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From: Stacey Demps-Barrett <sdemps-barrett@fmshrc.gov>
Cc: Tanya Whisnant <twhisnant@fmshrc.gov>; Linda Wiles <lwiles@fmshrc.gov>
Sent: Wed, Aug 30, 2017 2:33 pm
Subject: FOIA Request - Congressional Budget Justifications for 2000-2005 - FMSHRC
- OC

This email is in response to your FOIA request received in our office on August 21, 2017, in which you requested “the Congressional Budget Justifications for FMSHRC for each of the years FY 2000 through FY 2005.” After a search of our records, we have located the six documents responsive to your request. Therefore, attached are copies of the Budget Justification reports for the years 2000 to 2005.

As the cost to process this request is de minimis, there will be no charge to you.

Please note that as a requester, should you have a concern regarding the processing of your FOIA request, you have the right to seek the dispute resolution services of the Commission’s FOIA Public Liaison at FOIA-Liaison@fmshrc.gov.

Kindly acknowledge receipt of this email.

Sincerely,

Stacey Demps Barrett
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION OF APPROPRIATION ESTIMATES FOR COMMITTEE ON APPROPRIATIONS

FISCAL YEAR 2000

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 assessed 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 orders to close a mine, miners' charges of safety-related discrimination and miners' requests for compensation after having been 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. The Commission reviews decisions issued by its ALJs, rules on petitions for discretionary review, and may direct review on its own initiative of cases that may be contrary to law or policy or that present novel questions of policy. An ALJ's decision that is not directed for review becomes a final, non-precedential order of the Commission. The Commission's decisions are precedential, and many involve issues of first impression under the Mine Act. Appeals from the Commission's decisions are to the U.S. Courts of Appeals.

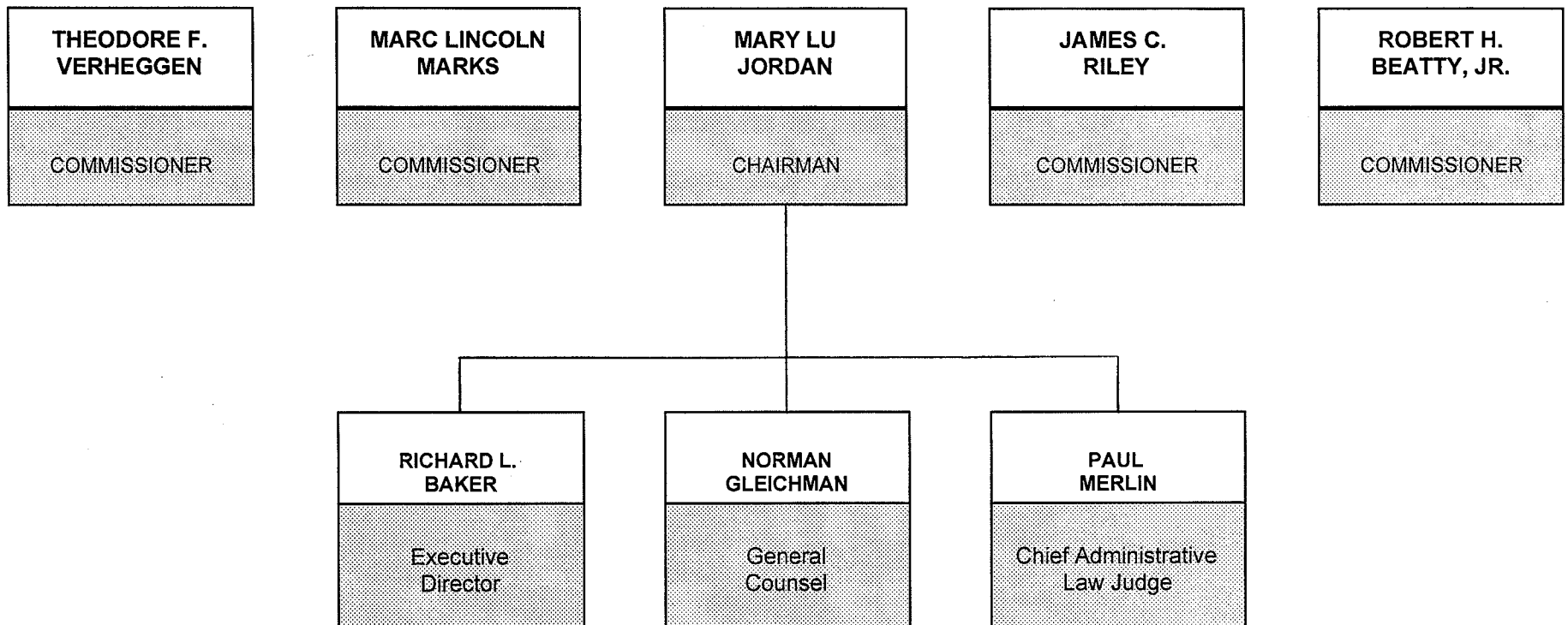
The Commission proposes to continue to reduce its inventory of undecided cases at both the trial and appellate levels during all three years covered by this budget submission. The large reduction in end-of-year inventories and high disposition of cases in FY 1999 is the result of the August 21, 1998 Court of Appeals decision in *Secretary of Labor v. Keystone Coal Mining Corp.* ("the Dust Cases"). Pending the court's decision, thousands of related cases at the trial level remained on stay. On November 9, 1998, the Secretary of Labor issued notices to vacate all pending cases under the master docket. As a result of the court's decision, the Commission disposed of 13 appellate cases and 3,865 trial cases during the first quarter of the fiscal year. As of January 31, 1999, the Commission has a trial docket of 1,585 undecided cases, having received 785 cases and decided 4,541 cases this fiscal year. In FY 1998 the Commission judges received 2,117 new cases and disposed of 1,804.

At the review level, the Commission has a current docket (as of January 31, 1999) of 27 cases, having received 14 cases and disposed of 30 cases so far this fiscal year. The average age of the 27 cases pending is 8.8 months. The Commission anticipates ending FY 1999 with 22 undecided cases on hand. In FY 2000 we anticipate receiving 55 new cases and deciding 63 matters, thus leaving only 14 cases undecided at the end of the year.

The budget request for FY 2000 totals \$6,159,000, an increase of \$99,000 over FY 1999. It contains funding for 51 FTE, a reduction of 3 FTE below the 1999 level.

Currently, the Commission has a full complement of five members. We anticipate having five members during FY 1999 and in FY 2000, although the terms of two Commissioners will expire on August 30, 2000.

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.), \$6,159,000.

Explanation of Language

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

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

AUTHORIZING LEGISLATION

	FY 1999 Current <u>Estimate</u>	FY 2000 <u>Request</u>
<u>Authorizing Legislation</u> <u>Containing Indefinite Authority</u>		
Federal Mine Safety and Health Amendments Act of 1977 (30 U.S.C. 823-824)	6,060,000	6,159,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

BUDGET AUTHORITY AND STAFFING BY ACTIVITY

	<u>1998</u>		<u>1999</u>		<u>2000</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	28	3,391,000	32	3,465,000	31	3,623,000	-1	+158,000
Administrative Law Judge Determinations	<u>19</u>	<u>2,669,000</u>	<u>22</u>	<u>2,595,000</u>	<u>20</u>	<u>2,536,000</u>	<u>-2</u>	<u>- 59,000</u>
Total	47	6,060,000	54	6,060,000	51	6,159,000	-3	+ 99,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SUMMARY OF CHANGES

FY 1999 Current Estimate	6,060,000
FY 2000 Request Appropriation	6,159,000
Change	+99,000

		1999 Current Estimate Base		Change From Base	
		FTE	Budget Authority	FTE	Budget Authority
INCREASES (Built-in)					
1.	Annualized cost of 1999 pay increase	—	—	—	+21,000
2.	January 2000 pay increase	—	—	—	+145,000
3.	Increase in other support costs	—	1,440,000	—	+14,000
4.	Increased cost of maintaining current staff	54	4,620,000	—	+57,000
DECREASE					
1.	Net staffing reductions associated with workload decreases and management changes			-3	-138,000
NET CHANGE		54	6,060,000	-3	+99,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

BUDGET AUTHORITY BY OBJECT CLASS

	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>Increase or Decrease</u>
<u>Personnel Compensation:</u>				
Full-time permanent	3,320	3,709	3,762	+53
Other than full-time permanent	81	105	124	+19
Special personnel service payments	57	50	30	-20
	<hr/>	<hr/>	<hr/>	<hr/>
Total, personnel compensation:	3,458	3,864	3,916	+52
Personnel benefits, civilian	691	756	789	+33
Travel and transportation of persons	68	100	100	—
Transportation of things	3	2	2	—
Rental payments to GSA	606	622	622	—
Communications, utilities and miscellaneous charges	86	102	107	+5
Printing and reproduction	31	35	35	—
Other services	477	471	480	+9
Supplies and materials	79	80	80	—
Equipment	69	28	28	—
	<hr/>	<hr/>	<hr/>	<hr/>
TOTAL	5,568	6,060	6,159	+99

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

PERSONNEL SUMMARY

	1998 ACTUAL	1999 ESTIMATE	2000 REQUEST
ACCOUNT: SALARIES & EXPENSES			
Executive Level III	1	1	1
Executive Level IV	4	4	4
Subtotal	5	5	5
ES-5	1	1	1
ES-3	1	1	1
Subtotal	2	2	2
AL-2	1	1	1
AL-3	11	10	9
Subtotal	12	11	10
GS-15	5	5	5
GS-14	4	4	4
GS-13	2	2	2
GS-12	—	2	2
GS-11	3	1	1
GS-10	1	1	1
GS-9	2	3	3
GS-8	4	8	8
GS-7	12	6	4
GS-6	1	—	—
GS-5	2	2	2
GS-4	1	1	1
Subtotal	37	35	33
Total Permanent Positions	56	53	50
Unfilled positions end-of-year	10	—	—
Total, full-time permanent employment end-of-year	46	53	50
Full-time equivalent (FTE) usage	47	54	51
<hr/>			
Average ES level	4.00	4.00	4.00
Average ES salary	\$121,198	\$123,357	\$128,785
Average AL level	2.92	2.91	2.90
Average AL salary	\$113,983	\$115,777	\$120,958
Average GS grade	9.57	9.97	10.15
Average GS salary	\$45,697	\$48,859	\$52,729

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

AMOUNTS AVAILABLE FOR OBLIGATION

	<u>1998</u>		<u>1999</u>		<u>2000</u>	
	FTE	Amount	FTE	Amount	FTE	Amount
Appropriation or Estimate, Total, Amounts Available for Obligation	57	6,060,000	54	6,060,000	51	6,159,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

APPROPRIATIONS HISTORY TABLE

Fiscal Year	Budget Estimate To Congress	House Allowance	Senate Allowance	Appropriation
1984	3,858,000	3,858,000	4,000,000	3,858,000
1985	3,837,000	3,837,000	3,837,000	3,837,000
Pay Supp.	36,000			
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			

¹ Reduction of \$164,000 pursuant to P.L. 99-177.

² Reduction of \$14,000 pursuant to Sec. 512 of P.L. 100-202.

³ Reduction of \$49,000 pursuant to Sec. 517 of P.L. 100-436.

⁴ Reduction of \$103,437 pursuant to Sec. 514(b) of P.L. 101-517
Reduction of \$54 pursuant to P.L. 99-177.

⁵ Reduction of \$46,000 pursuant to Sec. 511 of P.L. 102-394.

⁶ Reduction of \$11,000 pursuant to Sec. 2007 of P.L. 104-19.

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

⁸ Reduction of \$11,000 pursuant to Sec. 519 of P.L. 104-208

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

STAFFING HISTORY TABLE

<u>Fiscal Year</u>	<u>FTE</u>
1984	58
1985	52
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 Est.	54
2000 Est.	51

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CONGRESSIONAL DIRECTIVES

House Report 105-635 dated July 20, 1998 accompanying H.R. 4274 and Senate Report 105-300 dated September 8, 1998 accompanying S. 2440 contained no directives for the Federal Mine Safety and Health Review Commission.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION

	1999 Estimate		2000 Request		Increase or Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount
Commission Review	32	3,465,000	31	3,623,000	-1	+158,000
Administrative Law Judge Determinations	22	2,595,000	20	2,536,000	-2	- 59,000
Total Budget Authority	54	6,060,000	51	6,159,000	-3	+ 99,000

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 Amendments Act of 1977. It is not part of the Department of Labor nor its Mine Safety and Health Administration.

The Commission is charged with the responsibility of reviewing the enforcement activities of the Secretary of Labor and protecting miners against unlawful safety-related discrimination. 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 five 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>1998</u>		<u>1999</u>		<u>2000</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	28	3,391,000	32	3,465,000	31	3,623,000	-1	+158,000

Introduction:

The responsibility for the review of ALJs' 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 person 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. Many of the Commission's cases present issues of first impression under the Mine Act.

2000 Budget Request:

The budget request contains \$3,623,000 and 31 FTE for the Commission's appellate review activities for FY 2000. This is an increase of \$158,000. The additional \$158,000 requested for this activity is needed to fund the 4.4% salary increase projected for January 2000 and to maintain a staff of 31 FTE for this activity.

A total of 55 new cases is anticipated for review by the Commission during FY 2000 and 63 dispositions are expected, resulting in an end-of-year case inventory of only 14 undecided cases. This represents an anticipated reduction of 39 cases (74%) in the inventory of undecided cases that were on the docket as of September 30, 1997.

The Commission's FY 2000 GPRA Annual Performance Plan includes the following objectives for its appellate activity:

Objective 1 — Reduce appellate case backlog

Performance Goals for FY 2000:

- ◆ The Commission will have no undecided cases that are 18 months or older.
- ◆ Reduce to a minimum the number of cases in the inventory that are over 12 months of age.

With the funds and personnel requested in FY 2000, the Commission anticipates it will end the fiscal year with an inventory of 14 undecided cases.

Objective 2 — Issue opinions in a timely manner

Performance Goals for FY 2000:

- ◆ Retain few, if any, cases that are briefed but unassigned.
- ◆ Reduce the average age of substantive decisions by one month from the figures in the preceding fiscal year, or until the average age of substantive dispositions falls within a 9-12 month range.

In FY 1996, the Commission's average substantive decision age was 19.3 months. In FY 1997, the average was reduced to 17.9 months. The FY 1998 the average was reduced further to 17.0 months. Using this as a baseline, the Commission established a performance objective of a 1-month reduction for FY 1999 and a 1-month reduction for FY 2000. As a result, if the Commission meets its strategic objective for FY 1999, the average substantive decision age objective for FY 2000 will be 15.0 months.

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

Quality Indicators for FY 2000:

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

Fiscal Year 1999 Activity:

The Commission received an appropriation of \$3,465,000 and 32 FTE for its Commission Review activities in FY 1999. The Commission began FY 1999 with an inventory of 43 undecided cases and expects to receive 49 new cases during the year. Seventy dispositions including 13 dust certification cases are anticipated during this year. The Commission expects to reduce the undecided cases at the end of the fiscal year to 22, a 27% reduction in (non-dust) undecided cases during FY 1999.

Through January 31, 1999, the Commission has received 14 new cases. During this same period, it has issued 28 decisions and denied 2 petitions for review. The average age of the 27 matters pending on the Commission's docket as of January 31, 1999, was 8.8 months, and the average age of the 28 decided cases was 6.5 months.

The Commission's FY 1999 GPRA Annual Performance Plan includes the following objectives for its appellate activity:

Objective 1 — Reduce appellate case backlog

Performance Goals for FY 1999:

- ◆ The Commission will have decided all cases that are 18 months or older.
- ◆ Reduce to a minimum the number of cases in the inventory that are over 12 months of age.

Objective 2 — Issue opinions in a timely manner

Performance Goals for FY 1999:

- ◆ Retain few, if any, cases that are briefed but unassigned.
- ◆ Reduce the average age of substantive decisions by one month from the figures in preceding fiscal year, or until the average age of dispositions falls within a 9-12 month range.

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

Quality Indicators for FY 1999:

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

Fiscal Year 1998 Activity:

The Commission received an appropriation of \$3,391,000 and 32 FTE for its Commission Review activities in FY 1998. The Commission began FY 1998 with an inventory of 53 undecided cases. The Commission received 40 new cases and decided 50 cases. As a result, the Commission had 43 undecided cases on its docket at the end of the fiscal year, a reduction of 19% in its undecided case inventory.

In December 1997, the Commission's fifth member was appointed. In May 1998, that Commissioner was reappointed for a full-six year term expiring on August 30, 2004.

In setting the goals of its strategic plan, the Commission developed the following performance objectives associated with its FY 1998 budget. The objectives and accomplishments achieved during the year were:

Objective 1 — Reduce appellate case backlog

Performance Goals for FY 1998:

- ◆ The Commission will have decided all cases that are 24 months or older.

Accomplishments: During FY 1998, 5 undecided cases reached 24 months or older. As of September 30, 1998, 4 of those cases had been decided, leaving one case pending at the end of the year.

- ◆ Reduce by 50% from the FY 1997 figure the number of cases in the Commission's inventory that are between 18 and 23 months.

Accomplishments: 5 cases were pending at the end of FY 1997. As of September 30, 1998, only two cases were pending.

Objective 2 — Issue opinions in a timely manner

Performance Goals for FY 1998:

- ◆ Reduce by 50% from the FY 1996 figure the number of cases that are briefed but unassigned.

Accomplishments: There were 12 cases briefed but unassigned at the beginning of FY 1997. As of September 30, 1998, there were only 4 cases in that category.

- ◆ Reduce by 1.5 months from the FY 1997 figure the average age of substantive decisions issued.

Accomplishments: The FY 1998 objective was to reduce the average age of substantive decisions from 17.9 to 16.4 months. As of September 30, 1998, the average age of the substantive decisions was 17.0 months.

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

Quality Indicators for FY 1998:

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

Accomplishments: For fiscal year 1998 the Commission had an appeal rate of 26%, equal to the 26% rate for the FY 1993-97 period. The Commission affirmance rate for FY 1998 was 85% compared to a 79.6% affirmance rate for the FY 1987-97 period.

- ◆ Reduce by 1.5 months from the FY 1997 figure the average age of substantive decisions issued.

Accomplishments: The FY 1998 objective was to reduce the average age of substantive decisions from 17.9 to 16.4 months. As of September 30, 1998, the average age of the substantive decisions was 17.0 months.

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

Quality Indicators for FY 1998:

Accomplishments: For fiscal year 1998 the Commission had an appeal rate of 26%, equal to the 26% rate for the FY 1993-97 period. The Commission affirmance rate for FY 1998 was 85% compared to a 79.6% affirmance rate for the FY 1987-97 period.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

ADMINISTRATIVE LAW JUDGE DETERMINATIONS

	<u>1998</u>		<u>1999</u>		<u>2000</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	19	2,669,000	22	2,595,000	20	2,536,000	-2	-59,000

Introduction:

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

The agency maintains two offices of administrative law judges, in Falls Church, Virginia and Denver, Colorado. 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.

2000 Budget Request:

The Commission is requesting \$2,536,000, for the trial activities of its administrative law judges in FY 2000. This is a net reduction of \$59,000 and 2 FTE over the FY 1999 appropriation.

A reduction of 2 FTE is proposed for FY 2000. The \$111,000 funding derived from the FTE reduction includes \$43,000 to cover added costs in the Commission Review activity with the remaining \$68,000 needed for pay increases and support costs within the Administrative Law Judge determinations activity.

A total of 2,400 new cases is anticipated for FY 2000, with 2,500 dispositions projected, leaving an end-of-year inventory of 1,366 undecided cases.

The Commission's FY 2000 GPRA annual performance plan includes the following objectives for its trial activity:

Objective 1 — Target and dispose of cases that greatly exceed current average case processing time

Performance Goals for FY 2000:

- ◆ With few exceptions, decide all cases that have been assigned for more than 9 months.

Objective 2 — Reduce average case processing time

Performance Goals for FY 2000:

- ◆ Continue to assign cases to an ALJ within 72 hours of the issues being joined.
- ◆ With few exceptions, issue decisions within 90 days of receipt of post-hearing brief.
- ◆ With few exceptions, issue settlement decisions within 30 days of receipt of settlement motions.
- ◆ On average, decide cases within 6 months from assignment.

Objective 3 — Issue trial decisions based on sound factual and legal analysis

Quality Indicators for FY 2000:

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

Fiscal Year 1999 Activity:

The Commission received an appropriation of \$2,595,000 and 22 FTE for its Administrative Law Judge Determination activities in FY 1999.

The Commission began FY 1999 with an inventory of 5,341 undecided trial cases. A total of 2,300 new cases is anticipated for FY 1999, with 6,175 dispositions projected, leaving an end-of-year inventory of 1,478 cases. As of January 31, 1999, the Commission's ALJs had received 785 new cases and disposed of 4,474 cases.

On August 21, 1998, the U.S. Court of Appeals for the D.C. Circuit issued its opinion in the dust cases, upholding the Commission. On September 11, 1998, the Secretary of Labor advised the Commission of her intent to vacate all citations associated with the master docket. As a result, the Commission disposed all of the dust cases (3,865) during the first quarter of FY 1999.

The Commission's FY 1999 GPRA Annual Performance Plan includes the following objectives for its trial activity:

Objective 1 — Target and dispose of cases that greatly exceed current average case processing time.

Performance Goals for FY 1999:

- ◆ With few exceptions, decide all cases that have been assigned for more than 9 months.

Objective 2 — Reduce average case processing time

Performance Goals for FY 1999:

- ◆ Continue to assign cases to an ALJ within 72 hours of the issues being joined.
- ◆ With few exceptions, issue decisions within 90 days of receipt of post-hearing brief.
- ◆ With few exceptions, issue settlement decisions within 30 days of receipt of settlement motions.
- ◆ On average, decide cases within 6 months from assignment.

Objective 3 — Issue trial decisions based on sound factual and legal analysis

Quality Indicators for FY 1999:

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

Fiscal Year 1998 Activity:

The Commission received an appropriation of \$2,669,000 and 25 FTE for its Administrative Law Judge Determinations activities in FY 1998. As of October 1, 1997, The Commission's ALJs had an inventory of 5,028 cases and received 2,117 new cases during FY 1998. Case depositions totalled 1,804 leaving an end-of-year inventory of 5,341 cases.

In setting the goals for its strategic plan, the Commission developed the following performance objectives associated with its FY 1998 budget. These objectives and accomplishments during the year were:

Objective 1 — Target and dispose of cases that greatly exceed current average case processing time

Performance Goals for FY 1998:

- ◆ Decide all cases that have been assigned for more than 18 months.

Accomplishments: As of September 30, 1998, only 2 cases that had been assigned more than 18 months remained undecided.

- ◆ Using September 30, 1996 as a baseline, reduce by 75% the number of pending cases that have an age of between 9 and 17 months from assignment.

Accomplishments: As of September 30, 1998, 4 undecided cases that are between 9 and 18 months of age were pending. This represents an 89% reduction from the 37 cases that were pending in this age range as of September 30, 1996.

Objective 2 — Reduce average case processing time

Performance Goals for FY 1998:

- ◆ Continue to assign cases to an ALJ within 72 hours of initial pleadings being filed and disposition of all preliminary matters.

Accomplishments: Through September 30, 1998, at the trial level, penalty cases are being assigned in 68 days, well ahead of the 98-day objective and the timeframe specified in the Commission's rules. Review cases are being assigned in 21 days, less than the 33-day timeframe and assignment objective.

- ◆ Issue 95% of decisions involving hearings within 90 days of receipt of post-hearing brief.

Accomplishments: Through September 30, 1998, decisions in 92% of the cases involving hearings have been issued within 90 days of receipt of the post-hearing brief.

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

Accomplishments: Through September 30, 1998, settlement dispositions have been made within 30 days of receipt of the settlement motion in 99% of the settlement cases.

Objective 3 — Issue trial decisions based on sound factual and legal analysis

Quality Indicators for FY 1998:

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

Accomplishments: Since the beginning of FY 1998, the Commission has accumulated appeal and affirmance rates of its trial decisions. Through September 30, 1998, the trial appeal rate was 33% and the affirmance rate was 76%.

AGENCY-WIDE MANAGEMENT OBJECTIVES
FY 1998 - FY 2000

1. Audit of Financial Records

A. Financial Management

An audit of the Commission's FY 1997 financial records was completed during FY 1998. The audit, conducted by an independent certified public accounting firm, with oversight by the Inspector General of the Department of Labor, was conducted in accordance with the requirements of the Chief Financial Officers Act of 1990 and other appropriate regulations. The auditor's report indicated (1) that the Commission's balance sheet and related statements present fairly, in all material respects, and in conformity with accounting policies, the financial position of the Commission as of September 30, 1997; and (2) in the report on internal controls, no matters involving the internal control over financial reporting, compliance with laws and regulations, performance reporting and its operation were noted that were considered to be material weaknesses. The auditors did identify a number of discrepancies where improvements could be made. The Commission has reviewed these suggestions, made the appropriate adjustments where necessary and instructed additional review and procedural changes to assure continued application.

B. Accounting Support

The Commission has operated its own proprietary accounting system since FY 1985. Although improvements have been made to the system, including year 2000 compliance, major programming changes and improvements would have been needed to conform to the Government standard general ledger requirements. An alternative would have been to make a major expenditure to purchase a new "off the shelf accounting system." A third option, which the Commission has selected, was to franchise this activity. After considering a number of agencies, the Commission selected the Department of Treasury's Bureau of Public Debt, which began providing accounting services beginning with FY 1999 transactions. Commission staff will continue to process prior year transactions during FY 1999. The integration process will be completed by the end of the year with the Bureau of Public Debt providing all accounting services beginning in the year 2000.

2. Personnel Management

A. Position Management

The Commission will continue to evaluate its personnel and staffing needs, reflecting workload changes and staff development. The Commission ended FY 1998 with 48 employees, having already implemented its personnel staff

reductions of 3 FTE for FY 1999. For FY 2000 the Commission is requesting an FTE allocation of 51, a reduction of 3 FTE from the FY 1999 authorized level. The reduction consists of 2 FTE associated with the disposition of the Dust Cases, an ALJ, and a secretary. An additional FTE reduction is proposed to reflect the franchising of the Commission's accounting operations. The Commission had previously used contract personnel to perform library services. After reviewing the Commission's continuing librarian needs, it was determined that this function should be performed by permanent federal staff. As a result, the Commission added a professional librarian to its staff on FY 1999, utilizing an existing vacant position.

B. Personnel Support

For more than 10 years, the Commission has had an agreement with the Department of Agriculture for personnel servicing. After consideration of a number of alternatives, the Commission selected the Department of Treasury's Bureau of Public Debt to provide its personnel support beginning with FY 1999. This transfer will strengthen the Commission's personnel management program and provide more accurate and efficient personnel services. Payroll services will continue to be provided by the Department of Agriculture's National Finance Center.

3. Program Evaluation

During FY 2000 the Commission will review its strategic plan to assure that the measures it adopted fairly and accurately report accomplishments and measure achievement of its goals and objectives. In the Commission's strategic plan, many of the goals and objectives were repeated beyond FY 1999. With the experience gained during the FY 1997-1999 period we hope to improve performance and to gain greater efficiency than originally anticipated.

4. Information Technology

A. Year 2000 Modifications

The Commission determined that it did not have any programs that fall under the "mission critical" system definition. Nevertheless, we have taken appropriate steps to assure that all of the Commission's non-critical programs will be operational in the year 2000. In October 1998, the Commission's network contractor completed application compliance software testing on all network equipment and individual work stations for Y2K compliance. The hardware aspects of the network equipment and workstations had previously been checked and were found in compliance. As a result, the determination of the computer

hardware compliance phase of Y2K compliance has been completed.

Y2K compliance for the Commission's centralized case management system is currently in its final phases. All work on the central docket management program has been completed and the program successfully tested with the clock advanced beyond December 31, 1999. Y2K compliance for the subsystem covering the ALJs' individual dockets and a date exchange program will be achieved during the spring of 1999.

The Commission has an automated database of all Commission and ALJ decisions that have been published since its inception in 1977. The software used to research these decisions is not Y2K compliant. During FY 1999, the Commission will evaluate various Y2K compliant software alternatives to determine which software application is best suited for its legal research needs in FY 2000.

B. System Enhancements

The Commission continues to work on its computer programs to expand automation to new areas and to provide additional information. Automation of the ALJs' individual dockets and a data exchange program between the centralized docket and the individual ALJs' dockets has been delayed. The initial contractor failed to complete the required work for this program. As a result, a new contractor has been selected to simplify these programs and to rewrite them to achieve Y2K compliance in the same programming language as used in our centralized case management program. Testing of these programs is currently being conducted with the ALJs' individual docket system nearly implemented.

The Commission has also contracted to develop an automated program for its appellate activities. This program will be completed in FY 1999 and will provide management information on appellate cases similar to that available at the trial level.

C. Internet Website

Late in FY 1998 the Commission contracted with the Government Printing Office to develop and operate a Commission website. The website will include information about the Commission, its rules, guides and publications, strategic and performance plans, GILS records, a 4-year data base of Commission and ALJ published decisions, the Mine Act and Commission regulations, and a link to other related agencies and legal materials. The website should be operational by March 1999.

D. Computerized Transcription Analysis

The Commission is continuing the use of computerized transcription analysis at the appeal level but has not yet expanded the program to the ALJs. As a result of the need for more transcription uniformity, the Commission developed and provided court reporting companies with uniform specifications for transcripts of Commission hearings. As a result, expanded use of computerized transcripts for analysis is anticipated.

5. Commission Regulations

In addition to its adjudicative responsibilities, the Commission recently revised existing regulations and must revise and issue new regulations as a result of enacted legislative or Administration directives in the following areas:

(a) Freedom of Information Act — The Commission revised its FOIA regulations to reflect the new requirements of P.L. 104-231. Final FOIA regulations were published on October 24, 1997.

(b) Equal Access to Justice Act — The Commission issued proposed revisions to its EAJA regulations on December 19, 1996 and published new rules for public comment. The Commission received a number of public comments that were carefully considered. New EAJA regulations were published in final form on December 14, 1998.

(c) Privacy Act Regulations — The Commission's Privacy Act regulations have not been revised since they were first published in 1984, except to add the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requirements. During FY 1999 the Commission will initiate a review of these regulations.

(d) Alternative Dispute Resolution — Pursuant to the Alternative Dispute Resolution Act of 1996, the Commission has promulgated its ADR policy and may also adopt changes to its procedural rules to foster the use of ADR principles in formal agency adjudications.

(e) Rules of Procedure — The Commission published proposed changes to its Procedural Rules on May 7, 1998, for public comment. The Commission expects to publish final changes in these rules during FY 1999.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SELECTED WORKLOAD DATA

	1998 Actual	1999 Estimate	2000 Estimate
<u>Commission Review Activities</u>			
Cases pending beginning of year	53	43	22
New cases received	40	49	55
Total case workload	93	92	77
Cases decided	50	70	63
Cases pending end of year	43	22	14

Administrative Law Judge Determinations

Cases pending beginning of year	5,028	5,341	1,466
New cases received	2,117	2,300	2,400
Total case workload	7,145	7,641	3,866
Cases decided	1,804	6,175	2,500
Cases pending end of year	5,341	1,466	1,366

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

COMMISSION MEMBERS

<u>NAME</u>	<u>TERM EXPIRATION</u>
Mary Lu Jordan, Chairman	August 30, 2002
Robert H. Beatty, Jr.	August 30, 2004
Marc Lincoln Marks	August 30, 2000
James C. Riley	August 30, 2000
Theodore F. Verheggen	August 30, 2002

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CONSULTANTS

The Commission employed no consultants in FY 1998 and has no plans to employ consultants in FY 1999 or FY 2000.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION OF APPROPRIATION ESTIMATES FOR COMMITTEE ON APPROPRIATIONS

FISCAL YEAR 2001

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 assessed 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 orders to close a mine, 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 guaranteed, and 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.

The Commission proposes to continue to reduce its inventory of undecided cases at both the trial and appellate levels during all three years covered by this budget submission. The large reduction in end-of-year inventories and high disposition of cases in FY 1999 are the result of the August 21, 1998 Court of Appeals' decision in *Secretary of Labor v. Keystone Coal Mining Corp.* ("the Dust Cases"). Pending the court's decision, thousands of related cases at the trial level remained on stay. On November 9, 1998, the Secretary of Labor issued notices to vacate all pending cases under the master docket. As a result of the court's decision, the Commission disposed of 13 related appellate cases and 3,865 trial cases during the first quarter of FY 1999.

As of February 29, 2000, the Commission has a trial docket of 1,382 undecided cases, having received 790 cases and decided 924 cases so far this fiscal year. In FY 2001, we anticipate receiving 2,450 new cases and disposing of 2,550. This is a slight increase over the estimated 2,400 new cases and 2,500 dispositions projected for FY 2000. In FY 1999 the Commission ALJs received 2,335 cases and disposed of 6,160.

At the appellate level, the Commission has a current docket (as of February 29, 2000) of 30 cases, having received 27 cases and disposed of 19 cases so far this fiscal year. The average age of the 30 cases pending is 6.8 months. The Commission anticipates ending FY 2000 with 18

undecided cases on hand, based on our projected receipt of 54 new cases and disposition of 58 cases. In FY 2001 we anticipate receiving 59 new cases and deciding 66 matters, thus leaving only 11 cases undecided at the end of the year. In FY 1999 the Commission reduced its inventory of undecided cases from 43 to 22, having received 52 new cases and disposed of 73 matters, including 13 dust cases that had been on stay.

The Commission continues to find its performance goals challenging. Although we continue to improve in our decisional process, some performance objectives have not yet been achieved.

Of the 924 trial level cases disposed of as of February 29, 2000, Commission judges have decided all but 17 of the cases in less than 9 months. Decision age averaged 67 days, with decision after hearing averaging 224 days and settlement being completed on average in 70 days. Decisions in 97 percent of the 674 settlement dispositions were made within 30 days of receipt of the settlement motion. Ninety-two percent of cases in which a hearing was held were decided within 90 days of the post-hearing brief.

In FY 1999, Commission judges decided 2,295 non-dust cases. Ninety-three percent of these cases were decided within 6 months of assignment with only 63 cases exceeding 9 months. Ninety-seven percent of the 1,561 settlement dispositions were decided within 30 days of receipt of the settlement motion and 83 percent of the 144 decisions involving evidentiary hearings were decided within the 90 days of the post-hearing briefing. Only 24 cases exceeded the 90-day time frame.

The Commission's February 29, 2000 inventory of undecided cases averaged 6.8 months. Of the 30 undecided cases, 3 are more than 18 months old and 4 are more than 12 but less than 18 months of age. Two cases were briefed but unassigned as of that date. The average age of substantive decisions has dropped to 14.2 months based on the eight decisions issued through February 29, 2000.

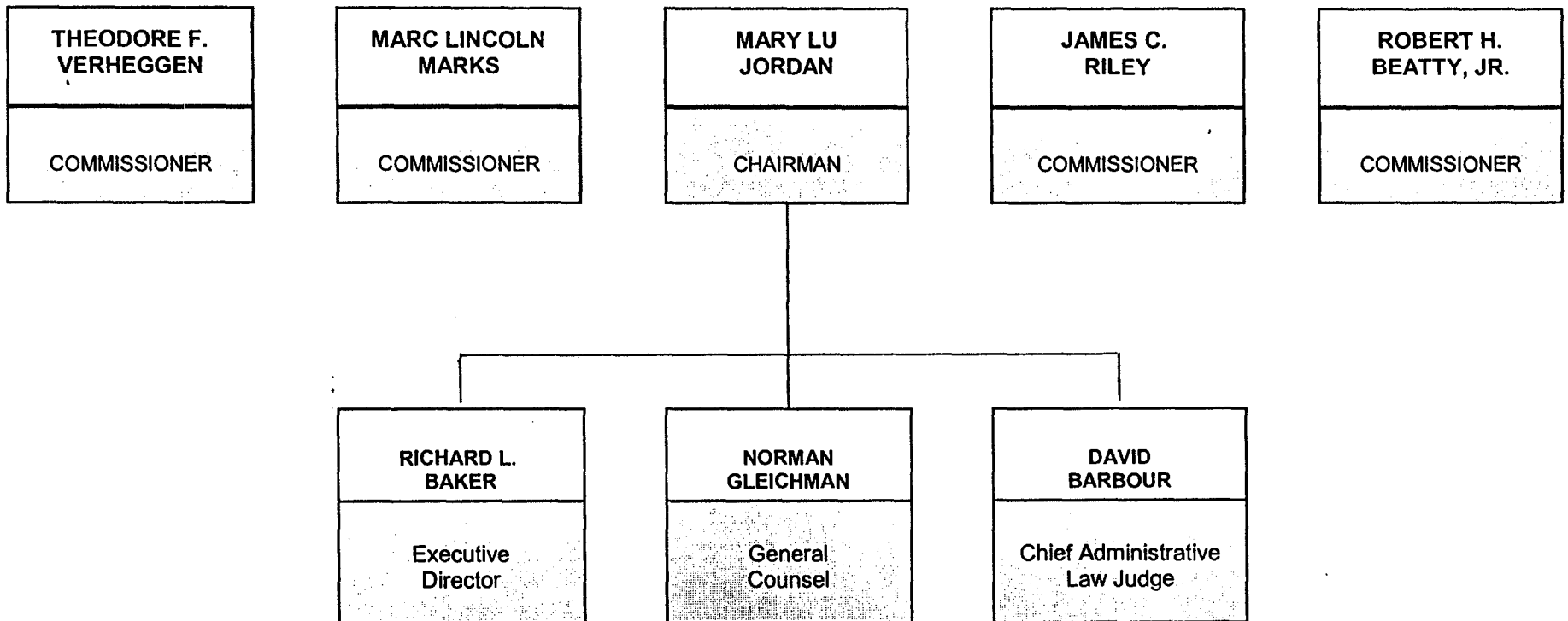
At the appellate level, FY 1999 reflected continued improvement over FY 1998 in meeting the performance objectives. Undecided cases over 18 months of age were reduced from 3 to 1, and cases between the age of 12 and 18 months were reduced from 9 to 5. Briefed but unassigned cases were reduced from 4 to 3, and the average age of substantive dispositions reflected continued improvement, falling from 17 months in FY 1998 to 16.4 months by the end of FY 1999.

The Commission has been successful in achieving its management objectives during the past year. We have transferred our personnel support activities from the Department of Agriculture to the Bureau of Public Debt (BPD). Our accounting and disbursement documents are now being processed by BPD. We averted any Y2K issues, and our website, hosted by the Government Printing Office, has been operational since April 17, 1999. We have upgraded and strengthened our information technology and increased security for the new millennium. The additional equipment funds in the budget will allow us to begin replacing our aging computers.

The budget request for FY 2001 totals \$6,320,000, an increase of \$184,000 over FY 2000. The budget contains funding for 50 FTE, a reduction of 1 FTE below the FY 2000 level.

Currently, the Commission has a full complement of five members. We anticipate having five members during FY 2000 and in FY 2001, although the terms of two Commissioners will expire on August 30, 2000.

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.), \$6,320,000.

Explanation of Language

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

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

AUTHORIZING LEGISLATION

	FY 2000 <u>Appropriation</u>	FY 2001 <u>Request</u>
<u>Authorizing Legislation</u> <u>Containing Indefinite Authority</u>		
Federal Mine Safety and Health Amendments Act of 1977 (30 U.S.C. 823-824)	6,136,000	6,320,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

BUDGET AUTHORITY AND STAFFING BY ACTIVITY

	<u>1999</u>		<u>2000</u>		<u>2001</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	26	3,465,000	31	3,600,000	30	3,701,000	-1	+101,000
Administrative Law Judge Determinations	<u>19</u>	<u>2,595,000</u>	<u>20</u>	<u>2,536,000</u>	<u>20</u>	<u>2,619,000</u>	=	+ <u>83,000</u>
Total	45	6,060,000	51	6,136,000	50	6,320,000	-1	+ 184,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SUMMARY OF CHANGES

	<u>FTE</u>	<u>Budget Authority</u>
FY 2000 Current Estimate	51	6,136,000
FY 2001 Request Appropriation	50	6,320,000
Change	-1	+184,000

	Change From Base	
	FTE	Budget Authority
INCREASES		
1. Pay adjustments	—	+187,000
2. Increase in other support costs	—	+12,000
3. GSA rental costs	—	+7,000
4. Computer equipment replacement	—	+37,000
DECREASE		
1. Staffing reduction — Office of General Counsel	-1	-40,000
2. One less day of pay		-19,000
NET CHANGE	<u>-1</u>	<u>+184,000</u>

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

BUDGET AUTHORITY BY OBJECT CLASS

	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>Increase or Decrease</u>
<u>Personnel Compensation:</u>				
Full-time permanent	3,213	3,771	3,875	+104
Other than full-time permanent	<u>100</u>	<u>125</u>	<u>130</u>	<u>+5</u>
Total, personnel compensation:	3,313	3,896	4,005	+109
 Personnel benefits, civilian	 717	 786	 805	 +19
Travel and transportation of persons	88	100	100	—
Transportation of things	13	2	2	—
Rental payments to GSA	622	622	629	+7
Communications, utilities and miscellaneous charges	93	107	109	+2
Printing and reproduction	31	35	35	—
Other services	570	480	490	+10
Supplies and materials	56	80	80	—
Equipment	163	28	65	+37
 TOTAL	 <u>5,666</u>	 <u>6,136</u>	 <u>6,320</u>	 <u>+184</u>

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

PERSONNEL SUMMARY

	1999 ACTUAL	2000 ESTIMATE	2001 REQUEST
ACCOUNT: SALARIES & EXPENSES			
Executive Level III	1	1	1
Executive Level IV	4	4	4
SUBTOTAL	5	5	5
ES-5	1	1	1
ES-4	—	1	1
ES-3	1	—	—
SUBTOTAL	2	2	2
AL-2	1	1	1
AL-3	10	9	9
SUBTOTAL	11	10	10
GS-15	5	5	5
GS-14	4	4	4
GS-13	2	3	4
GS-12	2	2	1
GS-11	2	1	1
GS-10	1	1	1
GS-9	2	3	3
GS-8	8	9	9
GS-7	6	2	1
GS-5	1	2	2
GS-4	2	1	1
SUBTOTAL	35	33	32
Total Permanent Full-time Positions	53	50	49
Unfilled positions end-of-year	9	1	—
Total, full-time permanent employment end-of-year	44	49	49
Full-time equivalent (FTE) usage	45	51	50

Average ES level	4.00	4.50	4.50
Average ES salary	\$123,357	\$130,200	\$135,017
Average AL level	2.91	2.90	2.90
Average AL salary	\$112,874	\$119,608	\$124,735
Average GS grade	10.00	10.36	10.50
Average GS salary	\$49,625	\$54,050	\$57,922

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

AMOUNTS AVAILABLE FOR OBLIGATION

	<u>1999</u>		<u>2000</u>		<u>2001</u>	
	FTE	Amount	FTE	Amount	FTE	Amount
Appropriation or Estimate, Total, Amounts Available for Obligation	45	6,060,000	51	6,136,000	50	6,320,000

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>
1984	3,858,000	3,858,000	4,000,000	3,858,000
1985	3,837,000	3,837,000	3,837,000	3,837,000
Pay Supp.	36,000			
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			

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.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

STAFFING HISTORY TABLE

<u>Fiscal Year</u>	<u>FTE</u>
1984	58
1985	52
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 Est.	51
2001 Est.	50

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CONGRESSIONAL DIRECTIVES

House Report 106-370 dated September 30, 1999, accompanying H.R. 3037 and Senate Report 106-166 dated September 28, 1999 accompanying S. 1650 contained no directives for the Federal Mine Safety and Health Review Commission.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION

	2000 Estimate		2001 Request		Increase or Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount
Commission Review	31	3,600,000	30	3,701,000	-1	+101,000
Administrative Law Judge Determinations	20	2,536,000	20	2,619,000	—	+ 83,000
Total Budget Authority	51	6,136,000	50	6,320,000	-1	+ 184,000

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 Amendments Act of 1977. It is not part of the Department of Labor nor its Mine Safety and Health Administration.

The Commission is charged with the responsibility of reviewing the enforcement activities of the Secretary of Labor and protecting miners against unlawful safety-related discrimination. 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 five 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>1999</u>		<u>2000</u>		<u>2001</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	3,465,000	31	3,600,000	30	3,701,000	-1	+101,000

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. 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. Many of the Commission's cases present issues of first impression under the Mine Act.

2001 Budget Request:

The budget request contains \$3,701,000 and 30 FTE for the Commission's appellate review activities for FY 2001. This is an increase of \$101,000. The increase requested for this activity is needed primarily to fund the annualization of FY 2000 pay increase and the 3 percent salary increase projected for January 2001. Also included in the increase are \$17,000 for non-salary cost increases and \$26,000 for computer replacements.

A total of 59 new cases are anticipated for review by the Commission during FY 2001 and 66 dispositions are expected, resulting in a projected end-of-year case inventory of only 11 undecided cases. This represents an anticipated reduction of 32 cases (74 percent) in the inventory of undecided cases that were on the docket as of September 30, 1998.

Fiscal Year 2001 Activity:

As a result of its accomplishments in reducing its appellate case backlog, the Commission has revised its performance objectives and eliminated the objective “reduce appellate case backlog.” At the beginning of FY 1997, the first year of its Strategic Plan and Annual Performance Plan, the Commission had a total of 63 undecided cases. With only 22 undecided cases as of the end of FY 1999 and additional reductions projected in FY 2000 and FY 2001, the Commission believes it has successfully eliminated its backlog of undecided cases.

The Commission’s FY 2001 GPRA Annual Performance Plan includes the following revised objectives for its appellate activity:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2001:

- ◆ All Commission cases will be assigned when briefing is completed.
- ◆ The Commission will have decided all cases that are 18 months or older
- ◆ There will be no more than 2 undecided cases that are over 12 months of age
- ◆ The average age of substantive decisions will be decreased by one month from the preceding fiscal year to an average of 14.4 months.

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

Quality Indicators for FY 2001:

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

Fiscal Year 2000 Activity:

The Commission received an appropriation of \$3,600,000 and 31 FTE for its Commission Review activities in FY 2000. The Commission began FY 2000 with an inventory of 22 undecided cases and expects to receive 54 new cases during the year. Fifty eight dispositions are anticipated during this year. The Commission expects to reduce the undecided cases at the end of the fiscal year to 18.

Through February 29, 2000, the Commission has received 27 new cases. During this same period, it has issued 18 decisions and denied 1 petition for review. The average age of the 30 matters pending on the Commission’s docket as of February 29, 2000, was 6.8 months, and the average age of the 8 substantive decisions was 14.2 months.

The term appointment of two of the Commission's five members will expire on August 30, 2000.

The Commission's FY 2001 GPRA Annual Performance Plan includes the following revised objectives for its appellate activity in FY 2000:

Objective 1 — Issue opinions in a timely manner.

Performance Goals for FY 2000:

- ◆ All Commission cases will be assigned when briefing is completed.
- ◆ The Commission will have no undecided cases that are 18 months or older
- ◆ There will be no more than 4 undecided cases that are over 12 months of age
- ◆ The average age of substantive decisions will be decreased by one month from the preceding fiscal year to an average of 15.4 months.

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

Quality Indicators for FY 2000:

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

Fiscal Year 1999 Activity:

The Commission received an appropriation of \$3,465,000 and employed 27 FTE in its Commission Review activities in FY 1999. The Commission began FY 1999 with an inventory of 43 undecided cases. The Commission received 52 new cases and decided 73 cases. As a result, the Commission had 22 undecided cases on its docket at the end of the fiscal year, a reduction of 49 percent in its undecided case inventory.

In setting the goals of its Strategic Plan, the Commission developed the following performance objectives associated with its FY 1999 budget. The objectives and accomplishments achieved during the year were:

Objective 1 — Reduce appellate case backlog

Performance Goals for FY 1999:

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

Accomplishments: During FY 1999, 12 undecided cases reached 18 months or older. As of September 30, 1999, 11 of those cases had been decided, leaving only one case pending at the end of the year.

- ◆ Reduce to a minimum the number of cases in the inventory that are over 12 months of age.

Accomplishments: Twelve cases over 12 months of age were pending at the end of FY 1998. By the end of FY 1999, there were six cases, a 50 percent reduction.

Objective 2 — Issue opinions in a timely manner

Performance Goals for FY 1999:

- ◆ Retain few, if any, cases that are briefed but unassigned.

Accomplishments: There were four cases briefed but unassigned at the end of FY 1998. By the end of FY 1999, there were only three cases in that category.

- ◆ Reduce by 1.0 month from the FY 1998 figure the average age of substantive decisions issued.

Accomplishments: The FY 1999 objective was to reduce the average age of substantive decisions from 17 to 16 months. As of September 30, 1999, the average age of the substantive decisions was 16.4 months.

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

Quality Indicators for FY 1999:

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

Accomplishments: For fiscal year 1999 the Commission had an appeal rate of 30 percent, slightly above the 25 percent rate for the FY 1993-98 period. The Commission affirmance rate for FY 1999 based on only 3 court decisions was 50 percent compared to an 81 percent affirmance rate for the FY 1989-98 period.

PERFORMANCE MEASUREMENT MATRIX

COMMISSION REVIEW

	FY 1996	FY 1997		FY 1998		FY 1999		FY 2000	FY 2001
	Base	Goal	Actual	Goal	Actual	Goal	Actual	Goal	Goal
OBJECTIVE: Issue opinions in a timely manner									
Undecided cases over 24 months of age	2	0	1	0	1	0	1	0	0
Undecided cases over 18 months of age (inclusive)	7	—	6	3	3	0	1	0	0
Undecided cases over 12 months of age (inclusive)	25	—	12	—	12	—	6	4	2
Cases Briefed but Unassigned	12	9	9	6	4	—	3	0	0
Substantive Disposition Age	19.3	17.8	17.9	16.4	17.0	16.0	16.4	15.4	14.4
OBJECTIVE: Issue well reasoned Commission opinions providing clear legal precedent and thoughtful analysis of issues									
Appeal rate		26%*	24%	25%*	26%	28%*	30%		
Affirmance rate		80%*	72%	81%*	85%	81%*	50%		

* These percentages are historical averages rather than goals. The appeal rates are averages from FY 1993 and succeeding years and the affirmance rates are averages of the preceding 10 years.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

ADMINISTRATIVE LAW JUDGE DETERMINATIONS

	<u>1999</u>		<u>2000</u>		<u>2001</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	18	2,595,000	20	2,536,000	20	2,619,000	—	+83,000

Introduction:

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

The agency maintains two offices of administrative law judges, in Falls Church, Virginia and Denver, Colorado. 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.

2001 Budget Request:

The Commission is requesting \$2,619,000, for the trial activities of its administrative law judges in FY 2001. This is an increase of \$83,000 over the FY 2000 appropriation. The additional \$83,000 requested for this activity is needed primarily to fund the annualization of the current year pay increase and to fund the 3.7 percent salary increase projected for January 2001. Also included is \$13,000 for computer equipment and other support costs.

A total of 2,450 new cases is anticipated for FY 2001, with 2,550 dispositions projected, leaving an end-of-year inventory of 1,316 undecided cases.

The Commission's FY 2001 GPRA Annual Performance Plan includes the following objectives for its trial activity:

Objective 1 — Reduce average case processing time

Performance Goals for FY 2001:

- ◆ Manage the case assignment process to assure assignment averages are less than the time frames in the Commission's procedural rules.

Objective 2 — Issue opinions in a timely manner

Performance Goals for FY 2001:

- ◆ Issue 93 percent of decisions within 90 days of receipt of post-hearing brief.
- ◆ Issue 97 percent of settlement decisions within 30 days of receipt of settlement motions.
- ◆ Decide 98 percent of cases within 9 months of assignment.
- ◆ On average, decide cases within 75 days from assignment.

Objective 3 — Issue trial decisions based on sound factual and legal analysis

Quality Indicators for FY 2001:

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

Fiscal Year 2000 Activity:

The Commission received an appropriation of \$2,536,000 and 20 FTE for its Administrative Law Judge Determination activities in FY 2000.

The Commission began FY 2000 with an inventory of 1,516 undecided trial cases. A total of 2,400 new cases is anticipated for FY 2000, with 2,500 dispositions projected, leaving an end-of-year inventory of 1,416 cases. As of February 29, 2000, the Commission's ALJs had received 790 new cases and disposed of 924 cases.

The Commission's FY 2001 GPRA Annual Performance Plan includes the following revised objectives for its trial activity in FY 2000:

Objective 1 — Reduce average case processing time

Performance Goals for FY 2000:

- ◆ Manage the case assignment process to assure assignment averages are less than the time frames in the Commission's procedural rules.

Objective 2 — Issue opinions in a timely manner

Performance Goals for FY 2000

- ◆ Issue 92 percent of decisions within 90 days of receipt of receipt of the post-hearing brief.
- ◆ Issue 97 percent of settlement decisions within 30 days of receipt of settlement motions.
- ◆ Decide 98 percent of cases within 9 month of assignment.
- ◆ On average, decide cases within 75 days from assignment.

Objective 3 — Issue trial decisions based on sound factual and legal analysis

Quality Indicators for FY 2000:

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

Fiscal Year 1999 Activity:

The Commission received an appropriation of \$2,595,000 and employed 18 FTE in its Administrative Law Judge Determinations activities in FY 1999. As of October 1, 1998, the Commission's ALJs had an inventory of 5,341 cases and received 2,335 new cases during FY 1999. Case depositions totaled 6,160 leaving an end-of-year inventory of 1,516 cases.

The large number of dispositions and inventory changes reflects the final disposition of the respirable dust cases. The U.S. Court of Appeals for the D.C. Circuit issued its opinion on August 21, 1998 upholding the Commission. The Secretary of Labor subsequently advised the Commission on September 11, 1998 of her intent to vacate all untried citations associated with this matter. As a result, the Commission disposed of all dust cases (3,865) during the first quarter of FY 1999.

In setting the goals for its strategic plan, the Commission developed the following performance objectives associated with its FY 1999 budget. These objectives and accomplishments during the year were:

Objective 1 — Target and dispose of cases that greatly exceed current average case processing time

Performance Goals for FY 1999:

- ◆ With few exceptions, decide all cases that have been assigned for more than 9 months.
Accomplishments: During FY 1999, there were 76 undecided cases that had been assigned more than 9 months. Sixty-three of those cases have been decided leaving only 13 cases at the end of the fiscal year.

Objective 2 — Reduce average case processing time

Performance Goals for FY 1999:

- ◆ Continue to assign cases to an ALJ within 72 hours of initial pleadings being filed and disposition of all preliminary matters.

Accomplishments: Through September 30, 1999, at the trial level, penalty cases were assigned in 70 days, well ahead of the 98-day goal and the timeframe specified in the Commission's rules. Review cases were assigned in 25 days, less than the 33-day timeframe and assignment goal.

- ◆ With few exceptions, issue decisions involving hearings within 90 days of receipt of post-hearing brief.

Accomplishments: Through September 30, 1999, decisions in 83 percent of the cases involving hearings were issued within 90 days of receipt of the post-hearing brief. Twenty-four cases were not decided within the 90-day time frame. Thirteen of these cases involved a judge's scheduling anomaly, where hearings on a number of complex cases involving multiple dockets and respondents, individual liability, discrimination, and fatal injury were completed during the same period.

- ◆ With few exceptions, issue settlement dispositions within 30 days of receipt of settlement motion.

Accomplishments: Through September 30, 1999, settlement dispositions were made within 30 days of receipt of the settlement motion in 97 percent of the settlement cases.

- ◆ On average, decide cases within 6 months of assignment.

Accomplishments: Through September 30, 1999, the average time from case assignment to disposition for cases involving hearing was 220 days. For

settlement cases, the average time was 65 days. As a result of the large number of settlements and other dispositions not requiring hearing, the average disposition time for all cases was 62 days.

Objective 3 — Issue trial decisions based on sound factual and legal analysis

Quality Indicators for FY 1999:

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

Accomplishments: Since the beginning of FY 1998, the Commission has accumulated appeal and affirmance rates of its trial decisions. Through FY 1999, the trial appeal rate was 31 percent, slightly less than the 33 percent in FY 1998. The affirmance rate was 58 percent, down from 76 percent in FY 1998.

PERFORMANCE MEASUREMENT MATRIX

OFFICE OF ADMINISTRATIVE LAW JUDGES

	FY 1996	FY 1997		FY 1998		FY 1999		FY 2000	FY 2001
	Base	Goal	Actual	Goal	Actual	Goal	Actual	Goal	Goal
OBJECTIVE 1: REDUCE AVERAGE CASE PROCESSING TIME									
Assignment of Penalty Cases (days)	—	98	85	98	68	98	70	85	85
Assignment of Review Cases (days)	—	33	40	33	21	33	25	30	30
Average (days)	82	—	70	—	60	—	64	—	—
OBJECTIVE 2: ISSUE OPINIONS IN A TIMELY MANNER									
Decisions issued within 90 days of post-hearing brief	81%	90%	97%	95%	92%	Few exceptions	83%	92	93
Settlement issued within 30 days of settlement motion	87%	90%	93%	95%	99%	Few exceptions	97%	97	97
Case assignment to disposition (days)	80	—	80	—	66	180 days	62	75	75
Cases decided within 9 months of assignment	—	—	93%	—	96%	—	97%	98%	98%
Undecided cases over 18 months of age	8	4	0	0	2	0	1	0	0
Undecided cases between 9 and 17 months	37	28	14	9	4	0	12	0	0
OBJECTIVE 3: ISSUE TRIAL DECISIONS ON SOUND FACTUAL AND LEGAL ANALYSIS									
Appeal Rate	—	—	—	—	33%	—	31%	—	—
Affirmance Rate	—	—	—	—	76%	—	58%	—	—

AGENCY-WIDE MANAGEMENT OBJECTIVES
FY 1999 - FY 2001

1. Financial Management

During FY 1999 the Commission completed the "phase out" of its own proprietary accounting system, which it had operated since 1985. All accounting services including prior year's activities are now being provided under an inter-agency agreement with the Department of Treasury's Bureau of Public Debt (BPD). The Commission intends to continue its 5-year audit cycle, with the next audit reviewing FY 2002 financial records.

2. Personnel Management

The Commission will continue to evaluate its personnel and staffing needs, reflecting workload changes and staff development. The Commission ended FY 1999 with 45 employees, having already implemented its personnel staff reductions of 3 FTE for FY 2000. For FY 2001 the Commission is requesting an FTE allocation of 50, a reduction of 1 FTE from the FY 2000 authorized level. The reduction consists of a secretarial position in the Commission's General Counsel's office.

The Commission continues to receive responsive personnel servicing after selecting the BPD as its personnel service provider. In addition to providing day-to-day operational needs, BPD has focused on correcting errors and other deficiencies noted when the personnel records were transferred.

3. Program Evaluation

During FY 2001, the Commission will continue to review its Strategic Plan and Annual Performance Plan to assure that its goals and objectives fairly and accurately report accomplishments. Beginning with FY 2000, selected goals and objectives have been revised to reflect the Commission's elimination of the backlog of undecided cases at the appellate level. Other goals have been refined to reflect more quantitative measurements based on operational experience. Based on experience gained during the FY 1997-FY 2000 period, we hope to further improve performance and to gain greater efficiency.

4. Information Technology

A. Year 2000 Modifications

The Commission successfully completed all Y2K modifications prior to December 31, 1999. As a result, we incurred no year change problems with our network, operating systems, or computer hardware.

B. System Enhancements

The Commission continues to work on its computer programs to expand automation to new areas and to provide additional information. Automation of the ALJs' individual dockets and a data exchange program between the centralized docket and the individual ALJs' dockets is complete and operational in the Falls Church office. The program will be expanded to our Denver office in the next several months. When operational, the program will eliminate the need for manual record keeping and will provide a judge with an up-to-date status of all cases on his/her individual docket. It will also provide the Chief Judge with information essential to case assignment and monitoring when making new case assignments. These improvements will expedite the case assignment and decisional process, helping the Commission achieve its performance objectives in this area. The Commission is proceeding with other minor system modifications.

The Commission is also near completion of an automated program for its appellate activities. This program will be completed in FY 2000 and will provide automated docket and case management data on appellate cases.

C. Internet Website

The Commission's website, <http://www.fmshrc.gov>, became operational on April 27, 1999. It receives almost 20,000 hits per month. The website includes information about the Commission, its rules, guides and publications, strategic and performance plans, GILS records, a data base of Commission and ALJ published decisions, and links to related agencies and legal materials, including the Mine Act and MSHA. The website is hosted and maintained by the Government Printing Office.

D. Network Security

The performance of the Commission's local area network has not been satisfactory. Response time is slow and dedicated communication lines are expensive. Beginning late in FY 1999, the Commission began to modernize its local and wide area networks using high-performance internal security management that includes integrated firewall, virtual private networking, authentication, and caching services. We believe that this enhanced system fully meets our information security requirements. Commission ALJs will have access to computerized legal research databases via laptop computer while in travel status and employees will be able to access work material on their home computers.

5. Commission Regulations

In addition to its adjudicative responsibilities, the Commission recently revised existing regulations and must revise and issue new regulations as a result of enacted legislative or Administration directives in the following areas:

- (a) Equal Access to Justice Act — The Commission issued proposed revisions to its EAJA regulations on December 19, 1996 and published new rules for public comment. The Commission received a number of public comments that were carefully considered. New EAJA regulations were published in final form on December 14, 1998.
- (b) Privacy Act Regulations — The Commission's Privacy Act regulations have not been revised since they were first published in 1984, except to add the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requirements. During FY 1999 the Commission completed a review of these regulations and its systems of records. Drafting and publication of revised systems of records is now in the final stage.
- (c) Alternative Dispute Resolution — Pursuant to the Alternative Dispute Resolution Act of 1996, the Commission has promulgated its ADR policy statement and is considering changes to its procedural rules to foster the use of ADR principles in formal agency adjudications.
- (d) Rules of Procedure — The Commission published proposed changes to its Procedural Rules on May 7, 1998, for public comment. The Commission published its final rule on September 8, 1999.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SELECTED WORKLOAD DATA

	1999 Actual	2000 Estimate	2001 Estimate
<u>Commission Review Activities</u>			
Cases pending beginning of year	43	22	18
New cases received	52	54	59
Total case workload	95	76	77
Cases decided	73	58	66
Cases pending end of year	22	18	11

Administrative Law Judge Determinations

Cases pending beginning of year	5,341*	1,516	1,416
New cases received	2,335	2,400	2,450
Total case workload	7,676	3,916	3,866
Cases decided	6,160*	2,500	2,550
Cases pending end of year	1,516	1,416	1,316

* Includes 3,865 dust cases.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

COMMISSION MEMBERS

<u>NAME</u>	<u>TERM EXPIRATION</u>
Mary Lu Jordan, Chairman	August 30, 2002
Robert H. Beatty, Jr.	August 30, 2004
Marc Lincoln Marks	August 30, 2000
James C. Riley	August 30, 2000
Theodore F. Verheggen	August 30, 2002

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CONSULTANTS

The Commission employed no consultants in FY 1999 and has no plans to employ consultants in FY 2000 or FY 2001.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION OF APPROPRIATION ESTIMATES FOR COMMITTEE ON APPROPRIATIONS

FISCAL YEAR 2002

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 assessed 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 orders to close a mine, 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 guaranteed, and 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 courts of appeals.

The Commission is requesting a budget of \$6,939,000 covering 50 FTE for FY 2002. This is a total increase of \$619,000, of which \$400,000 is a one time expenditure for the relocation of the Commission's headquarters in Washington, D.C. and the Falls Church Office of Administrative Law Judges. The Commission has requested the General Services Administration to identify alternative office space because continuing occupancy at its present locations is not an option. The Commission is also reviewing the current space arrangement of maintaining separate offices for its headquarters and its Falls Church ALJs, and is considering the option of consolidating both offices. The Commission will continue to occupy space at its present headquarters location until the lease expires on September 30, 2002 and at its Falls Church location under a short-term leasing arrangement at an added one time cost of \$53,000. The balance of the increase, \$166,000, will cover the government-wide pay increase projected for January 2002.

As of February 28, 2001, the Commission had a trial docket of 1,414 undecided cases, having received 890 cases and decided 1,039 cases so far this fiscal year. In FY 2002, we anticipate receiving 2,450 new cases and disposing of 2,500. This is a slight increase over the estimated 2,250 new cases and 2,350 dispositions projected for FY 2001. In FY 2000 the Commission ALJs received 2,371 cases and disposed of 2,324 cases.

With respect to our current year performance activity, of the 1,039 trial cases disposed of as of February 28, 2001, Commission judges have decided all but 28 of the cases in less than 9 months from assignment. Decision age averaged 75 days, with decision after hearing averaging 292 days and settlement being completed on average in 79 days. Decisions in 98 percent of the 673 settlement dispositions were made within 30 days of receipt of the settlement motion. Only four cases in which a hearing was held were not decided within 90 days of the post-hearing brief.

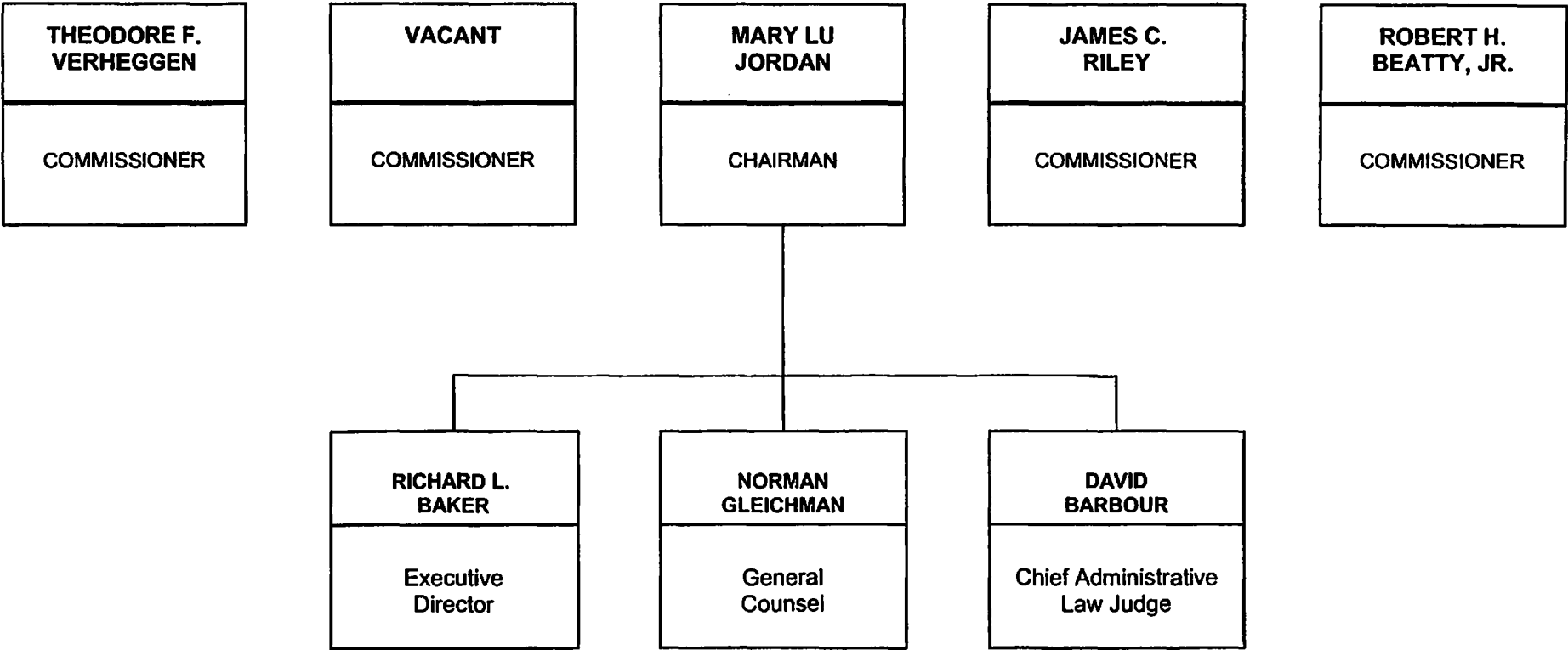
In FY 2000, Commission judges decided 2,324 cases. Ninety-eight percent of these cases were decided within 9 months of assignment with only 50 cases exceeding the 9 months timeframe. Of the 1,448 settlement dispositions, 97.5 percent were decided within 30 days of receipt of the settlement motion and 90 percent of the 143 decisions involving evidentiary hearings were decided within the 90 days of the post-hearing briefing. Only 14 cases exceeded the 90-day time frame.

At the appellate level, the Commission has a current docket (as of February 28, 2001) of 29 substantive and procedural cases, having received 25 cases and disposed of 30 cases so far this fiscal year. The 30 dispositions include 5 substantive decisions, 20 orders and denials of 5 petitions for review. The average age of the 29 undecided cases is 6.7 months. Currently, only 1 undecided case is more than 18 months old and 4 cases are more than 12 but less than 18 months of age. The average age of substantive decisions is 16.1 months based on the 5 decisions issued through February 28, 2001, 2 of which were more than 2 years old when decided. The Commission anticipates ending FY 2001 with 27 undecided cases on hand, based on our projected receipt of 59 new cases and disposition of 66 cases. In FY 2002 we anticipate receiving 60 new cases and deciding 66 matters, thus leaving 21 cases undecided at the end of the year. In FY 2000 the Commission received 73 new cases and disposed of 61 matters, and its inventory of undecided cases increased from 22 to 34.

FY 2000 reflected continued improvement over FY 1999 in meeting appellate performance objectives. The average age of substantive issuances fell from 16.4 months in FY 1999 to 12.2 months in FY 2000. Since FY 1996, when the average age of issued substantive decisions stood at 19.3 months, the Commission has reduced the average time it take to issue a substantive decision by more than 7 months. Although the Commission ended FY 2000 with 2 undecided cases that were more than 18 months old, the overall end of year inventory age was 5.1 months, down from 9.1 months in FY 1999.

Currently, the Commission has a complement of four members, including one Commissioner serving in a recess appointment. We anticipate having five members before the end of FY 2001 and during FY 2002, although the terms of two Commissioners will expire on August 30, 2002.

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.), \$6,939,000.

Explanation of Language

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

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

AUTHORIZING LEGISLATION

	FY 2001 <u>Appropriation</u>	FY 2002 <u>Request</u>
<u>Authorizing Legislation</u> <u>Containing Indefinite Authority</u>		
Federal Mine Safety and Health Amendments Act of 1977 (30 U.S.C. 823-824)	6,320,000	6,939,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

BUDGET AUTHORITY AND STAFFING BY ACTIVITY

	<u>2000</u>		<u>2001</u>		<u>2002</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	26	3,600,000	30	3,701,000	30	4,198,000	—	+497,000
Administrative Law Judge Determinations	<u>17</u>	<u>2,536,000</u>	<u>20</u>	<u>2,619,000</u>	<u>20</u>	<u>2,741,000</u>	<u>—</u>	<u>+ 122,000</u>
Total	43	6,136,000	50	6,320,000	50	6,939,000	—	+619,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SUMMARY OF CHANGES

	<u>FTE</u>	<u>Budget Authority</u>
FY 2001 Current Estimate	50	6,320,000
FY 2002 Request	50	6,939,000
Change	—	+619,000

Change From Base

	<u>FTE</u>	<u>Budget Authority</u>
INCREASES		
1. Pay adjustments	—	+166,000
2. GSA rental costs	—	+53,000
3. Office Relocation Costs	—	+400,000
 NET CHANGE	 —	 +619,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

BUDGET AUTHORITY BY OBJECT CLASS

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>Increase or Decrease</u>
<u>Personnel Compensation</u>				
Full-time permanent	3,345	3,815	3,954	+139
Other than full-time permanent	<u>139</u>	<u>190</u>	<u>195</u>	<u>+5</u>
Total, personnel compensation	3,484	4,005	4,149	+144
Personnel benefits, civilian	853	805	827	+22
Travel and transportation of persons	121	100	100	—
Transportation of things	13	2	2	—
Rental payments to GSA	568	629	682	+53
Communications, utilities and miscellaneous charges	98	109	109	—
Printing and reproduction	34	35	35	—
Other services	720	490	890	+400
Supplies and materials	80	80	80	—
Equipment	128	65	65	—
TOTAL	<u>6,099</u>	<u>6,320</u>	<u>6,939</u>	<u>+619</u>

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

PERSONNEL SUMMARY

	2000 ACTUAL	2001 ESTIMATE	2002 REQUEST
ACCOUNT: SALARIES & EXPENSES			
Executive Level III	1	1	1
Executive Level IV	4	4	4
SUBTOTAL	5	5	5
ES-5	1	1	1
ES-4	1	1	1
SUBTOTAL	2	2	2
AL-2	1	1	1
AL-3	9	9	9
SUBTOTAL	10	10	10
GS-15	5	5	5
GS-14	3	3	3
GS-13	3	3	3
GS-12	—	1	1
GS-11	2	2	2
GS-10	1	1	1
GS-9	4	3	3
GS-8	9	10	10
GS-7	2	1	1
GS-5	1	1	1
GS-4	1	1	1
SUBTOTAL	31	31	31
Total Permanent Full-time Positions	48	48	48
Unfilled positions end-of-year	7	—	—
Total, full-time permanent employment end-of-year	41	48	48
Full-time equivalent (FTE) usage	43	50	50
<hr/>			
Average ES level	4.50	4.50	4.50
Average ES salary	\$130,200	\$133,700	\$138,914
Average AL level	2.90	2.90	2.90
Average AL salary	\$120,950	\$126,306	\$131,232
Average GS grade	10.29	10.42	10.42
Average GS salary	\$53,514	\$56,607	\$59,022

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

AMOUNTS AVAILABLE FOR OBLIGATION

	<u>2000</u>		<u>2001</u>		<u>2002</u>	
	FTE	Amount	FTE	Amount	FTE	Amount
Appropriation or Estimate, Total, Amounts Available for Obligation	43	6,136,000	50	6,320,000	50	6,939,000

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>
1984	3,858,000	3,858,000	4,000,000	3,858,000
1985	3,837,000	3,837,000	3,837,000	3,837,000
Pay Supp.	36,000			
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			

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.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

STAFFING HISTORY TABLE

<u>Fiscal Year</u>	<u>FTE</u>
1984	58
1985	52
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 Est.	50
2002 Est.	50

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CONGRESSIONAL DIRECTIVES

House Report 106-645 dated May 24, 2000, accompanying H.R. 4577 and Senate Report 106-293 dated May 11, 2000 accompanying S. 2553 contained no directives for the Federal Mine Safety and Health Review Commission.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION

	2001 Estimate		2002 Request		Increase or Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount
Commission Review	30	3,701,000	30	4,198,000	—	+497,000
Administrative Law Judge Determinations	20	2,619,000	20	2,741,000	—	+ 122,000
Total Budget Authority	50	6,320,000	50	6,939,000	—	+ 619,000

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 Amendments Act of 1977. It is not part of the Department of Labor nor its Mine Safety and Health Administration.

The Commission is charged with the responsibility of reviewing the enforcement activities of the Secretary of Labor and hearing miners' complaints challenging unlawful safety-related discrimination. 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 five 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>2000</u>		<u>2001</u>		<u>2002</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	26	3,600,000	30	3,701,000	30	4,198,000	—	+497,000

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. 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. Many of the Commission's cases present issues of first impression under the Mine Act.

2002 Budget Request:

The budget request contains \$4,198,000 and 30 FTE for the Commission's appellate review activities for FY 2002. This is an increase of \$497,000. An increase of \$97,000 is requested for this activity to fund the annualization of FY 2001 pay increase and the projected salary increase in January 2002. A non-recurring increase of \$400,000 is requested in this activity for expenses associated with the relocation of the Commission's headquarters and Falls Church offices. The Commission anticipates that these funds will be used for office configuration, hearing room design and construction and office relocation costs, including moving costs associated with computer networking and communications installation. The Commission has requested other space through the General Services Administration because continuing occupancy at its present locations is not an option. The Commission is also reviewing the current space arrangement of maintaining separate offices for its headquarters and its Falls Church ALJs, and is considering the option of consolidating both offices. The Commission will continue to occupy space at its present headquarters until the lease expires on September 30, 2002 and at its Falls Church location under a short-term leasing arrangements.

A total of 60 new cases are anticipated for review by the Commission during FY 2002. Sixty-six dispositions are expected, resulting in a projected end-of-year case inventory of only 21 undecided cases.

The term appointments of two of the Commission's current members will expire on August 30, 2002.

Fiscal Year 2002 Activity:

The Commission's FY 2002 GPRA Annual Performance Plan includes the following revised objectives for its appellate activity:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2002:

- ◆ 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 2002:

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

Fiscal Year 2001 Activity:

The Commission received an appropriation of \$3,701,000 and 30 FTE for its Commission Review activities in FY 2001. The Commission began FY 2001 with an inventory of 34 undecided cases and expects to receive 59 new cases during the year. Sixty-six dispositions are anticipated during the year. The Commission expects to reduce the undecided cases at the end of the fiscal year to 27.

Through February 28, 2001, the Commission has received 25 new cases. During this same period, it has issued 5 substantive decisions, 20 orders, and denied 5 petitions for review. The average age of the 29 matters pending on the Commission's docket as of February 28, 2001, was 6.7 months, and the average age of the 5 substantive decisions issued was 16.1 months. This figure reflects the disposition of the Commission's 2 oldest cases.

The Commission's FY 2002 GPRA Annual Performance Plan includes the following revised objectives for its appellate activity in FY 2001:

Objective 1 — Issue opinions in a timely manner.

Performance Goals for FY 2001:

- ◆ 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 2001:

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

Fiscal Year 2000 Activity:

The Commission received an appropriation of \$3,600,000 and employed 26 FTE in its Commission Review activities in FY 2000. The Commission began FY 2000 with an inventory of 22 undecided cases. The Commission received 73 new cases including a higher than anticipated number of non-substantive matters. Sixty-one cases were decided during the year. As a result, the Commission had 34 undecided cases on its docket at the end of the fiscal year, 16 of which were received during the last 2 months of FY 2000.

The Commission developed the following performance objectives associated with its FY 2000 budget. The objectives and accomplishments achieved during the year were:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2000:

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

Accomplishments: All cases that were briefed were assigned at the end of FY 2000.

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

Accomplishments: During FY 2000, 7 undecided cases reached 18 months or older. As of September 30, 2000, 5 of those cases had been decided, leaving only 2 cases pending at the end of the year. This is an improvement over FY 1999 where 12 undecided cases reached the age of 18 months or older.

- ◆ There will be no more than 4 undecided cases that are over 12 months of age.

Accomplishments: Six cases over 12 months of age were pending at the end of FY 1999. By the end of FY 2000, there were 3 cases, a 50 percent reduction.

- ◆ Reduce by 1.0 month from the FY 1999 figure the average age of substantive decisions issued.

Accomplishments: The FY 2000 objective was to reduce the average age of substantive decisions from 16.4 to 15.4 months. That goal was exceeded and as of September 30, 2000, the average age of the substantive decisions was 12.2 months.

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

Quality Indicators for FY 2000:

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

Accomplishments: For FY 2000 the Commission had an appeal rate of 17 percent, which is below the 28 percent rate for the FY 1993-99 period. The Commission affirmance rate for FY 2000 based on 6 federal court of appeals decisions was 50 percent, compared to an 81 percent affirmance rate for the FY 1990-99 period. Rates for fiscal year 1998 through 2000 are as follows:

	FY 2000	FY 1999	FY 1998
Appeal rate of appellate decisions	17%	30%	26%
Affirmance rate of appellate decisions	50%	50%	85%

PERFORMANCE MEASUREMENT MATRIX

COMMISSION REVIEW

	FY 1996	FY 1997	FY 1998	FY 1999		FY 2000		FY 2001	FY 2002
	Base	Actual	Actual	Goal	Actual	Goal	Actual	Goal	Goal
OBJECTIVE: Issue opinions in a timely manner									
Undecided cases over 24 months of age	2	1	1	0	1	—	—	—	—
▲ Undecided cases over 18 months of age (inclusive)	7	6	3	0	1	0	2	0	0
Undecided cases over 12 months of age (inclusive)	25	12	12	—	6	4	3	—	—
▲ Cases briefed but unassigned	12	9	4	—	3	0	0	0	0
▲ Substantive disposition age	19.3	17.9	17.0	16.0	16.4	15.4	12.2	12.0	12.0
OBJECTIVE: Issue well reasoned Commission opinions providing clear legal precedent and thoughtful analysis of issues									
▲ Appeal rate		24%	26%	25%*	30%	28%*	17%		
▲ Affirmance rate		72%	85%	81%*	50%	81%*	50%		

* These percentages are historical averages rather than goals. The appeal rates are averages from FY 1993 and succeeding years and the affirmance rates are averages of the preceding 10 years.

▲ Current performance goals or quality indicators

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

ADMINISTRATIVE LAW JUDGE DETERMINATIONS

	<u>2000</u>		<u>2001</u>		<u>2002</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	2,536,000	20	2,619,000	20	2,714,000	—	+122,000

Introduction:

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

The agency maintains two offices of administrative law judges, in Falls Church, Virginia and Denver, Colorado. 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.

2002 Budget Request:

The Commission requests \$2,714,000, for the trial activities of its administrative law judges in FY 2002. This is an increase of \$122,000 over the FY 2001 appropriation. An increase of 69,000 is requested to fund the annualization of the current year pay increase and the projected salary increase for January 2002. The remaining \$53,000 is needed to fund increased GSA rental costs.

A total of 2,350 new cases is anticipated for FY 2002, with 2,500 dispositions projected, leaving an end-of-year inventory of 1,213 undecided cases.

The Commission's FY 2002 GPRA Annual Performance Plan includes the following objectives for its trial activity:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2002:

- ◆ 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 94 percent of decisions within 90 days of receipt of post-hearing brief.
- ◆ Issue 98 percent of settlement decisions within 30 days of receipt of settlement motions.
- ◆ Decide 98 percent of cases within 9 months of assignment.
- ◆ Decide on average all cases within 150 days from receipt by the Commission.

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

Quality Indicators for FY 2002:

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

Fiscal Year 2001 Activity:

The Commission received an appropriation of \$2,619,000 and 20 FTE for its Administrative Law Judge Determination activities in FY 2001.

The Commission began FY 2001 with an inventory of 1,563 undecided trial cases. A total of 2,250 new cases is anticipated for FY 2001, with 2,450 dispositions projected, leaving an end-of-year inventory of 1,363 cases. As of February 28, 2001, the Commission's ALJs had received 890 new cases and disposed of 1,039 cases.

The Commission's FY 2002 GPRA Annual Performance Plan includes the following revised objectives for its trial activity in FY 2001:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2001

- ◆ 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 93 percent of decisions within 90 days of receipt of the post-hearing brief.
- ◆ Issue 97 percent of settlement decisions within 30 days of receipt of settlement motions.
- ◆ Decide 98 percent of cases within 9 month of assignment.
- ◆ Decide on average all cases within 150 days from receipt by the Commission.

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

Quality Indicators for FY 2001:

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

Fiscal Year 2000 Activity:

The Commission received an appropriation of \$2,536,000 and employed 17 FTE in its Administrative Law Judge Determinations activities in FY 2000. As of October 1, 1999, the Commission's ALJs had an inventory of 1,516 cases and received 2,371 new cases during FY 2000. Case dispositions for the fiscal year totaled 2,324 leaving an end-of-year inventory of 1,563 cases.

The Commission developed the following performance objectives associated with its FY 2000 budget. These objectives and accomplishments during the year were:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2000:

- ◆ 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: Through September 30, 2000, the average assignment time for a trial case was 66 days. Penalty cases were assigned in 77 days, well ahead of the 85-day goal and the timeframe specified in the Commission's rules. Review cases were assigned in 28 days, less than the 30-day timeframe and assignment goal.

- ◆ Issue 92 percent of decisions involving hearings within 90 days of receipt of post-hearing brief.

Accomplishments: Through September 30, 2000, decisions in 90 percent of the cases involving hearings were issued within 90 days of receipt of the post-hearing brief. Although the Commission's judges did not achieve the goal of issuing 92 percent of their decisions within 90 days of receipt, they did exceed FY 1999 achievement levels when 83 percent of the cases involving hearing were decided within the 90-day timeframe. Only 14 cases were not decided within the 90-day time frame.

- ◆ Issue 97 percent of settlement dispositions within 30 days of receipt of settlement motion.

Accomplishments: Through September 30, 2000, settlement dispositions were made within 30 days of receipt of the settlement motion in 97.5 percent of the settlement cases. Thirty two settlement approvals were made in the 31-60 days timeframe with only 4 approvals requiring more than 61 days.

- ◆ On average, decide cases 75 days from assignment.

Accomplishments: Through September 30, 2000, the average time from case assignment to disposition for cases involving hearing was 231 days. For settlement cases, the average time was 69 days. As a result of the large number of settlements and other dispositions not requiring hearing, the average disposition time for all cases was 89 days.

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

Quality Indicators for FY 2000:

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

Accomplishments: Since the beginning of FY 1998, the Commission has accumulated appeal and affirmance rates of its trial decisions. For FY 1999, the trial appeal rate of ALJ decisions appealed to the Commission was 24 percent, the same as the figure reported for FY 1998. The affirmance rate was 52 percent, down from 70 percent in FY 1998. During FY 2000, both the trial appeal rate remained constant and the affirmance rate continued to decline from previous years. Rates for fiscal years 1998 through 2000 are as follows:

	FY 2000	FY 1999	FY 1998
Appeal rate of trial decisions	25%	24%	24%
Affirmance rate of trial decisions	46%	52%	70%

PERFORMANCE MEASUREMENT MATRIX

OFFICE OF ADMINISTRATIVE LAW JUDGES

	FY 1996	FY 1997	FY 1998	FY 1999		FY 2000		FY 2001	FY 2002
	Base	Actual	Actual	Goal	Actual	Goal	Actual	Goal	Goal
OBJECTIVE 1: ISSUE OPINIONS ON A TIMELY MANNER									
▲ Assignment of penalty cases (days)	—	85	68	98	70	85	77	76	75
▲ Assignment of review cases (days)	—	40	21	33	25	30	28	27	26
Assignment average (days)	82	70	60	—	64	—	66	—	—
▲ Decisions issued within 90 days of post-hearing brief	81%	97%	92%	Few exceptions	83%	92%	90%	93%	94%
▲ Settlement issued within 30 days of settlement motion	87%	93%	99%	Few exceptions	97%	97%	98%	98%	98%
Case assignment to disposition (days)	80	80	66	180	62	75	89	75	75
▲ Case receipt to disposition (days)	163	149	126	—	126	—	155	152	150
▲ Cases decided within 270 days of assignment	—	93%	96%	—	97%	98%	98%	98%	98%
Undecided cases over 270 days of age	45	14	6	0	13	0	19	0	0
OBJECTIVE 2: ISSUE TRIAL DECISIONS ON SOUND FACTUAL AND LEGAL ANALYSIS									
▲ Appeal rate	—	—	24%	—	24%	—	25%	—	—
▲ Affirmance rate	—	—	70%	—	52%	—	46%	—	—

▲Current performance goals or quality indicators

AGENCY-WIDE MANAGEMENT OBJECTIVES

FY 2000 - FY 2002

In revising its Strategic Plan, the Commission added an agency-wide management goal that covers both of its adjudicative budget activities. This goal is to manage the Commission's human resources, operations, facilities, and systems to ensure a continually improving, effective and efficient organization. The objectives of this goal, including regulatory initiatives, as they relate to the Commission's FY 2000-2002 budget are as follows:

Objective 1 — Ensure Organizational and Management Effectiveness

Performance Goals:

- ◆ Develop and implement an agency strategic plan, with annual performance goals, objectives and performance measures to assure public awareness, and to guide individual and organizational efforts.

The Commission completed redrafting its revised Strategic Plan on September 30, 2000. In an effort to have input from our stakeholders and coordinate with other Federal agencies, a notice of request for comments was published in the Federal Register on November 16, 2000. No comments were received. The plan has been published in final and has been posted on the Commission's website.

Although not specified as performance goals, the following activities are also an integral part of ensuring organizational and management effectiveness and are a part of the FY 2000-2002 budget program:

❑ Financial Management

The Commission's accounting services are being provided under an inter-agency agreement with the Department of Treasury's Bureau of Public Debt (BPD). The Commission hopes to continue its 5-year audit cycle, with the next audit reviewing FY 2002 financial records.

❑ Program Evaluation

During FY 2002, the Commission will continue to review its strategic plan and annual performance plan to assure that its goals and objectives fairly and accurately report accomplishments. Beginning with FY 2000, selected goals and objectives have been revised to reflect the Commission's elimination of the backlog of undecided cases at the appellate level. The FY 2001 appellate goals have also been revised to reflect the achievement in reducing the age of substantive dispositions. Other goals have been refined to reflect more quantitative measurements based on operational experience. Based on experience gained during the FY 1997-FY 2000 period, we hope to further improve performance and gain greater efficiency.

❑ **Privacy Act Regulations**

The Commission's Privacy Act regulations had not been revised since they were first published in 1984, except to add the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requirements. During FY 1999 the Commission completed a review of these regulations and its systems of records. New Privacy Act regulations were published in final form on April 6, 2000.

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's FY 2000-2002 activities relating to this Performance Goal are as follows:

❑ **Year 2000 Modifications**

The Commission successfully completed all Y2K modifications prior to December 31, 1999. As a result, we incurred no year change problems with our network, operating systems, or computer hardware.

❑ **System Enhancements**

The Commission continues to work on its computer programs to expand automation to new areas and to provide additional information. Automation of the ALJs' individual dockets and a data exchange program between the centralized docket and the individual ALJs' dockets is complete and operational in both the Falls Church and Denver ALJ offices. The program provides an ALJ with an up-to-date status of all cases on his/her individual docket. It also provides the Chief Judge with information essential to case assignment and monitoring when making new case assignments. These improvements will aid in the case assignment and decisional process, helping the Commission achieve its performance objectives in this area.

The Commission has also completed an automated program for its appellate activities. This program provides automated docket and case management data on appellate cases.

❑ **Internet Website**

The Commission's website, <http://www.fmshrc.gov>, became operational on April 27, 1999. It currently receives almost 40,000 hits per month. 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, and links to related agencies and legal materials, including the Mine Act and MSHA. The website is hosted and maintained by the Government Printing Office. The Commission expects to meet the regulatory timeframes and have its website in full compliance and accessible to people with disabilities.

☐ **Network Security**

Beginning late in FY 1999, the Commission began to modernize its local and wide area networks using high-performance internal security management that includes integrated firewall, virtual private networking, authentication, and caching services. The system is C2 class security certified by the Department of Justice. Anti-virus scans are conducted daily on servers and weekly on individual work stations. We believe that this system fully meets our information security requirements.

☐ **Remote Access**

During FY 2001 the Commission plans to install necessary software to allow employees to access work materials from their home computers and from laptops while on travel status. Remote access is an integral part in the development of the Commission's telecommuting policy required by Section 359 of P.L. 106-346.

☐ **Government Paperwork Elimination Act (GPEA)**

GPEA requires Federal agencies to consider adopting systems that would permit individuals or entities to submit information or transact business with Federal agencies electronically, where practicable. Agencies are also required, where practicable, to maintain records electronically. Early in FY 2001, the Commission made a preliminary determination that the only area in which it needed to consider the practicability of providing the option of electronic filing is the electronic submission of case-related filings. During the remainder of FY 2001 and in FY 2002 the Commission will assess potential usage, associated risks and benefits, system development requirements, costs, and regulatory changes before making a final determination on the practicability of accepting electronic filings.

Objective 3 — Relocate Commission's Headquarters and Field Office

Performance Goals:

- ◆ Obtain new Commission office facilities to provide an efficient and attractive work environment.

The Commission has maintained its headquarters and Falls Church office at the same location since its inception. However, continued occupancy at these sites is no longer an option and other space has been requested through the General Services Administration (GSA). The Commission is also reviewing the current space arrangement of maintaining separate offices for its headquarters and Falls Church ALJs and is considering the option of consolidating both offices. Until other space has been secured, the Commission will continue to occupy space at its present headquarters location until the lease expiration and at its Falls Church location under a short-term leasing arrangement.

In FY 2000, the Commission contracted with the BPD to provide space planning, design and layout, and relocation assistance. BPD has inventoried current space requirements and furniture, and has submitted the necessary space request to GSA for other office space. In initial discussions with GSA, we have been advised that current rental rates are approximately 50% higher than the Commission's existing leasing arrangements. These added costs will impact our FY 2003 budget requirements.

Although current negotiations with GSA have not yet reached the stage of discussing specific sites, the Commission has included in its FY 2002 budget a request for \$400,000 which will be needed for office configuration, hearing room designs and construction and office relocation costs, including moving costs associated with computer networking and communications installation.

Objective 4 — 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 continues to receive responsive personnel servicing under an inter-agency agreement with BPD.

During this budget period the Commission will continue to evaluate its personnel and staffing needs, reflecting workload changes and staff development. The Commission ended FY 2000 with 46 employees. For FY 2001 and FY 2002 the Commission has an allocation of 50 FTE.

In November 2000, the Office of Personnel Management (OPM) conducted a review of the Commission's human resources management program. The purpose of the review was to assure compliance of human resources management operations with merit systems principles and OPM standards. It is the first time that OPM has reviewed Commission operations. Although we have not yet received a copy of the report, the Commission expects to use the OPM recommendations to guide and strengthen its human resources management and program operation during FY 2001 and FY 2002.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SELECTED WORKLOAD DATA

	2000 Actual	2001 Estimate	2002 Estimate
<u>Commission Review Activities</u>			
Cases pending beginning of year	22	34	27
New cases received	73	59	60
Total case workload	95	93	87
Cases decided	61	66	66
Cases pending end of year	34	27	21

Administrative Law Judge Determinations

Cases pending beginning of year	1,516	1,563	1,363
New cases received	2,371	2,250	2,350
Total case workload	3,887	3,813	3,713
Cases decided	2,324	2,450	2,500
Cases pending end of year	1,563	1,363	1,213

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

COMMISSION MEMBERS

<u>NAME</u>	<u>TERM EXPIRATION</u>
Mary Lu Jordan, Chairman	August 30, 2002
Robert H. Beatty, Jr.	August 30, 2004
Vacant	August 30, 2006
James C. Riley*	August 30, 2006
Theodore F. Verheggen	August 30, 2002

* Commissioner Riley received a recess appointment on August 31, 2000 not to exceed the end of the 1st Session, 107th Congress.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CONSULTANTS

The Commission employed no consultants in FY 2000 and has no plans to employ consultants in FY 2001 or FY 2002.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION OF APPROPRIATION ESTIMATES FOR COMMITTEE ON APPROPRIATIONS

FISCAL YEAR 2003

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 guaranteed, and 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 courts of appeals.

The Commission is requesting a budget of \$7,455,000 covering 48 FTE for FY 2003. This is a net increase of \$189,000 over the FY 2002 appropriation after accruing employee pensions and annuitant health benefits.

The budget request contains \$206,000 for pay adjustments reflecting a 4.6 percent increase in calendar year 2002 and the 2.6 percent increase projected for calendar year 2003.

The Commission's FY 2002 budget contains a one-time increase of \$400,000 for office relocation costs. We expect that office space will be identified early in CY 2002 and that these relocation funds will be fully obligated by the end of the fiscal year. Therefore, we are requesting that these funds be deducted from our base level in FY 2003.

Although we have not yet determined the location or the cost of alternative space, we have included an increase of \$382,000 for FY 2003 based on GSA cost projections.

As of September 30, 2001, the Commission had a trial docket of 1,418 undecided cases, having received 2,310 cases and decided 2,455 this past fiscal year. In FY 2002, we anticipate receiving 2,100 new cases and disposing of 2,450. In FY 2003 we anticipate the Commission

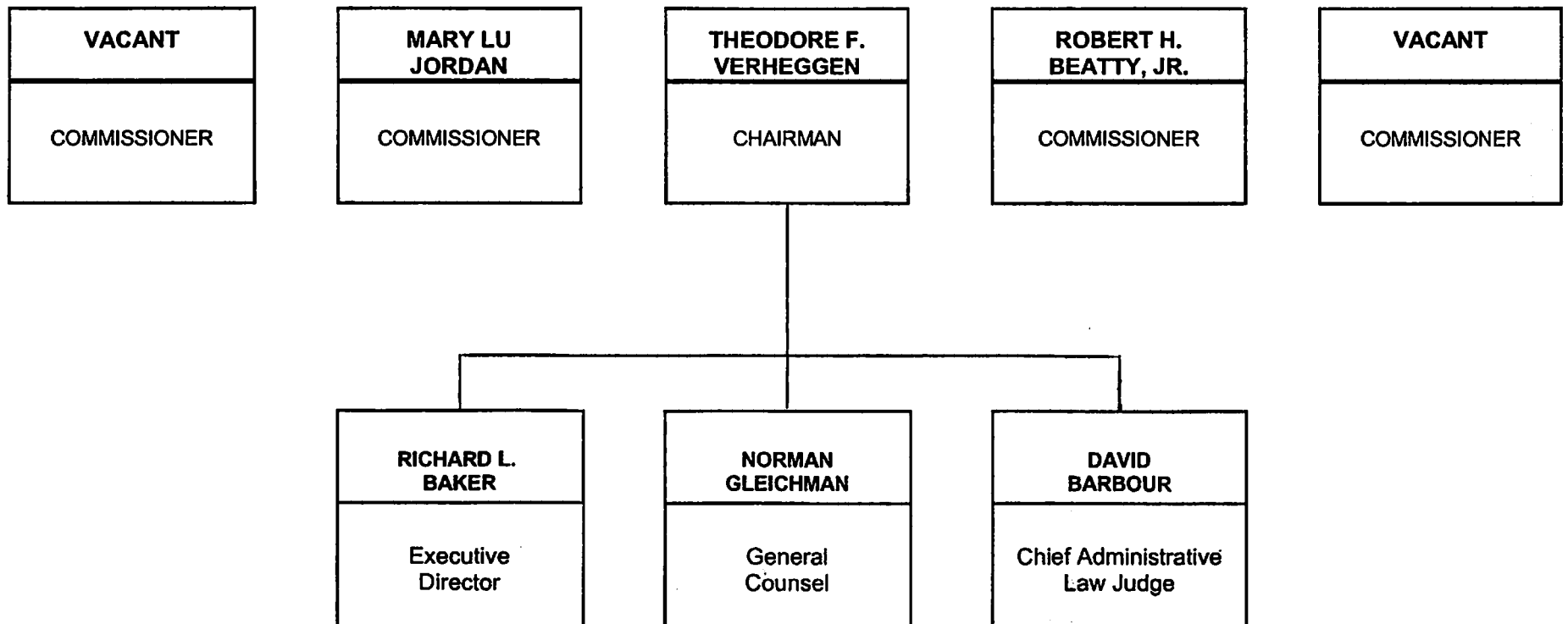
ALJs receiving 2,300 cases and disposing of 2,450 cases.

With respect to our FY 2001 performance at the trial level, of the 2,455 trial cases closed, Commission judges decided all but 74 cases in less than 9 months from assignment. Decision age averaged 70 days, with decision after hearing averaging 244 days and settlement being completed on average in 76 days. Decisions in 98 percent of the 1,612 settlement dispositions were made within 30 days of receipt of the settlement motion. Of the 157 cases in which a hearing was held, only 12 were not decided within 90 days of receiving the post-hearing briefs.

At the appellate level, the Commission ended the fiscal year with a docket of 26 cases, having received 65 cases and disposed of 73 cases in FY 2001. The 73 dispositions included 21 substantive decisions, 44 procedural orders and denials of 8 petitions for review. The average age of the 26 undecided cases was 4.9 months. Currently, as of January 31, 2002, there are no undecided cases more than 18 months old and only 1 case more than 12 but less than 18 months of age. The average age of substantive decisions issued this fiscal year is 12.6 months. We anticipate receiving 60 new cases and deciding 66 matters, thus leaving 20 cases undecided at the end of FY 2002. In FY 2003 we estimate receiving 60 new cases and disposing of 66 matters, resulting in an inventory of 14 undecided cases.

Currently, the Commission has a complement of three members. The terms of two of the current Commissioners will expire on August 30, 2002.

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.), \$7,455,000.

(Departments of Labor, Health and Human Services and Education, and related agencies Appropriations Act, 2002; additional authorizing legislation required.)

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 2002 <u>Appropriation</u>	FY 2003 <u>Request</u>
<u>Authorizing Legislation</u> <u>Containing Indefinite Authority</u>		
Federal Mine Safety and Health Amendments Act of 1977 (30 U.S.C. 823-824)	6,939,000	7,127,000
Legislation (to be proposed) to allocate the full cost of accruing pension and annuitant health benefits to appropriate salaries and expense accounts	327,000 ¹	328,000

¹ FY 2002 amount shown for comparability purposes only.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

BUDGET AUTHORITY AND STAFFING BY ACTIVITY

	<u>FY 2001</u>		<u>FY 2002</u>		<u>FY 2003</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	22	3,701,000	28	4,198,000	28	4,181,000	—	- 17,000
Administrative Law Judge Determinations	<u>20</u>	<u>2,619,000</u>	<u>20</u>	<u>2,741,000</u>	<u>20</u>	<u>2,946,000</u>	<u>—</u>	<u>+205,000</u>
Total BA (excludes accruals)	42	6,320,000	48	6,939,000	48	7,127,000	—	+188,000
Employee pension and annuitant health benefit accruals (legislative proposal) ¹	—	268,000		327,000		328,000	—	+ 1,000
Total BA/Including accruals	42	6,588,000	48	7,266,000		7,455,000	—	+189,000

¹ FY 2001 and FY 2002 are shown for comparability purposes only.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SUMMARY OF CHANGES

Budget Authority	FY 2002	FY 2003	Net Change
Appropriations (without accruals)	\$6,939,000	\$7,127,000	+188,000
Employee Pension and annuitant health benefit accruals	327,000	328,000	+ 1,000
Full-time Equivalent	48	48	—

Explanation of Changes	FTE	Budget Authority
Increases		
1. Pay Adjustments	—	+ 206,000
2. GSA Rent Increase	—	+382,000
Decreases		
1. Non recurring office relocation costs	—	<u>-400,000</u>
Net Change	—	+188,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

BUDGET AUTHORITY BY OBJECT CLASS (in thousands of dollars)

	<u>FY 2001¹</u>	<u>FY 2002¹</u>	<u>FY 2003¹</u>	<u>Increase or Decrease</u>
<u>Personnel Compensation</u>				
Full-time permanent	3,305	3,919	4,083	+164
Other than full-time permanent	<u>190</u>	<u>195</u>	<u>201</u>	<u>+6</u>
Total, personnel compensation	3,495	4,114	4,284	+170
 Personnel benefits, civilian	 734	 862	 898	 +36
Employee pension and annuitant health benefits accruals (legislative proposals)	268	327	328	+1
Travel and transportation of persons	88	100	100	—
Transportation of things	1	2	2	—
Rental payments to GSA	642	682	1,064	+382
Communications, utilities and miscellaneous charges	87	109	109	—
Printing and reproduction	29	35	35	—
Other services	831	890	490	-400
Supplies and materials	74	80	80	—
Equipment	273	65	65	—
 TOTAL	 <u>6,522</u>	 <u>7,266</u>	 <u>7,455</u>	 <u>+189</u>

¹ All numbers include the full share of accruing employee pensions and annuitant health benefits.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

PERSONNEL SUMMARY

	2001 ACTUAL	2002 ESTIMATE	2003 REQUEST
ACCOUNT: SALARIES & EXPENSES			
Executive Level III	1	1	1
Executive Level IV	4	4	4
SUBTOTAL	5	5	5
ES-5	1	1	1
ES-4	1	1	1
SUBTOTAL	2	2	2
AL-2	1	1	1
AL-3	9	9	9
SUBTOTAL	10	10	10
GS-15	5	5	5
GS-14	2	2	2
GS-13	3	3	3
GS-12	1	3	3
GS-11	4	2	2
GS-10	2	2	2
GS-9	1	1	1
GS-8	10	10	10
GS-7	1	1	1
GS-5	2	2	2
SUBTOTAL	31	31	31
Total Permanent Full-time Positions	48	48	48
Unfilled positions end-of-year	9	—	—
Total, full-time permanent employment end-of-year	39	48	48
Full-time equivalent (FTE) usage	42	48	48
<hr/>			
Average ES level	4.50	4.50	4.50
Average ES salary	\$133,700	\$138,200	\$141,793
Average AL level	2.90	2.90	2.90
Average AL salary	\$124,906	\$134,363	\$137,856
Average GS grade	10.45	10.52	10.52
Average GS salary	\$55,707	\$59,607	\$61,703

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

AMOUNTS AVAILABLE FOR OBLIGATION

	FY 2001 ¹		FY 2002 ¹		FY 2003	
	FTE	Amount	FTE	Amount	FTE	Amount
Appropriation	42	6,320,000	48	6,939,000	48	7,127,000
Employee pension and annuitant health benefit accruals (legislative proposal)		<u>268,000</u>		<u>327,000</u>		<u>328,000</u>
Total, Estimated Obligations		6,588,000		7,266,000		7,455,000
Total estimated obligations (excluding accruals)		6,320,000		6,939,000		7,127,000

¹ FY 2001 and FY 2002 amounts are shown for comparison purposes only.

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>
1984	3,858,000	3,858,000	4,000,000	3,858,000
1985	3,837,000	3,837,000	3,837,000	3,837,000
Pay Supp.	36,000			
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 ¹⁰
2002	6,939,000	6,939,000	6,939,000	6,939,000 ¹⁰
2003	7,455,000			

-
- 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 Amounts exclude the full share of accruing employee pensions and annuitant health benefits displayed elsewhere in this budget submission.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

STAFFING HISTORY TABLE

<u>Fiscal Year</u>	<u>FTE</u>
1984	58
1985	52
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 Est.	48
2003 Est.	48

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CONGRESSIONAL DIRECTIVES

House Report 107-229 dated October 9, 2001, accompanying H.R. 3061 and Senate Report 107-84 dated October 11, 2001 accompanying S-1536 contained no directives for the Federal Mine Safety and Health Review Commission.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION

	2002 Estimate		2003 Request		Increase or Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount
Commission Review	28	4,364,000	28	4,346,000	—	- 18,000
Administrative Law Judge Determinations	20	2,902,000	20	3,109,000	—	+ 207,000
Total Budget Authority	48	7,266,000	48	7,455,000	—	+ 189,000
Total Budget Authority (excluding accruals)	48	6,939,000	48	7,127,000	—	+ 188,000

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 Amendments Act of 1977. It is not part of the Department of Labor nor its Mine Safety and Health Administration.

The Commission is charged with the responsibility of reviewing the enforcement activities of the Secretary of Labor and hearing miners' complaints challenging unlawful health or safety-related discrimination. 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>2001</u>		<u>2002</u>		<u>2003</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	22	3,801,000	28	4,364,000	28	4,346,000	—	-18,000
Total Budget Authority (excluding accruals)		3,701,000		4,198,000		4,181,000		-17,000

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. 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. Many of the Commission's cases present issues of first impression under the Mine Act.

2003 Budget Request:

The budget request contains \$4,346,000 and 28 FTE for the Commission's appellate review activities for FY 2003. This is a net decrease of \$18,000 over the FY 2002 appropriation, adjusted to reflect the full share of accruing employee pensions and annuitant health benefits. Changes from the FY 2002 adjusted budget level include increases of \$122,000 for pay adjustment for the annualization of the current year 4.6 percent pay increase and the projected January 2003 increase of 2.6 percent, and \$261,000 for increased rental costs resulting from new leasing arrangements that consolidate the Commission's headquarters and Falls Church offices. Offsetting these increases is a one-time appropriation in the FY 2002 budget of \$400,000 for office relocation costs.

A total of 60 new cases are anticipated for review by the Commission during FY 2003. Sixty-six dispositions are expected, resulting in a projected end-of-year case inventory of only 14 undecided cases.

The Commission's FY 2003 GPRA Annual Performance Plan includes the following objectives for its appellate activity:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2003:

- ◆ 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 2003:

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

Fiscal Year 2002 Activity:

The FY 2002 resource level for the Commission Review Activity, adjusted to reflect accruing employee pension and annuitant health benefits, is \$4,364,000 and 28 FTE. The Commission began FY 2002 with an inventory of 26 undecided cases and expects to receive 60 new cases during the year. Sixty-six dispositions are anticipated during the year. The Commission expects to reduce the undecided cases at the end of the fiscal year to 20.

The term appointments of two of the Commission's current members will expire on August 30, 2002.

Through January 31, 2002, the Commission has received 18 new cases. During this same period, it has issued 5 substantive decisions, 16 orders, and denied 2 petitions for review. The average of the 28 matters pending on the Commission's docket as of January 31, 2002, is 4.5 months, and the average of the 5 substantive decisions issued is 12.6 months.

The Commission's FY 2003 GPRA Annual Performance Plan includes the following objectives for its appellate activity in FY 2002:

Objective 1 — Issue opinions in a timely manner.

Performance Goals for FY 2002:

- ◆ 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 2002:

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

Fiscal Year 2001 Activity:

The FY 2001 resource level for the Commission Review Activity, adjusted to reflect accruing employee pension's and annuitant health benefits, was \$3,801,000 and 22 FTE. The Commission began FY 2001 with an inventory of 34 undecided cases. The Commission received 65 new cases. Seventy-three cases were decided during the year. As a result, the Commission had 26 undecided cases on its docket at the end of the fiscal year.

Of the 73 cases decided in FY 2001, 21 were substantive decisions, 44 were procedural orders, and 8 petitions for review were denied. The average age of the 26 matters pending on the Commission's docket as of September 30, 2001 was 4.9 months, and the average age of the 21 substantive decisions issued was 14.2 months. This figure reflects the disposition of all appellate cases exceeding 18 months of age.

The Commission developed the following performance objectives associated with its FY 2001 budget. The objectives and accomplishments achieved during the year were:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2001:

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

Accomplishments: All cases that were briefed were assigned at the end of FY 2001.

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

Accomplishments: Through September 30, 2001, 6 cases reached 18 months or older. As of the same date, all of those cases had been decided. Thus the Commission began FY 2002 with no undecided cases over 18 months of age. This is also an improvement over FY 2000 when 7 undecided cases reached the age of 18 months or older and the Commission decided 5 of those cases during the fiscal year.

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

Accomplishments: As of September 30, 2001, the average age of the substantive dispositions was 14.2 months. This increase in average age over the 12.2 months in FY 2000 reflects disposition of all undecided cases that exceeded 18 months of age.

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

Quality Indicators for FY 2001:

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

Accomplishments: Through September 30, 2001, the Commission had an appeal rate of 24 percent, which is slightly below the 27 percent rate for the FY 1993-00 period. The Commission affirmance rate through September 30 based on 3 Federal court of appeals decisions is 100 percent, compared to a 79 percent affirmance rate for the FY 1991-2000 period.

PERFORMANCE MEASUREMENT MATRIX

COMMISSION REVIEW

	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000		FY 2001		FY 2002	FY 2003
	Base	Actual	Actual	Actual	Goal	Actual	Goal	Actual	Goal	Goal
OBJECTIVE: Issue opinions in a timely manner										
Undecided cases over 24 months of age	2	1	1	1	—	—	—	—	—	—
▲ Undecided cases over 18 months of age (inclusive)	7	6	3	1	0	2	0	0	0	0
Undecided cases over 12 months of age (inclusive)	25	12	12	6	4	3	—	2	—	—
▲ Cases briefed but unassigned	12	9	4	3	0	0	0	0	0	0
▲ Substantive disposition age	19.3	17.9	17.0	16.4	15.4	12.2	12.0	14.2	12.0	12.0
OBJECTIVE: Issue well reasoned Commission opinions providing clear legal precedent and thoughtful analysis of issues										
▲ Appeal rate		24%	26%	30%	28%*	17%	27%*	24%		
▲ Affirmance rate		72%	85%	50%	81%*	50%	79%*	100%		

* These percentages are historical averages rather than goals. The appeal rates are averages from FY 1993 and succeeding years and the affirmance rates are averages of the preceding 10 years.

▲ Current performance goals or quality indicators

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

ADMINISTRATIVE LAW JUDGE DETERMINATIONS

	<u>2001</u>		<u>2002</u>		<u>2003</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	20	2,787,000	20	2,902,000	20	3,109,000	—	+207,000

Introduction:

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

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

2003 Budget Request:

The budget request contains \$3,109,000 and 20 FTE for the Commission's trial activities of its administrative law judges in FY 2003. This is an increase of \$207,000 over the FY 2002 appropriation, adjusted to reflect the full share of accruing employee pensions and annuitant health benefits. Changes from the FY 2002 adjusted budget level includes increases of \$84,000 for pay adjustments for the annualization of the current year 4.6 percent pay increase and the projected January 2003 increase of 2.6 percent, and \$121,000 for increased rental costs resulting from new leasing arrangements that consolidated the Commission's headquarters and Falls Church offices.

A total of 2,300 new cases is anticipated for FY 2003, with 2,450 dispositions projected, leaving an end-of-year inventory of 918 undecided cases.

The Commission's FY 2003 GPRA Annual Performance Plan includes the following objectives for its trial activity:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2003:

- ◆ 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 94 percent of decisions within 90 days of receipt of post-hearing brief.
- ◆ Issue 98 percent of settlement decisions within 30 days of receipt of settlement motions.
- ◆ Decide 98 percent of cases within 9 months of assignment.
- ◆ Decide all cases within an average of 135 days from receipt by the Commission.

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

Quality Indicators for FY 2003:

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

Fiscal Year 2002 Activity:

The FY 2002 resource level for the Administrative Law Judge Determination Activity, adjusted to reflect accruing employee pension and annuitant health benefits, is \$2,902,000 and 20 FTE.

The Commission began FY 2002 with an inventory of 1,418 undecided trial cases. A total of 2,100 new cases is anticipated for FY 2002, with 2,450 dispositions projected, leaving an end-of-year inventory of 1,068 cases.

Through January 31, 2002, the Commission has received 658 new cases and has disposed of 840 cases.

The Commission's FY 2003 GPRA Annual Performance Plan includes the following objectives for its trial activity in FY 2002:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2002

- ◆ 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 94 percent of decisions within 90 days of receipt of the post-hearing brief.
- ◆ Issue 98 percent of settlement decisions within 30 days of receipt of settlement motions.
- ◆ Decide 98 percent of cases within 9 month of assignment.
- ◆ Decide all cases within an average of 140 days from receipt by the Commission.

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

Quality Indicators for FY 2002:

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

Fiscal Year 2001 Activity:

The FY 2001 funding level for the Administrative Law Judge Determinations Activity, adjusted to reflect accruing employee pensions and annuitant health benefits was \$2,787,000 and 20 FTE. As of October 1, 2000, the Commission's ALJs had an inventory of 1,563 cases and received 2,310 new cases during FY 2001. Case dispositions for the fiscal year totaled 2,455 leaving an end-of-year inventory of 1,418 cases.

The Commission developed the following performance objectives associated with its FY 2001 budget. These objectives and accomplishments during the year were:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2001:

- ◆ 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: Through September 30, 2001, the average assignment time for a trial case was 60 days. Penalty cases were assigned in 69 days, well ahead of the 85-day goal and the timeframe specified in the Commission's rules. Review cases were assigned in 22 days, less than the 30-day timeframe and assignment goal.

- ◆ Issue 93 percent of decisions involving hearings within 90 days of receipt of post-hearing brief.

Accomplishments: Through September 30, 2001, decisions in 92 percent of the cases involving hearings were issued within 90 days of receipt of the post-hearing brief. Only 12 cases were not decided within the 90-day time frame.

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

Accomplishments: Through September 30, 2001, settlement dispositions were made within 30 days of receipt of the settlement motion in 98 percent of the settlement cases. Twenty-eight settlement approvals were decided in the 31-60 days timeframe with only 7 approvals requiring more than 61 days.

- ◆ Decide 98 percent of cases within 9 months of assignment.

Accomplishments: Through September 30, 2001 decisions in 97 percent of the cases were issued within 9 months of assignment. More than 99 percent of the cases were decided within one year of assignment

- ◆ Decide all cases within an average of 150 days from receipt by the Commission.

Accomplishments: Through September 30, 2001, the average length of time from receipt of a case by the Commission to its disposition was 131 days.

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

Quality Indicators for FY 2001:

- ◆ 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. For FY 1999, the trial appeal rate of ALJ decisions appealed to the Commission was 24 percent, the same as the figure reported for FY 1998. The affirmance rate was 52 percent, down from 70 percent in FY 1998. During FY 2000, both the trial appeal rate remained constant and the affirmance rate continued to decline from previous years. Through September 30, 2001, the trial appeal rate has decreased and the affirmance rate has increased over the past two years.

PERFORMANCE MEASUREMENT MATRIX

OFFICE OF ADMINISTRATIVE LAW JUDGES

	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000		FY 2001		FY 2002	FY 2003
	Base	Actual	Actual	Actual	Goal	Actual	Goal	Actual	Goal	Goal
OBJECTIVE 1: ISSUE OPINIONS ON A TIMELY MANNER										
▲ Assignment of penalty cases (days)	—	85	68	70	85	77	76	69	71	70
▲ Assignment of review cases (days)	—	40	21	25	30	28	27	22	21	20
Assignment average (days)	82	70	60	64	—	66	—	60	—	—
▲ Decisions issued within 90 days of post-hearing brief	81%	97%	92%	83%	92%	90%	93%	92%	94%	94%
▲ Settlement issued within 30 days of settlement motion	87%	93%	99%	97%	97%	98%	98%	98%	98%	98%
Case assignment to disposition (days)	80	80	66	62	75	89	75	70	71	70
▲ Case receipt to disposition (days)	163	149	126	126	—	155	150	131	140	135
▲ Cases decided within 270 days of assignment	—	93%	96%	97%	98%	98%	98%	97%	98%	98%
Undecided cases over 270 days of age	45	14	6	13	0	19	0	48	0	0
OBJECTIVE 2: ISSUE TRIAL DECISIONS ON SOUND FACTUAL AND LEGAL ANALYSIS										
▲ Appeal rate	—	—	24%	24%	—	25%	—	20%	—	—
▲ Affirmance rate	—	—	70%	52%	—	46%	—	64%	—	—

▲ Current performance goals or quality indicators

**AGENCY-WIDE MANAGEMENT OBJECTIVES
FY 2001 - FY 2003**

In revising its Strategic Plan, the Commission added an agency-wide management goal that covers both of its adjudicative budget activities. This goal is to manage the Commission's human resources, operations, facilities, and systems to ensure a continually improving, effective and efficient organization. The objectives of this goal, including regulatory initiatives, as they relate to the Commission's FY 2001-2003 budget are as follows:

Objective 1 — Ensure Organizational and Management Effectiveness

Performance Goals:

- ◆ Develop and implement an agency strategic plan, with annual performance goals, objectives and performance measures to assure public awareness, and to guide individual and organizational efforts.

The Commission published its revised strategic plan covering the fiscal years 2000-2005 on March 30, 2001.

Although not specified as performance goals, the following activities are also an integral part of ensuring organizational and management effectiveness and are a part of the FY 2001-2003 budget program:

☐ **Financial Management**

The Commission's accounting services are being provided under an inter-agency agreement with the Department of Treasury's Bureau of Public Debt (BPD). The Commission hopes to continue its 5-year audit cycle, with the next audit reviewing FY 2002 financial records.

☐ **Program Evaluation**

During FY 2003, the Commission will continue to review its strategic plan and annual performance plan to assure that its goals and objectives fairly and accurately report accomplishments. While most of the Commission's goals have been refined over the past years to reflect achievements in reducing backlogs of undecided cases and a reduction in the age of appellate substantive dispositions, we continue to search out methods 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's FY 2001-2003 activities relating to this Performance Goal are as follows:

- **System Enhancement**

The Commission now operates an automated and completely integrated docketing and case tracking system for its trial and appellate cases. This program provide the Chief ALJ and the General Counsel with an up-to-date status of all trial and appellate cases. In addition, the program provides individual ALJ's with the complete inventory and status of all their assigned cases. These programs aid in the case assignment and decisional process, helping the Commission achieve its performance objectives.

- **Network Enhancement**

During FY 2001, the Commission incurred unexpected difficulties with its network as a result of an unscheduled change of its Internet provider. As a result of these difficulties, coupled with the need to reconfigure and upgrade the network because of technology improvements, government uniformity, and office relocations, the Commission has begun upgrading its operating network. This effort will include the scheduled replacement and upgrading of servers, routers, operating software, security and virus protection and other items needed to assure that the network remains modern and consistent with our needs and new location.

- **Internet Access**

The Commission's website, <http://www.fmshrc.gov>, became operational on April 27, 1999. It continues to receive about 40,000 hits per month. 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, and links to related agencies and legal materials, including the Mine Act and MSHA. The website is hosted and maintained by the Government Printing Office. The Commission is in full compliance with the regulations governing accessibility to persons with disabilities.

☐ **Network Security**

The Commission continues to modernize its local and wide area networks using high-performance internal security management that includes integrated firewall, virtual private networking, authentication, and caching services. Anti-virus scans are conducted daily on servers and individual work stations. We believe that this system fully meets our information security requirements.

☐ **Remote Access**

Although originally scheduled in FY 2001, the Commission plans in FY 2002 to install necessary software to allow employees to access work materials from their home computers and from laptops while on travel status. Remote access is an integral part in the development of the Commission's telecommuting policy required by Section 359 of P.L. 106-346.

☐ **Government Paperwork Elimination Act (GPEA)**

GPEA requires Federal agencies to consider adopting systems that would permit individuals or entities to submit information or transact business with Federal agencies electronically, where practicable. Agencies are also required, where practicable, to maintain records electronically. Early in FY 2001, the Commission made a preliminary determination that the only area in which it needed to consider the practicability of providing the option of electronic filing is the electronic submission of case-related filings. During FY 2002 the Commission will assess potential usage, associated risks and benefits, system development requirements, costs, and required procedural rule changes before making a final determination on the practicability of accepting electronic filings.

Objective 3 — Relocate Commission's Headquarters and Field Office

Performance Goals:

- ◆ Obtain new Commission office facilities to provide an efficient and attractive work environment.

The Commission has maintained its headquarters and Falls Church offices at the same locations since its inception. However, continued occupancy at these sites is no longer an option and other space has been requested through the General Services Administration (GSA). The Commission has reviewed the current space arrangement of maintaining separate offices for its headquarters and Falls Church ALJs and has determined that the offices should be consolidated. Until other space has been secured, the Commission will continue to occupy space at its present headquarters location through the lease expiration, and at its Falls Church location under a short-term leasing arrangement.

Current negotiations with GSA have reached the stage of discussing specific sites. Although we have not been provided the cost of these locations, we have included in our FY 2003 budget an increase of \$382,000 based on GSA cost projections.

Objective 4 — 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 continues to receive responsive personnel servicing under an inter-agency agreement with BPD.

During this budget period the Commission will continue to evaluate its personnel and staffing needs, reflecting workload changes and staff development. The Commission ended FY 2001 with 39 full time and 4 part time employees. For FY 2002 and FY 2003 the Commission has an allocation of 48 FTE.

In November 2000, the Office of Personnel Management (OPM) conducted a review of the Commission's human resources management program. The purpose of the review was to assure compliance of human resources management operations with merit systems principles and OPM standards. It was the first time that OPM has reviewed Commission operations. The OPM review found the Commission's human resources programs operating within the merit system principles and commended the Commission on its ability to recruit and place highly qualified candidates. The OPM Merit System Principles Questionnaire indicated that Commission employees' perspectives on human resources management issues are more positive than the overall government responses. The report also indicated a need to develop and implement a training program for managers, supervisors, and employees, and suggested other areas of improvement.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SELECTED WORKLOAD DATA

	2001 Actual	2002 Estimate	2003 Estimate
<u>Commission Review Activities</u>			
Cases pending beginning of year	34	26	20
New cases received	65	60	60
Total case workload	99	86	80
Cases decided	73	66	66
Cases pending end of year	26	20	14

Administrative Law Judge Determinations

Cases pending beginning of year	1,563	1,418	1,068
New cases received	2,310	2,100	2,300
Total case workload	3,873	3,518	3,368
Cases decided	2,455	2,450	2,450
Cases pending end of year	1,418	1,068	918

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

COMMISSION MEMBERS

<u>NAME</u>	<u>TERM EXPIRATION</u>
Theodore F. Verheggen, Chairman	August 30, 2002
Mary Lu Jordan	August 30, 2002
Robert H. Beatty, Jr.	August 30, 2004
Vacant	August 30, 2006
Vacant	August 30, 2006

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CONSULTANTS

The Commission employed no consultants in FY 2001 and has no plans to employ consultants in FY 2002 or FY 2003.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION OF APPROPRIATION ESTIMATES FOR COMMITTEE ON APPROPRIATIONS

FISCAL YEAR 2004

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 \$7,774,000 covering 50 FTE for FY 2004. This is an increase of \$647,000 and 1 FTE over the FY 2003 appropriation request.

The budget request contains several increases, including \$98,000 for pay adjustments reflecting a 3.1 percent increase in calendar year 2003 and a 2.0 percent increase projected for January 2004. Other increases include \$158,000 for GSA rent and \$80,000 for building security costs associated with the Commission's relocation of its Falls Church and Headquarters offices to new facilities in September 2002.

The Commission is requesting \$71,000 to hire one permanent full-time information technology employee. This person will be responsible for network oversight and security, provide day to day technical support and assist in the management of the Commission's information technology program. Accompanying this increase is a reduction of \$30,000 in IT contract costs, as the new position will assume some of the work currently performed by contractors.

The FY 2004 request also provides \$145,000 in additional funds to fund the existing staff of 49 FTE, including \$20,000 for an extra pay day in FY 2004. In addition, \$125,000 is included in our request for leave payments associated with projected retirements in FY 2004.

The Commission intends to significantly improve and expand upon its website in order to provide prompt notification of decisions by the Commission and significant decisions by its ALJs. The Commission also intends to revise the website to provide its constituents with a more effective means of researching Commission case law and precedents.

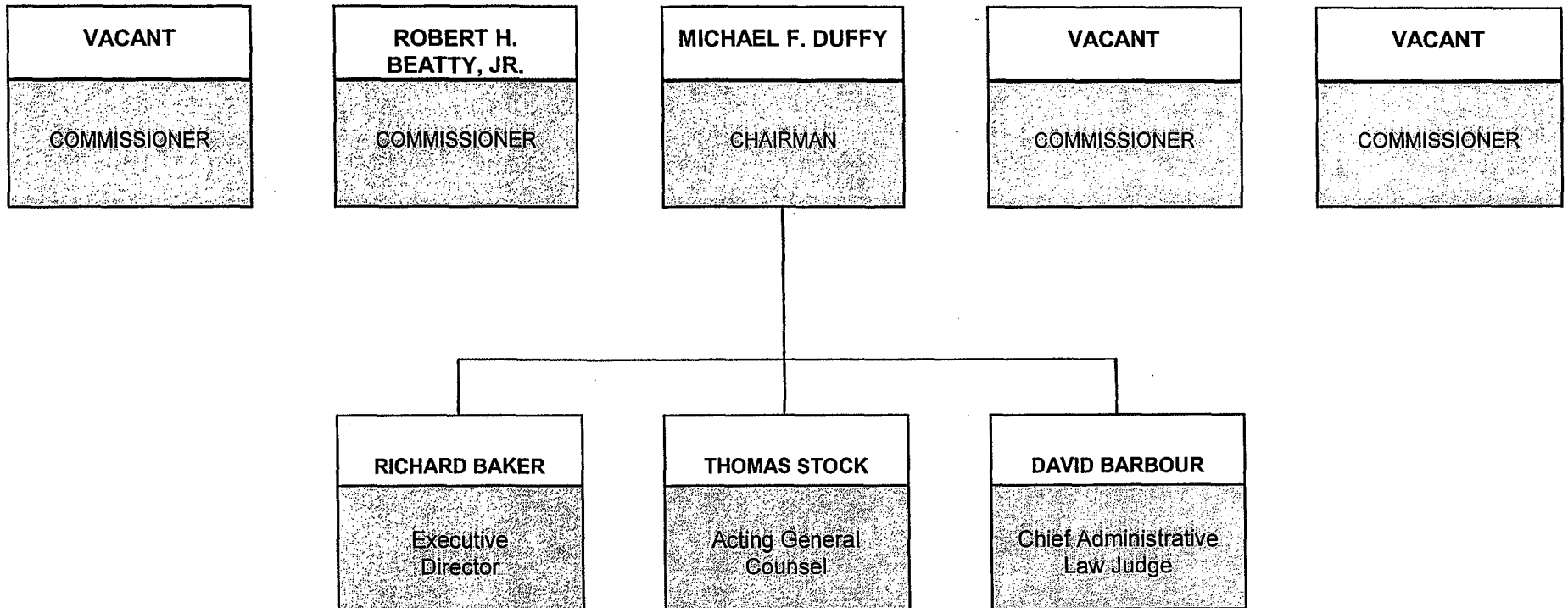
As of September 30, 2002, the Commission had a trial docket of 1,320 undecided cases, having received 2,102 cases and decided 2,200 this past fiscal year. In FY 2003, we anticipate receiving 2,100 new cases and disposing of 2,300. In FY 2004 we anticipate that the Commission ALJ's will receive 2,300 cases and dispose of 2,350 cases, ending the year with an inventory of 1,070 undecided cases.

With respect to our FY 2002 performance at the trial level, of the 2,200 trial cases closed, Commission judges decided all but 127 cases in less than 9 months from assignment. Forty-eight of the cases decided beyond the 9-month timeframe were consolidated in anomalous, multi-issue proceeding requiring numerous post hearing extensions due to their complexity. Decision age averaged 74 days, with decision after hearing averaging 283 days and settlement being completed on average in 82 days.

At the appellate level, the Commission ended the fiscal year with a docket of 15 cases, having received 65 cases and disposed of 76 cases in FY 2002. The 76 dispositions included 16 substantive decisions, 55 procedural orders and denials of 5 petitions for review. The average age of the 15 undecided cases was 4.1 months as of September 30, 2002. The average age of substantive decisions issued in FY 2002 was 11.4 months. We anticipate receiving 60 new cases and deciding 55 matters, thus leaving 20 cases undecided at the end of FY 2003. In FY 2004 we estimate receiving 65 new cases and disposing of 73 matters, resulting in an inventory of 12 undecided cases.

Currently, the Commission has a complement of two members, Chairman Duffy, whose term expires August 30, 2006, and Commissioner Beatty, whose term expires August 30, 2004. Three Commissioners' positions are vacant, although the President has sent the name of one nominee to the Senate for confirmation. By law, a quorum of three Commissioners is required to consider and decide cases appealed from the Commission's ALJs. Consequently, parties seeking review of ALJ decisions must either wait until additional Commissioners take office or appeal their cases to the appropriate federal circuit courts of appeals. The Commission's current inability to consider and decide cases, if it continues, will adversely affect the Commission's ability to meet its goals.

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.), \$7,774,000.

Note: A regular 2003 appropriation for this account had not been enacted at the time the budget was prepared; therefore, this account is operating under a continuing resolution (P.L. 107-229, as amended). The amounts included for 2003 in this budget reflect the Administration's 2003 policy proposals.

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 2003

FY 2004

Authorizing Legislation Containing Indefinite Authority

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

7,127,000

7,774,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

BUDGET AUTHORITY AND STAFFING BY ACTIVITY

	<u>FY 2002</u>		<u>FY 2003</u>		<u>FY 2004</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	20	4,193,000	30	4,181,000	31	4,639,000	+1	+458,000
Administrative								
Law Judge Determinations	<u>18</u>	<u>2,741,000</u>	<u>19</u>	<u>2,946,000</u>	<u>19</u>	<u>3,135,000</u>	<u>=</u>	<u>+189,000</u>
Total BA	38	6,934,000	49	7,127,000	50	7,774,000	+1	+647,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SUMMARY OF CHANGES

Budget Authority	FY 2003	FY 2004	Net Change
Appropriations	\$7,127,000	\$7,774,00	+647,000
Full-time Equivalent	49	50	1

Explanation of Changes	FTE	Budget Authority
Increases		
1. Increased pay and benefits	—	+ 223,000
2. Additional day of pay in FY 2004	—	+20,000
3. GSA Rent Increase	—	+158,000
4. Building Security Costs	—	+80,000
5. Information Technology Staff	+1	+71,000
6. Annual leave payments	—	+125,000
Decreases		
1. Reduction in IT Contract Costs		-30,000
Net Change	+1	+647,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

BUDGET AUTHORITY BY OBJECT CLASS (in thousands of dollars)

	<u>FY 2002</u>	<u>FY 2003</u>	<u>FY 2004</u>	<u>Increase or Decrease</u>
<u>Personnel Compensation</u>				
Full-time permanent	3,914	4,063	4,444	+381
Other than full-time permanent	195	221	223	+2
Total, personnel compensation	4,109	4,284	4,667	+383
Personnel benefits, civilian	862	898	948	+50
Travel and transportation of persons	100	100	100	—
Transportation of things	2	2	2	—
Rental payments to GSA	682	1,064	1,222	+158
Communications, utilities and miscellaneous charges	109	109	109	—
Printing and reproduction	35	35	35	—
Other services	890	490	546	+56
Supplies and materials	80	80	80	—
Equipment	65	65	65	—
 TOTAL	 6,934	 7,127	 7,774	 +647

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

PERSONNEL SUMMARY

	2002 ACTUAL	2003 ESTIMATE	2004 REQUEST
ACCOUNT: SALARIES & EXPENSES			
Executive Level III	1	1	1
Executive Level IV	4	4	4
SUBTOTAL	5	5	5
ES-5	1	1	1
ES-4	1	1	1
SUBTOTAL	2	2	2
AL-2	1	1	1
AL-3	9	9	9
SUBTOTAL	10	10	10
GS-15	5	5	5
GS-14	3	3	3
GS-13	1	1	2
GS-12	2	2	2
GS-11	2	2	2
GS-10	2	2	2
GS-9	1	1	1
GS-8	10	10	10
GS-7	1	1	1
GS-5	1	1	1
SUBTOTAL	28	28	29
Total Permanent Full-time Positions	45	45	46
Unfilled positions end-of-year	13	—	—
Total, full-time permanent employment end-of-year	32	45	46
Full-time equivalent (FTE) usage	38	49	50
<hr/>			
Average ES level	4.50	4.50	4.50
Average ES salary	\$132,086	\$136,187	\$142,038
Average AL level	2.90	2.90	2.90
Average AL salary	\$134,363	\$138,769	\$141,545
Average GS grade	10.21	10.21	10.69
Average GS salary	\$61,258	\$63,281	\$64,896

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

AMOUNTS AVAILABLE FOR OBLIGATION

	FY 2002		FY 2003		FY 2004	
	FTE	Amount	FTE	Amount	FTE	Amount
Appropriation, total estimated obligations	38	6,934,000	49	7,127,000	50	7,774,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

APPROPRIATIONS HISTORY TABLE

Fiscal Year	Budget Estimate To Congress	House Allowance	Senate Allowance	Appropriation
1984	3,858,000	3,858,000	4,000,000	3,858,000
1985	3,837,000	3,837,000	3,837,000	3,837,000
Pay Supp.	36,000			
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			
2004	7,774,000			

-
- 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.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

STAFFING HISTORY TABLE

<u>Fiscal Year</u>	<u>FTE</u>
1984	58
1985	52
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 Est.	49
2004 Est.	50

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CONGRESSIONAL DIRECTIVES

House Report 107-229 dated October 9, 2001, accompanying H.R. 3061 and Senate Report 107-84 dated October 11, 2001 accompanying S-1536 contained no directives for the Federal Mine Safety and Health Review Commission for FY 2002.

Action on the FY 2003 budget had not been completed at the time the President's Budget was transmitted to Congress.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION

	2003 Estimate		2004 Request		Increase or Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount
Commission Review	30	4,181,000	31	4,639,000	+1	+458,000
Administrative Law Judge Determinations	19	2,946,000	19	3,135,000	—	+189,000
Total Budget Authority	49	7,127,000	50	7,774,000	+1	+ 647,000

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 Amendments 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, 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>2002</u>		<u>2003</u>		<u>2004</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	20	4,193,000	30	4,181,000	31	4,639,000	+1	+458,000

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. 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.

2004 Budget Request:

The budget request contains \$4,639,000 and 31 FTE for the Commission's appellate review activities for FY 2004. This is an increase of \$458,000 and 1 FTE over the FY 2003 appropriation request. Changes from the FY 2003 budget include:

- (a) an increase of \$142,000 for pay and benefits including pay adjustments based on the annualization of the current year 3.1 percent pay increase and the projected January 2004 increase of 2 percent, and the additional day of pay in FY 2004;
- (b) \$100,000 increase for GSA rent.

- (c) an additional \$50,000 for the Commission's share of physical security costs provided jointly by the Federal Trade Commission;
- (d) an increase of \$71,000 to permit the Commission to employ one FTE devoted full time to information technology. The cost of this position has been partially offset with a reduction of \$30,000 in contractual services, so the net increase requested is \$41,000;
- (e) a one time appropriation of \$125,000 for leave payments. A staff member who has a large amount of accumulated leave has indicated retirement in FY 2004. Without the requested increase, the Commission would be forced to leave this key position vacant for most of the year after the incumbent leaves.

A total of 65 new cases are anticipated for review by the Commission during FY 2004. Seventy-three dispositions are expected, resulting in a projected end-of-year case inventory of only 12 undecided cases.

The Commission's FY 2004 GPRA Annual Performance Plan includes the following objectives for its appellate activity:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2004:

- ◆ 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 2004:

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

Fiscal Year 2003 Activity:

The FY 2003 resource level for the Commission Review Activity is \$4,181,000 and 30 FTE. The Commission began FY 2003 with an inventory of 15 undecided cases and expects to receive 60 new cases during the year. Fifty-five dispositions are anticipated during the year. The Commission expects to have 20 undecided cases at the end of the fiscal year.

Through January 31, 2003, the Commission has received 13 new cases. Five petitions for review were denied. As a result of not having a quorum of Commissioners, no decisions had been issued during FY 2003 prior to the transmittal of the President's FY 2004 budget.

The Commission's FY 2004 GPRA Annual Performance Plan includes the following objectives for its appellate activity in FY 2003:

Objective 1 — Issue opinions in a timely manner.

Performance Goals for FY 2003:

- ◆ 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 2003:

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

Fiscal Year 2002 Activity:

The FY 2002 resource level for the Commission Review Activity was \$4,193,000 and 20 FTE. The Commission began FY 2002 with an inventory of 26 undecided cases. The Commission received 65 new cases. Seventy-six cases were decided during the year. As a result, the Commission had 15 undecided cases on its docket at the end of the fiscal year. The Commission ended the fiscal year with only one member.

Of the 76 cases decided in FY 2002, 16 were substantive decisions, 55 were procedural orders, and 5 were denials of petitions for review. The average age of the 15 matters pending on the Commission's docket as of September 30, 2002 was 4.4 months, and the average age of the 16 substantive decisions issued was 11.4 months. This figure reflects the disposition of all appellate cases exceeding 18 months of age.

The Commission developed the following performance objectives associated with its FY 2002 budget. The objectives and accomplishments achieved during the year were:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2002:

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

Accomplishments: This goal was met. All cases that were briefed were assigned by the end of FY 2002.

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

Accomplishments: This goal was met. During FY 2002, one case reached 18 months or older and was decided before the end of the fiscal year.

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

Accomplishments: This goal was met. As of September 30, 2002, the average age of the substantive dispositions was 11.4 months, a decrease in the average age of 14.2 months in FY 2001.

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

Quality Indicators for FY 2002:

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

Accomplishments: Through September 30, 2002, the Commission had an appeal rate of 19 percent, which is below the 27 percent rate for the FY 1993-01 period. The Commission affirmance rate through September 30 based on only 2 Federal court of appeals decisions is 50 percent, compared to a 79 percent affirmance rate for the FY 1991-2001 period. Three other cases were dismissed by the Courts.

PERFORMANCE MEASUREMENT MATRIX

COMMISSION REVIEW

	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001		FY 2002		FY 2003	FY 2004
	Actual	Actual	Actual	Actual	Goal	Actual	Goal	Actual	Goal	Goal
OBJECTIVE: Issue opinions in a timely manner										
Undecided cases over 24 months of age	1	1	1	0	0	0	0	0	0	0
▲ Undecided cases over 18 months of age (inclusive)	6	3	1	2	0	0	0	0	0	0
Undecided cases over 12 months of age (inclusive)	12	12	6	3	0	2	0	1	0	0
▲ Cases briefed but unassigned	9	4	3	0	0	0	0	0	0	0
▲ Substantive disposition age	17.9	17.0	16.4	12.2	12.0	14.2	12.0	11.4	12.0	12.0
OBJECTIVE: Issue well reasoned Commission opinions providing clear legal precedent and thoughtful analysis of issues										
▲ Appeal rate	24%	26%	30%	17%	27%*	24%	27%*	19%		
▲ Affirmance rate	72%	85%	50%	50%	79%*	100%	78%*	50%		

* These percentages are historical averages rather than goals. The appeal rates are averages from FY 1993 and succeeding years and the affirmance rates are averages of the preceding 10 years.

▲ Current performance goals or quality indicators

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

ADMINISTRATIVE LAW JUDGE DETERMINATIONS

	<u>2002</u>		<u>2003</u>		<u>2004</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	18	2,741,000	19	2,946,000	19	3,135,000	—	+189,000

Introduction:

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

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

2004 Budget Request:

The budget request contains \$3,135,000 and 19 FTE for the Commission's trial activities of its administrative law judges in FY 2004. This is an increase of \$189,000 over the FY 2003 appropriation request. Changes from the FY 2003 budget include:

- (a) an increase of \$101,000 for pay and benefits including pay adjustments based on the annualization of the current year 3.1 percent pay increase and the projected January 2004 increase of 2 percent and the additional day of pay in FY 2004;
- (b) \$58,000 increase for GSA rent;
- (c) an additional \$30,000 for the Commission's share of physical security costs provided jointly by the Federal Trade Commission;

A total of 2,300 new cases is anticipated for FY 2004, with 2,350 dispositions projected, leaving an end-of-year inventory of 1,070 undecided cases.

The Commission's FY 2004 GPRA Annual Performance Plan includes the following objectives for its trial activity:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2004:

- ◆ Manage the case assignment process to assure that initial filings and response time frames are adhered to, resulting in case assignment averages that are less than the time frames in the Commission's procedural rules.
- ◆ Issue 94 percent of decisions within 90 days of receipt of post-hearing brief.
- ◆ Issue 98 percent of settlement decisions within 30 days of receipt of settlement motions.
- ◆ Decide 98 percent of cases within 270 days of assignment.
- ◆ Decide all cases within an average of 135 days from receipt by the Commission.

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

Quality Indicators for FY 2004:

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

Fiscal Year 2003 Activity:

The FY 2003 resource level for the Administrative Law Judge Determination Activity is \$2,946,000 and 19 FTE.

The Commission began FY 2003 with an inventory of 1,320 undecided trial cases. A total of 2,100 new cases is anticipated for FY 2003, with 2,300 dispositions projected, leaving an end-of-year inventory of 1,120 cases.

Through January 31, 2003, the Commission's ALJs have received 943 new cases and has disposed of 670 cases.

The Commission's FY 2004 GPRA Annual Performance Plan includes the following objectives for its trial activity in FY 2003:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2003

- ◆ 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 94 percent of decisions within 270 days of receipt of the post-hearing brief.
- ◆ Issue 98 percent of settlement decisions within 30 days of receipt of settlement motions.
- ◆ Decide 98 percent of cases within 270 days of assignment.
- ◆ Decide all cases within an average of 135 days from receipt by the Commission.

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

Quality Indicators for FY 2003:

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

Fiscal Year 2002 Activity:

The FY 2002 funding level for the Administrative Law Judge Determinations Activity was \$2,741,000 and 18 FTE. As of October 1, 2001, the Commission's ALJs had an inventory of 1,418 cases and received 2,102 new cases during FY 2002. Case dispositions for the fiscal year totaled 2,200 leaving an end-of-year inventory of 1,320 cases.

The Commission developed the following performance objectives associated with its FY 2002 budget. These objectives and accomplishments during the year were:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2002:

- ◆ 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. Through September 30, 2002, the average time for a case to be assigned to an ALJ was 71 days. Penalty cases were assigned in 80 days, within the 85-day goal and the timeframe specified in the Commission's rules. Review cases were assigned in 28 days, less than the 30-day timeframe and assignment goal. Although processing time frames increased over FY 2001, the average remains within the time frames contained in the Commission rules. The Commission plans to increase its monitoring and follow up efforts to assure that filings in each case are within the stated timeframes.

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

Accomplishments: This goal was not met. Through September 30, 2002, decisions in 61 percent of the 184 cases involving hearings were issued within 90 days of receipt of the post-hearing brief; 58 cases (32 percent) were decided during the 91-120 period after receiving the post-hearing brief. Of these 58 cases, 48 were consolidated in anomalous, multi-issue, proceeding where the parties requested numerous post-hearing extensions due to the complexity of the case. Only 13 cases were not decided within a 120-day time frame. Six of these cases were decided by one judge who has been habitually slow in issuing decisions.

The Chief Judge has established a tracking system that identifies cases that are close to exceeding the 90-day decision period, and will discuss the status of those cases with each individual judge. In addition, the Chief Judge continues to monitor compliance on a monthly basis and meets and discusses quarterly status reports with the judges individually .

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

Accomplishments: This goal was not met. Through September 30, 2002, 96 percent of settlement dispositions were made within 30 days of receipt of the settlement motion. Thirty-nine settlement approvals were decided within 31-60 days, and only 11 approvals required more than 61 days. Generally, settlement dispositions that exceed the 30-day time frame required the submission of additional materials and further explanations. Although this affects the Commission's goal, it is preferable to denying the settlement and setting the case for hearing. The Commission in conjunction with the Department of Labor, will continue to hold training sessions for solicitors and mining representatives on the preparation and adequate support of settlement motions.

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

Accomplishments: This goal was not met. Through September 30, 2002, the Commission's judges issued decisions in 94 percent of the cases within 270 days of assignment; 127 cases were decided beyond the 90-day timeframes including 48 which were consolidated in anomalous, multi-issue, proceeding where the parties requested numerous extensions for filings due to the complexity of the case. In other cases, complex technical issues arise that require extension to time frames during the case hearing process.

The Commission will work toward improving its measurement process by categorizing cases according to degree of complexity or other means and establish more reasonable time frames for disposition.

- ◆ Decide all cases within an average of 140 days from receipt by the Commission.

Accomplishments: This goal was not met. Through September 30, 2002, the average length of time from receipt of a case by the Commission to its disposition was 145 days. Average case disposition time rose due to the delays in issuing several decisions after hearing and the need for parties to supplement their motions on settlement proposals. The steps taken by the Chief Judge to monitor individual case processing and to educate solicitors and mining representatives on the need to adequately support settlement motions will result in a reduction in the average time for all cases.

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

Quality Indicators for FY 2002:

- ◆ 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. For FY 2002 the ALJ appeal rate was 17% and the affirmance rate was 55%.

PERFORMANCE MEASUREMENT MATRIX

OFFICE OF ADMINISTRATIVE LAW JUDGES

	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001		FY 2002		FY 2003	FY 2004
	Actual	Actual	Actual	Actual	Goal	Actual	Goal	Actual	Goal	Goal
OBJECTIVE 1: ISSUE OPINIONS ON A TIMELY MANNER										
▲ Average time (days) for assignment of penalty cases	85	68	70	77	0	69	0	80	0	0
▲ Average time (days) for assignment of review cases	40	21	25	28	27	22	21	28	20	20
Average time (days) for assignment of all cases	70	60	64	66	0	60	0	71	0	0
▲ Percentage of decisions issued within 90 days of post-hearing brief	97%	92%	83%	90%	93%	92%	94%	61%	94%	94%
▲ Percentage of settlement approvals issued within 30 days of settlement motion	93%	99%	97%	98%	98%	98%	98%	96%	98%	98%
Average time (days), case assignment to disposition	80	66	62	89	75	70	71	74	70	70
▲ Average time (days), case receipt to disposition	149	126	126	155	150	131	140	145	135	135
▲ Cases decided within 270 days of assignment	93%	96%	97%	98%	98%	97%	98%	94%	98%	98%
Undecided cases over 270 days of age	14	6	13	19	0	48	0	25	0	0
OBJECTIVE 2: ISSUE TRIAL DECISIONS ON SOUND FACTUAL AND LEGAL ANALYSIS										
▲ Appeal rate	0	24%	24%	25%	0	20%	0	17%	0	0
▲ Affirmance rate	0	70%	52%	46%	0	64%	0	55%	0	0

▲Current performance goals or quality indicators

**AGENCY-WIDE MANAGEMENT OBJECTIVES
FY 2002 - FY 2004**

In revising its Strategic Plan, the Commission added an agency-wide management goal that covers both of its adjudicative budget activities. This goal is to manage the Commission's human resources, operations, facilities, and systems to ensure a continually improving, effective and efficient organization. The objectives of this goal, including regulatory initiatives as they relate to the Commission's FY 2002-2004 budget are as follows:

Objective 1 — Ensure Organizational and Management Effectiveness

Performance Goals:

- ◆ Develop and implement a plan, with organizational goals, and performance measures to assure public awareness, and to guide individual and organizational efforts.

Subsequent to the change of Administrations, President Bush appointed Theodore F. Verheggen as Chairman of the Commission on August 20, 2001. Chairman Verheggen resigned effective July 26, 2002. On February 7, 2003, President Bush designated Michael F. Duffy as Chairman.

The Commission will revise and publish its strategic plan covering the fiscal years 2005-2009. During FY 2003, each of the Commission's objectives and timeframes will be reassessed to assure that they are appropriate and fairly and accurately measure the Commission's adjudicative responsibilities. The Commission plans to use the following means and strategies to ensure organizational and management effectiveness.

☐ **Financial Management**

The Commission's accounting services are being provided under an inter-agency agreement with the Department of Treasury's Bureau of Public Debt (BPD). In accordance with the requirements of the Accountability of Tax Dollars Act, the Commission will have its financial statements audited annually beginning with FY 2002.

☐ **Program Evaluation**

During FY 2004, the Commission will continue to review its strategic plan and annual performance plan to assure that its goals and objectives fairly and accurately report accomplishments. While most of the Commission's goals have been refined over past years to reflect achievements in reducing backlogs of undecided cases and a reduction in the age of appellate substantive dispositions, we continue to search out methods 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.

For FY 2004, the Commission is requesting an increase of \$41,000 and 1 FTE to establish a permanent information technology staff. Information technology is a critical issue with the Administration and the Commission. The Commission simply cannot continue to treat these efforts on an ad hoc basis and to rely on staff turnover in its statutory activities to provide funds for this important activity.

The Commission's FY 2002-2004 activities relating to this Performance Goal are as follows:

☐ **System Enhancement**

The Commission now operates an automated and completely integrated docketing and case tracking system for its trial and appellate cases. This program provides the Chief ALJ and the General Counsel with an up-to-date status of all trial and appellate cases. In addition, the program provides individual ALJs with a complete inventory and status of all their assigned cases. These programs aid in the case assignment and decisional process, helping the Commission achieve its performance objectives.

☐ **Network Enhancement**

During FY 2002, the Commission incurred unexpected difficulties with its network as a result of an unscheduled change of its Internet provider. As a result of these difficulties, coupled with the need to reconfigure and upgrade the network because of technology improvements, government uniformity, and office relocations, the Commission upgraded its operating network. This effort included the scheduled replacement and upgrading of servers, routers, operating software, security and virus protection and other items needed to assure that the network remains modern and consistent with our needs and new location.

☐ **Internet Access**

The Commission's website, <http://www.fmshrc.gov>, became operational on April 27, 1999. It continues to receive about 55,000 hits per month. 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, and links to related agencies and legal materials, including the Mine Act and

MSHA. The website is hosted and maintained by the Government Printing Office. The Commission is in full compliance with the regulations governing accessibility to persons with disabilities. The Commission intends to significantly improve and expand upon its website in order to provide prompt notification of decisions by the Commission and significant decisions by its ALJs. The Commission also intends to revise the website to provide its constituents with a more effective means of researching Commission case law and precedents.

☐ **Network Security**

The Commission continues to modernize its local and wide area networks using high-performance internal security management that includes integrated firewall, virtual private networking, authentication, and caching services. Anti-virus scans are conducted daily on servers and individual work stations. We believe that this system fully meets our information security requirements.

☐ **Remote Access**

Although originally scheduled in prior fiscal years, the Commission plans in FY 2003 to install necessary software to allow employees to access work materials from their home computers and from laptops while on travel status. Remote access is an integral part in the development of the Commission's telecommuting policy required by Section 359 of P.L. 106-346.

☐ **Government Paperwork Elimination Act (GPEA)**

GPEA requires Federal agencies to consider adopting systems that would permit individuals or entities to submit information or transact business with Federal agencies electronically, where practicable. Agencies are also required, where practicable, to maintain records electronically. Early in FY 2001, the Commission made a preliminary determination that the only area in which it needed to consider the practicability of providing the option of electronic filing is the electronic submission of case-related filings. During FY 2002 the Commission assessed potential usage, associated risks and benefits, system development requirements, costs, and required procedural rule changes before making the determination that accepting electronic filings was not practicable.

Objective 3 — Relocate Commission's Headquarters and Field Office

Performance Goals:

- ◆ Obtain new Commission office facilities to provide an efficient and attractive work environment.

The Commission had maintained its headquarters and Falls Church offices at the same locations since its inception. However, continued occupancy at these sites was no longer an option and other space was requested through GSA. The Commission reviewed its historical space arrangement of maintaining separate offices for its headquarters and Falls Church ALJs and determined that the offices should be consolidated.

Working through GSA, the Commission secured new space to consolidate its offices at 601 New Jersey Avenue. The space was accepted on September 19, 2002 and relocation of both Headquarters and Falls Church offices was completed on September 27, 2002.

The building is a new building completely occupied by the Federal Government. The Federal Trade Commission (FTC) is housed on seven and a half floors, the Commission occupies parts of the eight and ninth floors and the Medicare Payment Advisory Commission has the remaining space. Since FTC occupies most of the building, they have determined the level of necessary security required as well as other aspects of building operation. Costs for these items are included in the 2004 appropriation request.

Objective 4 — 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 continues to receive responsive personnel servicing under an inter-agency agreement with BPD. However, costs associated with these services increased 43% in FY 2003.

The Commission currently has a Chairman and one Commissioner. An additional Commissioner nominee is pending before the Senate. Nominations for the two remaining Commissioners vacancies have yet to be announced. As a result of vacancies in these statutory positions and the associated support staff, the Commission ended FY 2002 with 32 full-time and 4 part-time employees, well below its authorized staffing level.

The Commission has an FTE allocation of 49 for FY 2003 and is requesting 50 FTE for FY 2004.

The Commission's FY 2004 budget request is consistent with the President's Strategic Management of Human Capital Initiative. The FTE increase recognizes the need to establish and retain institutional skills and knowledge not possible through the continuing contracting for information technology support. The revision of the Strategic Plan will also focus on making the Commission more citizen-centered and results oriented.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SELECTED WORKLOAD DATA

	2002 Actual	2003 Estimate	2004 Estimate
<u>Commission Review Activities</u>			
Cases pending beginning of year	26	15	20
New cases received	65	60	65
Total case workload	91	75	85
Cases decided	76	55	73
Cases pending end of year	15	20	12

Administrative Law Judge Determinations

Cases pending beginning of year	1,418	1,320	1,120
New cases received	2,102	2,100	2,300
Total case workload	3,520	3,420	3,420
Cases decided	2,200	2,300	2,350
Cases pending end of year	1,320	1,120	1,070

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

COMMISSION MEMBERS

<u>NAME</u>	<u>TERM EXPIRATION</u>
Michael F. Duffy, Chairman	August 30, 2006
Robert H. Beatty, Jr.	August 30, 2004
Vacant	August 30, 2006
Vacant	August 30, 2008
Vacant	August 30, 2008

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CONSULTANTS

The Commission employed no consultants in FY 2002 and has no plans to employ consultants in FY 2003 or FY 2004.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION OF APPROPRIATION ESTIMATES FOR COMMITTEE ON APPROPRIATIONS

FISCAL YEAR 2005

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 \$7,813,000 covering 50 FTE for FY 2005. This is a net increase of \$84,867 over the FY 2004 appropriation.

The budget request contains several increases, including \$153,867 for pay and benefit adjustments, including a 4.1 percent increase in calendar year 2004 and a 1.5 percent increase projected for January 2005. Other increases include \$45,000 mainly for support service costs received from other agencies. These increases are partially offset by a reduction of \$114,000 in GSA rent.

The Commission intends to significantly improve and expand upon its website in order to provide prompt notification of decisions by the Commission and significant decisions by its ALJs. The Commission also intends to expand its website to include all printed decisions since its inception in a citable format to provide its constituents with a more effective means of researching Commission case law and precedents.

Through January 31, 2004, the Commission had a trial docket of 1,421 undecided cases, having received 629 new cases and decided 597 cases during the first 4 months of the fiscal year. In FY 2005, we anticipate receiving 2,300 new cases and disposing of 2,300 cases. In FY 2005

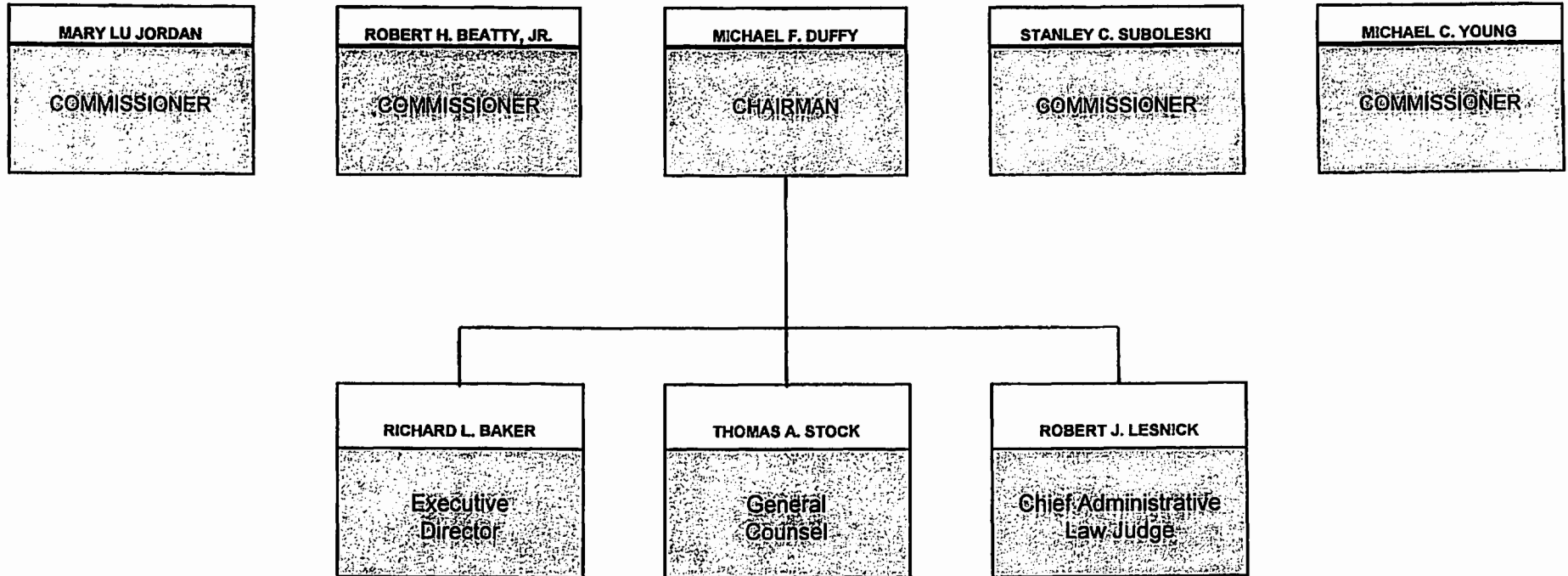
we anticipate that the Commission ALJ's will receive 2,300 cases and dispose of 2,350 cases, ending the year with an inventory of 1,339 undecided cases.

With respect to our FY 2003 performance at the trial level, of the 2,208 trial cases that were decided, Commission judges decided all but 46 cases in less than 9 months from assignment. Decision age averaged 63 days, with decision after hearing averaging 204 days and settlement being completed on average in 69 days.

At the appellate level, the Commission ended fiscal year 2003 with a docket of 42 undecided cases, having received 43 cases and disposed of 16 cases. The average age of the 42 undecided cases is 8.4 months as of September 30, 2003. The average age of substantive decisions issued in FY 2003 is 12.5 months. We anticipate receiving 60 new cases and deciding 79 matters, leaving 25 cases undecided at the end of FY 2004. In FY 2005 we estimate receiving 65 new cases and disposing of 70 matters, resulting in an inventory of 20 undecided cases.

The Commission began FY 2003 with only one member. By law, a quorum of three Commissioners is required to consider and decide cases appealed from the Commission's ALJs. In the absence of a quorum at the Commission, parties seeking review of ALJ decisions must either wait until additional Commissioners take office or appeal their cases to the appropriate Federal circuit court of appeals. A quorum of members was not achieved until June 2, 2003, thus, the Commission's inability to consider and decide cases for almost three fourths of the fiscal year adversely affected its ability to meet its performance goals. The term appointment of one Commission member will expire on August 30, 2004.

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.), \$7,813,000.

Explanation of Language

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

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

AUTHORIZING LEGISLATION

FY 2004

FY 2005

Authorizing Legislation Containing Indefinite Authority

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

7,728,133

7,813,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

BUDGET AUTHORITY AND STAFFING BY ACTIVITY

	<u>FY 2003</u>		<u>FY 2004</u>		<u>FY 2005</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	18	4,183,343	31	4,611,630	31	4,669,000	—	+57,370
Administrative								
Law Judge Determinations	<u>17</u>	<u>2,948,000</u>	<u>19</u>	<u>3,116,503</u>	<u>19</u>	<u>3,144,000</u>	=	<u>+27,497</u>
Total BA	35	7,131,343	50	7,728,133	50	7,813,000	—	+84,867

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SUMMARY OF CHANGES

Budget Authority	FY 2004	FY 2005	Net Change
Appropriations	\$7,728,133	\$7,813,000	+84,867
Full-time Equivalent	50	50	—

Explanation of Changes	FTE	Budget Authority
Increases		
1. Increased pay and benefits	—	+ 147,497
2. Increased support service costs	—	+45,000
3. Annual leave payments	—	+125,000
Decreases		
1. GSA Rent	—	-114,000
2. One less day of pay in FY 05	—	-21,000
3. Annual leave payments	—	<u>-97,630</u>
Net Change	—	+84,867

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

BUDGET AUTHORITY BY OBJECT CLASS (in thousands of dollars)

	<u>FY 2003</u>	<u>FY 2004</u>	<u>FY 2005</u>	<u>Increase or Decrease</u>
<u>Personnel Compensation</u>				
Full-time permanent	4,066	4,398	4,454	+56
Other than full-time permanent	221	223	282	+59
Total, personnel compensation	4,287	4,621	4,736	+115
Personnel benefits, civilian	899	948	987	+39
Travel and transportation of persons	100	100	100	—
Transportation of things	2	2	2	—
Rental payments to GSA	1,064	1,222	1,108	-114
Communications, utilities and miscellaneous charges	109	109	115	+6
Printing and reproduction	35	35	35	—
Other services	490	546	585	+39
Supplies and materials	80	80	80	—
Equipment	65	65	65	—
 TOTAL	 7,131	 7,728	 7,813	 +85

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

PERSONNEL SUMMARY

	2003 ACTUAL	2004 ESTIMATE	2005 REQUEST
ACCOUNT: SALARIES & EXPENSES			
Executive Level III	1	1	1
Executive Level IV	4	4	4
SUBTOTAL	5	5	5
ES	2	2	2
AL-2	1	1	1
AL-3	9	9	9
SUBTOTAL	10	10	10
GS-15	4	4	4
GS-14	2	2	2
GS-13	3	4	4
GS-12	2	2	2
GS-11	3	3	3
GS-10	1	1	1
GS-9	1	1	1
GS-8	10	10	10
GS-6	2	1	1
SUBTOTAL	28	29	29
Total Permanent Full-time Positions	45	46	46
Unfilled positions end-of-year	6	—	—
Total, full-time permanent employment end-of-year	39	46	46
Full-time equivalent (FTE) usage	35	50	50
<hr/>			
Average ES salary	\$136,921	\$140,430	\$142,817
Average AL level	2.90	2.90	2.90
Average AL salary	\$139,709	\$142,622	\$145,047
Average GS grade	10.54	10.62	10.62
Average GS salary	\$61,221	\$63,731	\$64,814

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

AMOUNTS AVAILABLE FOR OBLIGATION

	FY 2003		FY 2004		FY 2005	
	FTE	Amount	FTE	Amount	FTE	Amount
Appropriation, total estimated obligations	35	7,131,343	50	7,728,133	50	7,813,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
APPROPRIATIONS HISTORY TABLE

Fiscal Year	Budget Estimate To Congress	House Allowance	Senate Allowance	Appropriation
1984	3,858,000	3,858,000	4,000,000	3,858,000
1985	3,837,000	3,837,000	3,837,000	3,837,000
Pay Supp.	36,000			
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			

- 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.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

STAFFING HISTORY TABLE

<u>Fiscal Year</u>	<u>FTE</u>
1984	58
1985	52
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 Est.	50
2005 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 2003 or FY 2004.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION

	2004 Estimate		2005 Request		Increase or Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount
Commission Review	31	4,611,630	31	4,669,000	–	+ 57,370
Administrative Law Judge Determinations	19	3,116,503	19	3,144,000	–	+ 27,497
Total Budget Authority	50	7,728,133	50	7,813,000	–	+ 84,867

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>2003</u>		<u>2004</u>		<u>2005</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	18	4,183,343	31	4,611,630	31	4,669,000	-	+57,370

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.

2005 Budget Request:

The budget request contains \$4,669,000 and 31 FTE for the Commission's appellate review activities for FY 2005. This is a net increase of \$57,370 over the FY 2004 appropriation.

- (a) an increase of \$71,000 for pay and benefits including pay adjustments based on the annualization of the current year 4.1 percent pay increase and the projected January 2005 increase of 1.5 percent, offset by one less day of pay in FY 2005;
- (b) \$71,000 decrease for GSA rent.

- (c) an additional \$30,000 for the increased costs including services received from other agencies.
- (e) The request also includes an appropriation of \$125,000 for leave payments. A staff member who has a large amount of accumulated leave has indicated retirement in FY 2005. Without the requested amount, the Commission would be forced to leave this key position vacant for most of a year and/or make severe program reductions should the incumbent leave. This amount (less the applicable rescission of \$27,370) was appropriated in FY 04 but will lapse if not used or reprogrammed as a result of changes in retirement plans.

A total of 65 new cases are anticipated for review by the Commission during FY 2005. Seventy dispositions are expected, resulting in a projected end-of-year case inventory of 20 undecided cases.

The Commission's FY 2005 GPRA Annual Performance Plan includes the following objectives for its appellate activity:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2005:

- ◆ All Commission cases will be assigned when briefing is completed.
- ◆ All Commission 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 2005:

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

Fiscal Year 2004 Activity:

The FY 2004 resource level for the Commission Review Activity is \$4,611,630 and 31 FTE. The Commission expects to begin FY 2004 with an inventory of 42 undecided cases and anticipates receiving 60 new cases during the year. Seventy-nine dispositions are anticipated during FY 2004. The Commission expects to have 25 undecided cases remaining at the end of the fiscal year.

Through January 31, 2004, the Commission has received 14 new cases. During this period the Commission issued one substantive decision, remanded one case and denied three petitions for review.

The term appointment of one Commission member will expire on August 30, 2004.

The Commission's FY 2005 GPRA Annual Performance Plan includes the following objectives for its appellate activity in FY 2004:

Objective 1 — Issue opinions in a timely manner.

Performance Goals for FY 2004:

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

Quality Indicators for FY 2004:

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

Fiscal Year 200⁴ Activity:

The FY 2003 resource level for the Commission Review Activity was \$4,183,343 with actual employment of 18 FTE. The Commission began FY 200⁴ with an inventory of 15 undecided cases and received 43 new cases. Sixteen cases were decided, resulting in a docket of 42 undecided cases at the end of the fiscal year. The Commission began the fiscal year with only one member. Almost three fourths of the year had lapsed before a quorum of three Commissioners was achieved on June 2, 2003. The remaining two Commissioners were appointed on August 8, 2003. As a result, there was a low number of cases decided and an increase in undecided cases at the end of the year.

Of the 16 cases decided in FY 2003, 4 were substantive decisions, one was a procedural order, and 11 were denials of petitions for review. The average age of the 42 matters pending on the Commission's docket as of September 30, 2003 was 8.4 months, and the average age of the 4

substantive decisions issued was 12.5 months.

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

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2003:

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

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

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

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

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

Accomplishments: This goal was not met. As of September 30, 2003, the average age of the substantive dispositions was 12.5 months, an increase from the average age of 11.4 months in FY 2002. The Commission could not meet this goal due to lack of a quorum of Commissioners for most of the fiscal year.

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

Quality Indicators for FY 2003:

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

Accomplishment: During FY 2003 two cases were appealed to the Courts of Appeals. These cases were appealed when no two Commissioners voted to accept for review the decision of the Administrative Law Judge. Of the cases pending before the Court of Appeals in FY 2003, the Court reversed the Commission in one case and dismissed another case. As of September 30, 2003, four cases remained pending.

PERFORMANCE MEASUREMENT MATRIX

COMMISSION REVIEW

	FY 1997	FY 1998	FY 1999	FY 2000	2001	FY 2002	FY 2003		FY 2004	FY 2005
	Actual	Actual	Actual	Actual	Actual	Actual	Goal	Actual	Goal	Goal
OBJECTIVE: Issue opinions in a timely manner										
Undecided cases over 24 months of age	1	1	1	0	0	0	0	1	0	0
▲ Undecided cases over 18 months of age (inclusive)	6	3	1	2	0	0	0	2	0	0
Undecided cases over 12 months of age (inclusive)	12	12	6	3	2	1	0	7	0	0
▲ Cases briefed but unassigned	9	4	3	0	0	0	0	0	0	0
▲ Substantive disposition age	17.9	17.0	16.4	12.2	14.2	11.4	12.0	12.5	12.0	12.0

▲ Current performance goals or quality indicators

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

ADMINISTRATIVE LAW JUDGE DETERMINATIONS

	<u>2003</u>		<u>2004</u>		<u>2005</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	2,948,000	19	3,116,503	19	3,144,000	–	+27,497

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.

2005 Budget Request:

The budget request contains \$3,144,000 and 19 FTE for the Commission's trial activities of its administrative law judges in FY 2005. This is a net increase of \$27,497 over the FY 2004 appropriation. Changes from the FY 2004 budget include:

- (a) an increase of \$55,497 for pay and benefits including pay adjustments based on the annualization of the current year 4.1 percent pay increase and the projected January 2005 increase of 1.5 percent offset by one less day of pay in FY 2005;
- (b) \$43,000 decrease for GSA rent;
- (c) an additional \$15,000 for the increased costs of services received from other agencies.

A total of 2,300 new cases is anticipated for FY 2005, with 2,350 dispositions projected, leaving an end-of-year inventory of 1,339 undecided cases.

The Commission's FY 2005 GPRA Annual Performance Plan includes the following objectives for its trial activity:

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.
- ◆ Issue 94 percent of decisions within 90 days of receipt of post-hearing brief.
- ◆ Issue 98 percent of settlement decisions within 30 days of receipt of settlement motions.
- ◆ Decide 98 percent of cases within 270 days of assignment.
- ◆ Decide all cases within an average of 135 days from receipt by the Commission.

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

Quality Indicators for FY 2005:

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

Fiscal Year 2004 Activity:

The FY 2004 resource level for the Administrative Law Judge Determination Activity is \$3,116,503 and 19 FTE.

The Commission began FY 2004 with an inventory of 1,389 undecided trial cases. A total of 2,300 new cases is anticipated for FY 2004, with 2,300 dispositions projected, leaving an end-of-year inventory of 1,389 cases.

Through January 31, 2004, the Commission's ALJs have received 629 new cases and have disposed of 597 cases.

The Commission's FY 2005 GPRA Annual Performance Plan includes the following objectives for its trial activity in FY 2004:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2004

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

- ◆ Issue 94 percent of decisions within 90 days of receipt of the post-hearing brief.
- ◆ Issue 98 percent of settlement decisions within 30 days of receipt of settlement motions.
- ◆ Decide 98 percent of cases within 270 days of assignment.
- ◆ Decide all cases within an average of 135 days from receipt by the Commission.

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

Quality Indicators for FY 2004:

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

Fiscal Year 2003 Activity:

The FY 2003 funding level for the Administrative Law Judge Determinations Activity was \$2,948,000 with actual employment of 17 FTE. As of October 1, 2002, the Commission's ALJs had an inventory of 1,320 and received 2,277 new cases during FY 2003. Case dispositions for the year total 2,208 leaving an end-of-year inventory of 1,389 undecided cases.

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

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2003:

- ◆ 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 71 days. Penalty cases were assigned in 80 days, within the 85-day goal and the timeframe specified in the Commission's rules. Review cases were assigned in 26 days, less than the 30-day timeframe and assignment goal. The Commission continues to monitor to assure that filings in each case are within the stated timeframes.

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

Accomplishments: This goal was not met. Of the 67 decisions issued after hearings, 88% were issued within 90 days of receipt of the post-hearing brief. Only 8 cases were not decided within a 90-day time frame.

The Chief Judge has established a tracking system that identifies cases that are close to exceeding the 90-day decision period, and will discuss the status of those cases with each individual judge. In addition, the Chief Judge continues to monitor compliance on a monthly basis and meets and discusses quarterly status reports with the judges individually .

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

Accomplishments: This goal was not met. Ninety-three percent of settlement dispositions were made within 30 days of receipt of the settlement motion. Ninety-seven settlement approvals were decided within 31-60 days, and only 6 approvals required more than 61 days. Generally, settlement dispositions that exceed the 30-day time frame required the submission of additional materials and further explanations. Although this affects the Commission's goal, it is preferable to denying the settlement and setting the case for hearing. The Commission in conjunction with the Department of Labor, will continue to hold training sessions for solicitors on the preparation and adequate support of settlement motions.

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

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

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

Accomplishments: This goal was met. For FY 2003, the average length of time from receipt of a case by the Commission to its disposition was 134 days.

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

Quality Indicators for FY 2003:

- ◆ 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. However, because there was not a quorum of Commissioners until late in FY 2003, the FY 2003 data may not be representative. During FY 2003, Commission judges issued 67 decisions after hearings. Nineteen of those decisions were appealed for an appeal rate of 28%. Of the five substantive decisions issued by the Commission, four upheld the judge decision, resulting in an affirmative rate of 80%.

PERFORMANCE MEASUREMENT MATRIX

OFFICE OF ADMINISTRATIVE LAW JUDGES

	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003		FY 2004	FY 2005
	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	85	68	70	77	69	80	<85	80	<85	<85
▲ Average time (days) for assignment of review cases	40	21	25	28	22	28	<30	26	<30	<30
Average time (days) for assignment of all cases	70	60	64	66	60	71	0	71	71	71
▲ Percentage of decisions issued within 90 days of post-hearing brief	97%	92%	83%	90%	92%	61%	94%	88%	94%	94%
▲ Percentage of settlement approvals issued within 30 days of settlement motion	93%	99%	97%	98%	98%	96%	98%	93%	98%	98%
Average time (days), case assignment to disposition	80	66	62	89	70	74	70	63	63	63
▲ Average time (days), case receipt to disposition	149	126	126	155	131	145	135	134	134	134
▲ Cases decided within 270 days of assignment	93%	96%	97%	98%	97%	94%	98%	98%	98%	98%
Undecided cases over 270 days of age	14	6	13	19	48	25	0	83	0	0
OBJECTIVE 2: ISSUE TRIAL DECISIONS ON SOUND FACTUAL AND LEGAL ANALYSIS										
▲ Appeal rate	0	24%	24%	25%	20%	17%	N/A	28%	N/A	N/A
▲ Affirmance rate	0	70%	52%	46%	64%	55%	N/A	80%	N/A	N/A

▲Current performance goals or quality indicators

AGENCY-WIDE MANAGEMENT OBJECTIVES

MANAGEMENT OBJECTIVES

The Commission's management goal is to manage its human resources, operations, facilities, and systems to ensure a continually improving, effective and efficient organization. The objectives of this goal, as they relate to the fiscal years covered by the FY 2005 budget submission are as follows:

Objective 1 — Ensure Organizational and Management Effectiveness

Performance Goals:

◆ **Provide efficient and effective administrative management and support services**

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

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

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

◆ **Evaluate Program Effectiveness**

During FY 2004 the Commission will revise its Strategic Plan to assure that its resources effectively address its statutory requirements and constituent needs.

Performance plans are evaluated annually to assure that its 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 established a permanent information technology staff that was included in the President's FY 2004 budget. Information technology is a critical issue with the Administration and the Commission. The Commission simply could not continue to treat these efforts on an ad hoc basis and to rely on staff turnover in its statutory activities to provide funds for this important activity.

As with most Federal agencies, the Commission in FY 2003 devoted the majority 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. Security efforts will continue throughout fiscal years 2004 and 2005.

The Commission's website, <http://www.fmshrc.gov>, became operational on April 27, 1999. It is hosted and maintained by the Government Printing Office. The website includes information about the Commission, its rules, guides and publications, strategic and performance plans, GILS records, a database of Commission and ALJ published decisions, and links to related agencies and legal materials, including the Mine Act and MSHA. The Commission intends to significantly improve and expand upon its website during FY 2004 and FY 2005 in order to provide prompt notification of decisions by the Commission and significant decisions by its ALJs. The Commission also intends to revise the website to include all printed decisions since inception in a citable format, providing its constituents with a more effective means of researching Commission case law and precedents.

During FY 2004, the Commission will evaluate and make minor modifications to its docketing and case tracking systems for both trial and appellate activities. While the basic program which was installed in 1985 has been updated periodically, basic reporting format and data accumulation have not substantially changed. The first phase of this evaluation has been completed with a comprehensive documentation of the system. The program currently provides an up to date status of all cases as well as a complete inventory and status of cases by individual judges, and aids in case assignment and decisional process.

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 began FY 2003 with only one Commissioner, Robert H. Beatty, Jr. Michael F. Duffy was appointed on December 2, 2002 and was designated Chairman by President Bush on February 12, 2003. At that time, the Commission could legally accept cases for appellate review. On June 2, 2003, Stanley C. Suboleski was given a recess appointment, thus establishing a quorum and enabling the Commission to decide cases. On July 31, 2003 Commissioners Suboleski, Mary Lu Jordan and Michael G. Young, were confirmed for full term appointments. On August 8, 2003, Commissioners Jordan and Young were sworn in. Other key appointments of the Commission include Chairman's Duffy's appointment of Thomas Stock as General Counsel and Robert J. Lesnick as Chief Administrative Law Judge.

During FY 2004, the Commission anticipates completing the appointment of Commission's counsels as well as attorneys in the General Counsel's office and other essential support positions that have remained vacant. These vacancies will be carefully evaluated to assure that the added staff represents the best use of the Commission's limited FTE resources. On August 30, 2004, the term appointment of Commissioner Beatty will expire.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SELECTED WORKLOAD DATA

	2003 Actual	2004 Estimate	2005 Estimate
<u>Commission Review Activities</u>			
Cases pending beginning of year	15	42	25
New cases received	43	60	65
Total case workload	58	104	90
Cases decided	16	79	70
Cases pending end of year	42	25	20

Administrative Law Judge Determinations

Cases pending beginning of year	1,320	1,389	1,389
New cases received	2,277	2,300	2,300
Total case workload	3,597	3,689	3,689
Cases decided	2,208	2,300	2,350
Cases pending end of year	1,389	1,389	1,339

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

COMMISSION MEMBERS

<u>NAME</u>	<u>TERM EXPIRATION</u>
Michael F. Duffy, Chairman	August 30, 2006
Robert H. Beatty, Jr.	August 30, 2004
Stanley C. Suboleski	August 30, 2006
Mary Lu Jordan	August 30, 2008
Michael G. Young	August 30, 2008

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CONSULTANTS

The Commission employed no consultants in FY 2003 and has no plans to employ consultants in FY 2004 or FY 2005.