to refund to Buyer the deposit of ten cents (10¢) for each cloth sack so returned. This deposit has been included in the price herein stated and Buyer agrees to include it when payment for the cement is made.

It is, however, expressly understood that such cloth sacks must be delivered to Seller's mill in good condition and will be subject to mill count and inspection, and that no refund will be made for useless cloth sacks, nor for cloth sacks not of Seller's brand. Such cloth sacks, if received, will be held by Seller for thirty (30) days subject to Buyer's order and risk.

Seller agrees to pay carrier's freight charges on returned empty cloth sacks of Seller's brand after delivery to its nearest mill or to refund Buyer for freight charges prepaid on such shipments upon presentation of original bill of lading properly executed or original receipted freight bill.

If Seller shall change its present deposit required for cloth sacks, it is expressly agreed that the said amounts in the preceding paragraphs shall be changed accordingly and the gross price specified herein for cement packed in cloth sacks shall be changed in accordance with the change of deposit required.

Price on cement packed in paper bags includes the paper bags which are not returnable. Shipments in paper bags are made at Buyer's risk of breakage and resultant loss of cement.

Bulk cement.—Bulk cement shall be invoiced and paid for on basis of scale weights at point of origin or on railroad track scales, nearest point of origin, while enroute. Original weights shall be final basis of settlement unless buyer proves by notation on freight bill by railroad agent the fact and extent of such shortage occurring in any particular car and only in that case providing that claim for such shortage is made within fifteen (15) days after arrival of such car at destination.

When grain doors, bulkheads or boards are used to protect shipments of bulk cement, the weight of such dunnage shall be considered as part of the tare weight of the car.

Claims.—Claims for loss or damage will not be considered unless supported by seal record and railroad agent's acknowledgment on freight bill. Freight overcharge claims must be accompanied by original receipted freight bill.

The Seller reserves the right to select the route and method by which shipments shall be forwarded, but no Seller can be required to favor any one route or method of transportation as against another by any joint action of the Members of the Industry or the Code Authority. Transportation charges per tariff applying from shipping point to place of delivery for route and method of shipment used, will be paid by the Buyer for the account of the Seller.

Seller shall not be liable to Buyer for any delays in manufacturing, shipping, or delivering said cement, caused by fire, strikes, lockouts, differences with workmen, accidents, war, insurrection, inability to secure cars, coal, or other material, governmental interference or regulation, delays in transportation, or contingencies beyond Seller's control; and during the time of such delays Seller shall have the right to prorate among its various customers such cement as it may be able to manufacture and ship.

Seller shall have the right, but shall not be obligated, to ship from any plant other than the one normally supplying the delivery point specified herein.

Specifications.—The cement shipped under this contract shall conform to the present standard specifications for Portland cement of the American Society for Testing Materials and the American Standards Association and/or the Federal Specification Board, and no other warranty is made in respect thereof. Seller having no control over the use of cement will not, therefore, guarantee finished work in which it is used, nor shall the Seller be responsible for the condition of cement after delivery to Buyer. Any charges incident to inspection or tests made by or on behalf of Buyer to determine compliance with specifications shall be paid by Buyer.

EXHIBIT D

Liquidated Damage Agreement

In consideration for the act of others in making similar agreements and for substantial benefits and other valuable consideration, the receipt of which is hereby acknowledged, each party to this contract covenants and agrees with every other party hereto, and the Treasurer of the Code Authority for the Portland Cement Industry as an individual, that:

1. If found guilty of violation of any provision of the Code of Fair Competition for the Portland Cement Industry in the manner provided in Paragraph 2 hereof, he will pay to the Treasurer of the Code Authority, as an individual and not as Treasurer, in trust, as and for liquidated damages, amounts indicated as follows:

(a) For the violation of any wage provision an amount equal to the difference between the wages which have been paid and the wages which would have been paid if the Member had complied with the applicable provision of the Code, provided, however, that any such payments shall not relieve the Member from his obligation to make equitable restitution to his employee or employees.

(b) For the violation of any hour provision, an amount equal to the wages payable for the overtime at the regular rate payable to the employee or employees who worked overtime.

(c) For the violation of any provision of the Code (other than wage or hour provisions) involving a transaction incidental to or connected with a sale of any product of the Industry, an amount equal to ----- per cent (%) of the actual selling price of the product sold in violation of any such provision, or of the price at which the product should have been sold under the Code, if determinable, whichever is the higher.

(d) For the violation of any provision of the Code (other than wage or hour provisions) not involving a transaction incidental to or connected with a sale of any product of the Industry.

Note: The amount of liquidated damages must be correlated reasonably to the probable injury.

2. For the purposes of this contract, violation of any provision of the Code by a party hereto, and his or its liability for liquidated damages herein stipulated shall be determined by an impartial fact-finding board, the members of which shall be nominated by the Code Authority or by the parties to this contract, with the approval of the N. I. R. Board, consisting of the following:----- Said board shall receive and hear all evidence submitted, in a fair manner, and shall render its decision in the form of written findings of fact and conclusions based thereon. Said decision shall be final and not subject to review.

3. Each party to this contract hereby assigns, transfers, and delivers to the Treasurer of the Code Authority, as an individual, and not as Treasurer, in trust, all rights and causes of action whatsoever which shall hereafter accrue to such Member for such liquidated damages by reason of any violation of the Code by any other party, and hereby designates and appoints the Treasurer of the Code Authority, as an individual, and not as Treasurer, the true and lawful attorney in fact of such party to demand, sue for, collect and receipt for any and all amounts which shall be owing to such Member in respect of any such right or cause of action and to compromise, settle, satisfy, and discharge any such right or cause of action, all in the name of such Member or in the name of the Treasurer of the Code Authority, as an individual, and not as Treasurer as he shall elect. All rights of any person who shall at any time be the Treasurer in respect to any amount which shall be payable to him because of the commission by any employer of any act constituting a violation of said Code, shall pass to and become vested in his successor in office, as an individual, and not as Treasurer, upon the appointment of such successor.

4. All liquidated damages paid to or collected by the Treasurer of the Code Authority pursuant to the provisions of this contract shall be utilized by him

in the payment of Code expenses to the extent indicated and authorized in the budget for the Code Authority.

5. The Treasurer of the Code Authority, as an individual, and not as Treasurer, by accepting office accepts the trusts established by this contract and agrees to perform the duties of trustee hereunder until his successor in office may be appointed.

6. Any Member of the Industry may become a party to said contract by written notification to said Treasurer of the Code Authority of the adoption of and assent to the terms hereof.

7. Except as provided in Paragraph 3 above, nothing contained herein shall be construed or applied to (a) deprive any Member of the Industry, employee or other person of any right or cause of action arising out of this Code, or (b) relieve any Member of the Industry from any contractual or legal obligation arising out of such Code or of the Act or otherwise.

8. This contract may be terminated by vote of two-thirds ($\frac{2}{3}$) of the parties hereto, such termination to take effect immediately upon notice in writing to said Treasurer of the Code Authority; provided, however, such termination shall not relieve any member from payment of liquidated damages due as a result of any violation committed prior to said termination; provided, further, that such termination shall not be deemed to constitute a defense in any proceeding instituted pursuant to any provisions of the Act, any rules and regulations issued pursuant thereto, or any provisions of the Code.

9. Anything in this contract to the contrary notwithstanding, upon the affirmative vote of not less than seventy-five per cent (75%) of the parties hereto, said parties may waive any liability for liquidated damages arising under this contract; provided, however, such waiver shall not constitute a defense in any proceeding instituted pursuant to any provisions of the Act, any rules and regulations issued pursuant thereto, or any provisions of the Code.

10. No suit shall be brought for the collection of liquidated damages after one (1) year from the date of the decision rendered as provided in Paragraph 2 above.



