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Volume Title: Minimum Price Fixing in the Bituminous Coal Industry

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Volume Publisher: UMI

Volume ISBN: 0-87014-191-0

Volume URL: <http://www.nber.org/books/fish55-1>

Publication Date: 1955

Chapter Title: CHRONOLOGICAL SUMMARY OF ACTION TAKEN UNDER THE BITUMINOUS COAL ACT OF 1937

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Chapter URL: <http://www.nber.org/chapters/c2883>

Chapter pages in book: (p. 50 - 64)

## CHAPTER IV

### CHRONOLOGICAL SUMMARY OF ACTION TAKEN UNDER THE BITUMINOUS COAL ACT OF 1937

THE establishment and administration of minimum prices for the bituminous coal industry were extremely complex undertakings involving many varied activities on the part of the Coal Commission and later the Coal Division. For this reason it seems advisable to begin our analysis and appraisal of this experiment with a brief description, in chronological order, of the steps taken by the price-fixing agencies to carry out their many functions and responsibilities. Such a presentation should help the reader to follow the intricate developments discussed in subsequent chapters and at the same time to keep in mind the pattern followed in determining and administering bituminous coal prices.

For convenience, the administration of the Coal Act may be divided into four periods: April 1937-February 1938; March 1938-June 1939; July 1939-September 1940; and October 1940-August 1943.

Figure 1 has been prepared to show, on a time scale, the interrelations of the events touched upon in this chapter.

#### *A. Development of First Minimum Price Schedules, April 1937-February 1938*

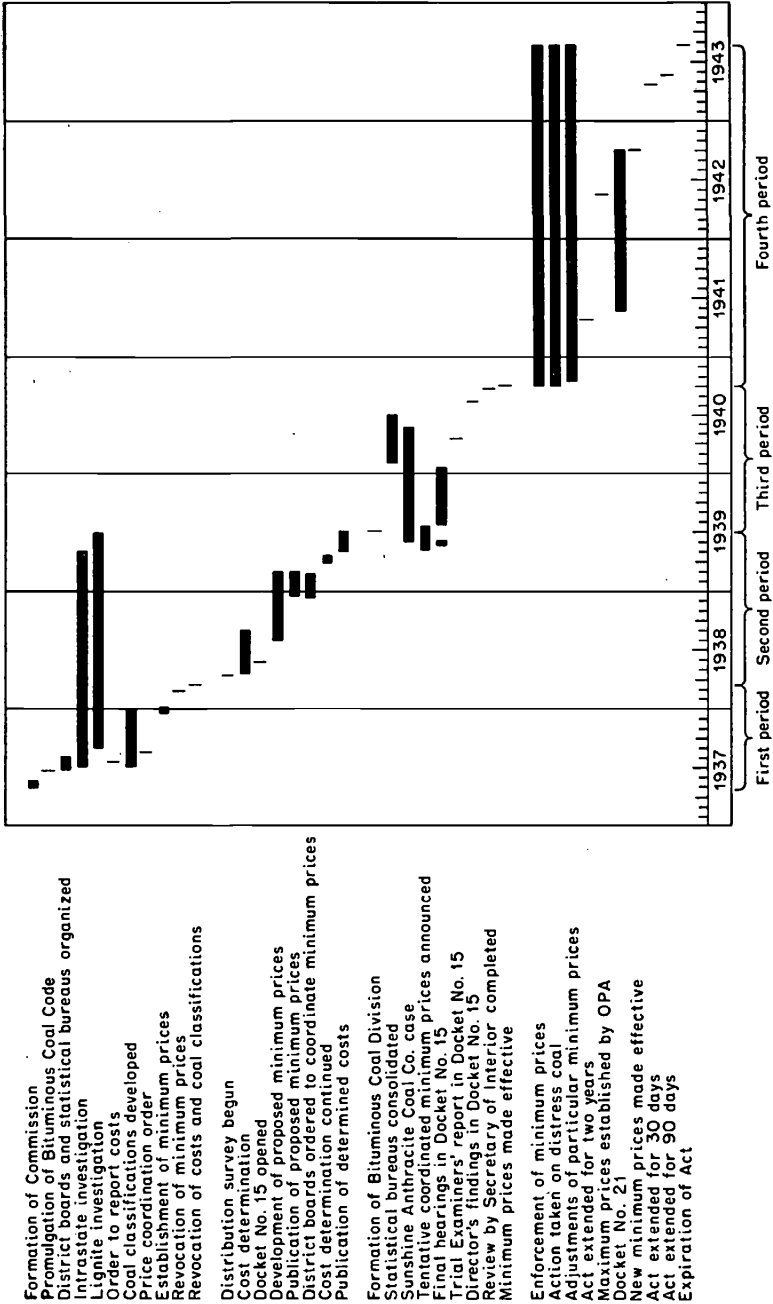
The Coal Act of 1937 became law on April 26, 1937, when it was signed by President Roosevelt. The Act provided that the President, by and with the advice and consent of the Senate, should appoint seven Commissioners, two of whom were to have had experience as coal operators and two as bituminous coal miners. The President appointed C. F. Hosford, Jr., and T. S. Haymond to the first group and Percy Tetlow and J. C. Lewis to the second. He named W. H. Maloney, P. E. Greenlee, and C. E. Smith as the other Commissioners. By election Mr. Hosford was chosen to be Chairman of the Commissioners, who assumed office on May 17, 1937.

#### 1. PROMULGATION OF BITUMINOUS COAL CODE

The Bituminous Coal Code was promulgated by the National Bituminous Coal Commission on June 21, 1937, and nine days later the Commission announced that 96 per cent of the producers

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FIGURE 1  
Chronological Summary of Action Taken from 1937 to 1943 under Bituminous Coal Act of 1937



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of bituminous coal—in terms of 1936 tonnage—had accepted the Code.<sup>1</sup>

### 2. ESTABLISHMENT OF DISTRICT BOARDS AND STATISTICAL BUREAUS

The first producing district board was set up on June 22 in northern West Virginia and 19 other such boards were organized before the end of July 1937. The two remaining boards were formed shortly thereafter. During June the Commission established 22 statistical bureaus, one for each district.

### 3. HEARINGS TO DETERMINE APPLICABILITY OF THE ACT TO VARIOUS COAL-PRODUCING STATES

A hearing was begun by the Commission in September 1937 to determine whether the coals of North and South Dakota were lignitic. It was established that they were, and as a consequence these states were excluded from the operation of the Act.<sup>2</sup> Accordingly, no district board and no statistical bureau were set up in District 21.

Between July 1937 and April 1939 the Commission held hearings in various states to determine whether the bituminous coal produced and consumed within a given state affected interstate commerce in coal. It was determined that such coal affected interstate commerce in 22 states but not in North Carolina. As a result, North Carolina was excluded from the provisions of the Act.

### 4. OPERATORS ORDERED TO REPORT THEIR COSTS

On July 15, 1937, the Commission ordered bituminous coal producers to report their costs for the calendar year 1936.<sup>3</sup> A tentative compilation of weighted average costs was soon published, and in November 1937 a revised table was issued.<sup>4</sup>

### 5. CLASSIFICATION OF COALS BY PRODUCING DISTRICTS

The classification of coal for purposes of minimum price fixing was begun in July 1937, and in August the Commission announced that classifications, in the preliminary stage, were to be based upon proximate analyses and physical and performance characteristics.<sup>5</sup>

<sup>1</sup> *Report of the National Bituminous Coal Commission for the Fiscal Year Ended June 30, 1937*, U.S. 75th Cong., 2d sess., H. Doc. 396 (1937), p. 2.

<sup>2</sup> By an order issued June 28, 1939. See *Coal Age*, August 1939, p. 73, and *Federal Register*, July 6, 1939, p. 2770.

<sup>3</sup> Order 15, *Federal Register*, July 17, 1937, p. 1234.

<sup>4</sup> *Coal Age*, December 1937, p. 174.

<sup>5</sup> Orders 38 and 43, *Federal Register*, August 18, 1937, pp. 1411-13; and September 14, 1937, pp. 1833-34.

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Initial classifications of coal were published for all districts in November and December 1937.<sup>6</sup>

### 6. COORDINATION TAKEN OVER BY COMMISSION

Order 39, issued by the Commission on August 17, 1937, directed the district boards to coordinate minimum prices by September 23.<sup>7</sup> When it became apparent in October that the district boards were not going to achieve this coordination, the Commission assumed the task under Section 6a of the Act.<sup>8</sup>

### 7. ESTABLISHMENT OF MINIMUM PRICES BY COMMISSION

At the end of 1937, the Commission proceeded, without holding final hearings, to establish minimum prices, f.o.b. mines, for all-rail coals produced in 22 districts: Districts 1-13—effective December 16, 1937;<sup>9</sup> District 14—effective December 27, 1937;<sup>10</sup> and Districts 15-20, 22, and 23—effective January 3, 1938.<sup>11</sup>

The prices were published by market areas, provided for, but not defined in, the Act. About the same time the Commission published minimum prices for truck coals, for coal sold for by-product, retort, and water-gas uses, and for locomotive fuel.

### 8. REVOCATION OF FIRST MINIMUM PRICE SCHEDULES

Even before the first minimum prices had become effective, several railroad groups had petitioned the Commission to suspend those which were applicable to locomotive fuel. Representatives of coal consumers in New York State also submitted a petition requesting the postponement of the new minimum prices. The Commission, though denying these petitions, announced that it would hold hearings on them.<sup>12</sup>

After the minimum prices had gone into effect, more petitions were addressed to the Commission. Cleveland, whose petition had been denied, requested from the District Court of the United States a temporary injunction to prevent the Commission from enforcing

<sup>6</sup> *Federal Register*, November 27-December 14, 1937; pp. 2542-46, 2551-52, 2570-73, 2686-87, 2766, and 2797.

<sup>7</sup> *Federal Register*, August 19, 1937, p. 1413.

<sup>8</sup> Orders 60, 72, and 115-18, *Federal Register*, October 26, 1937, p. 2270; November 23, 1937, p. 2525; December 14, 1937, pp. 2789-91.

<sup>9</sup> Orders 89-101, *Federal Register*, December 3, 1937, pp. 2567-662.

<sup>10</sup> Order 113, *Federal Register*, December 11, 1937, pp. 2766-69.

<sup>11</sup> Orders 140-47, *Federal Register*, December 21, 1937, pp. 2879-914.

<sup>12</sup> Press releases, National Bituminous Coal Commission, 204-6, 210, 258, and 269.

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its minimum prices. When that Court disclaimed jurisdiction, the city petitioned the United States Court of Appeals for the District of Columbia, and the injunction was issued on February 11, 1938. The railroads, whose petition to the Commission had been denied, appeared before the same Court and succeeded in obtaining a similar injunction on the same day. At the same time this Court granted injunctions on behalf of three coal companies.<sup>13</sup> In these cases the Court held that opportunity to be heard, required by the Act, had not been given before the prices were established.<sup>14</sup> On February 21 and 23 two more injunctions were issued on behalf of the New York State consumers and an Indiana consumer.<sup>15</sup>

The effect of these injunctions was to free many consumers from the necessity of paying established prices for bituminous coal. The Commission recognized that such a condition was obviously unfair to other consumers and confusing to coal producers. It therefore revoked all the minimum price schedules as of February 25, 1938.<sup>16</sup>

### B. *Second Determination of Cost and a New Start on Minimum Price Fixing, March 1938-June 1939*

The task of the National Bituminous Coal Commission, after the revocation of the minimum prices, was the development—with less haste and more extensive hearings—of a new minimum price structure that would meet the requirements of the Act as interpreted by the courts.

#### 1. REVOCATION OF DETERMINED COSTS AND COAL CLASSIFICATIONS

To remove from the new proceedings any objectionable taint that might be attributed to the earlier procedures used to establish minimum price schedules, the Commission revoked both the previously determined weighted average costs and the previously established classifications of coal.<sup>17</sup>

#### 2. POCKET NO. 15

The new work of the Commission was carried on under the supervision of Mr. Tetlow who was elected chairman on March 22, 1938,

<sup>13</sup> *Ibid.*, 277, 284, 287, 289, and 300.

<sup>14</sup> *Third Annual Report under the Bituminous Coal Act of 1937, Fiscal Year Ended June 30, 1939*, p. 6. See also, B. G. Reeder, "Some Problems of the Bituminous Coal Industry," *West Virginia Law Quarterly*, February 1939, pp. 108-33.

<sup>15</sup> Reeder, *loc. cit.*

<sup>16</sup> Order 230, *Federal Register*, February 26, 1938, p. 469.

<sup>17</sup> Orders 231 and 232, *Federal Register*, March 15, 1938, p. 565.

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after the resignation of Mr. Hosford. No one was appointed by the President to fill the vacated commissionership. The Commission designated the new proceedings which began in the spring of 1938 as "General Docket No. 15."

### 3. DISTRIBUTION SURVEY

In April 1938 the Commission issued Order 239, the purpose of which was to obtain extensive and detailed information regarding the distribution of bituminous coal. All producers (whether code members or not) were required to show, for the calendar year 1937, their shipments of coal in terms of size, quality, uses, means of transportation, and so on. Coal distributors were required to furnish information that coal producers could not provide.<sup>18</sup>

### 4. DISTRICT BOARDS ORDERED TO PROCEED WITH NEW COST DETERMINATION

On April 19, the Commission published Order No. 240 directing each district board to determine the weighted average cost for the district. Hearings were held by the Commission during June and July, and the "determined" costs arrived at by the Commission as a result of the hearings were published in July and August 1938.<sup>19</sup>

### 5. COMMISSION ORDERS FORMULATION OF PROPOSED MINIMUM PRICES

Although the "determined" costs announced in July and August 1938 were necessarily tentative,<sup>20</sup> the Commission proceeded to issue orders between July 30 and August 20, 1938 to all the district boards<sup>21</sup> directing them to work out "proposed minimum prices" based upon the tentative "determined costs" that had been announced for the nine minimum price areas.<sup>22</sup> The "proposed minimum prices" should not be confused with the "coordinated minimum prices." The former were intended primarily to show value relationships for

<sup>18</sup> *Federal Register*, April 16, 1938, p. 764. All questionnaires were to be returned before June 1, 1938.

<sup>19</sup> See Chapter VI.

<sup>20</sup> The question whether individual cost reports could be made public at hearings arose in March 1938 and was not finally settled until the Supreme Court ruled in the affirmative, on January 30, 1939, in the *Utah Fuel Co.* case. (*Utah Fuel Company et al. v. National Bituminous Coal Commission et al.* [1939], 306 U.S. 56.)

<sup>21</sup> Orders 245, 247, and 249, *Federal Register*, August 2, 1938, pp. 1895-96; August 13, 1938, pp. 1988-89; and August 23, 1938, pp. 2057-58.

<sup>22</sup> It will be recalled that the cost for the minimum price area within which a district was situated was to be used in these computations, and not the cost within the district itself. (Sec. 4-IIa.)

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the coals in any single district. Their purpose was to determine the price differentials which should prevail between the various sizes and grades of coal produced in a given district. In arriving at these prices, the district boards gave little or no consideration to the competitive relationships of the coals of one district with those of other districts. The "proposed minimum prices" brought the prices of different grades and sizes of coal in a given district into proper alignment in terms of inherent qualities, general market considerations, and types of consumers. The resulting schedule established a single price for each grade and size of coal, regardless of where it was produced in the district or the market to which it was to be shipped.

The coordinated minimum prices were established, on the other hand, to insure proper competitive relationships between the coals of the various districts. Because the coals of one district sell in competition with the coals of other districts and often with other fuels, it was necessary to modify the "proposed minimum prices" worked out by the various districts in terms of interdistrict factors and conditions. The coals in competing districts had to be coordinated in common consuming markets so that the coals of any district could continue to sell on a fair competitive basis in any market in which they were usually sold.

The prices called for by the Commission at this time were those indicated in Section 4-IIa of the Act. The minimum price schedules so developed were published between December 14, 1938, and February 28, 1939.<sup>23</sup> This phase of price fixing is discussed in Chapter VII.

### 6. COMMISSION ORDERS FORMULATION OF COORDINATED MINIMUM PRICES

Concurrently with the publication of the proposed price schedules—between December 9, 1938, and February 24, 1939—the Commission directed the district boards to work out "coordinated minimum prices"<sup>24</sup> as provided for in Section 4-IIb of the Act. The boards were instructed to make such alterations in the proposed minimum price schedules as would "reflect the relative market values of the various kinds and sizes of coals at the points of delivery, so

<sup>23</sup> *Federal Register*, December 14, 1938 (Districts 16-20, 22, and 23); December 22, 1938 (Districts 14 and 15); January 11 and 12, 1939 (Districts 2-6 and 13); January 19, 1939 (Districts 1, 7, and 8); February 8, 1939 (Districts 9, 11, and 12); and February 28, 1939 (District 10).

<sup>24</sup> Orders 253-56, 259-61, 264, and 266, *Federal Register*, December 14, 1938-February 28, 1939. Page numbers of specific orders are given in February 28, 1939, p. 1087.



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that final prices will preserve as nearly as possible fair competitive opportunities. In making the alterations, the boards are to take into consideration such factors as values as to uses, seasonal demand, transportation methods and charges, and prices of competitive types of fuel and energy.<sup>25</sup> The resulting coordinated price schedules were to cover the different coals to be shipped to each common consuming market area.<sup>26</sup>

### 7. COST PROCEEDINGS CONTINUED

After the Supreme Court had ruled that individual cost reports could be made public, the Commission in March 1939 opened final hearings on costs and in May and June published its revised "determined costs."<sup>27</sup>

### C. *Determination of Coordinated Minimum Prices by Bituminous Coal Division, July 1939-September 1940*

In this period the duties and functions of the National Coal Commission were transferred to the Bituminous Coal Division, the Coal Act of 1937 was declared constitutional, and the Bituminous Coal Division took over the task of completing the final development of coordinated minimum prices.

#### 1. "REORGANIZATION PLAN NO. II"

The National Bituminous Coal Commission had been the subject of some criticism, particularly within Congress, on alleged grounds of dissension among the Commissioners, patronage, excessive numbers of personnel, and inefficiency. On May 9, 1939, President Roosevelt submitted to Congress (under the Reorganization Act of 1939) "Reorganization Plan No. II" which included provisions for the transfer of the duties and functions of the National Bituminous Coal Commission to a body to be set up in the Department of the Interior. By a public resolution, Congress set the date of the transfer as July 1, 1939. On that date the new Bituminous Coal Division issued an order adopting, ratifying, and continuing all regulations, orders, forms, and notices that had been issued by its predecessor.<sup>28</sup>

Several important changes in the organization were introduced. The agency responsible for administering the Act was made a divi-

<sup>25</sup> Press release, National Bituminous Coal Commission, 474.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Annual Report of the Secretary of the Interior, Fiscal Year Ended June 30, 1941*, pp. 205-6.

<sup>28</sup> *Third Annual Report under the Bituminous Coal Act of 1937*, . . . June 30, 1939, pp. 2, 3, and 16.

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sion within the Department of Interior instead of a Commission and the Commissioners were replaced by a Director and an Assistant Director. In addition, the Office of the Consumers' Counsel was set up as a division in the Office of the Solicitor of the Department of the Interior. In April 1941, however, it was separated from that office and regained something of its earlier independent status.<sup>29</sup>

### Organization of Agencies Administering Bituminous Coal Act of 1937

#### *Name of Agency*

National Bituminous Coal Commission. May 17, 1937-June 30, 1939  
Bituminous Coal Division. July 1, 1939-August 23, 1943

#### *Organization*

Seven Commissioners (see the beginning of this chapter) Director: H. A. Gray  
Asst. Dir.: D. H. Wheeler

#### *Staff*

Marketing Division: N. W. Roberts	Marketing Section: N. W. Roberts
Division of Research: F. G. Tryon	Research Section: F. G. Tryon
Legal Division: R. W. Knox	Office of the General Counsel: Abe Fortas
Administrative Division: W. C. Hand	Administrative Section: W. C. Hand
Enforcement Division: J. H. Morris	Compliance Section: J. H. Morris
Division of Statistics: T. W. Hunter	Statistics Section: T. W. Hunter
Division of Trial Examiners: T. G. Lewis	Trial Examiners' Section: T. G. Lewis
Secretary's Office: F. W. McCullough	Records Section: E. C. Faris
	Information Section: L. Mosby

Note: Not all persons whose names are listed served for the entire period.

## 2. STATISTICAL OFFICES CONSOLIDATED

For economy the Bituminous Coal Division closed 11 of its 22 statistical offices in February 1940 and transferred their work to those that remained. The activities of the eight bureaus closed west of the Mississippi River were later carried on in the offices at Kansas City and Denver. A further consolidation, announced in June

<sup>29</sup> This final change was provided for in the measure enacted by Congress in April 1941 extending the life of the Coal Act for two years. Before July 1, 1939, the Consumers' Counsel office was headed by John Carson. On and after that date it was headed by F. L. Kirgis. He was succeeded by Luther Harr.

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1940, left in operation only five offices: at Pittsburgh, Pa.; Bluefield, W.Va.; Ashland, Ky.; Chicago, Ill.; and Denver, Colo.

#### 3. SUNSHINE ANTHRACITE COAL COMPANY V. ADKINS

The constitutionality of the Coal Act of 1937 was decided by the Supreme Court on May 20, 1940, in the case of *Sunshine Anthracite Coal Company v. Adkins* (1940) 310 U.S. 381.<sup>30</sup> The first decision in the Sunshine case was made in June 1939, when the Eighth United States Circuit Court of Appeals at St. Louis upheld the Commission's power to determine whether a given coal is anthracitic or bituminous. The Supreme Court denied certiorari, thus, in effect, upholding the power of the Commission in this matter. The Sunshine Company sought an injunction against the collection of the 19½ per cent tax on the ground that the collection of the tax was unconstitutional. The Federal three-judge statutory court at Little Rock, Arkansas, where the injunction was sought, decided that the tax was constitutional.<sup>31</sup>

The Supreme Court upheld the Coal Act in the following respects:

1. The court stated that although the 19½ per cent tax was imposed to compel compliance with the regulatory provisions of the Act, it was within the power of Congress to use taxation as a means of enforcing provisions that were valid under the "commerce clause."
2. The court stated that the various regulatory provisions of the Coal Act came within the competence of Congress under the "commerce clause."
3. The court held that the regulation of the industry under the Coal Act of 1937 did not violate "due process."
4. The court upheld the standard set forth in the Act, with re-

<sup>30</sup> An earlier case questioning the constitutionality of the Act was that of *City of Atlanta v. National Bituminous Coal Commission* (1939), 308 U.S. 517. The Supreme Court dismissed the complaint and in a *per curiam* opinion stated that the City of Atlanta was without standing to maintain the suit. Another case involving the constitutionality of the Act was that of *Wmslow Coal Corporation v. Smith*. The three-judge statutory court convened in the District Court of the United States for the Southern District of Indiana decided, on April 12, 1940, that the 1 cent a ton tax was a valid excise tax, and that the court was without power to grant an injunction against the collection of the 19½ per cent tax imposed upon non-Code members.

<sup>31</sup> The company had also urged that it should not pay the tax because its coal was not bituminous. The court held that the question had already been conclusively decided.

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spect to minimum and maximum prices, as being sufficiently specific and definite to guide administrative action.<sup>32</sup>

### 4. TASK OF COORDINATING MINIMUM PRICES TAKEN OVER BY COMMISSION

District Boards 5, 14, 16, 18, 20, and 23 completed the coordination of their minimum prices early in 1939. The sixteen remaining district boards, however, ran into difficulties which they could not resolve. The Commission therefore took over the assignment. Tentative coordinated minimum prices were published, but not put into effect, in May, June, and July 1939.<sup>33</sup>

### 5. FINAL HEARING ON TENTATIVE SCHEDULES

The next stage in the price-fixing process was the Final Hearing under General Docket No. 15. That undertaking began for Districts 16 to 20, 22, and 23 at Denver, Colorado, on May 19, 1939, and recessed on June 2. The hearing was resumed for the other districts in Washington on July 24 and, with scarcely an interruption, continued for six months to its conclusion on January 20, 1940.

### 6. COORDINATED MINIMUM PRICES ESTABLISHED BY DIVISION

The *Report, Proposed Findings of Fact, Conclusions and Recommendations of Trial Examiners*, based upon the final hearings, was issued on April 13, 1940. This report of 2,800 pages contained the recommended coordinated minimum price schedules and an extensive discussion setting forth the reasons for the establishment of the particular prices recommended.

H. A. Gray, Director of the Bituminous Coal Division, took the Trial Examiner's *Report* under advisement and heard oral arguments concerning its recommendations. Then, on August 14, 1940, he issued his *Findings of Facts*<sup>34</sup> in which he adopted (subject to

<sup>32</sup> *Annual Report of the Secretary of the Interior, Fiscal Year Ended June 30, 1940*, pp. 460-65. The reader interested in tracing the evolution of these opinions of the court is referred to Chapter IX of Ralph Hillis Baker, *The National Bituminous Coal Commission* (The Johns Hopkins Press, 1941).

<sup>33</sup> *Federal Register*, May 4, 1939 (Districts 16-20, 22, and 23); June 29, 1939 (Districts 1-8); July 12, 14, and 15, 1939 (Districts 9-15). Supplementary minimum prices appeared in the issues of May 6 and 10, 1939 and November 4, 1939. These were the prices developed under Section 4-IIb. The Bituminous Coal Division assumed the duties of the Commission on July 1, 1939.

<sup>34</sup> *Findings of Fact, Conclusions of Law, and Order of the Director of the Bituminous Coal Division Establishing Effective Minimum Prices and Marketing Rules and Regulations under the Bituminous Coal Act of 1937* (General Docket No. 15).

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certain modifications) the findings and recommendations of the Trial Examiners.

On September 26, 1940, Secretary Ickes announced that he had completed his review of the minimum prices and marketing rules and regulations. This announcement was accompanied by an order which made certain changes in the schedules and rules adopted by Mr. Gray and confirmed the rest.

On October 1, 1940, the final schedules of coordinated minimum prices developed in Docket No. 15 went into effect.<sup>35</sup> They remained in effect for two years.

### D. *Enforcement, Adjustment, and Revision of Minimum Prices, and Maximum Price Enforcement, October 1940-August 1943*

During this period the Bituminous Coal Division was confronted first with problems relating to the enforcement, adjustment and revision of the coordinated minimum price schedules and later with the enforcement of the maximum prices established by the Office of Price Administration with the advice and help of the Coal Division.

#### 1. ENFORCEMENT PROBLEM

In administering the minimum price schedules the Coal Division found some violations among producers and distributors. It issued 198 cease-and-desist orders to producers and revoked 139 memberships of which 69 were later restored. The distributors received three cease-and-desist orders and 54 revocations of which 28 were restored.

It should be borne in mind that the demand for coal had so increased, owing to the war, that the pressure on the operators to sell below minimum prices was greatly reduced. Had this not been the case, the task of enforcing minimum prices undoubtedly would have been more difficult.

#### 2. "DISTRESS COAL"

One of the enforcement problems that confronted the Coal Division was what to do about "distress coal." This type of coal has been defined as "coal which cannot be sold at the prevailing market price (before minimum prices were established) or at the effective minimum price, but which must be disposed of by the producer to prevent

<sup>35</sup> *Federal Register*, August 24, 1940 (Districts 1-8); August 28, 1940 (Districts 9-15); August 30, 1940 (Districts 16-20, 22, and 23); October 10, 1940 (Supplementary schedules). Minor changes and corrections appeared in the issues of September 27, October 19 and 26, November 8 and 15, and December 27, 1940.

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shutting down the mine because mine sidetracks have become blocked by cars loaded with unsold coal."<sup>36</sup> As a rule coal "is sold according to size, and when a particular size is manufactured, other 'resultant' sizes also must be made. Thus, to make lump and other prepared sizes, the smaller particles of coal which are removed (by screening) are resultant sizes which also must be marketed. Hundreds of different size combinations are made by the industry in marketing its coal."<sup>37</sup> Coal purchasers commonly seek to meet their normal requirements by shopping for distress coal, or use this possibility as a bargaining device in purchasing "nondistress coal."

In the period that began on October 1, 1940, the Bituminous Coal Division issued permits for the substitution of distress coal for cheaper coals that had been ordered by a purchaser in cases where the substitution was agreeable to the purchaser and where the market would not suffer. The producer was required to certify, in his request for a permit, that the substitution was necessary to prevent the mine from being shut down because of distress coal in cars on the sidings. Telegraphic communications permitted the prompt handling of requests for permits. Table 4 shows the tonnages sold under such permits and discloses that in the period October 1940 to May

TABLE 4  
Distress Coal Sold under Substitution Permits Issued by Bituminous Coal Division, October 1940-May 1941

Month	Total Estimated Production of Bituminous Coal <sup>a</sup> (net tons)	Distress Coal <sup>b</sup> (per cent of total production) (net tons)
October 1940	39,364,000	253,370 0.64
November 1940	40,682,000	225,591 0.55
December 1940	42,104,000	86,420 0.20
January 1941	45,087,000	77,630 0.17
February 1941	42,606,000	45,600 0.11
March 1941	48,926,000	40,915 0.08
April 1941	6,110,000	3,800 0.06
May 1941	43,603,000	25,200 0.06
Eight months	308,482,000	758,526 0.25

<sup>a</sup> *Minerals Yearbook, 1941*, p. 830, and *Minerals Yearbook, 1942*, U.S. Bureau of Mines, p. 856.

<sup>b</sup> *Annual Report of the Secretary of the Interior, Fiscal Year Ended June 30, 1941*, p. 189. These figures do not include railway locomotive fuel.

<sup>36</sup> *Annual Report of the Secretary of the Interior, . . . June 30, 1941*, pp. 187-88.

<sup>37</sup> *Loc.cit.*

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1941 the volume averaged one quarter of one per cent of the bituminous coal currently produced.

### 3. ADJUSTMENTS OF PARTICULAR MINIMUM PRICES

Another problem was that of making proper adjustments of particular minimum prices. The Division received a total of 2,047 petitions which sought either to modify particular minimum prices or to obtain new minimum prices for designated coals. Of this number 1,940 were disposed of by June 30, 1943.

### 4. EXTENSION OF BITUMINOUS COAL ACT OF 1937

The Bituminous Coal Act of 1937 was to expire in April 1941 unless extended by Congressional action. In March 1941 a hearing was held on the record of the coal control program, at which consideration was given to many problems that had arisen over the pricing of coal and the administration of the program. Because minimum prices had been in effect for only six months, the Congressional Committee responsible for the hearing decided that the program had not had a fair trial.<sup>38</sup> It recommended that the Act be extended with only minor modifications.<sup>39</sup> On April 26, 1941, the new Guffey-Boland Act became effective. It differed from the Act of 1937 in giving the Consumers' Counsel an independent status, but in virtually all other respects the new law was simply a continuation of the old one, extending its life for two years.<sup>40</sup>

### 5. HEARINGS ON NEED FOR ESTABLISHING MAXIMUM PRICES

Hearings to determine whether the Division should establish maximum prices were suggested by the Consumers' Counsel in July 1941.<sup>41</sup> The Bituminous Coal Division opened such hearings on September 9, 1941 in Washington but recessed them on September 25 when the testimony "failed to establish either (1) that 'abuses' exist or (2) that prices being charged for bituminous coal are excessive and oppressive of consumers."<sup>42</sup>

<sup>38</sup> *Extension of Bituminous Coal Act of 1937*, Hearings on H.J. Res. 101, Revised, U.S. House Committee on Ways and Means, 77th Cong., 1st sess., March 1941.

<sup>39</sup> *Extension of the Coal Act*, U.S. 77th Cong., 1st sess., H. Report No. 324 to accompany H.R. 4146 (1941).

<sup>40</sup> Press release, Bituminous Coal Division, C.D. 193 (PN 139309).

<sup>41</sup> Temporary maximum prices on soft coal had been set in April 1941 by the Price Stabilization Division of the Advisory Commission on National Defense. After the emergency created by the striking miners had ended these prices were revoked.

<sup>42</sup> *Federal Register*, October 8, 1941, pp. 5122-24.

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When maximum prices were finally put into effect in May 1942, it was the OPA that established them. Personnel of the Bituminous Coal Division, however, contributed their knowledge and experience to the development of these OPA maximum price schedules and the Coal Division was assigned the task of detecting and investigating alleged violations of these prices. The schedules, with numerous modifications, remained in effect until the end of 1946.

### 6. GENERAL REVISION OF MINIMUM PRICE SCHEDULES

On May 21, 1941, the Coal Division opened cost hearings, the first step in the proceedings for a general revision of minimum price schedules. These proceedings were designated as Docket No. 21. The new determined costs, which were generally higher than those in Docket No. 15, were announced in April 1942. Hearings on the development of new minimum prices, based upon these costs, were opened in May 1942. The report of the Trial Examiner was issued in July. In August the Acting Director of the Bituminous Coal Division, D. H. Wheeler, announced the new minimum prices. These were affirmed by Secretary Ickes and became effective on October 1, 1942, superseding the schedules that had been put into effect two years earlier.<sup>43</sup>

### 7. EXPIRATION OF THE ACT

Congress extended the Coal Act on April 22 for a period of 30 days—to May 24, 1943.<sup>44</sup> On May 22, President Roosevelt signed House Resolution 122 which extended the Act for 90 days.<sup>45</sup> On July 5, 1943, however, the Ways and Means Committee of the House, by a vote of 13 to 11, rejected a proposal for further extension. It was the opinion of Secretary Ickes that this decision by Congress was based on the contentions (1) that the Act established a system of regulations inimical to free competition, (2) that the Act was unnecessary because conditions in the industry had improved and because of the establishment of the Solid Fuels Administration for War, and (3) that the Act had failed to prevent strikes in the industry. He believed, however, that the testimony placed before the Ways and Means Committee was not of a nature that would support the validity of these contentions.<sup>46</sup> The Act expired on August 23, 1943.

<sup>43</sup> The cost phase of Docket No. 21 is discussed at the end of Chapter VI and the minimum-price phase in the last section of Chapter IX.

<sup>44</sup> *Coal Age*, May 1943, p. 117.      <sup>45</sup> *Ibid.*, June 1943, p. 125.

<sup>46</sup> *Annual Report of the Secretary of the Interior, . . . June 30, 1943*, pp. xviii-xix.