

THE NATIONAL ARCHIVES
LITTE
SCRIPTA
MANET
OF THE UNITED STATES

FEDERAL REGISTER

1934

VOLUME 4 NUMBER 6

Washington, Wednesday, January 11, 1939

Rules, Regulations, Orders

TITLE 7—AGRICULTURE

**AGRICULTURAL ADJUSTMENT
ADMINISTRATION**

[ACP-1939, Supp. No. 5]

**PART 701—1939 AGRICULTURAL CONSERVA-
TION PROGRAM BULLETIN**

SUPPLEMENT 5

Pursuant to the authority vested in the Secretary of Agriculture under Sections 7 to 17 of the Soil Conservation and Domestic Allotment Act, as amended, the 1939 Agricultural Conservation Program Bulletin, as approved November 10, 1938,¹ is hereby amended as follows:

Section 701.8 is amended by the addition of the following paragraph:

(1) *Hurricane damaged woodland.*—Payment will be made at the rate of \$4.00 per acre of woodland on the farm, which constitutes a serious fire hazard as a result of hurricane damage, for eliminating such hazard, improving the remaining stand of trees, and providing for the restoration of a full stand, provided such work is done with the prior approval of the county committee and in accordance with such approved system of farm woodlot management as is specified by the Agricultural Adjustment Administration. Woodland on which payment is made hereunder shall not be eligible for practice (4) of Section 701.7 (c) and payment hereunder shall not exceed \$60.00 for any farm. This practice is applicable only to farms in New Hampshire, Massachusetts (except Barnstable and Berkshire Counties), Rhode Island, Connecticut (except Fairfield and Litchfield Counties), Nassau and Suffolk Counties of New York, Cumberland, Oxford, and York Counties of Maine, and Caledonia, Chittenden, Essex, Franklin, Lamoille, Orange, Orleans, Washington, Windham, and Windsor Counties of Vermont.* #

* 3 F. R. 2715 DI.

Done at Washington, D. C., this 9th day of January, 1939. Witness my hand and the seal of the Department of Agriculture.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 39-126; Filed, January 10, 1939;
12:19 p. m.]

TITLE 16—COMMERCIAL PRACTICES

FEDERAL TRADE COMMISSION

[Docket No. 2598]

**IN THE MATTER OF MCCURRACH ORGANI-
ZATION, INC.**

SEC. 3.6 (cc) 4) *Advertising falsely or misleadingly—Source or origin—Place.* Falsely representing, by use of word "Kerry" or any other word or words indicating Irish origin, or in any other manner, that respondent's neckwear was made from poplin woven in Ireland (Eire) and known as "Irish Poplin," prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, McCurrach Organization, Inc., Docket 2598, December 29, 1938]

SEC. 3.66 (a10) *Misbranding or mislabeling—Copyrights.* Falsely affixing to respondent's neckwear labels bearing the legend "copyrighted", prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, McCurrach Organization, Inc., Docket 2598, December 29, 1938]

**United States of America—Before Federal
Trade Commission**

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 29th day of December, A. D. 1938.

Commissioners: Garland S. Ferguson, Chairman; Charles H. March, Ewin L. Davis, William A. Ayres, Robert E. Freer.

ORDER TO CEASE AND DESIST

This proceeding having been heard¹ by the Federal Trade Commission upon the

¹ 2 F. R. 2847 (3295 DI).

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Published by the Division of the Federal Register, The National Archives, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. L. 500), under regulations prescribed by the Administrative Committee, with the approval of the President.

The Administrative Committee consists of the Archivist or Acting Archivist, an officer of the Department of Justice designated by the Attorney General, and the Public Printer or Acting Public Printer.

The daily issue of the FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for \$1 per month or \$10 per year; single copies 10 cents each; payable in advance. Remit by money order payable to Superintendent of Documents, Government Printing Office, Washington, D. C.

Correspondence concerning the publication of the FEDERAL REGISTER should be addressed to the Director, Division of the Federal Register, The National Archives, Washington, D. C.

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complaint of the Commission, the answer of respondent, testimony and other evidence taken before Edward J. Hornbrook, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, McCurrach Organization, Inc., its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of men's poplin neckwear in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Representing, directly or indirectly, through advertisements or otherwise, by the use of the word "Kerry" or any other word or words indicating Irish origin, or in any other manner, that said neckwear was made from poplin woven in Ireland (Eire) unless and until such neckwear is made from poplin woven in Ireland (Eire) and known as "Irish Poplin".

(2) Affixing to such neckwear labels bearing the legend "copyrighted".

It is further ordered, That the respondent shall, within sixty days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

[SEAL] C. G. DUGANNE,
Acting Secretary.

[F. R. Doc. 39-116; Filed, January 10, 1938; 10:30 a. m.]

[Docket No. 3420]

IN THE MATTER OF PINAUD, INC.

SEC. 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product.* Representing that the use of respondent's preparation "Six-Twelve (612) Creme de Mascara" will increase or promote the growth of eyelashes or will cause eyelashes to be longer, heavier or of a silkier quality, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Pinaud, Inc., Docket 3420, December 30, 1938]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 30th day of December, A. D. 1938.

Commissioners: Garland S. Ferguson, Chairman; Charles H. March, Ewin L. Davis, William A. Ayres, Robert E. Freer.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, Chief Counsel for the Commission, which

provides among other things that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusions based thereon and an order disposing of the proceedings, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Pinaud, Inc., its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of an eyelash cosmetic now designated as Six-Twelve (612) Creme de Mascara, whether sold under that name or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

That the use of the preparation "Six-Twelve (612) Creme de Mascara" will increase or promote the growth of eye lashes or will cause eye lashes to be longer, heavier or of a silkier quality.

It is therefore ordered, That the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

[SEAL] C. G. DUGANNE,
Acting Secretary.

[F. R. Doc. 39-119; Filed, January 10, 1938; 10:33 a. m.]

[Docket No. 3461]

IN THE MATTER OF BRADLEY BOSTON, INC., ET AL.

SEC. 3.6 (n) 2) *Advertising falsely or misleadingly—Nature—Product.* Representing, etc., in connection with offer, sale and distribution of watches, rings and other jewelry in interstate commerce or in District of Columbia, watches which are not "lever set", equipped with "micrometers", and do not contain 19 or more jewels properly placed so as to insure accuracy and to eliminate friction, as "railroad" or "engineer" watches, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Bradley Boston, Inc., et al., Docket 3461, December 22, 1938]

SEC. 3.6 (i) *Advertising falsely or misleadingly—Free goods or service:* SEC. 3.72 (e) *Offering deceptive inducements to purchase—Free goods.* Representing, etc., in connection with offer, sale and distribution of watches, rings and other jewelry in interstate commerce or in District of Columbia, watches and other articles, regularly included in a combination

offer with a ring or other article, as "free", "included free", or "included free of extra charge", or representing, etc., said watches or other articles delivered to purchasers of rings or other articles as "free", "included free", or "included free of extra charge", until and unless the conditions under which such watches, etc., are delivered to purchasers are stated in immediate connection or conjunction with terms above, in words, letters and figures of equal conspicuousness, and there is no deception as to the price, quality, character or any other feature of any of the items in the offer, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, Bradley Boston, Inc., et al., Docket 3461, December 22, 1938]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 22nd day of December, A. D. 1938. Commissioners: Garland S. Ferguson, Chairman; Charles H. March, Ewin L. Davis, William A. Ayres, Robert E. Freer.

IN THE MATTER OF BRADLEY BOSTON, INC., A CORPORATION, ALSO TRADING AS GOLD STANDARD WATCH COMPANY; NATIONAL WATCH COMPANY, A CORPORATION, ALSO TRADING AS GOLD STANDARD WATCH COMPANY; AND PETER TURCHON, INDIVIDUALLY AND AS AN OFFICER OF SAID CORPORATIONS

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission and a stipulation as to the facts entered into between the respondents herein and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents are violating the provisions of the Federal Trade Commission Act;

It is ordered, That the respondents, Bradley Boston, Inc., a corporation, also trading as Gold Standard Watch Company, and National Watch Company, a corporation, also trading as Gold Standard Watch Company, their officers, agents, representatives and employees, and Peter Turchon, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of watches, rings and other jewelry in interstate commerce or

in the District of Columbia, do forthwith cease and desist from:

(1) Representing, designating or describing watches which are not "lever set", equipped with "micrometers", and do not contain 19 or more jewels properly placed so as to insure accuracy and to eliminate friction, as "railroad" or "engineer" watches;

(2) Representing, designating or describing watches and other articles regularly included in a combination offer with a ring or other article as "free", "included free", or "included free of extra charge";

(3) Representing, designating or describing watches or other articles delivered to the purchasers of rings or other articles as "free", "included free", or "included free of extra charge", until and unless the conditions under which watches or other articles are delivered to purchasers are stated in immediate connection or conjunction with the terms "free", "included free", or "included free of extra charge", in words, letters and figures of equal conspicuousness, and there is no deception as to the price, quality, character or any other feature of any of the items in the offer.

It is further ordered, That the respondents shall, within sixty days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, Secretary.

[F. R. Doc. 39-117; Filed, January 10, 1939; 10:31 a. m.]

[Docket No. 3485]

IN THE MATTER OF M. GOODMAN & SON ET AL.

SEC. 3.6 (a) 22) *Advertising falsely or misleadingly—Business status, advantages or connections of advertiser—Producer status of dealer—Manufacturer:* Sec. 3.96 (b) 5) *Using misleading name—Vendor—Producer or laboratory status of dealer.* Representing, in connection with offer, sale and distribution of hosiery, in interstate commerce or in District of Columbia, through use of words "Mills" or "Manufacturers", or any other words or phrases of similar import and meaning, that respondents are the manufacturers, etc., of said hosiery, unless and until they actually own and operate or control the plant or mill wherein such hosiery is manufactured by them, prohibited. (Sec. 5b, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [Cease and desist order, M. Goodman & Son et al., Docket 3485, December 22, 1938]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 22nd day of December, A. D. 1938.

Commissioners: Garland S. Ferguson, Chairman; Charles H. March, Ewin L. Davis, William A. Ayres, Robert E. Freer.

IN THE MATTER OF JACOB GOODMAN AND BERTHA GOODMAN, INDIVIDUALLY AND AS CO-PARTNERS, TRADING AND DOING BUSINESS UNDER THE NAMES OF M. GOODMAN & SON, JADE HOSIERY MILLS AND GOODY HOSE CO.

ORDER TO CEASE AND DESIST

This proceeding having been heard¹ by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondents, Jacob Goodman and Bertha Goodman, individually and as co-partners, trading and doing business under the names of M. Goodman & Son, Jade Hosiery Mills and Goody Hose Co., their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of hosiery in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, through the use of the words "Mills" or "Manufacturers" or any other words or phrases of similar import and meaning in their trade name and advertising matter, or through any other means or device, that they are the manufacturers or makers of said hosiery, unless and until they actually own and operate or directly and absolutely control the plant or mill wherein said hosiery is manufactured by them.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, Secretary.

[F. R. Doc. 39-118; Filed, January 10, 1939; 10:32 a. m.]

¹3 F. R. 2522 DL.

TITLE 30—MINERAL RESOURCES
NATIONAL BITUMINOUS COAL
COMMISSION

[General Docket No. 15]

ORDER IN THE MATTER OF THE ESTABLISHMENT OF MINIMUM PRICES AND MARKETING RULES AND REGULATIONS

IN RE PROPOSALS OF MINIMUM PRICES SUBMITTED BY THE DISTRICT BOARDS FOR DISTRICTS NOS. 2, 4, 5, 6, AND THAT PART OF DISTRICT NO. 13 WITHIN MINIMUM PRICE AREA NO. 1

At a session of the National Bituminous Coal Commission held at its offices in Washington, D. C., on the 4th day of January 1939.

The Commission, on the 25th day of May, 1938,¹ having instituted the within proceedings entitled "In the matter of the Establishment of Minimum Prices and Marketing Rules and Regulations, General Docket No. 15," for the purpose of carrying out the provisions of subsections (a) and (b) of Section 4, Part II, of the Bituminous Coal Act of 1937, and thereafter upon the 10th day of August, 1938, after notice of hearing, having determined² the weighted average cost, as provided in Section 4, II (a) of the Act, for Minimum Price Area No. 1, did, on the 11th day of August, 1938, by Order No. 247,³ and on the 20th day of August, 1938, by Order No. 251,⁴ direct the District Boards for Districts Nos. 2, 4, 5, 6, and that part of District No. 13 within Minimum Price Area No. 1 to propose minimum prices in conformity with the provisions of Section 4, II, (a) of the Act, and in accordance with the rules and regulations prescribed by said Orders Nos. 247 and 251, and

Each of said District Boards having, thereafter, proposed such minimum prices, the Commission, by its Order entered in this proceedings on September 19, 1938⁵ directed that a hearing on such proposals be held in the Hearing Room of the Commission at 15th and Eye Streets, N. W., Washington, D. C., commencing on the 10th day of October, 1938 at 10 o'clock, A. M., for the purpose of receiving evidence relating to said proposals to enable the Commission to approve such proposed minimum prices, or to enable the Commission to modify such proposed minimum prices, so as to conform them to the requirements of Section 4, II, (a) of the Act, in order that such proposed minimum prices, as approved, or modified, as the case may be, may serve as the basis for the coordination, as provided by Section 4 II, (b) of the Act, and

Reasonable public notice thereof having been given, said hearing was commenced at the time and place stated, and concluded on the 10th day of November,

1938, at which hearing all interested parties were afforded full opportunity to be heard, and

The evidence being adduced, and the Commission being fully advised in the premises, and upon consideration thereof, the Commission made Findings of Fact and Conclusions relating to the proposals of minimum prices submitted by the District Boards for Districts Nos. 2, 4, 5, 6, and that part of District No. 13 within Minimum Price Area No. 1, which Findings of Fact and Conclusions are on file in the Office of the Secretary of the Commission at Washington, D. C., and by this reference are incorporated herein and made a part hereof, and

Included in the said Findings of Fact and Conclusions relating to each of the aforesaid Districts is an appendix entitled "Schedule of Minimum Prices as modified and approved to serve as a basis for Coordination," which schedule embraces all modifications which the Commission determined to be necessary to conform the proposals of the respective Districts to the requirements of Section 4, II, (a) of the Act, and which the Commission has determined to be the proper basis to be used by the respective Districts for the coordination provided for in Section 4, II, (b) of the Act,

Now, therefore, Pursuant to the provisions of the Bituminous Coal Act of 1937, the National Bituminous Coal Commission orders and directs:

1. That in the coordination of minimum prices as provided by Section 4, II, (b) of the Act, to be hereafter directed by subsequent Order of the Commission, the District Boards for Districts Nos. 2, 4, 5, 6, and that part of District No. 13 within Minimum Price Area No. 1 will take, as a basis thereof, the schedules as approved herein and set out opposite their respective names as follows:

District No. 2.—Appendix to the Findings for District No. 2; as above referred to, entitled "Schedule of Minimum Prices as Modified and Approved to Serve as a Basis for Coordination."

District No. 4.—Appendix to the Findings for District No. 4, as above referred to, entitled "Schedule of Minimum Prices as Modified and Approved to Serve as a Basis for Coordination."

District No. 5.—Appendix to the Findings for District No. 5, as above referred to, entitled "Schedule of Minimum Prices as Modified and Approved to Serve as a Basis for Coordination."

District No. 6.—Appendix to the Findings for District No. 6, as above referred to, entitled "Schedule of Minimum Prices as Modified and Approved to Serve as a Basis for Coordination."

That Part of District No. 13 within Minimum Price Area No. 1 (Van Buren, Warren and McMinn Counties in Tennessee).—Appendix to the Findings for that part of District No. 13 within Minimum Price Area No. 1 (Van Buren, War-

ren and McMinn Counties in Tennessee), as above referred to, entitled "Schedule of Minimum Prices as Modified and Approved to Serve as a Basis for Coordination."

2. The Secretary of the Commission be and he is hereby directed to cause a copy of this Order, together with Findings of Fact and Conclusions, including the Appendices thereto, for Districts Nos. 2, 4, 5, 6, and that part of District No. 13 within Minimum Price Area No. 1, to be published forthwith in the FEDERAL REGISTER, and to cause a copy of this Order and Findings of Fact and Conclusions for each of the aforesaid Districts, to be mailed to the Consumers' Counsel, to the Secretary of each District Board, to all interested parties who have entered their appearances in the hearing relating to said proposals, and to make copies of this Order and Findings of Fact, including the appendices thereto, available for inspection by interested parties at the Office of the Secretary of the Commission, Washington, D. C., and at the office of each Statistical Bureau of the Commission.

By order of the Commission.

Dated this 4th day of January, 1939.

[SEAL] F. WITCHER McCULLOUGH,
Secretary.

IN RE MINIMUM PRICES AND MARKETING RULES AND REGULATIONS AS PROPOSED AND SUBMITTED BY THE DISTRICT BOARDS FOR DISTRICTS 1, 2, 3, 4, 5, 6, 7, 8 AND THAT PART OF DISTRICT 13 COMPRISING VAN BUREN, WARREN AND McMINN COUNTIES, TENNESSEE, ALL WITHIN MINIMUM PRICE AREA 1

FINDINGS AS TO THE FACTS AND CONCLUSIONS OF THE COMMISSION

Pursuant to the provisions of an Act of Congress approved April 26, 1937, entitled "An Act to regulate interstate Commerce in bituminous coal and for other purposes" (Public No. 48, 75th Congress, 1st Sess.) known as the "Bituminous Coal Act of 1937", and hereinafter referred to as the "Act", the National Bituminous Coal Commission, hereinafter referred to as the "Commission", under and by virtue of the authority granted in Section 4 II (a) of the Act, on the 11th day of August, 1938, issued its Orders No. 247 and No. 248 ordering and directing the District Boards for Districts 1, 2, 3, 4, 5, 6, 7 and 8 to propose to the Commission minimum prices free on board transportation facilities at the mines for kinds, qualities and sizes of coal produced in said districts and reasonable rules and regulations incidental to the sale and distribution of coal by code members within said districts, said proposals to be submitted to the Commission on or before the 6th day of September 1938, and, on the 20th day of August 1938, issued its Order No. 251

¹ 3 F. R. 1457 DI.

² 3 F. R. 1987 DI.

³ 3 F. R. 1980 DI.

⁴ 3 F. R. 2058 DI.

⁵ 3 F. R. 2281 DI.

ordering and directing the District Board for District 13 to propose minimum prices free on board transportation facilities at the mines for kinds, qualities and sizes of coal produced in such part of said district as lies within Minimum Price Area 1, that is, Van Buren, Warren and McMinn counties, in the state of Tennessee, said proposals to be submitted to the Commission on or before the 6th day of September 1938.

Orders No. 247 and No. 248 were published in the FEDERAL REGISTER under date of August 13, 1938 and copies of said orders were mailed to the Office of Consumers' Counsel, Washington, D. C.; to each of the code members within Districts 1, 2, 3, 4, 5, 6, 7 and 8; and to each of the Secretaries of the District Boards for said districts.

Order No. 251 was published in the FEDERAL REGISTER under date of August 23, 1938, and a copy of said order was mailed to each of the code members within Minimum Price Area 1; to the Secretaries of the District Boards for the districts within Minimum Price Area 1; and to the Office of Consumers' Counsel, Washington, D. C.

Order No. 247 directed the District Boards for Districts 1, 2, 3, 4, 5, 6, 7 and 8 to propose to the Commission minimum prices f. o. b. transportation facilities at the mines for kinds, qualities and sizes of coal produced by the code members in their respective districts, and to propose such classification of coal and price variations as to mines, consuming market areas, values as to uses and seasonal demand, as might be deemed proper and within the authority conferred by the Act.

Order No. 251 directed the District Board for District 13 to propose to the Commission minimum prices f. o. b. transportation facilities at the mines for kinds, qualities and sizes of coal produced by the code members in that part of District 13 embraced in Minimum Price Area 1, to wit, Van Buren, Warren and McMinn counties, in the state of Tennessee.

Orders Nos. 247 and 251 both provided that each District Board should transmit its schedule of proposed minimum prices to each code member within its respective district before filing such schedule with the Commission in order to give such code members an opportunity to protest any proposed price classification.

Orders No. 247 and No. 251 further directed that the minimum prices proposed by the several District Boards should conform to the following standards therefor set out in Section 4 II (a) of the Act:

(a) The proposed minimum prices for each of the aforesaid districts shall yield a return, per net ton, for such districts, equal as nearly as may be to the weighted average of the total costs, per net ton, of the tonnage of the Minimum Price Area within which such district is located, as said weighted average heretofore has been determined by Order of the Com-

mission dated August 10, 1938, in this proceeding.

(b) They shall reflect, as nearly as possible, the relative market value of the various kinds, qualities and sizes of coal to which they are applicable.

(c) They shall be just and equitable as between producers within the district.

(d) They shall be just and equitable as between producers within the district for any kind, quality or size of coal for shipment into any consuming market area.

(e) They shall not permit dumping.

Orders No. 247 and No. 251 further directed that each schedule of proposed prices submitted by the District Boards should include the following clause:

NOTE.—The prices in this schedule are not the final minimum prices that will be established on coal for shipment by code members within this district into consuming markets for this district. In the ultimate establishment of the effective minimum prices, pursuant to subsection (b) of Part II, Section 4 of the Act, the minimum prices as proposed in such schedule, or as modified, are subject to such increase or decrease, respectively, as may be necessary to carry out the provisions of subsections (a) and (b) of Part II, Section 4 of the Act.

Order No. 248 directed each of the aforesaid District Boards to propose to the Commission reasonable rules and regulations incidental to the sale and distribution of coals by the code members of their respective districts, such rules and regulations not to be inconsistent with the requirements of Section 4 of the Act and to conform to the standards of fair competition therein established. Said order directed said District Boards to transmit such proposed rules and regulations to all code members within their respective districts in order to afford such code members an opportunity of studying such proposed rules and regulations and of protesting any of such proposals and to suggest whatever added rules or regulations such code members deemed necessary to properly effectuate the purposes of Section 4 of the Act.

Upon receipt of said orders by the several District Boards within Minimum Price Area 1, said District Boards, as directed in said orders, proceeded to propose such minimum prices and marketing rules and regulations as in their judgment conformed to the requirements of said orders. Schedules evidencing such proposals were prepared by said District Boards and copies of same were transmitted to each code member within the respective districts in order that such code members, after due consideration of such schedules, might present to their respective District Boards whatever objections, if any, they might have to said schedules, and in order that the respective District Boards, after due consideration of such objections, if any, might revise such schedules in such manner as, in their judgment, would better conform to the requirements of Orders Nos. 247, 248 and 251, as issued by the Commission, and to the requirements of Section 4 II (a) of the Act.

The schedules of proposed minimum prices, as revised, together with the data upon which same were computed and the schedules of proposed marketing rules and regulations, together with the reasons supporting same, were transmitted to the Commission as directed in said orders.

Subsequent to the receipt of said schedules by the Commission, the Commission, on the 19th day of September 1938, issued its order giving notice to all interested parties of a hearing to be held upon the proposals of minimum prices and marketing rules and regulations as proposed and submitted to the Commission by the District Boards for Districts 1, 2, 3, 4, 5, 6, 7, 8 and 13, said hearing to be held on the 10th day of October 1938, at the Hearing Room of the Commission at 15th and Eye Streets, N. W., Washington, D. C. As expressed in the face of said order, said hearing was to be held for the purpose of receiving evidence relating to the aforementioned proposals of minimum prices and marketing rules and regulations in order to enable the Commission to approve or modify such proposals to the end that such proposals, as approved or modified, may serve as the basis for the coordination of same as provided in Section 4 II (b) of the Act.

Said order giving notice of said hearing directed the Secretary of the Commission to cause copies of said proposals to be made available for inspection by interested parties at the office of the Secretary of the Commission at Washington, D. C., and at the office of each Statistical Bureau of the Commission within each of the districts within Minimum Price Area 1; to cause a copy of said order to be published forthwith in the Federal Register and in two consecutive issues of a newspaper having a general circulation in each of the districts within Minimum Price Area 1; to cause a copy of said order to be mailed to each of the code members within said districts, to the Office of Consumers' Counsel, Washington, D. C., and to the Secretaries of each of the District Boards for the districts within Minimum Price Area 1. A copy of said order was directed to be made available for inspection at each of the Statistical Bureaus of the Commission within said districts.

The aforesaid directions in said order were complied with. A copy of said order was made available for inspection at the office of the Secretary of the Commission at Washington, D. C., and at the office of each of the Statistical Bureaus of the Commission within each of the districts within Minimum Price Area 1. A copy of said order was published in the Federal Register of date September 22, 1938, and copies of said order were mailed to each of the code members within Minimum Price Area 1; to the office of Consumers' Counsel, Washington, D. C.; and to each of the Secretaries of the District Boards within Minimum Price Area 1. A copy of said order was

published two times consecutively in the Chattanooga News, Chattanooga, Tennessee; Cleveland Plain Dealer, Cleveland, Ohio; The Charleston Gazette, Charleston, West Virginia; Pittsburgh Post Gazette, Pittsburgh, Pennsylvania; The Birmingham News, Birmingham, Alabama; The Fairmont Times, Fairmont, West Virginia; The Exponent, Clarksburg, West Virginia; and The Flint Journal, Flint, Michigan, newspapers having a general circulation in each of the respective districts within Minimum Price Area 1.

Due and reasonable notice of said hearing having been given all interested parties, said cause came on for hearing before the Commission on the 10th day of October 1938, at the hour and place as specified in said order, to wit, at 10 a. m. in the Hearing Room of the Commission, 15th and Eye Streets N. W., Washington, D. C.; and, after said hearing had been duly and formally opened and all interested parties desiring to appear had entered their appearances in said cause, the Commission proceeded to receive evidence relative to the proposals of minimum prices and marketing rules and regulations as proposed to the Commission by the District Boards for Districts 1, 2, 3, 4, 5, 6, 7, 8 and 13. The hearing was concluded on the 10th day of November 1938.

At said hearing all interested parties were afforded full opportunity to be heard on the proposals of minimum prices and marketing rules and regulations which had been submitted by each of the District Boards for Districts 1, 2, 3, 4, 5, 6, 7, 8 and 13 and each of said District Boards adduced evidence relating to such proposals and placed into this record as exhibits all of the data which such Boards had used as a basis for such proposals and each of the Boards by competent witnesses testified as to the factors which the Boards had considered in determining the price relationships and the marketing rules and regulations which had been proposed by such Boards in their respective schedules.

Each of the schedules of proposed minimum prices offered in evidence by the District Boards contained the clause previously quoted from Orders No. 247 and No. 251 which clearly indicates that the District Boards were proposing minimum prices free on board transportation facilities at the mines for kinds, qualities, and sizes of coal produced in each of the districts within Minimum Price Area 1 without taking into consideration those additional factors and standards which are set forth in Section 4, Part II, subsection (b) of the Act. The minimum prices so proposed, as hereafter approved or modified, will serve as a basis for coordination as provided in Section 4 II (b) of the Act. Such proposals of minimum prices do not take into account differences in transportation methods and charges and their effect upon a reasonable opportunity to compete on a fair basis, or competitive relationships be-

tween coal and other forms of fuel and energy as such matters constitute a part of the coordination of minimum prices and are properly a subject of consideration under Section 4 II (b) of the Act.

The evidence adduced at said hearing having been duly reported and filed with the Commission, the Commission, after due consideration of same and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom.

MINIMUM PRICE AREA No. 1—DISTRICT No. 2

PROPOSED MINIMUM PRICES

There are some 1,300 code members in District No. 2 and of these, twenty-two filed a total of thirty-nine protests with respect to the schedule of proposed minimum prices transmitted to the code members by the District Board in District No. 2 in compliance with Order No. 247. Of these protests the District Board disallowed ten and allowed in whole or in part twenty-nine.

The schedule of proposed minimum prices are revised after the disposition of the said protests, was filed with the Commission in compliance with Order No. 247 and was also forwarded to all code members in the District. This schedule was received in evidence as Exhibit 423. Testimony in support of the minimum prices proposed by District Board No. 2 was adduced by an expert witness, a member of the Marketing and Classification Committee of the District Board, and thoroughly familiar with the marketing and distribution of coals.

The schedule of prices was proposed in the first instance by the "Marketing and Classification Committee" (Appointed by the District Board) which consisted of four members, only one of whom, a member and also an employee of the District Board, is engaged in the production, sale and distribution of bituminous coal, his mines being what are known as truck mines. The other three members of this Committee since 1933 have been continuously engaged in work incidental to the administration of the Bituminous Coal Code under N. R. A., the Bituminous Coal Conservation Act of 1935 and the present Act. They have no financial interest in any coal enterprise in District No. 2, are men of broad experience in the marketing of bituminous coal, and each of them took an active part in the preparation of the price schedule submitted by the committee to the District Board on August 23, 1938.

At a meeting of the District Board in Pittsburgh on August 23, 1938, this report of the Marketing and Classification Committee was approved for submission to Code Members, and said committee was instructed to conduct full and open hearings on the thirty-nine protests filed by code members. These hearings were held under the supervision of the Chairman of the Secretary of the District

Board. The committee submitted its recommendations on these protests to the District Board at a meeting held September 16, 1938. After full consideration of said recommendations, the District Board by unanimous vote of those present accepted, the recommendations of the committee and formally adopted the revised schedule of proposed classifications and prices.

The members of District Board No. 2 are men of long experience in the coal industry and are familiar with the requirements of the Bituminous Coal Act of 1937, as well as with their duties as Board Members under the Act.

The mines of the code members of District No. 2 are located in the following twelve counties of Western Pennsylvania: Allegheny, Beaver, Butler, Greene, Lawrence, Mercer, Venango, Washington, Armstrong, Indiana, Fayette, and Westmoreland. The district is divided into nine producing sub-districts which were determined because of differences in freight-rate adjustments and differentials and wage agreements with the miners' union. Each of these sub-districts is recognized in the price schedule filed by District Board No. 2. They are (1) The Butler-Mercer sub-district comprising a section in Northeastern Pennsylvania in Butler, Beaver, and Mercer counties where the Brookville seam (averaging 3½ to 4½ feet in thickness) the Middle-Kittanning (averaging 3 feet) and Upper Freeport (about thirty-nine inches in thickness) are mined; (2) the Conemaugh sub-district located in Armstrong, Westmoreland, and Indiana counties, where the seam mined is the Upper Freeport with a thickness approximately the same as in the Butler-Mercer sub-district; (3) the Connellsville-Point Marion sub-district located in Fayette and Greene counties and having two distinct fields—the Connellsville coking field in Fayette county producing from the Pittsburg seam six to nine feet in thickness, and the Point Marion field, southwest of the coking field extending to the West Virginia border, producing from both the Pittsburg seam, six to nine feet thick, and the Sewickley seam, five to six feet thick; (4) the Greensburg sub-district in Westmoreland county, lying just east of what is commonly known as the Westmoreland gas field of the Youghiogheny-Westmoreland sub-district, and where production is also from the Pittsburg seam, six to seven feet in thickness; (5) the Latrobe sub-district in Westmoreland county, east of the Greensburg sub-district, producing also from the Pittsburg seam; (6) the Lionier sub-district also in Westmoreland county and east of the Latrobe sub-district, but of small area and producing from the Pittsburg seam; (7) the Fanhandle-Avella sub-district in Allegheny and Washington counties, west of Pittsburgh and extending to the west boundary of Pennsylvania, producing also from the Pittsburg seam; (8) the Thick Freeport sub-district in the northern part of Alle-

gheny county, producing from the double or Thick Freeport seam, from five to nine feet thick, and which seam is a combination of the upper and lower Freeport seams and there is a small production from the Thick Freeport seam in lower Allegheny county near McKeesport; (9) the Youghiogheny-Westmoreland sub-district, the largest of the nine sub-districts, located in Westmoreland county with a small section in Washington and Greene counties, and principally producing from the Pittsburg seam, but with a small production from the Redstone and Waynesburg seams.

The major portion of the coal produced in District No. 2 comes from the Pittsburgh seam which is mined in six of the nine sub-districts, but the quality and character of the coal from this seam varies considerably between sub-districts and also within the sub-districts, with the greatest variance between the coals produced in the Northeastern portion and those produced in the Southwestern portion of District No. 2.

The consuming market areas to which these coals ordinarily move include destinations in the States of Connecticut, Delaware, Indiana, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Virginia, Vermont, West Virginia, Wisconsin, the District of Columbia, and Canada.

The schedule of minimum prices (Ex. 423) proposed by District Board No. 2 comprises fifty closely typewritten pages and contains (1) a geographical description of the consuming market area to which the prices apply; (2) a list of the size groups; (3) an identifying list of the nine sub-districts in District No. 2; (4) an alphabetical list of code members showing price classification by sizes for all uses; (5) a list of thirteen price instructions and exceptions; (6) a list of minimum prices in cents per ton of 2,000 pounds f. o. b. transportation facilities at mines for all uses except retort and water-gas, by-product and railroad locomotive fuel, embracing twelve price indices A to M (excluding the letter I) and twelve size groups for each index letter; (7) a list of minimum prices in cents per ton of 2,000 pounds for vertical and horizontal retort gas plants and water-gas plants for the manufacture of illuminating gas embracing five price indices A to E inclusive, and three size groups for each index letter, as well as a single size group for each index letter for coal used by by-product coke plants; (8) a list of minimum prices per ton of 2,000 pounds f. o. b. mines for railroad locomotive fuel applicable to all mines and embracing two sizes with exceptions applicable to four sub-districts.

The investigations and studies which resulted in the preparation and final adoption of the price schedule submitted by the District Board to the Commission

were begun by the Marketing and Classification Committee many weeks prior to the issuance of Order No. 247, on August 11, 1938, but in anticipation of its issuance. These included—examination of all information in possession of the District Board with reference to coals produced by Code members in District No. 2; gathering additional information through questionnaires furnished to Code members; conference with officers of Code members familiar with the production, sale and distribution of coals produced in the District; visits to many representative mines in every producing sub-district, which were producing from every seam in the District and equipped with every type of preparation facility in the District; visual inspections of the coal as it was brought from the mines, as it passed through the process of screening and preparation and after it had been loaded into transportation facilities.

Complying with the requirement made by the Commission that the record must contain all analyses of all kinds, grades and sizes of coal which were given any consideration in arriving at the proposed classifications and prices, the District Board introduced Exhibits 425 and 425-A which contain all of the analyses that were given any consideration in arriving at the proposed classifications and prices. They are the same, except that Exhibit 425-A has thereon a key indicating the source of the information given. Each comprises seventy-two closely typewritten pages and lists alphabetically by sub-producing districts the producers whose coal was analyzed, the date of the analysis, the name of the mine and the size of the coal from which the same was taken. By percentages each lists the moisture content, volatile matter, fixed carbon, ash, sulphur, B. T. U. on both "received" and "dry" bases and the fusing temperature of the ash. The lists contain laboratory analyses secured through questionnaires during 1937 and 1938 as well as analyses made by the United States Bureau of Mines at the request of the District Board and by several recognized commercial laboratories, from time to time during 1937 and 1938. The Marketing and Classification Committee of the District Board did not have analyses for all the coals produced in the District in all sizes, but it was able to determine the proper grouping of coals for which it had no analyses, from the knowledge of the members of the committee as to the location of the mines, the seams from which it is produced, the character of the coal in place, the preparation facilities at these mines and by relating these coals to what the committee considered comparable coals produced at adjacent mines in the same area on which they had analytical data.

In evaluating the coals produced in District No. 2 no one factor was used as an absolute measure for establishing classifications and price relationships. All factors were considered important and were given full consideration.

The twelve size groupings shown on pages 4 and 5 of the schedule filed by the District Board for District No. 2 were established in the following manner: Nut, run of mine, 2" nut and slack; 1½" nut and slack; ¾" slack and ½" slack were established as the base sizes for the District, and the best coals in each of these sizes produced in the District were placed in "A" group, the next best in "B" group, the next best in "C" group, etc. In the same manner the prices and letter classifications for 2" x 4" egg, 2" and 4" lump were also established. All other sizes produced at each mine in the District as reported on the questionnaires sent out by the District Board in 1937, and by the Commission in 1938, were next placed in the appropriate groups with the base sizes already described, and those of equal value with the base size coals were placed in such base size groups. For some of the double screened coals additional size groupings between the four inch and the two inch lump were established in order that such sizes may be properly related in price and classification to the base sizes. There was also established one group above the four inch lump in order to create a properly related price and classification for coal having a bottom size larger than four inches. There were also established in the schedule four size groupings for slack coals and also price variations between these groupings, which were done to establish proper price relationships between the several sizes of nut and slack and slack under these size groups.

There are three typographical errors in the revised list of sizes, viz: (1) Under size group 3, on the third line it reads "two inches and over but not exceeding three inches with top sizes over five inches" but should read "top sizes five inches and over"; (2) under size grouping 5 in the fifth line where it reads "and larger but not exceeding 2½ inches" should read "and larger but under three inches"; and (3) in size group 6, the second line where it reads "bottom size smaller than one-half inch" should read "and bottom size one-half inch and under."

Price levels for these various size groups and the amount of spread in price which should properly exist between the various size groups in order not to disturb the normal flow of the various sizes are in the opinion of the expert witness reflected in the price schedule. He further testified that in his opinion the number of size groupings and differentials in price between size groups is necessary to enable code members to sell their coals of the various sizes competitively in their markets and make it possible for the consumer to purchase at fair and equitable prices the kinds, qualities, and sizes of coal being considered.

The schedule of prices proposed for general commercial application (size groups 1 to 12 as shown on pp. 4 and 5 of Exhibit 423 as revised by Exhibit 426;

and on pp. 7 to 44 of Exhibit 423, and p. 47 of Exhibit 423)—applies to all uses except by-product, retort and water-gas, and railroad locomotive fuel use.

For coals of general commercial application a price of \$2.15 per net ton, which is approximately the weighted average cost of production for Minimum Price Area No. 1, was adopted as the base price for the "C" classification mine run coal, and from this base related prices above and below the \$2.15 base price for mine run coal of lesser and greater value were also established. Price levels and relationships for the coals in each other size grouping, based on quality, size, marketability, and all other factors entering into the evaluation of coals were in like manner established.

The chemical constituents of coals for by-product application are more important than in coals for general application, and their ash and sulphur content and their coking properties are the most important factors. While relatively few code members in District No. 2 can produce coal acceptable for by-product use, a substantial part of the production of such code members that do produce it goes for that use.

For by-product use the schedule of prices shown on page forty-eight of Exhibit 423 was established. For this use the size of the coal is no factor as such plants pulverize all coal before charging it into the ovens, and slack, mine run, resultant mine run or double screened coals which are sufficiently alike in quality, are of equal value. Consumers prefer the smaller size coal as it is more easily pulverized. For this use coals of different sizes which are substantially of the same quality, mine run, resultant mine run, nut and slack and slack are grouped under size group 16. By proper reference these were also included in this size group coals produced at certain mines which are specially prepared and sized in order to make them acceptable for this use. While mine run and resultant coal from certain mines are not acceptable for this use, such mines can produce and ship other sizes of coals, such as double screened or lump coal, which are acceptable for by-product use and can move into the markets on the same basis as mine run and nut and slack from other mines. In still other cases nut and slack is not equal in value to the mine run and resultant mine run from the same mine, but is still acceptable at a price differential, which was established in the price schedule at page forty-eight. For such by-product purposes the producers of District No. 2 principally ship nut and slack, mine run, and resultant mine run and the base price for this use \$2.15, not only approximates the weighted average cost of Minimum Price Area No. 1, but is also approximately the average of the lowest price nut and slack and the highest price mine run which is generally acceptable for this application, that is \$2.00 for nut

and slack, and \$2.35 for mine run gives an average of \$2.175.

The factors which enter into the evaluation of coals for retort and water-gas use are primarily ash and sulphur, the quantity of gas the coal will yield and the structure of the coal. The sizes which are carried in separate size groupings for general commercial application are grouped for this use under size groups 13, 14, and 15 as described on page five of the price schedule as revised. The prices for by-product coke plants are in column 16, which means mine run, resultant mine run, nut and slack, and slack, unless otherwise indicated. The base price for retort and water-gas coal is the "A" price in size group 13 of \$2.40.

The prices for *railroad locomotive fuel* are set forth on page forty-nine of the price schedule. The chemical constituents of the coals such as ash, sulphur, and ash softening temperature, within certain limits, are not factors greatly affecting value when the coal is applied for railroad locomotive fuel use, as coals having a considerable range in these constituents are just as acceptable and efficient when used as railroad locomotive fuel. A majority of the coals priced lower for general commercial purposes are of equal value with coals priced higher for general commercial purposes, when such coals are used as locomotive fuel. But there are coals in District No. 2 of lower qualities which are not acceptable for locomotive fuel use at the same price level as the better coals, and it is necessary to accord such coals a differential of five cents to ten cents per ton below the base price for railroad locomotive fuel, which prices are also shown on page forty-nine of the schedule, together with a price differential of fifteen cents per ton over the mine run and nut and slack prices for lump or double screened coal when specifically ordered by the railroads for locomotive fuel use. For this use the price of \$2.15 per ton on mine run coal is approximately equal to the weighted average cost of production for Minimum Price Area No. 1, and is also the average price of all mine run coal moving for general commercial application.

The prices shown in the schedule submitted to the Commission by District Board No. 2 (Ex. 423), applied to 1937 tonnage distribution, will yield a return per net ton of \$2.1515, while the weighted average of the total costs per net ton of Minimum Price Area No. 1 as determined by the Commission is \$2.157, a difference of 5½ mills per net ton.

The total coal produced in District No. 2 in 1937, as shown by the Pennsylvania Department of Mines, was 71,952,734 tons, of which 4,373,761 tons were produced by non-code members and by mines now abandoned, 3,207,002 tons were coked at the mines, 448,059 tons were used for power and heat at the mines, and 509,407 tons were sold to employees at the mines—all of which four classes aggregated 8,538,229 tons, leaving

63,414,505 tons as the amount actually shipped in 1937. Of this amount, 58,533,274 tons or 92.30 per cent were reported to the Commission on Form D-1, 1,837,332 tons or 2.90 per cent was estimated commercial tonnage—(tonnage reported by one code member by size for all his mines but not separated by individual mines, making it impossible to determine the exact realization on the coals produced by this one member) and 1,731,068 tons or 2.73 per cent was the total production of mines having no rail connection, and commonly called truck mines. There was a grand realization total on 62,101,674 tons—97.93 per cent of the total tonnage shipped in 1937—of \$133,613,456.43, at an average price per net ton of \$2.1515.

Upon the record in this cause; upon the evidence both documentary and otherwise; and upon the above and foregoing facts found to exist, the Commission finds:

That the schedule of minimum prices, as amended, and submitted to the Commission by the District Board for District No. 2 should be corrected and revised in order that the same may better conform to Order No. 247 of the Commission and to the provisions of Section 4-II(a) of the Act, and said schedule is in the following respects modified.

(1) Delete the word "all" from the introductory statement so as to read—"The market areas to which coal produced in District No. 2 ordinarily moves include destinations in the States of:" (Tr. 1560).

(2) Delete from the proposed schedule pages four and five and substitute Exhibit No. 426 as modified and corrected. This is done because the evidence reveals that a number of errors exist in the size groups and size group explanation in the proposed price schedule on pages four and five thereof. This exhibit, after correcting the typographical errors already alluded to in a previous part of these findings, is attached to the amended price schedule and is an accurate portrayal of the size groups and sizes comprising each group.

(3) Change Lilley Mining Company's Lilley Mine Classification on page twenty-six for size group 14 from "A" to "B". The District Board witness requested this change to correct a clerical error.

(4) Modify item 3 on page forty-five so that it will read—"All size designations herein are for round hole screens except when otherwise designated. When other types of screens are used the District Board, subject to the approval of the Coal Commission, shall determine the actual size designation of the coal so prepared." This was agreed to by the witness for the District Board.

(5) Add to item 7 on page forty-five the following exception—"This rule does not apply to size groups Numbers 13, 14, 15, and 16." This is done because by-

product coal has been classified in these four size groups on the basis of coal shipped for this purpose, but under a technical construction of item 7 in the price instructions and exceptions, regarding crushed coal, this item might apply to the size groups referred to, which was not the intent of the District Board.

(6) Delete in item 8 on page forty-five the words "pending coordination." The reason for this is that the entire schedule, as now established is subject to, and pending, coordination.

(7) Modify item 9 on page forty-five by inserting the word "Gas" so as to read "Mine run and resultant coal over 2" for vertical and horizontal retort gas plants take classification and prices indicated in price column Number 16." This is done to make this item conform to the heading on page forty-eight.

(8) Add item 14 on page forty-six as follows:—"The $\frac{3}{8}$ " x 10 mesh size ($\frac{3}{8}$ x 0 slack from which the dust has been partially removed by being blown through a 10 mesh screen) produced by the Pittsburgh Coal Company at the Champion Mine No. 1 cleaning plant, shall be priced not less than ten cents per net ton higher than the price applicable to their size group 12. This should be noted by entering the reference mark "&" in the schedule opposite the letter classification for size group 12."

This classification and price was in fact proposed to the District Board and approved by them but by oversight was omitted from the schedule as proposed.

(9) Add item 15 on page forty-six:—"The $1\frac{1}{8}$ " x 10 mesh size ($1\frac{1}{8}$ " x 0 slack from which the dust has been partially removed by being blown through a 10 mesh screen) produced by the Pittsburgh Coal Company at the Champion No. 1 cleaning plant, shall be priced not less than fifteen cents per net ton higher than the price applicable to their size group 10." This should be noted by entering the reference mark "&" in the schedule opposite the letter classification for size group 10.

This classification and price was also actually proposed to the District Board and approved by them but by oversight was omitted from the schedule as proposed.

(10) Add item 16 on page forty-six viz:—"Middlings" is any nut coal produced at the cleaning plants of the Warden or Banning "1-2 Mines of the Pittsburgh Coal Company." "Middlings" as shipped by the Warden and Banning #1-2 Mines is coal reclaimed from the refuse of low gravity washings, and nut is the only size produced.

(11) Delete from the Table of Minimum Prices, for all size groups, the prices and classifications now identified as "K, L, and M." for the reason the schedule and the evidence show that the lowest classification for any mine in any size group is "J" and hence the Prices and Classifications named are superfluous.

No. 6—2

(12) Insert on page forty-nine under Sub-district No. 3, a new sub-heading entitled "Pittsburgh Seam" and thereunder list Jamison #20 and South Union #1 and South Union #2, and opposite these mines under column headed "Lump and Double Screened Coal" insert the price \$2.15 in each instance.

This is necessary because the evidence shows that in the mines named it has been the practice to screen all the coal. The slack sizes are shipped for by-product use. The larger sizes are of a poorer quality as compared to the slack sizes and are sold to the railroads. The quality and friable nature of the lump and double screened coal has forced them to a competitive plane with the mine-run coal produced by the base mines in District No. 2. The evidence further shows that the District Board recognizes that there are certain coals in District No. 2 of lower quality which are not acceptable for locomotive fuel use at the same price level as the better coals, and it is necessary to accord such coals a differential below the base price for railroad locomotive fuel. The proposed price on lump and double screened coal when sold for railroad locomotive fuel is \$2.30, but with the granting of this relief these sizes of coal from the named mines will sell at \$2.15, which is the mine run price for the base coals of this District. The result of this is that the protests of the Jamison Coal and Coke Company for their Jamison #20 mine and of the South Union Coal Company, South Union #1 and #2 mines are sustained.

The protest of the Youghiogheny and Ohio Coal Company for their Osborne No. 1 and No. 2 mines is denied because the evidence presented by them in support of said protest ignores many of the items used by the District Board in determining the value of coal or its value with relation to other coals. Their insistence that a limited number of their customers have questioned the proposed classification of their mines is not supported by testimony regarding what factors were considered by them. So also the evidence of protestant that in the past it has purchased other coals to substitute for their own for shipment to certain Lake customers does not establish that these coals were of equivalent value though they were priced the same. The request of protestant that certain sizes of the coal from its mines be reduced five cents per ton is not supported by the evidence and is denied.

The Commission finds that different standards exist in equating the value of coals when applied to certain various uses, such as general commercial application, byproduct application, retort and water-gas application and for railroad locomotive fuel use, and that where the same standards are involved, there is a difference in the weight given the individual factors when the coal is to

be applied to these various specified uses, and separate and distinct Price Classifications are necessary in order that the coals produced in District No. 2, can retain their fair competitive relationships.

The Commission finds that (1) it is proper to have the size groups as set forth in the amended schedule; and (2) the price differentials between size groups and classifications reflect the relative market value of these coals; and (3) the price level has been so established that the realization from these prices will approximate as nearly as may be the weighted average cost of production for Minimum Price Area No. 1. The Commission approves as a basis for coordination the price levels and differentials between classifications and size groups.

These findings result in only one change of classification and its effect upon the weighted average realization for the District is negligible (lowering it by \$0.0005) and does not affect the computed realization, which is \$2.1515.

The Commission therefore finds that the District Board for District No. 2, as directed in Order No. 247 of the Commission, proposed minimum prices free on board transportation facilities at the mines for kinds, qualities and sizes of coal produced within the District and classification of coal as to mines and consuming market areas, and submitted to the Commission a schedule of such proposed minimum prices together with the data upon which the same were computed including but without limitation, the factors considered in determining the price relationships.

The Commission further finds that the minimum prices proposed by the District Board for District No. 2, as herein modified, reflects as nearly as possible, the relative market value of the various kinds, qualities, and sizes of coal produced within the District, are just and equitable as between producers within the District, have due regard to the interests of the consuming public, and do not permit dumping, and that said minimum prices for any kind, quality, or size of coal for shipment into any consuming market area, as herein modified, are just and equitable between producers within the District.

The Commission also finds that the minimum prices proposed by the District Board for District No. 2, as herein modified, yield a return, per net ton for the District equal as nearly as may be to the weighted average of the total costs, per net ton, of the tonnage of Minimum Price Area No. 1, the price area in which District No. 2 is placed under the Act.

The Commission finds that the schedule of proposed minimum prices, as amended, and submitted to the Commission by the District Board for District No. 2, as amended, corrected, modified, and revised, as hereinbefore set forth, conforms to Order No. 247 of the Commission and to the requirements of Sec-

tion 4-II (a) of the Act, and as so amended, corrected, modified, and revised, said schedule should be and the same is hereby approved by the Commission to serve as a basis for the coordination provided for in Section 4-II (b) of the Act. A copy of said schedule, as amended, corrected, revised and modified, appears in the appendix for District No. 2.

APPENDIX FOR DISTRICT No. 2

SCHEDULE OF MINIMUM PRICES AS MODIFIED AND APPROVED TO SERVE AS A BASIS FOR COORDINATION

NOTE.—The prices in this schedule are not the final prices that will be established on coal for shipment by Code Members within this district into consuming markets of this district. In the ultimate establishment of the effective minimum prices, pursuant to subsection (b) of Part II, Section 4 of the Act, the minimum prices in this schedule are subject to such increase or decrease respectively, as may be necessary to carry out the provisions of subsections (a) and (b) of Part II, Section 4 of the Act.

F. W. McCULLOUGH, Secretary.

Issued January 4, 1939.

Geographical Description of Consuming Market Area to Which Prices Apply

The Market Areas to which coal produced in District No. 2 ordinarily moves include destinations in the States of:

Connecticut, Delaware, Indiana, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Virginia, Vermont, West Virginia, and Wisconsin; also District of Columbia and Dominion of Canada.

Size Groups

(Subject to price instructions and exceptions.) Coal for all purposes other than for railroad locomotive fuel, retort and water gas plants for the manufacture of illuminating gas, by-product coke plants

Size Group No. 1.—Lump coal having bottom size larger than 4" and double screened coal with bottom size 4" and over and top size 6" and over. This size group includes: 8" lump, 6" lump, 5" lump, 4 1/2" lump, 4" x 8" egg.

Size Group No. 2.—Lump coal having bottom size larger than 3" but not exceeding 4" and double screened coal with bottom size 4" and over and top size not exceeding 6". This size group includes: 4" lump, 3 1/2" lump, 4" x 6" egg.

Size Group No. 3.—Lump coal having bottom size larger than 2" but not exceeding 3" and double screened coal with bottom size 2" and over but not exceeding 3" with top size 5" and over. This size group includes: 3" lump, 2 3/4" lump, 2 1/2" lump, 2 1/4" lump, 2 3/8" lump, 3" x 6" egg, 3" x 5" egg, 2 1/2" x 8" egg, 2 1/2" x 6" egg, 2" x 8" egg.

Size Group No. 4.—Lump coal having bottom size larger than 1 1/4" but not ex-

ceeding 2" and double screened coal with bottom size over 2" if top size does not exceed 5" also double screened coal with top size over 5" if bottom size does not exceed 2". This size group includes: 2" lump, 1 1/2" lump, 2 1/2" x 5" egg, 2 1/2" x 4 1/2" egg, 2" x 6" egg, 1 3/8" x 6" egg, 1" x 6" egg, 3/8" x 6" egg.

Size Group No. 5.—Lump coal having bottom size of 1 1/4" and under and double screened coal with top size over 4" but not exceeding 5" if bottom size does not exceed 2", also double screened coal with top size not exceeding 4" and bottom size 1 1/2" and larger but under 3". This size group includes: 1 1/4" lump, 1 1/8" lump, 1" lump, 7/8" lump, 3/4" lump, 5/8" lump, 2 1/2" x 4" egg, 2 1/4" x 4" egg, 2" x 5" egg, 2" x 4 1/2" egg, 2" x 4" egg, 2" x 3" egg, 1 1/2" x 4" egg, 1 1/4" x 5" egg, 1 3/4" x 4 1/2" egg, 1" x 5" egg, 3/4" x 5" egg, 1/8" x 5" egg.

Size Group No. 6.—Double screened coal with top size over 2" but not exceeding 4" and bottom size 1 1/2" and under. This size group includes: 1 1/4" x 4" egg, 1 1/8" x 4" egg, 1" x 4" egg, 3/8" x 4" egg, 1 1/4" x 3" stove, 1 1/2" x 2 1/2" stove, 1 1/4" x 2 1/2" stove, 1 1/2" x 3" stove, 3/4" x 3" stove, 1/2" x 3" stove, 1" x 2 1/2" stove, 7/8" x 2 1/2" stove, 3/4" x 3" stove, 5/8" x 2 1/2" stove, 3/8" x 2 1/2" stove.

Size Group No. 7.—Double screened coal with top size not exceeding 2". This size group includes: 1 1/4" x 2", 1 1/8" x 2", 1" x 2", 3/4" x 2", 3/4" x 1 1/2", 3/4" x 1 1/4", 5/8" x 1 1/4", 5/8" x 1 1/8", 5/8" x 1", 1/2" x 2", 1/2" x 1 1/2", 1/2" x 1 1/4", 1/2" x 1 1/8", 1/2" x 7/8", 1/2" x 3/4", 3/8" x 2", 3/8" x 1 1/2", 3/8" x 1 1/8", 3/8" x 1 1/4", 3/8" x 1 1/2", 3/8" x 1", 3/8" x 2", 3/8" x 1 1/4", 3/8" x 1", 3/8" x 7/8".

Size Group No. 8.—Straight Mine Run (no fines removed, except as provided in price exceptions), Modified Mine Run (one or more intermediate sizes removed), and Resultant coals over 2".

This size group includes: 8" resultant, 6" resultant, 5" resultant, 4" resultant.

Size Group No. 9.—Nut and Slack with top size larger than 1 1/4" but not exceeding 2". This size group includes: 2" N&S, 1 3/4" N&S, 1 1/2" N&S.

Size Group No. 10.—Nut and Slack with top size larger than 3/4" but not exceeding 1 1/4". This size group includes 1 1/4" N&S, 1 1/8" N&S, 1" N&S, 7/8" N&S.

Size Group No. 11.—Slack with top size larger than 1/2" but not exceeding 3/4". This size group includes: 3/4" slack, 5/8" slack.

Size Group No. 12.—Slack with top size not exceeding 1/2". This size group includes: 1/2" slack, 3/8" slack, 1/4" slack.

Coal for Retort and Water Gas Plants for the Manufacture of Illuminating Gas

Size Group No. 13.—Lump larger than 2" and egg 2" x 5" and over, either top or bottom size.

Size Group No. 14.—1 1/2" lump and 2" lump and egg, top size under 5" and bottom size 2" and under.

Size Group No. 15.—1 1/4" lump and under.

Coal for By-product Plants

Size Group No. 16.—Mine run, resultant mine run, nut-slack and slack coal unless otherwise indicated.

Identification of Sub-District Numbers

Identification

- Sub-District No. 1.—Butler Mercer.
Sub-District No. 2.—Conemaugh.
Sub-District No. 3.—Connellsville-Pt. Marion.
Sub-District No. 4.—Greensburg.
Sub-District No. 5.—Latrobe.
Sub-District No. 6.—Ligonier.
Sub-District No. 7.—Panhandle-Avella.
Sub-District No. 8.—Thick Freepport.
Sub-District No. 9.—Youghiogheny-Westmoreland.

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Noted

Table with columns: Code member, Mine name, Sub-district No., Seam or kind, and Price classifications and size group Nos. (1-18). Rows include members like Abrozzi Coal Co., Aderhold, D. H., Aiken, H. W., Ainsley Coal Co., Ainsley Co., D. L., Ainsley, Robert, Alben, Cyrus, Alden, Dan, Allegheny Coal & Coke Co., Allegheny Pittsburgh Coal Co., Allison Valley Coal Co., Allman, William O., Alsippl & Chioldi, American Coal Co., American Zinc & Chemical Co., Anderson Bros., Andish, Roddy, Andreoli & Co., Angelo, Andres, John (Andres Bros.), Andrico Coal Co., Ankrom Bros., Ankrom, Ed., Arbosuckos, John.

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Noted—Continued

Table with columns: Code member, Mine name, Seam or kind, Sub-district No., Price classifications and size group Nos. (1-16)

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Noted—Continued

Table with columns: Code member, Mine name, Seam or kind, Sub-district No., Price classifications and size group Nos. (1-16)

Table with columns: Code member, Mine name, Seam or kind, Sub-district No., Price classifications and size group Nos. (1-16)

Table with columns: Code member, Mine name, Seam or kind, Sub-district No., Price classifications and size group Nos. (1-16)

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Noted—Continued

Table with columns: Code member, Mine name, Seam of kind, Sub-district No., Price classifications and size group Nos. (1-16), and Seam or kind. The table lists numerous coal companies and their products, such as Hays Coal Co., Hazeburg Coal Co., Hecker, etc., with their respective price classifications for sizes 1 through 16.

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Noted—Continued

Table with columns: Code member, Mine name, Seam of kind, Sub-district No., Price classifications and size group Nos. (1-16), and Seam or kind. This section continues the list from the previous page, including companies like Imbrie, Bors, and Hunter Steam Coal.

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Noted—Continued

Table with columns: Code member, Mine name, Seam or kind, Sub-district No., Price classifications and size group Nos. (1-16)

See footnotes at end of table.

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Noted—Continued

Table with columns: Code member, Mine name, Seam or kind, Sub-district No., Price classifications and size group Nos. (1-16)

See footnotes at end of table.

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Noted—Continued

Code member	Mino name	Sub-cl. dist. No.	Seam or kind	Price classifications and size group Nos.															
				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Pittsburgh Terminal Coal Corp.	Terminal #9 (B)	7	Pittsburgh	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Pletcher, W. H.	Donley	8	Pittsburgh	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Pletcher, Andy & John	Shank	2	Pittsburgh	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Point Pleasant Coal Co.	Point Pleasant	2	Pittsburgh	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Poland Coal Company	Poland #8	3	Pittsburgh	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Pollack, John F.	Pollack	3	Pittsburgh	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Poola Coal Co.	Pecky	3	Pittsburgh	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Portman & Freeman	Port Ann #1	5	Pittsburgh	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Porter, Wm. W.	Porter	6	Pittsburgh	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Porterfield, Olydo	Porterfield	4	Pittsburgh	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Potto, Domenick	Army & Navy	1	Pittsburgh	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Powell Gas Coal Co.	Powell Gas	1	Pittsburgh	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Pugas, John R.	Petas	3	Pittsburgh	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Provanco Bros.	Gans	6	Pittsburgh	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Provanco, E. B.	Provanco	3	Pittsburgh	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Purdy, W. W.	Purdy	7	Pittsburgh	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Q																			
Quinette, Thomas R and Franklin R.	Quinette	2	Pittsburgh	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Quinn, Michael and Lamb-ing, H. A.	Smith	2	Freeport	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
R																			
Raffaello & Sons, A.	Raffaello	7	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Rainey, Inc., W. J.	Allison	3	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Rainey, Inc., W. J.	Clyde #1	9	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Rainey, Inc., W. J.	Clyde #2	9	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Rainey, Inc., W. J.	Clyde #3 (W)	9	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Rainey, Inc., W. J.	Clyde #3 (R)	9	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Rainey, Inc., W. J.	Royal	6	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Ramey Customs Coal Mfg.	Ramey Customs	6	Pittsburgh	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Ramsey, W. H.	Sackett	3	Pittsburgh	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Randall, Monroe	Randall	1	Pittsburgh	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Randolph, Peter M.	Brown	1	Pittsburgh	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Rankin & Riddle	Rankin & Riddle	1	Pittsburgh	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Rankin Coal Mfg.	Rankin	1	Freeport	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Ransom, John	Ransom	1	Pittsburgh	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Rarck, John	Raney Farm	1	Pittsburgh	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Rea & Sons, F. M.	Rea	1	Ridge	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Rea Coal Company	Rea	7	Pittsburgh	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Reamer, Raymond	Reamer	1	Kittanning	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Rebeck Bros.	Rebeck	1	Freeport	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Reed Bra. Coal & Supply Co.	Reed	1	Pittsburgh	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G
Reed, Calvin R. & Wells, Homer	Reed & Wells	1	Kittanning	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G
Reed, Robert M.	Reed	2	Freeport	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Reed, Kelly & Wincer	Reed	1	Freeport	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Rehm, Richard A.	Rehm	6	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Rehman Coal Co.	Rehman	7	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Reiter Brothers	Reiter	7	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Reiter Coal Co.	Reiter	7	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D
Remley, W. B.	Remley	9	Pittsburgh	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Remley, Frank, Jr.	Remley, Frank, Jr.	9	Pittsburgh	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Reyna & Hurstland	Reyn	1	Kittanning	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Republ. Steel Corp.	Brownsville Jc.	3	Pittsburgh	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Republ. Steel Corp.	Crecent #1 (W)	9	Pittsburgh	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Republ. Steel Corp.	Crecent #2 (R)	9	Pittsburgh	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Republ. Steel Corp.	Davidson	3	Pittsburgh	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Republ. Steel Corp.	Indianola	3	Pittsburgh	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Republ. Steel Corp.	Indianola	3	Freeport	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Republ. Steel Corp.	Indianola	3	Freeport	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Republ. Steel Corp.	Kusselton	3	Freeport	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Revere Coal & Coke Co.	Revere	3	Pittsburgh	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E

See footnotes at end of table.

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Noted—Continued

Table with columns: Code member, Mine name, Seam or kind, Sub-district No., Price classifications and size group Nos. (1-15), and Seam or kind. Includes entries for Siler, Jacob; Simpson, Alex; Simpson Coal Co.; etc.

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Noted—Continued

Table with columns: Code member, Mine name, Seam or kind, Sub-district No., Price classifications and size group Nos. (1-15), and Seam or kind. Includes entries for Siler, Jacob; Simpson, Alex; Simpson Coal Co.; etc.

Table with columns: Code member, Mine name, Seam or kind, Sub-district No., Price classifications and size group Nos. (1-15), and Seam or kind. Includes entries for Uhlig, Hugo; Uley, H. W.; Union Coal Co.; etc.

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Noted—Continued

Code member	Mine name	Sub-district No.	Seam or kind	Price classifications and size group Nos.															
				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Walker, Harry D	Frazer	1	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Walker and Woodhall	King	2	U. Freeport	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wall, John J.	Wall	1	U. Kitt.	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wardman, William	Wardman	1	Kittanning	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Warman, F. C.	Cornish Strip	3	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Warren & Large	Warren & Large	9	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Washington Gas Coal Co.	Washington	7	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Washington Gas Coal Corp.	Tyler	7	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Watkins, Elizabeth	Watkins	5	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Weakland Coal Co.	Prospect	3	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Weaver, Duncan	Gray	7	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Weeder, Frank	Weeder	1	No. 6	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Weigle, L. S.	Weigle	1	Brookville	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Weirton Coal Co.	Isabell	3	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Weis Coal Co.	Weis Brothers	5	U. Freeport	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Weise, Paul H.	Morris	7	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Weise, Paul H.	Piney Fork	7	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Welling Coal Co.	Kelley	1	U. Freeport	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Westmoreland Brick Co.	Westmoreland	9	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Westmoreland Coal Co.	Adams	9	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Westmoreland Coal Co.	Biddle	9	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Westmoreland Coal Co.	Export #1 & 2	9	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Westmoreland Coal Co.	Hutchinson (W)	9	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Westmoreland Coal Co.	Hutchinson (R)	9	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Westmoreland Coal Co.	Macee	9	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Westmoreland Coal Co.	McCullough	9	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Westmoreland Mining Co.	Graff #1 & 2	5	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Westmoreland Mining Co.	Roaring Run (W)	2	U. Freeport	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Westmoreland Mining Co.	Roaring Run (R)	2	U. Freeport	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Westmoreland Mining Co.	Watson	2	U. Freeport	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
West Point Marion Coal Co.	Walnut Hill	3	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wheeler, Allen R.	Wheeler #1	1	Kittanning	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wheeler, Allen R.	Wheeler #2	1	Kittanning	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wheeler & Son, J. E.	Wheeler	1	U. Brookville	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wheeling & Sons, C. T.	McKadden	1	Kittanning	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wheeling & Sons, C. T.	Murrinsville	1	U. Kitt.	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wheeling & Sons, C. T.	Williams	1	U. Kitt.	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
White Ash Coal Company	Christly	1	U. Freeport	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
White, Fred	White #2	1	Kittanning	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Whyel Coke Co.	Sharpnack	3	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Whyel, Geo. W.	Whyel	3	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wigton, C. C.	C. C. Wigton	1	U. Freeport	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wike & Christian	Oak Grove	1	U. Kitt.	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wike, F. B.	Wike	1	Kittanning	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wilkinson, J. A.	Wilkinson	7	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Williams Brothers	Williams	3	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Williams & Connor	Taylor	3	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Williams Coal Co.	Williams	9	Redstone	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wilson & Sons, J. T.	Wilson	3	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wilson Gas Coal Co.	Wilson	9	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wilson, H. F.	Wilson	9	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wilson, J. C. S.	Wilson	9	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wilson, John	Bunker Hill	3	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wilson Refractories, Inc.	Red Hill #2	1	No. 5	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wineland, Frank N.	H. R. Wineland	6	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wineland, S. H.	Wineland	6	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wisn, Gust.	Marts	2	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wolstoncroft, Harry C.	Wolstoncroft	7	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Woodward Coal Co.	Woodward	9	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wright, Dawson	Milred #1	7	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Wyant & Sons, W. H.	Wyant	1	U. Kitt.	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Y																			
Yates, Jos. & Collins, Dennis	Yates	9	Pittsburgh	F	F	F	F	D	D	D	D	D	D	D	D	D	D	D	
Yawczak, Dan	Yawczak	7	Pittsburgh	F	F	F	F	D	D	D	D	D	D	D	D	D	D	D	
Yoho & Sons, B. J.	Yoho	1	M. Kitt.	G	G	G	G	D	D	D	D	D	D	D	D	D	D	D	
Yough. & Ohio Coal Co.	Charleroi	9	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Yough. & Ohio Coal Co.	Enterpris	7	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Yough. & Ohio Coal Co.	Osborne #1-2	9	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Yough. & Ohio Coal Co.	Osborne #1-2	9	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Youghigheny Gas Coal Co.	Turner	9	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Young Coal Co.	Young's	1	M. Kitt.	G	G	G	G	D	D	D	D	D	D	D	D	D	D	D	
Young Coal Co., Tha	McCrea	7	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Young, George A.	Young	2	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Young, W. J. & Roy S.	Young	1	L. Kitt.	F	F	F	F	D	D	D	D	D	D	D	D	D	D	D	
Younkin, Harry	Younkin	3	Pittsburgh	F	F	F	F	D	D	D	D	D	D	D	D	D	D	D	
Z																			
Zaher, John A.	Halfin	3	Pittsburgh	F	F	F	F	D	D	D	D	D	D	D	D	D	D	D	
Zak, Joseph	Zak	1	Kittanning	G	G	G	G	D	D	D	D	D	D	D	D	D	D	D	
Zellerino Coal Co., James	Zellerino	1	U. Freeport	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Zelmore, Fred B.	Zelmore	3	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Zendron Brothers	Zendron Bros.	1	U. Freeport	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Zenith Coal Co.	Zenith #1	1	U. Kitt.	G	G	G	G	D	D	D	D	D	D	D	D	D	D	D	
Zicardi & Walters	Zicardi & Walters	1	Kittanning	G	G	G	G	D	D	D	D	D	D	D	D	D	D	D	
Zimmerman Bros. (Albert)	Zimmerman	3	Pittsburgh	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Zimmerman Bros. (W. M.)	Zimmerman	1	Clarion	G	G	G	G	D	D	D	D	D	D	D	D	D	D	D	
Zippay, George	Zippay	9	Redstone	F	F	F	F	D	D	D	D	D	D	D	D	D	D	D	
Zufall, Amos	Zufall	3	C'ville	F	F	F	F	D	D	D	D	D	D	D	D	D	D	D	
Zward, Martin C.	Cover	3	Pittsburgh	F	F	F	F	D	D	D	D	D	D	D	D	D	D	D	

Subject to price exceptions and instructions.
 1 "Middlings" from this mine take price classification F.
 2 See items 14 and 15.
 3 2" and under nut slack takes price classification B.

4 A*
 5 2" and under nut slack takes price classification D.
 6 C*
 7 D*.

Price Instructions and Exceptions

- The schedule of prices shown herein applies f. o. b. transportation facilities at mines on all coal produced by Code members in District No. 2.
- All prices are subject to the Marketing Rules and Regulations issued by the National Bituminous Coal Commission.
- All size designations herein are for round hole screens except when otherwise designated. When other types of screens are used the District Board, subject to the approval of the Coal Commission, shall determine the actual size designation of the coal so prepared.
- In the sale of coal to destination points outside the boundary of the United States, prices stipulated herein are for payment in U. S. Funds.
- All Prices herein are in cents per net ton of 2,000 pounds f. o. b. transportation facilities at the mines unless otherwise designated.
- When coal is subjected to any chemical, oil or waxing process, such coal shall take price 10¢ higher than the price indicated for coal not subject to such treatment.
- Crushed Coal**—Crushing of coal is permitted at any mine with the understanding that the size and quality of the coal after crushing and as loaded into transportation facilities shall determine the price to be charged for such crushed coal. Prices herein for size groups 1 to 12 inclusive apply only to the designated sizes as produced through the screening of mine run coal, no portion of which has been subjected to crushing. Upon written application filed by Code Members with the District Board, accompanied by sufficient information to enable the Board to determine the quality and proper size designation of any coal produced through crushing, the Board will propose a classification and price for the size and grade of coal so produced. This rule does not apply to size groups Nos. 13, 14, 15, and 16.
- River, Ex-River, Lake Cargo, Vessel Fuel, Tidewater Bunker and Railroad Powerhouse Fuel will be the same as all other commercial prices.
- Mine Run and resultant coal over 2" for vertical and horizontal retort gas plants take classifications and prices indicated in price column #16.
- Straight mine run coal priced and classified under size grouping #8 containing more than 45% of ¾" minus slack may be modified by removing that portion of ¾" slack in excess of 45%.
- Where coals of different price classifications from one or several mines are mixed at or before loading into transportation facilities for shipment, the minimum price applying to the entire resultant mixture shall be the price established for that coal included in the mixture which carries the highest price classification. This shall not preclude screening and reassembling when normal size consists and screen tolerances are maintained.

12. Wilson, McCullough, Export #1 & 2, Adams and Biddle Mines in Sub-District No. 9, in size groupings Nos. 5 and 6 take D classification when coal is sold for metallurgical application. Champion #1 Mine in Sub-District No. 7 in size grouping Nos. 5 and 6 takes B classification when coal is sold for metallurgical application.

13. Price classifications of mines bearing reference "W" apply to coal mechanically cleaned in whole or in part. Price classifications of mines bearing reference "R" apply to coal no part of which is mechanically cleaned.

14. The 3/8" by 10 mesh size (3/8" x 0 Slack, from which the dust has been partially removed by being blown through a 10 mesh screen) produced by the

Pittsburgh Coal Company at the Champion No. 1 cleaning plant, shall be priced not less than 10¢ per net ton higher than the price applicable to their size group 12.

15. The 1 1/8" by 10 mesh size (1 1/8" x 0 Slack from which the dust has been partially removed by being blown through a 10 mesh screen) produced by the Pittsburgh Coal Company at the Champion No. 1 cleaning plant shall be priced not less than 15¢ per net ton higher than the price applicable to their size group 10.

16. Middlings is any nut coal produced at the cleaning plants of the Warden or Banning #1-2 mines of the Pittsburgh Coal Company.

MINIMUM PRICE AREA No. 1—DISTRICT No. 4

PROPOSED MINIMUM PRICES

Pursuant to Order No. 247 of the Commission, the District Board for District No. 4 had prepared by its Price and Classification Committee a schedule of proposed minimum prices, f. o. b. transportation facilities at the mines, for kinds, qualities and sizes of coal produced in said District by code members, and such classification of coal and price variations as to mines, consuming market areas, values as to uses and seasonal demands as deemed proper and within the authority conferred by the Act.

At a meeting of the District Board on August 19, 1938, the price and classification schedule as proposed by the Classification Committee was considered. Such schedule was introduced in evidence herein as Exhibit No. 450. On August 22, 1938, copies of such schedule were forwarded by the District Board to all code members within the District. In the letter of transmittal accompanying the schedule, code members were advised that protests might be filed with the District Board on or before August 29, 1938, and that any party filing protest might appear before the Board on August 30, 1938, for hearing.

Sixty-seven protests were filed with the District Board by producers within the District, of which number, after consideration at an adjourned meeting held August 30 and 31, 1938, thirteen protests were granted in whole, eight in part, and the balance denied.

At an executive session of the District Board on September 6, 1938, a revised schedule of proposed minimum prices, incorporating changes, inter alia, made as a result of the protests granted in whole or in part, was adopted and copies of such schedule were submitted to the Commission, to all District Boards, and to all code members in District No. 4. This proposed schedule was introduced in evidence herein as Exhibit No. 431.

Testimony in support of the minimum prices proposed by District Board No. 4 was adduced by two expert witnesses, the Chairman of the District Board and the Chairman of the Classification and Price Committee, both of whom are thoroughly familiar with the marketing and distribution of coals in District No. 4. It appears from the record that all of the members of the Classification and Price Committee and of the District Board, with the exception of the labor member, are thoroughly versed with the marketing of Ohio coals and are conversant with their characteristics and general acceptability by the consuming public.

At the time that the District Board adopted the proposed schedule of minimum prices there was before it, for consideration, information as to the analyses of District No. 4 coals and the distribution of such coals. In addition to those analyses furnished by code members in compliance with Commission's Order No.

Minimum Prices in Cents per Ton of 2,000 Lbs., F. O. B. Cars at Mines for All Uses Except Retort and Water Gas, By-product and Railroad Locomotive Fuel

Price index	Size groups											
	1	2	3	4	5	6	7	8	9	10	11	12
A	285	275	265	255	245	240	235	235	210	200	190	180
B	280	270	260	250	240	235	230	230	205	195	185	175
C	275	265	255	245	235	230	225	225	200	190	180	170
D	270	260	250	240	230	225	220	220	195	185	175	165
E	265	255	245	235	225	220	215	215	190	180	170	160
F	260	250	240	230	220	215	210	210	185	175	165	155
G	255	245	235	225	215	210	205	205	180	170	160	150
H	250	240	230	220	210	205	200	200	175	165	155	145
J	245	235	225	215	205	200	195	195	170	160	150	140

Subject to exceptions and instructions.

Minimum Prices in Cents per Ton of 2,000 Pounds F. O. B. Mines for Coal for Vertical and Horizontal Retort Gas Plants and Water Gas Plants for the Manufacture of Illuminating Gas in Price Columns 13, 14, and 15

Coal for By-Product Coke Plants, Price Column 16

	Price columns			
	13	14	15	16
A	240	*235	225	220
B	235	230	220	215
C	230	225	215	210
D				205
E				200

Exceptions

*A classification 2" Lump in Price column #14 takes B classification price. Price classifications for mines marked with * in price Grouping No. 16 apply to specially sized and prepared coal for by-product use.

Minimum Prices per Ton of 2,000 Pounds F. O. B. Mines for Railroad Locomotive Fuel

	All sizes other than lump and double screened coal*	Lump and double screened coal
All mines except as noted	\$2.15	\$2.30

Exception #1.—All mines in Subdistrict No. 5 as follows:

SUB DISTRICT NO. 5

	All sizes other than lump and double screened coal*	Lump and double screened coal
Atlantic #2	\$2.10	\$2.25
Saxman #2	2.10	2.25
Seger #1	2.10	2.25
Superior #2	2.10	2.25
Graff #1 & #2	2.10	2.25

Exception #2.—All mines producing in the Sewickley seam in Subdistrict No. 3 and the Redstone seam in Subdistrict No. 9, as follows:

SUBDISTRICT NO. 3—SEWICKLEY SEAM

	All sizes other than lump and double screened coal*	Lump and double screened coal
Jeffrey #1 & #2	\$2.05	\$2.20
Provinc	2.05	2.20
Sandy Run	2.05	2.20
G. B.	2.05	2.20
Irwin #11	2.05	2.20
Maple-Sterling #1	2.05	2.20

SUB-DISTRICT NO. 9—REDSTONE SEAM

Adamsburg	2.05	2.20
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Exception #3.—The following mine in Sub-District No. 7.

SUB-DISTRICT NO. 7

Florence	2.05	2.20
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Exception #4.—The following mines in the Pittsburgh Seam of Sub-District #3.

SUB-DISTRICT NO. 3—PITTSBURGH SEAM

Jamison #20		2.15
South Union #1		2.15
South Union #2		2.15

NOTE.—Straight mine run coal containing more than 33% of 3/4" minus slack may be modified by removing that portion of 3/4" minus slack in excess of 33%.

234, analyses from other sources were also available. The available analyses are embodied in tabulations received in evidence herein as Exhibits Nos. 438, 438-A, 439, and 439-A.

As to coals produced in District No. 4, those coals included in Size Groups 1 to 7, both inclusive, were classified and priced by the District Board primarily on their marketability, general acceptability by the consuming public, and physical characteristics. Analyses were regarded as a predominant factor by the District Board when coals produced in the slack sizes in Size Groups 9, 10, and 11 were classified and priced.

In the State of Ohio there are eight Origin Mine Groups, some of which may contain more than one seam of coal. On page 2, amended, of the Proposed Price Schedule, introduced in evidence herein as Exhibit No. 432, such Origin Mine Groups are described as follows:

Origin Mine Group No. 1, Eastern Ohio.—Belmont County; Harrison County (except the Apex Mine and except Monroe, Franklin, Washington and Freeport Townships); and Jefferson County (except the northern part thereof, to-wit: Brush Creek, Saline, Ross, Knox and Springfield Townships).

Origin Mine Group No. 2, Cambridge.—Guernsey County (except Wheeling, Monroe, Washington, Knox, Liberty, Jefferson, Adams and Westland Townships); Noble County; and Washington County.

Origin Mine Group No. 3, Bergholz.—The northern part of Jefferson County, to-wit: Brush Creek, Saline, Ross, Knox and Springfield Townships; also the Apex Mine in Harrison County.

Origin Mine Group No. 4, Middle.—Carroll, Columbiana, Coshocton, Holmes, Mahoning, Medina, Stark, Summit, Tuscarawas, Portage, Wayne and Trumbull Counties; also Monroe, Franklin, Washington and Freeport Townships in Harrison County; and Wheeling, Monroe, Washington, Liberty and Jefferson Townships in Guernsey County.

Origin Mine Group No. 5, Hocking.—Athens and Hocking Counties; that part of Perry County south of McCuneville in Salt Lick Township and Rendville in Monroe Township; and that part of Brown Township in Vinton County on and north of the line of the B. & O. Railroad.

Origin Mine Group No. 6, Crooksville.—Muskingum and Morgan Counties; that part of Perry County north of McCuneville and Rendville; and Knox, Adams and Westland Townships in Guernsey County.

Origin Mine Group No. 7, Jackson.—Jackson, Lawrence and Scioto Counties; Vinton County (exclusive of that part of Brown Township on and north of the B. & O. Railroad) and Huntington Township in Gallia County.

Origin Mine Group No. 8, Pomeroy.—Meigs County; and Gallia County exclusive of Huntington Township.

Coal from Origin Mine Group No. 1 is primarily of the Pittsburgh No. 8 seam although some No. 5 and No. 7 seam coal is to be found in the subdistrict, generally in Belmont, Harrison and Jefferson Counties. The Apex Mine referred to is included in Origin Mine Group No. 3 inasmuch as it ships on the Bergholz freight rate.

Origin Mine Group No. 2 comprises the Cambridge or No. 7 seam, although some No. 6 seam coal is to be found in Guernsey, Noble, and Washington Counties. Some Guernsey County mines operate in seams which are grouped in the Middle and Crooksville subdistricts.

In Origin Mine Group No. 3, generally referred to as the Bergholz subdistrict, are found coals of No. 5, No. 6, and No. 8 seams in the northern townships of Jefferson County.

The principal seam mined in Origin Mine Group No. 4 is the No. 6 seam, although there are other mines operating in seams Nos. 4, 5, and 7. In addition there are also some truck mines operating in seam No. 1.

In Origin Mine Group No. 5 the principal seam mined is No. 6 or the thick vein Hocking seam. There are also some mines operated in seam No. 7 and seam No. 8-A.

Origin Mine Group No. 6, known as the Crooksville subdistrict, operates in that part of seam No. 6 generally referred to as the thin vein Hocking. While in general the thin vein Hocking is similar to the thick vein Hocking of Group No. 5, it is thinner coal made up of the lower bench of the No. 6 seam.

The mines in Origin Mine Group No. 7, known as the Jackson subdistrict, operate in seams Nos. 1, 2, and 7.

Origin Mine Group No. 8, known as the Pomeroy subdistrict, operates in seams Nos. 5 and 8-A.

In no great producing fields are there to be found more uniform seams of coal than those mined in the Origin Mine Groups in District No. 4. Coals produced from the various seams of coals in Ohio are in direct competition with each other.

The Pittsburgh No. 8 seam probably has the greatest degree of uniformity of any seam coal in the United States, not only as to thickness and general structure of the seam but also as to general mining conditions and seam analyses.

The District Board has revised its proposed schedule of minimum prices, included in evidence herein as Exhibit No. 431, by the introduction into evidence of Exhibit No. 440, which lists the markets for District No. 4 coals. The markets are listed in the order of their importance, as follows:

Ohio, Michigan, Indiana, Pennsylvania, New York, Illinois, West Virginia, Iowa, Wisconsin, Minnesota, North Dakota, South Dakota, Lake Ports, and Canada.

As indicated on page 3 of the schedule of proposed prices, there are eleven size

groups which include all sizes of coal shipped from Ohio mines. In order to clarify Item 8 and the note appearing on page 3, a revised page 3 has been proposed and introduced in evidence herein as Exhibit No. 435.

Coals in Size Groups Nos. 1 to 4 are primarily used for domestic purposes. Structure, rather than analysis thereof, is the predominant factor in their classification, friability being practically the controlling factor in the classification of coals in Size Groups Nos. 1, 2, and 3. The District Board priced Size Group 2, 4" lump, as a base coal, and it priced Size 3, 2" lump, 20¢ under Size Group 2. The Board priced coals in Size Group 4 10¢ under the Size Group 3 coals.

Size Groups Nos. 5 and 6 are what is known as prepared steam sizes, being primarily 1¼" lump and 4" x 1¼" egg. 1¼" lump, Size Group 5, is comparable to 4" x 2" egg, Size Group 4, and is given the same price, while 4" x 1¼" egg, Size Group 6, is priced 10¢ lower than Size Group 5.

Size Group No. 7, double-screened nut or stoker coal, with the top size of 2" or less, has been priced 10¢ under the price for mine-run coals, Size Group 8.

Size Group No. 8 includes all resultants above 2" top size; modified mine-run with no fines removed; and mine-run crushed to any size.

Size Group No. 9 comprises 2" nut and slack, no fines to be removed; Size Group No. 10 comprises slack with top size not exceeding 1¼", no fines to be removed; and Size Group No. 11 comprises slack with top size not exceeding ¾", no fines to be removed.

The District Board classified coals produced in District No. 4 in ten quality groups designated by letters of the alphabet as D, H, K, M, N, O, Q, R, T, and U.

The coals of the Pittsburgh No. 8 seam, found in Origin Mine Group No. 1, are used as a quality base coal for the classification of the coals produced in this District for the reasons that more coal of this kind than any other are produced in Ohio, and these particular coals are probably more comparable than any other Ohio coal with the base coals of those districts competing with District No. 4 in the markets. Nearly sixty percent of the coal produced in Ohio is No. 8 seam from Origin Mine Group No. 1.

A tabulation correcting Exhibit No. 431, the schedule of proposed minimum prices, with reference to certain mines, was received in evidence herein as Exhibit No. 431-A.

The total production of rail-connected mines in District No. 4, the State of Ohio, in the calendar year 1937 was 20,791,512 net tons. This figure does not include wagon or truck coal except 985,018 net tons shipped by truck from such rail-connected mines.

Such tonnage broken down by seams and origin mine groups, as well as by individual mines, is shown in a tabula-

tion included in evidence herein as Exhibit No. 433.

The tonnage mined during the same period by code member truck mines amounted to 3,123,083 net tons. Such tonnage divided as to origin mine groups is shown in Exhibit No. 434 included in evidence herein.

A tabulation entitled "Statement of Tonnage Each Size, Reported by Rail-Connected Producers on Form D-1 for the Calendar Year 1937, Grouped According to Size Groups Proposed by the Board" was introduced in evidence herein as Exhibit No. 437. The total distribution tonnage appearing in this tabulation is 21,250,405 net tons as compared to the total production tonnage of 21,446,593. The slight discrepancies existing between the distribution and the production figures in Exhibits Nos. 433, 434, and 437 were due to the fact that some of the tonnages produced were used at the mines and some held as inventory.

The proposed schedule of minimum prices as submitted to the Commission, and as received in evidence herein as Exhibit No. 431, contains on page 2 a description of the Origin Mine Groups in the District; on page 3, a description of the size groups produced within the District; on page 4, a description of the consuming market areas to which prices set forth in the schedule apply; on page 5, price instructions and exceptions; on page 6, the prices in cents per net ton of 2000 pounds for the different qualities of the various sized groups; on page 7, the prices applicable to railroad locomotive fuel; and the remainder of the schedule is taken up by an alphabetical list of all code members, showing the name of mine, Origin Mine Group, type, method of transportation, and price classifications and size group numbers for coals produced by the code members within District No. 4. As heretofore noted, the District Board has recommended that amended and revised pages be substituted for those originally included in the schedule.

A statement of expected realization based upon the 1937 production of District No. 4, applying the prices as proposed in the price schedule, was submitted in evidence herein as Exhibit No. 441. This tabulation shows that on the production of 21,446,593 net tons the weighted average realization per ton on the basis of the proposed prices is \$2.0047. A horizontal increase of 15¢ per net ton would more nearly reach the figure of \$2.157 determined by the Commission as the weighted average cost of production in Minimum Price Area No. 1. Such an increase would in no way affect the price relationship proposed by the District Board for the various coals produced within the District.

A single price into all markets has been proposed for each size and quality of coal.

The Commission, after due consideration of the record in this cause, finds that the schedule of proposed prices, as

submitted to the Commission by the District Board for District No. 4, should be, and is, corrected and revised as follows:

I. Page 2.—Delete entire page and insert in place thereof the new page received in evidence herein as Exhibit No. 432, as hereinbefore set out in hac verba.

II. Page 3.—Delete entire page and insert in place thereof Page 3 Corrected, received in evidence herein as Exhibit No. 435, reading as follows:

Size Groups

Size 1.—Block or lump over 4 inches. Chunks with bottom size over 4 inches.

Size 2.—Block or lump over 2 inches to 4 inches inclusive. Chunks with bottom size over 2 inches to 4 inches inclusive.

Size 3.—2" Lump. Egg with bottom size 2 inches and top size over 4 inches.

Size 4.—Egg with bottom size 2 inches and top size 4 inches and under.

Size 5.—Lump coal with bottom size 1½ inches or less.

Size 6.—Egg coal with bottom size 1¼ inches or less and top size 4 inches or less.

Size 7.—Nut or stoker coal. Double screen coal, top size 2 inches or under.

Size 8.—Mine Run, including all residuals above 2 inches top size. Modified mine run, no fines removed. Mine Run crushed to any size.

Size 9.—Nut and slack with top size not exceeding 2 inches, no fines to be removed.

Size 10.—Slack with top size not exceeding 1¼ inches, no fines to be removed.

Size 11.—Slack with top size not exceeding ¾ inches, no fines to be removed.

When any size of coal is sold, in which the maximum top or bottom sizes exceeds the sizes scheduled above, then such coal must be included in the next higher size group of the same grade and shall take the price of that size group, except as provided for on page 5.

III. Page 4.—Delete entire page and insert in place thereof Page 4 Corrected, received in evidence herein as Exhibit No. 440, as hereinbefore set out in hac verba.

IV. Page 5.—Delete Exception 3, inserting in place thereof the following statement:

"All size designations herein are for round hole screens, or their equivalent, except when otherwise designated. When other types of screens are used, the District Board, subject to the approval of the Commission, shall determine the actual size designation of the coal so prepared."

V. Page 5.—Delete Exception 4, which reads as follows:

"Where the size shipped is all washed, the price shall be 10¢ higher than raw coal for the same size."

Insert in place thereof:

"Where the size shipped is all washed or mechanically cleaned other than by

washing process, the price shall be 10¢ higher than raw coal for the same size."

VI. Page 5.—Delete Exception 5, which reads as follows:

"Where the size shipped is partially washed, the price shall be the same as raw coal; except on prepared sizes the price shall be 5¢ higher than on raw coal for the same size."

Insert in place thereof:

"Where the size shipped is partially washed or partially mechanically cleaned, other than by washing process, the price shall be the same as raw coal; except on double screened sizes, the price shall be 5¢ higher than on raw coal for the same size."

VII. Page 5.—Delete Exception 6, which reads as follows:

"On partially washed Nut and Slack or Slack coal from Powhatan Mine, Classification 'M' shall apply."

Insert in place thereof:

"On partially washed or partially cleaned other than by washing process, Nut and Slack or Slack from Powhatan Mine, Classification 'M' shall apply."

VIII. Page 5.—Delete Exception 7, which reads as follows:

"Partially washed 1½" Lump coal shall take the same price as Raw 2" Lump."

Insert in place thereof:

"Partially washed or partially mechanically cleaned, other than by washing process, 1½" Lump coal shall take the same price as Raw 2" Lump."

IX. Page 5.—Delete Exception 8, which reads as follows:

"All washed 4" x 1½" Egg coal shall take the same price as 4" x 2" raw Egg coal."

Insert in place thereof:

"All washed or mechanically cleaned, other than by washing process, 4" x 1½" Egg coal shall take the same price as 4" x 2" raw Egg coal."

X. Page 5.—Delete Exception 9, which reads as follows:

"1½ x 28 Mesh all washed shall take 15¢ higher than the raw 2" Nut and Slack price."

Insert in place thereof:

"1½ x 28 Mesh all washed or mechanically cleaned, other than by washing process, shall take 15¢ higher than the raw 2" Nut and Slack price."

XI. Page 5.—Delete Exception 10, which reads as follows:

"Coal chemically treated 10¢ higher than when not so treated."

Insert in place thereof:

"When coal is subjected to a chemical, oil, waxing or other process, an additional charge of not less than 10¢ per net ton shall be made."

XII. Page 5.—Delete Exception 11, which reads as follows:

"Size Groups 1, 2, and 3 coal shipped from Black Diamond Mine, Origin Mine Group 5—8a Seam, of the Black Diamond Coal Company; Walhonding #2, Walhonding #3, and Caldwell Mines of the Cambridge Collieries Company; and Rigby Mine of the Akron Coal Company, will take 'O' Classification when used for kiln burning purposes or for use in State, Federal or Municipal institutions."

Delete also Exception 11 Corrected, which reads as follows:

"Size Groups 1, 2, 3, 4, 5, and 6 coal shipped from the following mines will take 'O' Classification when used for kiln burning purposes or for use in State, Federal or Municipal institutions:

- "Akron Coal Company—Rigby and Black Top Mines
- "Byesville Coal Company—Mt. Zion Mine
- "Cambridge Collieries Co.—Caldwell, Walhonding Nos. 2 and 3 Mines
- "Charleston Brothers—Four Roses Mine
- "Collart Brothers—Elm Tree Mine
- "Gender Coal Co., H. S.—Red Bird #2 Mine
- "Keith Andy, and Chas. McManaway Coal Co.—M & K Mine; Lewis & Dixon Mine, Orchard Coal Co.—Orchard Mine
- "L. A. SeEVERS—Morland Mine
- "Sharratt Coal Company—Blackbird #2 Mine
- "Slifko Jr. Geo.—Sugar Tree Mine
- "Wilson & Green Coal Co.—3-C Mine; the Black Diamond Coal Co.'s Black Diamond Mine 8-A Seam, and Harry Kahn, Norman K Mine."

XIII. Page 5.—Delete Exception 13, which reads as follows:

"The first cut strip mine run coal when crushed and loaded separately will take the Classification 'O' under Size Group 9."

Insert in place thereof:

"First cut strip Mine Run coal, when crushed and loaded separately, shall take Classification 'O' under Size Group 9, and when not crushed and loaded separately, the regular Classification and Mine Run price for Size Group 8 shall apply."

XIV. Page 6.—Delete classifications A, B, and C and prices therefor from the tabulation.

XV. Page 7.—Delete entire page. Insert in place thereof the following:

"Coal classified in Size Group 8 sold for Railroad Locomotive Fuel shall take minimum prices as follows:

\$2.05 per net ton of 2000 pounds f. o. b. Mine

Lump or any double screened coal ordered or sold for Railroad Locomotive Fuel shall take minimum prices as follows:

\$2.20 per net ton of 2000 pounds f. o. b. Mine

When any coal is ordered or sold for Railroad Locomotive Fuel in sizes or size groups not specified above, the regular commercial prices shall apply for such sizes or size groups not included and priced above."

XVI. Make corrections to price schedule with reference to price classification and size group numbers of those mines enumerated in Exhibit No. 431-A (page 2).

XVII. Reduce the classification of coals of code members in the Hocking District, as shown in the proposed price schedule, to a classification 10¢ lower than the base classification "O" in Size Groups 9, 10, and 11.

Because of the foregoing changes in the classifications of Hocking subdistrict coals, and coals for use as railway locomotive fuel, the estimated realization for District No. 4, shown in Exhibit No. 441 as \$2.0047, must be adjusted to \$2.017 per net ton. The weighted average cost for Minimum Price Area No. 1, as determined by the Commission, is \$2.157. Hence, to more nearly equalize realization and weighted average cost, all minimum prices as proposed by the District Board, and as hereinbefore adjusted, should be, and are, increased \$0.15 per ton, thus attaining a realization of \$2.167 or \$0.01 in excess of the weighted average cost.

And now, upon the record herein, and upon the evidence submitted, both oral and documentary, and upon the foregoing facts found to exist, the Commission finds:

That the District Board for District No. 4, as directed in Order No. 247 of the Commission, proposed minimum prices free on board transportation facilities at the mines for kinds, qualities and sizes of coal produced within the District, classification of coal and price variations as to mines and consuming market areas, values as to uses and seasonal demand.

That the District Board for District No. 4, as directed in Order No. 247 of the Commission, submitted to the Commission a schedule of such proposed minimum prices, together with the data upon which same were computed, including, but without limitation, the factors considered in determining the price relationships.

That the minimum prices proposed by the District Board for District No. 4, as herein modified, reflect, as nearly as possible, the relative market value of the various kinds, qualities and sizes of coal produced within the district; are just and equitable as between producers within the District; have due regard to the interests of the consuming public; and do not permit dumping.

That the minimum prices proposed by the District Board for District No. 4 for any kind, quality or size of coal for shipment into any consuming market area,

as herein modified, are just and equitable between producers within the District.

That the minimum prices proposed by the District Board for District No. 4, as herein modified, yield a return per net ton for the District equal as nearly as may be to the weighted average of the total costs per net ton of the tonnage of Minimum Price Area 1, the price area in which District No. 4 is placed under the Act.

That the schedule of proposed minimum prices, as amended, and submitted to the Commission by the District Board for District No. 4, as amended, corrected, modified and revised, as hereinabove set forth, conforms to Order No. 247 of the Commission and to the requirements of Section 4-II (a) of the Act, and as so amended, corrected, modified and revised, said schedule should be, and the same is hereby, approved by the Commission to serve as a basis for the coordination provided for in Section 4-II (b) of the Act. A copy of said schedule as amended, corrected, revised and modified appears in the Appendix for District No. 4.

APPENDIX FOR DISTRICT NO. 4

SCHEDULE OF MINIMUM PRICES AS MODIFIED AND APPROVED TO SERVE AS A BASIS FOR COORDINATION

NOTE.—The prices in this schedule are not the final prices that will be established on coal for shipment by Code Members within this district into consuming markets of this district. In the ultimate establishment of the effective minimum prices, pursuant to subsection (b) of Part II, Section 4 of the Act, the minimum prices in this schedule are subject to such increase or decrease, respectively, as may be necessary to carry out the provisions of subsections (a) and (b) of Part II, Section 4 of the Act.

F. W. McCULLOUGH,
Secretary.

Issued January 4, 1939.

Origin mine groups

Description

No. 1. Eastern Ohio.—Belmont County; Harrison County (except the Apex Mine and except Monroe, Franklin, Washington and Freeport Townships); and Jefferson County (except the northern part thereof, to-wit: Brush Creek, Saline, Ross, Knox and Springfield Townships).

No. 2. Cambridge.—Guernsey County (except Wheeling, Monroe, Washington, Knox, Liberty, Jefferson, Adams and Westland Townships); Noble County; and Washington County.

No. 3. Bergholz.—The northern part of Jefferson County, to-wit: Brush Creek, Saline, Ross, Knox and Springfield Townships; also the Apex Mine in Harrison County.

No. 4. Middle.—Carroll, Columbiana, Coshocton, Holmes, Mahoning, Medina, Stark, Summit, Tuscarawas, Portage, Wayne and Trumbull Counties; also Monroe, Franklin, Washington and Freeport Townships in Harrison County; and Wheeling, Monroe, Washington, Liberty and Jefferson Townships in Guernsey County.

No. 5. *Hocking*.—Athens and Hocking Counties; that part of Perry County south of McCuneville in Salt Lick Township and Rendville in Monroe Township; and that part of Brown Township in Vinton County on and north of the line of the B. & O. Railroad.

No. 6. *Crooksville*.—Muskingum and Morgan Counties; that part of Perry County north of McCuneville and Rendville; and Knox, Adams and Westland Townships in Guernsey County.

No. 7. *Jackson*.—Jackson, Lawrence and Scioto Counties; Vinton County (exclusive of that part of Brown Township on and north of the B. & O. Railroad) and Huntington Township in Gallia County.

No. 8. *Pomeroy*.—Meigs County; and Gallia County exclusive of Huntington Township.

Size Groups

Size 1.—Block or lump over 4 inches. Chunks with bottom size over 4 inches.

Size 2.—Block or lump over 2 inches to 4 inches inclusive. Chunks with bottom size over 2 inches to 4 inches inclusive.

Size 3.—2" Lump. Egg with bottom size 2 inches and top size over 4 inches.

Size 4.—Egg with bottom size 2 inches and top size 4 inches and under.

Size 5.—Lump coal with bottom size 1 1/4 inches or less.

Size 6.—Egg coal with bottom size 1 1/4 inches or less and top size 4 inches or less.

Size 7.—Nut or stoker coal. Double screen coal, top size 2 inches or under.

Size 8.—Mine Run, including all resultants above 2 inches top size. Modified mine run, no fines removed. Mine Run crushed to any size.

Size 9.—Nut and Slack with top size not exceeding 2 inches, no fines to be removed.

Size 10.—Slack with top size not exceeding 1 1/4 inches, no fines to be removed.

Size 11.—Slack with top size not exceeding 3/4 inches, no fines to be removed.

When any size of coal is sold, in which the maximum top or bottom sizes exceed the sizes scheduled above, then such coal must be included in the next higher size group of the same grade and shall take the price of that size group except as provided for below.

Geographical Description of Consuming Market Areas to Which Prices Apply

Ohio, Michigan, Indiana, Pennsylvania, New York, Illinois, West Virginia, Iowa, Wisconsin, Minnesota, North Dakota, South Dakota, Lake, and Canada.

Price Instructions and Exceptions

1. Prices listed herein are per net ton of 2,000 lbs. f. o. b. transportation facilities at the mine.

2. All prices are subject to the Marketing Rules and Regulations issued by the National Bituminous Coal Commission.

3. All size designations herein are for Round Hole Screens, or their equivalent, except when otherwise designated. When other types of screens are used, the District Board, subject to the approval of the Commission, shall determine the actual size designation of the coal so prepared.

4. Where the size shipped is all Washed or mechanically cleaned other than by washing process, the price shall be 10 cents higher than raw coal for the same size.

5. Where the size shipped is partially washed or partially mechanically cleaned, other than by washing process, the price shall be the same as raw coal; except on double screened sizes, the price shall be 5 cents higher than on raw coal for the same size.

6. On partially washed or partially cleaned other than by washing process, Nut and Slack or Slack from Powhatan Mine, Classification "M" shall apply.

7. Partially washed or partially mechanically cleaned, other than by wash-

ing process, 1 1/2" Lump coal shall take the same price as Raw 2" Lump.

8. All washed or mechanically cleaned, other than by washing process, 4" x 1 1/2" Egg coal shall take the same price as 4" x 2" raw Egg coal.

9. 1 1/2" x 28 Mesh all washed or mechanically cleaned, other than by washing process, shall take 15 cents higher than the raw 2" Nut and Slack price.

10. When coal is subjected to a chemical, oil, waxing or other process, an additional charge of not less than 10 cents per net ton shall be made.

11. Reject Coal of the Wheeling Township Coal Mining Company for shipment only to the Goodyear Tire & Rubber Company will take Size Group 9, "U" Classification.

12. First cut strip Mine Run coal when crushed and loaded separately, shall take Classification "O" under Size Group 9, and when not crushed and loaded separately, the regular Classification and Mine Run price for Size Group 8 shall apply.

Minimum Prices, F. O. B. Transportation Facilities at Mines, for All Coal Other Than Coal Used for Railroad Locomotive Fuel and Exceptions Noted Above

Price classification	Prices in cents per ton of 2,000 pounds and size group numbers											
	1	2	3	4	5	6	7	8	9	10	11	
D	330	320	300	290	290	280	265	275	230	230	224	-----
E	325	315	295	285	285	275	260	270	225	225	219	-----
F	320	310	290	280	280	270	255	265	220	220	214	-----
G	315	305	285	275	275	265	250	260	215	215	209	-----
H	310	300	280	270	270	260	245	255	210	210	204	-----
I	305	295	275	265	265	255	240	250	205	205	199	-----
J	300	290	270	260	260	250	235	245	200	200	194	-----
K	295	285	265	255	255	245	230	240	195	195	189	-----
L	290	280	260	250	250	240	225	235	190	190	184	-----
M	285	275	255	245	245	235	220	230	185	185	179	-----
N	280	270	250	240	240	230	215	225	180	180	174	-----
O	275	265	245	235	235	225	210	220	175	175	169	Base.
P	270	260	240	230	230	220	205	215	170	170	164	-----
Q	265	255	235	225	225	215	200	210	165	165	159	-----
R	260	250	230	220	220	210	195	205	160	160	154	-----
S	255	245	225	215	215	205	190	200	155	155	149	-----
T	250	240	220	210	210	200	185	195	150	150	144	-----
U	245	235	215	205	205	195	180	190	145	145	139	-----

Railroad Locomotive Fuel Prices

Coal classified in Size Group 8 sold for Railroad Locomotive Fuel shall take minimum prices as follows:

\$2.20 per net ton of 2,000 pounds f. o. b. mine.

Lump or any double screened coal ordered or sold for Railroad Locomotive

Fuel shall take minimum prices as follows:

\$2.35 per net ton of 2,000 pounds f. o. b. mine.

When any coal is ordered or sold for Railroad Locomotive Fuel in sizes or size groups not specified above, the regular commercial prices shall apply for such sizes or size groups not included and priced above.

Alphabetical List of Code Members Showing Price Classifications by Sizes for All Uses Except as Separately Shown

Name of code member	Name of mine	Origin mine group	# Seam	# Type	Ship-ment by*	Price classifications and size group Nos.														
						1	2	3	4	5	6	7	8	9	10	11				
Abbot Bros	Low Ash	6	6	Deep	-----	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Abel, E. H.	McCoy	1	8	Deep	T	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Abel, Ralph		4	5	Deep	T	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Aberts & Hall	Aberts & Hall	1	-----	-----	-----	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Abram Coal Co.	#78	5	6	Deep	T	K	K	O	O	O	O	O	O	O	O	O	O	O	O	O
Abram Coal Co.	Abram	5	6	Deep	R	K	K	O	O	O	O	O	O	O	O	O	O	O	O	O
Adams, M. P.	M. P. Adams	6	6	-----	T	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Addis & Healy Coal Co.	Bryant	8	5	Deep	T	K	K	O	O	O	O	O	O	O	O	O	O	O	O	O

*R—Rail, T—Truck, RT—Rail and truck. RTR—Rail, truck, and river. # Where space is blank information is not shown.

Alphabetical List of Code Members Showing Price Classifications by Sizes for All Uses Except as Separately Shown—Continued

Table with columns: Name of code member, Name of mine, Orig. mine group, Seam, Type, Ship-ment by, Price classifications and size group Nos. (1-11), and Name of mine. Lists members like Coluey Coal Co., Combs, Harry L., Hilltop, etc.

Alphabetical List of Code Members Showing Price Classifications by Sizes for All Uses Except as Separately Shown—Continued

Table with columns: Name of code member, Name of mine, Orig. mine group, Seam, Type, Ship-ment by, Price classifications and size group Nos. (1-11), and Name of mine. Lists members like Brown & Sons, W. G., Brown, Walter L., Bruno & Freer, etc.

Alphabetical List of Code Members Showing Price Classifications by Sizes for All Uses Except as Separately Shown—Continued

Table with columns: Name of code member, Name of mine, Opt. gin mine group, Seam, Type, Ship. ment by, Price classifications and size group Nos. (1-11), and a final column of classification codes.

Alphabetical List of Code Members Showing Price Classifications by Sizes for All Uses Except as Separately Shown—Continued

Table with columns: Name of code member, Name of mine, Opt. gin mine group, Seam, Type, Ship. ment by, Price classifications and size group Nos. (1-11), and a final column of classification codes.

Alphabetical List of Code Members Showing Price Classifications by Sizes for All Uses Except as Separately Shown—Continued

Table with columns: Name of code member, Name of mine, Origin mine group, Seam, Type, Ship-ment by, Price classifications and size group Nos. (1-11), and Name of code member. The table lists numerous coal companies and their products, such as Goshon Hill Coal Co., Gossler, F. & Sons, and Hinkie Coal Co.

Alphabetical List of Code Members Showing Price Classifications by Sizes for All Uses Except as Separately Shown—Continued

Table with columns: Name of code member, Name of mine, Seam, Type, Ship-ment by, Price classifications and size group Nos. (1-11), and Origi- mine group.

Alphabetical List of Code Members Showing Price Classifications by Sizes for All Uses Except as Separately Shown—Continued

Table with columns: Name of code member, Name of mine, Seam, Type, Ship-ment by, Price classifications and size group Nos. (1-11), and Origi- mine group.

* Permanently abandoned.

* Blver and truck.

Alphabetical List of Code Members Showing Price Classifications by Sizes for All Uses Except as Separately Shown—Continued

Table with columns: Name of code member, Name of mine, Orig. mino group, Seam, Type, Ship-ment by, Price classifications and size group Nos. (1-11), Name of mine, Seam, Type, Ship-ment by, Price classifications and size group Nos. (1-11)

Alphabetical List of Code Members Showing Price Classifications by Sizes for All Uses Except as Separately Shown—Continued

Table with columns: Name of code member, Name of mine, Orig. mino group, Seam, Type, Ship-ment by, Price classifications and size group Nos. (1-11), Name of mine, Seam, Type, Ship-ment by, Price classifications and size group Nos. (1-11)

Alphabetical List of Code Members Showing Price Classifications by Sizes for All Uses Except as Separately Shown—Continued

Table with columns: Name of code member, Name of mine, Origin mine group, Seam, Type, Ship-ment by, Price classifications and size group Nos. (1-11), Name of code member, Name of mine, Origin mine group, Seam, Type, Ship-ment by, Price classifications and size group Nos. (1-11).

Alphabetical List of Code Members Showing Price Classifications by Sizes for All Uses Except as Separately Shown—Continued

Name of code member	Name of mine	Origin mine group	Seam	Type	Ship-ment by	Price classifications and size group Nos.															
						1	2	3	4	5	6	7	8	9	10	11					
Werner & Son, John	Werner	8	8	Deep	T	R	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wesley, Geo	Bethel	1	8	Deep	T	R	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
West Branch Coal Co	West Branch	7	4	Deep	T	R	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Westcott & Son	Westcott	6	5	Deep	T	R	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Western Fuel Co	10X	5	6	Deep	T	R	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Weymueller, F. W. & J. W	Weymueller	5	6	Deep	T	R	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wheeler, H. C	Wheeler	2	8	Deep	T	R	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wheeling Township Coal Mining Co., The	#2	1	8	Deep	T	R	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Whitacre-Greer Co., The	Fireproofing Waynesburg #5	4	6	Deep	T	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q
Whitacre-Greer Co., The	Fireproofing #1	4	6	Strip	T	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q
Whitacre-Greer Co., The	Fireproofing McCall	4		Deep	T	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q	Q
White Ash Coal Co	White Ash	5	6	Deep	RT	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
White Elm Coal Co., The	White Elm	5	5		T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Whitmore Bros	Whitmore	5	6	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wiezinski, Pete	Wiezinski	6	7	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wilden, Frank	Wilden	4		Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wilkin, L. R	Wilkin	4			T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wilkinson Coal Co	Bluff	4	6	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Williams Bros. Coal Co	Williams Bros	4			T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Williams, D. H	Williams	4	6	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Williams & Sons, J. F	Gem	5	6	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Williams, R. S. Coal Co	Sup. Cement Corp	8	7	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Williams, R. S. Coal Co	Williams	7	7	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Williams, Earl A	Williams	6			T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Willison Bros	Willison	5	6	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Willison Coal Co	Willison	5	5		T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Willow Creek Coal Co	Little Patty	8	8A	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wilson Coal Co	Alexander 2	5	6	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wilson, Conrad C.	Wilson 1	6			T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wilson, C. F		4			T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wilson-Evans Coal Co	6	5	5	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wilson-Evans Coal Co		5	5	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wilson & Grace	Royer	4	6	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wilson & Green Coal Co	3-C	2	7	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Winegardner, H. K	Winegardner	6	6	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Winn, E. E	Winn	6			T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wintersville Coal Co	Ahmet	1	8	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wintgens, Otto	Wintgens	5	5	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Witchey Coal Co., J. E	Locust Grove	1	8	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wohrle Bros	Little Bonn	5	6	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wolf, Harry & Ida M. Stull	Freshwater	1			T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wolf, William	Thomas Road	4			T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wolfe & Foster	Wolfe & Foster	1	8	Deep	RT	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wolford Coal Co., The	Walnut Grove	4	6	Deep	RT	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Womer, C. M. & Walter Rice	Randolf	4	7	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wood Bros	Wood	4	6	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Woods, Leslie		1			T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Woods, Sanford	Cox	6	6	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wright Coal Co		5	5	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wright, A. J., & Wm. Thompson Coal Co.	Wright & Thompson	8	4	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wright & Weber	Wright	4	5	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Wrightsel, S. W	Orchard Hill	7		Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Yarger & Sons, H. L	Yarger	5	5	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Yost, Ray	Yost	5	5	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Youghiogheny & Ohio Coal Co., The	Amsterdam	3	6	Deep	RT	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Youghiogheny & Ohio Coal Co., The	Barton	1	8	Deep	RT	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Youghiogheny & Ohio Coal Co., The	Florence	1	8	Deep	RT	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Youghiogheny & Ohio Coal Co., The	Dorothy	1	8	Deep	RT	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Young & Sons	Youngs	5	6	Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Youtsey Bros	Youtsey	5		Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Youtsey, Harry	Youtsey	5			T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Zadernuk Coal Mine	Zadernuk	4			T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Zane Oak Mining Co	Oak Hill	7	5	Strip	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Zimmerman, Alden	Zimmerman	8		Deep	T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Zimmerman, Raymond	Black Stripe	4			T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Zion Coal Co	Mt. Zion	2			T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Zorzi, Silvio	Zorzi	4	6		T	K	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O

ber 7, 1938, submitted its recommendation to the Board, and on that date the proposed prices of the Price-Fixing Committee were adopted. At this meeting of the Board the question of quality was discussed, and a motion was made and unanimously carried that, for all price-fixing purposes in District No. 5, a single standard of classification be established for all coals within the confines of the District.

Prior to the adoption by the District Board of the Price-Fixing Committee's recommendations the Board had authorized Dr. H. E. Publow of the Michigan State College to take and analyze samples of the different mines in the District. These analyses were submitted to the District Board and are shown in the Board's Exhibit No. 536. After the approval and adoption of the recommendations of the Price-Fixing Committee, the District Board prepared the schedule of minimum prices and submitted it to all Code members in accordance with Order No. 247.

The District Board received protests from the Consolidated Coal Company and the Robert Gage Coal Company. In the Schedule sent out (Exhibit No. 535, p. 3, Item 9) a provision was made that "Where any coal is crushed, the minimum price therefor shall be the minimum price established for the original size before crushing." The Robert Gage Coal Company's protest was directed against that provision. The protest from the Consolidated Coal Company was directed against the same provision and, in addition, a protest was made against Item 10 on page 3 of said Schedule that, "The substitution on any order of a grade or size of coal taking a minimum price higher than the grade or size ordered is not authorized." Also, a protest was made against the price relationship proposed for 2" x 1" nut coal as compared with stoker coal, at \$1.95 for the former and \$1.45 per net ton for the latter.

On September 20th the District Board held a meeting for the purpose of considering these protests. This meeting was continued until October 27, 1938, to obtain additional information on the protests. At the meeting of October 27, 1938, due to the protests made, the District Board, after a hearing, unanimously agreed to delete Item No. 9 on p. 3 of the Schedule, relating to crushed coal. The Board also unanimously agreed to delete Item No. 10 on p. 3 of the Schedule and insert in lieu thereof a paragraph authorizing substitution of a grade or size of coal of a minimum price higher than the grade or size ordered under certain conditions therein specified. There was added a new size designated as Size Group 10½, being 2" x 1" nut, and it was decided by motion that 2" x 1" nut washed should take the same price as stoker coal. Size Group 12, appearing on p. 4, was changed to read "mine-run" only. These changes were incorporated into a Supplement to the Price Sched-

MINIMUM PRICE AREA No. 1—DISTRICT No. 5

PROPOSED MINIMUM PRICES

The District Board of District No. 5, Price Area No. 1, comprising all coal-producing counties in the State of Michigan, prepared a schedule of proposed minimum prices for the kinds, qualities and sizes of coal produced within said District in compliance with the Commission's said Order No. 247.

Upon receipt of the Commission's Order No. 247, the District Board held a meeting on August 24, 1938, at which

it adopted a motion appointing a Price-Fixing Committee composed of Warren E. Pippen, Herbert Bean and Howard C. O'Brien, with instructions to report back a proposal of prices subject to the approval of the Board. All the members of the Price-Fixing Committee are active in the coal industry, and are qualified in the matter of coal prices in Michigan by fifteen and twenty years' experience in the sale of coal in that State.

The Price-Fixing Committee held several meetings and reported to the District Board, and under date of Septem-

ule (Exhibit No. 537). Under date of October 29, 1938, the District Board mailed said Supplement to each Code member within the District, and thereafter filed with the Commission said original Schedule and said Supplement, as the proposals of the District Board.

Before submitting the Price Schedule to the Code members and to the Commission, the members of the District Board, knowing the distribution of all coal produced in Michigan, prepared an Exhibit showing the realization to be obtained based upon the prices proposed by the Board, which is identified as Exhibit No. 538. This Exhibit shows that a realization of \$2.1782 per ton would be obtained on the basis of the prices proposed. Thereafter, the District Board filed copies of the Schedule of Proposed Prices and the Supplement thereto, together with the data upon which they were computed with the Commission, which Schedule of Proposed Minimum Prices and Supplement were received in evidence as Exhibits Nos. 535 and 537.

The testimony in support of the schedule of minimum prices proposed by District Board No. 5 was adduced by an Expert witness, to wit, George C. Eastwood, a Member of the District Board, who was thoroughly familiar with the production and marketing of coal within District No. 5. The witness has been connected with the Consolidated Coal Company for approximately fifteen years, and during that period has had charge of production and sales for said Company, whose producing properties are located in Bay and Shiawassee Counties, Michigan, the annual production of which is approximately 200,000 tons.

The evidence shows that the schedule of minimum prices submitted by District Board No. 5 (Exhibits Nos. 535 and 537), as amended, proposes minimum prices f. o. b. transportation facilities at the mine for the various kinds, qualities and sizes of coal produced by Code members in the District.

The District Board, knowing the number of sizes produced in District No. 5 and the usual manner of grouping sizes, proposed twenty size groups. These size groups range from lump over 4" to $\frac{1}{16}$ " x 0" rejects. The size having the greatest demand is the lump coal over 4". The Board began with this particular size as the base and determined the differentials existing between each of the size groups below this size. The number of size groups was determined upon both present and past practices in District No. 5 and are the size groupings which are employed in Michigan today and have been for a number of years past.

It appears from the evidence that the Board first determined the price for Size Group No. 1, after having considered the demand and marketability of each of the size groups. Having determined that the price of \$3 per net ton for Size Group No. 1 reflected as nearly as possible the market value of that size based upon the weighted average cost of \$2.15, the Board

proceeded to price each subsequent size group on the same basis, to the end that the differentials between each size group would reflect the relative market value of said coal.

In determining the market value of each of these size groups, the evidence shows that the Board took into consideration the knowledge which its members gained in the marketing of coals generally in the past, and set the differentials as nearly as possible to the differentials maintained in open competition, bearing in mind that the price differentials between the sizes should be such that if all of the coal produced in the District were sold at such prices the total realization to the District would equal as nearly as may be the weighted average cost of the minimum price area.

It appears from the evidence that the output of Michigan coal reached its peak in 1907 when 2,035,858 tons were reported to have been mined. In the following year production dropped off sharply and a gradual decline then took place to the present low point of approximately 500,000 tons annually. The number of active or producing mines fell from the peak of thirty-eight to the present number of twelve mines, and of these only three mines are rail shipping mines at the present time, and the balance are, many of them, small truck mines. The production and sale of Michigan coal is dependent almost entirely upon domestic consumption. Most of the coals of Michigan are weak and friable which property causes them to slack readily.

The evidence is that all the coal produced in Michigan is marketed in the State of Michigan, largely in the towns of Saginaw, Bay City, Flint and Owosso, and all of it is sold within a radius of 150 miles from the point of production.

The evidence shows that the schedule of proposed minimum prices, as amended by District Board No. 5, will yield a return for the District equal as nearly as may be to the weighted average cost of the total cost per net ton of the tonnage of minimum price area as determined by the Commission, namely, \$2.157. The realization submitted will yield \$2.1782 per ton, being a difference of a little more than two cents per ton.

It appears from the evidence that the differentials shown on the proposed schedule, as amended, correctly reflect the relative market value of the various kinds, qualities and sizes of coal to which they are applicable.

The Expert witness for the District Board testified that the price classifications and price differentials reflected in the proposed schedule of minimum prices, as amended, were, in his judgment and in the judgment of the District Board, equitable as between Code members in the District, and have due regard to the interest of the consuming public. The evidence shows that the members of the District Board, before proposing such schedule of minimum prices, gave due consideration to all of the factors in de-

termining what they deem the proper relationship between the coals of the mines in the District. Every producer in the District had the opportunity to protest the proposed schedule. Except for the two protests heretofore specifically mentioned, none of the Code members protested to the price classifications and price relationships. The differentials between the proposed prices have in the main existed over a period of many years, and have proved acceptable to the consuming public.

The District Board in said Schedule proposed that "all coal, except lump or double screen sizes, sold for railroad locomotive fuel shall take a minimum price of \$1.95 per net ton of 2,000 pounds, f. o. b. mine" (Exhibits 535 and 537). This railroad locomotive fuel price is predicated on the fact that the preponderant tonnage sold to the railroads was mine run coal and that all of the egg coal sold in 1937 for railroad locomotive fuel was coal which was substituted for mine run.

In the opinion of the witness, the proposed prices do not permit dumping.

In order to make the price schedule proposed by District Board No. 5 (Exhibits Nos. 535 and 537) conform to the evidence and to the Commission's Order No. 247, the Commission finds that the proposed schedule should be corrected, modified and amended in the following respects, to wit:

Title page, Exhibit No. 535, entitled "Note B", which reads as follows:

NOTE B: Where it is necessary on switching charges that adjustments on f. o. b. mine prices be made, such changes may be proposed by the District Board as required properly to represent the relative market values thereof, or where transportation differentials exist as between marketing areas adjustments may be made as to properly represent the relative market value thereof,

should be deleted for the reason that it relates to adjustments in f. o. b. mine prices on account of switching charges and transportation differentials, which are not proper factors to be considered in this hearing.

Page 3. Price instructions and exceptions.—Delete Item 3, Exhibits Nos. 535 and 537, which reads as follows:

"All size designations herein are for round hole screens. When other types of screens are used, the round hole equivalent shall control the size."

Insert in place thereof:

"All size designations herein are for round-hole screens or their equivalent except when otherwise designated. When any other types of screens are used, the District Boards, subject to the approval of the Commission, shall determine the actual size designation of the coals so prepared."

This change was recommended by witness Eastwood.

Page 3. Price instructions and exceptions.—Delete Item 7, Exhibits Nos. 535 and 537, which reads as follows:

"Washed and/or mechanically cleaned coal all sizes above 1/4" Rejects from all mines shall be priced 25 cents per net ton higher than raw coal from the same mine, except that Nut Coal 1" x 2" and Egg Coal 2" x 4" from Mine Indexed No. 3 in the alphabetical list of Code Members, may be sold at the raw coal price."

Insert in place thereof:

"Washed and/or mechanically cleaned coal all sizes above 1/4" Rejects from all mines shall be priced 25 cents per net ton higher than the raw coal from the same mine for the corresponding sizes, except that Egg Coal 2" x 4" from Mine Indexed No. 3 in the Alphabetical List of Code Members may be sold at the raw coal price."

This change was recommended by the witness Eastwood.

Page 3. *Price instructions and exceptions.*—Delete Item 8, Exhibits Nos. 535 and 537, which reads as follows:

"All Washed Rejects 1/4" x 0", or 1/8" x 0", shall be priced 75 cents per net ton higher than indicated in the price schedule which follows for raw coal."

Insert in place thereof:

"All Washed Rejects 1/4" x 0", or 1/8" x 0", shall be priced 75 cents per net ton higher than indicated in the Price Schedule which follows for raw coal for these sizes."

Page 3. *Price instructions and exceptions.*—Delete Item 9, Exhibit No. 535, which reads as follows:

"Crushed coal.—Where any coal is crushed, the minimum price therefor shall be the minimum price established for the original size before crushing."

This deletion was made due to protest and, after hearing, unanimously agreed to by District Board No. 5.

Page 3. *Price instructions and exceptions.*—Delete Item 10, Exhibit No. 535, which reads as follows:

"The substitution on any order of a grade or size of coal taking a minimum price higher than the grade or size ordered is not authorized or permitted."

Also delete Item 10, Exhibit No. 537 (which was to replace Item 10 in Exhibit No. 535), which reads as follows:

"Substitution.—No substitution may be made, upon any spot order or contract, or any grade or size of coal taking a minimum price higher than the price specified in such order or contract, except upon the following conditions:

(a) The proposed substitution shall not be an express or implied condition of the order or contract.

(b) The coal substituted must be coal which the Code Member has already produced and loaded into transportation facilities and which cannot be sold promptly by the exercise of the usual sales effort, such substitution to be limited

to a specific tonnage for shipment on a specific order and from a specific mine.

(c) The substitution must be reasonably necessary as an emergency measure in order to continue operation of the mine of the Code Member.

(d) The substitution shall be acceptable to the purchaser of coal and shall not be made with the purpose or effect of conferring any advantage on the purchaser or securing any preference or advantage for the Code Member over his competitors.

(e) Such substitution may be made with the approval of the Statistical Bureau and in each instance formal application therefor shall be made upon forms provided by the Commission and permits shall be issued prescribing the conditions of substitution in each case approved.

The producer may make request and receive approval for substitution by telephone or telegraph from the Statistical Bureau, provided it is satisfied that an immediate emergency exists. In such a case, the producer shall immediately confirm the request in writing on the prescribed form, and the Statistical Bureau shall immediately upon receipt of such written request confirm its approval by issuing the permit prescribed by the Commission.

(f) Substitution will be allowed by producers on orders for railroad locomotive fuel without prior approval of the Commission; provided, however, that the producer immediately shall file the form prescribed by the Commission with the Statistical Bureau. No substitution for lump or double screen coal ordered by the railroads for locomotive fuel shall be made without prior approval, in the manner heretofore provided, from the Statistical Bureau.

(g) Copies of substitution permits shall be mailed daily to the office of the District Board and weekly summaries of substitution permits shall be mailed to all District Boards within the Price Area. The Commission may from time to time publish the essential facts as to all substitution permits granted.

(h) In each case of coal shipped under a substitution permit the invoice shall specifically show the permit number and the size and grade of coal substituted."

The reason for deletion of this item is that it relates to Marketing Rules and Regulations, rather than to a minimum price schedule.

Size group 10 1/2 as shown on Exhibit 537 should be changed to size group 11 and size groups 11 to 19, both inclusive, as shown on said Exhibit, should be changed to size groups 12 to 20, both inclusive, and be so numbered consecutively.

Page 4. *Exhibit No. 535.—Size groups.*—Delete item at bottom of page, which reads as follows:

"When any size of coal is sold, in which the maximum top or bottom size exceeds the sizes scheduled above, then such coal

must be included in the next higher size group and priced accordingly."

Insert in place thereof:

"When any size of coal is sold, in which the maximum top or bottom size exceeds the sizes scheduled above, then such coal must be included in the next higher priced group and priced accordingly."

Page 7. *Exhibits Nos. 535 and 537.—Railroad locomotive fuel prices.*—Delete item which reads as follows:

"Off-line Railroad Fuel shall be twenty cents less than On-line-Railroad Fuel."

Differences in transportation charges are not a part of this hearing.

The evidence (Exhibit No. 538) shows that the realization from the prices proposed is as follows:

Recapitulation of Realization—All Mines

	Net tons	Realization	Per ton
Realization from prices proposed:			
Shipments reported by rail-connected mines on Form D-1.....	262,294	\$532,583	\$2.2214
Shipments reported by truck mines on Form D-2.....	239,634	543,257	2.1215
Additional credits from treated coal (oil, wax, calcium chloride, etc.) 31,711 tons at 10¢ per ton.....		3,171	
Total shipments.....	501,928	1,129,941	2.1732

Taking into consideration the modifications herein of the schedule of proposed prices, the Commission finds that the effect on the estimated realization in Exhibit No. 538 is as follows:

A. Increasing the price of railroad fuel on off-line shipments \$1.75 to \$1.95 on 35,151 tons, as shown on sheet 2 of Exhibit No. 538, 20¢ per ton, equals \$7,030.20.

B. Decreasing the price on 2" x 1" nut coal, originally included in Size Group 10 and priced at \$1.95 for washed coal, to a price of \$1.70, and now included in Size Group 10 1/2, on 2,533 tons, equals \$633.25.

C. The following is a recapitulation of the effect on the estimated realization by the above adjustments:

Total tons shown in Exhibit No. 538.....	518,348
Total amount as shown on Exhibit No. 538.....	\$1,129,041.00
Average realization per ton as shown on Exhibit No. 538.....	2.1732
Plus Adjustment A.....	\$7,030.20
Less Adjustment B.....	633.25
Total adjustments.....	6,396.95
Estimated realization.....	1,135,437.95
Estimated realization per ton.....	2.1904
Preliminary realization after adjustments.....	\$2.1904
Weighted average cost for Minimum Price Area No. 1 as per Gen. Docket 15.....	2.157
Difference.....	.0334

This realization is .0334 per ton in excess of the price area cost, but is still as nearly as may be equal to the weighted average cost for Minimum Price Area No. 1.

And now upon the record herein, upon the evidence, both documentary and otherwise, and upon the above and foregoing facts found to exist, the Commission finds:

That the District Board for District No. 5 as directed in Order No. 247 of the Commission, proposed minimum prices free on board transportation facilities at the mines for kinds, qualities and sizes of coal produced within the District, classification of coal and price variations as to mines and consuming market areas.

That the District Board for District No. 5, as directed in Order No. 247 of the Commission, submitted to the Commission a schedule of such proposed minimum prices, together with the data upon which same were computed, including, but without limitation, the factors considered in determining the price relationships.

That the minimum prices proposed by the District Board for District No. 5, as herein modified, reflect, as nearly as possible, the relative market value of the various kinds, qualities, and sizes of coal produced within the District; are just and equitable as between producers within the District; have due regard to the interests of the consuming public; and do not permit dumping.

That the minimum prices proposed by the District Board for District No. 5 for any kind, quality or size of coal for shipment into any consuming market area, as herein modified, are just and equitable between producers within the District.

That the minimum prices proposed by the District Board for District No. 5, as herein modified, yield a return per net ton for the District equal as nearly as may be to the weighted average of the total costs, per net ton, of the tonnage of Minimum Price Area No. 1, the Price Area in which District No. 5 is placed under the Act.

That the schedule of proposed minimum prices, as amended, and submitted to the Commission by the District Board for District No. 5, as amended, corrected, modified and revised as hereinabove set forth, conforms to Order No. 247 of the Commission and to the requirements of Section 4-II (a) of the Act and as so amended, corrected, modified and revised, said schedule should be and the same is hereby approved by the Commission to serve as a basis for the coordination provided for in Section 4-II (b) of the Act. A copy of said schedule as amended, corrected, revised and modified appears in the Appendix for District No. 5.

APPENDIX FOR DISTRICT NO. 5

SCHEDULE OF MINIMUM PRICES AS MODIFIED AND APPROVED TO SERVE AS A BASIS FOR COORDINATION

NOTE.—The prices in this schedule are not the final prices that will be established on coal for shipment by Code Members within this district into consuming markets of this

district. In the ultimate establishment of the effective minimum prices, pursuant to subsection (b) of Part II, Section 4 of the Act, the minimum prices in this schedule are subject to such increase or decrease respectively, as may be necessary to carry out the provisions of subsections (a) and (b) of Part II, Section 4 of the Act.

F. W. McCULLOUGH,
Secretary.

Issued January 4, 1939.

Price Instructions and Exceptions

Item No. 1.—The schedule of prices shown herein applies f. o. b. transportation facilities at mines on all coal produced by Code Members in the District shown on the title page hereof.

Item No. 2.—All prices are subject to the Marketing Rules and Regulations issued by the National Bituminous Coal Commission.

Item No. 3.—All size designations herein are for round-hole screens or their equivalent except when otherwise designated. When any other types of screens are used, the District Boards, subject to the approval of the Commission, shall determine the actual size designation of the coals so prepared.

Item No. 4.—In the sale of coal to destined points outside the boundary of the United States, prices stipulated herein are for payment in U. S. funds.

Item No. 5.—All prices herein are per net ton of 2,000 lbs. f. o. b. transportation facilities at the mine unless otherwise designated.

Item No. 6.—When coal is subjected to any chemical, oil or waxing process, an additional charge of not less than 10 cents per net ton shall be made.

Item No. 7.—Washed and/or mechanically cleaned coal all sizes above 1/4"

Rejects from all mines shall be priced 25 cents per net ton higher than the raw coal from the same mine for the corresponding sizes, except that Egg Coal 2" x 4" from Mine Indexed No. 3 in the Alphabetical List of Code Members may be sold at the raw coal price.

Item No. 8.—All Washed Rejects 1/4" x 0", or 1/8" x 0", shall be priced 75 cents per net ton higher than indicated in the Price Schedule which follows for raw coal for these sizes.

Size Groups

Size group No.	Single screened sizes (screen size)	Double screened sizes	
		Maximum top size by maximum bottom size	
1	Lump—Larger than 4"		
2	Lump—4"		
3	Lump—3"		
4	Lump—2"		
5	Lump—1 1/2"		
6	Egg-----	5" x 3"	
7	Egg-----	5" x 2"	
8	Egg-----	4" x 2"	
9	Stove-----	3" x 1 1/2"	
10	Nut-----	2" x 1 1/2"	
11	Nut-----	2" x 1"	
12	Stoker-----	1 1/2" x 3/4"	
13	Mine run.		
14	4" Resultant.		
15	NPS-----	2" x 0.	
16	Slack-----	1 1/2" x 0.	
17	Slack-----	1" x 0.	
18	Rejects (Raw)-----	3/4" x 0.	
19	Rejects (Raw)-----	1/2" x 0.	
20	Rejects (Washed)-----	1/16" x 0.	

When any size of coal is sold, in which the maximum top or bottom size exceeds the sizes scheduled above, then such coal must be included in the next higher priced group and priced accordingly.

Identification of Sub-District Numbers

There are no subdivisions in District No. 5.

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Separately Shown

Code member	Mine name	Seam	Ship- ped by	Price classifications and size group numbers																			
				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
1. Aurora Coal Company---	Aurora-----	Mich.	T	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
2. Chippewa Coal Company.	Chippewa-----	Mich.	T	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
3. Consolidated Coal Company.	Wolverine-----	Mich.	RT	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
4. Consolidated Coal Company.	Crapo-----	Mich.	RT	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
5. Hodd Coal Company-----	Hodd-----	Mich.	T	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
6. Monitor Coal Company-----	Monitor-----	Mich.	T	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
7. New Michigan Coal Company.	New Michigan-----	Mich.	T	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
8. Robert Gage Coal Company.	No. 10-----	Mich.	RT	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
9. Saginaw Mining Company.	Janes Street---	Mich.	T	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
10. St. Charles Chesaning Coal Company.	Chesaning-----	Mich.	T	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
11. St. Charles Garfield Coal Company.	Garfield-----	Mich.	RT	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
12. Tri-Party Coal Company.	Tri-Party-----	Mich.	T	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	

T—Truck. RT—Rail and truck.

Price classification	Prices in cents per net ton of 2,000 pounds and size group numbers																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
A-----	300	295	285	265	265	255	245	240	220	195	145	145	195	165	135	125	115	75	50	75

Railroad Locomotive Fuel Prices

(On Line and Off Line)

All coal, except lump or double screened sizes, sold for Railroad Locomotive Fuel shall take a minimum price at \$1.95 per net ton of 2,000 lbs. F. O. B. mines.

Egg Coal.—(2' x 5' and under) and smaller double screened sizes may be applied at mine run prices when necessary, and to the extent only of equalizing production with orders for other group sizes.

Geographical Description of Consuming Market Area to Which Prices Apply

Market Area No. 27.—All territory in the State of Michigan on and south of the line of the Grand Trunk Railroad from Port Huron to Owosso, and on and east of the line of the Michigan Central Railroad, Owosso to Lansing, and on and south of the line of the Pere Marquette Railroad, Lansing to Waverly, and on and west of the line of the Pere Marquette Railroad, Waverly to Pentwater, Michigan (and in addition thereto that part of the province of Ontario west of Goderich, Clinton, St. Marys, London, St. Thomas and Port Stanley, Ontario).

Market Area No. 28.—All territory in the lower peninsula of Michigan north of the line of the Grand Trunk Railroad, Port Huron to Owosso, and west of the line of the Michigan Central Railroad, Owosso to Lansing, and north of the line of the Pere Marquette Railroad, Lansing to Waverly, and east and north of the line of the Pere Marquette Railroad, Waverly to Pentwater.

DISTRICT NO. 6
MINIMUM PRICES

In accordance with Order 247, the District Board for District 6 held various meetings for the purpose of classifying properly coals of the Code Members in relation to other coals produced in the District. As a result of said meetings, a schedule of proposed minimum prices was drafted by the District Board and copies thereof were sent to all Code Members within said District.

A letter dated August 24, 1938 was attached to each copy of such schedule of proposed minimum prices advising that any protests must be in writing and filed with the District Board not later than September 1, 1938.

The only protests which the District Board received were those protests from the Buffalo Coal and Coke Company with regard to the classification and prices of coal of the Brady mine on all sizes and also from the Cove Hill Coal Company on the coals of the Three Springs Mine. Subsequent to January, 1938, the Cove Hill Coal Company acquired ownership of the Three Springs Mine from the Marshall Mining Company and it was agreed that the record on the protest of the former owner at the previous hearings should now be heard in support of the present owner.

The final schedule of proposed minimum prices which was drawn up by the District Board for District 6 and submitted to the Commission, appears in the record as Exhibit 314.

In the preparation of the schedule of proposed minimum prices as submitted to the Commission by the District Board for District 6, meetings were held to discuss and consider the preparation of the schedule of proposed minimum prices for coals of the Code Members in the District. At these meetings each member of the District Board had before him a list of all Code Members with the tonnage produced by each for the year 1937, together with such data as has been accumulated by the District Board, such as reports from Code Members, containing information as to analyses of the various sizes of coal produced by them, the seam from which such coals were produced, the various sizes produced at the different mines, together with the tonnage of each size produced in 1937 and the monthly and annual reports from the Department of Mines of the State of West Virginia. Each member of the District Board also had before him a copy of the Commission's Order 247, setting forth the standards incorporated in Section 4, II (a) of the Act. It was the judgment of the members of the District Board for District 6 that all coal produced in said District is from the same geological basin and seam of coal, namely, Pittsburgh No. 8. The District Board determined the qualities of the coals in the various sizes produced by the Code Members are, within reasonable limits, the same. The District Board, in setting up the classification of the coals of each of the various Code Members, determined that there should be no variations as to the mines in the price of the coals of each member for each size into the consuming markets. The coals produced in District 6 are interchangeable because of their similarity in quality and characteristics.

The schedule of proposed minimum prices as submitted to the Commission by the District Board for District 6 contains twelve (12) size groups. These size groups are set forth in Exhibit 324, to which particular reference is made, as well as the total commercial tonnage produced for each of the twelve size groups, the total captive tonnage, the total rail fuel tonnage shipped and the total tonnage produced for bunker or vessel fuel purposes. Exhibit 324 also shows the proposed minimum prices for each size grouping in each use classification, together with the total realization based on 1937 tonnage.

Since the World War, the trend has been an increased use, for commercial purposes, from the mine run and double screen sizes to the smaller sizes of coal. The principal reason for this change is due to the development by manufacturers of burning equipment that would burn the smaller sizes of coal at higher efficiency. The District Board consid-

ered this fact in determining the price relationships between the various sizes in District 6.

It has been the general experience of the industry that the large size coals that go to domestic users command a higher price than the smaller sizes. It has been long recognized that as the size of coal screened decreases in District 6, the quality decreases. The District Board also took this into consideration in proposing a differential on the various lump and slack sizes.

In consideration and preparation of the schedule of proposed minimum prices, the members of the District Board for District 6 relied on their intimate knowledge of the various coals in the District regarding their relative market value and competitive relationships. The District Board gave little consideration to analyses. In some instances the analyses were at variance with the actual experience of the members of the District Board and they only considered what was essential and correct from their knowledge of the coals under consideration. The members of the District Board could, by examination of an analysis, determine if it reflected correctly the coal produced and they could then arrive at a price which was relative between the sizes and just and equitable as between the various producers in District 6.

The District Board determined market areas as follows: To the States of Connecticut, Delaware, Indiana, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Virginia, Vermont, West Virginia, Wisconsin, the District of Columbia and the Dominion of Canada, which are the areas to which the Code Members in District 6 have shipped their coals in the past.

The District Board for District 6 consists of 7 members, 6 producers and 1 labor member, all of whom are experienced and seasoned coal men, having actively engaged in the production, sale and merchandising of coals for many years. The small operators, as well as the large operators, have representation on the District Board.

The tonnage produced by the various companies with which the six producer members are connected represents 91.47 per cent of the total known commercial tonnage, or 70.80 per cent of the total production of District 6, including captive tonnage for the year 1937.

The District Board for District 6 used the mine run size as a base and applied the weighted average cost in Minimum Price Area No. 1, as determined by the Commission, namely, \$2.157 as the price for that size. The District Board then related the market values of the various sizes to the base size, as a result of which they were able to determine the price variations as between the various size groupings and to determine the pro-

posed minimum prices for each size grouping.

The letter "C" was used by the District Board for District 6 in order not to confuse the Code Members whose coals had been so classified in the price schedule proposed by the Commission on December 16, 1937. It would make no material difference if the letter "C" were changed to "A".

The base coal is shown on page 11, of Exhibit 324, together with the price differential between the various size groupings, using the mine run size as the base—Size 8. This exhibit shows in cents per net ton how much under or over the mine run size the price each size will take. There is no differential for individual mines as the coals mined all come from the same geological basin and the same seam of coal, namely, Pittsburgh No. 8.

The coals produced in District 6 are of such quality that the variety of uses is limited to commercial and domestic, railroad fuel, and bunker-vessel fuel. The District Board set up variations as to values to uses, giving effect to a value on coals for railroad fuel purposes and on coals for bunker-vessel fuel purposes in addition to the general price classification of commercial and domestic use.

The protests of Buffalo Coal and Coke Company and Cove Hill Coal Company were supported by one witness called on behalf of the protestants, being vice-president of the Costanzo Coal Mining Company, the selling agent for the protestant companies. The protests are to the classification of the coals produced at the mines of the protestants, including the prices on their slack sizes. The protestants alleged a price differential of fifteen cents per ton on Size Groups 1 to 5, inclusive; twenty cents per ton on Size Groups 6 to 8 inclusive; and twenty-five cents per ton on Size Groups 9 to 12, inclusive, should be allowed inasmuch as their coals are inferior in quality to coals produced by other mines in the District.

The total production of the protestants' mines is approximately 400,000 tons, or eight per cent of the total annual production from all mines in District 6. No evidence has been introduced to show the percentage of slack coal produced by the protestants.

No other formal objections were filed to the tentative classification schedule of coals that were produced by the District Board for District 6.

The District Board for District 6 established 12 size groupings of the coal within the District for the reason that no less number would afford a proper basis for coordination as required by Order 247. After the District Board had determined 12 size groupings, it found that the relative market value of Size Groups 6, 7 and 8 as determined is the same; also Size Groups 9 and 10 would take the same price.

The price of \$2.05 in Size Group 8 was proposed by the District Board for railroad fuel as the preponderant railroad

fuel tonnage in District 6 falls within Size Group 8 and such price would reflect the relative value of the various coals for railroad fuel purposes in relationship to the value of those coals used for other purposes. A price of \$2.25 in Size Group 5 was proposed by the District Board for

bunker-vessel fuel based upon the same reasoning as that for railroad fuel. The District Board recommended that the decimal point should be deleted and in Size Groups 6, 7 and 8 the seven mills should be deleted, so that the amended schedule would read:

Prices in Cents per Ton of 2,000 Pounds for Shipment Into All Consuming Markets, for All Purposes Except Railroad Fuel and Bunker Purposes

Price index	Size groups											
	1	2	3	4	5	6	7	8	9	10	11	12
C..... Brady and Three Springs Mine.....	260	250	240	235	225	215	215	215	195	195	185	185

Prices in Cents per Ton of 2,000 Pounds for Shipment Into All Consuming Markets—For Railroad Fuel

Price index	Size groups											
	1	2	3	4	5	6	7	8	9	10	11	12
C.....								215				

Prices in Cents per Ton of 2,000 Pounds for Shipment Into All Consuming Markets—For Bunker Fuel

Price index	Size groups											
	1	2	3	4	5	6	7	8	9	10	11	12
C.....					225							

The Commission finds that the price of \$2.05 for locomotive railroad fuel should be amended by an increase of ten cents per ton and that the schedule of proposed minimum prices should be amended to show such price to be \$2.15 per ton.

Exhibit 324 shows the total tonnage produced by Code Members as reported to the District Board, broken down as to size groupings for the year 1937, and separated into four use classifications, namely, commercial, captive, railroad and bunker-vessel fuel. It also shows the proposed minimum prices for each size grouping in each classification and the average realization per ton for the District at prices proposed by the District Board for District 6 and submitted to the Commission. The use of 100 per cent of the total tonnage would not change the realization figure to any appreciable extent. The weighted average cost of Minimum Price Area No. 1, as per General Docket 15, as determined by the Commission is \$2.157 per ton. The weighted average realization for 3,858,201.98 net tons is \$2.1179 per ton. In making this computation, 93.04 per cent of the tonnage produced in District 6 for the year 1937 was used.

There is, therefore, a difference of 4 cents between the yield upon the tonnage under the prices as proposed by the District Board for District No. 6 and the weighted average cost of production

for Minimum Price Area No. 1 as determined by the Commission. Since there is a volume of tonnage flowing below the weighted average cost, it must be raised, consequently, some tonnage price must be increased in order to "equal as nearly as may be" the weighted average cost.

By decreasing the prices in Size Groups 6, 7 and 8 from \$2.157 to \$2.15 (eliminating the mills) and by increasing the railroad fuel price from \$2.05 to \$2.15, the following effect would be had upon the estimated realization:

Total tons as shown in Exhibit 324.....	3,858,201.98
Total amount as shown in Exhibit 324.....	\$8,171,480.70
Average realization per ton as shown in Exhibit 324.....	\$2.11795
Less \$0.007 per ton on 1,647,970 tons in Size Groups 6, 7 and 8.....	\$11,535.70
Plus \$0.10 per ton on 872,705.48 tons increase on railroad fuel.....	\$87,270.50
Net adjustments.....	\$75,734.71
Net estimated realization.....	\$8,247,230.41
Net estimated realization per ton.....	\$2.13750
<i>Per ton</i>	
Weighted average cost for minimum price area No. 1 as per General Docket 15.....	\$2.157
Preliminary Realization after adjustments.....	2.137
Difference.....	\$0.020

The Commission finds that the realization is equal as nearly as may be to the weighted average cost for Minimum Price Area No. 1.

The District Board for District 6 is composed of members thoroughly experienced in the production and sale of coals in District 6. Said District Board approved the schedule of proposed minimum prices as amended before submitting same to the Commission and in the judgment of said District Board the minimum prices as they appear in the amended schedule are just and equitable between the producers within the district; have due regard to the interests of the consuming public, and do not and will not permit dumping; reflect as nearly as possible the relative market values of the various kinds, qualities and sizes of coal produced in said district; reflect price variations as to values as to uses; reflect price variations as to consuming market areas as to the various kinds, sizes and qualities of coal produced within the district for shipment into any consuming market areas and conform to the requirements of Order 247 of the Commission and to the provisions of Section 4, II (a) of the Act.

And now, upon the record in this cause, upon the evidence, both documentary and otherwise, and upon the above and foregoing facts found to exist, the Commission finds:

That the schedule of proposed minimum prices as amended and submitted to the Commission by the District Board for District 6 should be corrected and revised in order that same may better conform to Order 247 of the Commission and to the provisions of Section II (a) of the Act, and said schedule is in the following respects modified:

Item 3 on page 2 of the schedule should be revised to read, "All size designations herein are for round hole screens or their equivalent, except when otherwise designated. When other types of screens are used, the District Board, subject to the approval of the Commission, shall determine the actual size designations of coal so prepared."

Item 8 on page 2 of the schedule should be revised to read, "When coal is subjected to any chemical, oil or waxing process, an additional charge of not less than 10 cents per net ton shall be made."

Page 11 of the schedule should be corrected to eliminate the decimal point for all size groups and the 7 mills appearing in Size Groups 6, 7 and 8 should likewise be eliminated.

Page 11 of the schedule should be revised to change the price in Size Group 8 for railroad fuel from \$2.05 to \$2.15 per ton.

Page 12 of the schedule should be revised to read, "The Market Areas to

which coal produced in District 6 ordinarily moves includes destinations in the States of . . .", eliminating the word "all".

The protests of the Buffalo Coal and Coke Company and the Cove Hill Coal Company are granted as follows, and in all other respects denied: In Size Groups 9, 10, 11 and 12, a ten cent per net ton differential under the present proposed prices for these size groups is granted, and the Price Classifications for these Protestants, on page 5 of the schedule, should be amended to read as follows:

Size Group 9—E.

Size Group 10—E.

Size Group 11—E.

Size Group 12—E.

That the District Board for District 6, as directed by Order 247 of the Commission, proposed minimum prices free on board transportation facilities at the mines for kinds, qualities and sizes of coal produced within the District, and classification of coal and price variations as to mines and consuming market areas, and values as to uses.

That the District Board for District 6, as directed in Order 247 of the Commission, submitted to the Commission a schedule of proposed minimum prices, together with the data upon which same were computed, including but without limitation, the factors considered in determining the price relationships.

That the minimum prices as proposed by the District Board for District 6, and as herein modified, reflect as nearly as possible, the relative market value of the various kinds, qualities and sizes of coal produced within the district; are just and equitable as between producers within the District; have due regard to the interests of the consuming public, and do not permit dumping.

That the minimum prices proposed by the District Board for District 6, for any kind, quality, or size of coal for shipment into any consuming market area, as herein modified, are just and equitable between producers within the district.

That the minimum prices proposed by the District Board for District 6, as herein modified, yield a return per net ton for the District, equal as nearly as may be to the weighted average of the total costs per net ton of the tonnage of Minimum Price Area 1, the price area in which District 6 is placed under the Act.

That the schedule of proposed minimum prices, as amended, and submitted to the Commission by the District Board for District 6, as amended, corrected, modified and revised as hereinbefore set forth conforms to Order 247 of the Commission and to the requirements of Section 4, II (a) of the Act, and as so amended, corrected, modified and revised, said schedule be and the same is hereby approved by the Commission to serve as a basis for the coordination

provided in Section 4 II (b) of the Act. A copy of said schedule, as amended, corrected, revised and modified appears in the Appendix for District 6.

APPENDIX FOR DISTRICT No. 6

SCHEDULE OF MINIMUM PRICES AS MODIFIED AND APPROVED TO SERVE AS A BASIS FOR COORDINATION

NOTE.—The prices in this schedule are not the final prices that will be established on coal for shipment by Code Members within this district into consuming markets of this district. In the ultimate establishment of the effective minimum prices, pursuant to subsection (b) of Part II, Section 4 of the Act, the minimum prices in this schedule are subject to such increase or decrease respectively, as may be necessary to carry out the provisions of subsections (a) and (b) of Part II, Section 4 of the Act.

F. W. McCULLOUGH,
Secretary.

Issued January 4, 1939.

Price Instruction and Exceptions

1. The schedule of prices shown herein applies f. o. b. transportation facilities at mines on all coal produced by Code members in District No. 6.

2. All prices are subject to the marketing rules and regulations issued by the National Bituminous Coal Commission.

3. All size designations herein are for round-hole screens or their equivalents except when otherwise designated. When other types of screens are used, the District Board, subject to the approval of the Commission, shall determine the actual size designation of coal so prepared.

4. In the sale of coal to destined points outside the boundary of the United States, prices stipulated herein are for payment in U. S. funds.

5. All prices herein are per net ton of 2,000 pounds, f. o. b. transportation facilities at the mines.

6. Any mine of a Code member whose mine classification is not shown herein shall take the same classification as adjacent mines.

7. All grades of coal washed shall be classified in the same manner as in the case of raw coal; namely, on the basis of the kind, quality and size of the coal as loaded into transportation facilities.

8. When coal is subjected to any chemical, oil or waxing process, an additional charge of not less than 10 cents per net ton shall be made.

Base Size Groupings

Size 1.—All lump over 4", 5 x 8, 4 x 8.

Size 2.—2½" to 4" lump inclusive, 4 x 6, 4 x 5.

Size 3.—1½" to 2" lump inclusive, 3 x 6, 2 x 6, 1¼ x 6.

Size 4.—¾" to 1¼" lump inclusive, 3 x 5, 3 x 4, 2 x 5, 1¼ x 5.

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses—Continued

Table with columns: Company, Mine, Seam, Price classification and size group numbers (1-12). Lists various coal companies and their products.

Size Groups

Table defining size groups for coal lumps. Columns: Lump (maximum screen size), Double screened sizes (Maximum top size, Maximum bottom size). Lists sizes from 1 to 12.

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses

Table with columns: Company, Mine, Seam, Price classification and size group numbers (1-12). Lists various coal companies and their products.

Prices in Cents per Ton of 2,000 Pounds for Shipment Into All Consuming Markets, for Railroad Fuel

Prices in Cents per Ton of 2,000 Pounds for Shipment Into All Consuming Markets, for All Purposes Except Railroad Fuel and Bunker Purposes

Table with columns: Price Index, Size groups (1-12). Contains price index data for various coal types.

Prices in Cents per Ton of 2,000 Pounds for Shipment Into All Consuming Markets, for Bunker Fuel

Price index	Size groups											
	1	2	3	4	5	6	7	8	9	10	11	12
C.....					225							

Geographical Description of Consuming Market Areas to Which Prices Apply

The Market Areas to which coal produced in District No. 6 ordinarily moves includes destinations in the States of: Connecticut, Delaware, Indiana, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Virginia, Vermont, West Virginia, and Wisconsin; also District of Columbia and Dominion of Canada.

MINIMUM PRICE AREA No. 1—DISTRICT No. 13 WITHIN THE AREA DEFINED AS MINIMUM PRICE AREA No. 1, COMPRISING VAN BUREN, WARREN AND McMINN COUNTIES, TENNESSEE

PROPOSED MINIMUM PRICES

Pursuant to Order No. 251 of the Commission, the District Board for District No. 13 prepared a schedule of proposed minimum prices f. o. b. transportation facilities at the mine for kinds, qualities and sizes of coal produced by the one code member within that part of the District which lies within Minimum Price Area No. 1, comprising Van Buren, Warren and McMinn Counties, Tennessee, and such classification of coal and price variations as to mines and consuming market areas, and also such values as to uses and seasonal demands as it deemed proper and within the authority conferred by the Act.

There is only one code member within said part of District No. 13, and he operates only one mine. The District Board served a copy of its proposed schedule of minimum prices upon this code member, and also submitted a copy thereof, together with the data upon which the proposed minimum prices were computed and the factors that were considered in determining the price relationships, to the Commission. Said proposed schedule was introduced in evidence herein as Exhibit No. 495-A.

Said code member protested that the level of prices proposed by the District Board for his coal was too high and that the maximum price therefor should not exceed \$1.50 per net ton. The level of the prices proposed by the District Board for his coal was designed to yield a return as nearly as may be to the weighted average cost of \$2.157 per net ton which the Commission determined for Mini-

um Price Area No. 1 in which said part of District No. 13 is located. Obviously, therefore, a maximum price of \$1.50 per net ton, as contended for by the protestant, would not return a realization equal as nearly as may be to such weighted average cost.

The District Board explained to the protestant by letter that its proposed schedule was one of relationships of the kinds, qualities and sizes of coal, and not one of the level of prices, and nothing further was heard from him. Neither did said protestant file a protest with the Commission. No changes were necessitated by said protest and none were made by the District Board as a result thereof in its proposed schedule, Exhibit No. 495-A.

The schedule of minimum prices proposed by District Board No. 13 for said part of the District was prepared, considered and adopted at a meeting of the District Board, and the Chairman of the Board, who is thoroughly familiar with the marketing and distribution of coals produced in District No. 13, testified in support thereof. His knowledge of the coals of District No. 13 is based upon many years of experience in the District.

District Board No. 13 consists of fifteen members, all of whom have been connected with the coal industry for a good many years and practically all of whom have had long experience in the mining and marketing of coal. The members of this Board represent production from practically the entire District, and they have an intimate knowledge of the relative values of the coals produced in the entire District. By reason of this knowledge they are fully capable of judging the price differentials and relationships between the kinds, qualities and sizes of coal produced within the District, including that part thereof which lies within Minimum Price Area No. 1.

The schedule of minimum prices proposed by the District Board includes all of said part of District No. 13 in one production field. The mining of coal in the three counties comprising said field is confined, in so far as the District Board has knowledge, to the mine operated by the one code member. This is a truck mine with no rail connections and deliveries therefrom are made only by truck. The mine is located on the northern edge of the Sewanee seam of coal and all coal produced therein is mined from said seam. The Sewanee seam is mineable in that part of District No. 13 that carries the carboniferous measures in Tennessee, and it extends for a short distance into the State of Alabama.

The District Board designated the State of Tennessee as the only consuming market area into which said code member ships his coal, and the minimum prices proposed by the District Board are the same for this entire consuming market area.

The schedule of minimum prices proposed by the District Board contains six size groups numbered from one to six and one price classification designated "A". The code member within said part of District No. 13 submitted distribution data showing by tons the various sizes of coal that he produced during the period August 1937 to July 1938, inclusive, and analyses of his coal to the District Board. The District Board had these data and also analyses submitted by other code members operating on the Sewanee seam before it at the time it prepared its proposed schedule of minimum prices, and it related the coals of said code member according to their value, based on analyses, physical characteristics and market history.

The size groups and the price classification which the District Board proposed for the coals of said code member are set forth on page 4, of Exhibit No. 495-A. The size groups are numbered in descending order as to size.

Size Group No. 1 was used to designate screened coal-bottom size larger than 2"; Size Group No. 2 to designate double screened coal-maximum top size 5", maximum bottom size 2"; Size Group No. 3 to designate double screened coal-maximum top size 2", maximum bottom size 1"; Size Group No. 4 to designate straight mine-run; Size Group No. 5 to designate Resultant 2x0"; and Size Group No. 6 to designate Resultant 1x0". Only one price classification was proposed for each size group and this classification was designated by the letter "A".

The distribution data submitted by the code member, which represent 2,544 net tons produced within said part of District No. 13 during the period August 1937 to July 1938, inclusive, together with the analyses submitted by him were introduced in evidence as Exhibit No. 495-B. The size groups and the price classification proposed by the District Board appear to be reasonable and necessary, and they are hereby approved.

The District Board proposed eight price instructions, all of which are set forth on page three of the proposed schedule, Exhibit No. 495-A. Item No. 1 thereof provides that:

"The schedule of prices shown herein applies f. o. b. trucks or wagons at mines, on all coal produced by code members in the District shown on the title page hereof."

It appears, however, that the following language would more nearly conform to the provisions of Section 4, Part II (a) of the Act, which provides that all coal shall be priced f. o. b. "Transportation Facilities", and it will be inserted in lieu of the language of Item No. 1 as said language now appears on page 3 of the proposed schedule, Exhibit No. 495-A:

"The schedule of prices shown herein applies f. o. b. transportation facilities at

mines, on all coal produced by code members in the District shown on the title page hereof."

Item No. 3, page 3, of the proposed schedule provides that:

"If any size is made for which a price is not designated herein, such size shall be sold at the price applicable to the next larger size."

The evidence indicates that the following language would more nearly express the intentions of the District Board, and it will be inserted in lieu of the language of Item No. 3 as said language now appears on page 3 of the proposed schedule, Exhibit No. 495-A:

"If any size is made for which a price is not designated herein, such size shall be sold at the price applicable to the next higher priced size group, and priced accordingly."

Item No. 4, page 3, of the proposed schedule provides that:

"All size designations herein are for round hole screens. When other types of screens are used the round hole equivalent shall control the size."

The evidence also indicates that the following language would more nearly express the intentions of the District Board with respect thereto and the Commission finds that the above language of Item No. 4 as it now appears on page 3 of the proposed schedule should be deleted and the following language inserted in lieu thereof:

"All size designations herein are for round hole screens, or their equivalent, except when otherwise designated. When other types of screens are used, the District Board, subject to the approval of the Commission, shall determine actual size designation of the coal so prepared."

Items Nos. 6, 7 and 8, page 3, of the proposed schedule, provide, respectively, as follows:

(6) "When coal is subjected to any chemical, oil or waxing process, an additional charge of not less than 10 cents per net ton shall be made."

(7) "Seasonal discounts as follows may be allowed on domestic coal:

"Size groups 1, 2, and 3.—May, 50; June, 40; July, 30; Aug., 20; Sept., 10."

(8) "All prices herein are for unwashed coal; washed coal shall be ten cents per net ton higher than unwashed coal."

These price instructions appear to be reasonable and necessary and they are hereby approved.

No protests to the proposed schedule submitted by the District Board, Exhibit No. 495-A were filed with the Commission.

Exhibit No. 495-B shows the percentage of each size group produced by the

code member within said part of District No. 13 during the period August 1937 to July 1938, inclusive; the net realization per net ton for each size group after allowance for seasonal discounts; and the proportion of return in cents per net ton that each size group would give in relation to the total return per net ton at the prices proposed by the District Board and submitted to the Commission in Exhibit No. 495-A.

The average realization to be expected from the minimum prices proposed by the District Board for the coals produced by said code member in said part of District No. 13 has been computed by the District Board at \$2.167 per net ton as shown on Exhibit No. 495-A. The weighted average cost for Minimum Price Area No. 1 in which said part of District No. 13 is located, as determined by the Commission is \$2.157 per ton. There is, therefore, a difference of only 1 cent per net ton between the average yield upon the tonnage under the prices as proposed by the District Board for said part of District No. 13 and the weighted average cost of production for Minimum Price Area No. 1, as determined by the Commission.

District Board No. 13 approved the schedule of proposed minimum prices which it submitted to the Commission and, in the judgment of said Board, the prices which it proposed to the Commission in said schedule, Exhibit No. 495-A, under the Commission's Order No. 251, are just and equitable for the code member within said part of District No. 13, have due regard to the interests of the consuming public, and do not and will not permit dumping. It was also the judgment of the District Board, that the prices it so proposed to the Commission reflect, as nearly as possible, the relative market values of the various kinds, qualities and sizes of coal produced in said part of District No. 13, and that said schedule of proposed minimum prices also reflects price variations as to values, price variations as to consuming market areas of the various kinds, sizes and qualities of coal produced within said part of District No. 13, and conform to the requirements of said Order No. 251 of the Commission.

And now, upon the record herein, and upon the evidence submitted, both oral and documentary, and upon the foregoing facts found to exist, the Commission finds:

That the District Board for District No. 13, as directed in Order No. 251 of the Commission, proposed minimum prices free on board transportation facilities at the mines for kinds, qualities and sizes of coal produced within said part of District No. 13, classification of coal and price variations as to mines and consuming market areas, and values as to seasonal demand.

That the District Board for District No. 13, as directed in Order No. 251 of

the Commission, submitted to the Commission a schedule of such proposed minimum prices, together with the data upon which same were computed, including, but without limitation, the factors considered in determining the price relationships.

That the minimum prices proposed by the District Board for said part of District No. 13, as herein modified, reflect, as nearly as possible, the relative market value of the various kinds, qualities and sizes of coal produced within said part of District No. 13; are just and equitable as to the code member within said area; have due regard to the interests of the consuming public, and do not permit dumping.

That the minimum prices proposed by the District Board for said part of District No. 13 for any kind, quality or size of coal for shipment into any consuming market area, as herein modified, are just and equitable to the code member within said area.

That the minimum prices proposed by the District Board for said part of District No. 13, as herein modified, yield a return per net ton for said area equal as nearly as may be to the weighted average of the total costs per net ton of the tonnage of Minimum Price Area 1, the price area in which said part of District No. 13 is placed under the Act.

That the schedule of proposed minimum prices, as submitted to the Commission by the District Board for said part of District No. 13, as amended, corrected, modified and revised, as hereinabove set forth, conforms to Order No. 251 of the Commission and to the requirements of Section 4-II (a) of the Act, and as so amended, corrected, modified and revised, said schedule should be, and the same is hereby, approved by the Commission to serve as a basis for the coordination provided for in Section 4-II (b) of the Act. A copy of said schedule as amended, corrected, revised and modified appears in the Appendix for said part of District No. 13.

APPENDIX FOR DISTRICT NO. 13—VAN BUREN, WARREN AND McMINN COUNTIES (TENNESSEE) IN MINIMUM PRICE AREA No. 1

SCHEDULE OF MINIMUM PRICES AS MODIFIED AND APPROVED TO SERVE AS A BASIS FOR COORDINATION

NOTE.—The prices in this schedule are not the final prices that will be established on coal for shipment by Code Members within this district into consuming markets of this district. In the ultimate establishment of the effective minimum prices, pursuant to subsection (b) of Part II, Section 4 of the Act, the minimum prices in this schedule are subject to such increase or decrease respectively, as may be necessary, to carry out the provisions of subsections (a) and (b) of Part II, Section 4 of the Act.

F. W. McCULLOUGH,
Secretary.

Issued January 4, 1939.

Price Instructions

1. The schedule of prices shown herein applies f. o. b. transportation facilities at mines, on all coal produced by Code Members in the District shown on the title page hereof.

2. All prices are subject to the Marketing Rules and Regulations issued by the National Bituminous Coal Commission.

3. If any size is made for which a price is not designated herein, such size shall be sold at the price applicable to the next higher priced size group, and priced accordingly.

4. All size designations herein are for round hole screens, or their equivalent, except when otherwise designated. When other types of screens are used, the District Board, subject to the approval of the Commission, shall determine actual size designation of the coal so prepared.

5. All prices herein are per net ton of 2,000 pounds, f. o. b. transportation facilities at the mines, unless otherwise designated.

6. When coal is subjected to any chemical, oil or waxing process, an additional charge of not less than 10 cents per net ton shall be made.

7. Seasonal discounts as follows may be allowed on domestic coal:

Size groups 1, 2 and 3.—May, 50; June, 40; July, 30; Aug., 20; Sept., 10.

8. All prices herein are for unwashed coal; washed coal shall be ten cents per net ton higher than unwashed coal.

Size Groups

Description

Size Group No. 1.—Screened coal—bottom size larger than 2"

Size Group No. 2.—Double screened coal—maximum top size 2", maximum bottom size 2"

Size Group No. 3.—Double screened coal—maximum top size 2", maximum bottom size 1"

Size Group No. 4.—Straight Mine Run

Size Group No. 5.—Resultant 2 x 0"

Size Group No. 6.—Resultant 1 x 0"

Alphabetical List of Code Members Showing Price Classification by Sizes for All Uses Except as Separately Shown

Code member	Mine	Sub-dist.	Seam	Size groups					
				1	2	3	4	5	6
C. W. Hart	Hart		Sewanee	A	A	A	A	A	A

Prices for Shipment Into Market Area Nos.

Price classification	Prices in cents per net ton of 2,000 pounds and size group numbers					
	1	2	3	4	5	6
A	245	230	220	215	200	180

Geographical Description of Consuming Market Area to Which Prices Apply

Tennessee.

MINIMUM PRICE AREA NO. 1—DISTRICT BOARD NO. 2

PROPOSED MARKETING RULES AND REGULATIONS

A witness for District Board No. 2, properly qualified as an expert in the marketing of coal in that District, introduced into evidence as Exhibit No. 595 the rules and regulations proposed by District Board No. 2 in compliance with Commission Order No. 248. The witness testified that these rules and regulations were submitted to Code Members within District No. 2 and that two (2) protests were filed with the District Board. These protests related to the amounts of discounts allowable to distributors on certain classes of business. A hearing was granted to these protestants and since the amounts of discounts allowable to distributors had previously been proposed to the Commission by the District Board in Docket No. 12, the District Board was of the opinion that this schedule of discounts should be eliminated from the proposed rules and regulations. A new schedule of marketing rules and regulations was drawn up by the District Board on September 16, 1938, and any reference to amounts of discounts was omitted therefrom. This new schedule of rules and regulations was filed with the Commission pursuant to Order No. 248.

The witness for District No. 2 testified that this Board did not intend, by the definition of "sales agent" as contained in paragraph 2 of Section I, and by rule 3 of Section II, that a Code Member should evidence in writing the appointment of an ordinary salesman who is regularly and continuously employed at a stated salary per week and that such writing should be filed with the Statistical Bureau. Therefore, we are of the opinion that definition 2 of Section I should be modified to read as follows:

A "sales agent" is a person who, as agent of a code member (and therefore without purchasing the coal), sells coal produced by such code member for him or on his behalf: *Provided*, that "sales agent" shall not include an individual (herein referred to as a "salesman") regularly and continuously employed by a code member, whose sole compensation is a stated salary per week, per month, or per year, and who regularly devotes the major portion of his time to the solicitation of purchases of coal produced by his code member employer.

For the purpose of clarification, we modify definition 3 of Section I to read as follows:

A "commission" is the total of all compensations and allowances received by a sales agent from a code member for services rendered in the sale of coal.

The Chairman stated at the opening of the hearing that rules relating to registration of distributors, including farmers' cooperatives who may be entitled to register as such, should not be submitted at this hearing but should properly be submitted under Docket No. 12. In light of this statement, the witness for District No. 2 recommended the deletion from the District Board's proposals of any rules relating to registration of wholesalers and farmers' cooperatives. Since the definitions of "Wholesaler" and "Farmers' Cooperative Organization" proposed by the District Board in Section I, paragraphs 4 and 5, are determinative of the persons entitled to register as distributors and farmers' cooperative organizations we delete these definitions from the rules at this time and we substitute therefor the following definition of a "registered distributor":

A "registered distributor" is a person who has been duly registered by the Coal Commission pursuant to the rules and regulations prescribed by the Commission for the administration of Section 4 II (h) of the Act.

We are of the opinion that the definition of a "wholesaler's discount", proposed in Section I of paragraph 6, is not a proper subject for consideration at this hearing but should be determined in a hearing held pursuant to Section 4 II (h) of the Act.

The term "retailing" appears only in a rule which provides that "no discount from minimum or other prices shall be paid or allowed on coal sold to any person for retailing by him". This rule appears in rule 4 of Section V. The term is defined as the selling of coal in lots or upon conditions other than wholesale. It is apparent that the District Board intended to prohibit the payment of all discounts except as authorized by Section 4 II (h) of the Act. Such a rule is, in fact, determinative of those persons who may receive discounts under Section 4 II (h) of the Act. Also, as stated before, all rules pertaining to the regulation of distributors and discounts received by them have been deleted with the exception of a rule hereinafter discussed requiring a person to be registered as authorized to receive a discount before a Code Member may allow him any. Accordingly, the definition of "retailing" contained in paragraph 7 of Section I should be deleted.

For the purpose of clarification, we modify the definition of "commitment" contained in paragraph 10 of Section I to read as follows:

A "commitment" is the status of a contract between the time a quotation is accepted or an option is exercised and the time the contract is formally reduced to writing.

The terms "registration" and "registered", as defined in paragraph 19 of Section I, are contained only in rules relating to registration of wholesalers and farmers' cooperative organizations.

As previously stated, all rules governing registration of distributors have been deleted and the definition "registered distributor" has been substituted for the definition of "wholesalers" and "farmers' cooperative organizations". Accordingly, the definition of "registration" and "registered" should be deleted.

We are of the opinion that definitions 16 to 25, contained in Section I of the composite findings hereinafter given, are reasonable and desirable. The District Board did not define these terms but they are necessary for the proper interpretation of rules contained in the attached composite findings.

The witness for District Board No. 2 testified that in his opinion it would be reasonable and desirable to provide for the filing of agreements modifying sales agency contracts. Accordingly, we modify rule 3 of Section II of the District Board's proposed rules to provide for such filing. In order fully to effectuate the purpose of the rule, we are of the opinion that the writing should set forth all the terms and conditions of the contract, including the amount or basis of the sales agent's commission. Such modification is hereinafter set forth in rule 4 of Section II of the composite findings.

The witness for District Board No. 2 testified that the sales representative contemplated by rule 4 of Section II is not employed by the Code Member at his principal place of business or at a regularly established sales office. Accordingly, we so modify rule 4 of Section II of the District Board's proposed rules. It is apparent that the District Board, by this rule, intended that each Code Member shall file monthly with the Statistical Bureau a statement showing the tonnage sold to distributors and the amount of discounts paid or allowed to them. Accordingly, the rule should be further modified so as clearly to require such filing. These modifications are set forth in rule 5 of Section II of the attached composite findings.

Rule 5 of Section II of the District Board's proposed rules provides that a list showing the names and addresses of sales agents and Code Members for whom such agents act shall be published by the Coal Commission from time to time. In order properly to effectuate this rule, the Code Member should report to the Statistical Bureau the expiration, termination or rescission of all sales agency contracts. Likewise, the Code Member should file with the Coal Commission a list showing the names and addresses of his sales agents and should report any change in such list. These modifications are set out in rules 4 (C) and 6 of the attached composite findings. The witness testified that in his opinion it would be reasonable to require a sales agent to disclose the identity of his Code Member principal so as to protect the consumer from any possible fraud or subterfuge. He further stated that it would be reasonable and

desirable for the sales agent to disclose the fact of the agency relationship if such agent's name appears in the transaction. Therefore, we are of the opinion that the following rule should be added to the rules proposed by the District Board in Section II of Exhibit No. 595:

Each Code Member shall require all his sales agents clearly to set forth upon any form of solicitation, contract, spot order, invoice, and statement of account covering coal sold or to be sold, the name of such Code Member principal, and the name of the mine or mines from which shipment was made or is to be made. If the name of the sales agent also appears in the transaction, then the above-mentioned forms shall also disclose the fact of agency relationship with the Code Member principal.

Rule 6 of Section II of the rules proposed by District No. 2 provides that all agency contracts shall be held by the Coal Commission as the confidential records of said parties and shall not be made public without the consent of the Code Member from whom the same shall have been obtained. The witness for District No. 2 was of the opinion, however, that the Commission should have authority to disclose such information in a proceeding against a Code Member by way of enforcement of the Act. We are of the opinion that this provision is a reasonable one and that the rule should be so modified.

Rule 7 of Section II of the rules proposed by District Board No. 2 should be clarified in the manner set forth in rule 9 of Section II of the attached composite findings.

We are of the opinion that rule 6 of Section V of the rules proposed by District No. 2, in so far as it prohibits the granting of a discount to a registered distributor under the conditions enumerated therein, cannot be properly enforced and should be deleted. In a proceeding against a Code Member for violation of this rule, it would be very difficult to prove knowledge on the part of the Code Member as to how the distributor intended to distribute the coal which he purchased from the Code Member or as to the relationships which may exist between the distributor and the consumer to whom he sells the coal. From the point of view of enforcement, this rule could be properly effectuated only by a rule which would prohibit the distributor from receiving a discount in the instances enumerated in the rule. Such a rule is properly the subject of consideration under a hearing held pursuant to Section 4, Part II (h) of the Act.

In so far as the above rule prohibits the payment of a commission to a sales agent where the sales agent owns or controls the purchaser to whom he sells the coal, we are of the opinion that this rule is a proper subject for a hearing held under Section 4 II (g) of the Act, which provides that prices may not be evaded through the use of subsidiaries or affiliated sales. Accordingly, we find that

rule 6 of Section V should be modified in the manner set forth in rule 10 of Section II of the attached composite findings.

The witness for District Board No. 2 stated that in his opinion it would amount to a rebate if the sales agent's compensation or commission were determined on a tonnage basis and the Code Member included in the computation of such commission any part of the tonnage of coal sold by him to the sales agent. The witness stated that any rule prohibiting the payment of such a commission would be reasonable and that the making of such a contract would be in violation of the Act. Accordingly, we are of the opinion that the following rule is reasonable and should be added to Section II of the rules proposed by the District Board:

When any commissions are paid to a sales agent on a tonnage basis, the Code Member shall not include in the computation of such commissions any part of the tonnage of coal sold by him to the sales agent, whether for consumption or resale.

In light of the statement by the Chairman as to the scope of the hearing, we are of the opinion that Sections III and IV of the rules proposed by District Board No. 2 should be eliminated and the following rule substituted therefor:

No Code Member or sales agent of a Code Member shall pay or allow any discount from minimum prices to any person unless such person has been registered by the Coal Commission as authorized to receive such discount at the time of the sale.

Rule 1 of Section V of Exhibit No. 595 should be eliminated for the reason that it is, in substance, the same as rule 9 of Section II as contained in the attached composite findings. Rules 2 and 3 of Section V should be deleted for the reason that they are, in substance, the same as the rule substituted in these findings for Sections III and IV.

Rule 4 of Section V should be deleted because, in light of the previous reasons, the rule is determinative of persons entitled to a discount and is not the proper subject of this hearing.

Rule 5 of Section V should be amplified for the purpose of clarity to read as follows:

Code Members or their sales agents may allow discounts from minimum prices on sales of coal to registered distributors, not in excess of the maximum discount or price allowance prescribed by the Coal Commission upon such sales. Only one such discount may be allowed on any such sale.

The witness for District No. 2 stated that it was desirable that the minimum prices in effect at the time of the making of a contract should govern while rule 1 of Section VI is in effect. We are of the opinion that the governing minimum price under the Act is the price in effect

at the time of the making of a contract. The rule further provides that contracts for periods not exceeding one (1) year may be entered into with governmental agencies. In order to minimize the advantages a governmental agency would obtain while rule 1 of Section VI is in effect by reason of having the right to contract for a period of a year, we are of the opinion that it is reasonable and desirable to provide that the minimum price in effect at the time of delivery should govern on deliveries after the first thirty (30) days of such contracts. The rule as proposed by the District Board provides that such contracts may be made only with governmental agencies as are required by law to purchase coal for a period in excess of thirty (30) days. The witness was of the opinion that it would be more reasonable simply to permit such contracts with governmental agencies who purchase through competitive bidding. The witness was of the opinion that such an exception should also be granted to governmental agencies where by virtue of any express exemption in the statute or ordinance they are authorized by law to enter into contracts for a period of one (1) year without regard to competitive bidding. In order to place governmental agencies and other purchasers on an equal basis during the spot order period, the governing minimum price for deliveries during the first thirty (30) days of a contract with a governmental agency should be the price in effect at the time of the making of the contract. Accordingly, we find that rule 1 of Section VI should be modified to read as follows:

Subject to further order of the Coal Commission no Code Member or sales agent of a Code Member shall enter into any agreement or order for the sale of coal providing for delivery for a period in excess of that authorized for spot order, and no prices shall be less than the applicable minimum prices in effect at the time of the making of the agreement or order: *Provided*, however, that contracts for periods not exceeding one (1) year may be made with agencies of the Federal Government or with agencies of State or local governments, where the contract is entered into through competitive bidding, at the following applicable minimum prices:

(a) For deliveries during the first thirty (30) days of the contract, at not less than the applicable minimum price in effect at the time of the making of the agreement;

(b) For deliveries thereafter, at not less than the applicable minimum price in effect at the time of delivery if such price is higher than the contract price.

Provided, further, that contracts for periods not exceeding one (1) year at prices not less than the said applicable minimum prices may be made with agencies of the Federal Government or with such

agencies of the State or local governments, in the absence of competitive bidding, where by virtue of an express exemption in the statute or ordinance such agencies may enter into contracts for the purchase of coal without regard to competitive bidding.

It was the opinion of the witness for District No. 2 that quotations should become null and void only upon the establishment of a revised minimum price higher than the quoted price. District Board No. 2 did not propose any rule limiting the effective date of quotations while rule 1 of Section VI is in effect. We are of the opinion that in order properly to effectuate the rule limiting agreements or orders to a thirty (30) day delivery period, quotations should be uniformly limited to a fourteen (14) day effective period. District Board No. 2 likewise proposed no rule limiting the effective period of quotations and options when rule 1 of Section VI is revoked by the Commission and Code Members are permitted to enter into contracts in excess of thirty (30) day delivery periods. The witness for District Board No. 2, however, agreed that when rule 1 of Section VI is revoked, Code Members should be permitted to enter into contracts providing for a delivery period not in excess of twelve (12) months, except by special permission and approval by the Coal Commission. In order properly to effectuate the rule limiting contracts to a twelve (12) month period, we are of the opinion that quotations and options should be uniformly limited to a fourteen (14) day effective period when rule 1 of Section VI is revoked.

In light of the testimony, we modify rule 2 of Section VI to read as follows:

2. While the preceding rule is in effect, no option may be given by a Code Member or sales agent for the purchase of coal. When the above rule is suspended or revoked by the Coal Commission, options for the sale of coal may be given for a period not exceeding fourteen (14) days. No options may be given at a price less than the applicable minimum price in effect at the time of the giving of the option. If the applicable minimum price is increased beyond the quoted price within such fourteen (14) days and the option shall not have been exercised at that time, the option thereupon shall become null and void. *Provided*, however, that in connection with offers to sell to the United States Government, or States or political subdivisions thereof, options may be given for a period not exceeding forty-five (45) days from the date of the offer or from the final date for the filing of offers.

3. Quotations may also be given for a period of not exceeding fourteen (14) days. If the applicable minimum price is increased beyond the quoted price within such fourteen (14) days and the quotation shall not have been accepted

at that time, the quotation thereupon shall become null and void.

4. Every quotation and option shall provide that it is made subject to the provisions of the Marketing Rules and Regulations of the Coal Commission.

5. All quotations and options must be made or confirmed in writing. Every Code Member, or his sales agent, shall require of his offeree that the acceptance of a quotation or the exercise of an option be in writing.

The witness for District Board No. 2 testified that it would be more reasonable to require spot orders to be acknowledged or accepted within five (5) business days from the date of their receipt rather than three (3) business days as proposed by District Board No. 2. We modify rule 1 of Section VI to read as follows:

A spot order shall be in writing or confirmed in writing within five (5) business days from the date of the making thereof.

A witness for District Board No. 2 testified that rule 2 (a) of Section VII proposed by District Board No. 2 is necessary in order to prevent a sale below the minimum price by absorbing transportation charges. Accordingly, this rule should be deleted and considered separately in a hearing held pursuant to Section 4 II (g) of the Act, which prohibits such absorption.

In light of the testimony of the witness for District Board No. 2, we find that rules 2 (b), (c) and (d) of Section VII should be modified and clarified in the manner set forth in rules 2 (a), (b) and (c) of Section V of the composite findings hereinafter given.

The witness for District No. 2 was of the opinion that there should be rules and regulations governing contracts when rule I of Section VI of the Board's proposed rules and regulations were revoked by the Coal Commission. In view of his testimony we find that the following rule is reasonable and necessary:

Every contract shall be in writing and shall express the entire agreement between the parties. The contract shall clearly state the date of execution, the effective date, the expiration date, the price agreed upon, the terms of payment, the size and grade of coal, the number of cars or tonnage to be shipped, the name of the Code Member and the name of the originating mine, and, where the coal is purchased for consumption, the use to which the coal is to be applied. Contracts may also be made either (a) calling for a buyer's entire requirements or a stated percentage of his requirements, showing the maximum tonnage to be shipped thereunder, or (b) covering a buyer's requirements and stating the estimated tonnage to be shipped with an allowable overshoot of not exceeding ten (10) per cent of such estimated tonnage.

The witness was of the opinion that the following rule would be desirable and necessary if the period of contracting were to be limited to twelve (12) months:

No contract for the sale of coal shall provide for deliveries to commence at a date later than ninety (90) days from the date upon which such contract is entered into.

In light of the witness' testimony we find that the following rules are reasonable for District No. 2:

No contract shall be made at a price below the applicable minimum price as established by the Coal Commission at the time of the making of the contract for the coal to be sold thereunder, and no coal may be delivered upon a contract at a price below such applicable minimum price.

No contract shall provide for delivery over a period in excess of twelve (12) months except by special permission and approval of the Coal Commission, upon a showing of the necessity of meeting the long term contract competition of oil, gas, or other fuels or forms of power, or for such other reasons as the Commission may deem appropriate in order to further the effectual administration of the Act.

Any change in the terms of a contract, not in violation of these Rules and Regulations, shall be evidenced by a written agreement and shall conform to all the requirements set forth in these Rules and Regulations.

A report of every commitment shall be filed by the Code Member or his sales agent with the Statistical Bureau or Bureaus, within fifteen (15) business days from the date of the making of the agreement. Such report shall set forth all the terms and conditions of the commitment. A true copy of every contract and of any agreement for modification thereof shall be filed with the Statistical Bureau within fifteen (15) business days from the date of execution of such contract or agreement for modification: Provided, however, that a report of the commitment need not be filed if a copy of the contract is filed within fifteen (15) business days.

Each contract shall contain the following provisions, the meaning and effect of which shall not be changed or altered by any other provision of the contract:

"(a) This contract and the performance of all provisions thereof are expressly subject to the Bituminous Coal Act of 1937, and the proper orders and regulations issued thereunder by the National Bituminous Coal Commission.

"(b) No shipment consigned to any destination point may be reconsigned or diverted without the consent of the seller to be confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of

the reconsignment or diversion for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied: *Provided, however,* that this provision does not apply to railroad locomotive fuel sold at prices f. o. b. mines.

"(c) The coal shipped pursuant to this contract is sold and purchased upon the following conditions:

"(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein;

"(2) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied."

In any case where a contract is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in item 7 (b) of this section without first securing the consent of the Code Member producing such coal to be confirmed in writing.

The making of a contract for the sale of coal at a price below the minimum or above the maximum therefor established by the Commission at the time of the making of the contract shall constitute a violation of the Code and such contract shall be invalid and unenforceable.

No contract shall be made for the sale of coal for delivery after the expiration date of the Act at a price below the minimum or above the maximum therefor established by the Coal Commission and in effect at the time of making the contract.

Rule 1 of Section IX of Exhibit No. 595 is amplified so as to include truck shipment. Rule 3 of the same section should be modified so as to provide that payment for coal shipped for vessel fuel and delivered into vessels at ports of the Great Lakes or tributary waters thereof shall be made on or before the twentieth (20th) day of the month following such delivery. The witness for District Board No. 2 testified that Code Members should not be permitted to accept voluntarily as payment in full any amount which is less than the minimum price per net ton at the time of the making of the contract, except that Code Members may be permitted to enter into bona fide creditors' composition with other creditors of a defaulting purchaser and that a copy of such composition should be filed with the Statistical Bureau. We are of the opinion that the following rule should be approved for District No. 2 as being reasonable and in conformity with the Act:

No Code Member shall accept as payment in full for any account for the sale of coal any amount which is less than the applicable minimum price for the quantity of coal involved. Provided, however, that a Code Member may enter

into a bona fide general creditors' composition with other creditors of a defaulting purchaser. A copy of such creditors' composition shall be filed with the Statistical Bureau within ten (10) business days from the date of making such composition.

Rule 7 of Section IX does not state as to what time interest should be charged or what locality should govern the interest charged. Furthermore, a discrimination appears in that no provision is made for the charging of interest where the due date of the account is extended by agreement, express or implied, other than by acceptance of notes, trade acceptances or other forms of indebtedness. We find, therefore, that this rule should be modified to read as follows:

Where the due date of the account is extended by agreement of the parties, express or implied, or where payment is made by note, trade acceptance or other form of indebtedness, the seller shall charge and the buyer shall pay interest from and after the due date of the account at the current rate in the locality to which the coal is shipped to the vendee.

The District Board provided in Section IX that the price and fair trade provisions of the Act shall not be violated by the use of terms of payment and that, in no instance, shall the term of payment be more favorable than as specified in the rules. However, the District Board did not propose any specific rule making the agreement, express or implied, to extend credit for a period of longer than that authorized by the rules, a violation of the code. We are of the opinion that the following rule is necessary and reasonable in order fully to effectuate the rules proposed by the District Board relating to terms of payment:

The agreement by a Code Member, express or implied, to extend credit for a period longer than that authorized by these rules and regulations, with the effect of violating the price provisions or the unfair methods of competition of the Act, shall constitute a violation of the Code.

In light of the testimony of the witness for District No. 2 relating to rule 1 of Section VIII, we are of the opinion that this rule should be modified in the manner set forth in rule 1 of Section VIII of the attached composite findings. The witness for District Board No. 2 testified that in his opinion premium and penalty contracts should not be authorized which will permit the sale of coal below the applicable minimum price through the exercise of the penalty. In addition, the information required to be reported by rules 4 and 5 is already required by the rules approved for District No. 2. Accordingly, we find that these rules should be deleted and the following rule should be substituted therefor:

From and after the effective date of these Rules and Regulations, no Code Member shall enter into or perform any agreement made upon a penalty or a premium and penalty basis which will permit the sale of coal at an aggregate contract price below the applicable minimum price established by the Coal Commission for the coal sold and delivered upon such agreement subsequent to said effective date: Provided, that where a Code Member has entered into an agreement made upon a penalty or a premium and penalty basis, this rule shall not be considered as affecting any claim that the buyer might otherwise have had for substandard preparation or quality under Section X of these Marketing Rules and Regulations.

Rule 1 under Section X relates to screen sizes and permissible screen tolerances. This rule is deleted from the marketing rules and regulations for the reason that this subject is considered in the price schedule approved for this district.

For the purposes of clarification, we find that rules 2 and 3 of Section X should be modified to read as follows:

No deduction or allowance from invoice prices shall be granted by any Code Member or his sales agent to any purchaser for advertising.

Code Members (or their agents or representatives) either individually or collectively, with or without financial participation by retailers of coal, may conduct advertising campaigns seeking to increase the use of coal. The amount of expenditures incurred by a Code Member, his agent or representative for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.

In light of the opinion of the witness for District Board No. 2 that such requirements would be reasonable, we modify rule 4 of Section X in the manner set forth in rule 1 of Section IX of the attached composite findings so that the statement filed with the Statistical Bureau shall show the price at which the coal was sold, the ultimate destination of the coal, the name of the originating mine, the grade and size of the coal shipped and the amount of commission, if any, paid upon the resale of the coal.

With reference to rule 6 of Section X, we are likewise of the opinion that the statement to be filed with the Statistical Bureau should be of real value to the Commission and should, accordingly, contain all relevant information. We are of the opinion that the statement should show, in addition to the information required in the rule as proposed by the Board, the price at which the coal was sold, the tonnage delivery, the name of the mine, the name of the Code Member, the date of shipment, the grade and size of coal and the destination.

Rule 8 of Section X provides that all coal confiscated or lost in transit shall be invoiced to the carrier at the market

value of the coal but in no event at less than the minimum price established therefor by the Coal Commission. We are of the opinion that this rule should be modified to read as follows:

All coal confiscated or lost in transit shall be invoiced to the carrier at not less than the minimum price established for such coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or loss, whichever may be the higher.

We are of the opinion that the third and fourth paragraphs of rule 9 (f) of Section X should be deleted for the reason that such provision is impractical to administer.

After due consideration of all the testimony in the record relating to the rules proposed by District No. 2, we find that the following rules and regulations incidental to the sale and distribution of coal by Code Members in District No. 2 are reasonable, not inconsistent with the requirements of Section 4 of the Act and in conformance with the standards of fair competition established by the Act:

MARKETING RULES AND REGULATIONS INCIDENTAL TO THE SALE AND DISTRIBUTION OF COAL BY CODE MEMBERS WITHIN DISTRICT NO. 2 AS PROPOSED BY DISTRICT BOARD NO. 2 AND AS APPROVED, DISAPPROVED, OR MODIFIED FOR THE PURPOSE OF COORDINATION

Section I. Definitions

1. The term "person" as used herein, includes individuals, firms, associations, partnerships, corporations, trusts, trustees, cooperatives, receivers and trustees in bankruptcy and in other legal proceedings, and any other recognized forms of business organizations.

2. A "sales agent" is a person who, as agent of a code member (and therefore without purchasing the coal), sells coal produced by such code member for him or on his behalf: *Provided*, that "sales agent" shall not include an individual (herein referred to as a "salesman") regularly and continuously employed by a code member, whose sole compensation is a stated salary per week, per month, or per year, and who regularly devotes the major portion of his time to the solicitation of purchases of coal produced by his code member employer.

3. A "commission" is the total of all compensations and allowances received by a sales agent from a code member for services rendered in the sale of coal.

4. A "registered distributor" is a person who has been duly registered by the Coal Commission pursuant to the rules and regulations prescribed by the Commission for the administration of Section 4 II (h) of the Act.

5. A "spot order" is a legal obligation for the sale and purchase of coal, the delivery of which is stipulated to be made within not more than thirty (30) days from the date upon which the order was accepted.

6. A "contract" is a legal obligation for the sale and purchase of coal, the deliveries of which are stipulated to be made during a period longer than the maximum period specified for a spot order.

7. A "quotation" is an offer to sell coal which the offerer may withdraw prior to its being acted upon by the offeree.

8. An "option" is an offer to sell coal acceptable within a time certain, during which time the offerer may not withdraw the offer without the consent of the offeree.

9. A "commitment" is the status of a contract between the time a quotation is accepted or an option is exercised and the time the contract is formally reduced to writing.

10. "Coal Commission" as used herein, shall mean the National Bituminous Coal Commission established under the provisions of the Bituminous Coal Act of 1937.

11. "Act" as used herein shall mean the Bituminous Coal Act of 1937.

12. "District Board" as used herein, shall mean any District Board established under the provisions of Section 4, Part I (a) of the Act.

13. "Statistical Bureau" shall mean, unless otherwise specifically stated, the Statistical Bureau of the Commission for the District in which the coal involved in any transaction is produced, or the District in which is located a mine of a code member affected by any order or regulation.

14. "Minimum Price" shall mean a minimum price established and made effective by the Coal Commission.

15. "Maximum Price" shall mean a maximum price established and made effective by the Coal Commission.

16. The term "producer" includes all individuals, firms, associations, corporations, trustees, and receivers engaged in the business of mining coal.

17. The terms "reconsignment" and "diversion" as used herein shall mean the change in the original consignee or in the destination or route.

18. The term "transportation facilities" means railroad cars, ships, barges, trucks, or any other facilities used or useful in the transportation of coal.

19. A "code member" means a producer who has accepted and holds membership in the Bituminous Coal Code promulgated under the Bituminous Coal Act of 1937.

20. The term "domestic market" shall include all points within the continental United States and Canada, and car-ferry shipments to the Island of Cuba. Bunker coal delivered to steamships for consumption thereon shall be regarded as shipped within the domestic market.

21. "Cargo shipment" is a quantity of coal loaded in a vessel, boat or barge for transportation via water.

22. "Bunker coal" or "vessel fuel" is that coal used aboard a boat or vessel for consumption thereon.

23. "Coal" as used herein shall mean bituminous coal.

24. The term "bituminous coal" includes all bituminous, semi-bituminous and sub-bituminous coal and shall exclude lignite, which is defined as a lignitic coal having calorific value in British thermal units of less than seven thousand six hundred per pound and having a natural moisture content in place in the mine of 30 per centum or more.

25. The term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Section II. Sales Agents

1. All appointments of Sales Agents by Code Members or their agents or authorized representatives, and the terms and conditions of such appointments, shall be subject to the Marketing Rules and Regulations from time to time established by the Coal Commission.

2. Each Code Member shall be responsible for the compliance by all his Sales Agents and agents and employees of Sales Agents and agents with the provisions of the Bituminous Coal Code and of all rules and regulations, promulgations and determinations of the Coal Commission.

3. Each Code Member shall require all his sales agents clearly to set forth upon any form of solicitation, contract, spot order, invoice, and statement of account covering coal sold or to be sold, the name of such Code Member principal, and the name of the mine or mines from which shipment was made or is to be made. If the name of the sales agent also appears in the transaction, then the above mentioned forms shall also disclose the fact of agency relationship with the Code Member principal.

4. (A) Every contract for the appointment of a sales agent by Code Members or by agents or authorized representatives of Code Members, or any modification thereof, shall be in writing, and shall fully set forth therein all the terms and conditions of such contract, including the amount or basis of the sales agent's commission. Certified copies of all such agency contracts entered into on or prior to the effective date of the establishment of these rules and regulations and in effect on such date, shall be filed by the Code Member with the Statistical Bureau, or Bureaus, within twenty (20) business days after such date.

(B) Certified copies of all contracts appointing sales agents or of agreements modifying any sales agency contract, entered into subsequent to the effective date of these rules and regulations, shall be similarly filed by the Code Member within ten (10) business days after the date upon which such contracts or agreements have been entered into.

(C) Upon the expiration, termination, or rescission of any sales agency contract, the Code Member principal shall

make a report thereof to the Statistical Bureau, or Bureaus, within ten (10) business days after the date of such expiration, termination, or rescission.

5. (A) As to all coal sold by a Code Member otherwise than through a sales agent or through an employee regularly employed as a salesman by the Code Member at his principal place of business or at a regularly established sales office, such Code Member shall, not later than the tenth day of each month, file with the Statistical Bureau, or Bureaus, a list of all persons through whom, directly or indirectly, any such coal was sold during the preceding calendar month, with a statement of the duration and character of their employment, the tonnage sold by, and the rate and amount of compensation paid to, each of them.

(B) Not later than the tenth day of each month, each Code Member shall also file with the Statistical Bureau, or Bureaus, similar information obtained from his sales agents concerning sales of coal made during the preceding calendar month, by the sales agents' representatives and employees other than salesmen employed at the principal place of business or a regularly established sales office of the sales agent.

(C) Not later than the tenth day of each month, each Code Member shall also file with the Statistical Bureau or Bureaus a statement showing the names and addresses of distributors to whom the Code Member or his sales agents sold coal during the preceding calendar month, the tonnage sold, and the amount of discount allowed to each such distributor.

6. Within twenty (20) business days after the effective date of these rules and regulations, each Code Member shall file with the Coal Commission a list showing the names and addresses of all his sales agents. Upon any change in said list, the Code Member shall notify the Coal Commission within ten (10) business days after such change takes place.

7. A list showing the names and addresses of sales agents and the Code Members for whom such agents act shall be published monthly by the Coal Commission.

8. All agency contracts and other information filed by Code Members in conformity with the foregoing regulations, other than the names and addresses of sales agents, shall be held by the Coal Commission as the confidential records of said parties and shall not be made public without the consent of the Code Member from whom the same shall have been obtained, except where such disclosure is required in any proceeding against the Code Member by way of enforcement of the Act.

9. From and after twenty (20) business days following the effective date of these Marketing Rules and Regulations no Code Member or sales agent of a Code Member shall allow or pay, di-

rectly or indirectly, any commission or compensation to any sales agent,

(a) Unless the contract of agency shall have been filed with the Coal Commission, as hereinbefore required, and

(b) Unless the sales agent shall have agreed, in writing, with the Code Member to conform to and observe the minimum and maximum prices and Marketing Rules and Regulations established by the Coal Commission and the Fair Trade Practice Provisions of the Act, as well as all proper Orders of the Commission, and

(c) Unless the sales agent shall have in good faith complied with the agreement as in paragraph (b) above provided.

10. No commission shall be paid to a sales agent by a Code Member where the coal is delivered or sold to any person who owns such sales agent or who financially or otherwise controls such agent.

11. When any commissions are paid to a sales agent on a tonnage basis, the Code Member shall not include in the computation of such commissions any part of the tonnage of coal sold by him to the sales agent, whether for consumption or resale.

12. No Code Member shall employ any person or appoint any sales agent at a compensation obviously disproportionate to the ordinary value of the service or services rendered and whose employment or appointment is made with the primary intention and purpose of securing a preferment with a purchaser or purchasers of coal.

13. Subject to further order of the Coal Commission, the amount of commission to be paid by a Code Member to his sales agent shall be fixed by agreement of the parties, subject, however, that upon complaint of violation of the unfair methods of competition, as provided in the Act, the amount of such commission shall be subject to review by the Coal Commission.

Section III. Discounts

1. No Code Member or sales agent of a Code Member shall pay or allow any discount from minimum prices to any person unless such person has been registered by the Coal Commission as authorized to receive such discount at the time of the sale.

2. Code Members or their sales agents may allow discounts from minimum prices on sales of coal to registered distributors, not in excess of the maximum discount or price allowance prescribed by the Coal Commission upon such sales. Only one such discount may be allowed on any such sale.

Section IV. Limitation of Orders, Agreements, Options and Quotations

1. Subject to further order of the Coal Commission no Code Member or sales agent of a Code Member shall enter into any agreement or order for the sale of coal providing for delivery for a period in excess of that authorized for a spot order, and no prices shall be less than the applicable minimum prices in effect at the time of the making of the agree-

ment or order: *Provided*, however, that contracts for periods not exceeding one (1) year may be made with agencies of the Federal Government or with agencies of State or local governments, where the contract is entered into through competitive bidding, at the following applicable minimum prices:

(a) For deliveries during the first thirty (30) days of the contract, at not less than the applicable minimum price in effect at the time of the making of the agreement;

(b) For deliveries thereafter, at not less than the applicable minimum price in effect at the time of delivery if such price is higher than the contract price.

Provided, further, that contracts for periods not exceeding one (1) year at prices not less than the said applicable minimum prices may be made with agencies of the Federal Government or with such agencies of the State or local governments, in the absence of competitive bidding, where by virtue of an express exemption in the statute or ordinance such agencies may enter into contracts for the purchase of coal without regard to competitive bidding.

2. While the preceding rule is in effect, no option may be given by a Code Member or sales agent for the purchase of coal. When the above rule is suspended or revoked by the Coal Commission, options for the sale of coal may be given for a period not exceeding fourteen (14) days. No options may be given at a price less than the applicable minimum price in effect at the time of the giving of the option. If the applicable minimum price is increased beyond the quoted price within such fourteen (14) days and the option shall not have been exercised at that time, the option thereupon shall become null and void: *Provided*, however, that in connection with offers to sell to the United States Government, or States or political subdivisions thereof, options may be given for a period not exceeding forty-five (45) days from the date of the offer or from the final date for the filing of offers.

3. Quotations may also be given for a period of not exceeding fourteen (14) days. If the applicable minimum price is increased beyond the quoted price within such fourteen (14) days and the quotation shall not have been accepted at that time, the quotation thereupon shall become null and void.

4. Every quotation and option shall provide that it is made subject to the provisions of the Marketing Rules and Regulations of the Coal Commission.

5. All quotations and options must be made or confirmed in writing. Every Code Member, or his sales agent, shall require of his offeree that the acceptance of a quotation or the exercise of an option be in writing.

Section V. Spot Orders

1. A spot order shall be in writing or confirmed in writing within five (5) busi-

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ness days from the date of the making thereof.

2. Each spot order shall be subject to the following conditions which shall either be endorsed upon the form of the order or upon the written confirmation thereof by the Code Member or his sales agent, the meaning and effect of which shall not be changed or altered by any other provision of the order.

(a) "No shipment consigned to any destination may be diverted or re-consigned without the consent of the seller confirmed in writing. In case of any re-consignment or diversion, the seller shall charge and the buyer shall pay not less than the minimum price prescribed for such coal for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied: *Provided*, however, that this provision does not apply to railroad locomotive fuel sold at prices f. o. b. mine."

(b) "The coal shipped pursuant to this order is sold and purchased upon the following conditions:

"(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein;

"(2) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied."

(c) "If shipments called for by this order are not completed within thirty (30) days from the effective date of this order, the unfilled portion of the order shall not be delivered."

3. In any case where a sale is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in Item 2 (a) of this section without first securing the consent of his Code Member principal to be confirmed in writing.

4. All the terms and conditions of a sale of coal must be fully and expressly set forth either in the order or in the written confirmation thereof and such order or written confirmation thereof shall specifically contain all the terms required by Rule 1 of Section VI of these Marketing Rules and Regulations. Within ten (10) business days after the date of the making of the spot order or date of the written confirmation thereof, the Code Member or his sales agent shall file with the Statistical Bureau or Bureau a copy of such spot order or confirmation. Any modification of a spot order must also be made in writing and filed with the Statistical Bureau or Bureau in the same manner.

Section VI. Contracts

Upon the revocation or suspension of rule 1 of Section IV of these Marketing Rules and Regulations, Code Members

or sales agents of Code Members may thereafter enter into contracts for the sale and delivery of coal upon the following terms and conditions:

1. Every contract shall be in writing and shall express the entire agreement between the parties. The contract shall clearly state the date of execution, the effective date, the expiration date, the price agreed upon, the terms of payment, the size and grade of coal, the number of cars or tonnage to be shipped, the name of the Code Member and the name of the originating mine, and, where the coal is purchased for consumption, the use to which the coal is to be applied. Contracts may also be made either (a) calling for a buyer's entire requirements or a stated percentage of his requirements, showing the maximum tonnage to be shipped thereunder, or (b) covering a buyer's requirements and stating the estimated tonnage to be shipped with an allowable overshipment of not exceeding ten (10) per cent of such estimated tonnage.

2. No contract for the sale of coal shall provide for deliveries to commence at a date later than ninety (90) days from the date upon which such contract is entered into.

3. No contract shall be made at a price below the applicable minimum price as established by the Coal Commission at the time of the making of the contract for the coal to be sold thereunder, and no coal may be delivered upon a contract at a price below such applicable minimum price.

4. No contract shall provide for delivery over a period in excess of twelve (12) months except by special permission and approval of the Coal Commission, upon a showing of the necessity of meeting the long term contract competition of oil, gas, or other fuels or forms of power, or for such other reasons as the Commission may deem appropriate in order to further the effectual administration of the Act.

5. Any change in the terms of a contract, not in violation of these Rules and Regulations, shall be evidenced by a written agreement and shall conform to all the requirements set forth in these Rules and Regulations.

6. A report of every commitment shall be filed by the Code Member or his sales agent with the Statistical Bureau or Bureau, within fifteen (15) business days from the date of the making of the agreement. Such report shall set forth all the terms and conditions of the commitment. A true copy of every contract and of any agreement for modification thereof shall be filed with the Statistical Bureau within fifteen (15) business days from the date of execution of such contract or agreement for modification: *Provided*, however, that a report of the commitment need not be filed if a copy of the contract is filed within fifteen (15) business days.

7. Each contract shall contain the following provisions, the meaning and

effect of which shall not be changed or altered by any other provision of the contract:

"(a) This contract and the performance of all provisions thereof are expressly subject to the Bituminous Coal Act of 1937, and the proper orders and regulations issued thereunder by the National Bituminous Coal Commission.

"(b) No shipment consigned to any destination point may be reconsigned or diverted without the consent of the seller to be confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of the reconsignment or diversion for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied: Provided, however, that this provision does not apply to railroad locomotive fuel sold at prices f. o. b. mines.

"(c) The coal shipped pursuant to this contract is sold and purchased upon the following conditions:

"(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein;

"(2) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied."

8. In any case where a contract is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in item 7 (b) of this section without first securing the consent of the Code Member producing such coal to be confirmed in writing.

9. The making of a contract for the sale of coal at a price below the minimum or above the maximum therefor established by the Commission at the time of the making of the contract shall constitute a violation of the Code and such contract shall be invalid and unenforceable.

10. No contract shall be made for the sale of coal for delivery after the expiration date of the Act at a price below the minimum or above the maximum therefor established by the Coal Commission and in effect at the time of making the contract.

Section VII. Terms of Payment

1. The price and fair trade practice provisions of the Act shall not be evaded or violated by a Code Member, or his sales agent, through the use of terms of payment, and in no instance shall terms of payment be more favorable than the following:

(A) On rail, river, ex-river, or truck shipments, the date of payment of invoices for coal sold shall be on or before

the twentieth (20th) day of the month following the month in which shipment was made.

(B) On tidewater cargo shipments the date of payment shall be not more than thirty (30) days from date of vessel bill of lading, and where coal is sold f. o. b. mines for tidewater cargo shipment, on or before the twentieth (20th) day of the month following the month in which the coal is dumped.

(C) Payment for all tidewater Bunker coal supplied for foreign vessels shall be by cash on delivery or by master's draft on owners in United States currency at not exceeding fifteen (15) days' sight at supplier's option. When drafts are accepted in payment, all bank charges for collection, exchange, etc., shall be for owner's account. Payment for tidewater bunker coal supplied for American vessels shall be made on or before the twentieth (20th) day of the month following delivery.

Payment for coal shipped for vessel fuel, and delivered into vessels at ports on the Great Lakes or tributary waters thereof, shall be made on or before the twentieth (20th) day of the month following such delivery.

(D) On lake cargo shipments, the date of payment shall be not more than sixty (60) days from date of vessel bill of lading, and where coal is sold f. o. b. mines for lake cargo shipments, on or before the twentieth (20th) of the second month following the month in which dumped.

(E) On railroad locomotive fuel, the date of payment shall be on or before the twenty-fifth (25th) day of the month following the date of shipment.

(F) Invoices shall be paid in full in United States currency, or funds equivalent thereto, not later than the due date.

(G) No portion of the sale price may be withheld by agreement between the buyer and the seller based upon any unadjusted claim of the buyer.

(H) No sale, delivery, or offer for sale of coal shall be made upon any condition, express or implied, that any portion of the sale price may be withheld by the buyer, or deposited in escrow, pending or based upon a determination of the constitutionality of any provision of the Act, of the jurisdiction of the Coal Commission, or the validity or applicability of any order of the Coal Commission.

(I) Where the due date of the account is extended by agreement of the parties, express or implied, or where payment is made by note, trade acceptance or other form of indebtedness, the seller shall charge and the buyer shall pay interest from and after the due date of the account at the current rate in the locality to which the coal is shipped to the vendee.

(J) Freight on all-rail or ex-river shipments shall not be paid by a Code Member, or his sales agent, except to prepay stations as published in current railway tariffs or on shipments to the United States Government, States or

political subdivisions thereof. Where freight is thus prepaid, the amount thereof shall immediately upon receipt of freight bill or notice of sight draft payment, be invoiced to the buyer for immediate payment.

(K) No Code Member shall accept as payment in full for any account for the sale of coal any amount which is less than the applicable minimum price for the quantity of coal involved. Provided, however, that a Code Member may enter into a bona fide general creditors' composition with other creditors of a defaulting purchaser. A copy of such creditors' composition shall be filed with the Statistical Bureau within ten (10) business days from the date of making such composition.

(L) The agreement by a Code Member, expressed or implied, to extend the credit for a period longer than that authorized by these rules and regulations, with the effect of violating the price provisions or the unfair methods of competition of the Act, shall constitute a violation of the Code.

Section VIII. Use of Coal Analyses

1. Analyses of coal shall not be utilized by a Code Member, or his sales agent, in selling or offering for sale any coal produced by the Code Member, whether or not the analysis is a term in the offer or sale, unless such Code Member shall have filed with the Statistical Bureau and the District Board for the District in which the coal is produced, a report of the analysis or analyses as used or proposed to be used by him. Such report shall show the following:

(a) The name of the Code Member Producer.

(b) The name of the mine.

(c) The name or geological number of the seam or seams from which the coal is produced.

(d) The name of the size, and, if screened, the dimension or dimensions of the screen or screens over and/or through which the coal is prepared.

(e) Whether the analysis is representative of the entire production of such size of coal, or whether it represents only a portion of such production segregated by selective mining, selective preparation, actual analyses made at the mine, or in any other manner.

(f) That such analysis is representative of the grade and size of the coal as regularly produced by the Code Member and as loaded directly into transportation facilities for shipment to market and that the Code Member is prepared to make deliveries of coal of substantially the quality and character as shown by the analysis.

(g) That each such analysis is not less than a proximate analysis showing moisture content, ash, volatile matter, fixed carbon, sulphur and British thermal units and ash softening temperature.

2. All reports of analyses so filed shall be subject to inspection at the office of the Statistical Bureau at any time dur-

ing office hours by any interested person, and may be considered by the District Board and the Coal Commission in determining from time to time proper classifications of the coals produced by the Code Member.

3. A copy of any analysis of the coal of a Code Member made by or on behalf of a consumer and accepted by the Code Member as the basis for an adjustment of price under any contract or spot order shall be filed by the Code Member with the Statistical Bureau, the Coal Commission and the District Board, within five (5) business days after such adjustment is made.

4. From and after the effective date of these Rules and Regulations, no Code Member shall enter into or perform any agreement made upon a penalty or a premium and penalty basis which will permit the sale of coal at an aggregate contract price below the applicable minimum price established by the Coal Commission for the coal sold and delivered upon such agreement subsequent to said effective date: Provided, that where a Code Member has entered into an agreement made upon a penalty or a premium and penalty basis, this rule shall not be considered as affecting any claim that the buyer might otherwise have had for sub-standard preparation or quality under Section X of these Marketing Rules and Regulations.

Section IX. Resale of Coal Refused in Transit or at Destination

1. Where coal is refused by a consignee in transit or at destination, the Code Member may sell the same at the best obtainable price, provided that in each case the Code Member shall file with the Statistical Bureau, and the District Board for the District in which the coal was produced, within five (5) business days from the date of such resale, a statement giving the following information:

- (a) Name of consignee
- (b) Address of the Consignee
- (c) Original destination of the coal
- (d) Name of Code Member
- (e) Originating mine
- (f) The grade and size of coal shipped
- (g) Price at which coal sold
- (h) Reasons for the refusal
- (i) Facts resulting from the investigation of the complaint
- (j) Name of ultimate purchaser upon resale
- (k) Address of purchaser upon resale
- (l) Ultimate destination of the coal
- (m) Price received by the seller upon resale
- (n) Amount of commission, if any, paid upon the resale
- (o) A copy of the carrier's notice of refusal or a notice of reconsignment and such other pertinent information and facts as may be offered in proof of the necessity for such resale
- (p) A signed and verified statement that the provisions of the Code and the Marketing Rules and Regulations of the

Coal Commission other than as to price have not been violated or evaded

2. All Code Members shall properly furnish to the District Board and to the Statistical Bureau of the Coal Commission for the District in which the coal originated, full reports of all reconsignments, and shall authorize the carrier making such reconsignments to furnish complete information thereon to such Statistical Bureau.

Section X. Substandard Preparation or Quality

1. Where any allowance is requested by a buyer of coal on any shipment claimed to be substandard in preparation or quality, the Code Member or the sales agent, with the prior approval of the Code Member, may on or before the maturity date of the invoice, make settlement and agree with the buyer upon any amount reasonably to be deducted for such inferior coal and accept payment therefor at less than the minimum prices; provided, however, that in each such case the Code Member shall within five (5) days after granting such allowance file with the Statistical Bureau of the Coal Commission in the District in which the coal originates, a verified statement giving the following information:

- (a) The name and address of the consignee and the reason for the request for the allowance
- (b) The price at which the coal was sold, the tonnage delivered, the name of the mine, the Code Member, the date of shipment, the grade and size of coal, the destination, and the amount of allowance or adjustment made
- (c) Such other pertinent information and facts as may be offered in proof of the necessity for such reduction or allowance
- (d) A statement that the adjustment has not been made with the purpose or intent of evading the price provisions of the Act.

The Code Member shall also file, together with the statement, a written claim duly executed by or on behalf of the buyer and verified by affidavit, setting forth the amount claimed by way of deduction and the reasons for the complaint.

2. All such adjustments and allowances shall be subject to review by the Coal Commission.

Section XI. Substitutions

No Code Member or his sales agent shall make any substitution upon any spot order or contract, of any grade or size of coal taking a minimum price higher than the price specified in such order or contract, except upon the following conditions:

- (a) The proposed substitution shall not be an expressed or implied condition of the order or contract.
- (b) The coal proposed to be substituted must be coal which the code mem-

ber obligated to fill the spot order or contract has already produced and loaded into transportation facilities, and which coal cannot be sold promptly at not less than the established minimum price therefor by the exercise of the usual sales effort.

Each substitution shall be limited to a specific tonnage for shipment during a stated period, and on a specific order or contract and from a specific mine.

(c) The substitution must be reasonably necessary as an emergency measure in order to continue operation of the mine of the code member from which the coal applying on the original order or contract is to be shipped.

(d) The purchaser of the coal shall be duly notified of the proposed substitution and shall evidence his willingness to accept the same.

(e) The proposed substitution shall not be made with the purpose or effect of conferring any advantage on the purchaser or securing any preference or advantage for the applicant over his competitors and shall not create any preference for or prejudice against the district in which is located the mine producing the coal for which the substitution is proposed.

(f) Each substitution must first be approved by the Coal Commission, and such approval evidenced by a permit issued by a representative of the Commission duly designated for the district in which the coal is produced.

In each case formal application for authority to make substitution shall be made upon forms provided by the Commission and permits shall be issued prescribing the conditions upon which substitution is approved in each case.

(g) Each District Board shall create a Substitution Committee to be composed of Board members or employees of the Board, which shall have authority to make recommendations to the representative of the Coal Commission as to the granting of substitution permits within the district.

So far as practicable, the representative of the Commission shall confer with such Committee upon receipt of each application for a substitution permit and shall make available to the Committee such information concerning the application as is permitted by law and the regulations of the Commission.

(h) In each case of shipment under a substitution permit each invoice shall specifically show the permit number and the size and grade of coal substituted.

(i) The representative of the Commission shall mail daily to the office of the District Board copies of substitution permits granted and shall mail weekly, to all District Boards within the price area, summaries of substitution permits granted during the week.

The Commission may from time to time publish the essential facts as to all substitution permits granted in any district or price area.

Section XII. Miscellaneous

General

1. The minimum prices established by the Commission shall not apply to coal sold and shipped outside the domestic market as defined in the Act and in these Marketing Rules and Regulations.

2. Maximum prices established by the Commission shall not apply to coal sold and shipped outside the continental United States.

3. No coal shall be sold or delivered or offered for sale at a price below the minimum or above the maximum therefor established by the Commission, and the sale or delivery or offer for sale of coal at a price below such minimum or above such maximum shall constitute a violation of the Code: Provided, that the provisions of this paragraph shall not apply to a lawful and bona fide written contract entered into prior to June 16, 1933, which has been filed with the Coal Commission.

4. If, in converting a net or gross ton price, freight rate or freight rate differential, the calculation extends to more than 3 decimals, and the 4th decimal is .0005 or more, it shall be added as .001, and if under .0005 it shall be eliminated.

5. All coal shall be sold and invoiced on a price per ton basis, and all coal must be sold and invoiced under the size, price classification and other designation therefor in the price schedule published by the Coal Commission.

6. Failure to file information required by these Marketing Rules and Regulations or the filing of false information, wilfully made, will subject the party failing to file the information required, or the party so filing, to the penalties of the Act and other penalties imposed by law.

Advertising

1. No deduction or allowance from invoice prices shall be granted by any Code Member or his sales agent to any purchaser for advertising.

2. Code Members (or their agents or representatives) either individually or collectively, with or without financial participation by retailers of coal, may conduct advertising campaigns seeking to increase the use of coal. The amount of expenditures incurred by a Code Member, his agent or representative for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.

Screening for Buyer's Account

1. The screening of mine run or re-screening of other grades of coal, sold and billed as such, for the buyer's account for the purpose of keeping the resultant products separate in the shipment thereof is prohibited.

Coal Confiscated or Lost in Transit

1. All coal confiscated or lost in transit shall be invoiced to the carrier at not less than the minimum price established

for such coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or loss, whichever may be the higher.

Revision of Marketing Rules and Regulations

1. These Marketing Rules and Regulations are subject to revision and amendment by further order of the Coal Commission.

UNFAIR METHODS OF COMPETITION

In accordance with the provisions of Section 4 II (i) of the Act, the following practices with respect to coal are unfair methods of competition and shall constitute violations of the Code:

1. The consignment of unordered coal, or the forwarding of coal which has not actually been sold, consigned to the producer or his agent: Provided, however, that coal which has not actually been sold may be forwarded, consigned to the producer or his agent at rail or track yards, tidewater ports, river ports, or lake ports, or docks beyond such ports, when for application to any of the following classes: Bunker coal, coal applicable against existing contracts, coal for storage (other than in railroad cars) by the producer or his agent in rail or track yards or on docks, wharves, or other yards for resale by the producer or his agent.

2. The adjustment of claims with purchasers of coal in such manner as to grant secret allowances, secret rebates, or secret concessions, or other price discrimination.

3. The prepayment of freight charges with intent to or having the effect of granting a discriminatory credit allowance.

4. The granting in any form of adjustments, allowances, discounts, credits, or refunds to purchasers or sellers of coal, for the purposes or with the effect of altering retroactively a price previously agreed upon, in such manner as to create price discrimination.

5. The predating or postdating of any invoice or contract for the purchase or sale of coal, except to conform to a bona-fide agreement for the purchase or sale entered into on the predate.

6. The payment or allowance in any form or by any device of rebates, refunds, credits, or unearned discounts, or the extension to certain purchasers of services or privileges not extended to all purchasers under like terms and conditions, or under similar circumstances.

7. The attempt to purchase business, or to obtain information concerning a competitor's business by concession, gifts, or bribes.

8. The intentional misrepresentation of any analysis or of analyses, or of sizes, or the intentional making, causing, or permitting to be made, or publishing, of any false, untrue, misleading, or deceptive statement by way of advertising,

invoicing, or otherwise concerning the size, quality, character, nature, preparation, or origin of any coal bought, sold, or consigned.

9. The unauthorized use, whether in written or oral form, of trade-marks, trade names, slogans, or advertising matter already adopted by a competitor, or any deceptive approximation thereof.

10. Inducing or attempting to induce, by any means or device whatsoever, a breach of contract between a competitor and his customer during the term of such contract.

11. Splitting or dividing commissions, brokers' fees, or brokerage discounts, or otherwise in any manner directly or indirectly using brokerage commissions or jobbers' arrangements or sales agencies for making discounts, allowances, or rebates, or prices other than those determined under this Act, to any industrial consumer or to any retailers, or to others, whether of a like or different class.

12. Selling to, or through, any broker, jobber, commission account, or sales agency, which is in fact or in effect an agency or an instrumentality of a retailer or an industrial consumer or of an organization of retailers or industrial consumers, whereby they are* any of them secure either directly or indirectly a discount, dividend, allowance, or rebates, or a price other than that determined in the manner prescribed by this Act.

13. Employing any person or appointing any sales agent, at a compensation obviously disproportionate to the ordinary value of the service or services rendered, and whose employment or appointment is made with the primary intention and purpose of securing preferment with a purchaser or purchasers of coal.

PENALTIES

Section 5 (b) of Bituminous Coal Act:

"The membership of any such coal producer in such code and his right to an exemption from the taxes imposed by section 3 (b) of this Act, may be revoked by the Commission upon written complaint by any code members or district board, or any State or political subdivision of a State, or the consumers' counsel, after a hearing, with thirty days' written notice to the member, upon proof that such member has wilfully violated any provision of the code or any regulation made thereunder; and in such a hearing any code member or district board, or any State or political subdivision of a State, or the consumers' counsel, or any consumer or employee, and the Commissioner of Internal Revenue, shall be entitled to present evidence and be heard: Provided, that the Commission, in its discretion, may in such case make an order directing the code member to cease and desist from violations of the code and regulations made thereunder and upon failure of the code member to comply with such order the Commission may apply to a circuit court of appeals to enforce such order in accordance with the provisions of subsection (c) of section 6 or may reopen the case upon ten days' notice to the code member affected and proceed in the hearing thereof as above provided."

*So in original.

Section 5 (c) of Bituminous Coal Act:

"Any producer whose membership in the code and whose right to an exemption from the tax imposed by section 3 (b) of this Act shall have been revoked and canceled may apply to the Commission and shall have the right to have his membership in the code restored upon payment by him to the United States of double the amount of the tax provided in Section 3 (b) upon the sales price at the mine, or the market value at the mine if disposed of otherwise than by sale at the mine, or if sold otherwise than through an arms' length transaction, of the coal sold or disposed of by the code member in violation of the code or regulations thereunder (but in no case shall such sales price or market value be taken to be less than the minimum price established by the Commission for such coal and in effect at the time of such sale or other disposal), as found by the Commission under subsection (b) hereof. The Commission shall thereupon certify to the Commissioner of Internal Revenue and to the collector of internal revenue for the internal revenue collection district in which the producer resides the amount of the required payment as found under clause (5) of subsection (b), and upon payment of such amount to the Commissioner or the collector such officer shall notify the Commission thereof."

Section 10 (c) of Bituminous Coal Act:

"If any producer required by this Act or the code or regulation made thereunder to file a report shall fail to do so within the time fixed for filing the same, and such failure shall continue for fifteen days after notice of such default, the producer shall forfeit to the United States the sum of \$50 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the producer has his principal office or in any district in which he shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeiture."

Section 35 of the Criminal Code as amended by the Act of June 18, 1934, c. 587, 48 Stat. 996 (U. S. C., Title 18, sec. 80):

"Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and wilfully falsify or conceal or cover up by any trick, scheme, or devise a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder shall be fined not more than \$10,000 or imprisoned not more than ten years, or both."

Section 37 of the Criminal Code (U. S. C. 88):

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in

any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both." (R. S. § 5440; May 17, 1879, c. 8, 21 Stat. 4; Mar. 4, 1909, c. 321, § 37, 35 Stat. 1086.)

MINIMUM PRICE AREA No. 1—DISTRICT BOARD No. 4

PROPOSED MARKETING RULES AND REGULATIONS

A witness for District Board No. 4, properly qualified as an expert in the marketing of coal in that District, introduced into evidence as Exhibit No. 616, the rules and regulations proposed by District Board No. 4 in compliance with Commission Order No. 248. The witness testified that these rules and regulations were submitted to Code Members within said District on August 22, 1938, and that eleven protests against such rules and regulations were filed with the Board. All of said protests were granted by action of the Board on September 1, 1938, and incorporated in Exhibit No. 616. The witness testified that in his opinion and in the opinion of the members of the District Board the rules and regulations contained in Exhibit No. 616 are reasonable, not inconsistent with the requirements of Section 4 of the Act and in conformance with the standards of fair competition contained in the Act.

Although the witness testified that definitions 7, 8, 9 and 10 were necessary for the proper regulation of the distribution of coal for lower lake ports to the upper lake docks, these terms are only used in rules 2 to 6 of Section III, relating to the registration of distributors. In light of the Chairman's statement that such rules should not be received or discussed in this hearing, we are of the opinion that such definitions should be deleted. For the same reason, we are of the opinion that definitions 5, 6, 26 and 27 should be deleted and that the definition of a "distributor" contained in paragraph 4 of Section I should be modified to read as follows:

A "registered distributor" is a person who has been duly registered by the Coal Commission pursuant to the rules and regulations prescribed by the Commission for the administration of Section 4 II (h) of the Act.

For the purpose of clarification, we modify definition 3 of Section I to read as follows:

A "commission" is the total of all compensations and allowances received by a sales agent from a code member for services rendered in the sale of coal.

For the purpose of clarification, we modify the definition of a "commitment" contained in paragraph 15 of Section I to read as follows:

A "commitment" is the status of a contract between the time a quotation is accepted or an option is exercised and the

time the contract is formally reduced to writing.

The terms "retailing", "public institutions" and "industrial plants", defined in paragraphs 12, 18 and 19 of Section I, are applicable only to rules which have been deleted for reasons later set forth. Accordingly, these definitions should likewise be deleted.

We are of the opinion that definitions 16 to 25 contained in Section I of the composite findings hereafter given are reasonable and desirable. The District Board did not define these terms, although they appeared in various rules proposed by the District Board.

The witness stated that the purpose of rule 6 of Section V of Exhibit 616 is to provide for review of commissions paid to sales agents in order to prevent producers from paying exorbitant commissions in violation of the Code. We are of the opinion that the rule, as submitted by the District Board, is too broad for the reason that review is not limited solely to complaints of violation of the Code. Accordingly, we modify rule 6 of Section V to read as follows:

Subject to further order of the Coal Commission, the amount of commission to be paid by a Code Member to his sales agent shall be fixed by agreement of the parties, subject, however, that upon complaint of violation of the unfair methods of competition, as provided in the Act, the amount of such commission shall be subject to review by the Coal Commission.

We are of the opinion that rules 7 (a) and (b) of Section V, in so far as they prohibit the granting of a discount to a registered distributor in the situations enumerated therein, cannot be properly enforced and should be deleted. In a proceeding against a Code Member for violation of these rules, it would be very difficult to prove knowledge on the part of the Code Member as to how the distributor intended to distribute the coal which he purchased from the Code Member or as to the relationship which may exist between the distributor and the consumer to whom he sells the coal. From the point of view of enforcement, these rules could only be properly effectuated by rules which would prohibit the distributor from receiving a discount in the instances enumerated in the rules, and such rules are the subject of consideration under a hearing held pursuant to Section 4, Part II (h) of the Act.

The same difficulty of enforcement is present in rule 5 of Section V. In light of the witness' testimony that rule 5 might better be effectuated by a rule which would prohibit distributors from receiving a discount in the situations enumerated in the rule, we are of the opinion that rule 5 of Section V should be deleted.

In so far as rule 7 (a) of Section V prohibits the payment of a commission to a sales agent where the coal is distributed by the sales agent over or through

a vehicle, dock, trestle, yard or other facilities, directly or indirectly owned, operated or controlled by the sales agent or with which he is otherwise affiliated, we are of the opinion that the rule should be deleted. It is not shown in the record that such forms of distribution would lend themselves to evasion of minimum prices or to violation of the code.

In so far as rule 7 (b) prohibits the payment of the commission to a sales agent where the sales agent owns or controls the purchaser to whom he sells the coal, we are of the opinion that this rule is a proper subject for a hearing held under Section 4 II (g) of the Act which provides that prices may not be evaded through the use of subsidiaries or affiliated sales or transportation companies. Accordingly, we find that rule 7 (b) should be modified in the manner set forth in rule 10 of Section II of the composite findings hereinafter given.

The witness testified that the reason for rule 4 of Section IX was to protect a retail dealer as to price in his contractual relationships between a public institution or an industrial plant. We are of the opinion that this rule should be deleted for the reason that under the Act the governing minimum price as to all contracts is the price in effect at the time of the making of the contract.

We are of the opinion that the second paragraph of rule 8 (e) of Section XII should be deleted for the reason that it is impractical to administer. Likewise, rule 8 (f) of Section XII should be deleted for the reason that it creates an unreasonable discrimination.

In light of the opinion of the witness that it would be reasonable for the analysis filed under Section VIII to show moisture content, we modify the second sentence of rule 1 of Section VIII so as to require that the analysis filed shall show the moisture content.

In light of the witness' opinion that it would be reasonable to provide that all coal must be sold and invoiced on a price per ton basis, we modify the second sentence of rule 6 of Section XII to read as follows:

All coal shall be sold and invoiced on a price per ton basis, and all coal must be sold and invoiced under the designation shown therefor in the price schedule published by the Coal Commission.

The witness testified that a rule would be reasonable which provides that each Code Member shall require all of his sales agents clearly to set forth upon any form of solicitation, contract, spot order or invoice the name of the Code Member principal, and the name of the mine or mines from which shipment was made or is to be made. Therefore, we are of the opinion that the following rule should be added to the rules proposed by the District Board in Section II of Exhibit No. 616:

Each Code Member shall require all his sales agents clearly to set forth upon any

form of solicitation, contract, spot order, invoice, and statement of account covering coal sold or offered for sale, the name of such Code Member principal, and the name of the mine or mines from which shipment was made or is to be made and if the name of the sales agent also appears in the transaction, then the above mentioned forms shall also disclose the fact of agency relationship with the Code Member principal.

The witness testified that it would be reasonable to provide that the statement filed with the Statistical Bureau under rule 5 of Section XII, where an allowance for coal which is sub-standard in preparation or quality has been granted, should also be filed with the District Board. Accordingly, we modify rule 5 of Section V to provide that the statement relating to allowances for shipment of coal which is sub-standard in preparation or quality should be filed with the Statistical Bureau and the District Board in the District in which the coal originates.

The witness for District Board No. 4 testified that he heard the cross-examination of Mr. J. O. Smith, the witness for District Board No. 2, by the Commission's counsel and that he agreed with the answers Mr. Smith gave to the questions propounded to him by the Commission's counsel in so far as such answers were not in conflict with the opinions the witness expressed as to the specific rules proposed by his Board.

Rule 2 of Section I defining a sales agent is identical with the definition proposed by District Board No. 2. The witness for District Board No. 2 testified that his Board did not intend by this definition or by rules 2 and 3 of Section II of the Board's proposals that a Code Member shall evidence in writing the appointment of an ordinary salesman who is regularly and continuously employed at a stated salary per week and that such writing should be filed with the Statistical Bureau. In light of this testimony, we are of the opinion that definition 2 of Section I should be modified to read as follows:

A "sales agent" is a person who, as agent of a code member (and therefore without purchasing the coal), sells coal produced by such code member for him or on his behalf: Provided, that "sales agent" shall not include an individual (herein referred to as a "sales agent") regularly and continuously employed by a code member, whose sole compensation is a stated salary per week, per month, or per year, and who regularly devotes the major portion of his time to the solicitation of purchases of coal produced by his code member employer.

In the opinion of the witness for District Board No. 2, it would be reasonable and desirable to provide for the filing of agreements modifying sales agency contracts. Accordingly, we modify rule 3 of Section II to provide for such filing. In order fully to effectuate the purpose

of this rule, we are of the opinion that this rule should be further modified as hereinafter set forth in rule 4 of Section II of the composite findings so as clearly to indicate that the writing shall set forth all the terms and conditions of the contract including the amount or basis of the sales agent's commission.

In light of the testimony of the witness for District Board No. 2, and in order properly to effectuate rule 5 of Section II, which provides that a list showing the names and addresses of sales agents and Code Members for whom such agents act shall be published by the Coal Commission from time to time, we are of the opinion that the Code Member principal shall report to the Statistical Bureau the expiration, termination or rescission of all sales agency contracts. For the same reasons, the Code Member should file with the Coal Commission a list showing the names and addresses of his sales agents and should also report any change in such list.

The witness for District Board No. 2 testified that the sales representative contemplated by rule 4 of Section II is not employed by the Code Member at his principal place of business or at a regularly established sales office. Accordingly, we so modify rule 4 of Section II. It is apparent that the District Board by this rule intended that each Code Member shall file monthly with the Statistical Bureau a statement showing the tonnage sold to distributors and the amount of discounts paid or allowed to them. We are of the opinion that this rule should be clarified so as clearly to require such filing as provided in rule 5 of Section II of the composite findings hereinafter set forth.

The witness for District Board No. 2 stated that in his opinion it would amount to a rebate if the sales agent's compensation or commission were determined on a tonnage basis and the Code Member included in the computation of such commission any part of the tonnage of coal sold by him to the sales agent. The witness stated that a rule prohibiting the payment of such a commission would be reasonable. Accordingly, we are of the opinion that the following rule is reasonable and should be added to Section II of the rules proposed by the District Board:

When any commissions are paid to a sales agent on a tonnage basis, the Code Member shall not include in the computation of such commissions any part of the tonnage of coal sold by him to the sales agent, whether for consumption or resale.

We are of the opinion that rule 7 of Section II of the rules proposed by District Board No. 4 should be clarified in the manner hereinafter set forth in rule 9 of Section II of the composite findings.

In light of the statement by the Chairman as to the scope of the hearing, Sections III and IV of the rules proposed by District Board No. 4 should be eliminated

and the following rule substituted therefor under Section V:

No Code Member or sales agent of a Code Member shall pay or allow any discount from minimum prices to any person unless such person has been registered by the Coal Commission as authorized to receive such discount at the time of the sale.

Rule 1 of Section V of Exhibit No. 616 should be eliminated for the reason that it is in substance the same as rule 7 of Section II. Rules 2 and 3 of Section V should be deleted for the reason that they are in substance the same as the rule substituted in those findings for Sections III and IV. Rule 4 of Section V for the purpose of clarity should be amplified to read as follows:

Code Members or their sales agents may allow discounts from minimum prices on sales of coal to registered distributors, not in excess of the maximum discount or price allowances prescribed by the Coal Commission upon such sales. Only one such discount may be allowed on any such sale.

The witness for District No. 2, in testifying to a rule proposed by District No. 2 which is similar to rule 1 of Section VI, stated that it was highly desirable that the minimum prices in effect at the time of the making of the contract should govern while rule 1 of Section VI is in effect. We are of the opinion that the governing minimum price under the Act is the price in effect at the time of the making of the contract. The witness for District No. 4 stated that in order to minimize the advantages a governmental agency would obtain by reason of being given the right to contract for a year's time while rule 1 of Section VI is in effect, it is reasonable to provide that the minimum price in effect at the time of the delivery should govern on sales to governmental agencies. The witness for District Board No. 2 stated that it would be desirable to permit sales to governmental agencies without competitive bidding, for periods not exceeding one year while rule 1 of Section VI is in effect if by virtue of an express exemption in the statute or ordinance the governmental agencies may enter into contracts without regard to competitive bidding. In order to place governmental agencies and other purchasers on an equal basis during the spot order period, the governing minimum price for deliveries during the first thirty (30) days of a contract with a governmental agency, should be the price in effect at the time of the making of the contract. We find that rule 1 of Section VI should be modified to read as follows:

Subject to further order of the Coal Commission no Code Member or sales agent of the Code Member shall enter into any agreement or order for the sale of coal providing for delivery for a period in excess of that authorized for spot order, and no prices shall be less than the applicable minimum prices in effect

at the time of the making of the agreement or order: *Provided*, however, that contracts for periods not exceeding one (1) year may be made with agencies of the Federal Government or with agencies of State or local governments, where the contract is entered into through competitive bidding, at the following applicable minimum prices:

(a) For deliveries during the first thirty (30) days of the contract, at not less than the applicable minimum price in effect at the time of the making of the agreement;

(b) For deliveries thereafter, at not less than the applicable minimum price in effect at the time of delivery if such price is higher than the contract price.

Provided, further, that contracts for periods not exceeding one (1) year at prices not less than the said applicable minimum prices may be made with agencies of the Federal Government or with such agencies of the State or local governments, in the absence of competitive bidding, where by virtue of an express exemption in the statute or ordinance such agencies may enter into contracts for the purchase of coal without regard to competitive bidding.

It was the opinion of the witness for District Board No. 2 that quotations should become null and void only upon the establishment of a higher revised minimum price than the price quoted. District Board No. 4 did not propose any rule limiting the effective period of quotations while rule 1 of Section VI is in effect. We are of the opinion that in order properly to effectuate the rule limiting agreements or orders to a 30-day delivery period, quotations should be uniformly limited to a 14-day effective period. District Board No. 4 likewise proposed no rule limiting the effective period of quotations and options when rule 1 of Section VI is revoked by the Commission and Code members are permitted to enter into contracts in excess of 30-day delivery periods. The witness for District Board No. 4, however, agreed with the witness for District Board No. 2 that when rule 1 of Section VI is revoked Code members should be permitted to enter into contracts providing for a delivery period not in excess of twelve (12) months, except by special permission and approval of the Coal Commission. In order properly to effectuate the rule limiting contracts to a 12-month delivery period, we are of the opinion that quotations and options should be uniformly limited to a 14-day effective period when rule 1 of Section VI is revoked.

In light of the testimony we modify rule 2 of Section VI to read as follows:

2. While the preceding rule is in effect, no option may be given by a Code Member or sales agent for the purchase of coal. When the above rule is suspended or revoked by the Coal Commission, options for the sale of coal may be given for a period not exceeding fourteen (14)

days. No options may be given at a price less than the applicable minimum price in effect at the time of the giving of the option. If the applicable minimum price is increased beyond the quoted price within such fourteen (14) days and the option shall not have been exercised at that time, the option thereupon shall become null and void: *Provided, however*, that in connection with offers to sell to the United States Government, or States or political subdivisions thereof, options may be given for a period not exceeding forty-five (45) days from the date of the offer or from the final date for the filing of offers.

3. Quotations may also be given for a period of not exceeding fourteen (14) days. If the applicable minimum price is increased beyond the quoted price within such fourteen (14) days and the quotation shall not have been accepted at that time, the quotation thereupon shall become null and void.

4. Every quotation and option shall provide that it is made subject to the provisions of the Marketing Rules and Regulations of the Coal Commission.

5. All quotations and options must be made or confirmed in writing. Every Code Member, or his sales agent, shall require of his offeree that the acceptance of a quotation or the exercise of an option be in writing.

The witness for District Board No. 2 testified that it would be more reasonable to require spot orders to be acknowledged or accepted within five (5) business days from the date of their receipt rather than three (3) business days as proposed by District Board No. 2. We modify rule 1 of Section VII to read as follows:

A spot order shall be in writing or confirmed in writing within five (5) business days from the date of the making thereof.

The witness for District Board No. 2 testified that a rule proposed by his Board similar to rule 2 (a) of Section VII proposed by District Board No. 4 is necessary in order to prevent a sale below the minimum price by absorbing transportation charges. Accordingly, this rule should be deleted and considered separately in a hearing held pursuant to Section 4 II (g) of the Act, which prohibits such absorption.

In light of the testimony of the witness for District Board No. 2, we are of the opinion that rules 2 (b), (c) and (d) of Section VII should be modified and clarified in the manner set forth in rules 2 (a); (b) and (c) of Section V of the composite findings hereinafter given.

The witness for District Board No. 4 agreed with the opinions given by the witness Smith for District Board No. 2 and further stated that all modifications agreed to by the witness Smith were reasonable. In view of this testimony we find that the rules relating to contracts contained in Section VI of the composite findings hereinafter given should be approved for District No. 4. Although rule 7 (b) of Section VI of the composite find-

ings is of doubtful legality we approve it at this time for the purposes of coordination since the District Boards may propose a modified coordinated rule which is not subject to legal objection.

In light of the testimony of a witness for District Board No. 2 relating to a rule similar to rule 1 of Section VIII proposed by District Board No. 4, we are of the opinion that rule 1 of Section VIII should be modified in the manner set forth in rule 1 of Section VIII of the composite findings hereinafter given. The witness for District Board No. 2 testified that in his opinion premium and penalty contracts should not be authorized which will permit the sale of coal below the applicable minimum price through the exercise of the penalty. In addition, the information required to be reported by rules 4 and 5 is already required to be reported by rule 1 of Section VIII. Accordingly, we are of the opinion that these rules should be deleted and the following rule should be substituted therefor:

From and after the effective date of these Rules and Regulations, no Code Member shall enter into or perform any agreement made upon a penalty or a premium and penalty basis which will permit the sale of coal at an aggregate contract price below the applicable minimum price established by the Coal Commission for the coal sold and delivered upon such agreement subsequent to said effective date: Provided, that where a Code Member has entered into an agreement made upon a penalty or a premium and penalty basis, this rule shall not be considered as affecting any claim that the buyer might otherwise have had for sub-standard preparation or quality under Section X of these Marketing Rules and Regulations.

Rule 1 of the section entitled "Terms of Payment" on page 21 of Exhibit No. 616 should be expanded so as to include truck shipments. Rule 3 of the section entitled "Terms of Payment" should be modified so as to provide that payment for coal shipped for vessel fuel and delivered into vessels at ports on the Great Lakes or tributary waters thereof shall be made on or before the 20th day of the month following such delivery. The witness for District Board No. 2 testified that Code members should not be permitted to accept voluntarily as payment in full any amount which is less than the minimum price per net ton at the time of the making of the contract except that Code members may be permitted to enter into bona fide creditors' composition with other creditors of a defaulting purchaser and that a copy of such composition should be filed with the Statistical Bureau. We are of the opinion that the following rule should be approved for District No. 4 as being reasonable and in conformity with the Act:

No Code Member shall accept as payment in full for any account for the sale

of coal any amount which is less than the applicable minimum price for the quantity of coal involved. Provided, however, that a Code Member may enter into a bona fide general creditors' composition with other creditors of a defaulting purchaser. A copy of such creditors' composition shall be filed with the Statistical Bureau within ten (10) business days from the date of making such composition.

In the light of the opinion of the witness for District Board No. 2 that such requirements would be reasonable, we modify Rule 3 of Section XII in the manner set forth in Rule 1 of Section IX of the composite findings hereinafter given so that the statement filed with the Statistical Bureau shall show the price at which the coal was sold, the ultimate destination of the coal, the name of the originating mine, the grade and size of the coal shipped, and the amount of commission, if any, paid upon the resale of the coal.

With reference to Rule 5 of Section XII we are likewise of the opinion that the statement to be filed with the Statistical Bureau should be of real value to the Commission and should, accordingly, contain all relevant information. We are of the opinion that the statement should show, in addition to the information required in the rule as proposed by the Board, the price at which the coal was sold, the tonnage delivered, the name of the mine, the name of the Code Member, the date of shipment, the grade and size of coal, and the destination.

Rule 7 of Section XII provides that coal confiscated or lost in transit shall be invoiced to the carrier at the market value of the coal but in no event at less than the minimum price established therefor by the Coal Commission.

We are of the opinion that this rule should be modified to read as follows:

All coal confiscated or lost in transit shall be invoiced to the carrier at not less than the minimum price established for such coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or loss, whichever may be the higher.

Rule 7 of Section X does not state as of what time interest should be charged or what locality should govern the interest charged. Furthermore, a discrimination appears in that no provision is made for the charging of interest where the due date of the account is extended by agreement, expressed or implied, other than by the acceptance of note, trade acceptance or any other form of indebtedness. We find, therefore, that this rule should be modified to read as follows:

Where the due date of the account is extended by agreement of the parties, express or implied, or where payment is made by note, trade acceptance or other form of indebtedness, the seller shall charge and the buyer shall pay interest

from and after the due date of the account at the current rate in the locality to which the coal is shipped to the vendee.

The District Board provided in Section X, relating to terms of payment, that the price and fair trade provisions of the Act shall not be violated by the use of terms of payment and that, in no instance, shall the term of payment be more favorable than as specified in the rules. However, the District Board did not propose any specific rule making the agreement, express or implied, to extend credit for a period of longer than that authorized by the rules, a violation of the code. We are of the opinion that the following rule is necessary and reasonable in order fully to effectuate the rules proposed by the District Board relating to terms of payment.

The agreement by a Code Member, expressed or implied, to extend credit for a period longer than that authorized by these rules and regulations, with the effect of violating the price provisions or the unfair methods of competition of the Act, shall constitute a violation of the Code.

For purposes of clarification, we find that rules 1 and 2 of Section XII should be modified to read as follows:

1. No deduction or allowance from invoice prices shall be granted by any Code Member or his sales agent to any purchaser for advertising.

2. Code Members (or their agents or representatives) either individually or collectively, with or without financial participation by retailers of coal, may conduct advertising campaigns seeking to increase the use of coal. The amount of expenditures incurred by a Code Member, his agent or representative for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.

After due consideration of all the testimony in the record relating to the rules proposed by District Board No. 4, we find that the following rules and regulations incidental to the sale and distribution of coal by Code Members in District No. 4 are reasonable, not inconsistent with the requirements of Section 4 of the Act, and in conformance with the standards of fair competition established by the Act:

MARKETING RULES AND REGULATIONS INCIDENTAL TO THE SALE AND DISTRIBUTION OF COAL BY CODE MEMBERS WITHIN DISTRICT NO. 4 AS PROPOSED BY DISTRICT BOARD NO. 4 AND AS APPROVED, DISAPPROVED, OR MODIFIED FOR THE PURPOSE OF COORDINATION

Section I. Definitions

1. The term "person" as used herein, includes individuals, firms, associations, partnerships, corporations, trusts, trustees, cooperatives, receivers and trustees in bankruptcy and in other legal proceedings, and any other recognized forms of business organizations.

2. A "sales agent" is a person who, as agent of a code member (and therefore without purchasing the coal), sells coal produced by such code member for him or on his behalf: Provided, that "sales agent" shall not include an individual (herein referred to as a "salesman") regularly and continuously employed by a code member, whose sole compensation is a stated salary per week, per month, or per year, and who regularly devotes the major portion of his time to the solicitation of purchases of coal produced by his code member employer.

3. A "commission" is the total of all compensations and allowances received by a sales agent from a code member for services rendered in the sale of coal.

4. A "registered distributor" is a person who has been duly registered by the Coal Commission pursuant to the rules and regulations prescribed by the Commission for the administration of Section 4 II (h) of the Act.

5. A "spot order" is a legal obligation for the sale and purchase of coal, the delivery of which is stipulated to be made within not more than thirty (30) days from the date upon which the order was accepted.

6. A "contract" is a legal obligation for the sale and purchase of coal, the deliveries of which are stipulated to be made during a period longer than the maximum period specified for a spot order.

7. A "quotation" is an offer to sell coal which the offerer may withdraw prior to its being acted upon by the offeree.

8. An "option" is an offer to sell coal acceptable within a time certain, during which time the offerer may not withdraw the offer without the consent of the offeree.

9. A "commitment" is the status of a contract between the time a quotation is accepted or an option is exercised and the time the contract is formally reduced to writing.

10. "Coal Commission" as used herein, shall mean the National Bituminous Coal Commission established under the provisions of the Bituminous Coal Act of 1937.

11. "Act" as used herein shall mean the Bituminous Coal Act of 1937.

12. "District Board" as used herein, shall mean any District Board established under the provisions of Section 4, Part I (a) of the Act.

13. "Statistical Bureau" shall mean, unless otherwise specifically stated, the Statistical Bureau of the Commission for the District in which the coal involved in any transaction is produced, or the District in which is located a mine of a code member affected by any order or regulation.

14. "Minimum Price" shall mean a minimum price established and made effective by the Coal Commission.

15. "Maximum Price" shall mean a maximum price established and made effective by the Coal Commission.

16. The term "producer" includes all individuals, firms, associations, corpora-

tions, trustees, and receivers engaged in the business of mining coal.

17. The terms "reconsignment" and "diversion" as used herein shall mean the change in the original consignee or in the destination or route.

18. The term "transportation facilities" means railroad cars, ships, barges, trucks, or any other facilities used or useful in the transportation of coal.

19. A "code member" means a producer who has accepted and holds membership in the Bituminous Coal Code promulgated under the Bituminous Coal Act of 1937.

20. The term "domestic market" shall include all points within the continental United States and Canada, and car-ferry shipments to the Island of Cuba. Bunker coal delivered to steamships for consumption thereon shall be regarded as shipped within the domestic market.

21. "Cargo shipment" is a quantity of coal loaded in a vessel, boat or barge for transportation via water.

22. "Bunker coal" or "vessel fuel" is that coal used aboard a boat or vessel for consumption thereon.

23. "Coal" as used herein shall mean bituminous coal.

24. The term "bituminous coal" includes all bituminous, semi-bituminous and sub-bituminous coal and shall exclude lignite, which is defined as a lignitic coal having calorific value in British thermal units of less than seven thousand six hundred per pound and having a natural moisture content in place in the mine of 30 per centum or more.

25. The term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Section II. Sales Agents

1. All appointments of Sales Agents by Code Members or their agents or authorized representatives, and the terms and conditions of such appointments, shall be subject to the Marketing Rules and Regulations from time to time established by the Coal Commission.

2. Each Code Member shall be responsible for the compliance by all his Sales Agents and agents and employees of Sales Agents and agents with the provisions of the Bituminous Coal Code and of all rules and regulations, promulgations and the determinations of the Coal Commission.

3. Each Code Member shall require all his sales agents clearly to set forth upon any form of solicitation, contract, spot order, invoice, and statement of account covering coal sold or to be sold, the name of such Code Member principal, and the name of the mine or mines from which shipment was made or is to be made. If the name of the sales agent also appears in the transaction, then the above mentioned forms shall also disclose the fact of agency relationship with the Code Member principal.

4. (A) Every contract for the appointment of a sales agent by Code Members or by agents or authorized representatives of Code Members, or any modification thereof, shall be in writing, and shall fully set forth therein all the terms and conditions of such contract, including the amount or basis of the sales agent's commission. Certified copies of all such agency contracts entered into on or prior to the effective date of the establishment of these rules and regulations and in effect on such date, shall be filed by the Code Member with the Statistical Bureau, or Bureaus, within twenty (20) business days after such date.

(B) Certified copies of all contracts appointing sales agents or of agreements modifying any sales agency contract, entered into subsequent to the effective date of these rules and regulations, shall be similarly filed by the Code Member within ten (10) business days after the date upon which such contracts or agreements have been entered into.

(C) Upon the expiration, termination, or rescission of any sales agency contract, the Code Member principal shall make a report thereof to the Statistical Bureau, or Bureaus, within ten (10) business days after the date of such expiration, termination, or rescission.

5. (A) As to all coal sold by a Code Member otherwise than through a sales agent or through an employee regularly employed as a salesman by the Code Member at his principal place of business or at a regularly established sales office, such Code Member shall, not later than the tenth day of each month, file with the Statistical Bureau, or Bureaus, a list of all persons through whom, directly or indirectly, any such coal was sold during the preceding calendar month, with a statement of the duration and character of their employment, the tonnage sold by, and the rate and amount of compensation paid to, each of them.

(B) Not later than the tenth day of each month, each Code Member shall also file with the Statistical Bureau, or Bureaus, similar information obtained from his sales agents concerning sales of coal made during the preceding calendar month, by the sales agents' representatives and employees other than salesmen employed at the principal place of business or a regularly established sales office of the sales agent.

(C) Not later than the tenth day of each month, each Code Member shall also file with the Statistical Bureau, or Bureaus, a statement showing the names and addresses of distributors to whom the Code Member or his sales agents sold coal during the preceding calendar month, the tonnage sold, and the amount of discount allowed to each such distributor.

6. Within twenty (20) business days after the effective date of these rules and regulations, each Code Member shall file with the Coal Commission a list showing the names and addresses of all

sales agents. Upon any change in said list, the Code Member shall notify the Coal Commission within ten (10) business days after such change takes place.

7. A list showing the names and addresses of sales agents and the Code Members for whom such agents act shall be published monthly by the Coal Commission.

8. All agency contracts and other information filed by Code Members in conformity with the foregoing regulations, other than the names and addresses of sales agents, shall be held by the Coal Commission as the confidential records of said parties and shall not be made public without the consent of the Code Member from whom the same shall have been obtained, except where such disclosure is required in any proceeding before the Coal Commission by way of enforcement of the Act or upon the order of any court of competent jurisdiction.

9. From and after twenty (20) business days following the effective date of these Marketing Rules and Regulations no Code Member or sales agent of a Code Member shall allow or pay, directly or indirectly, any commission or compensation to any sales agent

(a) Unless the contract of agency shall have been filed with the Coal Commission, as hereinbefore required, and

(b) Unless the sales agent shall have agreed, in writing, with the Code Member to conform to and observe the minimum and maximum prices and Marketing Rules and Regulations established by the Coal Commission and the Fair Trade Practice Provisions of the Act, as well as all proper Orders of the Commission, and

(c) Unless the sales agent shall have in good faith complied with the agreement as in paragraph (b) above provided.

10. No commission shall be paid to a sales agent by a Code Member where a partial or complete ownership, direct or indirect, or other control of the sales agent exists in the purchaser to whom he sells the coal: *Provided*, however, that a commission may, nevertheless, be allowed and paid in a case where the commission has determined that such ownership, operation, control or affiliation is bona fide, is not established primarily to secure an indirect price reduction and is not within the prohibition of paragraphs 11 and 12 of Section 4 Part II (i) of the Act.

11. When any commissions are paid to a sales agent on a tonnage basis, the Code Member shall not include in the computation of such commissions any part of the tonnage of coal sold by him to the sales agent, whether for consumption or resale.

12. No Code Member shall employ any person or appoint any sales agent at a compensation obviously disproportionate to the ordinary value of the service or services rendered and whose employment or appointment is made with the pri-

mary intention and purpose of securing a preferment with a purchaser or purchasers of coal.

13. Subject to further order of the Coal Commission, the amount of commission to be paid by a Code Member to his sales agent shall be fixed by agreement of the parties, subject, however, that upon complaint of violation of the unfair methods of competition, as provided in the Act, the amount of such commission shall be subject to review by the Coal Commission.

Section III. Discounts

1. No Code Member or sales agent of a Code Member shall pay or allow any discount from minimum prices to any person unless such person has been registered by the Coal Commission as authorized to receive such discount at the time of the sale.

2. Code Members or their sales agents may allow discounts from minimum prices on sales of coal to registered distributors, not in excess of the maximum discount or price allowance prescribed by the Coal Commission upon such sales. Only one such discount may be allowed on any such sale.

Section IV. Limitation of Orders, Agreements, Options and Quotations

1. Subject to further order of the Coal Commission no Code Member or sales agent of the Code Member shall enter into any agreement or order for the sale of coal providing for delivery for a period in excess of that authorized for a spot order, and no prices shall be less than the applicable minimum prices in effect at the time of the making of the agreement or order: *Provided*, however, that contracts for periods not exceeding one (1) year may be made with agencies of the Federal Government or with agencies of State or local governments, where the contract is entered into through competitive bidding, at the following applicable minimum prices:

(a) For deliveries during the first thirty (30) days of the contract, at not less than the applicable minimum price, in effect at the time of the making of the agreement;

(b) For deliveries thereafter, at not less than the applicable minimum price in effect at the time of delivery if such price is higher than the contract price.

Provided, further, that contracts for periods not exceeding one (1) year at prices not less than the said applicable minimum prices may be made with agencies of the Federal Government or with such agencies of the State or local governments, in the absence of competitive bidding, where by virtue of an express exemption in the statute or ordinance such agencies may enter into contracts for the purchase of coal without regard to competitive bidding.

2. While the preceding rule is in effect, no option may be given by a Code Member or sales agent for the purchase of coal. When the above rule is suspended or re-

voked by the Coal Commission, options for the sale of coal may be given for a period not exceeding fourteen (14) days. No options may be given at a price less than the applicable minimum price in effect at the time of the giving of the option. If the applicable minimum price is increased beyond the quoted price within such fourteen (14) days and the option shall not have been exercised at that time, the option thereupon shall become null and void: *Provided*, however, that in connection with offers to sell to the United States Government, or States or political subdivisions thereof, options may be given for a period not exceeding forty-five (45) days from the date of the offer or from the final date for the filing of offers.

3. Quotations may also be given for a period of not exceeding fourteen (14) days. If the applicable minimum price is increased beyond the quoted price within such fourteen (14) days and the quotation shall not have been accepted at that time, the quotation thereupon shall become null and void.

4. Every quotation and option shall provide that it is made subject to the provisions of the Marketing Rules and Regulations of the Coal Commission.

5. All quotations and options must be made or confirmed in writing. Every Code Member, or his sales agent, shall require of his offeree that the acceptance of a quotation or the exercise of an option be in writing.

Section V. Spot Orders

1. A spot order shall be in writing or confirmed in writing within five (5) business days from the date of the making thereof.

2. Each spot order shall be subject to the following conditions which shall either be endorsed upon the form of the order or upon the written confirmation thereof by the Code Member or his sales agent, the meaning and effect of which shall not be changed or altered by any other provision of the order.

(a) "No shipment consigned to any destination may be diverted or re-consigned without the consent of the seller confirmed in writing. In case of any re-consignment or diversion, the seller shall charge and the buyer shall pay not less than the minimum price prescribed for such coal for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied: *Provided*, however, that this provision does not apply to railroad locomotive fuel sold at prices f. o. b. mine."

(b) "The coal shipped pursuant to this order is sold and purchased upon the following conditions:

"(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein;

"(2) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writ-

ing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied."

(c) "If shipments called for by this order are not completed within thirty (30) days from the effective date of this order, the unfilled portion of the order shall not be delivered."

3. In any case where a sale is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in Item 2 (a) of this section without first securing the consent of his Code Member principal to be confirmed in writing.

4. All the terms and conditions of a sale of coal must be fully and expressly set forth either in the order or in the written confirmation thereof and such order or written confirmation thereof shall specifically contain all the terms required by Rule 1 of Section VI of these Marketing Rules and Regulations. Within ten (10) business days after the date of the making of the spot order or date of the written confirmation thereof, the Code Member or his sales agent shall file with the Statistical Bureau or Bureaus a copy of such spot order or confirmation. Any modification of a spot order must also be made in writing and filed with the Statistical Bureau or Bureaus in the same manner.

Section VI. Contracts

Upon the revocation or suspension of rule 1 of Section IV of these Marketing Rules and Regulations, Code Members or sales agents of Code Members may thereafter enter into contracts for the sale and delivery of coal upon the following terms and conditions:

1. Every contract shall be in writing and shall express the entire agreement between the parties. The contract shall clearly state the date of execution, the effective date, the expiration date, the price agreed upon, the terms of payment, the size and grade of coal, the number of cars or tonnage to be shipped, the name of the Code Member and the name of the originating mine, and, where the coal is purchased for consumption, the use to which the coal is to be applied. Contracts may also be made either (a) calling for a buyer's entire requirements or a stated percentage of his requirements, showing the maximum tonnage to be shipped thereunder, or (b) covering a buyer's requirements and stating the estimated tonnage to be shipped with an allowable overshipment of not exceeding ten (10) per cent of such estimated tonnage.

2. No contract for the sale of coal shall provide for deliveries to commence at a date later than ninety (90) days from the date upon which such contract is entered into.

3. No contract shall be made at a price below the applicable minimum price as established by the Coal Commission at

the time of the making of the contract for the coal to be sold thereunder, and no coal may be delivered upon a contract at a price below such applicable minimum price.

4. No contract shall provide for delivery over a period in excess of twelve (12) months except by special permission and approval of the Coal Commission, upon a showing of the necessity of meeting the long term contract competition of oil, gas, or other fuels or forms of power, or for such other reasons as the Commission may deem appropriate in order to further the effectual administration of the Act.

5. Any change in the terms of a contract, not in violation of these Rules and Regulations, shall be evidenced by a written agreement and shall conform to all the requirements set forth in these Rules and Regulations.

6. A report of every commitment shall be filed by the Code Member or his sales agent with the Statistical Bureau or Bureaus, within fifteen (15) business days from the date of the making of the agreement. Such report shall set forth all the terms and conditions of the commitment. A true copy of every contract and of any agreement for modification thereof shall be filed with the Statistical Bureau within fifteen (15) business days from the date of execution of such contract or agreement for modification: Provided, however, that a report of the commitment need not be filed if a copy of the contract is filed within fifteen (15) business days.

7. Each contract shall contain the following provisions, the meaning and effect of which shall not be changed or altered by any other provision of the contract:

"(a) This contract and the performance of all provisions thereof are expressly subject to the Bituminous Coal Act of 1937, and the proper orders and regulations issued thereunder by the National Bituminous Coal Commission.

"(b) The purchase price named herein shall be increased or decreased in such amount as may be ordered by the District Board with the approval of the Coal Commission, occasioned by reason of any changes in wage rates, hours per day, hours or days per week, in working conditions, or Federal, State or other taxes or regulations affecting the cost of production or delivery of the coal covered by this contract.

"(c) No shipment consigned to any destination point may be reconsigned or diverted without the consent of the seller to be confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of the reconsignment or diversion for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied: Provided, however, that this provision does not

apply to railroad locomotive fuel sold at prices f. o. b. mines.

"(d) The coal shipped pursuant to this contract is sold and purchased upon the following conditions:

"(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein;

"(2) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied."

8. After the effective date of any increase or decrease, determined pursuant to paragraph (b) of the preceding rule 7, a Code Member shall increase or decrease the contract price or prices by the amount so ordered by the District Board and approved by the Coal Commission, and, with respect to any coal shipped subsequent to said effective date and already invoiced at the price previously in effect, a Code Member shall promptly issue a debit or credit memorandum, as the case may be, for the amount of any such increase or decrease.

9. In any case where a contract is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in item 7 (c) of this section without first securing the consent of the Code Member producing such coal to be confirmed in writing.

10. The making of a contract for the sale of coal at a price below the minimum or above the maximum therefor established by the Commission at the time of the making of the contract shall constitute a violation of the Code and such contract shall be invalid and unenforceable.

11. No contract shall be made for the sale of coal for delivery after the expiration date of the Act at a price below the minimum or above the maximum therefor established by the Coal Commission and in effect at the time of making the contract.

Section VII. Terms of Payment

1. The price and fair trade practice provisions of the Act shall not be evaded or violated by a Code Member, or his sales agent, through the use of terms of payment, and in no instance shall terms of payment be more favorable than the following:

(A) On rail, river, ex-river, or truck shipments, the date of payment of invoices for coal sold shall be on or before the twentieth (20th) day of the month following the month in which shipment was made.

(B) On tidewater cargo shipments the date of payment shall be not more than thirty (30) days from date of vessel bill of lading, and where coal is sold f. o. b.

mines for tidewater cargo shipment, on or before the twentieth (20th) day of the month following the month in which the coal is dumped.

(C) Payment for all tidewater Bunker coal supplied for foreign vessels shall be by cash on delivery or by master's draft on owners in United States currency at not exceeding fifteen (15) days' sight at supplier's option. When drafts are accepted in payment, all bank charges for collection, exchange, etc., shall be for owner's account. Payment for tidewater bunker coal supplied for American vessels shall be made on or before the twentieth (20th) day of the month following delivery.

Payment for coal shipped for vessel fuel, and delivered into vessels at ports on the Great Lakes or tributary waters thereof, shall be made on or before the twentieth (20th) day of the month following such delivery.

(D) On lake cargo shipments, the date of payment shall be not more than sixty (60) days from date of vessel bill of lading, and where coal is sold f. o. b. mines for lake cargo shipments, on or before the twentieth (20th) of the second month following the month in which dumped.

(E) On all coal sold to railroads, the date of payment shall be on or before the twenty-fifth (25th) day of the month following the date of shipment.

(F) Invoices shall be paid in full in United States currency, or funds equivalent thereto, not later than the due date.

(G) No portion of the sale price may be withheld by agreement between the buyer and the seller based upon any unadjusted claim of the buyer.

(H) No sale, delivery, or offer for sale of coal shall be made upon any condition, express or implied, that any portion of the sale price may be withheld by the buyer, or deposited in escrow, pending or based upon a determination of the constitutionality of any provision of the Act, of the jurisdiction of the Coal Commission, or the validity or applicability of any order of the Coal Commission.

(I) Where the due date of the account is extended by agreement of the parties, express or implied, or where payment is made by note, trade acceptance or other form of indebtedness, the seller shall charge and the buyer shall pay interest from and after the due date of the account at the current rate in the locality in which the coal is shipped to the vendee.

(J) Freight on all-rail or ex-river shipments shall not be paid by a Code Member, or his sales agent, except to prepay stations as published in current railway tariffs or on shipments to the United States Government, States or political subdivisions thereof. Where freight is thus prepaid, the amount thereof shall immediately upon receipt of freight bill or notice of sight draft payment, be invoiced to the buyer for immediate payment.

(K) No Code Member shall accept as payment in full for any account for the

sale of coal any amount which is less than the applicable minimum price for the quantity of coal involved. Provided, however, that a Code Member may enter into a bona fide general creditors' composition with other creditors of a defaulting purchaser. A copy of such creditors' composition shall be filed with the Statistical Bureau within ten (10) business days from the date of making such composition.

(L) The agreement by a Code Member, expressed or implied, to extend the credit for a period longer than that authorized by these rules and regulations, with the effect of violating the price provisions or the unfair methods of competition of the Act, shall constitute a violation of the Code.

Section VIII. Use of Coal Analyses

1. Analyses of coal shall not be utilized by a Code Member, or his sales agent, in selling or offering for sale any coal produced by the Code Member, whether or not the analysis is a term in the offer or sale, unless such Code Member shall have filed with the Statistical Bureau and the District Board for the District in which the coal is produced, a report of the analysis or analyses as used or proposed to be used by him. Such report shall show the following:

(a) The name of the Code Member Producer.

(b) The name of the mine.

(c) The name or geological number of the seam or seams from which the coal is produced.

(d) The name of the size, and, if screened, the dimension or dimensions of the screen or screens over and/or through which the coal is prepared.

(e) Whether the analysis is representative of the entire production of such size of coal, or whether it represents only a portion of such production segregated by selective mining, selective preparation, actual analyses made at the mine, or in any other manner.

(f) That such analysis is representative of the grade and size of the coal as regularly produced by the Code Member and as loaded directly into transportation facilities for shipment to market and that the Code Member is prepared to make deliveries of coal of substantially the quality and character as shown by the analysis.

(g) That each such analysis is not less than a proximate analysis showing moisture content, ash, volatile matter, fixed carbon, sulphur and British thermal units and ash softening temperature.

2. Every analysis used in selling, or offering for sale, any particular kind, quality, or size of coal shall be accompanied by a statement to the effect that a copy of such analysis has been properly filed with the Statistical Bureau, the Coal Commission and the District Board.

3. All reports of analyses so filed shall be subject to inspection at the office of the Statistical Bureau at any time during

office hours by any interested person, and may be considered by the District Board and the Coal Commission in determining from time to time proper classifications of the coals produced by the Code Member.

4. A copy of any analysis of the coal of a Code Member made by or on behalf of a consumer and accepted by the Code Member as the basis for an adjustment of price under any contract or spot order shall be filed by the Code Member with the Statistical Bureau, the Coal Commission and the District Board, within five (5) business days after such adjustment is made.

5. From and after the effective date of these Rules and Regulations, no Code Member shall enter into or perform any agreement made upon a penalty or a premium and penalty basis which will permit the sale of coal at an aggregate contract price below the applicable minimum price established by the Coal Commission for the coal sold and delivered upon such agreement subsequent to said effective date: Provided, that where a Code Member has entered into an agreement made upon a penalty or a premium and penalty basis, this rule shall not be considered as affecting any claim that the buyer might otherwise have had for sub-standard preparation or quality under Section X of these Marketing Rules and Regulations.

Section IX. Resale of Coal Refused in Transit or at Destination

1. Where coal is refused by a consignee in transit or at destination, the Code Member may sell the same at the best obtainable price, provided that in each case the Code Member shall file with the Statistical Bureau, and the District Board for the District in which the coal was produced, within five (5) business days from the date of such resale, a statement giving the following information:

(a) Name of consignee.

(b) Address of the consignee.

(c) Original destination of the coal.

(d) Name of Code Member.

(e) Originating mine.

(f) The grade and size of coal shipped.

(g) Price at which coal sold.

(h) Reasons for the refusal.

(i) Facts resulting from the investigation of the complaint.

(j) Name of ultimate purchaser upon resale.

(k) Address of purchaser upon resale.

(l) Ultimate destination of the coal.

(m) Price received by the seller upon resale.

(n) Amount of commission, if any, paid upon the resale.

(o) A copy of the carrier's notice of refusal or a notice of reconignment and such other pertinent information and facts as may be offered in proof of the necessity for such resale.

(p) A signed and verified statement that the provisions of the Code and the Marketing Rules and Regulations of the

Coal Commission other than as to price have not been violated or evaded.

2. All Code Members shall properly furnish to the District Board and to the Statistical Bureau of the Coal Commission for the District in which the coal originated, full reports of all reconsignments, and shall authorize the carrier making such reconsignments to furnish complete information thereon to such Statistical Bureau.

Section X. Substandard Preparation or Quality

1. Where any allowance is requested by a buyer of coal on any shipment claimed to be substandard in preparation or quality, the Code Member or the sales agent, with the prior approval of the Code Member, may on or before the maturity date of the invoice, make settlement and agree with the buyer upon any amount reasonably to be deducted for such inferior coal and accept payment therefor at less than the minimum prices; provided, however, that in each such case the Code Member shall within five (5) days after granting such allowance file with the Statistical Bureau of the Coal Commission in the District in which the coal originates, a verified statement giving the following information:

(a) The name and address of the consignee and the reason for the request for the allowance.

(b) The price at which the coal was sold, the tonnage delivered, the name of the mine, the Code Member, the date of shipment, the grade and size of coal, the destination, and the amount of allowance or adjustment made.

(c) Such other pertinent information and facts as may be offered in proof of the necessity for such reduction or allowance.

(d) A statement that the adjustment has not been made with the purpose or intent of evading the price provisions of the Act.

The Code Member shall also file, together with the statement, a written claim duly executed by or on behalf of the buyer and verified by affidavit, setting forth the amount claimed by way or deduction and the reasons for the complaint.

2. All such adjustments and allowances shall be subject to review by the Coal Commission.

Section XI. Substitutions

1. No substitution may be made, upon any spot order or contract, of any grade or size of coal taking a minimum price higher than the price specified in such order or contract, except upon the following conditions:

(a) The proposed substitution shall not be an express or implied condition of the order or contract.

(b) The coal substituted must be coal which the Code Member has already

produced and loaded into transportation facilities and which cannot be sold promptly by the exercise of the usual sales effort, such substitution to be limited to a specific tonnage for shipment on a specific order and from a specific mine.

(c) The substitution must be reasonably necessary as an emergency measure in order to continue operation of the mine of the Code Member.

(d) The substitution shall be acceptable to the purchaser of the coal and shall not be made with the purpose or effect of conferring any advantage on the purchaser or securing any preference or advantage for the Code Member over his competitors.

(e) Such substitution may be made only with the approval of the Statistical Bureau and in each instance formal application therefor shall be made upon forms provided by the Commission and permits shall be issued prescribing the conditions of substitution in each case approved.

(f) Copies of substitution permits shall be mailed daily to the office of the District Board and weekly summaries of substitution permits shall be mailed to all District Boards within the Price Area. The Commission may from time to time publish the essential facts as to all substitution permits granted.

(g) In each case of coal shipped under a substitution permit the invoice shall specifically show the permit number and the size and grade of coal substituted.

Section XII. Crushing and Pulverizing Coal

1. Each Code Member who maintains and operates at his mine, or at any facility used in preparing coals for market, any crushing or pulverizing device, shall register such device with the Statistical Bureau of the Coal Commission, on or before _____ on forms submitted by the Coal Commission.

2. Such forms shall include the following:

(a) Name and address of Code Member

(b) Name of mine or facility at which device is located

(c) Name and style or type of crushing or pulverizing device

(d) Hourly capacity of device

(e) Sizes of coal which device can crush or pulverize

(f) Sizes of coal resulting from crushing or pulverizing

(g) Number of tons crushed in 1936, 1937 and in each month of 1938

(h) Cost per ton of crushing or pulverizing in 1937.

3. Beginning with the month of _____, each Code Member shall, on or before the tenth (10th) day of each succeeding month, file with the Statistical Bureau, on forms to be provided by the Coal Commission, a statement, verified by affidavit, setting forth the following

information for the preceding calendar month:

(a) Number of tons of each size crushed or pulverized

(b) Number of tons of each size resulting from crushing or pulverizing.

Section XIII. Miscellaneous

General

1. The minimum prices established by the Commission shall not apply to coal sold and shipped outside the domestic market as defined in the Act and in these Marketing Rules and Regulations.

2. Maximum prices established by the Commission shall not apply to coal sold and shipped outside the continental United States.

3. No coal shall be sold or delivered or offered for sale at a price below the minimum or above the maximum thereof established by the Commission, and the sale or delivery or offer for sale of coal at a price below such minimum or above such maximum shall constitute a violation of the Code: Provided, that the provisions of this paragraph shall not apply to a lawful and bona fide written contract entered into prior to June 16, 1933, which has been filed with the Coal Commission.

4. If, in converting a net or gross ton price, freight rate or freight rate differential, the calculation extends to more than 3 decimals, and the 4th decimal is .0005 or more, it shall be added as .001, and if under .0005 it shall be eliminated.

5. All coal shall be sold and invoiced on a price per ton basis, and all coal must be sold and invoiced under the size, price classification and other designation therefor in the price schedule published by the Coal Commission.

6. Failure to file information required by these Marketing Rules and Regulations or the filing of false information, wilfully made, will subject the party failing to file the information required, or the party so filing, to the penalties of the Act and other penalties imposed by law.

Advertising

1. No deduction or allowance from invoice prices shall be granted by any Code Member or his sales agent to any purchaser for advertising.

2. Code Members (or their agents or representatives) either individually or collectively, with or without financial participation by retailers of coal, may conduct advertising campaigns seeking to increase the use of coal. The amount of expenditures incurred by a Code Member, his agent or representative for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.

Screening for Buyer's Account

1. The screening of mine run or re-screening of other grades of coal, sold and billed as such, for the buyer's account for the purpose of keeping the re-

sultant products separate in the shipment thereof is prohibited.

Coal Confiscated or Lost in Transit

1. All coal confiscated or lost in transit shall be invoiced to the carrier at not less than the minimum price established for such coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or loss, whichever may be the higher.

Revision of Marketing Rules and Regulations

1. These Marketing Rules and Regulations are subject to revision and amendment by further order of the Coal Commission.

Unfair Methods of Competition.—See page 166.

Penalties.—See page 166.

MINIMUM PRICE AREA No. 1—DISTRICT BOARD No. 5

PROPOSED MARKETING RULES AND REGULATIONS

A witness for District Board No. 5, properly qualified as an expert in the marketing of coal in that district, introduced into evidence as Exhibit No. 617 the rules and regulations proposed by District Board No. 5 in compliance with Commission Order No. 248. The witness testified that these rules and regulations were properly submitted to Code Members within said district on September 9, 1938, and that no protests concerning such proposals were received from Code Members.

The witness for District No. 5 agreed with the opinions given by the witnesses for Districts Nos. 2 and 4 as to certain modifications and additions to the rules proposed by Districts Nos. 2 and 4. As previously stated in the findings for District No. 4, the witness for District No. 4 likewise agreed to the opinions expressed by the witness for District No. 2 as to such modifications and additions and, accordingly, the rules for District No. 4 were modified to reflect such opinions. Therefore, we find that the rules proposed by District No. 5 which are similar to the rules proposed by Districts Nos. 2 and 4 should be modified in the same manner and for the same reasons as hereinbefore stated in the findings of fact for District No. 4.

The witness for District No. 5 testified that the rules and regulations proposed by District No. 5 are reasonable, not inconsistent with the requirements of Section 4 of the Act, and in conformance with the standards of fair competition established in the Act. Likewise, the evidence reveals that the proposed deletions, modifications and clarifications of such rules are in accordance with the standards of Section 4 II (a) of the Act. Accordingly, we find that the following rules and regulations proposed by District No. 5, reflecting such deletions, modifications and clarifications, are rea-

sonable, not inconsistent with the requirements of Section 4 of the Act, and in conformance with the standards of fair competition established in the Act:

MARKETING RULES AND REGULATIONS INCIDENTAL TO THE SALE AND DISTRIBUTION OF COAL BY CODE MEMBERS WITHIN DISTRICT NO. 5 AS PROPOSED BY DISTRICT BOARD NO. 5 AND AS APPROVED, DISAPPROVED, OR MODIFIED FOR THE PURPOSE OF COORDINATION

Section I. Definitions

1. The term "person" as used herein, includes individuals, firms, associations, partnerships, corporations, trusts, trustees, cooperatives, receivers and trustees in bankruptcy and in other legal proceedings, and any other recognized forms of business organizations.

2. A "sales agent" is a person who, as agent of a code member (and therefore without purchasing the coal), sells coal produced by such code member for him or on his behalf: Provided, that "sales agent" shall not include an individual (herein referred to as a "salesman") regularly and continuously employed by a code member, whose sole compensation is a stated salary per week, per month, or per year, and who regularly devoted the major portion of his time to the solicitation of purchases of coal produced by his code member employer.

3. A "commission" is the total of all compensations and allowances received by a sales agent from a code member for services rendered in the sale of coal.

4. A "registered distributor" is a person who has been duly registered by the Coal Commission pursuant to the rules and regulations prescribed by the Commission for the administration of Section 4 II (h) of the Act.

5. A "spot order" is a legal obligation for the sale and purchase of coal, the delivery of which is stipulated to be made within not more than thirty (30) days from the date upon which the order was accepted.

6. A "contract" is a legal obligation for the sale and purchase of coal, the deliveries of which are stipulated to be made during a period longer than the maximum period specified for a spot order.

7. A "quotation" is an offer to sell coal which the offerer may withdraw prior to its being acted upon by the offeree.

8. An "option" is an offer to sell coal acceptable within a time certain, during which time the offerer may not withdraw the offer without the consent of the offeree.

9. A "commitment" is the status of a contract between the time a quotation is accepted or an option is exercised and the time the contract is formally reduced to writing.

10. "Coal Commission" as used herein, shall mean the National Bituminous Coal Commission established under the provisions of the Bituminous Coal Act of 1937.

11. "Act" as used herein shall mean the Bituminous Coal Act of 1937.

12. "District Board" as used herein, shall mean any District Board estab-

lished under the provisions of Section 4, Part I (a) of the Act.

13. "Statistical Bureau" shall mean, unless otherwise specifically stated, the Statistical Bureau of the Commission for the District in which the coal involved in any transaction is produced, or the District in which is located a mine of a code member affected by any order or regulation.

14. "Minimum Price" shall mean a minimum price established and made effective by the Coal Commission.

15. "Maximum Price" shall mean a maximum price established and made effective by the Coal Commission.

16. The term "producer" includes all individuals, firms, associations, corporations, trustees, and receivers engaged in the business of mining coal.

17. The term "reconsignment" and "diversion" as used herein shall mean the change in the original consignee or in the destination or route.

18. The term "transportation facilities" means railroad cars, ships, barges, trucks, or any other facilities used or useful in the transportation of coal.

19. A "code member" means a producer who has accepted and holds membership in the Bituminous Coal Code promulgated under the Bituminous Coal Act of 1937.

20. The term "domestic market" shall include all points within the continental United States and Canada, and carrier shipments to the Island of Cuba. Bunker coal delivered to steamships for consumption thereon shall be regarded as shipped within the domestic market.

21. "Cargo shipment" is a quantity of coal loaded in a vessel, boat or barge for transportation via water.

22. "Bunker coal" or "vessel fuel" is that coal used aboard a boat or vessel for consumption thereon.

23. "Coal" as used herein shall mean bituminous coal.

24. The term "bituminous coal" includes all bituminous, semi-bituminous and sub-bituminous coal and shall exclude lignite, which is defined as a lignitic coal having calorific value in British thermal units of less than seven thousand six hundred per pound and having a natural moisture content in place in the mine of 30 per centum or more.

25. The term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Section II. Sales Agents

1. All appointments of Sales Agents by Code Members or their agents or authorized representatives, and the terms and conditions of such appointments, shall be subject to the Marketing Rules and Regulations from time to time established by the Coal Commission.

2. Each Code Member shall be responsible for the compliance by all his Sales Agents and agents and employees of Sales

Agents and agents with the provisions of the Bituminous Coal Code and of all rules and regulations, promulgations and determinations of the Coal Commission.

3. Each Code Member shall require all his sales agents, clearly to set forth upon any offer, contract, spot order, invoice, and statement of account covering coal sold or to be sold, the name of such Code Member principal, and the name of the mine or mines from which shipment was made or is to be made. If the name of the sales agent also appears in the transaction, then the above mentioned forms shall also disclose the fact of agency relationship with the Code Member principal.

4. (A) Every contract for the appointment of a sales agent by Code Members or by agents or authorized representatives of Code Members, or any modification thereof, shall be in writing, and shall fully set forth therein all the terms and conditions of such contract, including the amount or basis of the sales agent's commission. Certified copies of all such agency contracts entered into on or prior to the effective date of the establishment of these rules and regulations and in effect on such date, shall be filed by the Code Member with the Statistical Bureau, or Bureaus, within twenty (20) business days after such date.

(B) Certified copies of all contracts appointing sales agents or of agreements modifying any sales agency contract, entered into subsequent to the effective date of these rules and regulations, shall be similarly filed by the Code Member within ten (10) business days after the date upon which such contracts or agreements have been entered into.

(C) Upon the expiration, termination, or rescission of any sales agency contract, the Code Member principal shall make a report thereof to the Statistical Bureau, or Bureaus, within ten (10) business days after the date of such expiration, termination, or rescission.

5. (A) As to all coal sold by a Code Member otherwise than through a sales agent or through an employee regularly employed as a salesman by the Code Member at his principal place of business or at a regularly established sales office, such Code Member shall, not later than the tenth day of each month, file with the Statistical Bureau, or Bureaus, a list of all persons through whom, directly or indirectly, any such coal was sold during the preceding calendar month, with a statement of the duration and character of their employment, the tonnage sold by, and the rate and amount of compensation paid to, each of them.

(B) Not later than the tenth day of each month, each Code Member shall also file with the Statistical Bureau, or Bureaus, similar information obtained from his sales agents concerning sales of coal made during the preceding calendar month, by the sales agents' representatives and employees other than salesmen employed at the principal place

of business or a regularly established sales office of the sales agent.

(C) Not later than the tenth day of each month, each Code Member shall also file with the Statistical Bureau, or Bureaus, a statement showing the names and addresses of distributors to whom the Code Member or his sales agents sold coal during the preceding calendar month, the tonnage sold, and the amount of discount allowed to each such distributor.

6. Within twenty (20) business days after the effective date of these rules and regulations, each Code Member shall file with the Coal Commission a list showing the names and addresses of all his sales agents. Upon any change in said list, the Code Member shall notify the Coal Commission within ten (10) business days after such change takes place.

7. A list showing the names and addresses of sales agents and the Code Members for whom such agents act shall be published monthly by the Coal Commission.

8. All agency contracts and other information filed by Code Members in conformity with the foregoing regulations, other than the names and addresses of sales agents, shall be held by the Coal Commission as the confidential records of said parties and shall not be made public without the consent of the Code Member from whom the same shall have been obtained, except where such disclosure is required in any proceeding before the Coal Commission by way of enforcement of the Act or upon the order of any court of competent jurisdiction.

9. From and after twenty (20) business days following the effective date of these Marketing Rules and Regulations no Code Member or sales agent of a Code Member shall allow or pay, directly or indirectly, any commission or compensation to any sales agent.

(a) Unless the contract of agency shall have been filed with the Coal Commission, as hereinbefore required, and

(b) Unless the sales agent shall have agreed, in writing, with the Code Member to conform to and observe the minimum and maximum prices and Marketing Rules and Regulations established by the Coal Commission and the Fair Trade Practice Provisions of the Act, as well as all proper orders of the Commission, and

(c) Unless the sales agent shall have in good faith complied with the agreement as in paragraph (b) above provided.

10. No commission shall be paid to a sales agent by a Code Member where the coal is delivered or sold to any person who owns such sales agent or who financially or otherwise controls such agent.

11. When any commissions are paid to a sales agent on a tonnage basis, the Code Member shall not include in the

computation of such commissions any part of the tonnage of coal sold by him to the sales agent, whether for consumption or resale.

12. No Code Member shall employ any person or appoint any sales agent at a compensation obviously disproportionate to the ordinary value of the service or services rendered and whose employment or appointment is made with the primary intention and purpose of securing a preferment with a purchaser or purchasers of coal.

13. Subject to further order of the Coal Commission, the amount of commission to be paid by a Code Member to his sales agent shall be fixed by agreement of the parties, subject, however, that upon complaint of violation of the unfair methods of competition, as provided in the Act, the amount of such commission shall be subject to review by the Coal Commission.

Section III. Discounts

1. No Code Member or sales agent of a Code Member shall pay or allow any discount from minimum prices to any person unless such person has been registered by the Coal Commission as authorized to receive such discount at the time of the sale.

2. Code Members or their sales agents may allow discounts from minimum prices on sales of coal to registered distributors, not in excess of the maximum discount or price allowance prescribed by the Coal Commission upon such sales. Only one such discount may be allowed on any such sale.

Section IV. Limitation of Orders, Agreements, Options and Quotations

1. Subject to further order of the Coal Commission no Code Member or sales agent of the Code Member shall enter into any agreement or order for the sale of coal providing for delivery for a period in excess of that authorized for a spot order, and no prices shall be less than the applicable minimum prices in effect at the time of the making of the agreement or order: *Provided*, however, that contracts for periods not exceeding one (1) year may be made with agencies of the Federal Government or with agencies of State or local governments, where the contract is entered into through competitive bidding, at the following applicable minimum prices:

(a) For deliveries during the first thirty (30) days of the contract, at not less than the applicable minimum price in effect at the time of the making of the agreement;

(b) For deliveries thereafter, at not less than the applicable minimum price in effect at the time of delivery if such price is higher than the contract price.

Provided, further, that contracts for periods not exceeding one (1) year at prices not less than the said applicable minimum prices may be made with agencies of the Federal Government or

with such agencies of the State or local governments, in the absence of competitive bidding, where by virtue of an express exemption in the statute or ordinance such agencies may enter into contracts for the purchase of coal without regard to competitive bidding.

2. While the preceding rule is in effect, no option may be given by a Code Member or sales agent for the purchase of coal. When the above rule is suspended or revoked by the Coal Commission, options for the sale of coal may be given for a period not exceeding fourteen (14) days. No options may be given at a price less than the applicable minimum price in effect at the time of the giving of the option. If the applicable minimum price is increased beyond the quoted price within such fourteen (14) days and the option shall not have been exercised at that time, the option thereupon shall become null and void: *Provided*, however, that in connection with offers to sell to the United States Government, or States or political subdivisions thereof, options may be given for a period not exceeding forty-five (45) days from the date of the offer or from the final date for the filing of offers.

3. Quotations may also be given for a period of not exceeding fourteen (14) days if the applicable minimum price is increased beyond the quoted price within such fourteen (14) days and the quotation shall not have been accepted at that time, the quotation thereupon shall become null and void.

4. Every quotation and option shall provide that it is made subject to the provisions of the Marketing Rules and Regulations of the Coal Commission.

5. All quotations and options must be made or confirmed in writing. Every Code Member, or his sales agent, shall require of his offeree that the acceptance of a quotation or the exercise of an option be in writing.

Section V. Spot Orders

1. A spot order shall be in writing or confirmed in writing within five (5) business days from the date of the making thereof.

2. Each spot order shall be subject to the following conditions which shall either be endorsed upon the form of the order or upon the written confirmation thereof by the Code Member or his sales agent, the meaning and effect of which shall not be changed or altered by any other provision of the order.

(a) "No shipment consigned to any destination may be diverted or reconsigned without the consent of the seller confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the minimum price prescribed for such coal for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied: *Provided*, however, that this provision does not apply

to railroad locomotive fuel sold at prices f. o. b. mine."

(b) "The coal shipped pursuant to this order is sold and purchased upon the following conditions:

"(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein;

"(2) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied."

(c) "If shipments called for by this order are not completed within thirty (30) days from the effective date of this order, the unfilled portion of the order shall not be delivered."

3. In any case where a sale is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in Item 2 (a) of this section without first securing the consent of his Code Member principal to be confirmed in writing.

4. All the terms and conditions of a sale of coal must be fully and expressly set forth either in the order or in the written confirmation thereof and such order or written confirmation thereof shall specifically contain all the terms required by rule 1 of Section VI of these Marketing Rules and Regulations. Within ten (10) business days after the date of the making of the spot order or date of the written confirmation thereof, the Code Member or his sales agent shall file with the Statistical Bureau, or Bureaus, a copy of such spot order or confirmation. Any modification of a spot order must also be made in writing and filed with the Statistical Bureau, or Bureaus, in the same manner.

Section VI. Contracts

Upon the revocation or suspension of rule 1 of Section IV of these Marketing Rules and Regulations, Code Members or sales agents of Code Members may thereafter enter into contracts for the sale and delivery of coal upon the following terms and conditions:

1. Every contract shall be in writing and shall express the entire agreement between the parties. The contract shall clearly state the date of execution, the effective date, the expiration date, the price agreed upon, the terms of payment, the size and grade of coal, the number of cars or tonnage to be shipped, the name of the Code Member and the name of the originating mine, and, where the coal is purchased for consumption, the use to which the coal is to be applied. Contracts may also be made either (a) calling for a buyer's entire requirements or a stated percentage of his requirements, showing the maximum tonnage to be shipped thereunder, or (b) cover-

ing a buyer's requirements and stating the estimated tonnage to be shipped with an allowable overshoot of not exceeding ten (10) per cent of such estimated tonnage.

The provisions of the rule stated in the foregoing paragraph relating to quantity shall not apply to contracts made with agencies of the Federal, State or local governments in case the terms required to be submitted in a bid or offer for such contract are in conflict with such provisions.

2. No contract for the sale of coal shall provide for deliveries to commence at a date later than ninety (90) days from the date upon which such contract is entered into.

3. No contract shall be made at a price below the applicable minimum price as established by the Coal Commission at the time of the making of the contract for the coal to be sold thereunder, and no coal may be delivered upon a contract at a price below such applicable minimum price.

4. No contract shall provide for delivery over a period in excess of twelve (12) months except by special permission and approval of the Coal Commission, upon a showing of the necessity of meeting the long term contract competition of oil, gas, or other fuels or forms of power, or for such other reasons as the Commission may deem appropriate in order to further the effectual administration of the Act.

5. Any change in the terms of a contract, not in violation of these Rules and Regulations, shall be evidenced by a written agreement and shall conform to all the requirements set forth in these Rules and Regulations.

6. A report of every commitment shall be filed by the Code Member or his sales agent with the Statistical Bureau, or Bureaus, within fifteen (15) business days from the date of the making of the agreement. Such report shall set forth all the terms and conditions of the commitment. A true copy of every contract and of any agreement for modification thereof shall be filed with the Statistical Bureau within fifteen (15) business days from the date of execution of such contract or agreement for modification: *Provided*, however, that a report of the commitment need not be filed if a copy of the contract is filed within fifteen (15) business days.

7. Each contract shall contain the following provisions, the meaning and effect of which shall not be changed or altered by any other provision of the contract:

"(a) This contract and the performance of all provisions thereof are expressly subject to the Bituminous Coal Act of 1937, and the proper orders and regulations issued thereunder by the National Bituminous Coal Commission.

"(b) No shipment consigned to any destination point may be reconsigned or diverted without the consent of the seller to be confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall

pay not less than the applicable minimum price for such coal at the time of the reconignment or diversion for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied: Provided, however, that this provision does not apply to railroad locomotive fuel sold at prices f. o. b. mines.

"(c) The coal shipped pursuant to this contract is sold and purchased upon the following conditions:

"(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein;

"(2) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied."

8. In any case where a contract is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in item 7 (b) of this section without first securing the consent of the Code Member producing such coal to be confirmed in writing.

9. The making of a contract for the sale of coal at a price below the minimum or above the maximum therefor established by the Commission at the time of the making of the contract shall constitute a violation of the Code and such contract shall be invalid and unenforceable.

10. No contract shall be made for the sale of coal for delivery after the expiration date of the Act at a price below the minimum or above the maximum therefor established by the Coal Commission and in effect at the time of making the contract.

Section VII. Terms of Payment

1. The price and fair trade practice provisions of the Act shall not be evaded or violated by a Code Member, or his sales agent, through the use of terms of payment, and in no instance shall terms of payment be more favorable than the following:

(A) On rail, river, ex-river, or truck shipments, the date of payment of invoices for coal sold shall be on or before the twentieth (20th) day of the month following the month in which shipment was made.

(B) On tidewater cargo shipments the date of payment shall be not more than thirty (30) days from date of vessel bill of lading, and where coal is sold f. o. b. mines for tidewater cargo shipment, on or before the twentieth (20th) day of the month following the month in which the coal is dumped.

(C) Payment for all tidewater Bunker coal supplied for foreign vessels shall be by cash on delivery or by master's draft on owners in United States currency at not exceeding fifteen (15) days' sight at

supplier's option. When drafts are accepted in payment, all bank charges for collections, exchange, etc., shall be for owner's account. Payment for tidewater bunker coal supplied for American vessels shall be made on or before the twentieth (20th) day of the month following delivery.

Payment for coal shipped for vessel fuel, and delivered into vessels at ports on the Great Lakes on tributary waters thereof, shall be made on or before the twentieth (20th) day of the month following such delivery.

(D) On lake cargo shipments, the date of payment shall be not more than sixty (60) days from date of vessel bill of lading, and where coal is sold f. o. b. mines for lake cargo shipments, on or before the twentieth (20th) of the second month following the month in which dumped.

(E) On all coal sold to railroads, the date of payment shall be on or before the twenty-fifth (25th) day of the month following the date of shipment.

(F) Invoices shall be paid in full in United States currency, or funds equivalent thereto, not later than the due date.

(G) No portion of the sale price may be withheld by agreement between the buyer and the seller based upon any unadjusted claim of the buyer.

(H) No sale, delivery, or offer for sale of coal shall be made upon any condition, express or implied, that any portion of the sale price may be withheld by the buyer, or deposited in escrow, pending or based upon a determination of the constitutionality of any provision of the Act, of the jurisdiction of the Coal Commission, or the validity or applicability of any order of the Coal Commission.

(I) Where the due date of the account is extended by agreement of the parties, express or implied, or where payment is made by note, trade acceptance or other form of indebtedness, the seller shall charge and the buyer shall pay interest from and after the due date of the account at the current rate in the locality to which the coal is shipped to the vendee.

(J) Freight on all-rail or ex-river shipments shall not be paid by a Code Member, or his sales agent, except to prepay stations as published in current railway tariffs or on shipments to the United States Government, States or political subdivisions thereof. Where freight is thus prepaid, the amount thereof shall immediately upon receipt of freight bill or notice of sight draft payment, be invoiced to the buyer for immediate payment.

(K) No Code Member shall accept as payment in full for any account for the sale of coal any amount which is less than the applicable minimum price for the quantity of coal involved. Provided, however, that a Code Member may enter into a bona fide general creditors' composition with other creditors of a defaulting purchaser. A copy of such

creditor's composition shall be filed with the Statistical Bureau within ten (10) business days from the date of making such composition.

(L) The agreement by a Code Member, expressed or implied, to extend the credit for a period longer than that authorized by these rules and regulations, with the effect of violating the price provisions or the unfair methods of competition of the Act, shall constitute a violation of the Code.

Section VIII. Use of Coal Analyses

1. Analyses of coal shall not be utilized by a Code Member, or his sales agent, in selling or offering for sale any coal produced by the Code Member, whether or not the analysis is a term in the offer or sale, unless such Code Member shall have filed with the Statistical Bureau and the District Board for the District in which the coal is produced, a report of the analysis or analyses as used or proposed to be used by him. Such report shall show the following:

(a) The name of the Code Member Producer.

(b) The name of the mine.

(c) The name or geological number of the seam or seams from which the coal is produced.

(d) The name of the size, and, if screened, the dimension or dimensions of the screen or screens over and/or through which the coal is prepared.

(e) Whether the analysis is representative of the entire production of such size of coal, or whether it represents only a portion of such production segregated by selective mining, selective preparation, actual analyses made at the mine, or in any other manner.

(f) That such analysis is representative of the grade and size of the coal as regularly produced by the Code Member and as loaded directly into transportation facilities for shipment to market and that the Code Member is prepared to make deliveries of coal of substantially the quality and character as shown by the analysis.

(g) That each such analysis is not less than a proximate analysis showing moisture content, ash, volatile matter, fixed carbon, sulphur and British thermal units and ash softening temperature.

2. Every analysis used in selling, or offering for sale, any particular kind, quality, or size of coal shall be accompanied by a statement to the effect that a copy of such analysis has been properly filed with the Statistical Bureau, the Coal Commission and the District Board.

3. All reports of analyses so filed shall be subject to inspection at the office of the Statistical Bureau at any time during office hours by any interested person, and may be considered by the District Board and the Coal Commission in determining from time to time proper classifications of the coals produced by the Code Member.

4. A copy of any analysis of the coal of a Code Member made by or on behalf

of a consumer and accepted by the Code Member as the basis for an adjustment of price under any contract or spot order shall be filed by the Code Member with the Statistical Bureau, the Coal Commission and the District Board, within five (5) business days after such adjustment is made.

5. From and after the effective date of these Rules and Regulations, no Code Member shall enter into or perform any agreement made upon a penalty or a premium and penalty basis which will permit the sale of coal at an aggregate contract price below the applicable minimum price established by the Coal Commission for the coal sold and delivered upon such agreement subsequent to said effective date: Provided, that where a Code Member has entered into an agreement made upon a penalty or a premium and penalty basis, this rule shall not be considered as affecting any claim that the buyer might otherwise have had for sub-standard preparation or quality under Section X of these Marketing Rules and Regulations.

Section IX. Resale of Coal Refused in Transit or at Destination

1. Where coal is refused by a consignee in transit or at destination, the Code Member may sell the same at the best obtainable price, provided that in each case the Code Member shall file with the Statistical Bureau, and the District Board for the District in which the coal was produced, within five (5) business days from the date of such resale, a statement giving the following information:

- (a) Name of consignee.
- (b) Address of the consignee.
- (c) Original destination of the coal.
- (d) Name of Code Member.
- (e) Originating mine.
- (f) The grade and size of coal shipped.
- (g) Price at which coal sold.
- (h) Reasons for the refusal.
- (i) Facts resulting from the investigation of the complaint.
- (j) Name of ultimate purchaser upon resale.
- (k) Address of purchaser upon resale.
- (l) Ultimate destination of the coal.
- (m) Price received by the seller upon resale.
- (n) Amount of commission, if any, paid upon the resale.
- (o) A copy of the carrier's notice of refusal or a notice of reconsignment and such other pertinent information and facts as may be offered in proof of the necessity for such resale.
- (p) A signed and verified statement that the provisions of the Code and the Marketing Rules and Regulations of the Coal Commission other than as to price have not been violated or evaded.

2. All Code Members shall properly furnish to the District Board and to the Statistical Bureau of the Coal Commission for the District in which the coal

originated, full reports of all reconsignments, and shall authorize the carrier making such reconsignments to furnish complete information thereon to such Statistical Bureau.

Section X. Substandard Preparation or Quality

1. Where any allowance is requested by a buyer of coal on any shipment claimed to be substandard in preparation or quality, the Code Member or the sales agent, with the prior approval of the Code Member, may on or before the maturity date of the invoice, make settlement and agree with the buyer upon any amount reasonably to be deducted for such inferior coal and accept payment therefor at less than the minimum prices; provided however, that in each such case the Code Member shall within five (5) days after granting such allowance file with the Statistical Bureau of the Coal Commission in the District in which the coal originates, a verified statement giving the following information:

- (a) The name and address of the consignee and the reason for the request for the allowance.
- (b) The price at which the coal was sold, the tonnage delivered, the name of the mine, the Code Member, the date of shipment, the grade and size of coal, the destination, and the amount of allowance or adjustment made.
- (c) Such other pertinent information and facts as may be offered in proof of the necessity for such reduction or allowance.
- (d) A statement that the adjustment has not been made with the purpose or intent of evading the price provisions of the Act.

The Code Member shall also file, together with the statement a written claim duly executed by or on behalf of the buyer and verified by affidavit, setting forth the amount claimed by way of deduction and the reasons for the complaint.

2. All such adjustments and allowances shall be subject to review by the Coal Commission.

Section XI. Crushing and Pulverizing Coal

1. Each code member who maintains and operates at his mine or at any facility used in preparing coals for market, any crushing or pulverizing device, shall register such device with the Statistical Bureau of the Coal Commission, on or before the (date to be determined) on forms submitted by the Coal Commission.

2. Such forms shall include the following:

1. Name and address of code member.
2. Name of mine or facility at which device is located.
3. Name and style or type of crushing or pulverizing device.

4. Hourly capacity of device.
5. Sizes of coal which device can crush or pulverize.
6. Sizes of coal resulting from crushing or pulverizing.
7. Number of tons crushed in 1936 and in each month of 1937.
8. Cost per ton of crushing or pulverizing in 1936 and 1937.

3. Beginning with the month of (date to be determined) each code member shall on or before the tenth (10th) day of each succeeding month, file with the Statistical Bureau on forms to be provided by the Coal Commission, a statement verified by affidavit, setting forth the following information for the preceding calendar month:

- (a) Number of tons of each size crushed or pulverized.
- (b) Number of tons of each size resulting from crushing or pulverizing.

4. No code member shall sell any coal crushed or pulverized at a price less than the minimum price established for the grade and size of coal before the crushing.

Section XII. Miscellaneous

General

1. The minimum prices established by the Commission shall not apply to coal sold and shipped outside the domestic market as defined in the Act and in these Marketing Rules and Regulations.

2. Maximum prices established by the Commission shall not apply to coal sold and shipped outside the continental United States.

3. No coal shall be sold or delivered or offered for sale at a price below the minimum or above the maximum therefor established by the Commission, and the sale or delivery or offer for sale of coal at a price below such minimum or above such maximum shall constitute a violation of the Code: Provided, that the provisions of this paragraph shall not apply to a lawful and bona fide written contract entered into prior to June 16, 1933, which has been filed with the Coal Commission.

4. If, in converting a net or gross ton price, freight rate or freight rate differential, the calculation extends to more than 3 decimals, and the 4th decimal is .0005 or more, it shall be added as .001, and if under .0005 it shall be eliminated.

5. All coal shall be sold and invoiced on a price per ton basis, and all coal must be sold and invoiced under the size, price classification and other designation therefor in the price schedule published by the Coal Commission.

6. Failure to file information required by these Marketing Rules and Regulations or the filing of false information, wilfully made, will subject the party failing to file the information required, or the party so filing, to the penalties of the Act and other penalties imposed by law.

Advertising

1. No deduction of allowance from invoice prices shall be granted by any Code Member or his sales agent to any purchaser for advertising.

2. Code Members (or their agents or representatives) either individually or collectively, with or without financial participation by retailers of coal, may conduct advertising campaigns seeking to increase the use of coal. The amount of expenditures incurred by a Code Member, his agent or representative for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.

Screening for Buyer's Account

1. The screening of mine run or re-screening of other grades of coal, sold and billed as such, for the buyer's account for the purpose of keeping the resultant products separate in the shipment thereof is prohibited.

Coal Confiscated or Lost in Transit

1. All coal confiscated or lost in transit shall be invoiced to the carrier at not less than the minimum price established for such coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or loss, whichever may be the higher.

Revision of Marketing Rules and Regulations

1. These Marketing Rules and Regulations are subject to revision and amendment by further order of the Coal Commission.

Unfair Methods of Competition.—See page 166.

Penalties.—See page 166.

MINIMUM PRICE AREA No. 1—DISTRICT BOARD No. 6

PROPOSED MARKETING RULES AND REGULATIONS

The witness for District Board No. 6, properly qualified as an expert in the marketing of coal in that District, introduced into evidence as Exhibit No. 620, the rules and regulations proposed by District Board No. 6 in compliance with Commission Order No. 248. The witness testified that these rules and regulations were properly submitted to Code Members within said District on August 24, 1938, and that the District Board received no protest from Code Members concerning such rules and regulations.

The witness for District No. 6 testified that he heard the testimony of the witness for District No. 2 given on cross-examination and that he agreed with the opinions given by the witness for District No. 2 as to certain modifications and additions to the rules proposed by District No. 2 and that such modifications and additions to the rules proposed by District No. 6 were desirable

and reasonable. As previously stated in the findings for District No. 4, the witness for District No. 4 likewise agreed to the opinions expressed by the witness for District No. 2 as to such modifications and additions and accordingly, the rules for District No. 4 were modified to reflect such opinions. The witness for District No. 6 likewise stated that he heard the testimony of the witness for District No. 4 as to certain modifications and additions to the rules proposed by District No. 4 and that such modifications and additions were likewise desirable for District No. 6. Therefore, we find that the rules proposed by District No. 6, which are similar to the rules proposed by Districts Nos. 2 and 4, should be modified in the same manner and for the same reasons as stated in the findings for District No. 4. We further find, on the basis of the testimony introduced in the record, that the additional rules approved for District No. 4 in the findings of fact for District No. 4 should likewise be approved for District No. 6.

In light of the testimony, we are of the opinion that the following rule is reasonable for District No. 6:

No commission shall be paid to a sales agent by a Code Member where the coal is delivered or sold to any person who owns such sales agent or who financially or otherwise controls such sales agent.

Rule 7 of Section 5 should be deleted for the reason that it is determinative of those persons who are entitled to a distributor's discount under Section 4 II (h) of the Act.

Rule 1 of Section XII relates to screen sizes and permissible screening tolerances. This rule is deleted from the marketing rules and regulations for the reason that this subject is incorporated in the price schedule approved for this District.

Accordingly, we find that the following rules and regulations proposed by District No. 6, reflecting such deletions, modifications, clarifications and additions to the rules proposed by District No. 6 are reasonable, not inconsistent with the requirements of Section 4 of the Act and in conformance with the standards of fair competition established in the Act:

MARKETING RULES AND REGULATIONS INCIDENTAL TO THE SALE AND DISTRIBUTION OF COAL BY CODE MEMBERS WITHIN DISTRICT NO. 6 AS PROPOSED BY DISTRICT BOARD NO. 6 AND AS APPROVED, DISAPPROVED, OR MODIFIED FOR THE PURPOSE OF COORDINATION.

Section I. Definitions

1. The term "person" as used herein, includes individuals, firms, associations, partnerships, corporations, trusts, trustees, cooperatives, receivers and trustees in bankruptcy and in other legal proceedings, and any other recognized forms of business organizations.

2. A "sales agent" is a person who, as agent of a code member (and therefore without purchasing the coal), sells coal

produced by such code member for him or on his behalf: *Provided*, that "sales agent" shall not include an individual (herein referred to as a "salesman") regularly and continuously employed by a code member, whose sole compensation is a stated salary per week, per month, or per year, and who regularly devotes the major portion of his time to the solicitation of purchases of coal produced by his code member employer.

3. A "commission" is the total of all compensations and allowances received by a sales agent from a code member for services rendered in the sale of coal.

4. A "registered distributor" is a person who has been duly registered by the Coal Commission pursuant to the rules and regulations prescribed by the Commission for the administration of Section 4 II (h) of the Act.

5. A "spot order" is a legal obligation for the sale and purchase of coal, the delivery of which is stipulated to be made within not more than thirty (30) days from the date upon which the order was accepted.

6. A "contract" is a legal obligation for the sale and purchase of coal, the deliveries of which are stipulated to be made during a period longer than the maximum period specified for a spot order.

7. A "quotation" is an offer to sell coal which the offerer may withdraw prior to its being acted upon by the offeree.

8. An "option" is an offer to sell coal acceptable within a time certain, during which time the offerer may not withdraw the offer without the consent of the offeree.

9. A "commitment" is the status of a contract between the time a quotation is accepted or an option is exercised and the time the contract is formally reduced to writing.

10. "Coal Commission" as used herein, shall mean the National Bituminous Coal Commission established under the provisions of the Bituminous Coal Act of 1937.

11. "Act" as used herein shall mean the Bituminous Coal Act of 1937.

12. "District Board" as used herein, shall mean any District Board established under the provisions of Section 4, Part I (a) of the Act.

13. "Statistical Bureau" shall mean, unless otherwise specifically stated, the Statistical Bureau of the Commission for the District in which the coal involved in any transaction is produced, or the District in which is located a mine of a code member affected by any order or regulation.

14. "Minimum Price" shall mean a minimum price established and made effective by the Coal Commission.

15. "Maximum Price" shall mean a maximum price established and made effective by the Coal Commission.

16. The term "producer" includes all individuals, firms, associations, corporations, trustees, and receivers engaged in the business of mining coal.

17. The term "reconsignment" and "diversion" as used herein shall mean the

change in the original consignee or in the destination or route.

18. The term "transportation facilities" means railroad cars, ships, barges, trucks, or any other facilities used or useful in the transportation of coal.

19. A "code member" means a producer who has accepted and holds membership in the Bituminous Coal Code promulgated under the Bituminous Coal Act of 1937.

20. The term "domestic market" shall include all points within the continental United States and Canada, and car-ferry shipments to the Island of Cuba. Bunker coal delivered to steamships for consumption thereon shall be regarded as shipped within the domestic market.

21. "Cargo shipment" is a quantity of coal loaded in a vessel, boat or barge for transportation via water.

22. "Bunker coal" or "vessel fuel" is that coal used aboard a boat or vessel for consumption thereon.

23. "Coal" as used herein shall mean bituminous coal.

24. The term "bituminous coal" includes all bituminous, semi-bituminous and sub-bituminous coal and shall exclude lignite, which is defined as a lignitic coal having calorific value in British thermal units of less than seven thousand six hundred per pound and having a natural moisture content in place in the mine of 30 per centum or more.

25. The term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Section II. Sales Agents

1. All appointments of Sales Agents by Code Members or their agents or authorized representatives, and the terms and conditions of such appointments, shall be subject to the Marketing Rules and Regulations from time to time established by the Coal Commission.

2. Each Code Member shall be responsible for the compliance by all his Sales Agents and agents and employees of Sales Agents and agents with the provisions of the Bituminous Coal Code and of all rules and regulations, promulgations and determinations of the Coal Commission.

3. Each Code Member shall require all his sales agents clearly to set forth upon any form of solicitation, contract, spot order, invoice, and statement of account covering coal sold or to be sold, the name of such Code Member principal, and the name of the mine or mines from which shipment was made or is to be made. If the name of the sales agent also appears in the transaction, then the above mentioned forms shall also disclose the fact of agency relationship with the Code Member principal.

4. (A) Every contract for the appointment of a sales agent by Code Members or by agents or authorized representatives of Code Members, or any modification thereof, shall be in writing, and shall fully set forth therein all the terms and conditions of such contract, including the amount or basis of the sales agent's commission. Certified copies of all such agency contracts entered into on or prior to the effective date of the establishment of these rules and regulations and in effect on such date, shall be filed by the Code Member with the Statistical Bureau, or Bureaus, within twenty (20) business days after such date.

(B) Certified copies of all contracts appointing sales agents or of agreements modifying any sales agency contract, entered into subsequent to the effective date of these rules and regulations, shall be similarly filed by the Code Member within ten (10) business days after the date upon which such contracts or agreements have been entered into.

(C) Upon the expiration, termination, or rescission of any sales agency contract, the Code Member principal shall make a report thereof to the Statistical Bureau, or Bureaus, within ten (10) business days after the date of such expiration, termination, or rescission.

5. (A) As to all coal sold by a Code Member otherwise than through a sales agent or through an employee regularly employed as a salesman by the Code Member at his principal place of business or at a regularly established sales office, such Code Member shall, not later than the tenth day of each month, file with the Statistical Bureau, or Bureaus, a list of all persons through whom, directly or indirectly, any such coal was sold during the preceding calendar month, with a statement of the duration and character of their employment, the tonnage sold by, and the rate and amount of compensation paid to, each of them.

(B) Not later than the tenth day of each month, each Code Member shall also file with the Statistical Bureau, or Bureaus, similar information obtained from his sales agents concerning sales of coal made during the preceding calendar month, by the sales agents' representatives and employees other than salesmen employed at the principal place of business or a regularly established sales office of the sales agent.

(C) Not later than the tenth day of each month, each Code Member shall also file with the Statistical Bureau or Bureaus a statement showing the names and addresses of distributors to whom the Code Member or his sales agents sold coal during the preceding calendar month, the tonnage sold, and the amount of discount allowed to each such distributor.

6. Within twenty (20) business days after the effective date of these rules and regulations, each Code Member shall file with the Coal Commission a list showing

the names and addresses of all his sales agents. Upon any change in said list, the Code Member shall notify the Coal Commission within ten (10) business days after such change takes place.

7. A list showing the names and addresses of sales agents and the Code Members for whom such agents act shall be published monthly by the Coal Commission.

8. All agency contracts and other information filed by Code Members in conformity with the foregoing regulations, other than the names and addresses of sales agents, shall be held by the Coal Commission as the confidential records of said parties and shall not be made public without the consent of the Code Member from whom the same shall have been obtained, except where such disclosure is required in any proceeding before the Coal Commission by way of enforcement of the Act or upon the order of any court of competent jurisdiction.

9. From and after twenty (20) business days following the effective date of these Marketing Rules and Regulations no Code Member or sales agent of a Code Member shall allow or pay, directly or indirectly, any commission or compensation to any sales agent

(a) Unless the contract of agency shall have been filed with the Coal Commission, as hereinbefore required, and

(b) Unless the sales agent shall have agreed, in writing, with the Code Member to conform to and observe the minimum and maximum prices and Marketing Rules and Regulations established by the Coal Commission and the Fair Trade Practice Provisions of the Act, as well as all proper Orders of the Commission, and

(c) Unless the sales agent shall have in good faith complied with the agreement as in paragraph (b) above provided.

10. No commission shall be paid to a sales agent by a Code Member where the coal is delivered or sold to any person who owns such sales agent or who financially or otherwise controls such sales agent.

11. When any commissions are paid to a sales agent on a tonnage basis, the Code Member shall not include in the computation of such commissions any part of the tonnage of coal sold by him to the sales agent, whether for consumption or resale.

12. No Code Member shall employ any person or appoint any sales agent at a compensation obviously disproportionate to the ordinary value of the service or services rendered and whose employment or appointment is made with the primary intention and purpose of securing a preferment with a purchaser or purchasers of coal.

13. Subject to further order of the Coal Commission, the amount of commission to be paid by a Code Member to his sales agent shall be fixed by agreement of the parties, subject, however,

that upon complaint of violation of the unfair methods of competition, as provided in the Act, the amount of such commission shall be subject to review by the Coal Commission.

Section III. Discounts

1. No Code Member or sales agent of a Code Member shall pay or allow any discount from minimum prices to any person unless such person has been registered by the Coal Commission as authorized to receive such discount at the time of the sale.

2. Code Members or their sales agents may allow discounts from minimum prices on sales of coal to registered distributors, not in excess of the maximum discount or price allowance prescribed by the Coal Commission upon such sales. Only one such discount may be allowed on any such sale.

Section IV. Limitation of Orders, Agreements, Options and Quotations

1. Subject to further order of the Coal Commission no Code Member or sales agent of the Code Member shall enter into any agreement or order for the sale of coal providing for delivery for a period in excess of that authorized for a spot order, and no prices shall be less than the applicable minimum prices in effect at the time of the making of the agreement or order: *Provided*, however, that contracts for periods not exceeding one (1) year may be made with agencies of the Federal Government or with agencies of State or local governments, where the contract is entered into through competitive bidding, at the following applicable minimum prices:

(a) For deliveries during the first thirty (30) days of the contract, at not less than the applicable minimum price in effect at the time of the making of the agreement;

(b) For deliveries thereafter, at not less than the applicable minimum price in effect at the time of delivery if such price is higher than the contract price.

Provided, further, that contracts for periods not exceeding one (1) year at prices not less than the said applicable minimum prices may be made with agencies of the Federal Government or with such agencies of the State or local governments, in the absence of competitive bidding, where by virtue of an express exemption in the statute or ordinance such agencies may enter into contracts for the purchase of coal without regard to competitive bidding.

2. While the preceding rule is in effect, no option may be given by a Code Member or sales agent for the purchase of coal. When the above rule is suspended or revoked by the Coal Commission, options for the sale of coal may be given for a period not exceeding fourteen (14) days. No options may be given at a price less than the applicable minimum price in effect at the time of the giving of the option. If the applicable minimum price is increased beyond the quoted price

within such fourteen (14) days and the option shall not have been exercised at that time, the option thereupon shall become null and void: *Provided*, however, that in connection with offers to sell to the United States Government, or States or political subdivisions thereof, options may be given for a period not exceeding forty-five (45) days from the date of the offer or from the final date for the filling of offers.

3. Quotations may also be given for a period of not exceeding fourteen (14) days. If the applicable minimum price is increased beyond the quoted price within such fourteen (14) days and the quotation shall not have been accepted at that time, the quotation thereupon shall become null and void.

4. Every quotation and option shall provide that it is made subject to the provisions of the Marketing Rules and Regulations of the Coal Commission.

5. All quotations and options must be made or confirmed in writing. Every Code Member, or his sales agent, shall require of his offeree that the acceptance of a quotation or the exercise of an option be in writing.

Section V. Spot Orders

1. A spot order shall be in writing or confirmed in writing within five (5) business days from the date of the making thereof.

2. Each spot order shall be subject to the following conditions which shall either be endorsed upon the form of the order or upon the written confirmation thereof by the Code Member or his sales agent, the meaning and effect of which shall not be changed or altered by any other provision of the order.

(a) No shipment consigned to any destination may be diverted or reconsigned without the consent of the seller confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the minimum price prescribed for such coal for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied: *Provided*, however, that this provision does not apply to railroad locomotive fuel sold at prices f. o. b. mine."

(b) "The coal shipped pursuant to this order is sold and purchased upon the following conditions:

"(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein;

"(2) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied."

(c) "If shipments called for by this order are not completed within thirty

(30) days from the effective date of this order, the unfilled portion of the order shall not be delivered."

3. In any case where a sale is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in Item 2 (a) of this section without first securing the consent of his Code Member principal to be confirmed in writing.

4. All the terms and conditions of a sale of coal must be fully and expressly set forth either in the order or in the written confirmation thereof and such order or written confirmation thereof shall specifically contain all the terms required by Rule 1 of Section VI of these Marketing Rules and Regulations. Within ten (10) business days after the date of the making of the spot order or date of the written confirmation thereof, the Code Member or his sales agent shall file with the Statistical Bureau or Bureaus a copy of such spot order or confirmation. Any modification of a spot order must also be made in writing and filed with the Statistical Bureau or Bureaus in the same manner.

Section VI. Contracts

Upon the revocation or suspension of rule 1 of Section IV of these Marketing Rules and Regulations, Code Members or sales agents of Code Members may thereafter enter into contracts for the sale and delivery of coal upon the following terms and conditions:

1. Every contract shall be in writing and shall express the entire agreement between the parties. The contract shall clearly state the date of execution, the effective date, the expiration date, the price agreed upon, the terms of payment, the size and grade of coal, the number of cars or tonnage to be shipped, the name of the Code Member and the name of the originating mine, and, where the coal is purchased for consumption, the use to which the coal is to be applied. Contracts may also be made either (a) calling for a buyer's entire requirements or a stated percentage of his requirements, showing the maximum tonnage to be shipped thereunder, or (b) covering a buyer's requirements and stating the estimated tonnage to be shipped with an allowable overshipment of not exceeding ten (10) per cent of such estimated tonnage.

2. No contract for the sale of coal shall provide for deliveries to commence at a date later than ninety (90) days from the date upon which such contract is entered into.

3. No contract shall be made at a price below the applicable minimum price as established by the Coal Commission at the time of the making of the contract for the coal to be sold thereunder, and no coal may be delivered upon a contract at a price below such applicable minimum price.

4. No contract shall provide for delivery over a period in excess of twelve (12)

months except by special permission and approval of the Coal Commission, upon a showing of the necessity of meeting the long term contract competition of oil, gas, or other fuels or forms of power, or for such other reasons as the Commission may deem appropriate in order to further the effectual administration of the Act.

5. Any change in the terms of a contract, not in violation of these Rules and Regulations, shall be evidenced by a written agreement and shall conform to all the requirements set forth in these Rules and Regulations.

6. A report of every commitment shall be filed by the Code Member or his sales agent with the Statistical Bureau or Bureaus, within fifteen (15) business days from the date of the making of the agreement. Such report shall set forth all the terms and conditions of the commitment. A true copy of every contract and of any agreement for modification thereof shall be filed with the Statistical Bureau within fifteen (15) business days from the date of execution of such contract or agreement for modification: Provided, however, that a report of the commitment need not be filed if a copy of the contract is filed within fifteen (15) business days.

7. Each contract shall contain the following provisions, the meaning and effect of which shall not be changed or altered by any other provision of the contract:

"(a) This contract and the performance of all provisions thereof are expressly subject to the Bituminous Coal Act of 1937, and the proper orders and regulations issued thereunder by the National Bituminous Coal Commission.

"(b) No shipment consigned to any destination point may be reconsigned or diverted without the consent of the seller to be confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of the reconsignment or diversion for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied; Provided, however, that this provision does not apply to railroad locomotive fuel sold at prices f. o. b. mines.

"(c) The coal shipped pursuant to this contract is sold and purchased upon the following conditions:

"(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein;

"(2) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied."

8. In any case where a contract is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in item 7 (b) of this section without first securing the consent of the Code Member producing such coal to be confirmed in writing.

9. The making of a contract for the sale of coal at a price below the minimum or above the maximum therefor established by the Commission at the time of the making of the contract shall constitute a violation of the Code and such contract shall be invalid and unenforceable.

10. No contract shall be made for the sale of coal for delivery after the expiration date of the Act at a price below the minimum or above the maximum therefor established by the Coal Commission and in effect at the time of making the contract.

Section VII. Terms of Payment

1. The price and fair trade practice provisions of the Act shall not be evaded or violated by a Code Member, or his sales agent, through the use of terms of payment, and in no instance shall terms of payment be more favorable than the following:

(A) On rail, river, ex-river, or truck shipments, the date of payment of invoices for coal sold shall be on or before the twentieth (20th) day of the month following the month in which shipment was made.

(B) On tidewater cargo shipments the date of payment shall be not more than thirty (30) days from date of vessel bill of lading, and where coal is sold f. o. b. mines for tidewater cargo shipment, on or before the twentieth (20th) day of the month following the month in which the coal is dumped.

(C) Payment for all tidewater Bunker coal supplied for foreign vessels shall be by cash on delivery or by master's draft on owners in United States currency at not exceeding fifteen (15) days' sight at supplier's option. When drafts are accepted in payment, all bank charges for collection, exchange, etc., shall be for owner's account. Payment for tidewater bunker coal supplied for American vessels shall be made on or before the twentieth (20th) day of the month following delivery.

Payment for coal shipped for vessel fuel, and delivered into vessels at ports on the Great Lakes or tributary waters thereof, shall be made on or before the twentieth (20th) day of the month following such delivery.

(D) On lake cargo shipments, the date of payment shall be not more than sixty (60) days from date of vessel bill of lading, and where coal is sold f. o. b. mines for lake cargo shipments, on or before the twentieth (20th) of the second month following the month in which dumped.

(E) On all coal sold to railroads, the date of payment shall be on or before the twenty-fifth (25th) day of the month following the date of shipment.

(F) Invoices shall be paid in full in United States currency, or funds equivalent thereto, not later than the due date.

(G) No portion of the sale price may be withheld by agreement between the buyer and the seller based upon any unadjusted claim of the buyer.

(H) No sale, delivery, or offer for sale of coal shall be made upon any condition, express or implied, that any portion of the sale price may be withheld by the buyer, or deposited in escrow, pending or based upon a determination of the constitutionality of any provision of the Act, of the jurisdiction of the Coal Commission, or the validity or applicability of any order of the Coal Commission.

(I) Where the due date of the account is extended by agreement of the parties, express or implied, or where payment is made by note, trade acceptance or other form of indebtedness, the seller shall charge and the buyer shall pay interest from and after the due date of the account at the current rate in the locality to which the coal is shipped to the vendee.

(J) Freight on all-rail or ex-river shipments shall not be paid by a Code Member, or his sales agent, except to prepay stations as published in current railway tariffs or on shipments to the United States Government, States or political subdivisions thereof. Where freight is thus prepaid, the amount thereof shall immediately upon receipt of freight bill or notice of sight draft payment, be invoiced to the buyer for immediate payment.

(K) No Code Member shall accept as payment in full for any account for the sale of coal any amount which is less than the applicable minimum price for the quantity of coal involved. Provided, however, that a Code Member may enter into a bona fide general creditors' composition with other creditors of a defaulting purchaser. A copy of such creditors' composition shall be filed with the Statistical Bureau within ten (10) business days from the date of making such composition.

(L) The agreement by a Code Member, expressed or implied, to extend the credit for a period longer than that authorized by these rules and regulations, with the effect of violating the price provisions or the unfair methods of competition of the Act, shall constitute a violation of the Code.

Section VIII. Use of Coal Analyses

1. Analyses of coal shall not be utilized by a Code Member, or his sales agent, in selling or offering for sale any coal produced by the Code Member, whether or not the analysis is a term in the offer or sale, unless such Code

Member shall have filed with the Statistical Bureau and the District Board for the District in which the coal is produced, a report of the analysis or analyses as used or proposed to be used by him. Such report shall show the following:

(a) The name of the Code Member Producer.

(b) The name of the mine.

(c) The name or geological number of the seam or seams from which the coal is produced.

(d) The name of the size, and, if screened, the dimension or dimensions of the screen or screens over and/or through which the coal is prepared.

(e) Whether the analysis is representative of the entire production of such size of coal, or whether it represents only a portion of such production segregated by selective mining, selective preparation, actual analyses made at the mine, or in any other manner.

(f) That such analysis is representative of the grade and size of the coal as regularly produced by the Code Member and as loaded directly into transportation facilities for shipment to market and that the Code Member is prepared to make deliveries of coal of substantially the quality and character as shown by the analysis.

(g) That each such analysis is not less than a proximate analysis showing moisture content, ash, volatile matter, fixed carbon, sulphur and British thermal units and ash softening temperature.

2. Every analysis used in selling, or offering for sale, any particular kind, quality, or size of coal shall be accompanied by a statement to the effect that a copy of such analysis has been properly filed with the Statistical Bureau, the Coal Commission and the District Board.

3. All reports of analyses so filed shall be subject to inspection at the office of the Statistical Bureau at any time during office hours by any interested person, and may be considered by the District Board and the Coal Commission in determining from time to time proper classifications of the coals produced by the Code Member.

4. A copy of any analysis of the coal of a Code Member made by or on behalf of a consumer and accepted by the Code Member as the basis for and adjustment of price under any contract or spot order shall be filed by the Code Member with the Statistical Bureau, the Coal Commission and the District Board, within five (5) business days after such adjustment is made.

5. From and after the effective date of these Rules and Regulations, no Code Member shall enter into or perform any agreement made upon a penalty or a premium and penalty basis which will permit the sale of coal at an aggregate contract price below the applicable minimum price established by the Coal Commission for the coal sold and delivered upon such agreement subsequent to said effective

date; Provided, that where a Code Member has entered into an agreement made upon a penalty or a premium and penalty basis, this rule shall not be considered as affecting any claim that the buyer might otherwise have had for sub-standard preparation or quality under Section X of these Marketing Rules and Regulations.

Section IX. Resale of Coal Refused in Transit or at Destination

1. Where coal is refused by a consignee in transit or at destination, the Code Member may sell the same at the best obtainable price, provided that in each case the Code Member shall file with the Statistical Bureau, and the District Board for the District in which the coal was produced, within five (5) business days from the date of such resale, a statement giving the following information:

- (a) Name of consignee.
- (b) Address of the consignee.
- (c) Original destination of the coal.
- (d) Name of Code Member.
- (e) Originating mine.
- (f) The grade and size of coal shipped.
- (g) Price at which coal sold.
- (h) Reasons for the refusal.
- (i) Facts resulting from the investigation of the complaint.
- (j) Name of ultimate purchaser upon resale.

(k) Address of purchaser upon resale.

(l) Ultimate destination of the coal.

(m) Price received by the seller upon resale.

(n) Amount of commission, if any, paid upon the resale.

(o) A copy of the carrier's notice of refusal or a notice of reconsignment and such other pertinent information and facts as may be offered in proof of the necessity for such resale.

(p) A signed and verified statement that the provisions of the Code and the Marketing Rules and Regulations of the Coal Commission other than as to price have not been violated or evaded.

2. All Code Members shall properly furnish to the District Board and to the Statistical Bureau of the Coal Commission for the District in which the coal originated, full reports of all reconsignments, and shall authorize the carrier making such reconsignments to furnish complete information thereon to such Statistical Bureau.

Section X. Substandard Preparation or Quality

1. Where any allowance is requested by a buyer of coal on any shipment claimed to be substandard in preparation or quality, the Code Member or the sales agent, with the prior approval of the Code Member, may on or before the maturity date of the invoice, make settlement and agree with the buyer upon any amount reasonably to be deducted for such inferior coal and accept payment therefor at less than the minimum prices; provided, however, that in

each such case the Code Member shall within five (5) days after granting such allowance file with the Statistical Bureau of the Coal Commission in the District in which the coal originates, a verified statement giving the following information:

(a) The name and address of the consignee and the reason for the request for the allowance.

(b) The price at which the coal was sold, the tonnage delivered, the name of the mine, the Code Member, the date of shipment, the grade and size of coal, the destination, and the amount of allowance or adjustment made.

(c) Such other pertinent information and facts as may be offered in proof of the necessity for such reduction or allowance.

(d) A statement that the adjustment has not been made with the purpose or intent of evading the price provisions of the Act.

The Code Member shall also file, together with the statement a written claim duly executed by or on behalf of the buyer and verified by affidavit, setting forth the amount claimed by way of deduction and the reasons for the complaint.

2. All such adjustments and allowances shall be subject to review by the Coal Commission.

Section XI. Substitutions

1. No substitution may be made, upon any spot order or contract, of any grade or size of coal taking a minimum price higher than the price specified in such order or contract, except upon the following conditions:

(a) The proposed substitution shall not be an express or implied condition of the order or contract.

(b) The coal substituted must be coal which the Code Member has already produced and loaded into transportation facilities and which cannot be sold promptly by the exercise of the usual sales effort, such substitution to be limited to a specific tonnage for shipment on a specific order and from a specific mine.

(c) The substitution must be reasonably necessary as an emergency measure in order to continue operation of the mine of the Code Member.

(d) The substitution shall be acceptable to the purchaser of the coal and shall not be made with the purpose or effect of conferring any advantage on the purchaser or securing any preference or advantage for the Code Member over his competitors.

(e) Such substitution may be made only with the approval of the Statistical Bureau and in each instance formal application therefor shall be made upon forms provided by the Commission and permits shall be issued prescribing the conditions of substitution in each case approved.

(f) Copies of substitution permits shall be mailed daily to the office of the Dis-

trict Board and weekly summaries of substitution permits shall be mailed to all District Boards within the Price Area. The Commission may from time to time publish the essential facts as to all substitution permits granted.

(g) In each case of coal shipped under a substitution permit the invoice shall specifically show the permit number and the size and grade of coal substituted.

2. No substitution shall be made and no substitution permit shall be issued on any spot order or contract for coal sold for delivery to a person engaged in the retailing of coal.

Section XII. Coal Crushed, Coal Pulverized, and Coal Mechanically or Otherwise Reduced in Size

1. Each code member who maintains and operates at his mine or at any facility used in preparing coals for market, any crushing, pulverizing, mechanical or other device, shall register such device with the Statistical Bureau of the Coal Commission on forms submitted by the Coal Commission.

2. Such forms shall include the following:

1. Name and address of code member.
2. Name of mine or facility at which device is located.
3. Name and style or type of such device.
4. Hourly capacity of such device.
5. Sizes of coal which such device can reduce in size.
6. Sizes of coal resulting from such reduction in size.
7. Number of tons reduced in size in 1938 and in each month of 1937 and 1938.

3. Beginning with the effective date of established minimum prices, each code member shall on or before the tenth (10th) day of each succeeding month, file with the Statistical Bureau on forms to be provided by the Coal Commission, a statement verified by affidavit, setting forth the following information for the preceding calendar month:

(a) Number of tons of each size crushed, pulverized, mechanically or otherwise reduced in size.

(b) Number of tons of each size resulting from such reduction in size.

4. No Code Member shall sell any coal crushed, pulverized, mechanically or otherwise reduced in size, at a price less than the minimum price established for the resulting kind, quality, and size of the coal after being crushed, pulverized, mechanically or otherwise reduced in size.

Section XIII. Miscellaneous

General

1. The minimum prices established by the Commission shall not apply to coal sold and shipped outside the domestic market as defined in the Act and in these Marketing Rules and Regulations.

2. Maximum prices established by the Commission shall not apply to coal sold and shipped outside the continental United States.

3. No coal shall be sold or delivered or offered for sale at a price below the minimum or above the maximum therefor established by the Commission, and the sale or delivery or offer for sale of coal at a price below such minimum or above such maximum shall constitute a violation of the Code: Provided, that the provisions of this paragraph shall not apply to a lawful and bona fide written contract entered into prior to June 16, 1933, which has been filed with the Coal Commission.

4. If, in converting a net or gross ton price, freight rate or freight rate differential, the calculation extends to more than 3 decimals, and the 4th decimal is .0005 or more, it shall be added as .001, and if under .0005 it shall be eliminated.

5. All coal shall be sold and invoiced on a price per ton basis, and all coal must be sold and invoiced under the size, price classification and other designation therefor in the price schedule published by the Coal Commission.

6. Failure to file information required by these Marketing Rules and Regulations or the filing of false information, wilfully made, will subject the party failing to file the information required, or the party so filing, to the penalties of the Act and other penalties imposed by law.

Advertising

1. No deduction or allowance from invoice prices shall be granted by any Code Member or his sales agent to any purchaser for advertising.

2. Code Members (or their agents or representatives) either individually or collectively, with or without financial participation by retailers of coal, may conduct advertising campaigns seeking to increase the use of coal. The amount of expenditures incurred by a Code Member, his agent or representative for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.

Screening for Buyer's Account

1. The screening of mine run or re-screening of other grades of coal, sold and billed as such, for the buyer's account for the purpose of keeping the resultant products separate in the shipment thereof is prohibited.

Coal Confiscated or Lost in Transit

1. All coal confiscated or lost in transit shall be invoiced to the carrier at not less than the minimum price established for such coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or loss, whichever may be the higher.

Revision of Marketing Rules and Regulations

1. These Marketing Rules and Regulations are subject to revision and amend-

ment by further order of the Coal Commission.

Unfair Methods of Competition.—See page 166.

Penalties.—See page 166.

CONCLUSION

It is the conclusion of the Commission that the schedules of proposed minimum prices submitted by the District Boards for Districts 2, 4, 5, 6 and that part of District 13 within Minimum Price Area 1 and the marketing rules and regulations submitted to the Commission by the District Boards for Districts 2, 4, 5 and 6, as amended, corrected, modified or revised, conform to the requirements of Section 4 II (a) of the Act and that same as amended, corrected, modified or revised, may properly be transmitted to the respective District Boards within Minimum Price Area 1 to serve as a basis for the coordination as provided in Section 4 II (b) of the Act.

By the Commission.

[SEAL]

PERCY TETLOW,
Chairman.

Dated this 4th day of January, 1939.

[F. R. Doc. 39-87; Filed, January 6, 1939; 12:54 p. m.]

[General Docket No. 15]

ORDER IN THE MATTER OF THE ESTABLISHMENT OF MINIMUM PRICES AND MARKETING RULES AND REGULATIONS:

IN RE PROPOSAL OF RULES AND REGULATIONS INCIDENTAL TO THE SALE AND DISTRIBUTION OF COAL BY CODE MEMBERS SUBMITTED BY THE DISTRICT BOARDS FOR DISTRICTS NOS. 2, 4, 5, AND 6.

At a session of the National Bituminous Coal Commission held at its offices in Washington, D. C., on the 4th day of January 1939.

The Commission, on the 25th day of May, 1938,¹ having instituted the above-entitled proceedings for the purpose of carrying out the provisions of Sub-sections (a) and (b) of Section 4, Part II, of the Bituminous Coal Act of 1937, and having, by its Order No. 248, dated August 11, 1938,² directed the District Boards for Districts Nos. 2, 4, 5, and 6 to propose reasonable rules and regulations incidental to the sale and distribution of coal by the code members of the respective districts in conformity with the provisions of Section 4, II, (a) of the Act,

And each of the aforesaid District Boards having submitted such proposed rules and regulations together with the reasons upon which they were predicated, to the Commission in accordance with the provisions of said Order No. 248, the Commission did, by Order entered herein on September 19, 1938,³ di-

¹ 3 F. R. 1457 DI.

² 3 F. R. 1989 DI.

³ 3 F. R. 2261 DI.

rect that a hearing on said proposals be held in the Hearing Room of the Commission, 15th and Eye Streets, N. W., Washington, D. C., at 10 o'clock A. M., commencing on the 10th day of October, 1938, for the purpose of receiving evidence to enable the Commission to approve such proposed marketing rules and regulations, or to enable the Commission to modify the proposed marketing rules and regulations as provided in Section 4, II, (a) of the Act in order that such proposed marketing rules and regulations, as approved or modified, as the case may be, may serve as the basis for the coordination provided by Section 4, II, (b) of the Act, and

After reasonable public notice having been given thereof, said hearing was commenced at the time and place stated and concluded on the 10th day of November, 1938, at which time all interested parties were afforded a full opportunity to be heard, and the evidence being adduced, the Commission being fully advised in the premises has made Findings of Fact and Conclusions relating to the proposals of each of said districts, which Findings of Fact and Conclusions are on file at the Office of the Secretary of the Commission, Washington, D. C., and which are by this reference incorporated herein and made a part hereof,¹ and

The Commission having determined that the rules and regulations as set forth in the said Findings of Fact and Conclusions for each of the respective districts are reasonable and are not inconsistent with the requirements of Section 4 of the Act, and do conform to the standards of fair competition established by Section 4 of the Act, and form a proper basis for the coordination provided for by Section 4, II, (b) of the Act,

Now, therefore, Pursuant to the provisions of the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby approves, for the purpose of coordination, the "Rules and Regulations incidental to the sale and distribution of coal by code members," as the same are set forth in the "Findings of Fact and Conclusions" by the Commission for each of Districts Nos 2, 4, 5, and 6, filed this date in the Office of the Secretary of the Commission, Washington, D. C.

The Secretary of the Commission is hereby directed to cause a copy of this Order together with the Findings of Fact and Conclusions, above referred to, to be published forthwith in the Federal Register, and to cause a copy hereof, together with said "Findings of Fact and Conclusions" of the Commission to be mailed to the Consumers' Counsel, to the Secretary of each District Board, to all parties who have filed their appearances in the hear-

ing relating to the aforesaid proposals, and to cause copies thereof to be made available for inspection by interested parties at the office of the Secretary of the Commission, Washington, D. C., and at the office of each Statistical Bureau of the Commission.

By order of the Commission.

Dated this 4th day of January, 1939.

[SEAL] F. W. McCULLOUGH,
Secretary.

[F. R. Doc. 39-38; Filed, January 6, 1939;
12:55 p. m.]

Notices

DEPARTMENT OF THE INTERIOR.

National Bituminous Coal Commission.

[Docket No. 16-FD]

IN THE MATTER OF THE APPLICATION OF UNITED STATES COAL AND COKE COMPANY FOR EXEMPTION FROM SECTION 4, AS PROVIDED UNDER SECTION 4, PART II (1), AND FILED UNDER THE PROVISIONS OF SECTION 4-A OF THE BITUMINOUS COAL ACT OF 1937.

NOTICE AND ORDER FOR HEARING

This matter having come on for hearing regularly on the 10th day of August, 1937, before this Commission, and the same having been continued upon motion of Counsel for the applicant to a day to be later designated,

Now pursuant to said continuance, notice is hereby given that the hearing will be resumed in the hearing room of the Commission at 734 15th Street, N. W., Washington, D. C., on the 23rd day of January, 1939, at 10:00 o'clock a. m., said hearing to continue from day to day and from place to place as the Examiner hereinafter assigned may deem necessary and proper until the same shall have been completed.

It is ordered that Charles S. Mitchell, an Examiner for the Commission be and hereby is appointed to hear the same, and

The Secretary of the Commission is directed to mail forthwith a copy of this Notice and Order for Hearing to the applicant above-named, to each Secretary of the respective District Boards Nos. 1 to 8, inclusive, to the Consumers' Counsel, and shall cause the same to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated this 9th day of January, 1939.

[SEAL] F. WITCHER McCULLOUGH,
Secretary.

[F. R. Doc. 39-115; Filed, January 10, 1939;
9:51 a. m.]

DEPARTMENT OF LABOR.

Wage and Hour Division.

IN THE MATTER OF APPLICATIONS OF RAW FUR & WOOL ASSOCIATION OF ST. LOUIS, MO., INC. AND SUNDRY OTHER PARTIES FOR PARTIAL EXEMPTION OF THE RAW FUR RECEIVING INDUSTRY AS A SEASONAL INDUSTRY

NOTICE OF HEARING

Whereas, application has been made by Raw Fur & Wool Association of St. Louis, Mo., Inc. and sundry other parties under Section 7 (b) (3) of the Fair Labor Standards Act of 1938, 52 Stat. 1060, and Regulations—Part 526, as amended (Regulations Applicable to Industries of a Seasonal Nature)¹—issued by the Administrator thereunder, for partial exemption of the raw fur receiving industry from the maximum hours provisions of Section 7 (a) of said Act pursuant to said Section 7 (b) (3) applicable to industries found by the Administrator to be of a seasonal nature;

Now, therefore, notice is hereby given of a public hearing to be held pursuant to Section 526.5 (b) and Section 526.6 of said regulations on said application at the Raleigh Hotel, 12 Street and Constitution Avenue, Washington, D. C., to commence at 10:00 A. M. on January 19, 1939, before an authorized representative of the Administrator to be designated hereafter, to take testimony for the purpose of determining:

Whether or not the raw fur receiving industry as defined herein or any branch thereof is of a seasonal nature within the meaning of Section 7 (b) (3) of the Fair Labor Standards Act of 1938 and Part 526 of regulations issued thereunder.

At this hearing all persons interested, including employees, employee groups, employee labor organizations, employers, employer groups, and trade associations, within the industry affected and designated subordinates of the Administrator, will be afforded an opportunity to present evidence and to be heard. All persons or associations desiring to avail themselves of this opportunity should, if possible, notify the Administrator in advance.

An authorized representative of the Administrator will conduct the said hearing and will make a finding pursuant to Section 526.6 (e) of the said regulations upon the record made at the hearing. For the purposes of this hearing such authorized representative shall have all the powers conferred upon the Administrator by Section 9 of said Act (relating to the attendance of witnesses and the production of books, papers and documents).

As used in this notice the term "raw fur receiving industry" means the re-

¹ See p. 118.

¹ 3 F. R. 3127 DL.

ceiving, unpacking, grading, sorting, appraising, scraping, stretching and drying of raw furs.

Signed at Washington, D. C., this 10th day of January, 1939.

ELMER F. ANDREWS,
Administrator.

[F. R. Doc. 39-128; Filed, January 10, 1939;
12:25 p. m.]

[Administrative Order No. 12]

ACCEPTANCE OF RESIGNATION FROM AND
APPOINTMENT TO INDUSTRY COMMITTEE
No. 2

By virtue of and pursuant to the authority vested in me by the Fair Labor Standards Act of 1938, I, Elmer F. Andrews, Administrator of the Wage and Hour Division, Department of Labor, do hereby accept the resignation of Herman Rosenblum from Industry Committee No. 2 for the apparel industry and do appoint in his stead as representative for employers, D. J. Gray of Ware Shoals, South Carolina.

Signed at Washington, D. C., this 10th day of January, 1939.

ELMER F. ANDREWS,
Administrator.

[F. R. Doc. 39-127; Filed, January 10, 1939;
12:55 p. m.]

FEDERAL TRADE COMMISSION.

*United States of America—Before Federal
Trade Commission*

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 6th day of January, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

[Docket No. 3341]

IN THE MATTER OF JOHN H. DAVIS, AN INDIVIDUAL, AND DALE S. DAVIS, AN INDIVIDUAL, TRADING AS NORMANDIE ET CIE

ORDER APPOINTING EXAMINER AND FIXING
TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress, (38 Stat. 717; 15 U. S. C. A., Section 41),

It is ordered, That Edward E. Reardon, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is ordered, That the taking of testimony in this proceeding begin on Friday, January 13, 1939, at ten o'clock in the forenoon of that day (eastern standard time) in Room 2301, United States Court House, Foley Square, New York, New York.

Upon completion of testimony for the Federal Trade Commission, the examiner

is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39-111; Filed, January 9, 1939;
3:24 p. m.]

*United States of America—Before
Federal Trade Commission*

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 6th day of January, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

[Docket No. 3500]

IN THE MATTER OF RENAUD SALES COMPANY, INC., A CORPORATION, MURRAY W. MORIN, IRVING UNTERMAN, AND IRVING LIPSCHITZ, INDIVIDUALLY, AND AS OFFICERS OF RENAUD SALES COMPANY, INC.

ORDER APPOINTING EXAMINER AND FIXING
TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress, (38 Stat. 717; 15 U. S. C. A., Section 41),

It is ordered, That Edward E. Reardon, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Tuesday, January 17, 1939, at ten o'clock in the forenoon of that day (eastern standard time) in Room 2301, United States Court House, Foley Square, New York, New York.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39-112; Filed, January 9, 1939;
3:24 p. m.]

*United States of America—Before
Federal Trade Commission*

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 7th day of January, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

[Docket No. 3576]

IN THE MATTER OF V. PORTNOY & SONS, INC., TRADING AS ROOSEVELT MERCANTILE Co.

ORDER APPOINTING EXAMINER AND FIXING
TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress, (38 Stat. 717; 15 U. S. C. A., Section 41).

It is ordered, That Arthur F. Thomas, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Friday, January 20, 1939, at ten o'clock in the forenoon of that day (central standard time) in Room 1123, New Post Office Building, 433 West Van Buren Street, Chicago, Illinois.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39-113; Filed, January 9, 1939;
3:24 p. m.]

*United States of America—Before
Federal Trade Commission*

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 7th day of January, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

[Docket No. 3626]

IN THE MATTER OF J. W. MARROW MANUFACTURING COMPANY, A CORPORATION

ORDER APPOINTING EXAMINER AND FIXING
TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress, (38 Stat. 717; 15 U. S. C. A., Section 41),

It is ordered, That Arthur F. Thomas, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on

Monday, January 23, 1939, at ten o'clock in the forenoon of that day (central standard time) in Room 1123, New Post Office Building, 433 West Van Buren Street, Chicago, Illinois.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39-114; Filed, January 9, 1939;
3:25 p. m.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 5th day of January 1939.

[File No. 37-25]

IN THE MATTER OF ELECTRIC ADVISERS, INC.

ORDER GRANTING TEMPORARY APPROVAL OF MUTUAL SERVICE COMPANY PURSUANT TO SECTION 13 OF THE PUBLIC UTILITY HOLDING COMPANY ACT

Approval, based upon the findings made in this matter, is granted Applicant as a mutual service company subject to the following conditions that:

(1) Within sixty days from the date of the order, Applicant shall reduce its capitalization to \$200,000.

(2) The effectiveness of the order approving Applicant as a mutual service company shall terminate thirty days after the date of the Commission's order on the application of Cities Service Company under Section 3 (a) (3) of the Act (File No. 31-408). The Commission, however, reserves jurisdiction to extend the effectiveness of this order pending consideration by it of such amendments to the present application, File No. 37-25, or such further applications or declarations as may hereafter be filed respecting the rendering of services to companies of the Cities Service and/or Cities Service Power & Light Company system.

(3) In the event of a contemplated substantial change in its organization, the type and character of the companies to be serviced, the method of allocating costs to associate companies, or an increase in the scope of services to be rendered, Applicant shall first obtain the approval of this Commission of such change.

(4) If the operation of Applicant's cost-allocation method does not result in a fair and equitable allocation of its costs

among the associate serviced companies, the Commission will require, after notice and opportunity for hearing, prospective adjustments and, to the extent that it appears feasible and equitable, retroactive adjustments of such cost allocations.

This order is not to be construed as a ruling that Applicant may not be required to effect any changes in its organization and operation, or any other changes which become necessary for it to conform with the Act, present or future rules, regulations or orders.

This order shall be effective as of December 31, 1938.

It is so ordered.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-120; Filed January 10, 1939;
11:12 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 5th day of January, A. D. 1939.

[File No. 37-29]

IN THE MATTER OF NORTHEASTERN WATER & ELECTRIC SERVICE CORPORATION

ORDER REOPENING HEARING AND MAKING EXHIBIT PART OF RECORD

It appearing to the Commission that the hearing in this matter was closed on the 23rd day of December, 1938; and that Declarant, through counsel, subsequently agreed orally that Declarant would not, "without prior approval of the Commission, pay for or obtain on behalf of itself or the associate companies which it serves, any services from what are generally known as the '61 Broadway companies'", and that

Counsel for Declarant confirmed this agreement by a letter dated December 30, 1938 directed to this Commission;

It is ordered, That the hearing in this matter be, and the same hereby is, reopened for the purpose of receiving in evidence said letter as Commission's Exhibit No. 3; and that said Exhibit be, and hereby is, received and made part of the record herein.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-124; Filed, January 10, 1939;
11:13 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 5th day of January 1939.

[File No. 37-36]

IN THE MATTER OF GAS ADVISERS, INC.

ORDER GRANTING TEMPORARY APPROVAL OF MUTUAL SERVICE COMPANY PURSUANT TO SECTION 13 OF THE PUBLIC UTILITY HOLDING COMPANY ACT

Approval, based upon the findings made in this matter, is granted Applicant as a mutual service company subject to the following conditions that:

(1) Within sixty days from the date of the order, Applicant shall reduce its capitalization to \$50,000.

(2) The effectiveness of the order approving Applicant as a mutual service company shall terminate thirty days after the date of the Commission's order on the application of Cities Service Company under Section 3 (a) (3) of the Act (File No. 31-408). The Commission, however, reserves jurisdiction to extend the effectiveness of this order pending consideration by it of such amendments to the present application, File No. 37-36, or such further applications or declarations as may hereafter be filed respecting the rendering of services to companies of the Cities Service Company and/or Cities Service Power & Light Company systems.

(3) In the event of a contemplated substantial change in its organization, the type and character of the companies to be serviced, the method of allocating costs to associate companies, or an increase in the scope of services to be rendered, Applicant shall first obtain the approval of this Commission of such change.

(4) If the operation of Applicant's cost-allocation method does not result in a fair and equitable allocation of its costs among the associate serviced companies, the Commission will require, after notice and opportunity for hearing, prospective adjustments and, to the extent that it appears feasible and equitable, retroactive adjustments of such cost allocations.

This order is not to be construed as a ruling that Applicant may not be required to effect any changes in its organization and operation, or any other changes which become necessary for it to conform with the Act, present or future rules, regulations, or orders.

This order shall be effective as of December 31, 1938.

It is so ordered.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-121; Filed, January 10, 1939;
11:12 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its

office in the City of Washington, D. C., on the 6th day of January, A. D. 1939.

[File No. 31-189]

IN THE MATTER OF CENTRAL STATES
ELECTRIC CORPORATION

ORDER CONSENTING TO WITHDRAWAL OF
APPLICATION UNDER PUBLIC UTILITY
HOLDING COMPANY ACT OF 1935 PURSUANT
TO REQUEST OF APPLICANT

Upon the request of the applicant, the Commission consents to the withdrawal of the above-captioned application, and to that effect

It is so ordered.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-122; Filed, January 10, 1939;
11:12 a. m.]

*United States of America—Before the
Securities and Exchange Commission*

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 7th day of January, A. D. 1939.

[File No. 34-22]

IN THE MATTER OF HENRY A. GARDNER,
JOHN A. DAWSON AND ROBERT W.
HOTCHKISS, ACTING AS BONDHOLDERS'
PROTECTIVE COMMITTEE FOR UTILITIES
ELKHORN COAL COMPANY

ORDER DISMISSING DECLARATION, ETC.

A declaration having been filed with this Commission by Henry A. Gardner, John A. Dawson and Robert W. Hotchkiss under Rule U-12E-3 (c), promulgated pursuant to Section 12 (e) of the Public Utility Holding Company Act of 1935, for permission to solicit the deposit of Utilities Elkhorn Coal Company 6% Twenty Year First Mortgage Sinking Fund Gold Bonds, and such Committee having filed an application pursuant to Rule U-11F-2, promulgated pursuant to Section 11 (f) of said Act for the exemption of such interim allowances as may be approved by the District Court of the United States for the Northern District of Illinois, Eastern Division, in a total maximum amount of \$10,000 for its expenses in connection with the representation of the holders of such bonds;

A hearing having been held on the declaration and application after appropriate notice; declarants and applicants having waived a trial examiner's report, the submission to them of proposed findings of fact by counsel to the Commission, the submission to the Commission of proposed findings by declarants and applicants, and oral argument before the Commission; the Commission having considered the record in this matter and having made its findings herein;

It is ordered, That said declaration be and the same hereby is dismissed without

¹3 F. R. 2070 DI.

prejudice, however, to declarants as to any future declaration which may be filed by them; and

It is further ordered, That said application be granted and that applicants be and they hereby are exempted from the necessity of filing an application pursuant to Rule U-11F-2 with respect to such interim allowances for expenses in a total amount of \$10,000 as may be approved by the District Court of the United States for the Northern District of Illinois, Eastern Division, the granting of such application, however, being subject to the following terms and conditions:

(1) That such reimbursement for the expenses of the Committee as is permitted by the Court be charged against the estate of Utilities Elkhorn Coal Company;

(2) That there be transmitted to this Commission by the applicants a copy of any application for reimbursement for expenses filed with the Court or a copy of any bill for or any statement of expenses which shall be submitted to the debtor, or if no such application or bill for or statement of expenses is filed or submitted, a copy of the statement of the disbursements for which remuneration is claimed;

(3) That the Commission retains jurisdiction at any time to terminate the exemption hereby granted with respect to the applicants upon notice. If the exemption is terminated the applicants shall thereupon be subject to all the obligations or requirements of Rule U-11F-2 with respect to filing an application for and obtaining approval of the maximum amount of expenses and remuneration which may be allowed. The exemption hereby granted to the applicants shall not prejudice their right to apply for, nor the jurisdiction of the Commission over, the maximum amount of any final claims for fees, expenses or remuneration in connection with this reorganization.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-125; Filed, January 10, 1939;
11:13 a. m.]

*United States of America—Before the
Securities and Exchange Commission*

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 10th day of January, A. D. 1939.

[File No. 54-10]

IN THE MATTER OF THE NORTH AMERICAN
COMPANY AND NORTH AMERICAN EDISON
COMPANY

NOTICE OF AND ORDER FOR HEARING

Application and declaration pursuant
to sections 11 (e) and 7 of the Public

Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named parties;

It is ordered, That a hearing on such matter be held on January 24, 1939, at 10 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That Robert P. Reeder or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before January 19, 1939.

The matter concerned herewith is in regard to a proposal by the applicants and declarant for the retirement of all outstanding securities of the applicant North American Edison Company except such as are owned by the applicant The North American Company, the dissolution of the applicant North American Edison Company and the transfer in liquidation of all of the assets of North American Edison Company to The North American Company in consideration of the surrender to North American Edison Company of the securities of said Company owned by The North American Company and of the open account indebtedness of North American Edison Company to The North American Company existing at the time of such transfer of property, the assumption by The North American Company of a contingent liability of North American Edison Company with respect to a guaranty of bonds of Waukesha Gas and Electric Company in the principal amount of \$500,000, the assumption by The North American Company of the current and accrued liabilities of North American Edison Company existing at the date of final distribution of its assets, and a capital contribution by The North American Company to North American Edison Company of an amount of money sufficient to effect the retirement of the outstanding securities of North American Edison Company, other than those owned by The North American Company,

as above mentioned, which securities as of June 30, 1938, were as follows:

5% Debentures, Series A, due March 1, 1957-----	\$6,067,000
5½% Debentures, Series B, due August 15, 1963-----	16,218,000
5% Debentures, Series C, due November 15, 1969-----	20,280,000
\$6 Preferred Stock, without par value, stated value \$100 per share-----	34,829,000
Total-----	77,394,000

It is further proposed that the Certificate of Organization of The North American Company be amended to provide for the consolidation of the presently authorized preferred stock into Serial Preferred Stock, of a par value of

\$50 per share, the presently outstanding 6%, \$50 par, preferred stock to constitute one series. It is then proposed that the applicant The North American Company shall issue and sell 696,580 shares of said proposed Serial Preferred Stock of an annual dividend rate of 5¼%, and shall also issue and sell Debentures in the aggregate principal amount of \$70,000,000, dated February 1, 1939, bearing interest from said date, payable semi-annually, and rates of interest and maturities of principal to be as follows:

3½% Debentures, Series due 1949-----	\$20,000,000
3¾% Debentures, Series due 1954-----	25,000,000
4% Debentures, Series due 1959-----	25,000,000

The proceeds of the sale of said Preferred Stock and Debentures are to be used for the capital contribution to North American Edison Company above mentioned and for the retirement of the presently outstanding Debentures of the applicant The North American Company in the amount, as of June 30, 1938, of \$23,913,000, and for the payment of expenses incident to the consummation of the proposed plan and sale of securities.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-123; Filed, January 10, 1939; 11:12 a. m.]

