

NATIONAL RECOVERY ADMINISTRATION

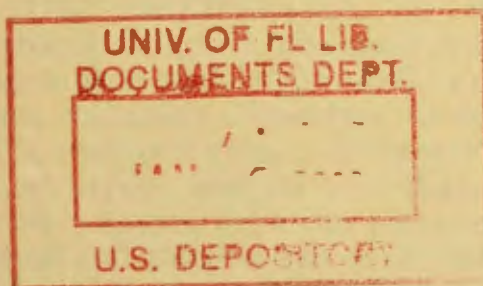
**SUPPLEMENTARY
CODE OF FAIR COMPETITION**

FOR THE

**FORGED TOOL
MANUFACTURING INDUSTRY**

(A Division of the Fabricated Metal Products
Manufacturing and Metal Finishing
and Metal Coating Industry)

AS APPROVED ON MARCH 24, 1934



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Approved Code No. 84—Supplement No. 9

SUPPLEMENTARY CODE OF FAIR COMPETITION

FOR THE

FORGED TOOL MANUFACTURING INDUSTRY

As Approved on March 24, 1934

ORDER

APPROVING SUPPLEMENTARY CODE OF FAIR COMPETITION FOR THE FORGED TOOL MANUFACTURING INDUSTRY

A DIVISION OF THE FABRICATED METAL PRODUCTS MANUFACTURING AND
METAL FINISHING AND METAL COATING 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, and in accordance with the provisions of Section I of Article VI of the Basic Code for the Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating Industry, approved November 2, 1933, for approval of a Supplementary Code of Fair Competition for the Forged Tool Manufacturing Industry, and hearing having been duly held thereon; and the annexed report on said Supplementary 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, 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 Supplementary 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 Supplementary Code of Fair Competition be and it is hereby approved; provided, however, that the provisions of Article VII, Paragraph (a), 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 Supplementary 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.,
March 24, 1934.

REPORT TO THE PRESIDENT

The PRESIDENT,
The White House.

SIR: This is a report on the Supplementary Code of Fair Competition for the Forged Tool Manufacturing Industry, a division of the Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating Industry, the hearing having been conducted thereon in Washington, D.C., February 16, 1934, in accordance with the provisions of Title I of the National Industrial Recovery Act.

GENERAL STATEMENT

The Forged Tool Manufacturing Industry, being truly representative of this division of the Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating Industry, has elected to avail itself of the option of submitting a Supplementary Code of Fair Competition, as provided for in Section 1 of Article VI of the Basic Code, for the Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating Industry approved by you on the second day of November, 1933.

RÉSUMÉ OF THE CODE

Article I states the purpose of the Supplementary Code.

Article II accurately defines specific terms employed in the Supplementary Code.

Article III. This Industry is a division of the Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating Industry and the labor provisions of its Basic Code, as approved November 2, 1933, are the labor provisions of this Supplementary Code.

Article IV establishes a Supplementary Code Authority consisting of four (4) members to be elected by the members of the Industry at a meeting called by the Temporary Supplementary Code Authority, and gives the Administrator the authority to appoint one additional member without vote and provides machinery for obtaining statistics and the administration of the Supplementary Code.

Article V provides for an accounting system and methods of cost finding and/or estimating.

Article VI provides for determining the lowest reasonable cost of the products of this Industry in periods of emergency.

Article VII provides methods of setting up and revising price lists, and for investigation of prices on the initiative of the Supplementary Code Authority or on the complaint of a member of the Industry.

Article VIII sets forth the unfair trade practices of this Supplementary Code which has been especially designed to offset unfair competition in this division of the Industry.

Article IX provides against monopolies and monopolistic practices.

Article X contains the mandatory provisions contained in Section 10 (b) and also provides for the submission of proposed amendments to the Supplementary Code.

Article XI recognizes that price increases be limited to actual additional increase in the seller's costs.

Article XII states the effective date of this Supplementary Code.

FINDINGS

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

I find that:

(a) Said Supplementary 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 purposes 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 restriction of production (except as may be temporarily required), by increasing the consumption of industrial and agricultural products through increasing purchasing power, by reducing and relieving unemployment by improving standards of labor, and by otherwise rehabilitating industry.

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

(c) The Supplementary 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 group is an industrial group truly representative of the aforesaid Industry; and that said association imposes no inequitable restrictions on admission to membership therein.

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

(e) The Supplementary 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 Supplementary Code.

For these reasons, therefore, I have approved this Supplementary Code, with a 60 day stay of the provisions prescribing a waiting period between the filing and effective date of revised price lists.

Respectfully,

HUGH S. JOHNSON,
Administrator.

MARCH 24, 1934.

SUPPLEMENTARY CODE OF FAIR COMPETITION FOR THE FORGED TOOL MANUFACTURING INDUSTRY

A DIVISION OF THE FABRICATED METAL PRODUCTS MANUFACTURING AND
METAL FINISHING AND METAL COATING INDUSTRY

ARTICLE I—PURPOSES

To effectuate the policies of Title I of the National Industrial Recovery Act, the following provisions are established as a Supplementary Code of Fair Competition for the Forged Tool Manufacturing Industry. Pursuant to Article VI of the Basic Code of Fair Competition for the Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating Industry, approved by the President of the United States on the second day of November, 1933, and upon approval by the President of the United States, the Provisions of the Supplementary Code shall be the standard of Fair Competition for and shall be binding upon every member thereof.

ARTICLE II—DEFINITIONS

SECTION 1. The term "Forged Tool Manufacturing Industry", hereafter referred to as the Industry, is defined to mean the manufacture for sale in whole or substantial part of Forged Hand Tool products, such as picks, mattocks, heavy eye hoes, crow, and other pry and digging bars, woodchoppers' wedges, woodchoppers' mauls, heavy hammers, sledges, and miscellaneous railroad track hand tools, track chisels, track wrenches, anvil tools and blacksmith tongs.

SECTION 2. The term "employee", as used herein 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.

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

SECTION 4. The term "member of the Industry", as used herein 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 5. The terms "President", "Act" and "Administrator", as used herein shall mean respectively the President of the United States, the National Industrial Recovery Act, and the Administrator for Industrial Recovery under Title I of said Act.

SECTION 6. The term "Basic Code", as used herein is defined to mean the Basic Code of Fair Competition for the Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating Industry as approved by the President of the United States on the second of November, 1933.

SECTION 7. The term "Supplementary Code Authority", as used herein means the agency which is to administer this Supplementary Code as hereinafter provided.

SECTION 8. The term "Society" is defined to mean the Forged Tool Society or its successor.

SECTION 9. The term "Federation", as used herein is defined to mean the Fabricated Metal Products Federation or its successor.

SECTION 10. The term "Secretary" is defined to mean the Secretary of the above named Society, or its successor.

ARTICLE III—EMPLOYMENT PROVISIONS

This Industry is a division of the Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating Industry, and without limitation the wage, hour and labor provisions in Article III of its Basic Code as approved by the President November 2, 1933, including Section 1 of said Article III by which the provisions of Sub-sections (1), (2) and (3) of Section 7 (a) of Title I of the Act are made conditions of the Code, are specifically incorporated herein and made a part hereof as the wage, hour and labor provisions of this Supplementary Code.

ARTICLE IV—ORGANIZATION AND ADMINISTRATION

SECTION 1. During the period not to exceed sixty (60) days following the effective date, the Supplementary Code Committee of the Industry shall constitute a temporary Supplementary Code Authority until the Supplementary Code Authority is elected. There shall be constituted within the sixty-day period a Supplementary Code Authority consisting of four (4) members to be elected by the members of the Industry, at a meeting called by the Temporary Supplementary Code Authority, upon ten days' notice sent by registered mail to all known members of the Industry, who may vote either in person or by proxy. The members of the Supplementary Code Authority first elected shall serve until the following annual meeting of the Society, and thereafter, members of the Supplementary Code Authority shall be elected at each annual meeting of the Society to serve until the following annual meeting. The members of the Supplementary Code Authority shall be elected in the following manner:

(a) One (1) member who shall be a member of the Industry by a majority vote of all members of the Industry present in person or by proxy, each member to have one vote.

(b) One (1) member who is not a member of the Society by a majority vote of all known members of the Industry who are non-members of the Society. Provided, however, that if the known members of the Industry who are not members of the Society, shall fail to so elect a member from among their number, then in that case, the members of the Society, each member having one vote, shall select two members, neither of which is a member of the Society and certify their names to the Administrator, who will select one only of the two so elected, to be a member of the Supplementary Code Authority.

(c) Two (2) members by fifty-one percent (51%) vote of mem-

bers of the Society, present in person or by proxy, weighted on the basis of one vote for each member and one additional vote for each \$5,000. of annual sales in the previous calendar year reported to the temporary Supplementary Code Authority; provided, however, that no one member may cast more than $33\frac{1}{3}$ percent of total number of votes cast.

A vacancy in the membership of the Supplementary Code Authority may be filled by a majority vote of the remaining members of the Supplementary Code Authority (provided, however, that the right to vote, as set forth above, shall be subject to the limitations provided in Section 4 of this Article). In addition thereto the Administrator may appoint one member without vote to serve on the Supplementary Code Authority who shall, together with the Administrator, be given notice of and may sit at all meetings of the Supplementary Code Authority.

SECTION 2. Any Society directly or indirectly participating in the selection or activities of the Supplementary Code Authority shall (1) impose no inequitable restrictions on membership, and (2) submit to the Administrator true copies of its Articles of Association, By-Laws, Regulations and any amendments when made thereto, together with such other information as to membership, organization and activities as the Administrator may deem necessary to effectuate the purposes of the Act.

SECTION 3. In order that the Supplementary Code Authority shall, at all times, be truly representative of the Industry and in other respects comply with the provisions of the Act, the Administrator may prescribe such hearings as he may deem proper; and, thereafter, if he shall find that the Supplementary Code Authority is not truly representative or does not in other respects comply with the provisions of the Act, may require removal of any or all of the members thereof and may make an appropriate modification or modifications in the method of selection of the Supplementary Code Authority.

SECTION 4. All members of the Industry are subject to the jurisdiction of this Supplementary Code; and all members of the Industry shall be entitled to participate in and share the benefits of the Supplementary Code Authority; shall be entitled to vote as provided in Section 1 of this Article, and shall pay their reasonable share of the expenses of the Administration of this Supplementary Code, such reasonable share to be determined by the Supplementary Code Authority, subject to review by the Administrator on the basis of volume of business and/or such other factors as may be deemed equitable by the Supplementary Code Authority.

SECTION 5. Nothing contained in the Supplementary Code shall constitute the members of the Supplementary Code Authority partners for any purpose.

SECTION 6. The Supplementary Code Authority shall have the following further powers and duties:

(a) To insure the execution of the provisions of this Supplementary Code and provide for the compliance of the Industry with the provisions of the Act.

(b) It shall have power to use such trade associations and other agencies as it deems necessary provided that nothing herein shall relieve the Supplementary Code Authority of its duties or responsibilities under this Supplementary Code.

(c) To adopt such by-laws, rules and regulations as are necessary for its procedure and for the administration of this Supplementary Code.

(d) To obtain from members of the Industry such information and reports as are required for the administration of the Supplementary Code, which information and reports shall be submitted by the members to such administrative and/or government agencies as the Administrator may designate; provided that nothing in the Supplementary Code shall relieve any member of the Industry of any existing obligations to furnish reports to any government agency. All individual and private information shall be submitted to the Secretary, or other appointee of the Supplementary Code Authority and shall be held in strict confidence and not disclosed to any competitor or other persons outside the Secretary's office, without the permission of the member of the Industry involved.

Provided, however, that such information may be disclosed to any authorized governmental agency as directed by the Administrator.

Provided, further, that when necessary in the hearing of a complaint, information, resulting from an investigation, may be disclosed to the Supplementary Code Authority or its appointee, and

Provided, further, that information pertaining to the reporting of prices, terms and conditions may be disclosed to effectuate the purposes of this Supplementary Code.

(e) To make recommendations to the Administrator for the coordination of the administration of this Supplementary Code with such other codes, if any, as may be related to the Industry.

(f) To appoint a trade practice committee which shall meet with the trade practice committee appointed under such other Code or Codes as may be related to the Industry for the purpose of formulating fair trade practices to govern the relationship between production and distribution employees under this Supplementary Code, and under such others to the end that such fair trade practices may be proposed to the Administrator as amendments to this Supplementary Code and such other Codes.

(g) To secure from members of the Industry an equitable and proportionate payment of the reasonable expenses of maintaining the Supplementary Code Authority and its activities.

(h) To cooperate with the Administrator in regulating the use of any N.R.A. insignia solely by those members of the Industry who have assented to, and are complying with, this Supplementary Code.

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

ARTICLE V—ACCOUNTING AND COSTING

The Code Authority shall cause to be formulated an accounting system and methods of cost finding and/or estimating, capable of use by all members of the Industry. After such system and methods have been formulated, full details concerning them shall be made available to all members as shall full details of all changes therein as and when made. Before becoming effective the cost system and methods of cost finding and estimating and all changes therein shall be filed with the Administrator subject to his disapproval within thirty (30) days. Thereafter all members shall determine and/or estimate costs in accordance therewith.

ARTICLE VI—SELLING BELOW COST

When and if, the Supplementary Code Authority determines that an emergency exists in the Industry and that the cause thereof is destructive price-cutting such as to render ineffective or seriously endanger the maintenance of the provisions of this Supplementary Code, the Supplementary Code Authority may cause to be determined the lowest reasonable cost of the products of this Industry, such determination to be subject to such notice and hearing as the Administration may require. Thereafter, during the period of the emergency, it shall be an unfair trade practice for any member of the Industry to sell or offer to sell any products of the Industry for which the lowest reasonable cost has been determined at such prices or upon such terms or conditions of sale that the buyer will pay less therefor than the lowest reasonable cost of such products.

When it appears that conditions have changed, the Supplementary Code Authority, upon its own initiative or upon the request of any interested party, shall cause the determination to be reviewed.

However, dropped lines or seconds or inventories which must be converted into cash to meet emergency needs may be disposed of by any member of the Industry, at any price and on any terms and conditions, but only if such member of the Industry has filed with the Supplementary Code Authority a statement in writing, setting forth the fact of, and reasons for, such proposed disposal.

ARTICLE VII—PRICE LISTS

(a) If the Supplementary Code Authority determines that it has been the generally recognized practice in the Industry to sell certain products on the basis of net price lists, or price lists and discount sheets, each member of the Industry manufacturing and selling such products shall, within ten (10) days after notice of such determination, file with the Supplementary Code Authority a net price list, or price list and discount sheet, in such form and for such products as the Supplementary Code Authority may prescribe, and the Supplementary Code Authority shall immediately send copies thereof to all known manufacturers of such products, and such lists shall be available to all interested parties. Revised price lists and/or discount sheets and/or all other conditions of sale may be filed from time to time thereafter with the Supplementary Code Authority by

any member of the Industry, to become effective five (5) days after actual receipt by the Supplementary Code Authority. Copies of such revised lists and/or discount sheets and/or all other conditions of sale, with notice of the effective date thereof, shall be immediately sent to all members of the Industry, and shall be available to all interested parties; and any member of the Industry may file, if he so desires, revisions of his price list and/or discount sheets and/or conditions of sale, which shall become effective at the date when the revised list first filed becomes effective, provided that he shall not establish prices lower, nor discounts greater, nor conditions of sale more favorable than those contained in the revised list first filed.¹

(b) If the Supplementary Code Authority shall hereafter determine that in any branch or subdivision of the industry, not selling its products on the basis of price lists, with or without discount sheets, the distribution or marketing conditions in said branch or subdivision are the same as, or similar to, the distribution and marketing conditions in a branch or subdivision of the industry where the filing of price lists, with or without discount sheets and other fixed conditions of sale, has been required, and that the use of price lists, with or without discount sheets and with fixed conditions of sale, should be put into effect in such branch or subdivision, then each member of the Industry manufacturing such product or products shall, within twenty (20) days after notice of such determination, file with the Supplementary Code Authority net price lists, or price lists with discount sheets, containing all fixed conditions of sale, in such form as the Supplementary Code Authority may prescribe, and such lists shall be immediately sent to all members of the Industry manufacturing such product or products, and shall be made available to all interested parties and may be revised from time to time as provided in Paragraph (a) hereof:

Provided, however, that the Supplementary Code Authority shall make no determination to place any product of the industry on a price list basis, unless two-thirds of the members who are at that time engaged in manufacturing such products shall affirmatively consent that such determination be made.

(c) The Supplementary Code Authority shall have power, on its own initiative, or on the complaint of any member of the industry to investigate any price or the terms of sale and payment for any product shown in any price list and/or discount sheet filed with the Supplementary Code Authority by any member of the Industry.

Each member of the Industry shall furnish the Supplementary Code Authority for distribution with such number of copies of his price lists and/or discount sheets as Supplementary Code Authority may prescribe.

(d) No member of the Industry shall sell, directly or indirectly, by any means whatsoever, any product of the Industry covered by provisions of this Article VI at a price or at discounts, or on other conditions of sale different from those provided in his own current net price lists, or price lists and discount sheets.

¹ See paragraph 2 of order approving this Code.

ARTICLE VIII—UNFAIR TRADE PRACTICES

In addition to the Unfair Trade Practices covered by Article V of the Basic Code, for all purposes of this Supplementary Code the following described acts shall constitute unfair practices. Any member of the Industry who shall directly or indirectly through any officer, employee, agent or representative use or employ any of such unfair practices shall be guilty of a violation of this Supplementary Code.

RULE 1. *Branding.*—Failure on the part of a member of the Industry to properly brand or identify his products with his name or his trademark, or other means of identification.

RULE 2. *Simplification and Standardization of Products.*—The Supplementary Code Authority shall make studies for the simplification of products of the Industry, the elimination of unnecessary or infrequently demanded sizes or types and for the establishment of dimensional standards in cooperation with the Bureau of Standards of the United States Department of Commerce with the view to their recommendations for adoption by the Industry. This study shall be completed within the period of three months from the effective date of this Supplementary Code. Such recommendations of the Supplementary Code Authority for the Industry, when approved by two-thirds vote of the members of the Industry, shall become the standards for the industry and shall become effective 30 days after such approval. Thereafter, all members of the industry shall follow such standards. Failure to follow such standards set-up by the Supplementary Code Authority, so approved by the members of the Industry, will be an unfair method of competition and a violation of this Supplementary Code. Provided, however, that exceptions to such standards may be applied for by formally petitioning the Supplementary Code Authority, and if the Supplementary Code Authority does not disapprove in writing within 60 days the petition shall become final when ratified by two-thirds vote of the members of the Industry, and if the Supplementary Code Authority disapproves, an appeal may be taken to the Administrator.

RULE 3. *Selling on Consignment.*—No member of the Industry shall ship goods on consignment except under circumstances to be defined by the Supplementary Code Authority, where peculiar circumstances of the Industry require the practice.

RULE 4. *Substitution.*—The furnishing of articles more or less expensive, of better or inferior quality or of larger or smaller size than specified without making proper adjustment.

RULE 5. *Lump Sum Bids and Contracts.*—To submit a bid or bids for two or more commodities, one or more of which is a Forged Tool Product in which the unit price of each commodity is not clearly stated. Accepting orders or contracts for sale at a lump sum where the contract does not specify the exact quantity, quality, and unit price of the product purchased.

RULE 6. The making by any member of the Industry of false statements or records to mislead or deceive the Supplementary Code Authority and/or Secretary concerning the compliance with any article or section of this Supplementary Code.

RULE 7. *Commissions.*—The splitting of commissions or other compensation received by an employee or agent of the seller, with the buyer for the purpose or with the effect of influencing a sale.

RULE 8. *Dates, etc.*—Stating in the invoice of any product as the date thereof a date later than the date of the shipment of such product, or including in any invoice any product shipped on a date earlier than the date of such invoice.

RULE 9. *Service, Extras.*—For the purpose of influencing a sale, rendering to any purchaser of any product in connection with the sale of such product any service, unless fair compensation for such service shall be paid for by such purchaser.

ARTICLE IX—MONOPOLIES

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

ARTICLE X—MODIFICATIONS

SECTION 1. This Supplementary Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with 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. This Supplementary Code, except as to provisions required by the Act, may be modified on the basis of experience or changes in circumstances, such modifications to be based upon application by the Supplementary Code Authority to the Administrator and such Notice and Hearing as he shall specify and to become effective and be a part of this Supplementary Code on approval by the President.

ARTICLE XI—PRICE INCREASES

Whereas the policy of the Act to increase real purchasing power will be made more difficult of consummation if prices of goods and services increase as rapidly as wages, it is recognized that price increases except such as may be required to meet individual costs should be delayed, but when made, such increases should, so far as possible, be limited to actual additional increases in the seller's costs.

ARTICLE XII—EFFECTIVE DATE

This Supplementary Code shall become effective at 12:01 A.M. o'clock on the tenth day after it is approved by the President.

Approved Code No. 84. Supplement No. 9.
Registry No. 1149-29.

