

**The U.S. Occupational Safety and Health Review Commission**

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**OSHRC**

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**FISCAL YEAR 2018**

**PERFORMANCE BUDGET AND JUSTIFICATION**



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May 2017

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**Fiscal Year 2018**  
**Performance Budget and Justification**

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# **I. INTRODUCTION – MISSION, VISION, AND STRATEGIC GOALS**

# **The U.S. Occupational Safety and Health Review Commission**

## **Our Mission**

The U.S. Occupational Safety and Health Review Commission (OSHRC or Review Commission) is an independent adjudicatory agency created by the Occupational Safety and Health Act of 1970 (the Act). Our sole statutory mandate is to serve as an administrative court providing fair and expeditious resolution of disputes involving the Occupational Safety and Health Administration (OSHA), employers charged with violations of federal safety and health standards, and employees and/or their representatives. The Review Commission was created by Congress as an agency completely independent of the Department of Labor to ensure that OSHA's enforcement actions are carried out in accordance with the law and that parties are accorded due process.

## **Functions and Procedures**

The Act and our Rules of Procedure (which are similar to the Federal Rules of Civil Procedure) provide two levels of adjudication when an employer contests an OSHA citation for alleged violations of the Act. The first is a trial level, which affords an opportunity for a hearing before a Review Commission Administrative Law Judge (ALJ or Judge). The Judge's decision becomes final unless it is directed for review by the Commission. When such review is granted, Commission Members (Commissioners) – who are appointed by the President and subject to Senate confirmation – address the issues presented by the case and issue a decision. Any final Commission decision may be appealed to the Federal courts of appeals. At both levels of decision, the Review Commission is charged with providing fair and impartial adjudication of cases concerning the safety and health of employees' working conditions in the United States.

The principal (National) office of the Review Commission is located in Washington, DC. There are also two regional offices: one in Atlanta, GA, and one in Denver, CO. The regional offices are staffed with ALJs who travel, as necessary, to adjudicate cases in locales near where the alleged workplace violations took place.

## **Vision Statement**

The Review Commission strives to be:

- An adjudicative body that is – and is recognized for being – objective, fair, prompt, professional, and respected.
- An agency that creates a body of law through its decisions that defines and explains the rights and responsibilities of employers and employees under the Act.
- A model Federal agency with highly effective processes; a highly motivated, qualified, and diverse workforce; and modern information management, communications, and administrative systems.

- An agency that values teamwork; develops its employees; and seeks to improve its performance, service, and value to the American people.

## **Strategic Goals**

OSHRC has three overarching strategic goals:

- 1) Respect for the rule of law by assuring fair, just, and expeditious adjudication of disputes brought before the Commission and its Judges.
- 2) Expanding transparency and openness by providing for stakeholder engagement and ensuring that the Review Commission keeps interested parties and the public it serves informed of the agency's work at all levels, consistent with due process requirements.
- 3) Providing responsible stewardship of resources to enhance agency operations and efficiencies in information management, financial management, human resources, and real property to accomplish the agency's statutory and regulatory mandates.

## **II. BUDGET REQUEST SUMMARY**

## **Budget Request Summary**

The U.S. Occupational Safety and Health Review Commission requests an appropriation of \$12,615,000 to continue our mission of adjudicating OSHA-issued workplace safety citations, fund essential agency programs, support 62 full-time equivalent (FTE) positions, and support our electronic filing (e-filing) system in fiscal year (FY) 2018. The funding request would also allow us to fulfill our legislative mandate to serve as an administrative court providing fair and prompt resolution of disputes involving OSHA, employers charged with violations of federal safety and health standards, and employees and/or their representatives. The request supports the goal in the Review Commission's Strategic Plan to improve service to the public.

Our FY 2018 estimated costs include:

- \$9,313,000 to support direct payroll and related costs for 62 FTE positions. These costs are approximately 75 percent of the Review Commission's budget request.
- \$1,529,675 for office space rent.
- \$449,975 for services provided by other Federal agencies, such as support for financial and administrative services provided by the Bureau of the Fiscal Service (BFS), and personnel and payroll services provided by the National Finance Center (NFC).
- \$110,000 to support and maintain OSHRC's e-filing system.
- \$1,212,350, the remaining amount, to be used for travel expenses for ALJs to hold hearings, court reporting services, managing the language access plan, the annual financial audit, the Federal Information Security Management Act (FISMA) audit, training and development of staff, the maintenance and purchase of equipment, to enable the Review Commission to complete its annual performance plan goals and targets, and to implement government-wide and Review Commission specific transparency initiatives.

### **E-Filing System**

In 2013 the Review Commission began securing information technology (IT) infrastructure upgrades through the established Networkx contract to support our cloud-based initiatives including an e-filing system to permit the electronic filing and service of litigation documents. The e-filing system was deployed in 2016. The e-filing system directly supports our annual performance plan's goals and targets, promotes transparency, supports technology improvements, and integrates business process automation to improve accuracy and efficiency in case management practices. This budget request includes \$110,000 for continued support (\$50,000 for licensing and hosting, and \$60,000 for needed enhancements) of the e-filing system.

## **Language Access Plan**

On February 17, 2011, the U.S. Attorney General issued a Memorandum for Heads of Federal Agencies, among others, regarding the Federal Government's Renewed Commitment to Language Access Obligations Under Executive Order (EO) 13166 (AG Memo). The AG Memo requested that each agency join the Department of Justice (DOJ) in recommitting to the implementation of EO 13166 by: (1) establishing a Language Access Working Group (LAWG) to be responsible for implementing the Executive Order; (2) evaluating and/or updating its Limited English Proficiency (LEP) Plan; (3) establishing a schedule to periodically evaluate and update its LEP services, policies, plans, and protocols; (4) ensuring agency staff can competently identify LEP contact situations and take the necessary steps to provide meaningful access; (5) notifying the public of its LEP policies, plans, and procedures; (6) assessing non-English language proficiency when considering hiring criteria; and (7) collaborating with other agencies for written translations intended for mass distribution.

The Review Commission has made significant progress in the development and implementation of a Language Access Plan (LAP) to fulfill its obligation under EO 13166. In 2011, OSHRC revised its LAP to more efficiently implement key actions required by EO 13166 and Title VI of the Civil Rights Act of 1964. In May 2014, responsibility for the LAP was transferred to the Office of the Chief Administrative Law Judge (OCALJ). A draft updated plan was developed and circulated to all Judges and key Review Commission staff members for review and feedback. The Review Commission implemented the revised and updated plan in August 2014. Based on feedback received from DOJ, the LAP was revised again in November 2015. The current LAP has already been implemented by OSHRC and a copy has been forwarded to DOJ for review.

The Review Commission's goal is to ameliorate LEP as a barrier to accessing its programs and activities; consequently, the agency is committed to taking reasonable steps through which LEP persons can meaningfully access its services consistent with its fundamental mission and existing law. To accomplish this very important goal, the FY 2018 budget request includes \$20,000 to cover services for translation of documents and interpreters for individuals with LEP.



# **III. APPROPRIATIONS LANGUAGE**

**FY 2018**

**Appropriations Language**

**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

**SALARIES AND EXPENSES**

*For expenses necessary for the Occupational Safety and Health Review Commission,  
\$12,615,000.*

Note: A full-year 2017 appropriation for this account was not enacted at the time the budget was prepared; therefore, the budget assumes this account is operating under the Further Continuing Appropriations Act, 2017 (P.L. 114–254). The amounts included for 2017 reflect the annualized level provided by the continuing resolution, “FY 2017 Continuing Resolution.”

**IV. PERFORMANCE  
BUDGET JUSTIFICATION  
BY ORGANIZATIONAL  
UNIT**

## Performance Budget Justification by Organizational Unit

The Review Commission has three main offices which function in concert to achieve the agency’s overarching mission:

1. The Administrative Law Judge function;
2. The Commission function; and
3. The Office of the Executive Director function.

Each office has staff and resources assigned exclusively to it, but all three work collaboratively to meet or exceed the Review Commission’s strategic goals. This separation of staff between the ALJs and Commissioners stems principally from the nature of their functions so that both of these review levels are, in fact and appearance, independent of the other. The Office of the Executive Director (OEXD) function supports both the ALJ and Commission functions and the agency’s strategic planning efforts.

Funding and staffing by function is as follows:

<b>FUNDING (IN MILLIONS) AND FTE BY FUNCTION</b>						
	<b>FY 2016 Actual</b>		<b>FY 2017 CR</b>		<b>FY 2018 Request</b>	
	<b><u>\$</u></b>	<b><u>FTE</u></b>	<b><u>\$</u></b>	<b><u>FTE</u></b>	<b><u>\$</u></b>	<b><u>FTE</u></b>
<b>Administrative Law Judge</b>	5.9	26	5.3	26	5.3	26
<b>Commission</b>	5.1	22	5.7	28	5.7	28
<b>Executive Director</b>	1.6	7	1.6	8	1.6	8
<b>Total</b>	<b>12.6</b>	<b>55</b>	<b>12.6</b>	<b>62</b>	<b>12.6</b>	<b>62</b>

## **Administrative Law Judge Function**

The front line of our agency's delivery of services to the American public rests with the Administrative Law Judges (ALJs or Judges). Our Judges travel around the country to conduct formal hearings and related proceedings in a fair, just, and expeditious manner. The function is directly related to the public service goal of fair, just, and expeditious adjudication of disputes brought before the Review Commission and its ALJs.

The ALJs report through the Chief Judge to the Chairman of the agency. However, they act independently in arriving at case decisions. The Review Commission's procedural rules are similar to the Federal Rules of Civil Procedure and are designed and administered to secure the just and timely determination of every contested case. In the absence of a specific Review Commission rule, the Federal Rules apply.

### **Proceedings Before the Review Commission's Administrative Law Judges**

The events leading to the presentation of an OSHA case before a Review Commission Judge follow an established procedure, and they are designed to provide all parties with a fair hearing and swift adjudication of their case. To contest all or part of a citation, penalty, or abatement period, an employer must file a notice of contest with the Secretary of Labor within 15 working days from the receipt of the citation proposed by OSHA. The Secretary of Labor transmits the notice of contest and all relevant documents to the Review Commission's Executive Secretary for filing and docketing. After the case is docketed, it is forwarded to the OCALJ for assignment to an ALJ. The case is generally assigned to an ALJ in the Review Commission office closest to where the alleged violation occurred. Thereafter, the Judge has full responsibility for all pre-hearing and pre-trial procedures and is charged with providing a fair and impartial hearing in an expeditious manner and rendering a decision promptly.

### **Administrative Law Judge Operations**

The Review Commission strives to expedite the judicial process in a fair and impartial manner and to strengthen its settlement procedures and case management responsibilities by constantly monitoring its Simplified Proceedings and Mandatory Settlement programs. The Administrative Law Judge function handles a caseload that continues to grow in complexity as reflected by the increasing number and complexity of OSHA citations over the last several years.

OSHA completed 31,948 inspections in FY 2016, and estimates that it will complete 32,540 in FY 2017, and 31,000 inspections in FY 2018. Of particular importance over the last several years from the Review Commission's resources perspective, the number of citations being contested has remained high, resulting in the high number of contests being docketed.

In FY 2008, the Review Commission docketed 1,962 contests. Since FY 2008, there has been a notable increase in the number of contests. Moreover, OSHA implemented a new administrative policy in FY 2011. As a result of this new policy, the average penalty for a serious violation increased, and the contest rate increased. In FY 2014, the Review Commission docketed 2,017 contests, as well as 2,164 contests in FY 2015, and 2,183 contests in FY 2016. This trend is expected to continue.

In addition to the greater number of contests that resulted from OSHA's new administrative penalty policy, OSHA's emphasis in recent years has been on serious workplace hazards, and the consequent increase in proposed penalties has translated into more complicated cases and more costly trials (e.g., cases involving heat stress, lock-out/tag-out, workplace violence, confined spaces, health care hazards, asbestos, process safety, construction industry hazards, etc.). Over the past few years, the Review Commission has noted an increase in the complexity of cases handled by ALJs. We attribute this trend to two factors. First, OSHA has increasingly focused its attention on encouraging more resource and time-intensive inspections. Second, the Department of Labor, Office of the Solicitor has decided to leverage litigation resources and focus less on high volume in favor of high-impact strategic cases. The increase in the complexity of cases challenges the Review Commission because Judges must invest a greater amount of time in handling those matters.

The complexity of these cases is the result of the existence of one or a combination of the following:

- Intricacies of the law (complex questions of law);
- Volume of documents, including transcripts;
- Large number of witnesses (including expert witnesses in fields such as engineering, architecture, construction, soil, physics, epidemiology, pathology, neurology, and infectious diseases);
- Number of alleged violations, items, and affirmative defenses (including distinct and separate items);
- Technical, novel, difficult, or new issues raised; or
- Various types of cases, such as those involving workplace violence, heat stress, asbestos, ergonomics, process safety management, and/or confined spaces.

The Review Commission is working to increase the efficiency of case processing by moving an appropriate portion of its ALJ docket into its Mandatory Settlement Part and Simplified Proceedings programs, both of which are innovative methodologies to speed the settlement or adjudication of pending cases. During FY 2011, the Review Commission began an evaluation of its current Mandatory Settlement Part program to ascertain whether even greater improvement in this settlement process can be achieved. This evaluation, "Dispute Resolution in the Administrative Process: Evaluation of the Occupational Safety and Health Review Commission Settlement Part Program," was completed in FY 2013 by alternative dispute resolution (ADR)

experts at the Indiana University School of Public & Environmental Affairs. The evaluation declared the agency's ADR program to be "successful," and noted that OSHRC "has done an admirable job addressing an increased caseload within constrained resources while at the same time meeting the expectations of its external stakeholders." With the higher caseload levels of recent years, Mandatory Settlement Part has been an important tool in avoiding a backlog of cases at the ALJ level. The Review Commission has reviewed the specific suggestions for improvement contained in the evaluation. In particular, the evaluation recommended that the Review Commission provide "training and regular continuing legal education in mediation and dispute resolution to every ALJ who is expected to serve as a settlement judge." The Review Commission agreed with this recommendation and as a result developed an ALJ training performance goal in our FY 2014 – 2018 Strategic Plan.

Under Commission Rule 120, 29 Code of Federal Regulations (CFR) § 2200.120, and where the parties consent, the Chief Judge may assign a Settlement Judge to a pending proceeding to aid the parties in disposing of the case. Where the aggregate amount of the penalty sought by the Secretary of Labor is \$100,000 or greater, the Mandatory Settlement procedure goes into effect. The Settlement Judge appointed by the Chief ALJ has full control of the proceeding and may require that the parties' representatives be accompanied at the settlement conference by officials having full settlement authority. This procedure has aided the Commission in disposing of some extremely complex cases, with the approval of all parties (if settlement efforts are not successful, the case may be assigned to a different Judge for trial).

The Simplified Proceedings process includes cases where the total proposed penalty is not more than \$20,000, or up to \$30,000 when found eligible by the Chief Judge. The Simplified Proceedings process allows parties with relatively simple cases to have their "day in court" unencumbered by formal procedural and evidentiary rules, while ensuring that due process requirements will be maintained. Under this process, a business, with or without counsel, can present its case before an ALJ and receive a prompt decision. Most paperwork, including legal filings, has been eliminated so that justice can be rendered swiftly and inexpensively. The process reduces the time and legal expenses to employers contesting relatively small penalty cases.

In FY 2016, approximately 34 percent of new cases were assigned to Simplified Proceedings. The Review Commission projects that approximately 30 percent of new cases will be assigned to the Simplified Proceedings process in FYs 2017 and 2018.

**Simplified Proceedings Case Activity**

**FY 2013 through FY 2018**

	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
	<b><u>Actual</u></b>	<b><u>Actual</u></b>	<b><u>Actual</u></b>	<b><u>Actual</u></b>	<b><u>Estimate</u></b>	<b><u>Estimate</u></b>
New Cases	2,215	2,017	2,164	2,183	2,500	2,500
Cases Assigned to Simplified Proceedings	919	708	586	738	750	750

**Anticipated Administrative Law Judge Workload for FY 2018**

Four major factors impact the ALJs' workload: (1) the quantity, magnitude, and nature of the cases; (2) the utilization of the Simplified Proceedings process; (3) the time, effort, and complexity of cases assigned to the Mandatory Settlement process; and (4) the number of trials held, and their length and complexity.

The number of OSHA inspections and their focus also affects the Review Commission's caseload. In particular, inspections of high hazard workplaces – especially those with high injury and illness rates, fatalities, repeat offenders, and egregious violations – generally result in larger contestable proposed penalties. These inspections tend to result in more complex and contentious cases, which consume extensive time. The discovery process is lengthy and time consuming, motion practice is expanded, legal research and decision-writing time is protracted, and, of necessity, the trial process is elongated and complicated.



## Administrative Law Judge Workloads

The following table provides actual Administrative Law Judge workloads for FY 2013 – 2016, and estimated workloads for FY 2017 and 2018.

	<b>FY 2013</b> <u>Actual</u>	<b>FY 2014</b> <u>Actual</u>	<b>FY 2015</b> <u>Actual</u>	<b>FY 2016</b> <u>Actual</u>	<b>FY 2017</b> <u>Estimate</u>	<b>FY 2018</b> <u>Estimate</u>
<b>OSHA Inspections<sup>1</sup>:</b>	39,228	36,163	35,817	31,948	32,540	31,000
<b>Administrative Law Judge Workload:</b>						
<b>A. Case Inventory, Start of Year</b>	1,154	909	888	1,099	1,109	1,049
<b>B. New Cases</b>	2,215	2,017	2,164	2,183	2,500	2,500
<b>C. Total Caseload</b>	3,369	2,926	3,052	3,282	3,609	3,549
<b>D. Disposals</b>						
<b>(1) With Hearing</b>	68	50	61	42	75	75
<b>(2) Mandatory Settlement Conferences</b>	81	66	56	86	85	85
<b>(3) Without Hearing</b>	2,311	1,922	1,836	2,045	2,400	2,400
<b>E. Total Dispositions</b>	2,460	2,038	1,953	2,173	2,560	2,560
<b>Total Case Inventory, End of Year</b>	909	888	1,099	1,109	1,049	989

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<sup>1</sup> Provided by OSHA

## Staffing

The OCALJ requires 26 FTE positions in FY 2018 to support the workload based on OSHA's planned inspections and contest rates in the coming years, and to meet performance targets, given the number and complexity of the cases anticipated.

The Chief Administrative Law Judge manages the effort to meet the agency's Government Performance and Results Act (GPRA) goals at the Administrative Law Judge level.

The Chief Administrative Law Judge:

- Reviews and screens all docketed cases, determines the level of complexity and assigns each to an Administrative Law Judge;
- Exercises strong management and monitors the progress of cases in order to ensure that performance goals are met;
- Supervises judicial and administrative staff and ensures that they receive appropriate training to perform their responsibilities; and
- Examines judicial case management practices of other entities to ensure that OSHRC's procedures are as efficient as possible.

	<b><u>FUNDING (IN MILLIONS) AND FTE</u></b>			
	<b><u>FY 2017 CR</u></b>		<b><u>FY 2018 Request</u></b>	
	<b><u>\$</u></b>	<b><u>FTE</u></b>	<b><u>\$</u></b>	<b><u>FTE</u></b>
<b>Administrative Law Judge Function</b>	5.3	26	5.3	26

**Strategic Plan and Outcome Goals**

The Review Commission’s Strategic Plan for FY 2014 – 2018 includes the following goals and outcomes related to this function:

<b><u>Public Service Goal</u></b>	<b><u>Outcome Goals</u></b>
<i>Respect for the rule of law by assuring fair, just, and expeditious adjudication of disputes brought before the Review Commission and its Judges.</i>	<ul style="list-style-type: none"> <li>• Ensure that a significant proportion of both complex and non-complex cases at the Administrative Law Judge level are resolved within one year to 20 months from docketing.</li> <li>• Improve training opportunities for Administrative Law Judges.</li> </ul>

OCALJ will advance this strategic goal through the following strategies:

1. Expedite the assignment of cases to Judges.
2. Use objective criteria to designate complex cases and track the processing of these cases.
3. Closely monitor case performance and improve case management information systems and reports.
4. Conduct early review and screening of potentially complex cases to expedite the disposition of such cases.
5. Implement appropriate changes in the agency’s Rules of Procedure to improve case processing (e.g., Mandatory Settlement Part and Simplified Proceedings) and seek new ADR methods.
6. Provide training to all Judges on a variety of subjects, including technical and legal issues, legal writing, case management, and ADR to help them develop services and processes equal to the very best in judicial arenas.
7. Continue to use a team of Judges to handle, on a rotational basis, extremely complex cases and assign appropriate staff to timely process and monitor such cases, including settlement discussions.

In accordance with Public Law 111-352, the Government Performance and Results Modernization Act of 2010 (GPRA Modernization Act of 2010) and Public Law 103-62, the Government Performance and Results Act (GPRA) of 1993, the Review Commission revised its strategic plan for FY 2014 – 2018. The revised plan focuses on the three overarching goals: (1) respect for the rule of law; (2) expanding transparency and openness; and (3) responsible stewardship of agency resources. It also identifies innovative and comprehensive strategies to achieve the strategic goals and objectives. The following are the performance goals for the OCALJ for fiscal years 2014 through 2018:

<b><u>Outcome Goals</u></b>	<b><u>Performance Measures</u></b>	<b>FY 2014 Actual (Target)</b>	<b>FY 2015 Actual (Target)</b>	<b>FY 2016 Actual (Target)</b>	<b>FY 2017 (Target)</b>	<b>FY 2018 (Target)</b>
Ensure that a significant proportion of non-complex cases at the ALJ level are resolved in less than one year.	Percent within one year.	97%  <b>Target met</b> (95%)	New goal developed for FY 2015	New goal developed for FY 2016	New goal developed for FY 2017	New goal developed for FY 2018
Ensure that a significant proportion of complex cases at the ALJ level are resolved in less than one year.	Percent within one year.	80%  <b>Target not met</b> (89%)	New goal developed for FY 2015	New goal developed for FY 2016	New goal developed for FY 2017	New goal developed for FY 2018
Ensure that a significant proportion of both complex and non-complex cases at the ALJ level are resolved within one year to 20 months from docketing. <sup>2</sup>	-Percent of simplified cases disposed of within one year at ALJ level.  -Percent of conventional cases disposed of within 17 months.  -Percent of settlement part cases disposed of within 19 months.	New goal developed to support FY 2014 – 2018 Strategic Plan	-Dispose of 95% of simplified cases within one year.  97% <b>Target met</b>  -Dispose of 90% of conventional cases within 17 months.  92% <b>Target met</b>  -Dispose of 98% of settlement part cases within 19 months.	-Dispose of 95% of simplified cases within one year.  93% <b>Target not met</b>  -Dispose of 90% of conventional cases within 17 months.  92% <b>Target met</b>  -Dispose of 98% of settlement part cases within 19 months.	-Dispose of 95% of simplified cases within one year.    -Dispose of 90% of conventional cases within 17 months.    -Dispose of 98% of settlement part cases within 19 months.	-Dispose of 95% of simplified cases within one year.    -Dispose of 90% of conventional cases within 17 months.    -Dispose of 98% of settlement part cases within 19 months.

<sup>2</sup> Except for mandatory settlement cases, which are assigned by the Chief Judge upon receipt from the Office of the Executive Secretary, Judges are not assigned cases until initial pleadings have been filed. This assignment generally occurs approximately 60 days after the case has been docketed due to the parties' frequent requests for extensions of time for filing initial pleadings.

<u>Outcome Goals</u>	<u>Performance Measures</u>	<b>FY 2014 Actual (Target)</b>	<b>FY 2015 Actual (Target)</b>	<b>FY 2016 Actual (Target)</b>	<b>FY 2017 (Target)</b>	<b>FY 2018 (Target)</b>
	-Percent of complex cases disposed of within 20 months at ALJ level.		95% <b>Target not met</b>  -Dispose of 95% of complex cases within 20 months. (FY 2015 will be the baseline year for this measure).  80% <b>Target not met</b>	93% <b>Target not met</b>  -Dispose of 95% of complex cases within 20 months (FY 2015 was the baseline year for this measure).  94% <b>Target not met</b>	-Dispose of 95% of complex cases within 20 months.	-Dispose of 95% of complex cases within 20 months.
Improve training opportunities for ALJs.	Time and resources dedicated to judicial training with special emphasis on mediation and dispute resolution.	Pro rata share of the agency's training resources was devoted.  <b>Target met</b> (Pro rata share of the agency's training resources)	Pro rata share of the agency's training resources was devoted.  <b>Target met</b> (An appropriate allocation of time and resources reflective of the number of ALJs)	Pro rata share of the agency's training resources was devoted.  <b>Target met</b> (Pro rata share of the agency's training resources)	Continue to designate a pro rata share of the agency's training resources.	Continue to designate a pro rata share of the agency's training resources.
Publish significant procedural decisions and non-dispositive orders separately from other decisions.	Key decisions and orders published within 4 months of the order.	11 key decisions and orders published.  <b>Target not met</b> (15 key decisions and orders published)	13 key decisions and orders published.  <b>Target not met</b> (20 key decisions and orders published)	13 key decisions and orders published.  <b>Target not met</b> (20 key decisions and orders published)	20 key decisions and orders published.	20 key decisions and orders published.

The Review Commission is evaluating the factors that impact the time frame by which complex cases are resolved by the Office of the Chief Administrative Law Judge to determine if the current outcome goal is a fair standard by which resolution should be measured. In FY 2016, two factors adversely impacted OCALJ's ability to meet the targeted outcome goal. First, the Office of the Chief ALJ, including Denver and Atlanta, is staffed with five attorneys providing support to twelve judges who have significant complex caseloads. This low level of legal support resulted in significant delays in issuing decisions and resolving cases.

Next, the complexity of the cases increased the time required to resolve cases at the ALJ level. Factors leading to the increased complexity of cases include OSHA's focus on encouraging more resource and time-intensive inspections, as well as the Department of Labor, Office of the Solicitor's decision to leverage litigation resources and focus away from high volume and in favor of high-impact strategic cases. The increase in complexity of cases is a challenge for the Review Commission because processing such cases requires the Judges to invest a greater amount of time in handling the matters and places an increased demand on the FTE assigned to handle the volume of cases.

## **Commission Function**

OSHRC's Commissioners are appointed by the President and confirmed by the Senate, and they serve as an appellate level of review. The Commissioners review and decide cases contested under the Act, following an initial decision by an ALJ. This appellate level of review must be prompt, fair, and protective of the parties' rights.

### **Proceedings Before the Commission**

The Commissioners adjudicate contested cases independently from the enforcement and rule-making functions vested in OSHA. Disputed enforcement proceedings are tried initially before the Review Commission's Judges. The Commission members may then review an ALJ's decision.

The Act provides for Presidential appointment and Senate confirmation of three Commissioners, each with a six-year term. The Commissioners sit as an appellate review body to review any case decided by the Review Commission's ALJs. Each Commission member has the discretionary authority to direct for review by the full Commission any case decided by any Judge. Absent such a direction for review, the decisions of the ALJs become a final order of the Review Commission by operation of law. Once a case is directed for review, the Commission members have the authority to review all aspects of a case, including the Judge's findings of fact, conclusions of law, penalty assessments, and abatement orders.

Each Commissioner has a counsel who is responsible for providing assistance and advice on all pending matters, including whether cases are appropriate for Commission review, the proper disposition of motions and cases, and aids the Commissioner in researching, drafting, and editing opinions after the Commission decides a case.

The Office of the General Counsel (OGC) provides legal advice and assists the Review Commission in complying with the various laws, regulations, and executive orders governing its operations. OGC has primary responsibility for preparing and presenting factual and legal analyses to assist Commission members in adjudicating appeals and in their issuance of opinions, and it also provides legal advice on ethics, Freedom of Information Act (FOIA), Equal Employment Opportunity (EEO), procurement, appropriations, Privacy Act, and other areas.

The Commission function also includes the work of the Commission's Executive Secretary, who is responsible for the docketing of cases at both the ALJ and Commission levels and serves as the Records Management Officer for the agency in coordination with the National Archives and Records Administration (NARA).

### **Commission Operations**

The Commissioners strive to minimize the time for deciding cases. Aided by improved case management technology, the Commission seeks to strengthen the internal processes by which a case is prepared for decision. Three external factors that have a major impact on the operations of the Commission are: (1) the presence of a quorum; (2) the size and complexity of cases; (3)

and the novelty of the issues presented for review.

The Act requires a quorum of two Commissioners to take official action, so decisions require the affirmative vote of two Commissioners. During periods when the Commission lacks a quorum, no cases can be decided. If there are only two Commissioners, it may be more difficult to reach agreement sufficient to dispose of some cases. In cases where such agreement cannot be reached, deadlocks result, and action on important issues and issuance of some pending cases may be delayed.

The Commission operated with two Commissioners during all of FY 2016. This was the result of one Commissioner's term expiring in April of FY 2015 without the nomination and confirmation of a new Commissioner. Notwithstanding the lack of a full complement of Commissioners for the fiscal year, the Commission resolved 19 cases and met two of its GPRA goal targets at the Commission level during FY 2016.

Historically, the number of safety and health inspections carried out by OSHA each year, the nature of those inspections, and the rate at which employers choose to contest the citations issued and penalties proposed by OSHA all have an impact on the number of cases before the Review Commission. In addition, OSHA's emphasis during recent years on more serious workplace hazards and the consequent increase in proposed penalties has translated into more complicated cases, and longer, more costly trials. Consequently, the complexity and size of the cases at the ALJ and Commission levels have increased significantly in recent years.

### **Anticipated Commission Workload for FY 2018**

The Commission focuses on solid case production, including deciding and issuing decisions in older cases in an effort to reduce case inventory. However, the cases that are going to hearings before the Review Commission's ALJs are becoming more complex (e.g., imposition of higher penalties, and/or more complex technical issues), which may result in a higher percentage of cases being petitioned for review.

In FY 2016, the Commission had 33 cases pending on its docket at the beginning of the year. It received 15 new cases and resolved 19 cases by year-end. Thus, the Commission entered FY 2017 with 29 cases pending review. During FY 2017, the Commission estimates receiving 27 new cases and resolving 27 cases, ending FY 2017 with 29 cases pending review. For FY 2018, the Commission anticipates receiving 26 new cases, and disposing of 28 cases, ending that year with an inventory of 27 cases.



### Commission Case Activity

	<b>FY 2013 <u>Actual</u></b>	<b>FY 2014 <u>Actual</u></b>	<b>FY 2015 <u>Actual</u></b>	<b>FY 2016 <u>Actual</u></b>	<b>FY 2017 <u>Estimate</u></b>	<b>FY 2018 <u>Estimate</u></b>
<b>New Cases:</b>						
Cases Directed for Review:	24	11	13	14	23	24
<b>Other New Cases:</b>						
Interlocutory Appeals:	0	0	0	0	2	1
Remands:	1	0	1	1	2	1
Other:	0	0	0	0	0	0
Total Other New Cases:	0	0	0	1	4	2
<b>Total New Cases:</b>	<b>25</b>	<b>11</b>	<b>14</b>	<b>15</b>	<b>27</b>	<b>26</b>
Case Inventory from Prior Year:	31	36	35	33	29	29
<b>Total Caseload:</b>	<b>56</b>	<b>47</b>	<b>49</b>	<b>48</b>	<b>56</b>	<b>55</b>
Dispositions:	20	12	16	19	27	28
<b>Case Inventory, End of Year:</b>	<b>36</b>	<b>35</b>	<b>33</b>	<b>29</b>	<b>29</b>	<b>27</b>

### Staffing

The Commission function requires 28 FTE positions in FY 2018. This includes 9 FTE positions for the three Commissioners and their immediate staff, 14 FTE positions for the Office of General Counsel, and 5 FTE positions for the Office of the Executive Secretary.

<b><u>FUNDING (IN MILLIONS) AND FTE</u></b>				
<b>Commission Function</b>	<b><u>FY 2017 CR</u></b>		<b><u>FY 2018 Request</u></b>	
	<b><u>\$</u></b>	<b><u>FTE</u></b>	<b><u>\$</u></b>	<b><u>FTE</u></b>
	5.7	28	5.7	28

## Strategic Plan and Outcome Goals

The Review Commission’s Strategic Plan for FY 2014 – 2018 includes the following goals and outcomes related to this function:

<u>Public Service Goal</u>	<u>Outcome Goal</u>
<i>Respect for the rule of law by assuring fair, just, and expeditious adjudication of disputes brought before the Review Commission and its Judges.</i>	<ul style="list-style-type: none"><li>• Develop and implement case management practices that will minimize the average age of all pending Commission-level cases.<sup>3</sup></li><li>• Further reduce the average age of the oldest pending Commission level cases.<sup>4</sup></li><li>• Resolve all priority cases in a timely manner.<sup>5</sup></li></ul>

The Commission will advance its strategic goal through the following strategies:

1. Focus on reducing the average age of the oldest pending cases and of all pending cases, with immediate aim of implementing the new case management practices adopted at the end of FY 2014:
  - a. Periodic Docket Review
    - i. Conduct quarterly and semiannual case management docket reviews to identify opportunities to speed case processing.
      - Quarterly Counsel’s meeting
      - Semiannual Commission docket review
  - b. Strategic Plan Implementation Monitoring
    - i. Incorporate data in quarterly docket reports on the age of each pending case, the average age of all pending cases, and the average age of the oldest 15% of cases.
    - ii. Review case management aspects of cases that exceed the target average in the periodic docket review meetings.
  - c. Efficient Briefing Practices

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<sup>3</sup> These goals will not apply to cases that are stayed at the Review Commission because criminal law investigations or prosecutions are being pursued.

<sup>4</sup> The Commission intends to further reduce the average age of the oldest fifteen (15%) percent of pending cases. External factors, such as lack of a quorum or recusal of a Commissioner, may adversely affect the Commission’s ability to meet these goals.

<sup>5</sup> Priority cases include Federal Rule of Civil Procedure (FRCP) 60(b) cases, Commission Rule (CR) 101(a) defaults, court remands, and interlocutory reviews. However, some FRCP 60(b) and CR 101(a) cases—those with significant threshold issues—are not treated as priority cases because of the complexity of those issues. Also, where the parties have indicated intent to settle a priority case, the time frame will be tolled.

- i. To the degree practicable, strive to narrowly tailor the issues in the Briefing Notice.
2. Expedite the disposition of priority cases that are designated as requiring rapid action (e.g., court remands, interlocutory reviews, Rule 60(b) cases), such that they are disposed of within six months of designation.
3. Expand Knowledge Management (KM) and research tools to accelerate the preparation of cases and issuance of Commission decisions.
4. Identify and provide training opportunities to all agency attorneys and support staff that will enhance their capabilities, such as training on technical and legal issues, legal writing, ethics, and technology and case management.
5. Use individual performance plans that support priorities in the Review Commission’s strategic and annual performance plans.
6. Assign teams of attorneys and other staff to large, complex cases to speed their preparation and issuance.
7. Implement appropriate changes to the agency’s procedures to improve case processing at the Commission level.

In accordance with Public Law 111-352, the GPRA Modernization Act of 2010 and Public Law 103-62, the GPRA of 1993, the Review Commission revised its strategic plan for the period FY 2014 through 2018. The revised plan focuses on the three overarching goals of: (1) respect for the rule of law; (2) expanding transparency and openness; and (3) providing responsible stewardship of agency resources. It also identifies innovative and comprehensive strategies to achieve the strategic goals and objectives. The following are the performance goals for the Commission for FY 2014 – 2018:

<b><u>Outcome Goals</u></b>	<b><u>Performance Measures</u></b>	<b>FY 2014 Actual (Target)</b>	<b>FY 2015 Actual (Target)</b>	<b>FY 2016 Actual (Target)</b>	<b>FY 2017 (Target)</b>	<b>FY 2018 (Target)</b>
Reduce the average age of open cases at the Commission-level.	Average age of open cases.	26 months <b>Target met</b> (27 months or less)	Replacement goal developed for FY 2015	Replacement goal developed for FY 2016	Replacement goal developed for FY 2017	Replacement goal developed for FY 2018
Resolve all priority cases in a timely manner.	Percent of priority cases disposed of within 6 months.	100% <b>Target met</b> (100%)	100% <b>Target met</b> (100%)	100% <b>Target met</b> (100%)	(100%)	(100%)

<b><u>Outcome Goals</u></b>	<b><u>Performance Measures</u></b>	<b>FY 2014 Actual (Target)</b>	<b>FY 2015 Actual (Target)</b>	<b>FY 2016 Actual (Target)</b>	<b>FY 2017 (Target)</b>	<b>FY 2018 (Target)</b>
Develop and implement case management practices that will minimize the average age of all pending Commission-level cases.	Average age of all pending Commission-level cases.	Case management practices developed. The average age of all pending Commission-level cases is 26 months.  <b>Target met</b> <sup>6</sup> Develop case management practices. (27 months or less)	Implemented case management practices. The estimated average age of all pending Commission-level cases is 21 months.  <b>Target met</b> (24 months or less)	Implemented case management practices. The estimated average age of all pending Commission-level cases is 24 months.  <b>Target not met</b> (23 months or less)	Continue to implement case management practices.  (22 months or less)	Continue to implement case management practices.  (20 months or less)
Further reduce the average age of the oldest pending Commission level cases.	Using experience gained from the recent disposition of the legacy cases, as well as recommendations derived from Commission's public meeting on legacy cases, to develop and implement case management practices that minimize the average age of the oldest fifteen (15%) percent of pending cases.	Case management practices developed.  <b>Target met</b> (Develop case management practices)	Case management practices were fully implemented.  <b>Target met</b> (Implement case management practices)	Case management practices were fully implemented.  <b>Target met</b> (Implement case management practices)	Reduce average age of the oldest 15 percent of pending Commission level cases by 10 percent from FY 2014 level.	Reduce average age of the oldest 15 percent of pending Commission level cases by 10 percent from FY 2014 level.

<sup>6</sup> As of September 30, 2009, the average (mean) period of time for a case on the Review Commission's docket was 46 months. The Review Commission's Strategic Plan for FY 2014 – 2018 anticipated reducing this average to 24 months by the end of FY 2015.

## **Office of the Executive Director Function**

The Office of the Executive Director (OEXD) provides administrative support services for the entire Review Commission to assure success in fulfilling its mission.

### **Administrative Operations**

The Executive Director function provides operational management for the agency, including procurement, information technology management, human resources management, budget and financial management, and administrative services. The day-to-day tasks of this office are led by the Executive Director and include:

- Supporting the development and implementation of the agency's strategic goals;
- Maintaining and enhancing a website to provide the public with greater access to Review Commission information;
- Providing agency-wide support in the areas of finance, budget, procurement and contracting, human resources, equal opportunity, and general administrative services;
- Providing personnel, payroll, benefits, reproduction, mail services, and travel assistance to agency employees;
- Procuring goods and services, maintenance and needed repairs of equipment, training, reference materials, supplies, and office space;
- Implementing case management and administrative systems through IT hardware and software;
- Developing and maintaining computer systems and information security enhancements; and
- Enhancing telecommunications and improving technology efficiency and effectiveness.

### **Anticipated Office of the Executive Director Workload for FY 2018**

During FY 2018, Office of the Executive Director staff will:

- Implement the Administration's government-wide performance initiatives;
- Improve financial and administrative services and enhance integrity and efficiency of the agency's financial management and human resources programs;
- Provide greater online access to information generated by OSHRC to citizens and other interested parties as a part of the Review Commission's transparency initiatives;

- Provide faster and better public access to, and dissemination of, Review Commission information and decisions through the use of modern automated technology and techniques, including the agency’s website;
- Improve computer information security based on an evaluation of the Review Commission’s computer security, compliance with the various security acts, and the implementation of corrections or improvements in any weaknesses found as a result of evaluations;
- Execute the Continuity of Operations Plan (COOP) including maintenance, testing, and (if needed) implementation of the COOP for the National office, and the regional offices in Denver and Atlanta;
- Make use of the best Knowledge Management practices to ensure that employees are better prepared to perform their work and to provide for continuity and succession planning; and
- Review information technology programs to determine ways to achieve cost savings.

In FYs 2015 and 2016, the Review Commission began the process of improving the quality of its web-based transparency initiatives, including enhancing the OSHRC website to make more information available to internal and external customers, revising our COOP, and undertaking other activities in support of our mission. In FY 2016, the e-filing system was deployed and fully implemented.

This budget request includes \$110,000 for continued support (\$50,000 for licensing/hosting and \$60,000 for enhancements) of the e-filing system. Effective management of this e-filing system is demonstrative proof of the agency’s commitment of using technology to improve accuracy and efficiency in its case management practices.

**Staffing**

The OEXD requires 8 FTE in FY 2018. The Office has responsibility for implementing the Administration’s performance improvement efforts, including implementing and monitoring strategic and performance plans and reports, budget, and performance integration, human capital development, and E-government.

	<b><u>FUNDING (IN MILLIONS) AND FTE</u></b>			
	<b><u>FY 2017 CR</u></b>		<b><u>FY 2018 Request</u></b>	
	<b><u>\$</u></b>	<b><u>FTE</u></b>	<b><u>\$</u></b>	<b><u>FTE</u></b>
<b>Executive Director Function</b>	1.6	8	1.6	8

**Strategic Plan and Outcome Goals**

The OEXD’s responsibilities include implementation of and/or providing Strategic Plan guidance for the following goals and outcomes:

<b><u>Public Service Goal</u></b>	<b><u>Outcome Goals</u></b>
<p><i>Expanding transparency and openness by providing for stakeholder engagement and ensuring that the Review Commission keeps interested parties and the public it serves informed of the agency’s work at all levels, consistent with due process requirements.</i></p>	<ul style="list-style-type: none"> <li>• Ensure that the Review Commission’s website is accessible to people with disabilities and serves as a useful repository for information about the agency and its adjudicatory activities.</li> <li>• Produce timely and accurate reports on the Review Commission’s activities, including all reports required by law.</li> <li>• Enhance the agency’s FOIA processing system by developing internet-based capabilities.</li> <li>• Broaden the Review Commission’s outreach activities with other Federal agencies and the affected public, including targeted education and outreach for individuals with Limited English Proficiency (LEP).</li> </ul>
<p><i>Responsible stewardship of agency resources to enhance operations and efficiencies in IT, financial management, human resources, and real property to accomplish the agency’s statutory and regulatory mandates.</i></p>	<ul style="list-style-type: none"> <li>• Develop and present an annual budget and performance plan that clearly present how the organization will accomplish government-wide management priorities, agency-wide goals, and organizational goals.</li> <li>• Implement a comprehensive human capital plan designed to recruit, retain and develop staff; support succession planning by strategically aligning present and future human capital needs and workforce planning; and evaluate the performance management system based on individual and organizational effectiveness.</li> <li>• Integrate knowledge management (KM) processes into a plan to capture, share, and generate knowledge and establish a unified knowledge network of people, processes and technology to enhance operations and efficiencies in all aspects of essential agency operations.</li> <li>• Improve technology infrastructure through efficiencies and investments (e.g., training, equipment, services) to support the effective use of broadband, cyber security, and energy efficiency.</li> <li>• Use existing and real property more effectively by implementing energy efficiency practices, space alignment efforts (e.g., sustainability) and expanding telework.</li> </ul>

In accordance with Public Law 111-352, the GPRA Modernization Act of 2010 and Public Law 103-62, the GPRA of 1993, the Review Commission revised its strategic plan for the period FY 2014 through 2018. The revised plan focuses on the three overarching goals of: (1) respect for the rule of law; (2) expanding transparency and openness; and (3) responsible stewardship of

agency resources. It also identifies innovative and comprehensive strategies to achieve the strategic goals and objectives. OSHRC’s Strategic Plan includes the following goals for the Office of the Executive Director for FY 2014 – 2018:

<b><u>Outcome Goals</u></b>	<b><u>Performance Measures</u></b>	<b>FY 2014 Actual (Target)</b>	<b>FY 2015 Actual (Target)</b>	<b>FY 2016 Actual (Target)</b>	<b>FY 2017 (Target)</b>	<b>FY 2018 (Target)</b>
Ensure that the Review Commission’s website is accessible to people with disabilities and serves as a useful repository for information about the agency and its adjudicatory activities.	Timeliness of postings to agency website.	All required material posted to the website in less than 7 days and usually within one day after issuance.  <b>Target met</b> (All material posted no later than 7 days after issuance)	All required material posted to the website in less than 7 days and usually within one day after issuance.  <b>Target met</b> (All material posted no later than 7 days after issuance)	All required material posted to the website in less than 7 days and usually within one day after issuance.  <b>Target met</b> (All material posted no later than 7 days after issuance)	All material posted no later than 7 days after issuance.	All material posted no later than 5 days after issuance.
Produce timely and accurate reports on the Review Commission’s activities, including all reports required by law.	Timeliness of submissions of required reports (e.g., financial statements, OMB, OPM, and EEO reports, etc.).	All material submitted by required deadlines.  <b>Target met</b> (100% of all material to be submitted by required deadlines)	All material submitted by required deadlines.  <b>Target met</b> (100% of all material to be submitted by required deadlines)	All material submitted by required deadlines.  <b>Target met</b> (100% of all material to be submitted by required deadlines)	100% of all material to be submitted by required deadlines.	100% of all material to be submitted by required deadlines.



<b><u>Outcome Goals</u></b>	<b><u>Performance Measures</u></b>	<b>FY 2014 Actual (Target)</b>	<b>FY 2015 Actual (Target)</b>	<b>FY 2016 Actual (Target)</b>	<b>FY 2017 (Target)</b>	<b>FY 2018 (Target)</b>
Broaden the Review Commission's outreach activities with other Federal agencies and the affected public, including targeted education and outreach for individuals with LEP.	Participation in professional conferences and meetings and strategic engagement with stakeholders.	Agency focus was to revise the draft language access plan and submit to DOJ for approval.  <b>Target not met</b> (Agency to sponsor one outreach and educational activity per year)	Draft language access plan was posted on the agency's website.  <b>Target met</b> (Fully implement a language access plan and post to the agency's website for public access)	Draft language access plan is posted on the agency's website.  <b>Target met</b> (Fully implement a language access plan and post to the agency's website for public access)	Review documents to be translated and posted on the agency's website.	-Review documents to be translated and posted on the agency's website.  -Participation in the American Bar Association's Annual Labor and Employment Law Conference.
Develop and present an annual budget and performance plan that clearly present how the organization will accomplish government-wide management priorities, agency-wide goals, and organizational goals.	System that links resources to specific activities that support measurable programmatic outcomes and objectives.	Resources were identified for various programs to support the methodology to efficiently align the budget with program goals.  <b>Target met</b> (Identify resources to support the methodology to efficiently align the budget with program goals).	Agency program goals were aligned with the budget to efficiently accomplish the mission.  <b>Target met</b> (Align budget with agency program goals to efficiently accomplish mission (e.g., program, human capital, procurement, IT infrastructure, space, and facilities).	Agency program goals continue to be aligned with the budget to efficiently accomplish the mission.  <b>Target met</b> (Align budget with agency program goals to efficiently accomplish mission (e.g., program, human capital, procurement, IT infrastructure, space, and facilities).	Align budget with agency program goals to efficiently accomplish mission (e.g., program, human capital, procurement, IT infrastructure, space, and facilities).	Align budget with agency program goals to efficiently accomplish mission (e.g., program, human capital, procurement, IT infrastructure, space, and facilities).

<b><u>Outcome Goals</u></b>	<b><u>Performance Measures</u></b>	<b>FY 2014 Actual (Target)</b>	<b>FY 2015 Actual (Target)</b>	<b>FY 2016 Actual (Target)</b>	<b>FY 2017 (Target)</b>	<b>FY 2018 (Target)</b>
Implement a comprehensive human capital plan designed to recruit, retain, and develop staff; support succession planning by strategically aligning present and future human capital needs and workforce planning; and evaluate the performance management system based on individual and organizational effectiveness.	Increase personnel capabilities and development by improving training opportunities.	.55 percent of basic payroll devoted to staff training and development.  <b>Target met</b> (.55 percent of basic payroll devoted to staff training and development)	.44 percent of basic payroll devoted to staff training and development.  <b>Target not met</b> (.65 percent of basic payroll devoted to staff training and development)	.44 percent of basic payroll devoted to staff training and development.  <b>Target not met<sup>7</sup></b> (.70 percent of basic payroll devoted to staff training and development)	.80 percent of basic payroll devoted to staff training and development.	1 percent of basic payroll devoted to staff training and development.

<sup>7</sup> The Review Commission devoted .44 percent of basic payroll to staff training and development. Our ability to expense .70 percent was severely impacted due to a nearly three-month Continuing Resolution which postponed the timely allocation of training funds.

<b><u>Outcome Goals</u></b>	<b><u>Performance Measures</u></b>	<b>FY 2014 Actual (Target)</b>	<b>FY 2015 Actual (Target)</b>	<b>FY 2016 Actual (Target)</b>	<b>FY 2017 (Target)</b>	<b>FY 2018 (Target)</b>
Integrate knowledge management (KM) processes into a plan to capture, share, and generate knowledge and establish a unified knowledge network of people, processes, and technology to enhance operations and efficiencies in all aspects of essential agency operations.	Conduct periodic knowledge audits to identify sources of knowledge and “at risk” knowledge gaps. <sup>8</sup> Tailor IT infrastructure to support the effortless sharing and transfer of knowledge. Degree to which best practices and lessons learned are integrated into the performance management system.	Staff trained in learning solution designed to optimize organizational performance and identify KM gaps.  <b>Target partially met</b> (Design the KM audit to establish benchmarks to evaluate knowledge gaps in the essential agency operations and programs)	Identified knowledge gap vulnerabilities to enhance agency operations and programs.  <b>Target met</b> (Use findings from evaluation of KM audit to identify and address knowledge gaps)	Implemented a Phased Retirement directive, identified knowledge gap vulnerabilities, and enhanced telework opportunities to retain employees that move outside of commuting area.  <b>Target Met</b> (Use findings from evaluation of KM audit to identify and address knowledge gaps).	Evaluate and address KM vulnerabilities to further enhance agency operations and programs.	Evaluate and address KM vulnerabilities to further enhance agency operations and programs.

<sup>8</sup> Areas identified as potential “at risk” knowledge gaps include programs and functions where a subject matter expert is eligible to leave the agency (through retirement or career transition) in one to three years and no backup expert has been identified to assume the duties and responsibilities vacated.

<b><u>Outcome Goals</u></b>	<b><u>Performance Measures</u></b>	<b>FY 2014 Actual (Target)</b>	<b>FY 2015 Actual (Target)</b>	<b>FY 2016 Actual (Target)</b>	<b>FY 2017 (Target)</b>	<b>FY 2018 (Target)</b>
Improve technology infrastructure through efficiencies and investments (e.g., training, equipment, services) to support the effective use of broadband, cyber security, and energy efficiency.	Streamline operations and infrastructure to eliminate duplication; minimize servers, storage and application sprawl. Maintain standardized platforms including hardware and software. Improve network/communications to ensure customers can access necessary information without delay.	Evaluated expanding the existing IT infrastructure and began procuring equipment and services necessary to support the e-filing initiative.  <b>Target met</b> (Evaluate expanding the existing IT infrastructure to support e-filing initiative)	Upgraded data circuits, implemented a new data analysis platform that scans internet traffic, trained staff on usage policies, and procured and installed Host servers.  <b>Target met</b> (Implement recommended IT infrastructure upgrades identified in evaluation)	Upgraded Citrix to permit additional security measures, and servers to Virtual machines; implemented a cloud-based case management system and provided training to users; upgraded desktops; and procured new servers.  <b>Target met</b> (Implement recommended IT infrastructure upgrades identified in evaluation)	Continue monitoring technology infrastructure to determine if additional resources are required.	-Reduce physical servers through virtualization.  -Reduce the number of operating systems in use.  -Evaluate and address enhancements to our e-filing system.  -Increase bandwidth for migration to cloud initiatives (i.e., electronic mail services to the cloud, and expand cloud storage space).
Use existing real property more effectively by implementing energy efficiency by implementing energy practices, space alignment efforts (e.g., sustainability), and expanding telework	Implement measures to reduce operating expenses when negotiating lease and develop a system to evaluate areas of consumption that impact sustainability.	Use of virtual machines and all equipment purchases meet EPA Energy Efficiency standards.  <b>Target met</b> (Establish goal of acquiring a percentage of supplies and equipment from eco-friendly sources) Disposed of	Use of virtual machines and all equipment purchases meet EPA Energy Efficiency standards.  Moved to a shared printing environment by using installed copiers as default printers moving away from desktop printers. Expanded	Use of virtual machines and all equipment purchases meet EPA Energy Efficiency standards.  Expanded Citrix to accommodate additional telework staff.	Continue monitoring to ensure supplies and equipment are procured from eco-friendly sources.	Continue monitoring to ensure supplies and equipment are procured from eco-friendly sources.

<b><u>Outcome Goals</u></b>	<b><u>Performance Measures</u></b>	<b>FY 2014 Actual (Target)</b>	<b>FY 2015 Actual (Target)</b>	<b>FY 2016 Actual (Target)</b>	<b>FY 2017 (Target)</b>	<b>FY 2018 (Target)</b>
		equipment through certified recyclers.  <b>Target met</b> (Dispose of equipment in an environmentally friendly manner)	Citrix to accommodate additional telework staff.  <b>Target met</b> (Increase the percentage of supplies and equipment procured from eco-friendly sources)	  <b>Target met</b> (Increase the percentage of supplies and equipment procured from eco-friendly sources)		
Enhance the agency's FOIA processing system by developing internet-based capabilities.	Development of an electronic form and/or request tracking capability.	Developed an electronic request form used for processing and expediting FOIA requests.  <b>Target met</b> (Assessment of tools and resources necessary for processing and expediting FOIA requests electronically)	Successful implementation of FOIA online form and use of dedicated FOIA email address to expedite receipt, tracking, and processing of requests.  <b>Target met</b> (Develop tools to be used for processing and expediting FOIA requests electronically)	Increased efficiency of FOIA online form and use of dedicated FOIA email address to expedite receipt, tracking, and processing of requests.  <b>Target met</b> (Develop tools to be used for processing and expediting FOIA requests electronically)	Explore advanced options for online tracking capability.	Explore advanced options for online tracking capability.

**V. BUDGET BY OBJECT  
CLASSIFICATION  
CATEGORY**

## Budget by Object Classification (BOC) Category

The U.S. Occupational Safety and Health Review Commission requests an appropriation of \$12,615,000 for FY 2018 to continue our mission of adjudicating OSHA-issued workplace safety citations. The requested amount assumes the support for 62 FTE positions as well as funding for other costs.

The proposed budget for FY 2018 by object classification category is shown in the table below, along with the FY 2017 annualized Continuing Resolution amount (“CR”) and the FY 2016 Actual amounts. A narrative explanation of the amount requested for each object classification follows the table.

### Object Classification Table

Fiscal Years 2017 and 2018  
(Dollars in Thousands)

Budget Object Class		FY 2016 Actuals	FY 2017 CR	FY 2018 Request	Change FY 2017 CR – FY 2018 Request	
					\$	%
11.0	Personnel Compensation	\$6,309	\$7,253	\$7,343	+90	+1.24
12.0	Personnel Benefits	1,898	1,950	1,970	+20	+1.03
<b>Subtotal Personal Services</b>		<b>8,207</b>	<b>9,203</b>	<b>9,313</b>	<b>+110</b>	<b>+1.2</b>
21.0	Travel	153	185	185	-0-	-0-
22.0	Transportation of Things	10	10	10	-0-	-0-
23.1	Space Rental Payments (GSA)	1,478	1,486	1,530	+44	+2.96
23.3	Communications, Utilities and Misc.	278	272	272	-0-	-0-
24.0	Printing and Reproduction	7	17	17	-0-	-0-
25.0	Other Services	1,600	1,030	1,004	-26	-2.52
26.0	Supplies and Materials	80	43	43	-0-	-0-
31.0	Equipment	602	369	241	-128	-34.69
	Unobligated Balance	224	-0-	-0-	-0-	-0-
<b>Grand Total</b>		<b>12,639</b>	<b>12,615</b>	<b>12,615</b>	<b>-0-</b>	<b>-0-</b>

## Budget Object Classification Detail

### 11.0 Personnel Compensation

#### Change FY 2017 CR – FY 2018 Request

FY 2017 CR	FY 2018 Request	Amount	Percent
7,253,000	7,343,000	+90,000	+1.24

The Review Commission requests \$7,343,000 to fund direct payroll costs in FY 2018. This includes funding for a 1.9 percent pay increase that is anticipated in January 2018. This amount assumes the support for 62 FTE positions. This object class also supports awards to recognize those employees whose performance is superior and who perform special acts or services.

### 12.0 Personnel Benefits

#### Change FY 2017 CR – FY 2018 Request

FY 2017 CR	FY 2018 Request	Amount	Percent
1,950,000	1,970,000	+20,000	+1.03

The Review Commission requests \$1,970,000 to fund the payroll-related costs of employee benefits in FY 2018. These benefits principally consist of the government’s contributions to the CSRS and FERS retirement programs, life and health insurance programs, the Transit Subsidy Program, and the Thrift Savings Plan.

### 21.0 Travel

#### Change FY 2017 CR – FY 2018 Request

FY 2017 CR	FY 2018 Request	Amount	Percent
185,000	185,000	-0-	-0-

The requested amount for travel in FY 2018 is \$185,000. Travel of Administrative Law Judges (ALJs) to conduct hearings accounts for the majority of this request. It should be noted that approximately 90 percent of the Review Commission’s travel budget pays for ALJ travel in order to conduct hearings. By law, these hearings must be conducted as close as possible to the site of the alleged violation. The remainder of these funds is for travel associated with training, necessary travel to the regional offices, and other requirements.

### 22.0 Transportation of Things

#### Change FY 2017 CR – FY 2018 Request

FY 2017 CR	FY 2018 Request	Amount	Percent
10,000	10,000	-0-	-0-

An amount of \$10,000 is requested to fund the cost of shipping materials between Review Commission offices and other locations.



### 23.1 Rental Payments to GSA

#### **Change FY 2017 CR – FY 2018 Request**

<b>FY 2017 CR</b>	<b>FY 2018 Request</b>	<b>Amount</b>	<b>Percent</b>
1,486,000	1,530,000	+44,000	+2.96

The request includes \$1,530,000 for office space rental for the National and Regional Offices. These projected rent costs are based on FY 2018 estimates provided by the General Services Administration (GSA) to the Review Commission.

### 23.3 Communications, Utilities, and Miscellaneous Charges

#### **Change FY 2017 CR – FY 2018 Request**

<b>FY 2017 CR</b>	<b>FY 2018 Request</b>	<b>Amount</b>	<b>Percent</b>
272,000	272,000	-0-	-0-

The Review Commission requests \$272,000 for communication costs in FY 2018. The Review Commission began the development and implementation of an e-filing system in FY 2013 with a hosted internet-based interface that accommodates the electronic filing of litigation documents. In FY 2016, the e-filing system was fully deployed. This request includes telecommunication costs to support our cloud initiative with increased security and bandwidth requirements and pave the way for future cloud initiatives.

Local phone service and telecommunication costs are projected to be \$252,000. Postage for the required mailing of letters, case files, and other materials related to cases is expected to be \$20,000.

### 24.0 Printing and Reproduction

#### **Change FY 2017 CR – FY 2018 Request**

<b>FY 2017 CR</b>	<b>FY 2018 Request</b>	<b>Amount</b>	<b>Percent</b>
17,000	17,000	-0-	-0-

The requested amount for printing in FY 2018 is \$17,000. Printing costs consist mainly of the charges for publishing rules, proposed rules, and other announcements in the Code of Federal Regulations (CFR) and/or the Federal Register, and for purchasing copies of the CFR and other GPO publications. Together, these printing/publishing costs are expected to approximate \$10,000 in FY 2018. The balance of the budget – \$7,000 – is needed for printing of Rules of Procedure and Guide to the Review Commission pamphlets, which are provided to parties to Review Commission proceedings.

### 25.0 Other Services

#### **Change FY 2017 CR – FY 2018 Request**

<b>FY 2017 CR</b>	<b>FY 2018 Request</b>	<b>Amount</b>	<b>Percent</b>
1,030,000	1,004,000	-26,000	-2.52

The requested amount for other services in FY 2018 is \$1,004,000. This amount will allow the Review Commission to maintain our current services. Requirements in this area fall into two basic categories: Interagency Agreements for services provided by other Federal agencies; and contractual services provided by non-Federal vendors. Additional information on each of these is provided in the following paragraphs.

**Services Provided by Other Federal Agencies.** A total of \$449,975 is requested for services provided by other Federal agencies. Our costs have increased in this category as a result of additional service costs associated with a new time and attendance system provided by the National Finance Center (NFC), along with higher costs for our Interagency Agreements with the Office of Personnel Management (OPM) and NARA. This area includes \$14,000 for personnel and payroll services provided by NFC, \$315,000 for financial and administrative services provided by the Bureau of the Fiscal Service (BFS), and \$58,000 for building security (estimated) provided by the Department of Homeland Security. The remaining amount will be used to fund other Interagency Agreements such as with the U.S. Department of Health and Human Services (Federal Occupational Health), GSA, OPM, and NARA.

**Other Contractual Services.** OSHRC procures a variety of services to support us in carrying out our mission. These include: court reporting (\$100,000); maintenance/incremental enhancements including security of the Review Commission’s information technology system, and services to support deployment of the e-filing system (\$60,000); services for translation of documents and interpreters for individuals LEP (\$20,000); independent evaluation of IT security under the Federal Information Security Management Act (FISMA) (\$30,000); and on-line legal research (\$43,000). This category also includes funding for other contractual services such as the annual audit of our financial statements (\$30,000), library operations (\$83,000), training, and other requirements to support the agency’s mission. This category also includes funds needed for continuing maintenance of the Review Commission’s website (\$30,000).

26.0 Supplies and Materials

**Change FY 2017 Enacted – FY 2018 Request**

<b>FY 2017 Enacted</b>	<b>FY 2018 Request</b>	<b>Amount</b>	<b>Percent</b>
43,000	43,000	-0-	-0-

The requested amount for supplies and materials in FY 2018 is \$43,000. This amount includes general office supplies (\$22,000) and information technology supplies and software (\$21,000).

31.0 Equipment

**Change FY 2017 Enacted – FY 2018 Request**

<b>FY 2017 Enacted</b>	<b>FY 2018 Request</b>	<b>Amount</b>	<b>Percent</b>
369,000	241,000	-128,000	-34.69

The requested amount for equipment in FY 2018 is \$241,000. The Review Commission began the development and implementation of an e-filing system in FY 2013 with a hosted internet-based interface that accommodates the electronic filing of litigation documents. As a result, our

information technology infrastructure was upgraded and licensing, and hosting costs are required to maintain the system. The e-filing system was fully deployed in FY 2016. We estimate that the licensing costs will be \$50,000. Subscriptions and other publications necessary to maintain our legal libraries are included in this object class. The remainder is required for new and/or replacement computers and other information technology requirements, and to enable us to comply with government-wide mandates such as the FISMA. Our information technology equipment includes personal computers, printers, a local area network, and associated peripherals. Finally, a small portion of this funding will be used to purchase any office furniture that may be needed.

## **VI. OTHER TABLES**

## The U.S. Occupational Safety and Health Review Commission Appropriation History

<u>Fiscal Year</u>	<u>Request to Congress</u>	<u>House Allowance</u>	<u>Senate Allowance</u>	<u>Appropriation</u>
1998	\$7,800,000	\$7,900,000	\$7,800,000	\$7,900,000
1999	\$8,050,000	\$8,100,000	\$8,100,000	\$8,092,000 <sup>9</sup>
2000	\$8,500,000	\$8,100,000	\$8,500,000	\$8,470,000 <sup>10</sup>
2001	\$8,720,000	\$8,600,000	\$8,720,000	\$8,720,000
2002	\$8,964,000	\$8,964,000	\$8,964,000	\$8,958,000 <sup>11</sup>
2003	\$9,577,000	\$9,577,000	\$9,577,000	\$9,673,000 <sup>12</sup>
2004	\$10,115,000	\$10,115,000	\$9,610,000	\$9,863,000 <sup>13</sup>
2005	\$10,516,000	\$10,595,000	\$10,595,000	\$10,510,240 <sup>14</sup>
2006	\$10,510,000	\$10,510,000	\$10,510,000	\$10,404,900 <sup>15</sup>
2007	\$10,346,000	\$10,510,000	\$10,346,000	\$10,470,779
2008	\$10,696,000	\$10,696,000	\$10,696,000	\$10,696,000 <sup>16</sup>
2009	\$11,186,000	\$11,186,000	\$11,186,000	\$11,186,000
2010	\$11,712,000	\$11,712,000	\$11,712,000	\$11,712,000
2011	\$12,051,000	\$11,712,000	\$12,051,000	\$11,712,000 <sup>17</sup>
2012	\$12,773,000	\$11,689,000	\$11,689,000	\$11,689,000 <sup>18</sup>
2013	\$11,965,000	\$11,667,000	\$11,667,000	\$11,666,908 <sup>19</sup>
2014	\$12,634,830			\$11,411,000
2015	\$12,651,000	\$12,651,000	\$12,651,000	\$11,639,000
2016	\$13,212,000	\$12,639,000	\$11,100,000	\$12,639,000
2017	\$13,411,000	\$12,975,000	\$13,411,000	\$12,615,000 <sup>20</sup>
2018	\$12,615,000			

<sup>9</sup> Reduced to \$8,092,000 by H.R. 1664

<sup>10</sup> Reduced to \$8,470,000 by P.L. 106-113

<sup>11</sup> Reduced to \$8,958,000 by P.L. 107-206

<sup>12</sup> Reduced to \$9,610,125 by P.L. 108-7

<sup>13</sup> Reduced to \$9,863,000 by P.L. 108-199

<sup>14</sup> Reduced to \$10,510,240 by P.L. 108-447

<sup>15</sup> Reduced to \$10,404,900 by P.L. 109-149

<sup>16</sup> Reduced to \$10,509,141 by P.L. 110-161

<sup>17</sup> Reduced to \$11,688,576 by P.L. 112-10

<sup>18</sup> Reduced to \$11,666,908 by P.L. 112-74

<sup>19</sup> Reduced to \$11,056,659 by P.L. 113-6 and Sequestration Order issued March 1, 2013

<sup>20</sup> A full-year 2017 appropriation for this account was not enacted at the time the budget was prepared; therefore, the budget assumes this account is operating under the Further Continuing Appropriations Act, 2017 (P.L. 114-254). The amounts included for 2017 reflect the annualized level provided by the continuing resolution, "FY2017 CR."

## Authorized Full Time Positions By Function

	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>
	Actual	Enacted	Estimate
<b>Administrative Law Judge:</b>			
AL-II	1	1	1
AL-III	11	11	11
GS-14	4	4	5
GS-13	1	1	0
GS-12	1	1	1
GS-11	0	0	0
GS-10	1	1	1
GS-9	1	1	2
GS-8	<u>6</u>	<u>6</u>	<u>5</u>
<i>Sub-total</i>	<b>26</b>	<b>26</b>	<b>26</b>
 <b>Commission:</b>			
Executive Level III	1	1	1
Executive Level IV	1	2	2
ES-00	2	2	2
GS-15	4	6	6
GS-14	4	4	4
GS-13	2	4	7
GS-12	4	4	1
GS-11	1	2	2
GS-10	0	0	0
GS-9	2	2	3
GS-8	1	1	0
GS-7	<u>0</u>	<u>0</u>	<u>0</u>
<i>Sub-total</i>	<b>22</b>	<b>28</b>	<b>28</b>
 <b>Office of the Executive Director:</b>			
ES-00	1	1	1
GS-15	2	2	2
GS-14	0	0	0
GS-13	0	0	0
GS-12	3	3	4
GS-11	1	1	0
GS-9	0	0	0
GS-7	0	0	0
GS-6	<u>0</u>	<u>1</u>	<u>1</u>
<i>Sub-total</i>	<b>7</b>	<b>8</b>	<b>8</b>
<b>Total full-time positions:</b>	<b>55</b>	<b>62</b>	<b>62</b>