

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION OF APPROPRIATION ESTIMATES

FOR COMMITTEE ON APPROPRIATIONS

FISCAL YEAR 2006

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

EXECUTIVE SUMMARY

The Federal Mine Safety and Health Review Commission is an independent adjudicative agency that provides administrative trial and appellate review of legal disputes arising under the Federal Mine Safety and Health Act of 1977. Section 113 of that Act establishes the Commission and sets forth its responsibilities.

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 and address whether the alleged violations occurred as well as the appropriateness of proposed 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.

The Commission's administrative law judges ("ALJs") decide cases at the trial level. The five member Commission provides administrative appellate review. Review of an ALJ decision by the Commission is not automatic but 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 an ALJ decision. In addition, the Commission on its own initiative may decide to review a case. An ALJ decision that is not accepted for review becomes a final, non-precedential order of the Commission.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 circuit courts of appeals.

The Commission is requesting a budget of \$7,809,000 covering 45 FTE for FY 2006. This is the same level as the FY 2005 adjusted appropriation. The Commission will fund its built-in increases, including the 2.3 pay raise projected for January 06 within its base funding.

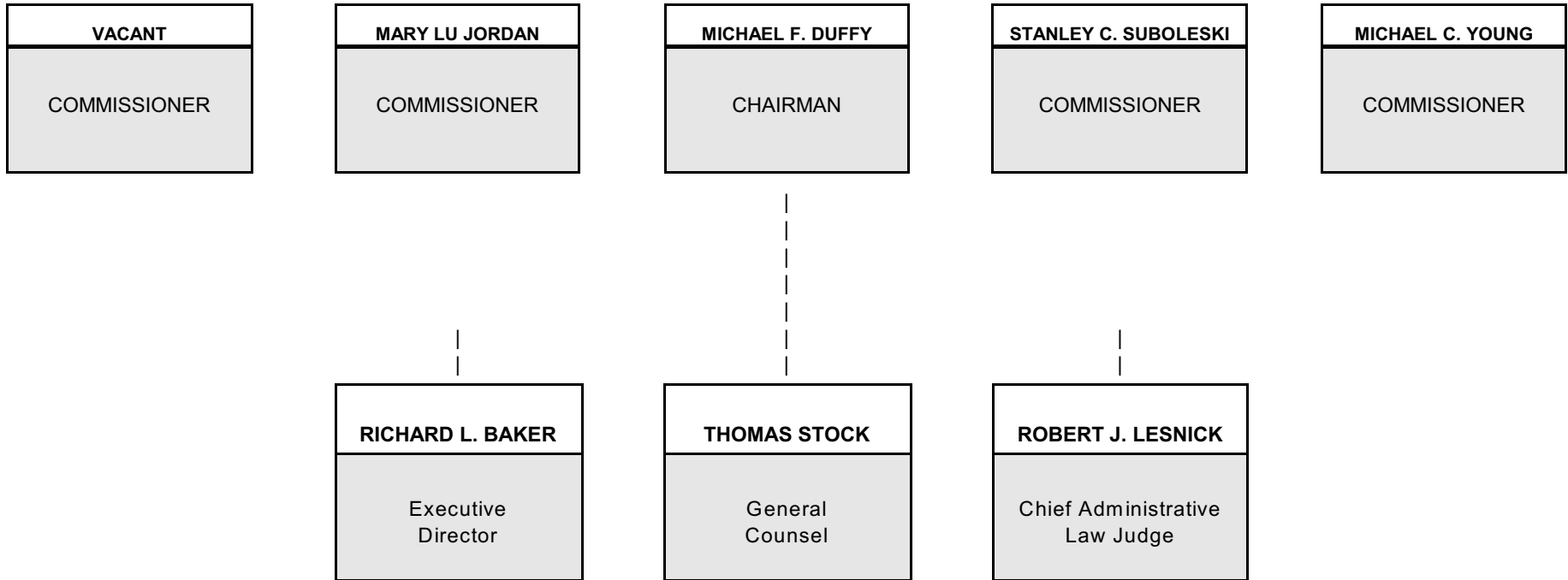
At the trial level, the Commission anticipates continuing to receive new cases at a rate of 2,200 per year. Dispositions for FY 2006 are estimated at 2,200, resulting in an end-of-year inventory of 1,307 undecided cases. This same workload level is projected for FY 2005.

At the appellate level, 55 new cases are anticipated for FY 2006, with dispositions of 55 resulting in an end-of-year inventory of 20 undecided cases. In FY 2005, the Commission will initiate a comprehensive review of all the procedural rules under which it operates. The rulemaking process will be completed with the issuance of final rules not later than March 31, 2006.

The Office of Administrative Law Judges have had some slippage in time frames for issuance of decisions and settlement approvals and did not meet the performance goals for FY 2004. Much of this slippage is due to decisional activities undertaken by the Commission's Office of ALJs in connection with a government-wide effort to process a substantial number of September 11 Victim Compensation Fund cases. Initially, much of the work on these cases was performed by the judges on weekends and after hours; however, in March 2004, the Department of Justice greatly accelerated the deadline for completing this work. In order to timely complete this important work in the shortened time period, more attention had to be devoted to these cases than was originally anticipated.

The impact of not having a quorum of Commissioners for almost three fourths of FY 2003 adversely affected the Commission's performance goals with the age of substantive decisions increasing to 18.6 months. The age of the substantive decisions is expected to decrease substantially in FY 2005 and the decision age will be maintained at 12 months or less for FY 2006.

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
ORGANIZATIONAL CHART
KEY PERSONNEL**



FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Mine Safety and Health Review Commission (30 U.S.C. 801, et. seq.), \$7,809,000.

Explanation of Language

Section 113 of the Federal Mine Safety and Health Amendments Act of 1977 established the Federal Mine Safety and Health Review Commission as an independent agency. Section 114 of the Act authorizes to be appropriated, out of moneys in the United States Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of the above-mentioned Act. The above appropriation language proposal is intended to carry out these provisions.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

AUTHORIZING LEGISLATION

	FY 2005	FY 2006
<hr/>		
<u>Authorizing Legislation</u> <u>Containing Indefinite Authority</u>		
Federal Mine Safety and Health Amendments Act of 1977 (30 U.S.C. 823-824)	7,809,024	7,809,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

BUDGET AUTHORITY AND STAFFING BY ACTIVITY

	<u>FY 2004</u>		<u>FY 2005</u>		<u>FY 2006</u>		<u>Increase or Decrease</u>	
	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>
Commission Review	24	4,611,630	28	4,666,024	28	4,666,000	-	-24
Administrative Law Judge Determinations	16	3,116,503	17	3,143,000	17	3,143,000	=	=
Total BA	40	7,728,133	45	7,809,024	45	7,809,000	-	-24

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SUMMARY OF CHANGES

Budget Authority	FY 2005	FY 2006	Net Change
Appropriations	\$7,809,024	\$7,809,000	-24
Full-time Equivalent	45	45	—

Explanation of Changes	FTE	Budget Authority
Rounding	—	-24
Net Change	—	-24

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

BUDGET AUTHORITY BY OBJECT CLASS
(in thousands of dollars)

	FY 2004	FY 2005	FY 2006	Increase or Decrease
<u>Personnel Compensation</u>				
Full-time permanent	3,487	4,381	4,381	—
Other than full-time permanent	<u>274</u>	<u>290</u>	<u>290</u>	<u>—</u>
Total, personnel compensation	3,761	4,671	4,671	—
Personnel benefits, civilian	831	959	959	—
Benefits former personnel	5	—	—	—
Travel and transportation of persons	65	100	100	—
Transportation of things	2	2	2	—
Rental payments to GSA	1,203	1,197	1,197	—
Communications, utilities and miscellaneous charges	71	115	115	—
Printing and reproduction	31	35	35	—
Other services	979	585	585	—
Supplies and materials	87	80	80	—
Equipment	<u>104</u>	<u>65</u>	<u>65</u>	<u>—</u>
TOTAL	7,139	7,809	7,809	—

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

PERSONNEL SUMMARY

	2004 ACTUAL	2005 ESTIMATE	2006 REQUEST
ACCOUNT: SALARIES & EXPENSES			
Executive Level III	1	1	1
Executive Level IV	4	4	4
SUBTOTAL	5	5	5
ES	2	2	2
AL-2	1	1	1
AL-3	9	8	8
SUBTOTAL	10	9	9
GS-15	4	4	4
GS-14	2	1	1
GS-13	4	3	3
GS-12	2	3	3
GS-11	3	2	2
GS-10	1	1	1
GS-9	1	1	1
GS-8	10	9	9
GS-6	2	1	1
SUBTOTAL	29	25	25
Total Permanent Full-time Positions	46	41	41
Unfilled positions end-of-year	10	—	—
Total, full-time permanent employment end-of-year	36	41	41
Full-time equivalent (FTE) usage	40	45	45

Average ES salary	\$137,606	\$139,882	\$141,430
Average AL level	2.90	2.89	2.89
Average AL salary	\$144,758	\$149,200	\$152,632
Average GS grade	10.62	10.72	10.72
Average GS salary	\$66,779	\$69,744	\$71,347

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

AMOUNTS AVAILABLE FOR OBLIGATION

	FY 2004		FY 2005		FY 2006	
	FTE	Amount	FTE	Amount	FTE	Amount
Appropriation, total estimated obligations	40	7,728,133	45	7,809,024	45	7,809,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
APPROPRIATIONS HISTORY TABLE

Fiscal Year	Budget Estimate To Congress	House Allowance	Senate Allowance	Appropriation
1986	3,709,000	3,815,000	3,815,000	3,651,000 ¹
1987	3,919,000	3,651,000	3,919,000	3,785,000
1988	4,139,000	4,080,000	4,080,000	3,892,000 ²
1989	4,079,000	4,079,000	4,079,000	4,030,000 ³
1990	4,005,000	4,030,000	4,030,000	4,030,000
1991	4,292,000	4,292,000	4,292,000	4,188,509 ⁴
1992	4,719,000	4,357,000	4,357,000	5,143,000
1993	5,830,000	5,772,000	5,772,000	5,726,000 ⁵
1994	5,842,000	5,842,000	5,842,000	5,842,000
1995	6,237,000	6,200,000	6,200,000	6,189,000 ⁶
1996	6,467,000	6,467,000	6,200,000	6,184,000 ⁷
1997	6,332,000	6,060,000	6,060,000	6,049,000 ⁸
1998	6,060,000	6,060,000	6,060,000	6,060,000
1999	6,060,000	6,060,000	6,060,000	6,060,000
2000	6,159,000	6,060,000	6,159,000	6,136,000 ⁹
2001	6,320,000	6,200,000	6,320,000	6,320,000
2002	6,939,000	6,939,000	6,939,000	6,934,000 ¹⁰
2003	7,127,000	—	—	7,131,343 ¹¹
2004	7,774,000	7,774,000	7,774,000	7,728,133 ¹²
2005	7,813,000	7,813,000	7,813,000	7,809,024 ¹³
2006	7,809,000			

-
- 1 Reflects reduction of \$164,000 pursuant to P.L. 99-177.
 - 2 Reflects reduction of \$14,000 pursuant to Sec. 512 of P.L. 100-202.
 - 3 Reflects reduction of \$49,000 pursuant to Sec. 517 of P.L. 100-436.
 - 4 Reflects reduction of \$103,437 pursuant to Sec. 514(b) of P.L. 101-517 and \$54 pursuant to P.L. 99-177.
 - 5 Reflects reduction of \$46,000 pursuant to Sec. 511 of P.L. 102-394.
 - 6 Reflects reduction of \$11,000 pursuant to Sec. 2007 of P.L. 104-19.
 - 7 Reflects reduction of \$9,000 pursuant to Sec. 513 and \$7,000 pursuant to Sec. 31002 of P.L. 104-134
 - 8 Reflects reduction of \$11,000 pursuant to Sec. 519 of P.L. 104-208
 - 9 Reflects reduction of \$23,000 pursuant to the Consolidated Appropriations Act for 2000, P.L. 106-113.
 - 10 Reflects reduction of \$5,000 pursuant to Section 1403 of P.L. 107-206.
 - 11 Reflects adjustments pursuant to the Omnibus Appropriations Act, P.L. 108-7.
 - 12 Reflects reduction of \$45,867 pursuant to the Consolidated Appropriations Act, P.L. 108-199.
 - 13 Reflects a congressional add-on of \$59,000 and a reduction of \$62,976 pursuant to section 122(a) of Public Law 108-447.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

STAFFING HISTORY TABLE

<u>Fiscal Year</u>	<u>FTE</u>
1986	47
1987	51
1988	52
1989	51
1990	48
1991	47
1992	56
1993	53
1994	53
1995	55
1996	52
1997	50
1998	47
1999	45
2000	43
2001	42
2002	38
2003	35
2004	40
2005 Est.	45
2006 Est.	45

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CONGRESSIONAL DIRECTIVES

There were no Congressional Directives for the Federal Mine Safety and Health Review Commission for FY 2004 or FY 2005.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION

	2005 Estimate		2006 Request		Increase or Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount
Commission Review	28	4,666,024	28	4,666,000	-	-24
Administrative Law Judge Determinations	17	3,143,000	17	3,143,000	-	-
Total Budget Authority	45	7,809,024	45	7,809,000	-	-24

GENERAL STATEMENT

The Federal Mine Safety and Health Review Commission was established as an independent agency by Section 113(a) of the Federal Mine Safety and Health Act of 1977. It is not part of the Department of Labor nor its Mine Safety and Health Administration (MSHA).

The Commission is charged with the responsibility of reviewing the enforcement activities of the Secretary of Labor, including hearing miners' complaints challenging unlawful health or safety-related discrimination, and resolving compensation issues for miners idled due to mine closure orders issued by MSHA. The Commission's ALJs hear and decide cases at the trial level initiated by the Secretary of Labor, mine operators, miners, and miners' representatives.

The 5-member Commission hears appeals from ALJ decisions. The Commission may review these decisions by granting a petition for discretionary review from one or more of the parties or by directing review on its own motion.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

COMMISSION REVIEW

	<u>2004</u>		<u>2005</u>		<u>2006</u>		<u>Increase or Decrease</u>	
	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>
Commission Review, Total Budget Authority	24	4,611,630	28	4,666,024	28	4,666,000	-	-24

Introduction:

The responsibility for the review of ALJ decisions is set forth in section 113(d)(1) of the Act. The Act states that an ALJ's decision shall become final 40 days after its issuance, unless within that period any two Commissioners direct that the decision be reviewed.

Most cases come before the Commission when two or more Commissioners vote to grant a petition for discretionary review filed by a party adversely affected or aggrieved by the ALJ's decision. Petitioners may include miners, miners' representatives, mine operators or the Secretary of Labor. Two or more Commissioners may also direct any case for review *sua sponte* (on the Commission's own motion, without the parties filing a petition). *Sua sponte* review is limited to ALJ decisions that are contrary to law or Commission policy, or that present a novel question of policy. By law, a quorum of three Commissioners is required to consider and decide cases appealed from the Commission's ALJs. Many of the Commission's cases present 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 newly promulgated by MSHA.

2006 Budget Request:

The Commission is requesting a budget of \$4,666,000 and 28 FTE for its appellate review activities in FY 2006. The Commission will fund its built-in increases, including the 2.3% pay raise projected for January 06 within its base financing. The \$24 decrease over FY 05 is due to rounding.

A total of 55 new cases are anticipated for review by the Commission during FY 2006. Fifty-five dispositions are expected resulting in an end-of-year inventory of 20 undecided cases. In addition, the Commission plans to complete a comprehensive review of all its procedural rules and publish final revised rules by March 31, 2006.

The term appointment of two Commission members, including the Chairman, who is appointed by the President, will expire on August 30, 2006.

The Commission's FY 2006 budget includes the following performance objectives:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2006:

- ◆ All Commission cases will be assigned when briefing is completed.
- ◆ All Commission cases will be decided within 18 months of receipt.
- ◆ The average age of substantive decisions will be maintained at 12 months or less.

Objective 2 — Commission's rules

Performance Goals for FY 2006:

- ◆ Complete rulemaking by March 31, 2006

Objective 3 — Issue well-reasoned Commission opinions providing clear legal precedent and thoughtful analysis of issues

Quality Indicators for FY 2006:

- ◆ Track Commission decisions that are appealed to the Courts of Appeals.

Fiscal Year 2005 Activity:

The FY 2005 resource level for the Commission Review Activity is expected to be \$4,666,024 and 28 FTE. The Commission began FY 2005 with an inventory of 20 undecided cases and anticipates receiving 55 new cases during the year. Fifty-five dispositions are anticipated during FY 2005, resulting in 20 undecided cases remaining at the end of the fiscal year.

Through January 31, 2005, the Commission has an inventory of 26 undecided cases, having received 20 new cases and disposed of 14 cases.

The Commission began, in the Fall of 2004, a review of the rules set forth in 29 C.F.R. Parts 2700 through 2706 to determine what revisions are appropriate to aid the efficient adjudication of proceedings before the Commission and its judges. In particular, the Commission is considering revisions to its procedural rules set forth in Part 2700 and its Equal Access to Justice Act rules set forth in Part 2704.

The goal of the Commission's procedural rules is to "secure the just, speedy and inexpensive determination of all proceedings, and to encourage the participation of miners and their representatives." 29 C.F.R. § 2700.1(c). Occasionally the Commission's procedural rules must be revised in order to better achieve that end.

The Commission published on October 27, 2004, an Announcement of a Notice of Proposed Rulemaking eliciting comments on revisions to the Commission's procedural rules. Following a 90-day comment period and review of all comments received, the Commission will publish a Notice of Proposed Rulemaking (approximately 120 days after the close of the comment period on the ANPR) with a 60-day comment period. A final rule will be promulgated approximately 180-240 days after the close of the comment period on the NPR. In any event, the Commission is committed to having a final rule promulgated no later than March 31, 2006.

The Commission's Budget includes the following objectives for its appellate activity in FY 2005:

Objective 1 — Issue opinions in a timely manner.

Performance Goals for FY 2005:

- ◆ All Commission cases will be assigned when briefing is completed.
- ◆ All Commission undecided cases currently in excess of 18 months of receipt will be decided.
- ◆ All Commission remaining cases will be decided within 18 months of receipt.
- ◆ The average age of substantive decisions will be maintained at 12 months or less.

Objective 2 – Commission's rules

Performance Goals for FY 2005:

- ◆ Complete the rulemaking process through the close of comment period.

Objective 3 — Issue well-reasoned Commission opinions providing clear legal precedent and thoughtful analysis of issues.

Quality Indicators for FY 2005:

- ◆ Track Commission decisions that are appealed to the Courts of Appeals.

Fiscal Year 2004 Activity:

The FY 2004 resource level for the Commission Review Activity was \$4,611,630 with actual employment of 24 FTE. The Commission began FY 2004 with an inventory of 42 undecided cases and received 37 new cases. Fifty-nine cases were decided, resulting in a docket of 20 undecided cases at the end of the fiscal year.

Of the 59 cases decided in FY 2004, 7 were substantive decisions, 46 were procedural orders, and 6 were denials of petitions for review. The average age of the 18 matters pending on the Commission's docket as of September 30, 2004 was 8.6 months, and the average age of the 7 substantive decisions issued on FY 2004 was 18.6 months.

The Commission developed the following performance objectives associated with its FY 2003 budget. The objectives and accomplishments achieved during the year were:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2004:

- ◆ All Commission cases will be assigned when briefing is completed

Accomplishments: This goal was met. All cases that were briefed were assigned.

- ◆ The Commission will have decided all cases that are 18 months or older.

Accomplishments: This goal was not met. Through September 30, 2004, five undecided cases reached 18 months or older, 3 of which were decided. The Commission could not meet this goal due to lack of a quorum of Commissioners for most of fiscal year 2003.

- ◆ The average age of substantive decisions will be maintained at 12 months or less.

Accomplishments: This goal was not met. As of September 30, 2004, the average age of the substantive dispositions was 18.6 months. The Commission could not meet this goal due to lack of a quorum of Commissioners for most of fiscal year 2003.

Objective 2 — Issue well-reasoned Commission opinions providing clear legal precedent and thoughtful analysis of issues.

Quality Indicators for FY 2004:

- ◆ Track Commission decisions that are appealed to the Courts of Appeals.

Accomplishment: During FY 2004, 3 cases have been appealed to the Courts of Appeals. The Court of Appeals decided 3 cases in FY 2004. The Court affirmed the Commission in 2 cases and reversed the Commission in another case. As of September 30, 2004, 5 cases remained pending.

PERFORMANCE MEASUREMENT MATRIX

COMMISSION REVIEW

	<u>FY 1999</u>	<u>FY 2000</u>	<u>FY 2001</u>	<u>FY 2002</u>	<u>FY 2003</u>	<u>FY 2004</u>		<u>FY 2005</u>	<u>FY 2006</u>
	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Goal</u>	<u>Actual</u>	<u>Goal</u>	<u>Goal</u>
OBJECTIVE: Issue opinions in a timely manner									
Undecided cases over 24 months of age	1	1	1	0	1	0	1	0	0
▲ Undecided cases over 18 months of age (inclusive)	6	3	1	2	2	0	1	0	0
Undecided cases over 12 months of age (inclusive)	12	12	6	3	7	0	6	0	0
▲ Cases briefed but unassigned	9	4	3	0	0	0	0	0	0
▲ Substantive disposition age	17.9	17.0	16.4	12.2	12.5	12.0	18.6	12.0	12.0

▲ Current performance goals or quality indicators

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

ADMINISTRATIVE LAW JUDGE DETERMINATIONS

	<u>2004</u>		<u>2005</u>		<u>2006</u>		<u>Increase or Decrease</u>	
	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>	<u>FTE</u>	<u>Amount</u>
Administrative Law Judge Determinations	16	3,116,503	17	3,143,000	17	3,143,000	-	-

Introduction:

The Commission employs administrative law judges to hear and decide contested cases at the trial level, as initiated by the Secretary of Labor, mine operators, and miners or their representatives. The judges are also responsible for evaluating and approving or denying settlement agreements under the Mine Act.

Administrative law judges travel to hearing sites located at or near the mine involved in order to afford mine operators, miners and their representatives the full opportunity to participate in the hearing process.

2006 Budget Request:

The budget request contains \$3,143,000 and 17 FTE for the Commission’s trial activities of its administrative law judges in FY 2006, the same amount that was appropriated in FY 2005. The Commission will fund its built in increases, including the 2.3 pay raise projected for January 06 within its base financing.

A total of 2,200 new cases are anticipated for FY 2006, with an equal number of 2,400 dispositions being projected for the year. The end of year inventory of undecided cases is estimated to be 1,307.

The Commission's FY 2006 budget includes the following performance objectives:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2006:

- ◆ Manage the case assignment process to assure that initial filings and response time frames are adhered to, resulting in case assignment averages that are less than the time frames in the Commission's procedural rules.
- ◆ Issue 92 percent of decisions within 90 days of receipt of post-hearing brief.
- ◆ Issue 96 percent of settlement decisions within 30 days of receipt of settlement motions.
- ◆ Decide 95 percent of cases within 270 days of assignment.
- ◆ Decide all cases within an average of 145 days from receipt by the Commission.

Objective 2 — Issue trial decisions based on sound factual and legal analysis

Quality Indicators for FY 2006:

- ◆ Track appeal rate and affirmance rate of substantive ALJ decisions.

Fiscal Year 2005 Activity:

The FY 2005 resource level for the Administrative Law Judge Determination Activity is \$3,143,000 and 17 FTE.

The Commission estimates beginning FY 2005 with an inventory of 1,307 undecided trial cases. A total of 2,200 new cases is anticipated for FY 2005, with 2,200 dispositions projected, leaving an end-of-year inventory of 1,307 cases.

Through January 31, 2005, the Commission has an inventory of 1,364 undecided cases having received 782 new cases and decided 726 cases.

The Commission's budget includes the following objectives for its trial activity in FY 2005:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2005

- ◆ Manage the case assignment process to assure that initial filings and response time frames are adhered to, resulting in case assignment averages that are less than the timeframes in the Commission's procedural rules.
- ◆ Issue 92 percent of decisions within 90 days of receipt of the post-hearing brief.
- ◆ Issue 96 percent of settlement decisions within 30 days of receipt of settlement motions.
- ◆ Decide 95 percent of cases within 270 days of assignment.
- ◆ Decide all cases within an average of 145 days from receipt by the Commission.

Objective 2 — Issue trial decisions based on sound factual and legal analysis

Quality Indicators for FY 2005:

- ◆ Track appeal rate and affirmance rate of substantive ALJ decisions.

Fiscal Year 2004 Activity:

The FY 2004 funding level for the Administrative Law Judge Determinations Activity is \$3,116,503 with actual employment estimated to be 16 FTE. As of October 1, 2003, the Commission's ALJs had an inventory of 1,389 and received 2,140 new cases during FY 2004. Case dispositions for the year were 2,222 leaving an end-of-year inventory of 1,307 undecided cases.

During FY 2004, in cooperation with the US Department of Justice (DOJ) and the Commission's OALJ, the Commission's accepted a substantial case load increase this year pursuant to the provisions of the Air Transportation Safety and System Stabilization Act," better known as the "September 11th Victim Compensation Fund of 2001. Congress passed this legislation "to provide compensation to any individual (or relatives of a deceased individual) who was physically injured or killed as a result of the terrorist-related aircraft crashes of September 11, 2001." Several agencies donated the time of a few ALJs; however, OALJ was the only group of judges which gave full participation to hearing these important cases.

OALJ was responsible for 134 cases under the Victims Compensation Act. Initially, most of the work was performed by the ALJs on nights and weekends; however, in March of this year, the DOJ accelerated the deadline for completion of the work. OALJ fully complied; however, the press of this work extended the normal processing time of Commission cases. By the close of the fiscal year, OALJ's processing time had returned to normal, an increase in end-of-year inventory of undecided cases is not anticipated.

The Commission developed the following performance objectives associated with its FY 2004 budget. These objectives and accomplishments during the year were:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2004:

- ◆ Manage the case assignment process to assure that initial filings and response time frames are adhered to, resulting in case assignment averages that are less than the time frames in the Commission's procedural rules.

Accomplishments: This goal was partially met. The average time for a case to be assigned to an ALJ is 69 days. Penalty cases were assigned in 81 days, within the 85-day goal and the timeframe specified in the Commission's rules. However, review cases were being assigned in 35 days, exceeding the 30-day timeframe and assignment goal. The Commission will more closely monitor the case assignment process to assure that filings in each case are within the stated timeframes.

- ◆ Issue 94 percent of decisions involving hearings within 90 days of receipt of post-hearing brief.

Accomplishments: This goal was not met. Through September 30, of the 129 decisions issued after hearings, 85% were issued within 90 days of receipt of the post-hearing brief. Of the remaining cases, 13 were decided during the 91-120 day time frame, 4 in the 121-150 day time frame and 3 in the 211-240 day time frame.

The Chief Judge has established a tracking system that identifies cases that are close to exceeding the 90-day decision period, and will continue to discuss the status of those cases with each individual judge. In addition, in some cases, decisions may have been delayed as a result of the Commission's commitment to meet the accelerated deadline for completing the Victim's Compensation Act cases.

- ◆ Issue 98 percent of settlement dispositions within 30 days of receipt of settlement motion.

Accomplishments: This goal was not met. Eighty-six percent of settlement dispositions were made within 30 days of receipt of the settlement motion. Thirteen percent of the settlement approvals were decided within 31-60 days, and less than 2 percent of the approvals required more than 61 days. Generally, settlement dispositions that exceed the 30-day time frame required the submission of additional materials and further explanations. The approval of many settlements slipped due to the accelerated deadlines imposed by the Department of Justice for the Victim's Compensation Act program. Although this affected the Commission's goal, it was imperative that the Commission fulfill its commitment in completing this government-wide effort.

- ◆ Decide 98 percent of cases within 270 days of assignment.

Accomplishments: This goal was met. Commission's judges issued decisions in 98 percent of the cases within 270 days of assignment.

- ◆ Decide all cases within an average of 135 days from receipt by the Commission.

Accomplishments: This goal was met. During FY 2004 the average length of time from receipt of a case by the Commission to its disposition was 123 days.

Objective 2 — Issue trial decisions based on sound factual and legal analysis

Quality Indicators for FY 2004:

- ◆ Track appeal rate and affirmance rate of substantive ALJ decisions.

Accomplishments: Since the beginning of FY 1998, the Commission has calculated appeal and affirmance rates of its trial decisions. During FY 2004, through August 31, Commission judges issued 129 decisions after hearings. Twenty of those decisions were appealed for an appeal rate of 16%. Of the seven substantive decisions issued by the Commission, three upheld the judge decision and two reversed the judge's decision resulting in an affirmance rate of 43%. The two remaining cases were remanded to the judge for further proceedings.

**PERFORMANCE MEASUREMENT MATRIX
OFFICE OF ADMINISTRATIVE LAW JUDGES**

	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004		FY 2005	FY 2006
	Actual	Actual	Actual	Actual	Actual	Goal	Actual	Goal	Goal
OBJECTIVE 1: ISSUE OPINIONS ON A TIMELY MANNER									
Average time (days) for assignment of penalty cases	70	77	69	80	80	<85	81	<85	<85
Average time (days) for assignment of review cases	25	28	22	28	26	<30	35	<30	<30
Average time (days) for assignment of all cases	64	66	60	71	71	71	70	71	71
Percentage of decisions issued within 90 days of post-hearing brief	83%	90%	92%	61%	88%	94%	85%	92%	92%
Percentage of settlement approvals issued within 30 days of settlement motion	97%	98%	98%	96%	93%	98%	86%	96%	96%
Average time (days), case assignment to disposition	62	89	70	74	63	63	53	63	63
Average time (days), case receipt to disposition	126	155	131	145	134	134	123	145	145
Cases decided within 270 days of assignment	97%	98%	97%	94%	98%	98%	98%	95%	95%
Undecided cases over 270 days of age	13	19	48	25	83	0	1	0	0
OBJECTIVE 2: ISSUE TRIAL DECISIONS ON SOUND FACTUAL AND LEGAL ANALYSIS									
Appeal rate	24%	25%	20%	17%	28%	N/A	16%	N/A	N/A
Affirmance rate	52%	46%	64%	55%	80%	N/A	43%	N/A	N/A

Current performance goals or quality indicators

AGENCY-WIDE MANAGEMENT OBJECTIVES
MANAGEMENT OBJECTIVES

The Commission's management goal is to manage its human resources, operations, facilities, and systems to ensure a continually improving, effective and efficient organization. The objectives of this goal, as they relate to the fiscal years covered by the FY 2006 budget submission are as follows:

Objective 1 — Ensure Organizational and Management Effectiveness

Performance Goals:

◆ Provide efficient and effective administrative management and support services

The Commission obtains many of the services required as an independent agency from other Federal agencies. Payrolling is provided by the Department of Agriculture. Personnel and accounting services are contracted through the Bureau of Public Debt (BPD) and website hosting is performed by the Government Printing Office. These franchise agencies also perform similar services to other government organizations thus providing the Commission with economies that could not be independently achieved. A further advantage is that the Commission receives the benefit of system enhancements required by new laws and can more effectively participate in the President's Management Agenda.

The Accountability of Tax Dollars Act requires that the Commission's financial statements be audited annually. The Commission utilized audit specifications and negotiated audit contracts developed by BPD for all the organizations it services. The audit of the Commission's FY 2003 financial records has been completed and the Commission has received a "clean" audit report. Audit of the Commission's FY 04 financial records has been completed and the Commission received a "clean" audit report for the second year.

The Commission will utilize the E-Travel program in FY 2005 currently being developed by the Department of Treasury as part of the government-wide E-travel system.

◆ Evaluate Program Effectiveness

During FY 2005 the Commission will revise its Strategic Plan to continue to assure that its resources effectively address its statutory requirements and constituent needs.

Performance plans are evaluated annually to assure that goals and objectives fairly and accurately report accomplishments. Commission goals and objectives are included in individual performance standards upon which employees are evaluated. Interaction

during evaluations provide an excellent method to further improve performance and gain greater efficiency.

Objective 2 — Provide Effective Information Technology Systems

Performance Goals:

- ◆ Maintain and enhance secure electronic information systems for case management, legal research, management operations support, and public access of data through the Internet.

The Commission has one staff member devoted full time to information technology and operation of its network.

The Commission continues to devote a major portion of its information technology efforts to network security with the constant threat from hackers, spammers, and viruses. Upgraded security software and patches were installed as they were released. Anti-virus scans are conducted daily on servers and individual workstations. Those security efforts will continue throughout fiscal years 2005 and 2006.

The Commission's website, <http://www.fmshrc.gov>, became operational on April 27, 1999. In January 2005, it had 13,685 visitations. It is hosted and maintained by the Government Printing Office. The website includes information about the Commission, its rules, guides and publications, strategic and performance plans, GILS records, a database of Commission and ALJ published decisions, transcripts of oral arguments, and links to related agencies and legal materials, including the Mine Act and MSHA. Constituents are promptly informed of ALJ and Commission's decisions through prompt posting on the Commission's website.

During FY 2004 the Commission began posting its decisions in a citable format providing its constituents with a more effective means of researching Commission case law and precedent. Current posting will be converted to citable format during FY 2005. The Commission intends to expand its website postings to include all precedential decisions since its inception.

During 2004, the Commission evaluated its docketing and case tracking system for both trial and appellate activities. While the basic program which was installed in 1985 has been modified periodically by various contractors, basic reporting format and data accumulation have not been substantially changed. Program language has not been updated since 1995, nor is the system web based. The first phase of this evaluation has been completed. The evaluation identified critical weaknesses in the database infrastructure that prevented the system from achieving the desired level of data integrity. The Commission is proceeding in FY 2005 with the normalization process to achieve data integrity as well as converting the obsolete program language code to the latest

technology language. Once this process has been completed, the existing system can be modified or migrated to a new system more economically.

Objective 3 — Sustain a High Performing Workforce

Performance Goals:

- ◆ Recruit, train, and retain a diverse workforce of skilled, highly motivated employees to effectively and efficiently accomplish the Commission's mission.

During CY 2004, the Commission evaluated all vacant positions to assure that any added staff represents the best use of the Commission's limited FTE resources and can be fully funded within available resources. The Commission's authorized FTE levels were reduced by 10 percent in FY 2005 to 45 consistent with the President's budget recommendations. On August 30, 2006, the term appointments of Chairman Duffy and Commissioner Suboleski will expire. On August 30, 2004, the term appointment for Commissioner Beatty expired and this Commission position is currently vacant.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SELECTED WORKLOAD DATA

	2004 Actual	2005 Estimate	2006 Estimate
<u>Commission Review Activities</u>			
Cases pending beginning of year	42	20	20
New cases received	37	55	55
Total case workload	79	75	75
Cases decided	59	55	55
Cases pending end of year	20	20	20

Administrative Law Judge Determinations

Cases pending beginning of year	1,389	1,307	1,307
New cases received	2,140	2,200	2,200
Total case workload	3,529	3,507	3,507
Cases decided	2,222	2,200	2,200
Cases pending end of year	1,307	1,307	1,307

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

COMMISSION MEMBERS

<u>NAME</u>	<u>TERM EXPIRATION</u>
Michael F. Duffy, Chairman	August 30, 2006
Stanley C. Suboleski	August 30, 2006
Mary Lu Jordan	August 30, 2008
Michael G. Young	August 30, 2008
Vacant	August 30, 2010

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CONSULTANTS

The Commission employed no consultants in FY 2004 and has no plans to employ consultants in FY 2005 or FY 2006.