

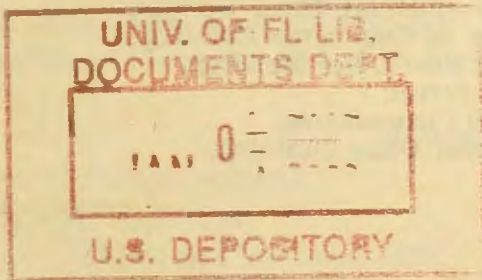
NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION

FOR THE

QUICKSILVER INDUSTRY

AS APPROVED ON MARCH 21, 1934



**UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1934**

This publication is for sale by the Superintendent of Documents, Government Printing Office, Washington, D.C., and by district offices of the Bureau of Foreign and Domestic Commerce.

DISTRICT OFFICES OF THE DEPARTMENT OF COMMERCE

Atlanta, Ga.: 504 Post Office Building.
Birmingham, Ala.: 257 Federal Building.
Boston, Mass.: 1801 Customhouse.
Buffalo, N.Y.: Chamber of Commerce Building.
Charleston, S.C.: Chamber of Commerce Building.
Chicago, Ill.: Suite 1706, 201 North Wells Street.
Cleveland, Ohio: Chamber of Commerce.
Dallas, Tex.: Chamber of Commerce Building.
Detroit, Mich.: 801 First National Bank Building.
Houston, Tex.: Chamber of Commerce Building.
Indianapolis, Ind.: Chamber of Commerce Building.
Jacksonville, Fla.: Chamber of Commerce Building.
Kansas City, Mo.: 1023 Baltimore Avenue.
Los Angeles, Calif.: 1163 South Broadway.
Louisville, Ky.: 408 Federal Building.
Memphis, Tenn.: 229 Federal Building.
Minneapolis, Minn.: 213 Federal Building.
New Orleans, La.: Room 225-A, Customhouse.
New York, N.Y.: 734 Customhouse.
Norfolk, Va.: 406 East Plume Street.
Philadelphia, Pa.: 422 Commercial Trust Building.
Pittsburgh, Pa.: Chamber of Commerce Building.
Portland, Oreg.: 215 New Post Office Building.
St. Louis, Mo.: 506 Olive Street.
San Francisco, Calif.: 310 Customhouse.
Seattle, Wash.: 809 Federal Office Building.

Approved Code No. 351

CODE OF FAIR COMPETITION

FOR THE

QUICKSILVER INDUSTRY

As Approved on March 21, 1934

ORDER

CODE OF FAIR COMPETITION FOR THE QUICKSILVER 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 Code of Fair Competition for the Quicksilver Industry, and hearings having been duly held thereon and the annexed report on said 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 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 Code of Fair Competition be and it is hereby approved.

HUGH S. JOHNSON,
Administrator for Industrial Recovery

Approval recommended:

K. M. SIMPSON,
Division Administrator.

WASHINGTON, D.C.,
March 21, 1934.

REPORT TO THE PRESIDENT

The PRESIDENT,
The White House.

SIR: The original Code of Fair Competition for the Quicksilver Industry was submitted August 3, 1933, by the National Quicksilver Producers Association, an unincorporated membership society organized in 1933, representing 95% of the known members of the Industry in volume of production. Several revisions of the Code were made prior to the public hearing held on February 2nd, 1934. The Code was revised during the recess of this hearing and submitted in its final form for approval. Every person who requested an appearance was properly heard in accordance with statutory and regulatory requirements.

The history of the mercury industry in the United States has indicated considerable flexibility both in supply and demand under the influence of price. When the price of mercury became high, production tended to increase and consumption to fall. For many years before 1915 the price of mercury at New York rarely exceeded \$50.00 and was generally below \$40.00 a flask (76 pounds).

In the United States in 1869 the average yearly price was \$46.00 a flask (76 pounds). By the latter part of 1873 the price had risen to \$105.00 a flask. This was due in part to the decline of production and the advent of pan-amalgamation of gold which increased the domestic demand. During the next two years, with the decline of placer gold production, the price receded, but owing to the high price of 1873 and 1874 many new enterprises were started which came into production during the next four years, and by 1877, the peak of domestic production—79,000 flasks—was reached, and the price had receded to \$37.00 a flask. In 1883 in order, no doubt, to maintain and assist a waning industry, a tariff was placed upon mercury amounting to 10% ad valorem. From that time a tariff has been maintained at varying rates. In 1909 the tariff was seven cents per pound, and in 1913 it was changed again to 10% ad valorem. During the War, with the greatly stimulated price, domestic production was slightly in excess of 36,000 flasks. In 1923 domestic production was about 8,000 flasks, and imports amounted to 24,000 flasks. The average New York price in 1921 was \$45.00 a flask. The Tariff Act of 1922 raised the duty to twenty-five cents a pound, but the effect upon production for the next few years seems to have been negligible. Possibly owing to the belief that mercury mines were exhausted in the United States, as well as to the fact that the production of Spain and Italy dominated the world's market, these governments made an agreement to control production; production was pooled and sales made through a common agency. The cartel advanced the price from \$70.00 to \$125.00 a flask.

Prior to the organization in 1928 of Mercurio Europeo, the Spanish-Italian cartel, the United States imported $\frac{2}{3}$ or more of its mercury supplies from Europe, chiefly from Spain and Italy. In spite of the

depression the cartel was able to maintain high prices for several years which stimulated production and use of American Mercury in the United States and temporarily reversed the proportions of foreign and domestic metal used in this country. Inability to restrict Spanish-Italian production, however, resulted in the accumulation of large stocks abroad, which coupled with the disposition of buyers to withhold commitments in an uncertain market broke the price control and sent prices below the level of American cost of production and sharply curtailed production even in the face of a duty of \$19.00 per flask. The New York price of mercury declined from a high of \$130.50 per flask in October, 1928, to \$110.60 in October, 1930 and to \$48.50 in December, 1932. As most American mines must receive at least from \$60.00 to \$70.00 per flask to operate, suspension of mining reduced United States production to 12,622 flasks in 1932 compared with 24,947 in 1931 and 21,553 in 1930, and our temporary position as an exporter was lost.

The mercury industry of the United States is broadly 83 years old. The history indicates a cycle of production. In 1850, commercial production of mercury was started. As indicated in 1877, the peak of all time domestic production of 79,000 flasks was reached. Not only was the United States self-sufficient, but produced a large exportable surplus. Since that time, under various legislative enactments and at various price levels, the domestic production has been a decreasing one. In other words, among the several points brought out by the history of the domestic production of mercury, are the exhaustion of the reserves of the country at various price levels; the temporary effect of a tariff; the lack of effect of a subsequent increase of two and one-half times the original tariff; the exhaustion of reserves by the artificial pegging of the price by foreign producers.

According to the last decennial census of the Bureau of the Census, the number of miners employed in the mercury industry in the United States was slightly over one thousand. In 1930, broadly, slightly more than 85% of the domestic requirements was the product of domestic mines. It may therefore be assumed that were other things equal, should the domestic supply be met by domestic production, it would mean that slightly over 1,300 men might be employed. In 1930, the average price per flask at New York was \$115.01. The present domestic price is \$67.538. If the immediate future trends of an industry can be judged by a study of past performance, it would seem that in the case of mercury in order to repeat the history of 1930, a price in excess of \$130.00 per flask would be required. A fact that should be given consideration is that in the past, as has been stated, the domestic reserves of mercury have been drawn on at various price levels and in many cases exhausted at the then existing price. It therefore, becomes evident that if prices were restored to the high levels of the past, the equivalent production could not in the future be duplicated unless technology had supplied a means of greatly reducing the cost of production, thus making commercially available material of extremely low-grade.

Production of mercury is confined to eight states and Alaska. Of the 1929 production of 23,682 flasks (76 pounds), California supplied 43%, Nevada 20%, Oregon 15%, Washington 6% and Texas, Arizona and Alaska the remaining 16%.

From 1922 to 1931, inclusive, the apparent domestic consumption of mercury ranged between 20,500 flasks (1931) and 38,500 flasks (1926). Our position has been and is that of an importer and any variations therefrom in the past decade have been of temporary duration. Foreign ores are richer than ours and production costs are lower.

Because of the great decline in the production of domestic mercury for reasons of decreased demand because of depression, plus the influence of the European cartel, the American Quicksilver Industry has been in a very depressed and chaotic state. The Industry has degraded to the point of almost not being an Industry in accordance with our definition for Industry under the terms of the Act. Because of mercury occupying a very prominent position in the list of emergency War materials for the use of making fulminates, and the more recent industrial demand for Mercury Vapor Boilers, and the hope that protection can be given the domestic industry by way of curbing "dumping" of distressed cartel mercury on the American market, the application of a Code of Fair Competition for the Quicksilver Industry has been allowed:

ARTICLE I. *Purpose*.—States the purpose of the Code.

ARTICLE II.—*Definitions*. Accurately defines specific terms applicable to the Quicksilver Industry as used in this Code.

ARTICLE III. *Hours*.—The maximum hours are limited to forty hours per week for employees engaged in the mining and processing of products and labor incident thereto. Watchmen, according to the nature of their responsibilities may be permitted to work either eighty-four hours in any two week period or forty-eight hours in any one week period. Office, salaried and other employees not covered by the above who receive less than \$35.00 per week shall not be permitted to work in excess of forty hours in any one week except that during any one week in any one month period they may be permitted to work forty-eight hours in such week. Employees engaged in an executive, managerial or supervisory capacity who receive not less than \$35.00 per week and employees other than those engaged in processing or labor operations directly incident thereto are not subject to any hourly limitations. The maximum hours shall not apply in cases of emergencies or repairs where the safety of life or health or the protection of property necessitates longer hours.

A 10% tolerance over the forty hour maximum is allowed to employees engaged in the preparation, care and maintenance of machinery and production facilities, stock and shipping clerks and truckmen engaged in outside delivery and pick-up service. The limitation as to hours of a twenty-four hour day shall not apply in such cases where the restriction of hours of labor of highly skilled workers in continuous process would unavoidably reduce production. No employee shall be permitted to work more than six days in any seven day period.

ARTICLE IV. *Wages*.—The minimum wage for employees engaged in mining and the processing of products or any labor incident thereto is at the rate of 42½¢ per hour, with the proviso that in the Southern district the minimum rate for such labor shall not be less than 30¢ per hour. Such minimum rates are to apply to totally unskilled and common labor. No person engaged in clerical or office work shall be paid less than at the rate of \$15.00 per week except that office boys

and girls may be paid a minimum of 80% of the established minimum for office employees. The established minimum rate of pay in Article IV, Section 1, shall apply irrespective of whether an employee is actually compensated on a time rate, piece rate or other basis. Provision is made for the employing of handicapped persons. Provision is also made for commissary employees who shall be paid not less than 80% of the minimum wage provided for in Article IV, Section 2. Female employees performing substantially the same work as male employees shall receive the same rate of pay as male employees. Provision is also made for the adjustment of wages above the minimum.

ARTICLE V. *General Labor Provisions.*—Provides that no employer shall employ any person under 18 years of age. This Article also sets forth mandatory provisions respecting the rights of employees to organize and bargain collectively. This Article also provides for matters having to do with reclassification of employees, standards for safety and health, the observance of State Laws, the posting of complete copies of the Code and the matter of Company Towns and Stores and the payment of wages.

ARTICLE VI. Establishes a Code Authority consisting of nine members, five of whom shall be selected from the Executive Committee of the National Quicksilver Producers Association, one of such members shall be the Secretary of the Association and two such members shall be members of the Industry selected by the Association, and one other such member shall represent the nonmembers of the Association. In addition to the nine members named above, there may be one or three representatives, without vote, to be appointed by the Administrator to serve without expense to the Industry for such terms as he may specify. In addition to the organization of the Code Authority, the Powers and Duties thereof are also outlined in this Article.

ARTICLE VII. *Marketing and Trade Practice Rules.*—This Article sets forth an open price schedule and trade practices for the Industry.

ARTICLE VIII. *Export Trade.*—No provision of this Code relating to terms of selling, shipping or marketing shall apply to export trade or sales or shipments for export trade.

ARTICLE IX. *Modifications.*—This Code and all the provisions thereof are expressly made subject to the right of the President in accordance with Sub-section (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. Provision is also made for recommendations to the Administrator for modifications of this Code by any interested party or by the Code Authority.

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

ARTICLE XI. *Effective Date.*—This Code shall become effective ten days after its approval by the Administrator.

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

I find that:

(a) 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 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 Code as approved complies in all respects with the pertinent provisions of said Title of said Act, including without limitation Sub-section (a) of Section 3, Sub-section (a) of Section 7, and Sub-section (b) of Section 10 thereof; and that the applicant association is an industrial association truly representative of the aforesaid Industry, and that said association imposes no inequitable restrictions on admission to membership therein.

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

(e) 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 Code.

For these reasons, therefore, this Code has been approved.

Respectfully,

HUGH S. JOHNSON,
Administrator.

MARCH 21, 1934.

CODE OF FAIR COMPETITION FOR THE QUICKSILVER INDUSTRY

ARTICLE I—PURPOSES

To effectuate the policies of Title I of the National Industrial Recovery Act, this Code is established as a Code of Fair Competition for the Quicksilver Industry, and its provisions are the standards of fair competition for such Industry and are binding upon every member thereof.

ARTICLE II—DEFINITIONS

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

SECTION 1. The term "President" means the President of the United States of America.

SECTION 2. The term "Act" means Title I of the National Industrial Recovery Act approved by the President, June 16, 1933, and any amendment thereto.

SECTION 3. The term "Administrator" means the Administrator for Industrial Recovery.

SECTION 4. The term "Industry" as used herein means the mining of and/or processing of ores in which quicksilver (mercury) represents the principal recoverable constituent and/or the sale of any mercury by such producer or processor which includes without limitation any person or corporation keeping a subsidiary or controlling relationship or one of joint ownership with any such producer and/or processor.

SECTION 5. The term "Member of the Industry" includes all those engaged in the Industry, either as an employer or on his or its own behalf.

SECTION 6. The term "Employee" means and 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 7. The term "Employer" means anyone by whom any such employee is employed or compensated.

SECTION 8. The term "Flask" as used herein means a standard container for quicksilver containing 76 net pounds avoirdupois of quicksilver.

SECTION 9. The term "Executive Committee" as used herein means the Executive Committee of the National Quicksilver Producers Association.

SECTION 10. The term "Secretary" means the Secretary of the National Quicksilver Producers Association.

SECTION 11. The term "Southern District" as used herein means the States of Texas, Arkansas, Louisiana, Mississippi, Tennessee and Alabama.

ARTICLE III—HOURS OF LABOR

SECTION 1. *Maximum Hours.*—On and after the effective date of this Code, no employee shall work or be permitted to work in excess of forty (40) hours in any one week or eight (8) hours in any twenty-four (24) hour period, except as herein otherwise provided. A normal work day shall not exceed eight (8) hours.

SECTION 2. *Hours For Clerical And Office Employees.*—On and after the effective date of this Code no person employed in clerical or office work shall be permitted to work more than an average of forty (40) hours per week during any one month period, nor more than forty-eight (48) hours in any one week. A normal work day shall not exceed eight (8) hours.

SECTION 3. *Exception as to Hours.*—The limitation as to hours of labor, as specified in Sections 1, 2 and 4 of this Article III, shall not apply to the following:

(a) To employees engaged in emergency maintenance or emergency repair work, involving breakdown, or the protection of life or property; provided that in any such special cases at least one and one-half ($1\frac{1}{2}$) times the normal wage rate for any employee so employed shall be paid for all hours worked in excess of the forty (40) hours in any one week or eight hours in any one day; provided that this overtime provision shall not apply in cases of catastrophes involving loss of life. Such special cases, however, shall be reported to the Code Authority.

(b) Nor to outside sales or sales service men; nor to persons in a managerial, executive or supervisory capacity who receive not less than \$35.00 per week;

(c) Nor to watchmen who, according to the nature of their responsibilities, may be permitted to work either eighty-four (84) hours in any two-week period; or forty-eight (48) hours in any one-week period, provided such employees shall have at least one day's rest in each seven day period;

(d) There may be a tolerance of 10% additional hours over the forty (40) hours in any one week for employees engaged in the preparation, care and maintenance of machinery and production facilities, stock and shipping clerks, and truckmen engaged in outside delivery and pick-up service; provided, however, that at least one and one half ($1\frac{1}{2}$) times the normal wage rate for any employee so employed shall be paid for all hours worked in excess of eight (8) hours per day or forty (40) hours in any one week;

(e) The limitation as to hours of a twenty-four (24) hour day shall not apply to such cases where restrictions of hours of labor of highly skilled workers in continuous processes would unavoidably reduce production, provided, however, that such employees in any such special cases shall not work more than forty-eight (48) hours in any one week; and provided that in such special cases at least one and one half ($1\frac{1}{2}$) times the normal wage rate for any employee so employed shall be paid for all hours worked in excess of eight (8) hours per day or forty (40) hours in any one week.

SECTION 4. *Standard Week.*—No employee shall be permitted to work more than six days in any seven-day period.

SECTION 5. *Employment By Several Employers.*—No employer shall knowingly permit any employee to work for any time, which, when totaled with that already performed with another employer or em-

ployers in this Industry or any other Industry, exceeds the maximum permitted herein.

ARTICLE IV—WAGES

SECTION 1. *Minimum Wages.*—On and after the effective date of this Code no employee, except as herein otherwise specified, shall be paid in any pay period less than at the rate of 42½¢ per hour; provided, however, that in the Southern District the minimum rate that shall be paid in any pay period shall be 30¢ per hour.

SECTION 2. *Clerical and Office Employees.*—No accounting, clerical, office, sales or service employee working on a weekly basis in any office shall be paid less than at the rate of fifteen (\$15.00) dollars per week; provided, however, that office boys and girls and messengers shall be paid at a rate not less than 80% of the minimum hereinabove specified; and provided further that the number of such boys and girls and messengers so paid shall constitute not more than 5% of the total number of such employees of any office of any one employer, but in any case each employer shall be entitled to one such employee.

(a) Commissary employees, excluding cooks, shall be paid not less than 80% of the minimum wage (\$15.00) provided for in Section 2 of this Article, and provided further that the total number of such commissary employees so paid shall constitute not more than 5% of the total number of employees in any camp, but in each case such employer shall be entitled to two such employees.

PIECEWORK COMPENSATION

SECTION 3. *Minimum Wages.*—This Article establishes a minimum rate of pay for any pay period which shall apply, irrespective of whether an employee is actually compensated on a time rate, piecework, or other basis.

SECTION 4. *Female Employees.*—Female employees performing substantially the same work as male employees shall receive the same rate of pay as male employees, and, when they displace male employees they shall receive the same rate of pay as the men they displace.

SECTION 5. *Wages Above The Minimum.*—Equitable adjustments above the minimum in all pay schedules of employees shall be made within thirty (30) days after the effective date of this Code by any employer who has not heretofore made such adjustments under the National Industrial Recovery Act. In no event, however, shall hourly rates be reduced. Within sixty (60) days after the effective date of this Code each Member of this Industry shall make a report of such adjustment whether made prior to or subsequent to date of approval of this Code to the Code Authority.

SECTION 6. *Handicapped Persons.*—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 all such persons em-

ployed by him, showing the wages paid to, and the maximum hours of work for such employee.

ARTICLE V—GENERAL LABOR PROVISIONS

SECTION 1. *Child Labor.*—On and after the effective date of this Code, no person under eighteen (18) years of age shall be employed in the Industry. In any State an employer shall be deemed to have complied with this provision as to age of employees 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.

SECTION 2. *Provisions From The Act.*—(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, and

(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.

SECTION 3. *Reclassification of Employees.*—No employer shall reclassify employees or duties of occupations performed, or engage in any other subterfuge for the purpose of defeating the purposes or provisions of the Act or of this Code.

SECTION 4. *Standards for Safety and Health.*—Every employer shall make reasonable provision for the safety and health of his employees at the place and during the hours of their employment. Standards for safety and health for this Industry shall be submitted to the Administrator by the Code Authority within six months after the date of approval of this Code.

SECTION 5. *State Laws.*—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.

SECTION 6. *Posting.*—All employers shall post and keep posted complete copies of this Code, and all amendments thereto, in conspicuous places accessible to employees.

SECTION 7. *Company Town and Stores.*—Employees other than maintenance or supervisory men, or those necessary to protect property, shall not be required as a condition of employment, to live in houses rented from the employer. No employee shall be required, as a condition of employment, to trade at a store owned or specified by an employer.

SECTION 8. *Payment of Wages.*—An 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 payments for pensions, insurance, or sick benefits other than those voluntarily paid

by the wage earners, or required by State Laws. Pay periods for wages shall be at least semi-monthly, and for salaries at least once per month. Employers shall agree not to withhold wages.

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

ORGANIZATION AND CONSTITUTION

SECTION 1. A Code Authority is hereby constituted and shall consist of nine voting members. Five of such members shall be selected from the Executive Committee of the National Quicksilver Producers Association. One of such members shall be the Secretary of the National Quicksilver Producers Association. Two such members shall be members of the Industry (not members of the Executive Committee) truly representative of the various interests of the Industry and shall be elected by the National Quicksilver Producers Association. One such member shall be elected by the members of the Industry who are not members of the National Quicksilver Producers Association, and shall be truly representative of such non-members. The selection of all elected members of the Code Authority shall be in a fair and equitable manner to be approved by the Administrator. In the event that the selection of the non-member of the National Quicksilver Producers Association is not made within thirty days after the effective date of this Code, such member shall be selected by the Administrator.

In addition to the above membership, there may be one, and not more than three members, without vote, and without compensation by the Industry, appointed by the Administrator to serve for six-month or twelve-month terms, as he may specify, from the date of appointment.

SECTION 2. Each trade or industrial association directly or indirectly participating in the selection or activities of the 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, Rules and 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 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 Code Authority is not truly representative or does not in other respects comply with the provisions of the Act, may require an appropriate modification in the method of selection of the Code Authority.

SECTION 4. Members 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 assenting to and complying with the requirements of this Code and sustaining their reasonable share of the expenses of its administration. Such reasonable share of the expenses of administration shall be determined by the Code Authority, subject to review and approval by the Administrator, on the basis of volume of business and/or such other factors as may be deemed equitable.

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 misfeasance or nonfeasance.

POWERS AND DUTIES

SECTION 6. Subject to such rules and regulations as may be issued by the Administrator, the Code Authority shall have the following further powers and duties, the exercise of which shall be reported to the Administrator and shall be subject to his right, on review, to disapprove any action taken by the Code Authority. If the Administrator shall determine that any action of the Code Authority 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 agency pending final action which shall not be effective unless the Administrator approves or unless he shall fail to disapprove after thirty days' notice to him of intention to proceed with such action in its original or modified form.

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

(b) To adopt By-Laws, Rules and Regulations for its procedure and for the administration and enforcement of the Code.

(c) To obtain from members of the Industry such information and reports as are required for the administration of the Code and to provide for submission by members of such information and reports as the Administrator may deem necessary for the purposes recited in Section 3 (a) of the Act, which information and reports shall be submitted by members to such Federal or State agencies as the Administrator 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 reports shall be disclosed to any other member of the Industry or any other party except to such governmental agencies as may be directed by the Administrator.

(d) 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.

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

(f) 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 Code.

(g) To recommend to the Administrator further fair trade practice provisions to govern members of the Industry in their relations with each other or with other industries and to recommend to the Administrator measures for industrial planning, including stabilization of employment.

ARTICLE VII—MARKETING AND TRADE PRACTICE RULES

SECTION 1. *Price Schedules*.—Every member of the Industry within ten (10) days after the effective date of this Code shall file with the Code Authority the price or prices and terms or conditions of sale at which he is offering his products for sale; this original filing to become effective on the date of such filing. Any member of the Industry desiring to change the prices of his products or terms or conditions of sale, shall do so by notifying the Code Authority of the desired changes, which shall become effective upon the date of such notice. All schedules of prices, terms and conditions of sale shall be available to members of the industry and to the public.

SECTION 2. *Trade Practice Rules*.—The following trade practices are declared to constitute unfair methods of competition between members of the Industry, and no member of the Industry shall use any of them, either directly or indirectly, through any officer, agent or employee. The violation of any one or more of these, or any further trade provisions which hereafter may be established, shall be deemed a violation of this Code.

(1) The secret payment or allowance of rebates, refunds, commissions, credits or unearned discounts, whether in the form of money or otherwise, or the secret extension to certain purchasers of special services or privileges not extended to all purchasers on like terms and conditions.

(2) The prepayment of freight charges with the intent or with the effect of granting discriminatory credit allowance.

(3) The allowance in any form of adjustments, discounts, credits or refunds, for the purpose or with the effect of altering retroactively the price quoted in such manner as to create price discrimination.

(4) The pre-dating or post-dating of any invoice or sales contract except to conform to a bona-fide agreement entered into on the pre-date.

(5) The false marking of any product of the Industry or the intentional misrepresentation of analysis of content or of any size or weight of standard flask or the making of, causing or permitting to be made or publishing of any false, misleading or deceptive statement by way of advertisement, invoice, or otherwise concerning the size, quality, quantity, character, nature, preparation or origin of any industry product.

(6) The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representation or by false disparagement of the grade or quality of their goods.

(7) The unauthorized use in written or oral form of trade-marks, trade names or slogans used by a competitor.

(8) No member of the Industry shall induce or attempt to induce the breach of an existing contract between a competitor and his customer or source of supply, nor shall any such member interfere

with or obstruct the performance of such contractual duties or services.

(9) No member of the Industry shall ship goods on consignment except where peculiar circumstances of the Industry require the practice. Such exceptions shall be defined by the Code Authority with the approval of the Administrator, and shall apply alike to all members of the Industry.

(10) No member of the Industry shall require that the purchase or lease of any goods be a prerequisite to the purchase or lease of any other goods.

(11) 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.

(12) No member of the Industry shall publish or circulate unjustified or unwarranted threats of legal proceedings which tend to or have the effect of harassing competitors or intimidating their customers. Failure to prosecute in a reasonable time shall be evidence that any such threat is unwarranted or unjustified.

(13) Aiding or abetting any person, firm, association, or corporation in any unfair practice.

(14) Procuring, otherwise than with the consent of any member of the Industry, any information concerning the business of such member which is properly regarded by it as a trade secret as held confidential within its organization, other than information relating to a violation of any provision of this Code.

(15) Knowingly shipping a lower grade of material than is described in the contract or order.

(16) Deviating from the published and previously established specifications, for the purpose of influencing a customer or prospective customer.

(17) Failing to file price schedules or changes therein, as required by Section 1 of this Article.

(18) Selling of any Industry product by a member of the Industry at a price below the open, filed or publicly announced price schedules of such member, or deviation from the conditions of sale contained in such schedules filed pursuant to Section 1 of this Article.

ARTICLE VIII—EXPORT TRADE

No provision of this Code relating to terms of selling, shipping or marketing, shall apply to export trade or sales or shipments for export trade.

ARTICLE IX—MODIFICATION

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 and specifically, but without limitation, to the right of the President to cancel or modify his approval of this Code or any conditions imposed by him upon his approval thereof.

SECTION 2. Such of the provisions of this Code as are not required to be included therein by the Act may, with the approval of the Administrator, be amended as provided in Section 3 hereof, in such manner as may be indicated by the needs of the public, by changes in circumstances, or by experience; all the provisions of this Code, unless so modified or eliminated, shall remain in effect until the expiration date of Title I of the Act.

SECTION 3. An amendment may be proposed by any interested party either to the Code Authority or directly by or to the Administrator. All proposed amendments shall be referred to the Code Authority, who shall give members of the Industry an opportunity to be heard thereon, and thereafter the Code Authority may make such recommendations thereon as is deemed proper, provided, however, that when approved by the Administrator as necessary to effectuate the policies of the Act, after such notice and hearing as he may prescribe, any proposed amendment shall thereupon become effective as a part of this Code.

SECTION 4. The Code Authority may make recommendations for modifications of this Code to the Administrator which shall become effective as a part of this Code upon approval by the Administrator after such notice and hearing as he may prescribe.

ARTICLE X—MONOPOLIES

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

ARTICLE XI—EFFECTIVE DATE

This Code shall become effective beginning ten days after its approval by the Administrator.

Approved Code No. 351.

Registry No. 1218-8-04.



UNIVERSITY OF FLORIDA



3 1262 08582 8647