

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CONGRESSIONAL BUDGET JUSTIFICATION

AND

ANNUAL PERFORMANCE PLAN



FISCAL YEAR 2023

MARCH 28, 2022

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

The Federal Mine Safety and Health Review Commission (FMSHRC or Commission) is an independent adjudicatory agency that provides administrative trial and appellate review of legal disputes arising under the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended. Section 113 of the Mine Act establishes FMSHRC and sets forth its responsibilities. The Mine Improvement and New Emergency Response Act of 2006, P.L. 109-236 (MINER Act) added an additional responsibility to FMSHRC, resolving disputes between the Secretary of Labor and underground coal operators with respect to the contents of emergency response plans or the Secretary's refusal to approve such plans.

FMSHRC is requesting a budget level of \$18.012 million in FY 2023 to support the full-time equivalent (FTE) of 76 staff members. This is \$828,000 and 4.8 percent above FMSHRC's annualized FY 2022 Continuing Resolution (C.R.) level.

Most cases that come before FMSHRC involve civil penalties proposed by the Department of Labor's Mine Safety and Health Administration (MSHA) against mine operators. FMSHRC is responsible for addressing whether the alleged violations occurred, as well as the assessment of appropriate civil penalties sufficient to deter operator noncompliance. Other types of cases include contests of MSHA orders to close a mine for health or safety reasons, review of MSHA's approval of operators' emergency response and other mine safety plans, miners' complaints they suffered discrimination because they exercised protected safety rights, as well as allegations of interference with the exercise of such rights, and miners' requests for compensation after being idled by a mine closure order. Disputes involving the temporary reinstatement of a miner, or an emergency response plan must be decided on an expedited basis.

FMSHRC's Administrative Law Judges (ALJs) decide cases at the trial level. The five-member Commission provides administrative appellate review. Review of an ALJ's decision by FMSHRC is not automatic 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 a judge's decision. In addition, the Commission, on its own initiative (*sua sponte*), may decide to review a case. A judge's decision that is not accepted for review becomes a final, non-precedential order of FMSHRC. Appeals from the Commission's decisions are to the federal courts of appeals.

Cases at the trial level are handled by FMSHRC's Office of the Chief Administrative Law Judge (OCALJ). It is estimated that the OCALJ will receive 1,049 new cases for review in FY 2023. It is estimated there will be 1,949 dispositions, and that the year-end balance will be 1,120 cases.

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FMSHRC's Commission Review function is expected to receive 48 new cases, including 12 substantive cases and 36 default cases. FMSHRC projects that 65 undecided appellate cases will be on hand at the beginning of FY 2023, including 14 substantive cases and 51 default cases. During FY 2023, it is expected that 42 substantive cases will be disposed.

Resolving substantive cases creates a great demand on the resources of the five-member Commission and the Office of General Counsel (OGC). Typically, in these substantive cases, the Commissioners, with the assistance of OGC, review and analyze extensive briefs filed by the parties, often conduct an oral argument, and issue a decision which addresses the major contentions raised by the parties.

In addition to petitions for review in substantive cases, at the appellate level FMSHRC considers requests to reopen cases in which a mine operator is in default for failing to timely respond to the Secretary's proposed penalty or to a judge's order. These cases are generically referred to as default cases. The number of these requests for reopening filed each year has remained at historically high levels. At the end of FY 2021, the number of default cases pending decision was 26. The number of pending default cases at the beginning of the year was 144. FMSHRC prioritized the resolution of default cases and made it a goal to clear the backlog of long-pending cases by close of the 2021 fiscal year. See e.g. Peyrani USA LLC, Docket No. CENT 2018-0258 (motion filed 4/17/18, decided 1,056 days later on 3/8/21).

FMSHRC's overall management priority continues to be the expeditious, fair, and legally sound adjudication of cases at the trial and appellate levels. In response to the COVID pandemic, FMSHRC implemented a fulltime teleworking plan for all personnel, initiated complete electronic filings and issuances and suspended in-person hearings, oral arguments, and Commission meetings. These measures remained in place in 2021 and 2022. Despite these significant challenges, FMSHRC continues to improve trial and appellate case pendency times, resulting in more timely resolutions for petitioners. FMSHRC is also mindful that mine emergencies and legislative changes may change the number, complexity, and complexion of cases, and affect what cases might be appealed. Our agency continues to build the systems, processes, and capacity to be scaled appropriately if new case filings increase.

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MISSION

The Federal Mine Safety and Health Review Commission is an independent adjudicatory agency charged with resolving disputes arising from the enforcement of safety and health standards in the nation's mines and ensuring Under its authorizing statute, the Mine Act, FMSHRC does not regulate the mining industry, nor does it enforce the Mine Act; those functions are delegated to the Secretary of Labor acting through MSHA and, with respect to Section 105(c)(3), to miners themselves. FMSHRC's mission is to contribute to the improved health and safety of the nation's miners by providing just, speedy, and legally sound adjudication of proceedings authorized under the Mine Act in a manner that deters noncompliance with the Act. In addition, FMSHRC's mission is to prevent the recurrence of historic abuses involved in the unwarranted lowering of penalties as a result of off the record negotiations between operators and the government by ensuring that a penalty once proposed and contested before the Commission is not compromised out of view of the public or without justification.

The scope of FMSHRC's mission was expanded by the passage of the MINER Act in 2006. That statute amended the Mine Act and vested FMSHRC with the responsibility for resolving disputes over the contents of mine emergency plans adopted by underground coal mine operators and submitted to MSHA for review and approval. The MINER Act imposed tight deadlines on FMSHRC and its ALJs with respect to these proceedings and FMSHRC has adopted procedural rules to implement those deadlines.

FUNCTIONS AND PROCEDURES

FMSHRC carries out its responsibilities through trial-level adjudication by ALJs and appellate review of ALJs' decisions by a five-member Commission appointed by the President and confirmed by the Senate. Most cases involve civil penalties assessed against mine operators by MSHA, and address whether the alleged safety and health violations occurred and if so, the degree of gravity and negligence involved, and whether the penalty is sufficient to deter violations of the Mine Act. Other types of cases involve mine operators' contests of mine closure orders, miners' complaints they suffered discrimination because they exercised protected safety rights, allegations of interference with the exercise of such rights, miners' applications for compensation after a mine is idled by a closure order, and review of disputes about MSHA's approval of operators' emergency response and other mandatory plans.

Once a case is filed with FMSHRC, it is referred to the Chief Administrative Law Judge (Chief Judge). Thereafter, litigants in the case must submit additional filings before the case is assigned to an ALJ. To expedite the decisional process, the Chief Judge may

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rule on certain motions and, where appropriate, issue orders of settlement, dismissal, or default. Otherwise, once a case is assigned to an individual ALJ, that ALJ is responsible for the case and rules upon motions and settlement proposals. If a hearing is necessary, the ALJ schedules and presides over the hearing, and issues a decision based upon the record. An ALJ's decision becomes a final, non-precedential order of FMSHRC unless it is accepted for review by the five-member Commission.

FMSHRC also provides administrative appellate review. It may, in its discretion, review decisions issued by ALJs when requested by a litigant, or it may, on its own initiative, direct cases for review. FMSHRC's decisions are precedential and appeals from FMSHRC's decisions are heard in the federal courts of appeals.

The Chair of the Commission is responsible for the administrative operations of the Commission. The Chief Operating Officer (COO) oversees the Commission's daily operations and provides management guidance to the Chair to ensure Commission compliance with federal regulations and improve the Commission's overall efficiency and effectiveness. The COO also leads the Office of Commission Support (OCS), which supports Commission functions through financial management, human resources, and information technology services.

STRATEGIC GOALS

FMSHRC has three strategic goals:

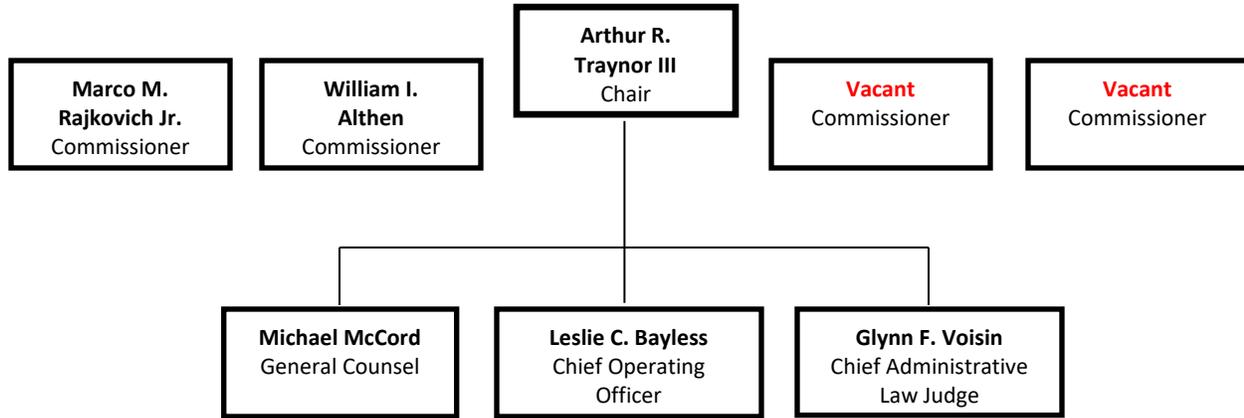
Strategic Goal 1: Ensure expeditious, fair, and legally sound adjudication of cases.

Strategic Goal 2: Increase the Commission's overall operational efficiency and effectiveness.

Strategic Goal 3: Achieve organizational excellence through workforce development.

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**KEY PERSONNEL
ORGANIZATION CHART**



FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

COMMISSION MEMBERS

<u>NAME</u>	<u>TERM EXPIRATION</u>
Arthur R. Traynor III	August 30, 2022
Marco M. Rajkovich Jr.	August 30, 2024
William I. Althen	August 30, 2024
Vacant	August 30, 2026
Vacant	August 30, 2026

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APPROPRIATION LANGUAGE

SALARIES AND EXPENSES

For necessary expenses of the Federal Mine Safety and Health Review Commission \$18,012,000 (Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2022.)

Note.—A full-year 2022 appropriation for this account was not enacted at the time the budget was prepared; therefore, the budget assumes this account is operating under the Continuing Appropriations Act, 2022 (Division A of P.L. 117-43, as amended). The amounts included for 2022 reflect the annualized level provided by the continuing resolution.

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Authorizing Legislation

Authorizing Legislation Containing Indefinite Authority
Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. § 801 etseq.)

Dollars in thousands

	FY 2021 Enacted	FY 2022 Annualized C.R.	FY 2023 Request
Budget Authority	\$17,184	\$17,184	\$18,012
FTE	76	65	76

Note: A full-year 2022 appropriation for this account was not enacted at the time the budget was prepared; therefore, the 2022 column reflects the annualized level provided by the continuing resolution (C.R.)

PRESIDENT'S PRIORITIES

COVID Response: In response to the executive order on Protecting the Federal Workforce and Requiring Mask-Wearing, FMSHRC crafted a COVID-19 Agency Safety Plan and continues to vigorously prepare for a safe return to the federal workplace for employees and our service base.

Enhancing Federal Information Technology (IT) and Cybersecurity: FMSHRC will continue its efforts to respond to Presidential priorities, by prioritizing IT Modernization and Cybersecurity with a specific emphasis on Executive Order 14028, "Improving the Nation's Cybersecurity". Focus areas will include security acquisition, standardized cybersecurity vulnerabilities and incident response, and maturing priority capabilities. FMSHRC priorities also include modernization of the public facing website, expanding digital services to a wider user base, and modernization of information systems associated with Privacy Act processes.

Promoting Racial and Economic Equity: In response to Executive Order 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, which was created to address outward barriers to equity and inclusion for members of underserved communities, FMSHRC will implement initiatives to promote racial and economic equity, beginning with making our public facing website accessible to the Spanish-speaking mining community and offering documents and information processes in Spanish. Additional initiatives will include distribution of bilingual written guidance in mining communities, so that miners are able to fully exercise their right to file a claim under section 105(c)(3) on their own behalf.

In Response to Executive Order 14035: Diversity, Equity, Inclusion, and Accessibility in the Federal Workplace (DEIA), which was created to address inward barriers to equity and inclusion for members of underserved communities, FMSHRC is assessing its recruitment, hiring, promotion, and retention policies and practices to ascertain any barriers. In addition, FMSHRC is assessing whether members of underserved communities encounter any reasonable accommodation or religious accommodation barriers. FMSHRC will then create an action plan based on the results of the self-assessment.

FMSHRC will continue to revisit its EEO Policies on a regular basis as the laws evolve and will address any perceived deficiencies. As discussed in more detail below, employees will continue to receive required EEO Trainings, but will also receive other trainings, such as conflict resolution, implicit bias, gender inclusion, and disability

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awareness to promote and foster an equitable and inclusive work environment. To that end, our agency has assembled and developed a Work Environment Committee (WEC) that examined our agency's current culture and best practices for promoting an environment that strengthens civility, trust, respect, inclusivity and professionalism throughout the organization. It will develop an action plan that includes recommendations for personnel outreach, leadership development, education and training, accountability concepts, and equitable opportunities for all employees. The committee is a cross section of our agency, with representatives from all job levels, demographics, and our three office locations. Currently, the committee is presenting staff with agency core values – Fair Treatment, Respect, Service and Trust – and developing plans for action to improve our agency culture. Upon the committee's recommendation, agency staff will identify and share working styles through the Everything DiSC Workplace assessment. Everything DiSC Workplace provides individual insights as well as the ability to compare styles with colleagues in the same department or across the agency. This activity promotes understanding, engagement, and meaningful connections throughout the agency, ultimately enhancing inclusivity.

Promoting Collective Bargaining: FMSHRC has taken steps to ensure that employees understand Executive Order 14003 through training provided on April 26, 2021. Training provided employees with an overview of Labor Unions and their purpose, employee rights, and steps to form a union. FMSHRC will continue to inform employees of their rights to participate in employee labor unions and collective bargaining.

Developing a Workforce for the 21st Century: FMSHRC continues to recruit talent both for the agency and as an entry point for more extensive Federal employment. Most agency hiring is done through the Office of the Chief Administrative Law Judge (OCALJ) for the law clerk and summer internship programs. OCALJ recruits from law schools across the country and through various recruitment programs to ensure that there is a diverse pool of candidates from which to hire new attorneys and interns. FMSHRC conducts comprehensive training for all new employees on position functions and duties, the Freedom of Information Act and procedures, Ethics rules, and Equal Employment Opportunity laws and procedures. In addition, on regular schedules, FMSHRC conducts No FEAR Act, Hatch Act, and Reasonable Accommodations refresher trainings for all employees. It also conducts other trainings, such as Conflict Resolution and Alternative Dispute Resolution for supervisors and managers, and non-managerial staff.

FMSHRC is committed to providing duties-related training for employees at all levels. Specifically, judges and other staff have participated in week-long certificate courses on various topics at the National Judicial College, judges and attorneys have participated in both three-day and week-long mediation courses provided by law school professors,

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and management analysts and legal assistants have participated in courses specific to their duties to enhance their respective skills.

Finally, FMSHRC is dedicated to celebrating the diversity of its staff through Special Emphasis Programs, Multicultural Day, and Disability Awareness Day. FMSHRC will continue to leverage investments in employee training to develop a well-trained workforce.

Improving Case Processing: FMSHRC will seek to maintain improvements to trial and appellate level case pendency, with an emphasis on resolving any remaining older cases. For example, in FY 2021 FMSHRC gave reducing the backlog of default cases a high priority. At the beginning of the year, 144 default cases were pending before the agency, and additional default cases were being filed. FMSHRC was able to dispose of 148 default cases during the year, which left only 26 default cases pending at the end of the year. These types of actions serve to provide a timely resolution to parties before FMSHRC.

Sharing Quality Services: FMSHRC will continue seeking improvement and efficiencies through Shared Service Providers. This includes interagency agreements for human resource, procurement, travel, financial management, cybersecurity initiatives with Shared Service providers. FMSHRC will also seek efficiencies where practical with other Federal entities. The Office of the Chief Administrative Law Judge is an active participant in OPM's Administrative Law Judge Loan Program. Under this program, OCALJ judges receive cases from other agencies who have demonstrated no ALJ is available within their own agency. FMSHRC currently has inter-agency agreements with four agencies under which it regularly receives loaner judge cases.

GENERAL STATEMENT

FMSHRC was established as an independent agency by section 113(a) of the Federal Mine Safety and Health Act of 1977. FMSHRC fulfills its mission through three functions.

The OCALJ function provides trial-level adjudication by ALJs. At the trial level, FMSHRC's ALJs hear and decide cases initiated by the Secretary of Labor, mine operators, miners, and miners' representatives.

The Commission Review function is carried out by the Commissioners, their staff, and OGC. FMSHRC hears appeals of judges' decisions by granting a petition for discretionary review from one or more of the parties or by directing review on its own

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motion. In addition, at the appellate level, FMSHRC considers motions to reopen cases where an operator has failed to timely contest a proposed penalty or to timely respond to the Secretary of Labor’s penalty petition.

The OCS function supports both the trial-level and appellate functions by providing financial management, human resources, and information technology services.

In FY 2023, FMSHRC is requesting \$18,012 million and 76 FTE.

Dollars in thousands

Function	FY 2021 Enacted		FY 2022 Annualized C.R.		FY2023 Request	
	FTE	Budget Authority	FTE	Budget Authority	FTE	Budget Authority
Administrative Law Judge	43	\$9,593	39	\$9,593	43	\$9,893
Commission Review	22	\$5,472	20	\$5,472	22	\$5,756
Commission Support	11	\$2,119	6	\$2,119	11	\$2,363
Total	76	\$17,184	65	\$17,184	76	\$18,012

ADMINISTRATIVE LAW JUDGE FUNCTION

Administrative Law Judge Function				
Dollars in thousands				
	FY 2021 Enacted	FY 2022 Annualized C.R.	FY 2023 Request	
Budget Authority	\$9,593	\$9,593	\$9,893	
FTE	43	39	43	

Introduction

FMSHRC employs ALJs to hear and decide contested cases at the trial level. The ALJs afford mine operators, miners and their representatives a full opportunity to participate in the hearing process. FMSHRC ALJs are also responsible for evaluating and approving or denying settlement agreements proposed by the parties under the Mine Act.

FMSHRC’s FY 2023 budget request includes the following strategic objective for the ALJ function:

- Strategic Objective 1.1 – Ensure timely issuance of decisions at the trial level

FY 2023

FMSHRC’s FY 2023 Budget includes \$9.893 million and 39 FTEs for its Administrative Law Judge function.

The FY 2023 request includes law clerks, management analysts, and legal assistants to support the judges, and several docket office management analysts and clerks to maintain case files and process and record documents filed with FMSHRC. FMSHRC has established a pendency goal for trial level cases of 180 days for FY 2023. Pendency is the average time between receipt of a case and case disposition.

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FMSHRC estimates that 938 trial level cases will be pending at the beginning of FY 2023. FMSHRC anticipates that it will receive 2,031 new cases during FY 2023 and will dispose of 1,949 cases during the same period.

FY 2022

FMSHRC's FY 2022 annualized C.R. level included 43 FTEs and \$9.741 million for the Administrative Law Judge function. FMSHRC anticipates operating at a level of 39 FTEs during FY 2022 for this function.

The FY 2022 level supports law clerks, management analysts, and legal assistants to support the judges, and several docket office management analysts and clerks to maintain case files and process and record documents filed with FMSHRC. FMSHRC established a pendency goal for trial level cases of 180 days for FY 2022.

FMSHRC had 1,001 trial level cases pending at the beginning of FY 2022. FMSHRC anticipates that it will receive 1,763 new cases during FY 2022 and will dispose of 1,826 cases during the same period.

FY 2021

FMSHRC's FY 2021 Enacted budget level for its Administrative Law Judge function was \$9,593 million and that office had a year-end total of 34 actual FTEs.

There were 880 trial level cases pending at the beginning of FY 2021. FMSHRC received 1,974 new cases during FY 2021 and disposed of 1,853 cases during the same period.

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Administrative Law Judge Function – Caseload Data

	FY 2021	FY 2022	FY 2023
	Actual	Estimate	Estimate
Cases pending beginning of year	880	1,001	938
Assessment of civil penalty	735	854	804
Notice of contest	110	109	99
Discrimination and compensation	30	32	29
Other	5	6	6
New cases received	1,974	1,763	2,031
Assessment of civil penalty	1,671	1,487	1,706
Notice of contest	270	245	284
Discrimination and compensation	27	25	33
Other	6	6	8
Total case workload	2,854	2,764	2,969
Assessment of civil penalty	2,406	2,341	2,510
Notice of contest	380	354	383
Discrimination proceeding	57	57	62
Other	11	12	14
Cases disposed	1,853	1,826	1,949
Assessment of civil penalty	1,552	1,537	1,687
Notice of contest	271	255	229
Discrimination and compensation	25	28	28
Other	5	6	5
Cases pending end of year	1001	938	1,020
Assessment of civil penalty	854	804	823
Notice of contest	109	99	154
Discrimination and compensation	32	29	34
Other	6	6	9

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Administrative Law Judge Function – Strategic Objectives

Strategic Objective 1.1 Ensure timely issuance of decisions at the trial level			
Performance Goal	FY 2021 Actual	FY 2022 Target	FY 2023 Target
1.1.1 Average time from receipt to disposition of all cases	196 days	180 days	180 days
1.1.2 Average time from receipt to disposition of penalty cases	184 days	180 days	180 days
1.1.3 Percent of all cases on hand over 365 days in age	12%	20%	20%

COMMISSION REVIEW FUNCTION

Commission Review Function			
Dollars in thousands			
	FY 2021 Enacted	FY 2022 Annualized C.R.	FY 2023 Request
Budget Authority	\$5,472	\$5,472	\$5,756
FTE	19	20	22

Introduction

The FMSHRC Commission Review function incorporates the responsibilities of the Commissioners and OGC in the appellate review function.

The five-member Commission decides two principal types of cases:

- (1) *substantive cases*, which are cases in which a judge has issued a final or interlocutory decision on the merits and FMSHRC has granted a petition for review filed by either party, or at least two Commissioners have decided to grant review on their own initiative.

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- (2) *default cases*, which are cases where an operator has failed to timely contest a proposed penalty or to timely respond to a judge's order and the operator has filed a motion to reopen the final order.

The general authority for the review of ALJs' decisions is set forth in section 113(d)(1) of the Mine 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 substantive cases come before FMSHRC 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. FMSHRC may also consider an ALJ's interlocutory ruling under certain circumstances.

Two or more Commissioners may also direct any ALJ's final decision for review *sua sponte* (on FMSHRC's own initiative, without the parties filing a petition). *Sua sponte* review is limited to judges' decisions that are contrary to law or FMSHRC policy, or that present a novel question of policy.

By law, a quorum of three Commissioners is required to decide substantive cases. When FMSHRC lacks a quorum of Commissioners, it cannot issue decisions, and this affects the average time required to reach decisions. Many of FMSHRC'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 FMSHRC or the courts. Many cases involve the interpretation of safety and health standards and regulations promulgated by MSHA.

The Office of General Counsel (OGC) is responsible for conducting the initial research in substantive cases and sometimes preparing draft opinions for Commissioners. Each Commissioner is assigned an attorney advisor, who reports directly to the individual Commissioner and assists with research and preparation of opinions. The OGC attorneys also perform other duties, such as responding to FOIA requests, ethics counseling and training, and review of financial disclosure forms. In addition, OGC is primarily responsible for formulating and drafting FMSHRC's rulemaking initiatives.

FMSHRC has established the following strategic objective for FMSHRC Commission Review function:

- Strategic Objective 1.2 – Ensure timely issuance of decisions at the appellate level

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FY 2023

FMSHRC's FY 2023 budget request includes 22 FTEs and \$5.756 million for its Commission Review function.

The appellate caseload includes several types of cases, including those where by law, FMSHRC must issue rulings very quickly. For example, FMSHRC hears appeals of temporary reinstatement cases; these are discrimination cases, and pursuant to FMSHRC's procedural rules, appeals of these types of decisions must be adjudicated within an extremely short timeframe. Commissioners' workload also includes deciding whether to accept petitions for discretionary review, which by statute must generally be granted or denied within approximately ten days.

In FY 2023, it is expected that 65 substantive and default cases will be pending at the beginning of the year, and an estimated 48 new cases will be filed during the year. Approximately 42 dispositions are expected, of which an estimated 12 will be substantive cases and 30 will be default cases. It is anticipated that FMSHRC's appellate docket will contain 71 cases at the end of FY 2023. The legal proceedings involved in disposing of substantive cases are expected to average twelve months. Therefore, the cases disposed of during one year include both cases that were received in a previous year but not disposed of that year (cases pending end of year), and new cases received during the current year. FMSHRC will continue to work expeditiously to achieve the goals for case backlog and pendency.

FY 2022

FMSHRC's FY 2022 annualized C.R. funding level included 20 FTEs and \$5.472 million for its Commission Review function. FMSHRC anticipates operating at a level of 20 FTEs during FY 2022 for this function.

The appellate caseload includes several types of cases, including those where by law, FMSHRC must issue rulings very quickly. For example, FMSHRC hears appeals of temporary reinstatement cases; these are discrimination cases, and pursuant to FMSHRC's procedural rules, appeals of these types of decisions must be adjudicated within an extremely short timeframe. Commissioners' workload also includes deciding whether to accept petitions for discretionary review, which by statute must generally be granted or denied within approximately ten days.

In FY 2022, a total of 33 substantive and default cases were pending before FMSHRC at the beginning of the year and an estimated 48 new cases will be filed during the year. Approximately 57 dispositions are expected, of which an estimated 14 will be substantive cases and 43 will be default cases. It is anticipated that FMSHRC's docket

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will contain 65 undecided cases at the end of FY 2022. FMSHRC will continue to work expeditiously to achieve the goals for case backlog and pendency.

FY 2021

FMSHRC's FY 2021 Enacted budget level for its Commission Review function was \$5.472 million and that office had a year-end total of 19 actual FTEs.

In FY 2021, there were 154 cases before FMSHRC at the beginning of the year, and 38 new cases were filed during the year. 159 cases were disposed, of which 11 were substantive cases and 148 were default cases. The number of dispositions in default cases in 2021 is unusually high (148) because the Commission is placing a special emphasis this year on reducing the backlog of pending default cases. FMSHRC's appellate docket contained 33 undecided cases at the end of FY 2021.

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Commission Review Function - Caseload Data

	FY 2021	FY 2022	FY 2023
	Actual	Estimate	Estimate
Cases pending beginning of year	154	33	65
Substantive cases	10	7	14
Default cases	144	26	51
New cases received	38	48	48
Substantive cases	8	12	12
Default cases	30	36	36
Total case workload	192	80	113
Substantive cases	18	18	26
Default cases	174	62	87
Cases disposed	159	57	42
Substantive cases	11	14	12
Default cases	148	43	30
Cases pending end of year	33	65	71
Substantive cases	7	14	14
Default cases	26	51	57

Commission Review Function – Strategic Objectives

Strategic Objective 1.2 Ensure timely issuance of decisions at the appellate level			
Performance Goal	FY 2021 Actual	FY 2022 Target	FY 2023 Target
1.2.1 Average time from direction for review to issuance of decision	12 months	12 months	12 months
1.2.2 Average time from briefing completion to issuance of decision	9 months	9 months	9 months
1.2.3 Percent of cases on hand over 18 months in age	14%	20%	20%

Strategic Objective 1.3 Issue orders in motions to reopen cases in a timely manner			
Performance Goal	FY 2021 Target	FY 2022 Target	FY 2023 Target
1.3.1 Average time from receipt of the motion to issuance of final order	120 days	120 days	120 days

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OFFICE OF COMMISSION SUPPORT FUNCTION

Office of Commission Support Function			
Dollars in thousands			
	FY 2021 Enacted	FY 2022 Annualized C.R.	FY 2023 Request
Budget Authority	\$2,119	\$2,119	\$2,363
FTE	11	6	11

Introduction

The Office of Executive Director (OED) will be restructured in FY2022 to address evolving Commission needs and will be known as the Office of Commission Support (OCS). This workforce reshaping effort was conducted in collaboration with the Office of Personnel Management (OPM). OCS is better postured to achieve the strategic objectives laid out in FMSHRC's new Strategic Plan 2022-2026.

The Chief Operating Officer oversees the Commission's daily operations and leads the Office of Commission Support (OCS). OCS provides administrative services to support FMSHRC in fulfilling its mission and strategic goals. The primary functions are financial management, human resources, and information technology services, in addition to procurement and contracting, facilities management, and general administrative service support.

The financial management services function includes budget and accounting, such as budget formulation, budget execution, funds control, financial reporting, and vendor payments.

Human resources include recruitment and placement, classification and pay administration, performance management and incentive awards, employee benefits and retirement, personnel security, coordination of employee training programs, and wellness and employee assistance programs.

Information technology includes help desk functions, network administration, Cybersecurity oversight and implementation, policy formulation, and telecommunications.

Procurement and contracting include specific matters such as maintaining a simplified acquisition program for supplies and services, contract implementation and oversight, and coordination of services and supplies.

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Facilities management includes property and space management, OSHA Compliance, emergency evacuation, and physical security.

OCS's other general administrative services include oversight and administering employee travel authorizations and reimbursements and the metro subsidy program.

FMSHRC has established the following strategic objectives for FMSHRC Commission Support function:

- Strategic Objective 2.1 – Modernize Information Technology infrastructure, resources, and capabilities
- Strategic Objective 2.2 – Increase internal transparency
- Strategic Objective 3.1 – Advance diversity, equity, inclusion, and accessibility
- Strategic Objective 3.2 – Improve talent management
- Strategic Objective 3.3 – Promote work-life programs

FY 2023

FMSHRC's FY 2023 budget request includes 11 FTEs and \$2.363 million for its Office of Commission Support function.

FY 2022

FMSHRC's annualized FY 2022 C.R. level included 6 FTEs and \$2.119 million for its Office of the Executive Director function. FMSHRC anticipates operating at the level of 6 FTEs during FY 2022 for this function.

FY 2021

FMSHRC's FY 2021 Enacted budget level was \$2.119 million for its Office of the Executive Director function and that office had a year-end total of 6 actual FTE's.

TABLES

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Budget Authority by Object Class

FY 2023 Budget Request by Object Class

Dollars in thousands

	FY 2021 Actual	FY 2022 Annualized C.R.	FY 2023 Request
Personnel Compensation	9,458	9,458	10,284
Other than Full-Time Permanent	<u>0</u>	<u>0</u>	<u>0</u>
Total, Personnel Compensation	9,458	9,458	10,284
Personnel Benefits, Civilian	2,512	2,512	2,697
Benefits to Former Employees	10	10	10
Travel and Transportation of Persons	8	8	151
Transportation of Things	12	12	11
Rental Payments to GSA	1,995	1,995	1,875
Communications, Utilities, and Misc.	733	733	807
Printing and Reproduction	9	9	15
Other Services	2,279	2,279	1,889
Supplies and Materials	48	48	150
Equipment	120	120	123
Total	17,184	17,184	18,012

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Personnel Summary

	2021 Actual	2022 Annualized C.R.	2023 Request
Executive Level III	1	1	1
Executive Level IV	4	4	4
Executive Schedule	5	5	5
ES	5	2	2
Senior Executive Service	2	2	2
AL-2	1	1	1
AL-3	11	11	11
Administrative Law Judges	12	12	12
GS-15	2	6	6
GS-14	9	5	5
GS-13	5	7	7
GS-12	16	5	16
GS-11	5	7	7
GS-9	13	11	11
GS-8	1	1	1
GS-7	1	4	4
General Schedule	57	46	57
Total Permanent Full-Time Positions	76	65	76

Average Salaries

	FY 2021 Enacted (Estimate)	FY 2022 Enacted (Estimate)	FY 2023 Request (Estimate)
Average EX Salary	\$161,800	\$166,169	\$169,757
Average ES Salary	\$175,033	\$179,221	\$184,598
Average AL Salary	\$183,315	\$188,249	\$193,896
Average GS Salary	\$101,718	\$110,182	\$113,584

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**Amounts Available for Obligation
(in millions)**

	FY 2021 Enacted Estimate		FY 2022 Annualized C.R.		FY 2023 Request	
	FTE	Amount	FTE	Amount	FTE	Amount
Appropriation	76	\$17.184	65	\$17.184	76	\$18.012

**Summary of Changes by Budget Authority
(in millions)**

Budget Authority	FY 2021 Enacted	FY 2022 Annualized C.R.	FY 2023 Request	Net Change (FY 2022 to FY2023)
Appropriations	\$17.184	\$17.184	\$ 18.012	(+0.828)
Full-time Equivalent	76	65	76	+11

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Appropriations and FTE History

Fiscal Year	Budget Estimate to Congress	House Allowance	Senate Allowance	Appropriation	FTE ¹
2009	8,653,000	8,653,000	8,653,000	8,653,000	50
2010	9,857,567	9,857,567	10,358,000	10,358,000 ²	63
Supplemental		3,800,000	3,800,000	3,800,000 ³	17 ⁴
2011	13,105,000	13,905,000	15,755,000	10,337,000 ⁵	63
2012	22,417,000	--	17,637,000	17,604,000 ⁶	72
2013	16,000,000	--	--	16,683,000 ⁷	74
2014	16,423,000	--	--	16,423,000	82
2015	17,601,000	--	--	16,751,000	73
2016	17,085,000	--	--	17,085,000	72
2017	17,184,000	--	--	17,184,000	65
2018	17,053,000	--	--	17,184,000	60
2019	17,053,000	-	-	17,184,000	66
2020	17,184,000	-	-	17,184,000	59
2021	17,184,000	-	-	17,184,000	76
2022	17,539,000	-	-		65*
2023	18,012,000				76*

*Estimated FTE Level

¹ FTE for FY 2013 and before represent the FTE ceiling given budget authority, not the actual FTE.

² Reflects Senate approved mark-up of \$500,000 pursuant to P.L. 111-117.

³ Reflects supplemental funding of \$3,800,000 pursuant to P.L. 111-212.

⁴ Temporary FTE provided July 29, 2010—July 28, 2011 though FY 2010 supplemental appropriation. The Commission carried this staff over for the last two months of FY 2011, using FY 2011 funding.

⁵ Reflects reduction of \$21,000 pursuant to Sec. 1119(a) of the Department of Defense and Full-Year Continuing Appropriations Act, 2013, P.L. 112-10.

⁶ Reflects reduction of \$33,334 pursuant to Section 527(a) of the Consolidated Appropriations Act, 2013, P.L. 112-74.

⁷ Reflects the post-sequester 2013 Continuing Resolution level.