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THE BASIC CODE (ADMINISTRATIVE ORDER NO. X-61)

Prepared by

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ТАМБОНО
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FOREWORD

This study of "The Basic Code (Administrative Order No. X-61)" was prepared by Messrs. W. H. Edmonds and W. W. Swift of the NRA Organization Studies Section, Mr. William W. Bardsley in charge.

The study presents a dependable and fairly complete picture of the formulation and results of the plan that was designed to complete the code making phase of NRA activities. The part occupied by this study in the entire examination of NRA administrative procedure may be seen by consulting "Work Materials No. 17, Tentative Outlines and Summaries of Studies in Process."

L. C. Marshall,
Director, Division of Review.

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SUMMARY OF CONTENTS, FINDINGS AND RECOMMENDATIONS

The title of this study conveys to those unfamiliar with NRA activities very little information as to its true nature. For these, it should be said, in explanation, that Administrative Order No. X-61 was an order issued under date of July 10, 1934 by General Hugh S. Johnson, Administrator for Industrial Recovery prescribing a plan for the completion of code making applicable to all industries then uncodified and presenting in connection therewith as, Exhibit A, a prescribed form designated as "The Basic Code".

The report on this study contains in narrative form, chronologically treated, an historical review of the beginnings of code making, the authority therefor, the factors which resulted in a change of policy culminating in the formulation of a plan to complete the codification process, the stages through which this plan traveled to adoption, its operation, and the results obtained.

The Introduction and Chapters I and II have to do with the early days of NRA, the authority for codes as contained in the National Industrial Recovery Act, the problems which arose from code making and administration, and the factors which led up to the adoption of a plan to wind up the codification process.

Chapter III outlines in some detail, the various stages in the development and formulation of the plan while Chapter IV discusses various features of the plan and the basic code prescribed in connection therewith.

Chapter V deals with the operation of the plan, reviews the procedure for handling and utilizing it, and touches upon the results obtained and Chapter VI contains certain findings and conclusions which have been reached as the result of the study.

Summarizing the findings set forth in the report on the above study, the findings are:

1. The basic code was unsuccessful in accomplishing its plan for completion of code making.

2. Its timing was ill-advised and should have been initiated much earlier in the code-writing process.

3. A thorough and comprehensive classification of industry for administrative purposes should have been made in connection with the formulation of the basic code. It seems desirable, from the viewpoint of administrative preparedness, to stress the importance of endeavoring to prepare in advance an accurate classification before putting such a plan into operation.

In addition to these findings the following question is raised:

In the event any new legislation is enacted which contemplates the formulation of codes or some similar documents for the regulation of industry, showed a plan for the grouping of the smaller industries under codes with identical provisions, such as was contemplated by Administrative Order No. X-61

be formulated in the early stages of the administration of the new law? The issue is whether such a plan, timed in this manner, would serve as an effective complement to the codification of the major industries and reduce the number of individual codes to an appreciable minimum.

THE BASIC CODE (ADMINISTRATIVE ORDER NO. X-61)

INTRODUCTION

On July 10, 1934, Administrative Order No. X-61, entitled "Plan for the Completion of Code Making", was issued over the signature of General Hugh S. Johnson, Administrator for Industrial Recovery. This order is attached as appendix "II".

The scope of this paper is defined and limited by the statement of administrative policy contained in the above order, and supplemented by various other orders and memoranda which will be treated subsequently. Essential, of course, to a full understanding of the policy itself, is a knowledge of the background against which it came into being, and the extent to which it accomplished the purposes for which it was conceived.

Accordingly, therefore, while endeavoring always to restrict this study to the boundaries outlined by the substance of Administrative Order X-61, it will be necessary, in order to attain the proper perspective, to indicate the sources of authority for the policy; to review earlier methods and procedures employed by NRA in codifying industry; to investigate the factors leading to a change of policy, and the circumstances under which this plan was enunciated; to trace the various stages in the growth and development of this policy prior to promulgation, and the extent of participation in its development by the various boards and divisions of NRA; to survey the general NRA situation at the time of promulgation; to indicate the manner in which the plan was put into operation and the extent to which it operated; to examine the effects of the policy upon industry, upon the code-making processes of NRA, and upon the NRA organization, and to indicate the extent of its effectiveness in accomplishing its stated objectives; to appraise and evaluate the plan in general as a phase of NRA administrative policy.

CHAPTER I.

NRA as a CODE MAKING ORGANIZATION

I. The Authority for Code Making in the Act.

An examination of the sources in the Act from which NRA derived its authority to codify American industry discloses immediately the broad grant of discretionary power allowed the President, in effectuating the general policies enumerated in Section 1.

Various alternative methods were enacted for the carrying out of these general policies. A brief review of the various methods prescribed, and the extent to which each was used, is a necessary background for an understanding of developments which later led to the consideration of a Basic Code.

Section 3(a) of the Act provides for voluntary codes of fair competition, and prescribed the basic procedure for the formulation of codes by "one or more trade or industrial associations or groups," and approval by the President. The President was authorized to approve codes only in the event that he found (1) that the association or groups sponsoring the codes imposed no inequitable restrictions on admission to membership among the groups represented; (2) that the applicants were truly representative of their respective trades or industries; (3) that such proposed codes were not designed to promote monopolies or to eliminate or oppress small enterprises and would not operate to discriminate against the latter; and (4) that the proposed codes would, in his judgment tend to effectuate the policy of the Act.

When the legislation was being formulated, in June, 1933, it was impossible to forecast the degree to which industry would respond by submitting voluntary codes, and so, provision was made in Section 3(d) to the effect that if industry failed to take the initiative in code-making, the President might do so. The President was therein authorized, upon his own motion, or upon complaint that abuses inimical to the public interest and contrary to the policy of the Act were prevalent in every trade or industry or subdivision thereof, for which a code had not already been approved, to prescribe and approve a code for that trade or industry or subdivision. Such a code would be approved by the President only after such notice and hearing as he might specify, and would have the same effect as a voluntary code approved under Section 3(a).

Further powers of imposition were to be found in Section 4(b), by which the President was authorized to license business enterprises in order to make effective a code of fair competition or an agreement or otherwise to effectuate the policy of Title I; and in Section 7(c), wherein the President was granted the power to prescribe such limited codes of fair competition covering hours, wages, and other conditions of employment as he might find necessary to effectuate the policy of Title I. These powers are mentioned merely for the purpose of completing the picture. They have no direct bearing upon events leading to the subject of this study.

A new concept, the idea of agreements for the effectuation of the policies of the Act, is introduced in Section 4(a). Under this provision, the President was authorized to enter into agreements with, and approve voluntary agreements among persons engaged in a trade or industry, labor organization, and trade or industrial organization, if in his judgment such agreements would

aid in effectuating the purposes of the law. It was under the authority of this section that the President promulgated the President's Reemployment Agreement (PRA), asking employers to cooperate by agreeing with him to maintain certain conditions, particularly regarding wages and hours of employment.

II. The Beginning of Code Making and the PRA.

From among the various possible lines of action outlined above, the President selected the powers conferred upon him in Section 3-a, to negotiate voluntary codes, as the basis for carrying out the purposes of the Act, and it was upon the exercise of the functions therein granted that the early history of NRA was moulded. This course was made possible by the wide-spread and enthusiastic application for voluntary codes on the part of industry. While these negotiations were proceeding, however, on a basis that was ostensibly, and in fact, voluntary, there remained in the background the powers of the President, above mentioned, to impose codes should conditions require such course.

With the submission of the earliest applications for voluntary codes, NRA was confronted with the immediate problem of interpreting the Act, formulating policies both of a substantive and administrative nature, and devising varying procedures and organization set-ups as the changing needs made necessary. This assumption of responsibility of interpretation and policy-making by NRA was the inevitable concomitant of the indefiniteness of the objectives sought by the Act.

It has been noted above that the President was required under Section 3(a) of the Act to make certain findings of a generally negative nature as a prerequisite to his approval of a voluntary code. Positive guides to policy, however, were few. In various sections of the Act it was indicated that codes should include (1) provisions covering minimum wages, maximum hours, and "other conditions of employment"; (2) measures to prevent "destructive wage cutting and price cutting"; (3) fair trade practice provisions, and (4) provisions protecting certain labor rights of collective bargaining.

Thus, on the basis of the sources of authority previously noted, and with the guidance of the general policies enumerated above, NRA set out, in effect with a carte blanche within the limits of the Act, on its program to bring about industrial recovery.

In Bulletin No. 2 issued on June 17, 1933, entitled, "Basic Codes of Fair Competition", NRA outlined the procedure to be observed in the formulation and approval of voluntary codes. It was stated that so far as practical the major industries would have the first attention of the Administrator. Industry was reminded that: "It is not the function of the National Recovery Administration to prescribe what shall be in the codes to be submitted by associations or groups. The initiative in all such matters is expected to come from within the industry itself."

And so the work of codification was begun, and every effort was made to expedite the process, and have at least the major industries covered by codes within a few weeks. In spite of every endeavor, however, and altho industry was responsive and made many applications for codes, the progress

of negotiations was discouragingly slow. The approval of Code No. 1 for the Cotton Textile Industry, required a full month for negotiation; and out of the hundreds pending, only eight had been approved at the end of the second month. It was feared that unless a speedier means could be found for carrying on the program, a reaction might set in to offset the stimulus which had permeated the industrial structure during the early summer.

At this time July 20, 1933, the President's Reemployment Agreement (PRA) was conceived, and the greatest peace-time campaign in the history of the government was launched, appealing to the emotions, the patriotism and the prejudices of employers, employees, and consumers alike, to bring success to the great drive to reduce unemployment, increase wages, and spread purchasing power. It was a simple plan, conceived in necessity, founded on the powers granted the President in Section 4(a) to enter into and approve voluntary agreements, and carried out with a driving energy.

By utilizing the facilities of the United States Post Office system, practically all employers in the country were contacted within three or four days, and over 2,300,000 employers signed agreements with the President, by which the working conditions of some 14-1/2 million employees were temporarily controlled. Unlike the codes of fair competition, no penalties were attached to violations of these agreements. Public opinion was expected to be the persuasive force for compliance, and the Blue Eagle was invented as the symbol by which cooperating employers should be known.

In some sections the Blue Eagle was more effective than in others, but everywhere its influence was felt. Public opinion was strongly behind the President, and few were the employers who did not display the Blue Eagle. In this way, with public opinion forcing industry into the PRA, it was to the interest of employers to secure separate codes by cooperative effort, and thus take advantage of the trade practice and price protection provisions being offered by NRA.

Thus, with the majority of industry already committed to the hour and wage provisions of the PRA, with such modifications and substitutions as were approved, NRA was now ready to proceed with the work of codification, and every facility of the organization was henceforth directed to that purpose. From time to time new substantive policies were formulated and announced, on the basis of cumulative experience; and rules and regulations, administrative devices and procedures were established with a view to securing and maintaining an orderly and expeditious process of code formulation. These were prescribed either by executive order of the President or by direct action of the Administrator. NRA was at all times a living organization, growing, developing, changing, to meet the ever increasing demands of the work which it had undertaken.

The story of the first year of code-making under NRA, and the problems with which the organization was confronted, and which it tried in various ways to meet, is the story of the factors leading to the administrative policy with which this paper is concerned.

CHAPTER II.

FACTORS LEADING TO A CHANGE OF POLICY.

The growing belief among NRA officials in the desirability of a change of code-making policy, resulting finally in the issuance of Administrative Order X-61, was a cumulative impression lasting over several months. The considerations upon which this conviction was based fall generally into two classes, - code-making problems, and early problems of administration. It would perhaps be well to treat these subjects separately, insofar as they may be segregated.

I. Code-Making Problems.

On June 21, 1934, General Johnson, looking back on one year of code-making activity, on the part of NRA, said, in part:^{1/}

"Once launched, there was no halting the code-making process. It had to be carried through so that every industry in the country and its workers might as quickly as possible have an even break of the recovery program's benefit."

Thus did General Johnson describe the situation which had arisen with respect to code-making during a year of NRA. From the beginning, NRA had been confronted with an avalanche of codes of all sizes and all degrees of importance. During the fall and winter of 1933, codes had been expedited to approval with relative speed. Negotiations were carried on untiringly by an enthusiastic staff, without thought of time or energy expended. Policies, during that period, were in an early stage of development, and the progress of codes was not directed to any great extent by precedent or by policy determinations, except for the general policies outlined in the Act.

The trade practice provisions which found their way into codes represented, except for such generally accepted prohibitions as commercial bribery, defamation of competitors, etc., the final outcome of negotiations between the NRA and the representatives of the industry concerned. Likewise, the labor provisions, as they appeared in the codes, were usually the result of long, and sometimes bitter argument and controversy. Provisions were submitted, and were approved, covering almost the entire field of industrial operations. Voluntary agreements of such broad scope, dependent first upon agreement between competitive groups within the industry itself, and secondly upon agreement between representatives of the industry, the general public, and the NRA, were necessarily arrived at only after a long series of conferences, hearings, investigations, and routine procedure.

As the months passed, and the great majority of industry and labor were brought under codes, it had been expected, or at least hoped, that there

1/ NRA Release No. 5889.

would be a marked reduction in the amount of time and energy spent in formulating new codes. The earlier approved codes had been in effect and operation for sometime, and the facilities of the staff were needed for the work of administration.

The hoped-for relaxation in the pressure from industrial groups for the formulation of new codes, or supplemental codes, did not seem to occur. It is true that during the spring of 1934, the volume of codes decreased, but the work of formulating each individual code was becoming more involved and more difficult, and the codes were proposed by smaller and smaller segments of industry. Yet, in formulating codes for even the smallest groups, the same controversies and arguments arose as to permissible provisions, the same procedure as to hearings, conferences, et cetera, had to be followed, and due consideration had to be given to the opinions of the several Advisory Boards and Divisions of NRA, representing every conflicting interest in the economic picture. Frequently months were spent in trying to write even a very small code in a manner acceptable to all parties in interest.

The intensely human and sometimes dramatic job of codifying American industry was inevitably drawing to a close. The long hearings and conferences lasting far into the night were becoming fewer; the bickering, compromising, and bargaining of the code-making period was occupying a smaller part in the staff's activities, but negotiations were becoming longer drawn out, and differences less speedily resolved. The fire and the urge of the early months were dying out, and the Recovery Administration was becoming more deliberate in its actions, more careful of its commitments.

NRA was now ready to enter upon a more prosaic, but perhaps more important, phase of its activity, - that of administering and enforcing the codes it had approved, and observing the effects and results of its earlier work. For the first time in history, industry was operating under rules of ethics - codes of fair competition; it was NRA's new job to administer and aid in securing compliance with these rules, and, in some cases, on the basis of experience, to change them.

Not only, then, was NRA faced with the law of diminishing returns as regards continued activity in the realm of code-making, but also there was developing a very real need for the organization to direct its attention to the subject of code administration. The problem of devising a suitable plan for bringing the work of code formulation to an end, was occupying the minds of the highest officials of NRA. The development of such a plan will be traced in Section III. of this study.

II. Early Problems of Administration

Early experience in the administration of approved codes indicated a number of ways in which all was not well with the policies previously pursued in code-making. To as great an extent as possible, it was sought to correct in the new policy the mistakes and shortcomings which administrative experience had pointed out in the old.

An unexpected development, with attendant unexpected problems, had been presented by the hundreds of codes presented to NRA for approval, -

codes of all sizes and degrees of importance, codes with overlapping definitions, codes intended to cover only a small portion of a larger industry, vertical codes cutting through the distribution functions, codes submitted by rival associations to cover the same industrial group, et cetera. At the outset, it had been the plan to codify the larger, basic industries. But the code idea had become a fever, in which the earlier, sounder conception of NRA bade fair to be lost from view; and NRA was not prepared for the work that was thus thrust upon the organization.

Coincident with the unforeseen deluge of smaller codes, came the gigantic and equally unforeseen problem of unforeseen problem of industrial classification. Of primary importance was the necessity for insuring uniformity or similarity of code provisions, both labor and trade practice; for closely related or directly competing divisions of industries or trades. The inherent difficulty of classifying American industry for administrative purposes, taken together with the nearly total unpreparedness of NRA for attacking the problem, presented one of the most troublesome obstacles in the path of smooth-functioning code administration.

It was natural that the gains secured by an industry through its code might well be obscured, or even lost sight of, in the light of the knowledge that the government had approved a more favorable price protection provision, or perhaps a less onerous labor provision, for a competing, or closely related industry. Keeping in mind the facts that codes were being approved for such small subdivisions of industry as "Fly Swatter Manufacturing," "Lightning Rod Manufacturing," and the "Wet Mop," "Dry Mop," and "Mop Stick" Industries and that the negotiations were being carried on at different stages in the development of NRA policy, and by different personalities (sometimes varying widely in their opinions as to what constituted "fair competition"), it was inevitable that some industries would be more favorably treated than others, and that consequent dissatisfactions would ensue.

Becoming more and more bothersome, too, was the problem of overlapping definitions. This situation was due in part to the efforts of applicant groups to secure broad definitions, as a means of covering fully a given competitive area, and to provide a broad basis for assessing the costs of code administration; in part to the necessarily hasty procedure and the general unpreparedness of NRA in the matter of industrial classifications.

On the other hand, questions were frequently arising concerning the code coverage of articles not clearly covered by any definition. Many products might reasonably be said to have been included under more than one code definition, being on the border line of each, and usually certain to produce dissatisfaction on one side whichever way it might have been determined.

More troublesome, however, and more difficult to remedy than multiple coverage or non-coverage of particular articles, was the multiple application of codes to single enterprises in some cases, and other instances where areas of competition were not included within the definition of a single industry or trade.

A great many cases arose in which the operations of a single firm were

subject to several codes. Sometimes a firm was presented with a very real problem in attempting to isolate its operations on the basis of the different code definitions under which its products had been classified. Even where segregation of work was physically possible, it was frequently, at the cost of efficiency and often unnecessarily disruptive of the firm's accustomed method of operation.

Some codes, from the broad coverage of their definitions, reached into unexpected places, while others were so narrow in their coverage that directly competing functions might be allocated under different codes.

What gave the force of reality to these questions of classification was the ever increasing number of small codes, each with its own labor and trade practice provisions. The two developments were inseparable. With a general uniformity or similarity in the provisions of codes for the larger divisions of industry, there would have been less occasion to dispute the code coverage on a particular product.

But as the codes increased in number, they also increased in the intricacy and complexity of their provisions.

Another factor of code administration which was beginning to claim the spotlight of attention was the assessment and collection of expenses incurred by the code authorities in administering codes. NRA had proceeded very slowly in granting code authorities the power to institute the legal proceedings for the collection of funds for the expenses of code administration, and even then it was apparent that the difficulties in financing the administration of small codes were not solved. The small groups desired to maintain their authority, and operate under their own code; but the expenses of administering their own code were frequently more than the traffic could or would bear.

From the foregoing, it is evident that there was need for a new policy determination, directed toward the following objectives:

1. To bring to an end the period of code-making, and to free the organization for the work of administration and compliance.
2. To reach this goal with the creation of as small a number of new codes as possible.
3. To strive for uniformity or similarity of provisions in codes for related, or competing industries.
4. To effect consolidations with approved codes, where possible.
5. To relieve small industries from the onerous expenses of code adoption and administration.

We may now proceed to a study of the formulation of a plan by which it was hoped to accomplish the above objectives, and the various stages and degrees by which the plan developed.

CHAPTER III

THE PLAN FOR THE COMPLETION OF CODE-MAKING

I. Early Developments in the Formulation of a Plan

The earliest documentary evidence found of the beginnings of a plan for a general, or blanket code is contained in a recommendation by Charles F. Ruff, an Assistant Deputy Administrator, early in February of 1934, that a "ready-to-wear" code be drawn up for small industries not already codified. 1/ It was suggested that such a code might be called the "President's Code for Miscellaneous Industries."

To substantiate the need for such a plan, Mr. Ruff pointed to the large amount of time being spent by NRA in formulating and approving codes for small industries, and mentioned that a number of small groups, while desirous of a code, were unable to afford trips to Washington to secure a "tailor made job."

The detailed recommendations were that a general code be prepared by NRA and offered to small industries for acceptance or rejection as they saw fit. Labor provisions would be established in the code, with the provision that exceptions might be granted, with the approval of the Labor Advisory Board, for industries similar or closely related to others operating under more liberal labor provisions.

It was Mr. Ruff's idea that the general code itself would be so fixed and standardized that the main work of NRA would be in examining the industries' proposed definitions for conflicts with other codes, and in establishing true representation. All that would remain then would be "to publish notice of the definition and ask for protests by mail. The code having been approved by the Boards and Divisions would not be reviewed by them."

Mr. Hickling replied that Mr. Ruff's suggestions might prove useful in later developments, but that in his opinion it would not be practicable to recommend the adoption of a blanket code at that time.

There is no evidence that there was any direct connection between the idea put forward by Mr. Ruff, and the plan that was finally promulgated as Administrative Order X-61. That there may have been some connection is indicated by the fact that the correspondence is to be found in the file of Blackwell Smith, Assistant Administrator for Policy, on the Basic Code.

The matter doubtless was the subject of considerable discussion and evidently culminated in the Assistant Administrator for Policy suggesting to the Director of Research and Planning Division, in a memorandum of date May 14, 1934, that they make a joint recommendation for a Presidential Agreement to cover small industries and that the Research and Planning Division suggest the number of employees at which to draw the line. It was specifically stated that groups logically integrated with larger industries would be excluded from such a recommendation. 2/

1/ Undated memorandum to Deputy Administrator C. L. Hickling in Assistant Administrator for Policy, Blackwell Smith's file on Basic Code, in NRA files.

2/ Memorandum from Assistant Administrator for Policy to the Director of Research and Planning Division, May 14, 1934 - Blackwell Smith's file on Basic Code, in NRA files.

Further exchanges of viewpoint during the next few days culminated in a memorandum from the Administrator to Colonel G. A. Lynch, Administrative Officer, under date of May 21, 1934. This memorandum 1/

1/ This memorandum is located in the file of the Assistant Administrator for Policy, on the Basic Code, in NRA files, and is here quoted in full:

"We have got to clean this show of Code making and there is too much consideration and fumbling in doing it. I want immediate action along the following lines:

"1. Let's get up a 'basic Code' containing only the following:

- a. 40 hour week and child labor.
- b. \$12 to \$13 per week minimum wage.
- c. Provision as to exceptions, etc. which conform with approved policy.
- d. No sale or service below cost.
- e. Leon Henderson and Bob Montgomery's provisions as to price cutting and cost finding.
- f. Statutory mandatory provisions.
- g. Provision for Code Authority and Government right of representation in accordance with approved policy. This could and should be done within 48 hours.

"2. Then we will draft communication to every Industry employing less than 5000 people with Codes not yet approved and say:

"In the interest of expedition the President would like to have you assent to the foregoing basic Code without further delay.

"If thereafter you desire additional fair trade provisions you may submit them and if supported by 75% of establishments in your Industry and approved by the Administrator they will automatically become part of your Code.

"We will put the basic Code through without reference to anybody but the Administrator."

"3. The same proposal should be made to all the big Codes still hung up such as Shipping, Communication, Anthracite, Public Utilities, etc. with the added remark that 'in the event this is not agreeable to you the President will impose Codes covering only wages and hours and child labor in any case in which he finds the labor conditions in your Industry below the prevailing industrial rates.'

"4. On this formula I expect to complete or abandon all Code making except handovers of administration by June 15. This organization must be immediately reset for Code administration. The fact that all Code Authorities are not organized and functioning is an indictment of this Administration."

Signed - HUGH S. JOHNSON, ADMINISTRATOR

was the actual beginning of the campaign to formulate a plan to end code making, and laid down general lines along which official thinking was to be directed.

This memorandum did not bring action within 48 hours, as General Johnson had suggested. It did, however, serve to define the issues and concentrate attention on the points which had been raised. Blackwell Smith, in a memorandum of May 22, 1934, addressed to the Administrative Officer, the Review Officer, and the Director of the Research and Planning Division, and in another memorandum of May 23, 1934, addressed to General Johnson, outlined a number of important points to be clarified and settled prior to the application of the policy prescribed by the Administrator. Some of the issues raised by Mr. Smith were: 1/

1. Whether the effort should be made to bring all industries having pending codes under the proposed Basic Code, with a resultant peak load of administration and compliance work forthwith, or whether the same thing should be done as to terms, but on a voluntary basis only, that is, enforceable by the Blue Eagle.
2. The difficulties which would be encountered in drawing up exact definitions.
3. Whether or not there should be public hearings.
4. Whether provision should be made for maintenance of wages above the minimum.
5. Should there be a Code Authority set up for each of the new Codes or should there be a voluntary Committee of the Industry without administrative facilities?
6. Should the step apply to supplementary Codes?
7. He also questioned whether it was fully recognized that the later insertion of trade practice provisions would mean practically the same amount of Code making as to have trade practices in the first instance merely delaying the incidence of the burden.
8. Should the basic Code include the standard, well-recognized rules against various types of cheating, for example, the commercial bribery rule?

1/ Both memoranda are to be found in Blackwell Smith's file on the Basic Code, in NRA Files.

Efforts were now under way in the industry divisions to speed up the formulation of codes on which work had been started. On May 24, 1934, Division Administrator A. R. Glancy reported that his division was attempting to reduce the number of small pending codes chiefly by persuading their proponents to accept a code already approved for a closely related industry. 1/

In the meantime, George S. Brady, Deputy Assistant Administrator for Classification Policy, had been working on the proper groupings and classifications of industry for administrative purposes, and on June 4, 1934, the Assistant Administrator for Policy recommended to the Administrator that the promulgation of the basic code idea be held in abeyance for a few days, pending a report from Mr. Brady. It was pointed out in this memorandum that there were only 162 pending codes before the Administration and that, in Mr. Brady's opinion, all of those logically fell under an approved code for some other industry, or in a few cases, under a pending important code. 2/

On the same day, General Johnson modified his original plan to the extent of making it applicable to all uncodified industries, rather than small ones only, and also introduced for the first time the idea of creating a single code authority for all small codes, the expenses to be borne by NRA, but with lee-way for any industry which so desired to erect and bear the expenses of its own code Authority.

The plan was now coming very much into the foreground of official thought and consideration and was rapidly taking definite form. The general objections and methods were now sufficiently crystallized to permit of the plan being referred to the various Advisory Boards and Divisions for their recommendations, prior to promulgation.

II. The Participation of the Advisory Boards and the Advisory Council in the Development of the Plan.

On June 5, 1934, the Industrial, Consumers and Labor Advisory Boards were consulted for the first time on the question of a Basic Code. On that date Mr. Smith addressed a memorandum to each of these Boards requesting their reaction, at the earliest possible moment to the following documents, which he attached:

- (1) Administrative Order setting forth the plan, with Basic Code attached.
- (2) Supplementary Administrative Orders.
- (3) Supplementary Rules and Regulations. 3/

1/ Memorandum from A. R. Glancy to Blackwell Smith - Blackwell Smith's file on Basic Code, in NRA Files.

2/ See Appendix II - Exhibit A, page 40.

3/ See Appendix II - Administrative Order with Basic Code attached - Exhibit A.
Supplementary Administrative Order - Appendix III.
Supplementary Rules and Regulations - Appendix IV.

On June 6, 1934, a meeting of the Labor Advisory Board was held for the purpose of considering the documents submitted by Mr. Smith. At this meeting the following resolution was passed:

"The Labor Advisory Board recommends as a substitute for the labor provisions of the Basic Code, the application of the labor provisions already in effect in kindred codes, the Administrator to determine the grouping or consolidation."

In transmitting the above resolution to the Assistant Administrator for Policy in a memorandum of the same date, Dr. Gustav Peck, Chief of Staff of the Labor Advisory Board, said in part:

"The Board felt rather strongly that it would be unwise to make public at this time, one year after the National Industrial Recovery Act went into effect, a Basic Code which might appear to be and would be easily interpreted as a standard code. While we sympathize with the ambition of smaller industries to adopt codes of their own, we are of the opinion that the number and variety of codes already approved, leaves ample room for the proper and fair grouping of all remaining industries. The approximately 500 codes which will be in effect when this Order is issued have been the result of fair negotiations by industry, labor and the NRA, and comparative justice will be done if the remaining smaller industries are requested to accept the terms under which kindred industries are operative." 1/

At the same time, Dr. Peck attached to his memorandum a point by point criticism of the Basic Code as submitted, in the event it should still be deemed desirable to pursue this course.

On the next day, June 7, 1934, Dr. Peck sent a supplementary memorandum to Mr. Smith recommending the insertion of a provision to the effect that in no case should hourly earnings be reduced and that there should be no reduction in weekly earnings to offset any reduction in hours up to 20%. "It is perfectly evident," he stated that many of the industries to be included under this catch-all code would be paying far higher rates than those contemplated for the Basic Code, and, of course, the NRA does not want to sponsor or seem to approve a Code which would permit wage reductions."

The Basic Code, moving rapidly now to the final stages of formulation, was referred to the Advisory Council for consideration and recommendation.

III. FINAL STAGES IN FORMULATION OF PLAN

The Advisory Council acted promptly in its consideration of the matter and approved the proposal in a memorandum to the Administrator under date of June 9, 1934 (See Appendix VIII), subject to certain specific recommendations which are summarized as follows:

1/ Memorandum from Gustav Peck to Blackwell Smith, June 6, 1934 -- Blackwell Smith's file on Basic Code, in NRA Files.

1. That the proposed plan shall not apply (a) to certain designated industries whose codes were nearing completion; and (b) to a few major industries then uncodified whose importance seemed to have warranted the preparation of individual codes, the industries referred to in both instances (a) and (b) to be designated by the Administrator;

2. That industries as yet uncodified and not covered by the preceding paragraphs (a) and (b) be encouraged to consult with kindred industries, thereby placing them under the complete provisions of an existing approved code, the determination of the proper kindred industry to be made by the Administrator;

3. That all other uncodified industries not dealt with in the two preceding paragraphs be urged to adopt the basic code, the provisions of which (a) to carry no flat declaration of hours and wages but that provisions dealing with such matters for any industry applying for the basic code be those in effect for kindred industries, and (b) that the recognized standard labor provisions of existing codes be included in the basic code;

4. That there be clarification and emphasis to avoid possible false impressions on the following points: (a) that the move contemplated purely voluntary action from industries, with the possible exception of important exceptional industries, if any, which failed to apply and were found to have had sub-standard working conditions; (b) that the proposal was not a move to force remaining industries under codes; (c) that the Service Code move was entirely separate and remained unchanged; 1/ and (d) that the purpose of the plan was to provide a simple means of giving a code forthwith to those uncodified industries which desired a code.

The approval of the plan by the Advisory Council with its modified recommendation, outlined above, apparently provoked renewed discussion before the Administrator, as no definite pronouncement was forthcoming until one month later and on July 10, 1934, when the Administrator announced the plan and made it effective through the issuance of Administrative Order No. X-61 with the form of the basic code attached as Exhibit II thereto.

An examination of the plan as embodied in Administrative Order X-61 and the two orders issued by the Administrator simultaneously therewith, Administrative Orders X-62 and X-63 (See Appendices II, III, and IV respectively), reveals that the Administrator to a considerable extent followed the above-stated modifications recommended by the Advisory Council but strengthened the proposal by announcing that, while the plan was not

1/ This refers to administrative action at this particular time on service codes. .

intended "to force all remaining uncodified industries under codes", the Administrator should determine as to any uncodified industry not applying for the basic code or for consolidation with a proper kindred industry within thirty days, if the wages, hours and labor conditions in such industries constituted an abuse inimical to the public interest and contrary to the policy of the Act, the Administrator within forty days after the announcement of the plan would provide for a hearing in accordance with Section 3 (d) of N.I.R.A. to determine whether a code covering hours of labor, rates of pay and other working conditions should not be prescribed.

It is now in order to review in detail the plan.

CHAPTER IV.

FEATURES OF PLAN FOR COMPLETION OF CODE-MAKING

I. LABOR PROVISIONS

An examination of Article II and III of the approved form of the basic code made a part of Administrative Order X-61 as Exhibit "A" considered along with Administrative Order X-63 shows that with respect to these features the Administrator followed the recommendations of the Advisory Council in that no flat declaration of hours and wages was made, these matters being left open in order that the hours and wages of kindred industries might be applied and that the recognized standard labor provisions be flatly declared.

This arrangement seems to have also taken care of the suggestions of the Labor Advisory Board, hereinbefore mentioned, as having been voiced by its Chief of Staff under date of June 6 and June 7, 1934.

II. TRADE PRACTICE PROVISIONS

An examination of Article V of the form and Administrative Order X-62 reveals that the price policies of NRA as announced in Office Memorandum No. 228 were rigidly adhered to and that the standard provisions, common to most codes, outlining the powers and duties of the code authority were allowed the notable exception that the plan for administration is entirely different from that embraced in previous approved codes.

III. ADMINISTRATION THROUGH GENERAL CODE AUTHORITY

Instead of a code authority set up and established by the industry itself, codes approved under Administrative Order No. X-61 were to be administered by a general NRA code authority at the expense of NRA with the members thereof to be appointed by the Administrator. It is noted, however, that any industry applying for a code under the plan and desiring to do so (Article IV, Basic Code), on approval of the Administrator, was allowed to elect its own code authority which would have the same powers and duties prescribed for the general NRA code authority and such further rules and regulations as the Administrator might prescribe.

Administrative Order No. X-34, Appendix "VI" hereto, provided for the selection of the members of the general NRA code authority. It was to consist of one member appointed by the Administrator to serve as chairman and three other members also appointed by the Administrator, one of whom was to be appointed with the advice of the Industrial Advisory Board, one with the advice of the Labor Advisory Board and one with the advice of the Consumers Advisory Board. These four members were empowered and directed to act upon all matters considered by this general code authority; the said Order, however, prescribed that one additional member should be appointed by the Administrator, with the approval of the Industrial Advisory Board, for each industry whose code was to be administered by such code authority, these additional members to act only upon matters which pertained to the respective codes for their particular industries.

CHAPTER V.

OPERATION OF PLAN

I. PROCEDURE FOR HANDLING PLAN

Along with the issuance of Administrative Orders Nos. X-61, X-62 and X-65, also come Office Order 100 and Office Memorandum No. 251, the former appointing a committee of three members to supervise the execution of the plan and the latter prescribing procedure for handling it. The Office Order designated Mr. Robert K. Straus as chairman of the committee on supervision with Messrs. Leon C. Marshall and George S. Brady completing the membership. The procedure established by Office Memorandum No. 251 was as follows:

- "1. The Committee will immediately distribute to each Division liaison officer a set of documents, including a copy of the Basic Code and related Administrative Orders, for each code which awaits approval by each Division.
2. Within a week of the receipt of these documents, they will be sent out to each uncoded industry with a covering letter written by the Deputy or Assistant Deputy Administrator who has been handling any negotiation with said uncoded industry, recommending that said industry's code be disposed of in accordance with the principles laid down in Administrative Order X-61.
3. As soon as these letters have been sent out, progress reports shall be made to the Committee on the Completion of Code Making by the Divisions, indicating to what industries the letters have been sent, and what the recommendations of the Division have been with regard to these industries.
4. Divisions will continue to submit weekly reports on Saturdays to the Committee on the Completion of Code Making as to the progress which has been made during the days covered by these reports.
5. The Committee on the Completion of Code Making may recommend to the Administrator any changes in this procedure which it may deem advisable in order to complete code making in the thirty-day period allotted. At the end of this thirty-day period, the Committee will make a definitive report, including any recommendations as to further action." (See Appendix "D".)

The Committee on Completion of Code Making, as directed in the above-mentioned office order and the said Office Memorandum No. 251, under date of August 6, 1934, submitted a report as to the progress made which goes into considerable statistical detail from which the forecast was made that 119 codes would be disposed of by August 10, 1934, 73 of which were individual codes, 31 represented consolidations under Administrative Order

X-61 and 15 covered basic codes under Administrative Order X-61. A copy of this report is annexed hereto as Appendix "IX".

II. INDUSTRIES EXCEPTED FROM PLAN

It will be recalled that service trades were excepted specifically from the provisions of Administrative Order X-61 as well as such other industries as the Administrator for specific cause might designate for different treatment. In the report, above referred to, from the Committee on Completion of Code Making it will be noted that Division VI had on hand 23 service codes in addition to the 17 shown to be in various stages of development in this division. It appears that, aside from these service trades the only exception granted from the provisions of Administrative Order No. X-61 were the Grocery Manufacturing Industries which were offered a basic code of their own under the terms of Administrative Order No. X-89, dated September 21, 1934, a copy of which is attached hereto as Appendix "VII".

III. DISCUSSION OF RESULTS OBTAINED

It should be recalled here that the report from the Chairman of the Committee on Completion of Code Making predicted that 119 codes would be disposed of by August 10, 1934, 31 of which were estimated would be consolidations under Administrative Order No. X-61 and 15 of which would be approvals of basic codes thereunder. Furthermore, the estimate was made that a balance of 97 codes would be left on August 10, 1934.

It appears that the Chairman of this Committee in his predictions was too sanguine and that the results predicted were not achieved, as only 3 consolidations were made in all and only 5 basic codes were ever approved under Administrative Order X-61. Indeed, except in the single case of the Wire Reinforcement Industry, a consolidation matter approved August 13, 1934, all of these consolidations and approvals took place considerably later than August 10, 1934.

Many factors combined to cause such a poor result. One was the fact that a considerable number of officials of NRA did not look upon the plan with favor. This caused it, when adopted, to be not only unpopular with the industries concerned but also with many persons in the Administration. The movement therefore suffered from lack of complete cooperation.

Furthermore, the plan was launched at a time when a great many submitted codes had passed through extended periods of negotiations with the result that the industries sponsoring them preferred to follow them through to approval rather than accept any consolidation or the basic code. In order to secure approval of codes in this category, instances arose of industries sacrificing and withdrawing provisions which had previously been relied on and insisted upon as being fundamental and essential to the welfare of those industries. This attitude was evidently based, in part, upon the fear that N. R. A. would carry out its announced intention of imposing, in certain circumstances, provisions relating to hours of labor, wages and conditions of employment, and also in part because some N. R. A. officials in charge of these submitted individual codes, obviously reluctant to relinquish supervision of them, attempted to persuade industries to secure approvals of their previously submitted codes rather than accept the plan offered by

Administrative Order X-61.

Another unfavorable circumstance was the fact that the proposed basic code did not provide for trade practice provisions which were specially adapted to the various industries. In other words, this type of complaint was to the effect that the proposed basic code was too standardized to take care of the trade problems peculiar to the various industries. While N.R.A. sought to meet this objection with assurances that amendments containing trade practice provisions peculiarly applicable to individual industries could be had later on, it is obvious that these industries were well aware of the difficulties which attended the path to approvals not only of amendments but of codes.

A further objection was made that the theory of industrial self-government was replaced by the idea of having the basic code administered by a general N.R.A. code authority or, in cases of consolidation, with an administration conducted by representatives of another industry. To state the objection differently, autonomy would be lost either by accepting consolidation under Administrative Order X-61 or by securing a basic code thereunder.

In addition to the diffidence shown by industry, the failure of the plan for the completion of code-making can in some measure be traced to the lack of comprehensive, accurate and thorough classification of industry for administrative purposes. It seems desirable, from the viewpoint of administrative preparedness, to stress the desirability and need for the preparation of such a classification in advance of putting such a program as the plan for completion of code-making into operation. Had this been done no doubt some of the difficulties which beset the plan would have been avoided.

Furthermore, the plan was adopted and put into operation too late in the code-making process to accomplish the end expected of it. Experience shows that the program would have achieved greater success had it been formulated much earlier and used as a complement to the codification of the major industries. It seems rather safe to say that had this policy been adopted the number of individual codes would have been materially reduced, the difficulties of administration lessened, and the prospects of securing compliance greatly increased.

From all of which it rather conclusively appears that the plan failed to realize its objectives; that the results obtained were negligible; that it was unfavorably received by industry and consequently not utilized extensively; and that the Administration, when confronted with the failure of the plan, never put into operation its announced intention of imposing provisions relating to wages, hours and conditions of employment, under Section 3(d) of the Act, in those industries found to be operating under sub-standard conditions.

APPENDIX I

Statement of Scope of Study, Method of Treatment, and Questions
Needing Further Research

This study was treated very largely from a historical point of view and is presented in narrative form. The conditions which culminated in the adoption of a plan to wind up the codification process have been reviewed and the stages by which the plan reached fruition have been traced in detail and in chronological order. Finally, some attempt was made to appraise the results obtained, point out the failure of the program, analyze the reasons for the failure, and present certain findings and recommendations:

The subject was developed in the following manner:

First, a tentative outline which is made a part of this report as Appendix X was carefully prepared before anything else was attempted.

Then, some weeks were spent in searching out sources of information, finding the material required to fill out the outline, and assembling this necessary data, preparatory to the writing of this report.

The next step consisted in conferring with the various officials of NRA who participated in the formulation of the plan and had charge of its application and in investigating conditions in NRA which gave rise to the need for a new code-making policy.

When the above details had been completed, the actual preparation of a report to round out the outline commenced, with the result that preliminary report was written and subsequently revised and put into this final form.

This report leaves little for further study. It is regarded by its authors as being reasonably complete. It may, however, at some future time be interesting as well as instructive to ascertain if the industries, uncodified at the time of the adoption of the plan for completion of code-making, in addition to reasons given for failing to utilize the plan, did not feel that they were being asked to adopt the hours and pay the wages required of kindred industries without being compensated with trade practice provisions designed to benefit and promote their own welfare.

It seems that the only source from which to obtain reliable information on this suggested question is the uncodified industries of July 10, 1934, and their respective trade associations, if any.

A comparison of the tentative outline, Appendix X hereto, with the text of this report will reveal a few other features which have only briefly been alluded to, if at all, such as the details of the organization of the General NRA Code Authority and the departure from the plan as instanced in the matter of the Grocery Manufacturing Industries. These fields may therefore in the future be explored with profit, but for the purposes of this particular study it has not seemed advisable to treat them any further.

APPENDIX II.

ADMINISTRATIVE ORDER NO. X-61.

PLAN FOR COMPLETION OF CODE MAKING

By virtue of authority vested in me as Administrator for Industrial Recovery under Title I of the National Industrial Recovery Act, and in order to provide a simple means of giving a code forthwith to those industries remaining uncodified who desire a code and in order thereby to free NRA for administration of approved codes, it is hereby ordered that:

1. This plan is available to any industry not yet codified under said Act (with the exception of industries, including local service trades, for specific cause designated by the Administrator for different treatment). Any such industry may apply to the Administrator for codification by application of the Basic Code (Exhibit "A", annexed) as the code for such industry. The hour and wage provisions to be included in said Basic Code, as to any applicant industry, shall be those already approved for the proper kindred industry, as determined by the Administrator, after due consideration of representations of the applicant industry and other relevant data. An uncodified industry, instead of applying for the Basic Code, may apply for consolidation and complete coverage by the existing code for the proper kindred industry, subject to stay as to applicant industry of provisions then inconsistent with policy.

2. If any such application is made by a truly representative body of the industry and if there be no objection to any party in material interest after ten (10) days published notice to all concerned, such Code shall, without further hearing, reference to Advisory Boards or other administrative action, become effective ten (10) days after its approval by the Administrator, in industries employing less than fifty thousand (50,000) persons, or by the President in all other industries.

3. All uncodified industries which desire codification (excepting those specially designated as above) are requested so to apply for such Basic Code or for consolidation with codes for kindred industries. If, after the approval of such application for any industry, it desires additional fair trade practice provisions or modifications as to such industry of the Basic Code, or the code with which consolidated, such industry may apply therefor at any time and will be accorded a prompt hearing and determination with respect thereto. Any industry which desires to consolidate under the code of a kindred industry may do so on approval of the Administrator even after becoming subject to the Basic Code.

4. It is not intended by this Plan to force all remaining uncodified industries under codes, but as to any such industry not yet codified which does not apply for such Basic Code, or for consolidation as above, within thirty (30) days after the date hereof and in which the Administrator shall determine that wages, hours, and conditions of labor constitute an abuse inimical to the public interest and contrary to the policy of said Act, the Administrator will within forty (40) days after the date hereof provide for a hearing in accordance with Section 3 (d) of said Act to determine whether

a code covering hours of labor, rates of pay, and other working conditions shall not be prescribed thereunder.

HUGH S. JOHNSON

Administrator for Industrial Recovery.

Washington, D. C.

July 10, 1934.

APPENDIX II,

EXHIBIT "A"

BASIC CODE

July 10, 1934.

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ARTICLE I

To effectuate the policies of Title I of the National Industrial Recovery Act, the following provisions are established as a basic Code of Fair Competition which shall govern every industry applying therefor in accordance with Administrative Order No. X- 61, dated July 10, 1934.

ARTICLE II

Section 1. Hours.

No employee shall be permitted to work in excess of _____ hours in any one week, except that for _____ weeks in any one calendar year, any employee may be permitted to work not more than _____ hours per week. All hours in excess of _____ per day or _____ per week shall be paid for at not less than one and one-half ($1\frac{1}{2}$) times the employee's regular rate.

Section 2. Exceptions.

The provisions of Section 1 shall not apply to employees engaged in emergency maintenance or emergency repair work involving breakdown of the protection of life or property, nor to persons employed in a managerial or executive capacity who earn regularly Thirty-five Dollars (\$35.00) per week or more, nor to any other class of employees which the Administrator shall find upon application of true representatives of the trade or industry should be subjected to an exemption or modification in accordance with N.R.A. policy; provided, however, that employees engaged in such emergency maintenance and emergency repair work shall be paid at one and one-half ($1\frac{1}{2}$) times their normal rate for all hours worked in excess of forty (40) hours per week.

Section 3. Minimum Wages.

No employee shall be paid in any pay period less than at the rate of _____ per week for _____ hours of labor, except in _____ in which region no employee shall be paid in any pay period less than at the rate of _____ per week for _____ hours of labor.

Section 4. Wages in General.

All wages shall be adjusted so as to maintain a differential at least as great in amount as that existing on June 16, 1933, between wages for such employment and the then minima. In no case shall there be any reduction in hourly rates; nor in weekly earnings for any reduction in hours of less than thirty per cent.

ARTICLE III.

Section 1. Child Labor.

No person under sixteen years of age shall be employed in the industry in any capacity. No person under eighteen years of age shall be employed at operations or occupations which are hazardous in nature or dangerous to health. The Code Authority shall submit to the Administrator for approval before October 1, 1934, 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 valid 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. Apprentices.

The hours and wages of regularly indentured apprentices in skilled trades or occupations of the industry may depart from the standards hereinabove prescribed; provided that the terms of employment and the course of instruction of such apprentices shall conform to standards uniform throughout the trade or industry and approved by the Administrator.

Section 3. 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 employed by him, showing the wages paid to, and the maximum hours of work for such employee.

Section 4. 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 shall be submitted by the Code Authority to the Administrator for approval within six months after the effective date of this Code. The standards approved shall thereafter be a part of this Code and enforceable as such.

Section 5. Required Labor Clauses.

The provisions of Section 7 (a) of said Act are hereby incorporated herein by this reference and shall be complied with.

ARTICLE IV.

Administration.

This Code shall be administered by the General NRA Code Authority which shall be selected pursuant to, have the powers specified in and function in accordance with Administrative Order X-62, dated July 10, 1934; provided, however, that, on approval by the Administrator, any industry so desiring may elect its own Code Authority to have powers and to function in the manner prescribed for the General NRA Code Authority and under such rules and regulations as the Administrator may prescribe.

ARTICLE V.

Trade Practices.

(a) It shall be an unfair method of competition for any member of any trade or industry subject hereto to violate any rule of fair trade practice for such trade or industry even if not herein contained when approved by the Administrator, or, in the case of trade practice provisions for trades or industries under the jurisdiction of the Secretary of Agriculture when approved by such Secretary, on application concurred in by seventy-five (75) per cent of the members of such trade or industry.

(b) Prices, rebates, discounts, commissions and conditions of sale shall be filed as prescribed in Administrative Order No. X-62, dated July 10, 1934, and it shall be an unfair method of competition to violate or fail to comply with the terms of that Order.

ARTICLE VI.

Section 10 (b) of said Act is hereby incorporated herein by reference and this Code is expressly made subject thereto.

APPENDIX III.

ADMINISTRATIVE ORDER NO. X-62

SUPPLEMENTING ADMINISTRATIVE ORDER NO. X-61, DATED JULY 10, 1934, AND THE BASIC CODE ANNEXED THERETO.

By virtue of the authority vested in me as Administrator for Industrial Recovery under Title I of the National Industrial Recovery Act and to supplement Administrative Order No. X-61, dated July 10, 1934, and the Basic Code annexed thereto, it is hereby ordered that:

A. General NRA Code Authority

1. The General NRA Code Authority, provided for in Article IV of said Basic Code, shall be appointed by the Administrator and shall serve without expense to the Industries subject to such Code.
2. Such Code Authority shall have the following powers and duties:
 - (a) To insure the execution of the provisions of the Code and to provide for the compliance of the trade/industry with the provisions of the Act.
 - (b) To adopt by-laws and rules and regulations for its procedure.
 - (c) To obtain from members of the trade/industry such information and reports as are required for the administration of the Code. In addition to information required to be submitted to the Code Authority, members of the trade/industry subject to said Basic Code shall furnish such statistical information as the Administrator may deem necessary for the purposes recited in Section 3(a) of the Act to such Federal and State agencies as he may designate; provided that nothing in the Code shall relieve any member of the trade/industry of any existing obligations to furnish reports to any Government agency. No individual report shall be disclosed to any other member of the trade/industry or any other party except to such other Government agencies as may be directed by the Administrator.
 - (d) The General NRA Code Authority shall submit to the Administrator within 90 days after the approval of this Basic Code a list of industries covered by the Basic Code, in which work on any part of the product is performed in the home and/or work is contracted out. The General NRA Code Authority may also submit a list of special problems affecting particular industries operating under the Basic Code, and recommendations pertaining thereto.

- (e) To make recommendations to the Administrator for the coordination of the administration of the Code and such other codes, if any, as may be related to or effect members of the trade/industry.
- (f) To recommend to the Administrator any action or measure deemed advisable, including further fair trade practice provisions to govern members of the trade/industry in their relations with each other or with other trades/industries; measures for industrial planning, and stabilization of employment.

B. Open Price Filing.

As provided for in Section (b) of Article V of said Basic Code, prices, rebates, discounts, commissions, and conditions of sale shall be filed in accordance with the following provisions:

1. Each member of the trade/industry shall file with a confidential and disinterested agent of the code authority or, if none, then with such an agent designated by the Administrator, identified lists of all of his prices, discounts, rebates, allowances, and all other terms or conditions of sale, hereinafter in this article referred to as "price terms", which lists shall completely and accurately conform to and represent the individual pricing practices of said member. Such lists shall contain the price terms for all such standard products of the industry as are sold or offered for sale by said member and for such non-standard products of said member as shall be designated by the code authority. Said price terms shall in the first instance be filed within 30 days after the date of approval of this provision. Price terms and revised price terms shall become effective immediately upon receipt thereof by said agent. Immediately upon receipt thereof, said agent shall by telegraph or other equally prompt means notify said member of the time of such receipt. Such lists and revisions, together with the effective time thereof, shall upon receipt be immediately and simultaneously distributed to all members of the industry and to all of their customers who have applied therefor and have offered to defray the cost actually incurred by the code authority in the preparation and distribution thereof and be available for inspection by any of their customers at the office of such agent. Said lists or revisions or any part thereof shall not be made available to any person until released to all members of the industry and their customers, as aforesaid; provided, that prices filed in the first instance shall not be released until the expiration of the aforesaid 30 day period after the approval of this code. The code authority shall maintain a permanent file of all price terms filed as herein provided, and shall not destroy any part of such records except upon written consent of the Administrator. Upon request the code authority shall furnish to the administrator or any duly designated agent of the Administrator copies of any such lists or revisions of price terms.
2. When any member of the trade/industry has filed any revision such member shall not file a higher price within forty-eight (48) hours.

3. No member of the trade/industry shall sell or offer to sell any product, services of the trade/industry, for which price terms have been filed pursuant to the provisions of this article, except in accordance with such price terms.
4. No member of the industry shall enter into any agreement, understanding, combination or conspiracy to fix or maintain price terms, nor cause or attempt to cause any member of the industry to change his price terms by the use of intimidation, coercion, or any other influence inconsistent with the maintenance of the free and open market which it is the purpose of this Article to create.

C. Costs and Price Cutting.

1. The standards of fair competition for the trade/industry with reference to pricing practices are declared to be as follows:
 - (a) Wilfully destructive price cutting is an unfair method of competition and is forbidden. Any member of the trade/industry or of any other trade/industry or the customers of either may at any time complain to the Code Authority that any filed price constitutes unfair competition as destructive price cutting, imperiling small enterprise or tending toward monopoly or the impairment of code wages and working conditions. The Code Authority shall within 5 days afford an opportunity to the member filing the price to answer such complaint and shall within 14 days make a ruling or adjustment thereon. If such ruling is not concurred in by either party to the complaint, all papers shall be referred to the Research and Planning Division of NRA which shall render a report and recommendation thereon to the Administrator.
 - (b) When no declared emergency exists as to any given product, there is to be no fixed minimum basis for prices. It is intended that sound cost estimating methods should be used and that consideration should be given to costs in the determination of pricing policies.
 - (c) When an emergency exists as to any given product, sale below the stated minimum price of such product, in violation of Section 2 hereof, is forbidden.

2. Emergency Provisions.

- (a) If the Administrator, after investigation shall at any time find both (1) that an emergency has arisen within the trade/industry adversely affecting small enterprises or wages or labor conditions, or tending toward monopoly or other acute conditions which tend to defeat the purposes of the Act; and (2) that the determination of the stated minimum price for a specified product within the trade/industry for a limited period is necessary to mitigate the conditions constituting such emergency and to effectuate the purposes of

the Act, the Code Authority may cause an impartial agency to investigate costs and to recommend to the Administrator a determination of the stated minimum price of the product affected by the emergency and thereupon the Administrator may proceed to determine such stated minimum price.

- (b) When the Administrator shall have determined such stated minimum price for a specified product for a stated period, which price shall be reasonably calculated to mitigate the conditions of such emergency and to effectuate the purposes of the National Industrial Recovery Act, he shall publish such price. Thereafter, during such stated period, no member of the trade/industry shall sell such specified products at a net realized price below said stated minimum price and any such sale shall be deemed destructive price cutting. From time to time, the Code Authority may recommend review or reconsideration or the Administrator may cause any determinations hereunder to be reviewed or reconsidered and appropriate action taken.

HUGH S. JOHNSON,
Administrator for Industrial Recovery.

Washington, D. C.
July 10, 1954

APPENDIX IV.

ADMINISTRATIVE ORDER NO. X-63.

PRESCRIBING RULES AND REGULATIONS TO SUPPLEMENT ADMINISTRATIVE ORDER NO. X-61,
DATED JULY 10, 1934, AND THE BASIC CODE ANNEXED THERETO.

By virtue of authority vested in me as Administrator for Industrial Recovery under Title I of the National Industrial Recovery Act the following rules and regulations are hereby prescribed to supplement the above-mentioned Administrative Order and Code:

1. The minimum rates of pay provided for in Article II of said Basic Code shall apply, irrespective of whether an employee is actually compensated on a time rate, piecework, or other basis.
2. Female employees performing substantially the same work as male employees shall receive the same rate of pay as male employees.
3. No employer shall permit any employee to work for any time which, when totaled with that already performed for another employer or employers exceeds the maximum permitted herein.
4. No employer shall reclassify employees or duties of occupations performed or engage in any other subterfuge so as to defeat the purposes or provisions of the Act or of said Basic Code.
5. No employer shall dismiss or demote any employee for making a complaint or giving evidence with respect to an alleged violation of the provisions of any Code of Fair Competition.
6. Code Authorities selected by industry in accordance with Article IV of said Basic Code shall function at the expense of the industry in accordance with such further rules and regulations as the Administrator may prescribe.
7. No provision hereof, of said Administrative Order No. X-61 or of said Basic Code, shall supersede any State or Federal law which imposes on employers more stringent requirements as to age of employees, wages, hours of work, safety, health and sanitary conditions, insurance, fire protection or general working conditions, than are imposed thereby.
8. No provision hereof, of said Administrative Order No. X-61, or of said Basic Code shall be so applied as to permit monopolies or monopolistic practices, or to eliminate, oppress, or discriminate against small enterprises.

HUGH S. JOHNSON,

Administrator for Industrial Recovery.

Washington, D. C.
July 10, 1934.

APPENDIX V.

OFFICE MEMORANDUM NO. 251.

July 10, 1934.

Procedure for Handling the Completion of Code Making

Office Order No. 100, establishes a Committee for the Completion of Code Making, and charges that Committee with the supervision of the execution of the plan embodied in Administrative Order X-61. The Division Administrators, in accordance with this Order, will name representatives to cooperate with this Committee. The method of cooperation will be as follows:

1. The Committee will immediately distribute to each Division liaison officer a set of documents, including a copy of the Basic Code and related Administrative Orders, for each code which awaits approval by each Division.
2. Within a week of the receipt of these documents, they will be sent out to each uncoded industry with a covering letter written by the Deputy or Assistant Deputy Administrator who has been handling any negotiation with said uncoded industry, recommending that said industry's code be disposed of in accordance with the principles laid down in Administrative Order X-61.
3. As soon as these letters have been sent out, progress reports shall be made to the Committee on the Completion of Code Making by the Divisions, indicating to what industries the letters have been sent, and what the recommendations of the Division have been with regard to these industries.
4. Divisions will continue to submit weekly reports on Saturdays to the Committee on the Completion of Code Making as to the progress which has been made during the days covered by these reports.
5. The Committee on the Completion of Code Making may recommend to the Administrator any changes in this procedure which it may deem advisable in order to complete code making in the thirty-day period allotted. At the end of this thirty-day period, the Committee will make a definitive report, including any recommendations as to further action.

By direction of the Administrator:

G. A. LYNCH,
Administrative Officer.

OFFICE ORDER NO. 100.

July 10, 1934.

Appointment of Committee for the Completion of Code Making

A Committee is hereby appointed to supervise the execution of the plan embodied in Administrative Order X-61, approved by the Administrator on July 10, 1934. Membership of the Committee:

Robert K. Straus, Chairman
Leon C. Marshall
George S. Brady

The Committee will request each Division Administrator to select a liaison officer from their respective Divisions to cooperate with it in the execution of this plan.

The Committee will make a report to the Administrator thirty days hence as to the progress of the plan, including any recommendations for further action which may be necessary at that time.

By direction of the Administrator:

G. A. LYNCH,
Administrative Officer.

APPENDIX VI.

ADMINISTRATIVE ORDER NO. X-84

PROVIDING FOR THE SELECTION OF THE MEMBERS OF THE GENERAL
NRA CODE AUTHORITY

By virtue of the authority vested in me as administrator for Industrial Recovery under Title I of the National Industrial Recovery Act, by Executive Orders of the President and otherwise, it is hereby ordered that the General NRA Code Authority provided for in Administrative Order No. X-62, dated July 10, 1934, shall be constituted as follows:

There shall be one member who shall act as Chairman, to be appointed by the Administrator, and three other members to be appointed by the Administrator as follows: one with the advice of the Industrial Advisory Board, one with the advice of the Labor Advisory Board, and one with the advice of the Consumers' Advisory Board, of NRA. All such members shall act upon all matters considered by such Code Authority. One additional member shall be appointed by the Administrator with the approval of the Industrial Advisory Board of NRA for each industry whose code is administered by such Code Authority. Each such additional member shall wherever practicable have a special knowledge of the industry which he is appointed to represent and shall act as a member of such Code Authority only upon matters which pertain to the code for such industry.

HUGH S. JOHNSON
Administrator for Industrial Recovery.

Washington, D. C.,
September 7, 1934.

APPENDIX VII.

ADMINISTRATIVE ORDER NO. X-89

Supplementing Administrative Order No. X-61
by offering a Basic Code to Grocery Manufac-
turing Industries.

By virtue of the authority vested in me as Administrator for Industrial Recovery, and in order to further the purposes of Administrative Order No. X-61, of July 10, 1934, it is hereby ordered that:

1. The Code of Fair Competition for the Grocery Manufacturing Industries (annexed hereto and marked Exhibit "A") is offered to each grocery manufacturing industry not yet codified under the Act, in lieu of the Basic Code; and to each grocery manufacturing industry now codified under the Act, in lieu of its own code.
2. If an application is made for said Code by any group truly representative of a grocery manufacturing industry and if there be no objection by any party in material interest after ten (10) days published notice to all concerned, such Code shall, without further hearing, reference to Advisory Boards or other administrative action, become effective ten (10) days after its approval by the Administrator, in industries employing less than fifty thousand (50,000) persons, or by the President in all other industries.
3. For the purposes of this Order, a grocery manufacturing industry is defined as follows: The manufacturing, processing, canning, packing, bottling and/or importing and sale by the manufacturer, processor, canner bottler, packer or importer of any one or related group of products commonly known as food and/or grocery products, except those products which are principally sold through other channels than the wholesale and retail grocery trades.
4. Grocery manufacturing industries are exempted from Administrative Order X-61.
5. It is recognized that the policies of the Act can better be effectuated in the grocery manufacturing and distributing industries if all such industries are subject to codes of fair competition containing substantially comparable provisions. Accordingly, all uncodified grocery manufacturing industries which desire codification are requested to apply for this Code; and all codified grocery manufacturing industries are requested to consult the Administrator with a view to applying for this Code or adopting such modifications of their own codes as will result in such substantially comparable provisions.

6. In accordance with the intention of paragraph 4 in Administrative Order X-61, hearings will be held as to any uncodified grocery manufacturing industry which has not applied for this Code within thirty (30) days after the date hereof.

HUGH S. JOHNSON

Administrator for Industrial Recovery.

Order recommended:

Armin. W. Riley,
Division Administrator.

September 21, 1934.

EXHIBIT "A" TO APPENDIX VII.

CODE OF FAIR COMPETITION
FOR THE
GROCERY MANUFACTURING INDUSTRIES

To effect the policies of Title I of the National Industrial Recovery Act, the following provisions are established as a basic Code of Fair Competition for the Grocery Manufacturing Industries, and its provisions shall be the standards of fair competition for every such industry and shall be binding upon every member of any one or more thereof, as hereinafter in Article I provided.

ARTICLE I

Application of Code

Section 1. The provisions of this Code shall apply to the members of any grocery manufacturing industry upon approval by the Administrator, pursuant to Administrative Order No. X-89., of an application to him by any group truly representative thereof. The Administrator may make such exemptions with respect to specific provisions herein as he may deem appropriate to avoid conflict with provisions in any separate approved Code of Fair Competition for such industry; and he may approve amendments hereto with respect to any grocery manufacturing industry.

ARTICLE II

Definitions

Section 1. As used herein:

(a) Grocery Manufacturing Industry. The terms "Grocery Manufacturing Industry" and "Industry" mean and include any industry as defined in an application and approval thereof by the Administrator pursuant to Administrative Order No. X-89.

(b) Grocery Manufacturer. The term "grocery manufacturer" or "manufacturer" includes, but without limitation, any individual, partnership, association, corporation or other form of enterprise wholly or partially engaged in a grocery manufacturing industry, either as an employer or on his or its own behalf.

(c) Employee. The term "employee" means any person engaged in a grocery manufacturing industry in any capacity and receiving compensation for his services (except a manufacturer or a broker) irrespective of the nature or method of payment of such compensation.

(d) Employer. The term "employer" means any person by whom any such employee is compensated or employed.

(e) Outside Salesman. The term "outside salesman" means any salesman who is engaged not more than twelve (12) hours per week inside the establishment, or any branch thereof, of his employer and who does not regularly deliver merchandise.

(f) Watchman. The term "watchman" means any employee who is engaged during at least ninety per cent (90%) of his working hours in watching and guarding the premises and property of any establishment of a member of the industry.

(g) Trade Buyer. The term "trade buyer" means any commercial buyer as distinguished from an ultimate consumer buyer.

(h) President, Act and Administrator. The terms "President", "Act" and "Administrator" mean, respectively, the President of the United States, Title I of the National Industrial Recovery Act, and the Administrator for Industrial Recovery.

Section 2. Population and trade areas for the purposes of this Code shall be determined by reference to the latest Federal Census and metropolitan areas designated therein.

ARTICLE III

Hours

Section 1. No employee shall be permitted to work more than forty (40) hours in any week or more than eight (8) hours in any day, with the following exceptions:

(a) The provisions of this Section shall not apply to employees engaged in managerial, executive, or supervisory capacities, regularly receiving not less than thirty-five dollars (\$35.00) per week, and outside salesmen.

(b) Watchmen shall be permitted to work not in excess of fifty-six (56) hours in any week.

(c) Engineers and firemen shall be permitted to work not in excess of forty-four (44) hours a week or in excess of nine (9) hours in any day.

(d) Deliverymen, outside truck drivers and chauffeurs, shall be permitted to work not in excess of forty-eight (48) hours a week.

(e) The provisions of this Section shall not apply to employees engaged in emergency repair and emergency maintenance work involving breakdowns or protection of life and property; provided that in every such case employees engaged in such work shall be compensated at a rate of not less than one and one-third (1-1/3) times their normal hourly rate for all hours worked in excess of the basic hours provided in this Article.

(f) During any eight (8) weeks in each calendar year, employees may be permitted to work six (6) hours per week in excess of the foregoing maxima, provided they are paid at least one and one-third (1-1/3) their normal rates of pay.

Section 2. No employee shall be permitted to work more than six (6) days in an seven (7) day period.

Section 3. All employees, except those enumerated in subsection (a), Section 1 of this Article, shall be compensated at a rate of not less than one and one-third (1-1/3) times their normal hourly rate for all hours worked on the following holidays: Christmas Day, Thanksgiving Day, George Washington's Birthday, Labor Day, July Fourth, New Year's Day, and such other holidays as may be proclaimed by the President of the United States.

ARTICLE IV

Wages

Section 1. No employee engaged in clerical, accounting or other office work shall be paid less than at the rate of:

Sixteen dollars (\$16.00) per week in cities of over 500,000 population or in the immediate trade area thereof;

Fifteen dollars (\$15.00) per week in cities between 250,000 and 500,000 population or in the immediate trade area thereof;

Fourteen dollars (\$14.00) per week in other places; except that office boys and messengers may be employed at a rate of not less than two dollars (\$2.00) below the above minima; provided that where any employees are classified and compensated as office boys or messengers not more than five per cent (5%) of all office employees shall be so classified and compensated, except that each establishment may employ at least one office boy or messenger at such rates.

Section 2. No watchman shall be paid less than at a rate of eighteen dollars (\$18.00) per fifty-six (56) hour week.

Section 3. No employee, other than those covered in Sections 1 and 2 of this Article, shall be paid at a rate of less than forty cents (40¢) per hour except that such employees may be paid at a rate of not less than thirty-five cents (35¢) per hour in Virginia, North Carolina, South Carolina, Tennessee, Alabama, Georgia, Florida, Mississippi, Louisiana, Texas, Arkansas, Oklahoma, Kentucky.

Section 4. Employees engaged in light work commonly performed by female operatives may be paid at rates not less than five cents (5¢) per hour below the respective minima established in Section 3. of this Article.

Section 5. Female employees performing substantially the same work as male employees shall receive the same rates of pay as male employees; and where they displace male employees they shall receive the same rates of pay as the male employees displaced.

Section 6. This Code establishes a minimum rate of pay which shall apply, irrespective of whether an employee is actually compensated on a time rate, piece work, or other basis.

Section 7. (a) In the event the normal full time weekly working hours of any employee shall, under the provisions of this Code be reduced by not more than sixteen and two-thirds per cent (16-2/3%) under the normal full time weekly working hours worked by said employee during the period from January 1,

1933, to May 1, 1933, the wages of said employee shall not be reduced below the normal full time weekly wage paid said employee during said period from January 1, 1933, to May 1, 1933.

(b) In the event the normal full time weekly working hours of any employee shall, under the provisions of this Code, be reduced by more than sixteen and two-thirds per cent ($16\frac{2}{3}\%$) under the normal full time weekly working hours worked by said employee during the period from January 1, 1933, to May 1, 1933, the wages of said employee shall not be reduced below the normal full time weekly wage paid said employee during said period from January 1, 1933, to May 1, 1933, by more than one-half ($\frac{1}{2}$) of the percentage of hourly reduction in excess of said sixteen and two-thirds percent ($16\frac{2}{3}\%$).

(c) In no case shall hourly wage rates be reduced.

Section 8. Wages shall be exempt from fines and rebates; and from charges or deductions, except charges and deductions for employees' contributions, voluntarily made by employees, or required by law, for pension, insurance or benefit funds. No employer shall withhold wages except upon service of legal process or other papers lawfully requiring such withholding. Deductions for other purposes not heretofore stated may be made only when the contract is in writing and is kept on file by the employer for at least six (6) months after the completion of the contract.

Section 9. Employees shall make payment of all wages in lawful currency or by negotiable checks payable on demand. All contracts of employment shall prescribe payment of wages at least every two (2) weeks.

Section 10. A person whose earning capacity is limited because of age or 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. Each employer shall file monthly with the Code Authority a list of all such persons employed by him, showing the wages paid to, and the maximum hours of work for such employee.

ARTICLE V

General Labor Provisions

Section 1. No person under sixteen (16) years of age shall be employed in the industries. No person under eighteen (18) years of age shall be employed at operations or occupations which are hazardous in nature or dangerous to health. The Code Authority shall submit to the Administrator within ninety (90) days after the effective date of this Code a list of such operations or occupations. In any jurisdiction 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 signed by the authority in such jurisdiction empowered to issue employment or age certificates or permits showing that the employee is of the required age.

Section 2. 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.

Section 3. 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.

Section 4. 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 5. No employee now employed at a rate in excess of the minimum shall be discharged and re-employed at a lower rate for the purpose of evading the provisions of this Code.

Section 6. No provision in this Code shall supersede any law which imposes on employers more stringent requirements as to age of employees, wages, hour of work, or as to safety, health, sanitary or general working conditions, or insurance, or fire protection, than are imposed by this Code.

Section 7. No employer shall knowingly permit any employee to work for a total number of hours in excess of the number of hours prescribed for his occupation for each week and day whether employed by one or more employers.

Section 8. No employer shall reclassify employees, or reclassify the duties or occupations performed by them, or change the method of compensation of employees, or engage in any subterfuge which tends to or will defeat the purpose or provisions of the Act or of this Code.

Section 9. Every employer shall provide for the safety and health of employees during the hours and at the places of their employment. Standards for safety and health shall be submitted by the Code Authority to the Administrator within three (3) months after the effective date of this Code.

Section 10. All employers shall post and keep posted copies of this Code in conspicuous places accessible to all employees. Every member of the industries shall comply with all rules and regulations relative to the posting of provisions of Codes of Fair Competition which may from time to time be prescribed by the Administrator.

ARTICLE VI

Organization, Powers and Duties of Code Authorities

Part A - Organization and Constitution.

Section 1. Immediately upon the approval by the Administrator of an application, pursuant to Article I, Section 1, of the Code, a Code Authority shall be constituted for the applicant grocery manufacturing industry.

Section 2. Each such Code Authority shall consist of the number of members specified in the application for this Code by the industry for which it is to be constituted; and the members shall be grocery manufacturers engaged

in such industry and shall be selected in the following manner:

(a) Within fifteen (15) days after the approval of such application the applicant trade association or group shall institute an election of the members of the Code Authority for such industry. If candidates are nominated by such trade association or group, due consideration shall be given to the proportion of grocery manufacturers who are members and who are non-members of the trade association or group. Members so elected shall hold office for one (1) year or until their successors are elected as hereinafter provided. Vacancies in membership of a Code Authority shall be filled for unexpired terms by the remaining members of such Code Authority subject to the approval of the Administrator.

Each grocery manufacturer engaged in such industry shall be entitled to one (1) vote for each member to be elected to the Code Authority, and may cast all votes for one person. At each election the voting may be in person, by proxy, or by letter.

(c) Any grocery manufacturing industry subject to the provisions of this Code may, under such rules and regulations as the Administrator shall prescribe, change the method of selection of its Code Authority as provided for in this Section, and such modified method of selection shall be followed in all subsequent elections for the Code Authority of such industry.

Section 3. In addition to membership as above provided there may be on each individual Code Authority from one (1) to three (3) members, without vote, to be known as Administration Members to be appointed by the Administrator to serve for such terms as he may specify without expense to the industry.

Section 4. Each trade or industrial association or group directly or indirectly participating in the selection or activities of any Code Authority shall (1) impose no inequitable restrictions on membership, and (2) submit to the Administrator true copies of its articles of association, by-laws, regulations, and any amendments when made thereto, together with such other information as to membership, organization, and activities as the Administrators may deem necessary to effectuate the purposes of the Act.

Section 5. In order that each Code Authority shall at all times be truly representative of its individual 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 in question is not truly representative or does not in other respects comply with the provisions of the Act, may require an appropriate modification of such Code Authority.

Section 6. Nothing contained in this Code shall constitute the members of any Code Authority, herein provided for, partners for any purpose, nor shall any member of any such Code Authority be liable in any manner to anyone for any act of any other member, officer, agent or employee of such Code Authority. Nor shall any member of such 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 malfeasance or non-feasance.

Section 7. In addition to the individual industry Code Authorities provided for in Section 1 of this Article, there shall be constituted a National Food and Grocery Manufacturing Advisory Board consisting of one member to be selected by each individual industry Code Authority from its industry. In addition to the membership as above provided, the Administrator may appoint not more than five (5) members without vote to serve for such time as he may specify.

(a) The National Food and Grocery Manufacturing Advisory Board shall be an advisory planning and coordinating agency within the meaning of the Act for all grocery manufacturing industries to which all common matters may be referred for advice.

(b) The National Food and Grocery Manufacturing Advisory Board shall appoint a representative or representatives to serve on a Food and Grocery Industry Conference Committee to be composed of representatives from food and grocery wholesalers, retailers, and manufacturers. The Food and Grocery Industry Conference Committee may act as planning and coordinating agency within the meaning of the Act for the entire food and grocery trade.

Section 8. If the Administrator shall at any time determine that any action of any individual Code Authority or any agency thereof or of the Advisory Board 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 or Advisory Board 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.

Part B - Powers and Duties

Section 1. Subject to such rules and regulations as may be issued by the Administrator, each Code Authority as provided for herein shall have the following powers and duties with respect to the grocery manufacturing industry selecting it in addition to those authorized by other provisions of this Code.

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

(b) To adopt by-laws and rules and regulations for its procedure.

(c) To obtain from grocery manufacturers such information and reports as are required for the administration of the Code. In addition to information required to be submitted to the Code Authority, grocery manufacturers shall furnish such statistical information as the Administrator may deem necessary for the purposes recited in Section 3 (a) of the Act to such Federal and State agencies as he may designate; provided that nothing in this Code shall relieve any grocery manufacturer of any existing obligations to furnish reports to any Government agency. No individual report shall be disclosed to any other grocery manufacturer or any other party except to such other 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 and the National Grocery Manufacturers Advisory Board for the Coordination of the administration of this Code and such other codes, if any, as may be related to or affect members of the industries.

(f) 1. 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, each such Code Authority is authorized:

- (a) 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;
- (b) 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 such budget shall be contributed by grocery manufacturers;
- (c) 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 grocery manufacturers, and to that end, if necessary, to institute legal proceedings therefor in its own name.

2. Each grocery manufacturer shall pay his or its equitable contribution to the expenses of the maintenance of its individual Code Authority, determined as hereinabove provided, and subject to rules and regulations pertaining thereto issued by the Administrator. Only grocery manufacturers complying with the Code and contributing to the expenses of its administration as hereinabove provided (unless duly exempted from making such contributions) shall be entitled to participate in the selection of members of the Code Authority 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.

3. Each Code Authority shall neither incur nor pay any obligation substantially in excess of the amount thereof as estimated in its approved budget, and shall in no event exceed the total amount contained in the 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.

(g) To delegate to the National Food and Grocery Manufacturing Advisory Board any or all of its powers and duties under this Code as now constituted or hereafter amended.

(h) To recommend to the Administrator any action or measure deemed advisable including further fair trade practice provisions to govern its grocery

manufacturers in relation with each other or with other industries; measures for industrial planning and stabilization of employment, and including modifications of this Code pertaining to its particular grocery manufacturing industry which shall become effective as part hereof upon approval by the Administrator after such notice and hearing as he may specify.

ARTICLE VII

Unfair Methods of Competition

Section 1. Open Price. (a) No grocery manufacturer shall offer to sell, contract to sell, or sell (except pursuant to a mutually irrevocable contract to sell not in violation of this Code when entered into) any product to a trade buyer except upon the basis of an open price which is strictly adhered to while effective. The term "open price" as used in this Section means a price list (a) which is published or available for the equal information of all trade buyers (actual and solicited) alike located in the same competitive market area, and (b) which declares all the manufacturer's prevailing prices, and discounts, rebates, allowances, and all other terms or conditions for the sale of such product.

(b) No grocery manufacturer shall make or permit to be made any direct or indirect price concession to a trade buyer. The term "direct or indirect price concession" means any variation from the manufacturer's open price, whether by means of a rebate, allowance, payment, free deal, gift, brokerage or by any other means whatsoever.

(c) This Section shall not apply to sales of commodities customarily sold in bulk or a bid-and-asked basis in open competitive buying; not to sales for charitable or relief purposes.

Section 2. Unearned Service Payment. No grocery manufacturer shall designate as an "advertising allowance", a "promotion allowance" or by a similar term, any price reduction, discount, bonus, rebate, concession, or other form of allowance, or any consideration for advertising or promotion services offered or given by him to any customer.

No grocery manufacturer shall offer or give any consideration merely for "pushing", "advertising", or otherwise than for definite and specific advertising or promotion services. Such consideration shall be given only pursuant to a separate written contract therefor, which contract shall specifically and completely set forth the advertising or promotion services (in such manner that their specific character may be understood by other members of the industry and their customers) to be performed by the recipient of said consideration, the precise consideration to be paid or given therefor by said manufacturer, the method of determining performance, and all other terms and conditions relating thereto.

No grocery manufacturer shall offer or give any such consideration unless it is equally available for the same service to all competitive buyers in the same competitive market, and unless a copy of the written contract therefor is retained on file for a period of sixty (60) days after the expiration thereof and in no event for less than one (1) year. In order to investigate an alleged violation of this Code, the Administrator may require a grocery manufacturer

to report any such contract made by him and/or to produce a copy thereof for inspection.

Section 5. Destructive Price Cutting. Wilfully destructive price cutting is an unfair method of competition and is forbidden. Any grocery manufacturer or member of any other industry or the customers of either may at any time complain to the appropriate Code Authority that any published price constitutes unfair competition as destructive price cutting imperiling small enterprises or tending toward monopoly or the impairment of code wages and working conditions. Such Code Authority shall within five (5) days afford an opportunity to the manufacturer publishing the price to answer such complaint and shall within fourteen (14) days make a ruling or adjustment thereon. If such ruling is not concurred in by other party to the complaint, all papers shall be referred to the Research and Planning Division of NRA which shall render a report and recommendation thereon to the Administrator.

Section 4. Quantity Price. No grocery manufacturer shall offer or make a quantity price unless it is based upon and reasonable measured by a saving resulting from a substantial difference in the quantity sold and delivered.

Section 5. Unearned Discount for Cash. No grocery manufacturer shall allow a discount for cash which is not earned by payment in accordance with the cash discount terms specified in his open price list.

Section 6. Payment or Diversion of Brokerage. No grocery manufacturer shall pay or permit to be paid a brokerage or commission to a trade buyer.

Section 7. Fraudulent Prizes or Premiums. No grocery manufacturer shall offer or give prizes, premiums, or anything of value by any of the following methods:

(a) In ways which involve lottery in any form, the term "lottery" as used herein including but without limitation, any plan or arrangement whereby the premium offered involves the element of chance and/or differs substantially and inequitable in value from buyer and buyer of the same quantity and/or distribution class;

(b) In ways which involve misrepresentation or fraud or deception in any form, including, but without limitation, the word "free", "gift", "gratuity" or language of similar import in connection with the giving of premiums for the purpose or with the effect of misleading or deceiving buyers;

(c) By giving premiums to any buyers when such premiums are not offered to all customers of the same class in the trade area.

Section 8. Unfair Substitution. No grocery manufacturer shall substitute without due notice and consent of a trade buyer another product for that ordered from him.

Section 9. Commercial Bribery. No grocery manufacturer 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 provision shall not be construed or 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.

Section 10. False Label or Advertisement on Container. No grocery manufacturer (a) shall sell a product falsely or deceptively labeled or marked; or (b) falsely or deceptively advertise a product; or (c) use a deceptive container or give short weight or measure or count.

Section 11. Unfair Interference with Competitors' Business. No grocery manufacturer shall unfairly interfere with a competitor's business, by uttering false statements about his business or by unfairly disparaging his business or products or by inducing a breach of his contracts.

ARTICLE VIII.

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 Title I of said Act.

Section 2. Such of the provisions of this Code as are not required to be included herein by the Act may, with the approval of the Administrator, be modified or eliminated in such manner as may be indicated by the needs of the public, by changes in circumstances, or by experience.

ARTICLE IX

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 X

None of the provisions of this Code relating to prices or terms of selling, shipping, or marketing shall apply to export trade or sales or shipments for export trade. "Export Trade" shall be defined as sales or shipments outside of the continental United States.

APPENDIX VIII.

June 9, 1934.

TO: THE ADMINISTRATOR
FROM: NRA ADVISORY COUNCIL
SUBJECT: BASIC CODE

The Advisory Council unanimously approves your proposal for the speedy codification of industry, if adjusted to care for the following specific recommendations:

1. That the proposed plan shall not apply (a) to certain industries to be designated by the Administrator (or the Advisory Council) whose codes are nearing completion; and (b) to certain few major industries as yet uncodified whose importance warrants the preparation of individual codes in accordance with existing procedure, such major industries to be designated by the Administrator (or the Advisory Council).
2. That industries as yet uncodified and not covered above be encouraged to consolidate with kindred industries, thereby coming under the complete provisions of some existing approved code. The determination of the proper kindred industry shall be by the Administrator.
3. That all other industries now uncodified and not dealt with by the above provisions be urged to adopt the Basic Code. The provisions of the proposed Basic Code be modified as follows:
 - A. That no flat declaration of hours and wages be made, but that the hours and wages for any industry applying for the Basic Code be those already approved for kindred industries, the Administrator to determine the proper kindred industry. The provisions of the kindred industry code shall also apply with regard to daily and weekly maximum hours, permissible overtime and overtime wages.
 - B. That the additional labor provisions set forth in Exhibit "A" hereto annexed, and now recognized as standard provisions, shall be included in the Basic Code.
4. That there be clarification and emphasis to avoid possible false impression (received by all members of the Industrial Advisory Board) on the following points:

- A. That this move contemplates purely voluntary action from industries, with the possible exception of important exceptional industries, if any, which fail to apply and are found to have substandard working conditions;
- B. That this is not a move to force all remaining industries under codes;
- C. That the service code move is entirely separate and remains unchanged;
- D. That the purpose of this move is to provide a simple means of giving a code forthwith to those remaining industries who desire a code, so as to clear the deck for administration of approved codes.

NRA ADVISORY COUNCIL

Per Willard L. Thorp

APPENDIX IX

August 6, 1934

To: Col. G. A. Lynch
 From: Robert K. Straus
 Subject: Completion of Code Making

In accordance with your request for information as to the progress of the drive to complete code making by August 10, I beg to submit the following tabulation:

Divisions	Individual Codes (Ready August 10)	X-61 Consolidations (Ready August 10)	X-61 Basic Codes (Ready August 10)	Industries still uncodified on August 10	Hearing still to be held -- will not be ready Aug. 10	Action delayed pending General's return	No decision as to disposition reached on August 4	Deadlock -- Probable candidate for 3rd code	Has Refused to apply under X-61 candidate for 3rd	Total
I	11	2	0	23	0	22	0	0	1	36
II	11	7	5	1	0	0	0	1	0	24
III	18	9	0	5	1	0	4	0	0	32
IV	3	3	4	4	0	0	3	0	1	14
V	7	1	4	5	2	0	2	1	0	17 <u>1/</u>
VI	21	6	0	59	0	0	59 <u>2/</u>	0	0	86
VII	2	3	2	0	0	0	0	0	0	7
Totals	73	31	15	97	3	22	68	2	2	216

1/ In this Division there are 23 Service Codes in addition, which will be handled under Executive Orders

2/ Of comment on Division Report annexed

You will note that 119 codes will be disposed of by August 10. A balance of 97 codes will be left on that date. Of these 97 no action has been taken of 22 in Division I pending the return of the Administrator. This group includes Anthracite, Shipping and Public Utility codes. In addition, no decision has been reached on 59 codes which are charged to Division VI. In every one of these cases a letter has been sent to the Industry enclosing a copy of Administrative Order X-61, but in most of these cases, the industries have not replied. In the few cases where they have replied, they have indicated that they will not apply for codification under X-61 since they cannot secure trade practice provisions at the same time from the AAA. I have instructed Division VI to warn all of these industries that if they do not apply under X-61 for codification by August 10, it may be necessary to investigate labor conditions in these industries with an eye to imposing a code under Paragraph 3-D of NIRA. I have had several conversations with officials of the Department of Agriculture, including Under-Secretary Tugwell, and I have told them that this will probably be necessary. They do not object to our going ahead on this basis, and indeed, they added that they see no reason why an industry should expect to receive trade practice provisions at the same time as they receive labor provisions. I do not recommend, however, that action be taken immediately on August 10 with reference to these industries in Division VI. It would seem to me preferable that the Administrator should make a statement, after conference with the Secretary of Agriculture, giving these industries some twenty days more (up to September 1) in which to apply under X-61, but warning them that if they have not applied by September 1, investigation of labor conditions in these industries will start immediately.

If we except the 81 codes which have been held up because of the special situations described above which exist with reference to them, and if we except the 23 codes which have been transferred to Division V as Service Codes, and to which the Executive Orders apply, some 18 industries only will be left on August 10 which must be codified. These will be reduced, I am sure, within a few days after August 10.

At this point I wish to call attention to the situation which exists with reference to supplemental codes. Code Record reported on August 3 that 141 supplemental codes awaiting approval. In my judgment, it was not the Administrator's intention to include these in the drive to complete code making. These industries are already codified in that they are operating under labor provisions of basic codes. If the Administrator wished to cease approving supplemental codes as of August 10, he could do so without inflicting any injury on labor since the employees of these industries are already thoroughly protected under codes.

I would like to call attention to the status of Division II. As of August 10, it will have only one code awaiting disposition, and it is probable that this industry will be a candidate for a prescribed code, since it has been unwilling to come to an agreement. I think that much credit is due Mr. Neal Foster for this excellent record. The efficiency and thoroughness with which he has cooperated with me in this drive to complete code making has indeed been gratifying.

Robert K. Straus, Chairman,
Committee on the Completion
of Code Making.

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APPENDIX X.

Tentative Outline

A. BASIC CODE (X-61)

I. CODE-MAKING AS FIRST PHASE OF NRA

- A. Period of intense activity
- B. The Code-making process
 - 1. Authority
 - 2. Objectives
 - (a) Industry urged to take initiative
 - (b) Major Industries given first attention
 - 3. Procedure
 - (a) NRA Bulletin #2 (Basic Codes of Fair Competition)
- C. Industry sponsored 3 (a) Codes
 - 1. Number submitted and approved to 7/1/34
 - (a) Major Industries (over 50,000 employees)
 - (b) Minor Industries (less than 50,000 employees)
 - (c) Service Trades
 - 2. Number pending as of 7/1/34
- D. Agreements under 4 (a)
 - 1. Promulgation of PRA
 - (a) Effect on Code-making
- E. Imposed Codes
 - 1. Powers of President under 3 (d) and 7 (c)
 - 2. Extent used
 - (a) Imposed Code Amendments
 - (1) Cotton Garment (36 Hour maximum work week)
 - (2) Other instances

II. FACTORS LEADING TO CHANGE IN POLICY

- A. Code-making problems
- B. Most of industry codified
 - 1. Small groups left mainly
- C. Need for concentration on other problems
 - 1. Administration of approved codes
 - 2. Clamor for compliance and enforcement

III. PLAN FOR COMPLETION OF CODE-MAKING

- A. General Theory
 - 1. Expeditionary method of codifying remaining uncodified trades and industries desiring Codes
 - 2. Free NRA from initial codification of industries for administration of approved codes
 - 3. Relieve smaller industries of expenditure of time and money involved in the adoption and administration of an individual Code.
- B. Steps taken to carry out plan.
 - 1. Administrative Order No. X-61
 - 2. " " " X-62
 - 3. " " " X-63

4. Office Order No. 100
5. Administrative Order No. X-84
- C. Application
 1. Industries excepted
- D. Optional methods of codification available
 1. By application for the basic Code
 2. By application for consolidation with approved code for kindred trade or industry
- E. Time limitation on applications
- F. Procedure for handling applications
 1. Truly representative body of the trade or industry must apply
 2. Notice and hearing
 3. Approval of applications
 - (a) Industries employing less than 50,000 persons
 - (b) All other trades or industries
 4. Committee for completion of code-making
 - (a) Functions
 - (1) Supervise execution of plan

IV. ADMINISTRATION OF PLAN

- A. General NRA Code Authority
 1. Members and how appointed
 2. Powers and duties
 3. Use for purposes other than administration of basic code.
 - (a) Cotton Garment Industry Code
 - (b) Retail Solid Fuel Code
 - (c) Other codes
 4. Questioned legality of functions

V. ACTUAL OPERATION OF PLAN

- A. Number of Applications for Basic Code
 1. Those approved and disapproved
- B. Number of Applications for Consolidation
 1. Those approved and disapproved
 2. One joint AAA-NRA Code consolidation
 - (a) Terminal Grain Elevator Industry placed under Grain Exchanges Code
- C. Deviations and Modifications Desired by Industry
- D. Code-making Continued

VI. DEPARTURE FROM PLAN

- A. Administrative Order No. X-89 (Basic Code for Grocery Manufacturing Industries)
 1. Main purposes:
 - (a) To facilitate the program outlined in Administrative Order No. X-61
 - (b) To bring different industries engaged in manufacture of food and grocery products, to greatest extent possible, under comparable code provisions

VII. CONCLUSIONS

- A. Did Plan Accomplish the Desired Objectives?
- B. Was Plan Practical?
- C. Would Better Results Have Followed Earlier Adoption of Plan?
- D. Was Type of Notice Used Sufficient?
- E. Did the Act Contemplate that Groups Could be Codified in Such Manner?
- F. Delegation and Redelegation of Power.



