

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION OF
APPROPRIATION ESTIMATES
FOR
COMMITTEE ON APPROPRIATIONS



FISCAL YEAR 2011

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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 that Act establishes the Commission and sets forth its responsibilities. The New Emergency Response Act of 2006, P.L. 109-236 (“MINER Act”) 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 5-member Commission provides administrative appellate review. Review of a Judge’s decision by the Commission is not automatic but requires the approval of at least two Commissioners. Most of the cases accepted for review are generated from petitions filed by parties adversely affected by 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 A Judge’s decision that is not accepted for review becomes a final, non-precedential order of the Commission.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 \$13,105,000 covering 77 FTEs for FY 2011. The Commission believes that this request level will allow it to prevent the current backlog of trial cases from growing any further. The request includes \$1,937,000 to support 15 additional FTEs and \$810,000 to support a base staff of 62 and to provide for an anticipated 1.4% pay increase for January 2011.

Since FY 2006, the number of new cases filed with the Commission has steadily increased. From FY 2000 through FY 2005, the average number of cases filed was 192 per month, or 2,307 per year. However, in FY 2008 and FY 2009, 8,961 and 9,230 new

cases were filed, respectively. (See attached graph A showing the increase in cases received and the increased disposition rate.) The Commission currently has a backlog of over 15,000 cases. In contrast, the average backlog from FY 2000 through FY 2004 was only 1,379. At the current rate of increase, the projected total backlog will be over 18,000 by the end of FY 2010.

Considering that the backlog, as of December 31, 2009, was 15,306 (over 6 times what the normal caseload has been from FY 1995 through FY 2005), and considering that we have estimated that each experienced Judge supported by one dedicated law clerk and a legal assistant whose time is shared by two judges, can dispose of approximately 500 cases annually, the Commission has concluded that its Office of Administrative Law Judges ("OALJ") needs a total of 18 Judges to prevent the backlog from growing any further. Additional space will be required to accommodate the necessary increase in staff.

Only a small fraction of cases decided by the Commission's OALJ is appealed in any given year. Consequently, at the appellate level, the workload is expected to remain relatively consistent with 200 new cases anticipated for FY 2010. After disposition of 190 cases, an end-of-year inventory of 105 undecided cases is expected. In FY 2011, we anticipate 205 new appeals resulting in an end-of-year inventory of 115 cases.

In addition to conducting its appellate responsibilities, the Commission published in FY 2009 an advanced notice of proposed rulemaking regarding 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. The number of these cases has increased sharply, in part due to a significant number of operators who, due to increased enforcement, are contesting citations, orders, and civil penalties for the first time, and who are unfamiliar with Commission procedures.

The Commission has been taking 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 intends to promulgate alternative filing requirements, such as the submission of proposed decisions electronically by the parties. For FY 2010, the Commission will increase its full-time law clerks to 9 to assist the OALJ, which will substantially increase the productivity of the Judges. Under our FY 2011 budget request, we are seeking a one-to-one ratio of law clerks to Judges, to achieve a disposition rate per Judge of 500 cases annually. The Commission continues to develop an electronic case-tracking system and electronic filing system, which will reduce processing time and improve staff productivity. The Commission is also considering the elimination of some procedural requirements, and the implementation of a simplified litigation system for some cases. Our proposed budget would allow the Commission to go forward with these plans.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

MISSION

The Commission is an independent adjudicatory agency charged with resolving disputes arising from the enforcement of occupational safety and health standards in the nation's mines. Under its enabling statute, the Mine Act, as amended, 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 the Mine Safety and Health Administration ("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 has been significantly expanded by the passage of the Mine Improvement and the MINER Act. That statute amends the Mine Act and vests 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 imposes tight deadlines on the Commission and its Judges with respect to these proceedings, and the Commission has expeditiously adopted procedural rules for carrying out Congressional intent. The statute calls for the periodic updating, review, and approval of mine emergency plans and the adoption of new technologies in underground communications and disaster response. As this process evolves, the Commission anticipates that its role as arbiter in the plan adoption and approval process will be a significant and ongoing responsibility.

FUNCTIONS AND PROCEDURES

The Commission carries out its responsibilities through trial-level adjudication by Judges and appellate review of Judge's decisions by a 5-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, so that in the appropriate sanctions can 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 given a docket number and 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 that is not reviewed becomes a final, non-precedential order of the Commission.

The 5-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 Circuit Courts of Appeals.

STRATEGIC GOAL

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

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

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Mine Safety and Health Review Commission
(30 U.S.C. 801, et. Seq.) \$13,105,000.

AUTHORIZING LEGISLATION

	FY 2010	FY 2011
<u>Authorizing Legislation</u> <u>Containing Indefinite Authority</u>		
Federal Mine Safety and Health Amendments Act of 1977, as amended (30 U.S.C. 823-824)	10,358,000	13,105,000

JUSTIFICATION BY ORGANIZATIONAL 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, as amended. It is not part of the Department of Labor or its MSHA.

The Commission is charged with the responsibility of reviewing the enforcement activities of the Secretary of Labor, including hearing miners' complaints challenging unlawful health or safety-related discrimination, and resolving compensation issues for miners idled due to mine closure orders issued by MSHA. The Commission also resolves disputes between the Secretary and underground coal mine operators relating to the contents of mine emergency plans. The Commission's Judges hear and decide cases at the trial level initiated by the Secretary of Labor, mine operators, miners, and miners' representatives. The Office of the Executive Director (OED) supports both the Commission and Judge functions by providing administrative and technical services to allow the Commission to fulfill its mission and meet specific goals outlined in the Commission's strategic plan.

The 5-member Commission hears appeals from Judge decisions. The Commission may review these decisions by granting a petition for discretionary review from one or more of the parties or by directing review on its own motion.

<u>FTE by Function and Funding (in millions)</u>				
	FY 2010 Estimate		FY 2011 Request	
	<u>FTE</u>	<u>AMOUNT</u>	<u>FTE</u>	<u>AMOUNT</u>
Commission	22*	5,205,000	24	5,700,000
Administrative Law Judges	40	5,153,000	53	7,405,000
Total	62	10,358,000	77	13,105,000

*(5) Docket FTE moved from the Commission function to the Administrative Law Judges function.

The FY 2011 Budget Appendix incorrectly listed 60 FTE, rather than 62 FTE, for FY 2010.

Commission Review Function

The responsibility for the review of Judge 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 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. Petitioners may include miners, miners' representatives, mine operators or the Secretary of Labor. The Commission is also charged with the responsibility of reviewing disputes arising over the emergency response plans of underground coal operators pursuant to the MINER Act.

Two or more Commissioners may also direct any case for review *sua sponte* (on the Commission's own motion, without the parties filing a petition). *Sua sponte* review is limited to Judge decisions that are contrary to law or Commission policy, or that present a novel question of policy. By law, a quorum of three Commissioners is required to consider and decide cases appealed from the Commission's Judges. 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 FY 2011, it is expected that 105 cases will be pending for review by the Commission at the beginning of the year. A total of 205 new cases are anticipated for review by the Commission during FY 2011. One hundred ninety-five dispositions are expected, resulting in an end-of-year inventory of 115 undecided cases.

In FY 2010, the Commission began the year with an inventory of 95 undecided cases, and 200 new cases are anticipated for the year. One hundred ninety cases are expected to be decided, resulting in a docket of 105 undecided cases at the end of the fiscal year.

The Commission began FY 2009 with an inventory of 103 undecided cases and received 184 new cases during the year. One hundred ninety-two dispositions were made during FY 2009, resulting in 95 undecided cases remaining at the end of the fiscal year.

Of the 192 cases decided in FY 2009, 4 were substantive decisions, 184 were procedural orders in default cases and 4 were denials of petitions for review. The average age of the 95 default cases pending on the Commission's docket as of September 1, 2009 was 4.1 months, and the average age of the 4 substantive decisions issued in FY 2009 was 9.6 months.

During FY 2009, the number of default cases handled by the Commission continued to be a major challenge, particularly for the Commission's Office of the General Counsel

("OGC"). Default cases typically involve situations where a mine operator has allegedly failed to challenge civil penalties proposed by the MSHA within the prescribed 30-day period for contesting such proposed penalties. Under the Mine Act, proposed penalties that are not timely contested automatically become final Commission orders. Operators may file written requests with the Commission seeking to establish "good cause" to re-open the final orders. The Commission has determined that operators may file requests seeking to establish good cause to re-open final orders utilizing principles adopted by the Federal Courts.

The number of default cases received by the Commission increased from 68 in FY 2007 to 177 in FY 2008 - a 2.5 fold increase. That higher rate continued in FY 2009 as 170 default cases were received. The increase in default orders has greatly increased the demands on OGC's attorneys, who must analyze each case and prepare a draft order for the Commissioners.

Commission Review Caseload Data			
	FY 2009 Actual	FY 2010 Estimate	FY 2011 Estimate
Cases pending beginning of year	103	95	105
New cases received	184	200	205
Total case workload	287	295	310
Cases decided	192	190	195
Cases pending end of year	95	105	115

Commission Review Staffing

The Commission is requesting a budget of \$5,500,000 and 24 FTE for its appellate review activities in FY 2011. The following FTEs are included: 10 FTEs for the five Commissioners and their immediate staff, 6 FTEs for OGC, and 8 FTEs for the Office of the Executive Director (“OED). This is an increase of \$370,000 over the amount estimated to be available for FY 2010. The request includes funding of a projected 1.4% pay increase in January 2011, and other costs of Commission operations.

The FY 2010 resource level for the Commission Review activity is expected to be \$5,130,000 with actual employment of 22 FTEs.

The FY 2009 resource level for the Commission Review Activity was \$4,919,400 and 26 FTEs.

	<u>FY 2009</u>		<u>FY 2010</u>		<u>FY 2011</u>		<u>Increase or Decrease</u>	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Commission Review, Total Budget Authority	26**	4,919,400	*22	5,130,000	24	5,500,000	+2	+370,000

* (5) Docket FTEs moved from the Commission function to the Administrative Law Judge function in FY 2010.

** FY 2009 FTE represent the FTE ceiling given budget authority, not actual FTE.

Performance Objective and Goals for FY 2011:

The Commission's FY 2011 budget includes the following objective and goals for its appellate function:

Objective: Issue opinions in a timely manner.

Performance Goals for FY 2011:

- ◆ All Commission cases will be assigned before briefing is completed.
- ◆ All remaining Commission cases will be decided within 18 months of receipt.
- ◆ The average age of substantive decisions will be maintained at 12 months or less.

Performance Objective, Goals, and Accomplishments for FY 2009:

The Commission developed the following performance objectives associated with its FY 2009 budget. The objectives and accomplishments achieved during the year were:

Objective 1 — Issue opinions in a timely manner

Performance Goals for FY 2009:

- ◆ All Commission cases will be assigned when briefing is completed.
Accomplishments: This goal was met. All cases were assigned before briefing was completed.
- ◆ The Commission will have decided all cases that are 18 months or older.
Accomplishments: This goal was met. On September 30, 2009 no case that was 18 months or older was pending before the Commission.
- ◆ The average age of substantive decisions will be maintained at 12 months or less.
Accomplishments: This goal was met. On September 30, 2009, the average age of the substantive dispositions was 9.6 months.

PERFORMANCE MEASUREMENT MATRIX

COMMISSION REVIEW

		<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>		<u>FY 2010</u>	<u>FY 2011</u>
		<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Goal</u>	<u>Actual</u>	<u>Goal</u>	<u>Goal</u>
	OBJECTIVE: Issue opinions in a timely manner								
	Undecided cases over 24 months of age	0	0	0	0	0	0	0	0
▲	Undecided cases over 18 months of age (inclusive)	3	1	0	0	0	0	0	0
	Undecided cases over 12 months of age (inclusive)	4	1	0	0	0	0	0	0
▲	Cases briefed but unassigned	0	0	0	0	0	0	0	0
▲	Substantive disposition age	13.1	15.5	5.1	8.9	12.0	9.6	12.0	12.0

▲ Current performance goals or quality indicators

Administrative Law Judge Function

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

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

In FY 2011, the Commission expects that 18,247 cases will be pending at the beginning of the year. A total of 9,200 new cases are anticipated, with 7,750 projected dispositions occurring during the year. The Commission estimates an end-of-year inventory of 19,697 undecided cases.

The Commission believes that the number of new case filings will not decrease in FY 2011 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.

In FY 2010, the Commission began the year with an inventory of 14,213 undecided trial cases, and 9,200 cases are anticipated for the year. A total of 5,166 cases are expected to be decided, resulting in an end-of-fiscal-year inventory of 18,247 undecided cases.

The Commission's OALJs began FY 2009 with an inventory of 9,737 cases, with 9,239 new cases received during the year. Case dispositions for the year were 4,766, resulting in an end-of-year inventory of 14,213 undecided trial cases. The number of new trial cases received represents a 400% increase over FY 2005; cases were filed with the Commission at a faster rate than experienced at any time in the past 10 years. The Judges in FY 2009 decided 92% of cases within 365 days.

The Commission monitors its workload by Dockets. Each Docket contains one or more citations, and each citation is, in essence, a separate case for which a Judge render a decision. Prior to February 2009, Dockets were limited to 20 citations due to MSHA's practices. However, since MSHA has removed that limit, Dockets may now include all citations related to a particular inspection. Therefore, the number of citations in one Docket could range from one to a few hundred. Approximately 10% of our Dockets were affected by the removal of the 20 citation limit.

Performance Objective and Goals for FY 2011:

The Commission's FY 2011 budget includes the following objectives and goals for its trial function:

Objective: *Issue opinions in a timely manner.*

Performance Goals for FY 2011:

- ◆ Manage case assignment to ensure an expeditious process. In FY 2010, the Commission began the year with an inventory of 14,213 undecided trial cases, and 9,200 new cases are anticipated for the year.
- ◆ Assign penalty cases in an average of 75 days.
- ◆ Assign review cases in an average of 30 days.
- ◆ Assign ALL cases in an average of 60 days.
- ◆ Issue 85% of decisions within 180 days of receipt of post-hearing briefs.
- ◆ Issue 85% of settlement approvals within 60 days of receipt of settlement motion.
- ◆ Decide all cases within an average of 16 months from date of assignment.
- ◆ Decide all cases within an average of 18 months from date of receipt by the Commission.
- ◆ Decide 90% of cases within 365 days of assignment.
- ◆ Have an inventory of no more than 13,000 undecided cases over 365 days from date of assignment.

Performance Objective, Goals, and Accomplishments for FY 2009:

The Commission developed the following performance objectives associated with its FY 2009 budget. The objectives and accomplishments achieved during the year were:

Objective 1 – *Issue opinions in a timely manner*

Performance Goals for FY 2009:

- ◆ Manage the case assignment process to assure that the initial filings and response time frames, in the Commission's Procedural Rules, are adhered to, resulting in the expeditious assignment of cases.

Accomplishments: The average time for cases to be assigned to a Judge was 214 days. Penalty cases were assigned within 266 days, on average, in FY 2009, due in part to delays in receiving assessments from DOL and insufficient clerical staff in the Docket Office.

- ◆ Issue 90 percent of decisions involving hearings within 180 days of receipt of post-hearing briefs.

Accomplishments: This goal was not achieved in FY 2009 due to the increase in the caseload of each Judge, combined with a large volume of cases requiring decisions within overlapping 180-day periods.

- ◆ Issue 90 percent of settlement dispositions within 60 days of receipt of settlement motion.

Accomplishments: Due to a significant increase in caseload; the Commission did not meet this goal in FY 2009.

- ◆ Decide 90 percent of cases within 15 months of assignment.

Accomplishments: The Judges decided 92% of cases within 15 months of assignment, exceeding its goal. We accomplished this goal by utilizing unpaid law student interns during the summer months; however, the Commission cannot always rely upon unpaid interns.

- ◆ Decide all cases within an average of 365 days from receipt by the Commission.

Accomplishments: The Judges decided all cases within an average of 319 days of receipt, exceeding our goal. Again, the Commission was able to accomplish this goal by utilizing unpaid law student interns during the summer months; however, the Commission cannot always rely upon unpaid interns.

PERFORMANCE MEASUREMENT MATRIX

OFFICE OF ADMINISTRATIVE LAW JUDGES

		FY 2005	FY2006	FY2 007	FY 2008	FY2009		FY 2010	FY2011
		Actual	Actual	Actual	Actual	Goal	Actual	Goal	Goal
	OBJECTIVE 1: ISSUE OPINIONS IN A TIMELY MANNER								
▲	Average time (days) for assignment of penalty cases	73	78	89	135	81	266	95	75
▲	Average time (days) for assignment of review cases	27	24	29	82	35	87	40	30
	Average time (days) for assignment of all cases	61	53	65	123	70	214	80	60
▲	Percentage of decisions issued within 180 days of post-hearing brief	96%	88%	69%	60%	90%	86%	65%	85%
▲	Percentage of settlement approvals issued within 60 days of settlement motion	90%	96%	80%	73%	90%	61%	65%	85%
	Average time (months), case assignment to disposition	62 days	62 days	63 days	164 days	15	3.5	21	16
▲	Average time (months), case receipt to disposition	121 days	N/A	128 days	291 days	12	10.5	24	18
▲	Percentage of cases decided within 365 days of assignment	97%	98%	97%	79%	90%	92%	70%	90%
	Undecided cases over 365 days of age	18	5	71	687	0	3738	11,500	13,000

Information on performance measurement is currently not available.

Office of the Administrative Law Judge Staffing

The Commission began FY 2010 with a case backlog of 14,213. This is a result of a four-fold increase in case filings since the passage of the MINER Act in 2006. With approximately 9,200 incoming cases annually, the Commission requests funding to expand the number of Judges and support staff to allow it to meet workload demands.

The Commission is requesting a budget of \$7,605,000 and 53 FTEs for its Judges determination in FY 2011. The additional staff increase includes 4 Judges and 9 law clerks. This is an increase of \$2,367,000 over the amount available for FY 2010. The request includes funding of a projected 1.4% pay increase in January 2011, and other costs of Commission operations.

Due to an anticipated increase in staffing levels within the Office of Administrative Law Judges, an additional office may be opened in the Washington Metropolitan area.

The FY 2010 resource level for the OALJs Determination Activity is expected to be \$5,238,000 and 40 FTEs.

The FY 2009 resource level for the OALJs Determination Activity was \$3,733,600 and 24 FTEs.

	<u>FY 2009</u>		<u>FY 2010</u>		<u>FY 2011</u>		<u>Increase or Decrease</u>	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Office of the Administrative Law Judges Determination	24**	3,733,600	*40	5,238,000	53	7,605,000	+13	2,367,000

* (5) Docket FTEs moved to OALJ from Commission function in FY 2010.

** FY 2009 FTE represent the FTE ceiling given budget authority, not actual FTE.

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 budget and accounting, human resources, procurement, information technology, facilities management, and general administrative service support. The following functions and support services are provided:

The Financial Management Services aspect of the department includes the areas of budget and accounting, with subsections that cover 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, 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 department, 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.

Travel Services involves the processing of reimbursements to employees in conjunction with the Bureau of Public Debt (“BPD”).

The department handles the Metro Subsidy functions, which include the distribution of the subsidy, the maintenance of the records of certification, and the reconciliation of all account activities.

Integral to the professional development of the employees of the Commission is the aspect of Training Coordination. This includes maintenance of current and appropriate training information, provision of the information, and coordinating the Commission’s training program.

Agency-wide Accomplishments

Management Objectives

The Commission's management goal is to manage its human resources, operations, facilities, and systems to ensure a continually improving, effective and efficient organization. The objectives of this goal, as they relate to the fiscal years covered by the FY 2011 budget submission are as follows:

Objective 1 – Ensure Organizational and Management Effectiveness

Performance Goals:

- ◆ Provide efficient and effective administrative management and support services.

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

The Commission has initiated a SWAT team consisting of Executives and Administrative staffing to work together in restructuring the hiring practices of the Commission to meet the new Office of Personnel Management ("OPM") initiatives. This was accomplished by preparing an end-to-end roadmap of the Commission's hiring policies and restructuring job announcements used for advertising vacancies. Commission identification badges have been transitioned to the HSPD-12.

The Accountability of Tax Dollars Act requires that the Commission's financial statements be audited annually. The Commission utilized audit specifications and negotiated audit contracts developed by BPD. The audit of the Commission's FY 2011 financial records has been completed and the Commission has again received a "clean" audit report.

The Commission implemented the PRISM procurement system in FY 2009 in order to streamline the procurement process and strengthen the Commission's internal controls.

The Commission decreased the size of the Library to better utilize space, allowing the Commission to hire contractors to provide support in assisting with

the backlog. The regional office of Administrative Law Judges was also relocated to downtown Denver from its previous location.

The Commission's Updated Emergency Evacuation Procedures were distributed to all current and new employees, as well as to contractors and volunteers. These procedures include emergency and shelter-in-place evacuation. A lead monitor and an alternate monitor are assigned to each floor the Commission occupies in a GSA-leased building. Evacuation drills were performed with GSA-leased building management so employees effectively prepare for an emergency requiring an evacuation. In addition, the Commission's emergency floor monitors conduct independent evacuation drills twice a year to ensure that evacuation procedures in place conform to building management procedures. New employees and contractors are briefed on these procedures to familiarize them with evacuation procedures. Due to the small size of the Commission, this function has been absorbed under OED and safety officers have been designated. Designated Commission employees have participated in health and safety support activities, and conferences, and have received professional certification.

The Commission is developing an Occupational Safety and Health Policy that will require annual mandatory training for all employees. This policy includes performance measures tracking annual mandatory safety and health training for all employees, as well as the posting of safety and health posters in Commission headquarters and the regional office.

During the 2009 fiscal year, the Commission received 45 FOIA requests. The majority of these requests were for case-related materials. Where the Commission was in possession of documents and information that was responsive to the FOIA request, the Commission granted the request and provided the information within the 20-day statutory time period. For five requests, the Commission did not possess records responsive to the request made. No requests were denied in part or in whole. The Commission collected \$64.30 in fees.

The Commission has a Chief FOIA Officer and a FOIA Liaison who administer its FOIA program. During FY 2009, both employees expended on average 5% of their work time administering the Commission's FOIA program. Other agency employees participated in responding to certain FOIA requests, on an as-needed basis. Overall, in FY 2009, the FOIA program involved approximately 1 - 2% of the Commission's overall work load and cost approximately \$12,000 in expenses, including personnel time.

◆ Evaluate Program Effectiveness.

The Commission will continue to review its Strategic Plan to assure that its resources effectively address its statutory requirements and constituent needs.

Performance plans are evaluated annually to assure that goals and objectives fairly and accurately report accomplishments. The Commission goals and objectives are included in individual performance standards upon which employees are evaluated. Interaction during evaluations provides an excellent method to further improve performance and gain greater efficiency.

Objective 2 – Provide Effective Information Technology Systems

Performance Goals:

- ◆ Maintain and enhance secure electronic information systems for case management, legal research, management operations support, and public access of data through the Internet.

The Commission has one staff member dedicated on a full-time basis to IT and operation of its network.

The Commission continues to devote a major portion of its IT efforts to network security with the constant threat from hackers, spammers, and viruses. Upgraded security software and patches were installed as they were released. Anti-virus scans are conducted daily on servers and individual workstations. Those security efforts will continue throughout fiscal years 2010 and 2011.

The Commission recognizes the importance of providing optimal protection for all areas relating to IT, a vital aspect of the Commission's operations. It has therefore, taken all steps to protect this valuable resource and continues to devote a major portion of its IT efforts to network security with the constant threat from hackers, spammers, and viruses. Upgraded security software and patches were installed as they were released, in compliance with the NIST guidelines. Anti-virus scans are conducted daily on servers and individual workstations. Those security efforts will continue throughout fiscal years 2010 and 2011.

The Commission's website, <http://www.fmsshrc.gov> recorded 359,856 visits as of December 31, 2009. The website includes information about the Commission, its rules, guides and publications, strategic and performance plans, budget requests and justifications, performance and accountability reports, GILS records, a database of Commission and Judge published decisions, transcripts of oral arguments, and links to related agencies and legal materials, including the Mine Act and MSHA. Constituents are promptly informed of Judge and Commission decisions through prompt posting on the Commission's website and can listen to audio recordings of Commission meetings and oral arguments.

The Commission continues to evaluate its docketing and case tracking system for both trial and appellate activities. The current case tracking system continues

to be developed to meet the Commission's docket processing needs. Future enhancements will be implemented within the system to support electronic filing.

The Commission is also currently evaluating the technical capabilities of other contractors interested in updating the existing case tracking system.

Objective 3 – Sustain a High Performing Workforce

Performance Goals:

- ◆ Recruit, train, and retain a diverse workforce of skilled, highly motivated employees to effectively and efficiently accomplish the Commission's mission.

The Commission continues to enhance its clerkship program by hiring additional law clerks. The clerkship program has proven to be effective and has increased productivity.

The Commission evaluated all vacant positions to assure that any added staff represents the best use of the Commission's limited FTE resources and can be fully funded within available resources. During FY 2009 5 of the 7 priority vacancies were filled. The 2 remaining positions, a Commissioner and Counsel are being held in abeyance pending confirmation of the President's nominee, Patrick K. Nakamura. During FY 2009, 37 employees and contractors successfully completed training programs to support their career development.

The Commission's Equal Employment Opportunity ("EEO") Office directs and manages a comprehensive EEO program assuring compliance with all Federal anti-discrimination laws and regulations. It provides policy and legal guidance to the Chairman and other senior level managers, ensuring that the agency is kept abreast of all critical developments in the law. The EEO office oversees the EEO counseling, alternative dispute resolution and complaint procedures. It develops, manages and implements the agency's EEO policies and procedures. The office coordinates and conducts the required EEO agency-wide trainings for all personnel. The EEO office prepares and submits agency reports in compliance with the statutory and Equal Employment Opportunity Commission ("EEOC") reporting requirements (e.g., the Congressional submission under the No FEAR Act, EEOC Management Directive 715, and the Annual Federal EEO Statistical Report of Discrimination Complaints). It works with senior managers to promote equal opportunity in recruitment, training, benefits, and promotion.

During FY 2009, the EEO Office incurred a number of expenses as part of its mission. It purchased on-line training for all personnel to review the requirements of the No FEAR Act. This is a requirement for all new personnel and agency-wide every two years. The office also hired two contract counselors to meet with agency employees and one mediator to resolve a formal complaint. The agency also prepared a Final Agency Decision in one case. In order to keep

current with the EEO law and requirements, the EEO Director attends training courses and EEO Director meetings. The office plans to continue its annual trainings in the EEO field so as to proactively prevent discrimination and to raise the awareness of employees and managers as to their rights and remedies.

The Commission has implemented a new system of providing annual ethics training to its employees. Previously, the Commission typically presented one hour of ethics training through a general overview to employees who were required to receive annual ethics training under 5 C.F.R. §§ 2638.704 and 2638.705. During FY 2009, Commission employees received ethics training on-line at a website managed by BPD.

The training addresses a variety of ethics-related subjects relevant to Commission employees. For each subject, the Commission's ethics officials drafted background material and questions and answers that specifically relate to issues likely to be faced by Commission employees. Employees read the material, answered the questions, and read further information provided in the answers. An automatic certificate of completion is then generated for record-keeping purposes.

The new ethics training method has affected a number of positive changes. First, the Commission now provides training more often and as the specific need arises. For FY 2009, the Commission employees were involved in three training sessions. In addition, the Commission has been able to involve a greater spectrum of employees in training, rather than only those employees required to receive annual training. The Commission also has been able to tailor training to current matters at issue. Finally, the Commission's ethics officials have noticed a heightened awareness in employees regarding their ethical obligations.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CONSULTANTS

The Commission employed no consultants in FY 2009 and has no plans to employ consultants in FY 2010 or FY 2011.

CHARTS AND GRAPHS

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

**Budget Authority by Object Class
(in millions)**

	FY 2009 Actual	FY2010 Estimate	FY2011 Estimate
Personnel Compensation	4,729	5,807	7,900
Other than Full-Time Permanent	<u>322</u>	<u>333</u>	<u>360</u>
Total, Personnel Compensation	5,051	6,140	8,260
Personnel Benefits, Civilian	1,173	1,400	1,605
Benefits to Former Employees	-	-	-
Travel and Transportation of Persons	147	175	230
Transportation of Things	2	3	5
Rental Payments to GSA	1,290	1,385	1,600
Communications, Utilities, and Misc.	115	145	150
Printing and Reproduction	18	28	30
Other Services	707	840	940
Supplies and Materials	80	102	115
Equipment	<u>70</u>	<u>140</u>	<u>170</u>
Total	8,653	10,358	13,105

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

PERSONNEL SUMMARY

	2009 ACTUAL	2010 ESTIMATE	2011 REQUEST
ACCOUNT: SALARIES & EXPENSES			
Executive Level III	1	1	1
Executive Level IV	3	4	4
	4	5	5
ES	1	1	1
AL-2	1	1	1
AL-3	9	13	17
	11	15	19
GS-15	4	6	6
GS-14	3	4	4
GS-13	1	1	1
GS-12	1	5	5
GS-11	8	10	20
GS-9	4	4	5
GS-8	7	6	6
GS-7	-	4	4
GS-6	1	1	2
GS-5	-	1	-
GS-4	1	-	-
	29	42	53
Total Permanent Full-time Positions	50	62	77
Unfilled positions end-of-year	5	-	-
Total, full-time permanent employment end-of-year	45	62	77
Full-time equivalent (FTE) usage	50	62	77

Average EX Salary	\$155,625	\$158,738	\$161,913
Average ES salary	\$156,673	\$159,806	\$163,002
Average AL salary	\$161,307	\$164,533	\$167,823
Average GS salary	\$79,534	\$81,125	\$82,748

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

AMOUNTS AVAILABLE FOR OBLIGATION

	FY 2009		FY 2010		FY 2011	
	FTE	Amount	FTE	Amount	FTE	Amount
Appropriation, total estimated obligations	43 ¹	8,653,000	62	10,358,000	77	13,105,000

1 This total reflects actual FTE usage, which is calculated cumulatively for the fiscal year. This differs from the FTE ceiling reported in other tables, which represents the maximum number of FTE that the agency could support given budget authority.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Summary of Changes By Budget Authority

Budget Authority	FY 2010	FY2011	Net Change
Appropriations	10,358,000	13,105,000	2,747,000
Full-time Equivalent	62	77	+15

Explanation of Changes	FTE	Budget Authority
Increases		1,937,000
Increased FTE	+15	
Maintain Base Staff	-	810,000
Decreases		
Net Change	+15	2,747,000

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

APPROPRIATIONS HISTORY

Fiscal Year	Budget Estimate House to Congress	Senate Allowance	Senate Allowance	Appropriation
1986	3,709,000	3,815,000	3,815,000	3,651,000 ²
1987	3,919,000	3,651,000	3,919,000	3,785,000
1988	4,139,000	4,080,000	4,080,000	3,892,000 ³
1989	4,079,000	4,079,000	4,079,000	4,030,000 ⁴
1990	4,005,000	4,030,000	4,030,000	4,030,000
1991	4,292,000	4,292,000	4,292,000	4,188,509 ⁵
1992	4,719,000	4,357,000	4,357,000	5,143,000
1993	5,830,000	5,772,000	5,772,000	5,726,000 ⁶
1994	5,842,000	5,842,000	5,842,000	5,842,000
1995	6,237,000	6,200,000	6,200,000	6,189,000 ⁷
1996	6,467,000	6,467,000	6,200,000	6,184,000 ⁸
1997	6,332,000	6,060,000	6,060,000	6,049,000 ⁹
1998	6,060,000	6,060,000	6,060,000	6,060,000
1999	6,060,000	6,060,000	6,060,000	6,060,000
2000	6,159,000	6,060,000	6,159,000	6,136,000 ¹⁰
2001	6,320,000	6,200,000	6,320,000	6,320,000
2002	6,939,000	6,939,000	6,939,000	6,934,000 ¹¹
2003	7,127,000	—	—	7,131,343 ¹²
2004	7,774,000	7,774,000	7,774,000	7,728,133 ¹³
2005	7,813,000	7,813,000	7,813,000	7,809,024 ¹⁴
2006	7,809,000	7,809,000	7,809,000	7,730,910 ¹⁵
2007	7,576,000	7,731,000	7,731,000	7,777,652 ¹⁶
2008	8,096,000	8,096,000	7,954,563	7,954,563
2009	8,653,000	8,653,000	8,653,000	8,653,000
2010	9,857,567	9,857,567	10,358,000	10,358,000 ¹⁷
2011	13,105,000			

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- 2 Reflects reduction of \$164,000 pursuant to P.L. 99-177.
 - 3 Reflects reduction of \$14,000 pursuant to Sec. 512 of P.L. 100-202.
 - 4 Reflects reduction of \$49,000 pursuant to Sec. 517 of P.L. 100-436.
 - 5 Reflects reduction of \$103,437 pursuant to Sec. 514(b) of P.L. 101-517 and \$54 pursuant to P.L. 99-177.
 - 6 Reflects reduction of \$46,000 pursuant to Sec. 511 of P.L. 102-394.
 - 7 Reflects reduction of \$11,000 pursuant to Sec. 2007 of P.L. 104-19.
 - 8 Reflects reduction of \$9,000 pursuant to Sec. 513 and \$7,000 pursuant to Sec. 31002 of P.L. 104-134.
 - 9 Reflects reduction of \$11,000 pursuant to Sec. 519 of P.L. 104-208.
 - 10 Reflects reduction of \$23,000 pursuant to the Consolidated Appropriations Act for 2000, P.L. 106-113.
 - 11 Reflects reduction of \$5,000 pursuant to Section 1403 of P.L. 107-206.
 - 12 Reflects adjustments pursuant to the Omnibus Appropriations Act, P.L. 108-7.
 - 13 Reflects reduction of \$45,867 pursuant to the Consolidated Appropriations Act, P.L. 108-199.
 - 14 Reflects a congressional add-on of \$59,000 and a reduction of \$62,976 pursuant to section 122(a) of P.L. 108-447.
 - 15 Reflects reduction of \$78,090 pursuant to Title III, Chapter 8, of the Department of Defense Appropriations Act, P.L. 109-148.
 - 16 Reflects reduction of \$144,437 pursuant to Sec. 528(a) of P.L.
 - 17 Reflects Senate Approved Mark-up of \$500,000 pursuant of P.L.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Staffing History Table

<u>Fiscal Year</u>	<u>FTE**</u>
1986	47
1987	51
1988	52
1989	51
1990	48
1991	47
1992	56
1993	53
1994	53
1995	55
1996	52
1997	50
1998	47
1999	45
2000	43
2001	42
2002	38
2003	35
2004	40
2005	40
2006	41
2007	44
2008	48
2009	50
2010	62*
2011	77*

* Estimates

** FTE for FY 2009 and before represent the FTE ceiling given budget authority, not the actual FTE.

Federal Mine Safety and Health Review Commission

Selected Workload Data

	2009 Actual	2010 est.	2011 est.
<u>Commission Review Activities</u>			
Cases pending beginning of year	103	95	105
New cases received	184	200	205
Total case workload	287	295	310
Cases decided	192	190	195
Cases pending end of year	95	105	115
<u>Administrative Law Judges Activities</u>			
Cases pending beginning of year	9,737	14,213	18,247
New cases received	9,239	9,200	9,200
Total case workload	18,976	23,413	27,447
Cases decided	4,766	5,166	7,750
Cases pending end of year	14,213	18,247	19,697

