

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION OF APPROPRIATION ESTIMATES

FOR

COMMITTEE ON APPROPRIATIONS

FISCAL YEAR 2010

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 (the Act), as amended (“Mine Act”). Section 113 of that Act establishes the Commission and sets forth its responsibilities. Public Law 109-236, the Mine Improvement and New Emergency Response Act of 2006 (MINER Act) added an additional responsibility to the Commission: resolving disputes between the Secretary of Labor and underground coal mine operators with respect to the contents of emergency response plans or the Secretary’s refusal to approve such plans.

Most cases that come before the Commission involve citations and orders issued by the Department of Labor’s Mine Safety and Health Administration (MSHA) against mine operators for violations of the Mine Act, and their accompanying civil penalties proposed by MSHA. The Commission is responsible for addressing 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. Unlike most of the cases that come before the Commission, disputes involving emergency response plans must be decided on an expedited basis.

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 An ALJ decision that is not accepted for review becomes a final, non-precedential order of the Commission.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 brought to the federal circuit courts of appeals.

The Commission is requesting a budget of \$9,857,567 covering 57 FTE for FY 2010. The request includes \$934,567 to support 7 additional FTE and \$270,000 to support a base staff of 50 and to provide for an anticipated 2.0% pay increase for January 2010. Any increased costs of Commission operations are being absorbed with the base funding.

During FY 2006, the Commission received more than 3,400 new trial cases, a 40% increase over FY 2005 and FY 2006 workload projections. In FY 2007, the Commission received 4,097 cases, a 17% increase over the number of cases filed in FY 2006.

In FY 2008, new case intake rose to 4,500, including emergency response plan disputes which did not reach the numbers that the Commission anticipated when the MINER Act was enacted.. As a result, the FY 2008 end-of-year inventory of undecided cases swelled to 9,760.

Thus far in FY 2009, as of February 28, the Commission has received 3,789 new case filings. The rate of new filings received each month during that period also is increasing. (See Attachment A)

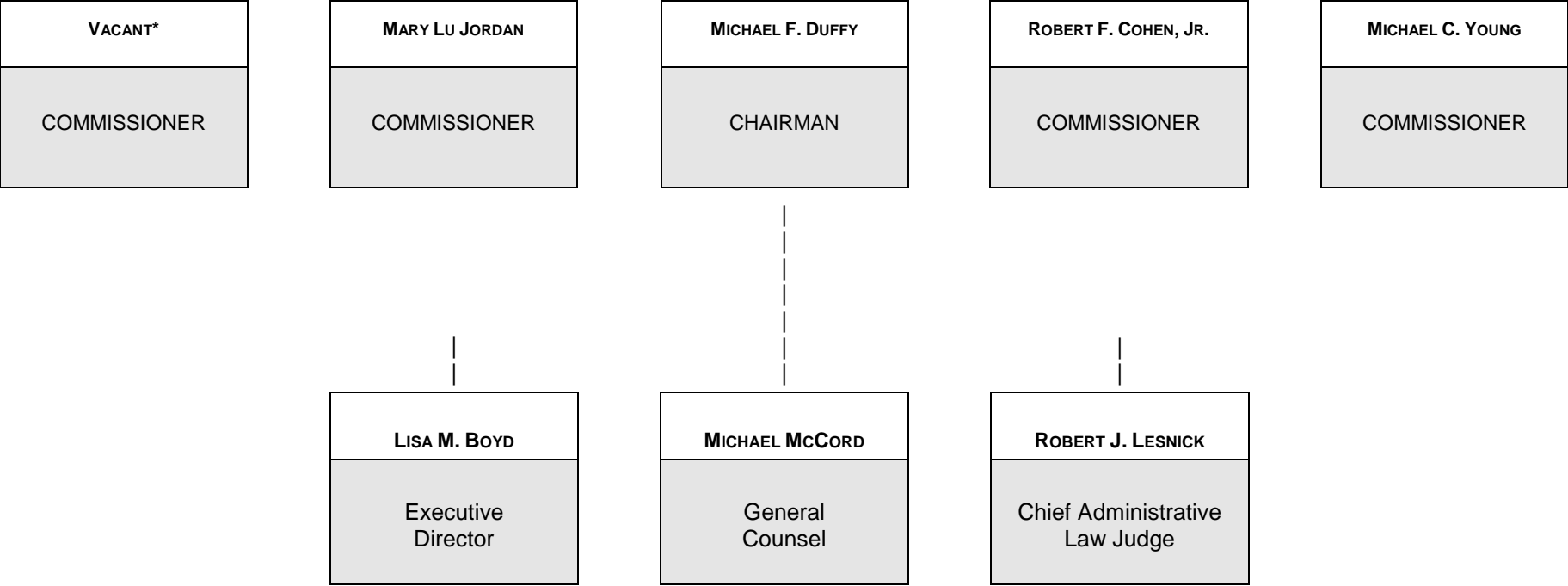
Given the trends outlined above, the Commission anticipates that the end-of-year inventory of undecided cases for FY 2009 will reach a projected level of 15,160.

As for FY 2010, the Commission anticipates that the surge in new filings at the ALJ level will continue. We project that new case intake will reach 9,600 cases, and that the end-of-year inventory of undecided cases will reach 19,369 cases

Only a small fraction of cases decided by the Commission's Office of ALJs is appealed in any given year. Consequently, at the appellate level, the workload is expected to remain relatively consistent with 176 new cases anticipated for FY 2009. After disposition of 200 cases an end-of-year inventory of 79 undecided cases is expected. We anticipate that those numbers will not change significantly in FY 2010, so that we anticipate 160 new appeals resulting in an end-of-year inventory of 49 cases.

In addition to conducting its appellate responsibilities, the Commission expects to promulgate procedural rules governing requests to reopen cases for which a final order has been issued by a Commission Judge or cases where a mine operator has been declared in default for failure to respond to a Judge's order. The number of these cases has increased primarily due to a significant number of operators, usually small operators, who, due to stepped-up enforcement, are contesting citations, orders and civil penalties for the first time, and who are unfamiliar with Commission procedures. While the Commission has been operating under the Continuing Resolution, we have had to postpone plans to utilize retired ALJs as settlement judges to handle cases that can be resolved without a full blown trial proceeding. Consequently, the development procedural rules or policies governing settlements under that initiative have been deferred. They will be revived during the remainder of FY 2009 and may carry over into FY 2010. The Commission also anticipates that legislative initiatives currently under consideration by Congress may require new or revised procedural rules

**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.), \$9,857,567.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

AUTHORIZING LEGISLATION

FY 2009

FY 2010

Authorizing Legislation
Containing Indefinite Authority

Federal Mine Safety and Health
Amendments Act of 1977, as amended
(30 U.S.C. 823-824)

8,653,000

9,857,567

**FEDERAL MINE SAFETY AND
HEALTH REVIEW COMMISSION**

BUDGET AUTHORITY AND STAFFING BY ACTIVITY

	<u>FY 2008</u>		<u>FY 2009 Est.</u>		<u>FY 2010 Est.</u>		<u>Increase over FY 2009 Est.</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	27	4,696,000	27	4,919,400	27	5,054,400		+135,000
Administrative Law Judge Determinations	<u>21</u>	<u>3,258,563</u>	<u>23</u>	<u>3,733,600</u>	<u>30</u>	<u>4,803,167</u>	<u>+7</u>	<u>+1,069,567</u>
Total BA	48	7,954,563	50	8,653,000	57	9,857,567	+7	+1,204,567

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SUMMARY OF CHANGES

Budget Authority	FY 2009	FY 2010	Net Change
Appropriations	\$8,653,000	\$9,857,567	\$1,204,567
Full-time Equivalent	50	57	+7

Explanation of Changes	FTE	Budget Authority
Increases		
Increased FTE	+7	934,567
Maintain Base Staff	-	270,000
Decreases		
Net Change	+7	+ 1,204,567

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

BUDGET AUTHORITY BY OBJECT CLASS
(in thousands of dollars)

	<u>Actual</u> FY 2008	<u>Estimate</u> FY 2009	<u>Estimate</u> FY	Increase or Decrease over 2009 Est.
<u>Personnel Compensation</u>				
Full-time permanent	4,064	4,729	5,562	+833
Other than full-time permanent	<u>204</u>	<u>322</u>	<u>333</u>	<u>+11</u>
Total, personnel compensation	4,268	5,051	5,895	+844
Personnel benefits, civilian	1,373	1,173	1,349	+176
Benefits former personnel	–	–	–	–
Travel and transportation of persons	70	147	160	+13
Transportation of things	2	2	3	+1
Rental Payments to GSA	1,303	1,290	1,375	+85
Communications, utilities and miscellaneous charges	111	115	120	+5
Printing and reproduction	15	18	28	10
Other services	677	707	750	+43
Supplies and materials	91	80	77	-3
Equipment	<u>44</u>	<u>70</u>	<u>100</u>	<u>+30</u>
TOTAL	7,954	8,653	9,857	1,204

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

PERSONNEL SUMMARY

	2008 ACTUAL	2009 ESTIMATE	2010 REQUEST
ACCOUNT: SALARIES & EXPENSES			
Executive Level III	1	1	1
Executive Level IV	3	4	4
	4	5	5
ES	1	1	1
AL-2	1	1	1
AL-3	8	9	13
	9	10	14
GS-15	7	8	6
GS-14	1	1	2
GS-13	2	2	2
GS-12	1	1	3
GS-11	7	9	12
GS-9	2	4	2
GS-8	7	7	7
GS-7	1	1	1
GS-6	1	1	1
GS-4	1	1	1
	30	34	36
Total Permanent Full-time Positions	48	50	57
Unfilled positions end-of-year	4	—	—
Total, full-time permanent employment end-of-year	44	50	57
Full-time equivalent (FTE) usage	48	50	57

Average EX Salary	\$153,750	\$155,625	\$158,243
Average ES salary	\$156,673	\$156,673	\$159,807
Average AL salary	\$158,500	\$162,900	\$166,158
Average GS salary	\$83,015	\$81,652	\$82,875

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

AMOUNTS AVAILABLE FOR OBLIGATION

	FY 2008		FY 2009		FY 2010	
	FTE	Amount	FTE	Amount	FTE	Amount
Appropriation, total estimated obligations	48	7,954,563	50	8,653,000	57	9,857,567

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
APPROPRIATIONS HISTORY TABLE

<u>Fiscal Year</u>	<u>Budget Estimate To Congress</u>	<u>House Allowance</u>	<u>Senate Allowance</u>	<u>Appropriation</u>
1991	4,292,000	4,292,000	4,292,000	4,188,509 ¹
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 ²
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 ³
1996	6,467,000	6,467,000	6,200,000	6,184,000 ⁴
1997	6,332,000	6,060,000	6,060,000	6,049,000 ⁵
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 ⁶
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 ⁷
2003	7,127,000	-	-	7,131,343 ⁸
2004	7,774,000	7,774,000	7,774,000	7,728,133 ⁹
2005	7,813,000	7,813,000	7,813,000	7,809,024 ¹⁰
2006	7,809,000	7,809,000	7,809,000	7,730,910 ¹¹
2007	7,576,000	7,731,000	7,731,000	7,777,652 ¹²
2008	8,096,000	8,096,000	7,954,563	7,954,563 ¹³
2009	8,653,000	8,653,000	8,653,000	8,653,000

¹ Reflects reduction of \$103,437 pursuant to Sec. 514(b) of P.L. 101-517 and \$54 pursuant to P.L. 99-177.

² Reflects reduction of \$46,000 pursuant to Sec. 511 of P.L. 102-394.

³ Reflects reduction of \$11,000 pursuant to Sec. 2007 of P.L. 104-19.

⁴ Reflects reduction of \$9,000 pursuant to Sec. 513 and \$7,000 pursuant to Sec. 31002 of P.L. 104-134

⁵ Reflects reduction of \$11,000 pursuant to Sec. 519 of P.L. 104-208

⁶ Reflects reduction of \$23,000 pursuant to the Consolidated Appropriations Act for 2000, P.L. 106-113.

⁷ Reflects reduction of \$5,000 pursuant to Section 1403 of P.L. 107-206.

⁸ Reflects adjustments pursuant to the Omnibus Appropriations Act, P.L. 108-7.

⁹ Reflects reduction of \$45,867 pursuant to the Consolidated Appropriations Act, P.L. 108-199.

¹⁰ Reflects a congressional add-on of \$59,000 and a reduction of \$62,976 pursuant to section 122(a) of Public Law 108-447.

¹¹ Reflects reduction of \$78,090 pursuant to Title III, Chapter 8, of the Department of Defense Appropriations Act, P.L. 109-148.

¹² Reflects adjustments pursuant to 2007 continuing resolution, P.L. 110-5.

¹³ Reflects reduction of \$144,437 pursuant to Sec. 528(a) of public law.

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	41
2007.	44
2008	48
2009	50
2010 Est.	57

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 2008 or FY 2009

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION

	2009 Estimate		2010 Request		Increase or Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount
Commission Review	27	4,919,400	27	5,054,400		+ 135,000
Administrative Law Judge Determinations	23	3,733,600	30	4,083,167	+7	+1,069,567
Total Budget Authority	50	5,054,400	57	9,857,567	+7	+1,204,567

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, as amended. 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 also resolves disputes between the Secretary and underground coal mine operators relating to the contents of mine emergency plans. 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>2008</u>		<u>2009</u>		<u>2010</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	27	4,696,000	27	4,919,400	27	5,054,400	+7	+135,000

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. The Commission is also charged with the responsibility of reviewing disputes arising over the emergency response plans of underground coal operators pursuant to the Mine Improvement and New Emergency Response Act of (MINER Act) 2006, P.L. 109-236.

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.

2010 Budget Request:

The Commission is requesting a budget of \$5,054,400 and 27 FTE for its appellate review activities in FY 2010. This is an increase of \$135,000 over the amount estimated to be available for FY 2009. The request includes funding of a projected 2.0% pay increase in January 2010, and other costs of Commission operations.

It is expected that 79 cases will be pending for review by the Commission at the beginning of FY 2010. A total of 160 new cases are anticipated for review by the Commission during FY 2010. One hundred ninety dispositions are expected, resulting in an end-of-year inventory of 49 undecided cases.

The Commission's Budget includes the following objectives for its appellate activity in FY 2010:

Objective — Issue opinions in a timely manner.

Performance Goals for FY 2010:

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

Fiscal Year 2009 Activity:

The FY 2009 resource level for Commission Review Activity is expected to be \$4,919,400 with actual employment of 27 FTE. The Commission is expected to begin FY 2009 with an inventory of 103 undecided cases, and 176 new cases are anticipated for the year. Two hundred cases are expected to be decided, resulting in a docket of 79 undecided cases at the end of the fiscal year.

Fiscal Year 2008 Activity:

The FY 2008 resource level for the Commission Review Activity was \$4,696,000 and 27 FTE. The Commission began FY 2008 with an inventory of 16 undecided cases and received 177 new cases during the year. Ninety dispositions were made during FY 2008, resulting in 103 undecided cases remaining at the end of the fiscal year.

Of the 90 cases decided in FY 2008, 8 were substantive decisions, 78 were procedural orders, and 4 were denials of petitions for review. The average age of the 103 matters pending on the Commission's docket as of September 1, 2008 was 5.2 months, and the average age of the 18 substantive decisions issued in FY 2008 was 8.9 months.

During FY 2008, the number of default cases handled by the Commission created a major challenge, particularly for the Commission's Office of the General Counsel (OGC). Default cases typically involve situations where a mine operator has allegedly failed to challenge civil penalties proposed by the MSHA within the prescribed 30-day period for contesting such proposed penalties. Under the Mine Act, proposed penalties that are not timely contested automatically become final Commission orders. Operators may file written requests with the Commission seeking to establish "good cause" to re-open the final orders. The Commission has

determined that operators may file requests seeking to establish good cause to re-open final orders utilizing principles adopted by the Federal Courts.

The number of default cases received by the Commission increased dramatically from 68 in FY 2007 to 177 in FY 2008 - a 2.5 fold increase. The increase in default orders has greatly increased the demands on OGC's attorneys, who must analyze each case and prepare a draft order for the Commissioners. OGC's task was made even more difficult by the fact that for part of FY 2008 the Commission lacked a quorum and was not able to rule on any re-opening requests, thereby contributing to the Commission's backlog.

The Commission developed the following performance objectives associated with its FY 2008 budget. The objectives and accomplishments achieved during the year were:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2008:

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

Accomplishments: This goal was met. All cases were assigned before briefing was completed.

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

Accomplishments: This goal was met. As of September 30, 2008 no case that is 18 months or older will be pending before the Commission.

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

Accomplishments: This goal was met. As of September 30, 2008, the average age of the substantive dispositions was 8.9 months.

PERFORMANCE MEASUREMENT MATRIX

COMMISSION REVIEW

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>		<u>FY 2009</u>	<u>FY 2010</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	0	0	0	0	0	0	0
• Undecided cases over 18 months of age (inclusive)	1	3	1	0	0	0	0	0
Undecided cases over 12 months of age (inclusive)	6	4	1	0	0	0	0	0
• Cases briefed but unassigned	0	0	0	0	0	0	0	0
• Substantive disposition age	18.6	13.1	15.5	5.1	12.0	8.9	12.0	12.0

- Current performance goals or quality indicators

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

ADMINISTRATIVE LAW JUDGE DETERMINATIONS

	<u>2008</u>		<u>2009</u>		<u>2010</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	21	3,258,563	23	3,733,600	30	4,803,167	7	1,069,567

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.

2010 Budget Request:

The budget request contains \$4,803,167 and 30 FTE for the Commission’s trial activities of its administrative law judges in FY 2010.

The request includes an increase of \$1,069,567 for 7 additional personnel, and funding of a projected 2.0 percent pay increase in January 2010 and other costs of Commission operations.

The additional staff increase includes 4 administrative law judges and 3 law clerks. The additional judges are necessary in view of a marked increase in cases that are expected to go to hearing. The Commission believes that the request for law clerks is an efficient and economical approach for assisting the judges in deciding the increased caseload on its trial docket. The use of law clerks will provide the Commission with the added flexibility to make staffing adjustments consistent with case filings and undecided case inventories. It is anticipated that two of the judges and one of the law clerks will be assigned to the Commission’s Denver office to deal with the large influx of cases brought by the noncoal segment of the mining industry. Indeed, between FY 2006 and FY 2008, cases arising west of the Mississippi rose from 700 to 2300, and in the first five months of FY 2009, new filings in that region already exceed 1000. (See Attachment B)

A total of 15,160 new cases are anticipated for FY 2010, with 5,391 dispositions being projected for the year. The end of year inventory of undecided cases is estimated to be 19,369.

The Commission's FY 2010 budget includes the following performance objectives:

Objective — Issue opinions in a timely manner

Performance Goals for FY 2010:

- Manage the case assignment process to assure that initial filings and response time frames are adhered to, resulting in a decisional process that falls within the time frames in the Commission's procedural rules.
- Issue 75 percent of decisions within 180 days of receipt of post-hearing briefs.
- Issue 75 percent of settlement decisions within 60 days of receipt of settlement motions.
- Decide 80 percent of cases within 365 days of assignment.
- Decide all cases within an average of 545 days from receipt by the Commission.

Fiscal Year 2009 Activity:

The FY 2009 resource level for the Administrative Law Judge Determination Activity is expected to be \$3,733,600 and 23 FTE.

The Commission began FY 2009 with an inventory of 9,760 undecided trial cases. A total of 9,000 new cases is anticipated for FY 2009, with 3,600 dispositions projected, leaving an end-of-year inventory of between 15,160 cases.

The Commission's budget includes the following objectives for its trial activity in FY 2009.

Objective — Issue opinions in a timely manner

Performance Goals for FY 2009:

- 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 90 percent of decisions within 180 days of receipt of the post-hearing briefs.
- Issue 90 percent of settlement decisions within 60 days of receipt of settlement motions.
- Decide 90 percent of cases within 365 days of assignment.
- Decide all cases within an average of 365 days from receipt by the Commission.*

*Year-to-date average is 461 days for FY 2009.

Fiscal Year 2008 Activity:

The FY 2008 funding level for the Administrative Law Judge Determinations Activity was \$3,258,563 with actual employment of 21 FTE. As of October 1, 2008, the Commission's ALJs had an inventory of 4,115 with 8,961 new cases received during the year. Case dispositions for the year were 3,316 resulting in an end-of-year inventory of 9,760 cases.

The Commission developed the following performance objectives associated with its FY 2008 budget. These objectives and accomplishments during the year were:

Objective — Issue opinions in a timely manner

Performance Goals for FY 2008:

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

Accomplishments: The average time for cases to be assigned to an ALJ was 123 days, penalty cases were assigned within 135 days on average in FY 2008, due in part to delays in receiving penalty assessments from DOL and insufficient clerical staff in the Office of Administrative Law Judges Docket Office.

- Issue 90 percent of decisions involving hearings within 90 days of receipt of post-hearing briefs.

Accomplishments: This goal could not be achieved in FY 2008 due to the extreme increase in the caseloads of each of the Commission judges, combined with a large volume of cases requiring decisions within overlapping 90-day periods. (See chart, page 23).

- Issue 95 percent of settlement dispositions within 30 days of receipt of settlement motion.

Accomplishments: Due to an increase in caseload of over 400 percent since FY 2006, this goal could not be met. (See chart, page 23).

- Decide 90 percent of cases within 270 days of assignment.

Accomplishments: Due to the caseload increase, this goal could not be met. (See chart, page 23).

- Decide all cases within an average of 195 days from receipt by the Commission.

Accomplishments: This goal could not be met in FY 2008 due to the unprecedented caseload; however, the disposition rate increased to 368 per ALJ due, in part, to the addition of 4 law clerks in February 2008. (See Chart, page 23).

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

	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008		FY 2009	FY 2010
	Actual	Actual	Actual	Actual	Goal	Actual	Goal	Goal
OBJECTIVE 1: ISSUE OPINIONS ON A TIMELY MANNER								
• Average time (days) for assignment of penalty cases	81	73	78	89	<85	135	81	81
• Average time (days) for assignment of review cases	35	27	24	29	<30	82	35	35
Average time (days) for assignment of all cases	70	61	53	65	71	123	70	70
• Percentage of decisions issued within 180 days of post-hearing brief	85%	96%	88%	69%	90%	60%	90%	75%
• Percentage of settlement approvals issued within 60 days of settlement motion	86%	90%	96%	80%	95%	73%	90%	75%
Average time (days), case assignment to disposition	53	62	62	63	93	164	15	18
• Average time (days), case receipt to disposition	123	121	NA	128	195	291	365	545
• Percentage of cases decided within 365 days of assignment	98%	97%	98%	97%	90%	79%	90%	80%
Undecided cases over 365 days of age	1	18	5	71	0	687	0	10,000

Information on performance measurement is currently not available.

- Current performance goals or quality indicators

AGENCY-WIDE MANAGEMENT OBJECTIVES

The Commission's 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 2010 budget submission, are as follows:

Manage the Commission's human resources, operations, facilities, and systems to ensure a continually improving, effective, and efficient organization.

Objective — Ensure Organizational and Management Effectiveness

Performance Goals:

Periodically review and revise the strategic plan through annual performance goals, objectives and performance measures to assure public awareness, and to guide individual and organizational efforts.

Objective — Provide Effective Information Technology Systems

Performance Goals:

- ◆ 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 government during emergencies.
- ◆ Ensure that the Commission's IT infrastructure is maintained according to the latest recommendations of the National Institute of Standards and Technology (NIST) with respect to the security of the agency's network. Move aggressively to a system of "paperless" filing and records management.

Objective — 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.
- ◆ Expand the clerkship program to assist the Commission’s judges in addressing the upsurge of new contest cases.
- ◆ Begin contracting for the services of retired administrative law judges to oversee negotiated settlements between MSHA and mine operators.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SELECTED WORKLOAD DATA

	2008 Actual	2009 Estimate	2010 Estimate
<u>Commission Review Activities</u>			
Cases pending beginning of year	16	103	79
New cases received	177	176	160
Total case workload	193	279	239
Cases decided	90	200	190
Cases pending end of year	103	79	49
 <u>Administrative Law Judge Determinations</u>			
Cases pending beginning of year	4,115	9,760	15,160
New cases received	8,961	9,000	9,600
Total case workload	13,076	18,760	24,760
Cases decided	3,316	3,600	5,391
Cases pending end of year	9,760	15,160	19,369

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

COMMISSION MEMBERS

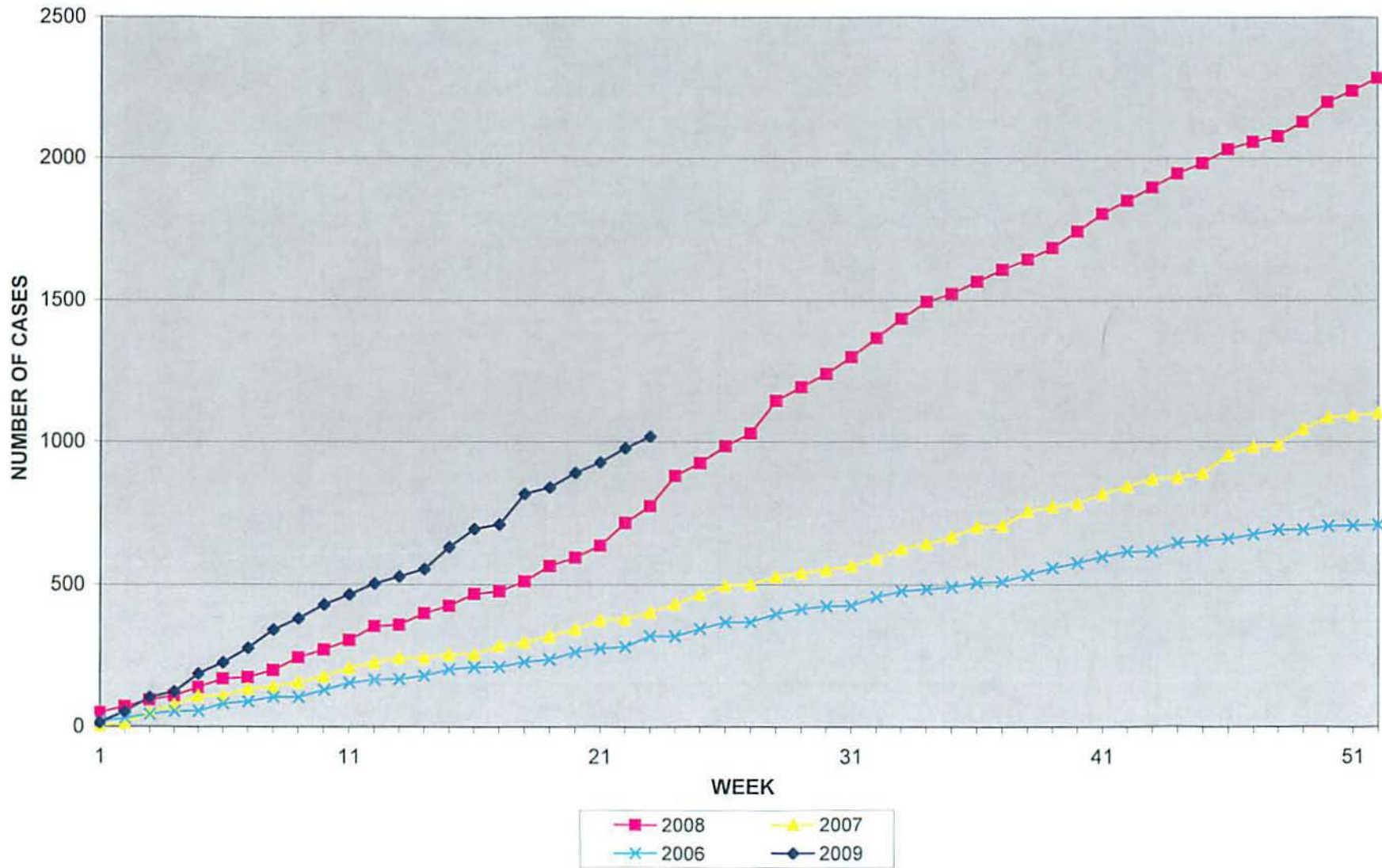
<u>NAME</u>	<u>TERM EXPIRATION</u>
Michael F. Duffy, Chairman	August 30, 2012
Mary Lu Jordan	August 30, 2014
Michael G. Young	August 30, 2014
Robert H. Cohen, Jr.	August 30, 2012
Vacancy	August 30, 2010

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

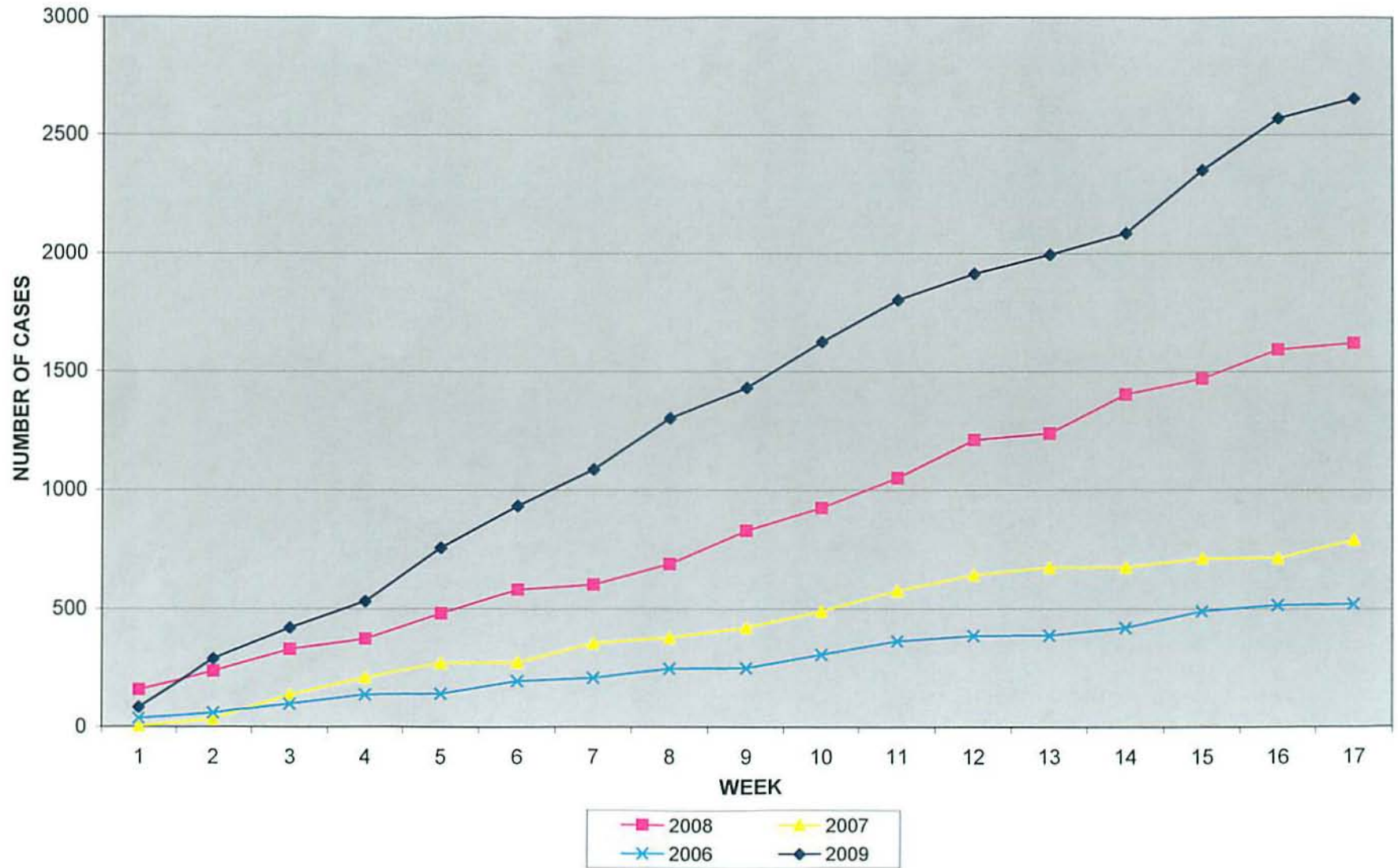
CONSULTANTS

The Commission employed no consultants in FY 2008 and has no plans to employ consultants in FY 2009 or FY 2010.

PENALTY CASES WEST OF MISSISSIPPI



PENALTY CASES



CONTEST CASES

