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Jesse B. Messitte

Robert Wolfe

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THE SOLID FUELS ADMINISTRATION FOR WAR
and
INDUSTRY ADVISORY GROUPS

By

JESSE B. MESSITTE AND ROBERT WOLFE*

A basic policy of the Solid Fuels Administration for War, established by Executive Order No. 9332,¹ has been to provide for the participation by representatives of producers, wholesalers and retailers of coal in the tasks essential to the accomplishment of the objectives of that order.² The purpose of this article is to describe the area and scope of this participation by representatives of the solid fuels industries³ in the administration of Executive Order No. 9332 and to assess the significance of this participation.

The role played by industry representatives in the administration of Executive Order No. 9332 can best be outlined in the context of the powers and duties of SFAW and of the general nature of the supply distribution problems faced by SFAW. SFAW collects data from the solid fuels industries and from other sources, both private and governmental, and, on the basis of such data, makes recommendations to other governmental agencies concerning prices, equipment, manpower and transportation for the solid fuels industries, to the end that these industries may be enabled to meet military, and essential industrial and civilian requirements for solid fuels. The Solid Fuels Administrator also has the power to determine the times and areas within which rationing of solid fuels should become effective; and he exercises, with respect to solid fuels and "subject to the direction of the Chairman of the War Production Board", the allocation and rationing power⁴ of the President conferred by the Second War Powers Act, 1942.⁵

*Jesse B. Messitte is the General Counsel of SFAW. Robert Wolfe is on the legal staff. This article is a reflection of the personal views of the writers and is not an expression of the official opinion of SFAW.

¹18 F. R. 5355, issued April 19, 1943. This order abolished the Office of Solid Fuels Coordinator for War that had been organized in the Department of the Interior and had functioned pursuant to a letter of the President to the Secretary of the Interior, dated November 5, 1941.

²Section 3 (a) of the executive order empowers the Solid Fuels Administrator to "appoint such general, regional, local, or functional solid fuel industry committees as the Administrator finds necessary . . ."

³"Solid fuels" are defined in the executive order as including "all forms of anthracite, bituminous, sub-bituminous, and lignitic coals (including packaged and processed fuels, such as briquettes)". "Solid fuels industries" are defined as "the development, production, preparation, treatment, process, storage, shipment, receipt, and distribution of solid fuels within the United States, its territories and possessions, but does not include the transportation of solid fuels."

⁴"Rationing" is sometimes considered as involving apportionment of available supply at the dealer-consumer level, and "allocation" is sometimes considered as involving apportionment of available supply at all other levels.

⁵56 Stat. 176, 50 U.S.C.A. § 606 (q) (Supp. 1942).

The responsibilities of and the problems presented by the duty of seeing to it that solid fuels are distributed equitably and in such a way as to secure maximum war production are probably not surpassed in difficulty by the responsibilities and problems of any other national war agency. No one would dispute the proposition that in the maintenance of a vigorous war economy coal *has* to be available for consumption in the right amounts at the right places at the right times.⁶ However, the magnitude of the business of mining and marketing coal is perhaps not generally apprehended. At the present time there are estimated to be about 15,000 mines in operation, about 14,000 producers of coal, about 1,500 wholesalers, tens of thousands of retail dealers of coal and millions of coal consumers. All these persons are either subject to, or affected by, SFAW regulatory activities. During the week ending November 20, 1943, when production had been resumed after the last strike and had been stimulated by the existence of a contract between the Government and the United Mine Workers of America, 13,907,000 tons of coal were produced. Approximately 38,740 railroad cars of coal moved daily during that week from the mines and collieries. The governmental responsibility for seeing to it that these 38,740 cars, as well as the substantial tonnages of coal moving by truck, river, lake or tidewater, moved to the right places was in the hands of SFAW.

Various factors have contributed to the making of the solid fuels supply and distribution situation for the coal year 1943-1944 much too tight for comfort. The productive efficiency of industries other than the solid fuels industries has, of course, been hampered by increasing shortages in machinery and manpower. That maximum production of coal has been crippled by difficulties stemming from the inability of mine management and labor to negotiate a wage agreement in 1943 is well known. We would not be accurate if we were to attribute the difficulty of securing equitable wartime distribution of coal to an increase in the "demand for coal." We have to speak in terms of "demands for coals." Great technological improvements in coal burning equipment have taken place during the last two decades so that today the burning equipment of many domestic and most industrial consumers is designed to burn most efficiently coal of a certain size and possessing certain physical and burning characteristics. As a result, there are demands for particular sizes or grades of coal, and many so-called fuel shortages exist, not because there is lack of adequate solid fuel but because there is less than enough of particular sizes or grades of coal to satisfy the consumer who in a pinch can use alternate solid fuel.

The duty of assuring equitable distribution of coal is further complicated by the fact that, although coal is produced in many widely-separated sections of

⁶In 1942 coal supplied over half the Nation's energy; it supplied about 55 per cent of the fuel used by public utilities; about 80 per cent of that used by railroads, about 55 per cent of that used for domestic space heating. The production of every ton of pig iron depends upon the availability of 1.3 tons of coking coal. Coal is truly the linchpin of war production.

the country, many acres requiring substantial coal tonnages are not located near producing fields. Many areas whose coal requirements have increased because of war industrialization are not located near producing fields where it is practicable to effect a substantial increase in production. Additional sources of supply must be found for areas whose coal requirements have increased; deliveries must be accelerated to regions and consumers whose need for coal is relatively more urgent. Frequently a delicate balancing of interests has to be made. The claims of one region for increased or accelerated shipments must be weighed in light of the opposition of other regions to receiving substitute coals or to having their requests for increased shipment deferred.

Finally it must be remembered that coal is mined and marketed only when there is a demand for it; it cannot be produced and stored at the mines because of the lack of storage facilities and the bulk of the commodity. It can be stored at the place of consumption⁷ or at retail dealer yards and docks. The formulation of any sound distribution program must take into account the buying habits of consumers and must involve consideration of the extent to which these habits need to be and can be modified during the war.

Some of the problems incident to the regulation of the distribution of solid fuels have been indicated. The war agencies established to coordinate and regulate the distribution of solid fuels—first the Office of Solid Fuels Coordinator and the SFAW—have found that successful execution of their duties has been facilitated by virtue of the relatively sound condition in which the bituminous coal industry—in tonnage produced and capital invested, the largest of the solid fuels industries—found itself when the demands for coal began to expand tremendously. Under the Bituminous Coal Act of 1937,⁸—enacted without any provision of its possible utility to the Nation during a war—minimum prices had been established for bituminous coal at the mines and unfair trade practices had been proscribed. Assured of recovery of its cost of production, the bituminous coal industry that had lost money as an industry for nearly a generation had been encouraged to engage in capital developmental work, and by 1942 the process of rehabilitation was so advanced that the industry was able to contribute to war production approximately 570 million tons of coal for 1942 and approximately 589 million tons of coal for 1943, the largest two-year bituminous coal output in the history of the United States. Just as useful to judicious control of bituminous coal distribution during the war was the assembling in Washington under the Coal Act of a corps of governmental administrators trained in coal problems as well as in governmental procedures. Moreover, the Coal Act provided for Bituminous Coal Producers District Boards the members of which represented all segments of the industry—labor, and large and small producers—in their

⁷Some coal cannot be stored at all. For example, lignite soon "degrades" when exposed to the air and must be burned within a relatively short period after extraction.

⁸Act of April 26, 1937 (50 Stat. 72, 15 U.S.C. § 828-851), as amended.

producing districts. These boards became acquainted with the nature of duties attached to assisting an administrative agency in an advisory capacity.⁹ The boards assisted in the initial establishment and subsequent adjustment of minimum prices, and, after the expiration of the Coal Act,¹⁰ were available as nuclei for the formation of new industry groups to assist SFAW.

Although bituminous and anthracite production was exceptionally high in 1942, shortages in the supply of coal for special uses began to appear at certain points. That it did not become necessary to impose any controls over the distribution of coal in 1942 may be ascribed to the salutary working relationships between the coal agencies in the Interior Department¹¹ and solid fuels industry groups. Sources of supply were found by SFAW, with the cooperation of the Coal Act district boards, for consumers unable to obtain sufficient bituminous coal. With the aid of these boards and with that of the Solid Fuels Advisory War Council, discussed below, the Solid Fuels Coordinator successfully waged the "Buy Now" campaign so that unprecedented coal stocks were built up by the end of 1942.¹²

As the efforts of management and labor to reach a new wage agreement lagged on during the spring of 1943 and threatened to interrupt production, it was foreseen that controlled distribution programs might have to be instituted; and SFAW was created, with more extensive powers, to succeed to the Office of Solid Fuels Coordinator. Shortages in manpower and machinery grew more acute in 1943. The strikes resulted in the loss of substantial tonnages.¹³ The rate of production did not keep pace with the rate of consumption.¹⁴ Controlled distribution programs had to be instituted if suffering and inconvenience to

⁹The Coal Act was originally administered by an independent regulatory commission, the National Bituminous Coal Commission. After July 5, 1939, it was administered by the Bituminous Coal Division in the Department of the Interior. Although the Division encouraged the district boards to participate to a significant degree in the administration of the Coal Act, its position was that under the statute final authority and responsibility inhered in it. The position of the Division was upheld in *BINKLEY MINING COMPANY v. WHEELER*, 133 F. (2d) 863 (C.C.A. 8th, 1943), *cert. denied*, 319 U.S. 764 (1943), where the court held that, in a proceeding instituted by a district board for the purpose of ascertaining whether applicable minimum prices had been violated and where the district board later refused to continue the proceeding, the Bituminous Coal Division had the power to continue it.

¹⁰The Ways and Means Committee of the House of Representatives voted on July 5, 1943, by a vote of thirteen to eleven not to report out favorably any of several pending bills that would have extended the Coal Act. That Act expired by its own terms on August 24, 1943.

¹¹The Bureau of Mines is in the Department of the Interior. The personnel of and the data collected by this agency and by the Bituminous Coal Division were utilized by SFAW and its predecessor agency, the Office of Solid Fuels Coordinator. Until the expiration of the Coal Act the solid fuels war agencies in the Department of the Interior needed only a small staff.

¹²Over 90 million tons of bituminous coal were held in stock at the end of 1942. This huge stock pile helped the country to weather the period of strikes in the spring of 1943 without the imposition of general controlled distribution programs. Coal was "frozen" in transit and at the mines during the work stoppages, however.

¹³Approximately 35 million tons of bituminous coal and 5 million tons of anthracite were lost.

¹⁴It is estimated that 674 million tons of coal were required for consumption and export in 1943 and that 650 million tons of coal were produced.

domestic consumers were to be kept to a minimum and if the war production of the Nation were not to falter.

The Solid Fuels Advisory War Council was the first industry group appointed during the war to assist the Government in getting coal distributed adequately. It was established in February 1942 by Solid Fuels Coordinator for War Ickes. Since its establishment the Council has consisted of 17 members representing all portions of the solid fuels industries and the coal consuming public.¹⁵ Since its first meeting in March 1942 the Council has met once a month in Washington, D. C.¹⁶

The Solid Fuels Advisory War Council, unlike the other industry groups that have been appointed, has not been called upon to assist in the actual administration of regulatory programs. The primary job of the Council members has been to consider monthly reports of the distribution situation presented by SFAW representatives and then, in the light of such reports and in the light of their own knowledge of coal conditions, to evaluate over-all policies and specific programs proposed by SFAW and independently to recommend policies and programs.

The Council has appointed several special committees. The expertise represented by the personnel of these committees is utilized not only for the purpose of making surveys suggested by SFAW or deemed appropriate by the Council itself but is utilized also to assist governmental agencies on coal problems. Thus, a committee has been appointed that has worked on the manpower problem at the mines and has held numerous conferences with the Chairman of the War Manpower Commission and the Director of the Selective Service System for the purpose of obtaining, in accordance with SFAW policy, remedial action to relieve the critical shortage of mine laborers. Another committee has been appointed which works with the War Shipping Administration in arranging for an adequate supply of bottoms for coastal transportation of coal; and another committee assists the Office of Defense Transportation in arranging appropriate restrictions upon truck deliveries of coal.

As suggested above, the Council has been useful in making better known to the Nation the fuel problems which are about to face it. The members of the Council are men who wield considerable influence among the groups whom they represent. The cooperation displayed by the coal consuming public is responding vigorously to the Government "Buy Now" plea, and the substantial public cooperation with the controlled distribution programs instituted by SFAW, may

¹⁵Four members represent bituminous coal producers; 2 members, anthracite producers; 1 member, wholesale distributors; 1 member, retail distributors; 1 member, the tidewater dock operators; 1 member, the Great Lakes dock operators; 2 members represent the railroads; 1 member represents transportation and facilities other than railroads; and 2 members represent mine labor. There are 2 members who represent the public generally; one of these public members, Dr. Walter Dill Scott, president-emeritus of Northwestern University, has been Chairman of the Council since April 1942.

¹⁶The monthly meetings of the Council average three and one-half hours in length. Minutes are kept of each meeting.

be attributed in large measure to the support of these programs by the members of the Advisory War Council who were convinced of their necessity before they were promulgated.

Other solid fuels industries groups created by SFAW assist more directly in the administration of specific regulatory programs. It will be best to describe the activities of these groups in connection with the basic programs in the administration of which they assist. The basic controlled distribution program for anthracite at the wholesaler level for the heating season of 1943-1944 is embodied in Solid Fuels Administration for War Revised Regulation No. 2, issued August 27, 1943.¹⁷ This regulation requires all wholesale suppliers of anthracite (including producers who sell directly to retail dealers) to arrange their distribution schedules so that, "on the basis of regular equal monthly shipments so far as practicable," they will have, by March 1, 1944, furnished to destinations and to retail dealers during the period from April 1, 1943 through March 31, 1944 up to, but not in excess of, 90 percent of the anthracite that they furnished to such destinations and dealers during the base period April 1, 1942 through March 31, 1943. Each wholesaler "whose anticipated available tonnage for the succeeding month is in excess of the maximum tonnage which may be shipped" has to "make such excess tonnage available in equal monthly portions for allocation by" SFAW. Retail dealers may request a supply of anthracite in excess of 90 percent of the tonnage received during the base period because of increases in population and burning equipment conversions.

A National Anthracite Distribution Committee, Regional Anthracite Distribution Committees and a Supply and Distribution Committee have been created to assist in the administration of the basic program controlling the wholesale distribution of anthracite.¹⁸ The anthracite consuming area of the country has been divided into six regions in each of which SFAW has appointed an Area Distribution Manager for anthracite. It is the duty of the Area Distribution Manager to submit to the Washington Office of SFAW recommendations concerning requests submitted by individual retail dealers or by entire consuming areas for additional anthracite in excess of the 90 percent tonnage.¹⁹ Requests are also filed by retail dealers for additional tonnage on the ground that, because they had large inventories at the beginning of the base period, the tonnages received by them during that period do not indicate fairly the extent of the requirements

¹⁷An influx of war workers into many anthracite consuming communities located in New England and the Middle Atlantic States, the withdrawal of coke from the domestic market and a wide response to the governmental plea for conversion of oil-burning equipment, had swollen the demand for hard coal.

¹⁸The establishments of these Committees was provided for by SFAW Regulation No. 2, issued June 19. This was a temporary measure controlling the wholesale distribution of anthracite until September 1, 1943.

¹⁹The Area Distribution Managers also investigate complaints that may be made concerning the provisions or the administration of Revised Regulation No. 2 and investigate the extent to which the regulation is being complied with.

of their customers. The primary function of the Regional Anthracite Distribution Committees is to advise and consult with the Area Distribution Managers with respect to the merits of these different types of requests. Each Regional Committee is composed of two producers, one wholesaler and two retail dealers doing business in the regions represented by them. Appointed in August 1943 by the Solid Fuels Administrator, the members of these Regional Committees are intimately acquainted with the patterns and problems of anthracite distribution in their regions. They hold formal meetings once a week, though all or any member of the Regional Committees are subject always to call by the Area Distribution Managers.

The National Anthracite Distribution Committee is composed of one representative from each of the three anthracite producing regions, two anthracite wholesalers, and three representatives of retail dealers. When this Committee was first appointed the anthracite controlled distribution program for the entire 1943-1944 heating season had not yet been put into effect. The first important contribution of the National Committee was to assist with advice and suggestions in the formulation of Revised Regulation No. 2. Since the promulgation of this regulation, the main duties of the National Committee have been (1) to consider the action taken by the Area Distribution Managers and the Washington Office of SFAW, after consultation with the Regional Committees, with respect to requests for additional anthracite, for the purpose of offering advice as to the extent to which exceptions from the provisions of the regulation appear appropriate for the future and (2) to recommend such modification of, or amplifications to, the provisions of Revised Regulation No. 2 as working experience with it may suggest.

The Supply and Distribution Committee is composed of four wholesalers. It meets in Washington during the first week of each month. At that time data is available from reports filed by anthracite wholesalers indicating which anthracite wholesalers will have during the month a tonnage available for distribution in excess of the amount needed to satisfy the 90 percent requirement and which wholesalers will not have sufficient tonnage to meet that requirement. The sole functions of the Supply and Distribution Committee are to examine the data compiled by SFAW relating to the distribution strength of the various anthracite wholesalers and to recommend to the Administrator which among the wholesalers with anticipated excess tonnage available for the month should be directed to make that tonnage or a portion of it available to other wholesalers without enough tonnage to meet the 90 percent requirement.²⁰

²⁰The National Anthracite Distribution Committee meets once a week in New York except that once a month immediately after the monthly meeting of the Supply and Distribution Committee in Washington it holds its meeting in that city for the purpose of considering and commenting upon the recommendations of the latter committee.

The National and Regional Anthracite Distribution Committees also assist in the administration of the basic controlled distribution program for anthracite at the retail dealer distribution level. Restrictions were first imposed by SFAW upon retail dealer deliveries of anthracite on the basis of consumer inventories at the time when the work stoppages of October-November 1943 were imminent.²¹ The program during the emergency period was to impose stringent restrictions on dealer deliveries, to freeze coal at the mines and release it to those communities threatened by cold weather without having sufficient coal or to industrial consumers without adequate stock-pile protection. However, no data was available concerning the stocks of household and other "domestic consumers" ²² of anthracite. A method had to be found for determining with some precision the amounts of coal needed for domestic consumption in the anthracite consuming communities, and it was not believed that the information of the Regional Committees concerning the supply situation at the dealer level in every community in their regions possessed the requisite precision. On the other hand, local communities comprised of retail distributors had been appointed in many of the anthracite consuming communities by the Office of Defense Transportation to aid in formulating and encouraging the adoption of so-called "joint action plans" among solid fuels distributors for the purpose of securing the most provident utilization of motor vehicle equipment and supplies. In some instances members of these committees did possess the requisite precise information concerning the anthracite supply situation of their communities. A "lend-lease" operation was carried out. The ODT loaned SFAW its advisory committees. The emergency regulation, Regulation No. 6, was based upon the assumption and provided specifically that the local ODT solid fuel advisory committees would coordinate retail dealer activities in their communities, make inventory checks and submit recommendations concerning the need to modify in local areas the limitations placed on dealer deliveries and the need of areas for the acceleration of deliveries from wholesalers beyond the monthly quotas contemplated by Revised Regulation No. 2. The incorporation of the industry groups appointed by and acting under the supervision of another national war agency into the framework of SFAW administration was continued in the revised regulation for anthracite at the dealer level for 1943-1944 necessitated by the production losses resulting from the strike.²³

The controlled distribution program for bituminous coal at the dealer level ²⁴ in history and structure is substantially like that of Revised Regulation No. 6. Its

²¹SFAW Regulation No. 6, issued October 30. The provisions of this regulation cut across the provisions of and in effect temporarily suspend OPA Ration Order No. 19. Ration Order No. 19 had placed restrictions upon dealer deliveries of anthracite on the basis of consumer inventories after the Solid Fuels Administrator had issued an order determining that anthracite rationing should be effective and after WPB through its Directive 1-W had delegated rationing authorities over anthracite to OPA. Directive 1-W and Ration Order No. 19 were revoked on November 17.

²²Retail dealers of both anthracite and bituminous coal sell to commercial and industrial consumers as well as to household consumers and such institutions as hospitals, asylums and schools.

²³Revised Regulation No. 6, issued November 15, 1943 (8 F. R. 15656).

²⁴Revised Regulation No. 7, issued November 9, 1943 (8 F. R. 15442).

limitations are directed to dealer deliveries on the basis of consumer inventories and stem from more stringent limitations imposed during the last emergency period of stoppages in production. But the distribution controls for bituminous coal above the dealer level have necessarily had to be shaped differently from those imposed upon the wholesale distribution of anthracite under Revised Regulation No. 2. Anthracite is marketed within a relatively compact area,²⁵ and approximately 80 percent of the anthracite mined annually is sold for space heating. Accordingly, it has been found feasible for the purpose of securing equitable distribution of the available anthracite supply to require the distribution of anthracite on the basis of a past historical distribution pattern, to impose a blanket percentage limitation on the historical movement and to arrange for the distribution of some of the coal available by virtue of the regulation into that limited number of communities critically in need of additional coal. But bituminous coal is marketed throughout the country and approximately 90 percent of the bituminous coal mined annually is sold for commercial and industrial uses. The shifts that war production has necessitated in industrial geography have changed the pre-war distribution pattern of bituminous coal movements to a materially greater extent than they have the pre-war anthracite distribution pattern. To require bituminous coal wholesalers to ship to industrial consumers a uniform percentage of the tonnage they shipped to such consumers during an historical period would be to make no progress toward relieving critical shortages. In order to secure the most effective distribution of bituminous coal at the wholesaler level, SFAW has deemed it necessary to issue regulations prohibiting, diverting or accelerating the movement of bituminous coal for certain uses or for certain regions;²⁶ to limit the percentages of monthly consumption requirements that industrial consumers may obtain on the basis of the days' supply they have on hand so that coal will be made available to build up the stocks of those industrial consumers with inadequate stock pile protection; and to issue directions to individual producers requiring them to ship specified tonnages of coal to specified consignees whose need for coal is vital and urgent.

The advisory groups that have been appointed to represent the bituminous coal industry have been of invaluable assistance in enabling SFAW to carry out its programs for controlling the movement of bituminous coal from the mines through wholesale channels of distribution. On August 3, 1943, Bituminous Coal Producers Advisory Boards were appointed for each bituminous coal producing district. With a few exceptions the members of the district boards under the Coal Act were appointed by the Solid Fuels Administrator as members of the new advisory boards

²⁵Although anthracite is marketed in 44 states, 95 per cent of the annual output is consumed in New England and in the Middle Atlantic States east of Erie, Pennsylvania.

²⁶Thus, SFAW Regulation No. 3, issued August 20, 1943 (8 F. R. 11652), prohibited the shipment of coal ex-lake from Great Lakes docks to the Pacific Northwest. SFAW Regulation No. 4, issued August 21, 1943 (8 F. R. 11654), required producers in the Appalachian fields to accord preference to their commitments to ship coal for all-important use in coke ovens and by-product plants and to their commitments to ship coal via lake.

in order that the new boards might inherit the governmental experience and the tradition of cooperation built up by the Coal Act district boards.

These advisory boards assist in the administration of the controlled distribution programs instituted for bituminous coal. The most important function of the advisory boards has been to aid the Area Distribution Managers²⁷ in their task of determining to which producers directions should be issued requiring the shipment of coal to specified consignees. With increasing frequency compliance by a producer with such a direction means that the producer must either reduce or halt entirely his shipments of coal to one or more persons to whom he is committed to ship coal.²⁸ Finding coal for an industrial consumer requesting coal of a particular size and grade involves not only locating a producer mining coal of such size and grade; it also involves comparing the stock situation²⁹ of the consumer requesting coal with that of other consumers to whom the producer is committed to ship. The familiarity of the advisory board members with the coals produced in their districts and with the problems of consumers obtaining coal from their districts enables them to render useful assistance to the Area Distribution Managers in their job of determining which producers are in the best position to ship a size and grade of coal needed by a consumer. A tremendous number of requests for bituminous coal that may have to be disposed of during emergency periods and the great number of technical factors that have to be taken into account in the process of selecting producers to fill these requests make this function of the advisory boards one that requires frequent informal consultation with the Area Distribution Managers.³⁰

These advisory boards are also called upon to assist SFAW in its consideration of the several approaches that are open to the solution of any particular distribution problem affecting bituminous coal and in formulating specific programs. Submittal of contemplated programs affecting bituminous and anthracite coal to the advisory boards and the National Anthracite Distribution Committee, respectively, as well as to the Solid Fuels Advisory War Council, has been helpful in eliciting the recommendations and suggestions of many of the best informed minds. But after all the recommendations are in, the determination as to the course to be followed, whether it happens to conform to the recommendations or not, is the province of SFAW.

²⁷Area Distribution Managers have been appointed for each bituminous coal producing district. They are employees of SFAW.

²⁸Consequently, in order that they may be protected against liability for breach of contract, producers desire that directions requiring them to ship coal explicitly order from which commitments and in what amount the coal required to be shipped should be diverted.

²⁹Data relating to the days' supply of coal for different uses are obtained from industrial consumers by SFAW. The stock situation of any consumer cannot be evaluated solely by a consideration of the days' supply of coal possessed by the consumer. One must also consider the physical limitations upon the extent to which the consumer can draw down his stock pile, the nearness of the consumer's plant to sources of supply and other factors.

³⁰During the lake navigation season when Solid Fuels Administration for War Regulation No. 4 operated to curtail the normal flow of Appalachian coals into certain areas, and during the emergency periods caused by strikes, members of certain advisory boards devoted all their time to assisting the Area Distribution Managers in their work of recommending to the Solid Fuels Administrator to which producers directions should be issued requesting the shipment of coal.

These, then, are some of the industry committees that assist SFAW in the necessary wartime regulation of solid fuels distribution. It will be readily understood that any impression of a rigidly-compartmentalized division of function among the industry groups assisting SFAW would be a misapprehension naturally arising from a bare recital of their activities. Administration under Executive Order No. 9332 is dynamic of necessity. The borders of the area of participation by industry groups in that administration are of necessity flexible.³¹ Only two generalizations may properly be made concerning such participation. First, the area of that participation, and the procedures governing its exercise, have to be determined by functional considerations. Whether or not industry committees to assist SFAW have been appointed along regional or non-regional lines, the size of each committee, the frequency and formality of committee meetings, depend upon the nature of the administrative problems to be solved, the funds available for handling those problems by governmental employees only, and the precise statistical information available relating to these problems.

The second generalization that may be validly made is that the functions of all industry groups assisting SFAW are strictly advisory in scope. The factious disagreements and indecision of the National Bituminous Coal Commission,³² and an appreciation of the large extent to which the interests of competing coal producing districts conflict, would have sufficed to deter any solid fuels war agency in the Department of the Interior from delegating its authority to representatives of any of the special interests subject to regulation under Executive Order No. 9332. In any event, that executive order did not authorize delegation of government authority to any industry group. Moreover, the activities of the industry groups have been confined to an advisory character so that members of these groups created by SFAW will operate in a manner not counter to the federal anti-trust laws. When early in the defense program it was recognized that industry groups could play a vital part in the program but that formation of such groups might be hindered by the reluctance of businessmen to enter into activities that might expose them to prosecution by the Department of Justice, the Attorney General took the notable step of announcing that the formation and functioning of industry groups would not be deemed violative of the anti-trust laws so long as their activities were advisory only.³³ A procedure has been evolved under which the advance clearance by the Department of Justice may be obtained by any war agency for the formation of par-

³¹Emergency problems arise and conferences are often held with selected members of one or more of the formally created committees or with a group of producers or consumers of coal who are not members of any formally created industry group.

³²See BAKER, *THE NATIONAL BITUMINOUS COAL COMMISSION* (1941) 117-118.

³³This policy was announced in a letter dated April 29, 1941, to Mr. John Lord O'Brian, General Counsel, OPM, by the then Attorney General, now Mr. Justice Jackson. It was announced that industry committee activities would not be violative of the anti-trust laws provided that "each industry committee shall confine itself to collecting and analyzing information and making recommendations . . . and shall not undertake to determine policies for the industry, nor shall it attempt to compel or to coerce anyone to comply with any request or order made by a public authority."

ticular industry advisory groups.³⁴ SFAW supervises all activities of these advisory groups and requires them to submit proposed plans of operation.³⁵

The functioning of these industry advisory groups established by SFAW may be considered as a specimen in the laboratory of public administration now perforce being conducted in Washington. Like other national war agencies,³⁶ SFAW has made use of a public administration technique that had been employed during peacetime.³⁷ Any attempt to appraise at this time the extent to which SFAW has accomplished the objectives of Executive Order No. 9332 would be premature; but, if past performance be a criterion, it may be confidently predicted that when a final appraisal of the administration of that executive order is made the contribution to its successful administration by the industry advisory groups will be found to have been a material one.

The national defense program and then war itself have made necessary the imposition of extensive controls over production, distribution and purchasing activities. The forging of workable controls needed for efficient prosecution of the war requires a detailed knowledge of the ways in which commodities are produced, distributed, purchased. Like other war agencies, SFAW has found that it is not enough

³⁴An exchange of letters was effected concerning the Solid Fuels Advisory War Council (letter of Solid Fuels Coordinator Ickes, dated February 13, 1942; reply of Attorney General Biddle, dated February 19, 1942) and concerning the Bituminous Coal Producers Advisory Boards (letter of Solid Fuels Administrator Ickes, dated October 14, 1943; reply of Attorney General Biddle, dated October 29, 1943).

³⁵The Act of June 11, 1942, sec. 12 (56 Stat. 351, 357, U.S.P., 1940 ed., Sup. II., Title 50, sec. 1112) provides that when the Chairman of WPB certifies to the Attorney General after consultation with him that the doing of or omission to do any act or thing is requisite to the prosecution of the war no prosecution or civil action shall be commenced with reference thereto under the anti-trust laws. SFAW has not found it necessary to request the issuance of a certificate under this statute to protect any of the industry groups appointed by it; but it has supported a request of the ODT for a certificate that was issued (Certificate 155) to shield from possible anti-trust law prosecution the activities of those distributors of solid fuels entering into joint action plans providing for concerted action to effect more provident utilization of truck facilities. SFAW has also supported applications for certificates to cover specific joint action plans under which the signatory coal dealers agree to limit deliveries during periods of local shortages according to the program of local ODT committees. SFAW support of these plans was based upon the assumption that the local committees would be better acquainted with local supply situations during emergency periods than either it or any of its advisory groups would be; and its support has been given on the understanding that no action limiting deliveries should be taken in contravention of SFAW regulations and that it would be informed immediately of any limitations imposed by the local committees. The provisions of these specific joint action plans do not involve the question of an unconstitutional delegation of legislative authority to private individuals or the subjection of the business activities of competing dealers not signatories to the plans to the whim of the dealers on the ODT committees; the provisions bind only those dealers who are signatories to the plans. See *CARTER v. CARTER COAL CO.*, 298 U.S. 238, 310-312 (1936). Compare *CUSACK CO. v. CITY OF CHICAGO*, 242 U.S. 526 (1917).

³⁶For the practice of WPB, see Weiner, *Legal and Economic Problems of Civilian Supply* (1942) 9 *LAW AND CONTEMPORARY PROBLEMS* 122, 144-145. Section 2 (a) of the Emergency Price Control Act of 1942 (56 Stat. 23, 25, U.S.C., 1940 ed., Sup. II, Title 60, sec. 902 (a)) directs the Price Administrator to appoint industry advisory committees to represent, at its request, any industry subject to maximum prices. Like Executive Order No. 9332, other executive orders grant authority to appoint advisory groups; for example, Executive Order No. 8890 (Office of Defense Health and Welfare Services), Executive Order No. 8989 (Office of Defense Transportation), Executive Order No. 9276 (Petroleum Administration for War).

³⁷See footnote 9, *supra*.

merely to recruit "technical" men from the regulated industries to serve as governmental employees or consultants. The distribution of solid fuels is carried on by a vast complex of practices necessarily varying from region to region. SFAW could not possibly attract into its service as governmental employees enough men conversant with those practices. The administrative problems of SFAW of how best to expose itself to informed opinion so that it may make a sound prognosis of the workability of its programs, and how best to obtain assistance to see these programs through successfully, have been met by utilization of industry advisory groups.

Public support for the regulatory activities of SFAW has been engendered by the utilization of advisory groups. These groups understand the background of SFAW policies and programs. They are able to explain the necessity for and the provisions of SFAW regulations. This results in public cooperation. We do not mean to say that violations of SFAW regulations have not occurred, but compliance with those regulations has been substantial.

As a specimen in the public administration laboratory examined for the purpose of discovering new ways for affecting more efficacious employment of industry advisory groups, SFAW experience with industry groups does not yield a startling case history. It reveals what an informed common sense would have foreseen.

Should it develop that the SFAW industry advisory groups have contributed to a successful administration of Executive Order No. 9332, then the participation of those groups in that administration will possess its greatest significance as a favorable precedent for continued utilization of industry advisory groups during peacetime public administration. The pre-war question concerning the extent to which representatives of interests subject to regulation should participate in the formulation and execution of regulation will continue to be with us. This question, which has not received the systematic consideration it merits,³⁸ assumes a crucial stature because with the growing complexity of society the legislative power had had to be farmed out by the primary and long-recognized legislative bodies to subordinate administrative agencies. The courts have refused to direct the legislative activities of these agencies.³⁹ Way for continuing to subject legislative-administrative agencies to informed public opinion will be found. One possible way is to provide that representatives of the groups to be regulated should themselves, together with representatives of the general public, constitute the governmental agency. What literature there is on the subject,⁴⁰ and some of

³⁸LEISERSON, *ADMINISTRATIVE REGULATION* (1942) "is notable as the first systematic and comprehensive attempt to analyze" this question, *BOOK REVIEW* (1942) 56 *HARV. L. REV.* 150, 151.

³⁹*GRAY v. POWELL*, 314 U.S. 402 (1941); *FEDERAL SECURITY ADMINISTRATOR v. QUAKER OATS Co.*, 318 U.S. 218 (1943).

⁴⁰See LEISERSON, *ADMINISTRATIVE REGULATION* (1942); Leiserson, *Interest Representation in Administrative Regulation* (1942) *ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE*; WHITE, *INTRODUCTION TO THE STUDY OF PUBLIC ADMINISTRATION* (1939); *RAILROAD RETIREMENT BOARD* (Monograph No. 8 of the staff of The Attorney General's Committee on Administrative Procedure, (1940) 13-14.

the experience in public administration, seems to indicate that special interest representation on the agency itself often tends to result in indecision or in factious squabbling prejudicial to the maintenance of public confidence.

The disadvantages of direct special interest representation⁴¹ are avoided by delegating legislative power to governmental administrators and by providing that such administrators shall appoint and consult with advisory groups representative of the portion of the public subject to regulation. The use of representative advisory groups as a method for subjecting the legislative authority to the impact of informed public opinion is an organic development from historic methods.⁴² Of course, men of ability who possess sufficient integrity and detachment to withstand being unduly influenced by groups representing special interests must be obtained for public administration, but that is another problem.⁴³

⁴¹A stimulating law review article suggests that through the OPA War Price and Rationing Boards "the neighborhood is once more a virile government unit." Oppenheimer, *The War Price and Rationing Boards* (1943) 43 COL. L. REV. 147, 164. Although the members of these boards are themselves subject to rationing and price control rules, they are empowered to make governmental decisions that are final unless overridden by superiors in the OPA organization. However, the board members do not represent conflicting group interests; each member of a board is affected, directly or indirectly, by board rulings, but to no greater extent than is a judge by his decisions or a Senator by Congressional legislation. The functioning of these boards would not seem, therefore, to be significant in the search for methods whereby informed public opinion can be brought to bear upon administrative agencies entrusted with legislative power over conflicting group interests.

Oppenheimer points out that the War Price and Rationing Boards, "like the Selective Service Boards, have brought elements of the jury system into administrative law" (163). It might be said that the relationship between advisory committees representing special group interests and the administrator brings into administrative law elements of the relationship between the master in equity and the chancellor.

⁴²The counsel for litigants before a judge who legislates within the interstices of a statute, or otherwise, are representatives of conflicting special interests acting in a recommendatory capacity.

⁴³See FRANK, *IF MEN WERE ANGELS* (1942).