

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION OF APPROPRIATION ESTIMATES

FOR

COMMITTEE ON APPROPRIATIONS

FISCAL YEAR 2009

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

TABLE OF CONTENTS

FY 2009 BUDGET

Executive Summary 1

Organization Chart 3

Appropriation Language 4

Authorizing Legislation 5

Budget Authority and Staffing by Activity 6

Summary of Changes 7

Budget Authority by Object Class 8

Personnel Summary 9

Amounts Available for Obligation 10

Appropriations History 11

Staffing History 12

Congressional Directives 13

Narrative Justifications

 General Statement 14

 Activities:

 Commission Review 15

 Administrative Law Judge Determinations 19

Agency-wide Management Objectives 24

Selected Workload Data 26

Commission Members 27

Consultants 28

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. 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 civil penalties proposed by the Department of Labor's Mine Safety and Health Administration (MSHA) against mine operators. The Commission is responsible for addressing whether the alleged violations occurred as well as the 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 \$8,653,000 covering 50 FTE for FY 2009. The request includes \$214,600 to support 2 additional FTE and \$215,000 to support a base staff of 48 and to provide for an anticipated 2.9% pay increase for January 2009. 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.

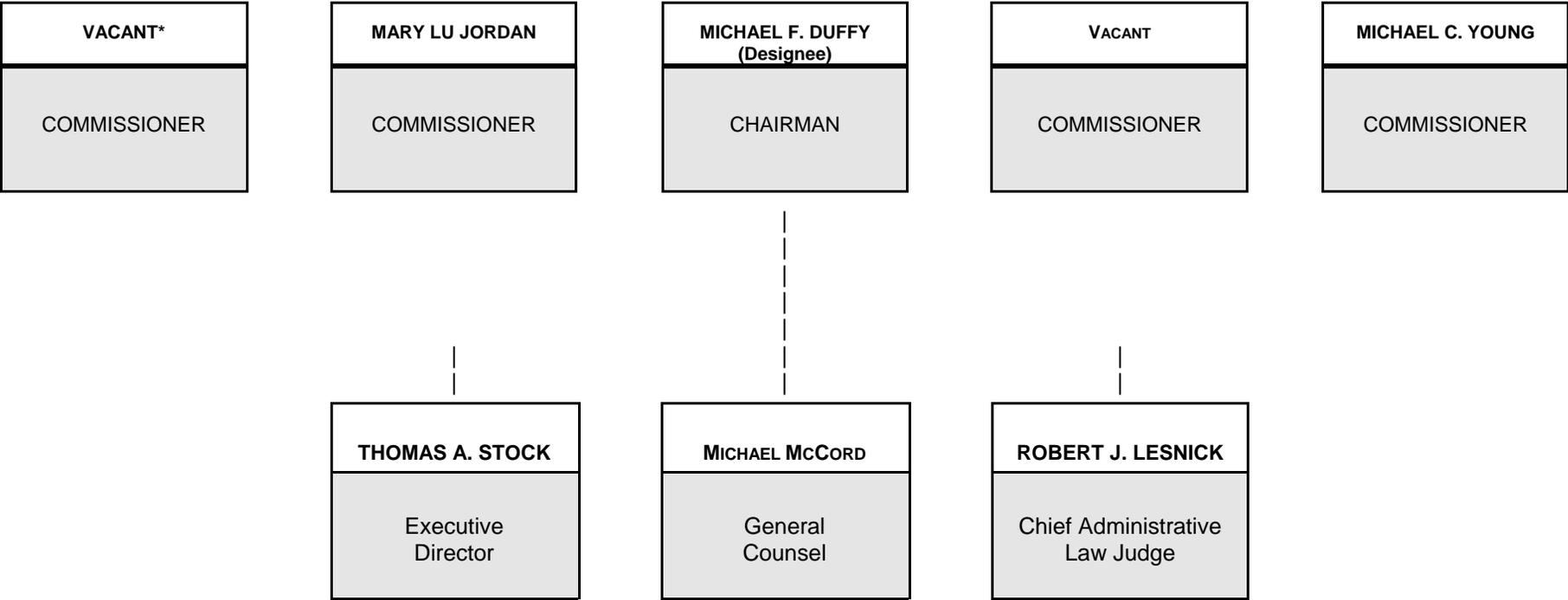
For FY 2008, new case intake is expected to rise to 6,000, including a small number of emergency response plan disputes which will require immediate attention. As a result, the FY 2008 end-of-year inventory of undecided cases is expected to increase to 7,015.

For FY 2009, the Commission anticipates new case filings to reach 8,000 per year. With the increased resources included in this budget, case dispositions should increase to 3,400, resulting in an end-of-year inventory of undecided cases at the FY 2009 projected level of 11,615.

At the appellate level, the workload is expected to remain consistent with 95 new cases anticipated for FY 2009, with dispositions of 90 resulting in an end-of-year inventory of 17 undecided cases.

In addition to conducting its appellate responsibilities, the Commission expects to promulgate procedural rules governing the utilization of settlement judges who will be hired to identify cases that can be resolved without a full blown trial proceeding. 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**



* ARLENE HOLEN (Designee)

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.), \$8,653,000.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

AUTHORIZING LEGISLATION

FY 2008

FY 2009

Authorizing Legislation
Containing Indefinite Authority

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

7,954,563

8,653,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

BUDGET AUTHORITY AND STAFFING BY ACTIVITY

	<u>FY 2007</u>		<u>FY 2008 Est.</u>		<u>FY 2009 Est.</u>		<u>Increase over FY 2008 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	4,651,695	27	4,696,000	27	4,919,400		+223,400
Administrative Law Judge Determinations	17	3,125,957	21	3,258,563	23	3,733,600	+2	+475,037
Total BA	44	7,777,652	48	7,954,563	50	8,653,000	+2	+698,437

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SUMMARY OF CHANGES

Budget Authority	FY 2008	FY 2009	Net Change
Appropriations	\$7,954,563	8,653,000	+698,437
Full-time Equivalent	48	50	+2

Explanation of Changes	FTE	Budget Authority
Increases		
	+2	618,437
Increased FTE	-	80,000
Maintain Base Staff		
Decreases		
Net Change	+2	+ 698,437

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

BUDGET AUTHORITY BY OBJECT CLASS
(in thousands of dollars)

	<u>Actual FY 2007</u>	<u>Estimate FY 2008</u>	<u>Estimate FY 2009</u>	Increase or Decrease over 2008 Est.
<u>Personnel Compensation</u>				
Full-time permanent	4,240	4,404	4,729	+325
Other than full-time permanent	<u>304</u>	<u>311</u>	<u>322</u>	<u>+11</u>
Total, personnel compensation	4,544	4,715	5,051	+336
Personnel benefits, civilian	991	1,031	1,173	+142
Benefits former personnel	10	-	-	-
Travel and transportation of persons	100	98	147	+49
Transportation of things	2	2	2	-
Rental Payments to GSA	1,248	1,248	1,290	+42
Communications, utilities and miscellaneous charges	117	112	115	+3
Printing and reproduction	35	34	28	-6
Other services	585	572	707	+135
Supplies and materials	80	78	80	+2
Equipment	<u>65</u>	<u>64</u>	<u>70</u>	<u>+6</u>
TOTAL	7,777	7,954	8,653	709

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

PERSONNEL SUMMARY

	2007 ACTUAL	2008 ESTIMATE	2009 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	9
SUBTOTAL	9	9	10
GS-15	4	6	6
GS-14	3	2	2
GS-13	2	2	2
GS-12	2	4	3
GS-11	1	7	9
GS-9	1	2	2
GS-8	8	7	7
GS-7	3	1	1
GS-6	1	1	1
SUBTOTAL	25	32	33
Total Permanent Full-time Positions	44	48	50
Unfilled positions end-of-year	5	—	—
Total, full-time permanent employment end-of-year	39	48	50
Full-time equivalent (FTE) usage	44	48	50

Average ES salary	\$138,008	\$141,044	\$154,200
Average AL level	2.89	2.89	2.95
Average AL salary	\$152,000	\$155,344	\$165,765
Average GS grade	10.92	10.92	10.85
Average GS salary	\$72,873	\$74,476	\$72,726

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

AMOUNTS AVAILABLE FOR OBLIGATION

	FY 2007		FY 2008		FY 2009	
	FTE	Amount	FTE	Amount	FTE	Amount
Appropriation, total estimated obligations	44	7,777,652	48	7,954,563	50	8,653,000

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	7,809,000	7,809,000	7,730,910 ¹⁴
2007	7,576,000	7,731,000	7,731,000	7,777,652 ¹⁵
2008	8,096,000	8,096,000	7,954,563	7,954,563 ¹⁶

- 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.
- ¹⁵ Reflects adjustments pursuant to 2007 continuing resolution, P.L. 110-5.
- ¹⁶ 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 Est.	50

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 2007 or FY 2008.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION

	2008 Estimate		2009 Request		Increase or Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount
Commission Review	27	4,696,000	27	4,919,400		+223,400
Administrative Law Judge Determinations	21	3,258,563	23	3,733,600	+2	+475,037
Total Budget Authority	48	7,954,563	50	8,653,000	+2	+698,437

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'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>2007</u>		<u>2008</u>		<u>2009</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	4,651,695	27	4,696,000	27	4,919,400	+2	+223,400

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.

2009 Budget Request:

The Commission is requesting a budget of \$4,919,400 and 27 FTE for its appellate review activities in FY 2009. This is an increase of \$223,400 over the amount estimated to be available for FY 2008. The request includes funding of a projected 2.9% pay increase in January 09, and other costs of Commission operations.

It is expected that 12 cases will be pending for review by the Commission at the beginning of FY 2009. A total of 95 new cases are anticipated for review by the Commission during FY 2009. Ninety dispositions are expected, resulting in an end-of-year inventory of 17 undecided cases.

The Commission's Budget includes the following objectives for its appellate activity in FY 2009:

Objective — Issue opinions in a timely manner.

Performance Goals for FY 2009:

- ◆ 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 2008 Activity:

The FY 2008 resource level for Commission Review Activity is expected to be \$4,696,000 with actual employment of 27 FTE. The Commission is expected to begin FY 2008 with an inventory of 12 undecided cases, and 86 new cases are anticipated for the year. Eighty-six cases are expected to be decided, resulting in a docket of 12 undecided cases at the end of the fiscal year.

Fiscal Year 2007 Activity:

The FY 2007 resource level for the Commission Review Activity was \$4,651,695 and 27 FTE. The Commission began FY 2007 with an inventory of 16 undecided cases and received 87 new cases during the year. Eighty-seven dispositions were made during FY 2007, resulting in 16 undecided cases remaining at the end of the fiscal year.

Of the 87 cases decided in FY 2007, 15 were substantive decisions, 70 were procedural orders, and 2 were denials of petitions for review. The average age of the 16 matters pending on the Commission's docket as of September 1, 2007 was 2.1 months, and the average age of the 15 substantive decisions issued in FY 2007 is expected to be 5.1 months.

During FY 2007, the Commission completed, with the January 18, 2007 publication of a final rule, the promulgation of regulations implementing the MINER Act, i.e., procedures for resolving disputes in connection with underground coal operators' emergency response plans. The rule making process began with the July 18, 2006 issuance of our interim rule upon which public comment was requested. Comments were received from the Department of Labor and representatives of operators and miners.

The Commission developed the following performance objectives associated with its FY 2007 budget. The objectives and accomplishments achieved during the year were:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2007:

- ◆ 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, 2007, 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, 2007, the average age of the substantive dispositions is expected to be 5.1 months. This low figure is largely due to the fact that seven related cases were all disposed of within one month. However, even if these cases were disregarded entirely, the average disposition time would be 8.8 months.

Objective 2 — MINER Act Rules

Performance Goals for FY 2007

- ◆ Complete the rulemaking by January 2007.

Accomplishments: This goal was met. The Commission published an interim rule on July 18, 2006, and after receipt of public comment, published a final rule on January 18, 2007.

PERFORMANCE MEASUREMENT MATRIX

COMMISSION REVIEW

	<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>FY 2008</u>	<u>FY 2009</u>
	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Goal</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	0	1	1	0	0	0	0	0	0	0
▲ Undecided cases over 18 months of age (inclusive)	2	2	1	3	0	1	0	0	0	0
Undecided cases over 12 months of age (inclusive)	3	7	6	4	0	1	0	0	0	0
▲ Cases briefed but unassigned	0	0	0	0	0	0	0	0	0	0
▲ Substantive disposition age	12.2	12.5	18.6	13.1	12.0	15.5	12.0	5.1	12.0	12.0

▲ Current performance goals or quality indicators

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

ADMINISTRATIVE LAW JUDGE DETERMINATIONS

	<u>2007</u>		<u>2008</u>		<u>2009</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	3,125,957	21	3,258,563	23	3,733,600	2	475,037

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.

2009 Budget Request:

The budget request contains \$3,733,600 and 23 FTE for the Commission’s trial activities of its administrative law judges in FY 2009.

The request includes an increase of \$475,037 for two additional personnel, and funding of a projected 2.9 percent pay increase in January 2009 and other costs of Commission operations.

The additional staff increase includes one administrative law judge and one law clerk. The additional judge is necessary in view of a marked increase in cases that are expected to go to hearing. The Commission believes that the request for a law clerk is an efficient and economical approach for assisting the judges in deciding the increased caseload on its trial docket. In addition, the Commission was granted authority to contract for retired ALJs to help with settlement cases. These allotments will not fully address the surge in new cases, but they would, at a reasonable cost, afford us some flexibility in meeting our responsibilities.

A total of 8,000 new cases are anticipated for FY 2009, with 3,400 dispositions being projected for the year. The end of year inventory of undecided cases is estimated to be 11,615.

The Commission believes that the number of new case filings will increase in FY 2009 as more operators elect to contest higher civil penalties proposed by MSHA and as MSHA increases its proposed assessments for continuing violations of the same standards and increases its utilization of its “pattern of significance and substantial violations” sanctions.

The Commission's FY 2009 budget includes the following performance objectives:

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 a decisional process that falls within the time frames in the Commission's procedural rules.
- ◆ Issue 90 percent of decisions within 180 days of receipt of post-hearing briefs. The hiring of 17 solicitors by the SOL will cause a substantial increase in hearings in 2008, resulting in overlapping briefing schedules and extending the time required to issue concurrent decisions.
- ◆ Issue more than 90 percent of settlement decisions within 60 days of receipt of settlement motions. In 2008, settlement decisions are expected to increase as the number of cases filed increases by 50%, requiring an additional 30 days for the issuance of settlement decisions.
- ◆ Decide 90 percent of cases within 15 months of assignment. The creation of a backlog by the end of 2008 of 7,000 cases will require an additional 180 days to be added to this timeframe.
- ◆ Decide all cases within an average of 365 days from receipt by the Commission. The creation of a backlog by the end of 2008 of 7,000 cases will require an additional 180 days to be added to this timeframe.

Fiscal Year 2008 Activity:

The FY 2008 resource level for the Administrative Law Judge Determination Activity is expected to be \$3,258,563 and 21 FTE.

The Commission began FY 2008 with an inventory of 3,856 undecided trial cases. A total of 4,500 new cases is anticipated for FY 2008, with 3,100 dispositions projected, leaving an end-of-year inventory of 5,250 cases.

The Commission's budget includes the following objectives for its trial activity in FY 2008:

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 case assignment averages that are less than the time frames in the Commission's procedural rules.
- ◆ Issue 90 percent of decisions within 90 days of receipt of the post-hearing briefs.
- ◆ Issue 95 percent of settlement decisions within 30 days of receipt of settlement motions.
- ◆ Decide 90 percent of cases within 270 days of assignment.
- ◆ Decide all cases within an average of 195 days from receipt by the Commission.

Fiscal Year 2007 Activity:

The FY 2007 funding level for the Administrative Law Judge Determinations activity was \$3,125,957, with actual employment of 17 FTE. As of October 1, 2006, the Commission's ALJs had an inventory of 2,779 with 4,115 new cases received during the year. Case dispositions for the year were 2,761, resulting in an end-of-year inventory of 4,115 undecided cases. The number of new trial cases received were 40 percent higher than FY 2005 and were received at a rate not experienced in the past 10 years. As a result, the inventory of undecided cases as of September 30, 2006 represents a workload of 15 months. The Commission Judges' disposition rate increased 20% in FY 2007 with 97% of these dispositions within 270 days. However, the increase volume of cases has affected the performance goals for FY 2007.

The Commission developed the following performance objectives associated with its FY 2007 budget. These objectives and accomplishments during the year were:

Objective — 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.

Accomplishments: The average time for cases to be assigned to an ALJ was 65 days, well within the goal of 71 days. Penalty cases were assigned within 89 days on average in FY 2007, due in part to the delays in receiving penalty assessments from DOL.

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

Accomplishments: This goal was not achieved in FY 2007 due to the steady increase in the caseloads of each of the Commission judges, combined with a large volume of cases requiring decisions within overlapping 90-day periods. The goal is measured in dockets rather than the number of hearings held and decisions issued. Multiple dockets are sometimes consolidated for hearing. For example, in FY 2007, two decisions which exceeded the 90 day goal accounted for 17 docketed cases, thereby skewing the results for this goal.

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

Accomplishments: Due to a 65% overall caseload increase since FY 2004, including a steady increase since FY 2006, this goal is not being met. Through August 31, 2007, the Commission has issued more settlements (1,261) than it did in FY 2006 through August 31, 2006 (1,213). The increased volume of settlements will result in 20% of settlement decisions being issued outside the 30-day goal.

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

Accomplishments: This goal exceeded the FY 2007 goal of 90%; 97% of the cases were decided within 270 days.

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

Accomplishments: This goal was exceeded in FY 2007. On average the Commission Judges disposed of the increased volume of cases in 128 days, substantially below the target of 195 days.

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

	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006		FY 2007		FY 2008
	Actual	Actual	Actual	Actual	Actual	Goal	Actual	Goal	Actual	Goal
OBJECTIVE 1: ISSUE OPINIONS ON A TIMELY MANNER										
▲ Average time (days) for assignment of penalty cases	69	80	80	81	73	<85	78	<85	89	<85
▲ Average time (days) for assignment of review cases	22	28	26	35	27	<30	24	<30	29	<30
Average time (days) for assignment of all cases	60	71	71	70	61	71	53	71	65	71
▲ Percentage of decisions issued within 90 days of post-hearing brief	92%	61%	88%	85%	96%	92%	88%	90%	69%	90%
▲ Percentage of settlement approvals issued within 30 days of settlement motion	98%	96%	93%	86%	90%	96%	96%	95%	80%	95%
Average time (days), case assignment to disposition	70	74	63	53	62	63	62	93	63	93
▲ Average time (days), case receipt to disposition	131	145	134	123	121	145	NA	195	128	195
▲ Percentage of cases decided within 270 days of assignment	97%	94%	98%	98%	97%	95%	98%	90%	97%	90%
Undecided cases over 270 days of age	48	25	83	1	18	0	5	0	71	0

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 2008 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.
- ◆ 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, in compliance with the NIST guidelines. Anti-virus scans are conducted daily on servers and individual workstations. Those security efforts will continue throughout fiscal years 2008 and 2009.

- ◆ The Commission's website, <http://www.fmshrc.gov> recorded 141,575 visits as of December 31, 2007. The website includes information about the Commission, its rules, guides and publications, strategic and performance plans, budget requests and justifications, 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 decisions through prompt posting on the Commission's website and can listen to audio recordings of Commission meetings and oral arguments.

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

	2007 Actual	2008 Estimate	2009 Estimate
<u>Commission Review Activities</u>			
Cases pending beginning of year	16	12	12
New cases received	87	86	95
Total case workload	103	98	107
Cases decided	87	86	90
Cases pending end of year	16	12	17
 <u>Administrative Law Judge Determinations</u>			
Cases pending beginning of year	2,779	4,115	7,015
New cases received	4,097	6,000	8,000
Total case workload	6,876	10,115	15,015
Cases decided	2,761	3,100	3,400
Cases pending end of year	4,115	7,015	11,615

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

COMMISSION MEMBERS

<u>NAME</u>	<u>TERM EXPIRATION</u>
Mary Lu Jordan	August 30, 2008
Michael G. Young	August 30, 2008

Michael F. Duffy, Designee	August 30, 2012
Arlene Holen, Designee	August 30, 2010
Robert F. Cohen, Jr., Designee	August 30, 2012

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CONSULTANTS

The Commission employed no consultants in FY 2007 and has no plans to employ consultants in FY 2008 or FY 2009.