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CHAPTER VI

AVERAGE COSTS AND SALES REALIZATION

THE collection and compilation of costs had to precede the setting of minimum prices for bituminous coal. The Bituminous Coal Act of 1937¹ provided that the uncoordinated minimum prices were "to yield a return per net ton" which for a given district would be "equal as nearly as may be to the weighted average of the total cost, per net ton," of the tonnage of the minimum price area in which it was located. (Sec. 4-IIa.) It also specified that the coordinated prices were to be related to the weighted average costs of the minimum price area in which it was located. What that relation was to be is stated in Section 4-IIb of the Act as: "The minimum prices proposed as a result of such coordination shall not, as to any district, reduce or increase the return per net ton upon all the coal produced therein below or above the minimum return as provided in subsection (a) of this section by an amount greater than necessary to accomplish such coordination, to the end that the return per net ton upon the entire tonnage of the minimum price area shall approximate the weighted average of the total cost per net ton of the tonnage of such minimum price area."

The Commission and later the Coal Division also compiled statistics on sales realization. These data were not required by the Act nor were they used as a criterion in price fixing. Information of this nature had been compiled in earlier investigations of this industry, notably, by the Federal Trade Commission, the United States Coal Commission of 1922, and the National Recovery Administration. The resulting material was helpful in interpreting cost data and in throwing light on the industry's experience under established minimum prices.

This chapter will deal with costs and sales realization and will describe the procedures followed in compiling and processing such data. It will also trace their trends between 1936 and 1942.

A. Cost Determination and Cost Data

In discussing the size of the task "of accounting of statistics, and factual analysis involved in the administration of the Coal Act," F. G. Tryon said that this assignment "is undoubtedly among the heaviest laid upon any administrative body."²

¹ 50 U.S. Stat. at L. (1937), 72. The Act is reproduced in Appendix G, below.

² Statement made by F. G. Tryon, Director, Division of Statistics, National

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1. COST DETERMINATION A JOINT RESPONSIBILITY

The computation of the weighted average of the total costs for a given district was a cooperative undertaking by the Commission and the district board. The Act provided that: "As soon as possible after its creation, each district board shall determine from cost data submitted by the proper statistical bureau of the Commission, the weighted average of the total costs of the ascertainable tonnage produced in the district in the calendar year 1936. The district board shall adjust the average costs so determined, as may be necessary to give effect to any changes in wage rates, hours of employment, or other factors substantially affecting costs, exclusive of seasonal changes, so as to reflect as accurately as possible any change or changes which may have been established since January 1, 1936. Such determination and the computations upon which it is based shall be promptly submitted to the Commission by each district board in the respective minimum-price area." (Sec. 4-IIa.)

The computation of "the weighted average of the total costs of the tonnage for each minimum-price area in the calendar year 1936, adjusted as aforesaid," was a task assigned by the Act to the Commission itself. (Sec. 4-IIa.)

2. GOVERNMENTAL ORDER RELATING TO COLLECTION OF DATA ON COSTS AND SALES REALIZATION

One of the early acts of the Commission was to arrange for the compilation of cost data from the producers of bituminous coal. In Order 15, dated July 15, 1937, the Commission set forth its requirements for reporting the essential figures. It began by citing the provision of the Coal Act of 1937 which authorized the setting up of a statistical reporting program³ and then required all pro-

Bituminous Coal Commission, before a subcommittee of the Committee on Appropriations, House of Representatives. Quoted by Ralph Hillis Baker in *The National Bituminous Coal Commission* (The Johns Hopkins Press, 1941), p. 91.

³ Section 10 states, "(a) The Commission may require reports from producers and may use such other sources of information available as it deems advisable, and may require producers to maintain a uniform system of accounting of costs, wages, operations, sales, profits, losses, and such other matters as may be required in the administration of this Act. . . ." [The data were not to be made public in such a way as to disclose the identity of the company furnishing them, unless they were needed as evidence in any hearing before the Commission or any court.]

"(b) Any officer or employee of the Commission or of any district board who shall, in violation of the provisions of subsection (a), make public any information obtained by the Commission or the district board, without its authority, unless directed by a court, shall be deemed guilty of a mis-

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ducers of bituminous coal to supply, on forms provided by the Commission, sales realization and costs information for the calendar year 1936.⁴ The Order also gave a brief description of the forms to be used, dealt with the reporting of costs of idle mines, stated how the blank forms were to be distributed, and set forth the requirement for their prompt return to the Commission.⁵

Order 15 was followed, at irregular intervals, by others dealing with the same matters. Table 8 has been prepared to show the evolution of the reporting system worked out by the Commission and its successor, the Bituminous Coal Division. Although the table is largely self-explanatory, it may be pointed out that simplified cost forms were sent to small producers, in the early years to operators with a "present actual daily capacity of 50 net tons or less," and later to those who had a "present actual daily capacity of less than 50 net tons." These small producers contributed less than two per cent of the total ascertainable tonnage in 1936. Table 9 gives by districts, minimum price areas, and the country as a whole the total ascertainable tonnage of all mines in 1936, the

demeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$500, or by imprisonment not exceeding six months, or by both fine and imprisonment, in the discretion of the court.

"(c) If any producer required by this Act or the code or regulation made thereunder to file a report shall fail to do so within the time fixed for filing the same, and such failure shall continue for fifteen days after notice of such default, the producer shall forfeit to the United States the sum of \$50 for each and every day of the continuance of such failure, which forfeiture shall be recoverable in a civil suit in the name of the United States, brought in the district where the producer has his principal office or in any district in which he shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeiture."

⁴ "Each producer of bituminous coal, whether or not a code member and whether or not engaged in commerce in coal which is subject to the provisions of Section 4 of said Act, shall file, in duplicate, complete reports showing the total costs of the tonnage produced and realization prices derived from the sale of coal, all as more fully set forth and specified in the Commission's Cost Forms No. 1 and 1-A, such reports to be made separately for each mine and to include all coal produced during the calendar year 1936 and all coal sold during the same period." (*Federal Register*, July 17, 1937, p. 1234.)

⁵ "Each producer shall, within fifteen (15) days from the date or receipt of a copy of this order and of said forms, file the required reports, duly verified, with the statistical bureau of the Commission in the district within which the mine or mines reported upon are located. The Commission directs specific attention to the provisions of Section 10 of said Act relating to the confidential nature of the reports required under this order and further gives notice that the penalties provided for noncompliance with this order by the producer will be strictly enforced."

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TABLE 8
Orders Relating to Reporting of Sales Realization
and Production Costs

Order, and Date Signed	Reports Required of Producers			
	Period Covered	Type of Data	Form Used	Mines Included
No. 15 July 15, 1937 ^a	Calendar year 1936	Costs and Sales Realization	No. 1	Those having a "present actual daily capacity of more than 50 net tons."
			No. 1-A	Those having a "present actual daily capacity of 50 net tons or less."
No. 29 July 30, 1937 ^b	Monthly, beginning Jan. 1937	Costs and Sales Realization	No. 2	Same as for Form No. 1 above
			No. 2-A	Same as for Form No. 1-A, above
No. 236 March 22, 1938 ^c	Monthly, beginning Jan. 1938	Costs and Sales Realization	No. 3	"All mines having a present actual daily capacity of 50 net tons or more, and . . . all mines shipping directly by rail or river regardless of daily capacity."
			No. 3-A	"All mines not shipping directly by rail or river and having a present actual daily capacity of less than 50 net tons."
No. 252 Oct. 12, 1938 ^d	Calendar year 1938	Costs and Sales Realization	No. 3	Same as for Form No. 3 above
No. 262 Feb. 16, 1939 ^e	Calendar years beginning 1939. Monthly reports hereby discon- tinued for small mines.	Costs and Sales Realization	No. T-1	Same as for Form No. 3 above
			No. T-2	Same as for Form No. 3-A above
No. 287 Nov. 20, 1939 ^f	Period June- Dec. 1939. Also calendar year 1939	Costs and Sales Realization	No. 3 Revised (B.C.D. No. 156)	Same as for Form No. 3 above
No. 293 May 4, 1940 ^g	Monthly, beginning Jan. 1940. Also cumula- tively Jan. through Dec.	Costs	No. 4 (B.C.D. No. 288)	Same as for Form No. 3 above
No. 308 Apr. 23, 1941 ^h	Monthly, beginning Jan. 1941	Sales Realization	B.C.D. No. 350	Same as for Form No. 3 above
			B.C.D. No. 351	Same as for Form No. 3 above but for non-code members only

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TABLE 8 (concluded)

Order, and Date Signed	Reports Required of Producers			
	Period Covered	Type of Data	Form Used	Mines Included
No. 339 May 30, 1942 ¹	Monthly, beginning Jan. 1942. Also cumu- latively Jan. through Dec.	Costs	No. 5, (B.C.D. No. 288, Revised May 1942)	Same as for Form No. 3 above

^a *Federal Register*, July 17, 1937, p. 1234.

^b *Ibid.*, July 31, 1937, pp. 1347-48.

^c *Ibid.*, March 24, 1938, p. 619.

^d *Ibid.*, October 14, 1938, p. 2475.

^e *Ibid.*, February 18, 1939, p. 969. See also Order No. 263, same page.

^f *Ibid.*, January 24, 1940, p. 279.

^g *Ibid.*, May 8, 1940, p. 1654.

^h *Ibid.*, April 26, 1941, pp. 2133-42.

ⁱ *Ibid.*, June 6, 1942, pp. 4289-90.

total tonnage produced by all mines with a capacity of over 50 tons a day and the percentages which both the large and small mines contributed to the total ascertainable tonnage as compiled by the Coal Division.⁶ The importance of the large mines is evidenced by the range in percentages from 87.8 in District 12 (Iowa) to 100.0 in District 5 (Michigan).

It will also be noted that the sales realization and cost data were submitted on the same forms until the end of 1939. In 1940 sales realizations of mines whose daily capacity was 50 tons or more were reported on Form T-1 for the calendar year only. Beginning in January 1941, however, these mines were required to submit their sales realizations monthly on a separate form.

3. COST INFORMATION COLLECTED

The cost forms were based upon the specifications enumerated in the Coal Act of 1937 which required the operators to report all production, administration, and selling costs other than bad debts, demurrage charges, cost of developing new mines and carrying idle or abandoned mines, taxes on unassigned acreage, taxes on income, taxes on excess profits, and interest on investment. The following list shows the various cost items which under the Act had to be compiled and, directly opposite each item, the detailed

⁶ The Coal Division's estimate of the total bituminous coal produced in 1936 was 94.7 per cent of the total production later reported by the U.S. Bureau of Mines for the same year in *Minerals Yearbook, 1938*, p. 693.

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TABLE 9

Production of Bituminous Coal in Mines Over and Under 50 Tons Daily Capacity, by Producing District and Minimum Price Area, 1936

	(ascertainable net tons)		(per cent of total ascertainable net tons)	
	Total	Mines over 50 Tons Per Day	Mines over 50 Tons per Day	Mines 50 Tons per Day and Under
			per Day	and Under
District				
1	37,793,264	36,372,829	96.2	3.8
2	69,090,922	68,464,653	99.1	0.9
3	22,203,799	22,166,214	99.8	0.2
4	22,386,428	21,326,313	95.3	4.7
5	618,121	618,121	100.0	0.0
6	4,247,196	4,196,446	98.8	1.2
7	52,981,211	52,930,479	99.9	0.1
8	86,496,407	86,257,219	99.7	0.3
MINIMUM PRICE AREA 1	295,817,348	292,332,274	98.8	1.2
District				
9	7,879,672	7,666,253	97.3	2.7
10	48,812,777	48,043,643	98.4	1.6
11	16,635,196	16,318,326	98.1	1.9
12	3,551,750	3,118,974	87.8	12.2
MINIMUM PRICE AREA 2	76,879,395	75,147,196	97.7	2.3
MPA 3 (District 13)	12,513,538	12,338,438	98.6	1.4
MPA 4 (District 14)	1,932,783	1,879,079	97.2	2.8
MPA 5 (District 15)	7,030,072	6,516,736	92.7	7.3
District				
16	2,343,702	2,236,618	95.4	4.6
17	4,891,733	4,805,853	98.2	1.8
18	713,782	648,980	90.9	9.1
MINIMUM PRICE AREA 6	7,949,217	7,691,451	96.8	3.2
District				
19	5,485,005	5,438,769	99.2	0.8
20	3,242,617	3,114,007	96.0	4.0
MINIMUM PRICE AREA 7	8,727,622	8,552,776	98.0	2.0
MPA 9 (District 22)	2,905,389	2,815,136	96.9	3.1
MPA 10 (District 23)	1,904,085	1,833,810	96.3	3.7
TOTAL UNITED STATES	415,659,449	409,106,896	98.4	1.6

Source: Compiled from data published in *Hearing Re Determination of Weighted Average of the Total Costs of the Tonnage Produced Within Minimum Price Area 1 [and] . . . Within Minimum Price Areas 2, 3, 4, and 5, [and] . . . Within Minimum Price Areas 6, 7, 9, and 10.* (General Docket No. 15) National Bituminous Coal Commission, 1938. The tonnage figures are designated "revised."

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cost information which was required on Form No. 4 (Bituminous Coal Division No. 288), the form used in 1940 and 1941.⁷ Accompanying footnotes point out how earlier forms and Form No. 5 differed from Form No. 4.

<i>Cost Items in Bituminous Coal Act of 1937, Sec. 4-IIa</i>	<i>Cost Items in Form No. 4 (Bituminous Coal Division No. 288)</i>
"Labor"	Daymen (paid by hour, day, or month) ^{a, c} Mining (piece and day workers) ^{a, b, c} Yardage and dead work ^{a, c} Mine supervisory and clerical employees ^c
"Supplies"	All supplies (except power purchased, and coal used to produce coal)
"Power"	Power purchased Coal used to produce coal, at market prices
"Insurance"	Insurance (all classes except compensation and vocational disease)
"Taxes"	Taxes on mine property and equipment and other taxes in lieu thereof. Corporate, privilege, and severance taxes ^d and sales taxes not paid by consumer. ^e Social security, old age benefit tax. Unemployment tax. Tax—Bituminous Coal Act of 1937 ^f
"Workmen's Compensation"	Compensation insurance Vocational disease insurance
"Royalties"	Royalties
"Depletion"	Depletion (use income-tax basis for calculation) ^g
"All other direct expenses of production"	Salaries and expenses of other employees at mine (not included in the first 4 items) ^h Mine office expense ^h
"Coal operators' association dues"	Operators' association dues and assessments
"District board assessments"	District board expense—including assessments
"Administration"	Salaries and expenses—officers, except selling officers Salaries and expenses—clerical and others not included under selling

⁷ This particular cost form was chosen for purposes of illustration because with its adoption, the inconvenient arrangements of the earlier forms had been eliminated. Incidentally, Form No. 1 did not differ greatly from the cost form which had been used under the NRA. "Company house expense," reported on the NRA form, was deleted. "Code authority expense" became "District board expense." Wholly new items were "Social security tax," "unemployment tax," and "vocational disease insurance." Also new were the taxes levied by the Coal Act of 1935 and later the Coal Act of 1937.

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*Cost Items in Bituminous
Coal Act of 1937, Sec.
4-11a*

*Cost Items in Form No. 4 (Bituminous Coal
Division No. 288)*

"Reasonable costs of selling"	Office expense and rent not included under selling Legal Depreciation—office equipment All other administrative expenses Salaries, commissions, and expenses—salesmen Salaries and expenses—selling officers Commissions to sales agents; affiliated with producer ¹ Commissions to sales agents; not affiliated with producer ¹ Discounts to middlemen where sales are made direct to the middlemen Discounts to middlemen and commissions to sales agents affiliated with producer where compensation includes both Discounts to middlemen and commissions to sales agents not affiliated with producer where compensation includes both Salaries and expenses—clerical Rent and office expenses directly connected with selling efforts Advertising Depreciation—office equipment and automobiles All other selling costs
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^a Strip mines reporting on this and earlier forms had to divide their stripping and loading labor costs among these items. Later, in Form 5, a special item was provided for reporting such labor.

^b In Form 5 this became two items—"Mining—day workers" and "Mining—piece workers."

^c In addition to all these labor items Form 5 included a new one: "Vacation payments."

^d "Corporate, privilege and severance taxes" was reported as a separate item in Form 5. Earlier, in Forms 1 and 2 corporate and privilege taxes had been considered administrative expenses.

^e "Sales taxes not paid by consumer" was reported as a separate item on Form 5. In Forms 1 and 2 "Sales taxes" had been considered a selling cost.

^f In Form 1 this had been called "Tax—Bituminous Coal Conservation Act of 1935." In Forms 1 and 2 these coal-act taxes were considered selling costs.

^g In Form 5 this item was divided into three parts. One of these, "Amortization," was designed to take care of development costs which might be allowable under the provisions of the Revenue laws, and also to permit a more accurate accounting for the exhaustion of leasehold values where such an element was a proper item of cost.

^h Among these "all other" expenses Form 5 included two new ones: (1) "Hired trucking to tippie, ramp or other loading facility (not to customer)" and (2) "Rental of equipment" such as a stripping shovel.

¹ In Form 5 parts of these items were separated, and recorded as a new item: "Commissions to marketing agencies."

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The information required of small mines on Forms No. 1-A and 2-A included the following eight items:

- Total labor in and around mine
- Total supplies and power
- Workmen's compensation, social security, etc.
- Property taxes and insurance
- Royalties and depletion
- All other producing expense
- Total administrative expense
- Total selling expense

Beginning in January 1938 the reporting of costs by the small producers was greatly simplified. Form No. 3-A contained only two cost items: (1) total labor in and around mine and (2) all other expense. The item "Total delivery costs" which forms number 1-A and 2-A carried under the section dealing with realization data was continued. Subsequently, Form No. T-2, however, increased the number of cost items for small mines and required them to report:

- Labor cost
- Supplies cost
- Cost of mine fuel
- Cost of electric power purchased
- All other expenses of production (excluding cost of trucking coal to customers)

4. PROCESSING OF COST STATISTICS

It will be recalled that the first costs reported to the Coal Commission, on Forms 1 and 1-A, were those for the calendar year 1936. Working with cost data compiled from these forms, and supplied to it by the Commission, each district, as prescribed by the Act, made adjustments "necessary to give effect to any changes in wage rates, hours of employment, or other factors substantially affecting costs, exclusive of seasonal changes" that had occurred since January 1, 1937.⁸ The district-adjusted costs were used by the Commission to compute the "determined" weighted average costs for the nine minimum price areas.⁹ The first minimum prices established by the Commission were based upon these determined costs. When these prices were revoked in February 1938, however, the entire procedure of cost determination and minimum price fixing had to begin all over again.

⁸ The Act read "1936" but the Bituminous Coal Commission interpreted the date to mean January 1, 1937.

⁹ See Table 12, column 1.

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When the second cost determination was begun in the spring of 1938, the cost data supplied on Forms 2 and 2-A were available for a considerable part of 1937. It was possible, therefore, to measure rather accurately the cost changes that had occurred after the base year, 1936.

a. *Processing by statistical bureaus.* For each of the 22 districts the Coal Commission, in accordance with the terms of the Act, established a statistical bureau which functioned as an agency of the Commission.¹⁰

The forms required by the Commission were sent by the producer in each district to the local statistical bureau where they were put through a process of five steps:

The statistical bureau affixed a key code number to each filled-in form and its accompanying affidavit. It placed the affidavit (numbered and named) in a confidential file and sent the form, numbered but anonymous, for processing.

The form was inspected to ascertain whether the data requested had been supplied and entered in the right places, and whether, in other respects, the form had been prepared in accordance with the Commission's orders and instructions.

The report was then examined for errors in computation. Where mistakes were discovered, they were rectified, and the reporting producer was so informed.

The reported costs of a given mine were next compared with the weighted averages for the producing district. Where figures for particular items had been reported that were out of line, the statistical bureau inquired of the producer why such deviations prevailed. Occasionally some items were reported that were inadmissible ("bad debts," "interest," etc.). These were stricken out, and the reporting producer was so notified.

Finally the cost reports of all the producers in the district were brought together and summated. The "cost plates" on

¹⁰ Sec. 4-IIa. Statistical bureaus were established in the following cities:

Dist. 1 Altoona, Pa.	Dist. 12 Des Moines, Iowa
Dist. 2 Pittsburgh, Pa.	Dist. 13 Birmingham, Ala.
Dist. 3 Fairmont, W. Va.	Dist. 14 Fort Smith, Ark.
Dist. 4 Cleveland, Ohio	Dist. 15 Kansas City, Mo.
Dist. 5 Saginaw, Mich.	Dist. 16 Denver, Colo.
Dist. 6 Wheeling, W. Va.	Dist. 17 Denver, Colo.
Dist. 7 Bluefield, W. Va.	Dist. 18 Albuquerque, N.M.
Dist. 8 Ashland, Ky.	Dist. 19 Cheyenne, Wyo.
Dist. 9 Louisville, Ky.	Dist. 20 Salt Lake City, Utah
Dist. 10 Chicago, Ill.	Dist. 22 Billings, Mont.
Dist. 11 Indianapolis, Ind.	Dist. 23 Tacoma, Wash.

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which these data appeared showed (1) totals and averages by subdistricts and (2) separate costs for "commercial mines" and "captive mines."¹¹

1) *Cost data of "Captive" and "Commercial" mines segregated.* The classification of mines as "commercial" and "captive" was adopted "in deference to industry usage in order to distinguish between consumer-affiliated business and ordinary commercial business." It was utilized "solely for the purpose of statistical analysis."¹² The differentiation between these two categories is important to the industry because the captive or consumer-owned mines supply part or all of their coal to affiliates of the parent company, and the value assigned to such coal often is not the open-market price but a book value. One can readily see why the operators who sell in the open market would prefer to have their costs, especially their selling costs, tabulated separately from those of the consumer-owned mines.

To determine whether a given mine was "commercial" or "captive," the magnitude of the tonnage of "coal not sold in the open market" was compared with the total production of the mine. If the coal so disposed of amounted to 40 per cent or more of the total output the mine was classified as "captive." If it amounted to less than 40 per cent the mine was considered to be "commercial."¹³ Table 10 has been prepared to show the relative importance of the two categories of coal mines, in terms of tonnages produced.

It will be noted that commercial mines in District 22 (Montana) produced less than 30 per cent of the District's total output. In all other districts, however, the percentage was greater, and in three—District 5 (Michigan), District 11 (Indiana), and District 18 (New Mexico)—it was 100. For the entire United States commercial production amounted to 80 per cent of the total ascertainable tonnage.¹⁴

b. *Processing by Coal Commission and Consumers' Counsel.* When the statistical bureaus had completed their work, they forwarded to the Commission both the "cost plates" and the individual cost reports for the calendar year 1936 and the last nine months

¹¹ *Hearing Re Determination of Weighted Average of the Total Costs of the Tonnage Produced Within Minimum Price Area 1* (General Docket No. 15), National Bituminous Coal Commission, 1938, pp. 3 and 4.

¹² *Ibid.*, p. 5.

¹³ *Loc.cit.*

¹⁴ See note 6, above.

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TABLE 10
Production of Bituminous Coal in "Commercial" and "Captive" Mines,
by Producing District and Minimum Price Area, 1936

	<i>(ascertainable net tons)</i>		<i>(per cent of total ascertainable net tons)</i>	
	<i>Total</i>	<i>Commercial Mines</i>	<i>Commercial Mines^a</i>	<i>Captive Mines^a</i>
District				
1	37,793,264	30,922,055	81.8	18.2
2	69,090,922	41,095,828	59.5	40.5
3	22,203,799	19,338,971	87.1	12.9
4	22,386,428	18,461,649	82.5	17.5
5	618,121	618,121	100.0	0.0
6	4,247,196	3,304,187	77.8	22.2
7	52,981,211	47,857,826	90.3	9.7
8	86,496,407	72,802,596	84.2	15.8
MINIMUM PRICE AREA 1	295,817,348	234,401,233	79.2	20.8
District				
9	7,879,672	7,746,365	98.3	1.7
10	48,812,777	42,630,932	87.3	12.7
11	16,635,196	16,635,196	100.0	0.0
12	3,551,750	3,203,590	90.2	9.8
MINIMUM PRICE AREA 2	76,879,395	70,216,083	91.3	8.7
MPA 3 (District 13)	12,513,538	6,279,735	50.2	49.8
MPA 4 (District 14)	1,932,783	1,892,784	97.9	2.1
MPA 5 (District 15)	7,030,072	6,465,724	92.0	8.0
District				
16	2,343,702	2,094,090	89.3	10.7
17	4,891,733	4,318,040	88.3	11.7
18	713,782	713,782	100.0	0.0
MINIMUM PRICE AREA 6	7,949,217	7,125,912	89.6	10.4
District				
19	5,485,005	2,086,064	38.0	62.0
20	3,242,617	2,998,350	92.5	7.5
MINIMUM PRICE AREA 7	8,727,622	5,084,414	58.3	41.7
MPA 9 (District 22)	2,905,389	864,736	29.8	70.2
MPA 10 (District 23)	1,904,085	1,441,061	75.7	24.3
TOTAL UNITED STATES	415,659,449	333,771,682	80.3	19.7

^a For definition, see accompanying text.

Source: Compiled from same source as Table 9. The tonnage figures are designated "revised."

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of 1937.¹⁵ The procedure utilized by the Commission and the Consumers' Counsel was:

The cost data were first subjected to a thorough mathematical checking by the Bureau of Research and Statistics, one of the departments of the Commission.

The Bureau next drew up composite tabulations of the weighted average costs in 1936 and the last nine months of 1937, by districts and by items. These tabulations were then transmitted to the various district boards before further analyses were made. This action evidently was taken to enable the district boards without undue delay to comply with the Commission's Order 24 (April 19, 1938) to "determine" the weighted average costs in their respective districts.

The Bureau then made a test audit of all cost items. Every cost report was rechecked, and the summations of these items on the "cost plates" were checked. As a result, several previously undetected inconsistencies and inadmissible entries were discovered and rectified.

The basic material was made available to the office of the Consumers' Counsel. That agency checked the mechanical posting of cost items from the original reports to the tabulation plates, and checked the compilation of totals and averages for each district. No significant errors were discovered. The Office then examined the individual cost reports and noted those mines in which one or more individual items seemed considerably higher than the general level in other mines in the district.

The mines so noted were invited by the Commission to explain the seemingly high costs of these items. As a result of information gained by these inquiries the Bureau of Research and Statistics was able to recommend the retention of some cost figures and the revision of others.

The Bureau of Research and Statistics reviewed the changes

¹⁵ "The cost computations for 1937 did not include the first three months of that year. The experience represented by those three months was essentially like that of 1936 on the wage scale then in effect. To have tabulated and analyzed the first three months' record of 1937 would have added very little to what was already known from the experience of the entire year, 1936. The last nine months of the year 1937, however, represented an experience under a new and higher wage scale, which became generally effective by agreement of April 1, 1937. It was the opinion of expert witnesses for the Commission that the adjustments of costs could not intelligently be undertaken without constant reference to actual experience at the new level of costs." (*Hearing Re Determination of Weighted Average of the Total Costs . . . Minimum Price Area 1*, p. 8.)

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described above and added all late cost returns that had been received. The results were transmitted to the district boards as corrections to the tentative data that had been sent to them earlier. In several instances the district boards had already completed their "determination" of costs.

Finally the Bureau made computations—independently of the work of the various district boards—of the weighted average costs of the ascertainable tonnage of coal produced in each district and submitted these computations to the Commission.¹⁶

1) *Tonnage divisor*. In computing the weighted average costs, the Commission was faced with a troublesome problem that had to do with the calculation of selling costs per ton. As pointed out earlier, the captive mines shipped their coal to affiliates of the same company and charged them a book value. These mines had no selling costs. Because of this fact, the Commission was confronted with this question—should the tonnage of captive mines be included in the "tonnage divisor" to be used in computing selling costs per ton, or should the divisor be restricted to the output of commercial mines only? In a district such as Indiana in which all mines in 1936 were commercial there was no problem. But in districts in which large tonnages of captive coal were produced the problem was important. In any district in which captive coal mines were operated the "tonnage sold commercially" was necessarily less than the "total ascertainable tonnage," and if the smaller tonnage was used as the divisor the "selling cost per ton" would be above that arrived at if the larger tonnage was employed.¹⁷

The Coal Commission used the "tonnage sold commercially" in its computations of the 1936 costs which were announced in 1938. The formula employed was:

$$\text{Total cost per ton} = \frac{\text{Producing and Administrative Costs}}{\text{Total Ascertainable Tonnage}} + \frac{\text{Selling Costs}}{\text{Tons Sold Commercially}}$$

This method had the advantage of fully representing the costs of commercial mines, and the disadvantage of creating a fictitious selling cost for captive mines.¹⁸

¹⁶ The first six steps listed were reported in *ibid.*, pp. 6 to 8 and 13 and the last step in the *Third Annual Report under the Bituminous Coal Act of 1937, Fiscal Year Ended June 30, 1939*, p. 9.

¹⁷ The "tonnage sold commercially" was not exactly equal to the "tonnage of commercial mines" because part of the output of some "captive mines" was sold commercially and part of the output of some "commercial mines" was used rather than sold.

¹⁸ The Commission observed that this "is the only method which will re-

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This method was vigorously attacked by the Consumers' Counsel. It is interesting to note that the Coal Commission abandoned the method in 1939 and recomputed the 1936 costs on the basis of the following formula:

$$\text{Total cost per ton} = \frac{\text{Producing and Administrative Costs} + \text{Selling Costs}^{10}}{\text{Total Ascertainable Tonnage}}$$

The new formula resulted in lower minimum prices but did not fully take into account the selling costs of commercial mines.²⁰

2) *Reasonable costs of selling.* Selling costs were the only costs specified in the Coal Act of 1937 that were qualified by the adjective "reasonable." The fact that the Coal Commission was empowered to scrutinize these costs and to reject any selling costs that it considered unreasonable led the Consumers' Counsel to urge that the Commission establish criteria for this purpose. The Counsel pointed out that unless this was done there would be a tendency among producers to increase their selling costs in the hope of raising the general level of minimum prices.²¹ The Commission, however, held to its opinion that the factors which affected selling costs were so numerous that it was practically impossible to set up criteria of reasonableness.²² It decided, therefore, to accept "the judg-

turn to the commercial mines a return per net ton upon the entire tonnage of the minimum price area which shall approximate the weighted average of the total costs per net ton of the minimum price area." (*Hearing Re Determination of Weighted Average of the Total Costs . . . Minimum Price Area 1*, p. 14.)

¹⁹ *Coal Consumers' Digest*, May 1940, p. 9.

²⁰ The effect of this method on cost determination is disclosed in Table 12. The costs in column 2 were computed by the first method (tonnage sold commercially as the divisor) and those in column 3 were computed by using total ascertainable tonnage as the divisor.

²¹ *Coal Consumers' Digest*, April 20, 1939, p. 2.

²² The factors given were: "The quality and size of coal; the method of transportation; the territory where it is consumed, whether densely or sparsely populated; the radius of distribution and presence or absence of a home market; the volume involved in the transaction; the intensity of competition from other producers; the extent of incidental services performed by the wholesaler, such as financing the producer; command of a varied supply of coals adapted to several uses; and existence of advantageous long-term contracts. Selling costs are also influenced by distance from market; the business policy of the producer, whether content to maintain his market or seeking to expand it; reciprocity in freight traffic; and the possession of auxiliary facilities of distribution, such as wharves, vessels, docks and retail yards, whether owned directly by the producer or by an affiliate." (*Hearing Re Determination of Weighted Average of the Total Costs . . . Minimum Price Area 1*, pp. 14-15.)

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ment of marketing experts that the actual costs of selling, as reported, are the best indication of the reasonable costs of selling." It held, however, that "any item not properly chargeable to cost should . . . be disallowed," as was in fact done in several districts.²³

c. *Reported costs: published data.* Before turning our attention to the "determined costs" that formed the basis for minimum price fixing, it may be of interest to the reader to see what happened to actual reported costs during the period under consideration, 1936 to 1942. Table 11 presents an official tabulation published in 1943, shortly before the Coal Act expired.²⁴ It should be noted that the costs are averages for all mines whether large or small, Code-member and non-Code-member, commercial or captive. For obvious reasons, much of this information was not available to the Commission when the cost hearings were being held.

d. *Determined costs.* The weighted average costs set forth in Table 11 were not used to construct the minimum price schedules. Instead, the costs for the year 1936 adjusted to give effect to "factors substantially affecting costs" as stated in the Act became the "determined" costs that were utilized for this purpose. The various cost determinations that were announced by the Commission and its successor are presented in Table 12. The costs shown in column 1 were announced in November 1937, but the minimum price structure that had been erected upon these costs, it will be recalled, was challenged and later revoked, which made it necessary to begin the process of cost determination anew.²⁵

1) *Costs in Docket No. 15: first determination.* In the second attempt to establish minimum price schedules, there were two determinations of costs. Both of these occurred under Docket No. 15. On April 19, 1938, the Commission issued Order 240 requiring each district board to make its own determination of costs (pursuant to the Commission's instructions),²⁶ and to submit such de-

²³ *Ibid.*, p. 16. ²⁴ See source note to Table 11.

²⁵ The November 1937 costs were revoked by Order 231, *Federal Register*, March 15, 1938, p. 565.

²⁶ "Each District Board shall forthwith, from the cost data covering 1936 tonnage previously submitted to it by the statistical bureau of the Commission for the district, determine the weighted average of the total costs of the ascertainable tonnage produced in its district in the calendar year 1936, and each District Board shall adjust the average costs so determined as may be necessary to give effect to any changes in wage rates, hours of employment, or other factors substantially affecting costs, exclusive of seasonal changes, so as to reflect as accurately as possible any change or changes which may have been established since January 1, 1936." (*Ibid.*, April 22, 1938, p. 794.) See note 8, above.

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termination, together with the underlying computations, to the Commission before April 30, 1938.

The district boards determined the weighted average costs for their respective districts as instructed and sent them with the data on which they had been based to the Commission. In June and July the Commission held hearings in Denver and Washington

TABLE 11
Reported Costs of Bituminous Coal, by Producing District and Minimum Price Area, 1936-1942
 (dollars per net ton, f.o.b. mine)

	1936	1937 ^a	1938	1939	1940	1941	1942 ^b
District							
1	2.09	2.34	2.31	2.20	2.14	2.32	2.49
2	1.96	2.17	2.26	2.08	1.98	2.22	2.38
3	1.63	1.82	1.78	1.72	1.65	1.91	2.03
4	1.72	1.92	1.90	1.76	1.71	1.89	2.02
5	3.59	4.01	3.90	3.84	3.90	3.97	4.38
6	1.75	1.96	1.86	1.66	1.64	1.97	2.08
7	1.95	2.17	2.23	2.08	2.04	2.38	2.62
8	1.81	2.01	2.04	1.95	1.90	2.19	2.36
MINIMUM PRICE AREA 1	1.89	2.10	2.13	2.00	1.94	2.20	2.37
District							
9	1.38	1.57	1.48	1.41	1.42	1.51	1.58
10	1.63	1.74	1.72	1.62	1.59	1.68	1.73
11	1.46	1.63	1.58	1.44	1.44	1.51	1.59
12	2.56	2.79	2.63	2.47	2.42	2.69	2.78
MINIMUM PRICE AREA 2	1.61	1.74	1.70	1.58	1.57	1.64	1.71
MPA 3 (District 13)	2.15	2.48	2.42	2.35	2.31	2.73	2.96
MPA 4 (District 14)	3.17	3.73	3.41	3.33	3.26	3.49	3.66
MPA 5 (District 15)	1.91	2.03	1.94	1.86	1.89	1.99	2.15
District							
16	2.28	2.61	2.54	2.54	2.36	2.47	2.54
17	2.45	2.74	2.76	2.60	2.50	2.76	2.80
18	2.87	3.14	3.13	3.29	3.32	3.41	3.61
MINIMUM PRICE AREA 6	2.44	2.75	2.72	2.63	2.51	2.72	2.78
District							
19	1.82	2.05	1.90	1.87	1.82	1.93	2.04
20	2.26	2.44	2.20	1.98	2.02	2.13	2.26
MINIMUM PRICE AREA 7	1.98	2.19	2.01	1.91	1.90	2.00	2.13
MPA 9 (District 22)	1.38	1.48	1.49	1.36	1.37	1.38	1.51
MPA 10 (District 23)	2.88	3.21	3.17	3.05	3.07	3.49	3.91
TOTAL UNITED STATES	1.87	2.07	2.06	1.94	1.90	2.12	2.27

^a April through September.

^b Preliminary.

Source: *Extension of Bituminous Coal Act of 1937*, Hearings on H. R. 356, H. R. 1454, and H. R. 2296, U.S. House Committee on Ways and Means, 78th Cong., 1st sess., June-July 1943, p. 21.

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TABLE 12

Determined Costs of Bituminous Coal, by Producing District
and Minimum Price Area, Selected Years
(dollars per net ton, f.o.b. mine)

	November 1937 ^a (1)	Docket No. 15		Docket No. 21 January 1942 ^d (4)
		July and August 1938 ^b (2)	May and June 1939 ^c (3)	
District				
1		2.3921	2.3887	2.4242
2		2.2619	2.2140	2.2508
3		1.8546	1.8366	1.9143
4		1.9473	1.9356	1.9377
5		3.6605	3.6543	4.2215
6		1.9989	1.9775	1.8907
7		2.2103	2.1940	2.4055
8		2.0517	2.0301	2.2521
MINIMUM PRICE AREA 1	2.15	2.1574	2.1284	2.2503
District				
9		1.5830	1.5805	1.7052
10		1.7707	1.7561	1.7899
11		1.6544	1.6525	1.6093
12		2.7734	2.7636	2.7183
MINIMUM PRICE AREA 2	1.79	1.7723	1.7622	1.7725
MPA 3 (District 13)	2.55	2.4740	2.4382	2.7500
MPA 4 (District 14)	3.59	3.6166	3.6080	3.8360
MPA 5 (District 15)	2.02	2.0489	2.0392	2.0739
District				
16		2.5647	2.5559	2.6312
17		2.7937	2.7664	2.8420
18		3.1608	3.1519	3.7093
MINIMUM PRICE AREA 6	2.74	2.7579	2.7389	2.8367
District				
19		2.0660	1.9917	2.0339
20		2.4940	2.4691	2.2811
MINIMUM PRICE AREA 7	2.46	2.2347	2.1691	2.1270
MPA 9 (District 22)	2.11	1.5899	1.4851	1.5034
MPA 10 (District 23)	3.45	3.2656	3.2247	3.5211
TOTAL UNITED STATES		2.1142	2.0884	2.1947

^a *Coal Age*, December 1937, p. 174.

^b *Second Annual Report of the National Bituminous Coal Commission, Fiscal Year Ended June 30, 1938, with additional activities to November 15, 1938*, p. 28.

^c *Annual Report of the Secretary of the Interior, Fiscal Year Ended June 30, 1941*, pp. 205-6.

^d *Federal Register*, February 3, 1942, p. 678.

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on the determination of weighted average costs. "The record of this hearing contained 1300 pages of testimony and 488 exhibits. From the evidence received at the hearing, the Commission made its findings of fact and determinations of the weighted average of the total costs of the tonnage for each minimum price area. In its findings, the Commission checked the evidence submitted by the Commission's Division of Research and Statistics against that submitted by the district boards, and incorporated all revisions and disallowances in costs justified by the record."²⁷

The "determined" costs arrived at by the Commission as the result of these hearings²⁸ are shown in column 2 of Table 12. In arriving at these determined costs the Commission made use of the formula:

$$\frac{\text{Producing and Administrative Costs}}{\text{Total Ascertainable Tonnage}} + \frac{\text{Selling Costs}}{\text{Tons Sold Commercially}}$$

The orders announcing these costs stated "it is therefore ordered that the weighted average of the total costs as herein determined, shall be taken as the basis to be effective until changed by the Commission, for the proposal and establishment of minimum prices in accordance with further order of the Commission."²⁹

These orders were immediately followed by Orders 245, 247, and 249 which required the district boards to propose minimum prices and submit them to the Commission within 25 days.³⁰ The factors considered and procedure followed in establishing these prices are described in Chapter VII.

2) *Disclosure of individual costs.* At the top of Forms 1, 2, and 3 in large type was the statement, "This report is required under the provisions of the Bituminous Coal Act of 1937 and is therefore confidential." On subsequent forms the last four words did not appear. This deletion was probably due to the realization by the

²⁷ *Third Annual Report under the Bituminous Coal Act of 1937, Fiscal Year Ended June 30, 1939*, p. 10.

²⁸ *Hearing Re Determination of Weighted Average of the Total Costs of the Tonnage Produced Within Minimum Price Area 1 [and] . . . Within Minimum Price Areas 2, 3, 4, and 5, [and] . . . Within Minimum Price Areas 6, 7, 9, and 10* (General Docket No. 15) National Bituminous Coal Commission, 1938.

²⁹ *Federal Register*, August 2, 1938, p. 1894. The orders for the areas were printed in *ibid.*, August 3, 1938, p. 1905; August 13, 1938, pp. 1987-88; and August 23, 1938, p. 2061.

³⁰ *Ibid.*, August 2, 1938, pp. 1895-96; August 13, 1938, pp. 1988-89; and August 23, 1938, pp. 2057-58.

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Commission that the cost or sales realization data of individual procedures might have to be submitted in evidence at hearings before the Commission or the courts.

In a ruling of March 30, 1938, the Commission discussed the use of individual cost records in its possession as evidence at its own hearings or before courts of law. It based its conclusion on the provision in Section 10a of the Act: "No information obtained from a producer disclosing costs of production or sales realization shall be made public without the consent of the producer from whom the same shall have been obtained, except where such disclosure is made in evidence in any hearing before the Commission or any court and except that such information may be compiled in composite form in such manner as shall not be injurious to the interests of any producer and, as so compiled, may be published by the Commission." In its ruling the Commission stated that it construed "the foregoing provision as permitting the introduction in evidence at a hearing before the Commission of the aforesaid cost data of the individual producers. . . ."⁸¹

Early in May 1938 the Mallory Coal Company and seven other companies⁸² filed a petition seeking to have this ruling vacated. A similar protest was entered by the Rochester and Pittsburgh Coal Company. These petitions were heard by the Commission on May 25 and 26. At these hearings the Consumers' Counsel appeared in favor of the ruling and expressed a belief that any prices fixed in the absence of individual cost data at the cost hearings would be invalid.⁸³ As the result of these hearings the Commission reaffirmed, on June 1, 1938, the ruling that it had made in March.⁸⁴ Similar petitions by the Chesterfield Coal Company and twelve other companies were heard on June 15, and the same decision was announced.⁸⁵ On June 6 the Mallory Coal Company and others attempted to have the ruling reviewed by the Court of Appeals for the District of Columbia. The court held that the ruling in question was not reviewable.⁸⁶

⁸¹ *Ibid.*, April 2, 1938, p. 689.

⁸² Atlantic Smokeless Coal Co., Ashland Coal & Coke Co., Hanna Coal Company of Ohio, Jamison Coal & Coke Co., Pittsburgh Coal Co., Westmoreland Coal Co., and Wheeling Coal Co.

⁸³ Baker, *op.cit.*, pp. 171-72. ⁸⁴ *Federal Register*, June 3, 1938, p. 1277.

⁸⁵ *Ibid.*, June 9, 1938, p. 1367, and August 9, 1938, p. 1955. The other petitioners were the Hi-Heat Coal Co., Independent Coal & Coke Co., Liberty Fuel Co., MacLean Coal Co., National Coal Co., Peerless Sales Co., Royal Coal Co., Spring Canyon Coal Co., Standard Coal Co., Sweet Coal Co., Utah Fuel Co., and United States Fuel Co.

⁸⁶ *Third Annual Report under the Bituminous Coal Act of 1937, . . . June 30, 1939*, p. 9.

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In the light of this opinion the Commission, on August 31, ordered its Secretary to make individual cost data available, beginning September 10, 1938, "to interested parties who had filed appearances in the proceeding under General Docket No. 15."³⁷

On September 7 the Utah Fuel Company and others sought, in the District Court for the District of Columbia, to enjoin disclosure of individual cost data by the Commission. The court two days later refused to issue such an injunction.³⁸

The Commission, on September 9, announced that the disclosure of costs would be postponed five days.³⁹ Meanwhile, the Utah Fuel Company and others had secured from the U.S. Court of Appeals of the District of Columbia a temporary stay restraining the Commission from publishing cost data while the matter was under consideration by the court.⁴⁰ On October 3 the matter was argued before the Appellate Court, and on December 5 the decision of the lower court was affirmed.⁴¹ The Commission thereupon announced that individual costs would be published on December 15.⁴² A motion was made for reargument, but the Appellate Court denied it on December 10. At the same time it granted an order restraining the Commission from publishing the data pending the filing of a petition for writ of certiorari with the Supreme Court.⁴³ This meant, of course, that the Commission had to postpone indefinitely the date of publication.⁴⁴

The Supreme Court rendered its decision on January 30, 1939 in the Utah Fuel Company case.⁴⁵ The court ruled in favor of the Commission and concluded with these words: "Obviously publication may be harmful to petitioners but as Congress had adequate power to authorize it and has used language adequate thereto we can find here no sufficient basis for an injunction. Upon the ground and for the reasons herein stated the decree of the District Court is affirmed."

³⁷ *Second Annual Report of the National Bituminous Coal Commission, Fiscal Year Ended June 30, 1938, with additional activities to November 15, 1938*, p. 12. Also *Federal Register*, September 3, 1938, pp. 2162-63.

³⁸ *Second Annual Report of the National Bituminous Coal Commission, . . . November 15, 1938*, p. 12.

³⁹ *Federal Register*, September 13, 1938, p. 2227.

⁴⁰ *Ibid.*, September 16, 1938, p. 2243.

⁴¹ *Second Annual Report of the National Bituminous Coal Commission, . . . November 15, 1938*, p. 12.

⁴² *Federal Register*, December 9, 1938, pp. 2886-87.

⁴³ *Second Annual Report of the National Bituminous Coal Commission, . . . November 15, 1938*, pp. 12-13.

⁴⁴ *Federal Register*, December 17, 1938, pp. 3026-27.

⁴⁵ *Utah Fuel Company, et al. v. National Bituminous Coal Commission et al.* (1939), 306 U.S. 56.

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3) *Costs in Docket No. 15: second determination.* After the Supreme Court had upheld the Commission's right to introduce individual cost data, such information was disclosed under proper conditions, and hearings were reopened for a final determination of weighted average costs in Docket 15.⁴⁶ The hearings were held in February, March, and April 1939 in the same cities as before, Denver and Washington. All previous hearings, findings of fact and conclusions and determinations of the Commission were reviewed. All interested parties were given the opportunity to cross-examine witnesses, to offer evidence relating to weighted average costs, and to offer objections to any parts of former findings of fact, conclusions, and determinations. These hearings were completed on April 15, 1939.⁴⁷ The findings of fact and conclusions of the Commission at these hearings were published in May and June 1939.⁴⁸ The determined costs published at that time for the nine minimum price areas are those shown in column (3) of Table 12.

As noted earlier in the chapter, the determined costs announced in May and June 1939 were computed on a basis different from that of the year before. The new formula was:

Total cost per ton =

$$\frac{\text{Production and Administrative Costs} + \text{Selling Costs}}{\text{Total Ascertainable Tonnage}}$$

Such a computation yields a total cost per ton that is lower than that arrived at by the earlier formula.

The determined costs as announced for the nine minimum price areas in May and June 1939 formed the cost basis of the minimum price structure which became effective October 1, 1940.

4) *Determination in Docket No. 21.* After the close of the cost hearings in April 1939 approximately two years elapsed before a new hearing was undertaken to determine costs. During May 1941, the Coal Division was obliged to make a re-determination of costs, since the district boards were able to submit "satisfactory proof" of a change in costs "in excess of 2 cents per net ton . . . in the weighted average of the total costs in the minimum price area,

⁴⁶ *Federal Register*, February 2, 1939, p. 501; February 16, 1939, pp. 948-49; March 11, 1939, pp. 1192-93.

⁴⁷ *Third Annual Report under the Bituminous Coal Act of 1937, . . . June 30, 1939*, pp. 10-11.

⁴⁸ *Federal Register*, May 4, 1939, pp. 1777, 1778 = 831 (Minimum Price Areas 6, 7, 9, and 10); June 2, 1939, pp. 2207-43 (M.P.A. 3, 4, and 5); June 13, 1939, p. 2381 (M.P.A. 2); and June 17, 1939, pp. 2436-37 (M.P.A. 1).

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exclusive of seasonal changes.⁴⁹ At the time the actual costs for 1939 had been compiled it was clear that such costs were below the determined costs announced in May and June of that year. In no minimum price area did the actual cost come within 2 cents of the determined cost. It was obvious that a new determination of cost and new price schedules were indicated, but the minimum price structure in Docket 15 had not yet been put into effect. Evidently the Coal Division decided to postpone the new cost determination and new minimum prices until the old minimum prices had become effective. Otherwise, the rapidly changing costs might make it impossible to fix minimum prices at all.

Seven months after the Docket 15 minimum prices had been put into effect (October 1, 1940) the Coal Division opened hearings, on May 21, 1941, in Docket 21.⁵⁰ This docket was concerned with the re-determination of weighted average costs leading to a general revision of the minimum price schedules that were then in effect. The hearings were summarized on October 21, 1941 in the *Report, Proposed Findings of Fact, Proposed Conclusions of Law and Recommendations of Trial Examiners*. Oral arguments were heard by the Acting Director of the Coal Division in November 1941, and his findings published on January 27, 1942.⁵¹ (See column 4 of Table 12.) The findings of the Acting Director were affirmed by the Secretary of the Interior.⁵² The determined costs were based upon the actual costs reported for the year 1940 with adjustments for changes in costs that occurred in the early months of 1941, of which changes in labor costs, beginning in April 1941 as a result of the signing of a new wage contract, were the most important.⁵³ Reference to Tables 11 and 12 will show that whereas the 1939 and 1940 costs were below the determined costs of Docket 15, the adjustments for 1941 were such as to call for higher determined costs and consequently higher minimum prices. The changes in the determined costs of Docket 21 from those of Docket 15 were:

⁴⁹ The Act, Sec. 4-IIa reads: "Thereafter, upon satisfactory proof made at any time by any district board of a change in excess of 2 cents per net ton of two thousand pounds in the weighted average of the total costs in the minimum-price area, exclusive of seasonal changes, the Commission shall increase or decrease the minimum prices accordingly. The weighted average figures of total cost determined as aforesaid shall be available to the public."

⁵⁰ *Federal Register*, May 7, 1941, pp. 2326-27. Preliminary summaries of cost data were opened to the inspection of interested persons on May 2 (*ibid.*, May 6, 1941, p. 2292).

⁵¹ *Ibid.*, February 3, 1942, pp. 677-78.

⁵² *Ibid.*, April 17, 1942, pp. 2873-77.

⁵³ *Ibid.*, p. 2875.

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<i>Minimum Price Area</i>	<i>Change (cents per net ton)</i>
1	+12.19
2	+ 1.03
3	+31.18
4	+22.80
5	+ 3.47
6	+ 9.78
7	- 4.21
9	+ 1.83
10	+29.64
All areas	+10.63

The new determined costs became the basis for the new minimum price schedules to be discussed in Chapter IX.

B. Data on Sales Realization

For the years 1936 to 1939 inclusive, sales realization data were collected on Forms 1, 2, 3, and 3-Revised. The items included and the information requested are set forth in Exhibit 1.

The first item (A) refers to sales income from long-term contracts which had been negotiated prior to June 16, 1933, that is, before the contracting parties had any reason to believe that price fixing was a real possibility. This date was selected by Congress "because it was the date of the enactment of the National Industrial Recovery Act, and represented, as nearly as could be found, a time at which legislation on the subject of the Coal industry, as well as other industries, began to be enacted by the Congress."⁵⁴ These transactions were exempted from the application of the Coal Act by a provision in Section 4-IIe.

Item B included all sales that had been controlled after June 16, 1933—for the period when minimum prices were in effect or were likely to be put into effect. Both items A and B applied to coal loaded on railroads, barges, locomotive tenders, or trucks, and included house coal and retail sales.

Items C and D, of course, were not added with the other items to arrive at the total realization. It was only their difference, Item E, that entered into the summation.

Items F, G, and H applied to all coal not sold in the open market. They embraced, respectively, coal used in mining operations, coal used by the producer in beehive ovens and briquetting plants, and coal sold under conditions that were noncompetitive.

⁵⁴ Testimony of C. F. Hosford, Chairman, National Bituminous Coal Commission (*To Regulate Interstate Commerce in Bituminous Coal*, Hearings on S. 1, U.S. Senate subcommittee of the Committee on Interstate Commerce, 75th Cong., 1st sess., March 1, 2, 8, and 15, 1937, p. 22).

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In 1939, 1940, and 1941 producers of bituminous coal whose mines had a daily capacity of 50 tons or more were required to report annually their total value of coal, f.o.b. mines, on Form T-1 instead of Form 3 which was used in 1938. The new form excluded selling expense but included the value of coal used by the producer

EXHIBIT 1

Items Reported under "Realization"
on Forms 1, 2, 3, and 3-Revised

<i>Distribution of Coal Produced</i>	<i>Net Tons</i>	<i>Gross Realization (Value FOB Mine)</i>	
		<i>Amount</i>	<i>Per Ton</i>
I. COAL SOLD IN OPEN MARKET:			
A. Sales from orders and contracts taken prior to June 16, 1933 ^a			
B. Sales from orders and contracts taken after June 16, 1933 ^a			
C. Inventory of unsold coal at beginning of month (market price) ^b			
D. Inventory of unsold coal at end of month (market price) ^b			
E. Net change in inventory at end of month (plus or minus) ^c			
II. COAL NOT SOLD IN OPEN MARKET:			
F. Coal used to produce coal ^d			
G. Exempt coal at current market price ^e			
H. Controlled sales ^f			

^a See text for explanation of this item.

^b This item did not appear on Forms 1 and 2. Instead there was an item: "Shipments to storage, rail yards, and docks" (market price). See accompanying text.

^c This item was the difference between C and D. In Forms 1 and 2, however, it applied only to "coal on hand and in transit to scales."

^d At the current market price. In Forms 1 and 2 this item was called coal "used at mine for power and heat."

^e This item included coal for beehive ovens and briquetting plants, but did not include such coal purchased from other producers. It included only coal consumed by the producer (or transported to himself for consumption by him).

^f This item included all sales for consumption by the buyer (1) where the relationship between producer and buyer was that of wholly owned or controlled parent and subsidiary corporation, (2) where there was common ownership or control of the producer and buyer in a third party, or (3) where the relation between producer and buyer for any reason was such that the sale was non-competitive. In Forms 3 and 3-Revised this item was described as "Controlled sales at not less than the minimum price." In Form 3 the third point read "similar reason" instead of "reason."

COSTS AND SALES REALIZATION

for mine fuel, coke, or other purposes. Beginning with January 1941, these producers were also asked to report their monthly data on sales realization on a new form—Bituminous Coal Division No. 350. The items contained on this form are shown in Exhibit 2.

It will be noticed that whereas truck and wagon shipments were previously reported with rail and river shipments on forms 1, 2, 3, and 3-Revised, they were now reported separately. On the other hand the separation into periods before and after June 16, 1933 was not made on Form B.C.D. 350.

Under the heading C, item 1 corresponds to the older designation "coal used to produce coal." Item C-2 appeared for the first time. Items 3 and 4 under C correspond to the earlier "exempt coal" (see Exhibit 1, item G). Item 5 was new.

Item D represents a reversion to the early item in Forms 1 and 2, "Shipments to storage, railyards and docks." The separate reporting of this item indicates a return to a more restrictive definition of "mine inventories," that is, "coal on hand or in transit to scales." The entries under E substantiate this observation.

It will be noticed that "Controlled Sales" which appeared in Exhibit 1 does not have a place in Exhibit 2. This is due to the fact that a special form, B.C.D. No. 351, was used by the non-Code-member producers for reporting their "controlled sales."⁵⁵

Much simpler forms were provided for producers whose mines had daily capacities of less than 50 net tons.⁵⁶ Forms 1-A, 2-A, and 3-A required the reporting of (1) total realization from sales at the mine, (2) total realization from delivered sales, and (3) total delivery cost. From these data gross and net realization were computed. Form 3-A provided an additional item, "Total coal used by producer (at current market price)." The later form, T-2, required the reporting of only two items: "Charges for trucking the coal to customers" and "The total amount received or charged for the coal produced" in the calendar year. The second item included, in addition to income from sales of coal, "the value of the coal used by

⁵⁵ "Ninety-five per cent of the known tonnage produced in the year 1936 have voluntarily accepted the code. The remaining 5 per cent consists chiefly of certain large captive mines that consider themselves to be automatically exempt under that clause of the act which indicates that coal produced by the consumer for his own use would not be subject to the requirements of the act." Statement of F. G. Tryon, Director of the Division of Statistics, National Bituminous Coal Commission. (*The Interior Department Appropriation Bill for 1940*, Hearings before U.S. House subcommittee of the Committee on Appropriations, 76th Cong., 1st sess., 1939, Part 1, p. 621.)

⁵⁶ It will be recalled that the precise definition of this class of mine was changed between 1937 and 1938 (See Table 8).

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EXHIBIT 2

Items Reported on Bituminous Coal Division Form No. 350
(Summary Report of Tonnage and Realization)

<i>Distribution of Coal Produced^a</i>	<i>Net Tons</i>	<i>Gross Realization (Value F.O.B. Mine)</i>	
		<i>Amount^b</i>	<i>Per Ton</i>
A. SHIPMENTS BY TRUCK OR WAGON:^c			
Lump (Specify sizes).			
Double-screened coal (Specify sizes).			
Mine-run (Indicate when modified).			
Screenings (Indicate when modified).			
B. SHIPMENTS BY RAIL, CONVEYOR, RIVER, PRIVATE RAILROAD, ETC.^d			
C. COAL USED AT MINE (Sizes and amounts charged):			
1. Mine fuel (coal used to produce coal).			
2. Coal furnished to employees in accordance with wage agreements. ^e			
3. Coal coked.			
4. Coal made into briquettes.			
5. Other mine use coal (Specify).			
D. COAL SHIPPED TO STORAGE OR ON CONSIGNMENT, NOT CARRIED IN MINE INVENTORIES, WHERE THERE HAS BEEN NO CHANGE IN THE TITLE TO THE COAL.			
E. MINE INVENTORIES:			
1. Coal on hand and in transit last of month.			
2. Coal on hand and in transit first of month.			
3. Net change in inventory (plus or minus).			

^a Each movement of coal was to be identified as 1) Mechanically cleaned, not treated; 2) Mechanically cleaned, treated; 3) Raw coal, not treated; or 4) Raw coal, treated. "Mechanically cleaned coal" is coal subjected to mechanical cleaning, such as washing, air-cleaned, or otherwise mechanically cleaned. It includes hand-picked coal, not otherwise cleaned or washed.

^b These amounts were to be reported f.o.b. the mine before deduction for discounts or commissions.

^c This item did not include coal furnished to employees in accordance with wage agreements.

^d This item covered all coal for which invoices, debit or credit memoranda,

COSTS AND SALES REALIZATION

Notes to Exhibit 2 (continued)

journal entries, or other accounting memoranda were filed with the statistical bureaus. This item accounted for all tonnage other than that included in items A, C, D and E.

^e In cases where no prices were set by the wage scale, coal furnished to employees was reported under "Shipments by Truck or Wagon."

employees or owners for house coal and the value of the coal used at the mine for power or heat."

1. PUBLISHED DATA

Although the sales realizations of all coal producers were, as we have seen, regularly reported to the Coal Commission and its successor, they were not published with any regularity. In 1939 data on sales realization were released for the last nine months of 1937.⁵⁷ Nothing further appeared until May 1941 when statistics on sales realization were published on an annual basis for 1938 and 1939. Tentative figures were issued for the period January-September 1940 which immediately preceded the establishment of minimum prices.⁵⁸ The next year, sales realization data were released for the first twelve months' period of minimum prices, October 1940-September 1941.⁵⁹

The first publication of comprehensive statistics on sales realization appeared in 1943, shortly before the expiration of the Coal Act of 1937. The tabulation⁶⁰ is reproduced here as Table 13. These data are not perfectly comparable from year to year but, as is pointed out in the notes to the table, the differences are probably not very important.

C. Trends of Sales Realization and Average Costs

Chart 8 shows what happened to sales realization per ton, weighted average costs, and tons of coal produced during the years 1936 to 1942 inclusive.⁶¹

⁵⁷ *Second Annual Report of the National Bituminous Coal Commission*, . . . November 15, 1938, p. 29.

⁵⁸ The foregoing were published in the Bituminous Coal Division's press releases P. N. 142097 (May 16, 1941) and P. N. 142542 (May 27, 1941).

⁵⁹ *Coal Age*, March 1942, p. 74.

⁶⁰ *Extension of Bituminous Coal Act of 1937*, Hearings on H.R. 356, H.R. 1454, and H.R. 2296, U.S. House Committee on Ways and Means, 78th Cong., 1st sess., June-July 1943, p. 22.

⁶¹ The first two series, appearing in the upper half of the chart, were drawn from data in Tables 11 and 13 and are subject to the qualifications stated in the footnotes of the latter table. The data on production are from *Minerals Yearbook, 1944*, U.S. Bureau of Mines, p. 844. The quantities in millions of net tons are:

1936-439	1938-348	1940-461	1942-583
1937-445	1939-395	1941-514	

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TABLE 13

Average Sales Realization Reported by Bituminous Coal Producers, by Producing District
and Minimum Price Area, 1936-1942
(dollars per net ton, f.o.b. mine)

	1936	1937 ^a	1938	1939	1940	1941	1942 ^b
District							
1	1.96	2.16	2.14	2.10	2.09	2.34	2.53
2	1.92	2.10	2.05	2.03	2.01	2.25	2.43
3	1.51	1.66	1.62	1.58	1.63	1.98	2.09
4	1.66	1.79	1.77	1.69	1.71	1.99	2.06
5	3.44	3.74	3.73	3.77	3.88	4.22	4.50
6	1.74	1.89	1.79	1.70	1.66	1.97	2.09
7	1.87	2.08	2.05	1.96	1.99	2.44	2.73
8	1.75	1.93	1.90	1.85	1.87	2.26	2.49
MINIMUM PRICE AREA 1	1.81	2.00	1.96	1.91	1.92	2.25	2.45
District							
9	1.28	1.37	1.33	1.35	1.39	1.57	1.74
10	1.69	1.76	1.73	1.65	1.69	1.81	1.89
11	1.57	1.62	1.59	1.51	1.53	1.70	1.79
12	2.55	2.65	2.58	2.43	2.49	2.74	2.85
MINIMUM PRICE AREA 2	1.66	1.71	1.69	1.61	1.65	1.78	1.87
MPA 3 (District 13)	2.23	2.44	2.42	2.37	2.32	2.69	2.87
MPA 4 (District 14)	3.17	3.51	3.14	3.27	3.22	3.61	3.77
MPA 5 (District 15)	1.96	1.99	1.94	1.91	2.01	2.15	2.26
District							
16	2.50	2.55	2.66	2.62	2.61	2.67	2.55
17	2.56	2.64	2.61	2.49	2.53	2.90	3.03
18	2.74	2.89	2.96	3.03	3.06	3.13	3.58
MINIMUM PRICE AREA 6	2.56	2.64	2.66	2.57	2.59	2.86	2.92
District							
19	1.97	1.96	1.96	2.02	2.06	2.09	2.12
20	2.23	2.24	2.28	2.13	2.20	2.33	2.48
MINIMUM PRICE AREA 7	2.07	2.06	2.08	2.06	2.11	2.18	2.26
MPA 9 (District 22)	1.46	1.49	1.50	1.41	1.45	1.48	1.56
MPA 10 (District 23)	3.10	3.17	3.21	3.17	3.19	3.57	3.94
TOTAL UNITED STATES	1.83	1.98	1.95	1.89	1.91	2.19	2.35

^a April through September.

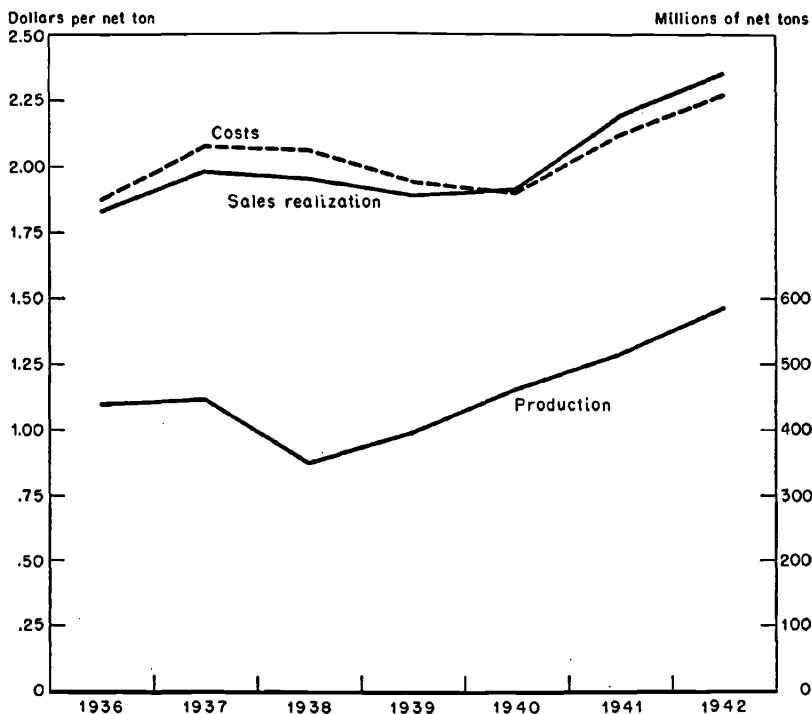
^b Preliminary.

Source: *Extension of Bituminous Coal Act of 1937*, Hearings on H. R. 356, H. R. 1454, and H. R. 2296, U.S. House Committee on Ways and Means, 78th Cong., 1st sess., June-July 1943, p. 22. Realization for 1936 to 1939 is based upon tabulations of cost reports for mines with rail or river connections and other mines of over 50 tons average daily capacity; realization for 1940 and 1941 is based upon tabulations of Forms T-1 and T-2, realization for 1942 is based on tabulations of Form 350. Realization for small mines is not available for 1936 to 1939 on a basis comparable with that of the large mines. In years in which small mines are included in the total, however, the effect of such inclusions is slight.

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CHART 8

Sales Realization, Reported Costs, and Production of Bituminous Coal, All Districts, 1936-1942



Source: Tables 11 and 13 and *Minerals Yearbook 1944*, U. S. Bureau of Mines.

It will be seen that costs exceeded sales realization during the period 1936 through 1939 and that the margins were therefore negative. In 1940 costs stood at \$1.90 which was one cent below the sales realization reported for that year. In 1941 and 1942 sales realization exceeded cost by 7 cents and 8 cents respectively.

The determined average cost for the United States as announced in May and June 1939 equalled \$2.0884 (Table 12, column 3). This figure was rather close to the actual costs reported for 1937 and 1938 (Table 11). In 1939 the actual costs had fallen to \$1.94 and in 1940 to \$1.90. If minimum prices, based on the Docket 15 determination (made in 1939), had been in effect throughout 1940 the positive margin above the actual costs would have been considerable. But the minimum price schedules were put into effect on October 1, 1940 and "producers continued to sell their com-

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mercial coal at less than the cost of production right up to" that date.⁶² In consequence, for the year as a whole the sales realization exceeded costs by only one cent.

The positive margins in 1941 and 1942 cannot be attributed to the existence of minimum prices based on a determination of \$2.0884, because the sales realizations were well above that figure. They are to be explained primarily by the increased demand for coal that occurred as the United States began to develop its war industries. From the prewar year 1939 the United States bituminous coal industry had increased its production 47 per cent by 1942.

On October 1, 1942, the new minimum prices of Docket 21 went into effect. These were based upon a determined cost, for the United States, of \$2.1947. This figure was greater than the actual cost in 1941 (\$2.12) but less than the actual cost of \$2.27 in 1942.

In forming an opinion of the industry in the period covered by Chart 8, the reader should recall that the costs reported to the National Bituminous Coal Commission and its successor do not include all the costs incurred by producers.⁶³ Thus the margin that was computed as the difference between the sales realization and the cost as collected by the Commission was not all profit. It was asserted by representatives of the operators that the discrepancy between the two kinds of total cost amounted to 5 cents a ton, or more. To these operators the total costs as collected by the Commission were unacceptable.

⁶² Press release, Bituminous Coal Division, P. N. 142097.

⁶³ See Chapter III, note 2.