

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION



PERFORMANCE AND ACCOUNTABILITY REPORT (PAR) FISCAL YEAR 2024

November 15, 2024

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Enclosure 1: Federal Mine Safety and Health Review Commission Independent
Auditor's Report and Financial Statements for the Years Ended
September 30, 2024, and 2023

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Message from the Chair

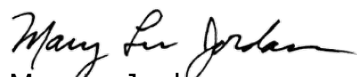
November 15, 2024

I am pleased to submit the Performance and Accountability Report for Fiscal Year 2024. This report provides performance information in keeping with the requirements of the Government Performance and Results Modernization Act of 2010 and includes audited financial statements and accompanying documentation as mandated by the Accountability of Tax Dollars Act of 2002.

As a result of the COVID pandemic, FMSHRC transitioned to exclusively electronic filings, allowing the continued use of workplace flexibility to include partial telework. At the trial level, Administrative Law Judges continue to hold in-person and remote hearings within the discretion of the presiding Chief Administrative Law Judge. At the appellate level, open meetings and oral arguments continue in-person.

In Fiscal Year 2024, FMSHRC met two of the four performance targets for trial level goals in the Office of the Chief Administrative Law Judge. The number of trial level cases on hand has increased over the past year, with 1,237 remaining at the end of FY 2024. At the appellate level, FMSHRC met two and substantially met one of its case targets for its five goals.

We are pleased to report the independent auditor's opinion that the Commission's financial statements as of and for the fiscal years ended September 30, 2024, and 2023, are presented fairly, in all material respects, in accordance with the United States of America (U.S.) generally accepted accounting principles. It is my assessment that the financial and performance data in this report are reliable and complete.


Mary Lu Jordan
Chair

Management Discussion and Analysis

MISSION AND ORGANIZATIONAL STRUCTURE

The Federal Mine Safety and Health Review Commission (FMSHRC, or the Commission) is an independent adjudicatory agency that provides administrative trial and appellate review of legal disputes arising under the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended. The Commission is entirely independent and is not a component of the Department of Labor (DOL) or the Mine Safety and Health Administration (MSHA).

Section 113 of the Mine Act establishes FMSHRC and sets forth its responsibilities. The Mine Improvement and New Emergency Response Act of 2006, P.L. 109-236 (MINER Act) added an additional responsibility to FMSHRC, resolving disputes between the Secretary of Labor and underground coal operators with respect to the contents of emergency response plans or the Secretary's refusal to approve such plans.

The mission of FMSHRC is to provide just, speedy, and legally sound adjudication of proceedings authorized under the Mine Act in a manner that deters noncompliance with the Act and ensures that a penalty once proposed and contested before the Commission is not compromised out of view of the public or without justification.

FMSHRC currently consists of four organizational elements:

- Office of the Chair and Commissioners (OCC)
- Office of the General Counsel (OGC)
- Office of the Chief Administrative Law Judge (OCALJ)
- Office of the Executive Director (OED)

The Commission is headquartered in Washington, DC with satellite offices located in Denver, CO and Pittsburgh, PA.

The Commission carries out its responsibilities through trial-level adjudication by administrative law judges and appellate review of the judges' decisions by a five-member Commission. The Commissioners are appointed by the President and confirmed by the Senate.

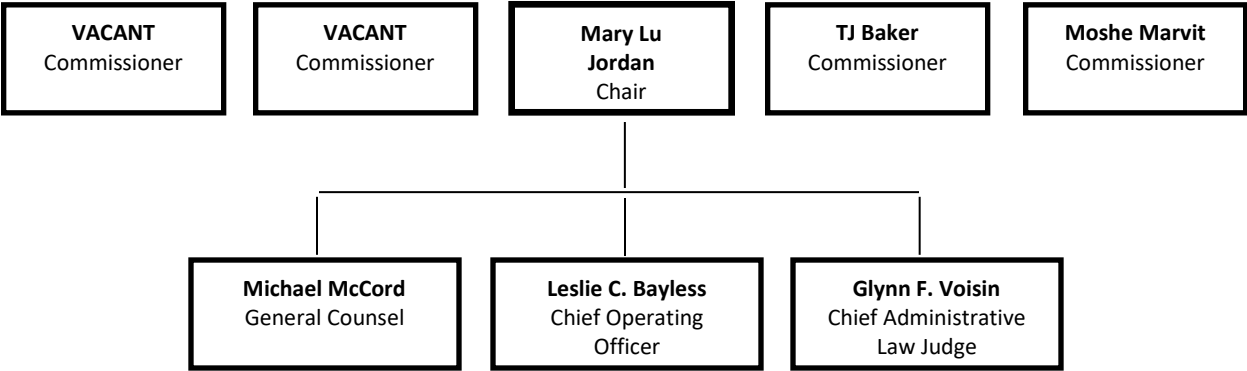
Most cases involve the contest of civil penalties proposed by MSHA to mine operators for alleged violations of mandatory health and safety standards, and address whether the alleged safety and health violations occurred as well as the assessment of appropriate civil penalties sufficient to deter operator noncompliance. The Commission is required by the Mine Act to review proposed penalty settlements between operators and MSHA to ensure that a penalty once proposed and contested before the

Commission is not compromised out of the view of the public and without justification. Other types of cases include contests of MSHA orders to close a mine for health or safety reasons, miners' requests for compensation after being idled by such orders, review of MSHA's approval or disapproval of operators' emergency response and other mine safety plans, miners' complaints that they suffered discrimination because they exercised protected safety rights, and miners' allegations of interference with the exercise of such rights. Disputes involving the temporary reinstatement of a miner, or an emergency response plan must be decided on an expedited basis.

Once a case is filed with the Commission, it is referred to the Chief Administrative Law Judge (Chief Judge). Thereafter, litigants in the case must submit additional filings before the case is assigned to a judge. To expedite the decisional process, the Chief Judge may rule on certain motions and, where appropriate, issue orders of settlement, dismissal, or default. Otherwise, once a case is assigned to an individual judge, that judge is responsible for the case and rules upon motions and settlement proposals. If a hearing is necessary, the judge will schedule and preside over the hearing, and issues a decision based upon the record. A judge's decision becomes a final, non-precedential order of the Commission unless it is accepted for review by the Commission. The Commission provides administrative appellate review. It may, in its discretion, review decisions issued by judges when requested by a litigant, or it may, on its own initiative, direct cases for review. The Commission's decisions are precedential and appeals from the Commission's decisions are heard in the federal courts of appeals.

The Chair of the Commission is responsible for the administrative operations of the Commission. The Chief Operating Officer (COO) oversees the Commission's daily operations and provides management guidance to the Chair to ensure Commission compliance with federal regulations and improve the Commission's overall efficiency and effectiveness. The COO also manages the Commission's budget, information technology and facilities functions, in addition to directing functions within the Office of the Executive Director (OED) to include administrative, human resources, financial management, procurement and other mission support services.

KEY PERSONNEL ORGANIZATION CHART



PERFORMANCE GOALS

For Fiscal Year 2024, FMSHRC set forth the following strategic goals:

Strategic Goal 1: Ensure expeditious, fair, and legally sound adjudication of cases.

Strategic Goal 2: Increase the Commission’s overall operational efficiency and effectiveness.

Strategic Goal 3: Achieve organizational excellence through workforce development.

KEY CHALLENGES

FMSHRC’s major challenge is the unpredictability of the workload. The number of contests filed by operators or appellate petitions brought to FMSHRC at both the trial and appellate levels is not subject to FMSHRC’s control.

- Most trial level cases that come before FMSHRC involve civil penalties proposed by MSHA against mine operators. These cases are the result of mine operators contesting those penalties.
- Most of the cases accepted for review are generated from petitions filed by parties adversely affected by a judge’s decision. In addition, the Commission, on its own initiative, may decide to review the case.
- The Commission at the appellate level also considers requests to reopen cases in which a mine operator is in default for failing to timely respond to the Secretary’s proposed penalty or to a judge’s order (“default cases”).

Our average time from receipt to disposition (i.e. pendency) of trial level cases slightly increased from 192 days in FY 2023 to 225 days in FY 2024. FMSHRC’s appellate case inventory of substantive cases increased during 2024. FMSHRC continues to improve its capacity to handle cases and consistently works to ensure systems, procedures, and staffing can resolve any future caseload spikes.

ANALYSIS OF FINANCIAL STATEMENTS

The Accountability of Tax Dollars Act of 2002 requires that FMSHRC's financial statements be audited annually. In accordance with the Accountability of Tax Dollars Act of 2002, FMSHRC began annual audits in FY 2003. FMSHRC has received an "unmodified" opinion for each annual review conducted by an independent auditor.

FMSHRC has contracted with the Department of the Treasury, Bureau of the Fiscal Service, Administrative Resource Center, for accounting services since 1998. The Administrative Resource Center prepared FMSHRC's FY 2024 financial statements, which include comparative data for FY 2023. The principal financial statements include the Balance Sheet, Statement of Net Cost, Statement of Changes in Net Position, and Statement of Budgetary Resources.

Analysis of the Balance Sheet

FMSHRC's assets in fiscal year 2024 were \$11,758,410 as of September 30, 2024. The Fund Balance with Treasury of \$11,733,517 represents FMSHRC's largest asset as of September 30, 2024. This is a decrease of approximately 2 percent from fiscal year 2023 and represents approximately 99 percent of the agency's total assets.

FMSHRC's liabilities in fiscal year 2024 totaled \$4,058,429 as of September 30, 2024. This is a decrease of \$571,999 from the fiscal year 2023 balance of \$4,630,428. The Intragovernmental Accounts payable on September 30, 2024, were \$1,099,305. The balance as of September 30, 2023, was \$1,076,053. Employer contributions and payroll taxes payable totaled \$56,519 on September 30, 2024. The balance as of September 30, 2023, was \$131,002. Federal employees salary, leave, and benefits payable decreased \$242,830 in FY 2024 from FY 2023. Unfunded annual leave increased by \$14,946 in FY 2024 from FY 2023. Unfunded annual leave represents approximately 18.21 percent of total agency liabilities.

The Net position is the difference between total assets and total liabilities. The total net position for fiscal year 2024 increased by \$376,307 from fiscal year 2023.

Analysis of the Statement of Net Cost

The Statement of Net Cost shows the net cost of operations for the agency, and it is broken out between FMSHRC's two major functions, Administrative Law Judges and Review Commission. The total net cost of operations in fiscal year 2024 was \$17,719,309, which is an increase of \$1,017,758 from the fiscal year 2023 net cost of operations of \$16,701,551, a change of approximately 6 percent.

Analysis of the Statement of Changes in Net Position

The Statement of Changes in Net Position reports the change in the agency's net position during the reporting period. The net position consists of two components, the unexpended appropriations, and the cumulative results of operations. The Net Position increased \$376,307 in fiscal year 2024 from fiscal year 2023, a change of approximately 5 percent.

Analysis of the Statement of Budgetary Resources

The Statement of Budgetary Resources presents how the budgetary resources were made available and the status of the budgetary resources at the end of the reporting period. The total budgetary resources must always equal the total status of budgetary resources. For fiscal year 2024, FMSHRC had total budgetary resources of \$24,414,166, which is \$1,652,358 more than in fiscal year 2023.

Statement of Financial Impact due to COVID-19

The COVID-19 pandemic did not have a significant financial impact on the agency's financial statements during FY 2024.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION				
Table of Key Measures				
Dollars in Thousands			Increase	(Decrease)
	FY 2024	FY 2023	\$	%
COSTS				
Total Financing Sources	\$17,702	\$16,756	(\$946)	5.65%
Less: Net Cost	\$17,719	\$16,702	\$1,017	6.09%
Net Change of Cumulative Results of Operations	(\$17)	\$54	\$37	68.52%
Assets:				
Fund Balance with Treasury	\$11,733	\$11,949	(\$216)	(1.81%)
Accounts Receivable - Intragovernmental	\$19	\$2	\$17	85%
Advances and Prepayments	\$5	\$0	\$5	-----
Accounts Receivable - Other than Intragovernmental	\$1	\$3	(\$2)	(66.67%)
Property, Equipment, and Software	\$0	\$0	\$0	0%
Total Assets:	\$11,758	\$11,954	(\$196)	(1.64%)
Liabilities:				
Accounts Payable - Intragovernmental	\$1,099	\$1,076	\$23	2.14%
Other Liabilities - Intragovernmental	\$73	\$151	(\$78)	(51.66%)
Accounts Payable - Other than Intragovernmental	\$1,958	\$2,233	(\$275)	(12.34%)
Federal Employees Salary/Leave/Benefits Payable	\$928	\$1,170	(\$242)	20.68%
Total Liabilities:	\$4,058	\$4,630	(\$572)	(12.3%)
Net Position (Assets minus Liabilities)	\$7,700	\$7,324	\$376	5.13%

MANAGEMENT ASSURANCES

Analysis of Systems, Controls, and Legal Compliance

FMSHRC is responsible for establishing and maintaining effective internal control over financial reporting, which includes safeguarding assets and complying with applicable laws and regulations. As a small independent Federal agency, it is more efficient for FMSHRC to leverage servicing agencies for key functions than to build an organic capability. Consequently, FMSHRC must rely heavily on the systems and controls provided by servicing agencies to meet OMB's guidelines and the requirements of law with respect to financial management, accounting systems, and financial reporting.

All financial data reported was obtained from the FY 2024 accounting reports prepared by the Department of the Treasury, Bureau of the Fiscal Service, Administrative Resource Center, FMSHRC's accounting servicing provider. The performance data on case intake and dispositions has been verified by Commission managers. There are no known material inadequacies—since the material weakness identified is related to FMSHRC's internal processes.

Based on the results of our assessment, FMSHRC can provide reasonable assurance that internal control over operations, reporting, and compliance were operating effectively as of September 30, 2024, with the exception of the material weakness identified by our auditors during the financial statement audit. The Commission's external auditors identified and reported to us a material weakness related to weaknesses in our entity levels controls surrounding the design of appropriate control activities, our organizational structure, expectations of competence, and the recruitment and retention of personnel.

Limitations of the Financial Statements

The principal financial statements are prepared to report the financial position and results of operations of the Federal Mine Safety and Health Review Commission, pursuant to the requirements of 31 U.S.C. § 3515(b). The statements are prepared from FMSHRC's books and records in accordance with Federal GAAP and the formats prescribed by OMB. Reports used to monitor and control budgetary resources are prepared from the same books and records. The statements should be read with the realization that they are for a component of the U.S. Government.

FRAUD REDUCTION REPORT

Pursuant to the Fraud Reduction and Data Analytics Act of 2015 (Public Law 114-186, 32 U.S. Code 3321), FMSHRC is reporting on its fraud reduction efforts for FY 2024 and the final quarter of FY 2023 in three key areas:

1. Implementation of financial and administrative controls

As a small agency, the Federal Mine Safety and Health Review Commission (FMSHRC) outsources budget, financial, human resources, procurement, and travel services to a shared services provider through an interagency agreement. Additionally, FMSHRC's payroll services are managed externally through a shared services interagency agreement. The outsourcing of these functions allows FMSHRC to tap into the abilities and capacity of a better resourced large agency with its own systems of internal controls.

FMSHRC must establish a formal internal controls mechanism. Although significant efforts were made throughout FY 2024 to address various operational areas that lack internal controls, there remains a need for additional staffing with the requisite expertise to ensure comprehensive and effective internal controls within the Commission and not rely on the internal controls of its service providers.

2. The fraud risk principle in the Standards for Internal Control in the Government (the GAO Green Book)

As outlined in the Standards for Internal Control in the Government (the GAO Green Book), a fraud risk management program is required. Currently, the Federal Mine Safety and Health Review Commission (FMSHRC) does not have sufficient resources to establish this program at the necessary level. However, FMSHRC does conduct the independent financial statement auditor's annual interviews regarding fraud, waste, and abuse. Any potential allegations of fraud, waste, or abuse are disclosed during these interviews. Additionally, FMSHRC maintains a low risk of fraudulent financial reporting, as it serves as an authorized shared services financial provider.

3. OMB Circular A-123 with respect to leading practices for managing fraud risk

OMB Circular A-123 outlines the best practices for managing fraud risk. The Commission operates in a hybrid environment, utilizing various external agencies to fulfill some of the practices outlined in Circular A-123, such as implementing Enterprise Risk Management (ERM) to identify, assess, and manage risks. However, the Commission must address its internal controls through the development of policies, procedures, and processes. To meet these requirements, the Commission needs additional resources to align with the standards set forth in OMB Circular A-123.

Performance Section

PERFORMANCE GOALS AND RESULTS

For Fiscal Year 2024, FMSHRC set forth the following strategic goals:

Strategic Goal 1: Ensure expeditious, fair, and legally sound adjudication of cases.

Strategic Goal 2: Increase the Commission's overall operational efficiency and effectiveness.

Strategic Goal 3: Achieve organizational excellence through workforce development.

The first strategic goal is accomplished through the Administrative Law Judges function at the trial level, and the Commission Review function at the appellate level. The second and third strategic goals are accomplished through the Office of the Executive Director function and the Chief Operating Officer.

ADMINISTRATIVE LAW JUDGES FUNCTION

FMSHRC employs administrative law judges to hear and decide contested cases at the trial level. Judges travel to hearing sites located at or near the mine involved to afford mine operators, miners, and their representatives a full opportunity to participate in the hearing process or provide virtual hearings where appropriate. FMSHRC judges are also responsible for evaluating and approving or denying settlement agreements proposed by the parties under the Mine Act.

FMSHRC received 1,877 new case filings in FY 2024. The number of new cases was an eighteen percent decrease from the 2,280 received in FY 2023.

There were 1,373 trial level cases pending at the start of FY 2024. In FY 2024 there were 2,013 dispositions.

The FY 2024 end-of-year inventory was 1,237 undecided cases.

FMSHRC met, substantially met, or did not meet the four performance targets for the Administrative Law Judges function, as shown in the Performance Measurement Matrix.

ADMINISTRATIVE LAW JUDGES FUNCTION PERFORMANCE MEASUREMENT MATRIX

Performance Metrics – Office of the Chief Administrative Law Judges Function						
Performance Goals		FY2020	FY2021	FY2022	FY2023	FY 2024
Average time from receipt to disposition of all cases (measured in days)	Target	24	180	180	180	180
	Results	161	196	183	192	225
	Status	M	SM	SM	SM	NM
Average time from receipt to disposition of penalty cases (measured in days)	Target	235	180	180	180	180
	Results	153	184	171	184	217
	Status	M	SM	M	SM	NM
Percent of all cases on hand over 365 days in age	Target	20%	20%	20%	20%	20%
	Results	1%	11%	6%	10%	21%
	Status	M	M	M	M	M
Number of cases pending at year end	Anticipated	1,161	886	938	1,276	1,573
	Results	886	1,101	1,126	1,373	1,237
	Status	M	NM	NM	M	M

Status:

M - Target met or exceeded

SM - Target substantially met - within 10% of target

NM - Target not met

COMMISSION REVIEW FUNCTION

FMSHRC decides two principal types of cases: (1) substantive cases, which are cases in which a judge has issued a final or interlocutory decision on the merits and the Commission has granted a petition for review filed by either party, or at least two Commissioners have decided to grant review on their own initiative; and (2) default cases, which are cases where an operator has failed to timely contest a proposed penalty or to timely respond to a judge's order and the operator has filed a motion to reopen the final order.

In FY 2024, 13 petitions were filed, and 10 were granted. The targets for three of the four performance goals for substantive cases were met or substantially met, as shown in the following matrix.

The average time from the date granted to decision issuance was 13 months in FY 2024 versus a goal of 13 months. Thus, the goal was met.

The average time from briefing completion to decision issuance was 10 months in FY 2024, which substantially met the goal of 9 months.

In FY 2024, 38 default cases remained on hand at the end of the fiscal year. Of these 38 cases, 20 cases have been on hand for more than 6 months. This was 43 percent of the total number of cases. Thus, the goal of less than 40 percent was not met.

The Commission disposed of 12 substantive cases in FY 2024, ending the year with 18 substantive cases on hand. Thus, the goal of less than 16 substantive cases pending at year end was not met.

COMMISSION REVIEW FUNCTION PERFORMANCE MEASUREMENT MATRIX

Performance Metrics - Commission Review Function						
Performance Goal		FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Average time from date granted to issuance of decision for substantive cases (measured in months)	Target	15	13	13	13	13
	Result	18	13	12	13	13
	Status	NM	M	M	M	M
Average time from briefing completion to issuance of decision for substantive cases (measured in months)	Target	12	9	9	9	9
	Result	12	10	9	10	10
	Status	M	SM	M	SM	SM
Percent of substantive cases on hand over 18 months in age	Target	20%	20%	20%	20%	20%
	Result	12%	20%	16%	18%	33%
	Status	M	M	M	M	M
Percent of default cases on hand over 6 months in age	Target	25%	40%	40%	40%	40%
	Result	40%	36%	46%	19%	43%
	Status	NM	M	NM	M	NM
Number of substantive cases pending at year end	Anticipated	16	16	16	16	16
	Result	8	5	13	15	18
	Status	M	M	M	M	NM

Status:

M - Target met or exceeded

SM - Target substantially met - within 10% of target

NM - Target not met

OFFICE OF THE EXECUTIVE DIRECTOR FUNCTION

The Commission's COO manages the Commission's budget, information technology and facilities functions, in addition to directing functions within the Office of the Executive Director (OED) to include administrative, human resources, financial management, procurement and other mission support services.

Information technology entails help-desk functions, network administration, cybersecurity, telecommunications, and government furnished equipment policy formulation.

Facilities management services cover property and space management, organization management, and physical security.

General administrative services provided by OED include the administration of employee travel authorizations and reimbursements and the employee public transit benefit program.

Human resources services include recruitment and placement, classification and pay administration, performance management and incentive awards, employee benefits and retirement, personnel security, coordination of employee training programs, and wellness and employee assistance programs.

Financial management services include accounting, budget formulation, budget execution, funds control, financial reporting, and vendor payments.

Procurement covers the acquisition of necessary services and supplies through contracts and the government purchase card program.

Federal Mine Safety and Health Review Commission (FMSHRC)
Fiscal Year 2024 Financial Statement Audit

Final Independent Auditors' Report

Submitted for review and acceptance to:
Theodosia Villatoro-Sorto
Contracting Officer's Representative (COR)
Federal Mine Safety and Health Review Commission
1331 Pennsylvania Avenue, NW
Washington, DC 20004

Submitted by:
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Final Independent Auditors' Report

Prepared under contract to the Federal Mine Safety and Health Review Commission (FMSHRC) to provide financial auditing services

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
AUDIT REPORT
SEPTEMBER 30, 2024**



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Independent Auditors' Report

Chair, Federal Mine Safety and Health Review Commission
Chief Operating Officer:

Report on the Financial Statements

Opinion

Pursuant to the Accountability of Tax Dollars Act of 2002, we have audited the Federal Mine Safety and Health Review Commission (FMSHRC) financial statements. FMSHRC financial statements comprise the balance sheet as of September 30, 2024; the related statements of net cost, changes in net position, and budgetary resources for the fiscal year then ended; and the related notes to the financial statements.

In our opinion, FMSHRC financial statements present fairly, in all material respects, FMSHRC financial position as of September 30, 2024, and its net cost of operations, changes in net position, and budgetary resources for the fiscal year then ended in accordance with U.S. generally accepted accounting principles.

Basis for Opinion

We conducted our audit in accordance with U.S. generally accepted auditing standards (GAAS); the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 24-02, *Audit Requirements for Federal Financial Statements*. Our responsibilities under those standards and OMB Bulletin No. 24-02 are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the FMSHRC and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Other Matter

The financial statements of FMSHRC as of and for the fiscal year ended September 30, 2023, were audited by another auditor, who expressed an unmodified opinion on those statements on November 9, 2023. These statements were not audited, reviewed, or compiled by us; accordingly, we do not express an opinion or provide any form of assurance on them.

Responsibilities of Management for the Financial Statements

Management is responsible for

- the preparation and fair presentation of the financial statements in accordance U.S. generally accepted accounting principles;
- preparing, measuring, and presenting the Required Supplementary Information (RSI) in accordance with U.S. generally accepted accounting principles;
- preparing and presenting other information included in FMSHRC's Performance and Accountability Report, and ensuring the consistency of that information with the audited financial statements and the RSI; and

- designing, implementing, and maintaining effective internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to (1) obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and (2) issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit of the financial statements conducted in accordance with GAAS, generally accepted government auditing standards (GAGAS), and OMB Bulletin No. 24-02 will always detect a material misstatement or material weakness when it exists.

The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements, including omissions, are considered to be material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, GAGAS, and OMB Bulletin No. 24-02, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures that are responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to an audit of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of FMSHRC's internal control over financial reporting. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Perform other procedures we consider necessary in the circumstances.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope of and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the financial statement audit.

Required Supplementary Information (RSI)

U.S. generally accepted accounting principles issued by the Federal Accounting Standards Advisory Board (FASAB) require that the information in the RSI be presented to supplement the financial statements. Such information is the responsibility of management and, although not a part of the financial statements, is required by FASAB, which considers it to be an essential part of financial reporting for placing the financial statements in appropriate operational, economic, or historical context.

We have applied certain limited procedures to the RSI in accordance with U.S. generally accepted government auditing standards. These procedures consisted of (1) inquiring of management about the methods used to prepare the RSI and (2) comparing the RSI for consistency with management's responses to our inquiries, the financial statements, and other knowledge we obtained during the audit of FMSHRC's financial statements, in order to report omissions or material departures from FASAB guidelines, if any, identified by these limited procedures. We did not audit and we do not express an opinion or provide any assurance on the RSI because the limited procedures we applied do not provide sufficient evidence to express an opinion or provide any assurance.

Other Information

FMSHRC's other information contains a wide range of information, some of which is not directly related to the financial statements. This information is presented for purposes of additional analysis and is not a required part of the financial statements or the RSI. Management is responsible for the other information included in FMSHRC's Performance and Accountability Report. The other information comprises the *Message from the Chair*, *Management Discussion and Analysis (MD&A)* and *Performance* sections but does not include the financial statements and our auditor's report thereon. Our opinion on the financial statements does not cover the other information, and we do not express an opinion or any form of assurance thereon.

In connection with our audit of the financial statements, our responsibility is to read the other information and consider whether a material inconsistency exist between the other information and the financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

Report on Internal Control over Financial Reporting

In connection with our audits of FMSHRC's financial statements, we considered FMSHRC's internal control over financial reporting, consistent with the auditor's responsibilities discussed below.

Results of Our Consideration of Internal Control over Financial Reporting

Our consideration of internal control was for the limited purpose described below, and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies¹ or to express an opinion on the effectiveness of FMSHRC's internal control over financial reporting. Given these limitations, during our 2024 audit, we identified a deficiency in FMSHRC's internal control over financial reporting that we consider to be a material weakness. This deficiency is described in the accompanying *Exhibit I, Material Weakness Findings and Recommendations*, to this report.

We also identified a deficiency in internal control over financial reporting that we consider to be a significant deficiency. This deficiency is described in the accompanying *Exhibit II, Significant Deficiency Findings and Recommendations*, to this report. In addition, we identified a deficiency in FMSHRC's

¹ A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit the attention by those charged with governance.

internal control over financial reporting that we do not consider to be material weakness or significant deficiency that, nonetheless, warrant management's attention. We have communicated this matter to FMSHRC management and, where appropriate, will report on them separately.

We considered the material weakness and significant deficiency in determining the nature, timing, and extent of our audit procedures on FMSHRC's fiscal year 2024 financial statements. Although the material weakness and significant deficiencies in internal control did not affect our opinion on FMSHRC's fiscal year 2024 financial statements, misstatements may occur in unaudited financial information reported internally and externally by FMSHRC because of the internal control deficiencies described in this report.

Basis for Results of Our Consideration of Internal Control over Financial Reporting

We performed our procedures related to FMSHRC's internal control over financial reporting in accordance with U.S. generally accepted government auditing standards and OMB audit guidance.

Responsibilities of Management for Internal Control over Financial Reporting

FMSHRC management is responsible for designing, implementing, and maintaining effective internal control over financial reporting relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibilities for Internal Control over Financial Reporting

In planning and performing our audit of FMSHRC's financial statements as of and for the fiscal year ended September 30, 2024, in accordance with U.S. generally accepted government auditing standards, we considered FMSHRC's internal control relevant to the financial statement audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of FMSHRC's internal control over financial reporting. Accordingly, we do not express an opinion on FMSHRC's internal control over financial reporting. We are required to report all deficiencies that are considered to be significant deficiencies or material weaknesses. We did not consider all internal controls relevant to operating objectives, such as those controls relevant to preparing performance information and ensuring efficient operations.

Definition and Inherent Limitations of Internal Control over Financial Reporting

An entity's internal control over financial reporting is a process effected by those charged with governance, management, and other personnel. The objectives of internal control over financial reporting are to provide reasonable assurance that (1) transactions are properly recorded, processed, and summarized to permit the preparation of financial statements in accordance with U.S. generally accepted accounting principles, and assets are safeguarded against loss from unauthorized acquisition, use, or disposition, and (2) transactions are executed in accordance with provisions of applicable laws, including those governing the use of budget authority, regulations, contracts, and grant agreements, noncompliance with which could have a material effect on the financial statements. Because of its inherent limitations, internal control over financial reporting may not prevent, or detect and correct, misstatements due to fraud or error.

Intended Purpose of Report on Internal Control over Financial Reporting

The purpose of this report is solely to describe the scope of our consideration of FMSHRC's internal control over financial reporting and the results of our procedures, and not to provide an opinion on the effectiveness

of FMSHRC's internal control over financial reporting. This report is an integral part of an audit performed in accordance with U.S. generally accepted government auditing standards in considering internal control over financial reporting. Accordingly, this report on internal control over financial reporting is not suitable for any other purpose.

Report on Compliance with Laws, Regulations, Contracts, and Grant Agreements

In connection with our audits of FMSHRC's financial statements, we tested compliance with selected provisions of applicable laws, regulations, contracts, and grant agreements consistent with our auditor's responsibilities discussed below.

Results of Our Tests for Compliance with Laws, Regulations, Contracts, and Grant Agreements

Our tests for compliance with selected provisions of applicable laws, regulations, contracts, and grant agreements disclosed no instances of noncompliance for fiscal year 2024 that would be reportable under U.S. generally accepted government auditing standards. However, the objective of our tests was not to provide an opinion on compliance with laws, regulations, contracts, and grant agreements applicable to FMSHRC. Accordingly, we do not express such an opinion.

Basis for Results of Our Tests for Compliance with Laws, Regulations, Contracts, and Grant Agreements

We performed our tests of compliance in accordance with U.S. generally accepted government auditing standards.

Responsibilities of Management for Compliance with Laws, Regulations, Contracts, and Grant Agreements

FMSHRC management is responsible for complying with laws, regulations, contracts, and grant agreements applicable to FMSHRC.

Auditor's Responsibilities for Tests of Compliance with Laws, Regulations, Contracts, and Grant Agreements

Our responsibility is to test compliance with selected provisions of applicable laws, regulations, contracts, and grant agreements applicable to FMSHRC that have a direct effect on the determination of material amounts and disclosures in FMSHRC's financial statements, and to perform certain other limited procedures. Accordingly, we did not test compliance with all laws, regulations, contracts, and grant agreements applicable to FMSHRC. We caution that noncompliance may occur and not be detected by these tests.

Intended Purpose of Report on Compliance with Laws, Regulations, Contracts, and Grant Agreements

The purpose of this report is solely to describe the scope of our testing of compliance with selected provisions of applicable laws, regulations, contracts, and grant agreements, and the results of that testing, and not to provide an opinion on compliance. This report is an integral part of an audit performed in accordance with U.S. generally accepted government auditing standards in considering compliance. Accordingly, this report on compliance with laws, regulations, contracts, and grant agreements is not suitable for any other purpose.

FMSHRC's Response to Findings

FMSHRC's responses to the findings identified during our audit are described immediately following the auditor's recommendations in *Exhibit I* and *Exhibit II*. FMSHRC's responses were not subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on them.

Agency Comments

We provided FMSHRC with a Draft of our report on November 11, 2024, and received FMSHRC's response on November 12, 2024. FMSHRC's response to our report was not subjected to the auditing procedures that we applied to our audit of the financial statements and, therefore, we express no opinion on the response.

Allmond & Company, LLC

Lanham, MD
November 15, 2024

Improvements needed in FMSHRC Entity Level Control Policies and Procedures 2024-01

CONDITION:

Improvements are needed in the Federal Mine Safety and Health Review Commission (FMSHRC) entity-level control policies and procedures. Entity-level controls are an integral part of an entity's internal control systems and serves as a foundation of the processes management uses to guide its operations. These controls include the control environment, risk assessment, information and communication, control activities, and monitoring activities. We noted FMSHRC has weaknesses in its entity-level controls within the following areas:

Design Appropriate Types of Control Activities – FMSHRC management did not have documented policies and procedures over significant financial processes. FMSHRC was unable to provide documented policies and procedures over their Financial Reporting, Fund Balance with Treasury, Procurement, Payroll and Personnel, and Budget significant process areas during the FY 2024 FMSHRC Financial Statement Audit.

Organizational Structure – FMSHRC management has not established the organizational structure necessary to enable the entity to plan, execute, control, and assess the organization in achieving its objectives. Management develops the overall responsibilities from the entity's objectives that enable the entity to achieve its objectives and address related risks. Currently, FMSHRC has several significant leadership positions vacant including Chief Human Capital Officer, Chief Financial Officer, and Executive Director. We noted that over the last several years FMSHRC has been under great scrutiny regarding questionable internal practices. As a result, FMSHRC has been without key personnel due to ongoing investigations.

Expectations of Competence – FMSHRC management has delegated authority and responsibilities to certain FMSHRC employees who lack the appropriate qualifications, training, and experience necessary to competently perform the functions outlined in their scope of work.

Recruitment, Development, and Retention of Individuals– We noted that FMSHRC has been under unofficial hiring freezes that have made it difficult for the agency to hire and retain the skillset necessary to support the agency's operations.

CRITERIA:

U.S. Government Accountability Office GAO-14-704G, *Standards for Internal Control in the Federal Government* (or "Green Book"), September 2014 revision, *Section 10.03 Design of Appropriate Types of Control Activities* states that, "Management clearly documents internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination. The documentation may appear in management directives, administrative policies, or operating manuals, in either paper or electronic form. Documentation and records are properly managed and maintained."

In addition, *Section 10.02 Response to Objectives and Risk* states, "Management designs control activities in response to the entity's objectives and risks to achieve an effective internal control system. Control

activities are the policies, procedures, techniques, and mechanisms that enforce management's directives to achieve the entity's objectives and address related risks. As part of the control environment component, management defines responsibilities, assigns them to key roles, and delegates authority to achieve the entity's objectives. As part of the risk assessment component, management identifies the risks related to the entity and its objectives, including its service organizations; the entity's risk tolerance; and risk responses. Management designs control activities to fulfill defined responsibilities and address identified risk responses."

Further, *Section 4.04 Expectations of Competence* states, "Personnel need to possess and maintain a level of competence that allows them to accomplish their assigned responsibilities, as well as understand the importance of effective internal control. Holding individuals accountable to established policies by evaluating personnel's competence is integral to attracting, developing, and retaining individuals. Management evaluates competence of personnel across the entity in relation to established policies. Management acts as necessary to address any deviations from the established policies."

Also, *Section 3.04 Organizational Structure* states, "Management develops an organizational structure with an understanding of the overall responsibilities and assigns these responsibilities to discrete units to enable the organization to operate in an efficient and effective manner, comply with applicable laws and regulations, and reliably report quality information."

Ultimately, as *Section OV4.08 Documentation Requirements*, of the Greenbook states, "Documentation is a necessary part of an effective internal control system. The level and nature of documentation vary based on the size of the entity and the complexity of the operational processes the entity performs. Management uses judgment in determining the extent of documentation that is needed. Documentation is required for the effective design, implementation, and operating effectiveness of an entity's internal control system."

CAUSE:

FMSHRC relies heavily on the role of their service provider, Bureau of Fiscal Service Administrative Resource Center (BFS/ARC), in their significant processes as well as BFS' internal policies and procedures.

FMSHRC has not documented policies and procedures for all significant process areas, including outlining the responsibilities of FMSHRC personnel and the responsibilities of FMSHRC's service providers.

EFFECT:

Without documented FMSHRC policies and procedures, FMSHRC is at risk of having an ineffective internal control system. More specifically, FMSHRC is susceptible to failing to design and implement control activities to achieve objectives and appropriately respond to risks.

Additionally, management and other personnel are at risk of being unable to adequately fulfill appointed positions ultimately leaving the agency vulnerable to misstatements in financial reporting.

RECOMMENDATION:

We recommend that FMSHRC management:

- Document policies and procedures for all significant process areas; including outlining the responsibilities of FMSHRC personnel and the responsibilities of FMSHRC's service providers.
- Ensure that all management and personnel, directly and indirectly responsible for performing processes outlined, have read, and understand the documented policies and procedures.
- Perform periodic review of policies and procedures, and policies and procedures are updated in a timely manner.
- Develop process narratives to assist new and transitioning personnel in understanding their scope of responsibilities and job function as well as help management perform review.

MANAGEMENT RESPONSE

Management acknowledges and concurs with the auditor's findings regarding the need for documented policies and procedures, clearer delineation of employee roles, and the development of robust processes to ensure staff competency. These areas have been a focal point of concern amongst the administrative staff and management with ongoing discussions on how to improve our internal control environment effectively with limited resources. The need to revamp organizational structure and make critical hires is essential to the success of key internal controls. Without sufficient staffing in roles crucial to operational oversight, achieving effective internal controls and consistent compliance remains challenging.

While there is a commitment within management to pursue these recommended actions, implementing these solutions on a broader scale necessitates active engagement and direction from the organization's political leadership. Per authorizing statute: *"The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission. The Commission shall appoint such employees as it deems necessary to assist in the performance of the Commission's functions..."* Management's ability to implement improvements is fundamentally constrained by the necessary authorizations, approvals, and delegations from the Commission.

AUDITORS' RESPONSE

We will perform follow up procedures during FY 2025 to determine if corrective action has been fully implemented.

Improvements needed over Contract Budgetary Approval Process 2024-02

CONDITION:

During our review of the Federal Mine Safety and Health Review Commission (FMSHRC) procurement activities we noted that FMSHRC needs improvements in the Contract Budgetary approval process. More specifically, we noted the following:

- Out of 160 procurement and budget samples tested for the period ending September 30, 2024, we noted 18 contracts where FMSHRC personnel was unable to provide evidence of budgetary approval prior to obligations being recorded in the financial system. The contracts total approximately \$1,734,965.

CRITERIA:

U.S. Government Accountability Office GAO-14-704G, *Standards for Internal Control in the Federal Government* (or “Green Book”), September 2014 revision, *Section 10.03 Appropriate documentation of transactions and internal control* states that “Management clearly documents internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination. The documentation may appear in management directives, administrative policies, or operating manuals, in either paper or electronic form. Documentation and records are properly managed and maintained.”

Additionally, *Documentation Requirements*, Section OV4.08 of the Greenbook states that “Documentation is required for the effective design, implementation, and operating effectiveness of an entity’s internal control system”.

Furthermore, *Section 10.3 Proper Execution of Transactions* states “Transactions are authorized and executed only by persons acting within the scope of their authority. This is the principal means of assuring that only valid transactions to exchange, transfer, use, or commit resources are initiated or entered into. Management clearly communicates authorizations to personnel.”

CAUSE:

FMSHRC did not always document and retain records of budgetary approval for contracts entered into on behalf of the agency.

FMSHRC has no documented policies and procedures in place detailing roles and responsibilities of personnel performing functions on behalf of the agency.

EFFECT:

Failure to appropriately track funds could result in actual expenditures being materially different from established program budgets, ultimately preventing the agency from meeting its objectives.

In addition, without appropriate budgetary approval being performed, FMSHRC is at risk of over obligating funds, which could potentially result in a violation of the Anti-Deficiency Act.

RECOMMENDATION:

We recommend that FMSHRC management:

- Ensure that budgetary approval is performed, documented, and retained for each contract prior to obligation of funds within the financial system.
- Establish internal policies and procedures to document the procurement process and the responsibilities of FMSHRC personnel and their service provider.

MANAGEMENT RESPONSE:

Management acknowledges and concurs with the auditor's findings regarding the need for documented budgetary approvals prior to contract obligations and for establishing clear, documented policies and procedures for procurement. Management has made substantial progress in addressing related issues over the last couple of years, significantly improving the overall contract management process in coordination with a shared service provider. However, the long-standing systemic issues resulting from improper historical methods require time to thoroughly remediate.

Complete resolution is contingent upon Commission authorization to hire a dedicated Financial Manager (OPM 0505 position series). While management is committed to further aligning our budgetary processes with best practices, our ability to fully implement the required improvements is limited without the expertise of a skilled financial management professional. This role is essential for ensuring consistent oversight, compliance, and proper financial controls. In the interim period, management will develop appropriate forms for routed approvals.

AUDITOR'S RESPONSE:

We will perform follow up procedures during FY 2025 to determine if corrective action has been fully implemented.