

**FEDERAL MINE SAFETY AND HEALTH REVIEW
COMMISSION**

STRATEGIC PLAN

FISCAL YEARS 2018 - 2022



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1. AGENCY AND MISSION INFORMATION

1.1 OVERVIEW

The Federal Mine Safety and Health Review Commission (Commission) is an independent adjudicatory agency charged with resolving disputes arising from the enforcement of safety and health standards in the nation's mines.

The Commission's authorizing statute is 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 scope of the Commission's mission was expanded by the passage of the Mine Improvement and New Emergency Response Act of 2006, P.L. 109-236 (MINER Act). That statute amended the Mine Act and vested the Commission with the responsibility for resolving disputes over the contents of mine emergency plans adopted by underground coal mine operators and submitted to MSHA for review and approval. The MINER Act imposed tight deadlines on the Commission and its judges with respect to these proceedings and the Commission has adopted procedural rules to implement those deadlines.

Under the Mine Act, the Commission does not regulate the mining industry, nor does it enforce the Mine Act; those functions are delegated to the Secretary of Labor acting through the Mine Safety and Health Administration (MSHA).

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

Most cases involve civil penalties assessed against mine operators by MSHA, and address whether or not the alleged safety and health violations occurred and if so, the penalty that should be assessed. Other types of cases involve mine operators' contests of mine closure orders, miners' complaints of safety or health related discrimination, miners' applications for compensation after a mine is idled by a closure order, and review of disputes between MSHA and underground coal mine operators relating to those operators' mine emergency plans.

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 schedules and presides 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 five-member Commission.

The Commission also 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 Office of the Executive Director supports the above functions by providing budget and financial management, and administrative and technical services, including human resources and information technology, procurement and contracting, and facilities management.

1.2 MISSION STATEMENT

The mission of the Federal Mine Safety and Health Review Commission is to provide just, speedy, and legally sound adjudication of proceedings authorized under the Mine Act, thereby enhancing compliance with the Act and contributing to the improved health and safety of the nation's miners.

2. 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

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.

Strategic Goal 2 is defined by commission-wide objectives without performance goals.

3. 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 motions to reopen 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)
- 2.3: Develop and maintain a Cybersecurity Risk Management Strategy for the Commission's network infrastructure in order to assess, respond, and monitor risk, to protect the Commission's resources
(Office of the Executive Director Function)

4. PERFORMANCE GOALS

Strategic Objective 1.1: Ensure timely issuance of decisions at the trial level

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.

Strategic Objective 1.1 Ensure timely issuance of decisions at the trial level							
Performance Goal	FY 2016 Actual	FY 2017 Actual	FY 2018 Target	FY 2019 Target	FY 2020 Target	FY 2021 Target	FY 2022 Target
1.1.1 Average time from receipt to disposition of all cases	348 days	325 days	290 days	260 days	240 days	230 days	230 days
1.1.2 Average time from receipt to disposition of penalty cases	309 days	315 days	280 days	250 days	235 days	225 days	225 days
1.1.3 Percent of all cases on hand over 365 days in age	21%	19%	20%	20%	20%	20%	20%

Performance Goal 1.1.1 Average time 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 time 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.

Strategic objective 1.2: Ensure timely issuance of decisions at the appellate level

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), a petition for interlocutory review (PIR) or a petition for temporary reinstatement (PTR).

- 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.

Strategic Objective 1.2 Ensure timely issuance of decisions at the appellate level							
Performance Goal	FY 2016 Actual	FY 2017 Actual	FY 2018 Target	FY 2019 Target	FY 2020 Target	FY 2021 Target	FY 2022 Target
1.2.1 Average time to issuance of decision	22 months	15 months	15 months	12 months	12 months	12 months	12 months
1.2.2 Average time from briefing completion to issuance of decision	19 months	13 months	9 months	9 months	9 months	9 months	9 months
1.2.3 Percent of cases on hand over 18 months in age	11%	14%	25%	20%	20%	20%	20%

Performance Goal 1.2.1 Average time to issuance of decision

- 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

- 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.

Strategic objective 1.3: Issue orders in motions to reopen cases in a timely manner

The goal in Strategic Objective 1.3 covers motions to reopen cases received by the Commission.

- This goal measures the time it takes to dispose of 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.

Strategic Objective 1.3 Issue orders in motions to reopen cases in a timely manner							
Performance Goal	FY 2016 Actual	FY 2017 Actual	FY 2018 Target	FY 2019 Target	FY 2020 Target	FY 2021 Target	FY 2022 Target
1.3.1 Average time to issuance of final order	279 days	494 days	300 days	120 days	120 days	120 days	120 days

Performance Goal 1.3.1 Average time to issuance of final order

- This goal measures the average time period from receipt of motion to reopen to the date of issuance of a Commission order.

5. OTHER INFORMATION

MAJOR MANAGEMENT PRIORITIES AND CHALLENGES

The Commission's overall management priority continues to be the expeditious, fair, and legally sound adjudication of cases at the trial and appellate levels.

The Commission's major challenge is the unpredictability of the workload. The number of new cases at both the trial and appellate levels is not subject to the control of the Commission.

- Most trial level 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. 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 a case.
- In addition, 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.

The Commission faced significant challenges when the new cases received increased significantly in recent years: the trial level cases increased by 170% from FY 2007 to FY 2010. This backlog was the result of the increased contest rate since 2006. Then the appellate level cases increased by 380% from FY 2009 to FY 2011. This increase in new cases led to substantial backlogs in cases on hand.

Through a combination of reengineered business processes, increased staffing, and a reduction in new cases received, the Commission has been able to reduce the cases on hand.

The Commission has now added a focus on the pendency of case dispositions. Pendency is defined as the time from receipt to disposition of cases. Pendency goals have been adopted for trial level, appellate level, and default cases.