

# **FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

## **STRATEGIC PLAN**



**FISCAL YEARS 2014-2018**

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## AGENCY AND MISSION INFORMATION

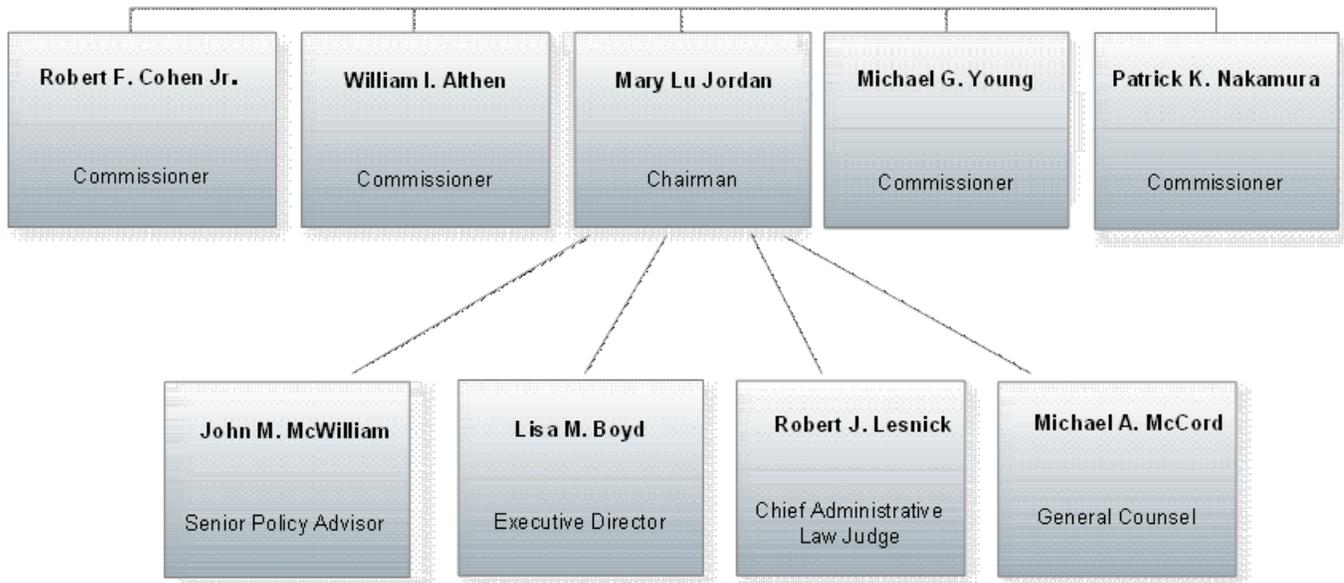
### MISSION

The Federal Mine Safety and Health Review Commission (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. Section 113 of the Mine Act establishes the Commission 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 the Commission, 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.

### ORGANIZATIONAL STRUCTURE

#### KEY PERSONNEL

#### ORGANIZATION CHART



## **BACKGROUND**

Most cases that come before the Commission involve civil penalties proposed by the Department of Labor's Mine Safety and Health Administration (MSHA) against mine operators. The Commission is responsible for addressing whether the alleged violations occurred, as well as the assessment of appropriate civil penalties. Other types of cases include contests of MSHA orders to close a mine for health or safety reasons, miners' charges of discrimination based on their complaints regarding health or safety, and miners' requests for compensation after being idled by a mine closure order. Disputes involving the temporary reinstatement of a miner or an emergency response plan must be decided on an expedited basis.

The Commission's Administrative Law Judges (judges) decide cases at the trial level. The five-member Commission provides administrative appellate review. Review of a judge's decision by the Commission is not automatic, and requires the approval of at least two Commissioners. 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 a case. A judge's decision that is not accepted for review becomes a final, non-precedential order of the Commission. Appeals from the Commission's decisions are to the federal courts of appeals.

Resolving these substantive cases creates a great demand on the resources of the five-member Commission and the Office of General Counsel (OGC). Typically, in these substantive cases, the Commissioners, with the assistance of the OGC, review and analyze extensive briefs filed by the parties, sometimes conduct an oral argument, and issue a decision which addresses the major contentions raised by the parties.

In addition to petitions for review in substantive cases, the Commission at the appellate level 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. These cases are generically referred to as default cases. The number of these requests for reopening filed each year has remained at historically high levels.

## STRATEGIC GOALS

The Commission has two strategic goals:

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

**Strategic Goal 2: Manage the Commission's human resources, operations, facilities, and information technology systems to ensure a continually improving, effective and efficient organization**

The Strategic Goal 1 of ensuring expeditious, fair, and legally sound adjudication of cases at the trial and appellate levels is further explained by strategic objectives. Performance goals and targets have been established to benchmark and track progress towards achieving the goals. The Strategic Goal 2 is defined by commission-wide objectives without performance goals.

## **STRATEGIC OBJECTIVES**

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

#### **Strategic Objectives**

- 1.1 Ensure timely issuance of decisions at the trial level  
(Office of the Administrative Law Judges Function)
- 1.2 Ensure timely issuance of decisions at the appellate level  
(Commission Review Function)
- 1.3 Issue orders in default cases in a timely manner  
(Commission Review Function)

### **Strategic Goal 2: Manage the Commission's human resources, operations, facilities, and information technology systems to ensure a continually improving, effective, and efficient organization**

#### **Strategic objectives**

- 2.1: Maintain and enhance secure electronic information systems for case management, legal research, management operations support, public access to data through the internet, and continuity of the Commission's operations during national emergencies or natural disasters which may disrupt normal office operations  
(Office of the Executive Director Function)
- 2.2: Recruit, train, and retain a diverse workforce of skilled, highly motivated employees to effectively and efficiently accomplish the Commission's mission  
(Office of the Executive Director Function)

## PERFORMANCE GOALS

Strategic Objective 1.1 Ensure timely issuance of decisions at the trial level (Office of the Administrative Law Judges Function)						
Performance Goal	2013 Result	2014 Target	2015	2016	2017	2018 Target
1.1.1 Average time from receipt to disposition of all cases	463 days	360 days	Targets established annually			180 days
1.1.2 Average time from receipt to disposition of penalty cases	433 days	425 days	Targets established annually			180 days
1.1.3 Percent of all cases on hand over 365 days in age	43%	40%	Targets established annually			10%

The goals in Strategic Objective 1.1 cover cases received in the Office of the Administrative Law Judges:

- The trial-level function lies within the Office of the Administrative Law Judges (OALJ).
- At the trial level, the Commission's judges hear and decide cases initiated by the Secretary of Labor, mine operators, miners, and miners' representatives.
- Cases primarily involve three types: assessment of civil penalty, notice of contest, and discrimination proceedings.
- Dispositions primarily consist of: settlements, decisions after hearing, dismissals, defaults, and judgments.

Performance Goal 1.1.1 Average days from receipt to disposition of all cases

- The time period, referred to as pendency, covers from the date that the case is received in the OALJ until the date of disposition.
- This goal includes all types of cases.

Performance Goal 1.1.2 Average days from receipt to disposition of penalty cases

- The time period, referred to as pendency, covers from the date that the case is received in the OALJ until the date of disposition.
- This goal includes only assessment of civil penalty cases.

Performance Goal 1.1.3 Percent of all cases on hand over 365 days in age

- This goal measures the percent of those cases on hand at year end that are over 365 days compared to all cases on hand.
- This goal includes all types of cases.

<b>Strategic Objective 1.2 Ensure timely issuance of decisions at the appellate level (Commission Review Function)</b>						
<b>Performance Goal</b>	<b>2013 Result</b>	<b>2014 Target</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018 Target</b>
1.2.1 Average time to issuance of decision in substantive cases	27.7 months	28 months	Targets established annually			18 months
1.2.2 Average time from briefing completion to issuance of decision in substantive cases	23.9 months	24 months	Targets established annually			14 months
1.2.3 Percent of substantive cases on hand over 18 months in age	43%	40%	Targets established annually			10%

The goals in Strategic Objective 1.2 apply to those substantive cases that, for the purpose of this Strategic Plan, are defined as those in which the Commission has granted review of a petition for discretionary review (PDR) or a petition for interlocutory review (PIR).

- These goals do not apply to the time expended on PDRs for which review was not granted. Decisions on whether to grant or deny review must, by statute, be made within 40 days of the issuance of an administrative law judge decision, and the Commission adheres strictly to that standard.
- These goals do not apply to the time expended on petitions for temporary reinstatement (PTRs). PTRs are by regulation to be decided within 10 days after receiving the PTR and any response, and the Commission adheres strictly to that standard.
- The matters to which these goals apply are significant cases with many presenting issues of first impression under the Mine Act. That is, the cases raise issues that have not been resolved by prior decisions of the Commission or the courts, or the cases involve the interpretation of safety and health standards and regulations promulgated by the Mine Safety and Health Administration of the Department of Labor.

Performance Goal 1.2.1 Average time to issuance of decision in substantive cases

- This goal measures the average time period from the date that review is granted to the date of issuance of a decision.

Performance Goal 1.2.2 Average time from briefing completion to issuance of decision in substantive cases

- This goal measures the average time period from briefing completion date to the date of issuance of a decision.
- By excluding the time before briefs are filed, this goal provides a measure of the average time for the Commission to issue a decision once the parties have fully presented their written arguments.

Performance Goal 1.2.3 Percent of all substantive cases on hand over 18 months in age

- This goal measures the percent of those substantive cases on hand at year end that are over 18 months in age (from the date that review was granted) compared to all cases on hand.

<b>Strategic objective 1.3: Issue orders in default cases in a timely manner (Commission Review Function)</b>						
<b>Performance Goal</b>	<b>2013 Result</b>	<b>2014 Target</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018 Target</b>
Percent of default cases on hand over 6 months in age	13%	13%	Targets established annually			10%

The goal in Strategic Objective 1.3 covers default cases received by the Commission

- This goal measures the time it takes to issue an order in cases where an operator has failed to timely contest a proposed penalty or to respond to the Secretary's penalty petition, and the operator has filed a motion to reopen the final order.

Performance Goal 1.2.1 Percent of default cases on hand over 6 months in age

- This goal measures the percent of those default cases on hand at year end that are over 6 months compared to all default cases on hand.

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## OTHER INFORMATION

### MAJOR MANAGEMENT CHALLENGES

The Commission has faced great challenges in recent years, as its trial caseload increased dramatically. From FY 2000 through FY 2005, the average number of new cases filed was 2,307 per year. However, beginning in FY 2006 the number of new cases filed increased steadily. The Commission began FY 2014 with an inventory of 7,612 trial-level cases. In contrast, the average trial-level caseload from FY 2000 through FY 2004 was only 1,379.

H.R. 4899, the Supplemental Appropriations Act, 2010 (P.L. 111-212), was enacted on July 29, 2010. Pursuant to that law, the Commission received \$3,800,000, available for one year from the date of enactment for the purpose of reducing the backlog. Supported by the FY 2011 continuing resolutions, as well as this supplemental appropriation, the Commission took a number of steps to dispose of cases more efficiently and reduce the backlog. Most importantly, the Commission hired additional personnel, including six new full time equivalent judges and the staff to support their work.

In addition, the Commission actively explored the implementation of an electronic case management system to increase the speed and efficiency with which cases are processed. The Commission submitted a report to Congress on March 23, 2011, describing the options, costs and timelines associated with this project. A new electronic Case Management System procurement was initiated in FY 2012 for award and fielding in early FY 2014. This system will permit electronic filing, fully electronic case files, electronic assignment and distribution of cases, automated notifications to parties, case tracking and other utilities. In anticipation of this new system, the Commission initiated pilot projects to increase the use of technology in case handling that will help to identify and ameliorate potential barriers to e-filing.

The Commission promulgated two final rules in FY 2011, both aimed at streamlining the adjudicatory process. On November 30, 2010, the Commission published in the Federal Register a final rule on settlement procedures. See 75 Fed. Reg. 73955. The goal of the rule is to make the settlement of cases more efficient and less time-consuming for Commission judges, by requiring that parties who file motions to approve settlement submit a proposed decision approving settlement with the motion. The rule generally requires the filing party

to submit the motion and proposed order electronically.

On December 28, 2010, the Commission published in the Federal Register a final Simplified Proceedings rule setting forth procedures that simplify and streamline the processing of certain civil penalty proceedings. See 75 Fed. Reg. 81459. Although the simplified proceedings rule became effective on March 1, 2011, full implementation was delayed until May 2012.

The backlog reduction activities undertaken by the Commission have been highly productive, and case dispositions at the trial level have increased significantly. However, as a result of the increasing number of cases disposed of by Commission judges, the number of cases appealed to the Commission Review has increased significantly.

## **PROGRAM EVALUATION**

The Commission will evaluate its progress toward accomplishing its strategic goals through analysis of the results of its performance measures and through a continual reassessment of its workload and the needs of the parties that it serves. The Commission has established a management committee that meets on a monthly basis to review management issues. On a quarterly basis this committee reviews program strengths and weaknesses to determine if alternative courses of action are required. The Commission will use the results of these evaluations to develop the annual performance goals and targets which will focus the Commission's activities for the year.