

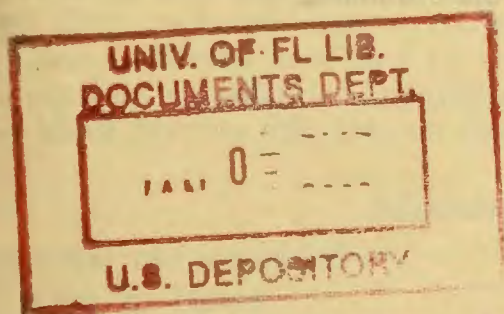
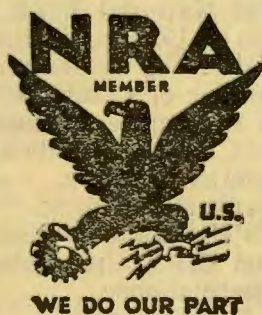
NATIONAL RECOVERY ADMINISTRATION

**AMENDMENT TO
CODE OF FAIR COMPETITION**

FOR THE

OXY-ACETYLENE INDUSTRY

AS APPROVED ON JULY 26, 1934



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Approved Code No. 155—Amendment No. 1

AMENDMENT TO CODE OF FAIR COMPETITION

FOR THE

OXY-ACETYLENE INDUSTRY

As Approved on July 26, 1934

ORDER

APPROVING AMENDMENTS OF CODE OF FAIR COMPETITION FOR THE OXY-ACETYLENE 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 amendments to a Code of Fair Competition for the Oxy-Acetylene Industry, and hearings having been duly held thereon and opportunity to object having been given and the annexed report on said amendments 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 amendments and the Code as constituted after being amended comply 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 amendments be and they are hereby approved, and that the previous approval of said Code is hereby modified to include an approval of said Code in its entirety as amended, provided that said amendments and this Order shall become effective on the fifth day after the date hereof.

HUGH S. JOHNSON,
Administrator for Industrial Recovery.

Approval recommended:

GEO. L. BERRY,
Division Administrator.

WASHINGTON, D.C.,
July 26, 1934.

REPORT TO THE PRESIDENT

The PRESIDENT,
The White House.

SIR: This is a report on the proposed amendments to the Code of Fair Competition for the Oxy-Acetylene Industry as approved by you on December 15, 1933. The public hearing on all but one of these amendments was held in the City of Washington, D. C. on May 15 and 16, 1934. The additional amendment was filed subsequent to this hearing and a notice of opportunity to be heard was published on June 29, 1934. Full opportunity was given to all interested parties to appear or to be heard.

The purposes and effects of the amendments on which the public hearing was held are as follows:

Amendment No. 1 revises the definition of "member of the Industry" to clarify same and amendment No. 2 eliminates the definition of "member of the Code" which is unnecessary.

Amendment No. 3 adds definitions for "reseller" and "consumer", terms used in subsequent amendments.

Amendment No. 4 exempts from the maximum hours provisions employees working in a technical capacity, who receive more than \$35.00 per week. This is because the operation of plants frequently depends on the work of employees of a technical capacity.

Amendment No. 5 changes the method of election of the Supervising Agency. It provides that five out of ten members of the Supervising Agency shall be elected on a basis of dollar volume of the business and that the other five members shall be elected by equal votes cast by units of the Industry.

Amendment No. 6 deletes Section 4 of Article VI as the subject matter of this section is covered in amendment No. 5.

Amendment No. 7 merely changes the designation number of Section 5 of Article VI.

Amendment No. 8 provides for the appointment of a Trade Practice Committee in accordance with Administration policy.

Amendment No. 9 enables the Supervising Agency to incur such reasonable obligations as are necessary for the administration of the Code. It requires that the Supervising Agency submit for approval of the Administrator an itemized budget and an equitable basis of pro-rating the assessments to be collected from the members of the Industry. Payment of an equitable contribution to the expenses of the Supervising Agency by members of the Industry is made mandatory by this amendment if their principal line of business is covered by this Code.

Amendment No. 10 changes the designation by number of Article VII to Article VII-A, Trade Practices—General Provisions.

Amendment No. 11 applies to Section 3 of Article VII (to be Article VII-A) and provides two optional methods of calculating

rental. The Code as approved did not contain any specification as to the method of calculating rental.

Amendment No. 12 pertains to Section 4 of Article VII (to be Article VII-A) and provides that the price to be charged for all gases sold may be an f.o.b. freight station price as well as an f.o.b. plant or warehouse price. This amendment is of benefit to the consumer because when shipments are made by rail no charge is made for delivery of the goods from plant or warehouse to the freight station.

Amendment No. 13 is a revision of Section 8 of Article VII (to be Article VII-A). It exempts medical gases sold on a gallonage basis for medical use only from the application of Sections 3, 4, 6 and 11.

Amendment No. 14 places in the Code as Section 9 of Article VII (to be Article VII-A) the standard bribery trade practice provision.

Amendment No. 15 provides as a new Section 10 of Article VII (to be Article VII-A) for the prohibition of lending, leasing or giving away of apparatus under certain conditions. This provision represents a compromise of different provisions proposed, by two factions of the Industry, namely, those manufacturers interested in the manufacture and sale of gas and apparatus and those interested in the manufacture and sale of apparatus only. Because of the controversial nature of this provision the Supervising Agency voted at their meeting on June 6 and 7, 1934, to postpone action on same. An agreement was reached later and eight out ten members of the Supervising Agency have assented, one member not voting.

Amendment No. 16 places in the Code a new Section 11 of Article VII (to be Article VII-A) pertaining to agreements between members of the Industry and resellers of gas. It is required that resellers of gas are bound in the handling of such products to comply with the provisions of Sections 1, 3 and 4 of Article VII (to be Article VII-A), provided, however, that nothing in this section shall be construed to mean that resellers of gas are bound to file the same rental or delivery charges filed by any member of the Industry. There are no provisions in the Code concerning the prices at which the products of the Industry are sold nor does it include any provision for the open filing of prices. All resellers of gas received a notice of the public hearing and all objections were met in revising the provision as proposed for approval.

Amendment No. 17 creates Article VII-B and provides trade practice provisions, which are self-explanatory, for the medical gas division of the business.

Amendment No. 18 changes the term "members of the Code" wherever used in the Code as approved to read "members of the Industry."

The purpose and effect of the amendment which was submitted subsequent to those on which the public hearing was held is as follows:

Amendment No. 19 places in the Code a new Section 12 of Article VII (to be Article VII-A) and provides, in connection with contracts in effect prior to the effective date of the Code, that the trade practice provisions contained in Sections 3, 4 and 5 of Article VII (to be Article VII-A) shall not apply if they were not specified in such contracts but that said provisions shall apply with respect to

extended or renewal periods of any such contract when extended or renewed by a member of the Industry. This amendment clears up a difficulty which the Industry has experienced in connection with contracts which were in effect prior to the effective date of the Code.

FINDINGS

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

I find that:

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

(b) The Code as amended complies in all respects with the pertinent provisions of said Title of said Act, including without limitation sub-section (a) of Section 3, sub-section (a) of Section 7 and sub-section (b) of Section 10 thereof.

(c) The National Oxygen and Acetylene Association was and is an industrial association truly representative of the aforesaid Industry and that said association imposed and imposes no inequitable restrictions on admission to membership therein and has applied for these amendments.

(d) These amendments and the Code as amended are not designed to and will not permit monopolies or monopolistic practices.

(e) These amendments and the Code as amended are not designed to and will not eliminate or oppress small enterprises and will not operate to discriminate against them.

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

For these reasons, these amendments have been approved.

Respectfully,

HUGH S. JOHNSON,
Administrator.

JULY 26, 1934.

AMENDMENT TO CODE OF FAIR COMPETITION FOR THE OXY-ACETYLENE INDUSTRY

AMENDMENT 1. In Article II—Definitions: For the present paragraph defining “member of the Industry” substitute the following:

“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.”

AMENDMENT 2. In Article II—Definitions: Delete the paragraph defining “member of the Code.”

AMENDMENT 3. In Article II—Definitions: Immediately following definition of “member of the Industry” insert the following two paragraphs:

“The term ‘reseller’ as used herein includes any person, firm or other form of enterprise, selling under the name and trademark of another, any product of the Industry.

“The term ‘consumer’ as used herein means the user of any product of the Industry as differentiated from the reseller.”

AMENDMENT 4. In Article III—Hours, Section 1, Line 5: Delete the word “or” and insert between the words “executive” and “capacity” the words “or technical.” Also add to Section 1 the following:

“The exception of employees in a technical capacity is not to include any skilled operating employees or draftsmen.”

As so modified said Section will read as follows:

“SECTION 1. On and after the effective date employers in the Industry shall not operate on a schedule of hours of labor for any of their employees (except any person employed as a salesman, engineer, fireman, loader, truck driver, or watchman, or employed in a managerial, executive or technical capacity and receiving more than \$35.00 per week) in excess of an average of forty (40) hours per week over any period of six (6) weeks, or in any event more than forty-eight (48) hours in any one week. The exception of employees in a technical capacity is not to include any skilled operating employees or draftsmen.”

AMENDMENT 5. In Article VI—Administration: Substitute for the present Section 1 the following:

“SECTION 1. This Code shall be administered by a Supervising Agency of ten (10) persons chosen and elected by the members of the Industry as follows:

“(a) At an election wherein each member of the Industry having a net sales volume of products of the Industry of \$100,000.00 or less per annum shall be entitled to one vote and each member of the Industry having a net sales volume in excess of \$100,000.00 per annum shall be entitled to one vote with respect to \$100,000.00 of

such sales volume and one vote with respect to each \$200,000.00 or fraction thereof that such sales volume shall be in excess of \$100,000.00, five (5) members of the Supervising Agency may be elected and the five (5) individuals receiving the greatest number of votes at such election shall become members of the Supervising Agency.

“(b) At an election wherein each member of the Industry is entitled to cast one vote, five (5) members of the Supervising Agency shall be elected.

“(c) The members of the Agency so elected shall serve for the period of one year from the date of their election or until their successors are elected and qualified.

“(d) In the event of the death or resignation of a member of the Supervising Agency, his successor shall be elected in the same manner as the retiring member.

“(e) No affirmative action can be taken by the Supervising Agency unless seven (7) members thereof vote in favor of such action.

“(f) In addition to the membership as above provided, there may be not more than three (3) members, without vote and without compensation from the Industry, to be known as Administration Members, to be appointed by the Administrator to serve for such terms as he may specify.

“(g) The provisions for a Supervising Agency as contained in Section 1 of Article VI as originally adopted in this Code shall remain in force and effect until the election and qualification of a Supervising Agency in accordance with the foregoing provisions.”

AMENDMENT 6. In Article VI—Administration: Delete Section 4.

AMENDMENT 7. In Article VI—Administration: Amend Section 5 to designate the same Section 4, in view of the elimination of Section 4 reported above, numbered 6.

AMENDMENT 8. In Article VI—Administration: Add a new section to be numbered Section 5 and to read as follows:

“SECTION 5. The Supervising Agency shall appoint a Trade Practice Committee which shall meet with the Trade Practice Committees appointed under such other Codes as may be related to the Industry for the purpose of formulating fair trade practices to govern the relationships between members of the Industry under this Code and members of other industries under such other Codes to the end that such fair trade practices may be proposed to the Administrator as amendments to this Code and such other Codes.”

AMENDMENT 9. In Article VI—Administration: Substitute for the present Section 6 the following:

“SECTION 6. (A) It being found necessary in order to support the administration of this Code and to maintain the standards of fair competition established hereunder and to effectuate the policy of the Act, the Supervising Agency is authorized:

“(1) To incur such reasonable obligations as are necessary and proper for the foregoing purposes, and to meet such obligations out of funds which may be raised as hereinafter provided and which shall be held in trust for the purposes of the Code;

“(2) To submit to the Administrator for his approval, subject to such notice and opportunity to be heard as he may deem necessary (1) an itemized budget of its estimated expenses for the foregoing

purposes, and (2) an equitable basis upon which the funds necessary to support the budget shall be contributed by members of the Industry;

"(3) After such budget and basis of contribution have been approved by the Administrator, to determine and obtain equitable contribution as above set forth by all members of the Industry, and to that end, if necessary to institute legal proceedings therefor in its own name.

"(B) Each member of the Industry shall pay his or its equitable contribution to the expenses of the maintenance of the Supervising Agency, determined as hereinabove provided, and subject to rules and regulations pertaining thereto issued by the Administrator. Only members of the Industry complying with the Code and contributing to the expenses of its administration as hereinabove provided, (unless duly exempted from making such contribution) shall be entitled to participate in the selection of members of the Supervising Agency or to receive the benefits of any of its voluntary activities or to make use of any emblem or insignia of the National Recovery Administration.

"(C) The Supervising Agency shall neither incur nor pay any obligation in excess of the amount thereof as estimated in its approved budget, except upon approval of the Administrator; and no subsequent budget shall contain any deficiency item for expenditures in excess of prior budget estimates except those which the Administrator shall have so approved."

AMENDMENT 10. Change the designation of Article VII—Trade Practices, to Article VII—A—Trade Practices—General Provisions.

AMENDMENT 11. In Article VII, to be Article VII—A: In Section 3, change the semicolon at the end of said section to a period, and add the following:

"Such rental may be calculated (a) by the "Numerical System", i.e., a computation for each individual cylinder, or (b) by the "Cylinder Quantity" method, i.e., a monthly computation based on the number of days cylinders are retained by customers in excess of thirty (30) days, without regard to any individual cylinder. It shall not be permissible to consolidate for rental computation purposes the cylinder records of any given customer having more than one receiving point, except for such points as are strictly temporary in character and/or where customer's receiving points are so near to each other that the interchange of cylinders naturally and commonly occurs."

AMENDMENT 12. In Article VII, to be Article VII—A: In Section 4, after the word "warehouse" insert the words "or freight station at the point of origin of shipment" and rearrange wording of clause (1) to read as follows:

"(1) a price f.o.b. plant, warehouse or freight station at the point of origin of shipment;"

As so revised said Section 4 will read as follows:

"SECTION 4. Failing to charge for all gases sold (1) a price f.o.b. plant, warehouse or freight station at the point of origin of shipment; (2) a delivery charge to be filed by each member of the Industry with the Supervising Agency which shall be open to inspection by any member of the Industry, or otherwise interested party;"

AMENDMENT 13. In Article VII, to be Article VII-A: Revise Section 8 to read as follows:

"SECTION 8. Sections 3, 4, 6 and 11 of Article VII-A do not apply to medical gases when sold on a gallonage basis for medical use only."

AMENDMENT 14. In Article VII, to be Article VII-A: Insert a new Section 9 to read as follows:

"SECTION 9. 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. Commercial bribery provisions 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."

AMENDMENT 15. In Article VII, to be Article VII-A: Insert a new Section 10 to read as follows:

"SECTION 10. Lending, leasing or giving away apparatus designed to use oxygen or acetylene, or substitutes therefor, in cutting or welding of metals by hand, as differentiated from automatic, semi-automatic or electrically-powered apparatus or equipment or accessories used therewith or manifolds or distributing systems.

"This provision shall not apply to (a) railroad companies; (b) other consumers with whom lending or leasing arrangements were in effect prior to June 18, 1934, provided a record of such consumers and evidence that such arrangements were in effect prior to said date is filed with the Chairman of the Supervising Agency within fifteen (15) days after the effective date of this modification; (c) competitive situations caused otherwise than by a member of the Industry, provided that full details shall be reported to the Chairman of the Supervising Agency immediately following the execution of any agreement made pursuant to this sub-section (c)."

AMENDMENT 16. In Article VII, to be Article VII-A: Insert a new Section 11 to read as follows:

"SECTION 11. All agreements between members of the Industry and resellers of gases shall specify that the reseller is required and bound in the handling of such products to comply with the provisions set forth in the foregoing Sections 1, 3 and 4, provided, however, that nothing in this Section shall be construed to mean that resellers of gas are bound to file the same rental or delivery charges filed by any member of the Industry; and it shall also be mandatory on members of the Industry either to require correction of any reported infraction of such Sections by a reseller or to terminate its agreement with such reseller within thirty (30) days after notice from the Supervising Agency that such reseller has been guilty of and has not corrected such infraction."

AMENDMENT 17. After the end of Article VII, to be Article VII-A: Insert a new Article VII-B—Trade Practices—Special Medical Gas Provisions, to read as follows:

"In addition to the trade practices set forth in Article VII-A, the following practices in the manufacture and distribution of

medical gases constitute unfair methods of competition and are prohibited:

"SECTION 1. Consigning or storing products of the Medical Gas Industry on property of any user or purchaser or prospective purchaser thereof to be paid for as sold.

"SECTION 2. Giving or lending any products or equipment or other facilities in conjunction with the use of Medical Gases without making adequate and proper charge therefor, as an inducement to obtain any competitor's business by contract or otherwise; provided, however, that this provision shall not be construed to prohibit the placing of equipment on trial or approval in good faith for a period not to exceed thirty (30) days.

"SECTION 3. Within sixty (60) days from the effective date of this amendment each member of the medical gas division shall file a schedule of monthly cylinder rental charges, individually prepared by the members, with the Supervising Agency, which schedule shall take effect immediately upon being filed and shall be based upon the net value of cylinders outstanding at the end of each month with an allowance of a normal free loan period without rental charges of thirty days, which under no circumstances shall be extended beyond ninety (90) days.

"Each schedule may be changed by filing with the Supervising Agency revised schedule to take effect also immediately upon filing. The Supervising Agency shall make such prices available to the inspection by the public at its official place of business during usual office hours. No member of the medical gas division shall charge less for rental of cylinders than the rate set forth on a cylinder rental charge schedule as filed with the Supervising Agency, or rebate such charge if justly made."

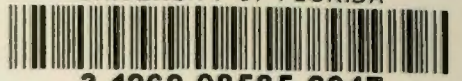
AMENDMENT 18. In Article IX, lines 8, 13 and 15, change the term "members of the Code" to read "members of the Industry."

AMENDMENT 19. In Article VII, to be Article VII-A: Add the following Section 12:

"SECTION 12. The provisions set forth in the foregoing Sections 3, 4 and 5 shall not be construed to require making or collecting charges for or with respect to products of the Industry sold under contracts in effect at the effective date of the Code, other than the charges provided for in such contracts; provided, however, that the said provisions shall apply with respect to extended or renewal periods of any such contract extended or renewed by a member of the Industry."

Approved Code No. 155—Amendment No. 1.
Registry No. 1150-02.

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