

June 2011

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Open Government Plan

Pursuant to the Office of Management and Budget's (OMB) Open Government Directive, M-10-06, the Federal Mine Safety and Health Review Commission (Commission) issues this plan detailing how the Commission will incorporate the principles of President Obama's Memorandum on Transparency and Open Government (January 21, 2009) into the agency's core mission objectives.

The Federal Mine Safety and Health Review 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). Under the Mine Act, the Department of Labor (DOL) issues regulations covering health and safety in the nation's mines. Federal mine inspectors employed by DOL's Mine Safety and Health Administration (MSHA) enforce these regulations by issuing citations and orders to mine operators. The Commission is concerned solely with the adjudication of disputes under the Mine Act, including the determination of appropriate penalties. It does not regulate mining or enforce the Mine Act. The Commission was established as an independent agency to ensure its impartiality.

Most cases deal with civil penalties assessed against mine operators and address whether the alleged safety and health violations occurred as well as the appropriateness of proposed penalties. Other types of cases include orders to close a mine, miners' charges of safety related discrimination, and miners' requests for compensation after the mine is idled by a closure order.

The Commission's administrative law judges (ALJs) decide cases at the trial level. The 5-member Commission provides appellate review. Commissioners are appointed by the President and confirmed by the Senate. Review of an ALJ decision by the Commission is not guaranteed but requires the affirmative vote of two Commissioners. Most of the cases accepted for review are generated from petitions filed by parties adversely affected by an ALJ decision. However, cases can also be accepted based on the Commission's own direction for review. An ALJ decision that is not accepted for review becomes a final, non-precedential order of the Commission.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 U.S. courts of appeals.

The Commission's headquarters and Office of Administrative Law Judges (OALJ) are co-located in Washington, D.C., with two additional OALJ's offices: one in Denver, Colorado, and another in Pittsburgh, Pennsylvania.

The Commission is classified as a “micro-agency” because of its small size (approximately 80 FTEs¹). Because the Commission’s functions are limited as described above, the agency does not maintain many types of information that the Administration’s Open Government initiative is designed to disseminate. Moreover, the Commission’s function as an adjudicatory body means that case files, which constitute the majority of the agency’s records and are the subject of a majority of the FOIA requests the agency receives, are public in nature and thus automatically subject to disclosure.

A. Transparency

In FY2008, prior to the Open Government Directive, the Commission engaged in a comprehensive undertaking to overhaul its website. The agency’s goal was to ensure that the information available on its website was correct and provided as much relevant information as possible that would be of interest to the public. In that regard, the agency took steps to ensure that all administrative law judge and Commission decisions were added to its site promptly, including older cases from prior years that pre-dated the creation of the agency’s site. Audio recordings of the Commission’s public meetings and oral arguments are likewise available online. All reports required of the agency are also made available on its website, including budget-related material, Freedom of Information Act, Equal Employment Opportunity, and other reports generated by record-keeping requirements. In response to the Open Government Directive, the Commission has developed a form, available on its website, which allows individuals to file FOIA requests electronically.

In accordance with OMB’s Open Government Directive, the Commission has developed an Open Government web page which is accessible from the agency’s main web page at: <http://www.fmshrc.gov> or can be accessed directly at: http://www.fmshrc.gov/open_govt.htm.

The Commission’s Open Government web page includes newly developed public disclosure data sets as follows:

1. Cases currently pending on review before the Commission.
2. Number and type of new cases filed at the Commission.

In addition, the Commission’s Open Government web page will be modified in the near future to include a feedback and comment section for public use.

FOIA Requests

The Commission’s FOIA program is managed by the agency’s Office of General Counsel (OGC). Under the oversight of the General Counsel, who reports directly to the Chairman of the agency, an attorney in the Office of General Counsel serves as the Chief FOIA Officer. In FY 2011,

¹ This represents the FTE ceiling, not the actual cumulative FTE. It includes 17 FTE made available by the FY 2010 Supplemental Appropriations Act (P.L. 111-212).

due to the surge of FOIA requests the agency received in FY 2010, the agency designated another staff attorney to assist the Chief FOIA Officer as Assistant FOIA Officer. An administrative staff member in OCG serves as the FOIA Public Liaison and works in this capacity under the direction of the Chief FOIA Officer. The agency's FOIA staff works directly with pertinent agency staff to obtain and provide responsive documents in a timely fashion. The Commission has always administered its FOIA program with a presumption in favor of disclosure and responds to FOIA requests promptly and in a spirit of cooperation.

As indicated in the Chief FOIA Officer's Report, filed on March 15, 2010, the Commission has had 100% full disclosure in both fiscal years 2008 and 2009. In FY 2008, the agency received 61 FOIA requests. The agency had no information in response to 2 requests and one request was withdrawn. Of the remaining 58 requests processed, full disclosure was provided. In FY 2009, the agency received 46 requests. The agency had no information in response to 5 requests and another Federal agency provided the information in response to one other request. Of the remaining 40 requests, full disclosure was provided. During both FY 2008 and 2009, the agency responded to all FOIA requests within the statutorily mandated time period 100% of the time.

In FY 2010, the Commission experienced a surge in FOIA requests as a result of public interest in recent events in the mining industry and in Commission activities. During FY 2010, the Commission received and timely processed 96 FOIA requests. In addition, the Commission fielded many more media queries for general information. In all instances, the Commission timely responded and provided the desired information with a presumption of openness and an attitude of cooperation.

The Commission's FOIA web page can be accessed at: <http://www.fmshrc.gov/foia/foia.html>. The Commission's FOIA Guide, which provides detailed instructions on the submission of and procedures for the processing of FOIA requests, can be found on this page. In addition, the Commission's FOIA log and reports related to FOIA are published on this web page. Recently, the Commission placed a new FOIA Request Control Form on its website, which permits requestors to submit their FOIA requests electronically. The form is in PDF format and also serves as a means of tracking requests within the agency to ensure efficient processing.

Records Management

The Commission's records management program is managed by the agency's Chief Docket Clerk with the oversight of the Office of the General Counsel. The agency does not maintain classified or declassified records or material and thus declassification procedures are unnecessary. Generally, agency records that are scheduled for periodic transfer to the National Archives and Records Administration relate to cases and case filings before the Commission.

B. Flagship Initiative

As a part of the Commission's goal of promoting even greater transparency, the agency is pursuing an initiative on electronic filing. The agency is in the process of researching and obtaining a system which will permit parties to electronically submit and obtain documents filed in cases. As

part of this initiative, the Commission will make electronically available pertinent documents in a case file, thereby reducing the need for persons to file individual FOIA requests on matters of general public interest.

The President's FY2012 budget includes funding for procuring and implementing a new electronic filing and case management system. Once the Commission has selected the type of system it is likely to use and has fully identified the contract requirements in coordination with MSHA and solicitors at DOL, it will issue a request for proposals.

C. Participation and Collaboration

The following individuals have primary responsibility for the Commission's Open Government initiatives:

Principal Senior Official	Michael McCord, General Counsel, mmccord@fmshrc.gov (202-434-9935)
FOIA	Linda Ghosal, Chief FOIA Officer, lghosal@fmshrc.gov (202-434-9935)
Website	Rory Smith, Chief Information Officer, rsmith@fmshrc.gov (202-434-9935)

For those who wish to contact the Commission by U.S. mail, the mailing address is:

Federal Mine Safety and Health Review Commission
601 New Jersey Ave., N.W., Suite 9500
Washington, D.C. 20001

The Commission is committed to increasing openness and transparency to the maximum practicable extent. It will examine every reasonable possibility to enhance public transparency, consistent with respect for due process and privacy concerns.

Members of the public who wish to comment on this plan, or who wish to suggest or recommend improvements or changes to the Commission's transparency initiatives, are welcome to contact the individuals at the addresses or telephone numbers listed above.

The Commission will update and revise this plan as necessary in accordance with suggestions made by the public, agency personnel, and its ability to devote the necessary human and technical resources to implement the goals of transparency and open government.