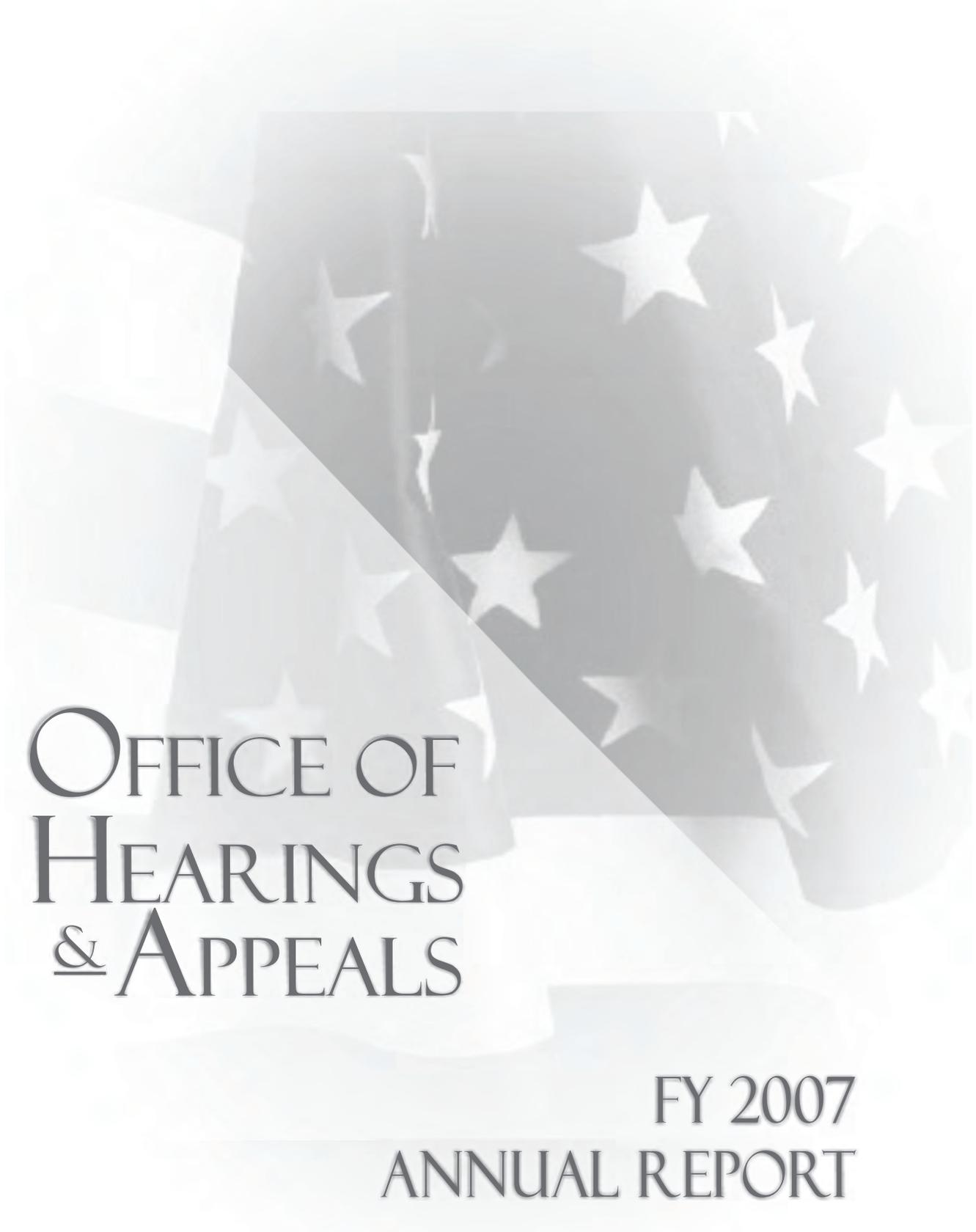


U.S. DEPARTMENT OF ENERGY



OFFICE OF HEARINGS & APPEALS

FY 2007
ANNUAL REPORT



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MESSAGE FROM THE ACTING DIRECTOR...



I am pleased to report on the FY 2007 operations of the Office of Hearings and Appeals (OHA).

OHA's mission is to conduct fair and efficient hearings, and to issue decisions of the Department with respect to any adjudicative proceedings which the Secretary may delegate. OHA's jurisdiction is broad and varied. It has included matters affecting the oil industry and consumers, appliance manufacturers, nuclear licensees, governmental entities, the public in general, and DOE and DOE contractor employees. Each area of jurisdiction supports one or more of DOE's Strategic Themes.

Here are the highlights for the past year:

Personnel security hearings. Under DOE's personnel security program, OHA conducts hearings concerning an individual's eligibility for access to classified information or special nuclear material. In FY 2007, we accelerated our resolution of older cases, reducing the number of older cases from 31 to 7.

Whistleblower cases. Under the DOE Contractor Employee Protection Program, OHA conducts investigations and hearings and considers appeals concerning whistleblower claims filed by DOE contractor employees. In FY 2007, we accelerated our resolution of older cases, reducing the number of older investigations from 5 to 0, as well as reducing the number of older hearings and appeals from 6 to 4.

Freedom of Information Act (FOIA) and Privacy Act Appeals. OHA considers appeals of agency denials of requests for information. In FY 2007, we continued to provide timely decisions.

Exceptions. OHA considers requests for relief from certain regulatory requirements, primarily Energy Information Administration (EIA) reporting requirements and the DOE appliance efficiency standards. In FY 2007, OHA resolved two older EIA-related requests and resolved all other exceptions cases in an average of less than 90 days.

\$1 Billion Crude Oil Overcharge Refund Program. OHA made final refunds of over \$200 million to 29,000 claimants. OHA expects to make final refunds to the remaining 1,000 claimants in early FY 2008. Since 1980, the Department has utilized the crude oil overcharge funds to support the minority bank deposit program, with deposits in 2004 reaching a high of \$256 million.

Elk Hills Oil Field (Formerly Naval Petroleum Reserve No. 1). In a 1997 agreement, Chevron and DOE agreed to a process in which OHA makes the final decision concerning a \$200 million dispute over equity interests in the field's production. As FY 2007 closed, OHA received an appeal concerning the Stevens Zone, the largest producing zone in the field.

As we begin FY 2008, we are committed to continued improvement and to meeting any new Departmental needs for adjudicative services. To achieve improvements and be well-positioned to accept new responsibilities, we are undertaking a comprehensive review of our operations to identify opportunities for increased efficiency and productivity.

We hope that this report is informative. We have expanded this year's report to include additional performance metrics, as well as ten-year trending data. If you have any comments or suggestions for future improvements, please write or email us.

Sincerely,

Poli A. Marmolejos

INTRODUCTION

The Office of Hearings and Appeals is the centralized adjudicative forum for the Department. The Secretary of Energy has delegated to the OHA Director the authority to act for him in many different areas. The Director's decision typically serves as a final agency action.

Over its 30-year history, OHA has had broad-ranging subject matter jurisdiction. Originally OHA's primary function was to consider exceptions and other petitions related to the economic oil regulations, as well as Freedom of Information Act (FOIA) and Privacy Act appeals. From that point onward, OHA's jurisdiction expanded to meet the needs of DOE's programs.

Over the last decade, OHA has heard appeals from a variety of DOE determinations, including those related to (i) assessments on utilities to fund a decontamination and decommissioning fund, (ii) reimbursement claims for environmental clean-up costs, (iii) the alternative fuel transportation program, (iv) physician panel reviews of DOE worker occupational illness claims, and (v) payment-equal-to-taxes claims under the Nuclear Waste Policy Act of 1982. OHA has also conducted personnel security and whistleblower proceedings, and considered exceptions from the Energy Information Administration (EIA) reporting requirements and from the appliance efficiency standards. In FY 2006, OHA was granted new jurisdiction to hear contractor appeals of civil penalties imposed for violations of DOE's new worker safety and health rule.

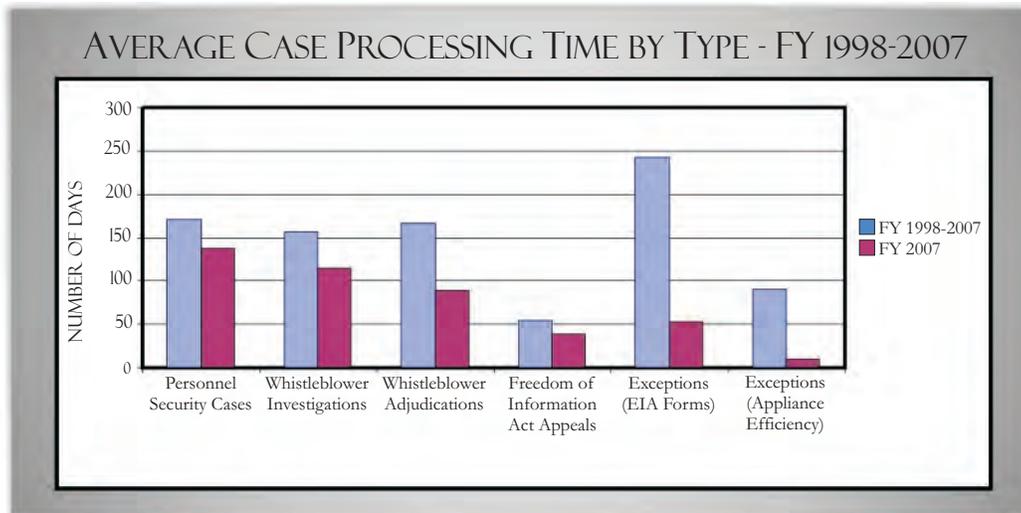
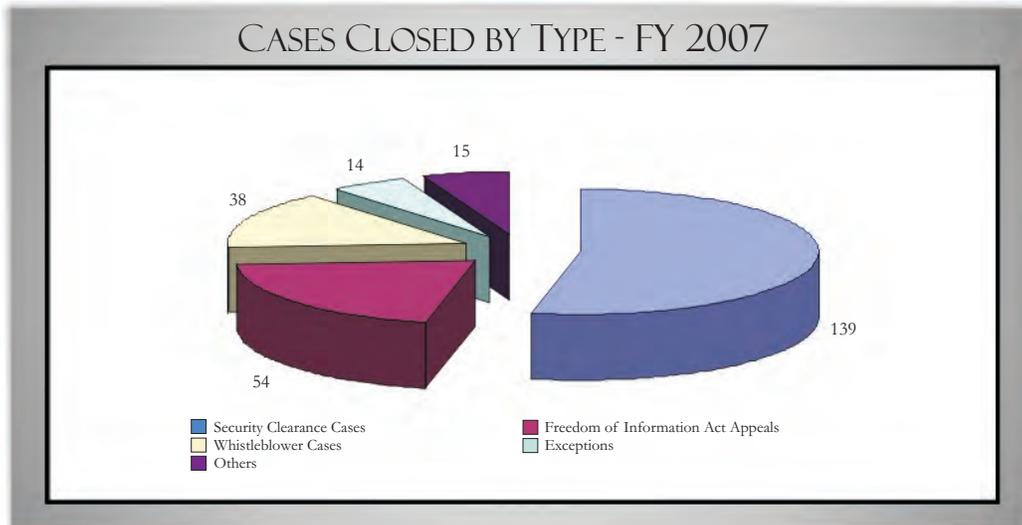
In FY 2007, OHA continued to conduct personnel security and whistleblower proceedings. OHA also continued to consider FOIA and Privacy Act appeals and exception requests. In the fourth quarter, OHA distributed crude oil overcharge funds that had been in escrow. As the fiscal year closed, OHA received another appeal involving the Elk Hills Oil Field, formerly Naval Petroleum Reserve No. 1.

The procedures that OHA uses vary, depending on the type of case involved. OHA procedures are flexible and easily adaptable to new situations, allowing OHA to minimize "start-up" times and to produce high quality work in new areas. To further this goal of flexibility and adaptability, OHA encourages the use of alternative dispute resolution techniques when they can benefit the parties.

In the end, OHA decisions do more than resolve disputes. OHA decisions also serve to inform affected parties and the public about the Department's programs. The decisions reflect the balancing of important and varied interests, including those of the public, the Department, state governments, and individual litigants.

OVERVIEW OF OHA WORKLOAD

The majority of cases closed in FY 2007 consisted of personnel security hearings, followed by FOIA and Privacy Act appeals, whistleblower cases (investigations, hearings, and appeals), exception applications and others. The first chart below shows the volume of cases, by type. The second chart below shows the average case-processing time for cases closed in FY 2007, and cases closed over the period FY 1998-2007. As the second chart shows, our FY 2007 average case-processing time decreased from our ten-year average in every type of case. We attribute this to a renewed emphasis on timeliness.



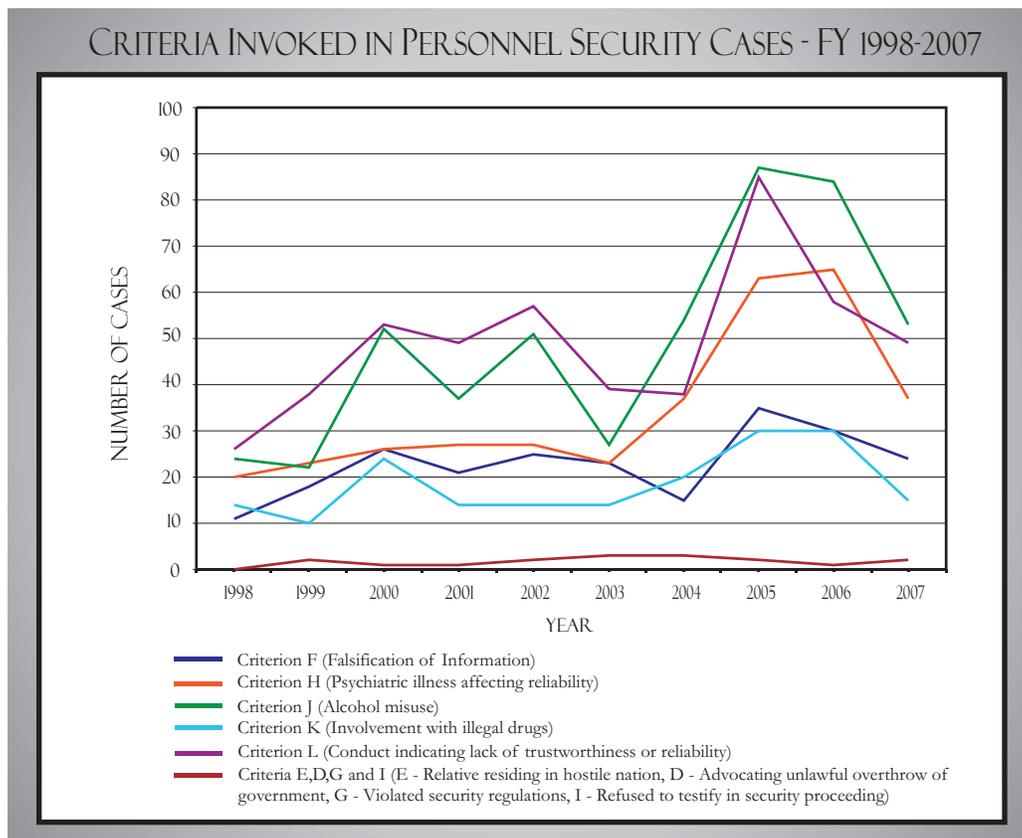
I. AREAS OF ADJUDICATION

A. PERSONNEL SECURITY

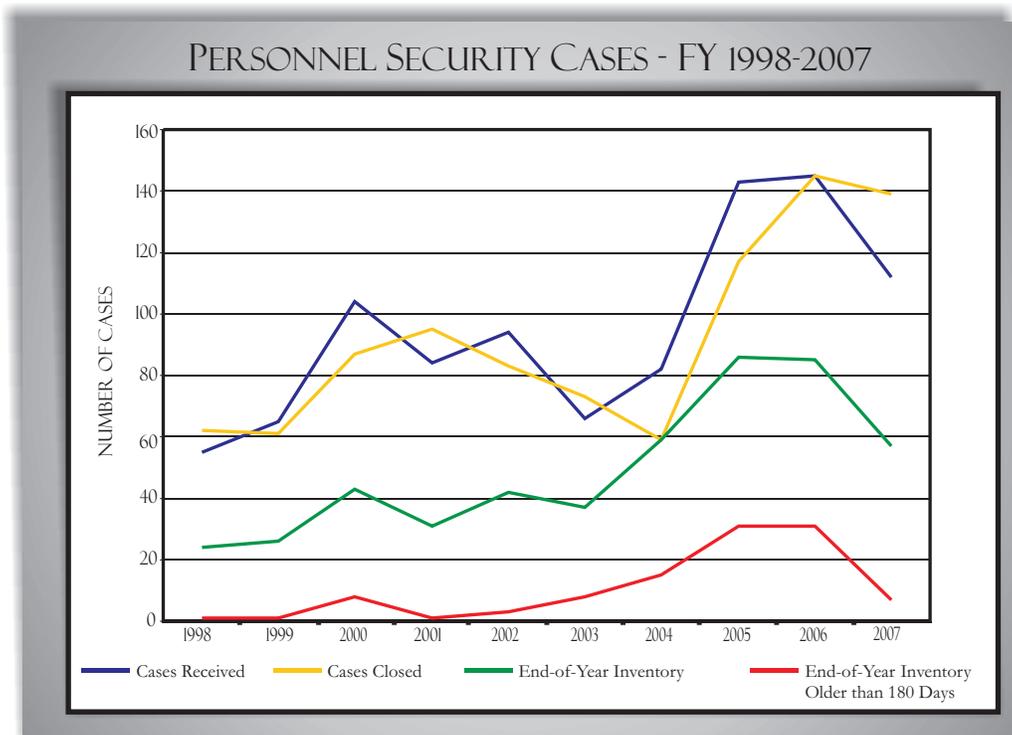
OHA conducts hearings involving eligibility for a security clearance. OHA also conducts hearings involving eligibility for the human reliability program, a security and safety reliability program for individuals who may have access to certain material, nuclear devices, or facilities. The governing regulations are set forth at 10 C.F.R. Part 710 and 712, respectively. Most of OHA's hearings concern eligibility for a security clearance. OHA's web site contains a "Question and Answer" sheet to assist individuals in understanding the personnel security hearing process.

Personnel security hearings typically involve concerns about excessive alcohol use, substance abuse, mental illness, financial irresponsibility, or conduct raising doubt about an individual's honesty and reliability. Evidence and testimony may include expert medical opinion. The OHA Hearing Officer assigned to the case analyzes the evidence and renders an initial agency decision, which may be appealed to an Appeal Panel.

The following chart shows the number of cases in which various types of concerns - also referred to as criteria - were raised. Some cases involve multiple criteria. For example, a case may involve a concern about excessive alcohol use (Criterion J) and related or different concerns about honesty and trustworthiness (Criterion L). As the chart shows, the criteria cited have been relatively constant. Excessive alcohol use (Criterion J) continues to be a leading source of concern.



The following chart shows the number of cases received and closed during each of the last ten years. The chart also shows the total inventory at the end of the year, as well as inventory over 180 days old, referred to as “older” inventory. Over the course of FY 2007, OHA closed a significant number of older cases. As a result, OHA inventory of older cases declined by 77 percent - from 31 cases to 7 cases - a five-year low. In FY 2008, OHA will continue to focus its efforts on closing personnel security cases in 180 days or less.



B. CONTRACTOR EMPLOYEE PROTECTION PROGRAM

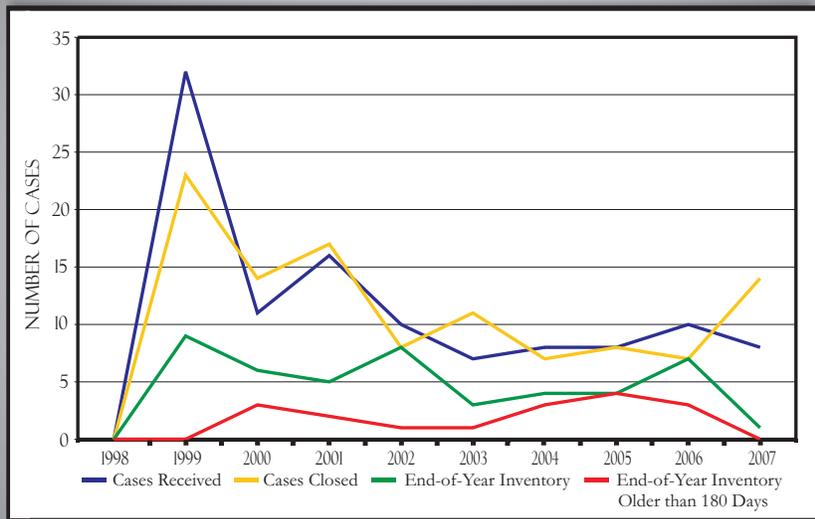
OHA investigates complaints, conducts hearings, and considers appeals under DOE's Contractor Employee Protection Program. The program provides an avenue of relief for DOE contractor employees who suffer reprisal as the result of making protected disclosures or engaging in other types of protected activity. The governing regulations are set forth at 10 C.F.R. Part 708. OHA's web site contains two "Question and Answer" sheets to assist DOE field personnel and contractor employees in understanding the process for considering contractor employee reprisal complaints.

The main issues in these cases are whether an employee engaged in protected activity and, if so, whether the contractor would have taken an adverse action against the employee in the absence of the employee's involvement in that activity. During the investigation, an OHA Investigator conducts interviews, examines documentary evidence, and issues a report. The OHA Hearing Officer rules on pre-hearing motions, conducts the hearing, and issues an initial agency decision, which may be appealed to the OHA Director. The OHA Director also hears appeals from dismissals of complaints. His decisions in both types of appeal serve to increase understanding of the program's purpose and implementation. A finding of reprisal for certain types of disclosures may result in civil penalties pursuant to the DOE enforcement programs under the Price-Anderson Act and the Worker Safety and Health Rule.

The DOE Contractor Employee Protection Program is part of a larger DOE program - the DOE Employee Concerns Program. The latter is managed by the Office of Civil Rights and Diversity. OHA works closely with that office on initiatives to strengthen the programs.

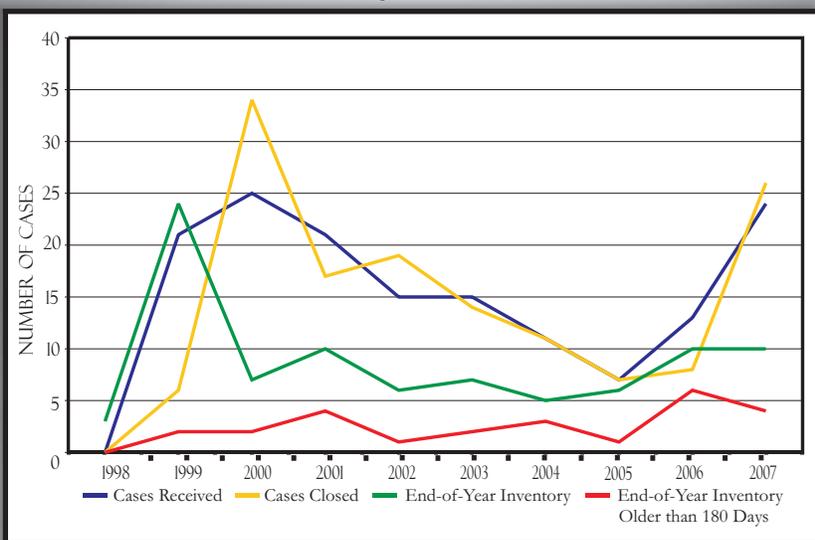
The following chart shows the number of investigations received and closed during each of the last ten years. The chart also shows the total inventory at the end of the year, as well as the older inventory, i.e., inventory over 180 days old. In 1999, OHA assumed responsibility for investigations; as a result, 1999 receipts largely represent investigations filed in earlier years that were transferred to OHA in 1999. Even apart from that, however, the number of investigations has declined over the last ten years; a possible explanation is increased efforts by the local employee concerns offices to resolve cases through alternative dispute resolution. Over the course of FY 2007, OHA closed 5 older investigations. As a result, OHA eliminated its inventory of older investigations. In FY 2008, OHA will continue to focus its efforts on reducing the processing time for investigations.

WHISTLEBLOWER INVESTIGATIONS - FY 1998-2007



The following chart shows the number of hearing cases and appeal cases received and closed during each of the last ten years. The chart also shows the total inventory at the end of the year, as well as the older inventory, i.e., inventory over 180 days old. The decline in the number of these cases is consistent with the decline in receipts of investigations. Over the course of FY 2007, OHA closed 2 older hearing cases, reducing its inventory of older cases from 6 to 4.

WHISTLEBLOWER ADJUDICATIONS - FY 1998-2007



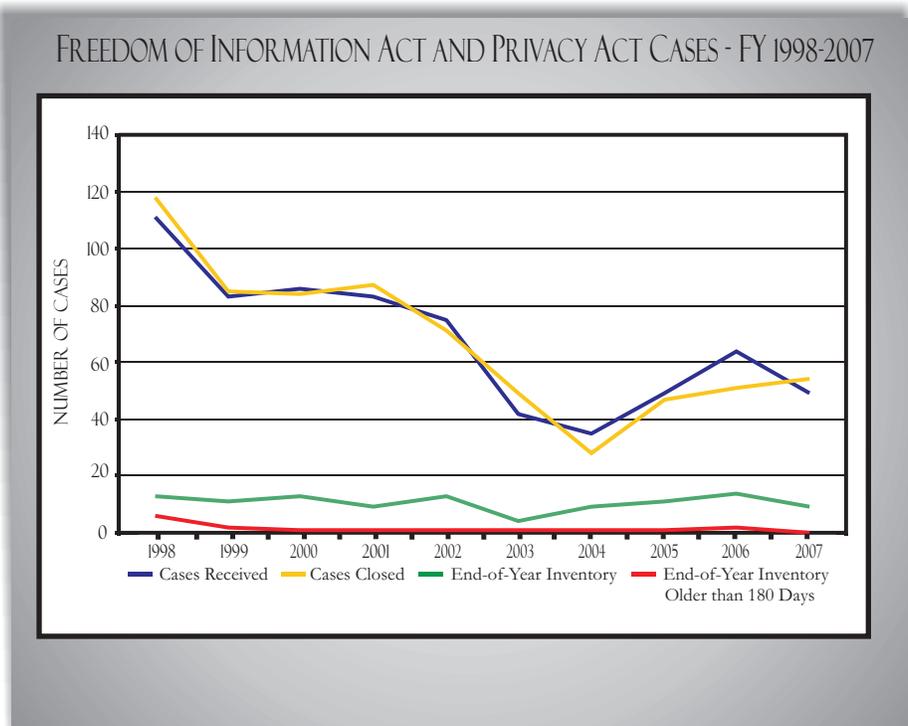
C. FREEDOM OF INFORMATION AND PRIVACY ACTS

OHA considers appeals of agency determinations under the Freedom of Information Act (FOIA) and Privacy Act. The governing regulations are set forth at 10 C.F.R. Part 1004 and 10 C.F.R. Part 1008, respectively.

These appeals arise from determinations across the DOE complex and involve diverse subject matter areas. OHA facilitates communication between the requester and the agency, which in some cases permits the resolution of the issues without adjudication. OHA works closely with the DOE's FOIA and Privacy Act offices and participates in complex-wide training.

OHA continues to receive an increased number of FOIA appeals by DOE workers seeking exposure and medical records to support compensation claims under the Energy Employees Occupational Illness Compensation Program Act. The Department of Labor administers that program.

The following chart shows the number of appeals received and closed during each of the last ten years. The chart also shows the total inventory at the end of the year, as well as older inventory, i.e., inventory over 180 days old.



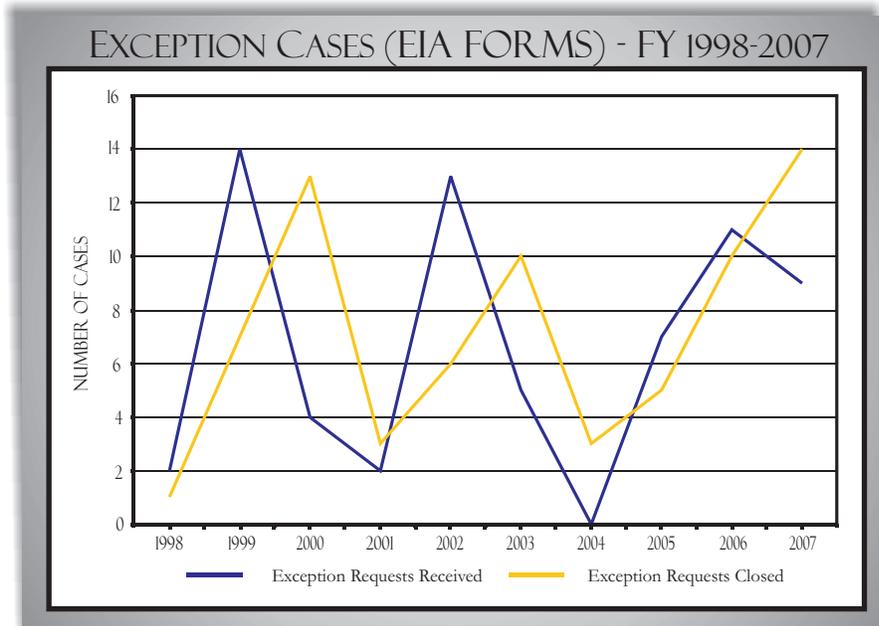
Appeals have increased steadily since 2004, although the current number is well below 1998 levels. During FY 2007, OHA closed 54 appeals. At the close of the year, OHA had no older inventory.

D. EXCEPTIONS AND SPECIAL REDRESS

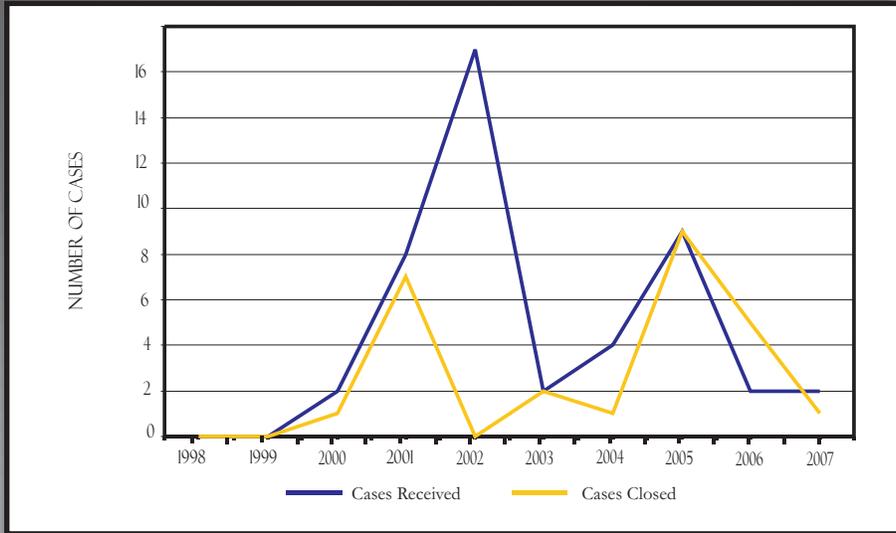
OHA considers requests for exceptions from certain DOE regulations or orders. Most requests concern the Energy Information Administration (EIA) reporting requirements and the DOE appliance efficiency regulations.

The exception process is a regulatory relief valve. An exception is granted where the application of a rule or order would constitute a gross inequity, serious hardship, or unfair distribution of regulatory burdens. OHA may grant an exception, for example, if applying a rule to a specific firm would be inconsistent with the overall purpose of a program or would impose a burden on the firm that would be grossly disproportionate to the burden imposed on other firms by the rule. In all cases, OHA consults with the affected DOE office.

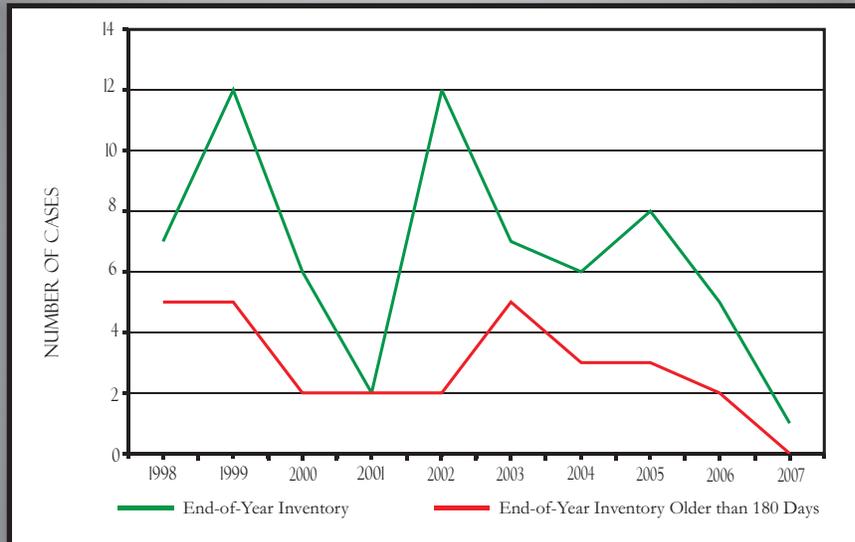
The following charts show the number of exception cases received and closed during each of the last ten years, the total inventory at the end of the year, as well as the older inventory, i.e., inventory over 180 days old. Over the last ten years, receipts of EIA cases have fluctuated, with the high points likely related to EIA announcements of a new reporting sample. Similarly, appliance efficiency cases tend to increase as the deadline for compliance with a new standard approaches. In FY 2007, OHA closed 14 EIA exception cases and 1 appliance efficiency case. At the end of FY 2007, OHA had no older inventory of exceptions cases.



EXCEPTION CASES (APPLIANCE EFFICIENCY) - FY 1998-2007



EXCEPTION CASES (ALL TYPES) - FY 1998-2007



E. THE CRUDE OIL OVERCHARGE REFUND PROCEEDING

Over the last twenty years, OHA has distributed over \$1 billion in crude oil overcharge refunds to nearly 100,000 individual claimants. In July 2007, a federal district court approved the settlement of all outstanding litigation affecting this proceeding, allowing OHA to approve the payment of final supplemental refunds to 30,000 eligible claimants. As of the end of the fiscal year, OHA had completed refunds to 29,000 claimants. OHA expects to complete refunds to the remaining 1,000 claimants in early FY 2008.

While OHA evaluated crude oil overcharge refund claims, DOE utilized the crude oil overcharge funds to support DOE's minority bank deposit program. In that program - the largest such program in the government - DOE deposited funds in minority banks, which in turn permitted them to lend to businesses and individuals to support the economic development of disadvantaged communities. In FY 2004, deposits reached a high of \$256 million.

F. ELK HILLS OIL FIELD (FORMERLY NAVAL PETROLEUM RESERVE NO. 1)

OHA has a unique jurisdiction concerning the Elk Hills Oil Field, formerly Naval Petroleum Reserve No. 1. In the largest privatization in U.S. history, the federal government sold its share in the field to a major oil company. Prior to the sale, Chevron USA Inc. and DOE operated the field as a unit pursuant to a congressionally-approved contract. At the time of the sale, the parties had not finalized their equity interests in the unit's production; Chevron agreed to give up judicial review in exchange for an agency process that culminates with an appeal to OHA. In 2005, OHA reversed and remanded a decision concerning the Stevens Zone for a revised determination. As the fiscal year neared its close, OHA received an appeal of the revised determination.

II. WORKING WITH OTHERS

Customer Service

Over the years, OHA has collaborated and partnered with other DOE offices. An OHA Deputy Director chaired the Working Capital Fund Dispute Resolution Council. In Equal Employment Opportunity (EEO) cases in which a DOE office had a conflict of interest, OHA attorneys served as counsel for DOE and as investigators under special authority from the Secretary. OHA attorneys serve as instructors at personnel security and FOIA training seminars. OHA attorneys also serve as speakers and resources for DOE's Employee Concerns Program.

This past fiscal year, OHA has continued to work with other offices. An OHA attorney made a presentation on OHA personnel security hearings to the Secretary's task force on the personnel security process, and another OHA attorney served as a resource to an Employee Concerns Program improvement initiative.

For internal and external customers, OHA maintains a website, www.oha.energy.gov. Decisions are generally made available on that website within 24 hours of issuance.

Serving Our Community

For the eighth year in a row, OHA attorneys supported DOE's participation in the "Everybody Wins!" lunchtime reading program at Amidon Elementary School. During Volunteer Service Week, OHA partnered with DOE's Office of Human Capital Management to organize and staff an "Everybody Wins!" booth. As the fiscal year closed, six OHA attorneys had registered for the FY 2008 reading program. Apart from DOE-sponsored activities, OHA staff members donate their time and skills to their communities in a variety of ways.

III. INFORMATION MANAGEMENT

OHA continues to use technology to accomplish its mission. OHA maintains a website where it publishes its opinions and other information. Internally, OHA uses a case management system to track productivity and timeliness. A contractor employee supports the case management system.

In FY 2007, OHA significantly reduced the space devoted to records storage. As we move into the new fiscal year, that process continues. For FY 2008, OHA plans to increase its use of electronic, rather than paper, records.

IV. GENERAL INFORMATION

- Extensive information is available on our website at www.oha.energy.gov. The website includes information about OHA jurisdiction, including applicable regulations, “Question and Answer” sheets, and OHA decisions.
- For copies of submissions in OHA proceedings, you may contact the Docket Room at (202) 287-1400. You may also FAX your inquiries to (202) 287-1415 or e-mail them to doretha.colter@hq.doe.gov.
- For general information, you may contact the Office of the Director at (202) 287-1566 or the Docket Room at the number listed above.
- To give us feedback on this Annual Report or on any aspect of our operations, please email us at oha.feedback@hq.doe.gov. We truly value your observations and suggestions.

