

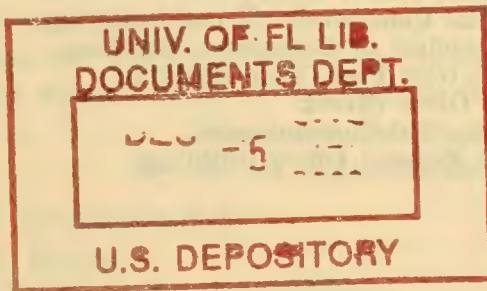
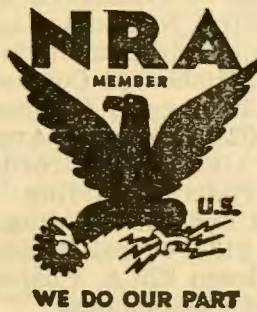
NATIONAL RECOVERY ADMINISTRATION

AMENDMENT TO  
CODE OF FAIR COMPETITION

FOR THE

BITUMINOUS COAL INDUSTRY

AS APPROVED ON JANUARY 25, 1935



UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1935

This publication is for sale by the Superintendent of Documents, Government Printing Office, Washington, D. C., and by district offices of the Bureau of Foreign and Domestic Commerce.

**DISTRICT OFFICES OF THE DEPARTMENT OF COMMERCE**

Atlanta, Ga.: 504 Post Office Building.  
Birmingham, Ala.: 257 Federal Building.  
Boston, Mass.: 1801 Customhouse.  
Buffalo, N. Y.: Chamber of Commerce Building.  
Charleston, S. C.: Chamber of Commerce Building.  
Chicago, Ill.: Suite 1706, 201 North Wells Street.  
Cleveland, Ohio: Chamber of Commerce.  
Dallas, Tex.: Chamber of Commerce Building.  
Detroit, Mich.: 801 First National Bank Building.  
Houston, Tex.: Chamber of Commerce Building.  
Indianapolis, Ind.: Chamber of Commerce Building.  
Jacksonville, Fla.: Chamber of Commerce Building.  
Kansas City, Mo.: 1028 Baltimore Avenue.  
Los Angeles, Calif.: 1163 South Broadway.  
Louisville, Ky.: 408 Federal Building.  
Memphis, Tenn.: 229 Federal Building.  
Minneapolis, Minn.: 213 Federal Building.  
New Orleans, La.: Room 225-A, Customhouse.  
New York, N. Y.: 734 Customhouse.  
Norfolk, Va.: 406 East Plume Street.  
Philadelphia, Pa.: 422 Commercial Trust Building.  
Pittsburgh, Pa.: Chamber of Commerce Building.  
Portland, Oreg.: 215 New Post Office Building.  
St. Louis, Mo.: 506 Olive Street.  
San Francisco, Calif.: 310 Customhouse.  
Seattle, Wash.: 809 Federal Office Building.

Approved Code No. 24—Amendment No. 6

**AMENDMENT TO CODE OF FAIR COMPETITION**

FOR THE

**BITUMINOUS COAL INDUSTRY**

As Approved on January 25, 1935

---

**ORDER**

**APPROVING AMENDMENT OF CODE OF FAIR COMPETITION FOR THE  
BITUMINOUS COAL INDUSTRY**

An application having been duly made pursuant to and in full compliance with the provisions of Title I, of the National Industrial Recovery Act, approved June 16, 1933, for approval of an amendment to the Code of Fair Competition for the Bituminous Coal Industry:

NOW, THEREFORE, on behalf of the President of the United States, the National Industrial Recovery Board, pursuant to authority vested in it by Executive Orders of the President, including Executive Order No. 6859, and otherwise; does find that said amendment and the Code as constituted after being amended comply in all respects with the pertinent provisions and will promote the policy and purposes of said Title of said Act, and does hereby order that said amendment be and it is hereby approved to become effective immediately and remain effective only until and including April 30, 1935, and that the previous approval of said Code is hereby amended to include an approval of said Code in its entirety as amended.

NATIONAL INDUSTRIAL RECOVERY BOARD,  
By W. A. HARRIMAN, *Administrative Officer*.

Approval recommended:

W. P. ELLIS,  
*Division Administrator.*

WASHINGTON, D. C.,  
January 25, 1935.

111342°—1465-111—35 (1)

## REPORT TO THE PRESIDENT

The PRESIDENT,  
*The White House.*

SIR: An application has been duly made pursuant to and in full compliance with the provisions of the National Industrial Recovery Act, for an amendment to the Code of Fair Competition for the Bituminous Coal Industry, submitted by a Sub-Divisional Code Authority of the Industry and an amendment submitted by the National Recovery Administration for consideration at the public hearing, held in Washington, D. C., January 4, 1935.

At this hearing, modifications of such proposed amendment were submitted by the National Bituminous Coal Industrial Board, an agency created and established under the Code for the purpose, among others, of considering and making recommendations to the President as to any amendments of the Code. Pursuant to the hearing and to information and considerations properly before us, as provided in the published notice of hearing, these amendments have been revised. Also as a result of this hearing an amendment to Article VI, Section 1 was approved January 8, 1935.

The existing provisions of Article VI, Sections 2, 3 and 4 and Article VII, Section 2 of the Code for said Industry are entirely inadequate in view of the necessity for changing and improving the methods and procedure in establishing fair market prices. An extreme emergency confronts the Industry occasioned by the custom of making forward contracts, under which the price for delivery of coal might jeopardize the hour and wage provisions of the Code, resulting in serious labor disturbances to the detriment of the public. It is, therefore, evident that the proposed amendment of Article VI, Sections 2, 3 and 4 and of Article VII, Section 2 of said Code, as modified by the National Industrial Recovery Board, as provided in the notice for public hearing thereon, will assist in improving the existing inadequate provisions.

### FINDINGS

The Acting Deputy Administrator in his final report to us on the amendment to the Code of Fair Competition for the Bituminous Coal Industry having found as herein set forth and on the basis of all proceedings in this matter:

We find that pending such further order as the National Industrial Recovery Board may enter thereon;

(a) The amendment to said Code and the Code as amended are designed to promote the policies and purposes of Title I of the National Industrial Recovery Act including the removal of obstructions to the free flow of interstate and foreign commerce which tend

to diminish the amount thereof, and will provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, by inducing and maintaining united action of labor and management under adequate governmental sanctions and supervision, by eliminating unfair competitive practices, by promoting the fullest possible utilization of the present productive capacity of industries, by avoiding undue restriction of production (except as may be temporarily required) by increasing the consumption of industrial and agricultural products by increasing purchasing power, by reducing and relieving unemployment, by improving standards of labor, and otherwise by rehabilitating industry and conserving natural resources.

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

(c) The Code empowers the National Bituminous Coal Industrial Board to consider and to make recommendations to the President as to any amendments of this Code. It also empowers any Sub-Divisional Code Authority to propose amendments on behalf of the Industry as a whole after submission to any other Code Authority affected thereby (which shall include the Divisional Code Authority).

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

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

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

In view of the emergency and conditions existing, said amendment, as modified, is accordingly approved to become effective immediately and for a temporary period to and including April 30, 1935, during which period further consideration will be given to the problems involved.

For the National Industrial Recovery Board:

W. A. HARRIMAN,  
*Administrative Officer.*

JANUARY 25, 1935.

## AMENDMENT TO CODE OF FAIR COMPETITION FOR THE BITUMINOUS COAL INDUSTRY

Modify Article VI by inserting to appear in said Article VI as a preamble thereto and immediately to precede Section 1 thereof, the following:

For the purpose of establishing and maintaining fair practices so as to protect the public in its right to buy coal at reasonable prices; to provide and maintain an adequate wage structure for employees; and to protect the producers in their right to produce coal and sell it in the markets, while observing the purposes of the National Industrial Recovery Act, it is provided as follows:

and by modifying Sections 2, 3 and 4 of said Article VI in such manner that the preamble to and Sections 1, 2, 3 and 4 of said Article VI shall read as follows:

### ARTICLE VI—UNFAIR PRACTICES

For the purpose of establishing and maintaining fair practices so as to protect the public in its right to buy coal at reasonable prices; to provide and maintain an adequate wage structure for employees; and to protect the producers in their right to produce coal and sell it in the markets, while observing the purposes of the National Industrial Recovery Act, it is provided as follows:

SECTION 1. The making of a contract to sell or offer to sell coal, whether for immediate or future delivery, at a price below the fair market price at the date of such contract or offer (regardless of the dates specified for the making of deliveries), or any sale or delivery of coal (other than pursuant to contract made in accordance with the foregoing) below the fair market price thereof at the time of delivery, determined as hereinafter provided, is hereby declared to be an unfair competitive practice and in violation of this Code. Such fair market price shall be determined and established as hereinafter provided, and it shall be proper in determining such fair market price to consider the purposes of the National Industrial Recovery Act, the minimum rates of pay herein established, the furnishing of employment for labor and the competition with other coals, fuels, and forms of energy or heat production. (Amendment Number Five, January 8, 1935.)

SECTION 2 (a). The fair market prices of coal of any kind, grade or size, referred to in the next preceding section, subject to the power of review hereinafter stated, shall be—

(1) The minimum prices for the various kinds, grades and sizes in the various consuming markets which may be established for future application by a marketing agency or by marketing agencies, of whatever form or howsoever constituted now existing or here-

after created or organized, acting for producers of at least two-thirds of the commercial tonnage of any coal district or group of districts, such minimum prices to be effective when and as announced as provided in paragraph (f) of this Section.

(2) The minimum prices for the various kinds, grades and sizes in the various consuming markets, which may be established for future application by the respective Code Authorities hereinafter set up, for their respective areas where no such marketing agency exists, such minimum prices to be effective when announced as provided in paragraph (f) of this Section.

(b) In determining such fair market prices, marketing agencies and Code Authorities shall take into consideration, among other factors, the purposes of the National Industrial Recovery Act, the minimum rates of pay herein established, the furnishing of employment for labor, competition with other coals, fuels and forms of energy or heat production, the customs, requirements and needs of the buying and consuming public for various kinds, grades and sizes of coal and the necessity for giving to consumers reasonable opportunity to buy and to producers reasonable opportunity to sell their coal in usual and normal markets. Furthermore, in order to determine such fair market prices, the marketing agencies and Code Authorities shall classify all coals, applying all factors usually considered in connection with physical structure and chemical analysis and their effect upon the salability and use value of such coals, and with due regard for the foregoing provisions, shall so price coals as to afford producers reasonable opportunity to sell the coal in competition with other coals, fuels and forms of energy or heat production, and to this end the marketing agencies and Code Authorities shall give due regard to the prices made by competing districts, but it shall be their purpose, while making competitive market prices, not to make dumping prices in any area of consumption.

(c) The term "marketing agency" as used in this Code shall include any trade association of coal producers complying with the requirements of a marketing agency and exercising the functions thereof as provided herein.

(d) Where a marketing agency functioning in any district or group of districts acts as selling agent for producers of at least two-thirds of the commercial tonnage, the Code Authority in announcing the prices of coal of producers outside of such agency in such district or group of districts shall utilize and follow the practices and methods of classification, and the classifications, used by such agency and shall adopt the same prices for the respective classes of coal as those fixed by such agency.

(e) The fair market prices established for future application under the provisions of Section 2 (a) (1) shall be reported to said Code Authorities by any such marketing agencies in such manner as may be required by such Authorities.

(f) The fair market price or prices of bituminous coal established as herein provided shall become effective, subject to appeal, suspension and modification as hereinafter provided, when the same shall be approved by the Presidential Member of the Code Authority (acting under the direction of the Administrator), and when published as provided herein. In his approval the Presidential Member may per-

mit a reduction or increase in said price or prices by action of said marketing agencies or Code Authorities within the limits which he may prescribe. Said prices shall be published by the Code Authority when so established and approved by the Presidential Member and from time to time thereafter as may be determined by the Code Authority or required by the Administrator, and in any event when any change is made therein. Simultaneously with such publication said fair market price or prices shall be transmitted by the Code Authority making or giving effect to and publishing any change in price, to the National Recovery Administrator for his review and subsequent action.

(g) Each Code Authority shall, at all times, provide and keep open an office during business hours to which any coal producer in its district or districts and any representative of the Administrator may apply for information with respect to classifications and prices.

SECTION 3. In order to prevent injustices among or between producers, any producer shall be granted a hearing upon written complaint, and the marketing agency or Code Authority which establishes fair market prices for the coals of such producer shall hold said hearing within five days (unless extension of time is consented to by such producer) after the receipt of said complaint, directly or through such agency as it may establish. In such complaint, the producer shall set out the grounds of his complaint, whether he is objecting to the prices fixed on his coal, and whether he desires an increase or decrease in his prices. He shall further set out whether he is objecting to prices of other producers in the same district or on account of prices in competing districts. The marketing agency or Code Authority, shall, to the extent reflected in the evidence, take into consideration, in addition to the factors set out in this article, the market demand for the class of coal of the producer, the relative operating time at the mines of the producer, as compared with that of the mines of other producers in the same and competing districts, their past production history, as well as the quality of the coal and the comparative delivered value thereof to the consumer, and such other pertinent facts as may be presented, and shall make its decision within five days after the hearing, unless extension of time is consented to by such producer. A record shall be made of all the facts and evidence presented to the marketing agency or Code Authority, as the case may be, at such hearing, and of the decision rendered thereon. Such producer shall have the right of appeal to an impartial Board of Arbitration which shall be set up by such agency or Code Authority, as hereinafter provided; and the decision of such Board shall be binding upon the producer and shall constitute the decision of such agency or Code Authority.

SECTION 4. In order to establish fair competitive price relationships and practices between marketing agencies and/or Code Authorities representing different Divisions or Subdivisions, such agencies and Code Authorities are hereby authorized and directed to meet and confer with each other and endeavor to agree upon a basis of fair competitive prices and practices relating thereto as between such Divisions and/or Subdivisions. They shall take into consideration the same factors as are considered by Code Authorities as between the producers within the Divisions or Subdivisions as here-



inbefore set out. Any such agreements made between marketing agencies and/or Code Authorities representing competing Divisions and/or Subdivisions shall be submitted to the Administrator for approval or disapproval and shall become effective within ten days after receipt thereof by him unless disapproved as being against the interest of the public. Such agencies and/or Code Authorities shall endeavor to agree between themselves, subject to the approval of the Administrator, on rules of procedure, notices of meetings, and other necessary order of business for such meetings looking to such agreements, notices of all of which shall be furnished to the Administrator or his representative, who shall have the opportunity to be present at such meetings. In default of an agreement as to such rules and other procedural matter approved by him, the Administrator may prescribe the same.

If any such agency or Code Authority shall be of the opinion that any producer or producers represented by it is adversely affected by any failure to reach such agreement, or that any prices or practices relating thereto, heretofore or hereafter established in a different Division or Subdivision, are unfair competitive prices or practices relating thereto and no such agreement in respect thereof has been reached, the dissatisfied agency or Code Authority shall have the right of appeal to the National Coal Board of Arbitration, as hereinafter provided.

#### ARTICLE VII—ADMINISTRATION

Change the designation of Section 2 to Sub-section (a) of Section 2 and add two additional sub-sections to said Section to be designated (b) and (c), as follows:

(b) Every marketing agency and Code Authority establishing prices as herein provided shall immediately set up and maintain a permanent impartial Board of Arbitration for the marketing agency, Division or Subdivision for which it acts, to which any producer represented by such agency or Code Authority may appeal from any decision thereof as to his classification or price or the practice complained of; provided, however, that any marketing agency or Code Authority may elect to join with any other marketing agency or Code Authority agreeing thereto, with the approval of the Administrator, to set up such Board for their joint use for the purposes of this Article. Such Board shall consist of not more than five members, who shall not be connected directly or indirectly with the coal industry during the time they serve as members of such Board. Such Board shall prescribe rules of procedure and keep a record of its proceedings. Any producer filing an appeal shall do so in writing, accompanied by evidence of service of a copy thereof upon such Code Authority or marketing agency. Such appeal shall be heard within five days of the date of filing unless the producer taking the appeal shall consent to extension of such time. Such Board in reaching its decision on any such controversy shall be guided, as the basis of such decision, by the principles upon which fair competitive market prices and practices relating thereto are to be established as hereinbefore provided in Article VI; and such Board shall decide the matters at issue within ten days after the hearing and the decision of such Board

shall be final and binding on the producer and shall constitute the decision of such Code Authority or marketing agency. If the decision of the Board favors the complainant, the marketing agency or Code Authority shall revise the price or practice complained of in accordance with such decision, or in the case of failure of the said Board to act within such ten days or such extended period as may be consented to by the complainant, such agency or Code Authority shall likewise revise such price or practice complained of as if the decision had been in favor of the complainant.

(c) In order to settle disputes and controversies between or among marketing agencies or Code Authorities representing different Divisions or Subdivisions with respect to fair competitive prices and practices relating thereto, there shall be created an impartial National Coal Board of Arbitration of five members, who shall not be connected directly or indirectly with the coal industry during the time they serve as members of such Board. The nine members of the National Bituminous Coal Industrial Board designated by the Divisional Code Authorities shall constitute electors by majority vote to elect, subject to the approval of the Administrator, and fix the salaries of the members of said National Coal Board of Arbitration and fill any vacancies thereon. The members of the National Coal Board of Arbitration shall be paid salaries at the rate of not to exceed \$10,000, each per year and shall serve for a term of two years, subject to removal by affirmative vote of at least six of said electors. Their salaries and traveling expenses and all necessary office expenses shall be paid by Divisional Code Authorities, contributing on a tonnage basis. Complaints to such Board shall be in writing, setting forth the reasons therefor, and may be made only by a marketing agency or by a Code Authority. The Board shall make all necessary rules and regulations for its operation and procedure and shall keep a record of its actions and proceedings. Said Board shall hear all complaints within ten days (or such additional time as may be consented to by complainant) after receipt of formal complaint in writing, accompanied by evidence satisfactory to the Board that copy thereof has been served upon the respondent marketing agency or Code Authority. Copies of the complaints shall also be furnished to other interested marketing agencies and Code Authorities and to the Administrator in accordance with rules of the Board. The Board shall decide all matters submitted to it within ten days after the hearing unless the time is extended with consent of the complainant and its action shall, subject to changes made under the provisions of the Code, be binding upon the parties for a period of not less than ninety days unless the Board in its discretion shall consent to review its action, and thereafter until new matter is submitted by the complainant sufficient in the opinion of the Board to cause it to change its decision. In settling and determining the disputes and controversies between Divisions and Subdivisions above referred to, said National Coal Board of Arbitration shall be governed by the same principles and standards, facts and factors as herein prescribed for the marketing agencies, Code Authorities, and Boards of Arbitration in fixing prices and determining disputes respecting prices and practices relating thereto. The decision of the Board shall be trans-

mitted to the Administrator for approval or disapproval and shall become effective within ten days after its receipt by him unless disapproved as being against the interest of the public. Pending hearing on and decision of such complaint the prices or practices complained of may by order of the Board and on such conditions as it may prescribe be suspended or modified.

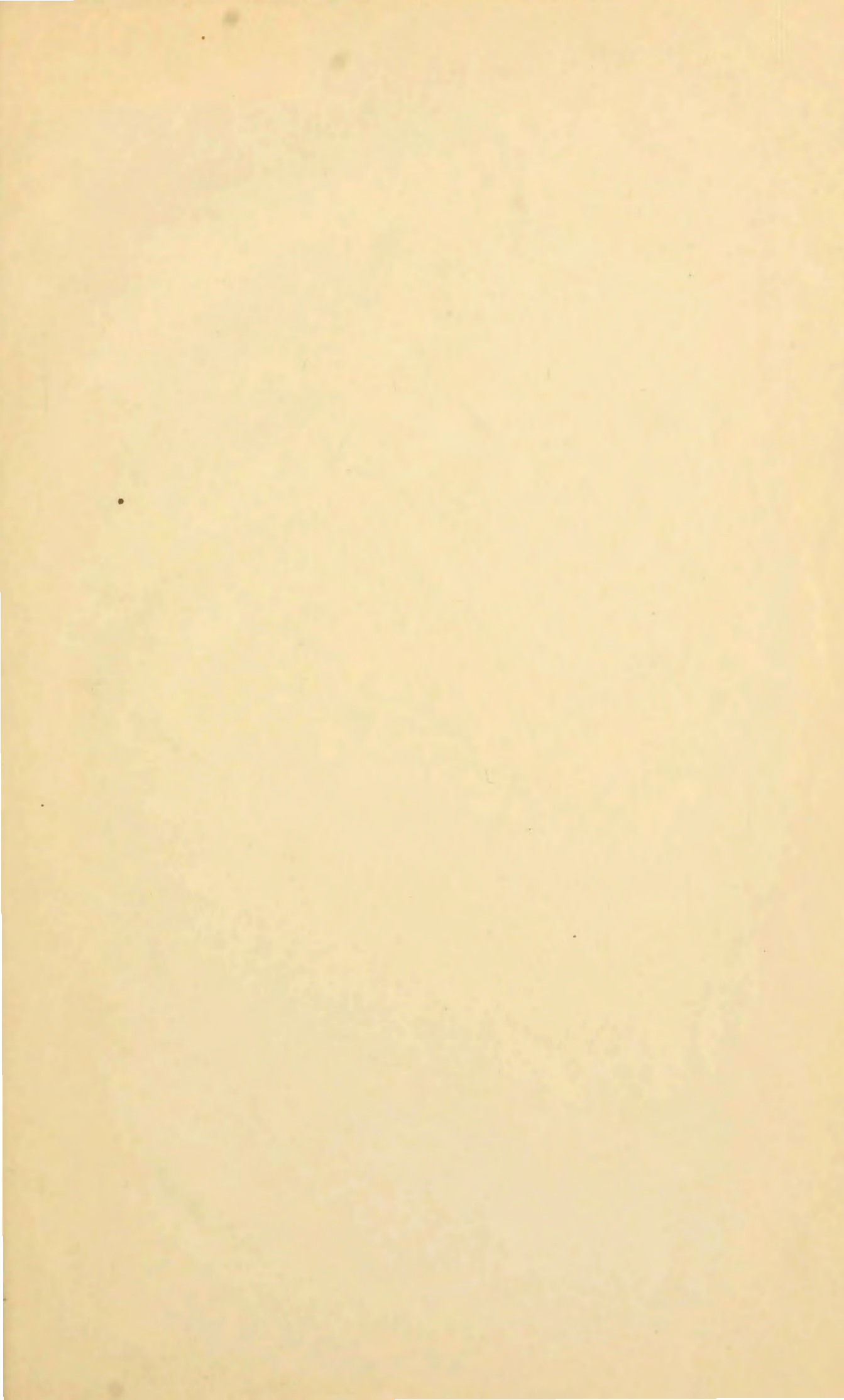
Appropriate publication shall be made by the Code Authority giving effect to any change in price required by such decision.

Approved Code No. 24—Amendment No. 6.  
Registry No. 702-45.



... the Administrator for a period of thirty days after the date of the order, and if the Administrator is not satisfied with the results of the investigation, he may, at any time, direct the Administrator to take such action as he may deem necessary to enforce the provisions of this Act.

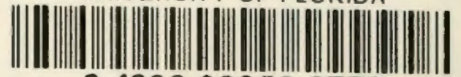
(c) It is hereby declared to be the policy of the United States Government to have a free and competitive market for coal. It is the further policy of the Government to have a coal industry which is financially sound and which operates in accordance with the principles of fair competition and good business practices. In order to carry out these policies, there shall be created an impartial National Coal Board of Arbitration, consisting of five members, who shall not be connected with the coal industry during the term of office of any one of such Board. The five members of the National Coal Board of Arbitration shall constitute a board by majority vote to hear, adjust to the approval of the Administrator, and fix the salaries of the members of each National Coal Board of Arbitration and to carry out the duties of such Board. The members of the National Coal Board of Arbitration shall be paid salaries at the rate of not to exceed \$10,000 each per year and shall serve for a term of two years, subject to removal by affirmative vote of at least six of the members. Their salaries and traveling expenses and all necessary office expenses shall be paid by the Division of Coal and Fuel Administration, subject to the budget of such Board shall be in writing, setting forth the figures therefor and may be made only by a marketing agency or by a Code Authority. The Board shall make all necessary rules and regulations for its operation and procedure and shall keep a record of its actions and proceedings. Said Board shall hear all complaints within ten days (or such additional time as may be granted to by complainant) after receipt of formal complaint in writing accompanied by evidence satisfactory to the Board that every effort has been made upon the respondent marketing agency or Code Authority. Copies of the complaints shall also be furnished to other interested marketing agencies and Code Authorities and to the Administrator in accordance with rules of the Board. The Board shall decide all matters submitted to it within ten days after the hearing unless the time is extended with consent of the complainant and its action shall, subject to changes made under the provisions of the Code, be binding upon the parties for a period of not less than sixty days unless the Board in its discretion shall choose to review its action, and thereafter until new matter is submitted by the complainant and the Board in the opinion of the Board to cause it to change its decision. In settling and determining the disputes and disagreements between Divisions and Subdivisions of the United States National Coal Board of Arbitration shall be governed by the same principles and standards, facts and factors as herein provided for the marketing agencies, Code Authorities, and Boards of Arbitration in fixing prices and determining disputes respecting prices and grading relating thereto. The decision of the Board shall be final.







UNIVERSITY OF FLORIDA



3 1262 08850 2777