

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION OF
APPROPRIATION ESTIMATES
FOR
COMMITTEE ON APPROPRIATIONS



FISCAL YEAR 2012

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Fiscal Year 2012 Budget Request and Annual Performance Plan

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

EXECUTIVE SUMMARY

The Federal Mine Safety and Health Review Commission (“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 (“Mine Act”), as amended. Section 113 of the Mine Act establishes the Commission and sets forth its responsibilities. The Mine Improvement and New Emergency Response Act of 2006, P.L. 109-236 (“MINER Act”), enacted in June of 2006, added an additional responsibility to the Commission, 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.

Most cases that come before the Commission involve civil penalties proposed by the Department of Labor’s Mine Safety and Health Administration (MSHA) against mine operators. The Commission is responsible for addressing whether the alleged violations occurred, as well as the appropriateness of proposed penalties. Other types of cases include contests of MSHA orders to close a mine for health or safety reasons, miners’ charges of discrimination based on their complaints regarding health or safety, and miners’ requests for compensation after being idled by a mine closure order. Unlike most of the cases that come before the Commission, disputes involving the temporary reinstatement of a miner or an emergency response plan must be decided on an expedited basis.

The Commission’s Administrative Law Judges (“judges”) decide cases at the trial level. The five-member Commission provides administrative appellate review. Review of a judge’s decision by the Commission 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, may decide to review a case. A judge’s decision that is not accepted for review becomes a final, non-precedential order of the Commission.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 \$22,417,000 for FY 2012 to support the full-time equivalent (FTE) of 128 staff members. This represents an increase of 65 FTEs

and \$12,059,000 over anticipated FY 2011 funding¹. The FY 2010 Supplemental Appropriations Act (P.L. 111-212) provided the Commission with an additional appropriation of \$3,800,000. This supplemental funding was available for obligation for one year, effective July 29, 2010. Including the supplemental, the Commission's total FY 2010 appropriations level was \$14,158,000 and 80 FTEs. Supplemental funds expire July 28, 2011. The Commission intends to retain staff funded through the supplemental for the remaining two months of FY 2011, using funds appropriated to the Commission in FY 2011. Therefore, the Commission anticipates that as of the end of FY 2011, it will have a staff of 80 FTE.

Cases at the trial level are handled by the Commission's Office of Administrative Law Judges (OALJ). The backlog of trial-level cases has been the subject of much discussion, especially in the wake of the tragic accident that occurred on April 5, 2010 at the Upper Big Branch Mine. The backlog is the result of a dramatic increase in the number of new cases filed with the Commission. From FY 2000 through FY 2005, the average number of cases filed was 192 per month, or 2,307 per year. However, since FY 2006 the number of new cases filed increased steadily, and in FY 2010, over 11,000 new cases were filed.

The Commission began FY 2011 with a backlog of 18,170 cases and anticipates that by the end of FY 2011, the backlog of undecided cases will reach 19,537.² Assuming the Commission receives the President's FY 2012 request by October 1, 2011, it projects that the number of undecided trial cases will drop to 17,162 cases by the end of FY 2012. This would represent the first drop in the backlog since FY 2004.³

The Commission has taken a number of steps to dispose of cases more efficiently and reduce the backlog. In an attempt to expedite the processing of settlement decisions, the Commission promulgated a final rule in November 2010 requiring that parties submit proposed settlement orders to the Commission in electronic form 75 Fed. Reg. 73955 (Nov. 30, 2010). In December 2010, the Commission published a final rule setting forth simplified procedures for litigating certain categories of cases before the Commission's judges 75 Fed. Reg. 81459 (Dec. 28, 2010).

In recent years, the Commission's appellate review function has also seen a dramatic increase in the number of filings. The trend of parties filing an increased number of petitions for substantive review is likely to continue for the foreseeable future, and

¹ This assumes an FY 2011 appropriation of \$10,358,000.

² This again assumes an FY 2011 appropriation of \$10,358,000 and that the Commission is able to retain staff, funded July 29, 2010—July 28, 2011 through the FY 2010 Supplemental Appropriation, until the end of FY 2011 using funds appropriated in FY 2011.

³ Projections assume that the number of incoming cases levels off at 11,000 new cases annually.

perhaps accelerate as the Commission's judges issue a greater number of decisions in the course of addressing the Commission's case backlog.

In addition to petitions for substantive review, the Commission at the appellate level considers requests to reopen cases in which a mine operator is in default for failure to respond to the Secretary's proposed penalty or to a judge's order. They often involve operators who are contesting citations, orders, and civil penalties for the first time and who are unfamiliar with Commission procedures. The number of these requests, referred to as default cases, has increased sharply. In FY 2011, the Commission plans to promulgate a new rulemaking intended to speed the consideration and processing of these requests.

The Commission's Office of the Executive Director (OED) supports all functions of the Commission through budget and accounting, human resources, procurement, information technology, facilities management, and general administrative services. The FY 2012 budget includes funding for an additional two FTEs for OED, which will ensure the Office's continued ability to provide a high level of support to Commission operations, and to a significantly larger Commission staff.

The FY 2010 supplemental appropriation included funding for the "exploration of information technology upgrades that would speed the processing of cases and would allow for increased tracking capabilities for individual cases."⁴ The Commission has research underway to identify market technological solutions to accomplish this goal. The FY 2012 budget includes \$1,000,000 to implement an electronic filing and case-tracking system to replace the Commission's current paper-centric process.

Finally, the GSA lease for the Commission's headquarters in Washington, D.C. is due to expire on September 2012. The request includes \$1,980,000 to cover the cost of moving the Commission's headquarters to a new location in Washington, D.C.⁵

⁴ Senate Report No. 111-188 (2010).

⁵ The Mine Act requires that the principal office of the Commission be located in the District of Columbia (30 U.S.C. § 823a).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

MISSION

The Commission is an independent adjudicatory agency charged with resolving disputes arising from the enforcement of safety and health standards in the nation's mines. Under its enabling statute, the Mine Act, the Commission 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. The Commission's mission is to provide just, speedy, and articulate adjudication of proceedings authorized under the Mine Act, thereby enhancing compliance with the Act and contributing to the improved health and safety of the nation's miners.

The scope of the Commission's mission was expanded by the passage of the MINER Act. That statute amended the Mine Act and vested the Commission 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 the Commission and its judges with respect to these proceedings and the Commission has adopted procedural rules to implement those deadlines.

FUNCTIONS AND PROCEDURES

The Commission carries out its responsibilities through trial-level adjudication by judges and appellate review of judges' 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 or not the alleged safety and health violations occurred and if so, the degree of gravity and negligence involved, so that appropriate sanctions may be imposed. Other types of cases involve mine operators' contests of mine closure orders, miners' complaints of safety or health related discrimination, miners' applications for compensation after a mine is idled by a closure order, and review of disputes between MSHA and underground coal mine operators relating to those operators' mine emergency plans.

Once a case is filed with the Commission, 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 a judge. To expedite the decisional process, the Chief Judge may rule on certain motions and where appropriate, issue orders of settlement, dismissal, or default. Otherwise, once a case is assigned to an individual judge, that judge is responsible for the case and rules upon motions and settlement proposals, schedules the case for hearing, holds the hearing, and issues a decision based upon

the record. A judge's decision becomes a final, non-precedential order of the Commission unless it is accepted for review by the five-member Commission.

The five-member Commission provides administrative appellate review based on the record. It may, in its discretion, review decisions issued by judges when requested by a litigant, or it may, on its own initiative, direct cases for review. The Commission's decisions are precedential, and appeals from the Commission's decisions are heard in the federal courts of appeals.

The Office of the Executive Director (OED) supports the above functions by providing budget and financial management, and administrative and technical services, including human resources and IT, procurement and contracting, and facilities management.

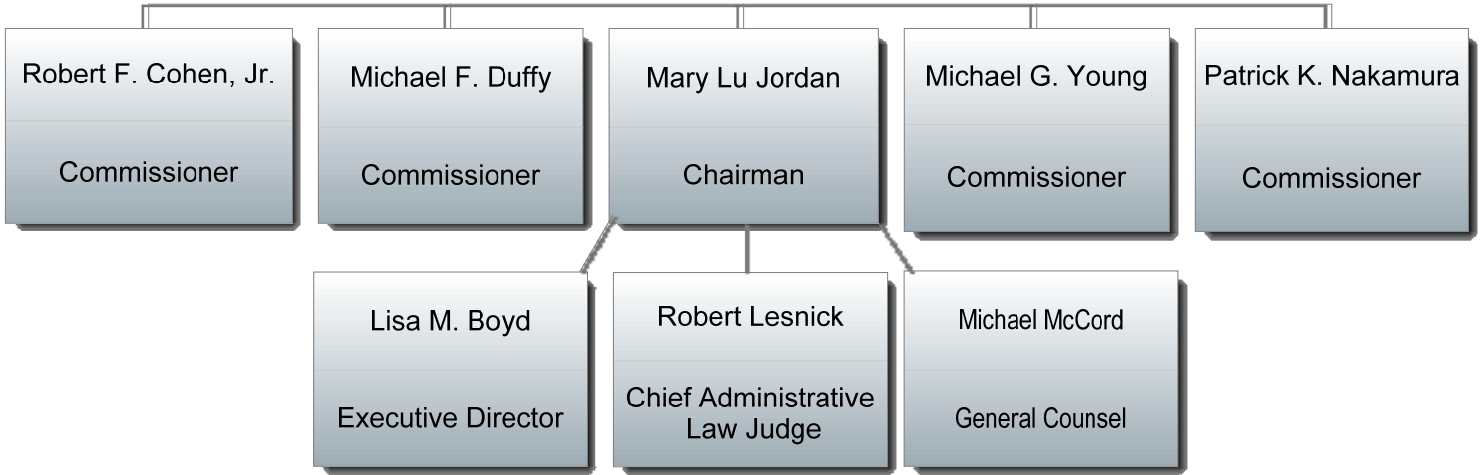
STRATEGIC GOALS

The Commission has set forth the following strategic goals: 1) to ensure expeditious, fair, and legally sound adjudication of cases at the trial and appellate levels, and 2) manage the Commission's human resources, operations, facilities, and information technology ("IT") systems to ensure a continually improving, effective, and efficient organization.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Federal Mine Safety and Health Review Commission

Key Personnel Organization Chart



COMMISSION MEMBERS

<u>NAME</u>	<u>TERM EXPIRATION</u>
Mary Lu Jordan, Chairman	August 30, 2014
Michael F. Duffy	August 30, 2012
Michael G. Young	August 30, 2014
Robert F. Cohen, Jr.	August 30, 2012
Patrick K. Nakamura	August 30, 2016

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

APPROPRIATION LANGUAGE

SALARIES AND EXPENSES

For necessary expenses of the Federal Mine Safety and Health Review Commission:
\$22,417,000.

AUTHORIZING LEGISLATION

<u>Authorizing Legislation Containing Indefinite Authority</u>	FY 2010	FY 2010 Supplemental*	FY 2011 (estimate)	FY 2012
Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. §801 et seq.)	\$10,358,000	\$3,800,000	\$10,358,000	\$22,417,000

* Available July 29, 2010—July 28, 2011, in accordance with P.L. 111-222.

JUSTIFICATION BY FUNCTION

GENERAL STATEMENT

The 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 (DOL) or the Mine Safety and Health Administration (MSHA).

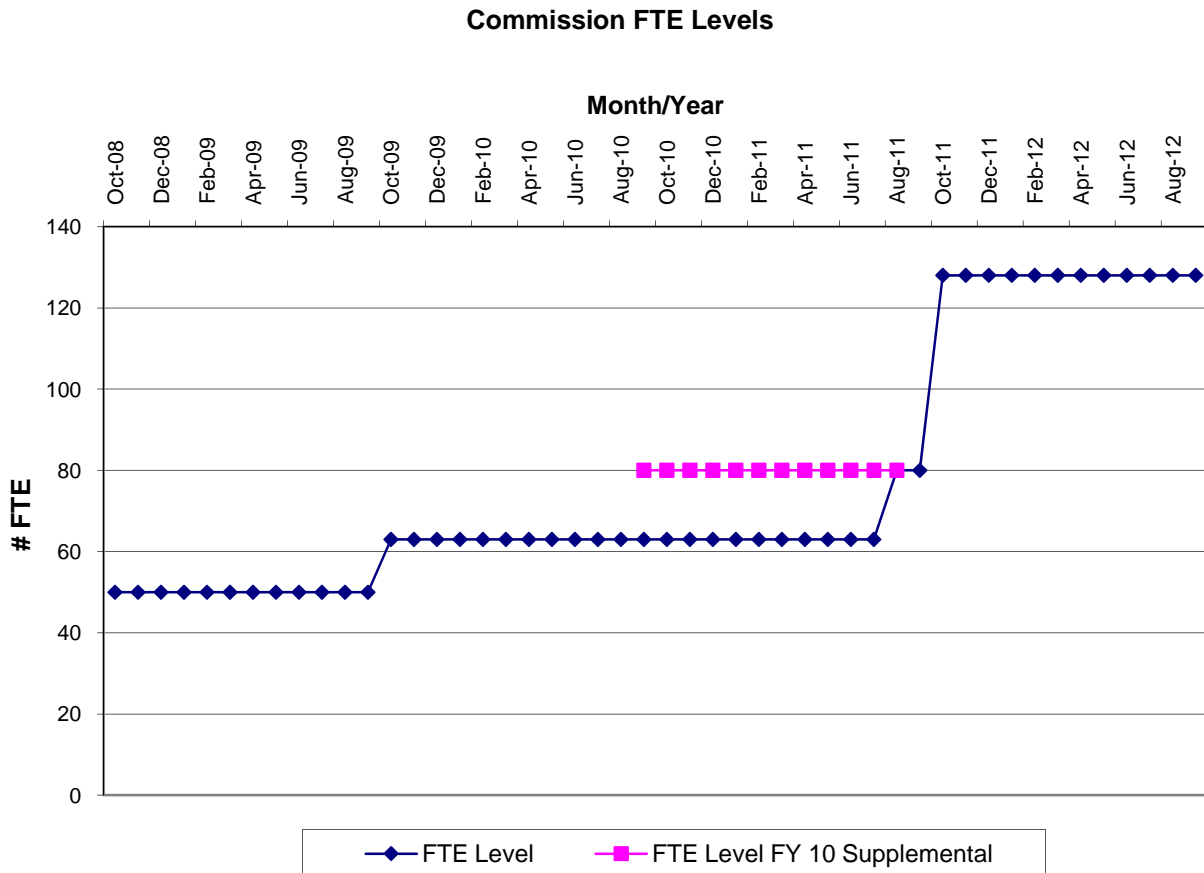
The Commission fulfills its mission through three main functions. The trial-level function lies within the Office of the Administrative Law Judge. At the trial level, the Commission's judges hear and decide cases initiated by the Secretary of Labor, mine operators, miners, and miners' representatives. The appellate function is carried out by the five-member Commission, its staff, and the Office of the General Counsel. The Commission 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 motion. In addition, at the appellate level, the Commission considers motions to reopen cases where an operator has failed to contest a proposed penalty, or to respond to the Secretary of Labor's penalty petition, in a timely manner. Finally, the Office of the Executive Director (OED) supports both the trial-level and appellate functions by providing budget management, administrative and technical services.

FTE by Function and Funding								
	<u>FY 2010</u>		<u>FY 2010 Supplemental*</u>		<u>FY 2011 Estimate</u>		<u>FY 2012 Request</u>	
	FTE	AMOUNT (000)	FTE	AMOUNT (000)	FTE	AMOUNT (000)	FTE	AMOUNT (000)
Office of Administrative Law Judges	41	6,483	15	3,445	40	6,292	100	17,345
Office of the Commission	16	3,028	2	355	17	3,219	20	3,921
Office of the Executive Director	6	847	0	0	6	847	8	1,151
Total	63**	10,358	17	3,800	63	10,358	128	22,417

* Available for expenditure July 29, 2010—July 28, 2011. The Commission intends to carry this staff over for the remaining two months of FY 2011, using funds appropriated in FY 2011.

**FTE for FY2010 represents the FTE ceiling, not the actual cumulative FTE.

The chart below shows the Commission's FTE levels since FY 2009. It illustrates that the FY 2010 Supplemental Appropriation, enacted at the end of July, 2010, supported increased FTE levels for two months of FY 2010 and 10 months of FY 2011. The Commission intends to carry over staff funded under the supplemental using funds appropriated in FY 2011.



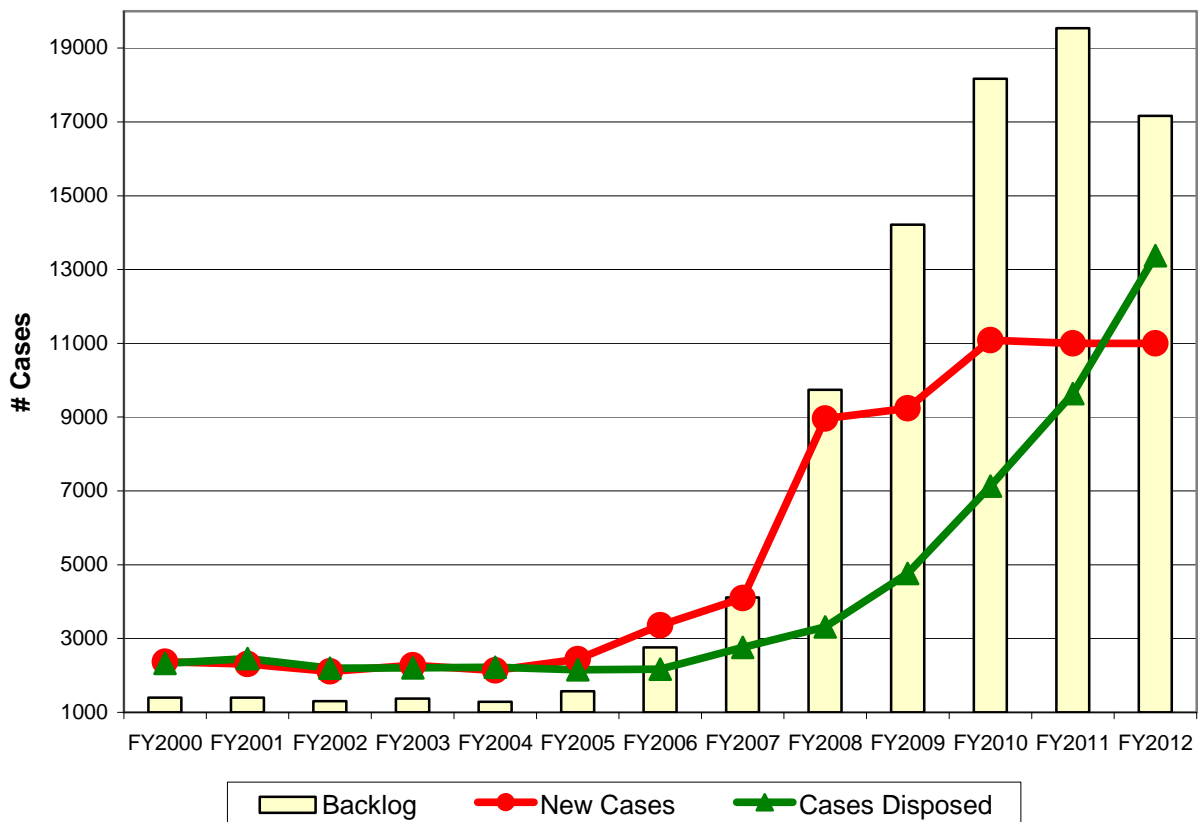
Administrative Law Judge Function

The Commission employs administrative law judges to hear and decide contested cases at the trial level. The judges travel to hearing sites located at or near the mine involved in order to afford mine operators, miners and their representatives a full opportunity to participate in the hearing process. Commission judges are also responsible for evaluating and approving or denying settlement agreements proposed by the parties under the Mine Act.

The Commission estimates that 19,537 trial level cases will be pending at the beginning of fiscal year 2012. New case filings are not expected to decrease in FY 2012, as

operators continue to elect to contest higher civil penalties proposed by MSHA and as MSHA increases its utilization of its “pattern of significant and substantial violations” sanctions. Therefore, the Commission anticipates that it will receive 11,000 new cases during the fiscal year. We project that 13,375 cases will be disposed of during the year, resulting in an end-of-year inventory of 17,162 undecided cases. This would be the first time since FY 2004 that the Commission’s inventory would decrease from one year to the next.

Commission Trial-Level Workload, FY 2000 - FY 2012



The Commission began fiscal year 2011 with an inventory of 18,170 undecided cases, and 11,000 new cases are anticipated for the year. A total of 9,633 cases are expected to be decided, resulting in an end-of-fiscal-year inventory of 19,537 undecided cases. The Commission estimates that depending on experience, judges will dispose of an average of 450-500 cases per year. Actual case disposals will depend largely on the complexity of the cases before each judge.

Administrative Law Judge Caseload Data

	FY 2010 Actual	FY 2011 Estimate	FY 2012 Estimate
Cases pending beginning of year	14,213	18,170	19,537
New cases received	11,087	11,000	11,000
Total case workload	25,300	29,170	30,537
Cases decided	7,130	9,633	13,375
Cases pending end of year	18,170	19,537	17,162

Performance Objective and Goals for FY 2012

The Commission has established new performance objectives and goals that are more easily understood, relevant to its existing processes and workload, and more accurately measure performance.

The Commission's FY 2012 budget includes the following objective for the Administrative Law Judge function:

- Dispose of cases in a timely manner.

The following performance goals have been established for FY 2012 to support this objective.

PERFORMANCE MEASUREMENT MATRIX
OFFICE OF ADMINISTRATIVE LAW JUDGES*

OBJECTIVE : DISPOSE OF CASES IN A TIMELY MANNER				
	FY 2010		FY 2011	FY 2012
	Goal	Actual	Goal	Goal
Average days from receipt to disposition of penalty cases*	n/a	499	550	450
Percent of cases disposed of within 365 days of receipt*	n/a	28%	30%	35%
Number of cases pending over 365 days	11,500	7,680	9,500	7,500
Percent of cases pending over 365 days*	n/a	42%	49%	44%
Percent of settlement orders issued within 60 days of settlement motion	65%	54%	55%	65%
Percent of dispositions under simplified proceedings***	n/a	n/a	Baseline	
Average days from receipt to disposition under simplified proceedings***	n/a	n/a	Baseline	

* The timeframes above include time allowed under the Commission’s Procedural Rules for the Secretary of Labor to file a petition (generally 45 days), time under the rules for an operator to answer (generally 30 days), and time granted by a judge when he or she stays a proceeding.

** New metric, baseline established FY 2010.

*** Simplified proceedings regulation finalized December 2010. Baseline metrics to be established in FY 2011.

Office of the Administrative Law Judges Staffing

The Commission currently has the full-time equivalent (FTE) of 20 judges, six of whom were hired with funds from the FY 2010 Supplemental Appropriations Act (P.L. 111-212). The Commission plans to retain the 20-judge staffing level through the end of fiscal year 2011, two months beyond the expiration of supplemental funds, using funds appropriated in FY 2011.⁶ Funding for a total of 29 judges with support staff is included in the FY 2012 budget. The FY 2012 budget request will enable the Commission to reverse the trend of increasing backlogs by the end of the fiscal year.

⁶ Assumes an FY 2011 Appropriation of \$10,358,000.

The Commission's FY 2012 budget includes 100 FTEs and \$17,344,569 for OALJ, an increase of 60 FTE and \$11,052,504 over the estimated FY 2011 appropriation level. However, OALJ added 15 FTEs as a result of the FY 2010 supplemental appropriation, and the Commission intends to carry over that supplemental staff for the final two months of FY 2011 after the supplemental funds expire. Therefore, the effective FTE increase for OALJ is 45 FTEs. The Commission seeks to add judges and support personnel in line with a plan that would allow a 1-to-1-to-1 ratio of judges to law clerks to legal assistants.

The Commission previously concluded that one judge supported by a law clerk and a shared legal assistant could dispose of 500 cases per year. However, that ratio was resulting in case processing bottlenecks at the legal assistant level. Legal assistants maintain the judges' dockets, proof documents, perform data entries on the Commission's case tracking system, type documents, prepare monthly reports accounting for each of the judges' cases, maintain the judges' hearing calendars, and make travel and courtroom arrangements for hearings. Thus, as the number of cases assigned to each judge increases, so does the workload of the legal assistants. Consequently, the 2012 budget request staffs each judge with one law clerk and one legal assistant. Four additional docket clerks are also included in the request, in order for the necessary processing of unassigned cases to occur in a timely manner.

Along with increasing its staff, the Commission must also ascertain the most efficient way to process cases in order to reduce the backlog. One way to achieve this goal is through technology. The Commission is currently researching technological solutions available in the marketplace that will provide a number of utilities, including electronic filing, fully electronic case files, electronic assignment and distribution of cases, automated notifications to parties and case tracking. Our FY 2012 budget includes \$1,000,000 to implement this technology. In addition, staff training is necessary for both new and current employees to more efficiently perform their day-to-day tasks. Accordingly, a \$55,000 training budget is included in the FY 2012 budget.

	<u>FY 2010</u>		<u>FY 2010 Supplemental*</u>		<u>FY 2011 Estimate</u>		<u>FY 2012 Request</u>	
	FTE	AMOUNT (000)	FTE	AMOUNT (000)	FTE	AMOUNT (000)	FTE	AMOUNT (000)
Office of Administrative Law Judges	41**	6,483	15	3,445	40	6,292	100	17,345

* Available for expenditure July 29, 2010—July 28, 2011. The Commission intends to carry this staff over for the remaining two months of FY 2011, using funds appropriated in FY 2011.

** FTE for FY2010 represents the FTE ceiling, not the actual cumulative FTE.

Commission Review Function

The five-member Commission decides two principal types of cases: (1) *substantive* cases, which are cases where a judge has issued a decision on the merits and either a party has filed a petition for review with the Commission or at least two Commissioners have decided to grant review on their own initiative; and (2) *default* cases, which are cases where an operator has failed to timely contest a proposed penalty or to respond to the Secretary's penalty petition and the operator has filed a motion to reopen the final order.

The authority for the review of judges' decisions is set forth in section 113(d)(1) of the Act. The Act states that a judge'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 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 judge's decision. The Commission is also charged with the responsibility of reviewing judges' decisions regarding disputes arising over the emergency response plans of underground coal operators pursuant to the MINER Act.

Two or more Commissioners may also direct any judge's decision for review *sua sponte* (on the Commission's own motion, without the parties filing a petition). *Sua sponte* review is limited to judges' 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 substantive cases. 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.

In recent years, the Commission's appellate review function has seen a dramatic increase in the number of filings of both default and substantive cases. The trend of parties filing an increased number of petitions for substantive review is likely to continue for the foreseeable future, and perhaps accelerate as the Commission's judges issue a greater number of decisions in the course of addressing the Commission's case backlog. In FY 2009, parties filed a total of such 14 petitions, and the Commission granted 10 of them. In FY 2010, parties filed a total of 32 petitions, and the Commission granted 19 of them – essentially a doubling of the number of new substantive cases reaching the Commission.

The increase in petitions filed by parties and granted by the Commission will have a significant impact on the Office of General Counsel (OGC), which is responsible for conducting the initial research in substantive cases and preparing draft opinions for the Commission members. In addition, during FY 2010, the increased number of default cases handled by the Commission continued to be a major challenge. Each default

case must be carefully analyzed by an OGC attorney-advisor, who then prepares a draft order for consideration by the Commissioners.

The OGC, among other things, plays an important role in handling substantive cases that have been appealed to the five Commissioners. Because of the recent increase in these appeals and the expectation that many more will be filed in the future, an additional attorney-advisor is needed. The OGC attorneys also perform other duties (such as responding to FOIA requests, ethics counseling and training, review of financial disclosure forms, and equal employment opportunity counseling and training), which will substantially increase as the size of the Commission staff expands. In addition, OGC is primarily responsible for formulating and drafting the Commission's rulemaking initiatives, such as more efficient settlement procedures, simplified proceedings for litigating certain categories of cases, and improved handling of default cases.

The Commission began FY 2010 with an inventory of 95 undecided cases and received 213 new cases during the year. One hundred eighty-nine (189) case dispositions were made during FY 2010, 20 of which were substantive cases and 169 were default cases. In FY 2011, the Commission began the year with an inventory of 119 undecided cases, and 230 new cases are anticipated for the year. An estimated 220 case dispositions are expected, consisting of 35 dispositions in substantive cases and 185 dispositions in default cases.

In FY 2012, it is expected that 129 cases will be pending before the Commission at the beginning of the year. It is anticipated that a total of 240 new cases will be filed during FY 2012. Two-hundred twenty (220) dispositions are expected, of which an estimated 40 will be in substantive cases and 180 in default cases. It is expected that the Commission's review docket will contain 149 undecided cases at the end of FY 2012.

Commission Review Caseload Data			
	FY 2010 Actual	FY 2011 Estimate	FY 2012 Estimate
Cases pending beginning of year	95	119	129
New cases received	213	230	240
Total case workload	308	349	369
Cases decided	189	220	220
Cases pending end of year	119	129	149

Commission Review Staffing

The Commission is requesting a budget of \$3,920,986 and 20 FTE for its appellate review activities in FY 2012. This includes 11 FTEs for the five Commissioners and their immediate staff⁷ and 9 FTEs for OGC. This is an increase of \$702,071 and 3 FTEs over the amount estimated to be available for FY 2011. However, with the 2010 supplemental appropriation, 2 FTEs and \$355,000 were added to the Office of the Commission from July 29, 2010—July 28, 2011. The Commission plans to use appropriations from FY 2011 to fund supplemental staff for the final two months of the fiscal year. Therefore, the Commission anticipates that at the end of FY 2011, the Commission Review Function will have 19 FTEs.

	<u>FY 2010</u>		<u>FY 2010 Supplemental*</u>		<u>FY 2011 Estimate</u>		<u>FY 2012 Request</u>	
	FTE	AMOUNT (000)	FTE	AMOUNT (000)	FTE	AMOUNT (000)	FTE	AMOUNT (000)
Office of the Commission	16**	3,028	2	355	17	3,219	20	3,921

* Available for expenditure July 29, 2010—July 28, 2011. The Commission intends to carry this staff over for the remaining two months of FY 2011, using funds appropriated in FY 2011.

** FTE for FY2010 represents the FTE ceiling, not the actual cumulative FTE.

Performance Objective and Goals for FY 2012

The Commission has updated and clarified its performance objectives and goals for its Commission review function. Our FY 2012 budget includes the following two objectives for this function:

- Issue decisions in substantive cases accepted for review in a timely manner
- Issue orders in default cases in a timely manner

The following performance goals have been developed for fiscal year 2012 to support this objective.

⁷ Includes a Senior Executive Service individual brought on-board at the beginning of FY 2011 to oversee hiring, the development and execution of a backlog reduction plan, and implementation of an electronic case management system for a term of up to two years, in accordance with Senate Report 111-188 (2010).

PERFORMANCE MEASUREMENT MATRIX

COMMISSION REVIEW FUNCTION

	<u>FY 2010</u>		<u>FY 2011</u>	<u>FY 2012</u>
	<u>Goal</u>	<u>Actual</u>	<u>Goal</u>	<u>Goal</u>
OBJECTIVE: Issue opinions in substantive cases accepted for review in a timely manner				
Undecided substantive cases over 18 months of age	0	2	3	2
Percent of undecided substantive cases over 18 months of age	0	7%	10%	8%
Undecided substantive cases 12—18 months of age	0	9	6	6
Percent of undecided substantive cases 12—18 months of age	0	32%	20%	16%
OBJECTIVE: Issue orders in default cases in a timely manner				
Undecided default cases over 6 months of age *	n/a	36	20	15
Percent of undecided default cases over 6 months of age*	n/a	38%	20%	15%

* New performance metric, baseline established in FY 2010.

Office of the Executive Director Function

The OED provides administrative services to support the Commission in fulfilling its mission and strategic goals. The primary functions are financial management, human resources, procurement and contracting, information technology, facilities management, and general administrative service support.

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

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

Procurement and contracting, another vital function of OED, covers specifics such as maintaining a simplified acquisition program for supplies and services, contract implementation and oversight, and coordination of services and supplies.

Information technology, which falls under the banner of this Office, entails help desk functions, network administration, policy formulation for IT, and telecommunication.

The facilities management covers property and space management, organization management, and physical security.

Other general administrative services provided by OED include the administration of employee travel authorizations and reimbursements, and the metro subsidy program.

Office of the Executive Director Staffing

The Commission is requesting an FY 2012 budget of \$1,151,445 and 8 FTE for the Office of the Executive Director. This is an increase of \$304,425 and 2 FTE over the anticipated FY 2011 level. The additional FTE for the Office of the Executive Director include one Information Technology specialist and one Administrative Assistant, required to support the increased IT and staff support needs of Commission staff.

	<u>FY 2010*</u>		<u>FY 2011</u>		<u>FY 2012</u>		<u>Increase or Decrease</u>	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Office of the Executive Director	6**	847,020	6	847,020	8	1,151,445	+2	304,425

* OED received no funding from the FY 2010 Supplemental.

** FTE for FY2010 represents the FTE ceiling, not the actual cumulative FTE.

CHARTS AND GRAPHS

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

**Budget Authority by Object Class
(In thousands)**

	FY 2010 Actual	FY 2010 Supplemental Estimate*	FY 2011 Estimate	FY 2012 Estimate**
Personnel Compensation	5,807	949	6,034	11,746
Other than Full-Time Permanent	<u>333</u>	<u>0</u>	<u>360</u>	<u>380</u>
Total, Personnel Compensation	6,140	949	6,394	12,126
Personnel Benefits, Civilian	1,400	177	1,352	3,266
Benefits to Former Employees	-	-	-	11
Travel and Transportation of Persons	175	84	136	465
Transportation of Things	3	6	8	31
Rental Payments to GSA	1,385	92	1,385	1,722
Communications, Utilities, and Misc.	145	63	112	157
Printing and Reproduction	28	-	7	23
Other Services	840	2,097	831	1,674
Supplies and Materials	102	25	133	855
Equipment	<u>140</u>	<u>307</u>	<u>0</u>	<u>2,087</u>
Total	10,358	3,800	10,358	22,417

* FY 2010 Supplemental costs include staff loaned or detailed from other federal agencies, contract staff, exploration of electronic case filing, and rental for temporary space, which are included in "Other Services".

** In FY 2012, the \$1.98 million request of moving Washington DC headquarters is distributed between "Other Services", "Supplies and Materials" and "Equipment". The \$1 million request for implementation of electronic case filing is distributed between "Other Services" and "Equipment".

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Personnel Summary

	2010 ACTUAL	2010 SUPPLEMENTAL	2011 ESTIMATE	2012 REQUEST
ACCOUNT: SALARIES & EXPENSES				
Executive Level III	1		1	1
Executive Level IV	4		4	4
	5		5	5
ES	1	1	1	2
AL-2	1		1	1
AL-3	13	6	13	28
	15	7	15	31
GS-15	6		5	5
GS-14	4		4	4
GS-13	2	1	2	5
GS-12	3		3	3
GS-11	11	6	12	33
GS-9	3		4	5
GS-8	7		8	8
GS-7	5	3	3	27
GS-6	1		2	2
GS-5	1		-	-
	43	17	43	92
Total Permanent Full-time Positions	63	-	63	128
Unfilled positions end-of-year	3	-	-	-
Total, full-time permanent employment end-of-year	60		-	-
Cumulative Full-time equivalent (FTE) usage	48	-	-	-

	FY 2010 Actual	FY 2011 Est.	FY 2012 Est.
Average EX Salary	\$157,460	\$157,460	\$157,460
Average ES Salary	\$156,673	\$156,673	\$167,337
Average AL Salary	\$164,427	\$164,427	\$166,427
Average GS Salary	\$78,273	\$78,273	\$81,285

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Amounts Available for Obligation

	FY 2010		FY 2010 Supplemental		FY 2011		FY 2012	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Appropriation, total estimated obligations	48*	10,358,000	17	3,800,000	63	10,358,000	128	22,417,000

*Actual cumulative FTE usage for 2010.

Summary of Changes by Budget Authority

Budget Authority	FY 2010	FY 2010 Supplemental	FY 2011	FY 2012	Net Change (FY 2011 to FY 2012)
Appropriations	10,358,000	3,800,000	10,358,000	22,417,000	+12,059,000
Full-time Equivalent*	63	17	63	128	65

*Represents FTE ceiling, given budget authority,

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Appropriations and FTE History

Fiscal Year	Budget Estimate to Congress	House Allowance	Senate Allowance	Appropriation	FTE ¹
2000	6,159,000	6,060,000	6,159,000	6,136,000 ²	43
2001	6,320,000	6,200,000	6,320,000	6,320,000	42
2002	6,939,000	6,939,000	6,939,000	6,934,000 ³	38
2003	7,127,000	–	–	7,131,343 ⁴	35
2004	7,774,000	7,774,000	7,774,000	7,728,133 ⁵	40
2005	7,813,000	7,813,000	7,813,000	7,809,024 ⁶	40
2006	7,809,000	7,809,000	7,809,000	7,730,910 ⁷	10
2007	7,576,000	7,731,000	7,731,000	7,777,652 ⁸	44
2008	8,096,000	8,096,000	7,954,563	7,954,563	48
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 ⁹	63
		3,800,000	3,800,000	3,800,000 ¹⁰	17¹¹
2011	13,105,000	13,905,000	15,755,000	10,358,000(e)	63(e)
2012	22,417,000				128(e)

(e) = estimated

¹ FTE for FY 2010 and before represent the FTE ceiling given budget authority, not the actual FTE.

² Reflects reduction of \$23,000 pursuant to the Consolidated Appropriations Act for 2000, P.L. 106-113.

³ Reflects reduction of \$5,000 pursuant to Section 1403 of P.L. 107-206.

⁴ Reflects adjustments pursuant to the Omnibus Appropriations Act, P.L. 108-7.

⁵ Reflects reduction of \$45,867 pursuant to the Consolidated Appropriations Act, P.L. 108-199.

⁶ Reflects a congressional add-on of \$59,000 and a reduction of \$62,976 pursuant to section 122(a) of P.L. 108-447.

⁷ Reflects reduction of \$78,090 pursuant to Title III, Chapter 8, of the Department of Defense Appropriations Act, P.L. 109-148.

⁸ Reflects reduction of \$144,437 pursuant to Sec. 528(a) of P.L. 110-161.

⁹ Reflects Senate Approved Mark-up of \$500,000 pursuant to P.L. 111-117.

¹⁰ Reflects supplemental funding of \$3,800,000 pursuant of P.L. 111-212.

¹¹ Temporary FTE provided July 29, 2010—July 28, 2011 through FY 2010 supplemental appropriation.