

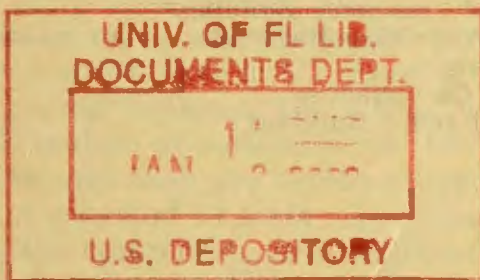
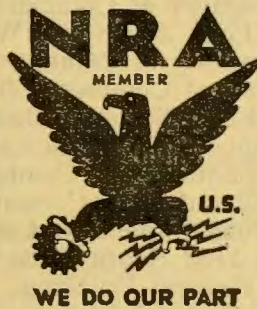
NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION

FOR THE

METAL TREATING INDUSTRY

AS APPROVED ON MARCH 26, 1934



UNITED STATES
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Approved Code No. 367

CODE OF FAIR COMPETITION

FOR THE

METAL TREATING INDUSTRY

As Approved on March 26, 1934

ORDER

APPROVING CODE OF FAIR COMPETITION FOR THE METAL TREATING 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 Metal Treating 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 is hereby approved; provided, however, that the provisions of Article VI, Section 6, insofar as they prescribe a waiting period between the filing with the Code Authority and the effective date of revised price lists or revised terms and conditions of sale, be and they are hereby stayed pending my further Order either within a period of sixty days from the effective date of this Code or after the completion of a study of open price associations now being conducted by the National Recovery Administration.

HUGH S. JOHNSON,

Administrator for Industrial Recovery.

Approval recommended:

A. R. GLANCY,

Division Administrator.

WASHINGTON, D.C.,

March 26, 1934.

REPORT TO THE PRESIDENT

The PRESIDENT,
The White House.

SIR: This is a report on the Code of Fair Competition for the Metal Treating Industry, as revised after a Public Hearing, held in Washington on January 18, 1934, in accordance with the provisions of the National Industrial Recovery Act.

PROVISIONS AS TO HOURS AND WAGES

Employees are limited to 40 hours per week and to 6 days in any 7, except during peak periods, when they may work 48 hours per week for 8 weeks in any 6 months' period, provided that no unemployed workers possessing the necessary skill are available. Time and a half will be paid to employees who work in excess of 8 hours per day, or 40 hours per week.

The minimum wage will be 42¢ per hour for factory employees, and \$16.00 per week for clerical or office employees. Female employees doing substantially the same work are to receive the same pay as male employees.

ECONOMIC EFFECT OF THE CODE

Under the provisions of this Code, estimates for 1934, based on operations for the first two months, show a gain in employment from about 600 to about 690 employees or approximately 15%, and an increase in the average weekly payrolls of about 25%.

The Industry, comprising approximately 80 firms, has an invested capital of about \$1,300,000 and an average annual sales volume of approximately \$1,600,000.

FINDINGS

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 avoid-

ing 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 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 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 types of the economic process have not been deprived of the right to be heard prior to approval of said Code.

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

Respectfully,

HUGH S. JOHNSON,
Administrator.

MARCH 26, 1934.

CODE OF FAIR COMPETITION FOR THE METAL TREATING INDUSTRY

ARTICLE I—PURPOSES

To effectuate the policies of Title I of the National Industrial Recovery Act, the following provisions are established as a Code of Fair Competition for the Metal Treating Industry and shall be the standard of Fair Competition for such Industry and shall be binding on every member thereof.

ARTICLE II—DEFINITIONS

1. The term "Metal Treating Industry," or "the Industry," as used herein, means and includes only the performance for sale of the processes of heat treatment of ferrous and/or non-ferrous metals and does not include the performance of such processes when in combination with other primary or secondary operations necessary in the preparation of metals or metal products for sale or use.

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.

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

4. The term "member of the industry," as used herein, includes anyone engaged in the industry, as above defined, either as an employer or on his own behalf.

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

6. The term "Institute," as used herein, means Metal Treating Institute, Inc.

ARTICLE III—HOURS

1. No employee shall be permitted to work in excess of forty (40) hours in any one (1) week, or six (6) days in any seven (7); provided, however, that during any period in which a concentrated demand upon any division of the industry shall place an unusual and temporary burden for metal treating upon its facilities, and no unemployed workers possessing the necessary skill to perform said metal treating work are available, an employee of such division may be permitted to work not more than forty-eight (48) hours for not more than eight (8) weeks in any six (6) months' period; and provided further that these limitations shall not apply to employees on emergency maintenance or emergency repair work, involving breakdowns or the protection of life or property in the member's own plant.

2. Where in any case an employee works in excess of eight (8) hours per day, or forty (40) hours per week, such extra time shall be compensated for at not less than one and one-half ($1\frac{1}{2}$) times the hourly rate of such employee.

3. Executives, supervisors, (but not working foremen), chemists and metallurgists, regularly paid thirty-five (\$35.00) dollars or more per week, and outside salesmen shall be exempt from the maximum limit of hours established in this Article. Electricians engaged in the care and repair of indicating pyrometers and related control equipment shall be permitted to work not more than forty-eight (48) hours per week, provided that one and one-half ($1\frac{1}{2}$) times the regular rate shall be paid for all hours worked in excess of forty (40) hours per week or eight (8) hours per day. .

4. No employer shall knowingly engage any employee for any time, which, when totaled with that already performed with another employer, or employers, in any industry, exceeds the maximum permitted herein.

5. Clerical or office and shipping and receiving employees may be employed forty (40) hours per week.

6. Any employer who regularly does the work of an employee shall be subject to the provisions of this Code as to hours of labor.

ARTICLE IV—WAGES

1. No employee shall be paid at less than the rate of forty-two (42¢) cents per hour, except as hereinafter provided.

2. A person whose earning capacity is limited because of age, physical or mental handicap, or other infirmity, may be employed on light work at a wage below the minimum established in 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. Each employer shall file monthly with the Code Authority a list of all such persons employed by him, showing wages paid to, and the maximum hours of work for such employees.

3. No clerical or office employee shall be paid less than the rate of sixteen (\$16.00) dollars per week, excepting office boys and girls, who may be paid at a rate not less than eighty (80) percent of the minimum wage fixed in this section; provided, however, that no employer shall engage at any one time more than one such office boy or girl for each twenty (20) office employees in regular classifications, with a maximum limit of twenty (20) office boys or girls in large offices, but with any employer entitled to have two.

4. This Article establishes a minimum rate of pay which shall apply irrespective of whether an employee is actually compensated on a time rate, piece rate, or other basis.

5. Female employees performing substantially the same work as male employees shall receive the same rate of pay as male employees.

6. During the first year of apprenticeship the minimum rates of pay shall not apply to any apprentice indentured under a system of training which will make the apprentice a skilled heat treater, provided that the indenture be made in pursuance of the laws of the

State in which the company is located. A copy of each indenture shall be filed with the Code Authority. No employer shall employ apprentices in a number to exceed the rate of one (1) apprentice to every ten (10) journeyman workers employed by him in the particular trade or occupation at the time of the employment of such apprentices.

7. Equitable adjustments in the rates of pay above the minimum shall be made on the effective date of this Code by every employer who has not made such adjustments under the National Industrial Recovery Act. Within thirty (30) days after the effective date of this Code all such adjustments made under the Act shall be reported to the Code Authority and to the Administrator. In no case shall rates be reduced.

8. Every employer shall make payment of all wages due in lawful currency or by negotiable check therefor, payable on demand. Employers agree that wages of employees paid on an hourly basis shall be paid at least twice a month and salaries at least once a month. Employers agree that wages or salaries shall not be withheld. Wages and salaries shall be exempt from any payments of pensions, insurance, or sick benefits other than those voluntarily paid by employees or required by state law. No employer or his agent shall accept any rebate, directly or indirectly, on such wages or salaries, nor give anything of value or extend favors to any person for the purpose of influencing rates of wages or salaries or the working conditions of employees.

9. No employer shall reclassify employees or duties of the occupations performed or engage in any other subterfuge for the purpose of defeating the purposes or provisions of the Act or of this Code.

ARTICLE V—GENERAL LABOR PROVISIONS

1. No person under sixteen (16) years of age shall be employed in the industry nor anyone under eighteen (18) years of age at occupations or operations hazardous in nature or detrimental to health. The Code Authority shall submit to the Administrator within sixty (60) days after the effective date of this Code, a list of such operations or occupations. In any State, an employer shall be deemed to have complied with this provision as to age if he shall have on file a certificate or permit duly issued by the authority in such State empowered to issue employment or age certificates or permits, showing that the employee is of the required age.

2. In compliance with Section 7 (a) of the Act it is provided:

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

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

3. No provisions of 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.

4. 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 shall be submitted by the Code Authority to the Administrator for approval within sixty (60) days after the effective date of this Code.

5. Each employer shall post and keep posted in conspicuous places, accessible to all employees, complete copies of this Code and any subsequent supplementary Codes or amendments.

ARTICLE VI—ADMINISTRATION

To effect further the policies of the Act, a Code Authority is hereby constituted to cooperate with the Administrator in the administration of this Code.

1. *Organization and Constitution of the Code Authority.*—(a) The Code Authority shall consist of five (5) members of the Institute elected by the members of the Institute, at a meeting duly called for that purpose or by letter ballot, and two (2) representatives of members of the Industry who are not members of the Institute, providing they so desire, and signify their willingness to pay their fair proportion of the cost of administering the Code. The representatives of the non-members shall be elected by the non-members in a meeting duly called for that purpose or by letter ballot. One or more additional members, without vote, may be appointed by the Administrator, at his discretion, to represent the Administrator or such groups or interests as he may designate.

(b) The Institute, or any other trade 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, bylaws, 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.

(c) In order that the Code Authority shall at all times be truly representative of the Industry and in other respects to comply with the provisions of the Act, the Administrator may provide 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.

(d) 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 non-feasance.

(e) 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 (30) days' notice to him of intention to proceed with such action in its original or modified form.

2. *Powers and duties of the Code Authority.*—The Code Authority shall have the following duties and powers to the extent permitted by the Act:

(a) To adopt by-laws, rules and regulations for its procedure and for the administration of this Code.

(b) To insure the execution of the provisions of this Code and provide for the compliance of the Industry with the provisions of the Act, subject to such rules and regulations as may be prescribed by the Administrator.

(c) To cooperate with the Administrator in making investigations as to the functioning and observance of any provision of this Code.

(d) To study the effect of the various provisions of this Code on the Industry and consider proposals for amendments or modifications and make recommendation from time to time thereon to the Administrator, which amendments or modifications will become effective as part of the Code upon approval by the Administrator after such notice and hearing as he may specify.

(e) To provide necessary data for the Administration of this Code, all members of the Industry shall upon request furnish to the Code Authority such information concerning conditions in the Industry—including wages, hours of labor, number of employees, costs, prices, and other matters pertaining to this Code as may be required by the Administrator—but this shall be carried out through such channels as to preclude identification of confidential information furnished by any member of the Industry.

(f) To establish, subject to the approval of the Administrator, discount terms and extension of time of payment to suit regional conditions.

3. *Reports to Government Agencies.*—In addition to the information required to be submitted to the Code Authority and to the Administrator, there shall be furnished to government agencies such statistical information as the Administrator may deem necessary for the purposes recited in Section 3 (a) of the Act, provided that nothing herein contained shall relieve anyone of any existing obligations to furnish reports to government agencies.

4. *Appointment of Divisional Committees.*—The Code Authority shall appoint a Divisional Committee for each geographical division and shall delegate to such Committees such of its powers and duties as it shall deem necessary for the proper administration of this Code under the sanction of and with the approval of the Code Authority.

5. *Accounting and Cost Filing.*—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 and approved by the Administrator full details concerning them shall be made available to all members. Thereafter all members shall determine and/or estimate costs in accordance with the principles of such methods.

6. *Open Price Filing.*—Within 15 days after the effective date of this Code, each member of the Industry shall file with the Code Authority a complete list of its current prices for the different classifications of metal treating service, terms, and trade discounts. Such price lists, terms, and discounts may be revised as conditions require by filing same with the Code Authority. It shall be an unfair method of competition for any person to sell metal treating service at any other than the price filed, or to give any concession directly or indirectly, by any means, from its list of prices, terms, and discounts, so long as the same remain in force.

A member of the Industry may submit a revised price list to the Code Authority any time. Such revised price list shall become effective on the 10th day after it is received by the Code Authority. The Code Authority shall immediately make such information available to all interested persons as each may be concerned. When a member of the Industry files a revised price, any other member may file a revised price to meet the one first filed. The second price shall become effective on the effective date of the one first filed.¹

7. 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 administration. The reasonable share of the expenses of its administration shall be determined by the 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 to be taken into consideration.

ARTICLE VII—TRADE PRACTICES

1. No member of the Industry shall defame any competitor by falsely imputing to him dishonorable conduct, inability to perform contracts, questionable credit standing, or by other misrepresentations having the tendency and capacity to mislead and deceive purchasers and prospective purchasers of metal treating service.

2. Procuring, otherwise than with the consent of any member of the Industry, any information concerning the business of such member which is properly regarded as a trade secret, or confidential within an organization, is unfair trade practice.

3. 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 em-

¹ See paragraph 2 of order approving this Code.

ployee, 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.

4. It is unfair trade practice to make or cause to be made, or to permit to be made by word-of-mouth or by publication, any false or deceptive statement or advertisement, concerning the grade, quality, character or finish of the process or the work, which statements may have the tendency or effect of misleading or deceiving customers, prospective customers, or ultimate retail purchasers of the final product, or which may have the tendency or effect of injuring the business of a competing member in the Industry.

5. Inducing by any means whatever, or attempting to induce, any party to a contract with a member of the Industry to violate such contract, is unfair trade practice.

6. It is unfair trade practice to make either direct or indirect discrimination in the price charged to several purchasers of metal treating service; provided that nothing herein contained shall forbid differences in prices due to clearly understood differences in the grade, and quality of the metal treating, or differences in price based on quantity discounts.

7. The dating of an invoice other than the date of shipment of all the material included therein, and the withholding from, or inserting in the invoice of facts which make the invoice a false record—either wholly or in part—of the transaction represented thereby and the payment or allowance of secret rebates, refunds, credits, unearned discounts, whether in the form of money or otherwise, constitute unfair competition.

8. It shall be unfair trade practice to subcontract any work in this Industry, in whole or in part, to any employee.

9. It shall be unfair trade practice for any member of the Industry who is operating his plant in competition with other members of the Industry, to rent, to lease or to allow the use of any portion of his factory space or equipment capacity, to employees for the purpose of their performing metal treating operations for the trade in competition with other plants in the Industry.

10. Except to meet the selling price of a bona fide low cost producer, it shall be unfair trade practice for any member of the Industry to sell metal treating service below his own individual cost thereof, costs in all cases being determined in accordance with a system of accounting acceptable to or established by the Code Authority with the approval of the Administrator, as mentioned in paragraph 5, Article VI.

11. It shall be unfair competition to make guarantee against decline in price, or to give protection against advance in price, extending beyond a period of ninety (90) days.

12. It shall be unfair competition to make unit prices quoted on a specified quantity of metal treating applicable to a lesser quantity. If lesser quantities are shipped under a contract calling for a larger quantity, billing prices shall be those quoted or consistent with the actual quantities shipped.

13. It is unfair practice deliberately to make impossible delivery promises for the purpose of winning orders for metal treating service.

ARTICLE VIII—MODIFICATIONS

This Code and all of the provisions thereof are expressly made subject to the right of the President, in accordance with 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 Title I of 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.

This 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 to the Administrator and such notice and hearing as he shall specify, to become effective on approval of the President.

ARTICLE IX—MONOPOLIES

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

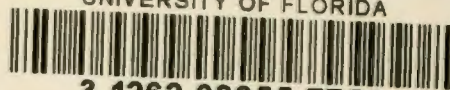
ARTICLE X—EFFECTIVE DATE

This Code shall become effective on the second Monday after its approval by the President.

Approved Code No. 367.
Registry No. 1118-25.



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