

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION OF APPROPRIATION ESTIMATES

FOR COMMITTEE ON APPROPRIATIONS

FISCAL YEAR 2007

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 An ALJ decision that is not accepted for review becomes a final, non-precedential order of the Commission.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 \$7,576,470 covering 44 FTE for FY 2007. The request includes funding for an anticipated 2.2% pay increase for January 07. Any increase costs of Commission operations are being absorbed within the base funding.

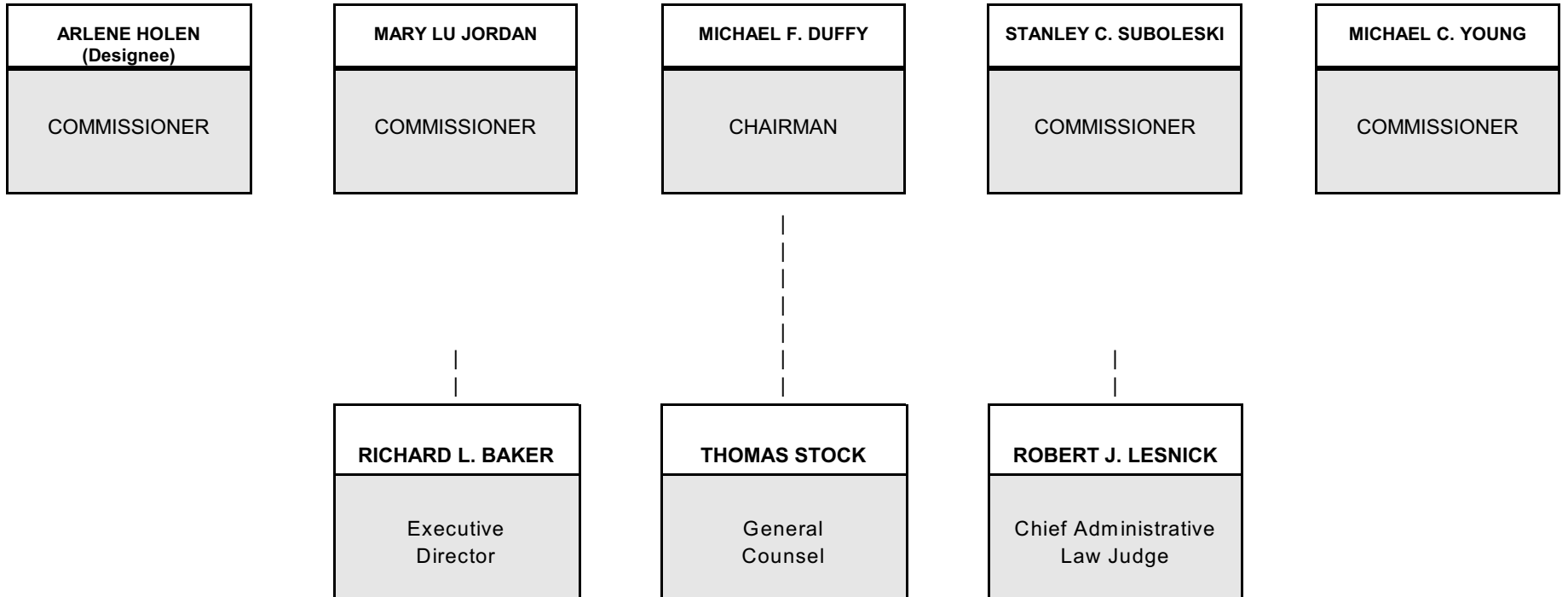
At the trial level, the Commission anticipates continuing to receive new cases at a rate of 2,200 per year. Dispositions for FY 2007 are estimated at 2,200, resulting in an end-of-year inventory of 1,589 undecided cases. This same workload level is projected for FY 2006.

At the appellate level, 65 new cases are anticipated for FY 2007, with dispositions of 67 resulting in an end-of-year inventory of 10 undecided cases.

In addition to conducting its appellate responsibilities, the Commission expects to complete a comprehensive review of its rules and issue final rules covering Commission procedures, EAJA, and the Privacy Act by September 30, 2006.

During FY 2005, the Commission reduced the average age of its substantive appellate dispositions from 18.6 months to 13.1 months.

**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.), \$7,576,470.

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 2006	FY 2007
<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)	7,730,910	7,576,470

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

BUDGET AUTHORITY AND STAFFING BY ACTIVITY

	<u>FY 2005</u>		<u>FY 2006</u>		<u>FY 2007</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	23	4,666,024	28	4,619,340	27	4,464,900	-1	+154,440
Administrative Law Judge Determinations	17	3,143,000	17	3,111,570	17	3,111,570	=	=
Total BA	40	7,809,024	45	7,730,910	44	7,576,470	-1	-154,440

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SUMMARY OF CHANGES

Budget Authority	FY 2006	FY 2007	Net Change
Appropriations	\$7,730,910	\$7,576,470	-154,440
Full-time Equivalent	45	44	-1

Explanation of Changes	FTE	Budget Authority
Increases		
GSA Rent	-	+70,000
Decreases		
Pay and Benefits	<u>-1</u>	<u>-224,440</u>
Net Change	-1	-154,440

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

BUDGET AUTHORITY BY OBJECT CLASS
(in thousands of dollars)

	<u>Actual</u> FY 2005	FY 2006	FY 2007	Increase or <u>Decrease</u>
<u>Personnel Compensation</u>				
Full-time permanent	3,677	4,317	4,125	-192
Other than full-time permanent	<u>273</u>	<u>290</u>	<u>294</u>	<u>+4</u>
Total, personnel compensation	3,950	4,607	4,419	-188
Personnel benefits, civilian	867	945	908	-37
Benefits former personnel	—	—	—	—
Travel and transportation of persons	64	100	100	—
Transportation of things	2	2	2	—
Rental Payments to GSA	1,190	1,197	1,267	+70
Communications, utilities and miscellaneous charges	102	115	115	—
Printing and reproduction	20	35	35	—
Other services	782	585	585	—
Supplies and materials	37	80	80	—
Equipment	<u>126</u>	<u>65</u>	<u>65</u>	<u>—</u>
TOTAL	7,140	7,731	7,576	-155

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

PERSONNEL SUMMARY

	2005 ACTUAL	2006 ESTIMATE	2007 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	8	8	8
SUBTOTAL	9	9	9
GS-15	4	4	4
GS-14	2	2	1
GS-13	3	3	3
GS-12	3	3	3
GS-11	2	2	2
GS-9	2	2	2
GS-8	8	8	8
GS-6	1	1	1
SUBTOTAL	25	25	24
Total Permanent Full-time Positions	41	41	40
Unfilled positions end-of-year	2	—	—
Total, full-time permanent employment end-of-year	39	41	40
Full-time equivalent (FTE) usage	40	45	44

Average ES salary	\$138,008	\$142,488	\$145,623
Average AL level	2.89	2.89	2.89
Average AL salary	\$149,200	\$152,000	\$155,344
Average GS grade	10.92	10.92	10.79
Average GS salary	\$71,698	\$74,164	\$73,894

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

AMOUNTS AVAILABLE FOR OBLIGATION

	FY 2005		FY 2006		FY 2007	
	FTE	Amount	FTE	Amount	FTE	Amount
Appropriation, total estimated obligations	40	7,809,024	45	7,730,910	44	7,576,470

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	7,809,000	7,809,000	7,730,910 ¹⁴
2007	7,576,000			

-
- 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.
 - 14 Reflects reduction of \$78,090 pursuant to Title III, Chapter 8, of the Department of Defense Appropriations Act, P.L. 109-148.

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	40
2006 Est.	45
2007 Est.	44

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 2005 or FY 2006.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION

	2006 Estimate		2007 Request		Increase or Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount
Commission Review	28	4,619,340	27	4,464,900	-1	+154,440
Administrative Law Judge Determinations	17	3,111,570	17	3,111,570	-	-
Total Budget Authority	45	7,730,910	44	7,576,470	-1	-154,440

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>2005</u>		<u>2006</u>		<u>2007</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	23	4,666,024	28	4,619,340	27	4,464,900	-1	+154,440

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.

2007 Budget Request:

The Commission is requesting a budget of \$4,464,900 and 27 FTE for its appellate review activities in FY 2007. The request includes funding of a projected 2.2 pay increase in January 07 and other costs of Commission operations.

A total of 65 new cases are anticipated for review by the Commission during FY 2007. Sixty-seven dispositions are expected resulting in an end-of-year inventory of 10 undecided cases.

The Commission's FY 2007 budget includes the following performance objectives:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2007:

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

Quality Indicators for FY 2007:

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

Fiscal Year 2006 Activity:

The FY 2006 resource level for the Commission Review Activity is \$4,619,340 and 28 FTE. The Commission expects to begin FY 2006 with an inventory of 14 undecided cases and anticipates receiving 65 new cases during the year. Sixty-seven dispositions are anticipated during FY 2006, resulting in 12 undecided cases remaining at the end of the fiscal year.

On October 27, 2004, the Commission began with the publication of an Advance Notice of Public Rulemaking (ANPR) a formal review of its rules in which it sought suggestions for improving its procedural rules, Government in the Sunshine Act regulations, regulations implementing the Freedom of Information Act (FOIA), and rules implementing the Equal Access to Justice Act (EAJA). The comment period on the ANPR closed on January 25, 2005. Substantial comments were received from the parties that practice before the Commission and from other interested groups.

After an extensive review of the comments and further deliberations by the Commission, a Notice of Proposed Rulemaking (NPR) regarding changes to improve its procedural rules, EAJA rules, and rules implementing the Privacy Act was published on January 5, 2006, with a closing comment period of March 6, 2006. The proposed changes in the NPR are more comprehensive than those described in the ANPR. The NPR addresses issues raised in the comments to the ANPR, and incorporates further reflection by the Commission and

developments in Commission proceedings since publication of the ANPR. Further consideration by the Commission also revealed that changes are unnecessary at the present time to other various rules, including the Commission's regulations implementing the Government in the Sunshine Act and FOIA.

In the NPR, the Commission has invited members of the interested public during the comment period to request a public meeting on the proposed rules and has stated that if public meetings are scheduled, the Commission will issue a subsequent notice in the Federal Register no later than 30 days before the dates of such meetings. If requested, the Commission anticipates scheduling public meetings no later than June 2006, and expects to publish its final rules by the end of the fiscal year.

The Commission's Budget includes the following objectives for its appellate activity in FY 2006:

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 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 2006:

- ◆ Complete rulemaking by September 30, 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 was \$4,666,024 with actual employment of 23 FTE. The Commission began FY 2005 with an inventory of 20 undecided cases and received 61 new cases. Sixty-seven cases were decided, resulting in a docket of 14 undecided cases at the end of the fiscal year.

Of the 67 cases decided in FY 2005, 10 were substantive decisions, 54 were procedural orders, and 3 were denials of petitions for review. The average age of the 14 matters pending on the Commission's docket as of September 30, 2005 was 8.1 months, and the average age of the 10 substantive decisions issued in FY 2005 was 13.1 months.

The Commission developed the following performance objectives associated with its FY 2005 budget. The objectives and accomplishments achieved during the year were:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2005:

- ◆ 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, however, progress was made toward accomplishing this goal. Through September 30, 2005, 7 undecided cases reached 18 months or older, 4 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 when the majority of decided cases were filed.

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

Accomplishments: This goal was not met. However, progress was made toward accomplishing this goal. As of September 30, 2005, the average age of the substantive dispositions was 13.1 months. This is a reduction of 5.5 months from the FY 2004 average of 18.6 months. The Commission could not meet this goal due to the majority of its substantive case dispositions being more than 12 months old.

Objective 2 — Commission Rules

Performance Goals for FY 2005

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

Accomplishments: This goal was not met. The Commission received substantial comments from the parties that practice before it and from other interested groups during the comment period to its ANPR. The assessment of these comments along with further reflection by the Commission and developments in Commission proceedings consumed more time than initially anticipated. Further consideration by the Commission also revealed that changes were unnecessary at the present time to some rules considered for review under the ANPR. These unanticipated events delayed publication of the NPR until January 5, 2006 with a comment period ending March 6, 2006.

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.

Accomplishments: During FY 2005, 2 cases were appealed to the Courts of Appeals. The Court of Appeals decided 5 cases in FY 2005. The Court affirmed the Commission in 2 cases, reversed the Commission in 2 cases and dismissed one case. As of September 30, 2005, 3 cases remained pending.

PERFORMANCE MEASUREMENT MATRIX

COMMISSION REVIEW

	<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>FY 2007</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	0	1	1	0	0	0	0
▲ Undecided cases over 18 months of age (inclusive)	3	1	2	2	1	0	3	0	0
Undecided cases over 12 months of age (inclusive)	12	6	3	7	6	0	4	0	0
▲ Cases briefed but unassigned	4	3	0	0	0	0	0	0	0
▲ Substantive disposition age	17.0	16.4	12.2	12.5	18.6	12.0	13.1	12.0	12.0

▲ Current performance goals or quality indicators

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

ADMINISTRATIVE LAW JUDGE DETERMINATIONS

	<u>2005</u>		<u>2006</u>		<u>2007</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	17	3,143,000	17	3,111,570	17	3,111,570	-	—

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.

2007 Budget Request:

The budget request contains \$3,111,570 and 17 FTE for the Commission’s trial activities of its administrative law judges in FY 2007. The request includes funding of a projected 2.2 percent pay increase in January 07 and other costs of Commission operations.

A total of 2,200 new cases are anticipated for FY 2007, with an equal number of dispositions being projected for the year. The end of year inventory of undecided cases is estimated to be 1,589.

The Commission’s FY 2007 budget includes the following performance objectives:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2007:

- ◆ 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 2007:

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

Fiscal Year 2006 Activity:

The FY 2006 resource level for the Administrative Law Judge Determination Activity is \$3,111,570 and 17 FTE.

The Commission estimates beginning FY 2006 with an inventory of 1,589 undecided trial cases. A total of 2,200 new cases is anticipated for FY 2006, with 2,200 dispositions projected, leaving an end-of-year inventory of 1,589 cases.

The Commission's budget includes the following objectives for its trial activity in FY 2006:

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 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 2006:

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

Fiscal Year 2005 Activity:

The FY 2005 funding level for the Administrative Law Judge Determinations Activity was \$3,143,000 with actual employment of 17 FTE. As of October 1, 2004, the Commission's ALJs had an inventory of 1,307 with 2,437 new cases received during the year. Case dispositions for the year were 2,155, resulting in an end-of-year inventory of 1,589 undecided cases.

The Commission developed the following performance objectives associated with its FY 2005 budget. These objectives and accomplishments during the year were:

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 time frames in the Commission's procedural rules.

Accomplishments: This goal was met. The average time for a case to be assigned to an ALJ was 61 days. Penalty cases were assigned in 73 days, less than the 85-day goal and the timeframe specified in the Commission's rules. Review cases were assigned in 27 days, well within the 30-day goal.

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

Accomplishments: This goal was met. Through September 30, of the 91 decisions issued after hearings, 96% were issued within 90 days of receipt of the post-hearing brief.

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

Accomplishments: This goal was not met. Through September 30, of the 1,471 settlement motions that were approved during this year, 90% were approved within 30 days of receipt of the settlement motion. This is an improvement over FY 04 when 86% of the settlement motions were approved within the 30-day timeframe period. Generally, settlement disposition that exceed the 30-day time frame require the submission of additional supporting materials and further explanation. The Commission will continue to monitor these cases to assure continued progress in meeting the 30-day timeframe and performance goal.

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

Accomplishments: This goal was not met. Through September 30, of the 2,155 cases that were disposed, 97% were disposed within 270 days of assignment to an ALJ.

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

Accomplishments: This goal was met. During FY 2005, the average length of timeframe receipt of a case by the Commission to its disposition was 121 days.

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.

Accomplishments: Since the beginning of FY 1998, the Commission has calculated appeal and affirmance rates of its trial decisions. During FY 2005, Commission judges issued 91 decisions after hearings. Nine decisions were appealed to the Commission for an appeal rate of 10%. Of the ten substantive decisions issued by the Commission, six upheld the judge decision and one reversed the judge's decision. One case was affirmed in part and reversed in part. 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	FY 2007
	Actual	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	81	<85	73	<85	<85
Average time (days) for assignment of review cases	25	28	22	28	26	35	<30	27	<30	<30
Average time (days) for assignment of all cases	64	66	60	71	71	70	71	61	71	71
Percentage of decisions issued within 90 days of post-hearing brief	83%	90%	92%	61%	88%	85%	95%	96%	92%	92%
Percentage of settlement approvals issued within 30 days of settlement motion	97%	98%	98%	96%	93%	86%	96%	90%	96%	96%
Average time (days), case assignment to disposition	62	89	70	74	63	53	63	62	63	63
Average time (days), case receipt to disposition	126	155	131	145	134	123	145	121	145	145
Cases decided within 270 days of assignment	97%	98%	97%	94%	98%	98%	98%	97%	95%	95%
Undecided cases over 270 days of age	13	19	48	25	83	1	0	18	0	0
OBJECTIVE 2: ISSUE TRIAL DECISIONS ON SOUND FACTUAL AND LEGAL ANALYSIS										
Appeal rate	24%	25%	20%	17%	28%	16%	N/A	10%	N/A	N/A
Affirmance rate	52%	46%	64%	55%	80%	43%	N/A	65%	N/A	N/A

Information on performance measurement is currently not available.

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 2007 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 and website hosting are contracted through the Bureau of Public Debt (BPD). 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 2005 financial records has been completed and the Commission has again received a "clean" audit report.

The Commission began using the Department of Treasury developed Gov Trip as its E-Travel program during FY 2005.

- ◆ Evaluate Program Effectiveness

The Commission will continue to review its Strategic Plan 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 2006 and 2007.

The Commission's website, <http://www.fmshrc.gov>, recorded 22,575 visits in November 2005. 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 calendar year 2005 the Commission's website was enhanced by including audio recordings of its meetings and oral arguments.

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 proceeded 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.

The company contracted for this initiative was terminated because work assignments were not being completed in a timely and economical manner. Technical specifications and project work requirement are currently been developed consistently with current information technology contracting requirements. The Commission is also currently evaluating the technical capabilities of other contractors interested in updating the existing system. A contract for upgrading the docketing system is expected to be issued during FY 2006.

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.

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. For FY 2005 and FY 2006, of the five priority vacancies at the beginning of the fiscal year, three positions were filled. The two remaining positions, a Commissioner and Counsel are being held in abeyance pending confirmation of the President's nominee, Arlene Holen. During FY 2005, four of the Commission's legal assistants successfully completed the paralegal training program.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SELECTED WORKLOAD DATA

	2005 Actual	2006 Estimate	2007 Estimate
<u>Commission Review Activities</u>			
Cases pending beginning of year	20	14	12
New cases received	61	65	65
Total case workload	81	79	79
Cases decided	67	67	67
Cases pending end of year	14	12	10

Administrative Law Judge Determinations

Cases pending beginning of year	1,307	1,589	1,589
New cases received	2,437	2,200	2,200
Total case workload	3,844	3,789	3,789
Cases decided	2,155	2,200	2,200
Cases pending end of year	1,589	1,589	1,589

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
Arlene Holen, Designee	August 30, 2010

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CONSULTANTS

The Commission employed no consultants in FY 2005 and has no plans to employ consultants in FY 2006 or FY 2007.