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CHAPTER IX

ENFORCEMENT, ADJUSTMENT, AND REVISION

THE preceding chapters have been devoted primarily to the activities of the district boards and the Bituminous Coal Division leading up to the establishment of minimum prices. During the 35 months that followed the completion of this task, that is, from October 1940 to August 1943, the Division was engaged in carrying out new duties and functions. These activities may be classified as:

—The enforcement of established minimum prices and marketing rules and regulations.
—The adjustment, where necessary, of existing minimum price schedules.
—General revision of existing minimum price schedules necessitated by a change in the levels of costs.

A. *Enforcement of Minimum Prices and Marketing Rules and Regulations*

Price cutting has been one of the principal reasons for the instability of this industry. Sellers in order to dispose of their coals often find it necessary to reduce their prices to the consumers. The widespread evasion, in late 1934 and early 1935, of prices established by the National Recovery Administration was probably one of the important reasons for the breakdown of the price structure which was established under the NRA Code. It was the recognition of this limitation of the NRA Code that led the sponsors of the Act of 1937 to adopt strong measures for the enforcement of the minimum price structure.

The Bituminous Coal Division was assigned the responsibility of obtaining compliance with its minimum price schedules and its rules and regulations by the producers of bituminous coal who were Code members and the distributors of such coal. This section will discuss the success attained by the Division in dealing with both of these groups and will describe the procedure of enforcement.

1. ENFORCEMENT OF MINIMUM PRICE SCHEDULES UPON PRODUCERS

Producers of bituminous coal who were Code members were required by the Act to sell their coal at prices not lower than the

established minima. Whenever such a producer sold coal below the minimum price, a complaint could be lodged with the Bituminous Coal Division by a Code member, a district board, a state or political subdivision thereof, or the Consumers' Counsel. If the infraction was willful, the Division, after a hearing, could issue a cease-and-desist order (enforceable by application to a circuit court of appeals) or revoke the offending producer's membership in the Code.[1] Loss of membership made the producer liable to an excise tax in an amount equal to 19½ per cent of the sales price at the mine or, in the case of coal sold or disposed of otherwise than by a sale at the mine, 19½ per cent of the fair market value of the coal at the time of its sale.[2] In addition, delinquent Code members who desired to have their membership restored could do so upon payment to the United States government of double the 19½ per cent tax on coal sold or disposed of in violation of the Code or of regulations established thereunder (Sec. 5c).

a. *Number of violations by producers.* The action taken by the Coal Division against producers whose violations of the minimum price schedules had been discovered is disclosed in Table 67. The data in this table, and others in this chapter, have been compiled by the authors from Orders published in the *Federal Register*, and may be incomplete. It is unfortunate that an official tabulation was not available.

Table 67 shows that orders to cease and desist were issued more often than orders to revoke the Code membership of producers. In several cases a revocation of membership was reconsidered by the Division and was replaced by the less severe cease-and-desist order.[3] When this occurred, the case was listed by the writers in the cease-and-desist column of the accompanying table and not in the revocation column. No information is available to show whether the Bituminous Coal Division had occasion to apply to the courts for the enforcement of cease-and-desist orders. It should be noted that the

[1] The Bituminous Coal Act of 1937 (50 U.S. Stat. at L. [1937], 72), Secs. 5b and 6c.

[2] The above tax was applicable to all producers who had not taken out a membership in the coal code (Sec. 3b). A violation of the Code also exposed the member to a lawsuit by another member who had been injured by such violation. Threefold damages and the costs of the suit (including a reasonable attorney's fee) were collectible (Sec. 5d). Information is lacking in regard to the number of suits brought against producers.

[3] On December 31, 1941, the Rider Coal Co. was subjected to a revocation order which was subsequently replaced by a cease-and-desist order dated June 19, 1942. Similarly, the A and B Coal Co. was placed under a revocation order on March 17, 1943, but this was later withdrawn and on May 19, 1943 a cease-and-desist order was issued.

TABLE 67

Cease-and-Desist Orders and Revocations of Producers' Code Membership, by Period, October 1940-August 1943

Period	*Cease-and-Desist Orders*[a] (*number*)		*Membership Revocations* (*number*)	
Oct.-Dec. 1940	4		0	
Jan.-Mar. 1941	16		1	
Apr.-June 1941	18		0	
July-Sept. 1941	25		20	
FIRST YEAR		63		21
Oct.-Dec. 1941	12		44	
Jan.-Mar. 1942	22		12	
Apr.-June 1942	32		20	
July-Sept. 1942	14		16	
SECOND YEAR		80		92
Oct.-Dec. 1942	5		3	
Jan.-Mar. 1943	16		9	
Apr.-June 1943	30		11	
July-Aug. 1943	4		3	
THIRD YEAR		55		26
Total		198		139

[a] Does not include cease-and-desist orders issued to producers simultaneously with revocation orders.

Source: Compiled by the authors from data published daily in the *Federal Register* during the three years in which minimum prices were in effect.

Division in issuing an order to cease and desist did not thereby estop itself from subsequently issuing a revocation order in the same case.[4]

Table 68 gives the number of cease-and-desist and revocation orders issued by the Division to producers in the various districts, ranked in descending order on the basis of the number of bituminous mines that were active in 1942. The first 12 districts listed in this table contained 90.1 per cent of the 10,512 bituminous coal mines and contributed 93.5 per cent of the bituminous coal produced in the United States. Approximately 86 per cent of the cease-and-desist orders and 92 per cent of the revocations were issued to producers located in these districts. The figures in Table 68 do not show much correlation between the number of penalties ordered by the Division and the size of the district whether measured in number of mines or volume of output.

[4] An order to cease and desist was issued to the Dunreath Coal Co. Inc. on January 27, 1941, and two days later an order was issued revoking the membership of the company in the Code. Both of these orders are included in the accompanying tables.

TABLE 68

Cease-and-Desist Orders and Revocations of Producers' Code Membership, by Producing District, October 1940-August 1943

	Producing District	*Mines*[a] *(number)*	*Production of Bituminous Coal in 1942*[a] *(thousands of net tons)*	*Cease-and-Desist Orders*[b] *(number)*	*Membership Revocations*[b] *(number)*
8	Southern No. 2	2,054	121,876	42	23
1	Eastern Pennsylvania	1,524	58,325	21	13
4	Ohio	1,176	32,946	13	18
2	Western Pennsylvania	951	88,940	7	4
10	Illinois	685	65,137	8	8
15	Southwestern	615	9,736	10	9
13	Southeastern	596	20,931	12	4
3	Northern West Virginia	493	38,954	1	6
11	Indiana	398	25,435	13	15
9	West Kentucky	382	13,488	28	4
7	Southern No. 1	333	64,615	3	2
12	Iowa	269	2,980	12	22
17	Southern Colorado	243	6,334	5	0
14	Arkansas-Oklahoma	202	2,529	1	0
22	Montana	133	3,854	6	1
19	Wyoming	115	8,149	4	2
6	Panhandle West Virginia	77	5,514	0	5
20	Utah	75	5,527	3	3
23	Washington	67	2,221	0	0
18	New Mexico	62	774	8	0
16	Northern Colorado	55	2,714	1	0
5	Michigan	7	231	0	0
	Total	10,512	581,210	198	139

[a] *Minerals Yearbook, 1943*, U.S. Bureau of Mines, pp. 862-64 and 935. Data for mines producing 1,000 net tons and over have been combined with those for mines producing less than 1,000 net tons per annum. Lignite mines and lignite production have been excluded.

[b] Does not include cease-and-desist orders issued to producers simultaneously with revocation orders.

Source: Compiled by the authors from data published daily in the *Federal Register* during the three years in which minimum prices were in effect.

During the three-year period in which minimum prices were in effect, 337 orders were issued either requiring producers to cease and desist from certain proscribed practices or revoking their Code membership. The total number of complaints involving violations by producers was greater than 337, because some complaints were dismissed and some were not acted upon before the expiration of the Coal Act in August 1943.

b. *Revocation of Code membership.* Any producer whose membership in the Code had been revoked could apply to have it re-

stored. It was necessary, of course, for the offending producer to demonstrate to the Bituminous Coal Division that he had paid (or had arranged to pay in installments) to the Bureau of Internal Revenue a fine of 39 per cent of the value of the coal that had been sold in violation of the Code and on the basis of which his membership had been revoked (Sec. 5c). Table 69 shows that about half (69) of the 139 producers whose memberships had been revoked were restored to membership in the Code. The total of all fines imposed was $151,766.31 of which 69 producers whose memberships were restored paid $107,990.44.[5]

In some cases the producers who paid fines suffered no additional loss because the Bituminous Coal Division made the effective date of the restoration order coincident with the effective date of the revocation. In other cases, the Division set the effective date of restoration on the date on which the fine had been paid. In such instances the producer was liable to a tax of 19½ per cent on the value of bituminous coal sold in the period between the revocation and the restoration of his Code membership.

Information is not available to show what happened to those producers whose membership had been revoked and who failed to pay the tax imposed after hearings by the Bituminous Coal Division. Many undoubtedly went out of business; some may have paid the 19½ per cent tax as cost of operating.[6]

c. *Amount of fines.* How large were the fines imposed by the Division on the producers involved? Dividing the total fines by the total producers in each of the three columns in Table 69 yields the following averages:

For producers who paid	$1,565.08
For producers who did not pay	625.37
For all producers involved	1,091.84

These averages, because they are influenced by several very large payments, tend to give a distorted picture of the magnitudes of the fines. As a matter of fact, the fines ranged from $7.18 to over $12,-

[5] These fines in all cases were paid to the Bureau of Internal Revenue. Payment to this Bureau was provided for by the framers of the Act presumably in order to preclude the possibility of any accusation that the Bituminous Coal Commission (Division) was imposing fines because of an interest in the income.

[6] Section 7 of the Act provided that "All provisions of law, including penalties and refunds, applicable in respect of the taxes imposed by Title IV of the Revenue Act of 1932, as amended, shall, insofar as applicable and not inconsistent with the provisions of this Act, be applicable with respect to taxes imposed under this Act."

TABLE 69

Producers Restored to Code Membership, Producers Not Restored to Code Membership, and Corresponding Fines Involved, October 1940-August 1943

Period	*Producers Restored* (*number*)	*Producers Restored* *Fines Imposed and Paid* (*dollars*)	*Producers Not Restored* (*number*)	*Producers Not Restored* *Fines Imposed But Not Paid* (*dollars*)	*All Producers Involved* (*number*)	*All Producers Involved* *Total Fines Imposed* (*dollars*)
Oct.-Dec. 1940	0	.00	0	.00	0	.00
Jan.-Mar. 1941	1	556.45	0	.00	1	556.45
Apr.-June 1941	0	.00	0	.00	0	.00
July-Sept. 1941	12	29,331.61	8	2,864.39	20	32,196.00
FIRST YEAR	13	29,888.06	8	2,864.39	21	32,752.45
Oct.-Dec. 1941	15	12,984.06	29	11,273.98	44	24,258.04
Jan.-Mar. 1942	10	11,985.16	2	932.88	12	12,918.04
Apr.-June 1942	9	12,640.36	11	9,476.97	20	22,117.33
July-Sept. 1942	9	25,919.49	7	9,826.25	16	35,745.74
SECOND YEAR	43	63,529.07	49	31,510.08	92	95,039.15
Oct.-Dec. 1942	2	551.93	1	45.57	3	597.50
Jan.-Mar. 1943	4	5,860.92	5	2,399.69	9	8,260.61
Apr.-June 1943	5	5,766,21	6	5,127.75	11	10,893.96
July-August 1943	2	2,394.25	1	1,828.39	3	4,222.64
THIRD YEAR	13	14,573.31	13	9,401.40	26	23,974.71
Total	69	107,990.44	70	43,775.87	139	151,766.31

Source: Compiled by the authors from data published daily in the *Federal Register* during the three years in which minimum prices were in effect.

000. Table 70 gives a frequency distribution of fines imposed by intervals of $1,000. It will be seen that, of the 69 producers who paid fines, 47 (or 68 per cent) were assessed amounts less than $1,000. Only 5 paid more than $5,000. The producers who did not pay their fines were as a group subjected to lower penalties. Of

TABLE 70

Fines Imposed on Producers, Frequency Distribution, October 1940-August 1943

(dollars)	Number of Producers		
	Who Paid	*Who Did Not Pay*	*Total*
under 1,000	47	57	104
1,000 and under 2,000	4	8	12
2,000 and under 3,000	5	2	7
3,000 and under 4,000	3	1	4
4,000 and under 5,000	5	1	6
5,000 and under 6,000	2		2
6,000 and under 7,000		1	1
7,000 and under 8,000			
8,000 and under 9,000	2		2
9,000 and under 10,000			
10,000 and under 11,000			
11,000 and under 12,000			
12,000 and under 13,000	1		1
Total	69	70	139

Source: Compiled by the authors from data published daily in the *Federal Register* during the three years in which minimum prices were in effect.

the 70 producers in this group, as many as 57 (or 81 per cent) were fined less than $1,000 and only one was fined over $5,000.

An analysis of the amount imposed upon producers whose fines were less than $1,000 is shown in Table 71. Roughly 32 per cent of the 69 offenders who met their obligations paid less than $250, and 43 per cent of the 70 violators who failed to do so owed fines of less than that amount.

Table 72 has been prepared to determine how important the violations of the Act were when viewed from the standpoint of the industry as a whole. At the left of the table are given the total values of coal, f.o.b. mines, in 1941 and 1942. It will be seen that the value of the tonnage upon which fines were imposed was a negligible percentage of the total value in both 1941 and 1942.

Two limitations of these data should be noted. First, the figures do not include the value of tonnages sold by producers in violation of the Act which were dealt with only by cease-and-desist orders,

and second, they do not include violations of the Act by distributors of bituminous coal. Whether the behavior of the industry under minimum price regulation was satisfactory or not is difficult to say, since there are neither standards nor previous records available by which to judge its effectiveness. Pertinent also is the following ob-

TABLE 71

Fines under $1,000 Imposed on Producers, Frequency Distribution, October 1940-August 1943

(*dollars*)	*Number of Producers*		
	Who Paid	*Who Did Not Pay*	*Total*
under 250	22	30	52
250 and under 500	11	15	26
500 and under 750	8	9	17
750 and under 1,000	6	3	9
Total	47	57	104

Source: Compiled by the authors from data published daily in the *Federal Register* during the three years in which minimum prices were in effect.

servation of the Bituminous Coal Division with respect to compliance in general in these near-war and war years:

"It is reasonable to assume that under less favorable market conditions than those prevalent during this fiscal year there may have existed a greater incentive to sell coal at less than the minimum prices and engage in unfair methods of competition."[7]

2. ENFORCEMENT OF MINIMUM PRICES AND MARKETING RULES AND REGULATIONS UPON DISTRIBUTORS

Registered distributors were entitled to purchase coal of producers at a discount. These discounts were not standard for the various coal markets. Variations in discounts were "more or less due to the industrial burden of the area, the thickness of population, and the amount of coal moving there." There was "a possibility that a man could sell coal at some place at a margin of $.03 per ton, whereas in another he would starve to death" with so low a discount.[8]

[7] *Annual Report of the Secretary of the Interior, . . . June 30, 1942*, p. 114.

[8] Statement of H. A. Gray, Director of the Bituminous Coal Division. (*The Interior Department Appropriation Bill for 1942*, Hearings before U.S. House subcommittee of the Committee on Appropriations, 77th Cong., 1st sess., 1941, Part 1, p. 1107.)

TABLE 72

Value of Coal Sold in Violation of Bituminous Coal Act of 1937 Compared with Total Value of Bituminous Coal, October 1940-August 1943

Period	Total Value of Bituminous Coal[a] (dollars)	Value of Tonnage upon which Fines Were Computed[b]					
		Producers Who Paid Fines		Producers Who Did Not Pay Fines		Total Producers Involved	
		(dollars)	(per cent of Col. 1)	(dollars)	(per cent of Col. 1)	(dollars)	(per cent of Col. 1)
Oct.-Dec. 1940	....	.00	....	.00	....	.00	....
Jan.-Dec. 1941	1,121,928,836	109,928.51	0.0098	36,252.23	0.0032	146,180.74	0.1030
Jan.-Dec. 1942	1,369,993,608	131,017.79	0.0096	52,004.28	0.0038	183,022.07	0.0134
Jan.-Aug. 1943	....	35,952.25	....	23,989.31	....	59,941.56	....
Total		276,898.55		112,245.82		389,144.37	

[a] *Minerals Yearbook 1943*, U.S. Bureau of Mines, pp. 857 and 936. Data are for bituminous coal mines producing 1,000 tons a year or over. Lignite figures have been excluded. The values for 1941 and 1942 include selling expense.

[b] These figures are the values of the coal sold by these producers in violation of the Act.

In return for the right to purchase coal at a discount, distributors were required by the Act (1) to abide by all the marketing rules and regulations and (2) to resell the coal at a price not lower than the established minimum.[9]

The Bituminous Coal Division was authorized to make a complaint against a distributor directly.[10] If, as a result of a hearing, the Division judged the accused distributor guilty of violating the Code, it could issue a cease-and-desist order[11] or it could suspend, cancel, or revoke the registration of the distributor for a fixed period of time or for an indefinite period.[12] While not empowered to impose direct fines upon distributors, the Division followed the practice of requiring them to return all discounts obtained in violation of the Code as a condition of reinstatement.

Table 73 shows the action taken by the Bituminous Coal Division against distributors whom it judged guilty of Code violations. The Division issued three cease-and-desist orders and suspended, revoked, or cancelled 54 registrations of which 28 (or 52 per cent) were reinstated. A total of 50 registrations were suspended, revoked, or cancelled for a specific period. The periods set by the Coal Division and the number of cases were:

1 to 30 days	21
31 to 60 days	9
61 to 90 days	8
91 days to 2 years	12

In summary, 57 distributors were penalized for violations of the Code during the three years in which minimum prices were in effect. If the total number of distributors handling coal during this

[9] Sec. 4-IIh reads: "The Commission shall, by order, prescribe due and reasonable maximum discounts or price allowances that may be made by code members to persons (whether or not code members), herein referred to as 'distributors,' who purchase coal for resale and resell it in not less than cargo or railroad carload lots; and shall require the maintenance and observance by such persons, in the resale of such coal, of the prices and marketing rules and regulations established under this section."

[10] This procedure differed from that which applied to producer code members, for whom the Division was authorized to hold hearings only after complaint by a Code member, a district board, a state (or political subdivision), or the Consumers' Counsel.

[11] The regulations did not originally allow for this, but it was authorized by an order dated May 2, 1942. (See *Federal Register*, May 6, 1942, pp. 3358-59.)

[12] The words "suspend, cancel, or revoke" appear to have been used interchangeably.

TABLE 73

Cease-and-Desist Orders, Suspensions, Revocations, Cancellations, and Reinstatements of Registrations of Distributors, October 1940-August 1943 (number)

Period (by date on which penalty was imposed)	*Cease-and-Desist Order Issued*[a]	*Suspensions, Revocations, and Cancellations of Registrations*		*Reinstatements of Registrations*
		Specified Periods	*No Period Specified*	
Oct.-Dec. 1940	0	0	0	0
Jan.-Mar. 1941	0	0	0	0
Apr.-June 1941	0	1	0	0
July-Sept. 1941	0	11	1	7
FIRST YEAR	0	12	1	7
Oct.-Dec. 1941	0	11	0	7
Jan.-Mar. 1942	0	6	2	2
Apr.-June 1942	0	4	0	4
July-Sept. 1942	2	4	1	2
SECOND YEAR	2	25	3	15
Oct.-Dec. 1942	0	1	0	1
Jan.-Mar. 1943	0	3	0	2
Apr.-June 1943	1	6	0	2
July-Aug. 1943	0	3	0	1
THIRD YEAR	1	13	0	6
Total	3	50	4	28

[a] This penalty was not provided for prior to May 2, 1942.

Source: Data compiled by the authors from orders published daily in the *Federal Register* during the three years in which minimum prices were in effect. This tabulation does not include revocations and cancellations arising from a failure on the part of distributors to establish their bona fide distributorship.

period was 1,954—the number in business on June 30, 1941[13]—the number of violators who were penalized constituted 2.9 per cent.

3. PROCEDURE FOR ENFORCING MINIMUM PRICES AND MARKETING RULES AND REGULATIONS

Although no detailed discussion of enforcement procedure is available, an understanding of the steps taken by the Division to obtain compliance with both the minimum prices and marketing regulations can be obtained from the testimony of Stephen Raushenbush, Compliance Coordinator of the Bituminous Coal Division, at a Congressional hearing in April 1941.[14]

[13] *Annual Report of the Secretary of the Interior, . . . June 30, 1941*, p. 196.

[14] *The Interior Department Appropriation Bill for 1942*, Hearings before U.S. House subcommittee of the Committee on Appropriations, 77th Cong., 1st sess., 1941, Part 1, pp. 1103-4.

According to Mr. Raushenbush, when a violation was discovered a report was filed with the compliance officer, who ascertained the facts from the sales slips and other records[15] and determined whether the minimum prices had been violated or improper discounts had been taken. If the compliance agent or manager found what appeared on the surface to be a violation, he filed a charge which was recorded at the Washington office.

As a general practice the charge was then subjected to a further examination in the field by a representative or representatives of the Coal Division. The investigation sometimes entailed an examination in the consuming area to which the coal was shipped. All reports were brought together in the Washington office, and a statement was prepared by the manager which specified whether the violation was unintentional or willful, and which contained a recommended course of action. If the facts warranted such action, all the evidence was brought together and summarized and a recommendation made that a formal complaint be filed. The General Counsel, after an examination, determined whether the evidence was adequate and whether the charges were proper. If he approved the statement, the Division requested the district board to lodge a formal complaint, since the Division could not do so itself.

If the board complied with the Division's request, a date was set for a hearing, a trial examiner was appointed, and the plaintiffs and defendants were given a 30-day notice. The case was presented by attorneys and the recommendations of the trial examiner were received by the Director of the Coal Division who then made the final decision. In "something like 50 per cent of the cases" the defendants admitted their failure to meet their obligations under the Act.

The compliance division was undoubtedly handicapped by an inadequate staff of attorneys, by the delays that resulted from the fact that the Coal Division itself could not make formal complaints, and by lack of authority to obtain "all the evidence, because Congress" did not give the Coal Division "the power to get evidence outside of such reports as are presented."[16]

[15] "Other records" presumably refers to sales contracts and spot orders. The sales slip or invoice supplied the Coal Division with the price, the quantity and quality of the coal sold as well as the name of the producer, the destination, the type of consumer and related matters. This information was of great help to the Division, but for obvious reasons could not supply the evidence needed to detect many evasions of minimum prices where both parties to the sale were willing to engage in unfair trade practices.

[16] *The Interior Department Appropriation Bill for 1942*, Hearings before

The reader should be warned that the 394 penalties (337 producers' revocations and cease-and-desist orders plus 57 orders penalizing distributors) imposed upon producers and distributors do not indicate the true magnitude of the enforcement problem. At the end of the calendar year 1941, when the enforcement program had completed its 15th month, 1,840 violation cases had been filed with the Bituminous Coal Division. Of these about one-third, 642, had been "terminated" by the Compliance Coordinator; a smaller number, 562, had been "referred to the General Counsel's office"; 449 cases were being investigated; and 187 were awaiting action by district boards.[17] Of the 562 referred to the General Counsel's office, 195 had been formally acted upon and disposed of, 268 had reached formal action, but had not been disposed of, and 99 had not yet reached formal action.[18]

The evidence submitted thus far suggests that the compliance machinery established by the Coal Division, notwithstanding overtime work on the part of the staff responsible for its operation, was unable to deal effectively with the known violations of producers and distributors. The data submitted in Table 74 substantiate this observation. On December 31, 1940, the Compliance Coordinator had terminated 20 per cent of the cases that had been filed. A year later the percentage was 35, which was a definite improvement. Part of this improvement, however, must be accounted for by the decreasing rate of new cases. Subtracting the cumulative numbers in the first column of Table 74 yields the following data for each designated period:

Oct. 1-Dec. 31, 1940	468
Jan. 1-March 31, 1941	648
Apr. 1-June 30, 1941	358
July 1-Sept. 30, 1941	245
Oct. 1-Dec. 31, 1941	121

Attention should also be called to the fact that this discussion has been confined to the evasions which came to the attention of the Coal Division.

In its justification of the budget for the fiscal year 1943, the Bituminous Coal Division emphasized the importance of adequate enforcement:

U.S. House subcommittee of the Committee on Appropriations, 77th Cong., 1st sess., 1941, Part I, pp. 1104-5.

[17] *The Interior Department Appropriation Bill for 1943*, Hearings before U.S. House subcommittee of the Committee on Appropriations, 77th Cong., 2d sess., 1942, Part I, p. 829.

[18] *Ibid.*, p. 830.

"The need for vigorous and vigilant efforts to insure compliance with the regulatory provisions of the Act will continue unabated during the present emergency, particulary with respect to the low-grade coal. Any inordinate delay in applying the sanction provided for by the Act encourages violations, many of which may be committed to retain business which would otherwise go to the producer first committing the violation. There is a particular need for special emphasis to be given to violations of the Marketing Rules and Regulations, including the unfair methods of competition estab-

TABLE 74

Compliance Cases Filed with Bituminous Coal Division and Terminated by Compliance Coordinator, October 1940-December 1941

From October 1, 1940:	*Total Cases Filed (number)*	*Cases Terminated by Compliance Coordinator*	
		(number)	*(per cent of total)*
to Dec. 31, 1940	468	94	20.1
to March 31, 1941	1,116	304	27.2
to June 30, 1941	1,474	429	29.1
to Sept. 30, 1941	1,719	511	29.7
to Dec. 31, 1941	1,840	642	34.9

Source: *The Interior Department Appropriation Bill for 1943*, Hearings before U.S. House subcommittee of the Committee on Appropriations, 77th Cong. 2d sess., 1942, Part I, p. 829.

lished by Section 4 II (i) of the Act. In large measure, proper enforcement of these regulations has had to be deferred to date because of the necessity of employing all available personnel for the enforcement of price schedules. Even the enforcement of the price schedules has been maintained at less than a desirable level since compliance agents who have conducted investigations must appear as witnesses in the prosecutions of those cases, thereby being unavailable for further investigations of reported violations or for independent investigations on their own initiative."[19]

Although the Bituminous Coal Division with its small staff was struggling to get and keep abreast of reported violations, it was the opinion of the Directors of the Division in 1941 and 1942 that the ratio of violations to the total volume of coal sold was not very great. When asked, on April 18, 1941, what difficulty the Division was experiencing in the enforcement of the Act, H. A. Gray, the Director, replied:

[19] *Ibid.*, pp. 825-26.

"We are not having any great difficulty now. In fact, we are having practically none now because of the cessation of the mining of coal. We were having quite a number of cases, but considering the volume or the number of shipments, we were having a comparatively small number of cases. The volume was large, and we had the investigation and handling of the complaints which go along with all sorts of violations. We were rather fortunate in having the prices go in on a good market for coal. The temptation for violation is not so great, of course, on a good market as on a poor market. With large shipments of coal the complaints of violations naturally tend to increase. What will happen if we have a poor market for coal we do not know, but we do not expect a poor market this year anyway."[20]

Eleven months later, the Acting Director, Dan H. Wheeler, was asked whether compliance was more general at that time than it had been earlier. He replied:

"The noncompliance was greater during the early period of the act. I think that it can be said now that compliance with the provisions of the act is generally considered very good. We have had something like 1,800 cases, I think . . . since October 1, 1940. We have had a total of 1,846 violations, and when you consider that we have 16,000 code members and about two or three hundred other operators who are not code members and that they had to learn to operate under this act, what the code prices were, and a lot of things of that kind, and when you realize that many of these violations were in the early stage, I think it can be said generally that compliance is pretty good."[21]

B. *Adjustment of Existing Minimum Price Schedules*

When the framers of the Coal Act of 1937 set forth the procedure to be followed and the requirements to be met in arriving at coordinated minimum prices, they realized that minor defects in these schedules might not become apparent until the schedules had been put into effect, and that conditions affecting particular market situations might undergo changes. For these reasons, presumably, they wrote Sec. 4-IId:

"If any code member or district board or member thereof, or

[20] *The Interior Department Appropriation Bill for 1942*, Hearings before U.S. House subcommittee of the Committee on Appropriations, 77th Cong., 1st sess., 1941, Part 1, p. 1081.

[21] *The Interior Department Appropriation Bill for 1943*, Hearings before U.S. House subcommittee of the Committee on Appropriations, 77th Cong., 2d sess., 1942, Part 1, p. 843.

any State or political subdivision of a State, or the consumers' counsel, shall be dissatisfied with such coordination of prices or rules and regulations, or by a failure to establish such coordination of prices or rules and regulations, or by any minimum or maximum prices established pursuant to subsections (b) or (c) of Part II of this section, he or it shall have the right, by petition, to make complaint to the Commission, and the Commission shall, under rules and regulations established by it, and after notice and hearing, make such order as may be required to effectuate the purpose of subsections (b) and (c) of Part II of this section. Pending final disposition of such petition, and upon reasonable showing of necessity therefor, the Commission may make such preliminary or temporary order as in its judgment may be appropriate, and not inconsistent with the provisions of this Act."

TABLE 75

Petitions Seeking Adjustment of Existing Minimum Prices Received by Bituminous Coal Division, October 1940-June 1943

Period	Number of Petitions		
	Total	Not Acted upon or Not Disposed of at End of Period	Disposed of by Division
Oct. 1940-June 1941	944[a]		
July 1941-Dec. 1941	307[b]		
OCT. 1940-DEC. 1941	1251[c]	236[c]	1015[c,d]
Jan. 1942-June 1942	265[e]		
OCT. 1940-JUNE 1942	1516[f]	39[g]	1477[f,h]
July 1942-June 1943	531[i]	68[i]	463[i,j]
OCT. 1940-JUNE 1943	2047[k]	107[l]	1940[k]

[a] As of July 1, 1941. *Annual Report of the Secretary of the Interior, Fiscal Year Ended June 30, 1941*, p. 201.

[b] By subtraction of 944 from 1251.

[c] *The Interior Department Appropriation Bill for 1943*, Hearings before U.S. House subcommittee of the Committee on Appropriations, 77th Cong., 2d sess. 1942, Part I, Table 4, p. 830.

[d] Of which 656 were finally, and 359 were conditionally, disposed of by the Division.

[e] By subtraction of 1251 from 1516.

[f] *Annual Report of the Secretary of the Interior for the Fiscal Year Ended June 30, 1942*, p. 112.

[g] By subtraction of 1477 from 1516.

[h] Of which 909 were finally, and 568 were conditionally, disposed of by the Division.

[i] *Annual Report of the Secretary of the Interior, Fiscal Year Ended June 30, 1943*, p. 104.

[j] By subtraction of 68 from 531.

[k] By summation.

[l] By subtraction of 1940 from 2047.

The authors have been unable to find any compilation or analysis of petitions seeking adjustments of existing minimum prices. Their own compilation assembled from scattered data is presented in Table 75. It appears that 2,047 petitions were made under the foregoing subsection between October 1, 1940 and June 30, 1943. This may be considered to apply approximately to the entire three-year period, for, with the end of the Coal Act in sight, there was little need to make a petition in July or August. All but 107 petitions had been disposed of, either by denial, conditional relief orders, or final relief orders. It is said that more than half of the total number of petitions were for the establishment of minimum prices for coals and sizes of coal that had not previously been produced for sale. Other petitions requested modifications in the then-existing minimum price schedules with respect to specific coals, sizes of coal, transportation routes, and so on.[22]

A clearer understanding of the Division's handling of petitions for price adjustment may be obtained from a reading of the following opinion and order.[23]

(Docket No. A-1040)

PETITION OF BOVARD COAL CO., A CODE MEMBER IN DISTRICT NO. 1, FOR THE ESTABLISHMENT OF PRICE CLASSIFICATIONS AND MINIMUM PRICES FOR ALL SHIPMENTS FOR COAL PRODUCED AT ITS RIMER MINE

MEMORANDUM OPINION AND ORDER GRANTING TEMPORARY RELIEF

This is a proceeding instituted upon an original petition filed by Bovard Coal Company, a code member in District No. 1, pursuant to section 4 II (d) of the Bituminous Coal Act of 1937. Petitioner requests the establishment of price classifications and minimum prices for the coals of its Rimer Mine in District No. 1 for all shipments except truck from Brady's Bend, Pennsylvania. Pursuant to a Notice of and Order for Hearing dated September 24, 1941, a hearing was held on October 23, 1941, before a duly designated Examiner of the Division. As no price classifications or minimum prices have been established for the coals of petitioner's Rimer Mine for rail shipment, it is necessary

[22] *Annual Report of the Secretary of the Interior, Fiscal Year Ended June 30, 1942,* and . . . *June 30, 1943.* In the report for the fiscal year ended June 30, 1941 the number of petitions dealing with new coals was given as 424, or 45 per cent of the 944 petitions up to that date.

[23] *Federal Register,* November 19, 1941, pp. 5887-88.

that such price classifications and mine prices be established temporarily, pending final disposition of this proceeding, in order to preserve for petitioner and its competitors their existing fair competitive opportunities.

It appears from the testimony adduced at the hearing that petitioner does not prepare coal in Size Groups 1 and 2 and does not now have facilities for preparing coal in Size Group 5. It further appears that petitioner requests the same price classifications as have already been established in Size Groups 3 and 4 for coals of the Fox Mine (Mine Index No. 2989) of the Rimersburg Coal Mining Company. The witness Fair stated that the Fox Mine is adjacent to the Rimer Mine, and the petition alleges that the coals of these mines are of similar quality. Pending final disposition of this proceeding the price classifications requested for Size Groups 3 and 4 for rail shipment should be established for coals of the Rimer Mine.

A difficult problem is presented by petitioner's request for permission to make rail shipments on Western Allegheny Railroad from Brady's Bend. From the testimony adduced at the hearing it appears that petitioner's crusher and loading facilities are at Brady's Bend and that petitioner desires to make rail shipments on the Western Allegheny Railroad from that point in order to serve certain customers in Meadville and Erie, Pennsylvania (in Market Area 10). Brady's Bend is in District No. 2, approximately 10 miles from the Rimer Mine. There are several nearer loading points on other railroads which petitioner might use, for example, Rimersburg, Pennsylvania, in District No. 1, approximately 3.7 miles from the Rimer Mine, on the Pennsylvania Railroad. The witness Fair stated at the hearing that petitioner would prefer to use Rimersburg if it were required to ship over the Pennsylvania Railroad.

It seems that the freight rates to Meadville and Erie are higher from Rimersburg than from Brady's Bend.* This results in a delivered differential in favor of District 2 producers on shipments into Market Area 10. In General Docket No. 15, after extensive public hearings, it was decided that District 1 producers had no such "existing fair competitive opportunities" in Market Area 10 as necessitated the allowance to them of freight rate absorptions on shipments into that market area. Petitioner's

* To Meadville the published freight rate from Brady's Bend appears to be $1.23, from Rimersburg, $2.24; to Erie, the published freight rate from Brady's Bend is $1.49, from Rimersburg, $2.05.

request represents a sharp break with the coordination established in General Docket No. 15 and should not be granted as a matter of temporary relief in the absence of a very strong showing. Such a showing does not seem to have been made.

Moreover, if petitioner's request is granted, it will receive preferential treatment over other District 1 producers, who must ship into Market Area 10 at the higher freight rate. The record does not reveal any reason for giving the Rimer Mine such special treatment as a matter of temporary relief.

Upon the basis of the foregoing considerations, I am of the opinion that pending final disposition of this matter, minimum prices should be established for rail shipments from petitioner's Rimer Mine only via the Pennsylvania Railroad from Rimersburg, Pennsylvania. Pending the final disposition of this proceeding, the temporary relief granted will make available to the Rimer Mine those markets in which District 1 coals have customarily been sold.

It is, therefore, ordered, That, pending final disposition of this proceeding, temporary relief be granted as follows: Commencing forthwith, the Schedule of Effective Minimum Prices for District No. 1 For All Shipments Except Truck is supplemented by including a "G" classification in Size Group 3 and an "H" classification in Size Group 4 for the coals of the Rimer Mine (Mine Index No. 902) of the Bovard Coal Company. Such shipments shall be made on the Pennsylvania Railroad from Rimersburg, Pennsylvania, and all adjustments required or permitted mines in Freight Origin Group 90 shall be applicable thereto.

Notice is hereby given that motions to stay, terminate or modify the temporary relief granted in this order may be made pursuant to the Rules and Regulations of the Bituminous Coal Division for proceedings under section 4 II (d) of the Bituminous Coal Act of 1937.

Nothing herein shall be taken as an expression of the views of the Director concerning the final disposition of this proceeding.

Dated: November 14, 1941.

H. A. Gray,
Director.

(SEAL)

C. *General Revision of Minimum Prices*

Congress recognized that changes in the level of the cost of mining coal were inevitable. Such changes would necessarily result from adjustments in wages and hours and other concessions growing out of contract negotiations as well as from changes in the price of supplies and equipment and the cost of other items involved in mining and selling coal. Provision was made for this contingency in the Act of 1937. Section 4-IIa provided that once minimum prices were established, the Commission "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, . . . shall increase or decrease the minimum prices accordingly."

The new contract that became effective on April 1, 1941, increased the wage rates and so raised the cost of mining coal. This increase in costs necessitated a general revision of minimum prices. The procedure followed and the problems encountered by the Coal Division in bringing about the revision of minimum prices on October 1, 1942, is the subject of General Docket No. 21. The first phase of the proceedings had to do with the "determination" of new weighted average costs. This aspect of the general problem was discussed in Chapter VI (pp. 104-6).

The second phase of Docket No. 21 began on May 5, 1942, when hearings on price revision were opened in Washington. All interested persons were afforded an opportunity to be present, adduce evidence, cross-examine witnesses, and otherwise be heard. On July 27, 1942 the Examiner filed his Report. The Acting Director heard oral arguments on August 20, 1942, and entered his Findings of Fact, Conclusions of Law and Opinion. On August 24, 1942, the Acting Director announced the new prices, as expressed in Table 76, to become effective October 1, 1942,[24] following affirmation on September 30, 1942, by Secretary of the Interior Ickes, after due consideration and review.[25]

In carrying out its general revision of minimum prices the Coal Division grouped the 193 market areas into nine large areas. To give some idea of the new grouping of the market areas the authors have arbitrarily assigned letter designations (see first column of Table 76) and outlined the appropriate areas, identified by their corresponding letters, on Map 5.

[24] *Ibid.*, September 3, 1942, p. 6944.
[25] *Ibid.*, October 3, 1942, pp. 7859-62.

TABLE 76

Changes in Coordinated Minimum Prices for All-Rail Coal, Effective October 1, 1942
(applicable to minimum prices in dollars per net ton, f.o.b. mine, of October 1, 1940)

Groups of Market Areas			*Increase Ordered*[a]	
Designation[b]	*General Description*[c]	*Market Area Numbers*[a,d]	*All Districts except No. 14*	*District No. 14*
A	Eastern seaboard as far west as and including Michigan (except Upper Peninsula), thence south along Indiana-Ohio state line through center of Kentucky and Tennessee, and south along Alabama-Georgia state line, and eastern Canada.	1-21, 100-102, 105-112, 118, 125-129, 131, 133-137, 139-141	.20	.45
B	Alabama, eastern Tennessee, eastern Mississippi, certain areas in west central Georgia, and Florida	113, 117, 120-124, 130, 132, 138, 142-148, 150	.30	.55
C	Greater Chicago (and switching limits), greater Louisville, Indiana (except west-central and south-central), western Kentucky, western Tennessee, western Mississippi, Arkansas, Louisiana, and most of Missouri (excluding St. Louis)	22-31, 103, 114, 70, 72, 74, 104, 115, 116, 151-157	.10	.35
D	West and south central Indiana, all Illinois except greater Chicago, Iowa, and a small eastern portion of Missouri (including St. Louis)	32-41, 47-50, 52-69, 71, 73, 75-78	.05	.30

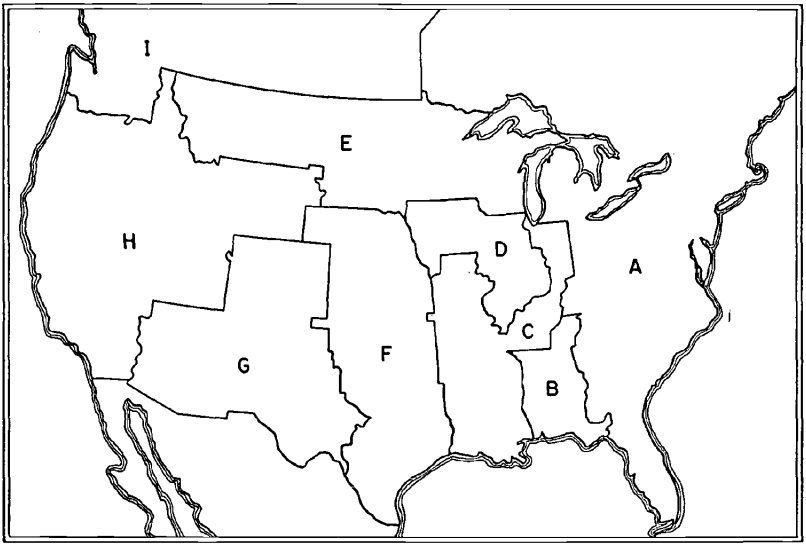
TABLE 76 (concluded)

Groups of Market Areas			*Increase Ordered*[a]	
Designation[b]	*General Description*[c]	*Market Area Numbers*[a,d]	*All Districts except No. 14*	*District No. 14*
E	Wisconsin, Minnesota, Upper Michigan Peninsula, North Dakota, South Dakota (except southwest corner) and Montana	42-46, 200-202, 213, 214	.15	.40
F	Nebraska, Kansas, Oklahoma, and Texas (except west central)	204-212	.10	.35
G	Colorado, Arizona, New Mexico and west central Texas	217-232, 236, 244-246	.15	.40
H	Wyoming, Utah, Idaho, Oregon, Nevada, California, and Black Hills region of South Dakota	203, 215, 216, 234, 237 (Idaho), 240, 241	.05	.30
I	Washington, Alaska, and western Canada	237 (Washington), 238, 239, 242, 243, 247-254	.25	.50

[a] From the Order of August 28, 1942, as reproduced in the *Federal Register*, September 3, 1942, pp. 6943-48.
[b] Designations adopted, for convenience, by the authors. The order is roughly from East to West.
[c] Based on a description in *Coal Age*, October 1942, p. 63.
[d] Market Areas as described in the *Federal Register*, August 30, 1940, pp. 3445-67.

MAP 5

Market Area Groupings Used in Revision of Minimum Price Schedules, 1942



Source: Table 76.

Reference to Table 76 will disclose that the increases granted by the Division ranged from 5 to 55 cents but that the increases in most of the districts were between 5 and 30 cents. The much higher increases that were granted to District 14 (Arkansas-Oklahoma) were due, in part, to factors peculiar to that district. In an order dated April 27, 1942, the Division had granted operators in that district an increase of 35 cents a ton for the domestic sizes because of the pronounced advance in their costs.[26]. The increases for October 1, 1942 included the increase of April 27.

An earlier order of the Coal Division explained that "District 14 constitutes a price area in itself. Much of the coal produced therein is disposed of in markets where there is little or no competition from coals produced in other areas. Accordingly, the revision of prices in this price area will not greatly affect producers in other price areas as would be the case where competition between districts or price areas is substantial."

The Coal Division pointed out (1) that the increases required to equalize minimum price realization and costs of operation varied from area to area and (2) that the application of varying increases to the minimum price areas would destroy the coordination between competing districts attained in the initial price determination.

[26] *Ibid.*, April 29, 1942, pp. 3130-32.

TABLE 77

Changes in Coordinated Minimum Prices for Railroad Fuel, Vessel Fuel, and Truck Shipments of Coal, by Producing District, Effective October 1, 1942
(Applicable to minimum prices in dollars per net ton, f.o.b. mine, of October 1, 1940)

	Producing District	Minimum Price Area	Railroad Fuel	Vessel Fuel	Truck Shipments
1	Eastern Pennsylvania	1	.20[a,b]	.20[c]	.20
2	Western Pennsylvania		.20[a]	.20[c]	.20
3	Northern West Virginia		.20[a]	.20[c]	.20
4	Ohio		.20[a]	.20	.20
5	Michigan		.20		.20
6	Panhandle (West Virginia)		.20[a]	.20	.20
7	Southern Numbered 1		.20[a,d]	.20[c]	.20
8	Southern Numbered 2		.20[a,d]	.20[c]	.20
9	West Kentucky	2	.00[b]		.05
10	Illinois		.00[b]		.05
11	Indiana		.00[b]		.05
12	Iowa		.00[b]		.05
13	Southeastern	3	.30[e]	.30	.30
14	Arkansas-Oklahoma	4	.40[b]		.30
15	Southwestern	5	.05[b]		.10
16	Northern Colorado	6	.15[b]		.15[f]
17	Southern Colorado		.15[b]		.15[f]
18	New Mexico		.15[b,g]		.15[f]
19	Wyoming	7	.05[b,h]		.05[f]
20	Utah		.05[b]		.05[f]
22	Montana	9	.15[i]		.15[f]
23	Washington	10	.30[b]		.25[f]

[a] Excluding that shipped via the Great Lakes as cargo.
[b] Excluding central-station railroad fuel.
[c] Also "bunker fuel."
[d] Central-station fuel is included if low-volatile and on-line.
[e] Includes railroad and powerhouse fuel produced in Subdistrict 1 and railroad fuel produced in Subdistrict 3.
[f] "Truck and wagon shipments."
[g] Includes sizes between 8" and ½".
[h] Also all coal produced by the Union Pacific Coal Company in Subdistricts No. 2 and 3 of District 19 when sold to the Union Pacific Railroad Company.
[i] Includes railroad locomotive fuel from Subdistricts 1 and 7, and all railroad fuel from Subdistricts 2 and 3.
Source: From the *Federal Register*, September 3, 1942, pp. 6943-48.

In order to resolve this problem, the Coal Division applied the "weighted average adjustment method."[27] It gave uniform price adjustments to coals moving into selected groups of consuming market areas (see Table 76). To obtain the weighted average increase, it weighted the increases in sales realization needed to bring minimum prices in line with the revised costs by the combined tonnages of the coal sold in selected groups of consuming areas.

The method used by the Coal Division was severely criticized by the Consumers' Counsel. The issues raised, the supporting arguments, and the economic implications are considered in Chapter X.

The procedure described was not applied in the revision of minimum prices for railroad fuel, vessel fuel, and coal shipped by truck. It will be seen from Table 77 that, within a single column, the price revisions were substantially uniform for the districts that composed a given minimum price area. No reason was assigned by the Coal Division for the use of a different procedure.

[27] *Annual Report of the Secretary of the Interior, . . . June 30, 1943*, pp. 103-4.