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Rules, Regulations, Orders

TITLE 16—COMMERCIAL PRACTICES

FEDERAL TRADE COMMISSION

[Docket No. 3710]

IN THE MATTER OF RICHARD ROSEBURY ORGANIZATION, INC., ET AL.

§ 3.69 (b) (16b) *Misrepresenting oneself and goods—Goods—Terms and conditions:* § 3.72 (n 1) *Offering deceptive inducements to purchase—Terms and conditions.* Representing, in connection with offer, etc., in interstate commerce, of magazines or subscriptions for magazines, through statements made by respondent's solicitors or statements appearing on receipts or other printed matter exhibited to prospective subscribers for such magazines, that a subscriber is to receive a greater number of magazines than those which are actually delivered, or a magazine or magazines other than the magazine or magazines which are actually delivered to said subscriber, or misrepresenting in any manner, directly or indirectly, the identity or number of magazines to be received by a subscriber for the subscription price paid or agreed upon, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Richard Rosebury Organization, Inc., et al., Docket 3710, May 20, 1939]

§ 3.69 (b) (16c) *Misrepresenting oneself and goods—Goods—Undertakings, in general:* § 3.72 (p) *Offering deceptive inducements to purchase—Undertakings, in general.* Accepting, in connection with offer, etc., in interstate commerce, of magazines or subscriptions for magazines, subscriptions from subscribers for magazines where the magazine or magazines covered by such subscriptions are not thereafter actually delivered to such subscribers, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Richard Rosebury Organization, Inc., et al., Docket 3710, May 20, 1939]

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 20th day of May, A. D. 1939.

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

IN THE MATTER OF RICHARD ROSEBURY ORGANIZATION, INC., AND RICHARD W. ROSEBURY, AN INDIVIDUAL

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent Richard Rosebury Organization, Inc., in which answer said respondent admits all of the material allegations of fact set forth in said complaint and states that it waives 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 respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That respondent Richard Rosebury 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 magazines, or subscriptions for magazines, in interstate commerce, do forthwith cease and desist:

(a) From representing, through statements made by its solicitors or statements appearing on receipts or other printed matter exhibited to prospective subscribers for such magazines, that a subscriber is to receive a greater number of magazines than those which are actually delivered, or a magazine or magazines other than the magazine or magazines which are actually delivered to said subscriber;

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FEDERAL REGISTER

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(b) From accepting subscriptions from subscribers for magazines where the magazine or magazines covered by such subscriptions are not thereafter actually delivered to such subscribers;

(c) From misrepresenting in any manner, directly or indirectly, the identity or number of magazines to be received by a subscriber for the subscription price paid or agreed upon.

It is further ordered, That this proceeding be closed as to the respondent Richard W. Rosebury.

It is further 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] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39-1983; Filed, June 7, 1939; 12:38 p. m.]

TITLE 19—CUSTOMS DUTIES

BUREAU OF CUSTOMS

[T. D. 49878]

COUNTERVAILING DUTIES—IMPORTS FROM GERMANY

DECLARATION OF IMPORTER REQUIRED IN CONNECTION WITH ENTRIES OF DUTIABLE MERCHANDISE IMPORTED DIRECTLY OR INDIRECTLY FROM GERMANY

To Collectors of Customs and Others Concerned:

Pursuant to the provisions of sections 303, 484 (d) and 624 of the Tariff Act of 1930 (U.S.C., title 19, secs. 1303, 1484 (d) and 1624), it is hereby ordered and directed that prior to the liquidation of any entry of dutiable merchandise imported directly or indirectly from Germany (including all areas now under the *de facto* administrative control of Germany), whether or not such merchandise is imported in the condition in which it was exported from that country or has been changed in condition by remanufacture or otherwise, there shall be filed with the collector of customs a declaration by the importer concerning the means of payment for the merchandise.

This declaration shall be on a form substantially in accordance with that appended hereto and shall be properly executed and filed at the time of entry if full payment has then been made. If payment has not been completed at the time of entry, a bond shall be given for the production of the form properly executed promptly upon completion of payment. This declaration shall be accompanied by supporting evidences, such as a corroborative statement by the bank through which payment was made, and, in the case of payment by Reichsmarks acquired by special means, additional evidence showing full details of the transaction, including copies of purchase orders or sales contracts, invoices, cable instructions to agents or affiliates, and other pertinent papers.

[SEAL] JAMES H. MOYLE, *Commissioner of Customs.*

Approved: June 3, 1939.

STEPHEN B. GIBBONS, *Acting Secretary of the Treasury.*

DECLARATION OF IMPORTER OF MERCHANDISE IMPORTED FROM GERMANY

[Separate declarations on this form shall be filed for each importation promptly upon completion of payment for the merchandise in the importation. It must be filed prior to the liquidation of the involved entry. All blanks shall be filled in, except that when an entire numbered or lettered item is not pertinent to the transaction involved it should be crossed out. Supporting evidence must be attached to this form.]

1. Payment for the merchandise purchased by _____ and imported under
(Name of importer)
entry No. _____ dated _____, 19__, has been made, or irrevocably secured, in the manner and through the use of the amounts and kinds of currency stated below:

(a) Payment was made by the use of _____
(Kind or kinds of currency, $, RM, £ Sw, _____, in the amount of_____. fcs., etc.)

NOTE: If payment has been made by the use of more than one type of currency, each type and the amount of each should be declared above. The transactions giving rise to each type of currency and the method of remittance of each type should be declared in the appropriate places on this form.

(b) Currency (other than dollars and other than Reichsmarks acquired by special means—see Item 3), namely _____
(Kind of "free" _____ used foreign currency, RM, £, Sw, fcs., etc.) in payment was purchased from _____
(Name of _____ on _____ at _____
seller) (Date) (Rate _____ of exchange at which purchased)

2. Dollars or "free" foreign exchange (other than Reichsmarks acquired by special means—see Item 3) in full or part payment was remitted in the following manner:

(a) Cable transfer: _____,
(Date)
_____, _____,
(Sending bank) (Receiving bank)
_____, _____.
(Payable to) (Amount and kind of currency)

(b) Check or demand draft: _____,
(Date)
_____, _____,
(Drawn by) (Drawn on)
_____, _____.
(Payable to) (Amount and kind of currency)

If drawn under letter of credit, give following information:
Issuing bank _____.
Number of credit _____.
Date of credit _____.

(c) Time draft: _____ days after _____,
_____, _____,
(Sight or date) (Draft dated)
_____, _____,
(Acceptance dated) (Drawn by)
_____, _____,
(Drawn on) (Payable to)
_____.
(Amount and kind of currency)

If drawn under letter of credit, give following information:

Issuing bank _____.
Number of credit _____.
Date of credit _____.
(d) Bank notes or any other form of remittance:

_____
(Give details)

3. Reichsmarks acquired by one of the special means listed below were remitted in full or part payment as declared below:

(a) Originally and continuously owned blocked credits: _____
(In the name of)

_____
(Description of transaction giving rise to blocked credits)

_____,
(Date of origin of blocked credits)
_____, R. M._____,
(Paid to) (Amount)
_____.
(Means of remittance)

(b) Funds transferred from German "Inland Account": _____

_____,
(Name of owner of "Inland Account")
_____
(Bank holding "Inland Account")
_____, R. M._____,
(Paid to) (Amount)
_____.
(Means of remittance)

The Reichsmarks in this Inland Account accrued from the following transaction:

_____
(Number of units—tons, lbs., etc.)
of _____, was
(Name of commodity)
purchased from _____
(Name of seller)
on _____, at_____
(Date of purchase)
_____,
(Currency and unit price of purchase)
and sold to _____
(Name of purchaser in Germany)
on _____, at_____
(Date of sale)
_____,
(Currency and unit price of sale)

(c) Direct commodity barter exchange:

The contractual basis of the commodity barter exchange under which this merchandise was imported is as follows:

_____ of
(Number of units—tons, lbs., etc.)
_____
(Name of commodity or merchandise to be shipped to Germany)
shall equal _____
(Number of units—tons, lbs., etc.)
of _____
(Name of commodity or merchandise to be imported)
_____; _____
(Date of contract) (Total number of units imported on this entry)
_____.
The name of the German party to this contract is _____.
(Name and address)
The commodity or merchandise shipped or to be shipped to Germany was purchased from _____, _____,
(Name) (Address)
at _____.
(Currency and unit price of purchase)
In payment for the commodity or merchandise here imported the German party to this contract accepts the commodity or merchandise exported under this contract at a value of _____.
(Unit value)

The amount of dollars or Reichsmarks credited by this exchange of goods is _____.

Give all additional details concerning the full contract terms:

_____
_____

4. Full or part payment was made by none of the above methods but by the method described in full in an attached statement.

DECLARATION

I have not received and do not expect to receive any rebate, refund, discount, or credit, directly or indirectly, from the amounts paid and listed above nor have I paid nor will I pay in settlement for the merchandise imported under this entry any sum in excess of the amounts listed above. I am at liberty to sell the imported merchandise to any buyer in the United States except for the restriction or obligation imposed by _____ as follows:

_____
_____
_____

I further declare that all of the statement made herein and all the accompanying evidences submitted are correct and true to the best of my knowledge and belief and that my records and accounts will be made available to officers of the customs whenever required.

(Signed) _____

[F. R. Doc. 39–1984; Filed, June 7, 1939; 12:57 p. m.]

TITLE 30—MINERAL RESOURCES

NATIONAL BITUMINOUS COAL COMMISSION

[General Docket No. 15]

IN THE MATTER OF THE ESTABLISHMENT OF MINIMUM PRICES AND MARKETING RULES AND REGULATIONS: IN RE RULES AND REGULATIONS INCIDENTAL TO THE SALE AND DISTRIBUTION OF COAL BY CODE MEMBERS AS ESTABLISHED BY THE COMMISSION FOR DISTRICTS Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, AND 23

AN ORDER ESTABLISHING RULES AND REGULATIONS INCIDENTAL TO THE SALE AND DISTRIBUTION OF COAL BY CODE MEMBERS WITHIN DISTRICTS NOS. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, AND 23

Whereas, pursuant to Orders Nos. 244, 248 and 250 of the Commission, the District Boards for each of the several districts proposed and submitted to the Commission rules and regulations incidental to the sale and distribution of coal by code members within their respective districts, as provided by Section 4, II (a) of the Act, and

Whereas, pursuant to hearings heretofore held in this Docket No. 15, the Commission made Findings of Fact and Conclusions relating to said proposals, and approved, disapproved, or modified said proposals for the purpose of coordination, as provided by Section 4, II (a) of the Act, and

Whereas, the Commission by its Orders Nos. 253, 254, 255, 256, 259, 260, 261, 264, and 266, directed the District Boards for each of Districts Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22 and 23 to coordinate the said rules and regulations, as approved by the Commission for the purpose of coordination, and

The District Boards for Districts Nos. 14, 16, 18 and 23, having reported to the Commission that they had coordinated said approved rules and regulations as to consuming market areas common to said Districts and having submitted to the Commission such coordinated rules and regulations, and

The District Board for District No. 20 having reported that it had coordinated said approved rules and regulations as to all consuming market areas common to Districts Nos. 14, 16, 18, 20 and 23, with the exception of the rule relating to substitution which said District Board modified, and said District Board having submitted to the Commission such coordinated Rules and regulations together with such modified rule, and

The District Boards for Districts Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19 and 22, having reported to the Commission that they were unable to coordinate said rules and regulations as to all of their common consuming market areas, and

The Commission, in lieu of said District Boards Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19 and 22, pursuant to Section 6 (a) of the Act and Order No. 268 of the Commission, having coordinated the rules and regulations incidental to the sale and distribution of coal by code members of the said districts, and

Whereas, the Commission, by its order dated April 1, 1939, directed that a hearing be held in the Commission Hearing Room, Washington, D. C., on the 17th day of April, 1939, on the rules and regulations as coordinated by the Commission for Districts Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19 and 22, and by its Orders dated April 3, and April 8, 1939, directed that a hearing be held on April 19, 1939, on the rules and regulations as coordinated by the District Boards for Districts Nos. 14, 16, 18, 20 and 23, and the proposed rule relating to substitution submitted by District Board No. 20, for the purpose of receiving evidence to enable the Commission to establish rules and regulations incidental to the sale and distribution of coal by code members within Districts Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22 and 23, and

Whereas, after reasonable public notice having been given thereof, said hearings were commenced at the time and place stated and concluded on the 21st day of April, 1939, after all interested parties were afforded a full opportunity to be heard, and the evidence being adduced, the Commission, upon consideration thereof, has made "Findings of Fact and Conclusions" relating to such evidence, which Findings of Fact and Conclusions, dated May 25, 1939, 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, and the Commission having determined that the "Marketing Rules and Regulations Incidental To The Sale And Distribution Of Coal (Within The Domestic Market As Described In The Bituminous Coal Act Of 1937) by Code Members Within Districts Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22 and 23", as the same are set forth in said Findings of Fact and Conclusions, are reasonable and necessary, are not inconsistent with the requirements of Section 4 of the Act, are in conformance with the standards of fair competition established by Section 4, II (i) of the Act, and are properly coordinated in common consuming market areas on a fair competitive basis;

Now, therefore, pursuant to the provisions of the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby establishes and prescribes the "Marketing Rules and Regulations Incidental To The Sale And Distribution Of Coal (Within The Domestic Market As Described In The Bituminous Coal Act Of 1937) by Code Members Within Districts Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22 and 23", as the same are set forth in the "Findings of Fact and Conclusions of the Commission", dated May 25, 1939, made and filed herein; said marketing rules and regulations shall be and become effective coincidental with the effective date of the minimum prices for the sale of coal by code members to be hereafter established pursuant to the provisions of the Bituminous Coal Act of 1937.

The Secretary of the Commission is hereby directed to cause a copy of this Order, together with the aforesaid "Findings of Fact and Conclusions", to be published forthwith in the FEDERAL REGISTER; and to cause copies of same to be mailed to the Secretary of each District Board, to the Consumers' Counsel and to all parties who have entered their appearances herein; and shall cause copies thereof to be made available for inspection by all interested parties at the Office of the Secretary of the Commission, Washington, D. C., and at each of the Statistical Bureaus of the Commission; and to cause copies of this Order together with copies of said Marketing Rules and Regulations to be mailed to all code members in each of the several districts.

By order of the Commission.

Dated this 25th day of May 1939.

[SEAL] F. WITCHER MCCULLOUGH,
Secretary.

PART 318—MARKETING RULES AND REGULATIONS INCIDENTAL TO THE SALE AND DISTRIBUTION OF COAL (WITHIN THE DOMESTIC MARKET AS DESCRIBED IN THE BITUMINOUS COAL ACT OF 1937) BY CODE MEMBERS WITHIN DISTRICT NOS. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, AND 23.*† [1]

Sec.

§ 318.1 *Definitions.* (a) 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.

(b) 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 the term "Sales Agent" shall not include an individual (herein referred to as a "salesman") who is regularly and continuously employed by a Code Member, and who regularly devotes the major portion of his time to the solicitation of purchases of coal produced by his Code Member employer.

(c) 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.

(d) 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 effective date of the order, such effective date to be not more than fifteen (15) days from the date upon which the order was accepted.

(e) 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.

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

(g) 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.

(h) 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.

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

(j) "Act" as used herein shall mean the Bituminous Coal Act of 1937.

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

(l) "Statistical Bureau" shall mean, unless otherwise specifically stated, the Statistical Bureau of the Coal 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.

(m) "Minimum price" shall mean a minimum price established and made effective by the Coal Commission.

(n) "Maximum price" shall mean a maximum price established and made effective by the Coal Commission.

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

(p) The terms "reconsignment" and/or "diversion" as used herein shall mean a change in the original consignee or in the destination or route.

(q) The term "transportation facilities" means railroad cars, vessels, trucks, or any other facilities used or useful in the transportation of coal.

(r) 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.

(s) "Cargo shipment" is a quantity of coal loaded into a vessel for transportation via water.

(t) "Bunker coal" or "vessel fuel" is that coal used aboard a vessel for consumption thereon.

(u) 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.

(v) A "Distributor", as used herein, means a person who has been registered with the Coal Commission as a Registered Distributor, or to whom a Distributor's Permit has been granted, pursuant to the rules and regulations established by the Coal Commission to require the maintenance and observance of the

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*§§ 318.1 to 318.14, inclusive, issued under the authority contained in sec. 2 (a), 50 Stat. 72; 15 U.S.C., Sup. III, 827.

†In §§ 318.1 to 318.14, inclusive, the numbers to the right of the decimal point correspond with the respective section numbers in the rules or regulations of the Commission, May 25, 1939.

[1] Established and prescribed by an Order entered in General Docket No. 15 on May 25, 1939; to become effective coincidental with the effective date of the minimum prices for the sale of coal by code members to be hereafter established pursuant to the Bituminous Coal Act of 1937.

Prices and Marketing Rules and Regulations by Distributors.*†

§ 318.2 *Sales agents.* (a) All sales of coal by Sales Agents of Code Members or their agents or authorized representatives, and the terms and conditions of such sales shall be subject to the Marketing Rules and Regulations from time to time established by the Coal Commission.

(b) Each Code Member shall require 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.

(c) Each Code Member shall require all his Sales Agents clearly to set forth upon any offer, contract, spot order and invoice, the name of such Code Member principal. 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.

(d) (1) 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 the rules and regulations in this part 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. A certified copy of an agency contract heretofore filed by a Code Member pursuant to Rule 3 of Section II of the Marketing Rules and Regulations established by Commission Order No. 88, dated November 29, 1937,[2] shall be deemed to have been filed as required by this Subparagraph without refiling hereunder, if such contract continues in force and effect without change: *Provided,* That the Code Member in the aforesaid period of twenty (20) business days notify the Statistical Bureau, or Bureaus, in writing that such contract is still in force and effect without modification or change.

(2) Certified copies of all contracts appointing Sales Agents or of agreements modifying any sales agency contract, entered into subsequent to the effective date of the rules and regulations in this part, 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.

(3) In the event of the termination of any sales agency contract other than by expiration according to its own terms, or in the event of rescission of any Sales Agency contract, the Code Member principal shall make a report to the Statistical Bureau, or Bureaus, within ten (10) business days after the date of such termination or rescission.

(e) (1) 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 last 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.

(2) Not later than the last 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 at a regularly established sales office of the Sales Agent.

(3) Not later than the last 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.

(f) Within twenty (20) business days, after the effective date of the rules and regulations in this part, each Code Member shall file with the Coal Commission, Washington, D. C., a list showing the names and post office 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.

(g) A list showing the names and post office addresses of Sales Agents and the Code Members for whom such agents act shall be published monthly by the Coal Commission.

(h) All agency contracts and other information filed by Code Members in conformity with the foregoing regulations, other than the names and post office 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.

(i) From and after twenty (20) business days following the effective date of the rules and regulations in this part, no Code Member or Sales Agent of a Code Member shall allow or pay, or obligate himself to allow or pay, directly or indirectly, any commission to any Sales Agent:

(1) Unless the contract of agency shall have been filed with the Statistical Bureau, or Bureaus, as hereinbefore required, and

(2) 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 Coal Commission, and

(3) Unless the Sales Agent shall have in good faith complied with the agreement as in subparagraph (2) above provided.

(j) 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 exists between the purchaser and the sales agent: *Provided, however,* That a commission may be allowed and paid in a case where the Coal Commission has determined that such ownership or control is bona fide, is not established 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.

(k) Where a Sales Agent is also engaged, directly or indirectly, in the business of retailing coal, no commission shall be paid or allowed to him by a Code Member on coal sold to another retailer who is either a Distributor or a Sales Agent of a Code Member: *Provided, however,* That such commission may nevertheless be allowed in a case where the Coal Commission has determined that such sales relationship is bona fide and would not result in evasion of the applicable minimum price.

(l) A Code Member may not employ as a Sales Agent a retail coal dealer for the sale of the Code Member's coal through the yard of such retail coal dealer.*†

§ 318.3 *Discounts.* (a) Code Members or their Sales Agents or Distributors may allow discounts from minimum prices on sales of coal only to persons authorized by the Coal Commission to receive such discounts, and such discounts shall not exceed the maximum discounts or price allowances prescribed by the Coal Commission upon such sales. Only one such discount may be allowed on one such sale.

(b) No Code Member, or Sales Agent or a Distributor may offer or grant any discount or allowance from the applicable minimum prices for shipments on Government Bills of Lading, except as may be authorized by the Minimum Price Schedules established by the Coal Commission.

(c) Every agreement for the sale of coal to a Distributor upon which a dis-

[2] 2 F.R. 2558. See also 3 F.R. 541 DI.

count is allowed shall contain the express provision that the discount is allowed upon the condition that the Distributor is authorized to accept and retain such discount.*†

§ 318.4 *Limitations of orders, agreements, options and quotations.* (a) Subject to further order of the Coal Commission, no Code Member or Sales Agent of the Code Member or Distributor 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 delivery of the coal thereunder: *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, or 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.

Provided, further, That contracts may be made providing for delivery over a period not in excess of twelve (12) months upon special permission and approval of the Coal Commission, upon a showing of the necessity of meeting the long term competition of oil, gas, or other forms of fuel and energy, or for such other reasons as the Commission may deem appropriate in order to further the effectual administration of the Act.

(b) Options and quotations for the sale of coal may be given by a Code Member, Sales Agent, or Distributor for a period not exceeding fourteen (14) days: *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. If the applicable minimum price is increased beyond the quoted price and the option shall not have been exercised, or the quotation accepted at the time of such increase, the option or quotation shall thereupon become null and void.

(c) All options must be made or confirmed in writing. Every Code Member or his Sales Agent or a Distributor shall require of his offeree that the acceptance of a quotation shall be made or confirmed in writing and that the exercise of an option be in writing.*†

§ 318.5 *Spot orders.* (a) A spot order shall be in writing or confirmed in writing within five (5) business days from the date of the making thereof.

(b) Each spot order shall among other things not inconsistent herewith contain 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 or a Distributor, the meaning and effect of which shall not be changed or altered by any other provision of the order:

(1) If the price herein named is f. o. b. any point other than the originating mine, such price shall be increased by the amount and at the time of any increase in the published freight rate included in such price and becoming effective during the period of the order.

(2) The buyer shall notify the seller in writing of all reconsignments or diversions, except that such notification is not necessary where the coal is purchased for and used as railroad fuel and the reconsignment or diversion does not result in a change in the applicable price. In the case of reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the applicable minimum price prescribed 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.

(3) The coal shipped pursuant to this order is sold and purchased upon the following conditions:

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

(ii) In case the coal is applied 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 in effect at the time of such change in application, for the use to which it is actually applied.

(4) If the shipments called for by this order are not completed within thirty (30) days from the effective date of this order, the unfilled portion of this order shall not be delivered.

(c) All the terms and conditions of a sale of coal must be fully and expressly set forth either in the spot order or in the written confirmation thereof and such spot order or written confirmation thereof shall specifically contain all the terms required by § 318.6 (a) of the rules and regulations in this part. Within ten (10) business days after the date of the making of a spot order or the date of the written confirmation thereof, the Code Member or his Sales Agent or a Distributor 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.

(d) All spot orders for the sale of coal, the minimum price of which is subject to seasonal increase, or decrease, shall provide that the price payable thereunder shall be not less than the applicable minimum price in effect at the time of delivery.*†

§ 318.6 *Contracts.* Upon the revocation or suspension of § 318.4 (a) of the rules and regulations in this part, Code Members or Sales Agents of Code Members or Distributors may thereafter enter into contracts for the sale and delivery of coal upon the following terms and conditions:

(a) 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, the name of the originating mine or mines, the destination to which the coal is to be shipped, and, where the coal is purchased for consumption or processing, the use to which the coal is to be applied. Contracts may also be made either (1) calling for a buyer's entire requirements or a stated percentage of his requirements, showing the maximum tonnage to be shipped thereunder; or (2) 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. The provisions of this 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.

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

(c) 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 and every contract shall provide that the price to be paid for the coal to be delivered thereunder shall be not less than the applicable minimum price in effect at the time of delivery.

(d) All contracts for the sale of coal, the minimum price of which is subject to seasonal increase or decrease, shall provide that the price payable thereunder shall be not less than the applicable minimum price in effect at the time of delivery.

(e) 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 forms of fuel and energy, or for such other reasons as the Coal Commission may deem appropriate in order to further the effectual administration of the Act.

(f) Any change in the terms of a contract shall be evidenced by a written

agreement and shall conform to all the requirements set forth in the rules and regulations in this part.

(g) A report of every commitment shall be filed 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 or Bureaus, 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 from the date of the commitment.

(h) Each contract shall among other things not inconsistent herewith contain the following provisions, the meaning and effect of which shall not be changed or altered by any other provisions of the contract:

(1) 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.

(2) If the price herein named is f. o. b. any point other than the originating mine, such price shall be increased by the amount and at the time of any increase in the published freight rate included in such price and becoming effective during the period of the contract.

(3) The buyer shall notify the seller in writing of all reconsignments or diversions, except that such notification is not necessary where the coal is purchased for and used as railroad fuel and the reconsignment or diversion does not result in a change in the applicable minimum price. In the case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the applicable minimum price prescribed 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.

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

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

(ii) In case the coal is applied 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 in effect at the time of such change in application, for the use to which it is actually applied.*†

§ 318.7 *Terms of payment.* The price and fair trade practice provisions of the Act shall not be evaded or violated by a Code Member, or his Sales Agent, or a Distributor, 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 day of the month following the month in which shipment was made.

NOTE: As to District No. 16, paragraph (a) is applicable only for coal sold to an industrial consumer. As to coal sold to persons other than industrial consumers or railroads, the date of payment for invoices shall be not later than the tenth (10th) day of each calendar month for all coal shipped during the preceding calendar month.

(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 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 on or before the twentieth (20th) day of the month following 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, stamps, etc., shall be for owner's account. Payment for tidewater bunker coal supplied for American vessels shall be made by cash on delivery or on or before the twentieth (20th) day of the month following delivery, at supplier's option.

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 loading, 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 rate of not less than five (5%) per centum per annum.

NOTE: As to District 16, the following sentence shall be added to paragraph (i):

Every Code Member or his Sales Agent shall each month report to the Statistical Bureau, and the District Board for the District in which he is located, every case in which an overdue payment or a note, trade acceptance, or other form of indebtedness, has been accepted in settlement of any account, setting forth all the conditions of such overdue payment, note, trade acceptance, or other form of indebtedness.

(j) Transportation charges shall not be paid by a Code Member, his Sales Agent, or a Distributor, except to prepay stations as published in current railway tariffs or on shipments to the United States Government, States or political sub-divisions thereof, and except as authorized in the minimum price schedules. Where freight is thus prepaid, except as authorized in the minimum price schedules, the amount thereof shall immediately, upon receipt of the freight bill or notice of sight draft payment, be invoiced to the buyer for immediate payment.

(k) Except as provided in § 318.10 of the rules and regulations in this part, no Code Member, his Sales Agent, or a Distributor, 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, his Sales Agent, or a Distributor, 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 the making thereof.

(l) This section shall not be construed as requiring Code Members, Sales Agents of Code Members, or Distributors to extend to each purchaser the full credit terms herein permitted, but each Code Member, his Sales Agent, or a Distributor shall be free to determine as to each purchaser whether credit shall be extended, and the terms of credit, if allowed, provided such terms are not more favorable than as herein provided.

(m) The agreement by a Code Member, his Sales Agent, or a Distributor, express or implied, to extend credit to his vendee for a period longer than that authorized by the rules and regulations in this part, with the effect of violating the minimum prices applicable or the

Unfair Methods of Competition prohibited by the Act, shall constitute a violation of the rules and regulations in this part and of the Bituminous Coal Code. The continued sale and delivery by a Code Member, his Sales Agent, or a Distributor, to his vendee who defaults in payment within the applicable maximum period of credit herein prescribed, in the absence of payment of interest or the enforcement by the Code Member, his Sales Agent, or Distributor of the claim for interest, shall establish a prima facie presumption of the existence of such implied agreement.*†

§ 318.8 *Use of coal analyses.* (a) No analysis of coal shall be utilized by a Code Member, his Sales Agent or a Distributor, in selling or offering for sale any coal produced by a Code Member, whether or not the analysis is a term in the offer or sale, unless the Code Member, the Sales Agent or the Distributor shall have filed with the Statistical Bureau or Bureaus and the District Board for the District in which the coal is produced, a report of analysis or analyses as used or proposed to be used by him. Such report shall show the following:

(1) The name of the Code Member producer.

(2) The name of the mine or mines.

(3) The name or geological number of the seam or seams from which the coal is produced.

(4) 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.

(5) 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 analysis made at the mine, or in any other manner.

(6) 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.

(7) That each such analysis is not less than a proximate analysis showing moisture content, ash, volatile matter, fixed carbon, and also sulphur and British thermal units and ash softening temperature: *Provided,* That if in offering or selling coal the Code Member, Sales Agent or Distributor utilizes an analysis which does not include all the items enumerated in this subparagraph (7), he may file a report of such analysis as is utilized by him in offering and selling his coal.

(b) 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 and the District Board.

(c) All reports of analyses so filed shall be subject to inspection at the office of the Statistical Bureau and at the office of the Coal Commission, Washington, D. C., 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 classification of the coals produced by the Code Member.

(d) Any analysis of the coal of a Code Member made by or in behalf of a consumer and accepted by the Code Member, his Sales Agent or a Distributor as the basis for an adjustment of price under any contract or order shall be filed by the Code Member, his Sales Agent or Distributor with the District Board and the Statistical Bureau, not later than the last day of the month following the month in which the adjustment is made.

(e) No agreement or order for the sale of coal produced by a Code Member, made upon a penalty or a premium and penalty basis, shall be entered into or accepted by a Code Member, his Sales Agent or a Distributor unless the analysis upon which the premium and penalty clause is based has been previously filed as required by paragraph (a) of this section. Such analysis shall be accompanied by a statement setting forth in full the terms of the premium and penalty provisions of the proposed contract or order.

(f) From and after the effective date of the rules and regulations in this part, no Code Member, his Sales Agent or a Distributor 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 or prices established by the Coal Commission for the coal sold and delivered upon such agreement subsequent to said effective date.*†

§ 318.9 *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, his Sales Agent or a Distributor may sell the same at the best obtainable price, provided that in each case the Code Member, his Sales Agent or a Distributor shall file with the Statistical Bureau or Bureaus and the Code Member or his Sales Agent shall file with the District Board for the District in which the coal is produced, within ten (10) business days from the date of such resale, a copy of the invoice to the consignee, a copy of the invoice to the purchaser upon the resale, and a statement giving the following:

(a) Reasons for the refusal.

(b) Facts resulting from the investigation of the complaint.

(c) Amount of compensation, if any, paid upon the resale.

(d) 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.

(e) A signed and verified statement that the provisions of the Bituminous Coal Code and the rules and regulations in this part other than as to price have not been violated or evaded.*†

§ 318.10 *Substandard preparation or quality.* (a) Where any claim of allowance or counterclaim is requested by a buyer for any delivery of coal claimed to be substandard in preparation or quality, or where it is claimed by the buyer that due to an error on the part of the shipper the buyer has incurred additional expense in accepting the shipment, the Code Member, his Sales Agent or a Distributor may, within a reasonable time after delivery of the coal, make settlement and agree with the buyer upon an amount reasonably to be deducted for such inferior coal or on account of such error and may accept payment therefor at less than the applicable minimum price: *Provided,* That in each such case the Code Member, the Sales Agent or the Distributor shall within ten (10) business days after granting such allowance file with the District Board of the District in which the coal originated and the Statistical Bureau of the Coal Commission a verified statement giving the following information, except that the Distributor is not required to file such statement with the District Board.

(1) The name and address of the consignee and the reason for the request for the allowance.

(2) 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.

(3) Such other pertinent information and facts as may be offered in proof of the necessity for such reduction or allowance.

(4) 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, his Sales Agent or a Distributor shall also file, together with the statement, a written claim duly executed by or on behalf of the buyer setting forth the amount claimed by way of deduction and the reasons for the complaint.

(b) All such adjustments and allowances shall be subject to review by the Coal Commission.*†

§ 318.11 *Substitutions.* 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 spot order or contract, except upon the following conditions:

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

(b) The coal substituted must be either coal which the Code Member has already produced and loaded into transportation facilities or coal which the Code Member is about to produce, and which substituted coal, in either case, cannot be sold promptly by the exercise of the usual sales effort. Such substitution must be limited to a specific tonnage for shipment on a specific spot order or contract and from a specific mine.

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

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

(e) Such substitution may only be made with the approval of a duly designated representative of the Coal Commission and in each instance formal application therefor shall be made by the Code Member upon forms provided by the Commission. The application is to be submitted to the Statistical Bureau of the District. If such application is approved, a written formal permit shall be issued prescribing the conditions in each case so approved.

(1) The Code Member may make informal application by telegraph for a substitution permit setting forth briefly the substance of the information as required in the formal application. In such case, the Code Member shall immediately confirm the telegraphic application by submitting the formal application for substitution provided by the Commission.

(2) If the telegraphic application for substitution is approved, an informal telegraphic permit may be issued prescribing the conditions of substitution in each case so approved. Upon approval of the formal application for substitution, the informal permit shall be confirmed by the issuance of the formal permit as herein provided.

(3) If a District Board so desires, it may appoint a representative who may propose recommendations to the duly designated representative of the Commission with respect to such applications for substitution as may be submitted to the Statistical Bureau of the District.

(f) Substitution may be made by Code Members on spot orders and/or contracts for railroad fuel without prior approval of the representative of the Commission: *Provided, however,* That the Code Members immediately shall file the form prescribed by the Commission with the Statistical Bureau. All substitutions made without the prior approval of the representative of the Commission which are in violation of paragraphs (a), (b), (c), and (d), of this section will be deemed to be sales of coal below the established minimum price.

(g) A monthly report of substitution permits shall be mailed by Code Members to the office of their District Board. 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.*†

§ 318.12 *Miscellaneous*—(a) *General.* (1) If, in converting a net or gross ton price, freight rate or freight rate differential, the calculation extends to more than two (2) decimals, and the third decimal is 0.005 or more, it shall be added as 0.01, and if under 0.005, it shall be eliminated.

(2) 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.

(3) Failure to file information required by the rules and regulation in this part 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.

(4) Except where the context of the rule indicates the contrary, the rules and regulations in this part are applicable to transactions and in circumstances wherein the transgression thereof would result in either the violation of the applicable minimum price as established by the Coal Commission or of the prohibited Unfair Methods of Competition.

NOTE: The following subparagraph is applicable to Code Members in District No. 16 only.

(5) Pea or slack coal shall not be loaded for shipment in box cars.

(b) *Advertising.* (1) No deduction or allowance from invoice prices shall be granted by any Code Member, his Sales Agent or a Distributor to any purchaser for advertising which would have the effect of reducing the invoice price below the applicable minimum price.

(2) Code Members or their agents or representatives or Distributors, 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 or a Distributor for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.

(c) *Screening for buyer's account.* 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.

(d) *Coal confiscated or lost in transit.* 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 sale to the carrier at the place of confiscation or loss.

(e) *Reports of changes in use and reconsignments.* All Code Members, or their Sales Agents or Distributors, shall on or before the last day of each month furnish to the District Board and the Statistical Bureau for the District in which the coal originated full reports of all changes in use and all reconsignments and/or diversions made during the preceding calendar month, and shall authorize the carrier making such reconsignments to furnish complete information thereon to such Statistical Bureau; *Provided, however,* That a Distributor is not required by this paragraph to make reports of reconsignments and changes in use to any District Board.

(f) *Revision of marketing rules and regulations.* The rules and regulations in this part are subject to revision and amendment by further order of the Coal Commission.*†

§ 318.13 *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 constitute violations of the Bituminous Coal Code:

(a) 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 yard or on docks, wharves, or other yards for resale by the producer or his agent.

(b) 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.

(c) The prepayment of freight charges with intent to or having the effect of granting a discriminatory credit allowance.

(d) 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.

(e) 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.

(f) 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.

(g) The attempt to purchase business, or to obtain information concerning a competitor's business by concession, gifts, or bribes.

(h) 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.

(i) 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.

(j) 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.

(k) Splitting or dividing commissions, brokers' fees, or brokerage discounts, or otherwise in any manner directly or indirectly using brokerage commissions or jobbers' arrangements or sale 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.

(l) 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 [3] 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.

(m) 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.*†

§ 318.14 *Penalties.* Section 5 (b) of the Bituminous Coal Act provides:

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 member 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 (10) days' notice to the code member affected and proceed in the hearing thereof as above provided.

The wilful violation of any of the rules and regulations in this part constitutes a violation of the Bituminous Coal Code within the meaning of Section 5 (b) of the Act.

Section 5 (c) of Bituminous Coal Act provides:

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 (15) 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 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 willfully falsify or conceal or cover up by any trick, scheme, or device 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 (10) 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 (2) years, or both. (R.S. § 5440; May 17, 1879, c. 8, 21 Stat. 4; Mar. 4, 1909, c. 321 § 37, Stat. 1086)

FINDINGS OF FACT 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, issued its Order No. 244, dated July 30, 1938, its Order No. 248, dated August 11, 1938, and its Order No. 250, dated August 20, 1938, which Orders directed the several District Boards within Minimum Price Areas 6, 7, 9 and 10, Minimum Price Area 1, and Minimum Price Areas 2, 3, 4 and 5, respectively, to propose and submit to the Commission reasonable rules and regulations incidental to the sale and distribution of coal by the Code Members of the respective Districts, in accordance with sub-section (a), Section 4, Part II of the Act. Each of the several District Boards, pursuant to the provisions of said Orders, transmitted its proposed rules and regulations to all Code Members within its District at least fifteen (15) days before the District Board filed its proposed rules and regulations with the Commission.

The Commission, on the 29th day of August 1938, issued its order giving no-

[3] So in original.

tice to all interested parties of a hearing commencing on the 14th day of September, 1938, in the Hearing Room of the Commission at the Albany Hotel, Denver, Colorado, for the purpose of receiving evidence relating to the proposed marketing rules and regulations submitted to the Commission by the District Boards for Districts Nos. 16, 17, 18, 19, 20, 22 and 23, pursuant to Commission Order No. 244, to enable the Commission to approve, disapprove or modify such proposed marketing rules and regulations for the purpose of coordination. Said Order was duly published and said hearing was commenced at the time and place stated. This hearing concluded on the 22nd day of September 1938, after all interested parties were afforded a full opportunity to be heard.

The Commission, by its Order dated the 9th day of December 1938, approved 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. 16, 17, 18, 19, 20, 22 and 23, filed on the 9th day of December 1938, in the office of the Secretary of the Commission, Washington, D. C. Said order and said "Findings of Fact and Conclusions" were duly published.

On the 19th day of September 1938, the Commission issued its Order giving notice to all interested parties of a hearing commencing on the 10th day of October 1938, in the Hearing Room of the Commission at 15th and I Streets NW., Washington, D. C., for the purpose of receiving evidence relating to the proposed marketing rules and regulations submitted to the Commission by District Boards Nos. 1, 2, 3, 4, 5, 6, 7, 8, and by District Board No. 13 (for so much of the District as is in Minimum Price Area No. 1), pursuant to Commission Order No. 248, to enable the Commission to approve, disapprove or modify such proposed marketing rules and regulations for the purpose of coordination. The Commission, by its Orders entered on the 11th, 21st and 29th days of October 1938, directed that a hearing on the proposals submitted by District Board No. 13, be held in the Hearing Room of the Commission, 15th and I Streets NW., Washington, D. C., commencing on the 9th day of November 1938. Said orders were duly published and the hearings were commenced at the time and place stated. These hearings were concluded on the 10th day of November 1938, after all the interested parties were afforded a full opportunity to be heard.

The Commission, by its Order dated the 4th day of January 1939, approved 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 on the 4th day of January 1939, in the office of the Secretary of the Commission, Washington, D. C. Said Order and said "Findings of Fact and Conclusions" were duly published.

On the 16th day of January 1939, the Commission issued its order approving 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" of the Commission for each of Districts Nos. 1, 3, 7, 8, and 13, filed on the 16th day of January 1939, in the office of the Secretary of the Commission, Washington, D. C. Said Order and said "Findings of Fact and Conclusions" were duly published.

The Commission, by its notice of and order for hearing entered on the 11th day of October 1938, and by its notice of postponement entered on the 21st day of October 1938, and its notice of and order for hearing dated October 29, 1938, directed that a hearing be held commencing on the 14th day of November 1938, in the Hearing Room of the Commission, in the Morrison Hotel, Chicago, Illinois, for the purpose of receiving evidence relating to the proposed marketing rules and regulations submitted to the Commission by the District Boards for Districts Nos. 9, 10, 11, 12, 14 and 15, pursuant to Commission Order No. 250, to enable the Commission to approve, disapprove or modify such proposed marketing rules and regulations for the purpose of coordination. Said Orders were duly published and said hearing was commenced at the time and place stated. This hearing was concluded on the 6th day of December 1938, after all interested parties were afforded a full opportunity to be heard.

The Commission, by its Orders dated the 17th day of December 1938, and the 2nd day and 20th day of February 1939, approved 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. 9, 10, 11, 12, 14 and 15, and filed in the office of the Secretary of the Commission, Washington, D. C. Said orders and said "Findings of Fact and Conclusions" were duly published.

Pursuant to Section 4, II (b) of the Act, the Commission, by its Orders Nos. 253, 254, 255, 256, 259, 260, 261, 264, and 266, directed each of the District Boards established by the Act to proceed to coordinate, with each of the other of said Districts with which it may compete in any common consuming market area, the rules and regulations incidental to the sale and distribution of coal, approved by the Commission to serve as a basis for coordination for the said Districts, to the end that the marketing rules and regulations approved by the Commission be completely coordinated in all common consuming market areas as provided by Section 4, II (b) of the Act. The Commission, by its Order No. 268, declared that District Boards Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19, and 22 failed to coordinate in all common consuming market areas the rules and regulations incidental to the sale and distribution of coal by Code Members, heretofore approved by the Commission to serve as a basis for coordination, as required by Section 4, II (b) of the Act, and as directed by orders of the Commission. Said Order further declared that the Commission, pursuant to Section 6 (a) of the Act, would proceed, in lieu of said District Boards, to coordinate in all common consuming market areas the rules and regulations for said Districts approved by the Commission for the purpose of coordination, in conformity with Section 4 of the Act.

On the first day of April, 1939, the Commission issued its Order for and Notice of a Final Hearing commencing on the 17th day of April, 1939, in the Hearing Room of the Commission in the City of Washington, D. C., for the purpose of receiving evidence to enable the Commission to establish rules and regulations incidental to the sale and distribution of coal by Code Members within Districts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19 and 22, as provided by Section 4, II (b) of the Bituminous Coal Act of 1937. Said Order incorporated by reference the rules and regulations as coordinated by the Commission pursuant to Order No. 268, and provided that such coordinated rules and regulations would be offered at the final hearing as the proposals of the Commission for said Districts. Said Order and the rules and regulations coordinated by the Commission for Districts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19 and 22, pursuant to Order No. 268, were duly published.

The Commission, by its Orders dated the 3rd day of April, 1939, and the 8th day of April, 1939, issued a Notice of a Final Hearing to commence on the 19th day of April, 1939, in the Hearing Room of the Commission at Washington, D. C., for the purpose of receiving evidence to enable the Commission to establish rules and regulations incidental to the sale and distribution of coal by Code Members within Districts 14, 16, 18, 20 and 23, as provided by Section 4, II (b) of the Bituminous Coal Act of 1937. Said Orders incorporated by reference the rules and regulations as coordinated by District Boards Nos. 14, 16, 18, 20 and 23, and provided that such coordinated rules and regulations would be offered at the final hearing as the proposed coordinated rules and regulations for said Districts. Said Orders, together with the proposed coordinated rules and regulations for Code Members of said Districts, were duly published.

At the opening of the hearing on April 17th, the Chairman announced that the hearing commencing on that day and the hearing commencing on April 19th

would be combined and merged, and that the Commission would make findings of fact and establish marketing rules and regulations for all districts upon the conclusion of said merged hearing.

The proposed marketing rules and regulations for Districts Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 18, and 22, as coordinated by the Commission pursuant to Order No. 268 were introduced into evidence as Exhibit R–19; the report of the representatives for District Boards Nos. 1, 2, 3, 4, 5, 6, 7, and 8 on coordinated marketing rules and regulations was introduced into evidence as Exhibit R–1; the report of the representatives for District Boards Nos. 14, 15, 16, 17, 18, and 19 on coordinated marketing rules and regulations was introduced into evidence as Exhibit R–8; and the report of the representatives for District Boards Nos. 14, 16, 17, 18, 19, 20, 22, and 23 on coordinated marketing rules and regulations was introduced into evidence as Exhibit R–9. Mr. Edgar Faris, the Assistant Secretary of the Commission, testified that no other reports on coordinated marketing rules and regulations were filed with the Commission.

Resolutions of District Boards Nos. 1, 2, 3, 4, 5, 6, and 7, approving the action of their representatives in signing the coordination report introduced into evidence as Exhibit R–1, were introduced into evidence as Exhibits R–2 to R–7, inclusive. Resolutions received by the Commission from District Boards Nos. 14, 15, 16, 17, 18, 19, 20 and 23 in regard to the ratification of the reports of the representatives of these District Boards relating to the coordination of marketing rules and regulations, which were introduced into evidence as Exhibits R–8 and R–9, were introduced into evidence as Exhibits R–10 to R–18, inclusive. District Board No. 20 adopted and approved the report of its representative with the exception of the rule relating to substitution, and said District Board proposed a modified rule relating to substitution, which is contained in the resolution of District Board No. 20, introduced into evidence as Exhibit R–17. The substitution rule proposed by District Board No. 20 is likewise contained on the first page of Exhibit R–22.

An expert witness for the Commission, Mr. Henry Brown, testified fully as to the reasons and necessity for the proposed marketing rules and regulations for Districts Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19, and 22, as coordinated by the Commission pursuant to Order No. 268 and as contained in Exhibit R–19.

An expert witness for each of District Boards Nos. 1, 2, 3, 4, 6, 7, 8, 10, 11, 13, 15, 17, and 19, then testified in support of the rules contained in Exhibit R–19, which, in his opinion, were reasonable. Each such witness further testified as to such modifications of the rules contained in Exhibit R–19 which, in his opinion, were reasonable.

An expert witness for District Board No. 16, who also appeared as a witness for District Boards Nos. 18 and 23, introduced into evidence as Exhibit R–21 the proposed marketing rules and regulations for District Boards Nos. 14, 16, 18, and 23, as coordinated by said District Boards pursuant to Commission orders. He also introduced into evidence as Exhibit R–22 a comparison of the proposed marketing rules and regulations as contained in Exhibit R–21 and the Commission's proposed marketing rules and regulations for Districts Nos. 1, 2, 3, 4 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19, and 22, as contained in Exhibit R–19. This witness testified generally in support of the rules contained in Exhibit R–21 and also specifically as to the differences between the rules contained in Exhibit R–21 and those contained in Exhibit R–19, such differences being shown in Exhibit R–22. In testifying with respect to such differences, the witness was of the opinion that most of the changes, as represented by Exhibit R–19, were reasonable and desirable.

Since District Board No. 20 adopted and approved, with the exception of the rule relating to substitution, the report of the representatives of District Boards Nos. 14, 16, 17, 18, 19, 20, 22 and 23, introduced into evidence as Exhibit R–9, the proposed coordinated marketing rules and regulations for Districts Nos. 14, 16, 18, 20 and 23, as coordinated by the District Boards of said Districts, are contained in Exhibit R–21, except that the substitution rule proposed by District Board No. 20 is contained on the first page of Exhibit R–22. An expert witness for District Board No. 20 testified that he was in agreement with the testimony given by the witness on behalf of District Boards Nos. 16, 18 and 23, with two reservations, one relating to the substitution rule, and the other relating to the rule in regard to prepayment of freight on shipments to Governmental institutions.

After due consideration of all the evidence introduced in the hearing, the Commission makes the following findings of fact:

A. With Respect to the Evidence Relating to the Definitions Contained in Sections I of Exhibit R–19 and the Definitions Contained in Section I of the Appendix of Exhibit R–21

1. Upon the basis of the testimony of the witness Brown and all the District Board witnesses who testified in the hearing, we find that the term "person" should be defined in such a manner as will indicate that such term shall have its broadest meaning and shall not be construed as restrictive in any sense; that the definition of the term "person" contained in paragraph 1, Section I of Exhibit R–19, which definition is the same as definition 1 of Section I of the appendix of Exhibit R–21, makes clear that such term is to have its broadest meaning; and that the definition of the term "person" contained in Section I of Exhibit R–19 and Section I of Exhibit R–21 is reasonable and necessary.

2. Upon the basis of the testimony of the witness Brown and all the District Board witnesses, we find that the definition of the term "Sales Agent" should put Code Members on notice that a person who purchases coal cannot be considered as a Sales Agent for the purpose of the rules relating to Sales Agents; that the distinction between a Sales Agent and a Distributor must be clear and distinct in order that maximum discounts established by the Commission, pursuant to Section 4, II (h) of the Act, may not be evaded by means of a Distributor terming himself as a Sales Agent; that some confusion has existed in the industry as to the distinction between a Sales Agent and a Distributor; that the parenthetical phrase "and therefore without purchasing the coal" contained in the definition of a "Sales Agent" in paragraph 2 of Section I, Exhibit R–19 and paragraph 2 of Section I of Exhibit R–21, would eliminate such confusion, since a Distributor must purchase the coal under Section 4, II (h) of the Act; that such phrase is reasonable and should be contained in the definition of a "Sales Agent"; that to require the appointment of an ordinary salesman to be evidenced by a written contract to be filed with the Commission would be unduly burdensome on Code Members, and that accordingly, the definition of a Sales Agent should specifically exclude a person who is commonly referred to as a salesman.

Upon the basis of the testimony of the witness for District Board No. 10, we find that the definition of the term "Sales Agent" contained in paragraph 2 of Section I of Exhibit R–19, as applying to a "salesman", does not cover the entire compensation that in many cases is given to a salesman, such as commissions in addition to salaries or bonuses for services in connection with sizes or grades that are difficult to sell at certain times of the year; that there is not much difficulty in distinguishing between the functions of a salesman and the functions of a Sales Agent; that the reference in the proviso of the definition to compensation which is paid to a salesman is misleading and should be deleted. We are of the opinion that the definition of a "sales agent" proposed by District Board No. 10, which in effect prescribes the minimum territory in which a sales agent may sell coal, and prohibits a code member from employing more than three sales agents in the entire state, with the exception of agents who have authority to sell the entire output of a mine or mines, is beyond the jurisdiction of this Commission to establish. This proposal is a drastic curtailment of the right to contract, which, in our opinion, is not justified in order to prevent evasions of the

minimum prices or unfair methods of competition. We find that the definition of a Sales Agent, as contained in paragraph 2 of Section I of Exhibit R–19, and in paragraph 2 of Section I of the Appendix of Exhibit R–21, 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 the term "Sales Agent" shall not include an individual (herein referred to as a "salesman") who is regularly and continuously employed by a Code Member, and who regularly devotes the major portion of his time to the solicitation of purchases of coal produced by his Code Member employer.

3. Upon the basis of the testimony of the witness Brown and the testimony of all the District Board witnesses, we find that the term "commission" should be defined so as to include all compensation and allowances received by a Sales Agent for services rendered in the sale of coal and that accordingly, the definition of the term, as contained in paragraph 3 of Section I of Exhibit R–19, and in paragraph 3 of Section I of Exhibit R–21, is reasonable and necessary.

4. Upon the basis of the testimony of the witness Brown and the testimony of all the District Board witnesses, we find that it has been customary in the industry to refer to legal obligations for the sale of coal for shipment within a period not exceeding thirty (30) days as "spot orders"; that it is a common practice in the industry to make spot orders during the latter part of a calendar month for coal to be delivered during the succeeding calendar month, and that unless this practice is permitted to continue the cost of selling might possibly increase; and, accordingly, that the definition of the term "spot order" contained in paragraph 4 of Section I of Exhibit R–19 is reasonable and necessary.

5. Upon the basis of the testimony of the witness Brown and all the District Board witnesses, we find that it has been common in the industry to refer to a legal obligation for the sale and purchase of coal, the deliveries of which are to be made over a period longer than the period specified for a spot order, as a "contract"; that it has been common in the industry to refer to an offer to sell coal, which the offerer may withdraw prior to its being acted upon by the offeree, as a "quotation"; that it has been common in the industry to refer to an offer to sell coal acceptable within a time certain, during which time the offerer may not withdraw the offer without consent of the offeree, as an "option"; that it has been common in the industry to refer to the status of a contract between the time the quotation is accepted or an option is exercised, and the time the contract is formally reduced to writing, as a "commitment"; and that, accordingly, the definitions of the terms "contract", "quotation", "option", and "commitment", contained in paragraphs 5, 6, 7 and 8 of Section I of Exhibit R–19 and paragraphs 5, 6, 7 and 8 of Section I of Exhibit R–21, are reasonable and necessary. We likewise, find that the definitions of the terms "District Board", "Statistical Bureau", "Minimum Price", "Maximum Price" and "Producer", contained in paragraphs 9, 10, 11, 12, 13, 14 and 15 of Section I of Exhibit R–19 and of the Appendix of Exhibit R–21, are reasonable and necessary.

6. Upon the basis of the testimony of the witness Brown and all the District Board witnesses, we find that a definition of the terms "reconsignment and/or diversion", is necessary for the reason that rules relating to spot orders and contracts require the seller to charge and the buyer to pay, in the event of any reconsignment or diversion, the applicable minimum price for the coal at the time of such reconsignment or diversion; that the words "or route", contained in definition 16 of Section I of Exhibit R–19 are necessary if a change in the route should result in a change in the applicable minimum price; and that the definition of the terms "reconsignment and/or diversion", as contained in paragraph 16 of Section I of Exhibit R–19, which is substantially the same as definition 16 of Section I of Exhibit R/21, is reasonable and necessary.

7. Upon the basis of the testimony of the witness Brown and all the District Board witnesses, we find that the definitions of the terms "transportation facilities" and "Code Member" contained in paragraphs 17 and 18 of Section I of Exhibit R–19 are reasonable and necessary.

8. Upon the basis of the testimony of the witness for District Boards Nos. 1, 2, 3, 4, 6, 8, and 13, we find that the definitions of the terms "domestic market", "coal", and "bituminous coal" contained in paragraphs 19, 22 and 23 of Section I of Exhibit R–19 and in the Appendix of Exhibit R–21, should be deleted for the reason that such definitions are contained in the Act.

9. We find that the definitions of the terms "cargo shipment" and "bunker coal" or "vessel fuel" contained in paragraphs 20 and 21 of Section I of Exhibit R–19 and in the Appendix of Exhibit R–21 reflect the usage of the terms in the industry and are reasonable and necessary.

10. Upon the basis of the testimony of the witness Brown and the witnesses for District Boards Nos. 7, 10, 11, 15, 16, 17, 18, 19, 20, and 23, we find that a definition of the term "control" is necessary so as to put Code Members on notice that where such term is used in the rules and regulations it is intended to mean the power to direct or cause the direction of the management and policies of a person whether through ownership of voting securities or by contract or otherwise, and that accordingly, the definition of the term contained in paragraph 24 of Section I of Exhibit R–19 is reasonable.

11. Section 4, II (h) of the Act provides that distributors are to observe and maintain the Marketing Rules and Regulations established by the Commission. However, some of the Marketing Rules and Regulations, because of their peculiar nature, are applicable to Code Members and their Sales Agents only. It is our opinion that a rule, the text of which refers to the persons who are to be bound by it, should, in order to prevent misinterpretation as to its applicability, refer to a Distributor if such rule is applicable to him and should omit reference to a Distributor if the rule is not applicable to him. Accordingly, we find that the following definition of a Distributor is reasonable and necessary.

A "distributor", as used herein, means a person who has been registered with the Coal Commission as a Registered Distributor, or to whom a Distributor's Permit has been granted, pursuant to the rules and regulations established by the Coal Commission to require the maintenance and observance of the Prices and Marketing Rules and Regulations by distributors.

B. With Respect to the Evidence Relating to Rules Contained in Section II of Exhibit R–19 and Section II of the Appendix of Exhibit R–21

1. Upon the basis of the testimony of the witness Brown and all the District Board witnesses who testified in the hearing, we find that notice to Code Members that sales of coal by their agents are subject to the rules and regulations from time to time established by the Commission is reasonable and necessary, and accordingly, that Rule 1 of Section II of Exhibit R–19, which gives such notice, is reasonable and necessary.

2. Upon the basis of the testimony of the witnesses for District Boards Nos. 1, 2, 3, 4, 6, 8 and 13, we find that Rule 2 of Section II of Exhibit R–19, which is the same as Rule 2 of Section II of Exhibit R–21, may be misinterpreted so as to lead to the belief that the Commission intends to exercise jurisdiction over persons who may be appointed as Sales Agents and over the amount of commission that may be paid to them; that such was not the intention of the rule, as explained by the witness for the Commission, Mr. Brown; that since the rule is susceptible to the construction put upon it by the said District Board witnesses, the rule is ambiguous; that said rule is unnecessary, and accordingly should be deleted.

3. Upon the basis of the testimony of the witness Brown and all the witnesses who testified in the hearing for the several District Boards, we find that it is reasonable and necessary to place upon the Code Member the responsibility of requiring his Sales Agents to comply with the Act, and that accordingly Rule

3, Section II of Exhibit R–19, which is also contained in paragraph 2 of Section II of the Appendices of Exhibits R–21 and R–9, is reasonable and necessary.

4. Upon the basis of the testimony of the witness Brown and of the testimony of all the District Board witnesses who testified in the hearing, except the witness for District Board No. 8, we find that Rule 4 of Section II of Exhibit R–19, which is the same as Rule 3 of Section II of the Appendix of Exhibit R–21, in so far as it provides that Code Members shall require their Sales Agents to set forth upon any offer, contract, spot order and invoice the name of such Code Member principal, and that if the name of the Sales Agent also appears in the transaction the above-mentioned form shall also disclose the fact of the agency relationship, is necessary to prevent subterfuge and fraud that may be practiced upon purchasers of coal; that these requirements of the rule are necessary so that the identity of the Code Member responsible for the action of the Sales Agent will be known; that these requirements of the rule are necessary so as to prevent an individual from entering into a contract for the sale of coal and then bargaining with various Code Members as to the amount of commission they will pay him for the adoption of the contract as principal, thus defeating the purpose of the Act to return to the producer the weighted average cost of production of the minimum price area subject to a normal sales cost. Upon the basis of the testimony of the witnesses for District Boards No. 4 and No. 6, we find that the requirement of the rule that the name of the mine or mines from which shipment was made or is to be made shall be included on the forms, is unreasonable and unnecessary and should be deleted. We are of the opinion that the requirement of the rule that the name of the Code Member must appear on the statement of account covering the coal to be sold is likewise unnecessary and should be deleted. Accordingly, we modify Rule 4 of Section II of Exhibit R–19, and Rule 3 of Section II of the Appendix of Exhibit R–21 to read as follows:

Each Code Member shall require all his Sales Agents clearly to set forth upon any offer, contract, spot order and invoice the name of the Code Member principal. 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.

5. On the basis of the testimony of Witness Brown and the testimony of all the District Board witnesses, we find that it is necessary for the Commission to determine whether a principal and agency relationship exists and what the terms of such relationship are, and that accordingly it is necessary for the proper administration of the Act that the contract for the appointment of the Sales Agent be in writing and filed with the Commission. Upon the basis of the testimony of the witnesses for District Boards Nos. 1, 2, 3, 4, 5, 6, 7, 8, 11 and 13, we find that it is unreasonable and unnecessary to provide for the refiling of agency contracts which have been heretofore filed by a Code Member pursuant to Rule 3 of Section II of the Marketing Rules and Regulations established by Commission Order No. 88, dated November 29, 1937; that it is reasonable to provide that as to agency contracts heretofore filed with the Commission pursuant to its former Marketing Rules and Regulations, the Code Member shall notify the Statistical Bureau in writing that such contract is still in force and effect without modification or change; that, accordingly, Rule 5 (A) of Section II of Exhibit R–19 and Rule 4 (A) of Section II of the Appendix of Exhibit R–21 should be modified to read as follows:

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. A certified copy of an agency contract heretofore filed by a Code Member pursuant to Rule 3 of Section II of the Marketing Rules and Regulations established by Commission Order No. 88, dated November 29, 1937, shall be deemed to have been filed as required by this Rule without refiling hereunder, if such contract continues in force and effect without change: *Provided*, That the Code Member in the aforesaid period of twenty (20) business days notify the Statistical Bureau, or Bureaus, in writing that such contract is still in force and effect without modification or change.

6. Upon the basis of the testimony of the witness Brown and the witnesses for District Boards Nos. 7, 8, 10, 11, 15, 16, 17, 18, 19, 20, and 23, we find that it is reasonable and necessary for the purpose of enforcement to provide that agency contracts shall be filed by the Code Member within ten business days after the date upon which such contracts have been entered into; accordingly, we find that Rule 5 (B) of Exhibit R–19, which is the same as Rule 4 (B) of the Appendix of Exhibit R–21 is reasonable and necessary.

7. Upon the basis of testimony of the witnesses for District Boards 1, 2, 3, 4, 6, 7 and 13, we find that it is unreasonable to provide for the report of the termination of a sales agency contract by expiration according to its own terms, since the Commission could ascertain such termination by an examination of the contract which has been filed and that, accordingly Rule 5 (C) of Section II of Exhibit R–19 and Rule 4 (C) of Section II of the Appendix of Exhibit R–21 should be modified to read as follows:

In the event of the termination of any sales agency contract other than by expiration according to its own terms, or in the event of rescission of any sales agency contract, the Code Member principal shall make a report to the Statistical Bureau, or Bureaus, within ten (10) business days after the date of such termination or rescission.

8. Upon the basis of the testimony of the witness Brown and all the District Board witnesses who testified in the hearing, we find that in order effectively to administer the Act, particularly paragraph 13 of Section 4, II (i) it is necessary to disclose to the Commission sales of coal which are made other than through customary channels and that, accordingly, Rule 6 (A) of Section II of Exhibit R–19, which is the same as Rule 5 (A) of Section II of the Appendix of Exhibit R–21, which provides for such disclosure is reasonable and necessary; upon the basis of the testimony of witnesses for District Boards Nos. 16, 17, 19 and 20, we find that it is reasonable to provide that the statement contemplated by Rule 5 (A) of Exhibit R–21 should be filed not later than the last day of each month; that Rule 6 (A) of Section II of Exhibit R–19 should be modified to provide for the filing of such statement not later than the last day of each month; and that Rule 6 (B) of Section II of Exhibit R–19 should be modified to provide for the filing of the statement contemplated by the rule not later than the last day of each month.

9. Upon the basis of the testimony of the witness Brown and the testimony of the witnesses for the District Boards Nos. 1, 2, 3, 4, 6, 7, 10, 13, 15, 16, 17, 18, 19, 20 and 23, we find that it is reasonable and necessary to provide that each Code Member shall file a statement with the Statistical Bureau showing the names and addresses of Distributors to whom the Code Member or his Sales Agent sold coal during the preceding calendar month, the tonnage sold, and the amount of discount allowed to each such Distributor. Accordingly, we find that Rule 6 (C) of Section II of Exhibit R–19 is reasonable and necessary. However, upon the basis of the testimony of the witnesses for District Boards Nos. 16, 17, 19 and 20, we find that the statement contemplated by the rule should be filed not later than the last day of each month.

10. Upon the basis of the testimony of the witness Brown and the witnesses for District Boards Nos. 7, 10, 11, 15, 16, 17, 18, 19, 20, and 23, we find that in order that the Commission may properly administer Rule 8, Section II, of Exhibit R–19 requiring the Commission to publish monthly a list showing the names

and addresses of Sales Agents, it is reasonable and necessary to require Code Members to file a list showing the names and addresses of all their Sales Agents and to notify the Coal Commission of any changes in such list. We further find upon the basis of this testimony that Rule 7 of Section II of Exhibit R–19, which is the same as Rule 6 of Section II of Exhibit R–21, places only a nominal burden on Code Members since it merely requires a single filing of such a list of Sales Agents and the notification to the Commission of any subsequent changes in such list; and that the rule relieves the Commission of the necessity of the very considerable burden of compiling a similar list from the copies of the sales agency agreements filed with the Statistical Bureaus. We are of the opinion that the list to be filed with the Commission should contain the post office addresses of the Sales Agents. Accordingly, we find that the following rule is reasonable and necessary:

Within twenty (20) business days, after the effective date of these rules and regulations, each Code Member shall file with the Coal Commission, Washington, D. C., a list showing the names and post office 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.

11. Upon the basis of the testimony of the witness Brown and all of the District Board witnesses, we find that rule 8 of Section II of Exhibit R–19, which is the same as rule 7 of Section II of the appendix of Exhibit R–21, is reasonable and necessary, for the purpose of discovering violations of the minimum prices and marketing rules and regulations by Sales Agents. We are of the opinion that this rule should also be modified so as to require that the list should show the post office addresses of the Sales Agents.

12. Upon the basis of the testimony of the witness Brown and all of the District Board witnesses, we find that the agency contracts filed with the Commission in conformance with the rules and regulations, other than the names and addresses of Sales Agents, shall be held by the Coal Commission as confidential except where 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. Upon the basis of such testimony, we find that rule 9 of Section II of Exhibit R–19, which is the same as rule 8 of Section II of the Appendix of Exhibit R–21, is reasonable and necessary.

13. Upon the basis of the testimony of the witness Brown and all of the District Board witnesses who testified in the hearing, we find that rule 10 of Section II of Exhibit R–19, which is the same as rule 9 of Section II of the Appendix of Exhibit R–21, is reasonable and necessary to enforce the filing of agency contracts as required by rules 5 (A) and (B) of Section II of Exhibit R–19, and to prevent violations by Sales Agents of the minimum prices, marketing rules and regulations and unfair methods of competition. However, we are of the opinion that this rule should be modified to expressly provide that a Code Member may not obligate himself to allow or to pay any Sales Agency commission unless the conditions specified in the rule have been complied with. This prohibition is implied in the rule and the modification is made in the interest of clarity, since the purposes of the rule can only be achieved by preventing such obligations. Accordingly, we are of the opinion that this rule should be modified to read as follows:

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, or obligate himself to allow or pay, directly or indirectly, any commission to any Sales Agent:

(a) Unless the contract of agency shall have been filed with the Statistical Bureau, or Bureaus, 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 Coal Commission, and

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

14. Upon the basis of the testimony of the witness Brown and all the District Board witnesses, we are of the opinion that rule 11 of Section II of Exhibit R–19, which is substantially the same as rule 10 of Section II of the Appendix of Exhibit R–21, is reasonable and necessary to prevent the granting of rebates to purchasers through the means of sales agency commissions which fall within the prohibition of paragraphs 11 and 12 of Section 4, II (i) of the Act and also to prevent indirect price reductions through the use of subsidiaries or affiliated Sales Agents. We are of the opinion that the proviso contained in rule 11 of Section II of Exhibit R–19 is necessary as a matter of law since we construe paragraphs 11 and 12 of Section 4, II (i) of the Act to prohibit the payment of commissions only where the ownership or control is established to secure an indirect price reduction.

15. In light of the testimony of the witness for District Board No. 1, which was concurred in by the witnesses for District Boards Nos. 2, 4, 6, 8, and 13, that rule 12 of Section II of Exhibit R–19 which is the same as rule 12 of Section II of the Appendix of Exhibit R–21, is unnecessary and confusing, we find that said rule should be deleted. We are of the opinion that this rule is, in effect, a statement of a legal conclusion and that the arrangement contemplated by the rule would as a matter of law, be prohibited because it would result in an indirect discount on the sale of coal. Accordingly, we find that the rule is unnecessary.

16. We are of the opinion that rules 13 and 14 of Section II of Exhibit R–19 and rules 12 and 13 of Section II of the Appendix of Exhibit R–21 should be deleted for the reason that they are contained in the Act.

17. Upon the basis of the testimony of the witness for District Board No. 10, we find that it is necessary, in order to prevent widespread abuses, to prohibit two retail dealers from acting as Sales Agents or as a Sales Agent and a Distributor, respectively, on coal sold to each other, except where such sales relationship is bona fide and will not result in evasion of the minimum price. Accordingly, we find that the following rule is reasonable and necessary:

Where a Sales Agent is also engaged, directly or indirectly, in the business of retailing coal, no commission shall be paid or allowed to him by a Code Member on coal sold to another retailer who is either a Distributor or a Sales Agent of a Code Member: *Provided, however,* That such commission may nevertheless be allowed in a case where the Coal Commission has determined that such sales relationship is bona fide and would not result in evasion of the applicable minimum price.

18. Upon the basis of the testimony of the witness for District Board No. 10, we find that in the absence of restraint, Code Members may seek to appoint a large number of retail dealers as Sales Agents, thereby granting indirect discounts from minimum prices and defeating the purpose of the Act to sustain the realization to producers. The witness for District Board No. 10, as an alternative rule to the District Board's proposed definition of a Sales Agent, proposed the following rule:

A Code Member may not employ as a Sales Agent a retail coal dealer.

However, the witness admitted that this rule would prohibit legitimate transactions by Sales Agents who are in the retail coal business. On the basis of this testimony, we find that this rule is unreasonable. The witness for District Board No. 10 stated in effect that although the following rule did not go far enough in the absence of a rule prohibiting the payment of commissions on reciprocal sales by retailers acting as sales agents, it was otherwise reasonable.

A Code Member may not employ as a Sales Agent a retail coal dealer for the sale of the Code Member's coal through the yard of such retail coal dealer.

On the basis of the testimony given by the witness for District Board No. 10, we find that such rule is reasonable and necessary.

19. The witness for District Board No. 8 recommended the adoption of the following rule:

(a) On the effective date of these rules and regulations, no Code Member shall allow or pay, directly or indirectly, any commission to any Sales Agent for or on account of any sale of coal in excess of eight per cent of the sales price of such coal f. o. b. transportation facilities at the mines; *Provided, however,* That, in the case of the sale of coal by a Sales Agent to a Distributor, on which a discount or allowance has been granted, the amount of commission which the Code Member may allow a Sales Agent shall not exceed four per cent of such sales price.

(b) Commissions and other payments allowed or paid by a Code Member to a Marketing Agency approved by the Commission under the provisions of Section 12 of the Act for or on account of its services in the sale of coal on behalf of the Code Member shall not be included in the computation of commissions for any purpose of sub-paragraph (a) hereof when the total rate of such commissions or other payments does not exceed one per cent of the sales price of such coal f. o. b. transportation facilities at the mines.

The witness stated that no rule relating to limitation of Sales Agency commissions was contained in the rules proposed by District Board No. 8 pursuant to Section 4, II (a) of the Act. No similar rule was contained in the proposals of any other District Board. The purpose of the rule was strongly opposed by the witness for District Board No. 1 in testifying to Rule 2 of Section II of Exhibit R–19, which rule, the witness stated, could be construed so as, among other things, to grant the Commission jurisdiction to limit the compensation that may be paid to Sales Agents. The testimony of the witness for District No. 1, in this respect, was concurred in by the testimony of the witnesses for District Boards Nos. 2, 3, 4, 6, 8, and 13. In the light of this testimony, we are of the opinion that the rule proposed by District Board No. 8 relating to the limitation of Sales Agency commissions should not be established.

C. With Reference to the Evidence Relating to the Rules Contained in Section III of Exhibit R–19 and Section III of the Appendix of Exhibit R–21

1. In light of the testimony of the witnesses for District Boards Nos. 1, 2, 4, 6, 7, and 13, we are of the opinion that rule 1 of Section III of Exhibit R–19 should be modified so as clearly to indicate that discounts from minimum prices may be allowed only to persons authorized by the Coal Commission to receive such discounts. The Commission has no jurisdiction to prevent the granting of discounts from a sale price which is above the minimum price and where the granting of such discounts will not have the effect of reducing the sale price below the applicable minimum price. Accordingly, we find that rule 1 of Section III of Exhibit R–19 and rules 1 and 2 of Section III of the Appendix of Exhibit R–21 should be modified to read as follows:

Code Members or their Sales Agents may allow discounts from minimum prices on sales of coal only to persons authorized by the Coal Commission to receive such discounts, and such discounts shall not exceed the maximum discounts or price allowances prescribed by the Coal Commission upon such sales. Only one such discount may be allowed on one such sale.

2. In light of the testimony of the witness for District Board No. 1, we are of the opinion that in the interests of clarity rule 2 of Section III of Exhibit R–19 should be modified so as expressly to provide that no discount may be granted from minimum prices for shipments on Government Bills of Lading except as may be authorized by the minimum price schedules. Accordingly, we find that rule 2 of Section III of Exhibit R–19 and rule 3 of Section III of the Appendix of Exhibit R–21 should be modified to read as follows:

No Code Member, Sales Agent, or a Distributor may offer or grant any discount or allowance from the applicable minimum prices for shipments on Government Bills of Lading, except as may be authorized by the Minimum Price Schedules established by the Coal Commission.

3. Upon the basis of the testimony of the witness Brown and the witnesses for District Boards Nos. 7, 8, 10, 11, 15, 16, 17, 18, 19, 20, and 23, we find that it is reasonable and necessary to establish a rule which will give a Code Member a legal claim against a Distributor for discounts accepted and/or retained by the Distributor in violation of the Distributor Rules. Accordingly, we find that rule 3 of Section III of Exhibit R–19 and rule 4 of Section III of the Appendix of Exhibit R–21, which rules were intended to grant to the Code Member such a legal claim, are reasonable and necessary, but for the purpose of clarification should be modified to read as follows:

Every agreement for the sale of coal to a Distributor upon which a discount is allowed shall contain the express provision that the discount is allowed upon the condition that the Distributor is authorized to accept and retain such discount.

D. With Respect to the Evidence Relating to Section IV of Exhibit R–19 and Section IV of the Appendix of Exhibit R–21

1. Upon the basis of the testimony of the witness Brown, we find that it is necessary to restrict contracts, for a limited period after the establishment of minimum prices, to a 30-day delivery period, in order to minimize the damage which may result to Code Members and consumers from possible errors and inequalities that might be contained in the minimum price schedules; that it would be unfair and unjust to permit any Code Member to make long term contracts until possible inequalities and errors in the minimum price schedules have been substantially rectified; that it is necessary to prevent the hardship and injustice that may result from long term contracts which may be made at the initially established minimum prices that may later be determined to be not in conformity with the standards contained in Section IV, Part II (a) and (b) of the Act; that in the absence of a rule restricting contracts to a 30-day delivery period, a Code Member having a minimum price which a short experience may prove to be too low in its relation to the prices of his competitors, could unfairly and unjustly obtain long term contracts on the basis of such low price; that the shorter the period for which contracts may be made while the initially established prices are being tested by experience, the less will be the risk of hardship and injustice to which code members will be subjected by possible improper price relationships. We further find upon the basis of the testimony of the witness Brown and upon the basis of the testimony of all the District Board witnesses, except the witness for District Board No. 15, that a rule limiting contracts to a 30-day delivery period after the establishment of prices is necessary and reasonable. We further find that the regulations and budgetary requirements of governmental agencies might necessitate the purchase of coal by contracts providing for delivery over a period longer than 30 days, and that, accordingly, it would be an undue hardship on such governmental agencies to prohibit contracts to be made with such agencies. Accordingly, we find that an exception should be made so as to permit a Code Member to enter into contracts having a delivery period in excess of 30 days but not exceeding one year, with agencies of Federal, State, and local governments; that it is reasonable that this exception should depend upon the contract being entered into through competitive bidding, for the reason that such a test is easy to apply; that the test of competitive bidding, however, should not control where by virtue of an express exemption in a statute or ordinance the governmental agency may enter into contracts for the purchase of coal without regard to competitive bidding. Upon

the basis of the testimony of the witness for District Board No. 15 and that of the witnesses for District Boards Nos. 16, 17, 18, 19, 20 and 23, we further find that a rule limiting contracts to a 30-day delivery period may work a hardship on the code members who must meet the long-term competition of oil, gas, or other forms of fuel and energy; and we, therefore, are of the opinion that a proviso should be contained in the rule so as to permit the making of contracts providing for delivery not in excess of twelve months upon special permission of the Coal Commission, upon a showing of the necessity for meeting the long-term competition of oil and gas or for such other reasons as the Commission may deem appropriate in order to further the effectual administration of the Act.

Rule I of Section IV of the appendix of Exhibit R–21 relates to limiting contracts to 30-day delivery periods and is the same as Rule I of Section IV of Exhibit R–19 except that it contains the following introductory clause: "Subject to a prior order of the Coal Commission suspending or revoking this Rule I of Section IV hereof, to be made not later than thirty (30) days after the effective date of minimum prices." The purpose of this clause in the rule contained in Exhibit R–21, as explained by the witness for District Board No. 16, is to make certain that 30 days after the rules become effective Code Members may enter into contracts providing for deliveries over a period in excess of thirty days. We find that the period of time, during which a rule limiting contracts to a 30-day delivery period is necessary and reasonable, cannot be predetermined but must be based on actual experience under the initially established minimum prices. Therefore, we find that the above-mentioned clause, which is contained in Rule I of Section IV of the appendix of Exhibit R–21, should be deleted from the Rule.

We are of the opinion that under the Act, coal may not be delivered at a price below the applicable minimum price in effect at the time of delivery. Upon the basis of testimony in the record and upon the foregoing findings of fact, we find that Rule I of Section IV of Exhibit R–19 and Rule I of Section IV of the appendix of Exhibit R–21 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 or Distributor 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 delivery of the coal thereunder: *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, or 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: *Provided, further,* That contracts may be made providing for delivery over a period not in excess of twelve (12) months upon special permission and approval of the Coal Commission, upon a showing of the necessity of meeting the long term competition of oil, gas, or other forms of fuel and energy, or for such other reasons as the Commission may deem appropriate in order to further the effectual administration of the Act.

2. Upon the basis of the testimony of the witness Brown and all the District Board witnesses who testified at the hearing, we find that if the time during which quotations and options may be effective were not limited, the effect of a rule which limits agreements for the sale of coal to a delivery period not in excess of that authorized by a spot order could be nullified by the granting of quotations and options having unusually long effective periods; that by providing for a uniform time when quotations and options will expire, the rules will render definite what would otherwise vary with circumstances and localities; that the limitation of quotations and options to a two-week effective period is reasonable; that a rule which provides that quotations and options will become void if the applicable minimum price is increased beyond the quoted price tends to prevent parties from evading an impending price increase through the use of quotations and options; that governmental agencies normally require forty-five (45) days to examine bids which have been filed with them and to determine which of the bids filed should be accepted; that in connection with the offers to sell the United States Government, or States or political sub-divisions thereof options should be permitted to be given for a period not exceeding 45 days from the date of the offer or from the final date for the filing of offers for the reason that the regulations and requirements of such agencies vary from those of the ordinary consumer, and that it would result in undue hardships to such agencies if options to such agencies were limited to a two-week effective period. Upon the basis of the testimony and the foregoing findings, we find that Rule 2 of Section IV of Exhibit R–19, which is substantially the same as Rules 2 and 3 of Section IV of the appendix of Exhibit R–21, is reasonable and necessary. However, for the purpose of clarity, we are of the opinion that these rules should be modified to read as follows:

Options and quotations for the sale of coal may be given by a Code Member, Sales Agent or Distributor for a period not exceeding fourteen (14) days: *Provided, however,* That in connection with offers to sell to the United States Government, or States or political sub-divisions 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. If the applicable minimum price is increased beyond the quoted price and the option shall not have been exercised, or the quotation accepted at the time of such increase, the option or quotation shall thereupon become null and void.

3. The witness for District Board No. 1, whose testimony was concurred in by the witnesses from District Boards Nos. 2, 3, 4, 6, and 13, recommended the deletion of the words "quotation or," or in lieu of such words, the substitution of the words "every written quotation or option" in Rule 3 of Section IV of Exhibit R–19. The purpose of the rule, as testified to by the witness Brown, is to prevent Code Members from entering into contracts which may be in violation of the rules and regulations. Rule 2 of Section V and Rule 8 of Section VI of Exhibit R–19 require that certain conditions be contained in every spot order and contract. In order for these conditions to be a part of the agreement, they must as a matter of law be a part of the offer. The purpose of the rule, therefore, was to make certain that the Code Member would make them a part of the offer. If the Code Member does not make these conditions a part of the offer to sell coal and the offeree accepts the offer, a contract may result which would not contain the conditions required in the rules and, therefore, would be in violation of such rules. The witness for District Board No. 1 testified that the rule would be impractical in its application to oral offers. If the recommendation of the witness for District Board No. 1 were accepted, namely, that the requirement that every quotation provide that it is made subject to the rules and regulations be deleted, then the rule would be subject to the construction that quotations need not be made subject to the rules and regulations. This, of course, is inaccurate. It would also be highly misleading to require that a written quotation shall provide that it is to be made subject to the rules and regulations for the reason that such a rule would carry the implication that an oral quotation need not provide that it is subject to the rules and regulations. In light of the testimony with respect to Rule 3 of Section IV of Exhibit R–19, we are of the opinion that this rule should be deleted for the reason that the risk of violation should be left with the Code Member. Rule 4 of Section IV of the appendix of

Exhibit R–21 should likewise be deleted, since it is the same as Rule 3 of Section IV of Exhibit R–19.

4. Upon the basis of the testimony of the witness Brown and all the District Board witnesses, we find that it is reasonable to provide that an option must be made or confirmed in writing, since such requirement is necessary in order properly to administer the rule which provides that if prices increase during the period of the option, the option shall become null and void. Upon the basis of the testimony of the witness Brown and the witness for District Board No. 7, we find that it is reasonable to provide that the acceptance of a quotation shall be made or confirmed in writing and that the exercise of an option shall be in writing, for the reason that such requirement would tend to prevent evasions of impending increases in the minimum prices through claims that a spot order or a contract was made prior to the time of such increase. Accordingly, we find that Rule 4 of Section IV of Exhibit R–19, and Rule 5 of Section IV of the appendix of Exhibit R–21 should be modified to read as follows:

All options must be made or confirmed in writing. Every Code Member or his Sales Agent or a Distributor shall require of his offeree that the acceptance of a quotation shall be made or confirmed in writing and that the exercise of an option be in writing.

E. With Respect to the Rules Relating to Section V of Exhibit R–19, and Section V of the Appendix of Exhibit R–21

1. Upon the basis of the testimony of the witness Brown and all the District Board witnesses, we find that it is reasonable to provide that spot orders shall be in writing or confirmed in writing since Section 4, II (a) of the Act provides that all Code Members shall report all spot orders to such Statistical Bureau as may be designated by the Commission, and, furthermore, since it is necessary that all spot orders must contain certain specific provisions in order to prevent evasions of minimum prices. Accordingly, we find that Rule 1 of Section V of Exhibit R–19, which is the same as Rule 1 of Section V of the Appendix of Exhibit R–21, is reasonable and necessary.

2. Upon the basis of the testimony of the witness Brown and all the District Board witnesses, we find that in order to prevent evasions of minimum prices the rules must provide that certain specific provisions must be endorsed either upon the form of the order or upon a written confirmation thereof. Since minimum prices at points other than the mine must be based upon a definite transportation charge, it is reasonable to provide that one of such conditions should be that if the price named in the spot order is f. o. b. any point other than the originating mine, such price shall be increased by the amount and at the time of any increase in the published freight rate included in such price and becoming effective during the period of the order. We are of the opinion that this Commission has no jurisdiction to require that the contract price be decreased in the event that the freight rate is decreased, since in that event the contract price may be above the then applicable minimum price. Accordingly, we find that Rule II A of Section 5 of Exhibit R–19 is reasonable and necessary and should be modified so as to eliminate the reference to decreasing the contract price.

Another condition which must be contained in every spot order, so as to prevent evasions of minimum prices is that in case of a reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the minimum price for delivery to the destination to which the shipment is actually delivered, and for the use to which it is actually applied. In order that this provision be observed, it is likewise necessary to provide that there must be inserted in the spot order the condition that the buyer shall notify the seller in writing of all reconsignments or diversions. We are of the opinion that the Commission has no jurisdiction to provide that no shipment may be diverted or reconsigned without the consent of the seller, confirmed in writing, since consent of the seller is not necessary to prevent price evasions. However, we are of the opinion that it is reasonable and necessary to provide that the buyer shall notify the seller in writing of all reconsignments or diversions since the seller must charge the applicable minimum price in such case. Upon the basis of the testimony of the witness Brown and the witnesses for District Boards Nos. 1, 3, 4, 6, 7, and 13, we find that since at the time a railroad purchases coal at a particular destination it is not certain of the place where the coal will be used, it is impractical to require notice in the case of the reconsignment or diversion of railroad fuel where such reconsignment or diversion does not result in a change in the applicable minimum price. Accordingly, we find that Rule 2 (b) of Section V of Exhibit R–19 and Rule 2 (a) of Section V of the Appendix of Exhibit R–21 should be modified to read as follows:

The buyer shall notify the seller in writing of all reconsignments or diversions, except that such notification is not necessary where the coal is purchased for and used as railroad fuel and the reconsignment or diversion does not result in a change in the applicable minimum price. In the case of reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the applicable minimum price prescribed 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.

3. Upon the basis of the testimony of the witness Brown and the witnesses for District Boards Nos. 2, 4, 7, 8, 10, 11, 15, 16, 17, 18, 19, 20 and 23, we find that in order to prevent evasions of minimum prices by applying coal purchased for a particular use to a use which takes a higher minimum price than that specified in the spot order, it is necessary to provide that each spot order shall contain the condition that the coal must be used in the plant or plants named in the spot order and for the use stated therein, and that in case the coal is applied by the buyer to a use other than that stated in the spot order, 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.

However, upon the basis of the testimony of the witness for District Boards Nos. 16, 17, 18, 19, 20 and 23, we find that such requirement is reasonable only where the coal is sold for consumption or processing. Accordingly, we modify Rule 2 (c) (1) and (2) of Section V of Exhibit R–19 and Rule 2 (b) (1) and (2) of Section V of the Appendix of Exhibit R–21 to read as follows:

The coal shipped pursuant to this order is sold and purchased upon the following conditions:

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

(2) In case the coal is applied 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 in effect at the time of such change in application, for the use to which it is actually applied.

4. Upon the basis of the testimony of the witness Brown and that of all the District Board witnesses, we find that it is reasonable and necessary, in order to restrict spot orders to a 30-day delivery period, to require that the spot order shall contain the condition that if shipments called for by the order are not completed within thirty days after the effective date of the order, the unfilled portion of the order shall not be delivered. Accordingly, we find that Rule 2 (d) of Section V of Exhibit R–19, which is the same as Rule 2 (c) of Section V of the Appendix of Exhibit R–21, is reasonable and necessary.

5. Since, in our opinion, it is unreasonable to require the consent of the seller in the case of reconsignment or diversion, we are of the opinion that

Rule 3 of Section V of Exhibit R–19, which is substantially the same as Rule 3 of Section V of the Appendix of Exhibit R–21, is unnecessary and accordingly should be deleted.

6. Upon the basis of the testimony of the witness Brown and that of all the District Board witnesses who testified in the hearing, we find it is reasonable, for the purpose of enforcement, to provide that spot orders should contain such relevant terms as the date of execution, the effective date, the expiration date, the price agreed upon, the terms of payment, the size and grade of the coal, the number of cars or tonnage to be shipped, the destination to which the coal is to be shipped, the name of Code Member, the name of the originating mine or mines, and, where the coal is purchased for consumption or processing, the use to which the coal is to be applied. Section 4, II (a) of the Act provides that spot orders are to be filed with the Statistical Bureau and, accordingly, it is reasonable to provide that every spot order or the written confirmation thereof shall be filed with the Statistical Bureau or Bureaus within ten business days after the making thereof, and that any modification of the spot order should be likewise in writing and filed in the same manner. Accordingly, we find that Rule 4 of Section V of Exhibit R–19, which is the same as Rule 4 of Section V of the Appendix of Exhibit R–21, is reasonable and necessary.

7. Upon the basis of the testimony of the witness Brown and that of all the District Board witnesses, we find that it is reasonable to require that all spot orders for the sale of coal, the minimum price of which is subject to seasonal increase or decrease, contain a provision stating what the governing minimum price should be. Since we are of the opinion that under the Act no coal may be delivered at a price below the price in effect at the time of delivery, we find that Rule 5 of Section V of Exhibit R–19, which is the same as Rule 5 of Section V of Exhibit R–21, should be modified as follows:

All spot orders for the sale of coal the minimum price of which is subject to seasonal increase, or decrease, shall provide that the price payable thereunder shall be not less than the price in effect at the time of delivery.

CONTRACTS

F. With Respect to the Evidence Relating to the Rules Contained in Section VI of Exhibit R–19 and Section VI of the Appendix of Exhibit R–21

1. Upon the basis of the testimony of the witness Brown and all the District Board witnesses, we find that in order to enable the Commission properly to administer the Act, it is necessary that it be fully informed of all contracts for the sale of coal and that, accordingly, it is reasonable and necessary to require that all contracts for the sale of coal shall be in writing and shall express the entire agreement between the parties. We further find that in order that the Commission may be fully informed of the terms of the contract, it is likewise reasonable to require that the contract shall clearly state the date of execution, effective date, 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, the name of the originating mine or mines, the destination to which the coal is to be shipped, and where the coal is purchased for consumption or processing, the use to which the coal is to be applied. Upon the basis of the testimony, we further find that it is necessary to make provision for contracts which do not call for a definite tonnage but call for a buyer's requirements, since it is customary for the industry to make such contracts; that some restrictions must be placed on contracts calling for a buyer's requirements in order properly to administer the Rules and Regulations and prevent evasions of the established minimum prices; that, accordingly, it is reasonable to provide that contracts may be made (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 a certain percentage of such estimated tonnage. Upon the basis of the testimony of the witness for District Board No. 2, we find that the greater the percentage of overshipment permitted, the less a Code Member will be able to determine to what extent he is obligated for tonnages if he had many such contracts; upon the basis of the testimony of the witnesses for District Boards Nos. 2, 3, 4, 6, 7 and 8, we find that a provision permitting overshipment not in excess of ten (10) per cent is reasonable and sufficient. Upon the basis of the testimony of the witness Brown, and all the District Board witnesses, we find that it would be unduly burdensome to apply the same rule with respect to contracts calling for a buyer's requirements to contracts with governmental agencies as is properly required as to contracts with other purchasers for the reason that governmental agencies normally require that the contracts made with them contain a provision permitting overshipment far in excess of ten (10) per cent of the estimated tonnage stated in the contract; that while a restriction of overshipment to ten (10) per cent of the stated requirements is reasonable for the ordinary purchaser, it is not reasonable for contracts made with governmental agencies; and, that, accordingly it is reasonable and necessary to make an exception to the requirements relating to quantity of coal so as to provide that such requirements should not apply to contracts made with agencies of the Federal, State or local Governments in case the terms required to be submitted in the bidding or offering for such contract be in conflict with such provisions. Accordingly, we find that Rule 1 of Section VI of Exhibit R–19 and Rule 1 of Section VI of Exhibit R–21 should be modified to read as follows:

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, the name of the originating mine or mines, the destination to which the coal is to be shipped, and, where the coal is purchased for consumption or processing, 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.

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 contracts are in conflict with such provisions.

2. Upon the basis of the testimony of the witness Brown, and all the District Board witnesses, we find that in order to minimize the hardships that may result from inequities in the initial price establishment, and in order to prevent Code Members who may have received an unfair advantage in the initial establishment of minimum prices from diverting business from their competitors for an unlimited length of time by means of long-term contracts, that it is reasonable and necessary to limit the length of time over which performance under a contract may take place and also to restrict the time when performance must begin under a contract. We further find, upon the basis of such testimony, that in the absence of restrictions upon the length of contracts, Code Members who may have received an advantage in the establishment of minimum prices could divert business from their competitors for the rest of the life of the statute and thereafter by entering into contracts for such a period. Upon the basis of the testimony of the witness Brown, and all the District Board witnesses, we find that it is reasonable and necessary to provide for an exception to a rule restricting the length of contracts upon a showing that such exception is necessary to meet the long term competition of oil, gas and other forms of fuel and energy, and for such other reasons as may be appropriate in order to further the effectual admin-

istration of the Act. Upon the basis of the testimony and the foregoing findings of fact, we find that it is reasonable and necessary to provide that delivery under a contract must commence not later than ninety (90) days from the date upon which such contract is entered into and that 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 long term contract competition of oil, gas, or other forms of fuel and energy, or for such other reasons as the Commission may deem appropriate to further the effectual administration of the Act. Accordingly, we find that Rule 2 of Section VI of Exhibit R–19, which is the same as Rule 2 of Section VI of the Appendix of Exhibit R–21, is reasonable and necessary and that Rule 5 of Section VI of Exhibit R–19, which is the same as Rule 5 of Section VI of the Appendix of Exhibit R–21, is reasonable and necessary.

3. Upon due consideration of the briefs filed in this hearing, we are of the opinion that under Section 4, II (e) of the Act, no coal may be delivered upon any spot order or contract at a price below the minimum price in effect at the time of delivery. The witnesses for District Boards Nos. 7, 10 and 13, were of the opinion that Rule 3 of Section VI should be modified so as to provide that no coal may be delivered upon a contract below the price in effect at the time of shipment. Accordingly, we are of the opinion that Rule 3 of Section VI of Exhibit R–19, which is the same as Rule 3 of Section VI of Exhibit R–21, should be modified so as to read as follows:

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 and every contract shall provide that the price to be paid for the coal to be delivered thereunder shall be not less than the applicable minimum price in effect at the time of delivery.

4. Upon the basis of the testimony of the witness Brown, and all the District Board witnesses, we find that it is reasonable and necessary to inform Code Members that in case of seasonal prices, the governing minimum price is the price to be in effect at the time of delivery. Upon the basis of the testimony of the witness for District Board No. 2, we find that Rule 4 of Section VI of Exhibit R–19, which is the same as Rule 4 of Section VI of the Appendix of Exhibit R–21, should be modified, for the purpose of clarity, to refer to seasonal decreases as well as seasonal increases. Accordingly, we find that Rule 4 of Section VI of Exhibit R–19 and Rule 4 of Section VI of the Appendix of Exhibit R–21 should be modified to read as follows:

All contracts for the sale of coal, the minimum price of which is subject to seasonal increase or decrease, shall provide that the price payable thereunder shall be not less than the applicable minimum price in effect at the time of delivery.

5. Upon the basis of the testimony of the witness Brown, and all the District Board witnesses, we find that, in order that the contracts on file with the Commission will accurately reflect existing contractual relations, it is reasonable and necessary to provide that any change in the terms of a contract shall be evidenced by a written agreement which shall conform to all the requirements set forth in the rules and regulations. Accordingly, we find that Rule 6 of Section VI of Exhibit R–19 is reasonable and necessary. Rule 6 of Section VI of Exhibit R–21 is in substance the same as Rule 6 of Section VI of Exhibit R–19, and the witnesses for District Boards Nos. 16, 18, 20 and 23 testified that they agreed to the rule as contained in Exhibit R–19.

6. Upon the basis of the testimony of the witness Brown, and the testimony of all the District Board witnesses, we find that it may take some time to reduce a binding agreement to a formal written contract; that in the absence of a rule requiring a report of such an agreement, which under the definitions is termed a commitment, the Coal Commission would not be advised of the nature of the agreement until the formal contract has been filed; that the Coal Commission should be advised as soon as possible of all agreements for the sale of coal, and that therefore, it is reasonable to provide that every commitment shall be reported to the Statistical Bureau within fifteen (15) days from the date of the making of the agreement and that such report shall contain all the terms and conditions of the commitment. Obviously, it is unreasonable to require a report of the commitment if the contract is filed within fifteen (15) days. Accordingly, we find that Rule 7 of Section VI of Exhibit R–19, which is the same as Rule 7 of Section VI of Exhibit R–21, is reasonable and necessary. However, upon the basis of the testimony of the witness for District No. 2, we find that this rule should be modified in the interest of clarity to read as follows:

A report of every commitment shall be filed 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 or Bureaus 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 from the date of the commitment.

7. In the interest of clarity, we are of the opinion that the first paragraph of Rule 8 of Section VI of Exhibits R–19 and R–21 should be modified to read as follows:

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

8. On the basis of the testimony of the witness Brown, and all the District Board witnesses, we find that in order to prevent evasions of minimum prices, the rules must provide that certain specific provisions must be contained in every contract. We find that one of such conditions should be that the contract and the performance of all provisions thereof are expressly subject to the Act and the proper orders and regulations issued thereunder by the Coal Commission. Accordingly, we find that Rule 8 (a) of Section VI of Exhibit R–19, which is the same as Rule 8 (a) of Section VI of Exhibit R–21, is reasonable and necessary. Since minimum prices at points other than the mine must be based upon a definite transportation charge, it is reasonable to provide that one of such conditions should be that if the price named in the contract is f. o. b. any point other than the originating mine, such price shall be increased by the amount and at the time of any increase in the published freight rate included in such price and becoming effective during the period of the contract. We are of the opinion that the Commission has no jurisdiction to require that the contract price be lowered in the event of a decrease in the freight rate. Accordingly, we find that Rule 8 (b) of Section VI of Exhibit R–19 is reasonable and necessary except that it should be modified so as to delete the reference to decreasing the contract price. Another one of the conditions to be contained in the contract which is necessary to prevent evasions of minimum prices is that in case of reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the applicable minimum price for delivery to the destination to which the shipment is actually delivered, and for the use to which it is actually applied. So that this provision will be observed, it is likewise necessary to provide that there must be inserted in the contract the provision that the buyer shall notify the seller in writing of all reconsignments or diversions. We are of the opinion that the Commission has no jurisdiction to provide that no shipment may be diverted or reconsigned without the consent of the seller, confirmed in writing, since the consent of the seller is not necessary to prevent evasions of minimum prices. However, we are of the opinion that it is reasonable and necessary to provide that the buyer shall notify the seller in writing

of all reconsignments or diversions since the seller must charge the applicable minimum price in such case. Upon the basis of the testimony of the witness Brown, and the witnesses for District Boards Nos. 1, 4, 6, 7, and 13, we find that it is impractical to require notice in the case of a reconsignment or diversion of railroad fuel where such reconsignment or diversion does not result in a change in the applicable minimum price, since at the time a railroad purchases coal at a particular destination it is not certain of the place at which the coal will be ultimately used. Accordingly, we find that Rule 8 (c) of Section VI of Exhibit R–19 and Rule 8 (b) of Section VI of the Appendix of Exhibit R–21 should be modified to read as follows:

The buyer shall notify the seller in writing of all reconsignments or diversions, except that such notification is not necessary where the coal is purchased for and used as railroad fuel and the reconsignment or diversion does not result in a change in the applicable minimum price. In the case of reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the applicable minimum price prescribed 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.

9. Upon the basis of the testimony of the witness Brown, and the witnesses for District Boards Nos. 2, 7, 8, 10, 11, 15, 16, 17, 18, 19, 20, and 23, we find that in order to prevent evasions of minimum prices by applying coal purchased for a particular use to a use which takes a higher minimum price than that specified in the contract, it is necessary to provide that each contract shall contain the condition that the coal must be used in the plant or plants named in the contract and for the use stated therein, and that in case the coal is applied by the buyer to a use other than that stated in the contract, 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 in effect at the time of such change in application for such coal for the use to which it is actually applied. However, upon the basis of the testimony of the witness for District Boards Nos. 16, 17, 18, 19, 20, and 23, we find that it is unreasonable to provide that the coal must be used in the plant or plants named in the contract and for the use stated therein, except where the coal is sold for consumption or processing. Accordingly, we modify Rule 8 (d) (1) and (2) of Section VI and Rule 8 (c) (1) and (2) of Section VI of the Appendix of Exhibit R–21 to read as follows:

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

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

(2) In case the coal is applied 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 in effect at the time of such change in application, for the use to which it is actually applied.

10. Since, in our opinion, it is unreasonable to require the consent of the seller in the case of reconsignment or diversion, we find that Rule 9 of Section VI of Exhibit R–19, which is the same as Rule 9 of Section VI of Exhibit R–21, is unnecessary and, accordingly, should be deleted.

11. The witness for District Board No. 7, as an alternative to his recommendation that Rule 3 of Section VI of Exhibit R–19 be modified, recommended the adoption of a rule which would provide that there must be inserted in each contract a condition that if during the term of the contract the Coal Commission found an increase in excess of two cents (2¢) per ton in the weighted average of the total costs in the Minimum Price Area wherein the coal contracted was produced, then the contract price should be increased so as to make such price not less than the applicable minimum price established by the Coal Commission at the time of the making of the contract, plus the amount per ton in the increase of the weighted average costs in the Price Area. We are of the opinion that this rule is unnecessary since we construe Section 4, II (e) of the Act as prohibiting the delivery of coal at a price below the applicable minimum price in effect at the time of delivery.

12. Upon the basis of the testimony of the witnesses for District Boards Nos. 1, 2, 4, 6, and 13, we are of the opinion that Rules 10 and 11 of Section VI of Exhibit R–19, which are the same as Rules 10 and 11 of Section VI of Exhibit R–21, should be deleted for the reason that they are contained in the Act.

G. With Respect to the Evidence Relating to Rules Contained in Section VII of Exhibit R–19 and Section VII of the Appendix of Exhibit R–21

1. Upon the basis of the testimony of the witness Brown and all the District Board witnesses, we find that it is reasonable and necessary to prohibit terms of payment more favorable than those customarily allowed by the industry for the reason that otherwise the minimum prices could be evaded through the use of terms of credit. Upon the basis of the testimony of the witness Brown and all the District Board witnesses, we find that Rule 1 (A) of Section VII in Exhibit R–19, which is the same as Rule 1 (A) of Section VII of the Appendix of Exhibit R–21, is reasonable and necessary since such rule reflects the customary term of credit on rail, river, ex-river or truck shipments, except that as to District No. 16 this rule should only apply on coal sold to an industrial consumer and that as to coal sold to persons other than industrial consumers, the date of payment should be not later than the tenth day of each calendar month for all coal shipped during the preceding calendar month.

2. Upon the basis of the testimony of the witness Brown and all the District Board witnesses, we find that Rule 1 (B) of Section VII of Exhibit R–19, which is the same as Rule 1 (B) of Section VII of the Appendix of Exhibit R–21, reflects the customary term of credit on tidewater cargo shipments and is therefore reasonable and necessary.

3. Upon the basis of the testimony of the witness Brown and of all the District Board witnesses, we find that Rule 1 (C) of Section VII of Exhibit R–19 reflects the customary term of credit for tidewater bunker coal, and therefore is reasonable and necessary, and that Rule 1(C) of Section VII of the Appendix of Exhibit R–21 should be modified to conform to Rule 1 (C) of Section VII of Exhibit R–19.

4. Upon the basis of the testimony of the witness Brown and all the District Board witnesses except the District Board witness for District No. 10, we find that Rule 1 (D) of Section VII of Exhibit R–19, which is the same as Rule 1 (D) of Section VII of the Appendix of Exhibit R–21, reflects the customary terms of credit on lake cargo shipments and is therefore reasonable and necessary.

5. Upon the basis of the testimony of the witness Brown and all District Board witnesses we find that Rule 1 (E) of Section VII of Exhibit R–19, which is the same as Rule 1 (E) of Section VII of the Appendix of Exhibit R–21, reflects the customary term of credit on coals sold to railroads and therefore is reasonable and necessary.

6. Upon the basis of the testimony of the witness Brown and all the District Board witnesses except the witness for District Board No. 10, we find that Rule 1 (F) of Section VII of Exhibit R–19, which is the same as Rule 1 (F) of Section VII of the Appendix of Exhibit R–21, is reasonable and necessary for the reason that it provides a uniform value of payment. The witness for District Board No. 10 testified that a large number of Code Members in District No. 10 would like if it is possible, to have a rule which would permit the granting of a 2% discount to retail dealers on certain sizes, namely, lump, egg, nut and stove, if invoices were paid within ten days immediately following shipment. We are of the opinion that the Act does not authorize this Commission to establish a rule which would permit the granting of

a 2% cash discount to retail dealers if payment is made within ten days after date of shipment, where the granting of such discount would result in reducing the invoice price below the applicable minimum price.

7. On the basis of the testimony of the witness Brown and all the District Board witnesses, we find that Rule 1 (G) of Section VII, Exhibit R–19, which is the same as Rule 1 (G) of Section VII of the Appendix of Exhibit R–21, is reasonable and necessary to prevent evasions of established prices by means of false claims and to properly enforce the Rules and Regulations relating to the adjustment of claims based on substandard preparation or quality.

8. On the basis of the testimony of the witness Brown and all the District Board witnesses, we find that Rule 1 (H) of Section VII of Exhibit R–19, which is the same as Rule 1 (H) of Section VII of Exhibit R–21, is reasonable and necessary to insure payment of accounts when due; that in the absence of such a rule, it would be possible for a Code Member and a consumer to enter into an agreement under which the purchase price would not be paid until after the expiration of the Act, since the constitutionality of any provision of the Act might not be determined until the time of such expiration or thereafter; and that such an agreement would defeat the very purpose for which the Act was passed.

9. On the basis of the testimony of the witness Brown and all the District Board witnesses, we find that to the extent that a buyer may withhold payment after the customary term of credit, he has a substantial benefit by the use of the money; that if interest were not required to be charged where parties agreed to extend credit after the due date of the account, rebates could be granted in the form of the value of the use of the money; that it is necessary and reasonable to provide that interest must be charged where the due date of account is extended by the agreement of the parties, express or implied, or where payment is made by note, trade acceptance or other forms of indebtedness. Upon the basis of the testimony of the witnesses for District Boards Nos. 1, 2, 3, 4, 6, 7, 8, and 13, we find that the rate of interest to be charged should be definite and that a provision that the rate should be the current rate in the locality to which the coal is shipped to the vendee, which provision is contained in Rule 1 (I) of Section VII of Exhibit R–19, which is the same as Rule 1 (I) of Section VII of Exhibit R–21, puts a burden on a Code Member with which he might conceivably have considerable difficulty in complying; and that it is reasonable to provide that the rate of interest charged should be not less than 5% per annum. Accordingly, we find that Rule 1 (I) of Section VII of Exhibit R–19, which is the same as Rule 1 (I) of Section VII of the Appendix of Exhibit R–21, 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 rate of not less than five (5%) per centum per annum.

10. On the basis of the testimony of the witness for District Board No. 16, we find that the following rule is reasonable and necessary for said district:

Every Code Member or his Sales Agent shall each month report to the Statistical Bureau, and the District Board for the District in which he is located, every case in which an overdue payment or a note, trade acceptance, or other form of indebtedness, has been accepted in settlement of any account, setting forth all conditions of such overdue payment, note, trade acceptance, or other form of indebtedness.

11. Upon the basis of the testimony of the witness Brown and all the District Board witnesses except the witness for District Board No. 20, we find that it has been customary in the industry to prepay freight on shipments to pre-pay stations as published in current railway tariffs and on shipments to the United States Government, states or political sub-divisions thereof; that it is reasonable and necessary to prevent the prepayment of transportation charges on other shipments, except as authorized in the minimum price schedules, in order that producers who are able to prepay transportation charges will not secure an unfair advantage over producers who are not able to do so. Accordingly, we modify Rule 1 (J) of Section VII of Exhibit R–19, which is the same as Rule 1 (J) of Section VII of Exhibit R–21, to read as follows:

Transportation charges shall not be paid by a Code Member, his Sales Agent, or a Distributor, except to pre-pay stations as published in current railway tariffs or on shipments to the United States Government, states or political sub-divisions thereof, and except as authorized in the minimum price schedules. Where freight is thus prepaid, except as authorized in the minimum price schedule, the amount thereof shall immediately, upon receipt of the freight bill or notice of sight draft payment, be invoiced to the buyer for immediate payment.

12. On the basis of the testimony of the witness Brown and the witnesses for District Boards Nos. 7, 8, 10, 11, 15, 16, 17, 18, 19, 20, and 23, we find that in the absence of Rule 1 (K), Section VII of Exhibit R–19, which is the same as Rule 1 (K) of Section VII of the Appendix of Exhibit R–21, Code Members could claim that although they sold coal at not less than the minimum price they cannot for various reasons collect such price and are therefore justified in accepting settlement of a lesser amount; that it would be extremely difficult to determine the bona fides of any settlement of an account made below the applicable minimum price; and that, accordingly, Rule 1 (K) of Section VII, Exhibit R–19, which is the same as Rule 1 (K) of Section VII of the Appendix of Exhibit R–21, is reasonable and necessary. However, so that this rule may not be construed as being contradictory to the rules contained in Section X of Exhibit R–19 and Section X of the Appendix of Exhibit R–21, which rules permit the granting of allowances for coal of substandard preparation or quality, we modify this rule to read as follows:

Except as provided in Section X of these Rules and Regulations, no Code Member, Sales Agent, or a Distributor 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, his Sales Agent, or a Distributor, 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 the making thereof.

13. We find that Rule 1 (L) of Section VII of Exhibit R–19, which is the same as Rule 1 (L) of Section VII of the Appendix of Exhibit R–21, is reasonable and necessary in that it puts Code Members on notice that they are not required to extend the terms of credit herein authorized.

14. We find that the following rule is reasonable and necessary because it makes clear what otherwise is implied in the rules, namely, that an implied agreement to extend credit for a period longer than that authorized by the rules and regulations is a violation of the Code, and, further, because it is reasonable to presume that such an implied agreement exists where there is a continued sale and delivery to a purchaser who defaults in payment within the maximum period prescribed and where there is no payment of interest or enforcement of a claim for interest by the Code Member:

The agreement by a Code Member, his Sales Agent or a Distributor, express or implied, to extend credit to his vendee for a period longer than that authorized by these Rules and Regulations, with the effect of violating the applicable minimum prices or the Unfair Methods of Competition prohibited by the Act, shall constitute a violation of these Rules and Regulations and of the Code. The continued sale and delivery by a Code Member, his Sales Agent or Distributor, to his vendee who defaults in payment within the applicable maximum period of credit herein prescribed, in the ab-

sence of payment of interest or the enforcement by the Code Member, his Sales Agent or Distributor, of the claim for interest, shall establish a prima facie presumption of the existence of such implied agreement.

H. With Respect to the Evidence Relating to the Rules Contained in Section VIII of Exhibit R–19 and Section VIII of the Appendix of Exhibit R–21

1. Upon the basis of the testimony of the witness Brown, and all the District Board witnesses, we find that it is reasonable to establish rules which will provide the Commission with uniform copies of analyses which are truly representative of a Code Member's coal; that in order properly to enforce paragraph 8, Section 4, Part II (i) of the Act which makes the intentional misrepresentation of any analysis or analyses an unfair method of competition, it is necessary to have certain rules relating to the use of analyses; that analyses are relevant in determining the proper classification of coal produced by the Code Member; that it is reasonable to provide that Code Members when utilizing coal analyses in the sale or offer for sale of any coal shall file a report of such analyses with the Statistical Bureau and District Board for the district in which the coal is produced; that it may very well be that a Code Member cannot procure a particular sample of coal which will fairly state the average character of the product regularly produced, and that in order to state that the analysis is truly representative of the grade and size of coal offered for sale the Code Member may have to rely upon the average of a number of samples and a number of analyses; that it is more reasonable to provide for the filing of a report of an analysis than for the filing of a single analysis made by a certain chemist on a certain date. Upon the basis of the testimony of the witness Brown and the witnesses for District Boards Nos. 3, 7, 8, 10, 11, 15, 16, 17, 18, 19, 20, and 23, we find that it is reasonable to provide that such report shall state the name of the Code Member, the name of the mine, the name or the geological number of the seam or seams from which the coal is produced, the name of the size of coal, and, if screened, the dimensions of the screen or screens over which the coal is prepared; that it is reasonable to provide that the report shall state whether or not the analysis is representative of the entire production of such size 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; that it is reasonable to provide that the Code Member shall report that the analysis is representative of the grade and size of 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 same quality and character as shown by the analysis. Upon the basis of the testimony of the witness for District Board No. 7, we find that a full proximate analysis, showing moisture content, ash, volatile matter, fixed carbon, sulphur and British thermal units and ash-softening temperature, is not always used in the sale of coal; that all the items contained in a full proximate analysis may not be of interest to all purchasers of coal; that it is impractical to require that a full proximate analysis be used whenever coal is sold upon an analysis basis; that where a Code Member utilizes an analysis which does not include all the items of a full proximate analysis, he should be permitted to file a report of such analysis as is utilized by him in the offering and selling of his coal. Upon the basis of the testimony in the record and the foregoing findings of fact, we find that Rule 1 of Section VIII of Exhibit R–19 and Rule 1 of Section VIII of the Appendix of Exhibit R–21 should be modified to read as follows:

No analysis of coal shall be utilized by a Code Member, his Sales Agent or a Distributor, in selling or offering for sale any coal produced by a Code Member, whether or not the analysis is a term in the offer or sale, unless the Code Member, the Sales Agent or the Distributor shall have filed with the Statistical Bureau or Bureaus and the District Board for the District in which the coal is produced, a report of 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 or mines.

(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, and also sulphur and British thermal units and ash softening temperature: *Provided,* That if in offering or selling coal the Code Member, Sales Agent, or Distributor utilizes an analysis which does not include all the items enumerated in this clause (g), he may file a report of such analysis as is utilized by him in offering and selling his coal.

2. Upon the basis of the testimony of the witness Brown, and also upon the basis of the testimony of the witnesses for District Boards Nos. 7, 10, 11, 15, 16, 17, 18, 19, 20, and 23, who were of the opinion that Rule 2 of Section VIII of Exhibit R–19 is reasonable and necessary, we find that it is reasonable and necessary to require that 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 and the District Board. We further find that if a consumer of coal is informed of the fact that an analysis which is used in the sale of coal has been properly filed, he can determine by an inspection of the analysis which is on file whether the analysis used in the sale is the same and thus aid the Commission in enforcing paragraph 8 of Section 4, Part II (i) of the Act, which makes the intentional misrepresentation of analysis a Code violation, and also aid the Commission in enforcing the rule which requires that every analysis used in the selling of coal must be filed with the Statistical Bureau; accordingly, we find that Rule 2 of Section VIII of Exhibit R–19, which is the same as Rule 2 of Section VIII of the Appendix of Exhibit R–21, is reasonable and necessary. However, for the purpose of clarification we modify this rule so as to delete the words "the Coal Commission."

3. On the basis of the testimony of the witness Brown, and the testimony of all the District Board witnesses who supported Rule 3 of Section VIII of Exhibit R–19, which is the same as Rule 3 of Section VIII of the Appendix of Exhibit R–21, we find that it is reasonable and necessary for the purpose of enforcing paragraph 8 of Section 4, Part II (i) of the Act, and also to aid in the discovery of the use of the analyses which have not been filed, to permit the inspection by interested persons of analyses at the office of the Statistical Bureau and, further, to provide that analyses filed with the Commission may be used for the proper classification of coal produced by the Code Member, since the analysis of coal plays an important part in determining proper classification of coals and since such requirement is a safeguard that an analysis filed with the Commission will be truly representative. We are of the opinion that such inspection should be permitted not only at the office of the Statistical Bureau, but also at the office of the Commission at Washington,

D. C. Accordingly, we find that Rule 3 of Section VIII of Exhibit R–19 and Rule 3 of Section VIII of the Appendix of the Exhibit R–21 should be modified so as to provide that inspection may also be made at the office of the Commission at Washington, D. C.

4. Upon the basis of the testimony of the witness Brown and all the District Board witnesses, we find that in order that the Commission may properly supervise the adjustments of prices so as to discover violations of minimum prices, it is necessary that when an analysis is used as a basis for such an adjustment, it shall be filed with the Commission; and, accordingly, we find that Rule 4 of Section VIII of Exhibit R–19, which is the same in substance as Rule 4 of Section VIII of the Appendix of Exhibit R–21, is reasonable and necessary. However, we are of the opinion that this rule should be modified so as to provide that the analysis should be filed not later than the last day of the month following the month in which the adjustment is made.

5. Upon the basis of the testimony of the witness Brown, and all the District Board witnesses, except the witness for District Board No. 8, we find that in order to determine whether agreements or orders made upon a premium and penalty basis are in violation of the minimum prices and rules and regulations, it is reasonable to provide that no agreement or order for the sale of coal made upon a penalty or a premium and penalty basis shall be entered into unless the analysis upon which the premium and penalty clause is based has been previously filed, and unless such analysis is accompanied by a statement setting forth in full the terms of the premium and penalty provisions of the agreement or order. Accordingly, we find that Rule 5 of Section VIII of Exhibit R–19 is reasonable and necessary.

6. Upon the basis of the testimony of the witness Brown, and the witnesses for District Boards Nos. 1, 2, 3, 4, 6, 11, 13, 15, 16, 17, 18, 19, 20 and 23, we find that it is reasonable to provide that there is a violation of the marketing rules and regulations only if the aggregate contract price paid under a premium and penalty contract is below the applicable minimum price or prices for the entire tonnage shipped under the contract; that the test of whether the aggregate contract price is below the minimum price for all the tonnage shipped under contract is reasonable, since it does not entirely prohibit the making of penalty and premium contracts which have the effect of temporarily reducing the price of the tonnage for any individual shipment thereunder below the applicable minimum price for such individual shipment. Upon the basis of the testimony of the witnesses for District Boards Nos. 1, 2, 3, 4, 6, and 13, we find that the proviso in Rule 6 of Section VIII of Exhibit R–19 and the proviso in Rule 5 of Section VIII of the Appendix of Exhibit R–21 is unnecessary and should be deleted.

I. With Respect to the Evidence Relating to the Rules Contained in Section IX of Exhibit R–19, and Section IX of the Appendix of Exhibit R–21

1. Upon the basis of the testimony of the witness Brown and the testimony of all the District Board witnesses, we find that where coal is refused in transit or at destination, the Code Member must dispose of the same as quickly as possible in order to minimize expenses and charges incident to the storing of the coal; that the only practical solution of this problem is to permit the Code Member to sell the same at the best obtainable price, and to provide that he must file a statement giving all the necessary information from which the Commission can determine whether there has been a bona fide refusal in transit or whether the Code Member has in effect violated the minimum prices. Upon the basis of the testimony of the witness for District Board No. 1, which was concurred in by witnesses for Districts Nos. 2, 4, 6 and 13, we are of the opinion that Rule 1 of Section IX of Exhibit R–19, which is the same as Rule 1, of Section IX of the Appendix of Exhibit R–21, would be less burdensome if the Code Member were required to file a copy of the invoice to the consignee and a copy of the invoice to the purchaser upon resale along with a statement containing the information desired by the Rule and not contained on such invoices. We are of the opinion that such a modification is reasonable and should be made. Accordingly, we modify Rule 1 of Section IX of Exhibit R–19, and Rule 1 of Section IX of the Appendix of Exhibit R–21 to read as follows:

Where coal is refused by a consignee in transit or at destination, the Code Member, his Sales Agent, or a Distributor may sell the same at the best obtainable price, provided that in each case the Code Member, the Sales Agent or the Distributor, shall file with the Statistical Bureau, or Bureaus, and the Code Member or his Sales Agent shall file with the District Board for the District in which the coal is produced, within ten (10) business days from the date of such resale, a copy of the invoice to the consignee, a copy of the invoice to the purchaser upon the resale, and a statement giving the following information:

(a) Reasons for the refusal;

(b) Facts resulting from the investigation of the complaint;

(c) Amount of compensation, if any, paid upon the resale;

(d) 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;

(e) 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. Upon the basis of the testimony of the witness Brown, and all District Board witnesses, except the witness for District Board No. 8, we find that it is reasonable and necessary in order to police the reconsignments of coal to provide that Code Members shall furnish to the District Board and to the Statistical Bureau full reports of all reconsignments. Furthermore, we have established as reasonable and necessary certain rules which require every spot order and contract to contain the condition that, in the case the coal is applied by the buyer to a use other than for which it was purchased, the seller shall charge and the buyer shall pay not less than the applicable minimum price for the use to which the coal is actually applied. In order to police these rules and to prevent evasions of minimum prices based on the use to which the coal is to be applied, we are of the opinion that a Code Member should likewise make a full report to the Statistical Bureau and the District Board every month of all changes in use made during the preceding calendar month. Accordingly, we find that Rule 2 of Section IX of Exhibit R–19, which is the same as Rule 2 of Section IX of the Appendix of Exhibit R–21, should be modified to read as follows:

All Code Members, or their Sales Agents, or Distributors, shall on or before the last day of each month furnish to the District Board and the Statistical Bureau for the District in which the coal originated full reports of all changes in use and all reconsignments and/or diversions made during the preceding calendar month, and shall authorize the carrier making such reconsignments to furnish complete information thereon to such Statistical Bureau: *Provided, however,* That a Distributor is not required by this rule to make reports of reconsignments and changes in use to any District Board.

J. With Respect to the Evidence Relating to the Rules Contained in Section X of Exhibit R–19 and Section X of the Appendix of Exhibit R–21

1. Upon the basis of the testimony of the witness Brown and all the District Board witnesses, we find that there are many instances of legitimate claims for substandard preparation or quality; that some provision must be made for the allowance of such claims, even though the effect of granting such allowances would be to reduce the price of the coal below the applicable minimum price established by the Commission; that it is reasonable and necessary, in order that the Commission may properly police the granting of such allowances, that a report of the circumstances and conditions surrounding the allowance of such claims should be filed with the Commission; that it has been customary in the industry to allow legitimate claims where, due to an error on the part of the

shipper, the buyer has incurred additional expense in accepting the shipment; that it is entirely possible that the fact of substandard quality may not be discovered by the inspection of the coal, particularly in the case of slack or other fine sizes; that a provision in the rule that the allowance must be made on or before the maturity date of the invoice is unreasonable, since the fact of substandard quality may not be discovered until after that date; and that it is unreasonable and unduly burdensome to require that a written claim executed by or on behalf of the buyer should be verified by affidavit. Accordingly, we find that Rules 1 and 2 of Section X of Exhibit R–19, and Rules 1 and 2 of Section X of the Appendix of Exhibit R–21, should be modified to read as follows:

Where any claim of allowance or counterclaim is requested by a buyer for any delivery of coal claimed to be substandard in preparation or quality, or where it is claimed by the buyer that due to an error on the part of the shipper the buyer has incurred additional expense in accepting the shipment, the Code Member, his Sales Agent, or a Distributor may, within a reasonable time after delivery of the coal, make settlement and agree with the buyer upon an amount reasonably to be deducted for such inferior coal or on account of such error and may accept payment therefor at less than the applicable minimum price: *Provided*, That in each such case the Code Member, the Sales Agent, or the Distributor, shall within ten (10) business days after granting such allowance file with the District Board of the District in which the coal originated and the Statistical Bureau of the Coal Commission a verified statement giving the following information, except that the Distributor is not required to file such statement with the District Board:

(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, his Sales Agent, or a Distributor shall also file, together with the statement, a written claim duly executed by or on behalf of the buyer setting forth the amount claimed by way of deduction and the reasons for the complaint.

All such adjustments and allowances shall be subject to review by the Coal Commission.

K. With Respect to the Evidence Relating to the Rule Contained in Section XI of Exhibit R–19, the Rule Relating to Substitution Proposed for Districts Nos. 14, 16, 18, and 23, and Contained on the First Page of Exhibit R–21 and the Rule Relating to Substitution Proposed for District No. 20 and Contained on the First Page of Exhibit R–22

1. Upon the basis of the testimony of the witness Brown and all the District Board witnesses who testified in the hearing in support of a rule relating to substitution, we find that in the screening of coal into the various sizes required by consumers, the mine siding or storage tracks at the mine tipple at times become blocked with cars of one or more sizes which cannot be sold currently with the other sizes produced; that this is due in large part to seasonal demand for the sizes that cannot be sold currently; that this condition causes the mine to discontinue operation until such time as the surplus can be disposed of; that in order to balance the movement of sizes under such condition it has been the practice of the industry to induce a purchaser to accept one or another of the surplus sizes in lieu of the size he has purchased; that such substituted size may actually be of less value to the particular consumer because it is not so well suited to the consumer's burning equipment or use to which the coal is put as the size ordered by him; that familiar illustrations of such substitutions occur in the Spring and early Summer when household sizes, as lump, egg and others, are necessarily produced in volume in excess of market demand in order to produce the industrial sizes, as slack and stoker coal for which the demand is more stable and uniform throughout the year; that undue hardship would result to the industry unless this practice were permitted to continue; and that therefore a rule permitting the 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 spot order or contract is reasonable and necessary.

2. Upon the basis of the testimony of the witness Brown and all the District Board witnesses who testified in support of a rule relating to substitution, we find that a rule relating to substitution should prevent a Code Member from making an agreement with the purchaser whereby he agrees to sell him a size of coal which the purchaser does not desire with the understanding that he will substitute a desired size which carries a higher minimum price; and that it is reasonable and necessary, in order to prevent such evasion, that a rule relating to substitution provide that the substitution cannot be made except upon the following condition:

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

3. Upon the basis of the testimony of the witness Brown and all the District Board witnesses who testified in the hearing in support of a substitution rule, we find that it is reasonable and necessary to provide, as a condition in the substitution rule, that the coal to be substituted cannot be promptly sold by the exercise of the usual sales effort and that the substitution must be limited to a specific tonnage for shipment on a specific spot order or contract and from a specific mine.

4. Upon the basis of the testimony of the witnesses for District Boards Nos. 1, 2, 3, 4, 6, and 7, we are of the opinion that that portion of clause (b) of rule 1 of Section XI of Exhibit R–19, which is the same as clause (b) of the substitution rule contained in Exhibit R–21, which clause would restrict substitution to coal already produced and loaded in transportation facilities, is unreasonable because it prohibits a Code Member from obtaining a substitution permit with respect to coal which the Code Member reasonably anticipates cannot be sold and that, accordingly, the mine would have to cease operation until the permit authorizing substitution were issued; that this is illustrated in the case of a mine which has a small track facility for the storage of unsold coal. Furthermore, we are of the opinion that the restriction that the coal must be loaded in the transportation facilities would prevent mines other than rail mines from substituting coal on outstanding orders, since coal at these mines could not in all cases be stored in transportation facilities. We find that the restriction is unduly burdensome as compared to its possible value in preventing evasions, and that it would discriminate against mines other than rail mines. Therefore, we modify rule 1 (b) of Exhibit R–19, which is the same as clause (b) in the substitution rule for Districts Nos. 14, 16, 18, and 23, in Exhibit R–21, to read as follows:

The coal substituted must be either coal which the Code Member has already produced and loaded into transportation facilities or coal which the Code Member is about to produce, and which substituted coal, in either case, cannot be sold promptly by the exercise of the usual sales effort. Such substitution must be limited to a specific tonnage for shipment on a specific spot order or contract and from a specific mine.

5. Upon the basis of the testimony of the witness Brown, and all the District Board witnesses who testified in support of a substitution rule, we find that it is reasonable and necessary, in order to

prevent the violation of minimum prices through the use of substitution, to provide that substitutions may be made only upon the condition that the substitution is necessary as a temporary and emergency measure in order to continue the operation of the mine of the Code Member. Accordingly, we find that Rule 1 (c) of Section XI of Exhibit R–19, which is the same as Rule 1 (c) of the Substitution Rule for Districts Nos. 14, 16, 18 and 23, is reasonable and necessary. However, for the purpose of clarification, we find that said rule should be modified to read as follows:

The substitution must be necessary as a temporary and emergency measure in order to continue the operation of the mine of the Code Member.

6. Upon the basis of the testimony of the witness Brown, we find that it is reasonable to provide that the substitution shall not be made except with the authorization of the purchaser; and upon the basis of the testimony of the witness Brown and all District Board witnesses who testified in the hearing in support of the substitution rule, we find further that in order to prevent evasion of minimum prices by substitution it is reasonable to provide that the substitution shall not be made with the purpose or effect of conferring any advantage on the purchaser or of securing any preference or advantage for the Code Member over his competitors. Accordingly, we find that rule 1 (d) of Section XI of Exhibit R–19 and rule 1 (d) of the substitution rule for Districts 14, 16, 18 and 23, should be modified to read as follows:

The substitution shall not be made except with the authorization of the purchaser and it shall not be made with the purpose or effect of conferring any advantage on the purchaser or of securing any preference or advantage for the Code Member over his competitors.

7. Upon the basis of the testimony of the witness Brown and the testimony of the witnesses for District Boards Nos. 11, 15, 16, 17, 18, 19, 20, and 23, we are of the opinion that substitutions should not be permitted to be made except upon the approval of a duly designated representative of the Commission and that 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. We are further of the opinion that the applications for substitution should be submitted to the Statistical Bureau. Upon the basis of the testimony of the witnesses for District Boards Nos. 1, 3, 4, 6, 7, and 11, we find that since the necessity of substitution is to meet an emergency situation at the mine, the rules should provide for a method which will permit quick application and will expedite issuance of substitution permits; accordingly, we are of the opinion that the Code Member should be permitted to make informal application by telegraph for a substitution permit, setting forth briefly the substance of the information as required in the formal application for a permit, but that in such case the Code Member shall immediately confirm the telegraphic application by submitting the formal application for substitution provided by the Commission. We are of the further opinion that the rule should provide that if the telegraphic application for substitution is approved, an informal telegraphic permit may be issued prescribing the conditions of the substitution in each case so approved, and that upon the approval of the formal application for substitution, the informal permit shall be confirmed by the issuance of the formal permit as provided by the rule. Upon the basis of the testimony of the witness for District Boards Nos. 1, 2, 3, 4, 6, 7, and 13, we find that the District Boards can be of valuable aid to the Commission in evaluating the merits of requests for substitution and that, accordingly, the rule should provide that if a District Board so desires it may appoint a representative who may propose recommendations to the duly designated representative of the Commission with respect to such applications for substitutions as are submitted to the Statistical Bureau of the District. Accordingly, we find that paragraph (e) of rule 1 of Section XI of Exhibit R–19, which is the same as paragraph (e) of the rule relating to substitution for District Boards Nos. 14, 16, 18, and 23, contained in Exhibit R–21, should be modified to read as follows:

Such substitution may only be made with the approval of a duly designated representative of the Coal Commission and in each instance formal application therefor shall be made by the Code Member upon forms provided by the Commission. The application is to be submitted to the Statistical Bureau of the District. If such application is approved, a written formal permit shall be issued prescribing the conditions in each case so approved.

The Code Member may make informal application by telegraph for a substitution permit setting forth briefly the substance of the information as required in the formal application. In such case, the Code Member shall immediately confirm the telegraphic application by submitting the formal application for substitution provided by the Commission.

If the telegraphic application for substitution is approved, an informal telegraphic permit may be issued prescribing the conditions of substitution in each case so approved. Upon approval of the formal application for substitution, the informal permit shall be confirmed by the issuance of the formal permit as herein provided.

If a District Board so desires, it may appoint a representative who may propose recommendations to the duly designated representative of the Commission with respect to such applications for substitution as may be submitted to the Statistical Bureau of the District.

8. Upon the basis of the testimony of the witness for District No. 6 we find that due to the fact that the efficiency of railroad locomotives is entirely at a different level than the efficiency of stationary steam plants, railroads can use both higher and lower grade coals at relatively the same efficiency; that the substitution of sizes having a higher minimum price on railroad fuel contracts would generally not confer any substantial advantage to the railroad; and that the freedom of substitution on railroad fuel contracts would not, within reasonable limits, create any advantage for the railroad. Upon the basis of the testimony of the witnesses for District Boards No. 1, 2, 3, 4, 6, 7, 16, 17, 18, 19, and 23, we find that to permit the Code Member to substitute on railroad fuel orders will give him the flexibility which he needs in order to balance his sizes and keep his mine in continual operation. Upon the basis of the testimony in the record and the foregoing findings of fact, we find that the following rule is reasonable and necessary:

Substitution may be made by Code Members on spot orders and/or contracts for railroad fuel without prior approval of the representative of the Commission: *Provided, however,* That the Code Member immediately shall file the form prescribed by the Commission with the Statistical Bureau. All substitutions made without the prior approval of the representative of the Commission which are in violation of conditions (a), (b), (c), and (d), of this rule will be deemed to be sales of coal below the established minimum price.

9. Upon the basis of the testimony of all the District Board witnesses who testified in the hearing in support of a substitution rule, we find that the District Boards can be extremely valuable to the Commission in the matter of policing a substitution rule. Upon the basis of the testimony of the witness Brown and the witnesses for District Boards Nos. 16, 17, 18, 19, and 23, we find that rule 1 (f) of Section XI of Exhibit R–19, which is the same as paragraph (g) of the substitution rule for Districts Nos. 14, 16, 18, and 23, contained in Exhibit R–21, is reasonable and necessary. Upon the basis of the testimony of the witness Brown and all District Board witnesses who testified in support of the substitution rule except the witness for District Boards Nos. 17 and 19, we find that it is necessary, in order properly to police the substitution rule to provide that in the case of coal

shipped under the substitution permit, the invoice for such coal shall specifically show the substitution permit number and the size and grade of coal so substituted. Accordingly, we find that rule 1 (g) of Section XI of Exhibit R–19, which is the same as paragraph (h) in the substitution rule for Districts Nos. 14, 16, 18, and 23, contained in Exhibit R–21, is reasonable and necessary.

The witness for District Board No. 1 testified in support of the substitution rule appearing in Section XI of Exhibit R–1, which is the Report of the Representatives for District Boards Nos. 1 to 8 on Coordinated Marketing Rules and Regulations. Paragraph 5 of Section XI of Exhibit R–1 contains the clause that 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. While the necessity for permitting substitutions on coal sold to retail dealers may not be as great as the necessity for permitting the substitution of coal sold to other consumers, we are of the opinion that a provision in the rule prohibiting substitutions on coal sold to retail dealers would make the rule discriminatory. The duly designated representative of the Commission, in determining whether a substitution will confer any advantage on the purchaser, must necessarily take into consideration the fact that the substitution upon a spot order or a contract made with a retail dealer of a grade or size of coal taking a minimum price higher than that specified in such spot order or contract will generally confer upon the retail dealer an advantage since such retail dealer may obtain a higher price in the resale of such coal.

As previously stated, District Board No. 20, upon receiving the Report of its Representative on Coordinated Marketing Rules and Regulations, Exhibit R–9, modified the rule relating to substitution. The witness for District No. 20 testified in support of such modified rule which is contained on page 1 of Exhibit R–22. This rule permits, without the prior approval of the Commission, the substitution of 1⅝" slack for 1" slack in not less than cargo or railroad carload lot shipments, if made directly to industrial consumers by Code Members. On the basis of the testimony in the record, we find that District No. 23 was unwilling to coordinate this proposed substitution rule in certain market areas where District No. 23 competes with District No. 20; that this rule would be discriminatory against Code Members of District No. 23 shipping in competition with Code Members of District No. 20. Accordingly, we find that the rule proposed by District No. 20 is not reasonable and therefore cannot be adopted as a coordinated marketing rule and regulation. The witness for District No. 20 offered as an alternative to the rule proposed by the District Board the rule proposed by District Boards Nos. 16, 18, and 23, with the addition that the rule should contain the clause that 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. As previously stated we are of the opinion that such a clause should not be contained in the substitution rule.

10. The witness for District Board No. 10 proposed that Section XI of Exhibit R–19 be eliminated in its entirety as applied to Minimum Price Area No. 2. However, the witness testified that the members of District Board No. 10 assumed that the regulations in connection with the prices for railroad locomotive fuel to be supplied from mines in that price area will permit substitutions with respect to such fuel, as proposed by the District Board, and that the Board is of the opinion that such privilege, with no limitation on crushing, is sufficient. Upon the basis of the testimony of the witness for District Board No. 11, we find that the substitution of one size of coal on an order for another size of coal, as far as Code Members in District No. 11 are concerned, is essential to the continuous operation of a coal mine and, therefore, a substitution rule for District No. 11 permitting substitutions of railroad fuel and other coal, is reasonable and necessary. Accordingly, we find that it would be unreasonable not to establish a substitution rule for Code Members in Minimum Price Area No. 2 permitting substitution on all coal.

L. With Respect to the Evidence Relating to the Rules Contained in Section XII of Exhibit R–19, and Section XI of the Appendix of Exhibit R–21

1. Upon the basis of the testimony of the witnesses for District Boards Nos. 1, 2, 4, 6 and 13, we find that Rules 1, 2, and 3 under the caption *General* of Section XII of Exhibit R–19 and Rules 1, 2, and 3 under the caption *General* of Section XI of the Appendix of Exhibit R–21 should be deleted for the reason that these rules are contained in the Act.

2. On the basis of the testimony of the witness for District Board No. 8, we find that Rule 4 under the caption *General* of Section XII of Exhibit R–19, which rule is the same as Rule 4 under the caption *General* of Section XI of the Appendix of Exhibit R–21, is too refined and should be modified to read as follows:

If, in converting a net or gross ton price, freight rate or freight rate differential, the calculation extends to more than two (2) decimals, and the third decimal is 0.005 or more, it shall be added as 0.01, and if under 0.005, it shall be eliminated.

3. Upon the basis of the testimony of the witness Brown and all the District Board witnesses, we find that it is reasonable and necessary to provide that all coal shall be sold and invoiced on a price per ton basis, and also under the size, price classification, and other designation shown therefor in the price schedule published by the Commission for the reason that it is necessary to establish a uniform procedure and method to govern the selling and invoicing of coal; and for the further reason that in the absence of the rule the Commission must either establish supplementary prices based simply on thermal efficiency, or else the Commission must undertake to translate sale made on a British thermal unit based into a price per ton basis in order to determine whether or not the minimum prices have been violated. Accordingly, we find that Rule 5 under the caption *General* of Section XII of Exhibit R–19, which is the same as Rule 5 under the caption *General* of Section XI of the Appendix of Exhibit R–21 is reasonable and necessary.

4. We find that Rule 6 under the caption *General* of Section XII of Exhibit R–19, which is the same as Rule 6 under the caption *General* of Section XI of the Appendix of Exhibit R–21, is reasonable and necessary for the reason that it puts Code Members on notice that the failure to file the information required or the willful filing of false information will subject the parties to the penalty prescribed by the Act and to the other penalties imposed by law.

5. In the light of the testimony for District Board No. 16, we are of the opinion that the following rule and regulation is reasonable and necessary for District No. 16:

Pea or slack coal shall not be loaded for shipment in box cars.

6. In order that there may not be any misunderstanding as to the application of the Commission's rules and regulations, we are of the opinion that the following statement should be contained in the rules and regulations as paragraph 4 under the caption *General* of Section XII:

Except where the context of the rule indicates the contrary, these rules and regulations are applicable to transactions and in circumstances wherein the transgression thereof would result in either the violation of the applicable minimum price as established by the Coal Commission or of the prohibited Unfair Methods of Competition.

7. Upon the basis of the testimony of the witness Brown and all the District Board witnesses, we find that it is reasonable and necessary to prohibit deductions or allowances from the invoice price to any purchaser for advertising, which would have the effect of reducing the invoice price below the applicable minimum price. We further find that it is reasonable to provide that Code Members may conduct advertising campaigns seeking to increase the use of coal, and that the amount of expenditures incurred will be subject to review by the Coal Commission as to whether or not there has been any violation of the minimum prices or unfair methods of competition. Accord-

ingly, we find that Rules 1 and 2 under the caption *Advertising* of Section XII of Exhibit R–19, which are the same as Rules 1 and 2 under the caption *Advertising* of Section XI of the Appendix of Exhibit R–21, should be modified to read as follows:

1. No deduction or allowance from invoice prices shall be granted by any Code Member, his Sales Agent or a Distributor to any purchaser for advertising which would have the effect of reducing the invoice price below the applicable minimum price.

2. Code members or their agents or representatives or Distributors 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, or a Distributor for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.

8. We find that Rule 1 under the caption *Screening For Buyer's Account* of Section XII of Exhibit R–19, which is the same as Rule 1 under the caption *Screening for Buyer's Account* of Section XI of the Appendix of the Exhibit R–21, is reasonable and necessary for the reason that if a Code Member were permitted to sell coal on a mine-run basis and screen it out for the purchaser, the total cost of the coal to the purchaser on a mine-run basis might be less than the aggregate minimum price for such size of coal and thus the minimum price could be evaded.

9. It is our opinion that this Commission has no jurisdiction to establish a rule of damages for coal confiscated or lost in transit. We are of the opinion that Rule 1 under the caption *Coal Confiscated or Lost in Transit* of Section XII of Exhibit R–19, which is the same as Rule 1 under the caption *Coal Confiscated or Lost in Transit* of Section XI of the Appendix of Exhibit R–21, is such a rule and, accordingly, we do not approve it. The Commission's jurisdiction in this matter is limited to preventing evasions of minimum prices and, therefore, we are of the opinion that the following rule is reasonable and necessary:

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 sale to the carrier at the place of confiscation or loss.

In the light of the testimony of all the District Board witnesses at the hearing supporting said rule, we are of the opinion that Rule 1 under the caption *Revision of Marketing Rules and Regulations* of Section XII of Exhibit R–19 which is the same as Rule 1 under the caption *Revision of Marketing Rules and Regulations* of Section XI of the Appendix of the Exhibit R–21 is reasonable and necessary.

We are of the opinion that the Unfair Methods of Competition contained in Section 4, II (i) of the Act and the applicable penalties established by the Bituminous Coal Act of 1937 and by other Acts of Congress should be included in the Marketing Rules and Regulations.

As previously stated, it is likewise our opinion that a rule, the text of which refers to the persons who are to be bound by it, should, in order to prevent misinterpretation as to its applicability, refer to a Distributor if such rule is applicable to him and should omit reference to a Distributor if the rule is not applicable to him. A rule which does not refer specifically to the persons who are to be bound by it is applicable to Code Members, Sales Agents and Distributors.

CONCLUSION

Upon the basis of all the evidence adduced at the hearing and upon the basis of the foregoing Findings of Fact and Conclusions, we find and conclude that the Rules and Regulations hereinafter set forth under the caption "Marketing Rules and Regulations Incidental to the Sale and Distribution of Coal (Within The Domestic Market As Described In The Bituminous Coal Act Of 1937) by Code Members within Districts Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22 and 23" are reasonable and necessary, are not inconsistent with the requirements of Section 4 of the Act, are in conformance with the standards of fair competition established by Section 4, II (i) of the Act, are properly coordinated in common consuming market areas upon a fair competitive basis, and are therefore in conformance with the standards of Section 4, II (a) and (b) of the Act.

By the Commission.

Dated this 25th day of May 1939.

[SEAL] PERCY TETLOW,
Chairman.

[F. R. Doc. 39–1947; Filed, June 6, 1939; 10:33 a. m.]

TITLE 43—PUBLIC LANDS

GENERAL LAND OFFICE

AIR NAVIGATION SITE WITHDRAWAL NO. 128

NEW MEXICO

MAY 24, 1939.

It is ordered under and pursuant to the provisions of section 4 of the act of May 24, 1928, 45 Stat. 728, that the following-described public land in New Mexico be, and it is hereby, withdrawn from all forms of appropriation under the public-land laws, subject to valid existing rights, for the use of the Civil Aeronautics Authority in the maintenance of air navigation facilities:

New Mexico Principal Meridian

T. 4 S., R. 1 E., sec. 10, NW¼SW¼, 40 acres.

And departmental order of April 8, 1935, creating New Mexico Grazing District No. 4, is hereby modified and made subject to the withdrawal made by this order in so far as it affects the hereindescribed land.

HARRY SLATTERY,
Under Secretary of the Interior.

[F. R. Doc. 39–1974; Filed, June 7, 1939; 9:37 a.m.]

REVOCATION OF TEMPORARY WITHDRAWAL OF JULY 26, 1900, OF PUBLIC LANDS FOR PROPOSED PAJARITO NATIONAL PARK

NEW MEXICO

MAY 27, 1939.

Departmental order of July 26, 1900, directing the temporary withdrawal of the public lands within the following-described area in the vicinity of Espanola, New Mexico, pending the determination of the advisability of creating the Pajarito National Park, is hereby revoked:

New Mexico Principal Meridian

Beginning at the northwest corner of the San Ildefonso Pueblo Grant, in T. 20 N., R. 7 E., thence southerly along the western boundary of said grant to the northern boundary of the Ramon Vigil Grant; thence westerly along the boundary of said grant to the northwest corner thereof; thence southeasterly along the boundary of said grant to the Rio Grande del Norte River; thence, in a general southwesterly direction, down the Rio Grande del Norte River, along its right bank, to its point of intersection with the township line between Tps. 17 and 18 N.; thence westerly along said township line to its intersection with the range line between Rs. 4 and 5 E.; thence northerly along said range line to the southern boundary of the Baca Location No. 1; thence easterly along the boundary of said Location to the southeast corner thereof; thence northerly along the eastern boundary of said Location to the northeast corner thereof; thence in a northeasterly direction to the southwest corner of the Juan Jose Lobato Grant; thence northeasterly along the southern boundary of said grant to its intersection with the section line between Secs. 18 and 19, in T. 21 N., R. 7 E.; thence easterly along said section line to its intersection with the western boundary of the San Juan Pueblo Grant; thence southerly along the western boundary of said grant to its southwest corner; thence due south to the northern boundary of the Santa Clara Pueblo Grant; thence westerly along the boundary of said grant to the northwest corner thereof; thence southerly along the western boundary of said grant to its intersection with the northern boundary of the San Ildefonso

Pueblo Grant; thence westerly along the boundary of said grant to the northwest corner thereof, the place of beginning.

HARRY SLATTERY,
Under Secretary of the Interior.

[F. R. Doc. 39–1975; Filed, June 7, 1939; 9:37 a. m.]

Notices

DEPARTMENT OF THE INTERIOR.

Bureau of Reclamation.

[No. 51]

YUMA AUXILIARY PROJECT

PUBLIC NOTICE OF ANNUAL WATER CHARGES [1]

MAY 20, 1939.

1. *Annual Operation and Maintenance Charges for Yuma Auxiliary Project.* For the season of 1939, and thereafter until further notice, each acre of irrigable land described below, whether water is used or not, shall be charged with a minimum operation and maintenance charge of Six Dollars ($6.00), which will permit delivery of not to exceed 3 acre-feet per acre; and additional water will be furnished at the rate of one dollar and fifty cents ($1.50) per acre-foot: *Provided,* That for lands entered subsequent to September 1, and prior to January 1, no minimum operation and maintenance charge shall be assessed, but water actually delivered shall be paid for in advance at the rate of $3.00 per acre-foot. For the irrigation season of 1939 the minimum charge will be due and payable on or before June 1, 1939, and for subsequent seasons covered by this notice (beginning January 1, of each year), the minimum charge will be due and payable April 15 of each year. Charges for additional water shall be payable on the tenth of the month following that in which the additional quantity was used. All charges due hereunder shall be payable to the Special Fiscal Agent, Bureau of Reclamation, Yuma, Arizona.

2. The following lands of the Gila and Salt River Base and Meridian shown on the farm-unit plats of this division, approved October 3, 1919, are subject to the charges announced:

T. 9 S., R. 23 W.;
Sections 31 and 32—All.
T. 10 S., R. 23 W.;
Sections 4, 5, 6, 7, 8, 9, and 17—All.
Section 18, E½SE¼, N½N½.
Section 19, NE¼NE¼.
Section 20, NW¼NW¼.

HARRY SLATTERY,
Under Secretary of the Interior.

[F. R. Doc. 39–1976; Filed, June 7, 1939; 9:37 a. m.]

[1] Act of June 17, 1902, 32 Stat., 388, as amended or supplemented.

National Bituminous Coal Commission.

[Docket No. 602–FD]

IN THE MATTER OF THE WEST KENTUCKY COAL COMPANY — COMPLAINT OF THE UNITED MINE WORKERS OF AMERICA, DISTRICT NO. 23, ALLEGING VIOLATION OF SECTION 9 (A) OF THE BITUMINOUS COAL ACT OF 1937

NOTICE OF AND ORDER DIRECTING ARGUMENT ON EXCEPTIONS TO THE REPORT OF THE EXAMINER AND ON MOTION FOR REHEARING

The West Kentucky Coal Company, respondent in the above entitled matter, Docket No. 602–FD, having filed with the Commission on May 12, 1939 its exceptions to the Report of the Examiner and having filed a motion for oral argument and for reopening of case; and the Commission having duly considered the same, and it appearing that it would be desirable to have oral argument by respondent or its counsel and other interested parties for the purpose of determining whether prayer of respondent should be granted;

Now, therefore, it is hereby ordered:

1. That at the hour of 10:00 o'clock A. M., on the 15th day of June, 1939, at the Hearing Room of the Commission, Walker Building, Washington, D. C., before the Commission, all interested parties in the matter of the exceptions to the Examiner's Report and motion for a rehearing filed by the West Kentucky Coal Company on May 12, 1939 shall be given an opportunity to present oral argument as to whether or not the exceptions to the Examiner's Report should be allowed and as to whether or not a hearing should be granted.

2. The Secretary of the Commission is directed forthwith to mail a copy of this Notice and Order to the West Kentucky Coal Company and the United Mine Workers of America, District No. 23, or to their attorneys of record, to the Consumers' Counsel, to the Department of the Interior, the Post Office Department and the War Department, and shall cause a copy hereof to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated at Washington, D. C., this 6th day of June 1939.

[SEAL] F. WITCHER MCCULLOUGH,
Secretary.

[F. R. Doc. 39–1982; Filed, June 7, 1939; 11:35 a. 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 2nd day of June, A. D. 1939.

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

[Docket No. 3658]

IN THE MATTER OF JOHN GREY THE FUR DESIGNER, INC., 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 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 Thursday, June 22, 1939, at nine o'clock in the forenoon of that day (eastern standard time), in Room 500, 45 Broadway, 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. 39–1970; Filed, June 6, 1939; 2:17 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 2nd day of June, A. D. 1939.

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

[Docket No. 3678]

IN THE MATTER OF ALLE-RHUME REMEDY COMPANY, INC., A CORPORATION, AND BLOCK DRUG COMPANY, INC., 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 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, June 13, 1939, at nine o'clock in the forenoon of that day (eastern standard time), in Room 500, 45 Broadway, New York, New York.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and receive evidence on behalf of the respondnt. 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. 39-1971; Filed, June 6, 1939; 2:18 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 3rd day of June, A. D. 1939.

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

[Docket No. 3726]

IN THE MATTER OF WALLACE G. CLARK, AND NORMAN A. DODGE, INDIVIDUALLY AND HYRAL DISTRIBUTING 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 John J. Keenan, 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 Thursday, August 17, 1939, at nine o'clock in the forenoon of that day (central standard time) in Room 330, District Court Room, Post Office Building, Dallas, Texas.

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. 39-1972; Filed, June 6, 1939; 2:18 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 3rd day of June, A. D. 1939.

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

[Docket No. 3739]

IN THE MATTER OF SAN PEDRO FISH EXCHANGE, AN UNINCORPORATED ASSOCIATION, AND ITS OFFICERS, AGENTS, REPRESENTATIVES AND MEMBERS; SEAFOOD BROKERAGE, INC., A CORPORATION, AND ITS OFFICERS, DIRECTORS AND STOCKHOLDERS; SOUTHERN CALIFORNIA WHOLESALE FISH DEALERS ASSOCIATION, AN UNINCORPORATED ASSOCIATION, AND ITS OFFICERS, AGENTS, REPRESENTATIVES AND MEMBERS; LOS ANGELES FISH EXCHANGE, A CORPORATION; M. N. BLUMENTHAL; SOUTHERN SEA PRODUCTS BROKERAGE CORPORATION, A CORPORATION, AND ITS OFFICERS, DIRECTORS AND STOCKHOLDERS

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 Acts of Congress (38 Stat. 717; 15 U.S.C.A., Section 41), and (49 Stat. 1526, U.S.C.A., Section 13, as amended).

It is ordered, That Robert S. Hall, 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 Wednesday, June 28, 1939, at ten o'clock in the forenoon of that day (Pacific standard time) in hearing room, Post Office Building, San Pedro, California.

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. 39-1973; Filed, June 6, 1939; 2:18 p. m.]

United States of America—Before Federal Trade Commission

[Docket No. 3798]

IN THE MATTER OF ANHEUSER-BUSCH, INC., RESPONDENT

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., title 15, sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Anheuser-Busch, Inc., is a corporation organized and existing under the laws of Missouri with its principal office and place of business at 9th and Pestalozzi Streets in the city of St. Louis and state of Missouri.

PAR. 2. Respondent owns and operates a plant at St. Louis, Missouri. This plant has a corn grinding capacity in excess of 10,000 bushels per day, with complete facilities for the finished fabrication of corn products, both for household and industrial use.

PAR. 3. For many years respondent has been and is now engaged in the business of manufacturing, selling and distributing in interstate commerce products derived from corn. The principal products derived from corn are (1) Starch, both for food and other purposes; (2) Glucose or Corn Syrup; and (3) Corn sugar. Starch is first manufactured from the corn, and glucose and grape sugar are made by treating the starch with certain acids, the resulting solid product being sugar and the resulting syrup being glucose. Glucose is largely used in the manufacture of candy, jellies, jams, preserves, and the like as well as in the mixing of syrups.

The principal by-products of corn resulting in the corn products business are gluten feed, corn oil, corn-oil cake and corn-oil meal.

Respondent, in addition to bulk products, produces branded products.

PAR. 4. For many years in the course and conduct of its business, the respondent has been and is now manufacturing the aforesaid commodities at said plant and has sold and shipped and does now sell and ship such commodities in commerce between and among the various states of the United States from the state in which its factory is located across state lines to purchasers thereof located in states other than the state in which respondent's said plant is located in competition with other persons, firms and corporations engaged in similar lines of commerce.

PAR. 5. Since June 19, 1936 and while engaged as aforesaid in commerce among the several states of the United States and the District of Columbia, the respondent has been and is now, in the course of such commerce, discriminating in price between purchasers of said commodities of like grade and quality, which commodities are sold for use, consumption or resale within the several states of the United States and the Dis-

trict of Columbia in that the respondent has been and is now selling such commodities to some purchasers at a higher price than the price at which commodities of like grade and quality are sold by respondent to other purchasers generally competitively engaged with the first mentioned purchasers.

PAR. 6. The effect of said discriminations in price made by the respondent, as set forth in Paragraph Five herein, may be substantially to lessen competition in the sale and distribution of corn products between the respondent and its competitors; tend to create a monopoly in the line of commerce in which the respondent is engaged; and to injure, destroy, and prevent competition in the sale and distribution of corn products between the respondent and its competitors.

PAR. 7. The effect of said discriminations in price made by the respondent, as set forth in Paragraph Five herein, may be substantially to lessen competition between the buyers of said corn products from respondent receiving said lower discriminatory prices and other buyers from respondent competitively engaged with such favored buyers who do not receive such favorable prices; tend to create a monopoly in the lines of commerce in which buyers from the respondent are engaged; and to injure, destroy, and prevent competition in the lines of commerce in which those who purchase from the respondent are engaged between the said beneficiaries of said discriminatory prices and said buyers who do not and have not received such beneficial prices.

PAR. 8. The aforesaid acts of respondent constitute a violation of the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. title 15, sec. 13).

Wherefore, the premises considered, The Federal Trade Commission on this 1st day of June, A. D., 1939, now issues this its complaint against Anheuser-Busch, Inc., stating its charges as hereinabove set out.

NOTICE

Notice is nereby given you, Anheuser-Busch, Inc., respondent herein, that the 7th day of July, A. D. 1939, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the city of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule VII) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearings on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the complaint.

In witness whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 1st day of June, A. D. 1939.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39-1962; Filed, June 6, 1939; 2:15 p. m.]

United States of America—Before Federal Trade Commission

[Docket No. 3799]

IN THE MATTER OF PIEL BROTHERS STARCH COMPANY, RESPONDENT

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., title 15, sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Piel Brothers Starch Company, is a corporation organized and existing under the laws of Indiana with its principal office and place of business at 1515 Dover Street in the City of Indianapolis and State of Indiana.

PAR. 2. Respondent owns and operates a plant at Indianapolis, Indiana. This plant has a corn grinding capacity in excess of 5,000 bushels per day, with complete facilities for the finished fabrication of corn products, both for household and industrial use.

PAR. 3. For many years respondent has been and is now engaged in the business of manufacturing, selling and distributing in interstate commerce products derived from corn. The principal products derived from corn are (1) Starch, both for food and other purposes; (2) Glucose or Corn Syrup; and (3) Corn sugar. Starch is first manufactured from the corn, and glucose and grape sugar are made by treating the starch with certain acids, the resulting solid product being sugar and the resulting syrup being glucose. Glucose is largely used in the manufacture of candy, jellies, jams, preserves, and the like as well as in the mixing of syrups.

The principal by-products of corn resulting in the corn products business are gluten feed, corn oil, corn-oil cake and corn-oil meal.

Respondent, in addition to bulk products, produces branded products.

PAR. 4. For many years in the course and conduct of its business, the respondent has been and is now manufacturing the aforesaid commodities at said plant and has sold and shipped and does now sell and ship such commodities in commerce between and among the various states of the United States from the state in which its factory is located across state lines to purchasers thereof located in states other than the state in which respondent's said plant is located in competition with other persons, firms and corporations engaged in similar lines of commerce.

PAR. 5. Since June 19, 1936, and while engaged as aforesaid in commerce among the several states of the United States and the District of Columbia, the respondent has been and is now, in the course of such commerce, discriminating in price between purchasers of said commodities of like grade and quality, which commodities are sold for use, consumption or resale within the several states of the United States and the District of Columbia, in that the respondent has been and is now selling such commodities to some purchasers at a higher price than the price at which commodities of like grade and quality are sold by respondent to other purchasers generally competitively engaged with the first-mentioned purchasers.

PAR. 6. The effect of said discriminations in price made by the respondent, as set forth in Paragraph Five herein, may be substantially to lessen competition in the sale and distribution of corn products between the respondent and its competitors; tend to create a monopoly in the line of commerce in which the respondent is engaged; and to injure, destroy, and prevent competition in the sale and distribution of corn products between the respondent and its competitors.

PAR. 7. The effect of said discriminations in price made by the respondent, as set forth in Paragraph Five herein, may be substantially to lessen competition between the buyers of said corn products from respondent receiving said lower discriminatory prices and other buyers from respondent competitively engaged with such favored buyers who do not receive such favorable prices; tend to create a monopoly in the lines of commerce in which buyers from the respondent are engaged; and to injure, destroy, and prevent competition in the lines of commerce in which those who purchase from the respondent are engaged between the said beneficiaries of said discriminatory prices and said buyers who do not and have not received such beneficial prices.

PAR. 8. The aforesaid acts of respondent constitute a violation of the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. title 15, sec. 13).

Wherefore, the premises considered, the Federal Trade Commission on this 1st day of June A. D. 1939, now issues this its complaint against Piel Brothers Starch Company, stating its charges as hereinabove set out.

NOTICE

Notice is hereby given you, Piel Brothers Starch Company, respondent herein, that the 7th day of July, A. D. 1939, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule VII) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the complaint.

In witness whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 1st day of June, A. D. 1939.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39-1963; Filed, June 6, 1939; 2:15 p. m.]

United States of America—Before Federal Trade Commission

[Docket No. 3800]

IN THE MATTER OF CLINTON COMPANY, CLINTON SALES COMPANY, RESPONDENTS

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., title 15, sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Clinton Company, is a corporation organized and existing under the laws of Iowa with its principal office and place of business in the city of Clinton and state of Iowa. Respondent, Clinton Sales Company, is a corporation organized under the laws of the state of Illinois and has its principal office and place of business at 1525 South Sangamon Street in the city of Chicago, state of Illinois. Respondent, Clinton Sales Company, is a wholly owned sales subsidiary of respondent Clinton Company, through which products manufactured by Clinton Company are sold and distributed. Clinton Company owns the entire capital stock of Clinton Sales Company, and controls and directs Clinton Sales Company.

PAR. 2. Respondent, Clinton Company, owns and operates a plant at Clinton, Iowa. This plant has a corn grinding capacity in excess of 32,000 bushels per day, with complete facilities for the finished fabrication of all known corn products, both for household and industrial use.

PAR. 3. For many years respondents have been and are now engaged in the business of manufacturing, selling and distributing in interstate commerce products derived from corn. The principal products derived from corn are (1) Starch, both for food and other purposes; (2) Glucose or Corn Syrup; and (3) Corn sugar. Starch is first manufactured from the corn, and glucose and grape sugar are made by treating the starch with certain acids, the resulting solid product being sugar and the resulting syrup being glucose. Glucose is largely used in the manufacture of candy, jellies, jams, preserves, and the like as well as in the mixing of syrups.

The principal by-products of corn resulting in the corn products business are gluten feed, corn oil, corn-oil cake and corn-oil meal.

The Clinton Company, in addition to bulk products, produces branded products.

PAR. 4. For many years in the course and conduct of their business, the respondents have been and are now manufacturing the aforesaid commodities at the aforesaid plant and have sold and shipped and do now sell and ship such commodities in commerce between and among the various states of the United States from the state in which their factory is located across state lines to purchasers thereof located in states other than the state in which respondents' said plant is located in competition with other persons, firms and corporations engaged in similar lines of commerce.

PAR. 5. Since June 19, 1936, and while engaged as aforesaid in commerce among the several states of the United States and the District of Columbia, the respondents have been and are now, in the course of such commerce, discriminating in price between purchasers of said commodities of like grade and quality, which commodities are sold for use, consumption or resale within the several states of the United States and the District of Columbia in that the respondents have been and are now selling such commodities to some purchasers at a higher price than the price at which commodities of like grade and quality are sold by respondents to other purchasers generally competitively engaged with the first mentioned purchasers.

PAR. 6. The effect of said discriminations in price made by said respondents, as set forth in Paragraph Five herein, may be substantially to lessen competition in the sale and distribution of corn products between the said respondents and their competitors; tend to create a monopoly in the line of commerce in which the respondents are engaged; and to injure, destroy, and prevent competition in the sale and distribution of corn products between the said respondents and their competitors.

PAR. 7. The effect of said discriminations in price made by said respondents, as set forth in Paragraph Five herein, may be substantially to lessen competition between the buyers of said corn products from respondents receiving said lower discriminatory prices and other buyers from respondents competitively engaged with such favored buyers who do not receive such favorable prices; tend to create a monopoly in the lines of commerce in which buyers from respondents are engaged; and to injure, destroy, and prevent competition in the lines of commerce in which those who purchase from respondents are engaged between the said beneficiaries of said discriminatory prices and said buyers who do not and have not received such beneficial prices.

PAR. 8. The aforesaid acts of respondents constitute a violation of the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. title 15, sec. 13).

Wherefore, the premises considered, the Federal Trade Commission on this 1st day of June, A. D. 1939, now issues this its complaint against Clinton Company and Clinton Sales Company, stating its charges as hereinabove set out.

NOTICE

Notice is hereby given you, Clinton Company, and Clinton Sales Company, respondents herein, that the 7th day of July, A. D. 1939, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the city of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers of failure to appear or answer (Rule VII) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearings on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, withour further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the complaint.

In witness whereof, the Federal Trade Commission has caused this, its complaint to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 1st day of June, A. D. 1939.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39–1964; Filed, June 6, 1939; 2:15 p. m.]

United States of America—Before Federal Trade Commission

[Docket No. 3801]

IN THE MATTER OF THE HUBINGER COMPANY, RESPONDENT

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., title 15, sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, The Hubinger Company, is a corporation organized and existing under the laws of Iowa with its principal office and place of business at 1003 South 5th Street in the city of Keokuk and state of Iowa.

PAR. 2. Respondent owns or operates a plant at Keokuk, Iowa. This plant has a corn grinding capacity in excess of 12,000 bushels per day, with complete facilities for the finished fabrication of all known corn products, both for household and industrial use.

PAR. 3. For many years respondent has been and is now engaged in the business of manufacturing, selling and distributing in interstate commerce products derived from corn. The principal products derived from corn are (1) Starch, both for food and other purposes; (2) Glucose or Corn Syrup; and (3) Corn sugar. Starch is first manufactured from the corn, and glucose and grape

sugar are made by treating the starch with certain acids, the resulting solid product being sugar and the resulting syrup being glucose. Glucose is largely used in the manufacture of candy, jellies, jams, preserves, and the like as well as in the mixing of syrups.

The principal by-products of corn resulting in the corn products business are gluten feed, corn oil, corn-oil cake and corn-oil meal.

Respondent, in addition to bulk products, produces branded products.

PAR. 4. For many years in the course and conduct of its business, the respondent has been and is now manufacturing the aforesaid commodities at said plant and has sold and shipped and does now sell and ship such commodities in commerce between and among the various states of the United States from the state in which its factory is located across state lines to purchasers thereof located in states other than the state in which respondent's said plant is located in competition with other persons, firms and corporation engaged in similar lines of commerce.

PAR. 5. Since June 19, 1936 and while engaged as aforesaid in commerce among the several states of the United States and the District of Columbia, the respondent has been and is now, in the course of such commerce, discriminating in price between purchasers of said commodities of like grade and quality, which commodities are sold for use, consumption or resale within the several states of the United States and the District of Columbia in that the respondent has been and is now selling such commodities to some purchasers at a higher price than the price at which commodities of like grade and quality are sold by respondent to other purchasers generally competitively engaged with the first mentioned purchasers.

PAR. 6. The effect of said discriminations in price made by the respondent, as set forth in Paragraph Five herein, may be substantially to lessen competition in the sale and distribution of corn products between the respondent and its competitors; tend to create a monopoly in the line of commerce in which the respondent is engaged; and to injure, destroy, and prevent competition in the sale and distribution of corn products between the respondent and its competitors.

PAR. 7. The effect of said discriminations in price made by the respondent, as set forth in Paragraph Five herein, may be substantially to lessen competition between the buyers of said corn products from respondent receiving said lower discriminatory prices and other buyers from respondent competitively engaged with such favored buyers who do not receive such favorable prices; tend to create a monopoly in the lines of commerce in which buyers from the respondent are engaged; and to injure, destroy, and prevent competition in the lines of commerce in which those who purchase from the respondent are engaged between the said beneficiaries of said discriminatory prices and said buyers who do not and have not received such beneficial prices.

PAR. 8. The aforesaid acts of respondent constitute a violation of the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., title 15, sec. 13).

Wherefore, the premises considered, the Federal Trade Commission on this 1st day of June, A. D. 1939, now issues this its complaint against The Hubinger Company, stating its charges as hereinabove set out.

NOTICE

Notice is hereby given you, The Hubinger Company, respondent herein, that the 7th day of July, A. D. 1939, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the city of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule VII) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearings on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the complaint.

In witness whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C. this 1st day of June, A. D. 1939.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39–1965; Filed, June 6, 1939; 2:16 p. m.]

United States of America—Before Federal Trade Commission

[Docket No. 3802]

IN THE MATTER OF PENICK & FORD, LTD., INC., RESPONDENT

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., title 15, sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Penick & Ford, Ltd., Inc., is a corporation organized and existing under the laws of Delaware with its principal office and place of business at 420 Lexington Avenue in the city of New York and state of New York.

PAR. 2. Respondent owns and operates a plant at Cedar Rapids, Iowa. This plant has a corn grinding capacity in excess of 34,000 bushels per day, with complete facilities for the finished fabrication of all known corn products, both for household and industrial use.

PAR. 3. For many years respondent has been and is now engaged in the business of manufacturing, selling and distributing in interstate commerce products derived from corn. The principal products derived from corn are (1) Starch, both

for food and other purposes; (2) Glucose or Corn Syrup; and (3) Corn sugar. Starch is first manufactured from the corn, and glucose and grape sugar are made by treating the starch with certain acids, the resulting solid product being sugar and the resulting syrup being glucose. Glucose is largely used in the manufacture of candy, jellies, jams, preserves, and the like as well as in the mixing of syrups.

The principal by-products of corn resulting in the corn products business are gluten feed, corn oil, corn-oil cake and corn-oil meal.

Respondent, in addition to bulk products, produces branded products.

PAR. 4. For many years in the course and conduct of its business, the respondent has been and is now manufacturing the aforesaid commodities at said plant and has sold and shipped and does now sell and ship such commodities in commerce between and among the various states of the United States from the state in which its factory is located across state lines to purchasers thereof located in states other than the state in which respondent's said plant is located in competition with other persons, firms and corporations engaged in similar lines of commerce.

PAR. 5. Since June 19, 1936 and while engaged as aforesaid in commerce among the several states of the United States and the District of Columbia, the respondent has been and is now, in the course of such commerce, discriminating in price between purchasers of said commodities of like grade and quality, which commodities are sold for use, consumption or resale within the several states of the United States and the District of Columbia in that the respondent has been and is now selling such commodities to some purchasers at a higher price than the price at which commodities of like grade and quality are sold by respondent to other purchasers generally competitively engaged with the first mentioned purchasers.

PAR. 6. The effect of said discriminations in price made by the respondent, as set forth in Paragraph Five herein, may be substantially to lessen competition in the sale and distribution of corn products between the respondent and its competitors; tend to create a monopoly in the line of commerce in which the respondent is engaged; and to injure, destroy, and prevent competition in the sale and distribution of corn products between the respondent and its competitors.

PAR. 7. The effect of said discriminations in price made by the respondent, as set forth in Paragraph Five herein, may be substantially to lessen competition between the buyers of said corn products from respondent receiving said lower discriminatory prices and other buyers from respondent competitively engaged with such favored buyers who do not receive such favorable prices; tend to create a monopoly in the lines of commerce in which buyers from the respondent are engaged; and to injure, destroy, and prevent competition in the lines of commerce in which those who purchase from the respondent are engaged between the said beneficiaries of said discriminatory prices and said buyers who do not and have not received such beneficial prices.

PAR. 8. The aforesaid acts of respondent constitute a violation of the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. title 15, sec. 13).

Wherefore the premises considered, the Federal Trade Commission on this 1st day of June, A. D. 1939, now issues this its complaint against Penick & Ford, Ltd., Inc., stating its charges as hereinabove set out.

NOTICE

Notice is hereby given you, Penick & Ford, Ltd., Inc., respondent herein, that the 7th day of July, A. D. 1939, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the city of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule VII) provide as follows:

In the case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearings on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint, and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the complaint.

In witness whereof, The Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 1st day of June, A. D. 1939.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39–1966; Filed, June 6, 1939; 2:16 p. m.]

United States of America—Before Federal Trade Commission

[Docket No. 3803]

IN THE MATTER OF A. E. STALEY MANUFACTURING COMPANY, THE STALEY SALES CORPORATION, RESPONDENTS

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., title 15, sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, A. E. Staley Manufacturing Company, is a corporation organized and existing under the laws of Delaware with its principal office and place of business at 2200 East Eldorado Street in the city of Decatur and state of Illinois. Respondent The Staley Sales Corporation is a corporation organized under the laws of the state of Illinois and has its principal office and place of business at 2200 East Eldorado Street, city of Decatur and state of Illinois. Respondent, The Staley Sales Corporation, is a wholly owned sales sub-

sidiary of respondent A. E. Staley Manufacturing Company, through which products manufactured by A. E. Staley Manufacturing Company are sold and distributed, A. E. Staley Manufacturing Company owns the entire capital stock of The Staley Sales Corporation and controls and directs The Staley Sales Corporation.

PAR. 2. Respondent, A. E. Staley Manufacturing Company, owns and operates a plant at Decatur, Illinois. This plant has a corn grinding capacity in excess of 50,000 bushels per day, with complete facilities for the finished fabrication of all known corn products, both for household and industrial use.

PAR. 3. For many years respondents have been and are now engaged in the business of manufacturing, selling and distributing in interstate commerce products derived from corn. The principal products derived from corn are (1) Starch, both for food and other purposes; (2) Glucose or Corn Syrup; and (3) Corn sugar. Starch is first manufactured from the corn, and glucose and grape sugar are made by treating the starch with certain acids, the resulting solid product being sugar and the resulting syrup being glucose. Glucose is largely used in the manufacture of candy, jellies, jams, preserves, and the like as well as in the mixing of syrups.

The principal by-products of corn resulting in the corn products business are gluten feed, corn oil, corn-oil cake and corn-oil meal.

A. E. Staley Manufacturing Company, in addition to bulk products, produces branded products.

PAR. 4. For many years in the course and conduct of their business, the respondents have been and are now manufacturing the aforesaid commodities at the aforesaid plant and have sold and shipped and do now sell and ship such commodities in commerce between and among the various states of the United States from the state in which their factory is located across state lines to purchasers thereof located in states other than the state in which respondents' said plant is located in competition with other persons, firms and corporations engaged in similar lines of commerce.

PAR. 5. Since June 19, 1936, and while engaged as aforesaid in commerce among the several states of the United States and the District of Columbia, the respondents have been and are now, in the course of such commerce, discriminating in price between purchasers of said commodities of like grade and quality, which commodities are sold for use, consumption or resale within the several states of the United States and the District of Columbia in that the respondents have been and are now selling such commodities to some purchasers at a higher price than the price at which commodities of like grade and quality are sold by respondents to other purchasers generally competitively engaged with the first mentioned purchasers.

PAR. 6. The effect of said discriminations in price made by said respondents, as set forth in Paragraph Five herein, may be substantially to lessen competition in the sale and distribution of corn products between the said respondents and their competitors; tend to create a monopoly in the line of commerce in which the respondents are engaged; and to injure, destroy, and prevent competition in the sale and distribution of corn products between the said respondents and their competitors.

PAR. 7. The effect of said discriminations in price made by said respondents, as set forth in Paragraph Five herein, may be substantially to lessen competition between the buyers of said corn products from respondents receiving said lower discriminatory prices and other buyers from respondents competitively engaged with such favored buyers who do not receive such favorable prices; tend to create a monopoly in the lines of commerce in which buyers from respondents are engaged; and to injure, destroy, and prevent competition in the lines of commerce in which those who purchase from respondents are engaged between the said beneficiaries of said discriminatory prices and said buyers who do not and have not received such beneficial prices.

PAR. 8. The aforesaid acts of respondents constitute a violation of the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. title 15, sec. 13).

Wherefore, the premises considered, the Federal Trade Commission on this 1st day of June, A. D. 1939, now issues this its complaint against A. E. Staley Manufacturing Company and The Staley Sales Corporation, stating its charges as hereinabove set out.

NOTICE

Notice is hereby given you, A. E. Staley Manufacturing Company and The Staley Sales Corporation, respondents herein, that the 7th day of July, A. D. 1939, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule VII) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearings on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the complaint.

In witness whereof, the Federal Trade Commission has caused this, its complaint to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 1st day of June, A. D. 1939.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39–1967; Filed, June 6, 1939; 2:16 p. m.]

United States of America—Before Federal Trade Commission

[Docket No. 3804]

IN THE MATTER OF UNION STARCH & REFINING COMPANY, UNION SALES CORPORATION, RESPONDENTS

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties re-

spondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., title 15, sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Union Starch & Refining Company, is a corporation organized and existing under the laws of Indiana with its principal office and place of business at 301 Washington Street in the City of Columbus and state of Indiana. Respondent, Union Sales Corporation, is a corporation organized under the laws of the state of Indiana and has its principal office and place of business at 301 Washington Street, city of Columbus and state of Indiana. Respondent, Union Sales Corporation, is a wholly owned sales subsidiary of respondent Union Starch & Refining Company, through which products manufactured by Union Starch & Refining Company are sold and distributed. Union Starch & Refining Company owns the entire capital stock of Union Sales Corporation and controls and directs Union Sales Corporation.

PAR. 2. Respondent, Union Starch & Refining Company, owns and operates a plant at Granite City, Illinois,. and also owns a plant at Edinburg, Indiana. These plants have a corn grinding capacity in excess of 19,000 bushels per day, with complete facilities for the finished fabrication of corn products both for household and industrial use. The Granite City plant has a corn grinding capacity of 15,000 bushels daily.

PAR. 3. For many years respondents have been and are now engaged in the business of manufacturing, selling and distributing in interstate commerce products derived from corn. The principal products derived from corn are (1) Starch, both for food and other purposes; (2) Glucose or Corn Syrup; and (3) Corn sugar. Starch is first manufactured from the corn, and glucose and grape sugar are made by treating the starch with certain acids, the resulting solid product being sugar and the resulting syrup being glucose. Glucose is largely used in the manufacture of candy, jellies, jams, preserves, and the like as well as in the mixing of syrups.

The principal by-products of corn resulting in the corn products business are gluten feed, corn oil, corn-oil cake and corn-oil meal.

The Union Starch & Refining Company, in addition to bulk products, produces branded products.

PAR. 4. For many years in the course and conduct of their business, the respondents have been and are now manufacturing the aforesaid commodities at the aforesaid plants and have sold and shipped and do now sell and ship such commodities in commerce between and among the various states of the United States from the states in which their factories are located across state lines to purchasers thereof located in states other than the states in which respondents' said plants are located in competition with other persons, firms and corporations engaged in similar lines of commerce.

PAR. 5. Since June 19, 1936 and while engaged as aforesaid in commerce among the several states of the United States and the District of Columbia, the respondents have been and are now, in the course of such commerce, discriminating in price between purchasers of said commodities of like grade and quality, which commodities are sold for use, consumption or resale within the several states of the United States and the District of Columbia in that the respondents have been and are now selling such commodities to some purchasers at a higher price than the price at which commodities of like grade and quality are sold by respondents to other purchasers generally competitively engaged with the first mentioned purchasers.

PAR. 6. The effect of said discriminations in price made by said respondents, as set forth in Paragraph Five herein, may be substantially to lessen competition in the sale and distribution of corn products between the said respondents and their competitors; tend to create a monopoly in the line of commerce in which the respondents are engaged; and to injure, destroy, and prevent competition in the sale and distribution of corn products between the said respondents and their competitors.

PAR. 7. The effect of said discriminations in price made by said respondents, as set forth in Paragraph Five herein, may be substantially to lessen competition between the buyers of said corn products from respondents receiving said lower discriminatory prices and other buyers from respondents competitively engaged with such favored buyers who do not receive such favorable prices; tend to create a monopoly in the lines of commerce in which buyers from respondents are engaged; and to injure, destroy, and prevent competition in the lines of commerce in which those who purchase from respondents are engaged between the said beneficiaries of said discriminatory prices and said buyers who do not and have not received such beneficial prices.

PAR. 8. The aforesaid acts of respondents constitute a violation of the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. title 15, sec. 13).

Wherefore, the premises considered, the Federal Trade Commission on this 1st day of June, A. D. 1939, now issues this its complaint against Union Starch & Refining Company and Union Sales Corporation, stating its charges as hereinabove set out.

NOTICE

Notice is hereby given you, Union Starch & Refining Company, and Union Sales Corporation, respondents herein, that the 7th day of July, A. D. 1939, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the city of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule VII) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearings on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to

whether the fact so admitted constitute the violation or violations of law charged in the complaint.

In witness whereof, the Federal Trade Commission has caused this, its complaint to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 1st day of June, A. D. 1939.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39-1968; Filed, June 6, 1939; 2:17 p. m.]

United States of America—Before Federal Trade Commission

[Docket No. 3805]

IN THE MATTER OF AMERICAN MAIZE-PRODUCTS COMPANY, RESPONDENT

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., title 15, sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, American Maize-Products Company, is a corporation organized and existing under the laws of Maine with its principal office and place of business at 100 East 42nd Street in the city of New York and state of New York.

PAR. 2. Respondent owns and operates a plant at Roby, Indiana. This plant has a corn grinding capacity in excess of 35,000 bushels per day, with complete facilities for the finished fabrication of all known corn products, both for household and industrial use.

PAR. 3. For many years respondent has been and is now engaged in the business of manufacturing, selling and distributing in interstate commerce products derived from corn. The principal products derived from corn are (1) Starch, both for food and other purposes; (2) Glucose or Corn Syrup; and (3) Corn sugar. Starch is first manufactured from the corn, and glucose and grape sugar are made by treating the starch with certain acids, the resulting solid product being sugar and the resulting syrup being glucose. Glucose is largely used in the manufacture of candy, jellies, jams, preserves, and the like as well as in the mixing of syrups.

The principal by-products of corn resulting in the corn products business are gluten feed, corn oil, corn-oil cake and corn-oil meal.

Respondent, in addition to bulk products, produces branded products.

PAR. 4. For many years in the course and conduct of its business, the respondent has been and is now manufacturing the aforesaid commodities at said plant and has sold and shipped and does now sell and ship such commodities in commerce between and among the various states of the United States from the state in which its factory is located across state lines to purchasers thereof located in states other than the state in which respondent's said plant is located in competition with other persons, firms and corporations engaged in similar lines of commerce.

PAR. 5. Since June 19, 1936 and while engaged as aforesaid in commerce among the several states of the United States and the District of Columbia, the respondent has been and is now, in the course of such commerce, discriminating in price between purchasers of said commodities of like grade and quality, which commodities are sold for use, consumption or resale within the several states of the United States and the District of Columbia in that the respondent has been and is now selling such commodities to some purchasers at a higher price than the price at which commodities of like grade and quality are sold by respondent to other purchasers generally competitively engaged with the first mentioned purchasers.

PAR. 6. The effect of said discriminations in price made by the respondent, as set forth in Paragraph Five herein, may be substantially to lessen competition in the sale and distribution of corn products between the respondent and its competitors; tend to create a monopoly in the line of commerce in which the respondent is engaged; and to injure, destroy, and prevent competition in the sale and distribution of corn products between the respondent and its competitors.

PAR. 7. The effect of said discriminations in price made by respondent, as set forth in Paragraph Five herein, may be substantially to lessen competition between the buyers of said corn products from respondent receiving said lower discriminatory prices and other buyers from respondent competitively engaged with such favored buyers who do not receive such favorable prices; tend to create a monopoly in the lines of commerce in which buyers from the respondent are engaged; and to injure, destroy, and prevent competition in the lines of commerce in which those who purchase from the respondent are engaged between the said beneficiaries of said discriminatory prices and said buyers who do not and have not received such beneficial prices.

PAR. 8. The aforesaid acts of respondent constitute a violation of the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. title 15, sec. 13).

Wherefore, the premises considered, the Federal Trade Commission on this 1st day of June, A. D. 1939, now issues this its complaint against American Maize-Products Company, stating its charges as hereinabove set out.

NOTICE

Notice is hereby given you, American Maize-Products Company, respondent herein, that the 7th day of July, A. D. 1939, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the city of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules and Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule VII) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearings on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations.

Upon application in writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the complaint.

In witness whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 1st day of June, A. D. 1939.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39-1969; Filed, June 6, 1939; 2:17 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 June, A. D. 1939.

[File No. 46-69]

IN THE MATTER OF UTILITIES POWER & LIGHT CORPORATION, LIMITED, ET AL.

SUPPLEMENTARY ORDER APPROVING ACQUISITION OF SECURITIES

Utilities Power & Light Corporation, Limited, a wholly owned subsidiary of Utilities Power & Light Corporation, a registered holding company (presently in reorganization proceedings under Section 77B of the Bankruptcy Act, the proceedings in which are pending in the District Court of the United States for the Northern District of Illinois, Eastern Division), and the trustee for the estate of the debtor, as intervening applicant, having filed an application, and amendments thereto, for an order of exemption under Section 9 (c) (3) of the Public Utility Holding Company Act of 1935, or, in the alternative, an order of approval under Section 10 of the Act with respect to the purchase by the applicant of outstanding debentures of Utilities Power & Light Corporation pursuant to tenders and at a price to be fixed by the Commission until a sum of $12,000,000 or such other sum as the Commission may fix was exhausted;

The Commission having issued an initial order on the application, as amended, approving, subject to certain terms and conditions, the acquisition by the applicant of outstanding debentures and claims against the parent pursuant to tenders at 70% of the principal amount until a sum of $9,000,000 was exhausted, without prejudice, however, to the right to authorize, by further order, the use of an additional amount not to exceed $3,000,000 for such purposes; [1]

The applicant and the intervening applicant having, on February 23, 1939, filed a third amendment to the application for an order of exemption or approval with respect to the purchase by the applicant of outstanding debentures of and claims against Utilities Power & Light Corporation pursuant to further tenders, until an additional sum of $3,000,000 be exhausted;

Following the filing of the amendment of February 23, 1939 a public hearing having been held pursuant to appropriate notice [2] and subsequently thereto the Commission having been advised that Atlas Corporation has agreed with the applicant and intervening applicant that Atlas Corporation will tender such amount of debentures which it holds, directly or indirectly, as may be necessary to exhaust the $3,000,000, available for this purpose;

The Commission having considered the record in this matter and having made and filed its supplementary findings and opinion herein;

It is ordered, That for the purposes represented by the application, as amended, the acquisition by the applicant of outstanding debentures of and claims against the parent pursuant to tenders and at a price fixed by the Commission be, and the same hereby is, approved subject to the following terms and conditions:

(a) That the approval herein granted shall not become final until the court having jurisdiction over the 77B proceedings shall have approved the transactions;

(b) That the maximum additional amount to be used for the purposes of this application shall be $3,000,000, and that the privilege of tendering, within the limit of such amount, shall be extended to all holders of claims asserted against the estate of the debtor and of the same rank as the debentures: *Provided, however,* That the privilege of tendering given by this condition shall not be available to holders of 6% First Mortgage Gold Bonds of Utilities Elkhorn Coal Company, dated July 1, 1928, due July 1, 1948, on claims which are alleged to arise against Utilities Power & Light Corporation directly or through Continental National Bank and Trust Company of Chicago, as trustee of said Elkhorn bond issue, by virtue of any agreements executed by Utilities Power & Light Corporation in connection with or in relation to such Utilities Elkhorn Coal Company bonds;

(c) That after the 77B court authorizes the solicitation and acceptance of tenders, the applicant and the trustee shall mail to every known holder of debentures and then asserted claims (other than any arising by virtue of any agreements in connection with or in relation to such Utilities Elkhorn Coal Company bonds) literature advising him of the privilege of tendering, and shall make or cause to be made to such debenture holders and claimants prior to or simultaneously with the sending of such literature, such disclosures as may be necessary or desirable for the purpose of enabling the holders of debentures and claims to determine whether or not to tender, including data designed to show the effect of the contemplated acquisitions upon the creditors who do not tender and upon stockholders of the debtor: *Provided, however,* That the literature sent to any claimant need not be the same as that which is sent to any other claimant or to debenture holders: *Provided, further,* That the trustee and the applicant shall submit to the Commission at least three days prior to the mailing thereof true copies of such literature, and within said period the Commission reserves the right to order the trustee to make such changes as it considers necessary in the public interest and the interest of investors and consumers;

(d) That no tenders shall be received after fifteen days from the date of the mailing of the literature inviting tenders and such literature shall so provide;

(e) That the price at which debentures, with accrued interest thereon, and claims, with interest thereon, shall be tendered and purchased shall be 70% of the principal amount;

(f) That if the price of 70 is not paid on any debenture or claim, the tender of which has been accepted, within 30 days after the closing date for tenders, the amount payable therefor in accordance with the terms of the call for tender, shall bear interest from such closing date at 3%;

(g) That in the event more debentures and claims shall be tendered than the amount available for that purpose (in accordance with (b) above) will suffice to purchase, each lot tendered shall first be purchased up to $5,000 principal amount of the debentures and/or claims tendered, and purchases of any remaining amounts shall, to the extent practicable, be made pro rata:

Provided, however, That no tender of debentures by Atlas Corporation or any subsidiary thereof shall be accepted until all other tenders of claims and debentures made within the fifteen day period within which tenders may be made have been accepted;

(h) That a copy of the agreement between the applicant, intervening applicant and Atlas Corporation, in which Atlas Corporation agrees that it will tender such amount of debentures which it holds, directly or indirectly, as may be necessary to exhaust the $3,000,000 available for this purpose, shall be filed with the Commission and shall be made part of the record in this proceeding;

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[1] Holding Company Act Release No. 1354, December 8, 1938.

[2] 4 F.R. 1254 DI.

(i) That any debenture holder may tender all or any part of the debentures held by him, but tenders in more than one lot of debentures having the same beneficial owner shall not be permitted;

(j) That if tenders are received from holders of debentures or claims asserted, to which any complete or partial defense, including any setoff or counterclaim, is asserted or has been established or is pending undetermined in legal proceedings, then in the case of each such debenture holder or claimant a sum equal to 70% of the principal amount of the debenture or debentures, claim or claims so tendered by him and disputed as aforesaid shall be placed in escrow pursuant to an appropriate agreement or agreements satisfactory to the Commission and which shall provide for payment to such debenture holder or claimant only when (1) such proceeding questioning his rights shall have been decided by the proper court (including decision of any such setoff or counterclaims) and all rights of review shall have been waived or terminated, or (2) the dispute settled by a compromise entered into by the debenture holder or claimant and the trustee for the estate of the debtor, and satisfactory to the 77B court. If the proceeding or dispute questioning the rights of the debenture holder or claimant shall be successful, and after deduction of any adjudged or agreed set off or counterclaim his claim shall ultimately be allowed by the court in a sum less than the amount of the principal and interest if any of the claim as originally asserted, the sum payable to such debenture holder or claimant shall be reduced proportionately and the balance of the sum deposited in escrow shall be released from escrow. Any debenture or claim placed in escrow shall not draw interest during the escrow period except as follows:

(i) If it is ultimately determined that the debenture or claim is entitled to share on the same basis with other debentures or claims tendered, the amount due (after deduction of any adjudged or agreed set off or counterclaim) on such debenture or claim at the tender price shall bear interest in accordance with the provisions of paragraph (f) above;

(ii) If it is ultimately determined that the debenture or claim is not entitled to share on the same basis with other debentures or claims tendered, the right of such debenture or claim to interest shall be determined in accordance with law as if it had not been placed in escrow;

(k) That the trustee shall submit to the Commission the name or names of the proposed depositary or depositaries with whom tenders shall be lodged, which shall be the depositary or depositaries for that purpose unless the Commission within three days after the receipt of this information informs the trustee that such depositary or depositaries is or are unacceptable;

(l) That the applicant and intervening applicant shall file a statement with the 77B court waiving all rights, if any, to vote, or cause to be voted the debentures or claims acquired in accordance with this order in respect to any plan of reorganization of the debtor.

(m) That the Commission reserve jurisdiction for the purpose of passing upon the matters by the foregoing conditions required to be passed upon, and for the purpose of passing upon any other questions subject to its jurisdiction that may arise in connection with the tenders or acquisitions pursuant thereto.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39–1981; Filed, June 7, 1939; 11:30 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 June, A. D. 1939.

IN THE MATTER OF APPLICATIONS BY THE PITTSBURGH STOCK EXCHANGE FOR UNLISTED TRADING PRIVILEGES IN AMERICAN & FOREIGN POWER COMPANY, INC., COMMON STOCK, NO PAR VALUE; ARMOUR AND COMPANY OF ILLINOIS, COMMON STOCK, $5 PAR VALUE; THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, COMMON STOCK, $100 PAR VALUE; THE ATLANTIC REFINING COMPANY, COMMON STOCK, $25 PAR VALUE; THE AVIATION CORPORATION, CAPITAL STOCK, $3 PAR VALUE; BARNSDALL OIL COMPANY, COMMON STOCK, $5 PAR VALUE; BETHLEHEM STEEL CORPORATION, COMMON STOCK, NO PAR VALUE; BOEING AIRPLANE COMPANY, CAPITAL STOCK, $5 PAR VALUE; CHRYSLER CORPORATION, COMMON STOCK, $5 PAR VALUE; COMMERCIAL SOLVENTS CORPORATION, COMMON STOCK, NO PAR VALUE; THE COMMONWEALTH & SOUTHERN CORPORATION, COMMON STOCK, NO PAR VALUE; CONTINENTAL OIL COMPANY, CAPITAL STOCK, $5 PAR VALUE; GIMBEL BROTHERS, INC., COMMON STOCK, NO PAR VALUE; THE B. F. GOODRICH COMPANY, COMMON STOCK, NO PAR VALUE; THE GOODYEAR TIRE & RUBBER COMPANY, COMMON STOCK, NO PAR VALUE; MONTGOMERY WARD & CO., INC., COMMON STOCK, NO PAR VALUE; THE NATIONAL SUPPLY COMPANY, COMMON STOCK, $10 PAR VALUE; THE NEW YORK CENTRAL RAILROAD COMPANY, CAPITAL STOCK, NO PAR VALUE; THE OHIO OIL COMPANY, COMMON STOCK, NO PAR VALUE; PARAMOUNT PICTURES, INC., COMMON STOCK, $1 PAR VALUE; PRESSED STEEL CAR COMPANY, INC., COMMON STOCK, $1 PAR VALUE; THE PURE OIL COMPANY, COMMON STOCK, NO PAR VALUE; SOCONY-VACUUM OIL COMPANY, INC., CAPITAL STOCK, $15 PAR VALUE; THE TEXAS CORPORATION, CAPITAL STOCK, $25 PAR VALUE; TRANSCONTINENTAL & WESTERN AIR, INC., COMMON STOCK, $5 PAR VALUE; UNITED AIRCRAFT CORPORATION, CAPITAL STOCK, $5 PAR VALUE; UNITED AIR LINES TRANSPORT CORPORATION, CAPITAL STOCK, $5 PAR VALUE; THE UNITED GAS IMPROVEMENT COMPANY, COMMON STOCK, NO PAR VALUE; UNITED STATES RUBBER COMPANY, COMMON STOCK, $10 PAR VALUE; WALWORTH COMPANY, INCORPORATED, COMMON STOCK, NO PAR VALUE; YELLOW TRUCK & COACH MANUFACTURING COMPANY, CLASS "B" STOCK, $1 PAR VALUE; THE INTERNATIONAL NICKEL COMPANY OF CANADA, LIMITED, COMMON STOCK, NO PAR VALUE; KENNECOTT COPPER CORPORATION, CAPITAL STOCK, NO PAR VALUE

ORDER DISPOSING OF APPLICATIONS TO EXTEND UNLISTED TRADING PRIVILEGES

The Pittsburgh Stock Exchange having made application to the Commission pursuant to Section 12 (f) (2) of the Securities Exchange Act of 1934, as amended, to extend unlisted trading privileges to the above-mentioned securities; and

A hearing having been held in this matter after appropriate notice,[1] and the Commission having this day made and filed its findings and opinion herein;

It is ordered, That the applications of the Pittsburgh Stock Exchange, pursuant to Section 12 (f) (2) of the Securities Exchange Act of 1934, as amended, to extend unlisted trading privileges to American & Foreign Power Company, Inc., Common Stock, No Par Value; Armour and Company of Illinois, Common Stock, $5 Par Value; The Atchison, Topeka & Santa Fe Railway Company, Common Stock, $100 Par Value; The Atlantic Refining Company, Common Stock, $25 Par Value; Barnsdall Oil Company, Common Stock, $5 Par Value; Bethlehem Steel Corporation, Common Stock, No Par Value; Chrysler Corporation, Common Stock, $5 Par Value; Commercial Solvents Corporation, Common Stock, No Par Value; The Commonwealth & Southern Corporation, Common Stock, No Par Value; The B. F. Goodrich Company, Common Stock, No Par Value; Montgomery Ward & Co., Inc., Common Stock, No Par Value; The National Supply Company, Common Stock, $10 Par Value; The New York Central Railroad Company, Capital Stock, No Par Value; The Ohio Oil Company, Common Stock, No Par Value; Paramount Pictures, Inc., Common Stock, $1 Par Value; Socony-Vacuum Oil Company, Inc., Capital Stock, $15 Par Value; The Texas Corporation, Capital Stock, $25 Par Value; United Aircraft Corporation, Capital Stock, $5 Par Value;

[1] 3 F.R. 2575 DI.

The United Gas Improvement Company, Common Stock, No Par Value; United States Rubber Company, Common Stock, $10 Par Value; and Yellow Truck & Coach Manufacturing Company, Class "B" Stock, $1 Par Value; be and the same hereby are granted; and

It is further ordered, That the applications of the Pittsburgh Stock Exchange, pursuant to Section 12 (f) (2) of the Securities Exchange Act of 1934, as amended, to extend unlisted trading privileges to The Aviation Corporation, Capital Stock, $3 Par Value; Boeing Airplane Company, Capital Stock, $5 Par Value; Continental Oil Company, Capital Stock, $5 Par Value; Gimbel Brothers, Inc., Common Stock, No Par Value; The Goodyear Tire & Rubber Company, Common Stock, No Par Value; Pressed Steel Car Company, Inc., Common Stock, $1 Par Value; The Pure Oil Company, Common Stock, No Par Value; Transcontinental & Western Air, Inc., Common Stock, $5 Par Value; United Air Lines Transport Corporation, Capital Stock, $5 Par Value; Walworth Company, Incorporated, Common Stock, No Par Value; The International Nickel Company of Canada, Limited, Common Stock, No Par Value; and Kennecott Copper Corporation, Capital Stock, No Par Value; be and the same hereby are denied.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39–1979; Filed, June 7, 1939; 11:29 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 June, A. D. 1939.

[File Nos. 7–252 to 7–255, inclusive]

IN THE MATTER OF APPLICATIONS BY THE DETROIT STOCK EXCHANGE FOR UNLISTED TRADING PRIVILEGES IN DOW CHEMICAL COMPANY COMMON STOCK, NO PAR VALUE; SIMPLICITY PATTERN COMPANY, INC., COMMON STOCK, $1 PAR VALUE; DIVCO-TWIN TRUCK COMPANY COMMON STOCK, $1 PAR VALUE; INTERNATIONAL RADIO CORPORATION COMMON STOCK, $1 PAR VALUE

ORDER DISPOSING OF APPLICATIONS TO EXTEND UNLISTED TRADING PRIVILEGES

The Detroit Stock Exchange having made application to the Commission pursuant to Section 12 (f) (2) of the Securities Exchange Act of 1934, as amended, to extend unlisted trading privileges to the above-mentioned securities; and

A hearing having been held in this matter after appropriate notice,[1] and the Commission having this day made and filed its findings and opinion herein;

It is ordered, That the applications of the Detroit Stock Exchange, pursuant to Section 12 (f) (2) of the Securities Exchange Act of 1934, as amended, to extend unlisted trading privileges to Dow Chemical Company, Common Stock, No Par Value, and International Radio Corporation, Common Stock, $1 Par Value, be and the same hereby are granted; and

It is further ordered, That the applications of the Detroit Stock Exchange, pursuant to Section 12 (f) (2) of the Securities Exchange Act of 1934, as amended, to extend unlisted trading privileges to Simplicity Pattern Company, Inc., Common Stock, $1 Par Value, and Divco-Twin Truck Company, Common Stock, $1 Par Value, be and the same hereby are denied.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39–1978; Filed, June 7, 1939; 11:29 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 June, A. D. 1939.

[File Nos. 7–311 to 7–337, inclusive; 7–340, 7–341]

IN THE MATTER OF APPLICATIONS BY THE PHILADELPHIA STOCK EXCHANGE FOR UNLISTED TRADING PRIVILEGES IN ALLEGHENY LUDLUM STEEL CORPORATION, COMMON STOCK, NO PAR VALUE; ARMOUR & COMPANY OF ILLINOIS, COMMON STOCK, $5 PAR VALUE; ARMSTRONG CORK COMPANY, COMMON STOCK, NO PAR VALUE; BRIDGEPORT BRASS COMPANY, COMMON STOCK, NO PAR VALUE; CONGOLEUM-NAIRN, INC., COMMON STOCK, NO PAR VALUE; CONSOLIDATED AIRCRAFT CORPORATION, COMMON STOCK, $1 PAR VALUE; CONTAINER CORPORATION OF AMERICA, CAPITAL STOCK, $20 PAR VALUE; CRANE COMPANY, COMMON STOCK, $25 PAR VALUE; DISTILLERS CORPORATION-SEAGRAMS, LIMITED, COMMON STOCK, NO PAR VALUE; ENGINEERS PUBLIC SERVICE COMPANY, INC., COMMON STOCK, $1 PAR VALUE; THE GREYHOUND CORPORATION, COMMON STOCK, NO PAR VALUE; INTERNATIONAL PAPER & POWER COMPANY, COMMON STOCK, $15 PAR VALUE; 5% CUMULATIVE CONVERTIBLE PREFERRED STOCK, $100 PAR VALUE; LOCKHEED AIRCRAFT CORPORATION, CAPITAL STOCK, $1 PAR VALUE; MARSHALL FIELD & COMPANY, COMMON STOCK, NO PAR VALUE; GLENN L. MARTIN COMPANY, COMMON STOCK, $1 PAR VALUE; NATIONAL GYPSUM COMPANY, COMMON STOCK, $1 PAR VALUE; NATIONAL LEAD COMPANY, COMMON STOCK, $10 PAR VALUE; NEWPORT INDUSTRIES, INC., CAPITAL STOCK, $1 PAR VALUE; PARAMOUNT PICTURES, INC., COMMON STOCK, $1 PAR VALUE; RICHFIELD OIL CORPORATION, COMMON STOCK, NO PAR VALUE; TRANSCONTINENTAL & WESTERN AIR, INC., COMMON STOCK, $5 PAR VALUE; UNITED AIR LINES TRANSPORT CORPORATION, COMMON STOCK, $5 PAR VALUE; WHITE MOTOR COMPANY, COMMON STOCK, $1 PAR VALUE; WILSON & CO., INC., COMMON STOCK, NO PAR VALUE; WORTHINGTON PUMP AND MACHINERY CORPORATION (DEL.), COMMON STOCK, NO PAR VALUE

ORDER DISPOSING OF APPLICATIONS TO EXTEND UNLISTED TRADING PRIVILEGES

The Philadelphia Stock Exchange having made application to the Commission pursuant to Section 12 (f) (2) of the Securities Exchange Act of 1934, as amended, to extend unlisted trading privileges to the above-mentioned securities; and

A hearing having been held in this matter after appropriate notice,[1] and the Commission having this day made and filed its findings and opinion herein;

It is ordered, That the applications of the Philadelphia Stock Exchange, pursuant to Section 12 (f) (2) of the Securities Exchange Act of 1934, as amended, to extend unlisted trading privileges to Allegheny Ludlum Steel Corporation, Common Stock, No Par Value; Armour & Company of Illinois, Common Stock, $5 Par Value; Armstrong Cork Company, Common Stock, No Par Value; Bridgeport Brass Company, Common Stock, No Par Value; Container Corporation of America, Capital Stock, $20 Par Value; Crane Company, Common Stock, $25 Par Value; Engineers Public Service Company, Inc., Common Stock, $1 Par Value; The Greyhound Corporation, Common Stock, No Par Value; International Paper & Power Company, Common Stock, $15 Par Value, and 5% Cumulative Convertible Preferred Stock, $100 Par Value; Lockheed Aircraft Corporation, Capital Stock, $1 Par Value; Glenn L. Martin Company, Common Stock, $1 Par Value; National Gypsum Company, Common Stock, $1 Par Value; National Lead Company, Common Stock, $10 Par Value; Newport Industries, Inc., Capital Stock, $1 Par Value; Paramount Pictures, Inc., Common Stock, $1 Par Value; Richfield Oil Corporation, Common Stock, No Par Value; Transcontinental & Western Air, Inc., Common Stock, $5 Par Value; United Air Lines Transport Corporation, Common Stock, $5 Par Value; Wilson & Co., Inc., Common Stock, No Par Value; be and the same hereby are granted; and

It is further ordered, That the applications of the Philadelphia Stock Exchange,

[1] 3 F.R. 2212 DI.

[1] 3 F.R. 3049 DI.

pursuant to Section 12 (f) (2) of the Securities Exchange Act of 1934, as amended, to extend unlisted trading privileges to Congoleum-Nairn, Inc., Common Stock, No Par Value; Consolidated Aircraft Corporation, Common Stock, $1 Par Value; Distillers Corporation-Seagrams, Limited, Common Stock, No Par Value; Marshall Field & Company, Common Stock, No Par Value; White Motor Company, Common Stock, $1 Par Value; and Worthington Pump and Machinery Corporation (Del.), Common Stock, No Par Value; be and the same hereby are denied.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39-1980; Filed, June 7, 1939; 11:30 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 June, A. D. 1939.

[File No. 32-149]

IN THE MATTER OF NEW YORK STATE ELECTRIC & GAS CORPORATION

NOTICE OF AND ORDER FOR HEARING

An application pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named party;

It is ordered, That a hearing on such matter be held on June 20, 1939, at ten 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 Willis E. Monty, 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 June 15, 1939.

The matter concerned herewith is in regard to the proposed issuance by applicant of its First Mortgage Bonds, due May 1, 1964, in the principal amount of $13,000,000, and 60,000 shares of 5½% cumulative preferred stock, $100 par value.

It is stated that the proceeds from the sale of the securities will be applied to redeem certain presently outstanding underlying bonds as follows:

Empire Gas and Electric Company General and Refunding Mortgage 6% Gold Bonds, Series A, due 1952, redemption to be at 107 on December 1, 1939, $1,720,000.

Empire Gas and Electric Company and Empire Coke Company Joint First and Refunding Mortgage 5% Gold Bonds, due 1941, redemption to be at 102 on September 1, 1939, $2,634,000.

New York Central Electric Corporation First Mortgage Gold Bonds, 5½% Series of 1950. Redemption to be at 103 on September 1, 1939, $3,049,000.

New York Central Electric Corporation First Mortgage Gold Bonds, 5% Series of 1952. Redemption to be at 103 on January 1, 1940, $662,000.

Seneca Power Corporation First Mortgage, 6% Gold Bonds, due 1946. Redemption to be at 102½ on September 1, 1939, $393,500.

Applicant's 4½% Notes, due May 6, 1942, payable to The Chase National Bank of the City of New York, aggregate principal amount, $3,460,000.

Applicant's 4% Note, due December 1, 1939, payable to The Chase National Bank of the City of New York, aggregate principal amount, $1,000,000.

Applicant's 6% Demand Note, payable to General Utility Investors Corporation, in the principal amount of, $976,300.

Redemption at $25.75 per share of 3,878 shares of the company's $1.25 Cumulative preferred Stock.

To be deposited with the Trustee under the Mortgage dated July 1, 1921, for withdrawal against expenditures for additional property or against retirement of bonds or refundable divisional lien bonds, in respect of which no additional bonds may be issued, $1,500,000.

29,276 shares of the Preferred Stock being registered are to be sold by the applicant, and the remaining 30,724 shares are to be sold for the account of Associated Power Corporation and General Utility Investors Corporation (affiliates of applicant).

It is stated that The First Boston Corporation and Glore, Forgan & Company will be the principal underwriters.

The coupon rate and redemption provisions for the bonds, offering prices and underwriting discount or commissions, and names of other underwriters will be furnished by amendment.

The Public Service Commission of New York has not yet approved this issue. However, representatives of the applicant have indicated that such approval should be obtained before June 20, 1939.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

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