

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

CONGRESSIONAL BUDGET JUSTIFICATION

AND

ANNUAL PERFORMANCE PLAN



FISCAL YEAR 2024

MARCH 13, 2023

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

INTRODUCTION

About Us

The Federal Mine Safety and Health Review Commission (FMSHRC, or the 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. The Commission is entirely independent and is not a component of the Department of Labor (DOL) or Mine Safety and Health Administration (MSHA).

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.

Our Mission

The mission of FMSHRC is to provide just, speedy, and legally sound adjudication of proceedings authorized under the Mine Act in a manner that deters noncompliance with the Act and ensures that a penalty once proposed and contested before the Commission is not compromised out of view of the public or without justification.

Functions and Procedures

The Commission carries out its responsibilities through trial-level adjudication by administrative law judges and appellate review of the judges' decisions by a five-member Commission. The Commissioners are appointed by the President and confirmed by the Senate.

Most cases involve the contest of civil penalties proposed by MSHA to mine operators for alleged violations of mandatory health and safety standards, and address whether the alleged safety and health violations occurred as well as the assessment of appropriate civil penalties sufficient to deter operator noncompliance. The Commission is required by the Mine Act to review proposed penalty settlements between operators and MSHA to ensure that a penalty once proposed and contested before the Commission is not compromised out of the view of the public and without justification. Other types of cases include contests of MSHA orders to close a mine for health or safety reasons, miners' requests for compensation after being idled by such orders, review of MSHA's approval or disapproval of operators' emergency response and other mine safety plans, miners' complaints that they suffered discrimination because they exercised protected safety rights, and miners' allegations of interference with the exercise of such rights. Disputes involving the temporary reinstatement of a miner, or an emergency response plan must be decided on an expedited basis.

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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. If a hearing is necessary, the judge schedules and presides over 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 Commission. The Commission provides administrative appellate review. 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 Chair of the Commission is responsible for the administrative operations of the Commission. The Chief Operating Officer 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.

Location

The Commission is headquartered in Washington, DC with satellite offices located in Denver, Colorado and Pittsburgh, Pennsylvania.

Strategic Goals

The Commission 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.

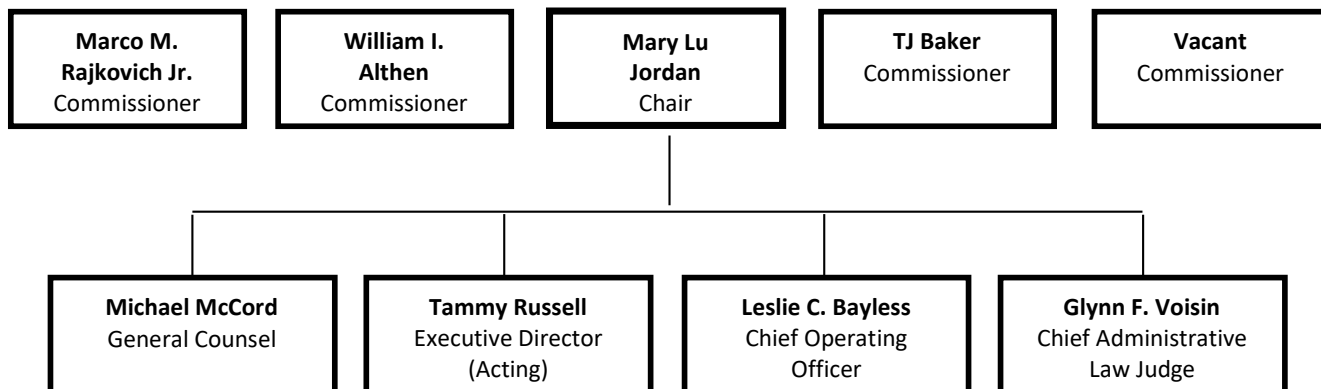
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CURRENT LEADERSHIP

Commission Members

Name	Term Expiration
Marco M. Rajkovich Jr.	August 30, 2024
William I. Althen	August 30, 2024
Mary Lu Jordan, Chair	August 30, 2026
TJ Baker	August 30, 2026
Vacant	August 30, 2028

Key Personnel Organization Chart



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BUDGET REQUEST SUMMARY

Request

FMSHRC is requesting a budget level of \$18.657 million in FY 2024 to support the full-time equivalent (FTE) of 76 staff members, which will allow the Commission to carry out its mission, support Administration priorities, and absorb inflationary increases.

President's Priorities

In addition to carrying out its substantive mission, the budget request allows FMSHRC to focus on advancing the following priorities outlined within the President's Management Agenda (PMA).

Federal Mission Resilience

In FY 2022, FMSHRC hired a Director of Information Technology (IT) and created a dedicated IT work unit. The Director of IT currently serves as the Chief Information Officer (CIO) and Chief Security Officer (CISO) and is an integral player in ensuring Continuity of Operations (COOP) and Disaster Recovery (DR) plans are maintained. FMSHRC plans to diversify these two positions (CIO/CISO) by adding a dedicated IT Security Specialist in FY 2023 to help manage CISO responsibilities.

Electronic Records

The agency's official files are in electronic format. Through the implementation of its electronic case management system (eCMS), the Office of the Chief Administrative Law Judge (OCALJ) created and maintains a paperless docket office.

Enterprise Infrastructure Solutions Transition

FMSHRC continues to engage with the General Services Administration (GSA) to transition off of GSA's network, Washington Interagency Telecommunications Systems (WITS) 3. Through a Memorandum of Understanding (MOU) with GSA, FMSHRC extended its deadline to transition by May 31, 2024, as required.

Strengthening the Talent Pipeline for Early Career Talent through Internship Improvements

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.

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Cybersecurity

FMSHRC continues to prioritize IT Modernization and Cybersecurity with a specific emphasis on Executive Order 14028, “Improving the Nation’s Cybersecurity.” FMSHRC plans to align its investments in cybersecurity along NIST guidelines. For example, investment categories will include security acquisition, standardized cybersecurity vulnerabilities and incident response, as well as maturing priority capabilities. FMSHRC priorities also include Zero Trust security, modernization of the public facing website, leveraging data as a strategic investment, expanding digital services to a wider user base, and modernization of information systems associated with Privacy Act processes.

Diversity Equity Inclusion and Accessibility

In response to Executive Order 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 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), created to address inward barriers to equity and inclusion for members of underserved communities, FMSHRC continues to assess its recruitment, hiring, promotion, and retention policies and practices to identify any barriers. In addition, FMSHRC continues to assess whether members of underserved communities encounter any reasonable accommodation or religious accommodation barriers.

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APPROPRIATIONS LANGUAGE

Salaries and Expenses

For expenses necessary for the Federal Mine Safety and Health Review Commission, [\$18,012,000] \$18,657,000. (*Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2023.*)

Authorizing Legislation

(containing indefinite authority)

Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. § 801 et seq.)

	FY 2022 Enacted	FY 2023 Enacted	FY 2024 Request
Budget Authority	\$17.539	\$18.012	\$18.657
FTE	59	65	76

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JUSTIFICATION BY FUNCTION

Overview

The Commission fulfills its mission through three main functions:

1. Administrative Law Judge Function
2. Commission Review Function
3. Commission Support Function

Function	FY 2022 Enacted		FY 2023 Enacted		FY 2024 Request	
	FTE	Budget Authority	FTE	Budget Authority	FTE	Budget Authority
Administrative Law Judge	36	\$9.649	39	\$9.893	43	\$9.900
Commission Review	18	\$5.671	20	\$5.756	22	\$5.988
Commission Support	5	\$2.219	6	\$2.363	11	\$2.769
Total	59	\$17.539	65	\$18.012	76	\$18.657

The Administrative Law Judge (ALJ) function is led by the Chief Administrative Law Judge and provides trial-level adjudication by ALJs. 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 and the Office of the General Counsel (OGC). OGC is led by the General Counsel. 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 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 Commission Support function is carried out by the Office of the Executive Director (OED) and the Chief Operating Officer (COO), who collectively provide financial management, human resources, procurement and contracting, information technology, facilities, and other general administrative support.

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Administrative Law Judge Function

	FY 2022 Enacted	FY 2023 Enacted	FY 2024 Request
Budget Authority	\$9.649	\$9.893	\$9.900
FTE	36	39	43

Cases at the trial level are handled by FMSHRC’s Office of the Chief Administrative Law Judge (OCALJ). 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 2024 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 2022	FY 2023	FY 2024
Performance Goal	Actual	Target	Target
1.1.1 Average time from receipt to disposition of all cases	185 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	17%	20%	20%

FY 2024

FMSHRC’s FY 2024 Budget includes \$9.900 million and 43 FTEs for its Administrative Law Judge function.

The FY 2024 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 2024. Pendency is the average time between receipt of a case and case disposition.

FMSHRC estimates that 1,276 trial level cases will be pending at the beginning of FY 2024. FMSHRC anticipates that it will receive 2,424 new cases during FY 2024 and will dispose of 2,333 cases during the same period.

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FY 2023

FMSHRC's FY 2023 budget level included 39 FTEs and \$9.893 million for the Administrative Law Judge function. FMSHRC anticipates operating at a level of 39 FTEs during FY 2023 for this function.

FMSHRC had 1,126 trial level cases pending at the beginning of FY 2023. FMSHRC anticipates that it will receive 2,260 new cases during FY 2023 and will dispose of 2,110 cases during the same period.

FY 2022

FMSHRC's FY 2022 budget level for its Administrative Law Judge function was \$9.649 million and that office had a year-end total of 36 actual FTEs.

There were 1,001 trial level cases pending at the beginning of FY 2022. FMSHRC received 2,155 new cases during FY 2022 and disposed of 2,030 cases during the same period.

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Administrative Law Judge Function – Caseload Data

	FY 2022	FY 2023	FY 2024
	Actual	Estimate	Estimate
Cases pending beginning of year	1001	1126	1276
Assessment of civilpenalty	854	939	1071
Notice of contest	109	155	169
Discrimination andcompensation	32	28	30
Other	6	4	6
New cases received	2155	2260	2424
Assessment of civilpenalty	1827	1916	2046
Notice of contest	298	303	340
Discrimination andcompensation	22	33	30
Other	8	8	8
Total case workload	3156	3386	3700
Assessment of civilpenalty	2681	2855	3117
Notice of contest	407	458	509
Discriminationproceeding	54	61	60
Other	14	12	14
Cases disposed	2030	2110	2333
Assessment of civilpenalty	1742	1784	1990
Notice of contest	252	289	303
Discrimination andcompensation	26	31	32
Other	10	6	8
Cases pending end of year	1126	1276	1367
Assessment of civilpenalty	939	1071	1127
Notice of contest	155	169	206
Discrimination andcompensation	28	30	28
Other	4	6	6

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Commission Review Function

	FY 2022 Enacted	FY 2023 Enacted	FY 2024 Request
Budget Authority	\$5.671	\$5.756	\$5.988
FTE	18	20	22

The Commission Review function incorporates the responsibilities of the Commissioners and staff in the Office of the Chair and Commissioners (OCC) and the Office of the General Counsel (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.
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.

OGC is responsible for conducting the initial research in substantive cases and preparing draft opinions for Commissioners. Each Commissioner is assigned an attorney advisor, who reports directly to the individual Commissioner and assists with research and

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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 objectives for FMSHRC Commission Review function:

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

	FY 2022	FY 2023	FY 2024
Performance Goal	Target	Target	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	20%	20%	20%

Strategic Objective 1.3 Issue orders in motions to reopen cases in a timely manner

	FY 2022	FY 2023	FY 2024
Performance Goal	Target	Target	Target
1.3.1 Average time from receipt of the motion to issuance of final order	120 days	120 days	120 days

FY 2024

FMSHRC’s FY 2024 budget request includes 22 FTEs and \$5.988 million for its Commission Review function.

The appellate caseload includes several types of cases, including those which 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 2024, it is expected that 71 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 2024.

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

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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 2023

FMSHRC's FY 2023 budget request includes 20 FTEs and \$5.756 million for its Commission Review function.

In FY 2023, 65 substantive and default cases were pending at the beginning of the year. 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.

FY 2022

FMSHRC's FY 2022 budget level included 18 FTEs and \$5.671 million for its Commission Review function.

In FY 2022, a total of 33 substantive and default cases were pending before the Commission at the beginning of the year. Sixty new cases were filed during the year. Twenty-eight dispositions took place, of which 7 were substantive and 21 were default cases. FMSHRC's docket contained 65 undecided cases at the end of FY 2022.

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Commission Review Function – Caseload Data

	FY 2022 Actual	FY 2023 Estimate	FY 2024 Estimate
Cases pending beginning of year	33	65	71
Substantive cases	7	14	14
Default cases	26	51	51
New cases received	60	48	48
Substantive cases	12	12	12
Default cases	48	36	36
Total case workload	93	113	113
Substantive cases	19	26	26
Default cases	74	87	87
Cases disposed	28	42	42
Substantive cases	7	12	12
Default cases	21	30	30
Cases pending end of year	65	71	71
Substantive cases	14	14	14
Default cases	51	57	57

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Commission Support Function

	FY 2022 Enacted	FY 2023 Enacted	FY 2024 Request
Budget Authority	\$2.219	\$2.363	\$2.769
FTE	5	6	11

The FY 2023 Congressional Budget Justification detailed plans to restructure the Office of Executive Director (OED) in FY 2022 to address evolving Commission needs. This workforce reshaping effort is still underway. Resultantly, OED and the Chief Operating Officer (COO) collectively provide Commission Support.

The Office of the Executive Director (OED) provides administrative services to support FMSHRC's accomplishment of its mission and strategic goals. The primary functions are financial management, human resources, procurement and contracting, 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 services cover 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 programs, and wellness and employee assistance programs. Procurement and contracting services include maintaining a simplified acquisition program for supplies and services, contract implementation and oversight, and coordination of services and supplies. Other general administrative services provided by OED include the administration of employee travel authorizations and reimbursements and the Metro subsidy program.

During FY 2022, the following functions were transitioned out of OED and placed directly under the COO: information technology and facilities management. The COO and underlying functions currently exist under the "Commission Review" program area but will transition to the "Commission Support" program area by FY 2024. Information technology entails help-desk functions, network administration, cybersecurity, policy formulation, and telecommunications. Facilities management services cover property and space management, organization management, and physical security.

In FY 2022 and prior years, there were no performance measurements for administrative operations. However, the 2022-2026 Strategic Plan 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.

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Strategic Objective 3.2 – Improve talent management.

Strategic Objective 3.3 – Promote work-life programs.

Performance measures will be established to track progress toward achieving these strategic objectives.

FY 2024

FMSHRC's FY 2024 budget request includes 11 FTEs and \$2.769 million for its Commission Support function.

FY 2023

FMSHRC's FY 2023 budget level included 6 FTEs and \$2.363 million for its Commission Support function.

FY 2022

FMSHRC's FY 2022 level included 5 FTEs and \$2.219 million for its Office of the Executive Director function.

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BUDGET TABLES

Budget by Object Classification

	FY 2022 enacted	FY 2023 estimated	FY 2024 estimated
Personnel Compensation	9.920	10.284	10.795
Other than Full-Time Permanent	<u>0</u>	<u>0</u>	<u>0</u>
Total, Personnel Compensation	9.920	10.284	10.796
Personnel Benefits, Civilian	2.698	2.697	2.789
Benefits to Former Employees	.010	.010	.008
Travel and Transportation of Persons	.151	.151	.151
Transportation of Things	.011	.011	.011
Rental Payments to GSA	1.875	1.875	1.897
Communications, Utilities, and Misc.	.807	.807	.807
Printing and Reproduction	.015	.015	.016
Other Services	1.721	1.889	1.888
Supplies and Materials	.150	.150	.165
Equipment	.181	.123	.136
Total	17.539	18.012	18.657

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Personnel Summary

	2022 Actual	2023 Estimate	2024 Request
Executive Level III	1	1	1
Executive Level IV	2	4	4
Executive Schedule	3	5	5
ES	2	2	2
Senior Executive Service	2	2	2
AL-2	1	1	1
AL-3	10	9	9
Administrative Law Judges	11	10	10
GS-15	7	7	7
GS-14	5	5	6
GS-13	6	7	10
GS-12	9	8	11
GS-11	2	3	6
GS-9	13	12	13
GS-8	1	1	1
GS-7	0	5	5
General Schedule	43	48	59
Total Permanent Full-Time Positions	59	65	76

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Appropriations and FTE History

Fiscal Year	Budget Estimate to Congress	House Allowance	Senate Allowance	Appropriation	FTE¹
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	--	--	17,184,000	59
2023	18,012,000	--	--	18,012,000	65*
2024	18,657,000	--	--		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.