

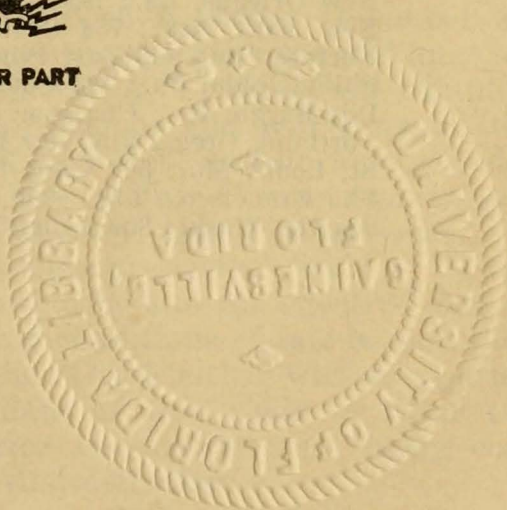
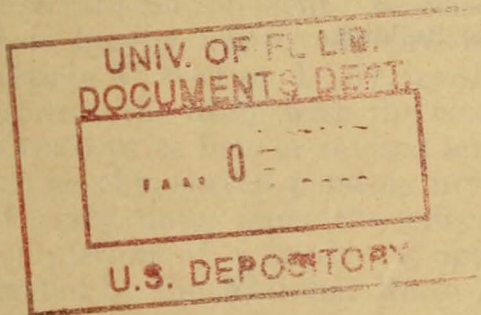
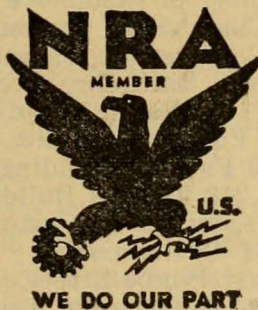
NATIONAL RECOVERY ADMINISTRATION

AMENDMENT TO
CODE OF FAIR COMPETITION

FOR THE

BOILER MANUFACTURING
INDUSTRY

AS APPROVED ON APRIL 16, 1934

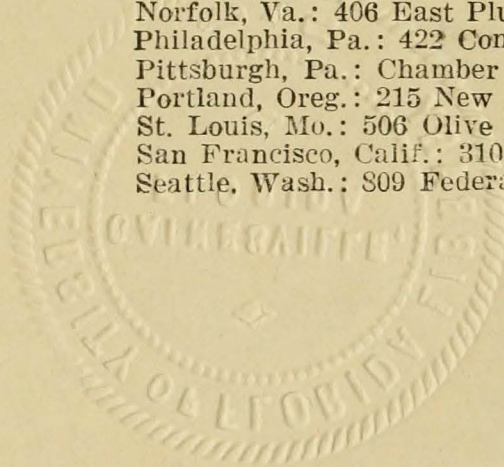


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Approved Code No. 38—Amendment No. 1

AMENDMENT TO CODE OF FAIR COMPETITION
FOR THE
BOILER MANUFACTURING INDUSTRY

As Approved on April 16, 1934

ORDER

**APPROVING AMENDMENT TO THE CODE OF FAIR COMPETITION FOR THE
BOILER MANUFACTURING INDUSTRY**

An application having been duly made pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for approval of a Supplement "A" to the Code of Fair Competition for the Boiler Manufacturing Industry, approved October 3, 1933, and hearings having been duly held thereon and the findings with respect thereto having been made and directed to the President:

NOW, THEREFORE, on behalf of the President of the United States, I, Hugh S. Johnson, Administrator for Industrial Recovery, pursuant to authority vested in me by Executive Orders of the President, including Executive Order No. 6543-A, dated December 30, 1933, and otherwise; do hereby incorporate by reference said annexed report and do find that said Supplement "A" of said Code complies in all respects with the pertinent provisions and will promote the policy and purposes of said Title of said Act; and do hereby order that said Supplement "A" to said Code of Fair Competition be and it is hereby approved; provided, however, that the provisions of Article V, Section I (d), insofar as they prescribe a waiting period between the filing with the Code Authority and the effective date of revised price lists or revised terms and conditions of sale be, and they are hereby, stayed pending my further Order either within a period of sixty days from the effective date of this Code or after the completion of a study of open price associations now being conducted by the National Recovery Administration.

HUGH S. JOHNSON,
Administrator for Industrial Recovery.

Approval recommended:

A. R. GLANCY,
Division Administrator.

WASHINGTON, D.C.,
April 16, 1934.

REPORT TO THE PRESIDENT

The PRESIDENT,

The White House.

SIR: This is a report on the Supplement "A" to the Code of Fair Competition for the Boiler Manufacturing Industry, approved October 3, 1933, as revised after a Public Hearing held in Washington on the 27th day of December, 1933, in accordance with the provisions of the National Industrial Recovery Act.

FINDINGS

I find that:

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

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

(c) The Supplement and the Code as approved complies in all respects with the pertinent provisions of said Title of said Act, including without limitation Subsection (a) of Section 3, Subsection (a) of Section 7, and Subsection (b) of Section 10 thereof; and that the applicant, the Code Authority of the Boiler Manufacturing Industry, constituted by Article IX of the Code, and approved by Administrative Order, dated February 1st, 1934, is truly representative of the aforesaid Industry.

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

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

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

For these reasons, this Supplement to said Code has been approved by me.

Respectfully,

HUGH S. JOHNSON,
Administrator.

APRIL 16, 1934.

AMENDMENT TO CODE OF FAIR COMPETITION FOR THE BOILER MANUFACTURING INDUSTRY

ARTICLE I—PURPOSES

Pursuant to Article XIII of the Code of Fair Competition for the Boiler Manufacturing Industry, duly approved by the President on October 3, 1933, and further to effectuate the policies of Title I of the National Industrial Recovery Act, the following provisions are submitted as a supplement to said Code of Fair Competition, and, upon approval by the President, shall be binding upon every member of the Boiler Manufacturing Industry.

ARTICLE II—DEFINITIONS

(1) The term "the Code", as used herein, shall mean the Code of Fair Competition for the Boiler Manufacturing Industry, duly approved by the President on October 3, 1933.

(2) The term "Boiler Manufacturing Industry", or "Industry", as used herein, shall mean the Boiler Manufacturing Industry as defined in Article II of the Code.

(3) The term "Branches of the Industry", as used herein, shall mean those groups of members of the Industry who manufacture specific classes of products of the Industry, such as water tube boilers, fire tube boilers, air preheaters, economizers, superheaters, stokers, pulverized fuel equipment, Class I welded pressure vessels and such other specific classes of products of the Industry as defined from time to time by the Code Authority.

(4) The term "Code Authority", as used herein, shall mean the Planning and Fair Practice Agency constituted by Article IX of the Code and approved by the Administrative order dated February 1, 1934, and variously referred to in the Code as the A. B. M. A. Committee of Industrial Recovery or the Committee.

(5) The term "Manager", as used herein, shall mean the Manager (or his Deputy), appointed as provided in Article IX of the Code.

(6) The term "Member of the Industry", as used herein, shall include but without limitation, any individual, person, partnership, association, corporation or other form of enterprise engaged in the manufacture or sale of the products of the Industry either as an employer or on his or its own behalf.

(7) The term "ultimate consumer", as used herein, shall mean one who purchases the products of the Industry from a member of the Industry for use and not for resale.

(8) The terms "employer" and "employee", as used herein, shall have the meaning as set forth in Article II of the Code.

(9) The provisions of this Supplement shall become effective immediately upon approval by the President.

ARTICLE III—ADMINISTRATION

SECTION 1. The Code Authority may, subject to the approval of a majority of the members of each of the several branches of the Industry, as defined in Article II, appoint a Supervisory Committee, for each of such branches, which shall among other duties cooperate with the Manager as Trade Practice Compliance Boards for the several branches of the Industry; provided, however, that nothing herein contained shall relieve the Code Authority of any of its duties and responsibilities under the Code or under any Supplement thereto; and provided, further, that the Administration representatives on the Code Authority may act in the same capacity on these Supervisory Committees.

SECTION 2. Nothing contained in the Code or in this Supplement shall constitute the members of the Code Authority partners for any purpose. Nor shall the Code or this Supplement be construed to render any member of the Code Authority or of any Supervisory Committee liable in any manner to any one for any act of any other member, officer, agent or employee of such Code Authority or Supervisory Committee. Nor shall this Code be construed to render any member of the Code Authority or of any Supervisory Committee, exercising reasonable diligence in the conduct of his duties hereunder, liable to any one for any action or omission to act under this Code except for his own wilful misfeasance or nonfeasance.

SECTION 3. If the Administrator shall at any time determine that any action of the Code Authority or any Supervisory Committee or any agency thereof may be unfair or unjust or contrary to the public interest, the Administrator may require that such action be suspended to afford an opportunity for investigation of the merits of such action, and further consideration by such Code Authority or Supervisory Committee or agency thereof pending final action which shall not be effective unless the Administrator approves the same or unless he shall fail to disapprove the same after thirty (30) days' notice to him of intention to proceed with such action in its original or modified form.

ARTICLE IV—SALES BELOW COST

SECTION 1. Upon approval by a majority of the members of any branch and due notice of such approval to the Administrator the following provision shall become effective as to such branch, not less than five (5) days after the filing of such notice to the Administrator. It shall be a violation of the Code to sell, or offer to sell, directly or indirectly by any means whatsoever, any product of such branch of the Industry, any product purchased for resale in connection with the installation of products of such branch of the Industry, service, and/or erection, at a net realized price less than the members individual cost determined as prescribed in Article X, Section 1 of the Code, with such modifications as may be (a) required by the conditions effecting such member (such as abnormal volume of business, etc.,) and (b) approved by the Supervisory Committee of the branch involved, all subject to the approval of the Code Authority and the Administrator; provided, however, that nothing in this Section shall

prevent a member from quoting a price lower than his individual cost determined as herein provided to meet the price of a competitor, who is not violating any provisions of the Code or any Supplement thereto, for products of equivalent type, quality, specification and/or performance; provided, further, that nothing herein shall limit the effect of Article VIII, Section 2 of this Supplement.

SECTION 2. Obsolete or discontinued lines of products, or distress merchandise, may be disposed of, at a net realized price less than cost, by any member, if such member has at least ten (10) days prior to the date of such sale filed with the Manager a list of such items.

ARTICLE V—PRICE LISTS

SECTION 1. (a) Upon approval by a majority of the members of any branch and due notice of such approval to the Administrator the following provisions shall become effective as to such branch, not less than five (5) days after the filing of such notice to the Administrator. The Supervisory Committee of such branch shall require the members of said branch to prepare and file with the Manager, within thirty (30) days, price schedules which may be in the form of net prices or prices with discounts, for such of his products as are sufficiently standard to permit of such pricing.

(b) The price schedules prepared and filed as provided in Section 1 above, shall become effective on filing and shall be the prices which he will quote to all ultimate consumers.

(c) Upon receipt of the above described price schedules the Manager shall at once distribute copies of same to all members of the branch effected.

(d) None of the price schedules so filed shall be changed by a member of the Industry except by filing with the Manager new price schedules setting forth such change or changes to become effective on the tenth day after the date on which such new price schedules shall have been received by the Manager who shall immediately notify the member filing such revised price schedule of the effective date resulting from the date of receipt. Copies of such revised price schedules, either increases or decreases, together with notice of the effective date thereof shall be immediately sent by the Manager to all other members of the branch of the Industry affected, who thereupon may file similar revisions. Such similar revisions if filed prior to the effective date of the revised schedules first filed shall take effect upon that date, except when the revised price first filed constitutes a decrease, and such similar revision is more favorable to the purchaser than such revised price first filed, in which case such similar revision shall not take effect until ten (10) days after the date when the same shall have been received by the Manager.¹

(e) All current price schedules on file shall be open to inspection by any customer or prospective customer or other interested party at all reasonable times.

SECTION 2. Each member of the Industry who makes products of special design that do not lend themselves to standard prices shall not sell such products at a price less than the sum of the filed prices on standard products, used in such products of special design, and

¹ See paragraph 2 of order approving this Amendment.

the cost (determined as provided in Article IV, of this Supplement) of all additional products, or parts of products that enter into the construction of such complete products of special design.

ARTICLE VI—INTRA INDUSTRY TRANSACTIONS

All members of the Industry do not manufacture all of the products of the Industry. Many sales involve a combination of products, some of which some members do not manufacture. To enable all members, who desire, to compete on an equitable basis for such sales, all members shall publish to the Industry the discount which they will allow when and if selling products or parts of products to other members for incorporation in or assembly with products of the Industry of the purchasing member's own manufacture and shall agree to take no unfair advantage through the use of such a discount when competing for such sales of a combination of products. The provisions of Article IV and Article V of this Supplement shall not prevent or restrict the allowance of such a discount.

ARTICLE VII—EXPORT SALES

SECTION 1. As trade practices in foreign countries are governed by foreign laws and as foreign manufacturers are not subject to the Code, it is understood the provisions of this Supplement "A" do not apply to export trade; provided, however, that should the total export business of the Industry in any three (3) months period exceed five (5%) percent of the total domestic business of the Industry for the same period, it is expressly understood that the Administrator may require the modification of this Section 1 in such manner as may be calculated to effectuate the purposes of the Act.

SECTION 2. The term "export" is defined as shipments to all countries of the world except the United States of America, or any territory or possession thereof.

ARTICLE VIII—FAIR TRADE PRACTICES

SECTION 1. Each member of the Industry shall send to the Manager (who shall hold same in strict confidence) immediate notice of each inquiry received on which he proposes to quote, a copy of each letter of proposal and estimate sheet made, and a copy of each order received, including prices and terms; provided, however, that such reports need not be made in connection with repair or renewal parts or such other products as may be excepted by the Code Authority, upon request of the majority of the members of the branch affected and with the approval of the Administrator.

SECTION 2. No member of the Industry shall change any quotation submitted unless a change is made in the specifications, and, in the event of such change in any specifications, the price and terms of the new quotation shall be determined in the same manner as in the original quotation. Where the original quotation has been reported, the revised quotation, with changes noted, and the reasons therefore indicated, shall at once be reported to the Manager.

SECTION 3. No member of the Industry shall accept secondhand or used equipment of any kind whatsoever as part payment towards the purchase of new equipment.

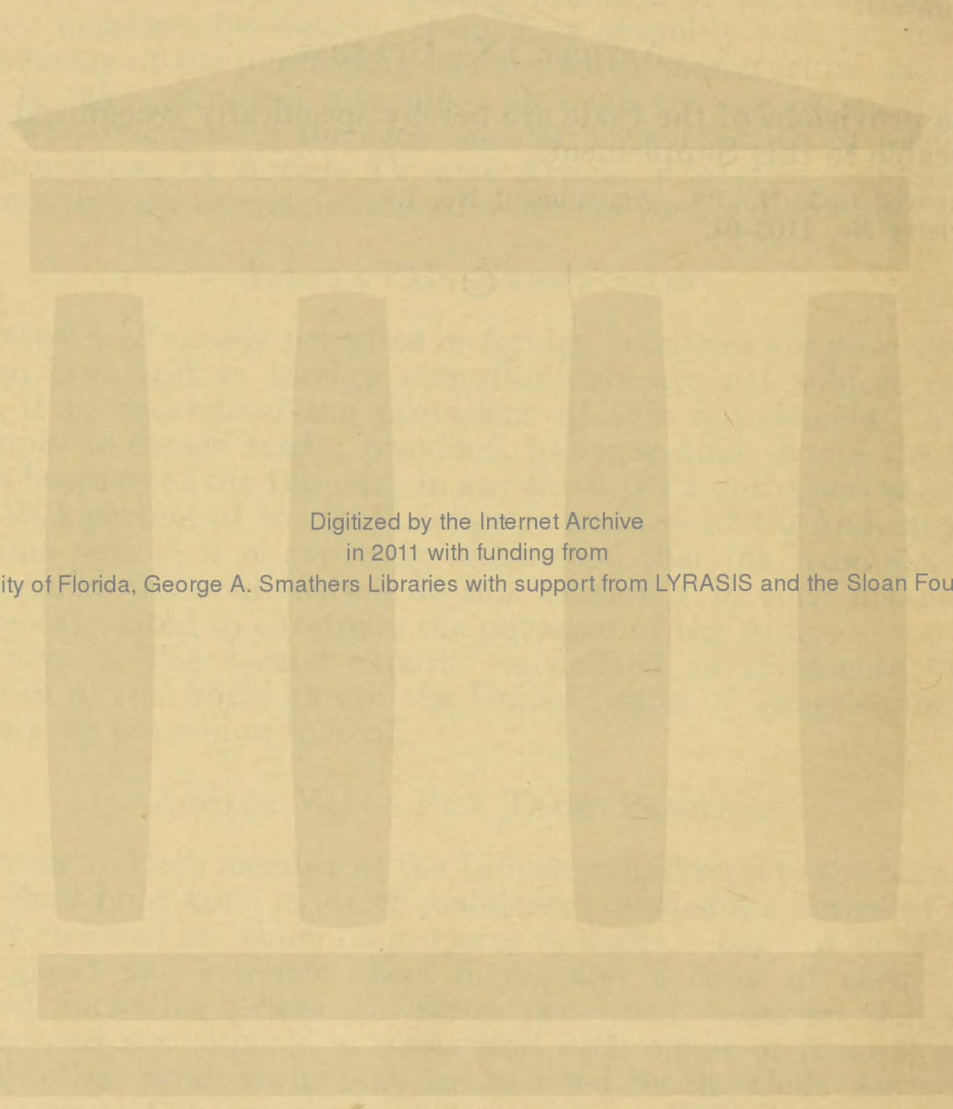
SECTION 4. No member of the Industry shall accept an order or contract for the products of this Industry, except Class I welded pressure vessels, which includes the construction of foundations, structures other than those necessary for the support of the equipment, or the removal of old equipment or structures, except in the case of repair or renewal of parts, unless the order or contract is so written that that part covering the products of this Industry and subject to the provisions of the Code and this Supplement is definitely segregated.

ARTICLE IX—GENERAL

The provisions of the Code are hereby specifically recognized to be applicable to this Supplement.

Approved Code No. 38. Amendment No. 1.
Registry No. 1103-01.





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